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June 3, 2024

## **Decision Letter:**

Attached is the decision letter issued by District Attorney Brian Mason related to the officer-involved shooting death of Mario Ortega in Adams County on July 13, 2023.

PowerPoint:

[OISDecisionLetterPowerPoint71323.pdf](#)

BWC Video:

(Warning Graphic)

[ACSOJuly23BWHopperRedacted.mp4](#)

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*District Attorney Mason assumed the oath of office on January 12, 2021. The 17<sup>th</sup> Judicial District Attorney's Office endeavors to seek justice on behalf of the citizens of Adams and Broomfield counties in felony and misdemeanor cases. DA Mason and his staff are dedicated to transforming the criminal justice system to better serve the citizens of the 17<sup>th</sup> Judicial District.*

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May 30, 2024

Sheriff Gene Claps  
Adams County Sheriff's Office  
4430 S Adams County Pkwy 1<sup>st</sup> Floor, Suite W5400  
Brighton, CO 80601

RE: The officer-involved shooting of Mario Ortega

Dear Sheriff Claps:

This letter is a review of the 17<sup>th</sup> Judicial District Critical Incident Response Team (CIRT) investigation into the July 13, 2023 shooting of Mario Ortega. The 17<sup>th</sup> Judicial District Critical Incident Response Team (CIRT) conducted the investigation, led by Sergeant Jeff Longnecker and Detective Andrew Merino from the Aurora Police Department. The remaining investigators on the CIRT who worked on this investigation are associated with law enforcement agencies independent of the Adams County Sheriff's Office. The Office of the District Attorney concludes that the investigation was thorough and complete. This letter includes a summary of the facts and materials that the CIRT presented for review, along with my pertinent legal conclusions.

The District Attorney's Office review is limited to determining whether any criminal charges should be filed against any of the involved officers for a violation of Colorado law. The standard of proof for filing a criminal case is whether there is sufficient evidence to prove all the elements of a crime beyond a reasonable doubt. The prosecution also has the burden of proving beyond a reasonable doubt that the use of force was not legally justified. This independent investigation and review is not intended to take the place of an internal affairs investigation by your agency. As such, the District Attorney's Office review does not evaluate compliance with any departmental policies, standards, or procedures.

Based on the evidence presented and the applicable Colorado law, there is no reasonable likelihood of success of proving the elements of any crime beyond a reasonable doubt against the involved officer. Therefore, no criminal charges will be filed as a result of this incident.

### **FACTUAL SUMMARY**

Just after midnight on July 13, 2023, Adams County Sheriff's Office Deputy Mathew Tran was working a routine patrol shift in unincorporated Adams County when he observed a 2004 blue Nissan Titan pickup truck make a U-turn in the intersection of W. 64<sup>th</sup> Avenue and Federal Boulevard. After the turn, the pickup traveled southbound on Federal Boulevard. Deputy Tran, dressed in his duty uniform and driving a marked patrol vehicle, turned southbound to follow the vehicle. Deputy Tran did not initiate a traffic stop, but continued to observe the vehicle as it entered the parking lot of the Lakeside Inn Motel located at 6251 Federal Boulevard.



*Aerial view of the Lakeside Inn Motel*

Deputy Tran pulled into the parking lot and ran the license plate as the pickup backed into an empty space on the northwest corner of the parking lot. While entering the information, Deputy Tran observed a male driver and female passenger get out of the pickup in a rushed manner. The male pulled the hood of his sweatshirt up over his head, despite the warm temperature. In less than a minute, Deputy Tran learned that the license plate was reported to belong to a stolen vehicle and confirmed the report with dispatch. At that point, the male and female had walked out of Deputy Tran's view and retreated around the corner of the two-story motel.

Deputy Tran got out of his patrol vehicle and walked toward the area where he last saw the male and female. He had his gun drawn as he walked past the stolen truck to the sidewalk. Within seconds, Deputy Tran encountered a male walking toward him. He recognized the male as the driver of the stolen truck. Deputy Tran pointed his gun at the male and ordered him to show his hands and get on the ground. The male ignored Deputy Tran's repeated commands and continued to walk toward Deputy Tran.

Deputy Tran stepped toward the male and grabbed his right arm as he commanded him to show his hands. The male quickly pulled his right hand out of his pocket and raised a handgun up to his own head. The handgun was inside a holster. Deputy Tran stepped back and pointed his gun at the male as the male continued to walk backward with the gun pointed to his head. A few seconds later, the male raised up his left arm and pulled the holster off the gun, bringing the gun down away from his temple. Deputy Tran immediately fired four rounds at the male, striking him and causing him to fall to the ground. The handgun fell to the ground near the male. Deputy Tran repeated commands to the male to show his hands. With the male down and not moving, Deputy Tran approached the male, kicked away the gun, and started to render aid by performing CPR. The male was later identified as Mario Ortega. He was transported to a local hospital where he was pronounced deceased.

