



## OFFICE OF THE DISTRICT ATTORNEY

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August 24, 2018

Chief Nicholas Metz  
Aurora Police Department  
15151 E. Alameda Parkway  
Aurora, Colorado 80012

RE: February 10, 2018 - Officer Involved Shooting of Troy Jacques (DOB: ████████76)

Dear Chief Metz,

### EXECUTIVE SUMMARY

On February 10, 2018, Aurora Police Department officers conducted a lawful stop of Troy Jacques. During the encounter, Mr. Jacques did not comply with the officers' orders, grabbed a semi-automatic pistol and began pointing it towards Officer Chad Warner. Officer Warner quickly reacted and fired lethal rounds at Mr. Jacques, causing his death. Applying the law to the facts of this incident, as described in detail below, I conclude Officer Chad Warner was legally justified in his use of force to defend himself and other officers from the threat posed by Mr. Jacques.

### MATERIALS REVIEWED AND INFORMATION CONSIDERED

An Inter-Agency Investigation was conducted by the Denver Police Department Homicide Unit and the Aurora Police Department Major Crime/Homicide Unit. I reviewed all materials provided including multiple 911 calls, radio traffic, recorded interviews with involved officers, body camera footage, written reports, witness statements, photographs, ballistic reports, and the autopsy findings.

### SUMMARY OF THE FACTS

On Friday, February 9, 2018 at 9:13 p.m., APD Field Training Officer Chad Warner (Ofc. Warner) and his Recruit, Officer Mary Fernandez (Ofc. Fernandez) took a felony menacing report from victims "MP" and her husband "TP". In summary, MP and TP reported that a male suspect racked the slide of his black handgun, then pointed it at them, as they were stopped at a red light near East Mississippi Avenue and I-225. MP's two children were in their car as well. The suspect followed them on the highway and then fled. MP called 911 and described the suspect as a bald Hispanic male, in his 40's, with a mustache, and wearing a black sweatshirt. They described the suspect's vehicle as a faded green minivan, bearing Texas plate ████████.

Ofc. Fernandez ran the plate and learned that it was registered to Texas resident Troy Jacques. Officers Warner and Fernandez planned to follow up on the incident on their next shift the following day.

On Saturday February 10, 2018, APD Dispatch distributed a be-on-the-lookout (BOLO) bulletin to area Officers after the owner of two dogs called in at 10:56 p.m. to report them missing. The dog's owner was listed as Troy Jacques. Mr. Jacques told Dispatch he was new to the area and was unsure where he lost his dogs. He reported a supposed near-collision with a woman in a maroon truck, and that, if APD could determine the location of that incident, they would have a point of reference as to where he lost his dogs. This incident was later determined to be a suspicious occurrence at South Chambers Road and East Hampden Circle that involved witness "SD," and occurred perhaps 45 to 60 minutes prior to officer-involved shooting.

Officers Warner and Fernandez recognized Mr. Jacques' unique name in the lost dogs BOLO. Ofc. Fernandez phoned Mr. Jacques to inquire about his dogs, and to attempt to gather more information about him, his vehicle, etc. In summary, Mr. Jacques said he just arrived in Colorado from Texas, was having a hard time, and just wanted to find his dogs. Mr. Jacques spoke of the incident with the woman in the maroon car and told Ofc. Fernandez several times, "I cannot go to jail. I'll kill myself before I go to jail." Mr. Jacques provided his DOB (████████76), said he was homeless, was driving a blue Chevy minivan and had been living out of the van. Mr. Jacques appeared to become wary of this call from Ofc. Fernandez, and did not provide his license plate. Mr. Jacques did report he believed he was in the area of East Smoky Hill Road and South Chambers Road.

Ofc. Warner then attempted to research Mr. Jacques on his MDC (in-car computer). He received a 'Wanted Person' message, but the MDC malfunctioned, and he was not able to learn any more about Mr. Jacques at that time.

Officers Warner and Fernandez responded to the area of Smoky Hill and Chambers, and parked to watch passing traffic. They saw a blue Chevy minivan traveling eastbound on Smoky Hill, and pulled in behind the minivan, believing it may be the vehicle from the February 9 menacing report. The driver of the van made a U-turn at South Mobile Way and pulled over after Ofc. Warner (who was driving) activated the overhead lights on their marked APD Patrol car. Ofc. Warner called out this traffic stop, to include the van's Texas plate of ██████████, at 11:27:40 p.m.

