

THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
DEPARTMENT OF CORRECTIONS,

Appellant,

vs.

JOSE MIGUEL NAVARRETE, an
individual,

Respondent.

Case No. 82113

District Court No.: A-1979766-9
(Eighth Judicial District Court,
Nevada)

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CERTIFICATE OF SERVICE

I certify that I am an employee of the State of Nevada, Office of the Attorney General, and that on May 10th, 2021, I electronically filed the foregoing document via this Court's electronic filing system. I certify that the following participants in this case are registered electronic filing systems users and will be served electronically:

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/s/ Anela Kaheaku

Anela Kaheaku, an employee of
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1 institution and the Department and oversee, as operations, you
2 oversee all the custody aspects of the institution, meaning
3 anything in uniform in the security facility.

4 MICHELLE ALANIS: As the Associate Warden, did you
5 review incident reports in NOTIS?

6 WARDEN ADAMS: Yes ma'am.

7 MICHELLE ALANIS: And, what would be your role in
8 reviewing the NOTIS reports?

9 WARDEN ADAMS: Well, I reviewed every-every
10 report, when the inmate was written up—they call it written
11 up, it's a Notice of Charges. Any time an inmate got a Notice
12 of Charges, I would go through NOTIS in the morning and read
13 each and every report that was put in from the day prior.
14 Then assign charges or check and make sure the charges were
15 correct, as assigned to the inmate and what have you.

16 That would be the Notice of Charges. If there were
17 any other reports, such as security breaches, use of forces,
18 anything like that, that would be up to me to review and make
19 sure that everything was straight and the Lieutenants and
20 Sergeants had done their jobs and staff had done theirs.

21 MICHELLE ALANIS: And, if you reviewed something
22 and it didn't appear like somebody had done their job, what
23 action would you take?

24 WARDEN ADAMS: My first thing would be to call
25 the shift lieutenant in and ask him to explain what's going

1 on, why, what have you. If it had to go down further than
2 that, you know—generally lieutenant would deal with the
3 sergeant, sergeant would deal with the officers, you know, it
4 goes downhill.

5 If I had to review with just the officer himself,
6 that means there's generally something is wrong-wrong with the
7 report. Depending on what the report was, what was wrong with
8 it, it may be referred to the Inspector General's Office for
9 investigation. If it appeared it was something seriously
10 wrong or if some policy or procedure had been violated.

11 MICHELLE ALANIS: And, you said as the Assistant
12 Warden of Operations, you were involved in reviewing and
13 implementing various policies and procedures, right?

14 WARDEN ADAMS: Yes ma'am.

15 MICHELLE ALANIS: Did that include reviewing the
16 Administration Regulations?

17 WARDEN ADAMS: As far as the Administrative
18 Regulations, as Associate Warden, yeah, you could review but
19 you'd have input. Like, they would set a team together and
20 you might have a Warden, two, three Associate Wardens,
21 whatever you need to review them and suggest whatever changes
22 through the Administration, through the Director's Office.

23 MICHELLE ALANIS: Okay.

24 WARDEN ADAMS: Mostly that—mostly that we
25 actually had as far as an Associate Warden that you had

1 authority to change your operational procedures which are
2 institutional level.

3 MICHELLE ALANIS: Okay. So, the operational
4 procedures, you could review, modify and kind of implement
5 those procedures.

6 WARDEN ADAMS: Yes. Yes.

7 MICHELLE ALANIS: Okay. And, are you familiar
8 with Operational Procedure 405?

9 WARDEN ADAMS: Use of Force. Yes.

10 MICHELLE ALANIS: And, is this something that gets
11 reviewed and changed periodically?

12 WARDEN ADAMS: Well, it's reviewed yearly,
13 unless something comes up that requires attention, it can be
14 reviewed as often as necessary and modified.

15 MICHELLE ALANIS: And, to your knowledge, is the
16 operational-OP 405, Use of Force, is that a confidential OP?
17 Is it in the--

18 WARDEN ADAMS: From? OP 405 would be
19 confidential from inmates, to an extent.

20 MICHELLE ALANIS: Okay. And, are you also
21 familiar with OP 407?

22 WARDEN ADAMS: [pause]

23 MICHELLE ALANIS: The--

24 WARDEN ADAMS: Give me the name of it and I'll
25 tell you.

1 MICHELLE ALANIS: I'm testing you huh?

2 WARDEN ADAMS: It's been almost two years.

3 MICHELLE ALANIS: Operational Procedure 407, Use
4 of Handcuffs--

5 WARDEN ADAMS: Yes.

6 MICHELLE ALANIS: --and Restraints. Okay. And,
7 can you explain to me what a post-order is?

8 WARDEN ADAMS: A post-order is a detailed
9 written guideline for staff when they assume post. That's
10 like a unit officer, if an individual works in a housing unit,
11 his post order will say--you know, I believe at that time, it
12 was post order 10, I want to say, for housing procedures. It
13 would say, you let the inmates out at this time. They--any
14 inmates that are going to work, you send them at this time.

15 It's really kind of like a breakdown of what your
16 duties are and each post would have the different ones. The
17 Tower Officers would have post orders for their tower. The
18 Search and Escort Officers have a post order for their
19 position. The property officers have a position confirming
20 everybody up to and including the shift lieutenant has a post-
21 order.

22 MICHELLE ALANIS: Okay. And, are post-orders
23 considered confidential?

24 WARDEN ADAMS: I believe, yes, from inmates,
25 they were when I was there.

1 MICHELLE ALANIS: Okay.

2 WARDEN ADAMS: Nothing is confidential from
3 staff.

4 MICHELLE ALANIS: Right, sorry.

5 WARDEN ADAMS: When you say "confidential",
6 it's inmate view.

7 MICHELLE ALANIS: It's not meant for the inmates
8 or--

9 WARDEN ADAMS: Correct.

10 MICHELLE ALANIS: --for the public necessarily to
11 know--

12 WARDEN ADAMS: Correct.

13 MICHELLE ALANIS: --these safety procedures.

14 WARDEN ADAMS: Correct.

15 MICHELLE ALANIS: Can you tell me a little bit, as
16 the Assistant Warden of Operations and in your 32 years of
17 experience, the training that the officers receive on use of
18 force?

19 WARDEN ADAMS: That would fall directly under
20 Administrative Regulation 405, which covers the entire
21 department. That would go through the Training Division,
22 which is also governed by POST, which is Peace Officers
23 Standards and Training, for the State. So, that governs all
24 police departments, jails, prisons, all that stuff. That
25 would be a requirement of that.

1 As they go through Academy training to begin with,
2 after which it's an ongoing yearly, what they call
3 Professional Employee Refresher Course, AR 405. AR 405 is to
4 be reviewed whenever you're doing use of force training; such
5 as if you go to the range, you're supposed to review 405 and
6 the officers will initial they reviewed 405 that day, prior to
7 shooting.

8 When you go handcuffs training and all this--anything
9 that has to do with a use of force, the OP and AR have to be
10 reviewed at that time, during the training. Generally it's
11 done in a classroom setting. Occasionally, it's done in a
12 practical setting. So, just the firing range, taser training,
13 gas training, stuff like that.

14 To break it down, they have a Use of Force
15 Continuum, which is from officer presence, all the way up to
16 deadly force. So, it's when force is necessary, when force is
17 authorized and what level of force is authorized for the
18 corresponding threat level that you're dealing with.

19 MICHELLE ALANIS: Okay.

20 WARDEN ADAMS: Does that make sense?

21 MICHELLE ALANIS: Yes. Does the use of force
22 training include any techniques of an officer using his arm to
23 place it around an inmate's neck, almost like--

24 WARDEN ADAMS: As in a choke hold?

25 MICHELLE ALANIS: Yes.

1 WARDEN ADAMS: No ma'am, absolutely not.

2 MICHELLE ALANIS: And that's not--

3 WARDEN ADAMS: That's not only unauthorized,
4 it's illegal.

5 MICHELLE ALANIS: [pause] What do you mean by
6 it's illegal?

7 WARDEN ADAMS: Within Nevada Revised Statutes,
8 I don't even believe Metro-Metro used to have it in the Use of
9 Force Continuum, I don't believe they do any more. I don't
10 think there's any police department--

11 DANIEL MARKS: Your Honor, he's not, you know,
12 here as a lawyer, and why don't we leave it to you and the
13 argument about a choke hold. It's not really relevant, I
14 think to the issue we're here for.

15 HEARING OFFICER: I'm assuming she's almost done
16 anyways, right? On the chokehold aspect.

17 MICHELLE ALANIS: Yeah, I was--I was just
18 [crosstalk]

19 DANIEL MARKS: We don't believe it is, but our
20 guy didn't do it and I don't think he can testify as a legal
21 expert, with all due respect to his experience. You would
22 need somebody from the DA's Office or some law enforcement--

23 HEARING OFFICER: You're probably right. You're
24 probably right. But I think she was done anyways.

25

1 MICHELLE ALANIS: Yeah, I'm not having him testify
2 as an expert, but obviously the choke hold is relevant to what
3 we're dealing with in this video. Officer Navarrete may have
4 not actually been the one to do it, but he was there for the
5 entirety of the incident.

6 DANIEL MARKS: Right, but he didn't do it.

7 HEARING OFFICER: Right, I'm aware of the status
8 of the facts. Go on ahead.

9 MICHELLE ALANIS: All right. Can you tell me,
10 Assistant Warden Adams, so Officer Navarrete was a Senior
11 Officer. There's been a little bit of testimony—obviously as
12 a Senior Officer, he holds a higher rank than a correctional
13 officer, correct?

14 WARDEN ADAMS: Yes.

15 MICHELLE ALANIS: What are the expectations of a
16 Senior Officer?

17 WARDEN ADAMS: Senior Officers are supposed to
18 train junior staff, new ones coming in and continue the
19 training of, even the seasoned and non-probationary staff and
20 as they're placed online staff, they're like a first line
21 supervisor as far as dealing with the other staff there.
22 They're the ones that can make decisions, snap decisions on
23 the spot when the Sergeant is not there or what have you.
24 They also work, often times, as a Senior Officer, you're
25 placed in what's called an Acting Sergeant position. In other

1 words, if the shift sergeant is not there or what have you, a
2 Senior Officer will be placed as the shift sergeant for that
3 day. So, they have that type of authority, training and
4 experience.

5 MICHELLE ALANIS: So, while they—they don't
6 necessarily have a supervisor role where they're approving
7 time off and things like that, right?

8 WARDEN ADAMS: Not unless they're in an active
9 sergeant position.

10 MICHELLE ALANIS: Okay. More of a first line
11 supervisor on the job.

12 WARDEN ADAMS: Yes, first line supervisor.

13 DANIEL MARKS: Your Honor, can we agree that he
14 was not acting as a—I mean, we're getting field. Can we all
15 stipulate, Navarrete was not the acting sergeant at the time
16 [inaudible] and just cut to the chase? Because I don't want
17 there to be a misleading—

18 MICHELLE ALANIS: I'm not trying to establish that
19 he was the acting—

20 DANIEL MARKS: Okay.

21 MICHELLE ALANIS: I mean, that's fine. I know he
22 wasn't the acting sergeant.

23 DANIEL MARKS: Okay, great.

24 MICHELLE ALANIS: I was just establishing his role
25 as a Senior.

1 DANIEL MARKS: Thank you.

2 MICHELLE ALANIS: And, if I could have you look at
3 Exhibit D in the book to your right. It starts with bate
4 stamp NDOC 179.

5 WARDEN ADAMS: All right.

6 MICHELLE ALANIS: It goes to 194.

7 WARDEN ADAMS: Okay.

8 MICHELLE ALANIS: Is this the AR 405 that you were
9 familiar with, Use of Force?

10 WARDEN ADAMS: Yes.

11 MICHELLE ALANIS: Okay. And, if I could just have
12 you flip to Page 2, NDOC 180. It looks like the sixth one
13 down. It says, Spontaneous Use of Force, actions that staff
14 may immediately take in response to an emergency situation.

15 WARDEN ADAMS: Yes ma'am.

16 MICHELLE ALANIS: So, for a spontaneous use of
17 force, as the Associate Warden, what type of emergency
18 situation would you be looking for?

19 WARDEN ADAMS: An inmate attempting to escape.
20 Inmate assault on another inmate. Inmate assault on staff.
21 Something that had to be dealt with immediately, right away.

22 MICHELLE ALANIS: And, looking at the next page,
23 NDOC 181, it looks like Section 405.3, when force may be used.
24 Would you agree that force is typically used when there's a
25 threat of physical harm?

1 WARDEN ADAMS: Yes.

2 MICHELLE ALANIS: Okay. And, if we look at
3 Section 2A, any staff witnessing a use of force that is either
4 excessive or unnecessary is required to immediately report
5 their observations. So, even if you didn't engage in a use of
6 force, or an unnecessary use of force, you have an obligation
7 to report it?

8 WARDEN ADAMS: Yes, you have an obligation to
9 report authorized use of force, unauthorized use of force,
10 excessive use of force. It doesn't matter what. If you
11 witness any kind of use of force, you're obligated to report
12 it.

13 MICHELLE ALANIS: Okay. And, let's see. If I
14 could have you flip to Page 4 which is NDOC 182. And, taking
15 all the way to the bottom, Section B. It's under #7, Levels
16 of force. It talks about spontaneous use of force and again,
17 used to respond to an emergency when there's no time to
18 formulate a plan.

19 WARDEN ADAMS: Yes.

20 MICHELLE ALANIS: So, is it your experience that
21 typically a spontaneous use of force, that there's not a lot
22 of time to respond and come up with other alternatives?

23 WARDEN ADAMS: Correct. That's exactly—that's
24 what was written. It is spontaneous is exactly right.
25 Spontaneous as in, if you're standing there doing your job and

1 two inmates start fighting, you don't have time to call the
2 supervisor and make a plan of, we're going to do this and this
3 and this. If they're in a secured area, such as they're
4 locked into a cell--there's two inmates locked in a cell. If
5 one is not actually killing the other, you have all the time
6 in the world to plan yourself, to go in there and get
7 everything straight to minimize risk of injury to yourself or
8 the participants.

9 For like if you're standing there and an inmate
10 starts hitting staff members or running for the fence or
11 something like that, you may not--you don't have the time to
12 stop and think and formulate, you have to act immediately.

13 MICHELLE ALANIS: And, if I could have you turn to
14 Exhibit J. And J goes from 309 to 328.

15 WARDEN ADAMS: Okay.

16 MICHELLE ALANIS: Are you familiar with this
17 Operational Procedure?

18 WARDEN ADAMS: Yes ma'am.

19 MICHELLE ALANIS: Okay. And, actually, if I could
20 have you look at NDOC bate stamp 325.

21 WARDEN ADAMS: Yes ma'am.

22 MICHELLE ALANIS: Is that your signature about
23 midway down the page?

24 WARDEN ADAMS: Yes ma'am, it is.

25

1 MICHELLE ALANIS: Okay. And so, were you part of—
2 was this part of your review and implementation process of
3 this Operational Procedure?

4 WARDEN ADAMS: Yes ma'am, I would've reviewed
5 it, made changes necessary with staff input and other
6 supervisor's input and then once it's all done, I would sign
7 off on it. The other Associate Warden of Programs, is Frank
8 [inaudible], he signed it. Warden Williams would've signed it
9 with approval and then, it says, Acting Deputy Director Nevin.
10 It goes all the way up to him for signature—for approval. So,
11 all these people that are signatures are on here, have
12 reviewed and approved it.

13 MICHELLE ALANIS: Okay. And if I could have you
14 turn to NDOC 310, the second page of that OP. Under the
15 general information, #5, you would agree with me that this
16 Operational Procedure prohibits force being used for any
17 vindictive or retaliatory purposes?

18 WARDEN ADAMS: Yes ma'am, absolutely.

19 MICHELLE ALANIS: Okay. And, it also notes that
20 use of excessive or unreasonable force may lead to criminal
21 prosecution, a civil suit and disciplinary action, right?

22 WARDEN ADAMS: Yes ma'am.

23 MICHELLE ALANIS: And, Operational Procedures, all
24 the employees are familiar with these, right?

25 WARDEN ADAMS: They're required to be, yes.

1 MICHELLE ALANIS: Okay. And, as far as a civil
2 suit—well, I'll go back to that. And, this Operational
3 Procedure also outlines, I think as you mentioned the amount
4 of force proportionate to what's occurring, right?

5 WARDEN ADAMS: Right. Or, should match the
6 level of threat.

7 MICHELLE ALANIS: Okay. And, if I could draw your
8 attention to NDOC 311, under 405.03, Alternatives to use of
9 force. Are you there?

10 WARDEN ADAMS: Yes ma'am.

11 MICHELLE ALANIS: Okay. All right so, prior to
12 any force being used, you—officers are trained on various
13 techniques that they can do?

14 WARDEN ADAMS: Yes ma'am.

15 MICHELLE ALANIS: And that includes the verbal and
16 non-verbal de-escalation?

17 WARDEN ADAMS: Yes ma'am.

18 MICHELLE ALANIS: And, waiting for inmates to cool
19 down?

20 WARDEN ADAMS: Uh huh.

21 MICHELLE ALANIS: Calling additional staff?

22 WARDEN ADAMS: Right, for a show of force and--

23 MICHELLE ALANIS: Okay.

24 WARDEN ADAMS: You've got one inmate and you
25 show up with four officers, [inaudible] calm down.

1 MICHELLE ALANIS: And, if I could have you turn
2 to—sorry, Exhibit K, OP 407. Which consists of NDOC 329 and
3 332.

4 WARDEN ADAMS: Yes ma'am.

5 MICHELLE ALANIS: Is this the OP 407 that we
6 discussed a little bit earlier?

7 WARDEN ADAMS: Yes.

8 MICHELLE ALANIS: You're familiar with this
9 Operating Procedure?

10 WARDEN ADAMS: Yes ma'am.

11 MICHELLE ALANIS: Okay. And again, looking at the
12 last page, NDOC 332, is that your signature on this page?
13 Sorry.

14 WARDEN ADAMS: Yes ma'am. It is.

15 MICHELLE ALANIS: Okay. So, similar to OP 405,
16 you helped review and implement this Operational Procedure?

17 WARDEN ADAMS: Yes ma'am.

18 MICHELLE ALANIS: Okay. And again, this is
19 something familiar to the staff, including the officers?

20 WARDEN ADAMS: Yes ma'am.

21 MICHELLE ALANIS: Okay. And, if I could have you
22 turn to Exhibit L which consists of NDOC 333-349.

23 WARDEN ADAMS: Yes ma'am.

24 MICHELLE ALANIS: Okay. And when you talked about
25 earlier, post-orders for all the various posts, this is Post

1 Order H, for Search and Escort Officers. Are you familiar
2 with this post-order?

3 WARDEN ADAMS: Yes ma'am.

4 MICHELLE ALANIS: And, if Senior Officer Navarrete
5 was assigned to Search and Escort, he would've had to comply
6 with this post-order, correct?

7 WARDEN ADAMS: Yes ma'am.

8 MICHELLE ALANIS: And, are the officers actually
9 required to sign the post orders?

10 WARDEN ADAMS: They're required to--they're
11 required to read it thoroughly, when they first take that
12 post, as in, if you take the post in June, they're supposed to
13 read this thoroughly and sign it. Every time you resume the
14 post, so if you come in tomorrow, you're supposed review it
15 and look and see if there's been any changes and then you're
16 supposed to sign it. Yes.

17 MICHELLE ALANIS: So, not only are they required
18 to be familiar and review the post orders, but they have to
19 review it on a daily basis when they--

20 WARDEN ADAMS: If they take that post on a
21 daily basis, they review it and look for any like, addendums,
22 anything new.

23 MICHELLE ALANIS: Okay.

24 WARDEN ADAMS: It can be a quick scan through
25 to make sure nothing has changed.

1 MICHELLE ALANIS: Okay. And, if I could have you
2 turn to NDOC 334, the second page of that post-order. H.01
3 Staffing, the first section there, #1.

4 WARDEN ADAMS: Uh huh.

5 MICHELLE ALANIS: The very last item says, a
6 Senior Correctional Officer will be assigned to the Search and
7 Escort Officer A, position on each shift. What does that
8 mean?

9 WARDEN ADAMS: Like, on first shift you have
10 three officers. Swing shift, you have three officers.
11 Graveyard you have two legislatively approved officers. So,
12 the A is usually like, just the A-Search and Escort A, Search
13 and Escort B, Search and Escort C. Search and Escort A is a
14 Senior Officer because he is now the first line supervisor for
15 Search and Escort B and Search and Escort C.

16 MICHELLE ALANIS: Okay. So, the A position is
17 that senior first line supervisor.

18 WARDEN ADAMS: Yeah, he's the one who takes the
19 lead, or he or she is the one who takes the lead in their
20 operations for the day.

21 MICHELLE ALANIS: Okay. And, if I could have you
22 turn to NDOC 336. #3, it looks like for this post, Officers
23 must conduct themselves in a professional at all times dealing
24 with both staff and with inmates, right?

25 WARDEN ADAMS: Yes ma'am.

1 MICHELLE ALANIS: And that's even if—even if the
2 inmates are becoming—making verbal comments. They still have
3 to conduct themselves in a professional manner, right?

4 WARDEN ADAMS: Yes ma'am.

5 MICHELLE ALANIS: In looking at #5, Search and
6 Escort Officers will enforce all rules, regulations and
7 procedures. One of the things that's noted there is to avoid
8 turning minor problems into major confrontations, right?

9 WARDEN ADAMS: Yes ma'am.

10 MICHELLE ALANIS: And, as a senior officer would
11 that responsibility—would they have an increased
12 responsibility to make sure that there's no minor problem or
13 no major confrontations for minor problems?

14 WARDEN ADAMS: Yes ma'am. They're supposed to
15 be dealing with their line staff. If there's an issue or what
16 have you, they should intervene, intercede and say, you know,
17 hey, this is what's happening or you're not doing this. Why
18 don't you take a break and I'll deal with this inmate myself,
19 something like that. And then, if he can't deal with the
20 situation or he can't resolve it then he takes the inmate down
21 to the Sergeant's office and they deal with the Sergeant and
22 Lieutenant.

23 MICHELLE ALANIS: Hearing Officer Gentile, I've
24 like to have J, K and L admitted at this time. I know you
25

1 withheld. Before he leaves the stand, I'd rather address this
2 now.

3 HEARING OFFICER: Okay. So, J-

4 MICHELLE ALANIS: J is OP 405. K is OP 407. L is
5 the post-order.

6 HEARING OFFICER: Any objection to that?

7 DANIEL MARKS: No. No objection.

8 HEARING OFFICER: Okay. They'll be admitted.

9 DANIEL MARKS: I just don't think they should
10 be confidential in our setting. I'm not about to show them to
11 inmates, but I don't want to be inadvertently, if I file
12 something in court or later, I don't think they should be
13 deemed confidential in the legal side.

14 HEARING OFFICER: Okay. Well, I don't think that
15 issue has even come up, so--

16 MICHELLE ALANIS: Again, I realize it kind of
17 complicates it. All my understanding is, through the inmate
18 litigation as well, is that when it gets filed and it gets
19 attached--obviously inmates know--you know, they have people,
20 they can have people access things. So, I think it's the
21 concern that maybe the information could get leaked to an
22 inmate. That was my understanding and that's why they're
23 typically submitted under seal, even to the federal court, is
24 my understanding.

25 HEARING OFFICER: Okay.

1 DANIEL MARKS: But they prosecuted in state
2 court, I assume this stuff would've come out.

3 MICHELLE ALANIS: I don't know if they presented
4 these or not. I wasn't at that hearing.

5 HEARING OFFICER: So, are you asking me to do
6 something special or—

7 MICHELLE ALANIS: I guess for now, if we could
8 just maintain them submitted under seal, rather than a filing
9 with the—

10 HEARING OFFICER: That's—that's fine. And then
11 the people, if the record ever gets—

12 MICHELLE ALANIS: I've had it both ways actually.
13 I've seen records where the OPs didn't get submitted under
14 seal and then I've seen some where they've maintained it
15 through the PJR portion.

16 HEARING OFFICER: So, you want all three of those
17 under seal?

18 MICHELLE ALANIS: Actually no. I believe it's
19 just the use of force.

20 HEARING OFFICER: Which one is it?

21 MICHELLE ALANIS: OP 405, Exhibit J.

22 HEARING OFFICER: Yeah.

23 MICHELLE ALANIS: And then Exhibit L.

24 HEARING OFFICER: Okay.

25 MICHELLE ALANIS: The restraints—

1 HEARING OFFICER: I'll note that they're under
2 seal.

3 MICHELLE ALANIS: Okay.

4 HEARING OFFICER: And then they can do whatever
5 they've got to do.

6 MICHELLE ALANIS: Okay.

7 DANIEL MARKS: But the other use of force is
8 not under seal.

9 MICHELLE ALANIS: The AR is public. That is not a
10 confidential—you can actually go on the NDOC website and
11 access them.

12 DANIEL MARKS: Right, okay.

13 MICHELLE ALANIS: Associate Warden Adams, are you
14 familiar with Jose Navarrete?

15 WARDEN ADAMS: Yes ma'am.

16 MICHELLE ALANIS: How are you familiar with him?

17 WARDEN ADAMS: I worked with him for quite a
18 while. He was one of our officers at Southern Desert and one
19 of our Senior Officers.

20 MICHELLE ALANIS: And, do you recall an incident
21 on October 9, 2016 which involved a use of force?

22 WARDEN ADAMS: You talking about the one that's
23 going on here? Yes. Absolutely.

24 MICHELLE ALANIS: Yes. How did you first learn of
25 this incident?

1 WARDEN ADAMS: Associate Warden of Programs
2 Dreason [phonetic] is the grievance coordinator for Southern
3 Desert Correctional Center. He would contact me if there was
4 an inmate grievance or something filed against a custody
5 staff, because they're my people, I'm supposed to deal with it
6 and look into it.

7 So, a grievance had been filed. I want to say, I
8 can't remember the guy's name.

9 MICHELLE ALANIS: The inmate?

10 WARDEN ADAMS: Yeah.

11 MICHELLE ALANIS: Norales.

12 WARDEN ADAMS: Norales.

13 MICHELLE ALANIS: Ricky Norales.

14 WARDEN ADAMS: Had filed a grievance. So, what
15 that does is, I'll then go into the NOTIS System, Nevada
16 Offender Tracking Information System. Go look it up, see his
17 grievance, what Dreason had given me. I read it and the first
18 thing that I'm actually supposed to do is, check into it and
19 see if this grievance can be disproved.

20 In other words, [inaudible] October 9th, yaddy,
21 yaddy, yadda, because Officer Navarrete was on this knee on
22 that day, yaddy, yadda. So, I will look up the rosters for
23 that day. Was Navarrete on this [inaudible]. If he wasn't,
24 then the grievance doesn't really have a whole lot of merit.

25

1 If he is, then I go to the next step—where was he at this
2 particular time of day.

3 I would have a shift supervisor go over to the
4 culinary, in particular grievance. Have the shift supervisor
5 go over to culinary and download for me on one of our flash
6 drives, the video and all that other good stuff. Bring it
7 back to me. Then I looked it. When I looked at that, read
8 the grievances, then I go in and I check all of the staff
9 involved, their reports. NOTIS charges against the inmate.
10 Whatever is there.

11 If everything looks correct, copasetic, what have
12 you, then it's over and done with and then they'll be told,
13 your grievance process will be dealt with through disciplinary
14 because if he's got a write up or charges coming up for him,
15 if he's found guilty of whatever it is he was accused of, if
16 he did it and what he's complaining about does not—a non-
17 grieveable issue, his grievance will be denied and sent down
18 the way.

19 If it's not that and his issue is grieveable and
20 holds merit, then if it's something that I can deal with on my
21 level, that's what I deal with it on my level. If it's
22 something I cannot deal with at my level or I'm not supposed
23 to deal with at my level, I go back in NOTIS and at the top of
24 the screen, there's a thing that says, refer to IG
25 Investigations. I check that box. I give them a one line

1 issue why was it referred. I send it off and then I get
2 notified, yes, it was referred for investigation. Pretty much
3 that's all I have to do with it at that time.

4 MICHELLE ALANIS: Okay. So, did there come a
5 point where you reviewed the video?

6 WARDEN ADAMS: Yes ma'am. The video and all
7 reports.

8 MICHELLE ALANIS: And-okay. And when you reviewed
9 the video, what did you do at that time?

10 WARDEN ADAMS: Well, when I reviewed the video,
11 I-

12 DANIEL MARKS: Can we have some foundation
13 because these dates could be important?

14 HEARING OFFICER: Okay.

15 MICHELLE ALANIS: I don't think-okay.

16 DANIEL MARKS: Well, I'd like some foundation.
17 If he doesn't know, he doesn't know.

18 HEARING OFFICER: Right.

19 MICHELLE ALANIS: Do you know when you reviewed
20 the video?

21 WARDEN ADAMS: We'd have to get with Dreason to
22 see when he sent me the grievance. Probably a couple of days
23 after the incident would be when the grievance came through.

24 MICHELLE ALANIS: Okay.

1 WARDEN ADAMS: To add to your foundation, as
2 the Associate Warden, I get grievances, stacks of them per
3 day. So, as far as, what day did this happen? I've been
4 retired for almost two years. No, I don't know what day.

5 HEARING OFFICER: Okay.

6 MICHELLE ALANIS: So, this incident occurred
7 October 9, 2016. So, you would've reviewed the video—you
8 wouldn't have reviewed the video that same day, right?

9 WARDEN ADAMS: No. What usually happens, if
10 there was a use of force, provided they notified their shift
11 supervisor that there was a use of force, relatively sure they
12 did since the inmate went to the infirmary. I would've got a
13 phone call because I'm the on-call guy. I would've got a
14 phone call that day and again, use of force happens often.

15 Inmates will often get in fights or they will turn
16 on officers. They'll do any number of things. I'll get a
17 phone call. Anybody hurt? No, nobody was hurt. Did he go to
18 the infirmary? Yes, he went to the infirmary. And then, I'm
19 not going to go in looking for it that day unless they said,
20 shots were fired, which also happens on a regular basis or gas
21 or taser was deployed, something like that. A hands-on, a
22 regular hands-on use of force, I'm not going to go search for
23 it that day, I'll wait for the reports to come in and
24 [inaudible].

1 What they do at breakfast time, they've got until
2 the end of their shift to get those reports done because they
3 can't just stop feeding 2,200 inmates to go write a report and
4 come back. So, it might take me that afternoon or the
5 following day to read reports and get everything straight and
6 all this other stuff. Unless the inmate files a grievance,
7 all I have is staff report and inmate-or, staff report and
8 medical report saying no injuries to the inmate, yaddy, yadda,
9 so unless the inmate raises a complaint about it, it's
10 considered a daily routine.

11 MICHELLE ALANIS: So, if I'm understanding you
12 correctly, this incident occurs October 9th. You may have
13 reviewed in NOTIS the incident report, whether later that day-

14 WARDEN ADAMS: Probably the next day.

15 MICHELLE ALANIS: --the next day.

16 WARDEN ADAMS: Probably the next day.

17 Everybody has all day to get their reports in. When I come in
18 the following day is when I'll start reviewing what went on
19 yesterday.

20 MICHELLE ALANIS: And, when you're reviewing those
21 reports and the medical summary on the inmate, that may not
22 necessarily lead you to review the video at that time.

23 WARDEN ADAMS: Yeah. If it shows no injury.

1 MICHELLE ALANIS: Okay. Another way that you may
2 be prompted to review the video is through the grievance
3 process.

4 WARDEN ADAMS: Yeah, when they make a grievance
5 or if I'm advised--like I say, if there's injury--if there's
6 something more than a hands on use of force or there's injury
7 reported, then it's an everyday occurrence until such time,
8 it's brought up hey, I have a complaint that this was done
9 incorrectly. Or, if a staff member comes in and goes, hey
10 something happened and it was wrong, it shouldn't have been
11 done that way.

12 MICHELLE ALANIS: Okay. So, when you viewed this
13 video of the incident, at that point, what did you do when you
14 were done reviewing the video?

15 WARDEN ADAMS: When we reviewed the video, we
16 were doing the reports at the same time and stuff. When I
17 looked at this video, I looked at the reports of staff
18 involved. The reports of staff involved said that, were
19 talking to the inmate and they described the inmate as
20 becoming aggressive. Like, when I tried to apply restraints,
21 he resisted. I'm watching the video, restraints were never
22 attempted to be applied until the guy was on the ground in the
23 dirt.

24 The reports didn't match the video. So, to me, it's
25 fishy, it's not right. In looking at the individuals

1 involved, what their reports state and what I see with my own
2 eyes, I reported it to the IG because it doesn't look right.
3 I advised my warden at the time that this is what I saw and
4 I'm submitting it for investigation. She said, yes. The
5 grievance was sent back to Dreason at that time, to basically
6 be put on hold until everything was sorted out, whether or not
7 he would find-uphold his grievance or deny it.

8 MICHELLE ALANIS: Okay. And, when you say it
9 didn't look right and you wanted to send it to the
10 Investigator--

11 WARDEN ADAMS: Inspector's General's Officer.

12 MICHELLE ALANIS: I don't know why I want to call
13 them Investigator General sometimes. What was it specifically
14 about the video that concerned you?

15 DANIEL MARKS: Asked and answered, he just said
16 it.

17 HEARING OFFICER: One more time.

18 WARDEN ADAMS: One more time is, you want from
19 like start to finish, just watching it and seeing multiple
20 individuals sitting on a wall for an extended period of time.
21 One particular individual is sitting there for a very long
22 time. And then, when it came time to--they were dealing with
23 him, it looked like they were talking to him. Valdez was
24 doing the talking and stuff. Valdez was talking to him. Sit
25 and watch Officer Valdez in this video going like this. He's

1 agitated. You can tell. That's body language. It's in your
2 training.

3 If an inmate does that stuff, I'm putting him on the
4 wall, right away in handcuffs because he's agitated. He's
5 [inaudible]

6 MICHELLE ALANIS: And, for the record, you're
7 moving both of your hands--

8 WARDEN ADAMS: Both hands up and down.

9 MICHELLE ALANIS: --forward and backward.

10 WARDEN ADAMS: Yeah, back and forth--

11 MICHELLE ALANIS: Swinging them.

12 WARDEN ADAMS: --like, clapping hands and stuff
13 like that, okay. You could tell by his body language, Valdez
14 is agitated and frustrated. There's no audio on the culinary
15 video, so you have to go by just what you can see. Senior
16 Navarrete is first line supervisor sitting there. The way
17 that I dealt with my Seniors and stuff, he should've told
18 Valdez, you're too agitated. You have no business being in
19 this vicinity. Because apparently this guy has done something
20 to really make you mad.

21 So, for the betterment of everybody involved, staff
22 safety, inmate safety. Lawsuits, liabilities, whatever. As
23 the Senior Officer, let me handcuff this guy and take him to
24 the Sergeant's Office and let the Sergeant put him in a cool
25

1 down, deal with him, what have you. As opposed to allow it to
2 go-make its way through fruition and the whole thing.

3 So, that was my-my major concern is, after the
4 reading the reports, I watched the video again and they just
5 don't match.

6 MICHELLE ALANIS: Okay. You mentioned that the
7 use of force happens often or it's an everyday occurrence.

8 WARDEN ADAMS: It can be, yeah.

9 MICHELLE ALANIS: So, I just want to make sure I
10 understand because here we're dealing with a situation of
11 what's been labeled as excessive force or unnecessary force.

12 WARDEN ADAMS: Yeah.

13 DANIEL MARKS: We're denying it's excessive
14 force.

15 WARDEN ADAMS: Yeah, I would call it
16 unnecessary force, not excessive, unnecessary. Excessive
17 because it's on this-

18 HEARING OFFICER: Right.

19 MICHELLE ALANIS: I guess my question is, you're
20 saying use of force happens often. Is what you viewed in that
21 video something that happens often?

22 WARDEN ADAMS: No ma'am. [pause] An inmate
23 being verbally abusive, I mean, that's all the time. It never
24 fails. It's like being a law enforcement officer on the
25 street. You're always getting some kind of argument or

1 complaint. That doesn't justify any type of use of force.
2 Otherwise you would have people shot all day every day on the
3 side of the road for getting pulled over.

4 MICHELLE ALANIS: And, if I could have you turn to
5 Exhibit N. It starts at Page NDOC 351 to NDOC 365. And, it
6 says, Grievances on Staff Member. Are you familiar with these
7 printouts?

8 DANIEL MARKS: Your Honor, I'm going to object.
9 This is what was done [inaudible] Friday. This is not
10 relevant at all. These were all not sustained. It was not
11 part of the original case. It wasn't part of their case in
12 terminating him. They're trying to--after they read our brief,
13 then they wanted to bootstrap these additional exhibits and
14 try to claim he had numerous grievances.

15 I think the true evidence is in--officers get
16 grievances frequently and if they're not sustained, they
17 don't--they shouldn't have any probative value.

18 HEARING OFFICER: Is it, what's your purpose in
19 talking about these?

20 MICHELLE ALANIS: This is a search on grievances
21 on this particular officer. I don't--it's relevant in the
22 sense that it names and identifies this officer. There's some
23 things that are referenced similar to what occurred in this
24 situation. Specifically, it includes the grievance on NDOC
25 360, it includes--

1 HEARING OFFICER: This case?

2 MICHELLE ALANIS: Yes, it includes this case.

3 It's Inmate Ricky Norales. And you can see on the bottom box
4 there, it says, Inmate states he was walking out of the dining
5 hall when he was stopped by Officers, he says, Vasquez and you
6 know, Nava—he has, obviously typos there, Naviette.

7 HEARING OFFICER: What page are you on?

8 MICHELLE ALANIS: I'm on NDOC 360.

9 HEARING OFFICER: Right. The other ones, I mean,
10 have they been sustained or are they not sustained? I think
11 that's important.

12 MICHELLE ALANIS: I think it says in most of
13 these, I believe some of them, if you look at the one right
14 before 359, I believe this was also referred for
15 investigation. That was either the week before or the week
16 after—I'm sorry, the month before, 9/15/16. So, they're not
17 all sustained necessarily, it's just a—

18 DANIEL MARKS: Your Honor, all of them were not
19 sustained or accepted. Here's the problem. They're claiming
20 it's not a progressive discipline case, it's O'Keefe, he did
21 or didn't file a—the rule. They're not claiming progressive
22 discipline.

