IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

STATE OF FLORIDA, Plaintiff, v. SCOT RALPH PETERSON, Defendant.	: : : : : : : :	Case No. 19-007166CF10A

MOTION TO JUDICIALLY & COLLATERALLY ESTOP

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Dated: Oct. 29, 2019

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COMES NOW, the Defendant, SCOT RALPH PETERSON, by and through the undersigned counsel, pursuant to the Due Process Clause of the respective State and Federal Constitutions and this Court's inherent powers, moves this Honorable Court to estop the Government from taking legal and factual positions that are inconsistent with the Government's positions advanced against Former Broward County Sherriff Israel.

In support thereof the Defendant states as follows.

PROCEDURAL HISTORY & BACKGROUND

I. THE INSTANT LITIGATION

On June 3, 2019, an eleven-count arrest warrant was issued asserting the following counts: Counts 1-7 Neglect of a Child in purported violation of Fla. Stat. §§ 827.01 & 827.03, Counts 8-10 Culpable Negligence in purported violation of Fla. Stat. § 784.05(1), and Count 11 Perjury When Not In An Official Proceeding in purported violation of Fla. Stat. § 837.012.

To the best of the undersigned's research, the Government's prosecution of the Defendant is the first time that a law enforcement officer has been prosecuted in respect to an active shooter incident.

II. EXECUTIVE ORDER 19-14

"[O]n January 11, 2019, Governor Ron DeSantis issued Executive Order 19-14, suspending Israel from office." *Israel v. Desantis*, ___ So. 3d ___, 2019 WL 1771730, at *1 (Fla. Apr. 23, 2019). "Executive Order 19-14 alleged that certain actions by Israel 'constitute[d] neglect of duty and incompetence.'" *Id.* "Executive Order 19-14 asserts various factual allegations, ... that Sheriff Israel has not and does not provide frequent training for his deputies resulting in the deaths of twenty-two individuals...." *Id.*

A copy of Executive Order 19-14 is *available at* http://www.flsenate.gov/usercontent/session/executivesuspensions/israel_scott/EO_19-14.pdf (last accessed Oct. 26, 2019), and is attached hereto as Exhibit 1.

III. FORMER SHERRIFF ISRAEL'S LITIGATION

"On March 7, 2019, Israel filed a petition for writ of quo warranto in the Circuit Court of the Seventeenth Judicial Circuit, alleging that Governor DeSantis exceeded his constitutional authority when suspending Israel. On April 4, 2019, the circuit court issued a written order dismissing Israel's petition." *Israel*, 2019 WL 1771730, at *1 (footnote omitted). The Florida Supreme Court ultimately affirmed the denial of Israel's quo warranto petition. *Id.* at *4.

Undeterred from the decision of the Florida Supreme Court, Israel continued his litigation before the Florida Senate.[1] Pursuant to Fla. Senate Rule 12.9(4) Governor DeSantis (in his role as the head of the Executive Branch for the State of Florida) filed a Bill of Particulars,[2] stating, in relevant part, that:

- "The events that took place on February 14, 2018, and the loss of life at Marjory Stoneman Douglas High School was avoidable, but for the failure of Mr. Isreal, and his deputies for which he bears sole responsibility." Ex. 2 at p. 5.
- "Deputy Peterson arrived at Building 12 approximately two minutes after the first shots were fired. By the time Deputy Peterson arrived at Building 12, twenty-one victims had already been shot, ten victims being fatally wounded...." Ex. 2 at p. 6.

[1] *See* http://www.flsenate.gov/Session/ExecutiveSuspensions (last accessed Oct. 26, 2019).
[2] *Available at* http://www.flsenate.gov/usercontent/session/executivesuspensions/israel_scott/GovernorDeSantisBillofParticulars_ScottIsrael.pdf (last accessed June 18, 2019); attached hereto as Exhibit 2.

- "The gunman's final shot was at approximately 2:27 p.m. At that point, eight BSO Deputies were at Marjory Stoneman Douglas High School." Ex. 2 at p. 6.
- "[E]ach of the eight deputies heard gunshots, but none of these BSO deputies immediately responded to the gunshots by entering the campus and seeking out the shooter." Ex. 2 at p. 6 (quotations omitted).
- "[T]he inadequacy of only having one SRO on campus hindered the ability to timely and effectively respond to an active assailant situation." Ex. 2 at p. 7.
- "Florida Statute § 30.07 places responsibility for the actions and negligence of appointed deputies solely onto the elected sheriff." Ex. 2 at p. 7.
- The failures on February 14th "were a result of improper and infrequent training, the absence of a BSO policy requiring ballistic vests to be worn while on-duty contributing to a delay in deputies responding to Building 12 and an absence of established incident command policies that led to a failure to communicate and effectively organize law enforcement response." Ex. 2 at p. 7-8.
- "Mr. Israel is solely responsible for implementing the active assailant response policies and training of his deputies." Ex. 2 at p. 8.
- "The BSO Active Shooter Policy at the time of the Marjory Stoneman Douglas High School shooting stated, 'if real-time intelligence exists, the sole deputy or a team of deputies *may* enter the area and/or structure to preserve life.'" Ex. 2 at p. 8 (emphasis in original).
- "The passive, discretionary engagement allowed for in the BSO Active hooter Policy is contrary to Mr. Israel's responsibility and duty to protect the peace within Broward

County. It is also contrary to universally accepted practice in the law enforcement community." Ex. 2 at p. 8.

- "The BSO training for active shooters did not stress the importance of preservation of life. Nor was the training frequent enough." Ex. 2 at p. 8.
- "The BSO training directs deputies to '[r]emember, the cavalry is on their way, so it's better to hold, then to expose yourself to unknown threats.'" Ex. 2 at p. 9.
- "BSO had 21 separate interactions with the gunman. A BSO internal investigation found two of these incidents required additional follow-up investigation that was never conducted." Ex. 2 at p. 9.
- "Mr. Israel neglected his duty and/or was incompetent in failing his paramount statutory responsibility to be the 'conservator of the peace' in Broward County, in violation of Florida Statute § 30.15." Ex. 2 at p. 10.
- "Mr. Israel is solely responsible for the negligence of the deputies he appointed, pursuant to Florida Statute § 30.07, as outlined in the factual allegations: a. Mr. Israel is responsible for the negligence of BSO Deputy Peterson …." Ex. 2 at p. 10.
- Mr. Israel neglected his duty and/or was incompetent in failing to provide sufficient policies and guidelines for establishing incident command to provide effective response and communication during mass casualty/active shooter situations, …." Ex. 2 at p. 11.
- "Mr. Israel neglected his duty and/or was incompetent in failing to protect the lives of the seventeen victims killed on February 14, 2018, at Marjory Stoneman Douglas High School," including

a. Mr. Israel is responsible for failing to protect the life of Alyssa Alhadeff;
b. Mr. Israel is responsible for failing to protect the life of Scott Beigel;
c. Mr. Israel is responsible for failing to protect the life of Martin Duque Anguiano;
d. Mr. Israel is responsible for failing to protect the life of Nicholas Dworet;
e. Mr. Israel is responsible for failing to protect the life of Aaron Feis;
f. Mr. Israel is responsible for failing to protect the life of Jamie Guttenberg;
g. Mr. Israel is responsible for failing to protect the life of Christopher Hixon;
h. Mr. Israel is responsible for failing to protect the life of Luke Hoyer;
i. Mr. Israel is responsible for failing to protect the life of Cara Loughran;
j. Mr. Israel is responsible for failing to protect the life of Gina Rose Montalto;
k. Mr. Israel is responsible for failing to protect the life of Joaquin Oliver;
l. Mr. Israel is responsible for failing to protect the life of Alaina Petty;
m. Mr. Israel is responsible for failing to protect the life of Meadow Pollack;
n. Mr. Israel is responsible for failing to protect the life of Helena Ramsay;
o. Mr. Israel is responsible for failing to protect the life of Alexander Schacter;
p. Mr. Israel is responsible for failing to protect the life of Carmen Schentrup;
q. Mr. Israel is responsible for failing to protect the life of Peter Wang."

Ex. 2 at p. 11-12.

- Mr. Israel neglected his duty and/or was incompetent in developing, implementing, adopting and training BSO deputies that they may engage with an active shooter…." Ex. 2 at p. 13.
- "Mr. Israel neglected his duty and/or was incompetent in the discretion given to his deputies for failing to engage with an active shooter." Ex. 2 at p. 13.
- "Even if the discretionary 'may' in the BSO Active Shooter Policy was

standard policy, the failure to protect life as a result of that policy is the responsibility of Mr. Israel." Ex. 2 at p. 13.

- "Mr. Israel neglected his duty and/or was incompetent in developing frequent training requirements for BSO deputies...." Ex. 2 at p. 13.

On June 3, 2019, Governor DeSantis filed his bench memorandum.[3] In the bench memorandum the Governor took the position that the "Florida voters gave the Governor the authority to suspend certain public officials for certain enumerated reasons, including neglect of duty and incompetence." Ex. 3 at p. 2. The State advanced the argument that "Section 30.07, Florida Statues, authorizes Sheriffs to appoint deputies to act with their power and authority. *And while law authorizes Sheriffs to appoint deputies, it explicitly makes them responsible for a deputies'* [sic] *neglect in office*." Ex. 3 at p. 3 (citations omitted; emphasis added). Indeed, to that end, "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." Ex. 3 at p. 13 (emphasis added). The State further noted: "Israel bears sole responsibility for developing and maintaining an active shooter policy that gave his deputies discretion on whether to engage a threat." Ex. 3 at p. 14. Further still the State argued that "Israel did not provide adequate or frequent trainings for his deputies.... This is a textbook example of neglect and incompetence solely at the hands of Israel.... [And] *this failure resulted in the loss of life* and inexcusable injuries to dozens of other innocent individuals." Ex. 3 at p. 14 (emphasis added).

