



OFFICE OF THE DISTRICT ATTORNEY  
TWENTIETH JUDICIAL DISTRICT  
Michael T. Dougherty, District Attorney

July 11, 2025

**VIA ELECTRONIC MAIL**

Stephen Redfearn  
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**RE: Investigation and legal analysis of the use of force on December 27, 2024 at CU Boulder's Center for Innovation & Creativity, located at 1777 Exposition Drive, Boulder, Colorado and subsequent death of Jesus Lopez Barcenas on December 29, 2024.**

Dear Chief Redfearn and Chief Griffin,

The investigation and legal analysis of the use of force on December 27, 2024 and subsequent death of Jesus Lopez Barcenas on December 29, 2024, involving Boulder Police Department Officers Jarret Mastriona and David Middlebrooks and University of Colorado Police Department Officers Sean Seaver and Larry Hargreaves and Sergeant Troy Lewis is complete.

The Boulder County Investigation Team, also known as the Boulder Critical Incident Team (BCIT), investigated this case. The multi-agency team is designated to investigate use-of-force incidents in which any law enforcement officer within the 20<sup>th</sup> Judicial District uses deadly, or potentially deadly, physical force against a person while acting under the color of official law enforcement duties.

The BCIT was notified following this incident which enabled the BCIT to investigate the use of force by the officers. Consistent with Boulder County protocol, BPD and CUPD did not participate in this use-of-force investigation regarding law enforcement officers. CUPD remained involved in the investigation regarding non-law enforcement personnel. I, also, want

to acknowledge the Boulder County Sheriff's Office, Longmont Police Department, and DA's Office Investigators for their work in conducting the BCIT investigation.

This BCIT investigation was conducted for the purpose of determining whether criminal charges are warranted against Sergeant Lewis and Officers Hargreaves, Seaver, Mastriona, and Middlebrooks for the use of force and subsequent death of Jesus Lopez Barcenas on University of Colorado – Boulder property on December 27, 2024, within the City of Boulder. The investigation and review of this incident did not evaluate, nor review, the appropriateness of police tactics or whether policies or procedures were followed. BPD and CUPD are responsible for conducting the review of police tactics and policies relating to this incident.

My decision, based on criminal law standards, does not limit administrative action by BPD or CUPD or any civil action where less stringent laws, rules, and levels of proof would apply. The authority and role of the District Attorney is to determine solely whether Sergeant Lewis and Officers Hargreaves, Seaver, Mastriona, and Middlebrooks committed a criminal offense that can be proven beyond a reasonable doubt.

## **BACKGROUND**

The BCIT completed an investigation into this incident and generated detailed reports and documentation. The file is voluminous and includes recorded witness interviews, police communications, reports, photographs, and video recordings related to the incident. As you are aware, I attempt to expeditiously complete all BCIT reviews and issue a decision promptly. This investigation had a number of unforeseen delays. The autopsy report was not completed until May based upon a thorough review and analysis by the forensic pathologist. Additionally, American Medical Response (AMR) indicated early in the investigation they would cooperate with the investigation but then failed to respond to many of the further communications. Two separate search warrants had to be completed to get any records and information from AMR. AMR personnel (that were willing to be interviewed) did not agree to be interviewed until within the last three weeks and only after several pointed communications. Further, just within the last two weeks, we have been informed that interviews will not be agreed to by two of the remaining AMR personnel. Finally, attempts to interview a Boulder Fire paramedic are still pending as members of my office are trying to engage in conversations with his attorneys. Although every individual has a constitutional right to remain silent, the lack of cooperation and unwillingness to provide interviews caused significant delays. It is worth noting that they were not being viewed as suspects, but rather, as witnesses.

A review of the reports and documentation filed with my office has been completed and I, along with members of my staff, have been briefed regarding this incident by BCIT Commanders in charge of the investigation. I conclude that, under the applicable Colorado law, no criminal charges can or should be filed against Sergeant Lewis or Officers Hargreaves, Seaver, Mastriona, and Middlebrooks. They did not commit any crime that could be proven

beyond a reasonable doubt. My findings, analysis, and conclusions of law with respect to Sergeant's and Officers' use of force in this incident are as follows:

## **SUMMARY OF DECISION**

Under Section 20-1-114(1), C.R.S., "The district attorney shall, if no criminal charges are filed following the completion of an investigation pursuant to section 16-2.5-301, C.R.S., release a report and publicly disclose the report explaining the district attorney's findings, including the basis for the decision not to charge the officer with any criminal conduct. The district attorney shall post the written report on its website or, if it does not have a website, make it publicly available upon request."

