

Dave Young  
District Attorney



17th Judicial District  
Adams & Broomfield Counties  
District Attorney's Office

December 3, 2013

Chief James S. May, Jr.  
Northglenn Police Department  
11701 Community Center Drive  
Northglenn, CO 80233

Re: Officer involved shooting of Alejandro Pinedo,  
September 2, 2013

Dear Chief May,

The investigation and legal analysis of the shooting of Alejandro Pinedo on September 2, 2013 is completed. The Seventeenth Judicial District Critical Incident Team's investigation of the shooting was presented to our office on November 1, 2013. The documents provided to the Seventeenth Judicial District Attorney's Office include police reports, videos, transcripts of interviews from lay witnesses and police officers, photographs and diagrams of the scene. Our review of these materials found the investigation to be thorough and complete. Based upon the review of the materials provided and applicable Colorado law, no criminal charges will be filed against the officer involved in this incident.

### **STATEMENT OF THE INVESTIGATION**

The incident began when Michelle Kirkpatrick, who lives at 11466 Fowler Drive in Northglenn, noticed a male on her back patio area as she walked into the dining room of her residence. Adjacent to the dining room are sliding glass doors that lead to a patio area. Her husband had already left the residence around 11:30 a.m. that morning and she initially thought the person was her husband returning home. She then noticed this male was someone she'd never seen before. She described him as a Hispanic male, wearing blue jeans and a white shirt, about 5' 7", black hair that was short on the sides and curly or wavy on top, no facial hair and he was a little pudgy. Ms. Kirkpatrick said she watched the male act as though he was looking for something in the patio area. She then saw him walk up the two stairs to the sliding glass doors and enter into her home. Ms. Kirkpatrick said the male came about two feet inside her home.

Upon seeing the male enter her home, Ms. Kirkpatrick asked him, "*What are you doing?*" The male, later identified as Alejandro Pinedo (DOB: 5/2/1975), responded, "*I'm supposed to be*

*in this house.*” Ms. Kirkpatrick said, *“Well, let me get my husband.”* Ms. Kirkpatrick was unsure if Mr. Pinedo responded in any fashion, but he did move back out of the house onto the steps of the patio. Ms. Kirkpatrick closed the sliding glass door and placed the lock bar onto the door preventing it from being opened from the outside. She then called 911.

While she was speaking to the 911 operator, Ms. Kirkpatrick continued watching what Mr. Pinedo was doing outside. She said he first stepped back down to where he had one foot on the step and the other on the ground. She then saw him come back up to the sliding glass doors and it appeared to her Mr. Pinedo had something black in his hand and was acting as though he was trying to pick the lock on the glass door. He then began aggressively trying to slide the glass door open. Ms. Kirkpatrick said she then began to panic telling her daughter, Brooklyn (DOB: 2/25/08) and her son, Akiba (DOB: 7/4/03) to stay in the living room. She then said she heard a siren and asked the 911 operator if she knew whether the police had arrived. The operator said police had indeed arrived and Ms. Kirkpatrick went back towards the glass doors because she wanted to be able to tell police which direction he went if Mr. Pinedo decided to run.

She said she saw Mr. Pinedo crouch down momentarily then stand up with his back against a wall. He then walked towards the gate of the patio. It was at that point that Ms. Kirkpatrick saw that Officer Adam Lewis had arrived. She said when Mr. Pinedo saw Officer Lewis, he raised his arm up and backed up a few feet as Officer Lewis approached. Ms. Kirkpatrick saw Mr. Pinedo was armed with what appeared to her to be a black-handled knife. She informed the 911 operator that Mr. Pinedo was armed with a knife.

