

Case No. 24A_____

IN THE SUPREME COURT OF THE UNITED STATES

City and County of Denver,

Petitioner/Applicant,

v.

Zach Packard, Amanda Blasingame, Joe Dera, Jacquelyn Parkins, Sara Fitouri,
Elisabeth Epps, Hollis Lyman, Claire Sannier, Kelsey Taylor, Stanford Smith, and
Ashlee Wedgeworth,

Respondents,

**APPLICATION TO RECALL AND STAY THE MANDATE
PENDING DISPOSITION OF PETITION FOR CERTIORARI**

To the Honorable Neil Gorsuch,
Associate Justice of the Supreme Court of the United States and
Circuit Justice for the Tenth Circuit

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PARTIES TO THE PROCEEDINGS

Applicant in this Court and Defendant-Appellant below is the City and County of Denver.

Respondents in this Court and Plaintiffs-Appellees below are Zach Packard, Amanda Blasingame, Joe Deras, Jacquelyn Parkins, Sara Fitouri, Elisabeth Epps, Hollis Lyman, Claire Sannier, Maya Rothlein, Kelsey Taylor, Stanford Smith and Ashlee Wedgeworth.

Defendants below are Cory Budaj, Patricio Serrant, David McNamee, City of Aurora, Jonathan Christian (also an Appellant in Case No. 24-1371 before the United States Court of Appeals for the Tenth Circuit), Ketih Valentine, Matthew Brukbacher, Timothy Dreith, and Anthony Hamilton.

RELATED PROCEEDINGS BELOW

Case No. 24-1371 before the United States Court of Appeals for the Tenth Circuit involves the appeal of Defendant Jonathan Christian related to the same proceedings before the District Court.

TABLE OF CONTENTS

	Page
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES	iii
INTRODUCTION	1
OPINIONS BELOW	3
JURISDICTION.....	3
STATEMENT OF THE CASE.....	3
A. The Summer 2020 George Floyd Protest	3
B. Proceedings Before the District Court	5
C. Proceedings before the Tenth Circuit.....	8
REASONS FOR GRANTING THE STAY	8
A. There is a Reasonable Probability Four Justices of this Court Will Consider the Issues to be Raised in the Petition Sufficient Meritorious to Grant Certiorari.....	9
1. Mr. Mitchell’s Trial Testimony.....	9
2. The Admissibility of Mr. Mitchell’s Testimony as Independent Monitor Presents an Issue of Substantial Importance for Resolution by this Court..	12
B. There is a Fair Prospect a Majority of the Court Will Vote to Reverse the Judgment Below Because the Arguments Advanced are Plausible	15
C. Irreparable Harm to Denver Will Result from the Denial of a Stay.....	18
D. The Balance of the Equities Favors Denver	18
CONCLUSION.....	19

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Conkright v. Frommert</i> , 566 U.S. 1401 (2009)	12
<i>Daubert v. Merrell Dow Pharms., Inc.</i> , 509 U.S. 579 (1993)	18
<i>General Electric v. Joiner</i> , 522 U.S. 136 (1997)	18
<i>Hollingsworth v. Perry</i> , 558 U.S. 183 (2010) (per curiam)	11
<i>James River Ins. Co., v. Rapid Funding, LLC</i> 658 F.3d 2107 (10th Cir. 2011)	15
<i>Kumho Tire Co., Ltd. v. Carmichael</i> , 526 U.S. 137 (1999)	17, 18
<i>Packard v. City and County of Denver</i> , 173 F.4th 1247 (10th Cir. 2026)	8
<i>San Diegans for the Mt. Soledad Nat’l War Mem’l v. Paulson</i> , 548 U.S. 1301 (2006)	11
<i>United States v. Bush</i> , 405 F.3d 909 (10th Cir. 2005)	15
<i>United States v. Johnson</i> , 617 F.3d 286 (4th Cir. 2010)	15-16
<i>United States v. Peoples</i> , 250 F.3d 630 (8th Cir. 2001)	16
<i>Wise v. Lipscomb</i> , 434 U.S. 1329 (1977)	11
 Statutes	
28 U.S.C. § 1254	8
28 U.S.C. § 1651	8
28 U.S.C. § 2101	7, 7