After the use of force, and subsequent involvement and conduct by AMR personnel, Jesus Lopez Barcenas died while in-custody and after being transported to the hospital by AMR personnel and therefore this report is mandated by C.R.S. §20-1-114(1) and C.R.S. §16-2.5-301. Section 16-2.5-301(1), C.R.S., discusses actions by peace officers leading to injury or death investigations. Therefore, as C.R.S. §20-1-114(1) requires a report based on a C.R.S. §16-2.5-301(1) investigation, the statute requires a public report in this case even though charges are being pursued against a paramedic, as discussed in more detail below, because no peace officer is being charged. Additionally, as District Attorney, I believe this report is essential to inform the public of the nature and reasons for my decision regarding the law enforcement officers. The release of this report furthers the interests of transparency and explains the circumstances under which the law enforcement officers engaged in the use of force and are not criminally liable.

This report is not to be construed as commentary on the criminal charges against AMR Paramedic Edward McClure that are being filed by my office. The charge against Edward McClure is merely an accusation at this point and, as with all defendants, he is presumed innocent of the charge against him unless and until a jury finds him guilty beyond a reasonable doubt. Also, as you are aware, I typically conduct a Community Town Hall after every officer-involved incident to fully address any questions from community members. However, as charges have been filed against Paramedic McClure, it would not be appropriate to hold such a town hall as criminal charges are pending.

Applying the applicable statutes to the facts presented through this investigation, Sergeant Troy Lewis and Officers Larry Hargreaves, Sean Seaver, Jarret Mastriona, and David Middlebrooks are not subject to criminal prosecution for their actions because they reasonably concluded that it was necessary to use physical force against Jesus Lopez Barcenas to detain him, place him under arrest, and to stop him from gaining access to Officer Hargreaves' service weapon.

In all cases, including those involving law enforcement officers, the District Attorney's criminal filing standard requires that there be a reasonable likelihood of conviction to bring criminal charges against an individual. As in other cases prosecuted by this office, this legal and ethical requirement guides the analysis.

## **STATEMENT OF FACTS**

For a more detailed statement of facts and summary of interviews with witnesses, please see the Affidavit for Arrest Warrant for Edward McClure. That Affidavit provides the accurate summary of the facts. Below, I have detailed for you the facts relevant to my legal analysis regarding the law enforcement officers.

At 8:15 AM, on December 27, 2024, Officers Sean Seaver and Larry Hargreaves of CUPD were dispatched to the Center for Innovation and Creativity (CINC) on a "suspicious person call." The CINC, located at 1777 Exposition Drive, is on University of Colorado – Boulder property, and therefore falls under CUPD's jurisdiction. Riding with Officers Hargreaves was a civilian rider named Eddie Jones.

When officers first arrived on scene at 8:22 AM, they located the "suspicious person," later identified as Jesus Lopez Barcenas. Mr. Barcenas was on a concrete ramp with railings, which was directly adjacent to the CINC. Officers called out to Mr. Barcenas, but he did not acknowledge them and continued to walk around the concrete ramp. After refusing orders to sit down, Mr. Barcenas began shouting that the CINC was on fire and that people were dying inside the building. He then began hitting a fire alarm located at the upper left side of the door with his cell phone.

Officers Hargreaves and Seaver both documented that when they parked their vehicles, they activated their stage three emergency overhead lights and were under the assumption that this would automatically activate their body worn cameras and dash cameras. However, while the dash cameras did activate, they later realized that their body worn cameras (BWC) did not activate as expected upon the activation of the stage three emergency overhead lights. Officer Hargreaves later activated his BWC during the struggle with Mr. Barcenas when he realized it had not previously activated. All other officers who responded to the scene did activate their BWCs and all interactions with Mr. Barcenas were captured either by dash cameras or BWC. It was later confirmed by CUPD Commander Eric Edford that a feature of the BWCs where stage two or stage three emergency lights in the patrol vehicle would activate a BWC was turned on for a few weeks starting in the middle of December 2024 until Axon (the manufacturers of the BWCs) administrators later realized this feature was turned on by mistake. Commander Edford sent an email to officers on January 27, 2025 informing them of this mistake.