## THE INVESTIGATION

Criminalists assigned to the CIRT gathered evidence and processed the scene. Four expended .9 millimeter shell casings were located near the area of the shooting. In addition, a black holster and black handgun held by Mr. Ortega were collected in the parking lot. The gun was examined and identified as a Hi-Point, 9 millimeter semi-automatic handgun. The serial number was defaced. The magazine was seated in the weapon and contained five live rounds.



*Photo of the handgun that Mr. Ortega held.*



*Photo of black holster that Mr. Ortega removed from the handgun just prior to the shooting.*

A later autopsy revealed that Mr. Ortega suffered two penetrating gunshot wounds to the torso and a superficial graze wound to his right buttock. The cause of death was determined to be a gunshot wound to the chest. Investigators discovered a total of 100 blue pills in a sock tied to the inside of Mr. Ortega's waistband. The blue pills were suspected to be fentanyl. A toxicological examination confirmed that Mr. Ortega was under the influence of methamphetamine and fentanyl at the time of his death.

Deputy Tran turned over his firearm for examination and round accountability. In addition, Deputy Tran participated in a recorded interview with CIRT investigators. The interview, along with the examination of the firearm and collection of evidence at the scene, leads to the conclusion that Deputy Tran fired four rounds from his firearm. Deputy Tran was equipped with a body-worn camera (BWC) that captured video of the entire shooting incident. The video corroborates the evidence on scene as well as Deputy Tran's recollection of the incident.

#### Involved Officer Interview

Deputy Tran participated in a recorded interview with CIRT investigators and explained his recollection of the incident prior to reviewing his BWC. He recalled the initial contact with the Nissan pickup and expressed his belief that the occupants were trying to conceal themselves. Upon confirming that the pickup truck was stolen, he got out of his patrol car with the intent of following the male and female suspects who retreated from the vehicle. Deputy Tran suspected that they would go into a motel room where he could hold and wait for additional deputies to assist with the investigation. He chose not to stay inside his vehicle and call for back up out of fear that he could not see where the suspects went, and he could be easily ambushed while sitting alone inside his patrol car. He also expressed his belief that car thieves are often armed with weapons and may be inclined to use force to flee arrest. For those reasons, Deputy Tran got out of his vehicle with his weapon drawn.

Deputy Tran said he was surprised to encounter the male suspect walking toward him. He believed that

the male was more likely to try to hide or run away. He immediately noted the male had his hands in his pockets, which caused him to point his weapon at the male and order the male to show his hands to be sure he did not possess a weapon. Deputy Tran recalled the male ignoring the commands and walking. According to Deputy Tran, the male continued to advance and tried to distract Deputy Tran by pointing behind him and saying, “It wasn’t me bro, I’ll tell you who it is.” Deputy Tran repeatedly ordered the male to get on the ground, but the male was noncompliant.