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[3] *Available at* http://www.flsenate.gov/usercontent/session/executivesuspensions/israel_scott/20190603GovernorsBenchMemorandum.pdf (last accessed Oct. 26, 2019); attached hereto as Exhibit 3.

The Florida Senate convened in a special session beginning on October 21, 2019. On October 22, 2019, the Florida Senate Committee on Rules submitted its final report on the matter of the suspension of Israel.[4] The "Committee on Rules voted to recommend that the evidence supports the Executive Order of Suspension by the Governor, and that Mr. Scott Israel be removed from the office of Sheriff of Broward County pursuant to the State Constitution and the Florida Statutes." Ex. 4 at p. 2. A vote of the Florida Senate was held on October 23, 2019, where the Senate voted in favor of removing Israel. Consequently, "the Senate accepted and adopted the report and recommendation of the Committee on Rules and removed Mr. Scott J. Israel from office."[5]

APPLICABLE LAW

I. FEDERAL LAW

A. Due Process

No "... State [shall] deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

B. Judicial Estoppel

> [J]udicial estoppel, "generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." *Pegram v. Herdrich*, 530 U.S. 211, 227, n. 8, 120 S.Ct. 2143, 147 L.Ed.2d 164 (2000); *see* 18 Moore's Federal Practice § 134.30, p. 134–62 (3d ed. 2000) ("The

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[4] *Available at* http://www.flsenate.gov/usercontent/session/executivesuspensions/israel_scott/20191021/FinalReportoftheCommitteeonRulesExecutiveOrder19-14.pdf (last accessed Oct. 26, 2019); attached hereto as Exhibit 4.

[5] *Available at* http://www.flsenate.gov/usercontent/session/executivesuspensions/israel_scott/20191023/20191023ReportandOrder.pdf (last accessed Oct. 26, 2019); attached hereto as Exhibit 5.

> doctrine of judicial estoppel prevents a party from asserting a claim in a legal proceeding that is inconsistent with a claim taken by that party in a previous proceeding"); 18 C. Wright, A. Miller, & E. Cooper, Federal Practice and Procedure § 4477, p. 782 (1981) (hereinafter Wright) ("absent any good explanation, a party should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory").

New Hampshire v. Maine, 532 U.S. 742, 749 (2001).

The "purpose [of judicial estoppel] is to protect the integrity of the judicial process, by prohibiting parties from deliberately changing positions according to the exigencies of the moment[.]" *Id.* at 749–50; *see also Ryan Operations G.P. v. Santiam-Midwest Lumber Co.*, 81 F.3d 355, 358 (3d Cir. 1996) (the rule, designed to prevent parties from "playing fast and loose with the courts," "seeks to prevent a litigant from asserting a position inconsistent with one that she has previously asserted in the same or in a previous proceeding.").

The United States Supreme Court has recognized that "this estoppel doctrine is equitable and thus cannot be reduced to a precise formula or test," but it has listed factors that guide its application. *See Zedner v. United States*, 547 U.S. 489, 504 (2006) (quoting *New Hampshire*, 532 U.S. at 750-51). It listed these factors as follows:

> [S]everal factors typically inform the decision whether to apply the doctrine in a particular case: First, a party's later position must be "clearly inconsistent" with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create "the perception that either the first or the second court was misled[.]" Absent success in a prior proceeding, a party's later inconsistent position introduces no "risk of inconsistent court determinations," and thus poses little threat to judicial integrity. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

New Hampshire, 532 U.S. at 750-51 (citations omitted). The Supreme Court further stated that "[i]n enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel." *Id.* at 751. It noted that "[a]dditional considerations may inform the doctrine's application in specific factual contexts." *Id.*

The United States Court of Appeals for the Eleventh Circuit (which has appellate jurisdiction over federal habeas petitions originating from Florida) applies judicial estoppel when "(1) the party took an inconsistent position under oath in a separate proceeding, and (2) these inconsistent positions were calculated to make a mockery of the judicial system." *Slater v. U.S. Steel Corp.*, 871 F.3d 1174, 1181 (11th Cir. 2017) (*en banc*). The first factor relates to the plaintiff's actions while the second factor relates to his motives. *Id.* To determine that there was intent to manipulate the legal system, courts may infer intent from the facts; for example, if there was knowledge at the time of the first proceeding and a motive can be shown, an inference may be permitted. *See Barger v. City of Cartersville, Ga.*, 348 F.3d 1289, 1294 (11th Cir. 2003); *see also Burnes v. Pemco Aeroplex, Inc.*, 291 F.3d 1282, 1287 (11th Cir. 2002) (holding that intentional manipulation can be inferred from the record).

C. Collateral Estoppel

"Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case." *Allen v. McCurry*, 449 U.S. 90, 94 (1980) (citing *Montana v. United States*, 440 U.S. 147 (1979)). "As commonly explained, the doctrine of collateral estoppel can apply to preclude relitigation of *both issues of law and issues of fact* if those issues were conclusively determined in a prior action." *United States v. Stauffer Chem. Co.*, 464 U.S. 165, 170–71 (1984)

(citations omitted, emphasis added). "[F]ederal decisions have made clear that the rule of collateral estoppel in criminal cases is not to be applied with the hypertechnical and archaic approach of a 19th century pleading book, but with realism and rationality." *Ashe v. Swenson*, 397 U.S. 436, 444 (1970).

In order for collateral estoppel to be applied, a court must have actually and finally decided an issue of fact or of the application of law to fact, and that decision must have been necessary to the outcome of the prior action. *See Allen*, 449 U.S. at 94; *Brown v. Felsen*, 442 U.S. 127, 139 n.10 (1979).

In *Parklane Hosiery Co. v. Shore*, 439 U.S. 322 (1979), the U.S. Supreme Court observed:

> assuming that the issue was resolved correctly in the first suit, there is reason to be concerned about the plaintiff's allocation of resources. *Permitting repeated litigation of the same issue as long as the supply of unrelated defendants holds out reflects either the aura of the gaming table* or a lack of discipline and of disinterestedness on the part of the lower courts, hardly a worthy or wise basis for fashioning rules of procedure. Although neither judges, the parties, nor the adversary system performs perfectly in all cases, *the requirement of determining whether the party against whom an estoppel is asserted had a full and fair opportunity to litigate is a most significant safeguard*.

Id. at 328 (cleaned up, emphasis added).

Collateral estoppel comes in offensive and defensive forms. "[O]ffensive use of collateral estoppel does not promote judicial economy in the same manner as defensive use does. Defensive use of collateral estoppel precludes a plaintiff from relitigating identical issues by merely 'switching adversaries.'" *Id.* at 329.

II. State Law

A. Due Process

"No person shall be deprived of life, liberty or property without due process of law, or be twice put in jeopardy for the same offense, or be compelled in any criminal matter to be a witness against oneself." Fla. Const. art. I, § 9. The Florida Supreme Court has interpreted "the Florida Constitution to offer *more* protection than the right provided in the Fifth Amendment to the United States Constitution." *Myers v. State*, 211 So. 3d 962, 971 (Fla. 2017) (cleaned up, emphasis in original).

B. Judicial Estoppel

"[T]he elements of judicial estoppel under federal law in such cases may not be identical to the elements usually required under state law in Florida." *Anfriany v. Deutsche Bank Nat'l Tr. Co. for Registered Holders of Argent Sec., Inc., Asset-Backed Pass-Through Certificates, Series 2005-W4*, 232 So. 3d 425, 429 (Fla. 4th DCA 2017) (cleaned up).

"Judicial estoppel is an equitable doctrine that is used to prevent litigants from taking totally inconsistent positions in separate judicial, *including quasi-judicial*, proceedings." *Blumberg v. USAA Cas. Ins. Co.*, 790 So.2d 1061, 1066 (Fla. 2001) (citation omitted, emphasis added). Indeed,

> judicial estoppel protects the integrity of the judicial process and prevents parties from making a mockery of justice by inconsistent pleadings and playing fast and loose with the courts. Judicial estoppel is imposed because intentional self-contradiction is being used as a means of obtaining an unfair advantage in a forum provided for suitors seeking justice.

Anfriany, 232 So. 3d at 427. (cleaned up).

> In Florida, judicial estoppel encompasses the following four elements: [1] A claim or position successfully maintained in a former action or judicial proceeding [2] bars a party from making a completely inconsistent claim or taking a clearly conflicting

> position in a subsequent action or judicial proceeding, [3] to the prejudice of the adverse party, [4] where the parties are the same in both actions, subject to the "special fairness and policy considerations" exception to the mutuality of parties requirement.

Salazar-Abreu v. Walt Disney Parks & Resorts U.S., Inc., __ So. 3d __, 2018 WL 6816757, at *2 (Fla. 5th DCA Dec. 28, 2018).