The driver and sole occupant of the van, later positively identified as Troy Michael Jacques by his fingerprints, immediately exited his van and stepped towards the patrol car. Ofc. Warner immediately exited the Patrol car and drew his Glock 9mm duty pistol, based on the earlier felony menacing call, a belief Mr. Jacques was armed, the partial wanted message he received, and the unusual nature of the driver exiting the vehicle during a traffic stop.

Officers Warner and Fernandez gave Mr. Jacques verbal commands to turn around, stop, and to get on the ground. Mr. Jacques disobeyed these direct verbal commands. Mr. Jacques told Ofc. Warner to, "leave me the fuck alone," and got back in his van. Not wanting Mr. Jacques to access a weapon and/or drive away, Ofc. Warner ran to the driver's door of the van and attempted to grab Mr. Jacques. Ofc. Fernandez followed Ofc. Warner, moving forward along the driver's side of the van. Mr. Jacques was partially seated in the driver's seat, with the driver's door open, and reaching down toward the center console area of his van.

Mr. Jacques then rotated toward Ofc. Warner holding a silver and black pistol in his right hand. Mr. Jacques began to point it toward Ofc. Warner. Fearful that Mr. Jacques was going to shoot him, or Ofc. Fernandez, Ofc. Warner immediately began to fire his pistol. Beginning at about 11:28:51 p.m., Ofc. Warner fired an initial volley of 13 rounds in rapid succession, as he moved rearward and slightly away from the van, then circled to his left, away from the van but back toward the driver's door. He bumped into Ofc. Fernandez as he retreated, and she then retreated behind the van. Mr. Jacques repeatedly yelled, "Ow!" during this gunfire. This first volley of 13 shots lasted only about four seconds, stopping at about 11:28:55. The van's door was open the entire time.

After circling up to a position roughly 90 degrees relative to the van's driver's door, Ofc. Warner could see Mr. Jacques seated in the driver's seat, with both buttocks on the seat, and both legs inside the vehicle. It appeared that Mr. Jacques' upper body was leaning to his right. Officer David McNamee (Ofc. McNamee), who had responded to cover the initial traffic stop call, now joined Ofc. Warner on the driver's side. Ofc. Warner continued to yell at Mr. Jacques to, "Get on the ground! Get on the ground! Let me see your hands!"

At 11:28:59, Mr. Jacques moved his hand(s) slightly, and a small glint of white or silver could be seen from the area of his hands, consistent with the silver slide of his pistol. Within the same second, Ofc. Warner began to fire a second volley of five shots in rapid succession, as he yelled again, "Let me see your hands! Let me see your hands!" Mr. Jacques again yelled, "Ow!" then said, "(Unintelligible), ugh." This second volley of five shots lasted only about three seconds, stopping at about 11:29:02.

Ofc. Warner then conducted a rapid reload of his pistol (reloading in a very short amount of time by ejecting the current magazine in the pistol to the ground, then inserting a new, loaded magazine into the gun). Immediately after doing so, Mr. Jacques sat up in his seat, then rapidly leaned backward. Mr. Jacques continued to move his legs. Ofc. McNamee ordered Mr. Jacques to, "Stop." At about 11:29:05, Mr. Jacques appeared to raise his left hand up to his neck area, as he rotated his entire body to his left so he was facing more toward Ofc. Warner. Mr. Jacques' upper body also began to move slightly backward toward the passenger seat. His right hand and arm could not be seen at that time.

At 11:29:06, Ofc. Warner again yelled, "Let me see your hands!" then fired a third volley of two shots in rapid succession. This third volley of two shots lasted less than one second. As Ofc. Warner fired his last shot, Ofc. McNamee was heard yelling, "Let me see your hands!" With the final two shots, Mr. Jacques' upper body collapsed backward toward the passenger seat, while he remained seated in the driver's seat and both his feet remained on the driver's floorboard. Mr. Jacques was motionless afterward.

Based on the body camera footage and scene investigation, the three volleys of gunfire included 20 shots over a period of approximately 15 seconds. From the time Ofc. Warner was first heard giving Mr. Jacques orders to turn around, to the time of the first shot, was about 19 seconds (11:28:32 to 11:28:51). No other gunshots were fired by anyone else, including Mr. Jacques.

Officers McNamee and Warner then removed Mr. Jacques from the van and placed him on the ground where he was handcuffed. Ofc. Warner then began to perform cardiopulmonary

resuscitation (CPR) upon Mr. Jacques. Ofc. Fernandez and other responding Officers then rotated administering CPR until Aurora Fire Department (AFD) and Falck Ambulance personnel arrived on-scene.

Mr. Jacques was then transported to the Medical Center of Aurora (MCA) where he was pronounced dead, at 12:00 a.m. (now 2/11/18), by Dr. Robert Snyder.