23 So, first of all, none of these sustained.

24 HEARING OFFICER: Yeah, I would have to say that
25 they're not—it's not relevant to that. It's—given the

1 situation, given what's being alleged here, it's really not.

2 This would cause me to have to go into 18 different mini-

3 hearings to see what he did, what he didn't do. And, we'd be

4 here for three weeks. So, I don't see the relevance-

5 MICHELLE ALANIS: Okay.

6 HEARING OFFICER: --or the purpose of it.

7 MICHELLE ALANIS: From your review of the video,

8 Associate Warden Adams, did you note any physical threats or

9 emergency situations happening with Inmate Norales and

10 Officers on scene?

11 DANIEL MARKS: The document speaks for itself,

12 unless there's some more foundation on it than just the video

13 with no sound. We've all saw it.

14 HEARING OFFICER: I'm sorry, I missed-I missed the

15 question. I'm sorry.

16 MICHELLE ALANIS: I was saying if he-

17 HEARING OFFICER: The heat is getting to me, I

18 apologize.

19 MICHELLE ALANIS: In his review of the video, the

20 incident video, if he observed any physical threats or could

21 he see any emergencies arising that would require the force

22 that was applied.

23 HEARING OFFICER: I'll let him answer it.

24 WARDEN ADAMS: Yes?

25 HEARING OFFICER: You can answer it.

1 WARDEN ADAMS: Okay. The inmate was against
2 the wall, faced away from everybody. So, he couldn't have
3 made a physical threat.

4 MICHELLE ALANIS: I don't need--nothing further at
5 this time.

6 HEARING OFFICER: Okay.

7 DANIEL MARKS: Warden, as I understand it, did
8 you conduct any interviews yourself in this case?

9 WARDEN ADAMS: Not that I recall, no.

10 DANIEL MARKS: Did you do any investigation?

11 WARDEN ADAMS: No, [inaudible] Inspector
12 General's Office.

13 DANIEL MARKS: Okay.

14 WARDEN ADAMS: Other than me viewing the video
15 and reviewing the report.

16 DANIEL MARKS: That's what I'm trying to figure
17 out. So, you didn't interview Jose Navarrete?

18 WARDEN ADAMS: No sir.

19 DANIEL MARKS: You didn't interview Valdez.

20 WARDEN ADAMS: No sir.

21 DANIEL MARKS: You didn't interview Ricky
22 Norales.

23 WARDEN ADAMS: No sir.

24 DANIEL MARKS: You didn't interview Wachter.

25 WARDEN ADAMS: No.

1 DANIEL MARKS: You didn't interview Knatz
2 [phonetic], who I believe was the acting sergeant.

3 WARDEN ADAMS: Correct.

4 DANIEL MARKS: You didn't interview Will, who
5 was the Lieutenant.

6 WARDEN ADAMS: Correct.

7 DANIEL MARKS: Correct? Is that right sir?

8 WARDEN ADAMS: That is correct.

9 DANIEL MARKS: You didn't make the actual
10 decision to terminate Mr. Valdez-Mr. Navarrete, correct?

11 WARDEN ADAMS: No, that was not me.

12 DANIEL MARKS: That was not you. So, your
13 total involvement in this case was, you reviewed two reports.
14 One from Valdez and one from Navarrete.

15 WARDEN ADAMS: No sir.

16 DANIEL MARKS: And, watched the video.

17 WARDEN ADAMS: I reviewed every report—I
18 reviewed every report on NOTIS.

19 DANIEL MARKS: So, you reviewed the NOTIS and
20 watched the video.

21 WARDEN ADAMS: Yes.

22 DANIEL MARKS: And the video you watched had no
23 audio.

24 WARDEN ADAMS: Correct.

25

1 DANIEL MARKS: You never watched the video that
2 was shot by acting sergeant Knatz, that actually had audio,
3 correct?

4 WARDEN ADAMS: Yeah, I did, yes.

5 DANIEL MARKS: Prior to turning it over to the
6 IG?

7 WARDEN ADAMS: Probably not.

8 DANIEL MARKS: So, you turned it over to the IG
9 based on the NOTIS reports and the video with no sound.

10 WARDEN ADAMS: Absolutely.

11 DANIEL MARKS: Okay. Now, I believe the
12 records indicate you turned the matter—the incident happened
13 on October 9th. You referred to the IG on October 12th,
14 approximately three days later.

15 WARDEN ADAMS: Okay.

16 DANIEL MARKS: And that's before—if you go to
17 NDOC 360—

18 MICHELLE ALANIS: I thought we just determined
19 that we're not using—

20 DANIEL MARKS: Okay, fine. I just wanted to
21 establish—

22 HEARING OFFICER: If anything is relevant, it's
23 the one for the incident, if you want to talk about the one
24 for the incident.

25

1 DANIEL MARKS: I just want to establish the
2 day.

3 HEARING OFFICER: That's different, so I'm sorry.

4 MICHELLE ALANIS: Is it getting admitted or we're
5 just—

6 DANIEL MARKS: I just want to ask him about the
7 day.

8 HEARING OFFICER: He can refer to it, for a
9 question if he wants to for that—

10 DANIEL MARKS: The date of that grievance is
11 10/13, so you had already turned it over to the IG, prior to
12 the grievance.

13 WARDEN ADAMS: Okay.

14 DANIEL MARKS: Isn't that true?

15 WARDEN ADAMS: By these dates, yes.

16 DANIEL MARKS: Is that your recollection?

17 WARDEN ADAMS: No, it's not my recollection
18 from three years ago, no.

19 DANIEL MARKS: From what?

20 WARDEN ADAMS: Almost three years ago, no.

21 DANIEL MARKS: Okay.

22 WARDEN ADAMS: I can tell you that this guy was
23 at High Desert when he filed his grievance. Meaning
24 everything [inaudible] mail back and forth. So, I may have
25

1 been called by one of the Associate Wardens up there, saying
2 this guy's [crosstalk] can you look into it?

3 DANIEL MARKS: Wasn't this at Southern Desert?

4 WARDEN ADAMS: The incident was at Southern
5 Desert. The inmate [inaudible]

6 DANIEL MARKS: So, you think the inmate who
7 filed the grievance was at High Desert?

8 WARDEN ADAMS: I know he was.

9 DANIEL MARKS: And that was on—he filed his
10 grievance on 10/13/2016.

11 WARDEN ADAMS: [crosstalk] official response on
12 11/14, it was mailed to High Desert State Prison, that's where
13 the inmate was. After the incident, the inmate probably
14 moved.

15 DANIEL MARKS: Okay. Now, you're aware—I
16 thought you said earlier in reference to opposing counsel that
17 you referred the matter for investigation to the Officer
18 Inspector General, because of the inmate grievance.

19 WARDEN ADAMS: Uh huh, because of the inmate
20 grievance.

21 DANIEL MARKS: But the records indicate, if you
22 go to Exhibit A, Page 81—

23 HEARING OFFICER: Oh, the air came on, that's
24 good.

25 MICHELLE ALANIS: Huh?

1 DANIEL MARKS: Yeah, the air is kicking on.
2 HEARING OFFICER: The air came on.
3 DANIEL MARKS: At the bottom of the page where
4 it says, Investigation—
5 WARDEN ADAMS: Can I get to 81 first?
6 DANIEL MARKS: Sure.
7 WARDEN ADAMS: [pause]
8 DANIEL MARKS: Towards the bottom of the page.
9 WARDEN ADAMS: 76, 77. [pause] All right.
10 DANIEL MARKS: On the bottom of the page, it
11 says on or about October 12, 2016, Supervisor Criminal
12 Investigator, David Mulnar was assigned to investigate
13 allegations of excessive use of force. Mulnar reviewed the
14 video footage provided by Adams, that's you, correct?
15 WARDEN ADAMS: Yeah.
16 DANIEL MARKS: All right. Now, let's talk
17 about the handcuffing. I'm not going to ask you about that.
18 You can put that down if you want.
19 WARDEN ADAMS: Put it down?
20 DANIEL MARKS: Thank you. Okay. There are
21 rules and regulations as to when a corrections officer can
22 handcuff an inmate, correct?
23 WARDEN ADAMS: Yes.
24 DANIEL MARKS: And, use of a handcuff, that's
25 not normally considered use of force, correct?

1 WARDEN ADAMS: Very fine gray line. It's hands
2 on. Once you touch an inmate, technically, when you've
3 touched an inmate, you've used force.

4 DANIEL MARKS: Okay, but--

5 WARDEN ADAMS: But no, it's not considered a
6 use of force.

7 DANIEL MARKS: Right, it's not considered a use
8 of force in the use of force [inaudible], correct?

9 WARDEN ADAMS: Correct.

10 DANIEL MARKS: And the corrections officers
11 have discretion on when they can cuff up an inmate, correct?

12 WARDEN ADAMS: No. For the--for the safety of
13 staff or the safety of the inmate, [inaudible] not and it's
14 stated directly in the OP, that they're not to be used as--

15 DANIEL MARKS: Punishment.

16 WARDEN ADAMS: --punishment.

17 DANIEL MARKS: Okay. But, if an inmate's on
18 the wall, if an inmate is given commands and is non-compliant
19 to those commands, he typically happens because of staffing
20 and other reasons that the corrections officer would say, I'm
21 going to cuff you up and take you to the shift commander and
22 let him do the timeout or the counseling, correct?

23 WARDEN ADAMS: Yeah.

24 DANIEL MARKS: And that's a virtual everyday
25 occurrence, correct?

1 WARDEN ADAMS: Yeah.

2 DANIEL MARKS: If the--right?

3 WARDEN ADAMS: Yes, quite often.

4 DANIEL MARKS: Okay. And, if an inmate is
5 being non-compliant on the wall, meaning doesn't have his
6 hands in the proper position, takes his hands off the wall,
7 turns, is not still, the corrections officer will tell him,
8 stop, put your hands on the wall, correct?

9 WARDEN ADAMS: Yes.

10 DANIEL MARKS: He will say, if you take your
11 hands off the wall I'm going to take that as an act of
12 aggression, correct?

13 WARDEN ADAMS: Depending on the correctional
14 officer, yeah.

15 DANIEL MARKS: And he may tell the inmate, I'm
16 going to cuff you up.

17 WARDEN ADAMS: Yes.

18 DANIEL MARKS: Okay. And at that point, the
19 inmate is supposed to have his hands high on the wall and the
20 correct--and there's a procedure where the corrections officer
21 would cuff up the inmate, correct?

22 WARDEN ADAMS: Correct.

23 DANIEL MARKS: All right. And then bring them
24 to the operational sergeant.

25 WARDEN ADAMS: Yes.

1 DANIEL MARKS: Okay. And that happens--
2 WARDEN ADAMS: Often.
3 DANIEL MARKS: It could happen very often.
4 WARDEN ADAMS: Uh huh.
5 DANIEL MARKS: At Southern Desert in 2016,
6 correct?
7 WARDEN ADAMS: Yes.
8 DANIEL MARKS: If the inmate then refuses to
9 comply with the cuffing, fights the cuffing or tenses up and
10 doesn't put his arms in the proper place, there could be a
11 spontaneous use of force at that point, correct?
12 WARDEN ADAMS: Yes, if he resists physical
13 cuffing, yes.
14 DANIEL MARKS: And, by resisting that can be,
15 if the inmate's on the wall, turning his shoulder, correct?
16 Back against the corrections officer.
17 WARDEN ADAMS: No, if his--if his back is to
18 you, he cannot pose you a physical threat.
19 DANIEL MARKS: If the inmate turns--
20 WARDEN ADAMS: If an inmate turns more than
21 halfway around, then he may be able to take an aggressive
22 stance motion.
23 DANIEL MARKS: If the inmate turns and makes a
24 movement, a furtive movement, the correction officer can take
25 defense action to take the inmate to the ground, correct?

1 WARDEN ADAMS: To the level to meet the
2 inmate's--the inmate's resistant and use.

3 DANIEL MARKS: Right, force has to always be
4 proportioned, correct?

5 WARDEN ADAMS: Correct.

6 DANIEL MARKS: So, in this case, you obviously
7 couldn't kick the inmate in the face.

8 WARDEN ADAMS: Correct.

9 DANIEL MARKS: You couldn't take the inmate and
10 slam him against the wall, correct?

11 WARDEN ADAMS: Correct.

12 DANIEL MARKS: You couldn't punch him in the
13 face.

14 WARDEN ADAMS: Correct.

15 DANIEL MARKS: But in order--if you are trying
16 to cuff somebody and you believe they're resisting, you're the
17 only one there that knows if they're resisting, you can use
18 minimal force to take them down and cuff them. Is that
19 correct?

20 WARDEN ADAMS: You would push him against the
21 wall and bring his hands behind his back.

22 DANIEL MARKS: And, if he resisted, turned and
23 resisted, you could take him to the ground and cuff him,
24 correct?

25 WARDEN ADAMS: Correct. Yes.

1 DANIEL MARKS: And that would be legitimate
2 force, as long as you didn't kick him in the face, or hit him
3 in the face or taser him--

4 WARDEN ADAMS: It would be legitimate force if
5 it was within the use of force guidelines.

6 DANIEL MARKS: But that's the minimal force,
7 hands on, correct?

8 WARDEN ADAMS: Yes.

9 DANIEL MARKS: Now, you reviewed the video, no
10 one kicked this inmate, correct?

11 WARDEN ADAMS: No.

12 DANIEL MARKS: No one hit this inmate in the
13 face, correct?

14 WARDEN ADAMS: Not that I saw, no.

15 DANIEL MARKS: No one taser this inmate,
16 correct?

17 WARDEN ADAMS: No sir.

18 DANIEL MARKS: And in fact, Officer Norales--
19 Officer Navarrete never put his hands on the inmate at all,
20 other than to aid Valdez in the cuffing, correct?

21 WARDEN ADAMS: Correct.

22 DANIEL MARKS: So, he used no force at all in
23 this incident, correct, Officer Navarrete, correct?

24 WARDEN ADAMS: Yeah, well--[crosstalk]

25 DANIEL MARKS: There was no force, correct?

1 WARDEN ADAMS: There was force in the fact that
2 he helped him restrain him, but nothing major.

3 DANIEL MARKS: Well, if you watch the video, he
4 was on the floor. He was on the ground. He came to his aid
5 but I believe the evidence will be that Valdez did the
6 cuffing.

7 WARDEN ADAMS: Correct.

8 DANIEL MARKS: And Officer Navarrete called for
9 back-up, correct? Isn't that correct?

10 WARDEN ADAMS: Yes.

11 DANIEL MARKS: Okay. You had no idea what
12 Norales was saying to the officers, correct?

13 WARDEN ADAMS: No.

14 DANIEL MARKS: Part of the officer's job is to
15 counsel inmates, correct?

16 WARDEN ADAMS: Yes.

17 DANIEL MARKS: And to get them to become
18 compliant, correct?

19 WARDEN ADAMS: Correct.

20 DANIEL MARKS: Because in the yard on that day,
21 what did you have, 200-300 inmates?

22 WARDEN ADAMS: At that particular point in
23 time?

24 DANIEL MARKS: Yeah.

25

1 WARDEN ADAMS: Yeah, I'd say probably about
2 200.

3 DANIEL MARKS: And, how many guards were there,
4 about three?

5 WARDEN ADAMS: You're talking about physically
6 in the culinary?

7 DANIEL MARKS: Yeah. Well, physically in the
8 yard.

9 WARDEN ADAMS: Physically in the yard? Two on
10 the roof with weapons. Less than 50 yards away. [pause] The
11 only ones I saw on the video were three.

12 DANIEL MARKS: So, you have five inmates [sic]-
13 so, you have three inmates [sic] without weapons in the yard.

14 WARDEN ADAMS: Three officers, thank you.

15 DANIEL MARKS: Three officers, two on the roof
16 with weapons that I assume you only want to use as a last
17 resort, right?

18 WARDEN ADAMS: Yes.

19 DANIEL MARKS: So, there are three that have to
20 use verbal and whatever skills they have to try to calm down--

21 WARDEN ADAMS: Verbal [crosstalk]

22 DANIEL MARKS: Excuse me.

23 WARDEN ADAMS: Verbal, physical or chemical
24 agents.

25

1 DANIEL MARKS: Right but try to use verbal
2 first to keep everything calm among 300 inmates. So, they're
3 outnumbered 100:1.

4 WARDEN ADAMS: Oh yes.

5 DANIEL MARKS: And, the officers are trained to
6 try to counsel inmates to comply with the rules and
7 regulations, correct?

8 WARDEN ADAMS: Yeah.

9 DANIEL MARKS: If someone steals food from the
10 culinary, it doesn't seem like a big deal to me, but I guess
11 that's a rule and regulation that, if they take food, it's
12 thrown out, correct?

13 WARDEN ADAMS: Yes.

14 DANIEL MARKS: And that's [crosstalk]

15 WARDEN ADAMS: They throw it out. It's thrown
16 out and they're replaced with an uncontaminated lunch.

17 DANIEL MARKS: And then they can be written up
18 because they're violating a rule, correct?

19 WARDEN ADAMS: Correct.

20 DANIEL MARKS: And, inmates can trade food for
21 weapons, drugs, etc., correct?

22 WARDEN ADAMS: Yes.

23 DANIEL MARKS: That's kind of the--that's the
24 barter system, correct?

25 WARDEN ADAMS: Uh huh, yes.

1 DANIEL MARKS: So, you're training your
2 correction officers to make the inmates follow the rules,
3 correct?

4 WARDEN ADAMS: Yes.

5 DANIEL MARKS: It would be easy for the
6 correction officers to just let these guys go, stealing food
7 or not and not get into this kind of situation, correct?

8 WARDEN ADAMS: That is correct.

9 DANIEL MARKS: But they're trained and their
10 job is to try to convince hardened criminals to follow the
11 prison rules, knowing they're outnumbered 100:1. Correct?

12 WARDEN ADAMS: That is correct.

13 DANIEL MARKS: So, it's a tough job. You'd
14 agree.

15 WARDEN ADAMS: Oh yes.

16 DANIEL MARKS: All right. Now, that day, you
17 were short staffed, correct?

18 WARDEN ADAMS: More than likely.

19 MICHELLE ALANIS: Objection, foundation.

20 DANIEL MARKS: And--because you had an acting
21 sergeant, didn't you? You had a Senior Correction Officer
22 [crosstalk]

23 WARDEN ADAMS: That doesn't necessarily mean
24 that we're short staffed. That might mean that we are short
25

1 of supervisors and one is in the process of hiring or any
2 number of reasons [crosstalk]

3 DANIEL MARKS: Okay, but you had an acting
4 sergeant.

5 WARDEN ADAMS: Okay.

6 DANIEL MARKS: [pause] So, if you go to Page
7 181, Exhibit D. #2, is force will be proportionate to the
8 threat exhibited, correct? That's on--

9 WARDEN ADAMS: On the bottom, [crosstalk]

10 DANIEL MARKS: Yeah.

11 WARDEN ADAMS: Force will be proportionate to
12 the threat given by the inmate, yes.

13 DANIEL MARKS: That's correct. A staff member
14 may use force to protect himself or any other individual from
15 his/her harm, correct?

16 WARDEN ADAMS: Yes.

17 DANIEL MARKS: If you witness use of force that
18 you think is excessive or unnecessary, you're required to
19 immediately report the observation, correct?

20 WARDEN ADAMS: Yes.

21 DANIEL MARKS: Now, when the correction--that's
22 all I have on that right now. The correction officers have to
23 work as a team, correct?

24 WARDEN ADAMS: Yes.

25

1 DANIEL MARKS: And therefore, correction
2 officers should not be disagreeing in front of an inmate,
3 correct?

4 WARDEN ADAMS: Disagreeing?

5 DANIEL MARKS: Yeah.

6 WARDEN ADAMS: Depending on how great the
7 situation.

8 DANIEL MARKS: It would be rare for you to say
9 that correction officers should disagree in front of the
10 inmate, that empowers the inmate, correct?

11 WARDEN ADAMS: Oh yes. Yes.

12 DANIEL MARKS: So, absent somebody taking out
13 their taser and you disagreeing or taking a baseball bat and
14 you disagreeing, it's a team effort and if you have issues,
15 you gotta deal with them later, correct?

16 WARDEN ADAMS: To an extent.

17 DANIEL MARKS: Because if you start fighting in
18 front of the inmates, they're going to take over the asylum,
19 correct?

20 WARDEN ADAMS: You're absolutely right.

21 DANIEL MARKS: Okay. [pause]

22 WARDEN ADAMS: There is a difference between
23 arguing and fighting and relaying a lawful order to step off.

24 DANIEL MARKS: I understand. Now, if you go to
25 Page 182, Exhibit D.

1 HEARING OFFICER: Exhibit?

2 DANIEL MARKS: D. D as in dog, same Exhibit.

3 HEARING OFFICER: I got it.

4 DANIEL MARKS: This is the Use of Force policy.

5 HEARING OFFICER: Right, I have it.

6 DANIEL MARKS: It's bate stamp 182 at the

7 bottom. It's 405.03, Paragraph 5. You would agree, to compel

8 an inmate's compliance with orders, force may be used if no

9 alternative method of persuasion is effective or whenever

10 circumstances require urgency, correct?

11 WARDEN ADAMS: Correct.

12 DANIEL MARKS: And if you're going to take an

13 inmate to the Sergeant, for what do you call it? A time out?

14 Counseling? What do you call it?

15 WARDEN ADAMS: Counseling from the Sergeant.

16 DANIEL MARKS: Counseling from the Sergeant,

17 sort of kicking it upstairs, you've got to put the inmate in

18 handcuffs, generally, that's the policy, correct?

19 WARDEN ADAMS: Depending on why he's going to

20 the Sergeant yes.

21 DANIEL MARKS: If he's going for being non-

22 compliant--

23 WARDEN ADAMS: Yes.

24 DANIEL MARKS: You cuff him up.

25 WARDEN ADAMS: Yes.

1 DANIEL MARKS: That's the term, right?

2 WARDEN ADAMS: Yes.

3 DANIEL MARKS: Okay. [pause] You would--before
4 you cuffed up an inmate, you normally would try to talk or
5 counsel that inmate, to get them to become compliant, correct?

6 WARDEN ADAMS: Yes.

7 DANIEL MARKS: Because going to the Sergeant
8 takes time and takes you off the yard, correct?

9 WARDEN ADAMS: Correct.

10 DANIEL MARKS: So, correction officers know
11 it's to their interest, for security and safety, as well as
12 the inmate, to try and talk the inmate, sort of off the ledge,
13 get him to be compliant, rather than have to cuff him up and
14 bring him to the Sergeant, take two officers out of the yard,
15 that could create other security problems, correct?

16 WARDEN ADAMS: Correct.

17 DANIEL MARKS: So, you would normally talk the
18 inmate down, as long as you could until the non-compliance was
19 so strong you felt you had to cuff him and bring him to the
20 Sergeant, correct?

21 WARDEN ADAMS: [crosstalk]

22 DANIEL MARKS: And, there's no time limit.
23 That's got to be a judgment call by the officer, correct?

24 WARDEN ADAMS: It's a judgment call, the
25 officer--for the officer, yes.

1 DANIEL MARKS: Right. Some officers got more
2 of a hair trigger and it's boom, we're going to cuff him up
3 and take him, correct?

4 WARDEN ADAMS: Uh huh.

5 DANIEL MARKS: Right?

6 WARDEN ADAMS: Yes.

7 DANIEL MARKS: And other officers are going to
8 do the more Freudian, let's talk it out, try to talk them off
9 the ledge, so to speak and cuff them as a last resort, isn't
10 that true?

11 WARDEN ADAMS: Yeah.

12 DANIEL MARKS: All right. And, if you go to,
13 the same Exhibit D, Page 179. It indicates passive compliance
14 measures, technique strategies used by staff to gain
15 compliance control of an inmate without forcible, physical
16 contact. That's the counseling, correct?

17 WARDEN ADAMS: Where are you at?

18 DANIEL MARKS: Bottom of Page 179.

19 WARDEN ADAMS: [inaudible] techniques
20 strategies, yes.

21 DANIEL MARKS: And then on Page 180, counsel
22 asked you about spontaneous--in these staff conditions, there's
23 spontaneous versus planned, correct?

24 WARDEN ADAMS: Yes.
25

1 DANIEL MARKS: So, there's really only two
2 types as-as correction officers use spontaneous, all that
3 means is, it's not a planned use of force.

4 WARDEN ADAMS: Correct.

5 MICHELLE ALANIS: Objection, misstates the-

6 DANIEL MARKS: Your Honor, that's exactly what
7 it was.

8 MICHELLE ALANIS: No, there's actually another one
9 on there that says, use of force, right underneath
10 spontaneous.

11 HEARING OFFICER: It is cross. What was the
12 question, I think he already answered it.

13 DANIEL MARKS: Yeah, he answered it.

14 HEARING OFFICER: Clarify?

15 DANIEL MARKS: So, let me just ask you, your
16 only involvement in this incident at all was what you've
17 already testified to in turning to the IG?

18 WARDEN ADAMS: Yes.

19 DANIEL MARKS: And the IG's up in Carson, is
20 that right?

21 WARDEN ADAMS: No, ever since Dave Mulnar,
22 [crosstalk]

23 DANIEL MARKS: Oh, out here. Okay. I'll pass
24 the witness.

25

1 MICHELLE ALANIS: Associate Warden Adams, going
2 back to looking at NDOC 180, you were just asked about the
3 different types of use of force. You were presented with
4 either planned or spontaneous. If we look at AR 405, it looks
5 like there's three definitions of use of force.

6 At the very top, planned use of force, midway down
7 spontaneous and then right below that, use of force. Would
8 you agree with that?

9 WARDEN ADAMS: Yes.

10 MICHELLE ALANIS: Okay. And so, can you maybe
11 explain for us the use of force talks about what we've been
12 kind of going through, progressive levels of force to gain an
13 inmate's control.

14 WARDEN ADAMS: Correct.

15 MICHELLE ALANIS: Which calls for the specific
16 situation, right?

17 WARDEN ADAMS: Correct. It applies to planned
18 and unplanned, spontaneous.

19 MICHELLE ALANIS: Okay. And the spontaneous use
20 of force specifically says, actions that staff may immediately
21 take in response to an emergency situation.

22 WARDEN ADAMS: Correct.

23 MICHELLE ALANIS: And I think I had asked you this
24 earlier, when you reviewed that video of the incident, did you
25 observe an emergency situation?

1 DANIEL MARKS: Your Honor, it's been asked and
2 answered.

3 WARDEN ADAMS: Nothing that I would-

4 DANIEL MARKS: My question went to something
5 totally different.

6 HEARING OFFICER: I think it touches upon your
7 question and so, I think she can clarify it.

8 WARDEN ADAMS: In what I observed, the inmate
9 posed no immediate threat to staff or himself. He didn't turn
10 around far enough to become an aggressive, combative stance.

11 MICHELLE ALANIS: Okay. And, earlier you were
12 asked about, you couldn't kick the inmate, you couldn't punch
13 him in the face. Could you push the inmate into the wall,
14 with both hands like this?

15 WARDEN ADAMS: No, you shouldn't. You should
16 never need more than one hand. That's why he's against the
17 wall, it put him at a disadvantage.

18 MICHELLE ALANIS: And you can't choke hold an
19 inmate, right?

20 WARDEN ADAMS: No ma'am.

21 MICHELLE ALANIS: And, in choke holding him, you
22 can't pull him back into the ground.

23 WARDEN ADAMS: Correct.
24
25

1 MICHELLE ALANIS: Earlier you were asked if
2 Navarrete had used any force on Inmate Norales and you said he
3 did not, right?

4 WARDEN ADAMS: Not that I observed, no.

5 MICHELLE ALANIS: Okay.

6 WARDEN ADAMS: Aside from applying body
7 pressure to hold him down.

8 MICHELLE ALANIS: Once he was already on the
9 ground.

10 WARDEN ADAMS: Correct.

11 MICHELLE ALANIS: In your opinion, as the
12 Associate Warden of Operations, did Senior Officer Navarrete
13 permit unnecessary force to occur?

14 WARDEN ADAMS: Yes.

15 MICHELLE ALANIS: And, by permitting unnecessary
16 for, or excessive force, is Senior Officer Navarrete following
17 the rules?

18 WARDEN ADAMS: No ma'am.

19 MICHELLE ALANIS: And, by permitting that, as the
20 Senior Officer, is he violating NDOC policies?

21 WARDEN ADAMS: Yes ma'am.

22 MICHELLE ALANIS: And then by submitting a NOTIS
23 report that identifies or I'm sorry, describes the situation—I
24 don't want to misquote it here. That Inmate Norales came off
25 the culinary wall while CO Valdez was attempting to retrain

1 him resulting in a spontaneous use of force. That wasn't an
2 accurate reporting, in your opinion.

3 WARDEN ADAMS: In my opinion, between that
4 report and the video, no.

5 MICHELLE ALANIS: And by submitting this report
6 that doesn't appear to accurately state what occurred that
7 day, that's not following the rules, right?

8 WARDEN ADAMS: No ma'am.

9 MICHELLE ALANIS: And, when officers are
10 submitting incident reports in NOTIS, are they required to
11 include as much detail as possible

12 WARDEN ADAMS: Yes ma'am.

13 MICHELLE ALANIS: And, is that particularly true
14 when there is use of force?

15 WARDEN ADAMS: Absolutely.

16 MICHELLE ALANIS: And so, at this point, when he
17 just says, he came off the culinary wall while he was
18 attempting to restrain him, is there any reference about
19 anything that occurred in the 11 minutes prior to that
20 incident occurring?

21 WARDEN ADAMS: No ma'am.

22 MICHELLE ALANIS: [pause] I believe you were
23 asked if you reviewed the video of the inmate when he's being
24 taken to the infirmary, right?

25 WARDEN ADAMS: Yes.

1 MICHELLE ALANIS: And you said you did review that
2 video?

3 WARDEN ADAMS: Not prior to referring him.

4 MICHELLE ALANIS: Okay, but at some point you
5 reviewed that video.

6 WARDEN ADAMS: Yes.

7 MICHELLE ALANIS: And, there's been testimony and
8 we've seen portions of the video where once the medical cart
9 comes up, the inmate says, I have a concussion. He goes on to
10 state that, you know, this force was inappropriate.

11 WARDEN ADAMS: Yes, I'm aware of that, where he
12 said they kicked him in the face and everything else, yeah.

13 MICHELLE ALANIS: And then there's a point when
14 the inmate laughs and says something about, played, being
15 played or playing.

16 WARDEN ADAMS: Yes.

17 MICHELLE ALANIS: Okay. Do you remember hearing
18 that on the video?

19 WARDEN ADAMS: Yes.

20 MICHELLE ALANIS: Okay. And if you need to, we
21 can play it but, does that—since you said you saw that video
22 after you referred it to the IG's Office, would that have
23 changed anything?

24 DANIEL MARKS: It's kind of irrelevant.

25 WARDEN ADAMS: No.

1 DANIEL MARKS: Because he didn't do a full
2 complete investigation. He turned it over to the IG, that was
3 the end of it. He didn't make the termination decision. He
4 didn't interview the witnesses. He didn't review the videos
5 for any substance.

6 MICHELLE ALANIS: He didn't make a-

7 HEARING OFFICER: I hear you, but for what it's
8 worth.

9 MICHELLE ALANIS: I mean, he's the one that
10 essentially sent this to investigation-

11 DANIEL MARKS: Right.

12 MICHELLE ALANIS: --because he observed
13 wrongdoing.

14 DANIEL MARKS: But then I asked him, did you do
15 anything after that regarding this case and he said, no.

16 HEARING OFFICER: That's correct. I understand
17 that. He's been kind of going beyond his role in the case in
18 all his testimony today. So, I'm going to allow it.

19 MICHELLE ALANIS: In your experience as the AW of
20 Operations, inmates will sometimes get officers to react,
21 right?

22 WARDEN ADAMS: Oh, absolutely.

23 MICHELLE ALANIS: And react inappropriately.

24 WARDEN ADAMS: Absolutely.

25

1 MICHELLE ALANIS: And they want inmate—sorry, not
2 inmates, they want officers to allow force to—unnecessary
3 force to occur, right?

4 WARDEN ADAMS: Absolutely.

5 MICHELLE ALANIS: And, because they know the
6 second that an officer puts hands on them, they can go—turn
7 around and file a lawsuit, right?

8 WARDEN ADAMS: Correct.

9 MICHELLE ALANIS: And expose the prison to
10 liability.

11 WARDEN ADAMS: Correct.

12 MICHELLE ALANIS: And get some sort of monetary
13 amount possibly from it, right?

14 WARDEN ADAMS: Yes ma'am.

15 MICHELLE ALANIS: And that's why the officers are
16 trained not to put hands on the inmates where not necessary,
17 right?

18 WARDEN ADAMS: Exactly. Verbal abuse is
19 irrelevant. It's doesn't amount to anything.

20 MICHELLE ALANIS: So, an inmate chuckling after
21 the fact or talking about how he's going to get his kid
22 through college.

23 WARDEN ADAMS: Is normal.

24 MICHELLE ALANIS: It's not a surprise, right?

25 WARDEN ADAMS: No ma'am.

1 MICHELLE ALANIS: I don't have anything further at
2 this time.

3 DANIEL MARKS: I do. When an inmate is saying,
4 I played your officers, you should train them better, is
5 something you should at least investigate, correct?

6 WARDEN ADAMS: Yes.

7 DANIEL MARKS: And, I think we established
8 before, if an inmate is not following orders and a correction
9 officer makes a decision to cuff someone up and they approach
10 and put the hand on the shoulder, you don't have to wait until
11 the inmate turns face-to-face with them, correct? There's a
12 period where if the inmate resists and whether it's three-
13 quarters, a quarter, you don't have wait until their face-to-
14 face like we are before you take them down.

15 WARDEN ADAMS: You don't have to wait until
16 their face-to-face but you have to wait until you're
17 physically in danger.

18 DANIEL MARKS: Until you believe there's
19 resistance.

20 WARDEN ADAMS: Until you--then you have to take
21 the lowest amount of stuff you can to control it.

22 DANIEL MARKS: Right, but it's when you as the
23 officer believe there's a resistance.

24 WARDEN ADAMS: Correct.

25

1 DANIEL MARKS: And then you can take him down
2 as long as you don't beat him, hit him, you take the least
3 aggressive amount of force, which is just taking someone down
4 and cuffing them up, correct?

5 WARDEN ADAMS: No. The least amount of force
6 would be to lay your shoulder into his shoulders and push him
7 against the wall and cuff him. Not [crosstalk]

8 DANIEL MARKS: And if he resists—if he resists—
9 -

10 WARDEN ADAMS: Then--

11 DANIEL MARKS: --you have to take him to the
12 ground.

13 WARDEN ADAMS: --you would have to take him to
14 the ground to get control.

15 DANIEL MARKS: And, use of force is judged--has
16 to be judged by a standard of the officer in the field, not
17 the comfort of a courtroom--

18 WARDEN ADAMS: Correct.

19 DANIEL MARKS: --like we are now, on split
20 seconds, correct?

21 WARDEN ADAMS: Absolutely.

22 DANIEL MARKS: What we're doing now is really
23 totally not what you're supposed to be doing in judging an
24 officer because they have to make a split second decision, in
25 the field outnumbered 100:1.

1 WARDEN ADAMS: That is correct.

2 DANIEL MARKS: And we have the luxury of
3 sitting here and running it in microseconds drinking coffee
4 knowing we're secure, correct?

5 WARDEN ADAMS: That's what we did but for the
6 first 25 years of my career, I made those split second
7 decisions.

8 DANIEL MARKS: Isn't that correct? And the US
9 Supreme Court has even said that.

10 WARDEN ADAMS: That's right.

11 DANIEL MARKS: Okay. Thank you. Can we have a
12 break at some point.

13 MICHELLE ALANIS: I just have one question.

14 HEARING OFFICER: Well, I want to finish this
15 witness and then—

16 DANIEL MARKS: Oh, sure. Oh, there's more?

17 MICHELLE ALANIS: Just one follow-up.

18 DANIEL MARKS: Okay.

19 MICHELLE ALANIS: Associate Warden Adams, when you
20 reviewed the video, did you see any attempt at trying to
21 restrain this inmate?

22 WARDEN ADAMS: Not until he was on the ground.

23 DANIEL MARKS: Asked and answered.

24 MICHELLE ALANIS: Okay. [pause] I'm done.

25 HEARING OFFICER: All right.

1 MICHELLE ALANIS: I actually stuck to it.

2 HEARING OFFICER: Thank you for your testimony
3 today. Appreciate it.

4 WARDEN ADAMS: Yeah.

5 HEARING OFFICER: All right. Well—

6 DANIEL MARKS: Can we take five? Can we take a
7 five minute break?

8 MICHELLE ALANIS: Yes, you're free to go.

9 HEARING OFFICER: Yeah, absolutely.

10 DANIEL MARKS: Who is the next witness?

11 HEARING OFFICER: Yeah. How many more do you
12 have?

13 MICHELLE ALANIS: I have two. Let me just—if I
14 can confer to determine how we want to do this in light of—

15 HEARING OFFICER: I'm probably going to find out
16 because we're going to probably need another day, right?

17 DANIEL MARKS: Yeah.

18 HEARING OFFICER: It looks inevitable to me. They
19 take you—they kick me out at 5:00. I mean, I don't have an
20 option to stay.

21 DANIEL MARKS: Should I let our witnesses go
22 then?

23 HEARING OFFICER: Well, I don't know. I don't
24 know how long she's got.

25 MICHELLE ALANIS: I have at least two. So—

1 HEARING OFFICER: We could squeeze somebody in,
2 it'd be great. If we can't you can't. So, I'd prefer to get
3 as many done as we can.

4 MICHELLE ALANIS: I would think-[crosstalk]

5 HEARING OFFICER: Especially if they're under
6 subpoena. I'd hate to inconvenience everybody. Let's see
7 what we can do.

8 NICOLE YOUNG: How long do you think your last
9 witnesses are going to take?

10 MICHELLE ALANIS: The PDH officer should be fairly
11 quick. I don't think he would be on there more than a half-
12 hour.

13 HEARING OFFICER: Let me go off the record. I'm
14 sorry. All right, let me--

15 MICHELLE ALANIS: And then we have Morgan Howell
16 to go through the charges and the termination.

17 HEARING OFFICER: So, that's going to be a bit
18 right? I'm not criticizing, I'm just asking. [laughs] I'm
19 not.

20 DANIEL MARKS: So, that's going to take us to
21 virtually 5:00. We have four other officers out there, I
22 don't know if we should just tell them it's going to be
23 rescheduled or just let them wait until 5:00.