C. Collateral Estoppel

"Florida has traditionally required that there be a mutuality of parties in order for the doctrine to apply. Thus, unless both parties are bound by the prior judgment, neither may use it in a subsequent action." *Stogniew v. McQueen*, 656 So. 2d 917, 919 (Fla. 1995). Florida has been "unwilling to follow the lead of certain other states and of the federal courts in abandoning the requirements of mutuality in the application of collateral estoppel." *Id.* at 919-20. However, a sole "case in which [the Florida Supreme] Court has not strictly adhered to the requirement of mutuality of parties is *Zeidwig*." *Id.* at 919 (citation omitted).[6]

In *Zeidwig*, the Florida Supreme Court "h[e]ld that defensive collateral estoppel applies in this criminal-to-civil context ... [because] [t]o fail to allow the use of collateral estoppel in these circumstances is neither logical nor reasonable." *Zeidwig v. Ward*, 548 So. 2d 209, 214 (Fla. 1989).

[6] "In that case, a criminal defendant who had unsuccessfully brought an ineffective assistance of counsel claim in a postconviction proceeding was held to be collaterally estopped from raising the same claim in a legal malpractice action against his former lawyer." *Id.*

ARGUMENT

I. THE COURT MUST JUDICIALLY ESTOP THE STATE

A. Required under Federal Law

1. Required under Binding U.S. Supreme Court Precedent

Florida's government, like the federal government, is separated into three distinct branches, the executive, the legislative, and the judiciary. Governor DeSantis, as the Governor of the State of Florida, is the head of the executive branch. The Office of the State Attorney for the 17th Judicial Circuit of Florida is an arm of the executive branch of the government of the State of Florida. Thus, both the Office of the Governor and the Office of the State Attorney are part of the same branch of government and must not take inconsistent legal and factual positions when litigating a case.

This Court must judicially estop the State of Florida from taking legal and factual positions in this case that are inconsistent with what the State of Florida, by and through the Office of the Governor, advanced in the litigation against Israel. These legal and factual positions include, but are not limited to the following: (1) the Defendant was not properly trained, (2) the BSO Active Shooter Policy did not require the Defendant to engage and exchange gunfire with Nikolas Cruz, (3) Florida Law places sole responsibility for the actions an any allegations of negligence on the part of BSO employees on Israel, and (4) Israel was responsible for the loss of life at Marjory Stoneman Douglas High School. *See generally* Ex. 2.

The need for judicial estoppel is evident here, *viz.* the State of Florida has deliberately changed positions according to the exigencies of this case. *See New Hampshire*, 532 U.S. at 749–50. Indeed, the State of Florida now takes a position that is irreconcilable with the Israel litigation, *see id.* at 749, and must be judicially estopped as all of the *New Hampshire* factors are present.

First, the State of Florida's position in this case is clearly inconsistent with the position taken in the Israel litigation. Specifically, the State now takes the position that (1) the Defendant was properly trained, (2) the BSO Activity Shooter Policy was not permissive in nature, (3) the Defendant is responsible for his alleged negligent actions in his role as a BSO deputy, and (4) the Defendant is responsible for the loss of life. These positions cannot be squared with the State's prior litigating position and is nothing more than an improper attempt at playing "fast and loose" with this Court, *see Ryan Operations, supra,* which if allowed to stand would make a mockery of the judicial system, *see Slater, supra.*

Second, the State of Florida has succeeded in persuading the Florida Senate in a quasi-judicial proceeding to accept the State's earlier position, *see* discussion *supra*, so that judicial acceptance of an inconsistent position would create the well-taken belief that either the Florida Senate in the Israel litigation or this Court was misled by the State. Under the facts of the Israel litigation and this case, this Court can infer that there is an attempt to manipulate the judicial system. *See Burnes, supra.*

Third, the State of Florida, by seeking to assert an inconsistent position in this case, would derive an unfair advantage or impose an unfair detriment on the Defendant if not estopped. This unfair advantage offends notions of fair litigation and justice and, in all events, offends the Due Process Clauses of both the Federal and Florida constitutions. *See* discussion *infra.*

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All three factors the U.S. Supreme Court expressly identified in *New Hampshire* are strongly present in this case, consequently the Court must judicially estop the State from taking factual and legal positions that are inconsistent with what was advanced by the State in the Israel litigation.

2. Required under the Due Process Clause of the 14th Amendment of the Federal Constitution

Due process takes its meaning from "[o]ur Nation's history, legal traditions, and practices." *Washington v. Glucksberg*, 521 U.S. 702, 721 (1997). "As applied to a criminal trial, denial of due process is the failure to observe that fundamental fairness essential to the very concept of justice. In order to declare a denial of it we must find that the absence of that fairness fatally infected the trial; the acts complained of must be of such quality as necessarily prevents a fair trial." *Lisenba v. California*, 314 U.S. 219, 236 (1941).

The Due Process Clause guarantees for every defendant the right to a trial that comports with basic tenets of fundamental fairness. *Lassiter v. Department of Soc. Servs.*, 452 U.S. 18, 24–25 (1981). This is so because "[s]ociety wins not only when the guilty are convicted but when criminal trials are fair; our system of justice suffers when any accused is treated unfairly." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The prosecutor may not "[become] the architect of a proceeding that does not comport with the standards of justice." *Id.* at 88. The prosecutor, therefore, violates the Due Process Clause if he knowingly presents false testimony—whether it goes to the merits of the case or solely to a witness's credibility. *Napue v. Illinois*, 360 U.S. 264 (1959); *Mooney v. Holohan*, 294 U.S. 103 (1935). *See also Pyle v. Kansas*, 317 U.S. 213, 215-16 (1942) (declaring that the prosecution's knowing use of perjured testimony would deprive the defendant of due process). To that end, the prosecutor has a constitutional duty to correct evidence he knows is false, even if he did not intentionally submit it. *Giles v. Maryland*, 386 U.S. 66 (1967).

"From these bedrock principles, it is well established that when no new significant evidence comes to light a prosecutor cannot, in order to convict two defendants at separate trials, offer

inconsistent theories and facts regarding the same crime." *Thompson v. Calderon*, 120 F.3d 1045, 1058 (9th Cir. 1997) (*en banc*), *rev'd on other grounds*, 523 U.S. 538 (1998). Indeed, courts and individual judges have found that a prosecutor's use of inconsistent factual theories of a case in successive trials violates a defendant's due process rights. *See Drake v. Kemp*, 762 F.2d 1449, 1470 (11th Cir. 1985) (Clark, *J.*, concurring); *Smith v. Groose*, 205 F.3d 1045, 1051 (8th Cir. 2000) ("Smith contends that this manipulation of the evidence deprived him of due process and rendered his trial fundamentally unfair. We agree. The State's use of factually contradictory theories in this case constituted 'foul blows,' error that fatally infected Smith's conviction.").

In this case, the position taken by the government is mutually exclusive and irreconcilable with the Israel litigation. It would be fundamentally unfair for the State to take legal and factual positions in this case that are diametrically opposed to the legal and factual positions taken in the Israel litigation. Indeed, due process prohibits the Defendant to be treated unfairly, *see Brady,* 373 U.S. at 87, prohibits any Assistant State Attorney from implementing a litigation course "that does not comport with the standards of justice," *id.* at 88, and prohibits the introduction of any testimony that is false, *see Mooney,* 294 U.S. 103. This Court must hold that due process prohibits the State from advancing inconsistent factual and legal theories in this case and accordingly prevent the State from attempting to do so. *See Thompson,* 120 F.3d 1045; *Drake,* 762 F.2d 1449 (Clark, *J.*, concurring); *Smith,* 205 F.3d 1045.

B. Required Under State Law

1. Required Under Extant Precedent

In Florida, judicial estoppel applies to both judicial and quasi-judicial proceedings. *See Blumberg,* 790 So.2d at 1066. While the Defendant contends that the Israel litigation before the

Florida Senate is a judicial proceeding, there can be no doubt that at a minimum such was a quasi-judicial proceeding. Consequently, this Court must judicially estop the State from taking inconsistent legal and factual positions in this case. Just as under Federal case law, Florida case law "prevents parties from making a mockery of justice by inconsistent pleadings and playing fast and loose with the courts." *Anfriany,* 232 So. 3d at 427.

First, in the Israel litigation, the State successfully maintained factual and legal positions that placed the blame of the events that happened at Marjory Stoneman Douglas High School on Israel (including but not limited to the BSO Active Shooter Policy that was permissive in nature).

Second, the factual and legal positions taken by the State in this case are completely inconsistent and/or conflicting with factual and legal positions taken in the Israel litigation.

Third, the Defendant will be prejudiced. *See* discussion *supra* at III.A.1.a.

Fourth, because this is a criminal case where the Defendant's rights under the Federal and Florida constitutions come to bear, and place his liberty and property at stake, such leads to the inexorable conclusion that the "special fairness and policy considerations" exception to the mutuality of parties requirement must be found.

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Accordingly, similar to Federal law, the Defendant is entitled to judicial estoppel under the four factors identified under Florida law. *See Salazar-Abreu,* 2018 WL 6816757 at *2.