After Mr. Jacques was removed from the van, a silver and black semi-automatic pistol was located on the passenger of Mr. Jacques's van. Ofc. McNamee later reported that it was located about six to eight inches from where he had earlier seen Mr. Jacques' right hand when he approached Mr. Jacques to take him into custody. The pistol is a Ruger SR40, .40-caliber pistol, Serial # [REDACTED], purchased by Mr. Jacques in Texas, on 1/27/18. The pistol had one round in the chamber, and three in the magazine.

Dr. Kelly Lear, Arapahoe County Coroner, performed an autopsy upon Mr. Jacques' body, on February 12, 2018. Dr. Lear found four perforating (through-and-through) gunshot wounds: on his trunk (two), left arm (one), and left leg (one). She determined Mr. Jacques had seven penetrating (entering his body) gunshot wounds: on his trunk (six), and left leg (one). Dr. Lear also determined Mr. Jacques had graze wounds to his left wrist and abdomen. She ruled the cause of Mr. Jacques' death to be multiple gunshot wounds.

Investigation later revealed that Mr. Jacques was suspected in multiple felony menacing and weapons cases in Texas in late December of 2017, just before moving to Colorado. His actions in those cases were similar to his actions in the felony menacing of the MP and TP family on February 9, 2018. He had two active warrants related to one of the Texas cases.

#### WITNESS INTERVIEWS

On February 9, 2018, at approximately 9:13 p.m., MP reported a felony menacing with a suspect matching Troy Jacques' description on East Mississippi Avenue near I-225. She, her husband TP, and their two children were in their SUV driving westbound on Mississippi. They described seeing a van stopped on the side of the road that was faded green on top and black on the bottom. As they passed the van the driver honked at them. They then pulled up to the light to turn left onto southbound I-225. The suspect then pulled alongside of them, on their right, in the through lane. MP described the suspect as a bald Hispanic male, in his 40's, with a mustache, wearing a black sweatshirt. She believed a passenger may have been in the van as well, but she was not sure. When the suspect was next to them he held up a black gun, racked the slide, and pointed it at them through his closed driver's window. MP was afraid of the male and what he was going to do with his gun. As MP made a left turn onto I-225, the van began to follow her. She called 911. She drove to East Iliff Avenue, exited, and went eastbound on Iliff. The van exited as well, and went westbound on Iliff. She was able to get the license plate of the van, and reported it to Dispatch as Texas plate [REDACTED]. Officers Warner and Fernandez took the report from MP and TP. This incident was documented under APD Case #2018-5772.

Officer Warner was interviewed as part of this investigation. He has been employed with APD since July, 2013. Prior to that, he was an Aurora Animal Control Officer for five years. He is currently a Field Training Officer/Specialist assigned to District 3. He works the swing shift, 3:00

p.m. to 1:00 a.m., and at the time of this investigation he was training Recruit Officer Mary Fernandez. He was driving a marked patrol car with no dash camera.

Prior to the interview, Ofc. Warner had not reviewed his body camera footage or that of any other officer. Ofc. Warner confirmed he had not discussed this incident with any other officers or reviewed any reports or media related to the incident.

Ofc. Warner described learning of the felony menacing report from MP and TP on February 9. He and Ofc. Fernandez followed up on the report on February 10. They also received the BOLO regarding Mr. Jacques looking for his dogs. Ofc. Fernandez contacted Mr. Jacques on the number he gave dispatch. Meanwhile, Ofc. Warner could overhear Ofc. Fernandez's conversation with Mr. Jacques. He learned that Mr. Jacques did not want to meet up with them, that he was in the area of Smoky Hill and Chambers and that he was homeless. The phone call with Mr. Jacques lasted perhaps five minutes. Ofc. Fernandez briefed him after the call. Ofc. Warner learned Mr. Jacques confirmed he had a green van with a Texas plate, though he did not know the plate, and that he was in the area of Smoky Hill and Chambers. Mr. Jacques felt like he was getting "clued in on," and realized the situation was not really about his dogs. Mr. Jacques said he was not willing to meet with them and said he would not go back to jail. Ofc. Fernandez informed Ofc. Warner that Mr. Jacques said, "I'll kill myself before I do that." Based on all of this information, Ofc. Warner believed Mr. Jacques would likely not be cooperative if they made contact with him.