24 MICHELLE ALANIS: If there's time to start, I
25 don't know if you want to start with--

1 DANIEL MARKS: No, I don't.

2 HEARING OFFICER: Whatever you prefer to do. You
3 guys—you're going to excuse them probably?

4 DANIEL MARKS: I don't know what I do, just
5 tell them, we'll get a new date, or do you want to get us a
6 new date when we come back from the break?

7 HEARING OFFICER: Well, let me see if I can get
8 one because it's not that easy to get a date.

9 MICHELLE ALANIS: No.

10 DANIEL MARKS: Okay. I'll tell them to just
11 wait.

12 MICHELLE ALANIS: They might give you a few.

13 HEARING OFFICER: My calendar is not exactly open
14 either. Let me see. What am I doing? There we go, let's go
15 off the record.

16 OFF THE RECORD

17 ON THE RECORD

18 HEARING OFFICER: We're back on the record now in
19 the Navarrete, I call him Navarrete, I'm sorry, versus
20 Department of Corrections. We're back on and the Department
21 of Correction is going to call the next witness?

22 MICHELLE ALANIS: Yes.

23 HEARING OFFICER: And, it's a telephonic witness?

24 MICHELLE ALANIS: Yes, it's Warden—now Warden
25 Perry Russell.

1 HEARING OFFICER: All right.

2 MICHELLE ALANIS: And—

3 HEARING OFFICER: Let's see how we can do.

4 MICHELLE ALANIS: If it's okay, I'm going to—

5 HEARING OFFICER: This usually works pretty good,
6 but we'll see.

7 MICHELLE ALANIS: If no one objects, I'm just
8 going to move up over here.

9 HEARING OFFICER: Do you have the number?

10 MICHELLE ALANIS: Yes.

11 HEARING OFFICER: [dials phone, rings]

12 WARDEN RUSSELL: Warden Russell.

13 MICHELLE ALANIS: Hi Warden Russell, this is
14 Deputy Attorney General, Michell Alanis.

15 WARDEN RUSSELL: Hi.

16 MICHELLE ALANIS: We have you on speakerphone at
17 the Navarrete hearing.

18 WARDEN RUSSELL: Okay.

19 HEARING OFFICER: Good afternoon sir. I'm Hearing
20 Officer Mark Gentile. And, could you—it's kind of odd, but
21 can you raise your right hand for us?

22 WARDEN RUSSELL: Got it.

23 HEARING OFFICER: All right. Do you solemnly
24 swear that the testimony you're about to give in this
25

1 proceeding will be the truth, the whole truth and nothing but
2 the truth?

3 WARDEN RUSSELL: Yes.

4 HEARING OFFICER: Very good. The Deputy AG is
5 going to ask you some questions and then Mr. Marks will have
6 some cross for you.

7 WARDEN RUSSELL: All right.

8 MICHELLE ALANIS: Warden Russell, can you—

9 HEARING OFFICER: State your full name.

10 MICHELLE ALANIS: --state your full name for the
11 record please?

12 WARDEN RUSSELL: Yes, it's Perry Arnold Russell.

13 MICHELLE ALANIS: And, where are you employed?

14 WARDEN RUSSELL: Currently, I'm employed at Warm
15 Springs Correctional Center in Carson City.

16 MICHELLE ALANIS: And, that's a part of the Nevada
17 Department of Corrections, correct?

18 WARDEN RUSSELL: It is.

19 MICHELLE ALANIS: And, what's your position there?

20 WARDEN RUSSELL: I am the Warden.

21 MICHELLE ALANIS: How long have you been the
22 Warden of Warm Springs Correctional Center?

23 WARDEN RUSSELL: About a year and a half.

24 MICHELLE ALANIS: What was the position you held
25 prior?

1 WARDEN RUSSELL: I was Associate Warden at High
2 Desert State Prison.

3 MICHELLE ALANIS: How long have you been with-how
4 long have you been employed with NDOC?

5 WARDEN RUSSELL: Since January 2007.

6 MICHELLE ALANIS: As the Associate Warden at High
7 Desert State Prison, were there times you had to serve as a
8 Pre-Disciplinary Hearing Officer?

9 WARDEN RUSSELL: Yes.

10 MICHELLE ALANIS: Okay. And, is that something
11 you still do today, as a Warden?

12 WARDEN RUSSELL: It is.

13 MICHELLE ALANIS: About how many times have you
14 served as a Pre-Disciplinary Hearing Officer?

15 WARDEN RUSSELL: Approximately six. It could be
16 a little more but for sure six.

17 MICHELLE ALANIS: How do you generally get
18 assigned in that role?

19 WARDEN RUSSELL: Normally, if the incident that
20 occurred is of a higher level, I will get a call because they
21 want somebody that's not biased. Most of the time, Southern
22 Desert will go to High Desert. High Desert will go to
23 Southern Desert. Up here and NCC will call to have someone do
24 their pre-disciplinary hearing.

25

1 MICHELLE ALANIS: Okay. So, as the Pre-
2 Disciplinary Hearing Officer, you're normally reviewing
3 incidents that did not occur at the institution you're
4 currently located at.

5 WARDEN RUSSELL: Correct. Lower level ones,
6 sometimes we will, but higher level ones, normally it's get
7 them to a different institution.

8 MICHELLE ALANIS: What do you mean "higher level"?

9 WARDEN RUSSELL: Where it may involve a
10 termination or it seems egregious enough to do a long
11 suspension or where there's also nobody that would be
12 considered non-biased in the institution. Like, the higher
13 they go, the more higher up, the staff get involved.

14 MICHELLE ALANIS: And, by the "higher they go",
15 you're again referring to the length of the discipline or the-

16 WARDEN RUSSELL: Correct.

17 MICHELLE ALANIS: --the type of discipline.

18 WARDEN RUSSELL: Yes.

19 MICHELLE ALANIS: Okay. And, can you tell me what
20 is the purpose of the Pre-Disciplinary Hearing Officer?

21 WARDEN RUSSELL: The Pre-Disciplinary Hearing
22 Officer will get all the information from the investigation
23 and they'll also be able to sit down and hear from whoever the
24 person is that's at the disciplinary hearing. That way
25 there's all sides and he can assess what he believes would be

1 a good outcome or what the outcome should be and any
2 particular discipline.

3 MICHELLE ALANIS: And, as the Pre-Disciplinary
4 Hearing Officer, prior to conducting this hearing with the
5 employee, do you review documents?

6 WARDEN RUSSELL: I do.

7 MICHELLE ALANIS: And, if there's any applicable
8 videos or photos, do you review those as well?

9 WARDEN RUSSELL: Yes ma'am.

10 MICHELLE ALANIS: Do you recall serving as the
11 Pre-Disciplinary Hearing Officer in the discipline of Jose
12 Navarrete?

13 WARDEN RUSSELL: I do.

14 MICHELLE ALANIS: And, what did you do to prepare
15 for this Pre-Disciplinary Hearing?

16 WARDEN RUSSELL: Reviewed the Specificity of
17 Charges, the Pre-Disciplinary packet which consists of the
18 investigation and a video.

19 MICHELLE ALANIS: So, you reviewed the
20 investigative file, the video and the specificity of charges?

21 WARDEN RUSSELL: Correct.

22 MICHELLE ALANIS: And so, by the time you get
23 this, the specificity of charges had already been served on
24 the employee, right?

25 WARDEN RUSSELL: Correct.

1 MICHELLE ALANIS: And in this case, what did the
2 specificity of charges recommend?

3 WARDEN RUSSELL: I believe it recommended
4 termination.

5 MICHELLE ALANIS: Okay. And, at the hearing, did
6 Mr. Navarrete have the opportunity to present his side of the
7 case?

8 WARDEN RUSSELL: He did.

9 MICHELLE ALANIS: And, was he represented at that
10 hearing?

11 WARDEN RUSSELL: He was.

12 MICHELLE ALANIS: Do you remember some of the
13 things that Mr. Navarrete addressed or brought up as his
14 defense?

15 DANIEL MARKS: Your Honor, it's kind of
16 irrelevant because this is a de novo--

17 WARDEN RUSSELL: Yes. He claimed that he should
18 not be dismissed--

19 [crosstalk]

20 MICHELLE ALANIS: Hold on Warden Russell, hold on
21 one second.

22 WARDEN RUSSELL: Okay.

23 HEARING OFFICER: Hang on Warden.

24 DANIEL MARKS: I would like to assert an
25 objection. You know the--you know the role of a Pre-

1 Disciplinary Hearing. We're not raising any issue about the
2 quality or the constitutional Loudermill issue. Under
3 O'Keefe, you're going to deal with it de novo.

4 So, in order to save time, do we really--is that
5 really relevant? We all know no witnesses were called. He
6 can testify to what he did. I can cross him. Limited on what
7 he did, but you have a de novo review under O'Keefe and we're
8 not raising a Loudermill issue. So, really what's the point.

9 MICHELLE ALANIS: Are you objecting to the point
10 of his entire testimony or me asking him about--

11 DANIEL MARKS: His defense because you can't
12 call witnesses to these things. He had a defense, but what
13 can you do?

14 MICHELLE ALANIS: Okay.

15 DANIEL MARKS: I mean, it's a pre-term hearing.
16 Is there relevance since under O'Keefe, you're going to look
17 at it de novo? Is there really any point?

18 MICHELLE ALANIS: I mean, in response to that, the
19 role of the Pre-Disciplinary Hearing Officer, that's the
20 opportunity for the employee to present their side of the case
21 because they've just been served with discipline. There are
22 times that the Pre-Disciplinary Hearing Officer reviews
23 everything and may not concur with the proposed
24 recommendation. It could be because of the points raised by
25 the employee.

1 DANIEL MARKS: It's up to you. If you want to
2 let it go, fine.

3 MICHELLE ALANIS: It's pretty much done.

4 DANIEL MARKS: I think we all—I think we all
5 know that—

6 HEARING OFFICER: I'm pretty sure, nobody's going
7 to find out, but go on ahead, I'll let you continue. I'll let
8 you continue.

9 DANIEL MARKS: I mean.

10 MICHELLE ALANIS: Okay.

11 DANIEL MARKS: The Pre-Term Hearing—well,
12 that's fine. We'll just let it go.

13 HEARING OFFICER: So, you want to restate that?

14 MICHELLE ALANIS: All right.

15 HEARING OFFICER: It was, what were his defenses,
16 I think.

17 MICHELLE ALANIS: It's okay. We don't have to go
18 over it. I think [inaudible] Warden Russell, following this
19 Pre-Disciplinary Hearing Review, did you prepare a report?

20 WARDEN RUSSELL: I did.

21 MICHELLE ALANIS: Okay. And, if I could have you—
22 I know I submitted our pre-hearing statement and exhibits. Do
23 you have an Exhibit B?

24 WARDEN RUSSELL: I do.

25

1 MICHELLE ALANIS: And, it contains, it looks like
2 three pages, NDOC 113 and it goes to 115?

3 WARDEN RUSSELL: Hold on one second. [pause]
4 Yes.

5 MICHELLE ALANIS: Okay. And, specifically if we
6 look at NDOC 114-115, is that the report that you prepared?

7 WARDEN RUSSELL: Yes.

8 MICHELLE ALANIS: Or memorandum, rather. And this
9 was dated April 12, 2017?

10 WARDEN RUSSELL: Yes.

11 MICHELLE ALANIS: Okay. And, it looks like in
12 this report, you actually note halfway down that Senior
13 Navarrete made the following comment, [inaudible] the defenses
14 or the arguments that he made at the hearing, correct?

15 WARDEN RUSSELL: Yes.

16 MICHELLE ALANIS: Okay. And he claimed that he
17 shouldn't be dismissed for what another officer did. He
18 completed his report hours later and so forth. Correct?

19 WARDEN RUSSELL: Correct.

20 MICHELLE ALANIS: Okay. After hearing from
21 Officer Navarrete and reviewing the documentation, what was
22 your recommendation?

23 WARDEN RUSSELL: I had recommendation
24 termination.

25

1 MICHELLE ALANIS: And, why did you concur with the
2 proposed termination?

3 DANIEL MARKS: It's irrelevant. I think it is
4 totally irrelevant.

5 MICHELLE ALANIS: Hold on one second, Warden
6 Russell.

7 DANIEL MARKS: They didn't bring in the
8 decision. This is the pre-term hearing. I mean, she may say
9 sometimes they reverse them but I think in all the years I've
10 been doing this, is like a handful of pre-term hearing, it
11 might be like, less than one-percent of all the pre-term
12 hearings.

13 So, we know if--once you're terminated by the
14 appointing authority, it's virtually impossible to reverse
15 their pre-term hearing. No witnesses are called, etc. This
16 is a de novo review. So, does it really matter? There's no
17 witnesses called. There's no--it's--you're trying to talk
18 somebody out of it and your chances of doing that, as we all
19 know, is like lightning in a box.

20 MICHELLE ALANIS: I've seen them, where they're
21 different. Quite frankly, while we're determining if he de
22 novo committed the misconduct, step 2 and 3 under *O'Keefe*
23 require us to show that the conduct is serious and require us
24 to show why we should defer, you know, whether you're
25 deferring to the appointing authority.

1 HEARING OFFICER: I overrule the objection.

2 MICHELLE ALANIS: Okay.

3 HEARING OFFICER: Go on ahead.

4 MICHELLE ALANIS: All right. Warden Russell, the
5 question I had posed was, why did you concur with the
6 termination?

7 WARDEN RUSSELL: On the point that he shouldn't
8 be dismissed for what occurred by another officer, through the
9 video and the investigation, the inmate was standing on the
10 wall for 10, 12, 15 minutes before anything occurred. CO-I
11 don't remember the other CO's name right off hand, basically
12 walked up from behind. Grabbed the inmate around the neck and
13 they all tumbled to the ground. None of which is in our POST
14 training.

15 I believe Senior and a CO there together, it was his
16 responsibility and obligation to, over that 10 minute period,
17 there was a lot of different things that could've been done
18 other than that. At no time did I see him resist and
19 according to the-the report, he was resisting when he was
20 trying to be restrained and I didn't see any of that in the
21 report, which spoke to the integrity of both officers.

22 And, it didn't appear as if anyone did anything to
23 stop it, nor was there anything in the report to stop it. He
24 said he didn't think that Valdez was be involved in a use of
25 force and he couldn't prevent it.

1 Over a 10 minute period, if he didn't prevent it, he
2 could've at least reported it correctly. He claimed that the
3 procedure, once the use of force occurred, he claimed he was
4 not involved. Being there, there was an obligation as a
5 Senior, or even another officer, to be honest and put forth a
6 correct report and to alert supervisory staff of what had
7 occurred. It speaks to the integrity of the officer.

8 MICHELLE ALANIS: And, Warden Russell, it looks
9 like on the second page of your memorandum here, you note some
10 specifics with Senior Navarrete's report where he claims that
11 Valdez was attempting to restrain the inmate and claimed that
12 Norales came off the wall.

13 Then you point out that there is no mention of
14 Officer Valdez pushing the inmate to the wall and you list
15 some other--some other facts there. Why did you specifically
16 point out the things that were not mentioned?

17 WARDEN RUSSELL: Because omission is a deception.
18 I mean, none of that was brought forth and it should've been.
19 After reviewing the video and the investigation, that report
20 should've included at least that the inmate was on the wall
21 for 10-15 minutes or 15-16 minutes. And that the officer then
22 pushed the inmate forward. There was no resistance, grabbed
23 around the neck and threw to the ground, which is not what the
24 training is taught.

25 MICHELLE ALANIS: And, I believe you--

1 WARDEN RUSSELL: It was an assault basically.

2 MICHELLE ALANIS: Okay. So, is it your position
3 that Senior Officer Navarrete's report includes both false and
4 misleading statements as well as omissions?

5 WARDEN RUSSELL: It is.

6 MICHELLE ALANIS: And, why are false—the false and
7 misleading reports such egregious conduct?

8 WARDEN RUSSELL: Because we depend on officers,
9 together, to adhere the rules and procedures and regulations
10 of the NDOC. That is not what's taught and it's not the
11 standard to be kept.

12 MICHELLE ALANIS: Do officers frequently have to
13 fill out reports?

14 WARDEN RUSSELL: Yes.

15 MICHELLE ALANIS: And you have to be able to rely
16 on those?

17 WARDEN RUSSELL: Yes.

18 MICHELLE ALANIS: And, why are—so, in this case,
19 you mentioned he permitted and did nothing to stop the force
20 that occurred within that 10 minute period. Why did you feel
21 that that was a serious charge, arising to the level of a
22 termination?

23 WARDEN RUSSELL: Well, the inmate's hands were on
24 the wall above his head for over 10 minutes. Valdez then
25 pushes the inmate to the wall, wrestles him to the ground.

1 There's no acceptable explanation for that. And, Senior
2 Navarrete did nothing to stop it, to oppose it, to let
3 supervisory staff find out about it. When I'm relying on
4 officers, I need their integrity intact or things start going
5 array, such as this.

6 MICHELLE ALANIS: If Officer Navarrete was only
7 charged with the use of force violation, would you still have
8 concurred with the proposed termination?

9 DANIEL MARKS: Objection. Calls for
10 speculation.

11 HEARING OFFICER: With the use of force, say that
12 again?

13 MICHELLE ALANIS: The—he has two violations under
14 the AR. One was the either willfully or permitting the use of
15 force and the second one was the false or misleading.

16 HEARING OFFICER: Are you asking would either one
17 violation be sufficient for the discipline imposed?

18 MICHELLE ALANIS: Yes.

19 HEARING OFFICER: That's probably a better
20 question.

21 MICHELLE ALANIS: Okay. Warden Russell, would
22 either one of those violations be enough to impose the
23 termination?

24 WARDEN RUSSELL: Yes.
25

1 MICHELLE ALANIS: And it's your opinion that
2 Officer Navarrete's conduct warranted termination.

3 WARDEN RUSSELL: Yes.

4 MICHELLE ALANIS: And, my last question here, you
5 mentioned in your report that you felt the termination would
6 be in the best interest of the State of Nevada. Can you tell
7 me why you believe it would be in the best interest of the
8 State?

9 WARDEN RUSSELL: Sure. We work out of integrity
10 and at a certain standard that must be upheld. When we don't
11 and we allow incidents such as this, it's not the standard
12 that we live by or work by. The officers are basically part
13 of—to hold not only—when you have a position of power, whether
14 it's over here inmates here or out in the street. I worked
15 undercover years ago in Colorado Springs. You have a higher
16 standard that you must live by. That was not the standard
17 that was upheld here.

18 MICHELLE ALANIS: I have nothing further at this
19 time.

20 DANIEL MARKS: Okay, I have a couple of
21 questions. Warden?

22 WARDEN RUSSELL: Yes sir.

23 DANIEL MARKS: Yeah, this is Dan Marks, I don't
24 think we've met in any of these cases. Did you ever work at
25 Southern Desert?

1 WARDEN RUSSELL: I did.

2 DANIEL MARKS: How long ago?

3 WARDEN RUSSELL: 2007 to about 2010.

4 DANIEL MARKS: Okay.

5 WARDEN RUSSELL: Well, maybe '12.

6 DANIEL MARKS: Okay. And, what was your job

7 there?

8 WARDEN RUSSELL: Then, I was a case worker, a

9 Case Worker I, Case Worker II, became a Case Worker III at

10 High Desert.

11 DANIEL MARKS: And, what do case workers do?

12 WARDEN RUSSELL: Just about everything except

13 supervise the unit. They do releases. They do classification

14 and housing means appropriately.

15 DANIEL MARKS: That's a different job in

16 corrections.

17 WARDEN RUSSELL: It is. It's part of

18 corrections, you go through POST.

19 DANIEL MARKS: But you're not a corrections

20 officer, it's a different job, correct?

21 WARDEN RUSSELL: Correct.

22 DANIEL MARKS: Okay. Now, do you have your

23 investigative report in front of you?

24 WARDEN RUSSELL: Let me take a look. [pause]

25

1 DANIEL MARKS: Your report. [crosstalk] Yeah,
2 your memorandum.

3 WARDEN RUSSELL: Oh yeah.

4 DANIEL MARKS: I was told you have it in front
5 of you.

6 WARDEN RUSSELL: I do.

7 DANIEL MARKS: It's on Page 114 and 115, I
8 guess.

9 WARDEN RUSSELL: Oh wait, maybe that's not--that's
10 not my memorandum, right?

11 DANIEL MARKS: It looks to me like it's your
12 memorandum.

13 WARDEN RUSSELL: My memorandum is two pages.

14 DANIEL MARKS: Yeah.

15 WARDEN RUSSELL: Let me look and see if--

16 DANIEL MARKS: It's bate stamp 114 and 115.

17 HEARING OFFICER: Exhibit B.

18 DANIEL MARKS: Exhibit B. All I'm asking you
19 is, do you have that in front of you?

20 WARDEN RUSSELL: Yes.

21 DANIEL MARKS: So, before--just so I'm clear,
22 you were sent the investigative report, is that from Ron
23 Moore?

24 WARDEN RUSSELL: You know, I'd have to look
25 because it's been two years now since I'd done that.

1 DANIEL MARKS: Okay. There were no witnesses
2 at the hearing.

3 WARDEN RUSSELL: No.

4 DANIEL MARKS: I just want to know, kind of
5 what you based your decision on. It's kind of hard by phone,
6 but you got an investigative report, you don't know if that's
7 from Rod Moore or not, correct?

8 WARDEN RUSSELL: Hold on a minute, okay? [pause]
9 Yeah, I don't remember who the investigator was.

10 DANIEL MARKS: Do you have Exhibit A or B in
11 front of you?

12 WARDEN RUSSELL: I have Exhibit B which is my
13 memorandum.

14 DANIEL MARKS: Okay, do you have Exhibit A?

15 WARDEN RUSSELL: No.

16 DANIEL MARKS: So, you don't recall what
17 investigative report you reviewed, correct?

18 WARDEN RUSSELL: Correct.

19 DANIEL MARKS: You didn't interview or have
20 testimony in front of you live, from Correction Officer
21 Valdez, correct?

22 WARDEN RUSSELL: I did do his Disciplinary
23 Hearing as well, but correct.

24 DANIEL MARKS: You didn't have in front of you
25 the Sergeant-acting Sergeant Knatz, K-N-A-T-Z.

1 WARDEN RUSSELL: No.

2 DANIEL MARKS: Who responded to the scene.

3 WARDEN RUSSELL: Correct.

4 DANIEL MARKS: You didn't have him put from

5 him, correct?

6 WARDEN RUSSELL: Correct.

7 DANIEL MARKS: You didn't have in front of you

8 live-the inmate himself, Norales, correct?

9 WARDEN RUSSELL: Correct.

10 DANIEL MARKS: You didn't have Wachter who was

11 another correction officer who was at the scene.

12 WARDEN RUSSELL: Correct.

13 DANIEL MARKS: You didn't have in front of you

14 or evidence from Sergeant now Lieutenant Willets, who was the

15 shift commander, correct?

16 WARDEN RUSSELL: Correct.

17 DANIEL MARKS: Now, regarding the reports,

18 it's-correction officers in a year can write reports very

19 frequently, it's not a one-shot, one-time situation, correct?

20 WARDEN RUSSELL: That's correct.

21 DANIEL MARKS: And, very typically, their

22 commanding officer, usually their Sergeant will send a report

23 back if they think there needs to be more information or more

24 clarity about a subject, correct?

25 WARDEN RUSSELL: Correct.

1 DANIEL MARKS: And generally, these reports, in
2 general at Southern Desert were a couple of paragraphs. They
3 weren't what I'd call a 10-page paper, correct?

4 WARDEN RUSSELL: It would depend on the writer,
5 but yeah, normally they were fairly short.

6 DANIEL MARKS: And the Sergeant would have the
7 opportunity to say, hey this case needs more, go back and give
8 more detail, watch the video, and give more detail, correct?

9 WARDEN RUSSELL: Okay.

10 MICHELLE ALANIS: I'm going to object. I think
11 we're kind of beyond the scope—

12 DANIEL MARKS: No, this is relevant. They're
13 accusing him of a false report. What could be more relevant
14 than what type of report he's [crosstalk] in the institution,
15 what could be more relevant?

16 HEARING OFFICER: Yeah. I'm going to allow it.

17 MICHELLE ALANIS: Okay.

18 DANIEL MARKS: Now, isn't it true sir that you—
19 you did your memo—in terms of videos, you only saw the video
20 without audio. You never saw the second video that had audio,
21 correct?

22 WARDEN RUSSELL: I can't remember, I think I saw
23 two videos.

24 DANIEL MARKS: Did you see the second video, or
25 you don't know.

1 WARDEN RUSSELL: It was taken from the other
2 angle, is that it or--

3 DANIEL MARKS: No, it had audio. Did you ever
4 see a video with audio?

5 WARDEN RUSSELL: Yes.

6 DANIEL MARKS: Okay. Now, you don't have in
7 your report that the officers found the inmate had smuggled
8 food, additional food out of culinary, do you?

9 WARDEN RUSSELL: No.

10 DANIEL MARKS: And, isn't that significant that
11 the inmate actually smuggled food and violated a rule and
12 that's why he was put on the wall for an extended period,
13 that's not in your report, correct?

14 WARDEN RUSSELL: Correct.

15 DANIEL MARKS: You also in your report say the
16 inmate was on the wall and ordered to stay in this position
17 for 15-16 minutes.

18 WARDEN RUSSELL: Yes.

19 DANIEL MARKS: Isn't it correct and you know
20 now it was under 11 minutes.

21 WARDEN RUSSELL: Okay. Even if it was 10
22 minutes, it was plenty of time to do something different.

23 DANIEL MARKS: Okay, but you said it was 15-16
24 minutes.

25

1 WARDEN RUSSELL: And if he was taking food, that
2 still does not let you take him off the wall the way he was
3 taken.

4 DANIEL MARKS: Okay. I'm going to get to that,
5 but I'm asking you, you didn't put in your report that he
6 smuggled food out and violated the rule, correct?

7 WARDEN RUSSELL: Correct.

8 DANIEL MARKS: That was an honest mistake, you
9 didn't intend to mislead anyone by leaving it out.

10 MICHELLE ALANIS: Objection. Asked and answered.

11 DANIEL MARKS: Did you? Did you intend to
12 mislead anyone?

13 MICHELLE ALANIS: He just ruled on the—

14 HEARING OFFICER: Overruled.

15 DANIEL MARKS: Next, okay. You put that he was
16 on the wall 15-16 minutes, now you know it was under 11.
17 That's correct?

18 WARDEN RUSSELL: Correct.

19 DANIEL MARKS: That was an honest mistake on
20 your part, correct?

21 WARDEN RUSSELL: Correct.

22 DANIEL MARKS: You didn't intend to mislead
23 anyone?

24 WARDEN RUSSELL: No.

25

1 DANIEL MARKS: Now, you didn't hear whether or
2 not the inmate was being compliant, correct, because you
3 didn't hear the inmates words, correct?

4 WARDEN RUSSELL: Correct.

5 DANIEL MARKS: If an inmate is not being
6 compliant on the wall, a correctional officer has a right to
7 hand cuff the inmate and take them to the Sergeant, correct?

8 WARDEN RUSSELL: By compliant, you mean like he's
9 talking to him or he's staying on the wall?

10 DANIEL MARKS: No, if he won't keep his hands
11 on the wall.

12 WARDEN RUSSELL: His hands were on the wall.

13 DANIEL MARKS: So, you thought his hands were
14 on the wall the whole 11 minutes.

15 WARDEN RUSSELL: Not the whole 11 minutes, when
16 they first put him on the wall, they rearranged him and made
17 him move his legs and move his arms. Then he stayed on that
18 wall.

19 DANIEL MARKS: And you thought he never took
20 his hands off the wall for the rest of the time he was on the
21 wall, is that what you're saying?

22 WARDEN RUSSELL: Not-not for him to be taken to
23 the ground, no.

24 DANIEL MARKS: That's not my question sir. If
25 a correction officer tells an inmate to maintain the position,

1 hands above his head, keep his hands on the wall and the
2 inmate refuses, the correction officer is allowed to cuff him
3 up and take him to the shift sergeant, correct?

4 WARDEN RUSSELL: Correct.

5 DANIEL MARKS: And that's policy, that's not
6 considered use of force, that's allowed, correct?

7 WARDEN RUSSELL: That's correct.

8 DANIEL MARKS: Now, when an in--when a
9 correction officer is going to cuff an inmate, he has to feel
10 whether the inmate is going to allow that cuffing or resist,
11 correct?

12 WARDEN RUSSELL: Correct.

13 DANIEL MARKS: And that's a judgment call by
14 the correction officer, if he feels resistance, correct?

15 WARDEN RUSSELL: Correct.

16 DANIEL MARKS: And, if he feels resistance,
17 he's to use the least amount of force to facilitate or to get
18 the cuffing accomplished. Sometimes that includes going to
19 the ground, isn't that correct?

20 WARDEN RUSSELL: Depending on the amount of
21 resistance, yes. If there's a lot of resistance, you would
22 end up on the ground.

23 DANIEL MARKS: Right and in this case, there
24 was enough resistance that they tussled some 10 feet away from
25 the wall, correct?

1 WARDEN RUSSELL: No, that is not correct.

2 MICHELLE ALANIS: Objection. Assumes facts not in
3 evidence.

4 WARDEN RUSSELL: He pushed the inmate into the
5 wall.

6 MICHELLE ALANIS: Hold on Warden Russell. Hold
7 on.

8 HEARING OFFICER: Hold on.

9 WARDEN RUSSELL: [crosstalk] around the inmate's
10 neck.

11 MICHELLE ALANIS: Warden Russell, hold on please.
12 There's an objection.

13 DANIEL MARKS: I'll just--

14 HEARING OFFICER: Yeah.

15 DANIEL MARKS: The inmate did resist the
16 attempt--the inmate resisted such that they did not fall
17 directly to the ground, correct?

18 WARDEN RUSSELL: No, that is not correct.

19 MICHELLE ALANIS: I'm going to--objection. That's--

20 DANIEL MARKS: The parties didn't fall directly
21 to the ground, there was a tussle that went a number of feet
22 away from the wall, isn't that, correct?

23 MICHELLE ALANIS: It misstates.

24 WARDEN RUSSELL: Not from what I saw, no. That
25 is not correct.

1 DANIEL MARKS: All right, we'll let the video
2 then speak for itself.

3 MICHELLE ALANIS: Exactly.

4 DANIEL MARKS: Now, when a correction officer
5 decides to cuff an inmate, that's often a split second
6 decision, correct?

7 WARDEN RUSSELL: Correct.

8 DANIEL MARKS: And they have to make that in
9 the yard, under tense and outnumbered conditions, they're
10 outnumbered 100:1, correct?

11 WARDEN RUSSELL: There were three officers around
12 one inmate.

13 DANIEL MARKS: But I'm saying, there's some 300
14 inmates in the yard for three officers, we've already heard
15 that testimony today. Isn't that correct?

16 WARDEN RUSSELL: Not in the immediate vicinity
17 but there was other inmates across the yard, yes.

18 DANIEL MARKS: Okay. Now, your only
19 involvement in this case was the Pre-Disciplinary Hearing?

20 WARDEN RUSSELL: That's correct.

21 DANIEL MARKS: And that was the end of it?

22 WARDEN RUSSELL: Yes.

23 DANIEL MARKS: And you didn't make the original
24 decision to terminate.

25 WARDEN RUSSELL: No.

1 DANIEL MARKS: And, the only witness, really
2 that you dealt with in the Jose Navarrete case was Jose
3 Navarrete, that's the only person you talked to, correct?

4 WARDEN RUSSELL: Correct, other than the other
5 Pre-Discip, I did on Valdez.

6 DANIEL MARKS: But you didn't—at Jose's
7 hearing--

8 WARDEN RUSSELL: No.

9 DANIEL MARKS: --Valdez didn't show.

10 WARDEN RUSSELL: No, it was just Navarrete and
11 his counsel.

12 DANIEL MARKS: Okay. I'll pass the witness.

13 HEARING OFFICER: All right. Any redirect?

14 MICHELLE ALANIS: No.

15 HEARING OFFICER: Warden, thank you very much for
16 your testimony today.

17 WARDEN RUSSELL: Your welcome.

18 HEARING OFFICER: We appreciate you waiting so
19 long. Thank you.

20 MICHELLE ALANIS: Thank you Warden Russell.

21 WARDEN RUSSELL: Thank you. Have a good night.

22 MICHELLE ALANIS: You too.

23 HEARING OFFICER: You too sir, bye.

24 WARDEN RUSSELL: Bye now.

25 HEARING OFFICER: [disconnects] I have dates.

1 DANIEL MARKS: Let's look at them.

2 HEARING OFFICER: I have—unfortunately, they gave

3 me these dates. April 5th.

4 MICHELLE ALANIS: Hold on one second.

5 HEARING OFFICER: April 16th.

6 DANIEL MARKS: I can't do the 5th.

7 MICHELLE ALANIS: I can't do the 5th either.

8 DANIEL MARKS: 16th.

9 HEARING OFFICER: Or the 26th.

10 MICHELLE ALANIS: Give me—give me one second.

11 HEARING OFFICER: This is April, right?

12 MICHELLE ALANIS: We are in April, yes.

13 DANIEL MARKS: You want to do 16?

14 MICHELLE ALANIS: What are the dates that you

15 just—

16 HEARING OFFICER: I have 5, 16 and 26. Which I'm

17 surprised I got—

18 MICHELLE ALANIS: 5, 16 and 26?

19 HEARING OFFICER: Yeah.

20 MICHELLE ALANIS: How is your calendar looking? I

21 can't do the 26th.

22 HEARING OFFICER: I could've sworn I had a trial—

23 MICHELLE ALANIS: But I can do the 16th. Are you

24 able to do the 16th?

25 [crosstalk]

1 SPEAKER: What day is today?

2 MICHELLE ALANIS: Today is the 2nd.

3 HEARING OFFICER: The 2nd. That's exactly two

4 weeks from today.

5 MICHELLE ALANIS: Two weeks from today, so it's a

6 Tuesday.

7 SPEAKER: I should be okay.

8 MICHELLE ALANIS: You should be okay?

9 SPEAKER: Yeah. Yeah. Tuesdays usually

10 are good.

11 HEARING OFFICER: All right. I'm going to set it

12 then for the 16th at 9:00.

13 DANIEL MARKS: 16th at 9:00.

14 HEARING OFFICER: Hopefully it won't take all day,

15 you never know, but if it does it does, I don't want to rush

16 anybody.

17 DANIEL MARKS: All right, great.

18 HEARING OFFICER: Logically speaking, it should be

19 done in a half a day.

20 DANIEL MARKS: And they just have one more

21 witness.

22 MICHELLE ALANIS: Yes.

23 DANIEL MARKS: And we'll just start that—you

24 want to just start that on the 16th?

25 HEARING OFFICER: If the witness--

1 MICHELLE ALANIS: If they kick us out at 5:00, I
2 guess we might as well wait.

3 DANIEL MARKS: I would just assume.

4 MICHELLE ALANIS: Rather than start now.

5 HEARING OFFICER: Who is it?

6 MICHELLE ALANIS: It's Warden Howell. He's going
7 to be forced to return anyway.

8 HEARING OFFICER: Oh, okay. Well, I don't know,
9 forced.

10 [crosstalk]

11 HEARING OFFICER: He's going to be invited.

12 MICHELLE ALANIS: Sorry.

13 DANIEL MARKS: [crosstalk] Why don't we just do
14 it on the 16th, so it's fresh.

15 HEARING OFFICER: All right.

16 MICHELLE ALANIS: That's okay with me.

17 DANIEL MARKS: He's just going to go through—

18 [crosstalk]

19 HEARING OFFICER: He's your last witness, right?
20 Probably?

21 MICHELLE ALANIS: Yes. Yes.

22 HEARING OFFICER: Whatever, if somebody comes up—

23 DANIEL MARKS: Let's just do it on the 16th.

24 HEARING OFFICER: And then you have some people
25 you're going to have come.

1 DANIEL MARKS: Yeah, we have five witnesses. A
2 lot of them are short.

3 HEARING OFFICER: All right.

4 DANIEL MARKS: All right.

5 HEARING OFFICER: Let's do that then.

6 DANIEL MARKS: Thank you.

7 HEARING OFFICER: We shall return.

8 [end of proceeding]

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CERTIFICATE OF TRANSCRIPT

I, Jaime Caris, as the Official Transcriber, hereby
certify that the attached proceedings before the Judge,

In the Matter of:

JOSE MIGUEL NAVARRETE,
Petitioner-Employee

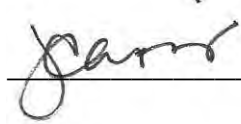
Appeal No.: 1713379-MG

vs.

DEPARTMENT OF CORRECTIONS,
Respondent-Employer

were held as herein appears and that this is the
original transcript thereof and that the statements
that appear in this transcript were transcribed by me
to the best of my ability.

I further certify that this transcript is a true,
complete and accurate record of the proceeding that
took place in this matter on April 2, 2019 in Las
Vegas, Nevada.



Jaime Caris
Always On Time
July 19, 2019

1 **BEFORE THE NEVADA STATE PERSONNEL COMMISSION**

2 **HEARING OFFICER**

3 JOSE MIGUEL NAVARETTE,)

4 Petitioner-Employee,)

5 v.)

6 DEPARTMENT OF CORRECTIONS,)

7 Respondent-Employer.)

Case No. 1713379-MG

FILED

MAY 30 2019

APPEALS OFFICE

8 **DECISION AND ORDER**

9
10 This matter came on for administrative hearing before the undersigned Hearing Officer for
11 the Nevada Department of Administration, Hearings Division on April 2, 2019 and April 16, 2019.
12 The hearing was held pursuant to Petitioner-Employee Jose Miguel Navarette's appeal of his
13 dismissal from State Service, effective April 21, 2017, for an incident that occurred at Southern
14 Nevada Correctional Center on October 9, 2016, and for alleged irregularities in the subsequent
15 reporting of that incident.

16 **1. PROCEDURAL AND FACTUAL OVERVIEW**

17 Petitioner-Employee Jose Miguel Navarette began his employment for the Nevada
18 Department of Corrections in May of 2008. It was established that he had no prior disciplinary
19 record.