42 U.S.C. § 1983 17, 18

Other

Fed. R. Civ. P. 26 17

Fed. R. Evid. 403 11

Fed. R. Evid. 407 11, 13

Fed. R. Evid. 701 7, 8, 11, 13, 16, 17, 18, 19, 20

Fed. R. Evid. 702 8, 10, 17, 19, 20

Supreme Court of the United States Rule 23 7

TO THE HONORABLE NEIL GORSUCH, ASSOCIATE JUSTICE OF THE
SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR
THE TENTH CIRCUIT

Applicant City and County of Denver (“Applicant” or “Denver”) respectfully requests an immediate recall and stay of the mandate of the United States Court of Appeals for the Tenth Circuit in Case No. 24-1367 pending the filing and disposition of a petition for writ of certiorari with this Court. Applicant filed a Motion to Stay the Mandate Pending the Filing of a Petition for Writ of Certiorari on May 26, 2026. The Tenth Circuit denied the Motion in an Order dated May 28, 2026, forcing Applicant to seek relief from this Court.

Denver respectfully requests this Court recall and grant a stay of the mandate by the Tenth Circuit pursuant to 28 U.S.C. § 2101(f) and Supreme Court Rule 23 pending this Court’s disposition of Denver’s forthcoming petition for writ of certiorari to be filed with this Court by July 20, 2026.

INTRODUCTION

The Tenth Circuit affirmed the District Court’s admission of lay opinion testimony from former Independent Monitor Nicholas Mitchell pursuant to Fed. R. Evid. 701. Mr. Mitchell had no personal, first-hand knowledge of what occurred during the George Floyd protest in Denver. Instead, like Plaintiff’s retained experts, Mr. Mitchell and his staff reviewed available video and documentation and Mr. Mitchell was allowed to offer lay opinions about what occurred during the protests

and his conclusions about why it occurred. The Tenth Circuit wrongfully interpreted and applied Fed. R. Evid. 701 to allow Mr. Mitchell's opinion testimony.

Denver respectfully requests this Court recall and stay the Tenth Circuit's mandate pursuant to 28 U.S.C. § 2101(f) and Supreme Court Rule 23 pending the filing and disposition of Denver's petition for writ of certiorari due on July 20, 2026. Denver meets the requirements for a recall and stay of the mandate under these circumstances. The issue of the appropriate interpretation and application of Fed. R. Evid. 701 concerning lay opinions presents an issue of substantial importance given the proliferation of independent monitors of police activities, the need to differentiate between lay opinion under Rule 701 and expert opinion under Fed. R. Evid. 702, and the lack of any precedent from this Court on these important and common issues. A reasonable probability therefore exists this Court would reverse the Tenth Circuit. Moreover, equitable considerations support the stay. Absent a stay Denver will be required to pay the substantial judgment and will be irreparably harmed if it is required to do so and this Court decides to review the Tenth Circuit's decision after Denver does. Plaintiffs will not be harmed by the stay because post-judgment interest will continue to accrue during the pendency of the stay. And because the judgment comes from the public fisc, the public interest favors the ability of Denver to seek review from this Court before having to satisfy the judgment.

OPINIONS BELOW

The Tenth Circuit’s order denying Applicant’s motion for a stay is unpublished, but reproduced at App. 1. The Tenth Circuit’s opinion affirming the District Court is published at 173 F.4th 1247 (10th Cir. 2026), and is also reproduced at App. 2-35.

The District Court’s oral ruling allowing former Independent Monitor Nicholas Mitchell to testify as a lay opinion witness is reproduced at App. 36-44.

JURISDICTION

This Court has jurisdiction over this application for a stay under 28 U.S.C. § 1254(1), and has the authority to grant the requested stay pursuant to the All Writs Act, 28 U.S.C. § 1651(a).

STATEMENT OF THE CASE

A. The Summer 2020 George Floyd Protest.

Two days after the death of George Floyd in Minneapolis, on May 27, 2020, the Denver Police Department (“DPD”) learned there would be a protest in Denver the following day. DPD anticipated the protest would start at 5:00 p.m. and end at 7:00 p.m. But the George Floyd protest was far different from what was anticipated. Whereas prior protests in Denver ordinarily followed a clear path and had set start and end times, the George Floyd protest was formless; had different groups moving throughout different parts of downtown Denver; lasted several days (in fact, some people continued to protest for weeks); went into the early morning hours; and was

attended by a much larger crowd, with some reports that there were as many as 10,000 people protesting.