Officer Lewis was working a day shift on September 2, 2013. He received a tone from dispatch at 12:47 pm about a burglary in progress at 11466 Fowler Drive. He recalled he had been at the address the day before due to a report of reckless driving in the area unrelated to the occupants, so he told dispatch he would handle the call. He was with a ride-along civilian passenger that day, Jason Villotti. When they arrived at the address at 12:49 pm, they both got out of the police car. Mr. Villotti described the patio area as an opening between the house and the attached garage portion of the house. The sight line into this area is partially blocked by a large bush. Mr. Villotti said he and Officer Lewis initially approached the front door of the home but heard, *“like a shuffling of stuff”* coming from the patio area and they proceeded in that direction instead. Officer Lewis approached the patio area on the grass and Mr. Villotti on the sidewalk. Mr. Villotti first saw an individual on the patio area behind the bush and alerted Officer Lewis. Officer Lewis had his gun drawn when he saw the man (Mr. Pinedo), wearing a white shirt and blue jeans, and immediately noticed this man had a black-handled knife with a three to four inch blade in his right hand. Mr. Pinedo told Officer Lewis, *“I’m not going back to jail.”*

At this point, Ms. Kirkpatrick could hear there was a discussion between Mr. Pinedo and the officer and could hear yelling but couldn’t make out exactly what was being said. She assumed it was the officer yelling because she could see his mouth moving and Mr. Pinedo had his back to her. She said the officer and Mr. Pinedo were about six to seven feet apart when Mr. Pinedo began walking towards the officer as the officer backed away in response. Ms. Kirkpatrick said, *“And then that’s when I grabbed the kids, I told them, let’s go in the bedroom. Because I – you know I didn’t know if the cop was going to shoot and I have just nothing but*

*glass there and then in that patio is also my son's bedroom window. There's a small bedroom window. So I grabbed them and ran into my bedroom."*

Mr. Villotti said when Officer Lewis and Mr. Pinedo came face to face, Mr. Pinedo said, *"Turn around, I'm not going back to jail."* He said Officer Lewis repeatedly told Mr. Pinedo to put the knife down. At this point Mr. Villotti estimated about a ten foot distance between Officer Lewis and Mr. Pinedo. He watched as Mr. Pinedo began advancing on Officer Lewis still with the knife held out in front of him and Officer Lewis backing up into the yard on the south part of the house. As the two went into the yard, Mr. Villotti retreated south across the street to the sidewalk on the other side of Malley Drive and Mr. Villotti saw Officer Andrew Fulton arrive.

Officer Fulton was also working a day shift on September 2, 2013. He said he'd had a fairly quiet day until he heard the tone alert for a burglary in progress at the Fowler Drive address. Officer Fulton went directly to 11466 Fowler Drive, arriving at 12:54 p.m. While proceeding to the Fowler address, he heard Officer Lewis relate that the suspected intruder was telling him that he wasn't going back to jail. When he arrived on scene Officer Fulton saw Officer Lewis and a male standing on the lawn. He noted the man had a knife in his right hand and was holding it in an aggressive manner. He immediately recognized the situation was potentially dangerous and drew his service revolver. He could hear Officer Lewis giving the man commands to drop his knife. Officer Fulton described the situation: *"I wanted to divert the man with the knife by yelling at him you know, obviously drop the knife, get on the ground. And I wanted him to know that you know he was out numbered. And that sometimes it works out in your favor that people just realize, yeah I'm gonna drop it and put my hands up. Um, he didn't do that."* Officer Fulton went on to say, *"I could see the look on (Mr. Pinedo's) face and it just didn't look right. It just didn't. I've seen other people armed before and there was just something about this guy's face he looked pretty serious and dedicated."*

After alerting dispatch of Mr. Pinedo's statement about not going back to jail, Officer Lewis said he asked Mr. Pinedo if he'd rather die than go back to jail and Mr. Pinedo said yes. Officer Lewis said he then became more fearful of the situation because he felt he was in an unsafe position since he and Mr. Pinedo were only eight to ten feet apart. He described the patio area as a twelve-by-twelve foot area that was confined on three sides by the house. The fourth, south-facing side of the patio was partially blocked by a shrub with a small gated opening. Officer Lewis said his training had taught him to avoid confined areas and when a person is armed with a knife, to maintain a distance of no less than twenty feet between himself and the armed suspect. Officer Lewis began to back away from Mr. Pinedo, but Mr. Pinedo began to advance toward him.

