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Travis County District Attorney Margaret Moore today released the following statement:

The Travis County District Attorney's Office has concluded its review of the Austin Police Department's investigation of the facts and circumstances of three separate 2016 officer-involved shootings involving Tyler Harrell, Cesar Garcia, and Ray Ojeda, and determined that in each case the credible investigative facts establish that each officer's use of force was justified under applicable Texas law governing when an officer may use deadly force. In accordance with the Office's policies, District Attorney Margaret Moore will not present these cases to a grand jury for possible indictment and has issued formal declination letters summarizing the facts of the investigation and the legal analysis forming the basis for her decision.

Declination letters were released in each of the following officer-involved shooting incidents:

Officer Leighton Radtke (APD # 6098) involving Tyler Harrell

On April 14, 2016, members of the Austin Police Department, including APD Officer Leighton Radtke, were executing a "no-knock" search warrant in relation to a drug investigation at the residence of Tyler Harrell. After breaching Mr. Harrell's front door and entering the residence, Tyler Harrell fired shots from a long rifle at the officers from the top of the second floor stairwell. Officer Leighton Radtke then returned fire shooting his AR rifle in the direction of Mr. Harrell. Mr. Harrell was not injured.

Mr. Harrell was charged with Attempted Capital Murder of a Police Officer, Aggravated Assault of a Peace Officer, and Possession of a Controlled Substance with Intent to Deliver, all arising out of this incident. In keeping with ethical rules governing prosecutorial conduct, a fuller discussion of the facts leading to Officer Radtke's shooting in the direction of Mr. Harrell cannot be made at this time without jeopardizing Mr. Harrell's right to a fair trial.

Corporal Salvatore Reale (APD #2100) and Officer Andrew McRae (APD #6331) involving Cesar Garcia

On September 5, 2016, APD officers responded to a 911 call to the San Paloma apartments located at 12501 Tech Ridge Blvd. #1013. The caller requested that an officer be dispatched to stand by while her ex-husband retrieved his belongings from her apartment. Additionally, the caller provided a description of her ex-husband and the truck he was driving. Upon arrival, officers identified the truck described in the call and saw the individual—later identified as Cesar Garcia—pull out a long rifle from his front seat. Mr. Garcia exited his vehicle with the rifle

in his hands. Officers at the scene, including a mental health officer, took cover and attempted to talk Mr. Garcia into dropping his weapon. Officers assured Mr. Garcia that he was not in trouble. However, Mr. Garcia walked away from the officers and told them that he was not going to drop his gun. Mr. Garcia walked to a location in the apartment complex and stood with the rifle in his hands while officers continued to attempt to get him to put the rifle down. At one point, Mr. Garcia raised the rifle and pointed it at officers who were then still in positions of cover. Officers warned Mr. Garcia not to raise his rifle again informing him that he would be shot if he did so.

After nearly ten minutes of negotiating with Mr. Garcia, an APD officer fired a less-lethal shotgun in an effort to gain compliance and get him to put his rifle down. Mr. Garcia, still armed, ran after being shot with the less-lethal shotgun toward an adjacent apartment building. While in pursuit of Mr. Garcia, officers saw Mr. Garcia turn around with his rifle raised and pointing in the direction of pursuing officers. At this point, one of the officers who had taken an elevated position of cover to monitor the incident, APD Corporal Salvatore Reale, fired one shot at Mr. Garcia. Additionally, one of the officers pursuing Mr. Garcia, Officer Andrew McRae, fired five shots at Mr. Garcia when he saw Mr. Garcia turn and point his rifle at pursuing officers. Mr. Garcia was struck four times and killed in the incident.

Officer James Harvel (APD #4289) involving Ray Ojeda

On June 14, 2016, at 4:05 a.m., Ray Ojeda called 911 and asked for police officers to be sent to his location at Odom Elementary School. He said he was armed with a handgun and a machete. He was asked to put his weapons down but he refused. He would not say why he needed the police, saying only that the officers would find out once they got there and that he wanted "stuff" to happen.

Multiple APD officers responded including patrol, K9, AIR 1, SWAT, and hostage negotiators. Officers formed a perimeter around the school while a hostage negotiator spoke with Ojeda over the phone and attempted to bring the event to a peaceful conclusion. Once Ojeda left school grounds and began walking into a populated residential neighborhood, two armored SWAT vehicles moved in to confront him. Rather than emptying his hands and raising them over his head as he was instructed to do over a loudspeaker, Ojeda took a shooting stance and pointed his outstretched right hand in the direction of officers. Believing that Ojeda was pointing a handgun at himself and other officers, Officer Harvel fired once, striking Ojeda in the torso.

Ojeda was hospitalized but recovered from his injury. Although Ojeda was never in possession of a handgun as he claimed, he was found to have been concealing a machete up his sleeve with the handle in or near the hand that was pointed at officers at the time he was shot.

In each of these cases the District Attorney's Office has determined that each officer's use of deadly force was justified under the facts established in the investigation. A full discussion of those facts and the legal analysis forming the basis for the declination letter will be published on the District Attorney's Civil Rights Unit's webpage that will be active Monday, October 23 (<https://www.traviscountytexas.gov/district-attorney/cru>).

Press packets containing documents, audio and video related to the Reale & McRae and Harvel cases are available from the District Attorney's Office Reception Desk, located on the first floor of the Criminal Justice Center, 509 West 11th Street.