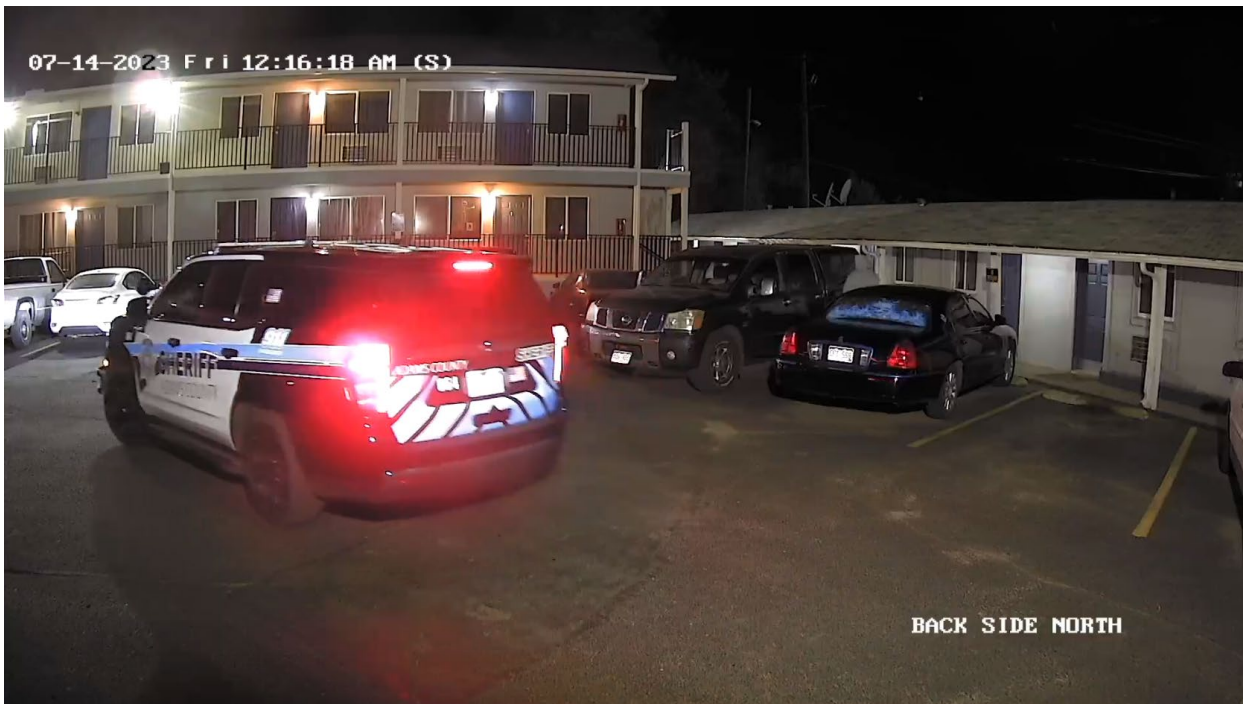
Deputy Tran was concerned that the male was attempting to hide something because he turned his body and put his hands back inside his front pocket. Deputy Tran stepped toward the male and reached for his arm with the intent to prevent the male from pulling out a weapon. The male stepped back and quickly drew out a holstered firearm from his front pocket. Deputy Tran stated that the male pulled the gun so fast that he had no time to react and thought he “probably should be dead.” He thought that if the holster was not on the gun, the male would have shot at him. Deputy Tran noted the holster was a “passive retention” holster, meaning that there was nothing holding the firearm inside the holster and that it could be removed with minimal effort.

When the male put the firearm to his head, Deputy Tran believed that he was attempting to “create distance” from Deputy Tran. Despite this action, Deputy Tran did not immediately shoot at the male because the male held the gun to his own head. Deputy Tran backpedaled to find a position of cover in the parking lot while trying to tell the male “Don’t do it.” The male interrupted and said, “Move then” as he tried to walk away. Due to the male’s actions, Deputy Tran became fearful for the civilians in the area and the other deputies who were responding to the scene.

Deputy Tran keyed his radio to alert dispatch and responding officers that Ortega had a gun. As he did so, the male reached his left hand up and removed the holster from the gun. At this point, Deputy Tran perceived that the gun was turned toward him when the male removed the holster. Deputy Tran said that he saw down the barrel of the male’s gun and felt he was going to die. At the time Deputy Tran fired his weapon, he made the conscious decision to fire his weapon, believing that he would be dead if he did not. He fired at the male until the male fell to the ground and he no longer perceived the male to be a threat. Immediately after the shooting, Deputy Tran observed the female passenger walking along the second-floor balcony of the motel. He moved around a vehicle for cover and reported the incident over the radio. When he noticed the male was no longer moving, Deputy Tran approached him, kicked the gun away, and started CPR.

#### Motel Surveillance and Body-Worn Camera

Investigators collected video surveillance from the motel parking lot as well as Deputy Tran’s BWC. The motel camera shows the blue Nissan pickup truck pull into the parking lot and back into a stall at the northeast corner of the lot just before 12:16 a.m. Deputy Tran pulled into the lot and parked near the truck approximately 30 seconds later. He got out of his vehicle with his weapon drawn at 12:16:39 a.m. and walked along the passenger side of the pickup.



*Still image of motel surveillance depicting the male driver of the pickup walking away with his hood pulled up over his head as Deputy Tran pulls into the parking lot.*

. At 12:16:59 a.m., the male walks past the back of the truck and Deputy Tran attempted to grab his arm. At 12:17:01 a.m., the male appears to hold a black object to the right side of his head while Deputy Tran held him at gunpoint. At 12:17:05 a.m., the male raised his left arm up toward his head and dropped it just before Deputy Tran fired his weapon at the male.



