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THE FLORIDA SENATE

In re: Executive Order of Suspension, Number 19-14
Suspension of Mr. Scott Israel, Sheriff
Broward County, Florida

GOVERNOR DESANTIS' BENCH MEMORANDUM

COMES NOW, the Executive Office of Governor Ron DeSantis ("EOG"), by and through Deputy General Counsel Nicholas Primrose, pursuant to Special Master Goodlette's letter dated May 2, 2019, respectfully submits this bench memorandum for review in the matter of Executive Order 19-14, Suspension of Scott Israel ("Israel"), Broward County Sheriff.

1. Introduction & Background

On January 11, 2019, Governor DeSantis issued Executive Order 19-14 suspending Scott Israel from his office as Broward County Sheriff after his failed leadership resulted in multiple deaths, his failure to provide appropriate department policies for responding to an active shooter situation, his failure to adequately and frequently train his deputies, and a failure of his paramount statutory duty to be the conservator of the peace in Broward County. Pursuant to Article IV, section 7(a) of the Florida Constitution, Governor DeSantis suspended Scott Israel on the grounds of neglect of duty and incompetence.

On January 29, 2019, Israel requested a formal hearing in the Florida Senate pursuant to Article IV, section 7(b) of the Florida Constitution. At a preliminary case management conference, Israel requested a Bill of Particulars pursuant to Florida Senate Rule 12.9(3). On February 25, 2019, EOG filed its Bill of Particulars and its Witness and Exhibit List. On March 7, 2019, Israel filed a Petition for Writ of Quo Warranto in the Seventeenth Judicial Circuit in and for Broward County, Florida challenging Executive Order 19-14. Israel also invoked Florida Senate Rule 12.9(2), requesting the matter in the Senate be abated during the pendency of the litigation. EOG objected to the abeyance given the frivolous nature and delay tactics of Israel.

On April 4, 2019, the Seventeenth Circuit denied Israel's Petition and granted EOG's Motion to Dismiss. The Seventeenth Circuit found Executive Order 19-14 met the constitutional requirements and jurisdictional authority. Israel appealed this order to the Fourth District Court of Appeal. EOG requested "pass-through" jurisdiction due to the great public importance of an immediate answer on the Governor's actions. Israel objected to that request. On April 9, 2019, the Fourth District Court of Appeal certified the case as one of great public importance and the Florida Supreme Court accepted jurisdiction on an expedited basis. On April 23, 2019, the

Florida Supreme Court, in a unanimous decision, affirmed the Circuit Court's order denying Israel's Petition. Upon the opinion, EOG immediately requested the Senate proceedings continue.

On May 2, 2019, the Special Master set this case for a prehearing conference on June 5, 2019, with a final hearing beginning on June 18, 2019. As part of that notice, the Special Master required both parties to exchange all exhibits and submit bench memorandums by June 3, 2019.

The sole question presented to the Florida Senate is whether Scott Israel should be removed from his office as Broward County Sheriff for neglect of duty and/or incompetence.

2. Applicable Law

Article IV, section 7(a) of the Florida Constitution was approved by the voters of Florida in 1968. In adopting this provision, Florida voters gave the Governor the authority to suspend certain public officials for certain enumerated reasons, including neglect of duty and incompetence. The Florida Supreme Court in *State ex rel. Hardie v. Coleman*, 155 So. 129 (Fla. 1943) defined both causes for suspension, in relevant part:

Neglect of duty has reference to the neglect or failure on the part of a public officer to do and perform some duty or duties laid on him as such by virtue of his office or which is required of him by law. It is not material whether the neglect be willful, through malice, ignorance, or oversight. When such neglect is grave and the frequency of it is such as to endanger or threaten the public welfare it is gross.

Incompetency as a ground for suspension and removal has reference to any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of office. Incompetency may arise from gross ignorance of official duties or gross carelessness in the discharge of them. It may also arise from lack of judgment and discretion or from a serious physical or mental defect not present at the time of election.

These definitions provide guidance the Florida Senate. Specifically, EOG would ask the Senate to look at whether Israel neglected his duties incumbent in his office and imposed by statute. Of import is the guidance that "it is not material whether the neglect be willful, through malice, ignorance, or oversight," and, therefore, any defense asserted of the following should be disregarded. EOG will present evidence to the Senate that Israel exhibited gross ignorance of his official duties or gross carelessness in the discharge of his duties, including exhibiting a lack of judgment and discretion.

Israel will contend that duty, as defined in the Florida Constitution, requires and mandates a constitutional or statutory duty. This argument failed in the Seventeenth Circuit, and the Florida Supreme Court affirmed there is no requirement of a statutory duty. However, as addressed in Executive Order 19-14, and useful in guiding the Florida Senate, are two statutes that impose duties and responsibilities on Israel.