As Ofc. Warner and Ofc. Fernandez patrolled the area they saw a van matching Mr. Jacques' description drive by. Ofc. Warner was driving his marked patrol car and began to follow the van. Mr. Jacques then made a U-turn and Ofc. Warner activated his overhead lights immediately after Mr. Jacques made his U-turn. He also activated his spotlight. He did not remember if he activated his "takedowns" lights (front-facing supplemental lighting) or not. Street lights illuminated the area as well. He did not activate the siren. There were no bystanders in the area. It was cold outside with snow on the ground.

After he activated his overheads, the van pulled over "pretty quick," to the right, about 50 yards west of Mobile. The driver pulled over in a fairly normal fashion, but may have hit the curb as he pulled over. Ofc. Warner called out the traffic stop. (A later review of Dispatch audio showed that Ofc. Warner called out with Texas plate [REDACTED].)

As Ofc. Warner came to a stop, he cracked his door open, something he usually does on traffic stops. In this case, he thought the driver might exit the van, run, etc. He was also wary of the driver, given the earlier felony menacing in which the driver of a van with the same Texas plate was armed with a gun. He wondered if the driver would come out shooting because he did not know who he was dealing with. Due to these unknown factors, Ofc. Warner was concerned and called for a cover Officer before he got out of his car.

Ofc. Warner said he was going to discuss conducting a high-risk stop with Ofc. Fernandez while waiting for their cover officer, but the situation unfolded so quickly he did not have a chance to do so.

As soon as the van stopped the driver's door opened. According to Ofc. Warner, it is abnormal for a driver to exit their car right away. Usually, a driver will wait for the Officer to approach them. Ofc. Warner quickly exited his patrol car and drew his pistol. When asked why he drew his

pistol, Ofc. Warner said because of the prior call involving a gun, this same van being involved in that call, and the suspect description from that call matching the male he saw driving the van, Ofc. Warner believed the male in the van they pulled over was the male who committed the felony menacing on February 9, 2018. He wanted to ensure the driver did not come out with a gun and start shooting them, and he wanted to respond appropriately. "I didn't want him to shoot me first, basically." Ofc. Warner was not holding a flashlight. He only held his pistol.

As Ofc. Warner exited, the driver was already getting out of the van. The driver was a bald white male, with a possible baggy coat or baggy clothing. According to Ofc. Warner, the driver (later identified as Mr. Jacques) looked pissed off, and was throwing both hands up in the air as if to communicate, "What? What!?" Asked if he heard Mr. Jacques say those words, Ofc. Warner said Mr. Jacques just mouthed the words, and was yelling something, but he was not sure what was being said. He added that Troy seemed "frustrated" and was "definitely pissed off."

He thought Mr. Jacques was going to get back in his van at that point because Mr. Jacques turned sideways toward the door. So Ofc. Warner gave Mr. Jacques verbal orders to not go in the van, to step toward him, and to, "Let me see your hands." Mr. Jacques initially complied, walking perhaps 10 feet toward Ofc. Warner, reaching the rear bumper of the van.

When Mr. Jacques reached the rear bumper of his van, Ofc. Warner ordered him to get down on his knees. Mr. Jacques did not obey at all, and began to turn around. Mr. Jacques then raised one hand and threw it down quickly as if to communicate, "Get out of here, you know. Fuck you, basically." (Ofc. Warner demonstrated this by raising his right hand and lowering it quickly and dismissively.) Mr. Jacques then began to walk back toward his van.

Ofc. Warner, who already had his pistol drawn, went around his car door, and continued to give Mr. Jacques verbal orders, to include, "Don't go back in the car," and, "Come back here." But Mr. Jacques made a "bee line" for his van door.

Ofc. Warner said they had no chance to engage in any de-escalation tactics because things happened too quickly. Ofc. Warner then ran to Mr. Jacques as he (Ofc. Warner) held his pistol in his hand. He did not want Mr. Jacques going back in his van, because he was concerned Mr. Jacques had a gun or other weapons, did not want Mr. Jacques to use those weapons against the Officers, and did not want him driving off. He wanted to get Mr. Jacques in control.

As Ofc. Warner got to the door frame Mr. Jacques was seated on the driver's seat and looking down and to his right toward the center console. Ofc. Warner grabbed Mr. Jacques' left arm. Ofc. Warner did not have time or opportunity to do any official arrest control tactic because he was simply trying to gain control of Mr. Jacques, who was non-compliant. Mr. Jacques was the only person he saw in the van.

As he was grabbing Mr. Jacques' arm, Mr. Jacques reached down to his right in the area of the van's center console. Then, Ofc. Warner said, "I see a gun in his hand, and he's coming up and he's turning it towards me. And I, I just start shooting. I like, I disengaged with him, but I start shooting and I'm, I'm moving back as I'm shooting." As he was shooting, he could see Mr. Jacques through the window, moving over toward the center console and passenger seat.