*Still image of motel surveillance depicting the male's left arm raised toward his head just before Deputy Tran fired his weapon at the male.*

Examination of the BWC recordings reveals similar time frames as the motel surveillance. Deputy Tran encountered Mr. Ortega at 12:16:46 a.m., as Mr. Ortega emerged from around the corner of the motel just beyond the parking lot. Deputy Tran immediately pointed his firearm at Mr. Ortega and ordered him to show

his hands. He then commanded Mr. Ortega to get on the ground. Mr. Ortega took his hands out of his pockets but continued to move toward Deputy Tran, ignoring five repeated commands to get down on the ground. A woman stood a distance behind Mr. Ortega as if to conceal herself from Deputy Tran.



*Still image from Deputy Tran's BWC depicting the male walking toward Deputy Tran with his hands in his front pocket.*



*Still image from Deputy Tran's BWC depicting Mr. Ortega as he continued to ignore Deputy Tran's commands to get to the ground with the woman concealing herself in the background.*

At 12:16:59 a.m., Mr. Ortega placed his hands back inside the front pocket of his sweatshirt. Deputy Tran attempted to grab Mr. Ortega's hands while simultaneously ordering him to take his hands out of his pockets. Within one second, Mr. Ortega drew a handgun out of his front pocket and held it up to the right side of his head. The gun appears to be in a holster. At 12:17:01 a.m., Deputy Tran stepped back with his gun drawn at Mr. Ortega while Mr. Ortega held a handgun pointed at his own head. Mr. Ortega said, "Move then,"



as he continued to walk away from Deputy Tran.



*Still image from Deputy Tran's BWC depicting Mr. Ortega as he drew a handgun and pointed it at his own head.*

Deputy Tran held Mr. Ortega at gunpoint as Mr. Ortega walked backward still holding the gun at his own head. At 12:17:05 a.m., Mr. Ortega reached his left hand up to the holster and removed it from the gun. Within a second, Deputy Tran fired four rounds in succession, causing Mr. Ortega to fall to the ground. The first round was fired at 12:17:06 a.m. and the last round was fired at 12:17:08 a.m.



*Still image from Deputy Tran's BWC depicting Mr. Ortega as he pulled the gun from the holster just prior to Deputy Tran firing his weapon at Mr. Ortega.*

### Other Witness Interviews

Investigators with the CIRT canvassed the motel to identify possible witnesses to the incident. A few

witnesses were identified who claimed to have heard the gunfire but did not see the incident. The female passenger who was with Mr. Ortega was identified but refused to speak with police about the incident.

## LEGAL ANALYSIS

As previously noted, this review is limited to a determination of whether criminal charges should be filed against the involved officers. The decision to file criminal charges involves an assessment of all known facts and circumstances as well as an evaluation of whether there is a reasonable likelihood of conviction at trial under the applicable law. Criminal liability is established when the evidence is sufficient to prove all the elements of a crime beyond a reasonable doubt. In addition to proving the elements of a crime, the prosecution must also disprove any statutorily recognized justification or defense beyond a reasonable doubt. Consequently, to file a criminal charge, the District Attorney's Office must be able to prove beyond a reasonable doubt that the involved law enforcement officers' actions were not justified under the circumstances surrounding this incident and the applicable law.

Under Colorado law, a law enforcement officer may use an amount of force, including deadly physical force, that is necessary and reasonable. Additionally, under Colorado law, police officers, like any other individual, have the right to defend themselves or others from the use or imminent use of unlawful physical force. An officer's right to use reasonable force is an affirmative defense, meaning that the prosecution must prove beyond a reasonable doubt that the use of force was not justified. The affirmative defenses applicable to the officers' use of force at the time of this incident is found at §18-1-707(4.5), C.R.S. (2023), and that subsection provides:

(4.5) Notwithstanding any other provisions in this section, a peace officer is justified in using deadly force if the peace officer has an objectively reasonable belief that a lesser degree of force is inadequate and the peace officer has objectively reasonable grounds to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving serious bodily injury.

The United States Supreme Court has set forth a standard of "objective reasonableness" in evaluating the use of force by a police officer. Under this standard, the inquiry into the appropriateness of an officer's use of force must (1) take into consideration the totality of the circumstances, including factors such as the severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, and whether the suspect is actively resisting arrest or attempting to evade arrest by flight; and (2) be judged from the perspective of an objectively reasonable officer on the scene "in light of the facts and circumstances confronting them, without regard to [his] underlying intent or motivation." Further, the United States Supreme Court notes, "[t]he 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." *Graham v. Connor*, 490 U.S. 386, 396-97 (1989).

