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DISTRICT ATTORNEY
SALT LAKE COUNTY
SIM GILL

HAND DELIVER

April 26, 2013

Chris Burbank
Chief of Police
Salt Lake City Police Department
315 East 200 South
Salt Lake City, UT 84111

Re: Officer Involved Critical Incident – March 19, 2013

Dear Chief Burbank:

After working in conjunction with the Salt Lake City Police Department, the Salt Lake County District Attorney's Office has completed its review of the investigation concerning the use of deadly force against Ronald M. Ontiveros. The incident occurred on March 19, 2013, at 1149 Foulger Street, Salt Lake City, Utah. The purpose of the review is to determine whether the deadly force employed was lawful under Utah law.

The Joint Criminal Apprehension Team (JCAT) is a multi-jurisdictional task force led by the U.S. Marshal's Office. The team is comprised of officers from various law enforcement agencies in Utah. On the date of the incident, JCAT was pursuing a fugitive by the name of James McIff who had active warrants for his arrest. JCAT received information that McIff was with his girlfriend, Amber Gray, and possibly staying at a residence located at 1149 Foulger Street, Salt Lake City, Utah.

After receiving information on McIff's whereabouts, Deputy U.S. Marshal Bobby Arnes contacted several members of the JCAT team to assist him in taking McIff into custody. Deputy U.S. Marshals Mark Thomson, Brett Glissmeyer, Joseph O'Callaghan, Jaime Zielger and Andrew Thomas responded from the U.S. Marshal's Office. Sergeant Lance Jensen from the Syracuse Police Department, Deputies Jon West and Kyle Sorensen from the Davis County Sheriff's Office, Officers Saul Bailey, Aaron Lavin and Jaren Fowler from the Unified Police Department and Agents Phil Rodriguez and Casey Nelson from Utah Adult Probation and Parole also responded. They all met at a location near the Foulger Street address and discussed plans to make contact with McIff and take him into custody.

The team set up surveillance on the residence at 1149 Foulger Street. On that block, Foulger is a dead end street with chain fencing on the north end of the block. A car dealership is

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located on the north end on the other side of the fencing. During the surveillance, a black Honda vehicle entered Foulger Street and parked in front of the house. Agent Nelson, who had been McIff's probation/parole agent, saw two men exit the Honda and recognized one of the two as possibly being McIff. Agent Nelson observed the subject enter the house while the other man, later identified as Ronald Manuel Ontiveros, stayed outside apparently cleaning the Honda.

Officers determined that the house was owned or rented by Amber Gray. Officers also determined that there was an outstanding felony warrant for Gray's arrest.

U.S. Deputy Marshal Arnes decided that he and U.S. Deputy Marshals Thomson and Ziegler and Officers Jensen, Bailey, Lavin, Fowler and Deputies West and Sorensen and Agent Rodriguez would make contact with the residence. They would approach the residence from the south proceeding north on the east side of Foulger. The officers set up in a "stick" formation with Arnes carrying a shield, leading the team. The remaining officers followed in a single file line. Each officer wore tactical clothing with large bright colored insignia identifying themselves as police officers. Officers carried either rifles or handguns, most in a low ready position.

Officers started up the east side of Foulger Street proceeding at a slow jog. When they started, the Officers could see that Ontiveros was still bent over inside the Honda. When they were no more than two houses from the corner, Ontiveros suddenly looked up and saw the Officers approaching. When they were seen by Ontiveros, the Officers in the stick shouted, "Police." Ontiveros started running north and then east alongside the fence at the end of the street. Various officers in the stick continued shouting, "Police." Glissmeyer and O'Callaghan were stationed in the parking lot of the dealership on the other side of the fence. O'Callaghan saw Ontiveros and also shouted, "Police." Ontiveros turned back and ran to the west. As he ran, Ontiveros pulled out a silver colored handgun from the area of his waist. Ontiveros fired at the Officers. Officers in the stick returned fire. Ontiveros was hit and fell down on the west side of the street.

After Ontiveros went down, officers noted that he was still moving and that his gun was on the ground nearby. Further, Ontiveros was in an open location on the street. Officers were concerned that if they approached Ontiveros to render aid, not only could Ontiveros use his weapon against them, but they would be in the open and their safety would be compromised since it was believed that McIff and Gray were still at large in the residence. Out of those concerns, officers held Ontiveros at gun point until a police dog pulled him to a safe location and away from the gun. Once Ontiveros was pulled to a safe location, officers immediately moved Ontiveros off the street and provided medical attention. He had gunshot wounds to his head and foot. He was later pronounced deceased at the University of Utah Medical Center.

