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Director James Comey
Federal Bureau of Investigations
935 Pennsylvania Avenue, N.W.
Washington, DC 20535-0001

Dear Director Comey:

This letter details my review of the May 22, 2013 incident wherein a Special Agent of the Federal Bureau of Investigation engaged in a use of force that included the discharge of his agency firearm resulting in the death of Ibragim Todashev. This review was undertaken to determine whether criminal charges are an appropriate response to the use of force in this instance. This state's highest court has—in at least one instance—affirmed the criminal conviction of a law enforcement officer for what was deemed an unlawful use of force. See *State v. Cobb*, 376 So.2d 230, 232 (Fla. 1979). However, the appellate court directly governing the Ninth Judicial Circuit of Florida has questioned whether criminal charges are ever appropriate against a law enforcement officer who exercises his or her judgment in difficult and dangerous circumstances. See *State v. Kadet*, 455 So.2d 389, 390-91 (Fla. 5th DCA 1984). The issue in these instances is whether the law enforcement officer's use of deadly force was justified because he or she reasonably believed that force was necessary to prevent imminent death or great bodily harm to himself or another. Fla. Stat. § 776.012(1)(2012). My review is limited to that single narrow issue and does not address any other aspects of the conduct of the law enforcement officers involved.

FACTUAL FINDINGS

This matter was submitted to my office as a result of an initial investigation by your agency. An independent, in depth investigation was then undertaken by this office for the purpose determining the circumstances surrounding the use of force. I want to express my appreciation for the assistance of your agents and laboratory personnel in responding to our various requests throughout this process.

As in most homicide investigations, the facts of this incident are revealed by the examination of three basic categories of information. The first is eye-witness accounts. There remain two eyewitnesses to relate their versions of the event. Both versions are well documented in our investigation, are essentially consistent, and can be summarized as follows:

Officers of the Massachusetts State Police (MSP) accompanied by a Special Agent of the Federal Bureau of Investigation (FBI) traveled to Orlando, Florida to question Ibragim Todashev about his knowledge of a triple murder that occurred in Waltham, Massachusetts on September 11, 2011. Prior to meeting with Mr. Todashev, they familiarized themselves with some of his personal history. They were aware that he was a skilled Mixed Martial Arts fighter. They viewed internet video recordings of fights in which he participated, were informed of interviews conducted with witnesses familiar with the extent of his training in the martial arts, and learned of the results of an investigation of a recent prior incident in which Mr. Todashev demonstrated his fighting skills in responding to a road rage episode involving two opponents.

They were also aware that Mr. Todashev had been cooperative with a Task Force agent and had voluntarily submitted to an interview on a few occasions prior to their visit.

When they arrived in the Orlando area, they learned that as a result of events that had occurred unrelated to their visit, Mr. Todashev was no longer willing to meet with them at a secure location, but would meet with them at his residence. After discussion, they determined that the risks of meeting him in an unsecured environment were outweighed by the potential benefits of obtaining his cooperation in their investigation and agreed to meet him at his residence.

Upon arrival at his residence, they found Mr. Todashev in the parking lot in the company of a friend. Mr. Todashev invited them into his residence for the interview as the friend remained outside. Two Officers of the MSP and a Special Agent of the FBI entered the residence with Mr. Todashev. The Task Force agent remained outside with the friend. Upon entry to the residence, they noted a silhouette of an assault rifle on the front door and a decorative sword hanging on the wall inside.

For approximately the next four and one half hours, the four of them engaged in what is described by the officers as a cooperative non-coercive discussion that eventually lead Mr. Todashev to admit some involvement in the triple homicide that was under investigation. At various times, they quote him as making statements clearly indicating an expectation of arrest, prosecution and probable incarceration. Toward the end of these discussions, one of the officers suggests that Mr. Todashev prepare a written statement detailing his involvement in the murders, which he agreed to do. One of the officers of the MSP then leaves the residence in order to communicate these new developments to a prosecutor back in Massachusetts, placing him outside the residence in the company of the Task Force Officer.

While the written statement is being prepared, one of the officers notes changes in Mr. Todashev's demeanor that heightens his concern. Based upon that heightened concern, the MSP officer removes the decorative sword and places it behind a small shoe shelf at the entrance to the kitchen. Moments later, Mr. Todashev is seated on a mattress in the living room of the residence, in front of him is a coffee table which he is using as a surface upon which to write his statement, behind him is a sliding glass door leading out of the residence to an open area of the complex. The MSP officer is seated on the bottom steps of a stairway leading from the living room to the upstairs sleeping area and is texting his concerns about Mr. Todashev's demeanor to the other MSP Officer who had stepped outside and the Special Agent of the FBI who is seated on the opposite side of the coffee table looking at his note pad.

