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August 20, 2019

Dudley Goodlette, Special Master
Suite 409, The Capitol
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Re: Scott Israel
Executive Order of Suspension, Executive Order No. 19-14
Recommended Order

Dear Special Master Goodlette:

In accordance with the Post-Hearing Scheduling Order, this submission constitutes Sheriff Israel's Proposed Recommended Order.

RECOMMENDED ORDER

Pursuant to Article IV, section 7(b) of the Florida Constitution and §§ 112.43 & 112.47, Florida Statutes (2018), Florida Senate Special Master Dudley Goodlette conducted a Final Hearing on June 18 & 19, 2019, in Tallahassee, Florida.

COUNSEL OF RECORD

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LEGAL ISSUES

The issue for the Senate Special Master and the Florida Senate is whether the evidence proves that Broward County Sheriff Scott Israel neglected his duty as Sheriff and was incompetent for the purposes of Article IV, § 7, of the Florida Constitution, as stated by Governor DeSantis in Executive Order 19-14 (Executive Order of Suspension).

LEGAL AUTHORITY GOVERNING SPECIAL MASTER PROCEEDINGS

The Florida Senate's constitutional responsibility is to remove from office or reinstate the suspended official. Article IV, § 7(b), Florida Constitution. The suspension "shall be prosecuted by Governor, the Governor's legal staff, or an attorney designated by the Governor." § 112.43, Fla. Stat. (2018). The failure to prove the charges mandates that the suspended official "shall not be removed by the Senate, the officer shall be reinstated, and the Senate may provide that the county, district, or state, as the case may be shall pay reasonable attorney's fees and costs of the reinstated officer upon his or her exoneration ..." § 112.44, Fla. Stat. (2018).

The Special Master's authority is to receive evidence and make recommendations to the Florida Senate. § 112.41(4), Fla. Stat. (2018).

Citing Sheriff Israel for his inadequate responses to the Fort Lauderdale airport shooting on January 6, 2017, and the February 14, 2018 Marjory Stoneman Douglas High School shooting ("MSD shooting"), Governor DeSantis suspended him for "neglect of duty and incompetence for the purposes of Article IV, § 7, of the Florida Constitution." Executive

SUMMARY OF FINDINGS AND CONCLUSIONS

The evidence does not support the stated basis for Broward County Sheriff Israel's removal from office. Accordingly, Sheriff Israel shall be reinstated to office. Sheriff Israel shall be afforded the salary and emoluments of office as of the date of his suspension. He is entitled to reasonable costs and attorney's fees upon a showing of the amount of fees incurred and costs expended.

The Special Master specifically finds that the evidence does not prove Sheriff Israel engaged in a neglect of duty and was incompetent for the purposes of Article IV, § 7, of the Florida Constitution arising from his responses to the Fort Lauderdale airport shooting on January 6, 2017, and the February 14, 2018 Marjory Stoneman Douglas High School shooting ("MSD shooting"), as asserted by Governor DeSantis as the only grounds for suspension in Executive Order 19-14.

INTRODUCTION TO RECOMMENDED ORDER

Executive suspension of an elected public official is an extraordinary constitutional process that requires a careful balancing of the right of the people to elect their officials as guaranteed by Article I, § 1 of the Florida Constitution, against the ability of the Governor to assure that officials faithfully perform their duties of office as required by Article II, Section 5 of the Florida Constitution. In conducting this constitutionally mandated evaluation, the Florida Senate is guided by the Florida Supreme Court's seminal interpretation of the gubernatorial suspension authority as a constitutionally limited power in *State ex rel. Hardie v. Coleman*, 115 Fla. 129, 134, 155 So. 129, 135 (Fla. 1934) (emphasis added):

The power of the Governor to suspend and of the Governor and the Senate to remove is not an arbitrary one. Both are guarded by constitutional limitations which should be strictly followed. It has been charged that this is an unusual power to vest in the Governor and the Senate, and so it is, but the people have lodged it there. The position of Governor and Senator is one vested with great dignity and responsibility and we are not to presume that these places will be filled by the people with

men who do not measure up to the responsibility imposed in them. At any rate the duty imposed should be exercised with great care and caution because, when done, the result is final as no other power is authorized to interfere.

The parties to this proceeding, Governor Ron DeSantis and suspended Broward County Sheriff Scott Israel, were given a full and fair opportunity to investigate the allegations, obtain and examine relevant evidence, and present both evidence and argument to the Special Master at the final hearing on June 18-19, 2019. The Governor's entire case at the final hearing consisted only of twenty-four (24) documentary exhibits. The Governor called no live witnesses and introduced no deposition testimony. Sheriff Israel testified under oath, presented four (4) witnesses at the hearing (including himself), introduced nine (9) deposition transcripts, and offered thirty-five (35) documentary exhibits.

The totality of the evidence does not indicate any failure of significance on the part of Sheriff Israel in the faithful performance of his duties of Sheriff of Broward County. To the contrary, the sum and substance is that Sheriff Israel ably attended to his constitutional, statutory, and common law duties to protect the residents of Broward County and promote the peace against criminal behavior. Because no one, let alone an elected sheriff, can absolutely guarantee that no person will be harmed and no crimes will occur under the sheriff's tenure, the historically vital role of a county's chief law enforcement officer has always been to use good faith and knowledgeable efforts to preserve, protect, and defend the population of the county. The evidence does not indicate that Sheriff Israel departed from that solemn obligation or that he was negligent or incompetent in the performance of those duties assigned to him as Sheriff.

Mass murders are undoubtedly tragic and reprehensible, inflicting untold harm to the victims and our communities. These attacks must be treated with the utmost alarm and attention. Communities, including law enforcement and public officials, need to develop the tools necessary to identify, isolate, deter, and apprehend these perpetrators.

From the extensive evidence presented at the final hearing, it is apparent there is neither a simple nor a one-size-fits-all solution. There are, however, myriad resources that, when consistently and

comprehensively applied, might serve to limit the occurrence and impact of these mass shootings and the resultant tragedies. Some of these tools include but are not limited to effective legislation, community awareness, law enforcement training, Florida-wide mandatory active shooter/killer training and policies, real-time active shooter scenarios, hardening of public facilities most at risk, development of community awareness of the factors that might lead to mass shootings, and effective investigation of tips and leads obtained by law enforcement and other officials. that criminal tragedies.

The evidence adequately proves that Sheriff Israel and the Broward Sheriff's Office during the entire time frame leading to the mass shooting events cited by the Governor and through the time of the suspension consistently and diligently implemented and followed best practices governing the hiring, training, and supervision of law enforcement personnel. The Sheriff's policies, procedures, and trainings concerning active shooter/killer situations and real-time scenarios were at least consistent with prevailing Florida law enforcement standards, and in many respects exceeded those standards. As the elected official ultimately responsible for the operation of the Broward Sheriff's Office, Sheriff Israel's leadership and staffing decisions were consistent with the standards governing Florida law enforcement, including those applicable to urban communities.