The destruction and violence directed at police officers was unprecedented. DPD learned of an estimate the downtown area suffered over \$4 million in property damage. At the time of trial, Denver had incurred \$953,000 on the project to repair city buildings alone. Seventy-three officer injuries were reported between May 28 and June 2, 2022. Officers reported being struck by rocks, bottles, bricks, fireworks, and other explosive devices. One officer was required to medically retire after a person drove a car into him and other officers. And it could have been much worse: throughout the protest, police recovered 25 firearms and 50 to 60 other weapons, including hatchets, machetes, and slingshots.

The number of agitators engaged in violent criminal behavior made it challenging for DPD to balance protecting the attendees' right to protest with maintaining public safety and order. This is especially so because, whereas the protest was peaceful during the day, it became leaderless and violent at night. Based on his judgment that other tactics (such as the use of batons against individuals) posed too great a risk of confrontation and injury to officers, the incident commander authorized area commanders on the ground to order the use of less-lethal munitions, including CS gas (*i.e.*, tear gas), pepper balls, and flash-bang grenades.

B. Proceedings Before the District Court:

This sprawling lawsuit was filed while the protests were ongoing. Plaintiffs—Appellees are twelve people who attended the protest for one or more of its first five days, between May 28 and June 2, 2020; did not engage in violence against police officers or destroy property; and were injured by less-lethal munitions. Plaintiffs asserted claims for municipal liability against Denver, generally alleging that Denver’s policies, practices, and customs; failure to train; and ratification of officer conduct caused violations of their constitutional rights.

Plaintiffs’ claims for municipal and individual liability against Denver and one Denver police officer, Jonathan Christian, for violation of Plaintiffs’ First and Fourth Amendment rights went to trial in March 2022. Plaintiffs advanced three theories—an “official policy, practice, or custom”; “failure to train”; and “ratification”—in seeking to impose municipal liability on Denver. To establish a failure to train or a pattern or practice of constitutional violations amounting to an actionable municipal custom, Plaintiffs presented voluminous, inflammatory evidence of officers, who are not parties to this litigation, using force at the George Floyd protest (and at no other prior event) against people other than Plaintiffs who also are not parties to this litigation.

Plaintiffs also called Nicholas Mitchell, Denver’s former Independent Monitor, as a lay witness. Much like Plaintiffs’ two experts on policing and crowd-management—whom Plaintiffs actually disclosed as experts and whose testimony

was subject to the requirements of Rule 702, Mr. Mitchell testified about his after-the-fact assessment of Denver's response to the protest and the conclusions he reached, namely, that Denver's response was deficient in several respects. But unlike the testimony and opinions of Plaintiffs' disclosed experts, Mr. Mitchell's testimony and opinions were cloaked with authority from his prior service as a Denver official whose assessment had been requested by the Denver City Council and unsubtly permeated with recommendations as to how Denver should do things differently.

Before trial, Denver argued the Office of the Independent Monitor's November 2020 report and Mr. Mitchell's testimony were inadmissible under Federal Rules of Evidence 407 and 403. At trial, before Plaintiffs called Mr. Mitchell to the stand, Denver reiterated these arguments, and further argued because Plaintiffs did not designate Mr. Mitchell as an expert, he could provide only lay testimony under Federal Rule of Evidence 701, and because he lacked personal knowledge about what happened at the protest, Denver contended, Mr. Mitchell necessarily could not offer any testimony based on his own perceptions.

The district court acknowledged the "opinions or the fact findings of the Office of the Independent Monitor . . . recognized . . . that certain things had to be improved." App. at 38. Responding to Plaintiffs' offer to cure the Rule 407 objection by asking Mr. Mitchell only about his conclusions and not his recommendations, *see* App. at 36-37, the district court stated it "bothers me," "risk[s] [Plaintiffs'] entire case," and is "a huge mistake" that Plaintiffs would call Mr. Mitchell to "take the