While neither is directly observing Mr. Todashev, the coffee table suddenly is propelled into the air striking the Special Agent of the FBI in the back of his head. Instead of running to the sliding glass door away from both officers, Mr. Todashev chooses to run past both officers in the direction of the kitchen. The Special Agent of the FBI, who is knocked to the ground by the force of the flying coffee table, attempts unsuccessfully, to grab Mr. Todashev by the leg to interrupt his flight. Mr. Todashev then runs into the kitchen area and is heard rustling through draws or cabinets as if searching for something. The Special Agent of the FBI gets to his feet, and with blood pouring from the wound to his head, pulls his weapon and shouts orders to Mr. Todashev.

The MSP officer, alerted by a loud noise, sees the coffee table flying, then Mr. Todashev fleeing toward the kitchen. His initial response is to pull his weapon and raise it; but thinking Mr. Todashev is merely fleeing out of the residence, he lowers his gun, only to immediately realize that Mr. Todashev has turned and is moving in his direction carrying a long pole of some sort. Both officers initially describe, in "302s", Mr. Todashev holding the pole over his head (invoking visions of the pole being held as a club with both hands above the shoulders and the end of the pole behind him). The MSP officer would later clarify in our recorded statement that the object, while held high, was held more in the style of a javelin, with the end of the pole pointed toward him as if intended to be used to impale rather than strike.

As Mr. Todashev advances on the MSP officer, the Special Agent of the FBI fired three to four shots at him. The MSP officer, though his attention was directed to Mr. Todashev, heard the shots coming from his right and saw Mr. Todashev's body twist in reaction to being struck by the shots. Mr. Todashev dropped to his knees by the force of the shots, but was not incapacitated. He immediately sprung toward the officers in what the MSP officer describes as a low angled lunge. The Special Agent of the FBI fired three to four additional shots which incapacitated Mr. Todashev and resulted in his death.

My analysis next turns to consideration of the two additional categories of information, peripheral witness testimony and physical/documentary/forensic evidence, and whether they are consistent with the eye witness accounts.

The peripheral witness accounts deal largely with what various witnesses heard and are largely consistent with the version given by the officers. The witnesses in closest proximity, are the Task Force Officer and the second MSP officer. The Task Force Officer confirms that the second MSP Officer left the residence shortly before the shots, stating Mr. Todashev had confessed. He further confirms that the second MSP officer was communicating with the District Attorney at the time of the shots. He hears the initial volley of three shots, a brief pause, and then four more. As he enters the residence, he sees Mr. Todashev on the floor with the red pole underneath him and the obvious injuries to the Special Agent of the FBI.

The second MSP Officer's testimony is in all respects consistent with The Task Force Officer though he believes he heard yelling before the shots and may have even heard his name. He also recalls two distinct sets of shots, but is less certain of the number in each set. He also observed the injuries to the Special Agent of the FBI.

Unfortunately, no neighborhood canvass was performed in the immediate wake of the shooting. It would have been helpful to have the fresh recollection of neighbors as to what they heard on the night of the shooting. Eventual canvassing efforts resulted in a few witnesses with some recollection of hearing shots including one with a recollection of seeing people inside the residence and hearing the shots. Though the recollection of the number of shots varied, some do remember two distinct groupings of shots confirming the testimony of the eye witnesses. There was nothing gleaned in the testimony of the peripheral witnesses that would shed substantial doubt on the testimony of the eyewitnesses.

Moving to the physical/documentary/forensic evidence, of great significance to me are the audio and video recordings of the interactions between the law enforcement officers and Mr. Todashev. Overall, they confirm the testimony of the eyewitnesses that characterize that interaction as cooperative and non-coercive, with no hint of physical violence by either the officers or Mr. Todashev. They confirm that he confessed to some involvement in the homicides under investigation and to statements acknowledging an expectation of arrest and probable incarceration. The explanation for stopping the recording just prior to the attack is also supported by the records of phone calls made just after the recording ceases and moments before the attack begins and I find nothing suspicious in that.

Early in the investigation, I insisted that DNA testing be performed on the blood stains clearly visible in the photographs of the coffee table seen in the residence. I felt it was vitally important to the credibility of this investigation that all forensic measures be used to either confirm or refute the testimony of the eyewitnesses. Those results confirm that the FBI agent was the source of the blood stains, giving support to his testimony that he was struck prior to the shots being fired.