20 The conduct at issue occurred during breakfast service at Southern Nevada Correctional
21 Center on October 9, 2016. Senior Officer, Jose Navarrete, along with Correctional Officer, Paul
22 Valdez, were randomly searching inmates leaving culinary for contraband. This activity was a
23 common occurrence at the prison.

24 This matter is somewhat unique in that there was a video camera mounted outside the
25 entrance of the culinary and the incident of October 9, 2016 was recorded on videotape.
26 Unfortunately, there is no audio and we are limited to a single perspective. The timeline of what
27 occurred is clearly demonstrated on the video. While certainly not perfect, the essence of what
28 occurred is reflected in the video. Audio of the encounter would certainly have helped put this in
a better context.

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JA 0852

1 The video begins as Officer Valdez and Senior Officer Navarrete had a number of inmates
2 leaving culinary place their hands on a wall, so that they could be searched. The testimony reflected
3 that the usual procedure is for inmates to be pulled out of line at random as they were leaving, placed
4 with their hands against a wall, and submitted to a brief pat down search. The entire process,
5 typically, is completed in a minute or so, although, there is no set time frame for each specific
6 encounter.

7 Every inmate pulled out of line on October 9, 2016 was subjected to this process and every
8 inmate, aside from one, was searched and released in a matter of a minute or so. The exception to
9 this was inmate Rickie Norelus. The video evidence reflected he was on the wall for approximately
10 ten (10) minutes before he was contacted physically by Officer Valdez, taken to the ground, and then
11 restrained by both officers. During this hearing, I was afforded enhanced video and slow motion
12 video of crucial moments of this encounter, which were not part of evidence at the Valdez hearing.
13 I also was provided an after-the-fact video of inmate Norelus as he was leaving the area and making
14 disparaging comments to the correction officers, which I had not considered before. I also, for the
15 first time, considered the testimony of Mr. Navarrete, whom I found to be credible.

16 I have repeatedly reviewed the tape of inmate Norelus' actions as he was placed on the wall.
17 Petitioner's Exhibit 8 provides key snippets of video from the ten (10) minutes. Mr. Navarrete
18 testified comprehensively as to what was occurring during each stage of the encounter. It does
19 appear, without question, that Mr. Norelus was acting differently than the other inmates when placed
20 on the wall for a pat down. He was clearly agitated and his hands were not in the proper position.
21 He appears to be continually looking around anxiously. There is, unfortunately, no audio and one
22 cannot determine what is being said by the officers or the inmates - yet, the head and body
23 movements of all involved reflect, without a doubt, that there was continual chatter by inmate
24 Norelus. The testimony by Mr. Navarrete was that Mr. Norelus was being uncooperative and
25 verbally abusive throughout the encounter.

26 At the 1:50 minute mark of the tape, he was searched by senior Officer Navarrete and no
27 apparent contraband was found. The tape again shows that after this search was completed, he,
28 again, took his hands off the wall and was not complying. Arguably, the decision to keep him on

1 the wall at this point was related to his failure to comply with procedures and the direction of the
2 officers. There was no sign of physical resistance by the inmate or of any physical threat to the
3 officers, the testimony was that he continued to be verbally abusive and agitated. Although
4 equivocal, this is supported by the tape.

5 Between minutes 2 and 3 of the tape, inmate Norelus is the only inmate at the wall. His
6 hands were raised and you can detect that he and Officer Navarrete were communicating. There is
7 no sign of any physical threat to the officers. The testimony was that he continued to be verbally
8 abusive and agitated.

9 Between minutes 3 and 6 on the tape, inmate Norelus is the only inmate on the wall. There
10 is a lot of movement by inmate Norelus and what appears to be a lot of communication between the
11 inmate and the officers. The testimony was that he was verbally abusive and agitated.

12 Between minutes 6 and 9 on the tape, this situation remains, essentially, the same. It appears
13 that the talking continues. Officer Navarrete positions himself alongside the inmate and it does
14 appear he is trying to de-escalate the situation, which is what he described. Inmate Norelus does
15 appear to be less agitated, although, there is still a lot of head movements and animated conversation.

16 At minute 10:40 on the tape, inmate Norelus takes his hand off the wall and looks at his
17 wrist. He appears to be continually talking. Shortly thereafter, Officer Valdez approaches the inmate
18 from behind. Unfortunately, there is no audio. The testimony was that Officer Valdez verbally told
19 the inmate he was going to cuff him and take him to the sergeant, yet, there was no signs that Officer
20 Valdez actually had his handcuffs in hand. As Officer Valdez abruptly approaches the inmate from
21 behind, the inmate does move backward slightly off the wall and looks over his left shoulder. You
22 can see the inmate's left arm and shoulders slightly moving backwards, but the hands remain on the
23 wall. Officer Valdez then pushes the inmate into the wall, grabs the inmate's neck with his right
24 arm, and wrestles him to the ground.

25 The physical aspects of this are rather shocking and appear unexpected. All of this occurred
26 in a matter of a few seconds. Once on the ground, he was immediately handcuffed by Officer Valdez
27 and Senior Officer Navarrete, who came over to assist. Officer Valdez' conduct seems abrupt and
28 unanticipated and, upon close review of the enhanced video, continues to appear unjustified.

1 The video of inmate Norelus leaving the area in a cart to head to the infirmary has him
2 laughing at the officers and claiming that they will "put his kids through college." He does not
3 appear injured and his conduct makes it seem as if he may have been baiting the officers to some
4 extent, which according to the testimony, is a common occurrence in this environment.

5 Following the incident, Officer Navarette authored an informational report (Petitioner's
6 Exhibit 1). This report reads, in pertinent part, as follows:

7 On October 9, 2016 I, Senior Correctional Officer Navarette was assigned to Search
8 and Escort at Southern Desert Correctional Center. At approximately 06:45 hours,
9 inmate Norelus #1104257 came off the Culinary wall while C/O Valdez was
10 attempting to restrain him resulting in a spontaneous use of force. When inmate
11 Norelus came off the wall he was resisting and both he and C/O Valdez went to the
ground. I then assisted in holding he inmates upper body down so that C/O Valdez
could restrain him. I notified supervisors and called medical so that they could
respond to the scene. Medical responded and inmate Norelus was escorted to the
infirmary to be further evaluated.

12 On March 16, 2017, Officer Navarette was served with a specificity of charges. He was cited
13 for the following violations:

14 NAC 284.650:

- 15 1. Activity which is incompatible with an employee's conditions of employment
16 established by law or which violates a provision of NAC 284.653 or 284.738 to
284.771, inclusive.
- 17 10. Dishonesty.
- 18 21. Any act of violence which arises out of or in the course of the performance of the
19 employees duties, including without limitation stalking, conduct that is intimidating,
assault or battery.

20 He was also charged with the following:

21 AR 339.07.9 False or Misleading Statements

- 22 A. Knowingly providing false or misleading statements, including omissions, either
23 verbally or in written reports or other documents, concerning actions related to the
24 performance of official duties. Or knowingly providing false or misleading
statements, including omissions, in response to any question or request for
information in any official investigation, interview, hearing or judicial process.
(Class 5)

25 AR 339.07.17 Unauthorized Use of Force

26 Wilfully employing or permitting the use of unnecessary, unauthorized or excessive force.
27 (Class 4-5)

28 A pre-disciplinary hearing took place on April 17, 2017. The pre-disciplinary hearing officer

1 determined it was in the best interest of the State for the Employee to be dismissed because he
2 allowed the use of excessive force as a Senior Officer and wrote a report that did not accurately
3 depict what occurred.

4 On April 19, 2017, Director James Dzurenda notified Mr. Navarette of NDOC's decision to
5 terminate his employment effective April 21, 2017. Mr. Navarette appealed this determination on
6 May 8, 2017.

7 **2. LEGAL AUTHORITY**

8 Mr. Navarette's appeal to the undersigned Administrative Hearing Officer of the Nevada
9 State Department of Administration was timely filed and the determination of the merits of the
10 appeal is properly within the jurisdiction of the Department.

11 In *O'Keefe v. Department of Motor Vehicles*, 134 Nev Adv. Op. 92, 431 P.3d 350 (2018),
12 the Nevada Supreme Court clarified the nature and scope of a hearing officer's review. *O'Keefe*
13 expressed the standard of review as follows:

14 When a classified employee requests a hearing to challenge an agency's decision to
15 terminate her as a first time disciplinary measure, the hearing officer "determines the
16 reasonableness" of the agency's decision by conducting a three step review process.
NRS 284.390 (1).

17 First the hearing officer reviews de novo whether the employee in fact
committed the alleged violation. See NAC 284.798.

18 Second, the hearing officer determines whether that violation is a "serious
19 violation" of law or regulations such that the "severe measure of termination is
20 available as a first time disciplinary action. NRS 294.383(1). If the agency's
published regulations prescribe termination as an appropriate level of discipline for
21 a first time offense, then that violation is serious as a matter of law. NRS 284.383(1);
NAC 284.646(1).

22 Third and last, the hearing officer applies a deferential standard of review to
the agency's determination that termination will serve the good of the public service.

23 Pursuant to NRS 284.390(1), the hearing officer is to determine the reasonableness of the
24 disciplinary action. Further, pursuant to NRS 284.390(6), the hearing officer is to determine if the
25 dismissal, demotion, or suspension was without just cause, as provided in NRS 284.385.

26 The Nevada Supreme Court recently held hearing officers may determine the reasonableness
27 of disciplinary actions and recommend appropriate levels of discipline, but only appointing
28 authorities have the power to prescribe the actual discipline imposed on permanent classified state

1 employee. *Taylor v. The State Department of Health and Human Services*, 129 Nev. Adv. Op. 99,
2 at 6 (December 26, 2013).

3 The employer has the burden of proof to present evidence and argument to prove the
4 allegations presented in the specificity of charges and whether there is "just cause" to discipline the
5 employee.

6 The Nevada Supreme Court recently issued a decision addressing the standard of proof in
7 these type of hearings. In *Nassiri and Johnson v. Chiropractic Physicians' Board of Nevada*, 130
8 Nev. Adv. Op. 27 (April 3, 2014), the Court held that the standard of proof is the degree or level of
9 proof demanded to prove a specific allegation and that the preponderance of the evidence is the
10 standard of proof for an agency to take disciplinary action against an employee. The preponderance
11 of evidence standard is described as "more probable than not."

12 In order to act arbitrarily and capriciously, an administrative agency must act in disregard of
13 the facts and circumstances involved. *Meadow v. Civil Service Bd. Of Las Vegas Metro. Police*
14 *Dept.*, 105 Nev. 624, 627, 781 P.2d 772 (1989).

15 **3. DISCUSSION**

16 I do not believe that the NDOC has established, factually by a preponderance of the evidence,
17 that Mr. Navarette wilfully employed or permitted the use of unauthorized or excessive force. There
18 is absolutely no evidence to reflect that he personally utilized excessive force. Rather, the charge
19 is that as a senior corrections officer that day, he should have acted differently, not allowed inmate
20 Norelus to be on the wall as long as he was, and prevented officer Valdez from using excessive
21 force.

22 A close review of the enhanced videotape does provide support for Mr. Navarette's testimony
23 that inmate Norelus, which not acting violently or constituting a physical threat, was not complying
24 with the protocol and directions of the officers. While the inmate's conduct was not egregious, it
25 was not in compliance, either. Inmate Norelus was, rather, on the edge of compliance and non-
26 compliance, almost as if he were intentionally attempting to create the situation. The conduct was
27 not bad enough to take him immediately to a sergeant, but it was enough that it could not be ignored.
28 The testimony established that there were staffing issues and that taking inmates to the sergeant for

every infraction was not a feasible alternative.

Mr. Navarette's testimony was that he attempted to de-escalate the situation at the scene. The video does support his testimony of what his intentions were. He is repeatedly seen talking to the inmate in a relaxed manner, in a relaxed position, seemingly trying to calm the inmate and gain compliance.

A close review does reflect that while the inmate did not appear to be a physical threat, he was continually talking, looking around, and not complying with directions. It appears that the behavior of inmate Norelus is, rather, on the cusp - insufficient to immediately take him to the sergeant, but such that to maintain order could not be ignored.

Whether it was appropriate to maintain inmate Norelus on the wall for over ten (10) minutes is unclear. We had testimony and argument that the search and escort process was to perform random relatively quick searches of inmates as they leave culinary. Most are completed in a matter of minutes. However, assuming that inmate Norelus was agitated and not strictly complying with procedures, as it appears here, the fact is that a senior correctional officer has discretion to act as he did in this case. There is no regulation or rule as to the length of time an inmate can be kept on the wall. Mr. Navarette testified that the unit was short staffed and that bringing him immediately to a sergeant would have left the area undermanned. His plan was to keep him on the wall and talk to him until he calmed down. It appears he tried this tactic for ten (10) minutes. There is no rule that a correctional officer must immediately bring a non-compliant inmate to the sergeant - an officer has discretion to attempt to de-escalate the situation.

While one, in hindsight, could question Mr. Navarette's discretion in the manner in which he handled the situation as he did that day, and the length of time he allowed the situation to develop, I believe it is unreasonable to conclude, on the evidence presented, that he willfully employed or permitted the use of unauthorized force.

The use of force by Officer Valdez occurred was quite sudden and was over in a matter of a few seconds. I do not believe, from the evidence, that this use of force was anticipated or could have been anticipated by Mr. Navarette, or that it could have been prevented by Mr. Navarette once it began.

1 The assertions that Mr. Navarette knowingly provided false or misleading statements in his
2 informational report are more difficult. We had some witnesses from NDOC testifying that the
3 report was false and misleading, that inmate Norelus never came off the wall, and when he did come
4 off the wall, he was not resisting. Officer Navarette's immediate supervisor, who reviewed the
5 report and the incident tape, felt it was accurate and appropriate.

6 It is a natural inclination to read the report and then repeatedly review the video, enhanced
7 and in slow motion, to see if what Mr. Navarette reported was precisely accurate. I feel that such
8 scrutiny is a mistake, as Mr. Navarette wrote the report without the benefit of reviewing any video -
9 he was trying to assimilate and explain this unexpected event he saw occur literally in a matter of
10 seconds. The reality is Mr. Navarette saw this event (the physical use of force by Officer Valdez)
11 take place in a matter of 2-3 seconds, from a side perspective. He saw it only one time.

12 As Officer Valdez approached, inmate Norelus did rock back and turn his head, but his hands
13 did not leave the wall. Officer Valdez pushes the inmate into the wall and his right arm goes around
14 the inmate's neck, which is the opposite side from Mr. Navarette's perspective, and which he may
15 or may not have been able to clearly see. The two came off the wall and struggled. Mr. Navarette
16 sees them going backwards and struggling, and he goes over to assist. Inmate Norelus comes to rest
17 on the ground some 15 feet or so from the wall. Is he reporting what he honestly believes he
18 perceived, or is he intentionally trying to cover up the situation?

19 My conclusion, after much soul searching and many reviews of the video and the statement,
20 is that Mr. Navarette's report is brief and, essentially, factually accurate given what he reasonably
21 could be expected to have perceived at the time. From his testimony, and even in his pre-hearing
22 interviews, it is clear that he believed, initially, Officer Valdez was intending to restrain the inmate.
23 While this was happening, a spontaneous use of force situation occurred. Norelus did come off the
24 wall as Officer Valdez was either properly or improperly attempting to restrain him, but I do not
25 think Mr. Navarette could be fairly called up to conclude from his 2-3 second perception whether
26 Officer Valdez' actions were appropriate or not, or whether the take down was initiated by the
27 wrongful conduct of the inmate or of Officer Valdez. The inmate did rock backwards just prior to
28 physical contact. I do not believe that Mr. Navarette was in the position to know what Officer

1 Valdez perceived or why this ended as it did. Mr. Navarette's report is a bland statement of events
2 which are, essentially, true. "When he came off the wall he was resisting." They did end up about
3 15 feet away - inmate Norelus just didn't just flop to the ground. Both officers, ultimately, had to
4 restrain the inmate. Once again, this appears, to me, to be a plain statement that appears, essentially,
5 true.

6 The testimony was that Mr. Navarette was taught to write clear and concise reports without
7 a lot of extraneous information. If his supervisor wanted more detail, they would ask and he would
8 supplement. I just do not believe, on the evidence presented, that NDOC has met the burden of
9 proving that Mr. Navarette knowingly and intentionally submitted a report with false or misleading
10 information.

11 **4. FACTUAL FINDINGS**

12 The evidence, documents, and testimony presented reflect as follows:

13 A. NDOC has not met its burden of proving, by a preponderance of the evidence, that
14 Mr. Navarette willfully employed or permitted the use of unauthorized force.

15 B. NDOC has not met its burden of proving, by a preponderance of the evidence, that
16 Mr. Navarette knowingly and intentionally submitted a report with false or misleading information.

17 **ORDER**

18 The decision of NDOC to dismiss Employee Jose Navarette from State Service is hereby
19 REVERSED, and

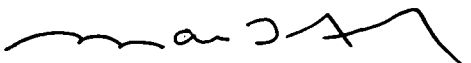
20 Employee Jose Navarette shall be restored to his prior position with back pay and benefits
21 in accord with the prior agreement of the parties.

22 DATED this 28 day of May, 2019.

23

24

25



MARK L. GENTILE
Hearing Officer

26 **NOTICE:** Pursuant to NRS 233B.130, should any party desire to appeal this final
27 determination of the Appeals Officer, a Petition for Judicial Review must be filed with the
28 District Court within 30 days after service by mail of this decision.

BEFORE THE NEVADA STATE PERSONNEL COMMISSION
HEARING OFFICER

FILED

MAY - 3 2019

JOSE NAVARRETE,

Petitioner-Employee,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS,

Respondent-Employer.

APPEALS OFFICE

Appeal No.: 1713379-MG

**NEVADA DEPARTMENT OF
CORRECTIONS' RESPONSE TO
EMPLOYEE'S SUPPLEMENTAL BRIEF
REGARDING CHANGE OF LAW**

Respondent-Employer, Nevada Department of Corrections (NDOC), by and through its counsel, Aaron D. Ford, Attorney General for the State of Nevada, and Michelle Di Silvestro Alanis, Deputy Attorney General, hereby submits its Response to Petitioner-Employee, Jose Navarrete's Supplemental Brief Regarding Change of Law.

The Nevada Supreme Court issued its Opinion in *NDOC v. Ludwick*, holding that NDOC Administrative Regulation (AR) 339 is "invalid and of no legal effect for purposes of employee discipline" because AR 339 has not been approved by the Personnel Commission. *NDOC v. Ludwick*, 135 Nev. Adv. Op. 12, ___ P.3d ___ (May 2, 2019). *Ludwick* does not change anything of substance in this case. *Ludwick* does not change the documents, video, and audio admitted into evidence nor the testimony heard over the course of two days. *Ludwick* did not invalidate the other ARs that govern the policies and procedures for NDOC staff, including AR 405. *Ludwick* did not invalidate the Operational Procedure (OP) or Post Order governing the policies and procedures at Southern Desert Correction Center or the evidence that NDOC determined Navarrete's misconduct as serious offenses. More importantly, *Ludwick* does not change the rights guaranteed under the Eighth Amendment. *Ludwick* only changes that the hearing officer cannot rely on AR 339 for the purposes of employee discipline due to a procedural hurdle.

In fact, *Ludwick* held that the hearing officer must address whether the employee's actions constitutes violations of NAC 284.650 as listed in the specificity of charges. *Ludwick* at 9. If the hearing officer finds that the employee violated the relevant NAC provisions, the hearing officer **must** then apply

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1 the remaining two steps outlined in *O'Keefe* to determine whether those violations warranted termination
2 as a first-time disciplinary action. *Ludwick* at 9 (emphasis added).

3 Step two of *O'Keefe* requires a hearing officer to next "determine[] whether that violation is a
4 serious violation[] of law or regulations' such that the 'severe measure[]' of termination is available as a
5 first-time disciplinary action." *O'Keefe v. State, Department of Motor Vehicles*, 134 Nev. ___, Adv. Op.
6 92, 431 P.3d 350, 356 (2018).

7 If the agency's published regulations prescribe termination as an
8 appropriate level of discipline for a first-time offense, then that violation is
9 necessarily serious as a matter of law. **A violation is also serious as a**
10 **matter of law if the agency has a policy that prescribes termination as**
11 **an appropriate level of discipline for a first-time offense. Where no such**
12 **regulation or policy is in place, the hearing officer applies a deferential**
13 **standard of review to an agency's determination that the seriousness of**
14 **the offense or condition warrants such dismissal.** Third and last, the
15 hearing officer applies a deferential standard of review to the agency's
16 determination that termination will serve the good of the public service.

17 *Ludwick* at 6 (internal citations and quotations omitted and emphasis added).

18 "[E]ven when there is no published regulation in place, the hearing officer should give deference
19 to an employer's decision that a violation is so serious it warrants termination for a first-time offense."
20 *Ludwick* at 5.

21 Here, NDOC charged Navarrete with the following NAC 284.650 violations:

22 NAC 284.650(1) Activity which is incompatible with an employee's
23 conditions of employment established by law or which violates a provision
24 of NAC 284.653 or 284.738 to 284.771, inclusive.

25 NAC 284.650(10) Dishonesty.

26 NAC 284.650(21) Any act of violence which arises out of or in the course
27 of the performance of the employee's duties, including without limitation,
28 stalking, conduct that is threatening or intimidating, assault, or battery.

29 This hearing officer must determine if Navarrete allowed an authorized or improper use of force
30 to occur and completed a report that included false and/or misleading statements or omissions. Pursuant
31 to *O'Keefe* and *Ludwick*, the hearing officer must first determine if Navarrete's conduct was a violation
32 of NAC 284.650(1), (10) and/or (21) under step one of *O'Keefe*. If the hearing officer finds a violation
33 under NAC 284.650, then under step two the hearing officer applies a deferential standard of review to
34 NDOC's determination that the seriousness of the offenses warrant dismissal. As noted above, while the

1 hearing officer cannot rely on AR 339 as a valid regulation to determine whether the violation was
2 serious, the hearing officer can rely on NDOC policies such as AR 405, OP 405 and 407, and the
3 Post Order for Search and Escort. Additionally, the hearing officer applies a deferential standard of review
4 to NDOC's determination that the offenses were serious. AR 339 has been invalidated for the purposes
5 of basing discipline on those violations due to a procedural hurdle; however, it is still persuasive evidence
6 that NDOC finds such violations to be serious enough to warrant termination. Lastly, under step three,
7 the hearing officer applies a deferential standard of review to NDOC's determination that the termination
8 will serve the good of the public service.

9 Based on the foregoing and the evidence presented at the hearing in this matter, Navarrete clearly
10 violated NAC 284.650 (1), (10) and (21) and this hearing officer must give deference to NDOC's
11 determination that the violations were serious and the termination served the good of the public service.

12 DATED this 3rd day of May, 2019.

13 AARON D. FORD
14 ATTORNEY GENERAL

15 By: /s/ Michelle Di Silvestro Alanis
16 Michelle Di Silvestro Alanis (Bar No. 10024)
17 Deputy Attorney General
18 Attorneys for Respondent-Employer
19 Nevada Department of Corrections
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CERTIFICATE OF SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), I hereby certify that, on May 3, 2019, service of **NEVADA DEPARTMENT OF CORRECTIONS' RESPONSE TO EMPLOYEE'S SUPPLEMENTAL BRIEF REGARDING CHANGE OF LAW** was made this date by depositing a true copy of the same for mailing, first class mail, at Reno, Nevada, or via e-mail, addressed as follows:

Mark Gentile (Email and mail)
Appeals Officer
Department of Administration
2200 S. Rancho Dr., Ste. 200
Las Vegas, NV 89101
zmcgough@admin.nv.gov

Daniel Marks (Email and mail)
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610 S. 9th St.
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/s/ Rebecca M. Zatarain
An employee of the Office of Attorney General

BEFORE THE NEVADA STATE PERSONNEL COMMISSION
MARK GENTILE, HEARING OFFICER

FILED

MAY 02 2019

JOSE MIGUEL NAVARRETE,

Case No.: 1713379-MG

APPEALS OFFICE

Petitioner/Employee,

v.

DEPARTMENT OF CORRECTIONS,

Respondent/Employer

SUPPLEMENTAL BRIEF REGARDING CHANGE OF LAW

Petitioner/Employee Jose Navarrete, by and through the undersigned attorney Daniel Marks, Esq., and Nicole M. Young, Esq., of the Law Office of Daniel Marks, hereby submits the following supplement:

On May 2, 2019, the Nevada Supreme Court issued a published decision in *NDOC v. Ludwick*, 135 Nev. Adv. Op. 12, attached hereto as Exhibit 1. In that decision, the Court held that AR 339 is "*invalid*" because the State Personnel Commission [hereinafter "Commission"] never approved that regulation, so it has "*no legal effect* for purposes of employee discipline." (See Exhibit 1, at p. 7 (emphasis added).) Further, at the hearing that took place in this case, "NDOC provided no evidence showing that the Commission approved AR 339." (See Exhibit 1, at p. 8.)

Based on the invalidity of AR 339, this Hearing Officer may NOT rely on AR 339 "for any purpose related to the disciplinary charges in this case." (See Exhibit 1, at p. 9.) This Hearing Officer may consider "the valid NAC provisions listed in [the] specificity of charges without any reliance on AR 339." *Id.* This includes the "Class of Offense Guidelines" listed under AR 339.07 and the

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2 "Prohibitions and Penalties" listed under AR 339.06, specifically the "Chart of Corrective/Disciplinary
3 Sanctions" mandating termination for class 4 and 5 offenses. Reliance on AR 339 now constitutes "*a*
4 *clear error of law warranting remand.*" *Id.* (emphasis added).

5 Because AR 339 has been deemed invalid by the Nevada Supreme Court, this Hearing Officer
6 may only rely on the NAC provisions listed in the specificity of charges and the standard set forth
7 under *O'Keefe v. Department of Motor Vehicles*, 134 Nev. Ad. Op. 92, 431 P.3d 350 (2018), to
8 determine whether Officer Navarrete committed the charged violation and whether
9 termination/discipline was warranted without regard for AR 339.

10 DATED this 2 day of May, 2019.

11 LAW OFFICE OF DANIEL MARKS

12 
13 DANIEL MARKS, ESQ.

14 Nevada State Bar No. 002003

15 NICOLE M. YOUNG, ESQ.

16 Nevada State Bar No. 12659

17 610 South Ninth Street

18 Las Vegas, Nevada 89101

19 Attorney for Petitioner/Employee
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3 **CERTIFICATE OF SERVICE**

4 I hereby certify that I am an employee of the LAW OFFICE OF DANIEL MARKS and on the
5 2 day of May, 2019, I did serve the above and foregoing **SUPPLEMENTAL BRIEF**
6 **REGARDING CHANGE OF LAW** by way of email and did depositing a true and correct copy with
7 first class postage fully prepaid thereon with the United States Post Office at Las Vegas, Nevada to the
8 following addresses:

9 Michelle Di Silvestro Alanis
10 Deputy Attorney General
11 Office of the Attorney General
12 Personnel, Business & State Services
13 555 E. Washington Ave., Ste. 3900
14 Las Vegas, Nevada 89101
15 Email: MAlanis@ag.nv.gov
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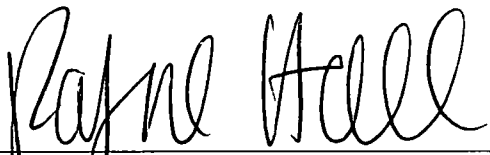
17 
18 _____
19 An employee of the
20 LAW OFFICE OF DANIEL MARKS
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EXHIBIT 1

135 Nev., Advance Opinion 12
IN THE SUPREME COURT OF THE STATE OF NEVADA

THE STATE OF NEVADA,
DEPARTMENT OF CORRECTIONS,
Appellant,
vs.
BRIAN LUDWICK, AN INDIVIDUAL,
Respondent.

No. 73277

FILED

MAY 02 2019

ELIZABETH A. BROWN
CLERK OF THE SUPREME COURT
BY: *[Signature]*
CHIEF DEPUTY CLERK

Appeal from a district court order denying a petition for judicial review in an employment matter. Eighth Judicial District Court, Clark County; Nancy L. Allf, Judge.

Reversed and remanded.

Aaron D. Ford, Attorney General, and Michelle Di Silvestro Alanis, Deputy Attorney General, Carson City,
for Appellant.

Law Office of Daniel Marks and Daniel Marks and Adam Levine, Las Vegas,
for Respondent.

BEFORE HARDESTY, STIGLICH and SILVER, JJ.

OPINION

By the Court, SILVER, J.:

After appellant Nevada Department of Corrections (NDOC) terminated respondent Brian Ludwick's employment for a first-time offense, Ludwick was reinstated by a hearing officer on administrative appeal. At issue is whether the hearing officer erred in finding that NDOC's

decision to terminate was improper. We hold that the hearing officer erred by relying, even if only in part, on a regulation that the State Personnel Commission (Commission) had not approved as statutorily required. The hearing officer also did not properly consider, as addressed in our recent opinion *O'Keefe v. State, Department of Motor Vehicles*, 134 Nev., Adv. Op. 92, 431 P.3d 350 (2018),¹ whether Ludwick's actions constituted violations of the valid regulations NDOC charged him with violating and, if so, whether those violations warranted termination as a first-time disciplinary measure. Accordingly, we reverse the district court's denial of NDOC's petition for judicial review and remand for proceedings consistent with this opinion.

FACTS AND PROCEDURAL HISTORY

Ludwick worked for NDOC as a correctional officer. During his employment, he qualified for leave under the Family and Medical Leave Act (FMLA), 29 U.S.C. § 2601 (2012), due to hypertension. In the more than two years Ludwick worked for NDOC, he had no disciplinary history.

On the day of the incident for which Ludwick was terminated, Ludwick was assigned to Unit 1 at the correctional facility. Unit 1 houses inmates returning from solitary confinement and tends to have more violent incidents than any other unit. The mandated minimum staffing for Unit 1 at the time was two officers, but three officers were assigned to Unit 1 on that day. During his shift, Ludwick attempted to contact his supervisor to inform him that he was not feeling well, but could not get ahold of him. Ludwick then left Unit 1, without prior permission, to speak to his

¹We recognize that the parties, the hearing officer, and the district court did not have the benefit of the *O'Keefe* opinion when addressing these issues.

supervisor in person. Although the parties dispute the specifics of the conversation that ensued, Ludwick ultimately left work on FMLA leave. The supervisor subsequently generated a report stating that Ludwick neglected his duty and abandoned his post without authorization when he left Unit 1.

After an internal investigation into the supervisor's report, NDOC charged Ludwick with violating NAC 284.650(1) (activity incompatible with employee's conditions of employment), NAC 284.650(3) (violating or endangering the security of the institution), NAC 284.650(7) (inexcusable neglect of duty), and NDOC's Administrative Regulation (AR) 339.05.15 (neglect of duty—leaving an assigned post while on duty without authorization of a supervisor). NDOC initially recommended a five-day suspension but ultimately decided to terminate Ludwick for consistency purposes, as other employees who had violated AR 339 were terminated.

Ludwick administratively challenged NDOC's decision and, following a hearing, the hearing officer overturned the termination. The hearing officer agreed with NDOC that "Ludwick engaged in inexcusable neglect by leaving his post without the prior permission of a supervisor." The hearing officer found that termination of employment, however, was too harsh a penalty, as Ludwick had no prior discipline and no incidents arose in Unit 1 after Ludwick left. The hearing officer also disagreed with NDOC's argument that Ludwick's leaving Unit 1 without prior approval constituted a serious security risk, as the minimum staffing requirements for the unit were still met and no one was assigned to replace Ludwick in Unit 1 after he left for the day. Finding that "some discipline" was still required because Ludwick "in fact violate[d] a very important safety and security policy by leaving his post without prior authorization from a

supervisor,” the hearing officer ordered that Ludwick be suspended for not more than 30 days. The district court denied NDOC’s subsequent petition for judicial review and this appeal followed.

DISCUSSION

“When reviewing a district court’s denial of a petition for judicial review of an agency decision, this court engages in the same analysis as the district court.” *Taylor v. State, Dep’t of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013) (quoting *Rio All Suite Hotel & Casino v. Phillips*, 126 Nev. 346, 349, 240 P.3d 2, 4 (2010)). Thus, pursuant to Nevada’s Administrative Procedure Act (NAPA), we review the hearing officer’s decision to determine whether it is clearly erroneous, arbitrary or capricious, or affected by an error of law. NRS 233B.135(3). In doing so, we review questions of law de novo but “defer[] to [a hearing officer’s] interpretation of its governing statutes or regulations if the interpretation is within the language of the statute.” *Taylor*, 129 Nev. at 930, 314 P.3d at 951 (quoting *Dutchess Bus. Servs., Inc. v. Nev. State Bd. of Pharmacy*, 124 Nev. 701, 709, 191 P.3d 1159, 1165 (2008)).

The hearing officer’s review of NDOC’s decision to terminate

Initially, the parties present arguments regarding the deference the hearing officer owed to NDOC’s decisions. We recently addressed that issue in *O’Keefe v. State, Department of Motor Vehicles*, 134 Nev., Adv. Op. 92, 431 P.3d 350 (2018), and concluded that the hearing officer conducts a de novo review of “whether the employee *in fact* committed the charged violation.” *Id.* at 355. And, when reviewing an agency’s decision that termination will serve the good of the public service, the hearing officer is to employ a deferential standard. *See id.* at 355-56 (overruling *Dredge v. State, Department of Prisons*, 105 Nev. 39, 769 P.2d 56 (1989), *State, Department of Prisons v. Jackson*, 111 Nev. 770, 895 P.2d

1296 (1995), and their progeny to the extent they “suggest that the hearing officer decides de novo whether the employee’s termination serves the good of the public service” (internal quotation marks omitted)). *O’Keefe* did not directly address, however, whether the hearing officer owes deference to an employer’s decision that a violation is so serious that it warrants termination for a first-time offense when the agency does not have a published regulation to that effect in place. *See id.* at 356 (providing that when a published regulation prescribes termination for a first-time offense, “then that violation is necessarily ‘serious’ as a matter of law”).

Examining *O’Keefe*’s reasoning for its limited overruling of *Dredge* and *Jackson* demonstrates that, even when there is no published regulation in place, the hearing officer should give deference to an employer’s decision that a violation is so serious it warrants termination for a first-time offense. *O’Keefe* explained that while those previous cases emphasized the need for deference to the employer when security concerns were implicated, the cases “did not create a broad rule that deference is generally not owed unless there are security concerns.” *Id.* *O’Keefe* then recognized that a hearing officer generally owes deference “as to whether the agency’s termination decision was reasonable and with just cause.” *Id.* (citing NRS 284.390(1), (7)). Because the determination of whether a violation is so serious that it warrants termination for a first-time offense is part of the hearing officer’s consideration of whether the agency’s decision to terminate was reasonable and with just cause, *O’Keefe* mandates that the hearing officer defer to the employer’s decision. *See id.*

The hearing officer erred by relying on an invalid regulation in reviewing the termination decision

A hearing officer's review of an agency's decision to terminate an employee as a first-time disciplinary measure requires a three-step process. *Id.* at 356 (citing NRS 284.390(1)). "First, the hearing officer reviews de novo whether the employee in fact committed the alleged violation." *Id.* (citing NAC 284.798). The hearing officer next "determines whether that violation is a 'serious violation[] of law or regulations' such that the 'severe measure[]' of termination is available as a first-time disciplinary action." *Id.* (alterations in original) (quoting NRS 284.383(1)). "If the agency's published regulations prescribe termination as an appropriate level of discipline for a first-time offense, then that violation is necessarily 'serious' as a matter of law." *Id.* (quoting NRS 284.383(1) and citing NAC 284.646(1)). A violation is also "serious" as a matter of law if the agency has a policy that prescribes termination as an appropriate level of discipline for a first-time offense. *See id.*; *see also* NAC 284.646(1)(a). Where no such regulation or policy is in place, the hearing officer applies a deferential standard of review to an agency's determination that "[t]he seriousness of the offense or condition warrants such dismissal." NAC 284.646(1)(b); *see O'Keefe*, 134 Nev., Adv. Op. 92, 431 P.3d at 356. "Third and last, the hearing officer applies a deferential standard of review to the agency's determination that termination will serve 'the good of the public service.'" *O'Keefe*, 134 Nev., Adv. Op. 92, 431 P.3d at 356 (quoting NRS 284.385(1)(a)).

All of the violations listed in Ludwick's specificity of charges were based on the fact that he left Unit 1 without prior permission from his supervisor. Ludwick does not dispute that he left the unit without permission except to argue that he had implied permission to leave under

the FMLA. We disagree, as 29 C.F.R. § 825.303(c) (2018) provides that “[w]hen the need for leave is not foreseeable, an employee must comply with the employer’s usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances,” and Ludwick did not demonstrate any unusual circumstances in this case. The question then becomes whether Ludwick leaving the unit without prior permission constitutes a violation of the NAC provisions and AR 339 as listed in the specificity of charges.

Addressing AR 339.05.15² first, the hearing officer determined that this regulation had to be approved by the Commission to be of any disciplinary effect. On appeal, NDOC asserts that the plain language in another statute, NRS 209.111, allows the Board of State Prison Commissioners (Board) to adopt administrative regulations regarding the labor of employees without the approval of the Commission and that AR 339 is therefore valid because it was approved by the Board.³ We agree with Ludwick and the hearing officer, however, that the fact that the Commission never approved AR 339 makes it invalid and of no legal effect for purposes of employee discipline.

²The parties agree that the relevant version of AR 339.05.15 provided that a corrections officer leaving an assigned post without permission constituted inexcusable neglect of duty.

³NDOC also contends that it is exempted from the NAPA’s statutes regarding the adoption of regulations. While the NAPA exempts NDOC from certain of its procedures, see NRS 233B.039(1)(b), NDOC is not exempt from the procedures regarding the adoption of regulations governing state personnel. See NRS 284.013 (exempting only certain state entities from NRS Chapter 284).

NRS 284.383(1) provides that the Commission must adopt, by regulation, "a system for administering disciplinary measures against a state employee." That system is set forth in NAC 284.638-.6563. The Commission also adopted NAC 284.742(1), which directs agencies to identify prohibited activities and possible violations and penalties and explain the discipline process for classified employees. Under that regulation, the agencies' policy must receive approval from the Commission:

Each appointing authority shall determine, *subject to the approval of the Commission*, those specific activities which, for employees under its jurisdiction, are prohibited as inconsistent, incompatible or in conflict with their duties as employees. The appointing authority shall identify those activities in the policy established by the appointing authority pursuant to NRS 284.383.