Because McIff and Gray were believed to still be in the residence and continued to present a potential threat, SWAT officers were called to the scene to engage and arrest them. They both surrendered to SWAT officers and their identities were confirmed and they were placed under arrest.

The OICI protocol was invoked. Lt. Isaac Atencio, Salt Lake City Police Department, took command of the scene. Detectives Chris Kotrodimos with other members of the Salt Lake City Police Homicide Unit, Detective Tyler Richmond, Unified Police Department, along with

Sgt. Dirk Watrous and members of the District Attorney's Office Investigation Unit responded and started processing the scene and interviewing witnesses.

At the scene, the protocol team found that the gun located near Ontiveros was a Beretta 9mm semi automatic. The gun did not have a live round in the chamber but had nine live rounds in the magazine.¹ One spent 9mm casing consistent in make and characteristics with the ammunition found in the Beretta was located in the roadway in the area where Ontiveros was seen shooting. The 9mm casing is also distinctly different from the ammunition used by the officers. Forty three spent casings were found in areas consistent with the described locations of the shooting officers.²

An autopsy was conducted by Dr. Ed Leis, Office of the Medical Examiner, State of Utah. Dr. Leis found a gunshot wound in Mr. Ontiveros' left foot and another fatal wound in his head. The bullet in the head entered from the back and was found in the front left side of the skull.

The investigation found that U.S. Deputy Marshals Mark Thomson, Bobby Arnes, and Jamie Ziegler along with Officer Aaron Lavin, Unified Police Department and Sergeant Lance Jensen, Syracuse Police Department fired their weapons at Ontiveros. All three Deputy Marshals provided written statements but did not consent to verbal interviews. Officer Lavin declined to provide any statement or submit to a verbal interview.³ Sergeant Jensen was interviewed by Detectives Kotrodimos and James Spangenberg but not by the protocol team.⁴

The following is a short outline of each officer's statement. Most of the information about the reasons for the officers presence at the Foulger Street location, the information they found on the occupants of the home, the gathering, briefing and assignment of officers, how the officers were dressing and identified as police officers, as well as the officers actions after the shooting are not disputed and will not be repeated in the summaries of the officers actions.

¹ There are a number of reasons why a round would not be in the chamber of the Beretta that contained a loaded clip after it was fired. However, the information from the incident is clear and without conflict that Ontiveros possessed and pointed the firearm in the direction of the officers and discharged a round in their direction.

² Normally, all officers involved in shootings, whether they actually fired their weapons or not, are taken directly to the investigating agency to have their firearms examined and ammunition counted. The examination is done to determine the condition of the firearm and to verify the amount of rounds fired. In this case, the firearms of the non shooting officers were not examined. Furthermore, the U.S. Marshall's Office failed to follow the direction of the scene commander to take their deputies directly to the Salt Lake City Police Department for an examination of their firearms. Instead, they took their deputies back to their own office and conducted an examination of the deputies' firearms without the protocol team's involvement.

³ The recent practice of some shooting officers refusing to make statements about their actions is unfortunate. Whether the use of deadly force is allowable under State law is usually a question of the reasonableness of an officer's actions given the facts and circumstances available to that officer at that moment. It becomes critical to know what the officer actually perceived. Without the officer's statement, the District Attorney's Office is left to rely on information from other sources that may not always reflect what the officer actually knew. One can easily find a circumstance where the officer's perceptions are the only justification for the officer's actions.

⁴ OICI protocol requires that shooting officers be interviewed by the lead investigating agency, an investigator from the District Attorney's Office and a representative from the shooting officer's agency. Although not critical to a determination in this case, the interview of this shooting officer was not completed in accordance with the OICI protocol.

Instead, the summaries will focus on the specific officer's particular or unique actions or observations related to the actual shooting.