As Officers Hargreaves and Seaver approached Mr. Barcenas, who was wearing a backpack backwards—i.e., strapped to his chest, Mr. Barcenas began to reach into his pockets and pull out an item that, at the time, officers were unable to identify, but was later determined to be a lighter. Because Mr. Barcenas was reaching into his pockets and had easy access to his backpack, officers decided that they needed to detain Mr. Barcenas to get control over the situation.

At 8:26 AM, four minutes after Officers Seaver and Hargreaves first arrived, they tried to place Mr. Barcenas in handcuffs but were unsuccessful in doing so because Mr. Barcenas began to resist. During the initial struggle, the officers and Mr. Barcenas went to the ground. In doing so, Mr. Barcenas fell on top of Officer Hargreave's left ankle, which resulted in Officer Hargreaves rolling and injuring his ankle.

As officers were on the ground with Mr. Barcenas, they tried to regain control over him. During the fall, Officer Hargreaves lost control over Mr. Barcenas's right wrist and could feel that Mr. Barcenas had a two-handed grip on the handle of his gun, which at the time was in his holster on his right hip. Officer Hargreaves was able to "shrimp" out of the situation and regain control over his gun.

During the struggle, CUPD Sergeant Troy Lewis arrived on scene. He stepped up onto the ramp, where the struggle was taking place, and began to assist officers in gaining control over Mr. Barcenas. Sergeant Lewis told Mr. Barcenas several times to stop fighting and warned him that he would be tased if he did not comply (however, at no point was his taser or any other officers' taser unholstered). Mr. Barcenas acknowledged Sergeant Lewis but continued to yell that there were "bodies" in the CINC.

Officers were able to get Mr. Barcenas's right arm out from underneath his body. Officer Seaver is seen on BWC trying, unsuccessfully, to handcuff Mr. Barcenas. The civilian rider, Eddie Jones, who assisted officers in detaining Mr. Barcenas after the struggle began, is seen holding Mr. Barcenas's right arm. While Eddie Jones was holding Mr. Barcenas's right arm in place, Sergeant Lewis and Officer Seaver were finally able to place one of the cuffs onto Mr. Barcenas's right wrist and then were able to place the other cuff on his left wrist.

While Sergeant Lewis and Officer Seaver were handcuffing Mr. Barcenas, Officer Hargreaves was kneeling in between Mr. Barcenas's legs, holding them down while also telling him to keep his legs down. Mr. Barcenas can be seen on BWC trying to move his legs around while yelling unintelligible statements.

During the struggle, dispatch was unable to get a response from Officer Seaver, so dispatch upgraded the incident to an emergency response, prompting Emergency Medical Services (EMS) and officers with BPD to respond. As a result, BPD Officer Jarrett Mastriona and Officer David Middlebrooks responded to assist the CUPD officers. Sergeant Lewis also requested that a second ambulance be dispatched to treat Officer Hargreaves' ankle.

At 8:34 AM, the first AMR ambulance arrived on scene. The ambulance, AMR 30, was staffed by Paramedic Edward McClure and Emergency Medical Technician (EMT) Steven Rappe.

At 8:35 AM, Paramedic McClure exited the ambulance and walked over to the officers and Mr. Barcenas. At this time, Mr. Barcenas was still lying on the ground in the prone position on the ramp. Sergeant Lewis explained to Paramedic McClure that officers would be taking Mr. Barcenas to jail but that he needed to be medically cleared before he could be taken to jail. EMT Rappe walked up and was told by Paramedic McClure that “We just need the gurney,” so EMT Rappe said “okay” and then walked back towards the ambulance.

At 8:37 AM, BPD Officers Mastriona and Middlebrooks arrived on scene. Additionally, the second ambulance—AMR 4, which was staffed by Paramedic Rachael Fling and EMT Austin Hardy—also arrived to tend to Officer Hargreaves. AMR 4 did not have any involvement with Mr. Barcenas while on scene, and transported Officer Hargreaves to Boulder Community Hospital (BCH).

Officer Mastriona asked Sergeant Lewis if they should apply a leg restraint to Mr. Barcenas and Sergeant Lewis said yes. Officer Mastriona attempted to apply the fabric leg restraint, but the restraint was ineffective due to how it was applied and was ultimately taken off. Officer Middlebrooks then cut off Mr. Barcenas’s backpack by cutting the straps. After Officer Middlebrooks cut the straps, the other officers rolled Mr. Barcenas onto his left side so that Sergeant Lewis could remove the backpack from underneath Mr. Barcenas’s body. They then rolled Mr. Barcenas back onto his stomach.