2. Required under the Due Process Clause of the Florida Constitution

This case heavily implicates the "Florida Constitution's Declaration of Rights, a series of rights so basic that the framers of our Constitution accorded them a place of special privilege, and is, therefore, fundamental." *Myers*, 211 So. 3d at 970 (cleaned up). "Special vigilance is required

where the fundamental rights of Florida citizens suspected of wrongdoing are concerned, for here society has a strong natural inclination to relinquish incrementally the hard-won and stoutly defended freedoms enumerated in our Declaration in its effort to preserve public order." *Id.* (citations omitted).

> These rights [enumerated in the Declaration of Rights] curtail and restrain the power of the State. It is more important to preserve them, even though at times a guilty man may go free, than it is to obtain a conviction by ignoring or violating them. The end does not justify the means. Might is not always right. Under our system of constitutional government, the State should not set the example of violating fundamental rights guaranteed by the Constitution to all citizens in order to obtain a conviction.

Bizzell v. State, 71 So.2d 735, 738 (Fla. 1954) (quoted in *Myers,* 211 So. 3d at 970-71). To that end, the Florida Supreme Court has interpreted Article I, § 9 of the Florida Constitution to provide criminal defendants more protection that the Federal Constitution. *Myers,* 211 So. 3d at 971; *accord State v. Horwitz*, 191 So. 3d 429, 438 (Fla. 2016) (noting that Florida courts interpreting the Florida Constitution "may interpret those rights as providing greater protections than those in the United States Constitution").[7]

This Court must conclude that under the Florida Due Process Clause the State must be judicially estopped from taking factual and legal positions that are inconsistent with the Israel litigation. Such a conclusion comports with the notion that "[d]ue process requires that fundamental fairness be observed in each case for each defendant. Our system of justice depends on this basic precept." *Gore v. State*, 719 So. 2d 1197, 1203 (Fla. 1998). Fundamental fairness prohibits the State from playing fast and loose with the court and from displaying the gamesmanship

[7] Only Fla. Const. Art. I, §§ 12 & 17 must be read in conformity with federal law. *Myers*,191 So. 3d at 438 n.3.

at issue here. Let there be no doubt that when "over zealousness in prosecuting the State's cause work[s] against justice, rather than for it," the Florida Supreme Court has not hesitated to reverse. *Id.* (cleaned up).

From the undersigned's research, this appears to be a matter of first impression for Florida courts, but other state courts from across the country have held that inconsistent governmental theories of liability offend due process. *See In re Sakarias*, 106 P.3d 931, 944 (Cal. 2005) ("we hold that the People's use of irreconcilable theories of guilt or culpability, unjustified by a good faith justification for the inconsistency, is fundamentally unfair, for it necessarily creates the potential for—and, where prejudicial, actually achieves—a false conviction or increased punishment on a false factual basis for one of the accuseds."); *State v. Carter*, 71 S.W.3d 267, 272 (Mo. App. S.D. 2002) ("the use of inherently factually contradictory theories [by the prosecutor] violates the principles of due process") (cleaned up).

***

Accordingly, similar to Federal law, the Defendant is entitled to judicial estoppel under the Due Process Clause of the Florida Constitution.

II. THE COURT MUST COLLATERALLY ESTOP THE STATE

A. Required Under Federal Law

The Defendant uses defensive collateral estoppel in this case to prevent the Plaintiff (i.e., the State of Florida) from relitigating identical issues already decided in the Israel litigation by merely switching adversaries" (i.e. switching from Israel to the Defendant). *See Parklane Hosiery*, 439 U.S. at 329. As the State of Florida was a party to the Israel litigation and this case, collateral estoppel is applicable in the instant matter. *See Allen*, 449 U.S. 90. Collateral estoppel applies to both the

issues of law and fact that were determined in the litigation before the Florida Senate. *See Stauffer Chem.*, 464 U.S. 165. The issues of law, fact, and the application of fact to law, *see generally* Exs. 1 & 2, were in fact decided before the Florida Senate; there can be no credible argument to the contrary. Given that the State had a full and fair opportunity to litigate its allegations in the Israel litigation, which it prevailed on, it is now collaterally estopped from attempting to relitigate the same issues against the Defendant. *Parklane Hosiery*, 439 U.S. at 328.

B. Required Under State Law

The Defendant admits that extant Florida case law limits this Court from granting him relief under Florida law. *See Stogniew*, 656 So. 2d 917. However, "*Zeidwig* constituted a narrow exception in which [nonmutual] collateral estoppel was permitted in a defensive context and then only under the compelling facts of that case." *Id.* at 919. The Defendant contends that compelling facts of *this* case, in conjunction with the similarities in circumstance with those in *Zeidwig*, warrant application of the mutuality exception. In this case, collateral estoppel would apply in a civil-to-criminal context in order to prevent a judicial determination that would be directly contrary to a determination in prior litigation. To wit: the finding that Israel was more-likely-than-not (preponderance of the evidence standard) the cause of the deaths and injuries at issue is incompatible with a finding that Peterson is beyond a reasonable doubt the cause of the same deaths and injuries.

Should this Court find that the instant case does not fit the narrow exception in which "collateral estoppel [i]s permitted in a defensive context … under the compelling facts of th[e] case[,]" *id.*, the Defendant raises the assertion here for subsequent appellate review, along with the following proposition.

The Defendant avers that the state of the law in Florida must be overruled/modified by the Florida Supreme Court, which should adopt the Federal test for collateral estoppel.[8] The Florida Supreme Court should reject the *stare decisis* effect of prior case law as it is not "an inexorable command," *see Pearson v. Callahan,* 555 U.S. 223, 233 (2009), and it is "at its weakest when [the Florida Supreme Court] interpret[s] the [Florida and Federal] Constitution[s]," *Agostini v. Felton,* 521 U.S. 203, 235 (1997). In criminal cases, to apply a strict mutuality requirement for collateral estoppel operates to vitiate the efficacy of the Federal and Florida Due Process Clauses; *Stogniew* must be overruled (or at a minimum modified for criminal cases).

CONCLUSION

The State of Florida via the executive branch is doing exactly what the well-founded principals of judicial estoppel have been set to prohibit. The Governor is blaming Former Sheriff Scott Israel for the loss of life at Marjory Stoneman Douglas High School for his inadequacies in training and policies related to a mass shooting as the Sherriff of Broward County while in turn the Office of the State Attorney for the 17th Judicial Circuit is taking a contrary position in blaming Scot Peterson for the loss if life arguing that he was properly trained and that he did not follow the mandated policies. The positions are not just dissimilar, they are diametrically opposed to each other and are mutually exclusive. It is axiomatic that since the court has found this to be "a textbook example of neglect and incompetence solely at the hands of Israel…" Scot Peterson shall not be

[8] "In *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundation,* 402 U.S. 313, 91 S.Ct. 1434, 28 L.Ed.2d 788 (1971), the United States Supreme Court completely abrogated the mutuality requirement in a defensive context …." *Zeidwig*, 548 So. 2d at 212.

charged in this matter as the neglect begins and ends with Former Sherriff Scott Israel, as stated by the Governor and ratified by the Florida Senate.

WHEREFORE, the Defendant respectfully requests that this Honorable Court grant this motion in full.

Respectfully submitted,

/s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III Date: 2019.10.29 12:46:25 -04'00'

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Dated: Oct. 29, 2019

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has provided through the Florida Courts E-Filing Portal to the Office of the State Attorney, 17th Judicial Circuit, Broward County, Florida, this 29th day of Oct., 2019.

/s/ Joseph A. DiRuzzo, III Digitally signed by /s/ Joseph A. DiRuzzo, III
Date: 2019.10.29 12:46:42 -04'00'
Joseph A. DiRuzzo, III

EXHIBIT 1

FLORIDA DEPARTMENT of STATE

RON DESANTIS
Governor

MICHAEL ERTEL
Secretary of State

Delivery Confirmation 91 7108 2133 3939 3373 6072

January 14, 2019

Mr. Scott J. Israel
[redacted]

Dear Mr. Israel:

Pursuant to the provisions of Section 112.40, Florida Statutes, we are sending you a copy of Executive Order Number 19-14 relating to your suspension as Sheriff, Broward County.