(Emphasis added.) See also NRS 284.383(3) ("An appointing authority shall provide each permanent classified employee of the appointing authority with a copy of a policy *approved by the Commission* that explains prohibited acts, possible violations and penalties and a fair and equitable process for taking disciplinary action against such an employee." (emphasis added)). The foregoing law clearly demonstrates that the Commission's approval was required for any administrative regulation regarding an employee's discipline to have any force and effect.

We agree with the hearing officer that NDOC provided no evidence showing that the Commission approved AR 339. NDOC's argument that NRS 209.111 allows the Board to bypass the Commission's approval fails. Although that statute states that the Board "has full control of all . . . labor" of the NDOC, it is referring to inmate labor, rather than the governance of NDOC employees. See *State v. Hobart*, 13 Nev. 419, 420 (1878) (addressing the precursor to NRS 209.111, which specifically

referred to "prison labor"); *Hearing on S.B. 116 Before the Sen. Finance Comm.*, 59th Leg. (Nev., Feb. 28, 1977) (statement of Charles L. Wolff, Warden, Nevada State Prison) (explaining that the bill was intended to provide more effective educational and vocational training to inmates "so they are prepared to be placed effectively back into the community and earn a livelihood" without any mention of employee discipline). And, because the regulation was never approved by the Commission, the hearing officer correctly determined that it was invalid and could not form a basis for terminating Ludwick.

Despite the hearing officer's correct determination that AR 339 was invalid, the officer still relied on the regulation in order to understand "the expectations and duties as it relates to correctional officers being at their assigned post" and to determine whether Ludwick's actions constituted an inexcusable neglect of duty under NAC 284.650(7) and justified termination for the first offense. This is a clear error of law warranting remand—because the regulation is invalid, the hearing officer should not have relied on it for any purpose related to the disciplinary charges in this case. *See* NRS 233B.135(3)(d). On remand, the hearing officer must address whether Ludwick's actions of leaving his post without prior permission constitutes violations of the *valid* NAC provisions listed in his specificity of charges without any reliance on AR 339. And, if the hearing officer finds that Ludwick violated the relevant NAC provisions, the officer must then apply the remaining two steps outlined in *O'Keefe* to determine whether those violations warranted terminating Ludwick as a first-time disciplinary action. *See* 134 Nev., Adv. Op. 92, 431 P.3d at 356.

CONCLUSION

Because the hearing officer committed legal error in relying on an invalid regulation to set aside Ludwick's termination, we reverse the district court's denial of NDOC's petition for judicial review. We therefore remand this matter to the district court so that it may grant NDOC's petition and remand the case to the hearing officer for further proceedings consistent with this opinion.

Silver, J.
Silver

We concur:

Hardesty, J.
Hardesty

Stiglich, J.
Stiglich

BEFORE THE NEVADA STATE PERSONNEL COMMISSION

FILED

HEARING OFFICER

APR - 3 2019

JOSE MIGUEL NAVARRETE,

Petitioner-Employee,

vs.

DEPARTMENT OF CORRECTIONS,

Respondent-Employer.

APPEALS OFFICE

Appeal No: 1713379-MG

NOTICE OF HEARING

The hearing in the above-entitled action heard on April 2, 2019, will be reconvened on Tuesday, April 16, 2019, at 9:00 a.m. at the following location:

State of Nevada
Department of Administration
2200 South Rancho Drive, Suite 220
Las Vegas, Nevada 89102

If either party needs additional assistance of the Hearing Officer to resolve any disputes regarding this matter, please contact the Hearing Officer's assistant to schedule a conference call.

DATED this 3rd day of April, 2019.



MARK GENTILE, ESQ.
HEARINGS OFFICER

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BEFORE THE NEVADA STATE PERSONNEL COMMISSION
HEARING OFFICER

FILED
APR 01 2019
APPEALS OFFICE

JOSE NAVARRETE,

Petitioner-Employee,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS,

Respondent-Employer.

Appeal No.: 1713379-MG

NEVADA DEPARTMENT OF
CORRECTIONS' SUPPLEMENT TO
PRE-HEARING STATEMENT

Respondent-Employer, Nevada Department of Corrections (NDOC), by and through its counsel, Aaron D. Ford, Attorney General for the State of Nevada, and Michelle Di Silvestro Alanis, Deputy Attorney General, hereby offers Respondent-Employer, NDOC's Supplement to Pre-Hearing Statement in the above-referenced matter pursuant to the Nevada Personnel Commission Hearing Officer Rules of Procedure. Supplemental documents are listed in **bold**.

III. STATEMENT OF ISSUES OF LAW AND LEGAL ARGUMENT

A. NDOC complied with NRS 284.387(2) and obtained a valid extension.

Employee's argument that his discipline is untimely because there was no good cause for an extension and that Employee did not receive NDOC's request for extension is incorrect. If Employee truly believed his discipline was untimely, he could have filed a Motion to Dismiss, to avoid the need for a hearing. Yet, Employee did not file a motion likely because he is aware that his arguments are without merit.

NRS 284.387 states:

1. An employee who is the subject of an internal administrative investigation that could lead to disciplinary action against the employee pursuant to NRS 284.385 must be:

(a) Provided notice in writing of the allegations against the employee within 30 days after the date on which the appointing authority becomes aware, or reasonably should have become aware, of the allegations. The notice must be provided before the employee is questioned regarding the allegations.

(b) Afforded the right to have a lawyer or other representative of the employee's choosing present with the employee at any time that the employee is questioned regarding those allegations. The employee must be

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given not less than 2 business days to obtain such representation, unless the employee waives the employee's right to be represented.

2. An internal administrative investigation that could lead to disciplinary action against an employee pursuant to NRS 284.385 and any determination made as a result of such an investigation must be completed and the employee notified of any disciplinary action within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1. **If the appointing authority cannot complete the investigation and make a determination within 90 days after the employee is provided notice of the allegations pursuant to paragraph (a) of subsection 1, the appointing authority may request an extension of not more than 60 days from the Administrator upon showing good cause for the delay.** No further extension may be granted unless approved by the Governor.

3. If the appointing authority does not make a determination within 90 days after the employee is provided notice of the allegations or within any extended time period approved pursuant to subsection 2, the appointing authority shall not take any disciplinary action against the employee pursuant to NRS 284.385 which is based on those allegations. (emphasis added).

NAC 284.6555 provides in pertinent part:

1. Pursuant to subsection 2 of NRS 284.387, if an appointing authority wishes to request an initial extension of not more than 60 days from the Administrator to complete an internal administrative investigation that could lead to disciplinary action against an employee pursuant to NRS 284.385 and make a determination as a result of the investigation, the appointing authority must:

(a) Submit the request to the Administrator on a form prescribed by the Division of Human Resource Management on or before the 90th day after the employee was provided notice of the allegations against the employee;

(b) Explain in the request why the appointing authority is unable to complete the internal administrative investigation and make a determination within 90 days after the employee was provided notice of the allegations; and

(c) Provide a copy of the request to the employee who is the subject of the internal administrative investigation

...

3. The Administrator may deny a request for an extension that is not submitted within the period required by paragraph (a) of subsection 1.

...

Here, NDOC served Employee with his notice of allegations on October 21, 2016. *See* NDOC 0029-31. The 90 days pursuant to NRS 284.387 would have expired on January 19, 2017 but NDOC obtained a valid extension in accordance with NRS 284.387 and NAC 284.6555. NDOC 002. First, on January 13, 2017, NDOC submitted a request to the Administrator of the Division of Human Resource Management on the prescribed form seeking a 60-day extension. NDOC 003-12. Second, NDOC explained on the prescribed form that the cause for the delay was that “[T]he Specificity of Charges is currently under review by the Attorney General’s office.” Pursuant to NRS 284.385, NDOC is required to consult with the Attorney General’s Office before dismissing, demoting or suspending a permanent classified employee. NDOC 003. On January 17, 2017, the Administrator found good cause and **granted** NDOC the 60-day extension making the new deadline to serve Employee March 20, 2017. NDOC 001. Employee was served with the Specificity of Charges, which recommended termination on March 16, 2017. *See* NDOC 0117.

This timeline is undisputed. Yet, Employee now argues that the basis for NDOC’s extension request was insufficient under NRS 284.387(2) and NAC 284.6555. Employee relies on a hearing officer decision in *Haycox v. DPS*. Employee also argues that he did not receive a copy of the request for extension therefore the extension is invalid. All of Employee’s arguments fail.

It is important to note that DHRM **granted** the request for extension. It is outside the authority of the hearing officer to second-guess DHRM. In fact, in *Jackson v. State of Nevada, DPS*, the Second Judicial District Court found that determination by DHRM regarding extensions of time under NRS 284.387(2) are outside the authority of a hearing officer to review. The *Jackson* court based its decision on the language of NRS 284.387(2), which instructs that requests are “made to the Administrator” upon showing good cause for the delay. *See Jackson v. State of Nevada* attached as Exhibit I. The Administrator is Perter Long and not a hearing officer assigned under NRS Chapter 284. Indeed, nowhere in NRS 284.387 or NAC 284.6555 does the language give a hearing officer authority to review determinations made by the Administrator. Thus, the hearing officer does not have authority to review the request for extension or DHRM’s subsequent granting of the extension.

Further, Employee’s argument would defeat the entire purpose of requesting an extension under the statute. If an extension could retroactively be invalidated by a hearing officer, then an agency would

1 not request an extension out of fear it would later be determined invalid. This analysis would render the
2 plain language of the statute meaningless or superfluous. *See Hobbs v. State*, 127 Nev. 234, 237, 251 P.3d
3 177, 179 (2011) (In construing a statute, the court's initial inquiry focuses on the language of the statute
4 and the court avoids statutory interpretation that renders language meaningless or superfluous).

5 Lastly, Employee cites to a non-binding order issued by Hearing Officer Robert Zentz in *Haycox*
6 *v. DPS*, in which he denied reconsideration. The portion of the order that Employee relies on is mere
7 dicta. Furthermore, *Haycox* is currently pending before the Eighth Judicial District Court on a petition
8 for judicial review. Therefore, *Haycox* should be disregarded because it is not precedential, is
9 categorically flawed, and is belied by the actual language in NRS 284.387. NRS 284.387(2) specifically
10 permits an extension when "the appointing authority cannot complete the investigation and make a
11 determination within 90 days..." (emphasis added). NDOC provided an explanation within the box on
12 the prescribed form when it requested an extension. NDOC showed good cause by stating that the
13 Attorney General's Office was reviewing the discipline. The statute allows NDOC to request an extension
14 and that is exactly what NDOC did. The Administrator reviewed the explanation and granted the request
15 for extension. Certainly having the Attorney General's Office review the discipline in accordance with
16 NRS 284.385 would be good cause. Thus, NDOC fully complied with NRS 284.387.

17 Employee next argues that the extension is invalid because NDOC did not comply with section
18 NAC 284.655(1)(c) because a copy of the request for extension was not provided to the employee.
19 Section 1(c) does not provide a time frame or deadline for the employer to provide the copy. It simply
20 says "provide a copy." NDOC provided a copy to the Employee when Employee was provided a copy of
21 his investigative file. NRS 284.387 and NAC 284.6555 do not provide a penalty should employee not
22 receive a copy of the request. Instead, NRS 284.387(3) provides a penalty if the employee is not served
23 within the 90 days or within the extension and states that the appointing authority shall not impose
24 discipline. No such provision exists for employee not receiving a copy of the request at the time of the
25 request. Nevada follows the maxim "expressio unius est exclusio alterius," the expression of one thing is
26 the exclusion of another. *State v. Javier C.*, 128 Nev. 536, 541, 289 P.3d 1194, 1197 (2012). Thus, had
27 the legislature intended to also penalize state agencies for failing to provide a copy of the request to the
28 employee, they would have included such a provision in the statute or the regulation.

Based on the foregoing, NDOC complied with NRS 284.387 and NAC 284.6555 and timely notified the Employee of his discipline and the termination should be upheld.

V. LIST OF EXHIBITS

- A. Investigative File for IA-2016-145 including audio interview and video of October 9, 2016 from SDCC Culinary
- B. April 19, 2017, Letter from Director James Dzurenda regarding termination with enclosed Pre-disciplinary Hearing Report
- C. March 16, 2017, Specificity of Charges with exhibits
- D. AR 405
- E. Administrative Regulations Acknowledgment signed by Employee
- F. Work Performance Standards signed by Employee
- G. S.B. 116
- H. Board of Prison Commissioners' Agenda
- I. *Jackson v. State of Nevada*
- J. **OP 405 (Confidential submitted under seal)**
- K. **OP 407**
- L. **Post Order (Confidential submitted under seal)**
- M. **Post Order Signature Sheet**
- N. **Grievances on Staff Member Navarrete**

NDOC reserves the right to list or present additional documents at the hearing including for impeachment or rebuttal purposes. NDOC reserves the right to utilize any and all exhibits disclosed by Employee. NDOC reserves the right to supplement this list.

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1 NDOC reserves the right to list and/or call additional witnesses including for impeachment or
2 rebuttal purposes. Employee is to subpoena her own witnesses.

3 DATED this 29th day of March, 2019.

4 AARON D. FORD
5 ATTORNEY GENERAL

6
7 By: /s/ Michelle Di Silvestro Alanis
8 Michelle Di Silvestro Alanis (Bar No. 10024)
9 Deputy Attorney General
Attorneys for Respondent-Employer
Nevada Department of Corrections

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EXHIBIT I

EXHIBIT I

Not
Admitted

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

WESLEY JACKSON, an individual, Case No. CV17-02415
Petitioner, Dept. No. 8

vs.

STATE OF NEVADA, *ex rel.* its
DEPARTMENT OF PUBLIC SAFETY,
PAROLE AND PROBATION DIVISION;
and DEPARTMENT OF
ADMINISTRATION; DIVISION OF
HUMAN RESOURCE MANAGEMENT;
and VICTORIA T. OLDENBURG in her
capacity as Hearing Officer,

Respondents.

ORDER DENYING PETITION FOR JUDICIAL REVIEW

Before the Court is a *Petition for Judicial Review*, filed December 28, 2017 by WESLEY JACKSON ("Mr. Jackson"). Mr. Jackson filed his *Opening Brief* on March 22, 2018, to which Respondent, STATE OF NEVADA, *ex rel.* its DEPARTMENT OF PUBLIC SAFETY ("DPS"), replied with a *Motion to Dismiss*. This Court denied that motion in an order rendered on August 23, 2018. In accordance with that ruling, Respondent filed its *Answering Brief* on September 21, 2018.

After a full review of Mr. Jackson's *Petition for Judicial Review*, the record on appeal, and the applicable authorities, the Court ORDERS the *Petition* **DENIED**.

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1 **BACKGROUND**

2 Mr. Jackson is a former law enforcement officer for the Division of Parole and Probation
3 of the Department of Public Safety ("DPS"). ROA Vol. I, 299; Vol II, 705. During his
4 employment, DPS received two separate and unrelated complaints regarding alleged
5 unprofessional conduct by Mr. Jackson. ROA Vol. I, 328-27, 329; Vol II, 705, 765-68, 814.

6 First, in May 2016, Ms. Angela Sommers made a complaint that Mr. Jackson had
7 engaged in inappropriate communications with her and that he had sexually harassed her. ROA
8 Vol. I, 328-29; Vol. II, 767-68. According to the complaint, Mr. Jackson requested that Ms.
9 Sommers meet with him to discuss an associate of hers who Mr. Jackson was supervising. Ms.
10 Sommers told Mr. Jackson she could not meet with him on May 4, 2016 because she had a hair
11 appointment. ROA Vol. I, 510; Vol. II, 999. Ms. Sommers alleged that prior to their meeting,
12 Mr. Jackson solicited a picture of Ms. Sommers from her and then while at the meeting, he asked
13 her inappropriate personal questions. ROA Vol. I, 361-62, 510-12; Vol. II, 767, 999. Ms.
14 Sommers further alleged that Mr. Jackson later sent her a text message and asked that she keep
15 their meeting confidential. ROA Vol. II 715, 1000. Approximately an hour later, Ms. Sommers
16 received another text message from Mr. Jackson which read: "Are you blonde now?" ROA Vol.
17 I, 514; Vol. II, 715, 767, 999-1000. Later, Ms. Sommers received a third text message from Mr.
18 Jackson, which read: "I hope that didn't make you mad." ROA Vol. I, 514; Vol. II, 715, 1000.
19 Ms. Sommers replied via text message that she found the messages to be inappropriate and she
20 asked Mr. Jackson to not contact her any further. ROA Vol. I, 360-61, 514-15; Vol. II, 715. Ms.
21 Sommers reported to DPS that her communications with Mr. Jackson made her feel both
22 uncomfortable and afraid. ROA Vol. II, 767.

23 Then, in June 2016, parolee Chris Hildenstab made a complaint that Mr. Jackson had sent
24 his girlfriend inappropriate text messages in May 2015. ROA Vol. I, 315-16, 329; Vol. II, 765,
25 814. Mr. Jackson made contact with Ms. Darbie Logue first through an attempted phone call and
26 then through text message. ROA Vol. I, 491-96; Vol. II, 723. Mr. Jackson did not initially
27 identify himself, but eventually did, stating that he was trying to get in touch with Mr.

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1 Hildenstab. ROA Vol. I, 496, Vol. II, 720, 724, 756. Ms. Logue indicated that she was no
2 longer in a dating relationship with Mr. Hildenstab, to which Mr. Jackson inquired further as to
3 whether that was really true. ROA Vol. I, 467-98; Vol. II, 720-21, 725, 757. Mr. Jackson asked
4 Ms. Logue to keep their conversation confidential. ROA Vol. I, 498; Vol. II, 721. He later
5 texted her, "Sorry now I'm just board [sic], single for the night ha." ROA Vol. I, 498; Vol. II,
6 721, 726, 730. Ms. Logue made no response until Mr. Jackson texted, "Lol" – to which Ms.
7 Logue responded, "Lol." ROA Vol. I, 498; Vol. II, 721, 726, 730. Mr. Jackson then replied,
8 "uhhh. . . ." ROA Vol. I, 498-99; Vol. II, 721, 726, 730. Ms. Logue did not engage in the
9 conversation further. ROA Vol. I, 498-99, Vol. II, 721, 726, 730. Ms. Logue participated in an
10 interview and indicated to officers that the messages made her feel scared, but that she was also
11 hesitant in reporting Mr. Jackson because she was afraid it would result in adverse consequences
12 for Mr. Hildenstab or herself. ROA Vol. II, 1005.

13 On September 1, 2016, Mr. Jackson received notice that he was the subject of an
14 investigation into five allegations of misconduct. ROA Vol. I, 342-43; Vol. II, 834-36. The
15 notice alleged that Mr. Jackson had inappropriate contact with two women he had become
16 acquainted with through his work as an officer for DPS. Id. The notice specifically named Ms.
17 Sommers and Ms. Logue. Id.

18 On September 6, 2016, Sergeant Joseph McKay and Sergeant William Dawson from DPS
19 interrogated Mr. Jackson. ROA Vol. II, 809. Mr. Jackson attended the interview without a legal
20 representative present. ROA Vol. II, 809 (00:01:24-00:01:35). The sergeants questioned Mr.
21 Jackson about the text messages that he had sent to Ms. Logue. When questioned about the
22 "single for the night" text message, Mr. Jackson responded that he did not intend to send the
23 message to Ms. Logue. ROA Vol. II, 809 (1:27:00-01:28:15). For much of the interview, he
24 maintained the position that the message was intended for a male friend to see if his friend
25 wanted to go out of a drink. ROA Vol. II, 809 (02:05:09-02:05:16). Ultimately, Mr. Jackson
26 admitted that he had intended to send the text message to Ms. Logue. ROA Vol. I, 504; Vol. II
27 809 (2:10:00-2:11:35). He further intimated that he may have been flirtatious with Ms. Logue
28 and he acknowledged that although he intended to retrieve information from her, his actions

1 were also an attempt to initiate a personal relationship with her. ROA Vol. I, 504-7; Vol. II 809
2 (01:28:40-01:29:25), (02:48:15-02:49:39).

3 Approximately two (2) hours and fifteen (15) minutes into the interview, the sergeants
4 offered Mr. Jackson a break. During that time, audio recording continued and one of the officers
5 can be heard saying, "He lied to us. He made up a story." Vol. II 809 (02:18:42-02:19:00). At
6 another point, the officers have a conversation about taking the phone, suggesting that if this has
7 happened with two women, there may be others. Id. (02:18:20-02:18:30).

8 A second Notification of Allegations of Misconduct, dated September 28, 2016, was sent
9 to Mr. Jackson containing an additional allegation for a total of six (6). ROA Vol. I, 508-09;
10 Vol. II, 825-27. Mr. Jackson was again interrogated on October 20, 2016 regarding the new
11 allegation that he had been untruthful in his initial interview. ROA Vol. I, 508-09. The charge
12 stated: "(F)" It is alleged that on September 6, 2016, your testimony was dishonest during your
13 interview with members of the Office of Professional Responsibility regarding your
14 communication with Darbie Logue."). Id. During the second interview, Mr. Jackson admitted
15 that he had been dishonest in statements he had made on September 6, 2016. ROA Vol. I, 508-
16 09, 441; Vol. II, 811 (00:22:00-00:23:00, 00:27:00-00:27:40). Specifically, he admitted that
17 when he told the officers the message was for a friend, that was untrue. ROA Vol. I, 509; Vol.
18 II, 811 (01:49:48-01:50:29). He further informed the investigators that he had not made a formal
19 record of his interactions with Ms. Logue. ROA Vol. I, 518.

20 On January 19, 2017, Mr. Jackson was presented with a Specificity of Charges, which
21 included a recommendation from DPS Major Stephanie O'Rourke that Mr. Jackson be
22 terminated effective February 13, 2017. ROA Vol. II, 702-714 (exhibits excluded). On
23 February 10, 2017, Captain Shawn Arruti issued a Pre-Disciplinary Report which also
24 recommended termination. ROA, Vol. II, 770. Mr. Jackson was ultimately terminated from his
25 position as a parole and probation officer for DPS on February 14, 2017.

26 Jackson appealed his termination pursuant to NRS 284.390 and a two-day hearing was
27 held on September 20 and 29, 2017 before administrative hearing officer Victoria Oldenburg,
28 Esq. ROA Vol. I, 29-578. Prior to the hearing, on May 23, 2017, Mr. Jackson presented Ms.

1 Oldenburg with a "Motion for Summary Judgment," in which he argued that his rights under
2 NRS 289.060 and NRS 284.387 had been violated. Ms. Oldenburg denied the motion.
3 Thereafter, considering all argument and evidence, Ms. Oldenburg determined that DPS's
4 decision to terminate Mr. Jackson was supported by just cause and she affirmed the termination.
5 *See Findings of Fact, Conclusions of Law, and Decision*, Appeal No. 1702455-VO, dated
6 December 6, 2017 (ROA Vol. I, 01).

7 Thereafter, Mr. Jackson timely filed his *Petition for Judicial Review* on December 28,
8 2017.

9 STANDARD OF REVIEW

10 Any person who is a party of record in an administrative proceeding and is aggrieved by
11 a final decision in a contested case is entitled to judicial review of the decision. NRS
12 233B.130(1). Judicial review of administrative decisions is governed by the APA, codified in
13 NRS Chapter 233B: The Nevada Administrative Procedure Act. *Liberty Mut. v. Thomasson*, 130
14 Nev. 27, 30, 317 P.3d 831, 833 (2014); NRS 233B. Pursuant to NRS 233B.135(1), judicial
15 review of a final decision of an agency must be conducted by the Court without a jury and
16 confined to the record.

17 Legal questions are to be reviewed de novo. *Southern Nevada Operating Engineers v.*
18 *Labor Commissioner*, 121 Nev. 523, 527-28, 119 P.3d 720, 724 (2005) (citing *State, Dep't of*
19 *Bus. & Indus., Office of Labor Com'r v. Granite Const. Co.*, 118 Nev. 83, 86, 40 P.3d 423, 425
20 (2002)). However, the final decision of the agency, i.e. the Department of Public Safety (DPS),
21 is deemed reasonable and unlawful until it is reversed or set aside (in whole or in part) by the
22 court. NRS 223B.135(2).

23 The standard of review is set out in NRS 223B.135(3), which states:

24 The court shall not substitute its judgment for that of the
25 agency as to the weight of evidence on a question of fact. The
26 court may remand or affirm the final decision or set it aside in
whole or in part if substantial rights of the petitioner have been
prejudiced because the final decision of the agency is:

- 27 (a) In violation of constitutional or statutory provisions;
28 (b) In excess of the statutory authority of the agency;
(c) Made upon unlawful procedure;

- (d) Affected by other error of law;
(e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
(f) Arbitrary or capricious or characterized by abuse of discretion.

North Las Vegas v. Pub. Serv. Comm'n, 83 Nev. 278, 429 P.2d 66 (1967); *See also Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 250, 327 P.3d 487, 491 (2014) (clarifying that NRS 233B.135 outlines a standard of review and not a standard of proof).

When in front of the hearing officer, the State bears the burden of proving that just cause supported termination. *See Nassiri v. Chiropractic Physicians' Bd.*, 130 Nev. 245, 249, 327 P.3d 487, 490 (2014); *Twiddy v. State Dep't of Pub. Safety*, No. 62868, 2015 WL 1441829, at *1 (Nev. Mar. 26, 2015). However, at this juncture, i.e., a petition for judicial review, the party challenging the decision bears the burden of demonstrating that the decision is invalid. NRS 233B.135(2).

On balance, great deference is afforded to the fact-based conclusions of law made by an appeal officer and her decision will not be overturned if it is supported by substantial evidence. *Grover C. Dils. Med. Ctr. v. Menditto*, 112 Nev. 278, 283, 112 P.3d 1093, 1097 (2005). The court is to make the limited determination of whether the record contains substantial evidence to support the agency's decision. *See Taylor v. State Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013); *State Dep't of Motor Vehicles v. Becksted*, 107 Nev. 465, 458, 813 P.2d 995, 996 (1991). "Substantial evidence" means evidence which a reasonable mind might accept as adequate to support a conclusion. NRSB135(4). This standard of review refers to the quality and quantity of the evidence necessary to support factual determinations. *Nassiri*, 130 Nev. at 249-50, 327 P.3d at 490. "It contemplates deference to those determinations on review, asking only whether the facts found by the administrative factfinder are reasonably supported by sufficient, worthy evidence in the record." *Id.*

The inquiry is confined to a search for an abuse of discretion, plain error, or an arbitrary and capricious decision. *See Taylor*, 129 Nev. at 930, 314 P.3d at 951; *See also Employment Security Dep't v. Holmes*, 122 Nev. 275, 279, 914 P.2d 611, 614 (1996). "[A]n abuse of discretion is characterized by an application of unreasonable judgment to a decision that is within

1 the actor's rightful prerogatives..." *Falline v. GNLV Corporation*, 107 Nev. 1004, 1009-1010, n.
2 3 (1991). A decision is arbitrary and capricious when it disregards the facts and circumstances
3 involved. *Meadow v. Civil Serv. Bd. of Las Vegas Metro. Police Dep't*, 105 Nev. 624, 627, 781
4 P.2d 772, 774 (1989) (citing *State v. Ford*, 110 Wash.2d 827, 755 P.2d 806, 808 (1988)).

5 DISCUSSION

6 In evaluating the arguments made by both Mr. Jackson and the State, the Court pulls a
7 single thread, asking whether Hearing Officer Oldenburg's decision on each issue was supported
8 by substantial evidence. In doing so, the Court finds Ms. Oldenburg's ratification of Mr.
9 Jackson's termination was justified and that her findings of fact and according conclusions were
10 supported by detailed, substantial evidence.

11 Therefore, the Court hereby **DENIES** Mr. Jackson's *Petition for Judicial Review* and
12 **AFFIRMS** Hearing Officer Oldenburg's *Findings of Fact, Conclusions of Law, and Decision*.

13 I. Hearing Officer Oldenburg's Decision to Deny Mr. Jackson's Motion for 14 Summary Judgment was a Proper Application of the Substantial Evidence in the 15 Record to the Law.

16 It is well-established that a grant of a motion for summary judgment is proper if there is
17 no genuine issue as to any material fact and the moving party is entitled to judgment as a matter
18 of law. NRCP 56(c); *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (en
19 banc) (per curiam). As a general rule, the moving party bears the initial burden of proving there
20 is no genuine issue of material fact. *Maine v. Stewart*, 109 Nev. 721, 726-27, 857 P.2d 755, 758
21 (1993) (per curiam). A "genuine issue of material fact" exists when a rational trier of fact could
22 return a verdict for the nonmoving party. *Wood*, 121 Nev. at 731, 121 P.3d at 1031. In
23 determining whether the moving party has met this burden, the court construes both the
24 pleadings and the record in the light most favorable to the nonmoving party. *Id.* at 732, 121 P.3d
25 at 1031.

26 No statutory provision or regulation under Nevada law explicitly vests a Hearing Officer
27 for the Nevada Department of Public Safety with authority to rule on a motion for summary
28 //

1 judgment. However, under Nevada Personnel Commission Hearing Officer Rules of Procedure
2 5, a hearing officer has the authority to review and rule on motions.

3 Accordingly, Hearing Officer Oldenburg denied Mr. Jackson's *Motion for Summary*
4 *Judgment* on June 28, 2017 finding first that the September 6, 2016 interview procedure
5 complied with NRS 289.060(3), and second, that claims under NRS 284.387 are outside the
6 statutory authority of the hearing officer. This Court agrees and additionally finds that Ms.
7 Oldenburg's decision on each issue was supported by substantial evidence.

8 **a. The Sergeants Conduct at the September 6, 2016 Interview Complied with**
9 **NRS. 289.060(3)(c).**

10 Mr. Jackson's *Motion for Summary Judgment*, filed May 23, 2017, mainly grounded
11 itself in allegations of impropriety in the September 6, 2016 interview and in allegations of
12 deficiency in the internal investigation's procedure. Mr. Jackson reiterates those arguments in
13 the instant *Petition*, arguing that Sergeants McKay and Dawson ("investigating sergeants,"
14 "sergeants") violated his rights under NRS 289.060(3) when they failed to terminate the
15 interview upon realizing that Mr. Jackson may have lied to them. According to Mr. Jackson,
16 suspicion of deception should have alerted the sergeants that a new charge could arise. Mr.
17 Jackson contends that NRS 289.060(3) required that the interview terminate immediately to
18 allow for new notice.

19 Mr. Jackson further asserts that the sergeants violated his rights by making a
20 misrepresentation to him when he asked why he would be needed for an additional interview and
21 why the investigation would need to go further. Mr. Jackson also makes general suggestions that
22 it was improper for the investigating sergeants to make any misrepresentations during the
23 interrogation process. Specifically, Mr. Jackson highlights a statement, "It's an easy out for you
24 right now. Don't let that ship sail. Don't let your easy out sail." – alleging this was an improper,
25 false promise. According to Mr. Jackson, in taking all of these alleged improprieties and
26 deficiencies as a whole, Hearing Officer Oldenburg should have found that his due process rights
27 were violated and she should have granted his *Motion for Summary Judgment*.

28 //

1 In opposition, the State first argues that the motion was procedurally irregular. However,
2 even if appropriately before the Hearing Officer, Ms. Oldenburg properly concluded that DPS's
3 investigation complied with the interrogation requirements set forth in NRS 289.060(3)(c)
4 because upon believing Mr. Jackson had been deceptive, the sergeants only recapped his
5 previous statements and did not question him about the new misconduct, i.e., the dishonesty. As
6 to the allegation that the request for extension was improper, the State argues that determination
7 is outside the scope of a hearing officer's authority.

8 In her *Order Denying Motion for Summary Judgment*, Hearing Officer Oldenburg
9 directly addressed the September 6, 2016 interview and found that the sergeants' conduct did not
10 violate NRS 289.060(3)(c). Pursuant to this section, a law enforcement agency conducting an
11 interview relating to an internal investigation shall:

12 (c) Limit the scope of the questions during the interrogation or
13 hearing to the alleged misconduct of the peace officer who is the
14 subject of the investigation. If any evidence is discovered during
15 the course of an investigation or hearing which establishes or may
16 establish any other possible misconduct engaged in by the peace
17 officer, the law enforcement agency shall notify the peace officer
18 of that fact and shall not conduct any further interrogation of the
19 peace officer concerning the possible misconduct until a
20 subsequent notice of that evidence and possible misconduct is
21 provided to the peace officer pursuant to this chapter.

22 The September 6, 2016 interview evidences Mr. Jackson recanting statements made early
23 in the interview that he had not intended to send the "single for the night" to Ms. Logue. Initially
24 maintaining that position, Mr. Jackson eventually conceded that he had fabricated the story that
25 the text message was meant for a male friend. ROA Vol. I, 504-7; Vol. II 809 (01: 28:40-
26 01:29:25), (02:48:15-02:49:39). The conflicting statements were evidence of new misconduct,
27 however, the investigating sergeants did not question Mr. Jackson about it. Instead, the
28 interview continued with questions about the text messages, drawing no specific attention to Mr.
Jackson's lack of honesty, e.g., why he was untruthful. DPS then properly notified Mr. Jackson
of the new allegation of dishonesty with a subsequent Notification of Allegations of Misconduct.
ROA Vol. I, 508-09; Vol. II, 825-27. He was then interviewed again on October 20, 2016
regarding those statements. ROA Vol. I, 508-09.

1 This Court not only agrees with Ms. Oldenburg's decision to deny Mr. Jackson's *Motion*
2 *for Summary Judgment*, but also finds that it was supported by substantial evidence. The
3 sergeants did not pursue a new allegation of misconduct without notice. They left all intimations
4 of a new allegation alone for the remainder of the September 6 interview. As Ms. Oldenburg
5 reasoned in her order, because the investigating sergeants did not question Mr. Jackson about the
6 newly discovered deception, they did not violate the plain language of NRS 289.060(3)(c).¹

7 There is nothing within the text which would require immediate termination of the
8 interview nor immediate notice of the new allegation, as Mr. Jackson contends. All that is
9 required is that the officers "not conduct any further interrogation of the peace officer *concerning*
10 *the possible misconduct* until a *subsequent* notice of that evidence and possible misconduct is
11 provided to the peace officer pursuant to this chapter." NRS 289.060(3)(c) (emphasis added).
12 The Court does not interpret this to mean the initial interview must stop *entirely* and that the
13 investigators must *immediately* give notice as to why, when there appears no explicit language to
14 that effect.

15 As to the allegation that the "easy out" statement made by Sergeant McKay was
16 improper, Hearing Officer Oldenburg stated in her *Findings of Fact, Conclusions of Law, and*
17 *Decision*, that "the relevancy of this claim to just cause for the dismissal is questionable."
18 Appeal No. 1702455-VO, dated December 6, 2017. This Court agrees.

19 Moreover, Ms. Oldenburg found "the reliable, substantial, and probative evidence
20 established that the interrogation technique of the 'easy out' statement was proper, and not a
21 promise of leniency to [Mr. Jackson] regarding the allegations if he told the truth" nor was it a
22 promise that if he told the truth, the charges against him would go away. *Findings of Fact,*
23 *Conclusions of Law, and Decision*, Appeal No. 1702455-VO, dated December 6, 2017. The
24 Court agrees with this interpretation of the interrogation, which the Court has reviewed via both
25 the transcript and the audio recording of the interview, that this line of questions and/or

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27 _____
28 ¹ The Court also notes that recapping Mr. Jackson's statements with him fell within the natural flow of investigative
interrogation. It logically follows that the sergeants would want to review Mr. Jackson's statements with him before
letting him leave – for clarity of their record and to ensure their pursuit of the truth.

1 statements was not an atypical technique. Investigators frequently use encouraging, sympathetic
2 patterns of speech to coax statements from their targets.

3 To the extent that Mr. Jackson is aggrieved that the sergeants may have lied or misled
4 him during the interview, the Nevada Supreme Court has previously upheld police subterfuge.
5 *Carroll v. State*, 132 Nev. Adv. Op. 23, 371 P.3d 1023, 1031 (2016), *reh'g denied* (June 23,
6 2016); *Marquez v. State*, No. 64201, 2015 WL 9596961, at *3 (Nev. Dec. 30, 2015); *Silva v.*
7 *State*, 113 Nev. 1365, 1369, 951 P.2d 591, 594 (1997); *Sheriff v. Bessey*, 112 Nev. 322, 325, 914
8 P.2d 618, 619 (1996). Although relevant in evaluating a confession for voluntariness, police
9 subterfuge is considered permissible when the methods used are not "of a type reasonably likely
10 to procure an untrue statement." *Bessey*, 112 Nev. at 325, 914 P.2d at 620.

11 The statements made by the two sergeants during the instant interviews, particularly the
12 "easy out" statement, do not amount to a level of deception likely to procure an untrue statement.
13 Additionally, and in the alternative, Mr. Jackson has not alleged that they have. His argument
14 appears to be a generalized grievance with the repercussions of his interview statements.
15 However, the Court finds no evidence of impropriety by the sergeants' interrogation techniques.

16 Therefore, the conduct of DPS and the sergeants, and the subsequent ratification of
17 Hearing Officer Oldenburg of such, do not amount to a violation of Mr. Jackson's due process
18 rights. The investigating sergeants acted within the parameters outlined in NRS 289.060(3)(c).
19 Therefore, the Court finds that in rendering her decision to deny summary judgment, Hearing
20 Officer Oldenburg appropriately reconciled the substantial evidence in the record with the
21 applicable law in reaching that same conclusion.

22 **b. DPS's Request for an Extension of Time Complied with NRS 284.387.**

23 Mr. Jackson avers that the State's October 31, 2016 request to extend the investigation
24 time period was unreasonable and without good cause such that it was in violation of NRS
25 284.387. Mr. Jackson submits that Major O'Rourke's request for a sixty (60) day extension
26 failed to meet the good cause standard. The request stated:

27 //

28 //

1 The nature of the alleged misconducts and the circumstances
2 involved in the case, demand an additional review and
3 consideration. Therefore, to ensure legally sound disciplinary
4 action, we are requesting a 60-day extension as outlined in NRS
5 284.387.

6 ROA Vol. II, 1052. Mr. Jackson then gives suggestions as to what Major O'Rourke could have
7 stated to establish good cause for delay, e.g., witnesses were unavailable, legal advisors were
8 unavailable.