The evidence does not support the Governor's assertions that Sheriff Israel "failed to provide appropriate department policies for responding to an active shooter situation, ... failed to adequately and frequently train his deputies to respond to an active shooter situation, and ... failed in his paramount statutory duty to be the conservator of the peace in Broward County." To the contrary, while the unconscionable acts of the two shooters demand criminal prosecution and appropriate judicial sanctions, Sheriff Israel is not responsible for the tragedies through any neglect or incompetence. As such, because the proof does not establish the specific grounds for suspension as cited in Executive Order 19-14 and as amplified in the Governor's Bill of Particulars, it is the conclusion of this Recommended Order that Sheriff Israel be reinstated to office.

PROCEDURAL HISTORY

Scott Israel was elected as the 16th Sheriff of Board County in 2012. Sheriff Israel, re-elected as Sheriff to serve a 4-year-year term in 2016,

served as the Broward Sheriff until his suspension by Governor DeSantis on January 11, 2019, through Executive Order 19-14.

Shortly after taking office, Governor DeSantis issued Executive Order 19-14 on January 11, 2019, immediately suspending Broward County Sheriff Scott Israel for neglect of duty and incompetence in connection with two mass shooting events in Broward County that occurred before the Governor's election: (1) the January 6, 2017 shooting at Fort Lauderdale-Hollywood International Airport that resulted in the deaths of five (5) people (FLL Airport Shooting); and (2) the February 14, 2018 shooting at Marjory Stoneman Douglas High School that resulted in the deaths of seventeen (17) students and staff (MSD Shooting).

As authorized by Article IV, § 7(b) of the Florida Constitution, Sheriff Israel on January 29, 2019, requested Senate review of his suspension. At a Case Management Conference, Sheriff Israel requests a Bill of Particulars of the Governor's suspension order as authorized by Senate Rule 12.9(3). Governor DeSantis furnished a Bill of Particulars and Witness List on February 25, 2019.

Challenging the Governor's authority to order his suspension, Sheriff Israel filed a *Quo Warranto* petition in the Circuit Court of the Seventeenth Judicial Circuit (Broward County) on March 7, 2019. *Sheriff Israel v. Governor Ron DeSantis*, Circuit Case No. CACE 19-005019 (Broward County). On April 4, 2019, after holding a hearing on the *quo warranto* petition, the Circuit Court entered a Final Order of Dismissal and denied relief. The Sheriff sought appellate review to the Fourth District Court of Appeal in Case No. 4D19-0970, which then granted the Governor's request for pass-through jurisdiction to the Florida Supreme Court as a matter of great public importance. On April 23, 2019, after briefing by the parties, the Florida Supreme Court denied relief. *Israel v. DeSantis*, 269 So. 3d 491 (Fla. 2019).

Senate proceedings resumed upon issuance of the Supreme Court mandate on May 16, 2019. The prehearing conference took place on June 5, 2019. In accordance with the prehearing schedule, the parties exchanged witness and exhibit lists, completed pre-hearing depositions, and submitted their bench memoranda. The 2-day final hearing took place on June 18-19, 2019, with the Governor calling no witnesses and Sheriff Israel presenting four (4) witnesses, including himself, and

introducing the deposition transcripts of nine (9) witnesses. The parties' exhibits were also entered into the record. The witnesses testifying at the final hearing were: BSO Colonel Jack Dale (Retired) (Final Hearing 78), BSO Detective John Curcio (Final Hearing 166), former BSO Executive Director Robert Pusins (Final Hearing 199), and Sheriff Israel (Final Hearing 234). The deposition witnesses were: James Polan, Kevin Shults, Edward Grant, Steve Geller, Michael DiMaggio, Jesse Madrigal, James Diefenbacher, Steve Robson, and Steve Kinsey.

The transcript of the final hearing was made available to the parties on July 9, 2019, with the parties thereafter filing their proposed Recommended Orders.

FINDINGS OF FACT

I. The Parties.

1. Governor Ron DeSantis was elected to Office as a Republican in November 2018. He is represented by Deputy General Counsel Nicholas Primrose and John MacIvor.

2. Sheriff Scott Israel is represented by Benedict P. Kuehne and Stuart N. Kaplan. Sheriff Israel was elected as Broward County Sheriff in 2012, was re-elected in 2016, and served until his suspension on January 11, 2019. He was elected to the constitutional office of sheriff as a Democrat and remains registered with the Democratic Party.

II. Background Facts.

A. Sheriff Israel's Law Enforcement History.

3. Sheriff Israel has been a sworn and certified law enforcement officer for forty (40) years (Final Hearing 235-235). His law enforcement career began as a patrol officer for the Fort Lauderdale Police Department in 1979. He retired from the Fort Lauderdale Police Department in 2004 after 25 years of service (Final Hearing 234-235). He served as chief of police for the City of North Bay Village before unsuccessfully running for Broward Sheriff in 2008 (Final Hearing 234-235).

4. He successfully ran for Broward Sheriff in 2012 as a

Democratic Party candidate and was re-elected in 2016 to a 4-year term expiring November 2020 (Final Hearing 235-236). The Broward Sheriff is a constitutional officer elected in a partisan election (Final Hearing 236). In his 2016 election, Sheriff Israel won by the largest margin in Broward County history (Final Hearing 238).

5. Sheriff Israel led the second-largest sheriff's office in the State of Florida (Final Hearing 237). He is a highly visible public servant who has worked since his first day in office to create a safe and protective community (Final Hearing 242).

B. Broward Sheriff's Office Under Sheriff Israel's Leadership.

6. The Broward Sheriff's Office is public safety and law enforcement agency of 5,600 budgeted positions that includes 1,500 law enforcement personnel, 1,300 detention deputies, 700 firefighters, 450 regional communications staff, and 150 child protection investigators, among other employees (Final Hearing 101-103; Kinsey Deposition 14-15). He has recruited and employed a leadership team of experienced senior deputies and administrators and worked closely with his BSO General Counsel on all important policy issues (Final Hearing 247, 250).

7. As Broward Sheriff, Israel was acutely aware of the duties and responsibilities of a county sheriff (Final Hearing 257). He attended a program for all elected sheriffs in Tallahassee (Final Hearing 258) and understood what was meant by the statutory responsibility to be county conservator of the peace (Final Hearing 258). While the Sheriff is ultimately responsible for the operation of the Sheriff's Office, it has never been the role of a sheriff in Florida to prevent crime from occurring (Final Hearing 259-260). Rather, a sheriff should be proactive in assessing and responding to the needs of the community (Final Hearing 260-261).