At 8:40 AM, Paramedic McClure walked back and administered an injection, later documented to be 5mg of Droperidol, into Mr. Barcenas’s left buttocks through a hole in his pants. Paramedic McClure did not say anything to officers, nor did he consult them before administering it, and after he injected Mr. Barcenas, he stated to Officer Seaver, “I love holes in the pants.” Officer Seaver apparently did not hear him, so Paramedic McClure repeated while laughing, “I love holes in the pants.”

Once Officer Middlebrooks saw that Paramedic McClure had a syringe in his hand, he told Officer Mastriona that they are not supposed to be a part of any administration of a sedative per BPD policy. Officers Middlebrooks and Mastriona stepped back from Mr. Barcenas. Officer Middlebrooks also told Sergeant Lewis that he did not ask for the injection and that the decision to inject Mr. Barcenas was AMR’s. The video evidence reflects that Paramedic McClure did not tell the officers that he was about to inject Mr. Barcenas or with what he was injecting Mr. Barcenas.

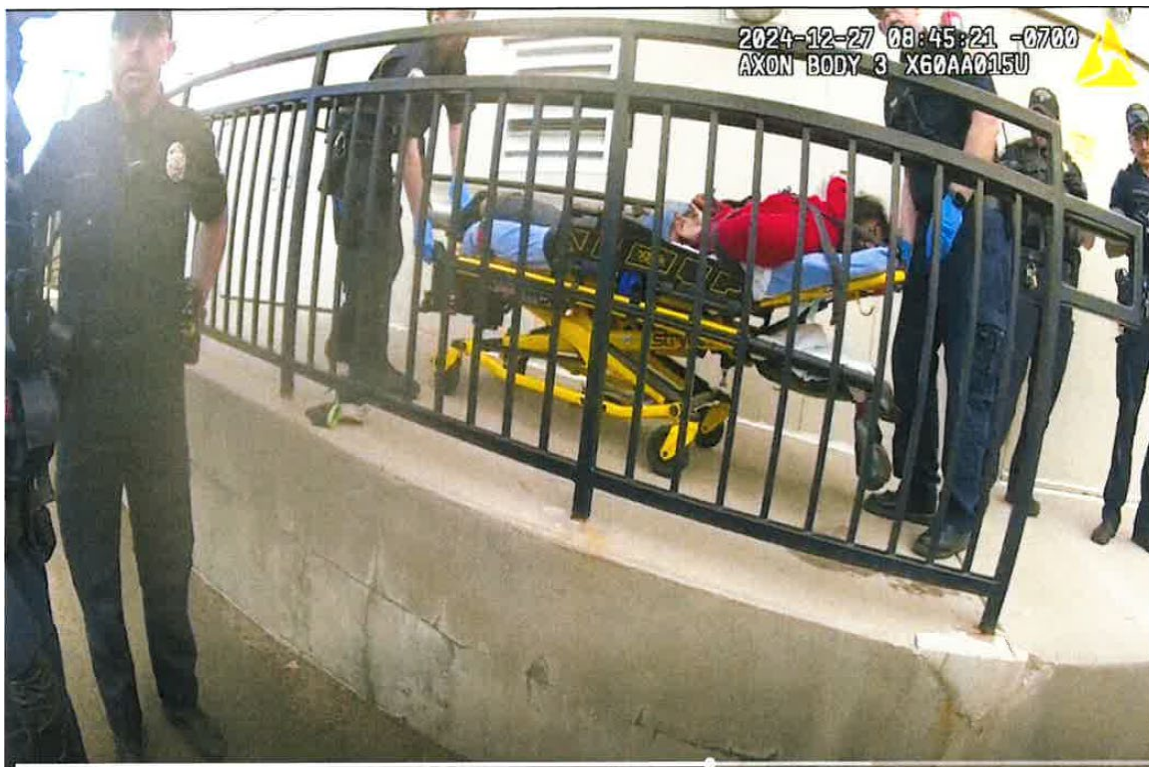
Mr. Barcenas, after receiving the injection, was still talking, yelling, and moving around while in the prone position while two officers continued to maintain control over him. Officers then discussed with Paramedic McClure and EMT Rappe the best way to place Mr. Barcenas on the gurney. Paramedic McClure suggested the officers lift Mr. Barcenas up and then he and EMT Rappe would slide the gurney underneath Mr. Barcenas. Officer Mastriona then removed

the leg restraint, and officers lifted Mr. Barcenas straight up and placed him on the gurney. They initially placed Mr. Barcenas, still in handcuffs, on his right side. Paramedic McClure and EMT Rappe then applied the gurney restraints. They first applied the ankle restraints. After the ankle restraints were applied, Mr. Barcenas was lying in the prone position.