stand and say, well, you know, I was hired to be a jury, just like this jury, and I've reviewed the evidence just like this jury, and this is what I found." App. at 39. Despite these serious concerns, the district court nonetheless overruled the Rule 407 objection (and Denver's other objection), based on the irrelevant notion that "these taxpayers sitting in the jury box are entitled to hear about" the Office of the Independent Monitor's "public report, paid for by the taxpayers." App. at 39-40. The district court ordered Mr. Mitchell could testify and could be cross-examined on his personal knowledge. App. at 39-40. The court further ordered that, while "what [Mitchell] did is a matter of fact," and he can "talk[] about facts," his testimony shall be "restricted to the opinions that he expressed at the time" of the report and, because Plaintiffs "didn't endorse him as an expert," he could not offer "new opinions." App. at 42; *accord* App. at 42-43 (repeating that "the opinions that he expressed and that were fully disclosed in his report are fair game, but any new opinions would not be").]

After a 15-day trial, the case was submitted to the jury. The jury returned a verdict in Plaintiffs' favor. It found all Plaintiffs (except Ashlee Wedgeworth, who proved only her First Amendment claim) established Denver's liability for violating both their First and Fourth Amendment rights. It further found the constitutional rights of two plaintiffs—Zachary Packard and Joe Deras—were violated by an officer from a mutual-aid jurisdiction acting pursuant to an official policy, practice, or custom of Denver. Based on these findings, the jury awarded Mr. Packard \$3 million,

Ms. Wedgeworth \$750,000, and all other Plaintiffs \$1 million each for a total verdict of \$13,750,000.00.

The district court denied Denver's motion for judgment as a matter of law, a new trial, or remittitur. After the District Court entered an amended judgment on August 29, 2024, Denver timely appealed.

C. Proceedings before the Tenth Circuit:

The Tenth Circuit affirmed the District Court in an opinion issued on April 21, 2026. With respect to the testimony of Mr. Mitchell, the Tenth Circuit concluded the District Court did not err in allowing Mr. Mitchell to testify. Specifically, the Tenth Circuit concluded Mr. Mitchell's opinions derived from his review and analysis of what occurred during the George Floyd protest gained solely from viewing videos from body-worn and stationary cameras, interviewing officers, reviewing documents, and considering research on the challenges of policing protests involving allegations of police misconduct was admissible under Fed. R. Evid. 701. The Tenth Circuit also rejected Denver's arguments Mr. Mitchell's testimony was inadmissible as a subsequent remedial measure under Fed. R. Evid. 407 and unfairly prejudicial under Fed. R. Evid. 403 due to Mr. Mitchell's close identification with Denver as its former Independent Monitor. App. at 17-27.

REASONS FOR GRANTING THE STAY

Denver's application satisfies the criteria for obtaining a stay pending the filing and disposition of a petition for writ of certiorari. To obtain a stay, "an applicant must

show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam); *San Diegans for the Mt. Soledad Nat’l War Mem’l v. Paulson*, 548 U.S. 1301, 1302 (2006) (Kennedy, J., in chambers); *Wise v. Lipscomb*, 434 U.S. 1329, 1333-34 (1977) (Powell, J., in chambers). In close cases, “it may be appropriate to balance the equities—to explore the relative harms to applicant and respondent, as well as the interests of the public at large.” *Conkright v. Frommert*, 566 U.S. 1401, 1402 (2009) (internal quotations omitted).

A. There is a Reasonable Probability Four Justices of this Court Will Consider the Issues to be Raised in the Petition Sufficient Meritorious to Grant Certiorari

Denver need not establish it will succeed on the merits of its arguments. Instead, Denver need only show a reasonable probability four Justices of this Court will consider its issues meritorious to grant certiorari. Denver meets this standard here.

1. Mr. Mitchell’s Trial Testimony:

The Office of the Independent Monitor, which is created by Denver’s Charter reports to the mayor, receives complaints alleging misconduct by Denver police officers, oversees the investigation of those complaints, and issues public reports recommending improvements to the DPD’s policies and practices. Mr. Mitchell, a

lawyer who has never worked as a police officer, was the Independent Monitor from August 2012 to January 2021. Mr. Mitchell was not present at the George Floyd protest and did not personally observe anything that happened among the protesters or police.

On June 5, 2020, the Denver City Council asked Mr. Mitchell to assess the police response to the protest, including DPD's use-of-force policy, use of various equipment, and other crowd-control measures. To perform the investigation, the Office of the Independent Monitor gathered and was provided information relating to the protest, including video footage and DPD records, and conducted interviews. It prepared and issued a report in November 2020.