8. As Sheriff, Israel is ultimately responsible for his agency and staff, including his sworn deputies (Final Hearing 385-387, 402).

9. Immediately upon taking office, Sheriff Israel began taking successful steps to reduce crime and lower recidivism, especially among youths and young adults (Final Hearing 262). The Broward County Annual Uniform Crime Reports during his tenure show a dramatic

reduction in crimes over time and an increase in clearance rates (Final Hearing 264; Israel Exhibit 18, pages 1659-1671). Sheriff Israel created the VIPER Squad that impacted juvenile crime (Final Hearing 262), developed the BAT Team to target burglaries (Final Hearing 265), and increased community outreach (Final Hearing 266).

C. BSO Law Enforcement Accreditations.

10. At all times during his tenure, the BSO was accredited by national and state accreditation programs (Israel Exhibits 11, 12, and 13, pages 377-471). The Broward Sheriff's Office was accredited as a law enforcement agency in accordance with the Commission for Florida Law Enforcement Accreditation ("CFA"), the premier state law enforcement accreditation program in the United States (Israel Exhibit 13, page 513). The Broward Sheriff's Office was certified by the Commission on Accreditation for Law Enforcement Agencies ("CALEA), representing the "gold standard" in public safety, for its law enforcement, communications, and detention policies (Final Hearing 86-89; Israel Exhibit 12, page 378). This CALEA national certification is known as the "triple crown" among law enforcement agencies, with the BSO having attained Excelsior Status (Final Hearing 87). BSO has 18 separate accreditations in Sheriff Israel's tenure (Israel Exhibit 11, page 377).

11. BSO was also certified as a Florida Department of Law Enforcement Certified Training Center for police academy training (Final Hearing 86-89; Israel Exhibit 32).

12. With Sheriff Israel's guidance, BSO implemented national NIMS standards for organizational efficiency and training, requiring every BSO employee, law enforcement and civilian, to undergo NIMS certification (Final Hearing 379-380; Israel Exhibits 21 & 22, pages 1683-1922).

13. The BSO was recognized by the International Association of Chiefs of Police (IACP) with its 2014 Leadership in Human and Civil Rights Award for its progressive and effective policies in police-community relations (Israel Exhibit 20, page 1674-1682).

14. Only after Sheriff Israel's suspension, under the tenure of Governor DeSantis' appointed Sheriff Tony, was the BSO CFLEA certification revoked in May 2019, with Sheriff Tony not even appearing

at the hearing conducted by the Commission on Florida Law Enforcement. Then-suspended Sheriff Israel was not even invited to the hearing since the accreditation issue no longer involved his tenure.

D. Municipal and Agency Contracting for Law Enforcement and Fire Services.

15. In addition to his statutory and commonly understood responsibility as Broward County's chief law enforcement officer, the Broward Sheriff's Office under Sheriff Israel entered into or continued existing operational contract agreements by which municipalities and governmental entities within Broward County contract with the BSO to effect municipal law enforcement (Final Hearing 269-273; Israel Exhibits 14, 16, and 17, pages 513-1658). Among the contracting entities was the Broward County Airport and Seaport (Final Hearing 271). That contract was negotiated with the Broward County Administrator. At no time during the contract period, including at the time of the FLL Airport Shooting in 2017, did the number of assigned police personnel at the airport decrease (Final Hearing 273).

16. In each instance of municipal or local government contracting for law enforcement services, the staffing allocation pursuant to the contract is determined by the contracting agency, not BSO.

E. BSO Active Shooter Policies and Training.

17. One of Sheriff Israel's first initiatives when elected Sheriff was to develop and implement "active shooter training" policies and practices for the BSO deputies and the community, even though such policies and training were not required by the Florida Criminal Justice Standards and Training Commission ("CJSTC") (Final Hearing 388).

18. One of Sheriff Israel's first command appointments was the assignment of Lt. Colonel DiMaggio as SWAT Commander (Final Hearing 337).

19. Through extensive coordination with other law enforcement agencies and the Broward County Schools, BSO conducted a full-scale active shooter training program exercise at Pompano Beach High School (Final Hearing 337; Kinsey Deposition 55). This May 2013 program was

considered a template for police trainers nationwide, evaluating the multi-disciplinary multi-team, coordinated response to a group of gunmen entering the school (Final Hearing 339; Israel Exhibit 29, page 2139). The exercise involved multiple law enforcement agencies, the Broward County Schools, K-9 units, Swat Teams, helicopters, and as many as 300 student volunteers (Final Hearing 337), all coordinated by Captain Grant and Lt. Colonel DiMaggio (Final Hearing 338).

20. Even though the State of Florida did not require active shooter training (Final Hearing 293, 359), BSO planned and conducted many full-scale drills, including a full-scale joint active shooter/terrorist training at the Fort Lauderdale Airport and Seaport known as Operation Vigilant Port in coordination with the Broward County Aviation Division and involving numerous federal and local law enforcement agencies (Final Hearing 292-294).

21. Prior to the February 14, 2018 MSD shooting, BSO conducted active shooter training for all its deputies in 2015 and 2016, and was continually involved in staggered training for its deputies, monthly training for specialty units, including conducting classes on building tactics, handgun and rifle training, combat lifesaver programs, rescue task force exercises, and tabletop applications for active shooter scenarios that add to active shooter response capabilities (Kinsey Deposition 15-17).

22. BSO's Active Shooter policy, training, and practices were developed after considerable study of prevailing practices and an examination of national best practices and policies, including those authored by the International Association of Chiefs of Police Law Enforcement Policy Center Active Shooter/Killer Model Policy (Israel Exhibits 7 & 8, pages 142-165). BSO command staff and BSO General Counsel were involved in the development of BSO Active Shooter Policy 4.37 (Final Hearing 97-100). Robert Pusins, a national expert on police practices and policies (Final Hearing 199-200, 354) was a significant participant in the policy development (Final Hearing 204-210, 354).

23. BSO followed the national standard of mandating active shooter/killer training once every three years for all sworn law enforcement officers (Final Hearing 398). This was implemented despite FDLE having no standards for active shooter training (Kinsey Deposition 9-10). The BSO training was at least as comprehensive as local and

national standards (Kinsey Deposition 17-18).

24. The BSO Active Shooter Policy in effect at the time of the Marjory Stoneman Douglas High School mass shooting was consistent with model active shooter policies throughout the nation (Final Hearing 356, 547-549, 552). Even though Florida neither required any active shooter policies or training nor provided any guidelines for implementation of active shooter protocols (Final Hearing 359), the BSO policy was consistent with nearly every existing active shooter policy then implemented by law enforcement agencies in Florida, as documented by Capt. Diefenbacher's comprehensive study (Final Hearing 212-216, 219-221, 363; Israel Exhibit 30, page 2142-2848; Diefenbacher Deposition 22-34). The BSO policy was similar to the policy utilized by MSD Commission Chair Sheriff Gualtieri in Pinellas County (Final Hearing 536).