“I don’t know if he’s going to start shooting back at me...” (At this point in the interview Ofc. Warner became very emotional while placing his head in his hands. He said, “I’m sorry.” A break was taken to give Ofc. Warner time to gather his composure.)

Ofc. Warner further described how Mr. Jacques “pulled a gun and turned towards me.” Ofc. Warner saw that Mr. Jacques was holding a pistol in his right hand and rotated toward Ofc. Warner. Ofc. Warner thought the gun was a two-tone handgun.

As Mr. Jacques pointed the gun at him, Ofc. Warner tried to disengage, but said, “I was so afraid and, and fearful that he was going to start shooting me, or start, just start shooting, and so I, I started shooting into his, into the driver’s seat as I started retreating backwards.” He began shooting immediately after seeing Mr. Jacques’ gun, and fired his first shots at the area of the driver’s seat where Mr. Jacques had been seated.

Officers Fernandez and McNamee were also interviewed. Neither fired their weapons but both acknowledged they were not in a safe position to engage Mr. Jacques without endangering the other officers.

#### APPLICABLE LAW

The District Attorney’s review of this event is guided by the following statutes pertaining to the use of force – both generally and by peace officers:

Section 18-1-704(2) C.R.S. states in relevant part:

- (2) Deadly physical force may be used only if a person reasonably believes a lesser degree of force is inadequate and:
  - (a) The actor has reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.

Section 18-1-707 C.R.S. states in relevant part:

- (1) . . . a peace officer is justified in using reasonable and appropriate physical force upon another person when and to the extent that he reasonably believes it necessary:
  - (a) To effect an arrest or to prevent the escape from custody of an arrested person unless he knows that the arrest is unauthorized; or
  - (b) To defend himself or a third person from what he reasonably believes to be the use or imminent use of physical force while effecting or attempting to effect such an arrest or while preventing or attempting to prevent such an escape.
  
- (2) A peace officer is justified in using deadly physical force upon another person for a purpose specified in subsection (1) of this section only when he reasonably believes that it is necessary:
  - (a) To defend himself or a third person from what he reasonably believes to be the use or imminent use of deadly physical force; or
  - (b) To effect an arrest, or to prevent the escape from custody, of a person whom he reasonably believes:

- (I) Has committed or attempted to commit a felony involving the use or threatened use of a deadly weapon; or
- (II) Is attempting to escape by the use of a deadly weapon;

Deadly physical force “means force, the intended, natural, and probable consequence of which is to produce death, and which does, in fact, produce death.” §18-1-901(3)(d), C.R.S.

### ANALYSIS AND CONCLUSION

Based on my review of all the evidence in this case, I find Officer Warner was justified in using deadly physical force against Mr. Jacques on February 10, 2018. The totality of the evidence leads me to conclude Officer Warner reasonably feared for his life and the lives of his fellow officers when he saw Mr. Jacques point a pistol at him.

The reasonableness of Officer Warner’s belief that Mr. Jacques intended to use deadly force against him is further bolstered by his knowledge of the felony menacing incident from February 9. Additionally, Officer Warner was aware Mr. Jacques’ had very recently told Officer Fernandez that “I cannot go to jail. I’ll kill myself before I go to jail,” or words to that effect. Coupling these circumstances with Mr. Jacques’ unusual behavior of exiting his vehicle during a traffic stop and deliberately ignoring lawful commands to get on the ground, Officer Warner was justifiably concerned that the situation could escalate when Mr. Jacques returned to his van and grabbed the gun. And there is no doubt that when Mr. Jacques pointed the gun towards Officer Warner that Officer Warner was justified in responding with deadly force.

Moreover, the body cameras worn by the officers corroborate their accounts of events. The physical evidence corroborates the officers’ statements, particularly the location of Mr. Jacques’ pistol and Ofc. Warner’s accurate description of the gun as “two tone.” Finally, I conclude the officers’ statements are credible and internally consistent. I find Officer Warner’s beliefs and actions to be reasonable under the circumstances to ensure his and other officers’ safety.

Applying the law, as stated in §18-1-704 and 707, C.R.S., to the facts summarized above, I find Officer Chad Warner reasonably believed that his own life and the lives of other officers were in imminent danger of deadly force by Mr. Jacques. Indeed, based solely on the events and circumstances known to Officer Warner at the time (not including the additional menacing and shooting crimes alleged to have been committed by Mr. Jacques in Texas), it is likely that Officer Warner’s actions on February 10, 2018 prevented his own death and saved the lives of his fellow officers.



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