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REPLY TO: Miami

June 11, 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
Memorandum Concerning Impact of Scot Peterson
Arrest and Prosecution on Senate Suspension Review

Dear Special Master Goodlette:

Last week's arrest of former Broward Sheriff's Office Deputy Scot Peterson has a significant impact on Sheriff Israel's suspension review and his ability to fully prepare for the scheduled proceedings commencing June 18, 2019. Although Sheriff Israel is prepared to begin the hearing as scheduled, he seeks to keep the record of proceedings open for a reasonable amount of time before final argument by the parties and a recommendation is made by the Special Master to the Florida Senate. Sheriff Israel requests this relief in order to comport with principles of fairness and due process.

The Scot Peterson case commenced with his arrest on Tuesday, June 4, 2019. The arrest was widely reported in the media, and Peterson first appeared in court on Wednesday, June 5, for an initial appearance and bond hearing. 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, following the February 14, 2018 Marjory Stoneman Douglas High School shooting in which seventeen (17) people were murdered by the assailant, who is

himself charged with seventeen counts of premeditated murder.

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 (OEI) 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.”

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.

The Affidavit reviews some, but not all, of the law enforcement interviews taken during the FDLE’s investigation. Portions of the Affidavit are redacted.

Neither Sheriff Israel nor his legal team were given any advance notice of the FDLE investigative conclusions, nor have they been given access to any of the information and documentation underlying the FDLE

charges. Despite multiple requests to the FDLE and the Broward State Attorney's Office for the underlying information, including but not limited to the investigative interviews and the training materials gathered in the course of the investigation, Sheriff Israel's representatives have been informed that the requested records are not available at this time and may not be available for production for several weeks or longer.

The impact of the FDLE's investigative conclusion and the initiation of a criminal prosecution by the Broward County State Attorney's Office is a significant event that impacts Sheriff Israel's ability to fully prepare for his Senate proceeding. He is entitled to have access to the many investigative interviews conducted by the FDLE, as well as to obtain the FDLE's information gathered about the BSO's extensive Active Shooter training. This information is, after all, gathered at the direction of the Florida Governor, and the investigation was directed by the Florida Governor.

Although the initiation of the investigation was at the direction of Governor DeSantis' predecessor, there is no mistaking that the FDLE has reported to Governor DeSantis for five (months) before the conclusion of its investigation. Yet, neither Governor DeSantis nor the FDLE provided any disclosure of the investigation to Sheriff Israel in advance of the Governor's suspension decision or in preparation for the Senate proceedings. Sheriff Israel is entitled to know what information was disclosed to the Governor or his staff in advance of the release of the FDLE arrest decision, and whether any of the information known to the Executive Office of the Governor should have been disclosed to Sheriff Israel in a manner consistent with due process principles.

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 Sheriff Israel's effort to demonstrate that he did not neglect his duty or function in an incompetent manner as Sheriff. The information underlying the FDLE investigation is especially crucial in light of the Governor's position, stated in his Bench Memorandum served on June 3, 2019, that the Sheriff's neglect of duty and incompetence included Deputy Peterson's supposed "lack of training" that now appears from the FDLE Arrest Affidavit to be inaccurate.

Of equal importance is that the FDLE Affidavit directly contradicts the findings of the MSD Commission Report that Deputy Peterson's training was "inconsistent." Since the Governor apparently relies heavily on the MSD Commission Report, the direct law enforcement evidence that contravenes the MSD Report is supportive of Sheriff Israel's defense that his suspension is not based on facts or the law.

This new development requires the granting of additional time to allow Sheriff Israel to muster the highly supportive underlying interviews and information demonstrating that his service as Sheriff did not include his incompetence or neglect of duty. Due Process demands this relief in the interests of justice and fairness.

Adequate time to prepare a defense is founded on due process principles. *Griffin v. State*, 598 So. 2d 254 (Fla. 1st DCA 1992); *Peevey v. State*, 820 So. 2d 422 (Fla. 4th DCA 2002). The late disclosure of relevant, discoverable evidence is ordinarily a basis for a court to favorably grant a request for additional time to pursue the discovery. *See Ruby Tuesday, Inc. v. Emmanuel Sheppard & Condon PA*, 3:09-CV-438-RV-MD, 2010 WL 11527306, at *1 (N.D. Fla. Mar. 19, 2010).

The Third District explained the importance of being able to adequately pursue and review relevant discovery materials in *Colby v. McNeill*, 595 So. 2d 115, 117 (Fla. 3d DCA 1992):

Where material discovery is furnished at a time which will not enable the defendant to make use of it in the preparation of his defense before the expiration of the speedy trial time limits, the court may properly continue the case to a date beyond those limits, charge the continuance to the State, and thereafter grant the defendant's motion for discharge based on the speedy trial rule violation.

See Hunter v. State, 660 So. 2d 244, 249-50 (Fla. 1995) (meaningful time to review information and prepare a defense is an essential ingredient of a fair proceeding). This new information warrants allowing Sheriff Israel a reasonable opportunity to obtain the favorable information underlying the FDLE investigation. *See Bozeman v. Port-O-Tech Corp.*, 07-60569-CIV, 2008 WL 2690797, at *2 (S.D. Fla. July 2, 2008).

For all these reasons, Sheriff Israel requests that the Special Master keep the record of proceedings open for a reasonable amount of time to obtain the requested underlying materials in a manner consistent with due process and fundamental fairness.

Respectfully submitted,



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