25. BSO Active Shooter Policy 4.37, using "may" as the operative consideration when devising a law enforcement response to an active shooter, stated: "if real time intelligence exists, the sole deputy or team of deputies may enter the area and/or structure to preserve life." Consistent with the BSO training on the policy, BSO deputies were trained and drilled to aggressively confront an active shooter in every likely scenario (Final Hearing 361-364; Grant Deposition 13-19, 29-32).

26. The BSO Active Shooter Policy was consistent with national standards, had not been criticized previously by the Florida Department of Law Enforcement, and did not materially differ from policies utilized by other Florida law enforcement agencies (Final Hearing 356-357). Its implementation by BSO was carefully evaluated and vetted, was subjected to intense scrutiny, was compared with active shooter policies existing within the State of Florida and throughout the United States and was made available to the Florida Department of Law Enforcement (Final Hearing 354-357).

27. The BSO active shooter policy was not and had never been considered a limitation on law enforcement entry into an active shooting or hostage situation (Final Hearing 504; Kinsey Deposition 33-34; DiMaggio Deposition 45-50).

28. BSO Major Kevin Shults oversaw training (Kinsey Deposition

10). As a part of its active shooter training program, BSO implemented and conducted “training for trainers” programs for the Broward County School Board consistently through calendar year 2018. School Resource Officer Scot Peterson was one of the trainers for the program. This project included a joint program with the Broward County Police Chiefs’ Association to design and implement a multi-jurisdictional cadre of instructors teaching Broward County Schools’ personnel how to respond to an active shooter incident. BSO coordinated the creation of this Broward County Schools program, scheduling instructors to participate in the training, and providing the necessary expertise and resources to assure the success of the still-ongoing program as of the time of the Sheriff’s suspension.

29. BSO regularly participated in joint training exercises with other law enforcement agencies, including federal law enforcement (Kinsey Deposition 14; DiMaggio Deposition 12-13, 21)

III. Fort Lauderdale-Hollywood Airport Shooting (January 6, 2017).

A. The FLL Airport Shooting Events.

30. On January 6, 2017, a lone gunman who disembarked from a plane arriving at the Fort Lauderdale-Hollywood Airport retrieved an automatic weapon from his checked baggage and opened fire in the airport passenger terminal (Final Hearing 440). This FLL Airport Shooting resulted in the mass murders of five travelers.

31. The presence of BSO deputies on the scene at the FLL Airport Shooting resulted in the near-immediate apprehension of the shooter within less than 80 seconds of the first shots being fired (Final Hearing 433). Broward Deputy Sheriff Jesus Madrigal, assigned to the Delta Checkpoint in Terminal 2, immediately responded to the sound of the gunshots while on duty, and took the shooter into custody, preventing further tragedy (Madrigal Deposition *passim*). Acting on his training, Deputy Madrigal’s prompt response led to his and responding law enforcement officers being in positions to help victims obtain medical attention quickly and save more lives. Deputy Madrigal was recognized as a hero and awarded the 2018 Deputy of the Year Award by the Florida Sheriffs Association (Final Hearing 289-290; Israel Exhibit 33, page 2875). Deputy Madrigal was even honored by Governor DeSantis for his

heroic actions at the FLL Airport Shooting (Final Hearing 290).

32. Within one hour of the shooting, the FBI became the primary law enforcement agency controlling the airport, with BSO working in close collaboration (Final Hearing 110-111, 298; Kinsey Deposition 18-21). The FBI had obtained information that the shooting might have been part of terrorist activity and arranged with BSO to secure a total shut-down of the airport with the approval of the Federal Aviation Administration and Broward County Aviation Division (Final Hearing 298-299, 325, 446). An airport shut-down and evacuation of this magnitude had never taken place, not even during the Los Angeles Airport shooting some years before. A mass evacuation of 20,000 airport travelers and civilians had never occurred (Final Hearing 333) yet was handled responsibly by BSO and the other law enforcement agencies at the scene without incident (Final Hearing 117-120, 160; Kinsey Deposition 24-25).

33. BSO coordinated 17-18 SWAT Teams from numerous law enforcement agencies (Final Hearing 298; Kinsey Deposition 22-23), leading to an airport-wide investigation of possible other gunmen. With the presence of so many federal and local law enforcement agencies responding to the Airport Shooting, the resulting chaos and rumors required an evacuation to prevent the possibility of a multi-faceted terror attack (Final Hearing 297).

34. A post-incident investigation of the shooting led to the publication of an official post-event report confirming that BSO worked seamlessly with all agencies that responded to the incident (EOG-00222). The investigation confirmed that the shooter planned his homicidal rampage by retrieving the gun he had sent through his checked baggage (a Walther 9mm pistol he had legally purchased), loaded the weapon in the men's room, and proceeded to randomly shoot people in the baggage claim area. The shooter was convicted of federal criminal charges and sentenced to five life terms plus 120 years.

35. The final, as published, version of the Fort Lauderdale-Hollywood Airport Critical Incident Report (October 6, 2017), found no negligence, incompetence, or neglect of duty on the part of Sheriff Israel or the BSO (EOG-00222). It did, however, criticize Broward County's emergency radio communications systems that is operated and controlled

by Broward County. Sheriff Israel and the BSO had for years pressed the County to upgrade and enhance its regional emergency communications system. BSO is one of many users of the County's regional communications system, but has no control over its operation, implementation, or effectiveness.

B. After-Action and Critical Incident Reports.

36. Following the FLL Airport Shooting, the BSO conducted an incident review known as an "After Action Report." This is a standard post-event process designed to study and learn from a significant event (Final Hearing 281). Typically, incident reviews involve a detailed and time-intensive effort to identify relevant facts, examine responses, and make recommendations (Final Hearing 321-322). Every mass attack throughout the United States and worldwide is regularly evaluated and studied by law enforcement and government agencies in order to identify better and more effective ways to respond to future incidents (Final Hearing 322). BSO is no different in studying these significant incidents (Final Hearing 321-322).

37. Quite often, the review and reporting in the aftermath of a significant event undergo a comprehensive review process resulting in several non-final drafts until the final report is prepared and approved (Final Hearing 274-278). That was the case with the FLL Airport Shooting, resulting in the issuance of a final Critical Incident Report on October 6, 2017 (EOG-00222). The earlier drafts are preliminary in nature and not intended for public dissemination (Final Hearing 274-275; EOG-00004-00221).

