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December 27th, 2023

Garden City Police Department
301 E. 50th Street
Garden City, Idaho 83714

RE: Eli Robert Nash – January 23rd, 2023, Officer Involved Shooting

Dear Sergeant O’Gorman:

Pursuant to the Memorandum of Understanding Agreement between Blaine County and the Ada County Prosecuting Attorney’s Offices dated June 6th, 2022; I was requested to review the investigation conducted by the Critical Incident Task Force (CITF) to determine whether criminal charges should be filed against the officer involved in the shooting of Eli Robert Nash. Here, the critical incident task force (CITF) was led by the Garden City Police Department as the investigative agency. I have carefully reviewed the investigation, comprised of reports, photographs, video and audio recordings, and concluded that the shooting was justifiable under Idaho law and decline to file criminal charges. A summary of the facts, the applicable law, and the reasons for my decision are explained below.

Nash was on parole after his release from prison following a conviction of two counts of Sexual Exploitation of a Child by Electronic Means. In late 2022, Nash’s parole officer suspected that he was in possession of child pornography and performed a routine house

check where Nash's electronic devices were seized to search for evidence of child pornography. Shortly thereafter, Nash absconded from supervision. On January 23rd, 2023, the Idaho Department of Corrections and Parole had issued a parole warrant for Nash's arrest and notified Boise Police Officer Tim Beaudoin.

Further, Officer Beaudoin was aware that Nash had Failed to Register as a Sex Offender under I.C. § 18-8311 and had applied for a separate arrest warrant with the Attorney General's Office. Other officers were also investigating allegations that Nash had recently sexually assaulted a thirteen (13) year old girl.

On January 23rd, 2023, Officer Beaudoin assembled multiple officers from the Boise Police Department and an investigator from Idaho Department of Corrections to arrest Nash on his outstanding warrant for the parole violation. Officers located Nash's vehicle and followed him in the vicinity of Eagle Road, in Eagle, Idaho, until they lost visual contact. Boise Police Department Officer Kip Paporello later observed Nash at an Arby's fast-food restaurant and followed him to a parking lot adjacent to the Texas Roadhouse restaurant at 3801 E. Fairview Ave, in Meridian, Idaho. The parking lot was shared by several stores and restaurants and was busy around four thirty in the afternoon. Upon locating Nash, Officer Paporello informed the remainder of the law enforcement team.

Three law enforcement vehicles with six officers responded and positioned themselves in the parking lot where they were able to observe Nash in the front seat of his vehicle, staring at his phone. The law enforcement team then coordinated a plan to arrest Nash. The plan was that one vehicle with four officers would approach Nash's car from the rear. Another unmarked police vehicle, driven by Officer Beaudoin would approach from the front and block Nash's vehicle from escape. A third vehicle, driven by BPD Officer Kip Paporello was to park nearby. Given Nash's history of child pornography, a primary goal of law enforcement was to preserve any potential evidence from his phone.

With this plan in place, the officers approached Nash's vehicle in accordance with their assignment. Each officer wore a tactical vest with the word "POLICE" across the chest. The officers exited their vehicles and surrounded Nash's vehicle. Two officers went to the driver's side door and knocked hard on the window identifying themselves as police officers and commanding him to put his hands on the steering wheel. Other officers surrounded

Nash's car to watch and assist in his arrest, however both the rear windows had been covered with blankets and blocked the officers from looking inside.

Again, the two officers knocked and yelled at Nash to show his hands. They observed Nash as he looked around at the officers surrounding his vehicle but refused to show his hands or obey the officers' commands. A decision was made by the officers to break the car window to prevent Nash from destroying potential evidence on his phone. As the driver's window shattered, Nash leaped into the rear seat of the car, concealing himself from several officers' view.

Officer Beaudoin remained towards the front of Nash's car and could see inside the vehicle through the windshield. Beaudoin saw Nash in the backseat where Nash shifted his body so that his back was against the rear passenger door, facing the rear driver's side door. Through the front seats, Beaudoin saw that Nash had a gun in his hand pointed towards the rear driver's door and his eyes were tracking the officers that were visible.

As the other officers struggled to see Nash, Paporello moved to the back of the car to a position where he could lean over the trunk of the car and see through the rear windshield. Paporello saw Nash with his back to the rear door on the passenger side holding a gun in his lap pointed toward the rear driver's side door. Paporello observed Nash ready to fire the gun and looking toward the rear driver's side door. Paporello stated that Nash appeared to be waiting for officers to open the rear driver's side door. At that moment, there were at least two officers in that general direction that could not see Nash and thus were unable to perceive the threat. Paporello proceeded to fire four rounds at Nash through the rear windshield.

Paporello continued to see the gun lying on Nash's lap, but Nash appeared to be unresponsive. The rear passenger window was shattered by another officer, and they opened the door. Another officer secured Nash's gun, located between his hands, and placed it on the hood of a police vehicle. Nash was removed from the car and officers began to render first aid. Despite the life-saving efforts employed by law enforcement, Nash was declared deceased on scene. A subsequent autopsy report revealed that Mr. Nash died from multiple gunshot wounds.