Sincerely,

Kristi Reid Willis

Kristi Reid Willis, Chief
Bureau of Election Records

KRW/iw

Enclosure

cc: The Honorable Ashley Moody, Attorney General
Ms. Debbie Brown, Secretary of the Senate

STATE OF FLORIDA

OFFICE OF THE GOVERNOR

EXECUTIVE ORDER NUMBER 19-14

(Executive Order of Suspension)

WHEREAS, Article IV, Section 7 of the Florida Constitution provides in relevant part that, "the Governor may suspend from office … any county officer for … neglect of duty … [or] incompetence"; and

WHEREAS, Scott Israel is presently serving as the Sheriff for Broward County, Florida, having been reelected by the voters of Broward County in 2016 for a four-year term; and

WHEREAS, pursuant to Florida Statute § 30.15, it is the duty of elected sheriffs to be the conservators of the peace in their respective counties; and

WHEREAS, pursuant to Florida Statute § 30.07, "sheriffs may appoint deputies to act under them who shall have the same power as the sheriff appointing them, and for the neglect and default of whom in the execution of their office the sheriff shall be responsible"; and

WHEREAS, sheriffs are responsible for appointing command staff who are responsible for the training, response and security within the counties, including airports, seaports and schools within their jurisdiction; and

WHEREAS, sheriffs are responsible for the recruitment, hiring and promotion of their command staff and deputy sheriffs; and

WHEREAS, on February 14, 2018, Marjory Stoneman Douglas High School in Parkland, Broward County, Florida, experienced a tragic shooting, taking the lives of seventeen students and staff members; and

WHEREAS, prior to the shooting at Marjory Stoneman Douglas High School, Broward County Sheriff's Office had a total of 21 interactions with the shooter, including two incidents that an internal affairs investigation later found warranted additional follow-up; and

WHEREAS, the first of the above incidents occurred in February 2016 when the Marjory Stoneman Douglas shooter posted a picture of a gun with a statement similar to "I am going to get this gun when I turn 18 and shoot up the school"; and

WHEREAS, Broward County Deputy Eason, acting on behalf of and in place of Sheriff Israel, did not complete an incident report, but instead noted in CAD, "No threats noted and info forwarded to (SRO) Peterson at school."; and

WHEREAS, the second of the above incidents occurred in November 2017 when Broward County Sheriff's Office received a call that the Marjory Stoneman Douglas shooter "had weapons and wanted to join the military to kill people" and "that [he] 'might be a Columbine in the making' and was a threat to kill himself."; and

WHEREAS, Broward County Deputy Treijs, acting on behalf of and in place of Sheriff Israel, did not complete an incident report, but instead noted in CAD that the Marjory Stoneman Douglas shooter was autistic, his location was unknown, and directed the caller to contact another police department; and

WHEREAS, on February 14, 2018, Broward County Deputy Scot Peterson was at all times acting on behalf of and in place of Sheriff Israel while serving as the School Resource Officer at Marjory Stoneman Douglas High School; and

WHEREAS, on February 14, 2018, Broward County Deputy Peterson exercised the discretion of Sheriff Israel consciously deciding not to engage the Marjory Stoneman Douglas shooter, while the shooter was actively killing and attempting to kill the students and teachers of Marjory Stoneman Douglas High School; and

WHEREAS, according to the Marjory Stoneman Douglas Public Safety Commission Report dated January 2, 2019, there were six other Broward County Sheriff Deputies acting on behalf of and in place of Sheriff Israel who were in close proximity to the Marjory Stoneman Douglas High School that "did not immediately move towards the gunshots to confront the shooter"; and

WHEREAS, Sheriff Israel is responsible for developing, implementing and training his deputies on policy related to active shooters; and

WHEREAS, Sheriff Israel is responsible for inserting into the Broward County Sheriff's Office Active Shooter Policy that a deputy "may" enter the area or structure to engage an active shooter and preserve life; and

WHEREAS, on November 15, 2018, Sheriff Israel stated to the Marjory Stoneman Douglas Public Safety Commission "that he wanted his deputies to exercise discretion and he did not want them engaging in 'suicide missions.'"; and

WHEREAS, as noted by the Marjory Stoneman Douglas Public Safety Commission Report dated January 2, 2019, Broward County Sheriff's Office policy for responding to an active shooter situation is inconsistent with current and standard law enforcement practices; and

WHEREAS, even if the duty to engage an active shooter was discretionary, the responsibility for the exercise of that discretion falls upon the elected sheriff; and

WHEREAS, the Marjory Stoneman Douglas Public Safety Commission Report further revealed a failure on the part of Sheriff Israel and his deputies to timely establish an incident command center; and

WHEREAS, to meet the Sheriff's duty to be the conservator of the peace, it is necessary for the Sheriff to provide adequate, up-to-date, frequent, thorough and realistic training to handle high-risk, high-stress situations, including mass casualty incidents; and

WHEREAS, Sheriff Israel's deputies interviewed by the Marjory Stoneman Douglas Public Safety Commission could not remember the last time they attended active shooter training or what type of training they received; and

WHEREAS, on January 6, 2017, a tragic shooting occurred at the Fort Lauderdale-Hollywood Airport in Broward County, Florida, taking the lives of five and injuring dozens more; and

WHEREAS, during the shooting at the Fort Lauderdale-Hollywood Airport the Broward County Sheriff's Office failed to contain and maintain security resulting in a breach of airport security; and

WHEREAS, an internal investigation into the Fort Lauderdale Airport shooting uncovered a lack of leadership by Sheriff Israel, including: a failure by Sheriff Israel to establish proper containment procedures for the crime scene, a failure by Sheriff Israel to establish a centralized command and response, a failure by Sheriff Israel to provide his deputies adequate, thorough and realistic training, and a failure by Sheriff Israel to establish an appropriate response to a mass casualty incident; and

WHEREAS, the investigation also revealed that Sheriff Israel's neglect of duty and incompetence lead to "most of the law enforcement personnel who responded [lacking] clear instructions, objectives, and roles."; and

WHEREAS, Sheriff Israel has egregiously failed in his duties as Sheriff for Broward County; and

WHEREAS, Sheriff Israel failed to maintain a culture of vigilance and thoroughness amongst his deputies in protecting the peace in Broward County, Florida; and

WHEREAS, Sheriff Israel has demonstrated during multiple incidents that he has not provided for the proper training of his deputies; and

WHEREAS, two separate reports into the recent mass casualty shootings in Broward County specifically found that Sheriff Israel has not and does not provide frequent training for his deputies

resulting in the deaths of twenty-two individuals and a response that is inadequate for the future safety of Broward County residents; and

WHEREAS, two separate reports into the recent mass casualty shootings in Broward County specifically found that Sheriff Israel has not implemented proper protocols to provide guaranteed access to emergency services, nor proper protocols to have timely, unified command centers setup to control a crime scene, leading to confusion, a lack of recognized chain-of-command, and ultimately a failure to contain the dangerous situation; and

WHEREAS, Sheriff Israel has contravened his oath of office as set forth in Article II, section 5, of the Florida Constitution, to "...faithfully perform the duties" of Sheriff of Broward County, Florida; and

WHEREAS, due to his demonstrated neglect of duty and incompetence, Sheriff Israel can no longer demonstrate the qualifications necessary to meet his duties in office; and

WHEREAS, it is in the best interests of the residents of Broward County, and the citizens of the State of Florida, that Sheriff Israel be immediately suspended from the public office, which he now holds;

NOW, THEREFORE, I, RON DESANTIS, Governor of Florida, pursuant to the Constitution and the laws of the State of Florida, do hereby find, determine, and for the purposes of Article IV, section 7, of the Florida Constitution, allege as follows:

A. Scott Israel is, and at all times material was, the Sheriff for Broward County, Florida.

B. The office of sheriff is within the purview of the suspension powers of the Governor, pursuant to Article IV, section 7, of the Florida Constitution.

C. The actions and omissions of Scott Israel as referenced above and as noted in the Marjory Stoneman Douglas Public Safety Commission Report, dated January 2, 2019 and attached hereto,

constitute neglect of duty and incompetence for the purposes of Article IV, section 7, of the Florida Constitution.

D. If, after execution of this suspension, additional facts are discovered that illustrate further neglect of duty and incompetence—or other constitutional grounds for suspension of Sheriff Israel—this Executive Order may be amended to allege those additional facts.

BEING FULLY ADVISED in the premises, and in accordance with the Constitution and the laws of the State of Florida, this Executive Order is issued, effective immediately:

Section 1. Scott Israel is hereby suspended from the public office that he now holds, to wit: Sheriff for Broward County, Florida.

Section 2. Scott Israel is hereby prohibited from performing any official act, duty, or function of public office; from receiving any pay or allowance; and from being entitled to any of the emoluments or privileges of public office during the period of this suspension, which period shall be from the effective date hereof, until a further executive order is issued, or as otherwise provided by law.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of Florida to be affixed, at Tallahassee, this 11th day of January, 2019.

RON DESANTIS, GOVERNOR

ATTEST:

SECRETARY OF STATE

FILED
2019 JAN 11 PM 1:38
DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

EXHIBIT 2

STATE OF FLORIDA
Office of the Governor
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001
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850-717-9418

RON DESANTIS
GOVERNOR

THE FLORIDA SENATE

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

GOVERNOR DESANTIS' BILL OF PARTICULARS

COMES NOW, the Executive Office of Governor Ron DeSantis, by and through Deputy General Counsel, Nicholas Primrose, and files this Bill of Particulars pursuant to Florida Senate Rule 12.9(4) and Special Master Dudley's letter dated February 20, 2019, and states as follows:

INTRODUCTION

On January 11, 2019, Governor DeSantis issued Executive Order 19-14 suspending Mr. Scott Israel ("Mr. Israel") from his public office as the Sheriff of Broward County, Florida, for neglect of duty and incompetence. Mr. Israel has failed in his paramount responsibility to be the conservator of the peace in Broward County, resulting in a failure to protect the lives of residents and visitors of Broward County.

Article IV, Section 7(a) of the Florida Constitution provides the authority of the Governor to suspend a county official for "neglect of duty" and "incompetence." The Florida Supreme Court has defined "neglect of duty" as "the neglect or failure on the part of a public officer to do and perform some duty or duties laid on [them] as such by virtue of [their] office or which is

required of [them] by law." *State ex rel. Hardie v. Coleman*, 155 So. 129, 132 (Fla. 1934). The Court further explained, "[i]t is not material whether the neglect be willful, through malice, ignorance, or oversight." *Id.* The Florida Supreme Court has defined "incompetence" as "intellectual quality, the lack of which incapacitates one to perform the duties of his office" that "may arise from gross ignorance of official duties or gross carelessness in the discharge of [the duties]. *Id.* at 133. The Court further explained "incompetence" includes a lack of judgment and discretion. *Id.* Executive Order 19-14 suspended Mr. Israel from his public office for neglect of duty and incompetence. As outlined below, the factual allegations and specific statutory charges below rise to the level of neglect of duty and incompetence.