38. In the case of the FLL Airport Shooting, the initial draft was assigned by Under-Sheriff Kinsey to Major Cedeno with instructions to gather all relevant information before being vetted by subject matter experts and consultations were held with other agencies, including the Broward County Administrator, the FBI, and other federal law enforcement agencies (Final Hearing 279-280, 447). Deputy Cedeno's first draft satisfied its intended purpose (Final Hearing 454), but was replete with factual inaccuracies, erroneous assumptions, and unsupported conclusions (Final Hearing 300-301, 306, 319, 583; Kinsey Deposition 43-44), and had not been reviewed or vetted by the command staff.

39. Capt. Diefenbacher was assigned to the second step of the review process (Final Hearing 275, 460-461) and authored a second draft report (EOG-00123). (Final Hearing 275; Diefenbacher Deposition 8-10).

40. BSO Under-Sheriff Kinsey was responsible for and issued the final Critical Incident Report (Final Hearing 126-127, 276; EOG-00222; Kinsey Deposition 40-43). As published in its final and approved version, the Critical Incident Report was accurate and compliant with prevailing standard for an after-action report (Final Hearing 276-277). The report was not sanitized or selectively written; it was approved by BSO Command Staff and Sheriff Israel, who did not interfere in the preparation of the initial drafts or the final product (Final Hearing 126-127, 277-278, 462-463). Lt. Colonel Grant, who provided valuable SWAT input for the final report, considered the as-published version to be accurate (Grant Deposition 41-42).

41. The final Critical Incident Report was widely distributed (Final Hearing 329) and used as a national model for responding to active shooter threats (Final Hearing 329). Sheriff Israel and other members of his command staff, including Col. Jack Dale, were asked to make presentations to national law enforcement and training organizations since the BSO/FBI response to the FLL Airport Shooting was considered a model for study and implementation (Final Hearing 121-125). At no time and by no one was the FLL Airport Shooting response considered inadequate, negligent, or incompetent (Final Hearing 125). Law enforcement and national security agencies were astounded by BSO's professional response to the airport incident (Final Hearing 122).

IV. Marjory Stoneman Douglas High School Shooting (February 14, 2018).

A. School Resource Officers.

42. According to the BSO contract with Broward County Schools, BSO is responsible for staffing School Resource Officer (SRO) positions at various schools, with input from the Broward Schools Superintendent (Final Hearing 287-288). An SRO is an important law enforcement position requiring unique skills and involving specialized training (Final Hearing 282-285, 341-342). Ultimately, Broward County Schools are responsible for approving SROs assigned to the schools (Final Hearing

342-343).

43. SROs receive annual trainings during the school summer recess (Final Hearing 398).

44. BSO Deputy Scot Peterson was the School Resource Officer assigned to the Marjory Stoneman Douglas High School (Final Hearing 128). Although it is now known that Deputy Peterson failed to adhere to his training and policies in confronting the MSD High School murderer, there was nothing in his training, experience, or practice that provided any indication that he would not respond as required in an emergency (Final Hearing 128-130, 348-349). Peterson had been recognized as School Resource Officer of the Year (Kinsey Deposition 51). He had been trained on active shooter scenarios (Kinsey Deposition 51-52).

45. Nothing in Deputy Peterson's extensive BSO record offered any advance warning of his incapacity (Final Hearing 228-229, 352; Israel Exhibit 26, page 1937). Peterson had extensive active shooter course participation (Final Hearing 349), and even participated in training programs for Broward Schools personnel (Final Hearing 350-351, 511-512; Israel Exhibit 31, page 2849-2871).

46. In his television interview (Israel Exhibit 27, page 2934-2944), Peterson admitted he knew he was supposed to confront the active shooter but did not know why he failed to act.

B. MSD High School Shooting Incident.

47. The February 14, 2018 mass shooting at Marjory Stoneman Douglas High School in Parkland, Florida is an extreme tragedy. But it was not a preventable mass terror attack given the intention of the mass murderer to commit acts of terrorism on the suburban high school campus.

48. At the final hearing, Sheriff Israel expressed his grief for the senselessly murdered children, teachers, and staff. He took full responsibility for the response of the BSO to that senseless shooting and implemented many post-event improvements and systems in response thereto during his time as Sheriff.

49. At the scene, BSO set up and coordinated a command post and

communicated with the other responding law enforcement agencies (Kinsey Deposition 47-49; Grant Deposition 50-51). The MSD property was a 47-acre campus (Grant Deposition 52).

50. BSO Detective John Curcio, the lead investigator for the prosecution of the MSD School shooter (Final Hearing 171-173), knows more about the MSD High School Shooting than any other person, having been responsible for the entire criminal case against the shooter (Final Hearing 182). Det. Curcio reviewed every investigative report, sworn statement, evidence, recordings, and communications (Final Hearing 185-188). He was never asked to brief Governor DeSantis or his staff about the case (Final Hearing 183).

51. Neither Sheriff Israel nor the BSO were responsible for the mass shooting. The facts do not permit a finding that Sheriff Israel was guilty of neglect of duty or incompetence in connection with that tragedy.

52. As the Marjory Stoneman Douglas High School Public Safety Commission Report (January 2, 2019) (“MSD Report”) detailed, the shooting was planned and executed by a former student who was in lawful possession of the deadly weapons he used to exact his revenge on the school for unknown reasons that he can only be attributed to the workings of his diabolically twisted mind. The shooter acted out a terrorist plot designed to take the lives of innocent students and school personnel. The bipartisan MSD Commission found no incompetence or neglect of duty on the part of Sheriff Israel and offered a constructive critique of what went wrong that day and in the many months preceding the shooter’s deadly assault, including the failure of on-site Deputy Scott Peterson to enter the school to locate and confront the shooter (EOG-00252-00709).

53. According to Det. Curcio, the BSO Active Shooter Policy did not alter the way BSO deputies were trained to respond to an active shooter situation (Final Hearing 188-189; Kinsey Deposition 50-52). Deputy Peterson knew what he was trained to do but failed to comply with his training to confront the shooter (Final Hearing 193).

54. MSD Commission Chair Sheriff Bob Gualtieri, the elected Sheriff of Pinellas County and a licensed lawyer in good standing with The Florida Bar, stated publicly that he saw no basis for Sheriff Israel’s

suspension from office as a result of the Marjorie Stoneman Douglas shooting. In an interview with journalist Tony Pipitone, MSD Commission Chair Gualtieri confirmed that nothing in the MSD Commission report constituted grounds for the removal of Sheriff Israel from office by the Governor. <https://www.nbcmiami.com/news/local/MSD-Commission-Chair-Would-Not-Recommend-Removal-of-BSO-Sheriff-From-Office-502532751.html> (December 11, 2018) (Israel Exhibit 34, page 2883).