In this case, there is no dispute that Deputy Tran discharged his firearm multiple times at Mario Ortega, causing his death. The legal question for this analysis is whether Deputy Tran's use of deadly force was reasonable and necessary. Applying the proper legal standards to the facts and circumstances of the situation of this case, the issue is whether an objectively reasonable officer would have concluded that Mario Ortega posed an immediate threat to the safety of the officer or another person such that the use of deadly force was necessary to prevent serious injury or death.

Here, Deputy Tran followed the blue Nissan pickup truck after observing the driver commit a traffic violation. Deputy Tran decided not to initiate a traffic stop, but rather to conduct further investigation. The male driver, later identified as Mr. Ortega, and his female passenger hurriedly got out of the vehicle and retreated around the corner of the two-story motel. Upon confirming that the pickup was reported stolen,

Deputy Tran decided to follow Mr. Ortega and the female. Deputy Tran drew his firearm believing it necessary given his experience that suspects may be armed or try to use force to flee from police.

Deputy Tran articulated his belief that Mr. Ortega may be armed during the first encounter. He was surprised to encounter Mr. Ortega coming back toward him and attempted to use his authority and his weapon to command Mr. Ortega to show his hands and get on the ground. Mr. Ortega refused to comply with these reasonable commands to resolve the situation and continued to advance toward Deputy Tran. As Deputy Tran attempted to resolve the situation using physical force, Mr. Ortega quickly pulled out a handgun and held it to his own head, creating a threatening situation for Deputy Tran. Any reasonable officer would perceive Mr. Ortega's use of the handgun as a threatening situation. While Mr. Ortega initially pointed the weapon to his own head, he was clearly using the weapon as a threat of force to gain distance from Deputy Tran. Mr. Ortega was still in close proximity when he removed the holster from the gun and elevated the threat beyond harming himself. At that point, Deputy Tran had a split-second to decide whether Mr. Ortega was going to fire the gun at him.

There were few options available to Deputy Tran in this situation. Perceiving the risk that Mr. Ortega may be armed, Deputy Tran initially attempted to gain Mr. Ortega's compliance with commands and the display of a weapon. When his initial show of authority was ineffective, Deputy Tran again attempted to escalate the use of non-lethal force to physical restraint to resolve the situation. Within a matter of two seconds, Mr. Ortega intensified the encounter by arming himself with a handgun. Yet despite the display of a weapon, Deputy Tran did not immediately fire his weapon on Mr. Ortega. Rather, he backed away and evaluated the alternatives. However, in the short time that Mr. Ortega removed the holster from the gun and Deputy Tran perceived the weapon pointed at him, there was little time to formulate any other less lethal response. Given the circumstances, Deputy Tran reasonably believed that Mr. Ortega presented a risk to his life and there were no reasonable less lethal alternatives available to stop Mr. Ortega from firing the weapon at him.

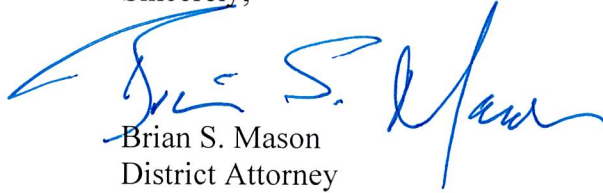
There is no evidence to suggest that an objectively reasonable officer would have acted differently than Deputy Tran did in this incident. The time between Deputy Tran's initial surprising encounter with Mr. Ortega to the time Mr. Ortega displayed a weapon was around 15 seconds. Further, less than 5 seconds elapsed between the time Mr. Ortega displayed the handgun to the time he removed it from the holster. Yet while this situation rapidly escalated, it was not due to Deputy Tran's behavior or conduct. Rather, Mr. Ortega, by his actions, not only refused to comply with reasonable commands and displayed a handgun, he also demonstrated an intent to use force with the weapon by removing it from the holster. Any reasonable person would perceive Mr. Ortega's conduct with the deadly weapon to be a threat to safety. Mr. Ortega's conduct led Deputy Tran to exercise split-second and, indeed, reasonable judgment in a tense and quickly evolving situation. This conclusion is confirmed by the BWC footage. The evidence presented in this investigation supports a conclusion that Deputy Tran had objectively reasonable grounds to use deadly physical force against Mr. Ortega. Consequently, no charges will be filed against Deputy Tran.

## CONCLUSION

Given the totality of the circumstances and evidence, the prosecution cannot prove that the involved officers were not justified in using reasonable force under §18-1-707, C.R.S. (2023). Therefore, applying the facts of this incident to the applicable law, the evidence does not support the filing of criminal charges against Deputy Mathew Tran for firing his weapon at Mario Ortega and causing his death.

Please feel free to contact me if you have any questions.

Sincerely,



Brian S. Mason  
District Attorney