FACTUAL ALLEGATIONS

Mr. Israel was elected as the Sheriff of Broward County, Florida in 2012, and re-elected for another four-year term in 2016. Since his reelection, two specific, tragic events have highlighted years of failed leadership by Mr. Israel, resulting in the lost of life, a failure to protect the peace and failure to protect the lives of residents and visitors of Broward County, Florida.

A. Fort Lauderdale-Hollywood International Airport

On January 6, 2017, a gunman opened fire inside the baggage claim area of the Fort Lauderdale-Hollywood International Airport Terminal 2. The gunman killed five individuals and wounded six more before surrendering. While the initial incident lasted only minutes, the subsequent failures by Mr. Israel, and the deputies he is responsible for, led to dozens of additional injuries and unwarranted chaos over the next few hours. On October 6, 2017, Broward County Sheriff's Office ("BSO") released its internal investigation Critical Incident Report into

the Fort Lauderdale Airport shooting, the report and its draft version are fully incorporated by reference and cited below. BSO, through their Airport District Unit, provides critical law enforcement and community protection services, in conjunction with federal partners and airport authorities, at Fort Lauderdale-Hollywood International Airport. BSO retains the jurisdiction, decision making authority and control during emergencies, like the Fort Lauderdale-Hollywood Airport shooting.

The initial shooting event on January 6, 2017, lasted only 85 seconds with the shooter firing approximately 14 rounds. The lives of Mary Amzibel, Terry Andres, Michael Oehme, Shirley Timmons and Olga Welterkng were lost, an additional six victims were wounded. Two hours later, uncertainty and additional chaos ensued that could have and should have been avoided. As outlined in the Critical Incident Report, information was relayed over the primary law enforcement radio channel that shots were heard by a Border Patrol Agent at Terminal 2. During the chaos of passengers, airport staff and law enforcement reacting to this radio transmission, a BSO Deputy erroneously relayed information over the radio of "shot fired Terminal 4" and a few seconds later corrected to "shots fired Terminal 1." Between 2:22 p.m. and 3:24 p.m., there were eight separate radio transmissions of shots fired, one radio transmission of "additional shooters" and one transmission of a gunshot victim. The Critical Incident Report highlighted that "miscommunications and frantic responses" from BSO personnel aided in the loss of control during the event.

It is important to note that BSO had the benefit of learning from the lessons of the 2013 Los Angeles Airport shooting to enhance their procedures for dealing with an airport shooting, including utilizing the National Incident Management System ("NIMS"). The Critical Incident Report recommended that BSO needed to ensure NIMS practices are utilized appropriately,

especially in establishing incident command. Incident command is critical to coordinating and communicating with each of the law enforcement entities, first responders and airport personnel to effectuate organized and effective response to a mass casualty event. The Critical Incident Report found that BSO's failure to ensure proper incident command procedures led to the confusion that ensued after the initial shooting incident.

As mentioned above, the Critical Incident Report found a lack of preparation for an event like the airport shooting as contributing factor, even though BSO could have and should have learned from the 2013 Los Angeles Airport shooting. "Questionable readiness levels were discovered during the [Fort Lauderdale-Hollywood Airport shooting]." The Critical Incident Report explained that a lack of preparation on behalf of BSO, and all of the partners, led to 100% confusion and chaos within three minutes of the shooting incident. A lack of training and preparation, organized and led by BSO, was a primary area of opportunity to improve. In fact, the initial draft of the Critical Incident Report found that tabletop exercises were not frequent enough, nor was there sufficient preparation for an actual event. There were no clear guidelines and expectations to protect passengers at Fort Lauderdale-Hollywood Airport during a mass casualty/active shooter situation.

BSO also failed to properly allocate law enforcement personnel at Fort Lauderdale-Hollywood Airport in the years preceding the shooting event. From 2007 to 2017, the BSO Airport District declined in personnel, going from 150 positions to 116. During this same period, Fort Lauderdale-Hollywood Airport expanded its operations and passenger capacity. Another area of concern exposed in the initial draft of the Critical Incident Report includes the complacency of BSO Deputies assigned to the Airport District Unit, due to the environment of

lessened exposure to harm. Allocation of staff and resources is purely a responsibility that falls onto the elected sheriff.

B. Marjory Stoneman Douglas High School

On February 14, 2018, a gunman opened fire inside Marjory Stoneman Douglas High School at approximately 2:21 p.m. The gunman killed seventeen students and faculty members and seventeen other individuals were wounded. The events that took place on February 14, 2018, and the loss of life at Marjory Stoneman Douglas High School was avoidable, but for the failure of Mr. Israel, and his deputies for which he bears sole responsibility. In direct response to the shooting, on March 9, 2018, Governor Rick Scott signed the Marjory Stoneman Douglas High School Public Safety Act, which, in addition to implementing school safety measures, also established the Marjory Stoneman Douglas High School Public Safety Commission (hereinafter referred to as the "Commission"). The Commission is tasked with analyzing the events surrounding the Marjory Stoneman Douglas High School shooting and providing recommendations to mitigate and prevent future school shooting events. On January 2, 2019, the Commission issued its Initial Report, fully incorporated by reference and cited below.

On or about July 25, 2017, Mr. Israel entered into an agreement with Broward County Schools for BSO to provide law enforcement officers to serve as School Resource Officers ("SRO") throughout the school district for the upcoming academic year. As part of that agreement, Mr. Israel, by and through the SRO, was responsible for performing all law enforcement functions and assisting Broward County Schools with the protection and security of the school and its occupants.

BSO Deputy Sheriff Scot Peterson ("Deputy Peterson") was the SRO assigned to Marjory Stoneman Douglas High School. On February 14, 2018, entry points to Marjory Stoneman Douglas High School were open and unmanned. The gunman entered Building 12 and began firing his weapon. Deputy Peterson arrived at Building 12 approximately two minutes after the first shots were fired. By the time Deputy Peterson arrived at Building 12, twenty-one victims had already been shot, ten victims being fatally wounded: Martin Duque Anguiano, Luke Hoyer, Gina Montalto, Alyssa Alhadeff, Alaina Petty, Alexander Schachter, Nicholas Dworet, Helena Ramsay, Christopher Hixon and Carmen Schentrup.

Even though Deputy Peterson knew there was an active shooter, he did not enter Building 12 upon arrival. Deputy Peterson did not engage the gunman upon arriving at Building 12. While the gunman continued to move through Building 12 firing his weapon and causing greater loss of life, Deputy Peterson retreated from his position outside Building 12 towards Building 7, a position he would remain at for approximately 48 minutes.

As indicated by the Commission's Initial Report, from the time Deputy Peterson arrived at Building 12, and subsequently retreated to Building 7, eleven more victims were shot, with seven victims being fatally wounded: Aaron Feis, Scott Beigel, Jaime Guttenberg, Cara Loughran, Joaquin Oliver, Meadow Pollack and Peter Wang.

The gunman's final shot was at approximately 2:27 p.m. At that point, eight BSO Deputies were at Marjory Stoneman Douglas High School. Per the Commission's Initial Report, each of the eight deputies heard gunshots, but "none of these BSO deputies immediately responded to the gunshots by entering the campus and seeking out the shooter." These eight deputies were: Sergeant B. Miller, Deputy Peterson, Deputy E. Eason, Deputy M. Kratz, Deputy J. Stambaugh, Deputy R. Seward, Deputy A. Perry and Detective B. Goolsby. Deputy Peterson

directed the BSO deputies to "stay at least 500 feet away from Building 12." It was eventually discovered at 3:02 p.m., that the gunman had fled Building 12 at approximately 2:30 or 2:40 p.m., unbeknownst to any of the BSO deputies on the scene.

The Commission's Initial Report identified serious failures of security that were known or should have been known by Mr. Israel, including: unlocked and opened gates were regularly unstaffed leaving an open perimeter, a breach of effective security protocols and a lack of uniform and mandated physical site security requirements that resulted in a security system failure and the inadequacy of only having one SRO on campus hindered the ability to timely and effectively respond to an active assailant situation.

Florida Statute § 30.07 places responsibility for the actions and negligence of appointed deputies solely onto the elected sheriff. As outlined in the Commission's Initial Report, there were failures on behalf of Deputy Peterson that Mr. Israel bears responsibility for: (1) Deputy Peterson was derelict in his duty by failing to act consistently with his training and fled to a position of personal safety, even though Deputy Peterson was in a position to engage the shooter and mitigate further harm to others; (2) Deputy Peterson failed to investigate the source of gunshots, failing to mitigate further harm to others; (3) Deputy Peterson failed in protecting the lives of others by directing other BSO deputies and law enforcement to stay 500 feet away from Building 12, failing to mitigate further harm to others; and (4) Deputy Peterson failed to call out a Code Red over the school radio, failing to mitigate further harm to others.