First, section 30.15, Florida Statutes, titled “Powers, duties, and obligations” says “Sheriffs, in their respective counties, in person or by deputy shall: be conservators of the peace in their counties.” *See* §30.15(1)(e), Fla. Stat. EOG-00002. Lest there be any doubt as to what this duty and obligation means, conservator is defined as an official charged with the protection of something affecting public welfare and interests and peace is defined as a state of security or order within a community and freedom from civil disturbance. *See* Merriam-Webster Legal Dictionary (<https://www.merriam-webster.com/dictionary/conservator#legalDictionary> and <https://www.merriam-webster.com/dictionary/peace#legalDictionary>). Furthermore, courts have held “conservator of the peace” means “the duty to protect people and property” and “protect against crime without waiting for it to occur.” *See State v. A.R.R.*, 113 So. 3d 942, 944-45 (Fla. 4th DCA 2013) (citing *Ortiz v. State*, 24 So. 3d 596, 607 (Fla. 5th DCA 2009) (Torpy, J., concurring); *United States v. Markland*, 635 F. 2d 174, 176 (2d Cir. 1980).

Second, Section 30.07, Florida Statutes, authorizes Sheriffs to appoint deputies to act with their power and authority. *See* § 30.07, Fla. Stat. EOG-00001. And while law authorizes Sheriffs to appoint deputies, it explicitly makes them responsible for a deputies’ neglect in office. *Id.* *See also, Israel v. DeSantis*, 2019 WL 1771730, *4 (Fla. Apr. 23, 2019) (Muniz, J., concurring).

In addressing Israel’s assertion that Executive Order 19-14 fails to cite statutory duties, Justice Muniz opined in his concurrence that, Israel’s view of his duties is too narrow and that “[a] sheriff’s myriad day-to-day functions and responsibilities—including the development of policies and the training and supervision of employees—are the essential means of carrying out these overarching statutory obligations. *Id.*

The Florida Senate must review the facts and evidence under a preponderance of the evidence standard—a mere tipping of the scales. If the facts and evidence presented favor removal from office for neglect of duty and incompetence, the Florida Senate must vote for removal. EOG will prove at the Final Hearing that Israel neglected his duties and was incompetent, demanding the Florida Senate remove him permanently from office.

3. Facts & Evidence

Executive Order 19-14 cites two mass casualty incidents as the basis for neglect of duty and incompetence, the Fort Lauderdale-Hollywood International Airport shooting on January 6, 2017, and the Marjory Stoneman Douglas High School shooting on February 14, 2018.

a. Fort Lauderdale-Hollywood International Airport¹

On January 6, 2017, at approximately 12:54 p.m., a gunman² opened fire inside the baggage claim area of the Fort Lauderdale-Hollywood International Airport (FLL) Terminal 2. EOG-00008. The gunman killed five individuals and six were wounded—making it the deadliest attack on a U.S. Airport. *Id.* The gunman ran out of ammunition and eventually surrender to the responding Broward Sheriff deputies. *Id.* At approximately 1:10 p.m., deputies began to secure the crime scene and move passengers away from the scene.

¹ The following facts are derived from three reports authored by the Broward County Sheriff’s Office, including two draft versions, dated May 3, 2017 and June 2, 2017, and the Final Report published on October 6, 2017.

² To respect the victims of both tragic events and their families, the names of the gunmen will not be used.

At 2:20 p.m., a customs border patrol officer, who believed he heard gunshots, ran with his firearm out towards FLL Terminal 2 asking if anyone heard shots fired. EOG-00016. A fire rescue captain who heard this office radioed “Border Patrol reporting shots fired in Terminal 2.” EOG-00017. As a result, additional chaos ensued with airline and airport employees and passengers stampeding towards other terminals and the parking garage. One Broward Sheriff deputy upon seeing the fleeing individuals radioed “shots fired” coming from the Palm Garage. EOG-00018. That radio transmission caused even more panic, various law enforcement officers started running towards the Palm Garage. EOG-00019-00020. In a separate terminal, another Broward Sheriff deputy subsequently believed he heard shots fired and relayed “shots fired in Terminal 4,” followed by a “shots fired in Terminal 1.” EOG-00021. Per the Broward Sheriff’s Office After Action Report, from the initial chaos in Terminal 3, “which began the domino effect of self-evacuations” it took under 4 minutes for the entire airport to be self-evacuated. EOG-00021.

The Report recaps even more confusion, including an incident where a Broward Sheriff deputy fled his vehicle near Terminal 1 and an individual was able to get into the Sheriff’s vehicle encountering a police K9. The police K9 “apprehended” the individuals, as it was trained to do, requiring medial assistance. This incident was relayed over the radio as potentially a gunshot victim, causing multiple law enforcement officers to begin looking for another shooter. EOG-00024-00025.

Thousands of individuals were running wild throughout the FLL property, including hundreds being directed onto the airport’s runways. Approximately thirty minutes after the last report of a gunshot victim, another officer believed they heard “multiple shots being fired” at an adjacent hanger. EOG-00031. While that radio report of shots fired was relayed, other officers apprehended a male carrying a backpack who was also running in the panic. EOG-00032. Law enforcement ultimately decided to “disrupt” his backpack, causing an explosion sound. EOG-00033. Of import, this individual was cleared by the FBI and released.

At approximately 3:30 p.m., officers determined that the reports of a second shooter were wrong and now had to determine how to secure the airport and manage the nearly 12,000 people who were displaced. Broward Sheriffs Office (“BSO”) decided to transport all of the individuals to an off-site location, however due to the chaos responding officers’ vehicles were left in the roadways. Buses were not able to move individuals off-site until 7:30 p.m.—6 ½ hours after the initial gunman was apprehended. EOG-00037. Collection of evidence occurred throughout the evening, and while the airport re-opened the following day, the Terminal 2 baggage claim area was not opened until one week later.