9 The State opposes, arguing that dismissal of the summary judgment claim was proper
10 because Hearing Officer Oldenburg had no authority to rule on the issue and, in the alternative,
11 DPS's request both demonstrated support by good cause and was requested within an appropriate
12 timeframe

13 Pursuant to NRS 284.387(2), an internal administrative investigation must be completed
14 within ninety (90) days of the initial notice to the employee, unless good cause can be shown for
15 the delay. An employer may seek an extension of no more than sixty (60) upon a showing of
16 good cause. NRS 284.387(2).

17 This Court agrees that determinations regarding extensions of time under NRS
18 284.387(2) are outside the authority of the Hearing Officer at summary judgment. The statute
19 clearly states that requests are to be made to "the Administrator upon showing good cause for
20 delay," i.e., Mr. Peter Long, the Administrator Division of Human Resources in this case, and no
21 other section gives the Hearing Officer authority to review that decision. For this reason, it was
22 proper for Hearing Officer Oldenburg to dismiss this claim at the point of summary judgment.

23 Nonetheless, Ms. Oldenburg allowed Mr. Jackson to raise the issue again at the
24 administrative hearing. ROA Vol. II, 112 n. 4. Subsequently, Hearing Officer Oldenburg's
25 *Findings of Fact, Conclusions of Law, and Decision* stated that good cause existed for the
26 request and it was not improper. Appeal No. 1702455-VO, dated December 6, 2017. Ms.
27 Oldenburg rested her findings on the content of the request and on the testimony of Mr. Long,
28 Chief Wood, and Major O'Rourke. Specifically, the testimony of Chief Wood and Major
O'Rourke "... explained the reasons for the request, clearly established good cause for

1 requesting the extension and established the thorough and thoughtful process DPS engage in
2 prior to determining just cause to dismiss [Mr. Jackson] from state service.” Id.

3 Based on the specific examples enumerated by Hearing Officer Oldenburg, the Court
4 finds her ruling to be supported by substantial evidence.

5 **II. The Record Reflects No Improper Bias by Hearing Officer Oldenburg Towards**
6 **Mr. Jackson.**

7 In addressing the hearing, Mr. Jackson argues that Hearing Officer Oldenburg’s ultimate
8 ruling was made through clearly erroneous abuse of procedure. The *Opening Brief* states that
9 Ms. Oldenburg acted with bias towards Mr. Jackson and that she outright violated NRS
10 233B.123(4) and due process when she denied his attorney the opportunity to cross-examine
11 Sergeants Dawson at the administrative hearing. Mr. Jackson argues that because the hearing
12 process violated his rights, Ms. Oldenburg’s ratification of his termination is plainly invalid.

13 The State asserts the position that Ms. Oldenburg “did not commit any errors of law,
14 abuse her discretion, or act outside of her authority” as Hearing Officer. *Answering Brief*, 11:24-
15 25. Specifically, her restriction on cross-examination was proper because she had already
16 determined that Mr. Jackson’s rights were not violated under NRS 289.060(3)(c). In response to
17 Mr. Jackson’s accusation that Ms. Oldenburg was bias, the State contends that the record is
18 devoid of any evidence of bias against Mr. Jackson.

19 In reviewing the administrative hearing transcript, it is clear that Mr. Jackson’s attorney
20 had the opportunity to cross-examine Sergeant Dawson. ROA Vol. I, 523-33. Ms. Oldenburg
21 only limited Mr. Jackson’s opportunity to re-cross Sergeant Dawson on an issue previously
22 decided at summary judgment, i.e., DPS compliance with NRS 289.060(3)(c). Because the issue
23 was previously decided, it was proper for Ms. Oldenburg to limit the testimony – in the interest
24 of efficiency, and because her previous ruling had become the law of the case. *See Recontrust*
25 *Co. v. Zhang*, 130 Nev. 1, 7–8, 317 P.3d 814, 818 (2014) (“The law-of-the-case doctrine ‘refers
26 to a family of rules embodying the general concept that a court involved in later phases of a
27 lawsuit should not re-open questions decided (i.e., established as law of the case) by that court or
28 a higher one in earlier phases.’”). Only in exceptional circumstances is a departure from a prior

1 holding warranted, *See Hsu v. Cty. of Clark*, 123 Nev. 625, 630–31, 173 P.3d 724, 728–29
2 (2007) (addressing the law of the case doctrine, "... it is not improper for a court to depart from a
3 prior holding if convinced that it is clearly erroneous and would work a manifest injustice. [...]
4 Federal courts have adopted three specific exceptions to the law of the case doctrine, concluding
5 that a court may revisit a prior ruling when (1) subsequent proceedings produce substantially
6 new or different evidence, (2) there has been an intervening change in controlling law, or (3) the
7 prior decision was clearly erroneous and would result in manifest injustice if enforced.
8 Nevertheless, as the United States Supreme Court has noted, absent those "extraordinary
9 circumstances," a court "should be loathe" to revisit its prior decisions."), and this Court sees no
10 evidence of such circumstance.

11 As to any generalized allegations of bias, the allegation must rise to a level sufficient to
12 indicate a due process violation. *Alexander v. Nevada Dep't of Corr.*, 126 Nev. 688, 367 P.3d
13 743 (2010) (citing *Wolff v. McDonnell*, 418 U.S. 539, 571, 566 94 S.Ct. 2963, 2978 (1974)). A
14 threshold which Mr. Jackson has not met.

15 Mr. Jackson's argument that Hearing Officer Oldenburg acted with bias towards him at
16 the administrative hearing is too generalized. He points to an exchange at the administrative
17 hearing whereby Ms. Oldenburg made the statements, "I wanted to give the State and
18 opportunity..." and "in all fairness to the State..." The Court does not agree that this amounts to
19 impermissible bias. Taken in context, Ms. Oldenburg explained that she granted the State an
20 opportunity to address testimony relating to issues raised under NRS 289.060(3)(c) because Mr.
21 Jackson's attorney repeatedly solicited testimony on this topic despite the prior rulings denying
22 summary judgment and finding the interview to be NRS 289.060(3)(c) compliant. *Findings of*
23 *Fact, Conclusions of Law, and Decision*, Appcal No. 1702455-VO, dated December 6, 2017.
24 Without more, the allegations do not sufficiently amount to violation of a due process.

25 Therefore, it was appropriate for Ms. Oldenburg to limit questioning that attempted to
26 contravene her prior ruling and the Court simply finds no evidence of bias amounting to a due
27 process violation.

28 //

1 **III. Hearing Officer Oldenburg's Ultimate Affirmance of Mr. Jackson's**
2 **Termination was Justified and Supported by Substantial Evidence.**

3 According to Mr. Jackson, because the investigation and hearing were carried out in a
4 fashion so contrary to his rights, due process included, Ms. Oldenburg's decision affirming his
5 termination was clearly erroneous. Curiously, Mr. Jackson does not make an outright
6 undermining of the existence of substantial evidence on the record. To the contrary, he states:

7 The Hearing Officer's 'Findings of Fact, Conclusion of Law, and
8 Decision,' was made upon unlawful procedure, is in violation of
9 statutory provision which protected JACKSON's rights, is affected
10 by error of law, and is clearly erroneous in view of the reliable,
11 probative and substantial evidence on the whole record, and is
12 characterized by an abuse of discretion.

13 *Opening Brief*, 18:8-15 (emphasis added). He does not argue that his conduct was proper, but
14 that procedural deficiency has warranted his termination invalid.

15 The State supports Hearing Officer Oldenburg's decision, arguing that she made specific
16 findings, supported by substantial evidence, including: that Mr. Jackson solicited unwelcome
17 intimate relationships with Ms. Sommers and Ms. Logue and that Mr. Jackson also made false
18 and misleading statements during the internal investigation. Therefore, her ratification of Mr.
19 Jackson's termination was both justified and founded on substantial evidence.

20 The Court reiterates that its review of Hearing Officer Oldenburg's decision is limited to
21 the particular inquiry of whether the decision was supported by substantial evidence. *See Taylor*
22 *v. State Dep't of Health & Human Servs.*, 129 Nev. 928, 930, 314 P.3d 949, 951 (2013);
23 *Becksted*, 107 Nev. at 458, 813 P.2d at 996. A decision evidencing abuse of discretion, plain
24 error, or an arbitrary and capricious decision would not be supported by substantial evidence.
25 *See Taylor*, 129 Nev. at 930, 314 P.3d at 951; *See Holmes*, at 279, 914 P.2d at 614.

26 NRS 284.390(1) vests a hearing officer with the authority to review an agency's decision
27 to terminate an employee. In a broad sense, the hearing officer is tasked with evaluating the
28 termination for reasonableness. NRS 284.390(1). However, when taken out of the abstract and
29 actually applied, the process is much more intricate, requiring a three-step analysis. *O'Keefe v.*

30 //

1 *Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92 (2018) overruling *Knapp v. State ex rel. Dep't of*
2 *Prisons*, 101 Nev. 420, 892 P.2d 575 (1995).

3 First, the hearing officer reviews de novo whether the employee in
4 fact committed the alleged violation. See NAC 284.798. Second,
5 the hearing officer determines whether that violation is a 'serious
6 violation [] of law or regulations' such that the 'severe measure'
7 [] of termination is available as a first-time disciplinary action.
8 NRS 284.383(1). [...] Third and last, the hearing officer applies a
9 deferential standard of review to the agency's determination that
10 termination will serve 'the good of the public service.' NRS
11 284.385(1)(a).

12 *Id.*²

13 In the *Findings of Fact, Conclusions of Law, and Deciston*, Hearing Officer Oldenburg,
14 determined that Mr. Jackson had in fact committed the alleged violation, thereby satisfying the
15 first step of the *O'Keefe* analysis. Appeal No. 1702455-VO, dated December 6, 2017 (ROA Vol.
16 I, 001). She stated:

17 ... the reliable, substantial, and probative evidence establishes that:
18 Employee [Mr. Jackson], while representing the Department of
19 Public Safety, Division of Parole and Probation, used his official
20 capacity to solicit a sexual relationship with Darbie Logue, [...] by
21 sending the 'single for the night' text, and following up [...] in
22 violation of NAC 284.560(2) [sic]³, DPS Policy 341.3.1(q)(5), r(2)
23 and (r)(15).

24 Employee [Mr. Jackson], while representing the
25 Department of Public Safety, Division of Parole and Probation,
26 used his official capacity to solicit a sexual relationship with
27 Angela Sommer by engaging in communications of a personal and
28 inappropriate nature while representing the Division in violation of
NAC 284.560(2) [sic], DPS Policy 341.3.1(q)(5), r(2) and (r)(15).
Employee asked Ms. Sommers for photographs of herself, told her
she looked young for her age, requested to know what her hair
color was, asked her if she had a boyfriend, his age, how much
money he made, and why she was with her boyfriend being that
there was such an age gap.

Employee was dishonest in his interview with OPR on
September 6, 2016 by making false and misleading statements to
the investigators in violation of DPS Policy 341.3.1. Employee

² According to the record before the Court, Mr. Jackson had no prior disciplinary action taken against him. ROA Vol. II, 705.

³ The Specificity of Charges presented to Mr. Jackson lists NRS 284.650(2) as the cause of disciplinary action. ROA Vol. II, 209.

1 was asked on a number of occasions if he intentionally sent the
2 'single for the night' text messages to Ms. Logue. Employee made
3 three strong denials in response to these inquiries by investigators.
4 ('It was not to her,' 'I didn't send it to her' and 'I didn't intend to
5 send it to her.') and fabricated a story that he intended to send the
6 text to a friend. Employee's dishonest statements were made
7 knowingly at the time they were made.

8 ROA Vol. I, 26. This demonstrates that Ms. Oldenburg thoroughly reviewed the evidence in the
9 record and used it to support each of her findings. The examples provided are clear, concise, and
10 demonstrate that, based on the substantial evidence, she was able to determine that Mr. Jackson
11 had committed the violations. This finding reconciles with the evidence in the record including:
12 the complaints made by each witness, the formal reports/recommendations filed by other DPS
13 employees, testimony from the administrative hearing, and Mr. Jackson's own statements at each
14 of his interviews.

15 The violations warrant dismissal. The Nevada Administrative Code (NAC) Section
16 284.646, subsections (1) and (2), vest DPS with the authority to dismiss an employee for any
17 cause set forth in NAC 284.650, which includes:

- 18 1. Activity which is incompatible with an employee's
19 conditions of employment established by law or which violates a
20 provision of NAC 284.653 or 284.738 to 284.771, inclusive.
21 [...]
- 22 2. Disgraceful personal conduct which impairs the performance
23 of a job or causes discredit to the agency.
24 [...]
4. Discourteous treatment of the public or fellow employees
while on duty.
5. Incompetence or inefficiency.
[...]
7. Inexcusable neglect of duty.
[...]
10. Dishonesty.
[...]

25 In light of the substantial evidence in the record, any of these sections under NAC 284.650
26 would serve as sufficient grounds for Mr. Jackson's dismissal. DPS and Hearing Officer
27 Oldenburg relied on Section (2), disgraceful personal conduct which impairs the performance of
28 a job or causes discredit to the agency.

1 The violations relating to Mr. Jackson's attempts to engage in personal relationships with
2 the two witnesses also amounted to violations of DPS policy under the sections:

3 **DPS 341.3.1 Prohibitions/Class of Offense Guide**

4 (q)(5) Unwelcome solicitation of a sexual relationship while on-
5 duty or through the use of official capacity [A Class 5 Offense];
6 [...]

7 (r)(2) Any act on or off-duty which reflects discredit to the
8 Department; failure to conduct oneself in a professional manner
9 while meeting the responsibilities to the public, the Department
10 and to each other; disgraceful personal conduct which impairs job
11 performance. [A Class 2 Offense]; and
12 [...]

13 (r)(15) The wrongful or unlawful exercise of authority on the part
14 of any employee for malicious purpose, personal gain, willful
15 deceit or any other improper purpose. [A Class 4 Offense].

16 Mr. Jackson's dishonesty regarding the allegations violated DPS 341.3.1(g) (1):

17 **False and/or Misleading Statements**

18 1. Knowingly providing false or misleading statements, either
19 verbally or in written reports or other documents, concerning
20 actions related to the performance of official duties or providing
21 false or misleading statements in response to any question for
22 request or request for information in any official investigation,
23 interview, or judicial proceeding. [A Class 5 Offense].

24 According to the DPS Policy Manual, for all Class 4 offenses, the minimum reprimand is either
25 suspension or demotion with the maximum consequence being dismissal. ROA Vol. II, 778.

26 For all Class 5 offenses, dismissal is both the minimum and maximum consequence. Id.

27 Therefore, based on both the NAC and DPS Policy, termination was appropriate based on
28 the classification of Mr. Jackson's violation and the second step of the *O'Keefe* analysis is thus
satisfied. In addition, because termination is prescribed as an appropriate level of discipline, the
violation is necessarily "serious" as a matter of law. NRS 284.383(1); NAC 284.646(1); *O'Keefe*
v. Dep't of Motor Vehicles, 134 Nev. Adv. Op. 92 (2018).

As to the third and last step of the *O'Keefe* analysis, whether the termination will serve
the public good is not a subjective determination for the hearing officer, but whether "it was
reasonable for the agency to 'consider[] that the good of the public service w[ould] be served'
by termination." *O'Keefe v. Dep't of Motor Vehicles*, 134 Nev. Adv. Op. 92 (2018) (quoting NRS
284.385(1)(a)) (brackets in original).

1 In addressing this, Hearing Officer Oldenburg stated: "... the action of Employer [DPS]
2 in termination Employee [Mr. Jackson] has been established by reliable, substantial, and
3 probative evidence to be for the good of the public service..." Ms. Oldenburg based her finding
4 on numerous examples of Mr. Jackson's inappropriate conduct previously discussed in her
5 *Findings of Fact, Conclusions of Law, and Decision*. Appeal No. 1702455-VO, dated December
6 6, 2017 (ROA Vol. I, 001).

7 Given the extensive, substantial evidence in the record including, including the contents
8 of the complaints by the witnesses, the text messages in the record, Mr. Jackson's own
9 admissions, etc., the fact that the good of the public is served by Mr. Jackson's termination is
10 axiomatic. Mr. Jackson, by way of his authority as an officer for DPS, acted in an
11 unprofessional and inappropriate manner towards Ms. Sommers and Ms. Logue. He then
12 attempted to cover- up what he had done. By his own admissions, Mr. Jackson has recognized
13 his fault. He conceded responsibility for his actions and recognized the inappropriateness of his
14 conduct. ROA Vol. II, 809 (02: 12:29- 02:18:35).

15 Therefore, the Court agrees with Hearing Officer's Oldenburg and finds that under the
16 deferential standard of *O'Keefe's* third step, the good of public service is well-served by Mr.
17 Jackson's termination.

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1 **CONCLUSION**

2 The Court finds that the decision of the Respondent to terminate Mr. Jackson was
3 adequately justified and supported. The Court additionally finds that the decision to ratify the
4 termination, as made by Hearing Officer Oldenburg, was well-reasoned, supported, and based on
5 substantial evidence. Specifically, the decision finds merit through the complaints of the
6 witnesses, the text messages, and the statements made by Mr. Jackson himself.

7 Accordingly, the Court **AFFIRMS** the decision of the Hearing Officer and **DENIES** Mr.
8 Jackson's *Petition for Judicial Review*.


9 **IT IS SO ORDERED.**

10 **DATED** this 19 day of December, 2018.

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14 **BARRY L. BRESLOW**
15 District Judge
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[illegible]

Michael Langton, Esq.
Brandon Price, Esq.


CHRISTINE KUHLE
Judicial Assistant

NEVADA DEPARTMENT OF CORRECTIONS
SOUTHERN DESERT CORRECTIONAL CENTER
OPERATIONAL PROCEDURE 405
(SUBMITTED UNDER SEAL)

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DISTRICT COURT
CLARK COUNTY, NEVADA

STATE OF NEVADA ex rel. its
DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

JOSE MIGUEL NAVARRETE, an individual;
STATE OF NEVADA ex rel. its DEPARTMENT
OF ADMINISTRATION, PERSONNEL
COMMISSION, HEARING OFFICER,

Respondents.

) Case No.: A-19-797661-J
) Dept. No.: 16
) ROA No.: 2000026-MG

CONFIDENTIAL DOCUMENT PRESENTED UNDER SEAL

Nevada Department of Corrections presented Exhibit J entitled, "Nevada Department of Corrections Southern Desert Correctional Center Operational Procedure 405." This Exhibit J is considered a confidential document. It was agreed amongst the parties and the Hearing Officer that Exhibit J would be presented under seal as part of the Record on Appeal.

Therefore, this cover sheet shall be e-filed with the Record on Appeal and will serve as notice to the District Court Judge that a hard copy of Exhibit J will be delivered to the Judge's chambers to be included in the Record on Appeal for this matter.

DATED this 13th day of August, 2019.


MARK GENTILE, ESQ.
HEARING OFFICER

EXHIBIT K

EXHIBIT K

Respondent's EXHIBIT # k

**NEVADA DEPARTMENT OF CORRECTIONS
SOUTHERN DESERT CORRECTIONAL CENTER**

**OPERATIONAL PROCEDURE
407**

USE OF HANDCUFFS AND RESTRAINTS

Supersedes: O.P. #407 (Dated 11-06-09)
Effective Date: June 26, 2015
Review Date: June 25, 2016

AUTHORITY:

NRS 209.131; NRS 209.376
Administrative Regulation #407

RESPONSIBILITY:

1. The Warden and Associate Warden responsible for Operations are responsible for the overall operation of this regulation. Direct supervision of this regulation is the responsibility of the Shift Supervisor.
2. The Warden/Designee:
 - A. Ensure that the Operational Procedure lists under what conditions each restraint can be applied.
 - B. Ensure that the Operational Procedure identifies the authorization needed to use a particular restraint.
 - C. Ensure Custody Staff is trained to use restraints available at that institution.
 - D. Authorize Custody Staff to use selected restraints under the conditions listed in the OP.
3. All Custody personnel are responsible to use restraints only when authorized to do so; and only when they have been trained on that particular type of restraint.

407.01 RESTRAINT DETERMINATION

1. All restraints will be used humanely and restraining equipment will never be used as punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.
2. The degree and duration of the use of a restraint device should be limited to the minimum necessary to control the situation or the offender and never should be used as punishment on an offender. The criteria for determining the degree of restraint will include the following:

**USE OF HANDCUFFS AND
RESTRAINTS**

OP 407
SOUTHERN DESERT CORRECTIONAL CENTER

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ND06 0329
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JA 0914

- A. Custody classification. Offenders will be restrained according to their classification unless they are being transported with a higher classification inmate, then all offenders will be restrained according to the highest level of custody designation in the transporting vehicle. For example: If a Minimum security inmate is being transported along with a Maximum security inmate, then both of them will be restrained in full restraints (leg irons, belly chains, and handcuffs).
- B. Classification - review Pre-Sentence Investigation and Judgment of Conviction - regarding other co-defendants, witnesses and victims.
- C. Violence potential as determined by criminal history and disciplinary record in regards to imminent threat of bodily harm to staff or other persons;
- D. Escape potential or threat of escape;
- E. Nature and purpose of movement;
- F. Assessment of the circumstances happening at the time;
- G. Identify in your risk assessment the potential threat of outside forces.

407.02 AUTHORIZED RESTRAINT EQUIPMENT

1. Only that equipment authorized by the Department shall be used on inmates during an transportation or movement. Application of mechanical restraint equipment shall conform to approved methods.
2. Authorized restraint equipment includes:
 - A. **Handcuffs and Handcuffs with Waist Chain** - Handcuffs and Handcuffs with Waist Chain are the standard items of restraint and will be the only restraint used unless specific authorization has been provided for additional restraint, an emergency exists or custody designations specify otherwise. This will approved by the Warden or designee.
 - B. **Leg Restraints** - Leg restraints are to be used on inmates requiring maximum restraint or in instances to control acts of violence or escape. Leg restraints will be placed on the inmate with him/her kneeling and facing away from the Officer. In the case of an inmate with large legs that regular leg restraints will not work on, the Associate Warden or designee will approve the use of restraints designed for this type of application.
 - C. **Control Chain** - shall be used while escorting Maximum security or High Risk Potential inmates. This device is attached to the back of the waist chain. It should never be used to cause undue physical pain or restricts the blood circulation or breathing of an inmate.
 - D. **Handcuff Cover** - Each Institution will have hard plastic handcuff covers (black boxes) for the transporting of extreme escape risks. This device covers and shields the handcuff key openings.
 - E. **Plastic Flex Cuffs** - Plastic flex cuffs are authorized during an emergency situation. Caution must be used and recognition that this is only a temporary restraint and not to be inter-changed with use of the handcuff. There are also possibilities of swelling and care must be exercised in application of these devices. Some swelling will be noted the next day after prolonged use of the flex cuff. Flex cuffs must be applied tight enough to secure the wrists but not so tight they cause a constriction in blood flow. Inmates under restraint with flex cuffs must be under direct supervision and the cuffs checked every fifteen (15) minutes to ensure proper application.

407.03 DEGREES OF RESTRAINT

1. Inmates will be placed in restraint equipment when their behavior or security falls within the Department's policies or guidelines. The degree of restraint shall be determined by established criteria relevant to the safety of the individual inmate and other persons involved. Restraining equipment will never be used for punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.
 - A. All escorted movement of restrained inmates will be conducted by the escorting Officer holding the inmate's upper arm to ensure the safety and security of the inmate.
2. Degree of restraint during movements within the Institution:
 - A. Restraint equipment will be used according to the dictates of the institutional operational procedure and post orders. Post Orders will address specific requirements, if necessary.
 - B. The escorting officer as dictated by the institutional operational procedure and post orders will carry a set of handcuffs on his person for emergency use. An inmate may be placed in handcuffs at any time by an escorting officer when there is reason to believe there is imminent danger to the inmate or others. However, such action must be reported to the Shift Supervisor, and written documentation completed.
 - C. If additional restraints are deemed necessary, the Shift Supervisor may authorize that a control chain, handcuff cover or leg irons be used. The Shift Supervisor may determine that all of the devices are necessary.
3. Degree of restraint when transporting inmates outside of an Institution/Facility:
 - A. Maximum and Close Custody Inmates. At no time will an inmate of maximum or close custody be transported without restraints. The types of restraints to be used are waist restraints and leg irons.
 - B. Medium Custody Inmates. Inmates of medium custody are to be transported in waist and leg restraints.
 - C. Minimum Custody Inmates. Inmates of Minimum Custody do not need restraints during transport.
 - D. Mixed Custody Levels. When transporting mixed custody levels, all inmates will be restrained according to the custody level of the highest risk inmate being transported.
4. The power of decision regarding additional restraints is granted to the transporting officers. The transporting officers must use good judgment in the use of additional restraints in accordance with NRS 209.376. All restraints will be used humanely and restraining equipment will never be used as punishment or in any way that causes undue physical pain or restricts the blood circulation or breathing of an inmate.

407.04 MEDICAL

1. Legitimate medical conditions which do not permit the full utilization of routine restraint apparatus will be evaluated on a case by case basis. To the extent possible, the arrangement of restraints will be modified to accommodate the medical condition. In any event, public safety should remain the overriding concern.

USE OF HANDCUFFS AND
RESTRAINTS

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ATTACHMENTS:

None

Signature Authority:

Warden of Facility:

Brian E. Williams, Sr. Brian E. Williams
(Printed Name) (Signature)

Deputy Director:

E.K. McDaniel E.K. McDaniel
(Printed Name) (Signature)

INMATE ACCESSIBLE: ✓
YES NO

Associate Warden:

Minor Adams Minor Adams
(Printed Name) (Signature)

Associate Warden:

Frank Dreesen Frank Dreesen
(Printed Name) (Signature)

NEVADA DEPARTMENT OF CORRECTIONS
SOUTHERN DESERT CORRECTIONAL CENTER
POST ORDER H
(SUBMITTED UNDER SEAL)

EXHIBIT L

EXHIBIT M

EXHIBIT M

Not admitted

POST ORDER

I have also read and fully understand all operations statements and memorandums, which may affect the implementation of this post order and are attached hereto.

NDOC 0350
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EXHIBIT N

EXHIBIT N

Not admitted



**State of Nevada
Department of Corrections**

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062977618

ISSUE DATE: 04/22/2014

OFFENDER: (1111055) SCOTT, GEORGE

ISSUE LOC: SDCC

STAFF: (41181) NAVARRETE, JOSE

TRANS DATE: 04/22/2014	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: EMR_RTRN	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
Per AR 740 this is not an emergency. Follow proper grievance procedure. I will discuss with day shift supervisors.		
TRANS DATE: 04/22/2014	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: EMR_RCVD	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u>		
On 4/21/14 today C/O Navarette talked very bad and told me he would see me tomorrow because of a grievance I have on me. He call me bitches and told me he was going to see me soon. [REDACTED] was there and a nurse as well. He would be here 4/22/14 I really need to have something done before he comes back to work. Please talk to him before then.		
<u>OFFICIAL RESPONSE:</u>		

Report Name: NVRGOS

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State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062977663

OFFENDER: (1111055) SCOTT, GEORGE

STAFF: (41181) NAVARRETE, JOSE

ISSUE DATE: 04/23/2014

ISSUE LOC: SDCC

TRANS DATE: 08/27/2014	LEVEL / STATUS: IF / A	USER ID: SCOOK
TRANS TYPE: RTRN_INF	FINDING: Denied	ASSIGNED TO: MADAMS
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
From the office of AWO Adams Response received from Sgt. Lewis: In response to your grievance 20062977663: I spoke with [REDACTED] and Senior Navarette, I could not identify the nurse [REDACTED] in your grievance. Senior Navarette denies the accusations that he was acting unprofessionally nor did he make any threats. In as much as statements from staff discount your accusation, the investigation into your allegations of staff misconduct has revealed nothing to support your claim. Your grievance is denied.		
TRANS DATE: 04/23/2014	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: RCVD_INF	FINDING: . . .	ASSIGNED TO: MADAMS
<u>INMATE COMPLAINT:</u>		
4/21/14 C/O Navarette was working Medical. Navarette was upset with him from the other day (4/20/14) for trying to file a grievance to get a bottom bunk. Navarette called him bitches and told him he would beat his ass. [REDACTED] and [REDACTED] witnessed this. [REDACTED] told him he handled the situation well by walking away. He feels that Navarette will try to do something else to him for writing him up.		
<u>OFFICIAL RESPONSE:</u>		

Report Name: NVRGOS

Reference Name: NOTIS-RPT-OR-0255.1

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JA 0924



State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062927189

ISSUE DATE: 07/29/2011

OFFENDER: (54501) CLARK, ROBERT

ISSUE LOC: SDCC

STAFF: (41181) NAVARRETE, JOSE

TRANS DATE: 07/29/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: RDENO
TRANS TYPE: EMR_RTRN	FINDING: Not Accepted	ASSIGNED TO: TCARLMAN
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u> Not an emergency per AR740.		
TRANS DATE: 07/29/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: RDENO
TRANS TYPE: EMR_RCVD	FINDING:	ASSIGNED TO: TCARLMAN
<u>INMATE COMPLAINT:</u> Breakfast I was accosted and put on the wall for not producing my ID card. I was called a dick and kicked by C/O Navarette and then he refused to let me eat. I was disrespected, assaulted and was denied chow.		
<u>OFFICIAL RESPONSE:</u>		



State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062930097

OFFENDER: (90648) JACKSON, WILLIE

STAFF: (41181) NAVARRETE, JOSE

ISSUE DATE: 09/19/2011

ISSUE LOC: SDCC

TRANS DATE: 04/20/2012	LEVEL / STATUS: 2 / INACTIVE	USER ID: VAUSTIN
TRANS TYPE: RTRN_L2	FINDING: Denied	ASSIGNED TO: RBANNISTER
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u> Agree with first level response.		
Rec 5/11/12		
TRANS DATE: 02/16/2012	LEVEL / STATUS: 2 / INACTIVE	USER ID: LPETERSEN
TRANS TYPE: RCVD_L2	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> [REDACTED] personally orchestrated this act of terrorism, however. AR740 is Specific Emergency Griev. Procedure :To be taken to "shift supervisor" in a timely fashion/ not attempt to cover your officers actions. Later that night I was taken to Med. left hand severely swollen. See additional 7 pages.		
<u>OFFICIAL RESPONSE:</u> HDSP		
TRANS DATE: 11/22/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RTRN_INF	FINDING: Denied	ASSIGNED TO: RJAEGER
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u> I [REDACTED] am in receipt of your Informal Grievance # 20062930097. In response to your allegations of not following proper Emergency grievance procedure. Whether I am assigned to Unit 8 Or any other position on this yard, I am a shift supervisor. I retain the authority of a supervisor to handle these issues at my level. Per AR 740 it is my responsibility to determine whether a grievance constitutes an emergency or not. If I determine it meets emergency criteria, I then would forward it to the highest ranking staff member on duty, which would be the Shift Commander or higher. your emergency grievance was denied but you were given medical attention for your alleged injury. Based on the medical report completed by Nurse [REDACTED] you had no injuries. a cell compliance check was done on your cell. Cell compliance checks are done on a regular basis in unit 8 when the opportunity presents itself. Rcv 1/4/12 Peltzer		
TRANS DATE: 09/19/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RCVD_INF	FINDING:	ASSIGNED TO: FDRESEN
<u>INMATE COMPLAINT:</u> On 9-6-11, at approx. 9:26am, C/O Navarette used unprovoked, unauthorized, excessive force upon my person. I attempted to file an emergency grievance in accord w/AR 740 because...I felt I needed medical attention. Instead of allowing my griev to be forwarded to the Shift Supervisor as "outlined in AR 740", Unit 8 Sgt. [REDACTED] short stopped it (this is not the first time) & attempted to answer in order to cover for his subordinate. Upon submitting a second Emer Griev, Sgt. [REDACTED] short stopped it. This was at 12:30pm. Sgt. [REDACTED] verstepped his authority & covered up w/out reservations C/O Navarette's use of excessive, unprovoked, unauthorized use of force & C/O's Navarette & Duddridges open act of retaliation; antagonistic & intimidating tactics by ransacking & vandalizing my cell & personal property. Sgt. [REDACTED] acts were unprofessional & perpetrated" under the color of authority" as a Nevada Department of Corrections Employee.		
<u>OFFICIAL RESPONSE:</u>		



State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062930100

OFFENDER: (90648) JACKSON, WILLIE

STAFF: (41181) NAVARRETE, JOSE

ISSUE DATE: 09/19/2011

ISSUE LOC: SDCC

TRANS DATE: 03/02/2012	LEVEL / STATUS: 1 / INACTIVE	USER ID: SCHILSON
TRANS TYPE: RJD_1	FINDING:	ASSIGNED TO: SBURNS
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u> Grievances cannot be processed without the signature of the inmate as well as the date/time it is submitted.		
TRANS DATE: 02/09/2012	LEVEL / STATUS: 1 / INACTIVE	USER ID: SCHILSON
TRANS TYPE: RCVD_L1	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> Your C/O is lie & I'll only point out the obvious lie. The C/O say he attorated to cuff me up thru the food slot (no!) Read page 2 of grievance lines 6-13 and keep in mind this grievance was denied 4 times by AWP [REDACTED] along w/evidence of damaged hand and property... see attached pages. ...[SCHILSON, 04/04/2012 13:09:25] Inmate resubmitted with signature.		
<u>OFFICIAL RESPONSE:</u> Sent to SDCC 2/21/12 Second 1st level sent to SDCC 3/11/12		
TRANS DATE: 12/02/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RTRN_INF	FINDING: Denied	ASSIGNED TO: RJAEGER
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u> I, Sgt [REDACTED] am in receipt of your Informal Grievance # 2006293100. I have contacted CO Navarrete in regards to your allegations of employee misconduct, discrimination/ sexual harassment, false and misleading statements, Insubordination, Neglect of Duty and unauthorized use of force, I have contacted CO Navarrete for response. His reply is; I officer Navarrete recall the situation on 9/6/11. I attempted to cuff the inmate through the food flap and because of the issue he has with his arm I was unable to get the cuffs from wrist to wrist. I notified the bubble officer to pop the door so that I could put the inmate in restraints without inflicting damage. When I put the cuff on his left wrist, Inmate Jackson pulled away. I did tighten my grip and pull the cuff to gain control for my safety. Inmate Jackson was escorted to his appointment and taken to see Nurse [REDACTED] for alleged injuries. I did a routine compliance check in his cell. The only things taken were empty milk cartons and paper he was using to block the windows. After reviewing the allegations and the Officers response, I find that you have blown the situation out of proportion and that the officer was being careful not to aggravate any injuries. Nurse Doglione also verified that there was no injury to your shoulder. Rcv 1/4/12 Peltzer		
TRANS DATE: 09/19/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RCVD_INF	FINDING:	ASSIGNED TO: FDREESSEN
<u>INMATE COMPLAINT:</u> on 9-6-11 at appox. 9:26am C/O Navarette pulled me out of my cell for a Psych visit. I informed the C/O before he attempted to put me in cuffs that I have a double cuff medical chrono due to a messed up shoulder. "The C/O did not use "standard operating procedure" before placing me in restraints. He came on the tier instead of having me back up to A-wing gate slot. The C/O placed the cuff on my left wrist & pulled my arm upward. I moved to adjust my position, because he was twisting my damaged shoulder & hurting me. C/O Navarette jerked up on the cuff higher. I went up on my toes & said you're hurting me. The C/O jerked up on the cuff again & said "don't move mother f---ker". I tried again to communicate w/him & let him know he was hurting me.		
<u>OFFICIAL RESPONSE:</u>		

Report Name: NVRGOS

Reference Name: NOTIS-RPT-OR-0255.1

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State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062930783

ISSUE DATE: 09/28/2011

OFFENDER: (1022384) DEAL, REGINALD

ISSUE LOC: SDCC

STAFF: (41181) NAVARRETE, JOSE

TRANS DATE: 10/07/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RJD_1	FINDING:	ASSIGNED TO: AROPER
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
<p>I Lt. [REDACTED] spoke to C/O Navarette regarding the incident that you describe in grievance #20062930783. C/O Navarette stated that at approximately 6:20 AM he was posted on S&E at SDCC. Navarette states that he did ask for your ID to take note of your back number, so he could ascertain that you did have a receipt for your boots. He states that he then handed back your ID. Navarette stated that he then asked you to get on the wall for a routine pat search. He stated that you then placed your cup on the ground with your spoon inside the cup. Navarette stated that he did not touch your spoon and at the end of the pat search, instructed you to leave. C/O Navarette stated that he did not use profanity nor speak disrespectfully toward you at any time during the process. Although C/O Navarette denies that the incident occurred as you have described in your grievance, he was reminded of the importance of maintaining a respectful demeanor with inmates whenever possible. Grievance Denied.</p>		
TRANS DATE: 10/03/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RTRN_INF	FINDING:	ASSIGNED TO: AROPER
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
<p>In response to the alleged incident that occurred on 8-31-2011 at approximately 6:20 in the morning I was posted on S&E at Southern Desert Correctional Center. I did ask the inmate for his ID to take note of his back number, so that I could further investigate if the inmate had a receipt for his boots. I then handed the inmate his ID back. I proceeded to ask him to get on the wall for a routine pat down. The inmate placed his cup on the ground, inside his cup he had his spoon. I never touched his spoon through the process. At the completion of the pat down I did instruct the inmate to leave, but I did not use profanity or speak to the inmate in a disrespectful manner.</p>		
TRANS DATE: 09/28/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: RDENO
TRANS TYPE: RCVD_INF	FINDING:	ASSIGNED TO: FDRESEN
<u>INMATE COMPLAINT:</u>		
<p>At approximately 6:21 am as I walking up to the chow hall, Navarette while looking my way said pull your pants up, I then stated my pants are pulled up, he stated I wasn't talking to you. I then stated Oh,. He then told me to come here which I did. [REDACTED] then jumped in and said Ask him where he works because I had package brought boots on. I then said these are from the package he then said do you have a receipt. I stated yes but I might have to look through my belongings. Navarette then asked for my ID which I gave him, he then ask what room and housing unit I was and I told him. He then threw my ID at my face and aggressively stated Get the f out of my face. I then stated your just going to throw my ID in my face. He then stated roughly again Get the f on the wall. I did as I was told and he went into the culinary and got 2 sack lunches. He came out and said What the f is your problem, I stated I have no problem I just want to be treated with respect.</p>		
<u>OFFICIAL RESPONSE:</u>		

Report Name: NVRGOS

Reference Name: NOTIS-RPT-OR-0255.1

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State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062930891

ISSUE DATE: 09/30/2011

OFFENDER: (1057687) WALKER, KEVIN

ISSUE LOC: SDCC

STAFF: (41181) NAVARRETE, JOSE

TRANS DATE: 10/24/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RJD_2	FINDING:	ASSIGNED TO: VRABOURN
<u>INMATE COMPLAINT:</u> Prison has it's own procedure for assault on an inmate by a C/O.		
<u>OFFICIAL RESPONSE:</u> DOC 3098 sent to I/M. Not Accepted. Informal was not accepted.		
TRANS DATE: 09/30/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RJD_1	FINDING:	ASSIGNED TO: RGALVAN
<u>INMATE COMPLAINT:</u> I/M states he was stopped by C/O Nvarette on his way to breakfast. The C/O asks him for his ID, which eh doesn't have. He turns around to go back to his unit and the C/O stops him to ask him why was he sneaking away. The I/M is cuffed and taken away.		
<u>OFFICIAL RESPONSE:</u> DOC 3098 sent to I/M. Not accepted. No remedy noted.		