55. The BSO deputies who were found to have violated policies in connection with the shooting and the interactions with the shooter were appropriately disciplined for their misconduct (Final Hearing 482). Internal investigations were initiated but were deferred at the request of the FDLE (Final Hearing 183, 482-484). When evaluated, it was determined that none of the prior BSO interactions with the MSD shooter would have resulted in an arrest or the removal of his access to firearms (Final Report 191-193, 487-488).

C. Deputy Peterson Arrested Following Extensive FDLE Investigation.

56. Shortly before the commencement of the final hearing in this matter, former BSO Deputy Scot Peterson was arrested on Tuesday, June 4, 2019 (Israel Exhibit 37, page 2891). Peterson's arrest on eleven (11) charges was the culmination of a fourteen (14) month investigation by the Florida Department of Law Enforcement, an Executive Branch agency.

57. The shooter has been under arrest since the day of his murderous crime spree and is facing the death penalty if convicted of the murders. the assailant, who is himself charged with seventeen counts of premeditated murder.

58. According to the Arrest Warrant executed by FDLE Inspector Keith B. Riddick on June 3, 2019, "Florida Governor Rick Scott directed the Florida Department of Law Enforcement (FDLE) Office of Executive Investigations to conduct an investigation into the law enforcement response to the incident." In the ensuing fourteen (14) months, the FDLE conducted an exhaustive investigation that included law enforcement interviews with 184 witnesses, an evaluation of more than 200 investigative reports, and a review of hours of surveillance video. In

announcing Peterson's arrest, FDLE Commissioner Rick Swearingen summarized the investigation with this statement: "There can be no excuse for his complete inaction and no question that his inaction cost lives." (Israel Exhibit 37).

59. Included in the FDLE arrest affidavit were summaries of Peterson's extensive law enforcement training that encompassed a review of Peterson's participation in "Active Shooter" exercises and functioning as "an instructor for the Broward Public Schools 'Active Killer' course." The Arrest Affidavit includes this statement concerning Peterson in summarizing the "Probable Cause" for F.S. 784.05(1):

As a member of the Broward County Sheriff's Office Deputy Peterson had received many hours of training in the proper response to an active shooter situation, and furthermore had received additional training, as a School Resource Officer, in the proper response to an active shooter situation in a school setting, both trainings which stressed the importance of the immediate engagement of an active shooter. Deputy Peterson had also received training in the necessity of and methods in promptly responding to and rendering aid to those persons injured in a mass casualty incident.

60. The FDLE Affidavit is consistent with the evidence at the final hearing that BSO deputies were fully aware of and trained on the proper law enforcement response to an active shooter.

61. That the FDLE found probable cause to believe Scot Peterson engaged in criminal activity despite his extensive training in safeguarding lives in response to the actions of an active killer is significant in finding as a matter of fact that the BSO Active Shooter Policy and training were consistent with model practices and standards.

62. The FDLE Affidavit directly contradicts the findings of the MSD Commission Report that Deputy Peterson's training was "inconsistent."

D. MSD High School Shooting Used as Campaign Issue for Candidate DeSantis.

63. Both the FLL Airport Shooting and MSD High School Shooting occurred during Sheriff Israel's tenure, during the gubernatorial administration of Governor Rick Scott (Final Hearing 253). Sheriff Israel discussed the shootings with Governor Scott, who commissioned the Marjory Stoneman Douglas High School Public Safety Commission to investigate the tragedy (Final Hearing 254; EOG 00252). Governor Scott also tasked the Florida Department of Law Enforcement to conduct its own independent investigation of the MSD High School Shooting, asking the Broward Sheriff's Office to defer to the FDLE investigation (Final Hearing 254). Sheriff Israel agreed and fully cooperated with both inquiries (Final Hearing 254, 482).

64. Governor Scott assured Sheriff Israel that no action would be taken, or recommendations made until completion of the FDLE investigation and he MSD Commission inquiry and confirmed that Sheriff Israel would have ample opportunity to confer before making any decisions (Final Hearing 255). The MSD Commission submitted its Initial Report to Governor Scott on January 2, 2019 (EOG-00252). The Report did not find that Sheriff Israel was negligent or incompetent in connection with either the mass shooting or the law enforcement response and did not recommend Sheriff Israel's suspension (EOG-00252-00722).

65. The FDLE investigation concluded in June 2019, shortly before the final hearing in this matter (Israel Exhibit 37, pages 2891-2930). The FDLE recommended that criminal charges be brought against former BSO Deputy Scott Peterson for his dereliction of duty in responding to the MSD High School Shooting (Israel Exhibit 37).

66. But well before issuance of the MSD Commission Initial Report and the FDLE investigative report, the tragic mass shootings became a campaign issue for then-candidate Ron DeSantis, who repeatedly committed during the campaign to suspend Sheriff Israel if elected (Final Hearing 250). Candidate DeSantis' political stance resulted in the MSD High School Shooting becoming a politically charged issue (Final Hearing 253). Candidate DeSantis never attempted to confer with Sheriff Israel about either shooting, and neither he nor his campaign staff sought to discuss law enforcement training, policies, or tactics in the aftermath of the incidents (Final Hearing 250). Even as Governor-Elect, DeSantis did not reach out to Sheriff Israel in any manner or on any topic (Final Hearing 256). Governor-Elect DeSantis

unsuccessfully urged Governor Scott to suspend Sheriff Israel before leaving office (Final Hearing 257).

67. In the aftermath of the MSD High School Shooting, as Sheriff Israel attended many community events and assured the community that efforts were being taken to protect the public from danger, Sheriff Israel took a strong, public position on gun safety and limiting access to weapons of war. This led to Sheriff Israel being attacked by the National Association (NRA) for his public stance, and warnings from the NRA that it would seek his suspension (Final Hearing 377-79).

68. Sheriff Israel maintained a visible public presence following the shooting, intending to boost BSO moral and encourage the community to work with law enforcement in bringing about needed reforms to the gun laws (Final Hearing 382-382, 583-584). At trial, however, Sheriff Israel apologized for the tone and tenor of his CNN interview (Final Hearing 382-383) as having been too dismissive of the criticism of the law enforcement response to the MSD High School Shooting.

E. Post-MSD Shooting Events.

69. When BSO Active Shooter Policy 4.37 came under criticism for its inclusion of the word “may” instead of “shall,” MSD Public Safety Commission Chair Sheriff Bob Gualtieri asked Sheriff Israel to change the policy back to “shall.” (Final Hearing 409). Upon conferring with his command staff and General Counsel, Sheriff Israel replaced “may” with “shall,” although the policy and its training remained the same: deputies are to confront the active shooter (Final Hearing 406-410). Active shooter training had always focused on moving toward the shooter to neutralize, arrest, or obtain the surrender of the perpetrator (Final Hearing 431).