As cited in footnote 1, BSO conducted an After Action Report into the FLL shooting. EOG will rely on two draft versions of the report and the final published version in its presentation of evidence.

The Initial Draft After Action Report (Initial Draft Report), dated May 3, 2017, indicates that BSO’s Airport District provides law enforcement services for FLL and general airport security. EOG-00060. The Initial Draft Report indicates that between 2008 and 2013, staffing levels at the Airport District “drastically reduced”, and that reduction in staff coincided with the growth of FLL, including more passenger capacity and the addition of Terminal 4. EOG-00060-00061. Prior to the FLL shooting, BSO participated in a full-scale exercise in Miami-Dade for

responding to active shooter situations, but had not conducted a full-scale exercise with its partners at FLL. EOG-00061-00062.

The Initial Draft Report made 16 observations and provided areas of improvement (“AOP”), including, but not limited to, Active Shooter Response and Training, Mindset and Team Building, Sense of Urgency and Visionary Security Tactics, Cohesive Interactions and Unified Command, and Perimeter Containment. *See* EOG-00068-00103.

An AOI with response to active shooter was:

AOI 3: BSO District personnel, though many are tenured, must avoid complacency based on their environment and a perceived sense of security. BSO deputies assigned to the BSO Airport District can mistake the assignment as a lessened exposure to harm or perceived retirement, when the contrary is highly needed to vigilantly address and deter active shooter and bombing events. Historically, it has been an accepted practice, but times have changed immensely requiring a global view to assigned personnel.

EOG-00070. The Initial Draft Report acknowledges the initial response was timely, but that there were too many loose ends that allowed for confusion and a deficient BSO Airport District command greatly contributed to unforeseen obstacles. EOG-00071. This deficiency was confirmed in the “Mindset” section, finding that some personnel were not familiar with FLL’s environment and that BSO Airport District must “establish Standard Operating Procedures (SOP) to better meet and exceed emergency expectations. The current standard leaves much for improvement in establishing a unified front for combating current active shooter and terrorist trends.” EOG-00076. The Initial Draft Report continued to find in an AOI under “Sense of Urgency,” wherein “the event revealed weaknesses and unfamiliarity by many involved.” EOG-00078. It was also critical of the failure to have real-life exercises and trainings:

Joint agency disaster drills, threat assessments, aviation tabletops, ICS exercises and annual BSO SWAT tactical airport training looks good on paper, but how deep is such training rooted in the initial layer of protection? Tabletop exercises, ICS and disaster drills are not frequent enough and do not go far beyond the placing a phone call, email, text or online check in to confirming readiness levels and threat compliance. These practices are infrequent and extremely deficient in simulating or preparing any participant for what is to come.

EOG-00079. The readiness of BSO was also criticized in the Initial Draft Report, at one point suggesting BSO lost control during the event due to miscommunication and frantic responses. EOG-00083, EOG-00086. While not an exhaustive recitation of the Initial Draft Report’s findings, it reveals faults with BSO, especially given the November 1, 2013 shooting that occurred at Los Angeles International Airport and acts of terrorism that have elevated the need for efforts to protect airport. EOG-00104. Specifically, the Initial Draft Report said, “the need to

develop and implement strategies designed to respond to an actual or threat of an Active Shooter/Suicide Bomber at [FLL] is paramount to functioning in the 21st Century mindset and tactics applied to public safety. EOG-00104. The Initial Draft Report explained that the totality of the FLL shooting and chaos would have been “greatly minimized if proper vetting tactics and containment of critical areas were properly supported by vigorous assessment and confirmation by responding personnel.” EOG-00115-00116. Ultimately, the Initial Draft Report concluded that the while law enforcement responded to the initial shooting with vigilance, the aftermath was confusion and chaos. “Mistakes were made.” EOG-00117.

A Second Draft Report (“Second Draft Report”) was created on June 2, 2017. EOG-00123-00221. This version contained substantial edits from the Initial Draft Report. For example, in the AOI for Active Shooter, the Second Draft Report deleted the issue with complacency and lack of diligence by BSO Airport District personnel. *Compare* EOG-00070 with EOG-00163. However, the AOI still confirms a need for improved active shooter training lesson plans for BSO and a need for enhanced training specific to BSO Airport District. EOG-00163. The Second Draft Report found an absence of proper incident command controls which obstructed the containment and control of the scene. EOG-00165.

During the events, the absence of a clearly defined IC created unnecessary entanglements and unclear responsibilities. BSO and BCAD disagreed as to the magnitude of the Primary Event and underestimated the effects of such an event would affect other travelers.

EOG-00169. The Second Draft Report kept the recommendation for numerous training exercises with all partners at FLL. EOG-00167. Another distinct edit was the elimination of the finding that BSO was not ready for an event or response of this nature in the observation of BSO Emergency Operations Center. *Compare* EOG-00083 with EOG-00170-00171. Similarly, the Second Draft Report deleted the critique that “miscommunication and frantic responses aided in the loss of control during the event.” *Compare* EOG-00086 with EOG-00174.