Paramedic McClure then stated, "Now let's strap the crap out of him." He and EMT Rappe continued to apply the rest of the restraints from the legs up. Officers got out of the way while Paramedic McClure and EMT Rappe applied the restraints. Paramedic McClure moved up to the head of the gurney and lifted the top part of the gurney, elevating it at an upward angle so that Mr. Barcenas upper half of his body was raised higher than the rest of his body. As they were putting the seatbelts on, Paramedic McClure can be heard telling EMT Rappe, "Just keep him face down. I don't care. Oh, just go over his arms. I don't want to move him."

Officer Middlebrooks then asked EMT Rappe if he would like a spit sock, as Mr. Barcenas was bleeding from the mouth. EMT Rappe asked the officers if Mr. Barcenas had been spitting, and all the officers confirmed he had not. EMT Rappe did not take a spit sock from the officers. Review of BWC and dash cameras confirms that at no point did a police officer ever place a spit sock on Mr. Barcenas.

After Paramedic McClure and EMT Rappe applied the restraints, they raised the gurney and pushed it to their ambulance. Mr. Barcenas, who was handcuffed behind his back, was still lying in the prone position with the upper half of his body elevated at an incline angle.





At 8:46 AM, Paramedic McClure and EMT Rappe placed Mr. Barcnas in the back of the ambulance. BPD Officer Trevor McQueeney, who had arrived on scene at 8:39 AM, told Sergeant Lewis that he could ride in the back of the ambulance with Paramedic McClure and Mr. Barcnas. At 8:49 AM—three minutes after Paramedic McClure and EMT Rappe put Mr. Barcnas in the back of the ambulance—Officer McQueeney looked into the ambulance through an open side door and asked Paramedic McClure if he wanted him to ride in the back of the ambulance on its way to BCH. Paramedic McClure responded by saying, “I don’t. I’ve got him sedated. He’s four-pointed. As long as you guys are following...I mean if you guys are going to meet us at the hospital.” Officer McQueeney responded by saying, “Yeah, it sounds like someone is going to follow,” to which Paramedic McClure responded with “Alright.”

On Officer McQueeney’s BWC, you can see that Mr. Barcnas is still in the same position as when placed into the ambulance—i.e., handcuffed, face-down in the prone position with his upper-body elevated. However, at this point, Mr. Barcnas now had a spit sock over his head. Mr. Barcnas did not appear to be moving nor talking or yelling. Paramedic McClure is sitting near Mr. Barcnas’s head.





Approximately 30 seconds after Officer McQueeney exited the ambulance, EMT Rappe is seen exiting the back of the ambulance and walking to the driver's side. Approximately one minute later, the ambulance drove off. Officer Seaver followed in his patrol vehicle.

At 8:55 AM, while AMR 30 was in route to BCH, at Foothills Highway and Arapahoe Avenue, AMR 30 upgraded to an emergency response. At 8:57 AM, after AMR 30 arrived at BCH, Officer Seaver's BWC captures Paramedic McClure doing CPR on Mr. Barcenas in the back of the ambulance. At this point, Mr. Barcenas was lying on his back, but his hands were still handcuffed behind him. EMT Rappe and AMR 4 personnel assisted rolling Mr. Barcenas into the Emergency Room ("ER") while Paramedic McClure continued CPR. Paramedic McClure can be heard telling Paramedic Fling that Mr. Barcenas "just cored" on him.

Mr. Barcenas was rolled into a trauma ER room where BCH medical staff took over treatment of Mr. Barcenas. Paramedic McClure informed the ER staff what happened and that he had administered 5mg of Droperidol. At 9:00 AM, Paramedic McClure attempted to take the handcuffs off Mr. Barcenas. However, he was unable to do so, so he walked over to Officer Seaver and asked Officer Seaver if he (McClure) could use Officer Seaver's handcuff key because his was not working. Officer Seaver gave him his key. Finally, Paramedic McClure, at 9:01 AM, was able to get the handcuffs off.