70. MSD Commission Chair Gualtieri deemed the actions involved in the MSD Shooting were not indicative of improper conduct, malfeasance, or misfeasance on the part of Sheriff Israel, and constituted no grounds for removal from office (Final Hearing 532-533, 535).

71. Sheriff Israel implemented a host of new practices, policies, and programs based on the lessons learned from both the FLL Airport Shooting and the MSD High School Shooting. These included the

SaferWatch smartphone app (Final Hearing 142; Israel Exhibit 25, page 2931-2933; Kinsey Deposition 60) and access to school surveillance cameras in real time through the Real-Time Intelligence Center (Final Hearing 585; Kinsey Deposition 58-59; DiMaggio Deposition 52-53). BSO “ramped up” training for its deputies (Kinsey Deposition 57-58).

72. BSO had in place a number of programs and practices at the time of the MSD School Shooting, including but not limited to:

- a. Training strategy and facilities pertaining to tactics and firearms.
- b. BSO as an FDLE state certified training center.
- c. Active shooter and rescue task force training.
- d. Mandatory training of skills related to active shooter incidents for sworn personnel.
- e. Mandatory use of force and defensive tactics training.
- f. Incident command training.
- g. School Resource Officer Training.
- h. SWAT training as it relates to active shooter.
- i. QRF (Quick Response Force) supplemental training as it relates to active shooter.
- j. Systemwide training on active shooter/killer.
- k. Joint active killer training program with Broward County Schools.
- l. Southeast Regional Domestic Security Task Force participation and exercises.

73. Following the MSD School Shooting Tragedy, BSO implemented several enhancements and improvements, including but not limited to:

- a. Assignment of the School Resource Officer program to a new command.
- b. Enhanced active shooter training to all permanently assigned School Resource Deputies.
- c. Delivery of mandatory active killer training to all sworn personnel.
- d. Guardian training program.
- e. SaferWatch App and Fortify Florida tip programs for school crime reporting.
- f. Threat assessment procedures and use of Risk

Protection Orders.

- g. Creation of a Real Time Crime Center with access to school cameras.
- h. BSO review committee for MSD Commission Report.
- i. Internal Affairs Investigation of deputies receiving information concerning MSD shooter.
- j. Internal Affairs Investigation of BSO personnel during MSD response.

CONCLUSIONS OF LAW

I. Burden of Proof.

74. The Governor conceded at the final hearing that the burden of proof in a Senate suspension review is “by a preponderance of the evidence ... that Scott Israel neglected his duties and was incompetent.” (Final Hearing 17).

II. Allegations for Suspension Not Substantiated.

75. Executive Order of Suspension 19-14 cited “neglect of duty and incompetence” on the part of Sheriff Israel arising from the Fort Lauderdale-Hollywood Airport shooting and the Marjory Stoneman Douglas High School shooting as the only constitutional grounds for suspension.

76. Article IV, section 7(a) of the Constitution provides that the Governor “may suspend from office ... any county officer, for malfeasance, misfeasance, neglect of duty, drunkenness, incompetence, permanent inability to perform official duties, or commission of a felony.”

77. When the Governor suspends a public official, the Florida Senate has the exclusive role of determining whether to remove or reinstate that suspended official. Art. IV, § 7(b), Fla. Const.

78. Senate review is therefore limited to the two grounds set out in the Executive Order of suspension: neglect of duty and incompetence in connection with the 2017 and 2018 shootings.

79. Because the evidence does not prove that Sheriff Israel failed

to “faithfully perform the duties” of Broward County Sheriff as required by Article II, § 5 of the Florida Constitution, his removal from office is not constitutionally permissible.

80. As constrained by the Florida Supreme Court, an elected official’s “neglect of duty” is subject to an exacting standard: as the term is used in Article IV, section 7(a), neglect of duty encompasses only “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. *See Israel v. Desantis*, 269 So. 3d 491, 496 (Fla. 2019), quoting *State ex rel. Hardie v. Coleman*, 155 So. 129, 132 (1934).

81. A different standard applies to the allegation of incompetency, defined as “any physical, moral, or intellectual quality, the lack of which incapacitates one to perform the duties of his office’ and ‘may arise from gross ignorance of official duties or gross carelessness in the discharge of them ... [or] from lack of judgment and discretion.” *Id.*

82. Testing the evidence against these constitutional standards, there is no doubt that Sheriff Israel faithfully carried out the statutory and expected duties imposed upon him, has done so in a competent manner, and maintains the full capacity to continue to competently fulfill his responsibilities as Broward Sheriff. But instead of relying on evidence, the Governor’s case proceeds with speculation, finger-pointing, and after-the-fact criticism, despite the abundant evidence that Sheriff Israel acted to protect the lives, safety, and property of Broward County residents by putting in place effective processes, policies, and personnel to keep the peace. That Sheriff Israel is neither perfect nor omnipotent does not establish proof of any constitutional negligence or incompetence.

83. Utilizing only draft reports in place of objective evidence, the Governor contends that Sheriff Israel and the Broward Sheriff’s Office were not prepared to properly respond to the mass shootings perpetrated by two criminal perpetrators intent on maximizing casualties. These tragedies, unfortunately, have become all too commonplace in our society, requiring law enforcement leaders like Sheriff Israel and his command staff to be proactive in their efforts to learn from past events and develop policies and trainings that will better protect the communities they serve.

84. Notwithstanding the universal law enforcement recognition that the BSO response to the FLL Airport Shooting was a model of law

enforcement response to an unprecedented and never-before encountered situation, the Governor attempts to cast blame for the heroic police apprehension of the military-trained shooter within 80 seconds of first firing. The combined BSO/FBI response to this shooting prevented even more senseless deaths, even though the five innocent civilians who perished by gunfire are never seen by the law enforcement community as acceptable losses. Following that mass attack, the BSO handling of the situation, including the first-ever total airport shutdown, was taught to other law enforcement and national security professionals as a how-to response lesson. That is not the stuff of negligence or incompetent administration and leadership. Quite the opposite.

85. The evidence shows convincingly that the two “draft” After Action Reports wielded by the Governor as the only “proof” of a botched law enforcement response is no evidence at all. The drafts represent neither supported findings or valid conclusions, but are merely developments *en route* to a fully investigated, analyzed, and vetted work product. The drafts are merely the rough and untested preparatory work of two officers assigned to conduct preliminary information gathering.

86. The Governor presented no testimony Major Cedeno, who compiled the first draft that was replete with inaccuracies, misinformation, and unsupported conclusions. The Governor presented no evidence rebutting the conclusive showing that the first draft was unreliable and did not even attempt to call the author to present any relevant or material evidence.