BSO released its Critical Incident Report (“Final Report”) into the FLL shooting on October 6, 2017. The Final Report was 30 pages long. By comparison, the Initial Draft Report was 119 pages and the Second Draft Report was 99 pages. Of equal import, the observations were whittled down to 7, whereas the draft versions contained 16 areas. In the Final Report, there was no discussion of the lack of vigilance by BSO Airport District members, nor any AOIs under the Active Shooter Response and Training section. *See* EOG-00241-00242. The entire observation regarding Mindset was eliminated. And the recommendation that a lack of incident command controls contributed to the chaos was also eliminated from the section on Sheriff’s Emergency Operations Center as discussed above. *See* EOG-00243-00244. Just as glaringly, there is zero acknowledgment or recommendation regarding trainings. Rather, the lessons learned section states, “tabletop training of this event is vital to those responsible for securing the airport” and multiple trainings have been scheduled. EOG-00249.

In closing, the Final Report states:

CLOSING

January 6, 2017 was a tragic day, challenging the bravery, resources, resiliency, dedication and professionalism of thousands of first responders and civilian personnel. Surrounded by extreme chaos, these individuals answered the call in exemplary fashion. Broward County is proud of these heroes. There was no way to prevent this tragedy or to prepare completely for the amount of unique obstacles that had to be overcome in a very short period of time. Through the leadership of Sheriff Israel, BSO personnel, the FBI, BCAD, all other law enforcement agencies, fire rescue, regional communications, and community partners, this tragic event was mitigated and investigated in an extraordinary manner. Upon the first deputy's arrival at the shooting, no additional lives were lost, the suspect was taken into custody, the scene was secured and this critical incident was handled. The goal of this CIR is to review the incident, the applicable responses and apply lessons learned as we prepare ourselves, and others, in the event an incident such as this happens again.

EOG-00250. The report never acknowledges failures on the part of Israel or BSO. Rather, as highlighted above, the Final Report claims you cannot prevent or prepare for this type of event and that “through the leadership of Sheriff Israel” the event was mitigated and the scene was secured and handled. EOG-00250.

b. Marjory Stoneman Douglas High School³

Prior to the 2017-2018 academic year, BSO entered into a School Resource Officer Agreement with the Broward County School Board. EOG-00710. The Agreement, signed by Israel, provided that BSO would assign school resource officers (“SRO”) to various schools within Broward County, including Marjory Stoneman Douglas High School. EOG-00711. The Agreement mandated that any SRO shall exercise all law enforcement powers granted to them by applicable law. *Id.* The Agreement further defined the SROs duties, in relevant part, as performing law enforcement functions within the school setting and assisting the Broward County Schools “in protecting and securing the school plant and its occupants.” EOG-00711-00712.

On February 14, 2018, SRO Deputy Scot Peterson (“Deputy Peterson”) was assigned to Marjory Stoneman Douglas High School per the Agreement. At approximately 2:19 p.m., a former student of the school entered the property and walking into Building 12 because the points of entry onto the school property were not guarded or manned by SROs. EOG-00294; EOG-00311. At 2:21 p.m., that former student opened fire inside of Building 12 fatally shooting three students and injuring another. To better understand the full extent of the events, a chronological timeline is necessary⁴:

<u>Time</u>	<u>Event</u>
2:21.16	Gunman enters Building 12
2:21.38	Gunman fires first rounds on 1 st floor hallway
2:21.40	Gunman fires into classroom 1216

³ The following facts are derived from the Marjory Stoneman Douglas High School Public Safety Commission’s Initial Report dated January 2, 2019 (“MSD Initial Report”) and BSO’s Incident/Investigation Report and Supplement, which have been redacted (“BSO Report”).

⁴ A detailed timeline of events can be found at EOG-00294 through EOG-00307.

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2:22.13	Gunman fires into classrooms 1214 and 1215
2:22.13	First call to 911 received at Coral Springs Communication Center
2:22.14	Deputy Peterson meets security specialist at Building 1
2:22.39	Fire alarms activate in Building 12
2:22.48	Gunman continues firing round on 1 st floor hallway
2:22.57	Fire alarms are shut off
2:23.05	Gunman fires into classrooms 1212 and 1213
2:23.17	Deputy Peterson arrives at Building 12
2:23.22	Gunman fires three additional shots on 1 st floor hallway
2:23.25	Gunman fires another shot on 1 st floor hallway
2:23.26	Deputy Peterson radios “possible shots fired”
2:23.36	Gunman fires six shots on the 2 nd floor
2:23.43	Deputy Peterson and security specialist “fled” Building 12 towards Building 7. Deputy Peterson would stay at Building 7 for the next 48 minutes. EOG-00300.
2:23.51	Gunman fires into classroom 1231
2:23.55	Gunman fires into classroom 1234 striking an exterior window. “This window was immediately northwest (70 ft) of Deputy Peterson’s location.” EOG-00301.
2:24.30	Gunman enters the 3 rd floor hallway
2:24.31	Gunman fires multiple rounds down the 3 rd floor hallway
2:24.54	First “Code Red” is called
2:24.58	Gunman fired multiple rounds down the 3 rd floor hallway
2:25.12	Gunman fires another round on 3 rd floor
2:25.20	Gunman fires another round on 3 rd floor
2:25.26	Gunman fires more rounds on 3 rd floor
2:25.35	Gunman enters teacher’s lounge and attempts to shot out the windows
2:26.24	Coral Springs Police Department confirm active shooter over dispatch
2:26.54	Coral Springs Officer Burton arrives at Marjory Stoneman Douglas High School
2:27.03- 2:27.10	Gunman fires last rounds. “Body camera of [BSO] Deputy J. Stambaugh captured sounds of [gunman’s] last shots. At that point, there were eight BSO deputies on or in the immediate area of campus. [...] None of these BSO deputies immediately responded to the gunshots by entering the campus and seeking out the shooter.” EOG-00303.
2:27.35- 2:27.54	Gunman exited Building 12 and run southwest with a group of fleeing students
2:28.00	Deputy Peterson tells BSO deputies to stay at least 500 feet away from Building 12
2:32.42	First group of responding law enforcement officers enter Building 12.
3:02.20	BSO Sergeant Rossman broadcasts over radio that school video is delayed and gunman fled Building 12 30 minutes earlier
3:11.20	Deputy Peterson leaves his position at Building 7
3:17.53	BSO Mobile Command arrives at Marjory Stoneman Douglas High School