Mr. Israel is also solely responsible for the failure of the seven other BSO deputies who failed to engage the shooter and mitigate further harm to others: Sergeant B. Miller, Deputy E. Eason, Deputy M. Kratz, Deputy J. Stambaugh, Deputy R. Seward, Deputy A. Perry and Detective B. Goolsby. These failures were a result of improper and infrequent training, the

absence of a BSO policy requiring ballistic vests to be worn while on-duty contributing to a delay in deputies responding to Building 12 and an absence of established incident command policies that led to a failure to communicate and effectively organize law enforcement response.

Additionally, Mr. Israel is solely responsible for implementing the active assailant response policies and training of his deputies. The BSO Active Shooter Policy at the time of the Marjory Stoneman Douglas High School shooting stated, "if real-time intelligence exists, the sole deputy or a team of deputies *may* enter the area and/or structure to preserve life." (emphasis added). This policy was implemented under Mr. Israel's leadership. In fact, during an interview with the Commission, Mr. Israel "defended use of the word 'may' stating that he wanted his deputies to exercise discretion and he did not want them engaging in 'suicide missions.'" The passive, discretionary engagement allowed for in the BSO Active Shooter Policy is contrary to Mr. Israel's responsibility and duty to protect the peace within Broward County. It is also contrary to universally accepted practices in the law enforcement community.

The BSO training for active shooters did not stress the importance of preservation of life. Nor was the training frequent enough. The Commission's Initial Report found that some deputies interviewed "could not remember the last time they attended active shooter training" or "recall what type of active assailant training they received." This failure is a result of Mr. Israel not prioritizing a robust training operation, not having enough training deputies to meets the needs of the large personnel force, not requiring annual active shooter training, especially after the Fort Lauderdale-Hollywood Airport and not allocating appropriate funds to training facilities.

The priorities in an active shooter situation is the life of victims and innocent bystanders. In a single deputy response, the BSO training reminds the deputy that "every time you hear a gunshot…you have to believe that is another victim being killed." However, the training also

reminds the deputy that additional support may be nearby and not to get up a good position of cover to contain the suspect. The BSO training directs deputies to "[r]emember, the cavalry is on their way, so it's better to hold, then to expose yourself to unknown threats." The contradiction on preservation of life versus waiting for back-up was on full display in how Deputy Peterson failed to engage the gunman, allowing additional fatalities to occur.

Finally, Mr. Israel is responsible for the failure and negligence of his deputies in their preliminary inaction towards the Marjory Stoneman Douglas High School gunman. As outlined in the Commission's Initial Report, prior to February 14, 2018, BSO had 21 separate interactions with the gunman. A BSO internal investigation found two of these incidents required additional follow-up investigation that was never conducted. BSO policy 3.6.1 (B) requires deputies to complete an incident report, unless unusual circumstances are present that do not require an incident report.

On February 5, 2016, BSO Deputy E. Eason handled a call regarding an Instagram post from the gunman with a picture of a gun and a caption similar to "I am going to get this gun when I turn 18 and shoot up the school." Deputy Eason did not complete a report or investigate this threat. It should be noted that Deputy Eason was previously suspended twice for his failure to properly follow up and complete an incident report. As a result of the internal investigation, Deputy Eason was found in violation of BSO policy on reporting incidents and suspended for three days. The second incident occurred on November 30, 2017, BSO Deputy G. Treijs handled a call reporting that the gunman had weapons and wanted to kill people, including "might be a Columbine in the making." Deputy Treijs did not complete a report, and instead told the caller to call another police department. Deputy Treijs was found in violation of BSO policy on reporting incidents, but was only issued a written reprimand. The violation of BSO policy is a direct result

of a lack of proper and frequent training, a lack of vigilance in protecting the community and a lack of leadership by Mr. Israel.

SPECIFIC CHARGES

1. Mr. Israel neglected his duty and/or was incompetent in failing his paramount statutory responsibility to be the "conservator of the peace" in Broward County, in violation of Florida Statute § 30.15, as outlined above.

2. Mr. Israel is solely responsible for the negligence of the deputies he appointed, pursuant to Florida Statute § 30.07, as outlined in the factual allegations:

   a. Mr. Israel is responsible for the negligence of BSO Deputy Peterson;

   b. Mr. Israel is responsible for the negligence of BSO Deputy Eason;

   c. Mr. Israel is responsible for the negligence of BSO Deputy Treijs;

   d. Mr. Israel is responsible for the negligence of BSO Sergeant Miller;

   e. Mr. Israel is responsible for the negligence of BSO Deputy Kratz;

   f. Mr. Israel is responsible for the negligence of BSO Deputy Stambaugh;

   g. Mr. Israel is responsible for the negligence of BSO Deputy Seward;

   h. Mr. Israel is responsible for the negligence of BSO Deputy Perry;

   i. Mr. Israel is responsible for the negligence of BSO Detective Goolsby.

3. Mr. Israel neglected his duty and/or was incompetent in failing to protect the lives of the five victims killed on January 6, 2017, at the Fort Lauderdale-Hollywood International Airport, as outlined above and more fully stated:

   a. Mr. Israel is responsible for failing to protect the life of Mary Amzibel;

   b. Mr. Israel is responsible for failing to protect the life of Terry Andres;

   c. Mr. Israel is responsible for failing to protect the life of Michael Oehme;

d. Mr. Israel is responsible for failing to protect the life of Shirley Timmons;

e. Mr. Israel is responsible for failing to protect the life of Olga Welterkng.

4. Mr. Israel neglected his duty and/or was incompetent in failing to protect the health and safety of the victims injured on January 6, 2017, at the Fort Lauderdale-Hollywood International Airport, as outline above and more fully stated:

a. The ensuing chaos and confusion after the initial shooting incident led to unnecessary injuries that could have and should have been avoided with appropriate training and leadership.

5. Mr. Israel neglected his duty and/or was incompetent in providing appropriate staffing levels at Fort Lauderdale-Hollywood Airport to meet the growing needs of the airport's increased size and passenger capacity, as outlined above.

6. Mr. Israel neglected his duty and/or was incompetent in failing to provide frequent and effective training for a mass casualty/active shooter situation at Fort Lauderdale-Hollywood Airport, as outlined above.

7. Ms. Israel neglected his duty and/or was incompetent in failing to provide sufficient policies and guidelines for establishing incident command to provide effective response and communication during mass casualty/active shooter situations, as outlined above.

8. Mr. Israel neglected his duty and/or was incompetent in failing to protect the lives of the seventeen victims killed on February 14, 2018, at Marjory Stoneman Douglas High School, as outlined above and more fully stated:

a. Mr. Israel is responsible for failing to protect the life of Alyssa Alhadeff;

b. Mr. Israel is responsible for failing to protect the life of Scott Beigel;

c. Mr. Israel is responsible for failing to protect the life of Martin Duque Anguiano;

d. Mr. Israel is responsible for failing to protect the life of Nicholas Dworet;

e. Mr. Israel is responsible for failing to protect the life of Aaron Feis;

f. Mr. Israel is responsible for failing to protect the life of Jamie Guttenberg;

g. Mr. Israel is responsible for failing to protect the life of Christopher Hixon;

h. Mr. Israel is responsible for failing to protect the life of Luke Hoyer;

i. Mr. Israel is responsible for failing to protect the life of Cara Loughran;

j. Mr. Israel is responsible for failing to protect the life of Gina Rose Montalto;

k. Mr. Israel is responsible for failing to protect the life of Joaquin Oliver;

l. Mr. Israel is responsible for failing to protect the life of Alaina Petty;

m. Mr. Israel is responsible for failing to protect the life of Meadow Pollack;

n. Mr. Israel is responsible for failing to protect the life of Helena Ramsay;

o. Mr. Israel is responsible for failing to protect the life of Alexander Schachter;

p. Mr. Israel is responsible for failing to protect the life of Carmen Schentrup;

q. Mr. Israel is responsible for failing to protect the life of Peter Wang.

9. Mr. Israel neglected his duty and/or was incompetent in requiring his deputies, including, but not limited to the actions of Deputy Peterson, to engage an active shooter, which resulted in additional fatalities, as outline above and more fully stated:

a. From the time Deputy Peterson arrived at Building 12, his failure to enter the building and/or engage the gunman resulted in seven additional fatalities and almost a dozen more wounded students and faculty.

b. Seven additional BSO deputies arrived at Marjory Stoneman Douglas High School, heard gunfire and did not enter Building 12 and/or engage the gunman resulting in additional fatalities and wounded students and faculty.

10. Mr. Israel neglected his duty and/or was incompetent in developing, implementing, adopting and training BSO deputies that they may engage with an active shooter, failing his paramount statutory responsibility to be the "conservator of the peace" in Broward County, in violation of Florida Statute § 30.15.

11. Mr. Israel neglected his duty and/or was incompetent in the discretion given to his deputies for failing to engage with an active shooter, as outlined above.

a. Even if the discretionary "may" in the BSO Active Shooter Policy was standard policy, the failure to protect life as a result of that policy is the responsibility of Mr. Israel.

12. Mr. Israel neglected his duty and/or was incompetent in developing frequent training requirements for BSO deputies, failing his paramount statutory responsibility to be the "conservator of the peace" in Broward County, in violation of Florida Statute § 30.15, as outlined above.

a. Multiple BSO deputies who responded to the Fort Lauderdale-Hollywood Airport lacked an understanding of their objectives and roles;

b. Multiple BSO deputies during the Commission's investigation into the Marjory Stoneman Douglas High School shooting could not remember the last time they had been trained on active assailant/shooter policy;

c. The lack of frequent and effective trainings by Mr. Israel was exposed during two separate mass casualty events within a one-year span of time that resulted in the deaths of twenty-two individuals.