Plaintiffs called Mr. Mitchell as a witness at trial. He testified about the post-investigation conclusions the Office of the Independent Monitor reached in its November 2020 report. Those conclusions included the DPD's response to the protest was inadequate in multiple respects:

“there were deficient internal controls on officer use of force” during the protest;

there were examples of Denver officers deploying less-lethal munitions “in ways that were extremely troubling”;

“[a]t least a small number of officers” who were not certified to use pepper balls or 40-millimeter launchers “received those less-lethal weapons when they arrived at the protest” and “received some kind of emergency field training”;

officers from mutual-aid jurisdictions deployed more than 150 less-lethal shotgun rounds, more than 200 Kevlar bag rounds, and at least 73 rubber-ball rounds;

the Denver Police Department had more than 30,000 pepper ball rounds in its inventory at the start of the protest and received a resupply on the second day;

there was a “footage gap” in body-worn camera footage recorded by Denver police officers;

the Denver Police Department’s use of mutual-aid partners was deficient in certain ways, including the lack of joint training;

the effective tracking of less-lethal munitions is critical in protest management, and the Denver Police Department did not do that at the beginning of the protest;

officer identification was a problem during the protest because there were examples in which officers did not have visible nametags and badge numbers.

Each of these conclusions is highly suggestive of remedial measures that, in Mr. Mitchell’s opinion, Denver should take.

Mr. Mitchell also testified about the interviews of several Denver police officers conducted during the investigation. Through Mr. Mitchell, Plaintiffs introduced memoranda summarizing three of those interviews. Mr. Mitchell recounted the three officers and others shared various criticisms about DPD’s response to the protest:

“officers on the ground were reacting to what they saw without any sort of leadership”;

“during the prior administration of the police department, there had been a greater focus on training in crowd control, crowd management, and field force operations”;

Denver officers “felt a need for greater emphasis on training and crowd management and field force operations”;

“the current chief’s attitude [is] that training was not important, or not as important as other chiefs had indicated in the past”;

in the command post, Denver Police Chief Pazen “would lose it if he was presented with a differing opinion”;

Chief Pazen “was often angry or paralyzed” during the protest;

“a lot of officers and protesters may have been injured due to a lack of supervision and command”;

“there was an absence of command and control, and too much reliance on [pepper balls]”;

“the Denver Police Department’s operational response to the protests were not pretty, and that the department was caught with their pants down”;

officers were “throwing gas just to deploy gas instead of making tactical decisions”; and

it was a “theme” in multiple interviews that officers “hadn’t received crowd control or field force training for several years prior to the onset of the George Floyd protest.”

Mr. Mitchell featured prominently in Plaintiffs’ opening statements. And in closing argument, Plaintiffs argued “Mitchell spent months with a team of experts looking at everything That’s the full picture, and you heard what he had to say.”

2. The Admissibility of Mr. Mitchell’s Testimony as Independent Monitor Presents an Issue of Substantial Importance for Resolution by this Court

First, this Court has never determined what is considered allowable lay opinion testimony under Fed. R. Evid. 701. The Tenth Circuit’s decision substantially and inappropriately broadens the scope of allowable lay witness testimony under Fed. R. Evid. 701. Mr. Mitchell had no personal knowledge of the protest. His “personal knowledge” was solely based on his review of information, documents, video and interviews. This was the same evidence presented to the jury for its review. Allowing Mr. Mitchell to opine on deficiencies in Denver’s response to the protest despite his lack of any first-hand, personal knowledge far exceeds the type of opinion Rule 701

permits. Effectively, Mr. Mitchell was allowed to offer substantially similar expert testimony to the Plaintiffs' retained experts, but did so pursuant to Fed. R. Evid. 701, not Fed. R. Evid. 702, because unlike the retained experts, Plaintiffs never endorsed Mr. Mitchell as an expert.