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3:37.45	Gunman is apprehended by Coconut Creek Police Officer Leonard approximately 2 miles southwest of the school
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In total, the gunman took the lives of 17 innocent students and faculty members. The gunman injured dozens more.

The Florida Legislature passed the Marjory Stoneman Douglas High School Public Safety Act, which was enacted on March 9, 2018, by Governor Rick Scott. The Act created the Marjory Stoneman Douglas High School Public Safety Commission (“Commission”). On January 2, 2019, the Commission issued its Initial Report.

The Commission interviewed dozens of individuals and review countless documents and evidence to determine way to better mitigate the risk of another tragedy. At the outset, the Commission prefaced, “[a]ccountability starts at the top of every organization, and all leaders have an obligation to ensure not only that the law is followed, but that effective policies and best practices are implemented.” EOG-00271. While acknowledging the basic, effective school safety begins with prevention, the Commission noted, “once an attack has commenced, the focus must be on immediately mitigating the harm.” *Id.*

In addition to schools, law enforcement agencies and all governmental entities across Florida must ensure that they employ the most effective response systems and policies possible. This ranges from non-redundant 911 systems to police radios that work properly to implementing effective command and control concepts. Further, all law enforcement and other first responder personnel must receive the highest level of active assailant training; and they must be properly equipped to stop the threat of an active assailant situation at the first possible moment. Accountability for implementing these best practices rests with these organizations’ leaders. In today’s world, with numerous lessons learned from prior active assailant events, failure to train appropriately and consistently and properly equip all personnel is simply wrong and unacceptable.

EOG-00272. The Commission made numerous findings and recommendations based on their preliminary investigation. In discussing campus security, the Commission found, “unlocked and opened gates were regularly left unstaffed for long periods of time on the MSDHS campus” and that an “overall lack of uniform and mandated physical site security requirements resulted in void that allowed [the gunman] initial access to MSDHS and is a system failure.” EOG-00312. The Commission found that Broward County Schools nor Marjory Stoneman Douglas High Schools had an established active shooter response policy, nor were there written or trained policies regarding Code Red. EOG-00319. There was a training at the school on January 11, 2018, conducted by a Broward County Schools detective that addressed locking doors, covering windows, and moving students to safe areas during a Code Red. EOG-00320.

On February 14, 2018, Deputy Peterson was the only SRO on campus, although eight other Broward County Schools employees were assigned to school safety functions. However, the Commission noted their action/inaction should be evaluated given the lack of training provided. EOG-00322. Security specialist Kevin Greenleaf (“Security Greenleaf”) told the

Commission he met with Deputy Peterson and heard gunshots coming from Building 12, but that both he and Deputy Peterson retreated to Building 7. EOG-00324. Another employee, Andrew Medina (“Medina”), saw the gunman get dropped off on the campus property carrying a duffle bag⁵ and radioed there was a “suspicious kid” on campus. EOG-00326. Medina told BSO he knew the gunman was not a student, but followed his training to just report it. An assistant principal recalls seeing Deputy Peterson outside with his gun drawn and him confirming to her that there was gunfire inside Building 12. EOG-00351. With regards to school’s safety functions, the Commission recommended that the school safety team regularly meet and train on proper protocols and procedures in coordination with law enforcement. EOG-00353-00354.