State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20063034791

OFFENDER: (81238) DILLON, MELVIN

STAFF: (41181) NAVARRETE, JOSE

ISSUE DATE: 10/13/2016

ISSUE LOC: SDCC

TRANS DATE: 05/02/2017	LEVEL / STATUS: 1 / INACTIVE	USER ID: SCOOK
TRANS TYPE: RTRN_L1	FINDING: Denied	ASSIGNED TO: JGENTRY
<u>INMATE COMPLAINT:</u> Inmate disagrees signed 6-12-17		
<u>OFFICIAL RESPONSE:</u> >>>5/11/17 SDCC forwarded to HDSP >>>5/2/17 SDCC forwarded to HDSP HDSP > SDCC 5-10-17 HDSP > SDCC 6.16.17 Inmate Dillon. I am in receipt of your Grievance #20063034791, and find that you were correctly responded to at the Informal level. You will be advised regarding the outcome of the investigation by the office of the Inspector General upon its completion. Grievance denied.		
TRANS DATE: 04/19/2017	LEVEL / STATUS: 2 / INACTIVE	USER ID: MTROTTER
TRANS TYPE: RCVD_L2	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> 4/14/17 I have been denied the liberty to be treated equal and even handedly during the September 15th 2016 excessive force violation of the eighth amendment claim...		
<u>OFFICIAL RESPONSE:</u> 4/25 SDCC received - Not accepted. HDSP > SDCC 4-20-17		
TRANS DATE: 01/31/2017	LEVEL / STATUS: 1 / INACTIVE	USER ID: MTROTTER
TRANS TYPE: RJD_3	FINDING:	ASSIGNED TO: JNASH
<u>INMATE COMPLAINT:</u> I have been denied the liberty to be treated equal and even handedly during the September 15th 2016 excessive force violation of the Eighth Amendment claim. The conduct of CO Navaret, [REDACTED] and [REDACTED] were without any regard for regulation 339 employee code of... [MTROTTER, 02/17/2017 09:32:16] Inmate signed 2-16-17		
<u>OFFICIAL RESPONSE:</u> 4/25 4th Reject Missing documentation in accordance with AR 740. >>> 2nd level grievance received alone		
2/2/17 forwarded to HDSP DOC 3098: The Informal and First Level submissions and responses were not included with the Second Level submission. Per AR 740, You cannot continue to the next level when the prior level was not accepted. Please resubmit at the First level with deficiency completed.		

Report Name: NVRGOS

Reference Name: NOTIS-RPT-OR-0255.1

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State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20063034791

OFFENDER: (81238) DILLON, MELVIN

STAFF: (41181) NAVARRETE, JOSE

ISSUE DATE: 10/13/2016

ISSUE LOC: SDCC

TRANS DATE: 01/18/2017	LEVEL / STATUS: 1 / INACTIVE	USER ID: SCOOK
TRANS TYPE: RJD_2	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> "I have been hindered by way of not being given form DOC-3095, administrative claim form after multiple requests I was denied. My due process right to proceed to the next level per administrative regulation 740.05 section 7. sub section (B). Pursuant to administrative..." [MTROTTER, 02/17/2017 09:31:55] Inmate signed 2-18-17		
<u>OFFICIAL RESPONSE:</u> DOC 3098 to Inmate Grievance not accepted. AR 740.06.2 states you must also attach any (all) relevant documentation (to your grievance submission). When resubmitting grievances you must include all previously submitted grievance documents and responses received, relative to the specific Issue Id number. Missing Documentation: - Informal Grievance - Informal Grievance response dated 11/7/16 Additionally, At the First Level you must state why you disagree with the Informal Grievance response you received (AR 740.06.2) Your statement that you were denied your due process right to proceed to the next level is unfounded and does not address why you disagree with the response to your informal grievance.		
TRANS DATE: 01/10/2017	LEVEL / STATUS: 1 / INACTIVE	USER ID: MTROTTER
TRANS TYPE: RCVD_L1	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> "I have been hindered by way of not being given form DOC-3095, administrative claim form after multiple requests I was denied. My due process right to proceed to the next level per administrative regulation 740.05 section 7. sub section (B). Pursuant to administrative..."		
<u>OFFICIAL RESPONSE:</u> 1/18/17 SDCC received - Not accepted.		
TRANS DATE: 11/07/2016	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: IG_REVIEW	FINDING:	ASSIGNED TO: DMOLNAR
<u>INMATE COMPLAINT:</u> Referral for investigation		
<u>OFFICIAL RESPONSE:</u> Emailed 11/7/16		
TRANS DATE: 10/13/2016	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: RJD_1	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> Inmate states on 9/15/16 COs Navarrete, [REDACTED] and [REDACTED] violated his constitutional, civil and statutory right to be treated fairly. ... [LBELT, 12/16/2016 13:46:15] Inmate signed 11-28-16		
<u>OFFICIAL RESPONSE:</u> 11/14/16 mailed to HDSP DOC 3098 to Inmate This grievance has been forwarded to the Office of the Inspector General for investigation. Grievance not accepted. You have not provided a remedy for your complaint. Per AR 740.06(A), all grievances submitted by the inmate should also include the remedy sought to resolve the claim.		

Report Name: NVRGOS

Reference Name: NOTIS-RPT-OR-0255.1

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State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20063034798

OFFENDER: (1104257) NORELUS, RICKIE

STAFF: (41181) NAVARRETE, JOSE

STAFF: ()

ISSUE DATE: 10/13/2016

ISSUE LOC: SDCC

TRANS DATE: 12/08/2016	LEVEL / STATUS: IF / INACTIVE	USER ID: PDELPORTO
TRANS TYPE: IG_RESP	FINDING: IG Case Made	ASSIGNED TO: RMOORE
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
This grievance issue is resolved as the incident was previously assigned for investigation.		
TRANS DATE: 11/07/2016	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: IG_REVIEW	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u>		
Request IG review		
<u>OFFICIAL RESPONSE:</u>		
Emailed 11/7/16		
TRANS DATE: 10/13/2016	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: RJD_1	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u>		
Inmate states he was walking out of the dining hall when the was stopped by Officers Vasquez and Navaette, placed on the wall and searched. He was attacked by both. ...[LBELT, 12/16/2016 13:46:47] Inmate signed 11/28/16		
<u>OFFICIAL RESPONSE:</u>		
11/14/16 mailed to HDSP DOC 3098 to Inmate		
This grievance has been forwarded to the Office of the Inspector General for investigation.		
Grievance not accepted. You have not provided a remedy for your complaint. Per AR 740.06(A), all grievances submitted by the inmate should also include the remedy sought to resolve the claim.		



State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062933533

OFFENDER: (90648) JACKSON, WILLIE

STAFF: (41181) NAVARRETE, JOSE

ISSUE DATE: 11/17/2011

ISSUE LOC: SDCC

TRANS DATE: 05/16/2012	LEVEL / STATUS: 2 / INACTIVE	USER ID: WKOSUB
TRANS TYPE: RTRN_L2	FINDING: Not Accepted	ASSIGNED TO: SLFOSTER
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u> return to esp 6-15-12. Rcv 6/26/12 sbc Your second level grievance is not accepted as it pertains to issues not previously cited in the informal or first level grievance.		
TRANS DATE: 05/09/2012	LEVEL / STATUS: 2 / INACTIVE	USER ID: LBOHRN
TRANS TYPE: RCVD_L2	FINDING:	ASSIGNED TO: SLFOSTER
<u>INMATE COMPLAINT:</u> ...[LBOHRN, 05/09/2012 11:05:39] NDOC's policy seems to be the I/M is lying because he's an I/M and the C/O isn't because he or she isn't an I/M and why does my medical file reflect two (2) visits about my left arm and why is my left hand still messed up? Questions the judge will ask: res \$75,000		
<u>OFFICIAL RESPONSE:</u> sent to SDCC 5/10/12		
TRANS DATE: 03/16/2012	LEVEL / STATUS: 1 / INACTIVE	USER ID: WKOSUB
TRANS TYPE: RTRN_L1	FINDING: Denied	ASSIGNED TO: BWILLIAMS
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u> I am in receipt of your grievance as it relates to allegations regarding CO Navarrette. AWO Dreesen has spoken to this officer regarding your allegations and the officer denies these claims. Inmate Jackson you make serious accusations regarding unauthorized use of force and discrimination, either of which you have provided any proof for me to substantiate. AWO assured me that he explained to this officer and his supervisor that this type of conduct is unacceptable. Therefore based on the aforementioned your grievance is DENIED.		
TRANS DATE: 03/02/2012	LEVEL / STATUS: 1 / INACTIVE	USER ID: WKOSUB
TRANS TYPE: RJD_1	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> Sgt [REDACTED] call not be impartial concerning this matter see gr 2062930097 and this is the 2nd incident where C/O Navarrette has been verbally abusive towards me and has threatened me w/ physical violence see gr 20062930057 orig and gr 2062930100 cover up. see attached pages.		
<u>OFFICIAL RESPONSE:</u> doc 3098 sent to i/m; GRIEVANCES CANNOT BE PROCESSED WITHOUT THE SIGNATURE OF THE INMATE AS WELL AS THE DATE/TIME IT IS SUBMITTED.		
TRANS DATE: 02/16/2012	LEVEL / STATUS: 1 / INACTIVE	USER ID: LBOHRN
TRANS TYPE: RCVD_L1	FINDING:	ASSIGNED TO: BWILLIAMS
<u>INMATE COMPLAINT:</u> Sgt [REDACTED] call not be impartial concerning this matter see gr 2062930097 and this is the 2nd incident where C/O Navarrette has been verbally abusive towards me and has threatened me w/ physical violence see gr 20062930057 orig and gr 2062930100 cover up. see attached pages.		
<u>OFFICIAL RESPONSE:</u> Sent to SDCC 2/21/12		

Report Name: NVRGOS

Reference Name: NOTIS-RPT-OR-0255.1

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State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062933533

OFFENDER: (90648) JACKSON, WILLIE

STAFF: (41181) NAVARRETE, JOSE

ISSUE DATE: 11/17/2011

ISSUE LOC: SDCC

TRANS DATE: 01/20/2012	LEVEL / STATUS: IF / INACTIVE	USER ID: WKOSUB
TRANS TYPE: RTRN_INF	FINDING: Denied	ASSIGNED TO: FDREESSEN
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
FWD TO ESP FOR IM; SIGNATURE. RCV 2/1/12 I am in receipt of your grievance # 20062933533 dated Nov. 4, 2011. I have spoken to C/O Navarette about your allegations and he (C/O Navarette) stated that on Nov.2,2011 there was a delay in some inmates getting their sack Lunches on this date due to a mishap in the culinary. This was corrected as fast as possible and that you were given your lunch as soon as the missing lunches were brought to Unit 8. He also denies any use of foul or abusive language towards you. However I did review AR 339 with officer Navarette and discussed standards of professionalism with him.		
TRANS DATE: 11/17/2011	LEVEL / STATUS: IF / INACTIVE	USER ID: CPAIGE
TRANS TYPE: RCVD_INF	FINDING:	ASSIGNED TO: FDREESSEN
<u>INMATE COMPLAINT:</u>		
On 11-2-11 at appox. 7:43 am C/O Navarette not only cursed me & made discriminatory remarks & derogatory sexually discriminatory remarks "You F'n faggot. You Bitch" He also threatened me stating "Go to yard, you'll get yours. I'll kick you ass you piece of shit. You'll get yours for writing me up. Go to yard. On 9-6-11 C/O Navarette used unprovoked unauthorized excessive force against me & "quite possibly caused irreputable damage to my (L) arm & hand.		
<u>OFFICIAL RESPONSE:</u>		



State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062990049

ISSUE DATE: 12/04/2014

OFFENDER: (1086159) THOMPSON, ELTON

ISSUE LOC: SDCC

STAFF: (41181) NAVARRETE, JOSE

STAFF: (46230) ORTEGA, JOSHUA

STAFF: (48343) CROWDER, MICHAEL

TRANS DATE: 01/08/2015	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: RTRN_INF	FINDING: Denied	ASSIGNED TO: MADAMS
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
<p>Inmate Thompson, the grievance that you submitted related to not receiving your meals from the culinary has been reviewed. Officers [REDACTED] and Navarette were contacted in addition to SDCC Culinary Manager [REDACTED]. The three officers all verified that standard meals were offered to you on 12/2/2014 and you refused the meal offered. The incident referred to occurred on the first day of an institutional lock-down. Per AR 269, during lock down, alterations may be made to the menu to meet operational requirements. Common fare meals were not served on that date based upon circumstances directly related to the lock down. On the second day of the lock down, common fare meals were again offered to you.</p>		
Grievance Denied.		
TRANS DATE: 12/04/2014	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: RCVD_INF	FINDING:	ASSIGNED TO: MADAMS
<u>INMATE COMPLAINT:</u>		
<p>Inmate states at approx 6:30 am on 12/2 his unit was served breakfast and lunch to their rooms due to a lock down situation from the previous night. When the officers reached his door he informed them that he was to receive the common fare religious meal. Officer [REDACTED] told him there would be no common fare. When he asked for an emergency grievance S&E Officer [REDACTED] told him no. Later he asked the unit officer Navarette for an emergency grievance and Navarette refused to give him one.</p>		
<u>OFFICIAL RESPONSE:</u>		



State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062990373

OFFENDER: (1051146) JILES, MAURICE

STAFF: (41181) NAVARRETE, JOSE

ISSUE DATE: 12/09/2014

ISSUE LOC: SDCC

TRANS DATE: 07/31/2015	LEVEL / STATUS: 2 / A	USER ID: LHINE
TRANS TYPE: RTRN_L2	FINDING: Denied	ASSIGNED TO: SLFOSTER
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
I have reviewed your grievance at all levels and assure you this was referred to the IG's office for review. Grievance is denied.		
TRANS DATE: 05/13/2015	LEVEL / STATUS: 2 / INACTIVE	USER ID: SCOOK
TRANS TYPE: RCVD_L2	FINDING:	ASSIGNED TO: SLFOSTER
<u>INMATE COMPLAINT:</u>		
Inmate Jiles states the reason why he disagrees with the decision is because CO Navarette did the things he said and medical did not notice it.		
<u>OFFICIAL RESPONSE:</u>		
6/8/15 SDCC mailed to CGTH		
TRANS DATE: 04/03/2015	LEVEL / STATUS: 1 / INACTIVE	USER ID: SCOOK
TRANS TYPE: RTRN_L1	FINDING: Denied	ASSIGNED TO: BWILLIAMS
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u>		
I am in receipt of your grievance as it relates to your alleged assault by SCO Navarette. In reviewing all documents and reports I can find nothing to support your allegations of unnecessary use of force or unbecoming conduct. In your grievance you admit to not following the officers order and stating SCO Navarette will have to place you in restraints. Furthermore, SCO Navarette did report this incident and had you seen by medical. There is nothing documented in your medical file that indicates SCO Navarette attempted to choke you as you claim. Based on all information, reports and the fact that you were returned to your unit leads me to believe this incident was insignificant and minor, and that you're over exaggerating what occurred. Grievance DENIED.		
TRANS DATE: 03/17/2015	LEVEL / STATUS: 1 / INACTIVE	USER ID: SCOOK
TRANS TYPE: RCVD_L1	FINDING:	ASSIGNED TO: BWILLIAMS
<u>INMATE COMPLAINT:</u>		
I disagree because CO Navarette choked me with the collar of my jacket by twisting it.		
<u>OFFICIAL RESPONSE:</u>		



State of Nevada
Department of Corrections

GRIEVANCES ON STAFF MEMBER

VERIFIED GRIEVANCES ON STAFF MEMBER

ISSUE ID#: 20062990373

OFFENDER: (1051146) JILES, MAURICE

STAFF: (41181) NAVARETTE, JOSE

ISSUE DATE: 12/09/2014

ISSUE LOC: SDCC

TRANS DATE: 01/29/2015	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: RTRN_INF	FINDING: Denied	ASSIGNED TO: MADAMS
<u>INMATE COMPLAINT:</u>		
<u>OFFICIAL RESPONSE:</u> Inmate Jiles, your grievance that was resubmitted on 1-15-15 was received and reviewed. In your grievance, you alleged misconduct by Senior Correctional Officer Navarette. SC/O Navarette was contacted regarding this incident (which occurred on November 25, 2014). The grievance was initially denied due to your failure to provide a remedy per AR 740. Senior Navarette had reported on the day of the incident that he ordered inmate Jiles to stop kicking or pulling on the door to which the inmate replied "I'll do whatever the fuck I want". After seeing Jiles in the unit, Navarette ordered the inmate to go back outside the unit at which point the inmate refused. After another direct refusal of an order from the inmate, Navarette placed the inmate in wrist restraints. Navarette noted that Jiles continued to resist and the officer then placed the inmate stomach down on the floor until assisting officers arrived. Southern Desert Correctional Center medical staff was also contacted regarding this incident. Nurse John Doglione did not indicate any evidence that the inmate Jiles was choked as claimed in the grievance. Jiles was treated and returned to his assigned housing unit. Grievance denied.		
TRANS DATE: 01/06/2015	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: RCVD_INF	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> The reason why I'm writing this grievance is because on 11-25-14 myself and CO Navarette had an altercation about me pulling on the door to the unit. After returning from morning chow. The reason why I tried to open the door is because CO Navarette usually has the door propped. (see continued statement)		
<u>OFFICIAL RESPONSE:</u>		
TRANS DATE: 12/11/2014	LEVEL / STATUS: IF / A	USER ID: LHINE
TRANS TYPE: IG_REVIEW	FINDING:	ASSIGNED TO: PDELPORTO
<u>INMATE COMPLAINT:</u> IG Review ...[LHINE, 06/11/2015 16:02:03] The reason why I'm writing this grievance is because on 11-25-14 myself and CO Navarette had an altercation about me pulling on the door to the unit. After returning from morning chow. The reason why I tried to open the door is because CO Navarette usually has the door propped. (see continued statement)		
<u>OFFICIAL RESPONSE:</u> Emailed 12/11/2014		
TRANS DATE: 12/09/2014	LEVEL / STATUS: IF / INACTIVE	USER ID: SCOOK
TRANS TYPE: RJD_1	FINDING:	ASSIGNED TO:
<u>INMATE COMPLAINT:</u> The reason why I'm writing this grievance is because on 11-25-14 myself and CO Navarette had an altercation about me pulling on the door to the unit. After returning from morning chow. The reason why I tried to open the door is because CO Navarette usually has the door propped. (see continued statement)		
<u>OFFICIAL RESPONSE:</u> DOC 3098 to inmate This issue has been referred to the Office of the Inspector General for investigation. Grievance not accepted. You failed to state the remedy you are seeking. Per AR 740.06 - all grievances submitted by the inmate should also include the remedy sought to resolve the claim.		

BEFORE THE NEVADA STATE PERSONNEL COMMISSION **FILED**
MARK GENTILE, HEARING OFFICER

MAR 29 2019

APPEALS OFFICE

JOSE MIGUEL NAVARRETE,

Case No. 1713379-MG

Petitioner/Employee,

v.

Date of Hearing: April 2, 2019
Time of Hearing: 9:00 am

DEPARTMENT OF CORRECTIONS,

Respondent/Employer

PETITIONER'S LIST OF EXHIBITS

<u>Exhibit</u>	<u>Offered</u>	<u>Admitted</u>
1. Incident Report, dated October 9, 2016	_____	_____X
2. Medical Report of Incident, dated October 9 & 11, 2016	_____	_____X
3. Jury Verdict, filed on December 14, 2018	_____	_____X
4. Physical Examination of Inmate, dated June 30, 2013	_____	_____X
5. Criminal Complaint, Declaration of Arrest, & Judgments of Conviction for Inmate Rickie Norelus	_____	_____X
6. Employee Appraisal & Development Report, dated March 11, 2015	_____	_____X
7. Employee Appraisal & Development Report, dated March 11, 2016	_____	_____X
8. Video Clips of Incident (Slowed Down)	_____	_____X
9. Video of Incident w/ Slowed Take-Down	_____	_____X
10. Video after Use of Force Reported	_____	_____X

DOC 010

Petitioner's EXHIBIT # 1

INCIDENT INFORMATION SHEET
To be placed on the Outside of Incident Folder

TYPE OF INCIDENT: Use of Force DATE: 10/09/2016
IR# 2016-SDCC-004293 TIME: 0645

Check of after completion and attach to page 1:

- ☒ Supervisors Summary
- ☒ Incident Review
- ☒ Incident Report (019)
- ☒ Informational Reports (028)
- ☒ Use of Force reports

For Office Use Only

Inc. No. _____
INFO ONLY _____
Distributed: _____
Date: _____
By: _____

Check of after completion and attach to page 2:

- ☐ Evidence Photos/Video
- ☐ Crime scene photos
- ☒ Inmate/Staff injury photos

Evidence Disposition

- ☐ Collected/Chain of Custody established
 - a. Secured ? ☐ YES ☐ NO, If "YES", Location: _____
 - b. Collecting Officer: _____

Reports submitted by the following staff:

Sgt. Willett, Dean	C/O Valdez, Paul
SC/O Navarrete, Jose	C/O Wachter, David
SC/O Kutz, Timothy	CNI Dutu, Dustin

Check of after completion and attach to page 3:

- ☒ Unusual Occurrence reports
- ☐ Fire Marshall report

Check of after completion and attach to page 4:

- ☒ Booking Reports of all involved inmates

Inmates involved:

Norelus, Rickie #1104527	

Check of after completion and attach to page 5:

- ☒ Segregation Informational(s)
- ☒ Notice of Classification Change sheet(s)
- ☒ Notice of Charges
- ☐ Other Incident related documents

Check of after completion and attach to page 6:

- ☒ Related Administrative Regulations of Operational Procedures
- ☒ Related Post Orders
- ☒ Copy of Post Order Signature Sheet for date of incident

SHIFT SUPERVISOR SIGNATURE: [Signature] DATE: 10/9/16

REVIEWED BY SIGNATURE: _____ DATE: _____

REVIEWED BY SIGNATURE: _____ DATE: _____

SUPERVISOR'S SUMMARY OF INCIDENT

The following is to be completed by the Shift Supervisor. The Shift Supervisor will complete all paragraphs. If not applicable to the particular incident, the Supervisor will put "N/A" (Not Applicable). Provide information in order specified, example; 1. Date; Time; Location should read; On August 31, 1963, at approximately 12:02 p.m., in Unit 5.....

SHIFT SUPERVISOR: Sgt. Willett, Dean

1. DATE, TIME AND LOCATION OF INCIDENT:

October 9, 2016 at 0645 hours in front of Culinary

2. STAFF ASSIGNED TO AREA, UNIT:

SC/O Navarrete, Jose	
C/O Valdez, Paul	
C/O Wachter	

3. INMATES INVOLVED:

Norelus, Rickie #1104527	

4. OTHER WITNESSES (STAFF AND/OR INMATES):

SC/O Navarrete, Jose	
C/O Valdez, Paul	
Unit 3	

5. HOW WAS THE SHIFT SUPERVISOR NOTIFIED (INCLUDE WHO MADE NOTIFICATION AND WHICH SUPERVISOR WAS NOTIFIED)

SC/O Navarrete notified Sgt. Willett via institutional radio

6. CUSTODY STAFF INVOLVED - INCLUDE ALL RESPONSE STAFF, ETC. (LIST IN ORDER OF RANK):

SC/O Navarrete, Jose	C/O Wachter
SC/O Knatz, Timothy	
C/O Valdez, Paul	

7. WHAT CORRECTIVE ACTION WAS IMPLEMENTED?:

None

8. USE OF FORCE:

<input type="checkbox"/> NOT APPLICABLE	<input checked="" type="checkbox"/> OFFICER PRESENCE	<input type="checkbox"/> CHEMICAL AGENT
<input type="checkbox"/> PLANNED	<input checked="" type="checkbox"/> VERBAL COMMANDS	<input type="checkbox"/> IMPACT TOOL
<input checked="" type="checkbox"/> SPONTANEOUS	<input checked="" type="checkbox"/> CONTROL & RESTRAINT	<input type="checkbox"/> DEADLY FORCE

9. MEDICAL STAFF INVOLVEMENT (INCLUDE WHO EVALUATED WHO):

CN II Dutwin, Dustin	

10. STAFF INJURIES ☐ NOT APPLICABLE ☒ YES ☐ NO:

Officer Valdez knees are bruised

SUPERVISOR'S SUMMARY OF INCIDENT CONTINUATION

11. INMATE INJURIES ☐ NOT APPLICABLE ☒ YES ☐ NO:

Inmate Norelus received no injuries

12. IF INCIDENT INVOLVED EXPOSURE TO BODILY FLUIDS, WAS THE INMATE HIV/HEP POSITIVE?

☐ UNKNOWN ☐ YES ☒ NO

13. EVIDENCE - TYPE, COLLECTED BY, WHERE PLACED:

None

14. DISPOSITION OF INMATE FOLLOWING INCIDENT:

Inmate Norelus was seen by Medical staff and place in Unit 8 AdSeg pending disciplinary

15. WORKMANS COMP REPORTS COMPLETED/SUBMITTED:

☐ NOT APPLICABLE ☒ YES ☐ NO

16. FIRE MASHALL'S REPORT COMPLETED/SUBMITTED:

☐ NOT APPLICABLE ☐ YES ☒ NO

17. CIVIL RIGHTS NOTIFICATION MADE BY: N/A

18. NOTICE OF CHARGES COMPLETED:

☐ NOT APPLICABLE ☒ YES ☐ NO

19. FUTHER REMARKS:

None

20. COMPLETE QUESTIONS FOR INCIDENT REVIEW:

INCIDENT REVIEW

1. WAS POLICY FOLLOWED

☐ NOT APPLICABLE ☒ YES ☐ NO

2. WAS THERE JUSTIFICATION FOR THE TYPE OF FORCE USED IN THIS INCIDENT

☐ NOT APPLICABLE ☒ YES ☐ NO

IF YES/NO, EXPLAIN:

Officer was in fear of being assaulted

3. WAS THE OFFICER QUALIFIED ON THE WEAPON USED

☒ NOT APPLICABLE ☐ YES ☐ NO

DATE OF LAST QUALIFICATION ON WEAPON USED

4. IF LIVE ROUND WAS DISCHARGED, WAS THE WEAPON REMOVED FOR INSPECTION

☒ NOT APPLICABLE ☐ YES ☐ NO

INCLUDE DATE OF LAST INSPECTION AND IF NOT REMOVED, WHY:

5. WHAT DATE DID THE OFFICE SIGN THE POST ORDER PRIOR TO THE INCIDENT

Yes

(INCLUDE A COPY OF THE SIGNED POST ORDER SIGNATURE PAGE)

6. DID OTHER STAFF RESPOND APPROPRIATELY ☐ NOT APPLICABLE ☒ YES ☐ NO

INCLUDE WHO AND HOW:

SC/O Knatz by medical cart
SC/O Navarrete by foot
C/O Wachter by foot

7. WERE THE INMATES INVOLVED PROPERLY CLASSIFIED

☐ UNKNOWN ☒ YES ☐ NO

8. ARE THERE ANY TRAINING ISSUES ☐ NOT APPLICABLE ☐ YES ☒ NO

IF YES, WHAT:

8. ARE THERE ANY RECOMMENDATIONS FOR CORRECTIVE ACTION

☐ NOT APPLICABLE ☐ YES ☒ NO

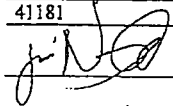
IF YES, WHAT:



STATE OF NEVADA DEPARTMENT OF CORRECTIONS
Southern Desert Correctional Center

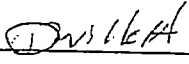



Informational Report (028)

IR #: 2016-SDCC-004293 Reported By: SC/O Navarrete, Jose
Date: 10/09/2016 Employee ID: 41181
Time: 06:45 am
Location: Front of the Culinary Signature: 
Inmate: Norelus, Rickie ID#: 1104257 Cell: U3-B-23-A
Inmate: ID#: Cell:
Inmate: ID#: Cell:
Inmate: ID#: Cell:

NARRATIVE

On October 9, 2016 I, Senior Correctional Officer Navarrete was assigned to Search and Escort at Southern Desert Correctional Center. At approximately 06:45 hours inmate Norelus #1104257 came off the Culinary wall while C/O Valdez was attempting to restrain him resulting in a spontaneous use of force. When inmate Norelus came off the wall he was resisting and both he and C/O Valdez went to the ground. I then assisted in holding the inmates upper body down so that C/O Valdez could restrain him. I notified supervisors and called medical so that they could respond to the scene. Medical responded and inmate Norelus was escorted to the infirmary to be further evaluated.

Staff Member	Print Name	Signature	Date
Reviewing Supervisor:			10/9/16
Reviewing Administrator:			



STATE OF NEVADA DEPARTMENT OF CORRECTIONS
Southern Desert Correctional Center



Informational Report (028)

IR #: 2016-SDCC-004293 Reported By: SC/O Knatz, Timothy
Date: 10/09/2016 Employee ID: 47239
Time: 06:45 am
Location: Front of the Culinary Signature:

Inmate:	Norelus, Rickie	ID#:	1104527	Cell:	U3-B-23-A
Inmate:		ID#:		Cell:	
Inmate:		ID#:		Cell:	
Inmate:		ID#:		Cell:	

NARRATIVE

On 10/9/2016 at approximately 0645 I, Senior Correctional Officer Timothy Knatz, while working as the acting shift Sergeant at Southern Desert Correctional Center responded to a call of a spontaneous use of force in front of the culinary. I took the video camera and still frame camera from Operations and then escorted the responding nurse from infirmary to the scene in front of the culinary. The video camera was on and I began filming at K-Gate. When we arrived, there was an inmate laying on the ground with his hands restrained behind his back. This inmate would later be identified as Norelus, R. #1104257. The nurse asked inmate Norelus if he was injured and inmate Norelus stated that he had a concussion. The inmate was assisted to his feet and assisted onto the nurse's cart. I escorted nursing staff and the inmate back to the infirmary for a complete evaluation. While in the infirmary, I took photographs of inmate Norelus's alleged injuries. There were no visible marks noted at this time. There is nothing further to report.

Staff Member	Print Name	Signature	Date
Reviewing Supervisor:	<u>D. W. Lett</u>		<u>10/9/16</u>
Reviewing Administrator:			



STATE OF NEVADA DEPARTMENT OF CORRECTIONS
Southern Desert Correctional Center



Incident Report (019)

IR #: 2016-SDCC-004293 Reported By: Sgt. D. Willett
Date: 10/09/16 Employee ID: 40254
Time: 06:45 am
Location: Front of the Culinary Signature:
Inmate: Norelus, Rickie ID#: 1104257 Cell: U3-B-23-A

NARRATIVE

On October 9, 2016 at approximately 0645 hours Senior Officer Navarrete, J notified SDCC Shift Command Sgt. Willett via radio that Officer Valdez, P had to place inmate Norelus, R # 1104527 on the ground (spontaneous Use of Force), inmate Norelus was not following instruction and moved aggressively toward Officer Valdez when being placed in restraints. Inmate Norelus was placed in restraints, transported to the infirmary. Inmate Norelus was evaluated by medical staff no injuries noted, photographs were taken and uploaded into NOTIS. Inmate Norelus due process started and was placed in Unit 8 AdSeg pending disciplinary. Officer Valdez reported both of his knees were hurting (C-1 completed). AWO Adams was notified. Due to the size of the Culinary video, it was place on the SDCC share drive (Incident video (non-mandown) under IR number).

Staff Member	Print Name	Signature	Date
Reviewing Supervisor:			
Reviewing Administrator:			



STATE OF NEVADA DEPARTMENT OF CORRECTIONS
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Informational Report (028)

IR #: 2016-SDCC-004293 Reported By: C/O Valdez, Paul
Date: 10/09/2016 Employee ID: 52887
Time: 06:45 am
Location: Front of the Culinary Signature: *[Signature]*

Inmate: Norelus, Rickie ID#: 1104257 Cell: U3-B-23-A
Inmate: ID#: Cell:
Inmate: ID#: Cell:
Inmate: ID#: Cell:

NARRATIVE

On October 9, 2016 I CO Valdez assigned to Search and Escort from 0500-1300. At approximately 0645 during morning breakfast Inmate Norelus, R 1104257 was placed on the wall. While Inmate Norelus was on the wall he was told multiple times by me and SCO Navarrete to keep his hands on the wall. Inmate Norelus kept taking his hands off the wall saying "what are you going to do?" after several commands I attempted to place him restraints. When attempting to place him in restraints, I told Inmate Norelus don't move your hands. Inmate Norelus again stated "what are you going to do?" and moved his hands off the wall and turned in an aggressive manner which resulted in a spontaneous use of force. Inmate was placed in restraints medical was called and Inmate was taken to the infirmary.

Staff Member

Print Name

Signature

Date

Reviewing Supervisor:

[Signature]

[Signature]

10/9/16

Reviewing Administrator:



STATE OF NEVADA DEPARTMENT OF CORRECTIONS
Southern Desert Correctional Center



Informational Report (028)

IR #: 2016-SDCC-004293 Reported By: C/O Wachter, David
Date: 10/09/2016 Employee ID: 54813
Time: 06:45 am
Location: Front of the Culinary Signature: *[Signature]*

Inmate: Norelus, Rickie ID#: 1104527 Cell: U3-B-23-A
Inmate: ID#: Cell:
Inmate: ID#: Cell:
Inmate: ID#: Cell:

NARRATIVE

I Correctional Officer D. Wachter was posted as Search and Escort at Southern Desert Correctional Center on 10/09/2016 between 0500 and 1300 hours. At approximately 0645 while feeding breakfast, C/O Valdez told inmate Norelus, Rickie # 1104257 on the wall for a random pat search. With another unit coming to the chow hall, I placed myself in between the unit and the search taking place behind me. I then heard a commotion which I turned around and saw C/O Valdez taking the inmate to the ground. I noticed SC/O Navarette closer to the incident than me, so I proceeded to shut the culinary door and get the rest of the unit on the ground. Medical came and I escorted inmate Norelus to the infirmary. End Of Report

Staff Member	Print Name	Signature	Date
Reviewing Supervisor:	<i>D. Wachter</i>	<i>[Signature]</i>	10/9/16
Reviewing Administrator:			



STATE OF NEVADA DEPARTMENT OF CORRECTIONS
Southern Desert Correctional Center



Informational Report (028)

IR #: 2016-SDCC-004293 Reported By: CNII Datuin, Dustin
Date: 10/09/2016 Employee ID: 56458
Time: 06:45 am
Location: Front of the Culinary Signature: D. Datuin

Inmate:	Norelus, Rickie	ID#:	1104527	Cell:	U3-B-23-A
Inmate:		ID#:		Cell:	
Inmate:		ID#:		Cell:	
Inmate:		ID#:		Cell:	

NARRATIVE

On Sunday 9, 2016, I Dustin T. Datuin Correctional Nurse II was on duty at Southern Desert Correctional Center assigned to the medical infirmary from 1900 to 0700. Approximately around 06:45 a.m., inmate seen in culinary on the ground with bilateral wrist restraint and brought medical infirmary for medical evaluation, inmate name Norelus, Rickie # 1104257. Inmate states, "I was taken down to the ground by two officers, CO Valdez and CO Navarette", vitals and medically stable, no injury noted at this time, returned inmate to custody. End of report.

Staff Member	Print Name	Signature	Date
Reviewing Supervisor:	<u>Dustin T. Datuin</u>	<u>D. Datuin</u>	<u>10/9/16</u>
Reviewing Administrator:			



STATE OF NEVADA DEPARTMENT OF CORRECTIONS
Southern Desert Correctional Center



Use of Force Report

IR #: 2016-SDCC-004293 Reported By: C/O Valdez, Paul
Date: 10-09-2016 Employee ID: 52887
Time: 06:45
Location: Front of the Culinary Signature: *[Signature]*

Officers Involved

C/O Valdez, Paul

Inmates Involved

Last Name, First Name, ID #, Cell Location

Norelus, Rickie #1104527 Unit 3B-23-A

Type of Force Used

(Such as Hands on, Taser, Shot Gun, etc.)

Hands on

Statement of Officer (Reason for use of force)

On October 9, 2016 I CO Valdez assigned to Search and Escort from 0500-1300. At approximately 0645 when attempting to place inmate Norelus #1104527 in restraints, inmate Norelus turned aggressively toward me. Fearing for my safety I placed my arms around his shoulders and attempted to place him on the ground. During the process of placing him to the ground, inmate Norelus turned his body around and I become face to face with the inmate, at this point I wrestled inmate Norelus down forcing him to the ground. Once inmate Norelus was on the ground I gave him the order to turn around by rolling to his right side. Using my left hand I reach for my restraints and cuffed his left hand and immediately secured his right hand. Supervision and medical were informed of the use of force. Medical came out took inmate to infirmary for medical examination.