Under Fed. R. Evid. 701, a witness not testifying as an expert is limited to opinion testimony that is among other things “rationally based on the witness’s perception,” Fed. R. Evid. 701(a), meaning it must be based on the witness’s “first-hand knowledge or observation,” Fed. R. Evid. 701 advisory committee’s note. “The perception requirement stems from [Federal Rule of Evidence] 602 which requires a lay witness to have first-hand knowledge of the events he is testifying about so as to present the most accurate information to the finder of fact.” *United States v. Bush*, 405 F.3d 909, 916 (10th Cir. 2005) (quoting *United States v. Hoffner*, 777 F.3d 1423, 1425 (10th Cir. 1985)). The types of lay opinions admissible under Rule 701 are those “observations [that] are common enough to require . . . a limited amount of expertise, if any.” *James River Ins. Co., v. Rapid Funding, LLC* 658 F.3d 2107, 1214 (10th Cir. 2011). Examples of such observations include “the appearance of persons or things, identity, the manner of conduct, competency of a person, degrees of light or darkness, sound, size, weight, distance, and an endless number of items that cannot be described factually in words apart from inferences.” *Id.*

In contrast, because Fed. R. Evid. 701(a) requires first-hand knowledge, courts exclude lay opinions obtained from post-incident investigations by witnesses who

relied on second-hand information. *E.g., United States v. Johnson*, 617 F.3d 286, 293 (4th Cir. 2010) (holding district court abused its discretion by permitting DEA agent to give lay opinions interpreting wiretapped phone calls where agent “did not participate in the surveillance during the investigation, but rather gleaned information from interviews . . . *after* listening to the phone calls”); *United States v. Peoples*, 250 F.3d 630, 641 (8th Cir. 2001) (holding district court erred in admitting FBI agent’s lay opinions about the meaning of words and phrases used in recorded conversations that “were based on her investigation after the fact, not on her perception of the facts”).

Mr. Mitchell relied *only* on second-hand information. Mr. Mitchell had no personal involvement or knowledge of the protest. Rather, his lay opinion testimony was based *exclusively* on the Office of Independent monitor after-the-fact investigation of what occurred during the protest. The Tenth Circuit concluded Mr. Mitchell’s testimony was appropriate under Rule 701 because he had personal knowledge of the fact-gathering for his investigation even though he did not have any first-hand observations of what occurring during the protest. App. at 19. This conclusion represents an extremely broad interpretation and application of Rule 701 ungrounded from the first-hand knowledge requirement of the Rule. To support its conclusion, the Tenth Circuit relied exclusively on two criminal decisions allowing an investigating officer to offer lay opinions. App. at 20. Fundamentally, however, the

nature of Mr. Mitchell's lay opinion testimony at trial far exceeded the scope of the lay opinion testimony in these cases.

The substantial importance of this issue is underscored based on the reality of independent monitors and other similar civilian oversight over police departments throughout the United States. The National Association for Civil Oversight of Law Enforcement reports a total of 137 different jurisdictions have different forms of civil oversight of law enforcement. This proliferation of a civilian oversight model means the admissibility of findings by independent monitors and over civilian overseers presents a significant issue in cases involving police activities. If independent monitors are allowed to offer lay opinions under Rule 701, they will be able to do so in all cases involving alleged law enforcement misconduct. Lawsuits involving alleged police misconduct pursuant to 42 U.S.C. § 1983 represent a significant portion of federal civil litigation.

The importance of the parameters of lay opinion testimony by independent monitors such as Mr. Mitchell under Fed. R. Evid. 701 because of its impact on much police litigation under 42 U.S.C. § 1983 presents a reasonable probability four Justices of this Court would vote to grant review of this important issue presented in this case.

B. There is a Fair Prospect a Majority of the Court Will Vote to Reverse the Judgment Below Because the Arguments Advanced are Plausible

This Court has never addressed the distinction between what is an allowable lay opinion under Fed. R. Evid. 701 and what is an opinion requiring the designation

of an expert pursuant to Fed. R. Civ. P. 26(a)(2) and Fed. R. Evid. 702. Both rules impose important procedural and substantive safeguards for expert testimony before it is admitted at trial. Fed. R. Civ. P. 26(a)(2), for either a retained or non-retained expert, requires a specific description of the expert opinions. *See* Fed. R. Civ. P. 26(a)(2)(B) and (C). Fed. R. Evid. 702 substantively requires the district court to engage in the important gate-keeping function of enduring the reliability and relevance of expert testimony. *Kumho Tire Co., Ltd. v. Carmichael*, 526 U.S. 137, 152 (1999). Lay opinion testimony under Rule 701 does not require either rule to be followed. These practical distinctions between lay opinion and expert opinion testimony are important considerations differentiating opinions under the two rules.