The Commission also addressed Deputy Peterson’s actions/inactions in their Report. Deputy Peterson had been in law enforcement for 32 years, 28 of those years as an SRO. EOG-00357. Deputy Peterson was not wearing his issued ballistic vest, nor was his BSO issued rifle readily accessible. *Id.* Deputy Peterson, in a statement to BSO, stated he heard gunfire within approximately 10 feet of Building 12 and it was so loud, he thought it was outside. EOG-00358. Based on its review of the evidence, the Commission concluded that by the time Deputy Peterson arrived at Building 12, “twenty-one victims had already been shot, nine of whom were fatally wounded.” EOG-00359. Specialist Greenleaf told the Commission that Deputy Peterson never approached the doors to Building 12, did not look in the windows, nor accessed his keys for the building. *Id.* As described above, Deputy Peterson retreated from Building 12 and went to Building 7. Upon hiding in a stairwell, other law enforcement started to arrive at Marjory Stoneman Douglas High School. Deputy Peterson confirmed to law enforcement there was a shooter, who appeared to be on the 2nd or 3rd floor. EOG-00362. Deputy Peterson explained to *The Today Show* that he did not go inside Building 12 because he was trained to contain his area. EOG-00365. The Commission found:

Findings:

1. Former Deputy Scot Peterson was derelict in his duty on February 14, 2018, failed to act consistently with his training and fled to a position of personal safety while Cruz shot and killed MSDHS students and staff. Peterson was in a position to engage Cruz and mitigate further harm to others, and he willfully decided not to do so.
2. There is overwhelming evidence that Deputy Peterson knew that the gunshots were coming from within or within the immediate area of Building 12. Furthermore, there is no evidence to suggest that Peterson attempted to investigate the source of the gunshots. In fact, the statement of Security Specialist Greenleaf confirms Peterson did not attempt to identify the source of the gunshots, and, by all accounts—including surveillance video—Peterson retreated to an area of safety.

EOG-00366. The Commission also believed that law enforcement response was hindered because of Deputy Peterson’s instruction to stay away, erroneous directions and other improper information. EOG-00367. Through review of the physical evidence, prior to Deputy Peterson’s arrival at Building 12, nine victims were fatally wounded, therefore, once Deputy Peterson

⁵ Of import, the duffle bag was clearly a rifle bag with a “Cabela’s” logo on the side. Cabela’s is a well-known outdoorsmen store. Another campus employee upon seeing the bag told the Commission it was obviously a rifle bag and “would have been even more obvious to someone experienced with firearms.” EOG-00333.

arrived at Building 12 and then retreated, another eight victims were fatally wounded and dozens more injured.

As for Deputy Peterson's training, the Commission found that his understanding on the training was inconsistent, the he was trained to call a Code Red and he did, and that while his years of experience as an SRO might have been beneficial, "*it may have also contributed to his inadequate response to this shooting.*" EOG-00368-00369. Additionally, they found that SROs are not afforded a chance to maintain and exercise their tactical skills other than in training, so it is of the utmost importance that SROs "be provided with frequent, thorough and realistic training to handle high-risk, high stress situations." *Id.* Ultimately, the Commission also found issues with BSO's SRO program, including having inadequate staffing of SROs on campuses and no unified command leading to inadequate supervision. EOG-00370.

The Commission issued additional findings related to BSO deputies who were off-campus and their response. The Commission initially finds, "sporadic functioning of BSO's radios undoubtedly hindered BSO's response." EOG-00437. Another concern was the lack of a sense of urgency by responding BSO deputies:

3. Several uniformed BSO deputies were either seen on camera or described taking the time to retrieve and put on their ballistic vests, sometimes in excess of one minute and in response to hearing gunshots. Deputy sheriffs taking time to retrieve vests from containers in their cruisers, removing certain equipment they were wearing so that they could put on their vests, and then replacing the equipment they had removed all while shots were being fired, or had been recently fired is unacceptable and contrary to accepted protocol, under which the deputies should have immediately moved toward the gunshots to confront the shooter. Absence of a policy requiring deputies to wear ballistic vests while on-duty unnecessarily delayed their preparedness to respond.

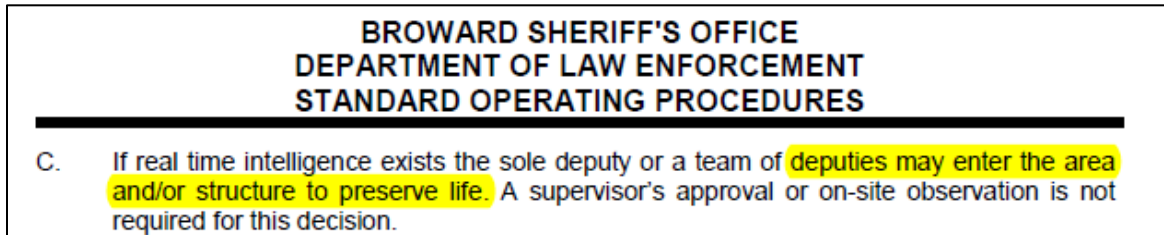
EOG-00437. Shockingly, the evidence identified six deputies who responded to Marjory Stoneman Douglas High School arrived while gunfire was still occurring, and even though these deputies heard the shots, they did not immediately run towards the gunshots to confront the shooter—a violation of accepted protocol. *Id.* One readily apparent deficiency was lack of frequent training of BSO deputies on active shooter response—calling the training "inconsistent at best":

11. On the other hand, Broward Sheriff's Office deputies remembered that they attended training in the past few years, but some could not remember the last time they attended active shooter training. Some BSO deputies could not even recall the type of training they received. Several were specific in referencing that their policy states that deputies "may" go toward the shooter. BSO's training was inconsistent at best, and was reflected in their poor response to this active shooter event.