When Officer Fulton arrived, Mr. Villotti said Mr. Pinedo had begun advancing further towards Officer Lewis. Mr. Villotti said, *"I don't want to say he ran . . . because he didn't run but he was a lot more aggressive, if that makes sense, in his approach to Lewis."* At this time Mr. Villotti heard Officer Fulton urging Officer Lewis to shoot Mr. Pinedo. *"And, ah, there was a pause, not a pause as in no one moving, just a pause of nobody saying anything as the man kept coming forward, and that's when Officer Lewis opened fire."* Mr. Villotti said he heard Officer Lewis fire his weapon a total of four times in rapid succession.

At this time, Ms. Kirkpatrick had gathered her children and brought them into her bedroom. A window in the room faced the area where Officer Lewis and Mr. Pinedo were standing. Ms. Kirkpatrick said she looked out the window just as Officer Lewis fired his weapon at Mr. Pinedo. She estimated they were about ten feet apart when the shots were fired and only recalls hearing two shots.

As Officer Lewis kept backing up onto the lawn area, he said Mr. Pinedo followed him but abruptly turned around and headed in the direction of the driveway. Upon reaching the driveway he said Mr. Pinedo turned once again in his direction and began running towards him with the knife raised still in his right hand. He estimated the distance between him and Mr. Pinedo shrank to between four to six feet when he fired his weapon. He recalls hearing another officer tell him to shoot Mr. Pinedo, but he indicated that he fired his weapon out of fear for his own life. Officer Lewis described his thought process during this incident as follows, *“Throughout this whole point I just remember having my gun in the ready position, I didn’t have it up on target until he came charging at me and that when he came charging at me, um the thought of just being in fear, fear for my life, the way he had the knife demonstrated. Him getting closer and closer, um just made me react, put my gun and then pull it up on the target, shot him and I’d say three or four times, I remember hearing the shots go off. At that point he went down.”*

Officer Fulton’s description of his observance of Mr. Pinedo was, *“He was looking at me and he was looking at him (Lewis) and, and I, you know, I can’t say this for sure cause I don’t know but it looked like he was debating on who he was gonna swing the knife at. Um, I don’t know but, um it just didn’t look right to me and he wasn’t responding to any commands at all.”* His recollection was that he was fifteen to sixteen feet away from Mr. Pinedo and that Officer Lewis may have been roughly the same distance from Mr. Pinedo. From his training, he knew it was dangerous to have a person armed with a knife inside of twenty-one feet of his location. When Mr. Pinedo again made movement towards Officer Lewis, Officer Fulton urged Lewis to shoot Mr. Pinedo, saying, *“I knew he (Lewis) was gonna get, he was gonna get hurt.”* Officer Fulton indicated that due to his positioning he could not take a safe shot at Mr. Pinedo. He then saw Officer Lewis shoot Mr. Pinedo, recalling that he heard three shots. He called out shots fired on the police radio at 12:56 p.m. He approached Mr. Pinedo, found the knife he had been holding and kicked it a safe distance away. Mr. Pinedo was transported to Denver Health Medical Center where he remained for approximately one month before being arrested and taken into custody.

On September 2, 2013, Angelica Pinedo was concerned with her brother’s behavior from the day before and went to his residence to talk to him. Her brother was not home and she found his front door was unlocked. When she entered the residence she found a significant amount of blood on the kitchen floor and also noticed several bloody knives and a pair of scissors covered in blood lying on a kitchen counter. Ms. Pinedo then called 911 at around 4:21 p.m. Thornton Police were dispatched to 4210 E. 100<sup>th</sup> Avenue, #389, regarding a report of a missing adult male, Alejandro Pinedo (DOB: 5/2/1975). Officers contacted Angelica Pinedo on scene. Ms. Pinedo said she had last seen her brother, Alejandro, at his house on September 1, 2013, from 6:00 to 9:00 p.m. During the time she was there she discovered Alejandro had been on a “three day meth binge” and was having several hallucinations throughout the day. Ms. Pinedo said she

received a phone call from her brother around 1:40 a.m. on Sept. 2. In the phone conversation, Mr. Pinedo was still acting suspiciously and had visions of Ms. Pinedo being hurt. Ms. Pinedo said she assured her brother she was fine and disconnected the call.