While BCH medical staff were working on Mr. Barcenas, one of the staff members handed Officer Seaver a small clear baggie that was located on Mr. Barcenas. The baggie had what appeared to be a white powdery substance inside of it. The substance inside of this baggie was later tested by CUPD Officer Michelle Leo and Sergeant Travis McMurren and tested presumptive positive for methamphetamine.

Officer Seaver continued to observe Mr. Barcenas in the emergency room. BCH staff performed CPR on him until he was stable enough to be transported to the Intensive Care Unit (ICU). Although he stabilized enough to be transported to the ICU, Mr. Barcenas died two days later on December 29, 2024.

On December 30, 2024, AMR informed Paramedic McClure through a letter that they were terminating his employment. AMR determined that Paramedic McClure had violated several policies and "failed to follow accepted standards of care and administer medications or treatments in a responsible manner in accordance with medical director's order and protocols."

Also on December 30, 2024, Dr. Meredith Frank of the Boulder County Coroner's Office conducted a medicolegal postmortem examination (autopsy) of Mr. Barcenas. On May 1, 2025, she completed her findings and report. Her findings were, "sudden cardiac arrest following a prolonged physical altercation and struggle, which included prone positioning and the use of restraints and a sedative (butyrophenone) medication." Dr. Frank's opinion was, "Based on the postmortem examination findings and history available to me at this time, it is my opinion that Jesus Lopez Barcenas, a 36-year-old male, died as a result of complications of sudden cardiac arrest following a physical altercation and struggle which included prone positioning and the

use of restraints and sedative (butyrophenone) medication, and that the toxic effects of methamphetamine contributed to his death. The manner of this death, in my opinion, is best classified as homicide.” “Homicide” as used in the context of a forensic pathologist’s opinion as to the manner of death, means that Mr. Barcenas was killed by another person. It does not reflect the criminal statutory definition of homicide.

## **LEGAL AUTHORITY**

Before turning to the legal authority regarding use of force and any legal justifications, as there was an issue regarding the activation of the BWCs of Officers Hargreaves and Seaver, it is important to note that Colorado law specifies the requirements for peace officers to activate BWCs or dash cameras. C.R.S. §24-31-902(1)(a)(II)(A) states, in relevant part “... a peace officer shall wear and activate a body-worn camera or dash camera, if the peace officer’s vehicle is equipped with a dash camera, when responding to a call for service, ... in response to a call for service, ... or during any interaction with the public initiated by the peace officer, whether consensual or nonconsensual, for the purpose of enforcing the law or investigating possible violations of the law. The body-worn camera or dash camera does not need to be on when en route to a call for service, but should be turned on shortly before the vehicle approaches the scene.”

Turning to the issue of use of force, criminal liability is established in Colorado only if it is proven beyond a reasonable doubt that someone has committed all the elements of an offense defined by Colorado statute, and further proven beyond a reasonable doubt that the offense was committed without any statutorily recognized justification or defense. While using physical force against another person, who subsequently died from a culmination of factors – including the physical struggle and positioning – is generally prohibited by statute as an assault, manslaughter, or homicide in Colorado, the Criminal Code specifies certain circumstances in which the use of physical force by a peace officer is justified.

C.R.S. §18-1-707 defines the circumstances under which a peace officer can justifiably use physical force in Colorado. In pertinent part, the statute reads as follows:

- (1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person.
- (2) When physical force is used, a peace officer shall:
  - (a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;
  - (b) Use only a degree of force consistent with the minimization of injuries to others;

- (c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and
- (d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(2.7)(a)(II) "Prone position" means a position in which a person is lying on a solid surface with the person's chest and abdomen positioned downward even if the person's face is turned to the side or the person has one shoulder lifted.

(2.7)(a)(III) "Prone restraint" means a use of physical force, including, but not limited to, the use of a mechanical restraint, in which the person who is being restrained is in a prone position.

- (3) A peace officer is justified in using deadly physical force to make an arrest only when all other means of apprehension are unreasonable given the circumstances and:
  - (a) The arrest is for a felony involving conduct including the use or threatened use of deadly physical force;
  - (b) The suspect poses an immediate threat to the peace officer or another person;
  - (c) The force employed does not create a substantial risk of injury to other persons.