EOG-00439. Another area of concern highlighted by the Commission was a failure by BSO leadership to timely establish an incident command and were ineffective in the duties as the initial incident commander. EOG-00468. The Commission found confusion existed as to the incident command post.

c. Active Shooter Policy

A major finding by the Commission focused on the BSO Active Shooter Policy. BSO Standard Operating Procedure (“BSO SOP”) 4.37 – Active Shooter, stated:



EOG Ex. U (EOG-04132). This policy was revised on March 28, 2016, under Israel’s tenure as Sheriff. Contrast BSO’s policy with Coral Springs Police Department which states the deputies “shall” pursue the threat. EOG-00469.⁶ To be sure, Israel does not deny this policy direction, but rather endorses it to protect his deputies—not protect lives of Broward County residents, teachers, students, and visitors. The Commission believes the “may” is insufficient and “fails to unequivocally convey the expectation that deputies are expected to immediately enter an active assailant scene where gunfire is active and to neutralize the threat” continuing that the “may” is inconsistent with current and standard law enforcement practices. EOG-00471 Another concern related to the policy was a lack of frequent training, finding “some deputies could not remember the last time they attended active shooter training” and “could not recall what type of active assailant training they received.” EOG-00472. It was determined that BSO deputies attended trainings during 2012-2013 and again 2015-2017 with two four-hour courses consisting of only 90 minutes of practical exercises. Compare to the Coral Springs Police Department which had an adequate policy of engaging the threat and the officers knew their training because it occurred annually.

A review of the actual training materials will confirm that Israel’s BSO deputies were trained on the mantra “don’t be a hero, the cavalry is coming.” *See* EOG Ex. W. The training plan is consistent with what occurred in the two incidents referenced above—to the detriment of numerous lives.

d. BSO Failure to Protect the Peace

Another area of review by the Commission was the failures of BSO in initially investigating the Marjory Stoneman Douglas High School shooter. The evidence shows that BSO had 21 interactions with the shooter prior to February 14, 2018. EOG-00504. Many of these

⁶ BSO SOP 4.37 was amended in December 2018 and became effective on January 4, 2019, changing the “may” to “shall”. *See* EOG Ex. V, EOG-04135. However, it should be noted the new SOP still includes an ability to not engage the threat if there is a solo deputy to allow for additional deputies.

incidents were concerning and should have raised red flags about behavior and future actions, but two in particular demanded action that BSO deputies failed to take.

The first interaction of failed BSO policies occurred on February 5, 2016. BSO Deputy Eason handled a call regarding the shooter posting of picture of himself on Instagram with a gun with a caption similar to “I am going to get this gun when I turn 18 and shoot up the school.” EOG-00507. Internal records confirm that Deputy Eason did not complete an incident report, but rather just wrote “no threats noted.” *Id.* Deputy Eason was investigated, after the Marjory Stoneman Douglas High School shooting. It was determined that he did not follow BSO policies, and the internal affairs team had doubts that Deputy Eason even forwarded this information to the SRO, as he claimed back in 2016. It was also revealed that this was not the first time Deputy Eason was found to have failed to properly follow upon on calls as required—being suspended for two days in 2010. Deputy Eason requested a pre-disposition conference to challenge the findings and recommendations. Deputy Eason was ultimately disciplined on September 4, 2018, for violating BSO policy and given a three-day suspension. *See* EOG Ex. P.

The second interaction of failed BSO policies occurred on November 30, 2017, a mere 76 days before the shooter impact countless lives. BSO Deputy Treijs handled a call with reports that the shooter had weapons, wanted to kill people, and might be the next Columbine. EOG-00508. Instead of completing an incident report, Deputy Treijs wrote a note that the shooter was autistic and location unknown. Then Deputy Treijs directed the caller to another police department, shirking his duties. Within two weeks of the Marjory Stoneman Douglas High School shooting, BSO decided to conduct an internal affairs investigation into Deputy Treijs. BSO determined Deputy Treijs violated BSO policies and received only a written reprimand for not acting on the information. *See* EOG Ex. R.

Of import, Israel in his Response to the Bill of Particulars “takes full responsibility for the response of BSO,” to the Marjory Stoneman Douglas High School shooting, which means he must acknowledge the failures of his deputies in their lack of response and lack of life-saving. Israel Response, May 3, 2019, pg. 11.

4. Charges Against Scott Israel

Israel’s paramount duty, imposed by the Florida Legislature, is to be the conservator of the peace within Broward County. *See* EOG Ex. B (Fla. Stat. § 30.15(1)(e)). Additionally, Israel bears statutory responsibility for the deputies he employees in his office. *See* EOG Ex. A (Fla. Stat. § 30.07). This duty must include hiring, firing, promoting and training deputies, and developing policies within the office that protect the peace. Based upon the facts and evidence outlined above, as well as the exhibits that will be presented to the Florida Senate, Israel has neglected these duties or was incompetent in the discharge of them and, as the leader of BSO, he bears sole responsibility for the negligence of his deputies—a point well documented in the evidence.

Israel failed to be the conservator of peace during the Fort Lauderdale-Hollywood Airport and Marjory Stoneman Douglas High School shootings that resulted in the deaths of twenty-two individuals. The lives that were lost and those that were injured fall on the shoulders of Israel. Unfortunately, Israel has maintained, and we expect a large part of his presentation of evidence to suggest, his leadership was top-notch.