U.S. Deputy Marshal Mark Thomson stated that he was in the stick with the approaching officers. He saw Ontiveros stand up and look at officers. Ontiveros started to hop up and down as if trying to decide whether to run. Thomson yelled, "Police." Ontiveros ran northeast. Thomson yelled, "Police stop." Ontiveros reached into his waist band and pull out what appeared to be silver handgun and pointed it at officers that were northeast of Ontiveros. Thomson heard a gunshot and saw a muzzle blast from the gun. Ontiveros then pointed the gun in the direction of the approaching officers. Thomson fired his firearm several times and Ontiveros fell to the ground.

U.S. Deputy Marshal Bobby Arnes stated that he was in the stick with the other officers carrying a shield. He saw Ontiveros pop up as they approached and heard someone yell, "Stop, Police." Ontiveros fled. Arnes saw Ontiveros reach toward his waist and then saw a silver colored handgun by Ontiveros' side. Arnes saw Ontiveros fire the gun in the direction of some officers. The bullet appeared to hit the ground. Ontiveros then pointed the gun at other officers to the northeast and fire a round at them. Arnes fired his gun several times and kept firing until Ontiveros fell to the ground.

U.S. Deputy Marshal Jamie Ziegler stated that he was in the stick approaching the house on Foulger Street when he saw Ontiveros in the street. He saw a gun in his hand and heard other officers shout, "He's got a gun." Ziegler saw Ontiveros raise his arm pointing the gun at officers on the street. Ziegler fired at Ontiveros several times.

Sergeant Lance Jensen stated that he was third in line in the stick and was carrying a door ram in addition to his firearm. He also said that prior to proceeding up the street, officers could see Ontiveros working in the Honda. Officers waited until Ontiveros ducked back inside the Honda then they started up the street. Officers were almost immediately "burned" as Ontiveros saw the officers and started running. Officers in the stick shouted commands, "Police," and "Stop." Jensen saw Ontiveros reach in his waistband and pull out a silver colored handgun and fire at least two rounds at the officers north of his location. Ontiveros then turned and fired at the approaching officers. Jensen fired eight to ten rounds at Ontiveros.

The following officers submitted to verbal interviews: Jaren Fowler, Brett Glissmeyer, Joseph O'Callaghan, Andrew Thomas, Kyle Sorenson, Saul Bailey, Phil Rodriguez, Casey Nelson, and Jon West. These officers were close to the shooting and saw or heard at least some of the events.

Officer Jaren Fowler stated that he was the last officer in the stick with the other approaching officers. He saw Ontiveros look at the approaching officers and then run. He also saw Ontiveros bring out a silver handgun and then heard several shots being fired from Ontiveros' location. Multiple officers fired and Ontiveros fell to the ground. Fowler did not fire his gun.

U.S. Deputy Marshal Brett Glissmeyer stated that he was in the parking lot of the car dealership north of the Foulger address by trees and the fence. He could see Ontiveros in the

Honda and felt that he was acting like a lookout rather than just cleaning the car. Glissmeyer heard U.S. Deputy Marshal O'Callaghan, who was also in the lot, shout, "He's running," and then "gun." Glissmeyer heard shots but was too far east of the area to see what happened.

U.S. Deputy Marshall Joseph O'Callaghan stated that he was in the car dealership lot watching the house on Foulger Street. He could see Ontiveros and saw that as the stick officers approached, Ontiveros started to run. O'Callaghan could see a gun in his hand. O'Callaghan shouted, "Police." He then heard a gunshot that he thought had been fired by Ontiveros. O'Callaghan did not fire his gun.

U.S. Deputy Marshall Andrew Thomas stated that he was on a nearby street and heard shots but did not see what happened and did not fire his weapon.

Deputy Kyle Sorenson stated that he was in the stick with as many as five officers in front of him. As the officers in the stick rounded the corner onto Foulger, Sorenson saw Ontiveros stand up and run. Sorenson heard an officer shout, "gun" and saw something in Ontiveros' hand. He also heard a shot from Ontiveros' location. Sorenson saw other officers shooting and saw Ontiveros laying in the street but still moving. Sorenson did not fire his weapon.

Officer Saul Bailey stated that he was in the 5th or 6th position in the approaching stick formation. As they approached, Ontiveros fled. Bailey heard several officers yelling commands at Ontiveros and identifying themselves as police officers. Bailey saw Ontiveros run north to the area where the containment officers were and then back west. Bailey heard another officer yell, "gun." He saw Ontiveros with a weapon in his right hand. He also saw Ontiveros fire at least one round at the approaching officers. Bailey saw Officer Lavin fire several rounds at Ontiveros and saw Ontiveros fall to the ground. Bailey did not fire his weapon but maintained security. While maintaining security, Bailey saw through his rifle scope a handgun on the ground by Ontiveros. Because the other suspects were still in the house, he and other officers kept a "hot zone" and watched until a police dog pulled Ontiveros away from the gun.