C.R.S. §18-1-901 (3)(d) states "deadly physical force" means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.

Independent of the analysis under C.R.S. §18-1-707, an officer can also be justified in using force pursuant to C.R.S. §18-1-704(1), which provides, in relevant part:

[A] person is justified in using physical force upon another person in order to defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force by that other person, and he may use a degree of force which he reasonably believes to be necessary for that purpose.

Additionally, it is fundamental that the laws of self-defense and the defense of others, which are laws of necessity, involve the question of one's right to act upon appearances, even though such appearances may prove to have been deceptive. Apparent necessity, if well-grounded and of such a character as to appeal to a reasonable person, under like conditions and circumstances, as being sufficient to require action, justifies the application of the doctrine of self-defense to the same extent as actual or real necessity. *See Young v. People*, 107 P. 274 (Colo. 1910).

Accordingly, the issue is whether the sergeant and officers used deadly physical force or simply physical force and if they reasonably and lawfully, using the criteria in statute and case law, engaged in the level of force used against Mr. Barcenas.

## LEGAL ANALYSIS

Pursuant to C.R.S. §24-31-902(1)(a) Officers Hargreaves and Seaver were equipped with both BWCs on their uniforms and dash cameras in their vehicles. Both officers activated their dash cameras before contacting Mr. Barcenas. Further, both officers believed they had activated their BWCs at the same time they activated their dash cameras. Starting in the middle of December 2024 CUPD officers became aware that their BWCs would automatically activate when they turned on their emergency lights in their patrol vehicles, which is also what activates the dash cameras; however, this feature was inadvertently turned on by the administrators of the BWCs and turned off by administrators when they realized the mistake. Once the feature was turned on in the middle of December, Officers Hargreaves and Seaver relied upon the automatic activation of their BWCs when performing their duties, including during this incident. However, the automatic activation either did not work or had been turned off by administrators, unbeknownst to either Officer Hargreaves or Officer Seaver, when contact was made with Mr. Barcenas. Notwithstanding the failure to activate their BWCs, both officers did activate their dash cameras in their vehicles which recorded the entirety of the contact with Mr. Barcenas. Pursuant to C.R.S. 24-31-902(1)(a)(II)(A), Colorado law requires the use of a BWC *or* a dash camera, so both Officer Hargreaves and Officer Seaver were in compliance with the legal requirements regarding the recording of their interaction with Mr. Barcenas. Further, later responding officers did have BWCs that were activated during their contact with Mr. Barcenas.

The determination of whether the officers' conduct was criminal is primarily a question of legal justification. The question of legal justification is whether a reasonable officer, confronted with the same facts and circumstances, could have concluded that it was necessary to use physical force to arrest, defend himself or another, and stop the threat that Jesus Lopez Barcenas presented, and if so, whether that use of force was reasonable and appropriate in response to the threat. In this case, the answer to those questions is yes as applied to Sergeant Lewis and Officers Hargreaves, Seaver, Mastriona, and Middlebrooks.

The analysis must begin with a determination if the law enforcement officers engaged in the use of deadly physical force. The sergeant and officers did not engage in the use of deadly physical force as defined in C.R.S. §18-1-901(3)(d). While Mr. Barcenas unfortunately and tragically died after his encounter with the police officers (and AMR personnel), the law enforcement conduct does not meet the definition of deadly force as defined above. The force used by law enforcement officers was not intended to cause death, nor was the natural and probable consequence of the level of force used to cause death. Further, pursuant to the autopsy report, Mr. Barcenas died based on methamphetamine use, a physical struggle, prone positioning, and the AMR use of a sedative. The struggle was caused by Mr. Barcenas's reaction to law enforcement's questions, directions, and attempts to effect an arrest. Further, the time frame while under the control of law enforcement that Mr. Barcenas was prone on the concrete ramp was due to Mr. Barcenas's continued resisting and failure to follow the directions of law enforcement. The use of the sedative and the subsequent prone positioning

while being treated medically is attributable to Paramedic McClure and not law enforcement officers.

The officers did, however, engage in the use of physical force as contemplated in C.R.S. §18-1-707(2). The analysis next turns to whether that force was reasonable and appropriate based upon the circumstances presented at the time to the law enforcement officers. As noted, law enforcement did not use deadly physical force, they used only the degree of force consistent with the minimization of injuries, AMR arrived to provide assistance and medical aid to Mr. Barcenas.