Israel bears sole responsibility for developing and maintaining an active shooter policy that gave his deputies discretion on whether to engage a threat. This policy is wholly insufficient and inadequate—a point the Commission highlighted goes against accepted practices. To make matters worse, Israel did not provide adequate or frequent trainings for his deputies. Many of them could not even remember the last time they received training or what the trainings were. This is a textbook example of neglect and incompetence solely at the hands of Israel. It does not take imagination to see how this failure resulted in the loss of life and inexcusable injuries to dozens of other innocent individuals.

As documented, Deputy Peterson failed to engage the shooter at Marjory Stoneman Douglas High School even after he heard shots being fired. At a bare minimum, seven innocent lives were taken after Deputy Peterson arrived at the building and decided to retreat, instead of engaging the shooter. At least eight other BSO deputies arrived at Marjory Stoneman, while gunshots continued to be heard, and failed to enter the building or take life-saving action. Israel bears responsibility for these act and omissions. Similarly, two BSO deputies were disciplined for failing to follow policies related to follow-up with the shooter on two incident calls reporting concerning violent behavior.

The failures highlights during Marjory Stoneman Douglas High School are even more concerning given the failures highlights during the Fort Lauderdale-Hollywood International Airport shooting just a year prior. Many BSO deputies failed in their response due to a lack of training and real-life practical exercises on how to respond to an active shooter event—even though the LAX shooting should have indicated a real need for preparing for a similar event. Furthermore, it is undisputed that Israel failed to properly provide for adequate staffing at FLL while it increased in size and added passenger capacity.

Israel also neglected his duties or was incompetent in failing to have established policies on incident command or properly training his deputies on the procedures. This is evidence by both incidents described above. A common theme that deputies did not know how to respond, a lack of understanding on proper communication, or containment, which lead to complete chaos in both events.

5. Rebuttal to Scott Israel

As mentioned above, legal arguments by Israel that the Executive Order does not comply with the requirements of the Florida Constitutional have already failed at the Florida Supreme Court. The Florida Senate should not give these arguments any weight. The Executive Order suspends Israel for two grounds explicitly listed in Article IV, section 7(a) of the Florida Constitution. Furthermore, Israel's argument that the Executive Order lacks statutory duties is patently false. Executive Order 19-14 defines two statutory duties (F.S. 30.15(1)(e) and F.S. 30.07) that Israel neglected or was incompetent in the discharge of them. To date, Israel have not acknowledged his duty to be the conservator of the peace under Section 30.15(1)(e), Florida Statutes—a statutory duty that has been unequivocally neglected. Furthermore, the Florida Supreme Court has already opined that Israel's argument about duties is too narrow.

Israel also contends the motivations for the suspension are not constitutional. At every step, in every filing, Israel's attorneys have claimed the Executive Order was done to please the National Rifle Association. This argument is meritless and disrespectful to the families of the victims of both the Fort Lauderdale Airport and Marjory Stoneman Douglas High School

shootings. The motivation for Executive Order 19-14, while not an issue for consideration by the Florida Senate, was to protect life in Broward County moving forward—an area which has been neglected under Israel’s tenure and lack of leadership.

Israel contends under his leadership BSO has been accredited as a gold-standard law enforcement agency. First, it is important to note that BSO received the accreditations that Israel now takes credit for, prior to his service. BSO was initially accredited by the Commission for Florida Law Enforcement in 2001, and has maintained its accreditation each time it undergoes reaccreditation review. BSO has held the CALEA accreditation since 1999, and had been reaccredited each time it was reviewed.

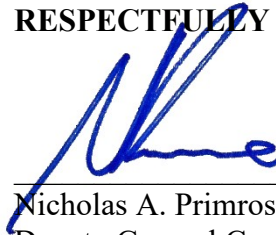
Second, these accreditations are not indicative of, nor do they absolve Israel of negligence or incompetence. After the FLL Airport shooting, when BSO was being assessed for reaccreditation by CALEA, Israel noted an area of concern he must address was “effective and appropriate response to mass casualty and terrorist related events.” *See* 2017 CALEA Award Letter and Final Assessment Report. We know that even after the FLL shooting, with heightened scrutiny on BSO, changes were not made to address that area of concern.

Contrary to Israel’s assertions, Executive Order 19-14 was necessary and appropriate. It complies with the requirements of the Florida Constitution. And, the Florida Senate, being apprised of all the facts and evidence will find Israel’s presentation is self-serving and not rooted in reality.

Conclusion

EOG submits after reviewing the acts and omissions in their totality and cumulatively, it will confirm Israel’s neglect of duties and incompetence. EOG respectfully submits that the Florida Senate must remove Israel permanently from his position as Sheriff of Broward County.

RESPECTFULLY SUBMITTED,



Nicholas A. Primrose
Deputy General Counsel
Executive Office of Governor Ron DeSantis

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 3rd day of June, 2019, a true copy of the foregoing has been e-mailed to counsel for Mr. Scott Israel: Benedict Kuehne, Esq. (Ben.Leuhne@kuehnelaw.com).