87. Captain Diefenbacher, who drafted the second preliminary report, testified by deposition as the Sheriff’s witness. Capt. Diefenbacher recognized that major Cedeno’s initial draft was “emotional and non-pragmatic” (Diefenbacher Deposition 7-8). Captain Diefenbacher’s role was to “structure it more like other agencies had structured their AARs” (Diefenbacher Deposition 8). Captain Diefenbacher always understood and intended that his work product “was intended to be a draft so that the command could examine the facts in a different format than what Major Cedeno had presented.” (Diefenbacher Deposition 9-10).

88. Capt. Diefenbacher explained that this was his first ever “major AAR” and understood his review to be at “the very lowest” level,

with his effort subjected to increasing scrutiny by others with more knowledge and input (Diefenbacher Deposition 10-12).

89. BSO's training for active shooter/killer scenarios was both cutting edge and far ahead of anything else offered in the State of Florida. Sheriff Israel and his command staff developed large-scale and joint operation training exercises at a variety of public facilities, including the first-ever full-scale drill at a public school, an active shooter/terrorist exercise at the airport/seaport, and numerous other venues, all designed to train law enforcement to be ready for the unexpected. That is precisely what a law enforcement leader is expected to do to protect the public. As established by the entirety of the evidence, BSO studied past incidents, developed training based on known conditions, and considered the "what if" and never contemplated situations.

90. Recent mass shooting events have underscored that law enforcement must be ready for the unexpected.

- a. The August 3, 2019 Walmart shooting in El Paso, Texas was the first mass shooting in a Walmart in the United States, resulting in 22 deaths and 27 injuries.
- b. The May 31, 2019, Municipal Complex Shooting in Virginia Beach, VA was the first mass shooting in a Municipal Complex in the United States, with 12 civilians killed and 5 persons injured.
- c. On October 27, 2018, a terrorist attack at the Tree of Life Synagogue in Pittsburgh, PA was the first mass shooting in a Jewish Temple in the United States, with 11 fatalities and 6 people injured.
- d. On October 1, 2017, the Route 91 Harvest Festival shooting in Las Vegas was the first mass shooting at a concert venue in the United States, causing 58 deaths and 851 persons injured.
- e. Closer to home, the June 16, 2017, Pulse Night Club shooting in Orlando, Florida was the first mass shooting in a LGBT Club in the United States, with 49 fatal casualties and 53 injuries.

91. Even the Governor’s statement that the MSD Shooting was “one of the deadliest school massacres in the United States” citing to EOG-00277, misses the mark and is contrary to the record and the publicly available information. While the MSD tragedy cannot be compared to any other, the more than 30 documented school shootings in the United States resulted in 117 student and faculty deaths and 275 students/faculty injuries. These are just some of the horrific school tragedies that BSO studied and incorporated into its active shooter/killer trainings:

- a. May 18, 2018 - Santa Fe High School - Ten people – eight students and two teachers – were fatally shot, and thirteen others were wounded. The suspected shooter was taken into custody and later identified by police as a 17-year-old student.
- b. January 23, 2018 – Marshall County High School - 15-year-old student killed two students and wounded 18 others; he was ultimately taken into custody.
- c. December 7, 2017 - Aztec High School Shooting in New Mexico – The shooter, 21-year-old former student at the school, killed two students, went inside the classroom where students had barricaded themselves in a small office and then committed suicide.
- d. October 1, 2015 - Umpqua Community College – a 26-year-old student who was enrolled at the school fatally shot an assistant professor and eight students in a classroom. Eight others were injured. He committed suicide.
- e. April 6, 2007 – Virginia Tech – a university student shot and killed 32 people and wounded 17 others with two semi-automatic pistols. He committed suicide.

92. Sheriff Israel and the BSO studied and learned from each of these, and other, tragedies, incorporating lessons learned into the BSO training, protocols, and policies. That is the mark of an observant, skilled,

and competent law enforcement leader. The evidence is far from indicative of neglect of duty or incompetence.

93. It is far too easy for an executive to criticize others for underperformance when the executive has neither the background nor experience to grade the work of law enforcement leaders. In our system of elective governance, however, it is for the people – the voters – to test the competency of elected officials. The Senate, in the absence of compelling evidence of any neglect or incompetence, should validate the authority our Florida Constitution in placing ultimate political authority in the people. Art. I, §1, Fla. Const. The same public has the power and authority to elect their sheriff, a constitutional officer. Art. VIII, §1(d), Fla. Const.

94. The Senate, with its many specialty committees and members, is acutely aware of the myriad factors that make for the “faithful execution of the law” by public officials. Subjecting elected officials to standards never seen and never before observed represents an arbitrary and capricious exercise of political prerogative. The evidence presented here does not permit political retribution and campaign promises to satisfy the constitutional standard of neglect of duty and incompetence.

95. Sheriff Israel met his statutory duties prescribed in §§ 30.07 and 30.15, Florida Statutes (2018). The Sheriff’s Active Shooter Policy was consistent with Florida and national standards. The training on the policy met the rigorous protocols demanded of law enforcement agencies. Deputy Peterson’s abandonment of his more-than-adequate training has been alleged by the FDLE to be a criminal act for which Sheriff Israel cannot be held liable as neglectful or incompetent conduct.

96. The extreme reach of the Governor’s suspension represents a perilous step for our system of checks and balances, resulting in elected officials becoming subservient to the vagaries of executive action and wholly unrealistic expectations. But for the Senate’s adherence to the limitations of the Florida Constitution when assessing the actions of elected officials, every police leader and government official is in peril for failing to prevent criminals and terrorists from causing mass destruction, a standard that has not been imposed on any elected sheriff or official in Florida’s history. Imposing such sweeping responsibility upon elected sheriffs for the conduct of deviant, malicious criminal perpetrators is

unfounded in law, policy, or custom, and establishes a frightening precedent. Because the evidence does not prove by a preponderance that Sheriff Israel neglected his duties or was incompetent as set out in the Executive Order of Suspension, the Special Master should reject the suspension and recommend that Sheriff Israel be restored to his elective office.

REQUEST FOR ATTORNEY'S FEES AND COSTS

97. Pursuant to § 112.44, Sheriff Israel asks for the assessment of reasonable costs and fees incurred during his opposition to the executive suspension.

CONCLUSION

98. The evidence show unerringly that Sheriff Israel fulfilled his constitutional, statutory, and common law duties and responsibilities in a conscientious and competent manner. He hired skilled, talented deputies and staff. He adequately oversaw and implemented law enforcement training. He instituted programs, protocols, and policies consistent with the protection of the public safety. He duly functioned as a conservator of the peace in Broward County as the elected Sheriff. He and his senior staff fully expected sworn deputies them to perform their duties competently. During his tenure, crime in Broward County was substantially reduced, a clear indication of the Sheriff's competence and commitment to his duties and responsibilities. Sheriff Israel should not be removed from office for the unproven reasons indicated in the Executive Order of Suspension 19-14.

Respectfully submitted,



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