When I heard that Mr. Todashev was shot in the back, my initial reaction was one of concern until I actually read the report of autopsy and discussed the findings with the forensic pathologist. I insisted that the autopsy report be kept away from the eyewitnesses until they could be questioned by my investigator so that there could be no claim that those results had influenced their testimony. It is the steep angle of

the shots which struck Mr. Todashev in the head and back, which I find most persuasive in drawing my conclusions. It is always treacherous to draw to strong a conclusion from the precise angle of entry of any single gunshot wound. The human body is far too flexible and movements too unpredictable to make definitive conclusions. That said, the angle of entry of these particular shots would be difficult to achieve in any orientation other than a shooter greatly elevated above his target, (the placement of the shell casings preclude that possibility), or shooter and target on the same level, with the target either on his hands and knees or propelling himself up from that position. This is precisely the action described by the MSP Officer in his detailed statement to my investigator given prior to having access to the report of autopsy. I find this consistency between testimony and forensic finding a most compelling element of proof of the credibility of the officer's statement.

Initially, I was also concerned about the autopsy findings showing that two of the initial shots to the right side of the torso of Mr. Todashev passed through his arm before entering his body. This seemed incongruous with the description in the "302s" of Mr. Todashev holding the pole over his head (invoking visions of the pole being held as a club with both hands above the shoulders and the end of the pole behind him). My understanding was greatly aided by the detailed descriptions we were able to obtain through our interview with the MSP Officer. His description of the manner in which Mr. Todashev held the pole and the reaction of his body to the first shot resolved any lingering concern I had as to this issue.

The documentary evidence of the text message sent by the MSP officer just prior to the incident noting the change in Mr. Todashev's behavior gives further credibility to his version of the events.

In my opinion, none of the other physical/documentary/forensic evidence detailed in the lengthy and comprehensive report of Chief Investigator Edwards sheds any substantial doubt on the credibility of the statements of the eyewitnesses.

CONCLUSIONS

The version of events related by the Special Agent of the FBI, provided to us in a "302", the version of events provided by the physical/documentary/forensic evidence in the "302", and recorded testimony are consistent and supported by a substantial amount of peripheral witness and physical/documentary/forensic evidence. I would comment that the absence of an actual recorded interview with the Agent detailing precise details of the movements of all individuals somewhat complicated the analysis. Fortunately, we were able to obtain sufficient detail from the MSP officer.

For reasons which we will never know, Mr. Todashev's response to his impending arrest and probable incarceration was not to flee from the residence out the easily accessible rear door that was right behind him. We learned much about Mr. Todashev during our investigation. I find the statements of those who knew him from his fighting career most illuminating. I commend Chief Investigator Edwards for going to such lengths in an effort to understand Mr. Todashev. The one common thread among all was the observation that he was, at his core, a fearless fighter. Regardless of how beaten down he was, he simply didn't have any quit in him. Perhaps on this occasion, he simply reverted to that basic aspect of his personality and chose to go down fighting.

My conclusion, based upon the facts presented to me in this investigation, is that the actions of the Special Agent of the FBI were justified in self-defense and in defense of another.

Although there is no evidence in this instance indicating the use of poor judgment by the agent involved, it is instructive here, and in all instances, to note the words of our appellate court when reviewing law enforcement uses of force:

As an observation, we question whether a law enforcement officer should ever be, in the absence of intentional misconduct or some degree of malice, criminally responsible for using poor judgment. A police officer, under the circumstances here, is ordered into a life threatening situation. The call usually comes without warning. He does not ask for the assignment, but he is bound to protect society against the violent acts of the unlawful or mentally deranged. Now that same society seeks to punish him for using poor judgment. An officer, in such circumstances, should not be burdened with the knowledge that if he overreacts to the real or imagined dangers he may be committing a crime, especially when those who judge his actions do so with the benefit of perfect hindsight and from a position of safety.

Kadet, 455 So.2d at 390–91 (emphasis in original).

There is no evidence in this instance that the Special Agent of the FBI committed intentional misconduct or acted with any degree of malice. Therefore, a complete review of the investigation leads me to conclude that criminal charges against the Special Agent of the FBI are not warranted, and that the Office of the State Attorney's review of this incident is complete.

Sincerely,

A handwritten signature in black ink, appearing to be 'JL Ashton', followed by a long, horizontal, wavy line that extends across the page.

Jeffrey L. Ashton
State Attorney