13. Mr. Israel neglected his duty and/or was incompetent in staffing BSO's Airport District with employees who were complacent and not diligent in their duty to protect the peace, as outlined above.

14. Mr. Israel neglected his duty and/or was incompetent in staffing BSO's School Resource Officer program with employees who were complacent and not diligent in their duty to protect the peace, as outlined above.

RESPECTFULLY SUBMITTED,

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of February, 2019, a true copy of the foregoing has been e-mailed to counsel for Mr. Scott Israel: Benedict Kuehne, Esq. (Ben.Leuhne@kuehnelaw.com).

EXHIBIT 3

STATE OF FLORIDA
Office of the Governor
THE CAPITOL
TALLAHASSEE, FLORIDA 32399-0001
www.flgov.com
850-717-9418

RON DESANTIS
GOVERNOR

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 expediated 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.
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> ***
>
> 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 exhibiteding 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 Statues, 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, Isreal'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 Airport[1]

On January 6, 2017, at approximately 12:54 p.m., a gunman[2] 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 hear 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 ("AOI"), 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.

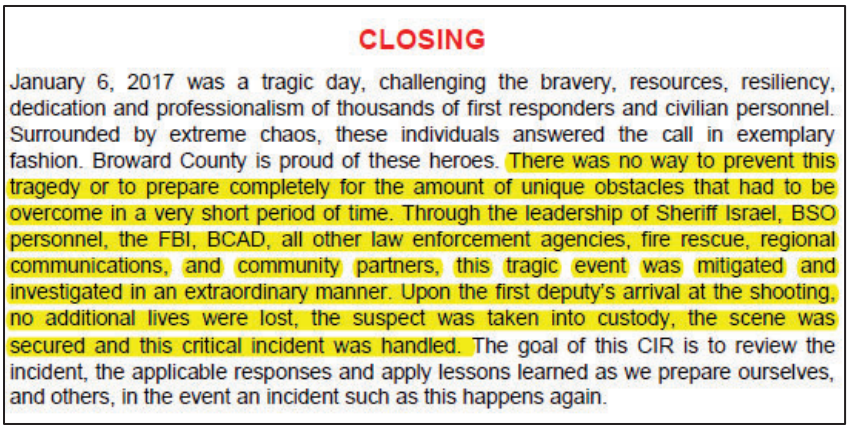
A Second Draft Report ("Second Draft Report") was created on June 2, 2017. EOG-00123-00221. This version contained substantial edits from the Initial Draft Report. For example, in the AOI for Active Shooter, the Second Draft Report deleted the issue with complacency and lack of diligence by BSO Airport 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 School[3]

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 necessary[4]:

Time	Event
2:21.16	Gunman enters Building 12
2:21.38	Gunman fires first rounds on 1st 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.

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 1st 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 as Building 12**
2:23.22	Gunman fires three additional shots on 1st floor hallway
2:23.25	Gunman fires another shot on 1st floor hallway
2:23.26	**Deputy Peterson radios "possible shots fired"**
2:23.36	Gunman fires six shots on the 2nd 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 3rd floor hallway
2:24.31	Gunman fires multiple rounds down the 3rd floor hallway
2:24.54	First "Code Red" is called
2:24.58	Gunman fired multiple rounds down the 3rd floor hallway
2:25.12	Gunman fires another round on 3rd floor
2:25.20	Gunman fires another round on 3rd floor
2:25.26	Gunman fires more rounds on 3rd 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

3:37.45	Gunman is apprehended by Coconut Creek Police Officer Leonard approximately 2 miles southwest of the school

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 bag[5] 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:

> **BROWARD SHERIFF'S OFFICE**
> **DEPARTMENT OF LAW ENFORCEMENT**
> **STANDARD OPERATING PROCEDURES**
>
> C. If real time intelligence exists the sole deputy or a team of deputies may enter the area and/or structure to preserve life. A supervisor's approval or on-site observation is not required for this decision.

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 is undergoes reaccreditation review. BSO has held the CALEA accreditation since 1999, and had been reaccredited each time it was reviewed.

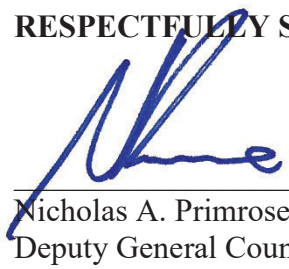
Second, these accreditations are not indicative of, nor do they absolve Israel of negligence or incompetence. After the FLL Airport shooting, when BSO was being assessed for reaccreditation by CALEA, Israel noted an area of concern he must address was "effective and appropriate response to mass casualty 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).

EXHIBIT 4

THE FLORIDA SENATE

COMMITTEE ON RULES

Location
402 Senate Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5350

Senator Lizbeth Benacquisto, *Chair*
Senator Audrey Gibson, *Vice Chair*

Professional Staff: John B. Phelps, *Staff Director*

Senate's Website: *www.flsenate.gov*

October 22, 2019

The Honorable Bill Galvano
President of the Senate

Re: Executive Order of Suspension, Number 19-14
Suspension of Mr. Scott Israel, Sheriff
Broward County, FL

Dear President Galvano:

The Committee on Rules submits this final report on the matter of suspension of Mr. Scott Israel.

By Executive Order Number 19-14 filed with the Secretary of State on January 11, 2019, and pursuant to Article IV, section 7(a) of the Florida Constitution, the Honorable Ron DeSantis, Governor, suspended Mr. Scott Israel as Sheriff of Broward County for neglect of duty and incompetence.

On January 14, 2019, the Senate informed Mr. Israel of his right to a hearing and on January 24, 2019, the matter was referred to a Special Master. On January 29, 2019, Mr. Israel requested a hearing and the Special Master engaged in pre-hearing proceedings until litigation between the Governor and Mr. Israel was initiated on March 7, 2019. Pursuant to Senate Rules, on March 12, 2019, the matter was held in abeyance until the rendering of a final determination in the litigation and exhaustion of all appellate remedies.

On April 23, 2019, after a final determination in the litigation and the exhaustion of appellate remedies, the Special Master resumed proceedings. The Special Master conducted a public case management conference on May 1, 2019, and a public evidentiary hearing was held on June 18, 2019 and June 19, 2019. The Governor and Mr. Israel submitted proposed findings of fact and conclusions of law to the Special Master on August 12, 2019, and August 20, 2019, respectively. On September 24, 2019, the Special Master delivered his advisory Report and Recommendation, recommending reinstatement, for consideration.

By proclamation on September 25, 2019, the Senate was convened in special session beginning at 9:00 a.m. on Monday, October 21, 2019, and ending at 11:59 p.m. on Friday, October 25, 2019, for the sole and exclusive purpose of considering the reinstatement or removal of Mr. Israel as Sheriff of Broward County. Additionally, on September 25, 2019, the advisory report and recommendation of the Special Master was referred to the Committee on Rules pursuant to Senate Rule 12.7.

On Monday, October 21, 2019, a public meeting of the Committee on Rules was held for consideration and report. I report the Committee on Rules voted to recommend that the evidence supports the Executive Order of Suspension by the Governor, and that Mr. Scott Israel be removed from the office of Sheriff of Broward County pursuant to the State Constitution and the Florida Statutes.

Sincerely,

Lizbeth Benacquisto, Chair

EXHIBIT 5

THE FLORIDA SENATE

Tallahassee

In re: Executive Suspension of	)	
Scott J. Israel	)	
Sheriff, Broward County	)	Report and Order
State of Florida	)	

Pursuant to Article IV, Section 7(a) of the Constitution of Florida, the Governor, Ron DeSantis, suspended Mr. Scott J. Israel from office by Executive Order Number 19-14 for neglect of duty and incompetence, which order was filed with the Secretary of State on January 11, 2019.

The executive order was received by the Florida Senate. On January 14, 2019, the Senate informed Mr. Israel of his right to a hearing and on January 24, 2019, the matter was referred to a Special Master. On January 29, 2019, Mr. Israel requested a hearing and the Special Master engaged in pre-hearing proceedings until litigation between the Governor and Mr. Israel was initiated on March 7, 2019. Pursuant to Senate Rules, on March 12, 2019, the matter was held in abeyance until the rendering of a final determination in the litigation and exhaustion of all appellate remedies.

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On Monday, October 21, 2019, a public meeting of the Committee on Rules was held for consideration and report. The Committee on Rules voted to recommend that the evidence supports the Executive Order of Suspension by the Governor and that Mr. Scott Israel be removed from the office of Sheriff of Broward County pursuant to the State Constitution and the Florida Statutes.

On Wednesday, October 23, 2019, pursuant to motion, the Senate accepted and adopted the report and recommendation of the Committee on Rules and removed Mr. Scott J. Israel from office.

WHEREFORE, IT IS ORDERED by the Senate of the State of Florida, that:

1. Mr. Scott J. Israel is removed from the office of Sheriff of Broward County, Florida.
2. This order be filed with the Department of State and in the permanent records of the Florida Senate.

DONE AND ORDERED this 23rd day of October, 2019.

FILED
2019 OCT 23 PM 6:05

Bill Galvano, President

Debbie Brown, Secretary