Law enforcement was called to the CINC on a report of a suspicious person and possible crimes in progress and attempted to speak with Mr. Barcenas without the use of any force. Mr. Barcenas did not meaningfully engage with law enforcement upon their requests and their repeated attempts to de-escalate the situation, he continued to make nonsensical statements, and attempted to damage property. The situation was somewhat volatile and law enforcement made the decision they would need to detain Mr. Barcenas for his and others' safety. Attempts to detain Mr. Barcenas resulted in a struggle, resisting arrest, and what Officer Hargreaves perceived as an attempt to disarm him of his service weapon. Based upon all of this, the officers and sergeant used only the degree of force necessary to gain compliance from Mr. Barcenas and to effectuate an arrest of him, which was reasonable and appropriate.

Once officers were able to gain enough control of Mr. Barcenas, they held him in a prone position while he continued to resist and ignore officers' directions and as they waited for a medical clearance from AMR before he could be transported to the jail. Both BPD and CUPD had policies, as required by law, on the use of prone restraint and all law enforcement officers' actions were, generally, consistent with those policies. See C.R.S. §18-1-707(2.7). Most importantly in this analysis, the prone positioning, positioning of the gurney, and the use of the restraints and spit sock by Paramedic McClure is alleged to have caused the tragic and untimely death of Mr. Barcenas.

Under Colorado case law, the facts must be viewed as they appeared to the officers at the time; future developments are irrelevant to the legal analysis. The investigation revealed that at the time the officers used physical force, their actions were objectively reasonable to prevent any ongoing threat posed by Mr. Barcenas and to arrest him. Additionally, as required by law, Mr. Barcenas's relatives were later notified by CUPD.

An analysis under C.R.S. §18-1-704 is the same for law enforcement officers as it is for any other individual. The investigation revealed that during the time law enforcement used force against Mr. Barcenas, their actions were objectively reasonable to prevent the threat of injury or death to themselves, other officers, or to the public, especially in light of the attempt by Mr. Barcenas to grab Officer Hargreaves' weapon.

Thus, Sergeant Lewis and Officers Hargreaves, Seaver, Mastriona, and Middlebrooks were legally justified in using physical force by both C.R.S. § 18-1-707 and C.R.S. § 18-1-704(1).

Further, pursuant to C.R.S. §18-8-802, as no law enforcement officer exceeded the degree of physical force permitted under C.R.S. §18-1-707, there was no duty by any officer to intervene in the use of unlawful force by another law enforcement officer. While the conduct committed by Paramedic McClure is resulting in the filing of a criminal charge, C.R.S §18-8-802 only requires officers to intervene when unreasonable force is used by other peace officers. In addition, and importantly, it appears that the officers deferred to the medical and clinical judgement by the attending paramedic, Edward McClure, in dealing with Mr. Barcenas once AMR arrived.

## **CONCLUSION**

I find in my review of this incident that no conduct by Sergeant Lewis and Officers Hargreaves, Seaver, Mastriona, and Middlebrooks rises to the level of a criminal offense that can be proven beyond a reasonable doubt. As noted above, my review does not include a review of the appropriateness of police tactics or whether internal policies or procedures were followed. As District Attorney, my role is defined by statute and, as such, it is to review whether the officers committed a crime that can be proven beyond a reasonable doubt.

It is the conclusion of my office that, based on the applicable law and the facts and circumstances of this case, law enforcement's actions during this incident were legally justified as set forth in C.R.S. § 18-1-707 and C.R.S. § 18-1-704. The officers were legally justified in their use of reasonable and appropriate physical force in response to Mr. Barcenas's failure to follow commands, resisting arrest, and attempting to grab the gun of Ofc. Hargreaves. As a result, my office will not be filing criminal charges against Sergeant Lewis or Officers Hargreaves, Seaver, Mastriona, or Middlebrooks.

I appreciate the cooperation provided by BPD and CUPD and the extremely thorough investigation conducted by the BCIT.

As noted above, in the interest of transparency, and as required by law, I will be releasing this letter to the public. This letter will be posted on the District Attorney's Office website. Pursuant to BCIT policy, once the prosecution of Paramedic McClure is completed, CUPD will become the custodian of records related to this case. Please contact me if you require further information.

Sincerely,



Michael T. Dougherty  
District Attorney  
20<sup>th</sup> Judicial District