The firearm was later identified as a 9 mm CZ-75 handgun, the hammer was pulled back and a round was in the chamber and fourteen rounds in the magazine. The weapon was ready to fire.

To determine whether the shooting by law enforcement was justifiable, a review of Idaho law is warranted. Idaho Code Section 19-610 provides that when an "arrest is being made by an officer under the authority of a warrant or when the arrest is being made without a warrant but is supported by probable cause to believe that the person has committed an offense, after information of the intention to make the arrest, if the person to be arrested either flees or forcibly resists, the officer may use all reasonable and necessary means to effect the arrest and will be justified in using deadly force under conditions set out in section 18-4011, Idaho Code." That statute sets forth that an officer may use deadly force "when reasonably necessary in overcoming actual resistance" and when an "officer has probable cause to believe that the resistance poses a threat of death or serious physical injury to the officer or to other persons." I.C. § 18-4011(2). Finally, an officer may use deadly force when reasonably necessary in order to prevent the escape of any person suspected of having committed a felony when the officer has probable cause to believe that the person suspected of a felony poses a threat of death or serious physical injury to the officer or other persons. See I.C. § 18-4011(3).

In addition, the United States Supreme Court has stated that reviewing officer involved shooting cases "requires careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether he is actively resisting arrest or attempting to evade arrest by flight." *Graham v. Conner*, 490 U.S. 386, 396 (1989). The Court continued "the calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation." *Id.* at 397-397. Further, "if police officers are justified in firing at a suspect in order to end a severe threat to public safety, the officers need not stop shooting until the threat has ended." *Plumhoff v. Rickard*, 572 U.S. 765, 777 (2014).

In this case, Nash had a valid parole warrant for his arrest pursuant to Idaho Code Section 20-1007. In addition, officers had probable cause to arrest Nash for failure to

register his status as a convicted sex offender under Idaho Code Section 18-8311. Therefore, law enforcement had both probable cause for Nash's arrest and a valid warrant. In the process of attempting to arrest Nash, law enforcement verbally identified themselves as police and they repeatedly ordered him to show his hands.

Given the circumstances, law enforcement was justified in their belief that Nash presented a threat of death or serious physical injury to officers and to the public. Nash knew that the police were at his vehicle to arrest him. Rather than comply, he chose to conceal and arm himself. It was particularly concerning that he concealed himself from view because this placed the officers involved in a vulnerable position without being able to observe what Nash was doing, nor knowing his intentions. Nash obviously knew he was non-compliant with his parole supervision and was therefore aware of the high likelihood that he would return to prison. Indeed, Nash's desperate actions were all indications that justify a reasonable person in believing Nash was a threat to the police.

The next issue is whether it was reasonably necessary for law enforcement to use deadly force to effect the arrest. The time that elapsed between Nash jumping into the backseat and the shots fired was less than ten seconds. During that time, Nash had barricaded himself in the backseat of his locked vehicle where he was substantially blocked from outside view. With Nash hidden, BPD officer Paporello positioned himself in the only area where he could see Nash inside the vehicle, through the rear windshield. When Paporello saw Nash with a pistol in his hand pointing in the direction of officers on the driver's side of the car, Nash posed an imminent threat of death or physical injury to those officers. Moreover, those officers on the driver's side of the car were unable to see that they were in grave danger as they were in the intended line of Nash's fire. Indeed, officer Paporello was forced to make a split-second judgment, in a tense, uncertain and rapidly evolving situation. *See Plumhoff, 572 U.S. 777.* There was little choice but to use deadly force.

Once Paporello observed that Nash possessed a firearm, he was justified, given the totality of the circumstances, in believing that Nash presented an imminent and deadly threat to law enforcement. Paporello was aware that Nash had absconded parole, was under investigation for new sex offenses, and was in violation of his obligation to register as a sex offender. Further, Paporello was aware that Nash had ample opportunities to comply with

police commands and surrender, but instead he hid, armed himself, and surreptitiously pointed the gun at law enforcement.

In conclusion, after reviewing the evidence in this case, Officer Kip Paporello acted reasonably in using deadly force due to the threat of death or serious physical injury to the officers and/or the public. Therefore, I have concluded that the shooting of Eli Nash by Officer Paporello was lawful and justified under the circumstances. Consequently, I have determined that no criminal charges are warranted against Officer Paporello.

The Blaine County Prosecuting Attorney's involvement in this case is now complete and the criminal case review is considered closed. Please feel free to contact me if you have any additional questions or comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew Fredback". The signature is fluid and cursive, with a large, stylized initial "M" and "F".

Matthew Fredback
Blaine County Prosecuting Attorney

Cc: Shawna Dunn, Ada County Prosecutor's Office