On October 3, 2013, Northglenn Police Detectives Jean Mahan and Paul Gesi went to Denver Health Medical Center to ask for an updated medical status on Mr. Pinedo to determine if he could be medically cleared to be taken into custody. Upon arrival, the detectives learned Mr. Pinedo had been transferred out of the Intensive Care Unit and into the Primary Care Unit. Det. Gesi spoke with Mr. Pinedo's primary care physician who said Mr. Pinedo was going to be medically released that day and could be transferred to the Adams County Detention Facility.

Detectives advised Mr. Pinedo he had a warrant for his arrest and would be transported soon to the detention facility. Mr. Pinedo told the detectives that his family had hired an attorney to represent him and the attorney had advised him not to speak to them; however, he said he wanted to explain to the detectives that he was not a bad person, he'd been under the influence of illegal drugs and wasn't himself. Mr. Pinedo's father was there with his son and indicated that the officers had no right to shoot his son. According to Det. Mahan, the younger Mr. Pinedo responded, "*Grow up dad, what else were they supposed to do? I had a knife, they were just defending themselves.*" Before they left, the detectives were able to assist Mr. Pinedo in getting in touch with his attorney. The attorney, Iris Eytan, told Mr. Pinedo to not make any more statements. Our office later contacted Ms. Eytan as well to inquire whether further statements from Mr. Pinedo could be obtained regarding the shooting and whether his medical records could be obtained. Ms. Eytan declined both request.

### **CRIMINAL BACKGROUND ON ALEJANDRO PINEDO**

Mr. Pinedo's criminal history includes two felony convictions in Adams County. He was convicted in 05CR2094 of Possession of a Controlled Substance (F4) and Menacing (F5). In 12CR2366, he was convicted of Criminal Impersonation (F6) and DUI. He has five convictions for Driving Under the Influence and five prior convictions for Driving Under Restraint, either due to prior alcohol-related convictions or as a habitual traffic offender. He has two prior convictions for Third-Degree Assault, one prior conviction for Resisting Arrest and one for Obstructing a Peace Officer. He also has two convictions for misdemeanor Theft.

#### **Use of Deadly Force by the Officer:**

Section 18-1-707(2) of the Colorado Revised Statutes defines when a peace officer may use deadly force:

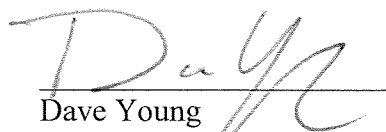
- (2) A peace officer is justified in using deadly physical force upon another person . . . only when he reasonably believes that it is necessary:
  - To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force.

## CONCLUSION

Officer Adam Lewis was dispatched to 11466 Fowler Drive on September 2, 2013 for a burglary in progress. Upon arrival, Officer Lewis encountered Alejandro Pinedo in a back patio area of the home. Immediately Mr. Pinedo informed Officer Lewis he was not going back to jail and in fact told the officer he would rather die than go back to jail. Mr. Pinedo was armed with a knife that had a three to four inch blade and held it in a threatening manner towards Officer Lewis. Despite Officer Lewis' and Fulton's repeated loud commands to drop his weapon and to get on the ground, Mr. Pinedo continued advancing in a threatening manner on Officer Lewis with a knife in his hand. Both officers knew from prior training that they should keep armed suspects outside of a twenty-one foot diameter for officer safety and that anyone within the twenty-one foot diameter with a knife can conceivably inflict lethal or serious bodily injury. Both officers felt that based upon the statements Mr. Pinedo made that day and their observations of his behavior that Officer Lewis's life was in danger. This belief was reasonable under these circumstances.

Therefore, it is the conclusion of the Seventeenth Judicial District Attorney's Office that Officer Lewis was justified in the use of deadly force against Alejandro Pinedo pursuant to C.R.S. 18-1-707 (2) and no criminal charges will be filed against Officer Lewis. Please feel free to contact me if you have any questions or further investigation is needed.

Respectfully,

  
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Dave Young  
District Attorney