Agent Phil Rodriguez stated that he was also in the stick formation in the 5th or 6th position in line. He saw Ontiveros flee as the officers approached and saw a gun in his hand. He saw a flash from Ontiveros' gun and felt that he, Ontiveros, had fired. Once Ontiveros was down, Rodriguez saw the police dog pull Ontiveros out of the danger area so that officers could get him medical attention. Rodriguez did not fire his weapon.

Agent Casey Nelson was stationed on a nearby street as containment and heard shouting and gun fire but did not see the events and did not fire his weapon.

Deputy Jon West was assigned to be in the stick formation. He was near the back of the line in 7th or 8th position. He saw Ontiveros run, saw a silver handgun in his hand and saw him point the gun at officers. West saw other officers firing at Ontiveros but West did not fire his weapon.

The Utah Code addresses the use of deadly force by a peace officer as follows:

76-2-404. Peace officer's use of deadly force.

(1) A peace officer, or any person acting by his command in his aid and assistance, is justified in using deadly force when:

(a) the officer is acting in obedience to and in accordance with the judgment of a competent court in executing a penalty of death under Subsection 77-18-5.5 (3) or (4);

(b) effecting an arrest or preventing an escape from custody following an arrest, where the officer reasonably believes that deadly force is necessary to prevent the arrest from being defeated by escape; and

(i) the officer has probable cause to believe that the suspect has committed a felony offense involving the infliction or threatened infliction of death or serious bodily injury; or

(ii) the officer has probable cause to believe the suspect poses a threat of death or serious bodily injury to the officer or to others if apprehension is delayed; or

(c) the officer reasonably believes that the use of deadly force is necessary to prevent death or serious bodily injury to the officer or another person.

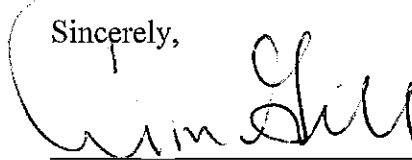
(2) If feasible, a verbal warning should be given by the officer prior to any use of deadly force under Subsection (1) (b) or (1) (c).

In this incident, the involved officers had sufficient cause to approach the house and arrest the occupants, Ms. Gray and Mr. McIff. Officers approached in clearly marked police attire. Ontiveros' actions in fleeing and continuing to flee after being told by police to stop focused the police attention on him instead of the occupants of the house and exposed the officers to risk from inside house. Whether the officers were justified in chasing after Ontiveros in the first place and whether or not they could have detained Ontiveros if they had caught him is not at issue. Officers could at least make sure that Ontiveros did not interfere with their attempt to arrest the occupants of the house. However, once Ontiveros pulled out what is consistently described as a silver colored handgun and pointed it at the officers, they were faced with a completely different and more dangerous situation.⁵ Most of the officers heard at least one shot coming from Ontiveros' location. Many saw Ontiveros point the gun at officers. Some heard more than one shot and a few actually saw a flash. Finally, an empty casing, consistent with live rounds still in Ontiveros' gun, was found in the area where he was when officers saw him shooting. All this supports a conclusion that Ontiveros did shoot at the officers. Given that fact, officers had a reasonable belief that the use of deadly force against Ontiveros was necessary to protect their lives, other officers and nearby residents. Therefore, the deadly force used against Ontiveros was justified under Utah Code Annotated Section 76-2-404(1) (c).

⁵ It is also not an issue that Ontiveros was hit in the back of the head by the fatal bullet. The specific position of Ontiveros' body relative to the shots fired is almost impossible to determine. Both Ontiveros and the officers were moving and turning during the shooting. Furthermore, what is important to this analysis are Ontiveros' actions at the time the officers fired and not his position when actually hit.

If you have any questions or concerns regarding the determination made in this case, or otherwise wish to discuss the matter, please feel free to contact our office to set up a personal meeting.

Sincerely,

A handwritten signature in cursive script that reads "Sim Gill". The signature is written in black ink and is positioned above a horizontal line.

SIM GILL,
Salt Lake County District Attorney