Moreover, Fed. R. Evid. 701 and Fed. R. Evid. 702 are different and a fair prospect exists this Court would determine the Tenth Circuit's interpretation and application of Fed. R. Evid. 701 to Mr. Mitchell's lay opinion testimony fails to acknowledge or apply this difference. Mr. Mitchell was allowed to offer opinions at trial similar to the opinions offered by Plaintiffs' retained expert witnesses. Mr. Mitchell's approach, reviewing available materials related to the protest, analyzing them, and then offering opinions about them did not differ in any appreciable respect from the approach of Plaintiffs' retained experts. Many 42 U.S.C. § 1983 alleged police misconduct cases involve retained expert testimony. Moreover, most significant events involving alleged law enforcement misconduct also involve reviews internally by supervisors or others from the department such as internal affairs, and external

reviews from another law enforcement agency or a district attorney. Now, reviews are also conducted by independent monitors or other civilians overseeing the police in the many jurisdictions who have adopted such a model. Under the Tenth Circuit's approach, all of these different internal and external reviewers would likely be allowed to offer lay opinions concerning their conclusions about what occurred in the underlying police event under Fed. R. Evid. 701. Such an approach does not make sense because it vitiates any meaningful distinction between a lay opinion under Fed. R. Evid. 701 and an expert opinion under Fed. R. Evid. 702.

This Court's precedent interpreting and applying Fed. R. Evid. 702 requires district courts to vigorously assess the reliability of proposed expert testimony. *See, e.g., General Electric v. Joiner*, 522 U.S. 136 (1997); *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993); *Kumho Tire*, 526 U.S. at 152. Allowing witnesses such as Mr. Mitchell and other independent monitors to testify under Fed. R. Evid. 701 and offer what amounts to the same opinion as an expert without requiring the same assessment is fundamentally inconsistent with this jurisprudence. This is particularly significant in the context of police independent monitors because of their status as perceived independent arbiters of police activity, their public profiles, and their close association with the same jurisdictions being sued. These realities warrant this Court taking a hard look at this issue and demonstrate a fair prospect this Court would reject the Tenth Circuit's analysis and conclusion.

C. Irreparable Harm to Denver Will Result from the Denial of a Stay

Denver will be irreparably harmed in the absence of a stay. If the judgment is not stayed pending the petition for writ of certiorari being ruled upon by this Court, Denver will either be required to pay the judgment or Respondents will be permitted to seek to collect the judgment. Inclusive of interest and attorney's fees, the judgment in this matter will be approximately \$20 Million. If this Court were to grant the petition without a stay of the mandate and the judgment, Denver will be irreparably harmed by having to satisfy a judgment subject to review by this Court, particularly if this Court ultimately accepts review and then reverses. Under such circumstances, efforts would need to be made to recover the money from Respondents and their counsel. Ready legal remedies for Denver to seek to collect money paid by Denver do not readily exist and would not be easily accomplished. Such an approach simply makes no practical sense and demonstrates the irreparable harm to Denver under these circumstances.

D. The Balance of the Equities Favors Denver

Moreover, the balance of the equities favors Denver here. The District Court awarded post-judgment interest. Accordingly, interest will continue to accrue during any stay issued by this Court and during any time period while the petition is pending consideration by this Court meaning Respondents will remain financially whole and financially unharmed by a stay. Respondents obtained only monetary relief before the District Court so there is nothing other than money at issue. Under such

circumstances, because there is no financial harm to Respondents due to the continued accrual of interest, equity does not favor Respondents.

Additionally, the public interest supports a stay. The judgment in this matter will be paid by public funds from Denver. As a result, Denver's taxpayers have an interest in the opportunity for Denver to file a petition for writ of certiorari for consideration by this Court and a concomitant stay pending resolution of the petition. The public interest supports allowing this Court to decide if this matter warrants review before a substantial monetary judgment to be paid from the public fisc becomes final and is satisfied.

CONCLUSION

In conclusion, for all the foregoing reasons, the City and County of Denver respectfully requests the Court recall and grant a stay of the Tenth Circuit's judgment pending the filing of its petition for writ of certiorari and the disposition of the petition by this Court, and for all other and further relief as this Court deems just and appropriate.

Dated: June 5, 2026.

Respectfully submitted,

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