Extent of Injury to Inmate

None

Treatment Afforded Inmate

Inmate was evaluated by SDCC medical

Staff Witnesses

SC/O Navarrete
C/O Wachter

Inmate Witnesses



STATE OF NEVADA DEPARTMENT OF CORRECTIONS
Southern Desert Correctional Center



Use of Force Report

Unit 3

Staff Member	Print Name	Signature	Date
Reviewing Supervisor:	DW:166	[Signature]	10/19/16
Reviewing Administrator:			

Perinone's EXHIBIT # 2

MEDICAL REPORT OF INCIDENT, INJURY OR UNUSUAL OCCURRENCE

Institution: SREC

Housing Location: Unit 3

1. Occurrence: Place: COLLAPSE Date: 10-9-46 Time: 0645
2. Medical Notified: Date: 10-9-46 Time: 0645
3. Medical Arrived: Date: 10-9-46 Time: 0650
4. Check boxes that apply: ☐ Mandown ☒ Non-Man Down ☐ Altercation ☐ Recreational ☐ Self-Inflicted
5. Evaluation/Assessment Completed Date: 10-9-46 Time: 0700

6a. Subjective: Brief description of the injury or unusual occurrence. (Include patient's own words, if possible):

My stroke, "I was taken down by two officers to the ground."

6b. Names of witnesses, summaries of their stories, insofar as available to medical officer attending case, and description of points of difference between their version and that of #6a above.

CD Valdez

CD Navarette

7. Objective: (Description and extent of injury) 98%
T.P.R., BP 138/86 P=100 R=18 97as Tetanus:

Allergies: PKA

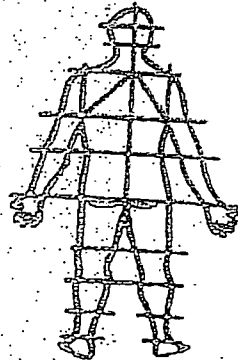
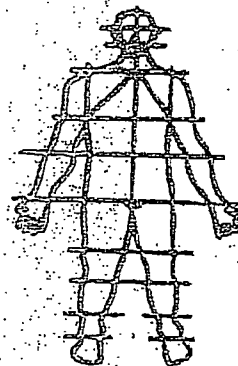
Slack and oriented x 3 not in any acute medical distress. No signs of any injury at this time.

8. Assessment:

Body lacerated related to use force

9. Plan: (Include treatment regimen, follow-up visits, disposition).

Returned to custody



PROVIDER SIGNATURE DDA

TITLE CMT

DATE: 10-9-46

NEVADA DEPARTMENT OF CORRECTIONS
UNUSUAL OCCURRENCE
REPORT

NAME: MORELUS, RICKIE

Last

First

MI

ID#

1104257

UNIT#

Unit 3

MEDICAL REPORT OF INCIDENT, INJURY OR UNUSUAL OCCURRENCE

Institution: SDU

Housing Location: 8A24

1. Occurrence: Place: - in front of cell Date: 10/08/16 Time: Morning
2. Medical Notified: Date: 10/11/16 Time: 11:20
3. Medical Arrived: Date: 10/11/16 Time: 16:20
4. Check boxes that apply: ☐ Mandown ☒ Non-Man Down ☐ Altercation ☐ Recreational ☐ Self-Inflicted
5. Evaluation/Assessment Completed Date: 10/11/16 Time: 16:20

6a. Subjective: Brief description of the injury or unusual occurrence. (Include patient's own words, if possible):

"No injuries" "I'm ok"

6b. Names of witnesses, summaries of their stories, insofar as available to medical officer attending case, and description of points of difference between their version and that of #6a above.

Sgt McCormick

7. Objective: (Description and extent of injury)

T.P.R., BP

97.2 - 100% - 97.2 Resp 17 Hr 58 - 123/80
Last Tetanus:

Allergies:

Denies pain or injury - A AOX3
no difficulty with movement - NO MARKS
- NO bruising - able to move bkt
WRIST - NO swelling areas

8. Assessment:

Body Check per Custody request

9. Plan: (Include treatment regimen, follow-up visits, disposition).

- Return to custody
pictures taken

PROVIDER SIGNATURE

Kalton

TITLE

CWIII

DATE

10/11/16

NEVADA DEPARTMENT OF CORRECTIONS

UNUSUAL OCCURRENCE
REPORT

NAME:

Norelus

Rickie

Last

First

MI

ID#

1104257

UNIT#

- 8A24

Petitioner EXHIBIT # 3

C-18-333098-2

VER

Verdict
4803751

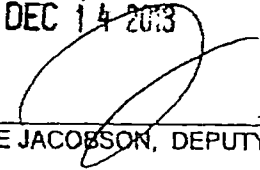


1 VER

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

DEC 14 2013

DISTRICT COURT BY 
CLARK COUNTY, NEVADA ALICE JACOBSON, DEPUTY

THE STATE OF NEVADA,
Plaintiff,

CASE NO: C-18-333098-2

-vs-

DEPT NO: 6

JOSE NAVARRETE
Defendant.

VERDICT

We, the jury in the above entitled case, find the Defendant JOSE NAVARRETE, as follows:

COUNT 1 - OPPRESSION UNDER COLOR OF OFFICE

(please check the appropriate box, select only one)

☐ Guilty of Oppression Under Color of Office

☒ Not Guilty

COUNT 2 - INHUMANITY TO PRISONER

(please check the appropriate box, select only one)

☐ Guilty of Inhumanity to Prisoner

☒ Not Guilty

00687

JA 0956

111 COUNT 3 - FALSE REPORT BY PUBLIC OFFICER

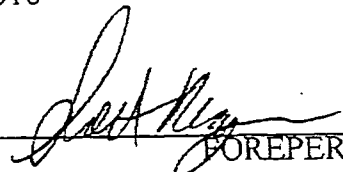
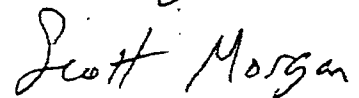
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(please check the appropriate box, select only one)

☐ Guilty of False Report by Public Officer

☒ Not Guilty

DATED this 14th day of December, 2018


FOREPERSON


Perinone's EXHIBIT # 4

☒ Initial Assessment
☐ Periodic Assessment

Date: 6/30/13
Date: _____

226 B55

Temp: <u>98.9</u>	BP: <u>121/75</u>	Height: <u>5'7</u>	Rt eye: w/o glasses: <u>10/10</u>	Rt eye: with glasses: _____	Allergies: <u>NKA</u>
Pulse: <u>65</u>	Resp: <u>20</u>	Weight (lbs): <u>159.4</u>	Lt eye: w/o glasses: <u>10/10</u>	Lt eye: with glasses: _____	Corrective lenses: <input type="checkbox"/>

Normal	Abnormal		Normal	Abnormal		Normal	Abnormal	
1. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Skin	8. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Mouth	15. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Genitalia
2. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Gait	9. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Neck	16. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Musculoskeletal
3. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Speech	10. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Chest	17. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Extremities
4. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Eyes	11. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Breasts	18. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Neurological
5. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Nose	12. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Lungs	19. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Lymph Node
6. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Ears	13. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Heart	20. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Rectum
7. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Throat	14. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Abdomen	21. <input checked="" type="checkbox"/>	<input type="checkbox"/>	Prostate
22. <input type="checkbox"/>	Other: _____							
23. <input type="checkbox"/>	Other: _____							
24. <input type="checkbox"/>	Other: _____							

Assessment:

25. Suicidal: ☐ Yes ☒ No 26. Oriented: ☒ Yes ☐ No 27. Affect: ☒ Appropriate ☐ Inappropriate

Comments: _____

Abnormal Physical Exam Findings by Number:

Granulation - 871

Major Health Problems	Treatment Plan

Practitioner Signature: [Signature] Date: JUN 26 2013

NOTE: DOC 2547-Health Classification and Restrictions must be completed after each Initial and Periodic Health Assessment.

NEVADA DEPARTMENT OF CORRECTIONS
PHYSICAL EXAMINATION

NORELUS, RICKIE

1104257

Reference Medical Directive MD414

STATE000098 2571 (09/12)

00690
JA 0959

Petitioner's EXHIBIT # 5

FILED

JUSTICE COURT, LAS VEGAS TOWNSHIP
CLARK COUNTY, NEVADA

JAN 14 8 12 AM '13

THE STATE OF NEVADA,

Plaintiff,

JUSTICE COURT
LAS VEGAS, NEVADA
BY SSN DEPUTY

-vs-

CASE NO: 13F00545X

DEPT NO: 2

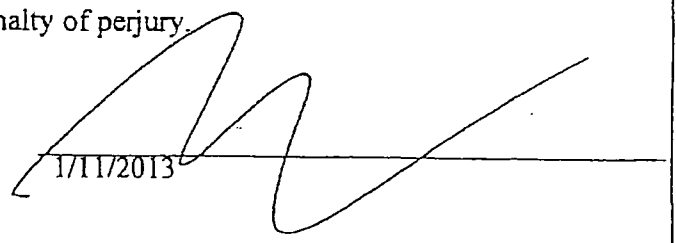
RICKY NORELUS, aka,
Rickie Norelus #2702736,

Defendant.

CRIMINAL COMPLAINT

The Defendant above named having committed the crime of ASSAULT WITH A DEADLY WEAPON (Category B Felony - NRS 200.471), in the manner following, to-wit: That the said Defendant, on or about the 10th day of January, 2013, at and within the County of Clark, State of Nevada, did then and there wilfully, unlawfully, feloniously and intentionally place another person in reasonable apprehension of immediate bodily harm and/or did unlawfully attempt to use physical force against another person, to-wit: DEANA GUZMAN, with use of a deadly weapon, to-wit: a hatchett, by running toward the said DEANA GUZMAN with said hatchett in his hand raised above his head.

All of which is contrary to the form, force and effect of Statutes in such cases made and provided and against the peace and dignity of the State of Nevada. Said Complainant makes this declaration subject to the penalty of perjury.


1/11/2013

13F00545X/1a1
LVMPD EV# 1301100789
(TK2)

13F00545X
CRM
Criminal Complaint
2142701



LAS VEGAS METROPOLITAN POLICE DEPARTMENT
DECLARATION OF ARREST

Event #: 130110-0789

I.D. #: 2702736

True Name: NORELUS, RICKY

Date of Arrest: 01-10-13

Time of Arrest: 0922

OTHER CHARGES RECOMMENDED FOR CONSIDERATION:

THE UNDERSIGNED MAKES THE FOLLOWING DECLARATIONS SUBJECT TO THE PENALTY FOR PERJURY AND SAYS: That I am a peace officer with the Las Vegas Metropolitan Police Department, Clark County, Nevada, being so employed for a period of 21 years.

That I learned the following facts and circumstances which lead me to believe that the above named subject committed (or was committing) the offense(s) of AWDW at the location of 3831 Swenson #33, and that the offense(s) occurred at approximately 0658 hours on the 10 day of JAN, 2013, in the:

☒ County of Clark

☐ City of Las Vegas

DETAILS FOR PROBABLE CAUSE:

That Deanna Guzman dob 07-09-76 was walking northbound along Swenson passing by the address of ³⁸³¹~~3848~~ Swenson at approximately 0658 hours. Guzman walked along the west sidewalk and a black male with no shirt and grey sweat pants was standing outside his apartment on the second floor and was extremely agitated and was swearing and using profanity. Guzman continued to walk northbound ignoring the male. Guzman conducted her business at the Vegas market at Twain and Swenson. Guzman then started to walk southbound again on the west sidewalk of Swenson. As Guzman was walking past 3831 Swenson the same black agitated male exited apartment #33 and yelled to Guzman that he was a "psycho mother fucker and a thug," after stating this the male in a agitated state told Guzman to, "hold up I got something for you." The male went back inside the apartment and then exited came running down the stairs at Guzman. Guzman observed that the agitated male had a black hatchet in his hand and that he was running at her. Guzman went on to say the male had the hatchet raised above his head in a striking pose. Guzman who was terrified for her life at the man running at her with a black hatchet raised above his head took off running for her apartment at 3955 Swenson. Upon arriving home Guzman immediately called the police.

Upon police arrival at 3831 Swenson officers approached and took position around apartment #33. Once positioned officers could hear the agitated male talking to himself inside the apartment. Officers were able to talk to the agitated male through an open window near the front door. The male refused to answer or open the front door and was highly agitated by officer presence. The male, later identified through scope as Ricky Norelus dob 11-06-90, talked continuously about his meth usage from the prior night and refused to cooperate with officers talking about rap and incoherent unrelated subject matter. LVMPD swat units were requested and arrived taking over the scene. Shortly after swat arrival Norelus came out of the apartment through the open window and was not wearing a shirt and fit the description provided

Wherefore, Declarant prays that a finding be made by a magistrate that probable cause exists to hold said person for preliminary hearing (if charges are a felony or gross misdemeanor) or for trial (if charges are misdemeanor).

Declarant must sign all page(s)
with an original signature.

KEITH STOTTS

Print Declarant's Name

Declarant's Signature

P#

LAS VEGAS METROPOLITAN POLICE DEPARTMENT

CONTINUATION REPORT

Event #: 130110-0789

ID#: 2702736

by Guzman. Norelus was detained and a one on one was conducted with the victim Guzman. Guzman stated the man we had detained was indeed the man who ran at her with the hatchet putting her in fear for her life. Norelus was placed under arrest for AWDW due to charging at Guzman with a hatchet poised to strike and stating that he had something for her placing her in immediate fear of bodily harm or death. . That a search warrant was conducted on apartment #33 at 3851 Swenson and recovered from inside a coffee table was a black hatchet along with a hunting type survival knife and a large frame broken gun frame. There was evidence inside the apartment of wide spread drug usage to include a glass pipe commonly used to smoke meth with and small baggies that methamphetamine is sold in. That Norelus was booked accordingly CCDC for AWDW. Please see all connecting reports under event 130110-0789..

Declarant must sign all page(s)
with an original signature.

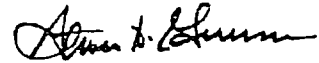
KEITH STOTTS

Print Declarant's Name

1- St
Declarant's Signature

4321

P#



CLERK OF THE COURT

1 JOCP
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4 DISTRICT COURT
5 CLARK COUNTY, NEVADA
6

7 THE STATE OF NEVADA,
8

9 Plaintiff,
10

11 -vs-
12

13 RICKIE NORELUS
14 #2702736
15

16 Defendant.
17

CASE NO. C288392-1

DEPT. NO. XX

18 JUDGMENT OF CONVICTION
19 (PLEA OF GUILTY)
20
21

22 The Defendant previously appeared before the Court with counsel and entered
23 a plea of guilty to the crime of BATTERY WITH USE OF A DEADLY WEAPON
24 (Category B Felony), in violation of NRS 200.481; thereafter, on the 6TH day of June,
25 2013, the Defendant was present in court for sentencing with his counsel, LYNN
26 AVANTS, Deputy Public Defender, and good cause appearing.

27 THE DEFENDANT IS HEREBY ADJUDGED MENTALLY ILL and ADJUDGED
28 guilty of said offense and, in addition to the \$25.00 Administrative Assessment Fee,
and \$150.00 DNA Analysis Fee including testing to determine genetic markers, the
Defendant is sentenced to the Nevada Department of Corrections (NDC) as follows:
TO A MAXIMUM of SEVENTY-TWO (72) MONTHS with a MINIMUM parole eligibility

JUN 11 2013

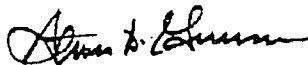
006954
JA 0964

1 of TWENTY-FOUR (24) MONTHS; with NINETY-NINE (99) days Credit for Time
2 Served.

3 FURTHER, COURT RECOMMENDS Defendant to participate in the 184 Drug
4 Treatment Program.
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7 DATED JUN 11 2013

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11 JEROME TAO
12 DISTRICT JUDGE
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CLERK OF THE COURT

1 JOCP

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3 DISTRICT COURT
4 CLARK COUNTY, NEVADA
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6 THE STATE OF NEVADA,
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8 Plaintiff,

9 -vs-

CASE NO. C287075-1

DEPT. NO. XXIV

10 RICKY NORELUS
11 aka Rickie Norelus
12 #2702736

13 Defendant.

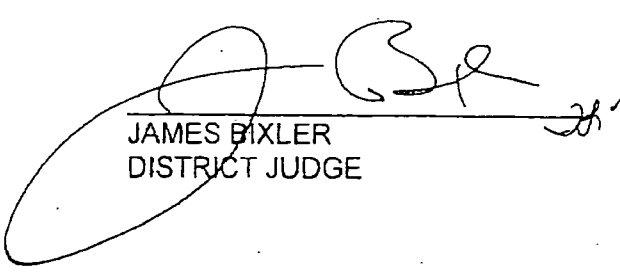
14 JUDGMENT OF CONVICTION
15 (PLEA OF GUILTY)
16

17 The Defendant previously appeared before the Court with counsel and entered
18 a plea of guilty to the crime of ATTEMPT BATTERY WITH SUBSTANTIAL BODILY
19 HARM (Category D Felony/Gross Misdemeanor), in violation of NRS 193.330,
20 200.481; thereafter, on the 11th day of June, 2013, the Defendant was present in Court
21 with his counsel, BRIGID HOFFMAN, Deputy Public Defender, and good cause
22 appearing.
23

24 THE DEFENDANT IS HEREBY ADJUDGED guilty under the felony statute of
25 said offense and, in addition to the \$25.00 Administrative Assessment Fee, and
26 \$150.00 DNA Analysis Fee including testing to determine genetic markers, the
27 Defendant is sentenced as follows: TO A MAXIMUM of FORTY-EIGHT (48) MONTHS
28

1 with a MINIMUM Parole Eligibility of TWELVE (12) MONTHS in the Nevada
2 Department of Corrections (NDC) and this Sentence to run CONSECUTIVE to Case
3 C288392; with ONE HUNDRED TWENTY (120) DAYS Credit for Time Served.
4

5
6 DATED this 24th day of June, 2013

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10 JAMES BIXLER
11 DISTRICT JUDGE
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~~Petitioner~~ EXHIBIT # 6

Agency Use Only

Central Records Use Only

RECEIVED NPOC SO.

APR 02 2015



HUMAN RESOURCES

**STATE OF NEVADA
EMPLOYEE APPRAISAL & DEVELOPMENT REPORT**

1. Employee Name: Last NAVARRETE First JOSE Initial	
2. Class Title: Senior Correctional Officer (13.312)	3. Employee ID #: 41181
4. Dept/Div/Section: Corrections/SDCC/Custody	5. Date Evaluation Due: 03/11/2015
6. Agency # (3 digits): 440 Home Org # (4 digits): 3738 Position Control #: 767	7. Date Next Evaluation Due: 03/11/2016
8. Probationary/Trial Period (check one): 6 month Probation/Trial: <input type="checkbox"/> 2 nd month <input type="checkbox"/> 5 th month <input type="checkbox"/> Other 12 month Probation/Trial: <input type="checkbox"/> 3 rd month <input type="checkbox"/> 7 th month <input type="checkbox"/> 11 th month <input type="checkbox"/> Other	
OR Permanent (check one): <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Other	
9. Work Performance Standards: <input checked="" type="checkbox"/> are an accurate reflection of the position <input type="checkbox"/> will be revised to reflect changes	
10. Overall Rating from Page 2, Number 14 (check one): <input type="checkbox"/> Does Not Meet Standards* <input checked="" type="checkbox"/> Meets Standards <input type="checkbox"/> Exceeds Standards <small>* If a rating of "Does Not Meet Standards" is given, another evaluation must be completed within 90 days. The rating may affect adjustments in salary based on merit (NAC 284.194) and longevity pay (NAC 284.270).</small>	
Rater's Printed Name: Lt R Jaeger	
Rater's Signature & Title: <i>R Jaeger</i>	Date: 3/7/15 (mm/dd/yy)
11. Additional Supervisory Review (optional): <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree (Comment Required)	
Printed Name: Associate Warden Minor Adams	
Signature and Title: <i>[Signature]</i>	Date: 16 March 15 (mm/dd/yy)
12a. Date employee received evaluation document: 3/18/15 Employee's Initials: <i>JN</i> (Does not indicate agreement or disagreement)	
b. Employee Response: NAC 284.470 requires that you complete the section below and sign the report on performance within 10 working days after discussion with your supervisor. <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree <input type="checkbox"/> Request Review* (If you disagree with the report and request a review, you must specify the points of disagreement below or attached.)	
c. Employee Signature: <i>[Signature]</i> Date evaluation returned to supervisor: 3/19/15	
13. Appointing Authority Review: <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree (Comment Required)	
Appointing Authority's Printed Name: Warden Brian E. Williams, Sr.	
Appointing Authority Signature & Title: <i>Brian E. Williams</i>	Date: 3-20-15 (mm/dd/yy)

* Note - Reviewing Officer uses form NPD-15R to respond to employee's request for review as outlined in NAC 284.470

00700
JA 0969

Employee Evaluation & Development Report – Page 2

Employee Name: (Last)	NAVARRETE	(First)	JOSE	(Initial)	
Employee ID #: 41181					

14. Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A).		(A) Rating	(B) Weighted Value	(C) Weighted Rating
Job Element #1: Custodial Responsibilities		2		
<ul style="list-style-type: none"> Comply with Administrative Regulations and DOC procedures for control on inmate activities. Assure proper supervision of inmates. Ensure safety for staff and inmate population. Supervise inmate population during meals. Maintain alertness/awareness of problems with the security of the institution. Enforce inmate discipline. Supervise inmate work assignments. Conduct institutional searches for contraband. Know emergency procedures and evacuation plans. Counsel inmates concerning attitude and conduct. Supervise proper inmate dress code. Supervise inmate participation in recreational activities. Maintain proper procedures for the mechanical operation of equipment. Submit written documentation of any deficiencies. Supervise inmate use of authorized personal and DOC property. 				
Job Element #2: Training		2		
<ul style="list-style-type: none"> Serves as lead worker for subordinate officers and provides on the job training to subordinate officers on duties of assigned areas. 				
Job Element #3: Legal Responsibilities		2		
<ul style="list-style-type: none"> Fill out and maintain log books, i.e., Shower, Yard, etc. Process legal mail. Report and document all violations. Recommend any ideas on improving institutional procedures. Direct correspondence to immediate supervisor. 				
Job Element #4: Security Equipment		2		
<ul style="list-style-type: none"> Maintain proficient in the use of firearms. Maintain equipment for use in emergencies. Report any deficiencies noted. Proficient in the use, care and maintenance of security equipment, i.e., radios, telephones, etc. Proficient in the use of control equipment, i.e., Tasers, Chemical agents and their application. 				
Job Element #5: Key Control		2		
<ul style="list-style-type: none"> Have proficient knowledge of A.R.'s, I.P.'s and department policies and procedures concerning key control. Be proficient in the use, storage and exchange of institutional/personal keys. Be proficient in the use of door and key control. Report damaged or lost keys. 				
Job Element #6: Tool Control		2		
<ul style="list-style-type: none"> Have a proficient knowledge of the tool control A.R. and I.P. Report any lost or damaged tools. 				

00701

JA 0970

Employee Evaluation & Development Report – Page 3

Employee Name: (Last)	NAVARRETE	(First)	JOSE	(Initial)	
Employee ID #: 41181					

Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A).	(A) Rating	(B) Weighted Value	(C) Weighted Rating
Job Element #7: Vehicles <ul style="list-style-type: none"> Operate vehicles in a safe, legal and proficient manner. Maintain travel logs. Provide vehicle maintenance. 	2		
Job Element #8: Count <ul style="list-style-type: none"> Oversee and conduct all institutional counts. Oversee and conduct negative counts, ensuring accurate completion. Oversee and conduct picture counts and emergency counts. 	2		
Job Element #9: Appearance <ul style="list-style-type: none"> Maintain uniform and appearance to standard. 	2		
Job Element #10: Work Ethic <ul style="list-style-type: none"> Ability to prioritize tasks, estimate time frames, meet deadlines, plan and use available resources and coordinate work assignments with others. 	2		
Job Element #11: Customer Service and Communication <ul style="list-style-type: none"> Provide quality and quantity of information and service to co-workers and external customers. Answer telephones; greet customers; answer general questions; refer callers/visitors to appropriate personnel. Maintain and project an approachable, open-minded attitude and respect confidentiality to ensure open, two-way communication. 	2		
Job Element #12: Safety <ul style="list-style-type: none"> Observe safe practices at all times. Observe terms of safety of self, others, and care of Department property, equipment, and vehicles. Follow Department accident reporting procedures. 	2		
Job Element #13: Professionalism <ul style="list-style-type: none"> Display a professional demeanor at all times when interacting with staff and inmates. Be courteous and considerate. Avoid critical and argumentative statements. Observe the Chain-of-Command in all interactions and correspondence. Cooperate with and maintain a good relationship with operations and program staff. 	2		
Overall Rating (Scale: 1 to 1.50 = DMS; 1.51 to 2.50 = MS; 2.51 to 3 = ES) <i>(A "does not meet standards" rating may affect adjustments based on merit (NAC 284.194) and longevity pay (NAC 284.270). Another evaluation must be completed within 90 days (NRS 284.340).</i>	2		

Supervisor's Comments: *(A "does not meet standards" rating for any job element must include a detailed explanation of the deficiencies.)*
 Officer Navarrete has been with the Nevada Dept of Corrections since May 5, 2008. He is currently assigned to the Unit 8 and S&E relief position. He has been relied upon to work as acting Shift Sgt on several occasions and has performed quite well. His work ethic has improved and he maintains a professional attitude and uniform.

00702

JA 0971

Employee Evaluation & Development Report – Page 4

Employee Name: (Last)	NAVARRETE	(First)	JOSE	(Initial)	
Employee ID #: 41181					

Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A).	(A) Rating	(B) Weighted Value	(C) Weighted Rating
16. Development Plan & Suggestions: <i>(The supervisor will address how the employee can enhance performance and achieve standards; indicates recommendation for further development and training. This section should be discussed with the employee.)</i> Senior Officer Navarrete is encouraged to seek out training. He should review and read departmental A.R.'s and O.P.'s; He will be attending Peace Officers Standards and Training Category III refresher this year.			
17. Merit Award Program: <i>(Provide information to employee relating to the Merit Award Program established in NRS 285.020.)</i> Please check method(s) used: <input type="checkbox"/> Employee Handbook <input checked="" type="checkbox"/> State Human Resource website: <input type="checkbox"/> Other (List details) _____ http://hr.nv.gov/			

Distribution: Original to Division of Human Resource Management; Copy to Agency; Copy to Employee NPD-15
Rev. [7/13]

Petitioner's EXHIBIT # 7

Agency Use Only

Central Records Use Only



STATE OF NEVADA EMPLOYEE APPRAISAL & DEVELOPMENT REPORT

1. Employee Name: Last <u>NAVARRETE</u> First <u>JOSE</u> Initial <u></u>	
2. Class Title: <u>Senior Correctional Officer (13.312)</u>	3. Employee ID #: <u>41181</u>
4. Dept/Div/Section: <u>Corrections/SDCC/Custody</u>	5. Date Evaluation Due: <u>03/11/2016</u>
6. Agency # (3 digits): <u>440</u> Home Org # (4 digits): <u>3738</u> Position Control #: <u>767</u>	7. Date Next Evaluation Due: <u>03/11/2017</u>
8. Probationary/Trial Period (check one) 6 month Probation/Trial: <input type="checkbox"/> 2 nd month <input type="checkbox"/> 5 th month <input type="checkbox"/> Other 12 month Probation/Trial: <input type="checkbox"/> 3 rd month <input type="checkbox"/> 7 th month <input type="checkbox"/> 11 th month <input type="checkbox"/> Other OR Permanent (check one): <input checked="" type="checkbox"/> Annual <input type="checkbox"/> Other	
9. Work Performance Standards: <input checked="" type="checkbox"/> are an accurate reflection of the position <input type="checkbox"/> will be revised to reflect changes	
10. Overall Rating from Page 2, Number 14 (check one): <input type="checkbox"/> Does Not Meet Standards* <input checked="" type="checkbox"/> Meets Standards <input type="checkbox"/> Exceeds Standards * If a rating of "Does Not Meet Standards" is given, another evaluation must be completed within 90 days. The rating may affect adjustments in salary based on merit (NAC 284.194) and longevity pay (NAC 284.270).	
Rater's Printed Name: <u>Lt R Jaeger</u>	
Rater's Signature & Title: <u>[Signature]</u>	Date: <u>03/02/16</u> (mm/dd/yy)
11. Additional Supervisory Review (optional): <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree (Comment Required)	
Printed Name: <u>AWO Minor Adams</u>	
Signature and Title: <u>[Signature]</u>	Date: <u>4 March 16</u> (mm/dd/yy)
12a. Date employee received evaluation document: <u>3/2/16</u> Employee's Initials: <u>[Initials]</u> (Does not indicate agreement or disagreement)	
b. Employee Response: NAC 284.470 requires that you complete the section below and sign the report on performance within 10 working days after discussion with your supervisor. <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree <input type="checkbox"/> Request Review* (If you disagree with the report and request a review, you must specify the points of disagreement below or attached.)	
c. Employee Signature: <u>[Signature]</u> Date evaluation returned to supervisor: <u>3/2/16</u>	
13. Appointing Authority Review: <input checked="" type="checkbox"/> Agree <input type="checkbox"/> Disagree (Comment Required)	
Appointing Authority's Printed Name: <u>Warden Brian E. Williams, Sr.</u>	
Appointing Authority Signature & Title: <u>[Signature]</u>	Date: <u>4.7.16</u> (mm/dd/yy)

* Note - Reviewing Officer uses form NPD-15R to respond to employee's request for review as outlined in NAC 284.470

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Employee Evaluation & Development Report - Page 2

Employee Name: (Last)	NAVARRETE	(First)	JOSE	(Initial)	
Employee ID #: 41181					

Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A). Please note that whole number ratings are used, not fractions, to rate individual job elements.	(A) Rating	(B) Weighted Value	(C) Weighted Rating
Job Element #1: Custodial Responsibilities <ul style="list-style-type: none"> Comply with Administrative Regulations and DOC procedures for control on inmate activities. Assure proper supervision of inmates. Ensure safety for staff and inmate population. Supervise inmate population during meals. Maintain alertness/awareness of problems with the security of the institution. Enforce inmate discipline. Supervise inmate work assignments. Conduct institutional searches for contraband. Know emergency procedures and evacuation plans. Counsel inmates concerning attitude and conduct. Supervise proper inmate dress code. Supervise inmate participation in recreational activities. Maintain proper procedures for the mechanical operation of equipment. Submit written documentation of any deficiencies. Supervise inmate use of authorized personal and DOC property. 	2		
Job Element #2: Training <ul style="list-style-type: none"> Serves as lead worker for subordinate officers and provides on the job training to subordinate officers on duties of assigned areas. 	2		
Job Element #3: Legal Responsibilities <ul style="list-style-type: none"> Fill out and maintain log books, i.e., Shower, Yard, etc. Process legal mail. Report and document all violations. Recommend any ideas on improving institutional procedures. Direct correspondence to immediate supervisor. 	2		
Job Element #4: Security Equipment <ul style="list-style-type: none"> Maintain proficient in the use of firearms. Maintain equipment for use in emergencies. Report any deficiencies noted. Proficient in the use, care and maintenance of security equipment, i.e., radios, telephones, etc. Proficient in the use of control equipment, i.e., Tasers, Chemical agents and their application. 	2		
Job Element #5: Key Control <ul style="list-style-type: none"> Have proficient knowledge of A.R.'s, I.P.'s and department policies and procedures concerning key control. Be proficient in the use, storage and exchange of institutional/personal keys. Be proficient in the use of door and key control. Report damaged or lost keys. 	2		

Employee Evaluation & Development Report – Page 3

Employee Name: (Last)	NAVARRETE	(First)	JOSE	(Initial)	
Employee ID #: 41181					

Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A). Please note that whole number ratings are used, not fractions, to rate individual job elements.		(A) Rating	(B) Weighted Value	(C) Weighted Rating
Job Element #6: Tool Control <ul style="list-style-type: none"> Have a proficient knowledge of the tool control A.R. and I.P. Report any lost or damaged tools. 		2		
Job Element #7: Vehicles <ul style="list-style-type: none"> Operate vehicles in a safe, legal and proficient manner. Maintain travel logs. Provide vehicle maintenance. 		2		
Job Element #8: Count <ul style="list-style-type: none"> Oversee and conduct all institutional counts. Oversee and conduct negative counts, ensuring accurate completion. Oversee and conduct picture counts and emergency counts. 		2		
Job Element #9: Appearance <ul style="list-style-type: none"> Maintain uniform and appearance to standard. 		2		
Job Element #10: Work Ethic <ul style="list-style-type: none"> Ability to prioritize tasks, estimate time frames, meet deadlines, plan and use available resources and coordinate work assignments with others. 		2		
Job Element #11: Customer Service and Communication <ul style="list-style-type: none"> Provide quality and quantity of information and service to co-workers and external customers. Answer telephones; greet customers; answer general questions; refer callers/visitors to appropriate personnel. Maintain and project an approachable, open-minded attitude and respect confidentiality to ensure open, two-way communication. 		2		
Job Element #12: Safety <ul style="list-style-type: none"> Observe safe practices at all times. Observe terms of safety of self, others, and care of Department property, equipment, and vehicles. Follow Department accident reporting procedures. 		2		
Job Element #13: Professionalism <ul style="list-style-type: none"> Display a professional demeanor at all times when interacting with staff and inmates. Be courteous and considerate. Avoid critical and argumentative statements. Observe the Chain-of-Command in all interactions and correspondence. Cooperate with and maintain a good relationship with operations and program staff. 		2		

Employee Evaluation & Development Report – Page 4

Employee Name: (Last)	NAVARRETE	(First)	JOSE	(Initial)	
Employee ID #: 41181					

Job Elements (Transfer from Employee Work Performance Standards form and provide a numerical rating of 1 = DMS; 2 = MS; or 3 = ES for each job element in column (A). Please note that whole number ratings are used, not fractions, to rate individual job elements.	(A) Rating	(B) Weighted Value	(C) Weighted Rating
Overall Rating (Scale: 1 to 1.50 = DMS; 1.51 to 2.50 = MS; 2.51 to 3 = ES) (A "does not meet standards" rating may affect adjustments based on merit (NAC 284.194). Another evaluation must be completed within 90 days. (NRS 284.340).	2		
15. Rater's Comments: (A "does not meet standards" rating for any job element must include a detailed explanation of the deficiencies.) Senior Officer Navarrete has been with the Nevada Dept of Corrections since May 5, 2008. He is currently assigned to the S&E A position. He is relied upon to organize and ensure completion of inmate roll-ups, inmate ID cards, and random zone searches. He also assists in training of staff new to the shift. His work ethic is continually improving and he maintains a professional attitude and uniform.			
16. Development Plan & Suggestions: (The supervisor will address how the employee can enhance performance and achieve standards; indicates recommendation for further development and training. This section should be discussed with the employee.) Senior Officer Navarrete is encouraged to seek out training. He should review and read departmental A.R.'s and O.P.'s. He will be attending Peace Officers Standards and Training Category III refresher this year.			
17. Merit Award Program: (Provide information to employee relating to the Merit Award Program established in NRS 285.020.) Please check method(s) used: <input type="checkbox"/> Employee Handbook <input checked="" type="checkbox"/> State Human Resource website: http://hr.nv.gov/ <input type="checkbox"/> Other (List details) _____			

Distribution: Original to Division of Human Resource Management; Copy to Agency; Copy to Employee

NPD-15
Rev. [11/15]

Periton EXPERT # 8

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AVANTE-Ex. 8

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Permitted EXHIBIT # 9



Penetration EXHIBIT # 10



FILED

BEFORE THE NEVADA STATE PERSONNEL COMMISSION
HEARING OFFICER

MAR 26 2019

APPEALS OFFICE

JOSE NAVARRETE,

Petitioner-Employee,

vs.

NEVADA DEPARTMENT OF
CORRECTIONS,

Respondent-Employer.

Appeal No.: 1713379-MG

NEVADA DEPARTMENT OF
CORRECTIONS'
PRE-HEARING STATEMENT

Respondent-Employer, Nevada Department of Corrections (NDOC), by and through its counsel, Aaron D. Ford, Attorney General for the State of Nevada, and Michelle Di Silvestro Alanis, Deputy Attorney General, hereby offers Respondent-Employer, NDOC's Pre-Hearing Statement in the above-referenced matter pursuant to the Nevada Personnel Commission Hearing Officer Rules of Procedure.

NDOC believes the evidence presented at hearing in this matter will clearly demonstrate that it properly terminated Petitioner-Employee, NDOC Correctional Officer, Jose Navarrete (Employee). This Hearing Officer has jurisdiction over the instant matter pursuant to NRS 284.390 through 284.405, inclusive; NAC 284.650; and NAC 284.774 through 284.818, inclusive.

I. INTRODUCTION AND STATEMENT OF ADMITTED OR UNDISPUTED FACTS

Employee started his employment with NDOC in May 2008. At the time of his dismissal from State service, Employee was a Senior Correctional Officer with NDOC assigned to Southern Desert Correctional Center (SDCC). Employee was dismissed from State service effective April 21, 2017.

The incident, which gave rise to Employee's dismissal, occurred on October 9, 2016, involving Employee, correctional officer Paul Valdez and inmate Rickie Norelus. During breakfast service at SDCC, the officers were randomly searching inmates leaving culinary for contraband. Employee was present during this time. The standard process is to have an inmate place his hands on the wall, while the officer conducts a brief pat down search. Once it is determined the inmate does not have any contraband on him, the inmate is released back to his housing unit. This process takes mere seconds.

There is a video camera placed outside of the entrance to the culinary building, and the incident

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Page 1 of 13

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on October 9 was recorded. This recording demonstrates that six inmates were placed on the wall leaving the culinary building. One at a time, Employee conducted a brief pat down search of four of these inmates, Valdez searched one, and then each of those inmates was released. One particular inmate, Rickie Norelus, was searched, no contraband appeared to have been found on him, and yet, that inmate was required to stand facing the wall, with his arms above his head for over ten minutes. During those ten minutes, Valdez is seen standing behind the inmate, talking to him, while Navarrete walks around, and leans casually against the wall, even turning his back to the inmate. Valdez's body language becomes increasingly agitated and aggressive throughout those ten minutes.

Just under 11 minutes into the video, Valdez comes up behind the inmate, pushes up against him, then puts his right arm around the inmate's neck, and wrestles him to the ground. This take down is not any methodology taught by NDOC. It was only after Valdez wrestled the inmate to the ground that he made any attempt to reach for his handcuffs. There was nothing to indicate that the spontaneous use of force was warranted or required. Following the incident, Employee prepared a report that is not substantiated by the conduct in the video.

On March 16, 2017, Employee was served with a Specificity of Charges (SOC) which recommended Employee's termination for the following violations:

NAC 284.650 Causes for disciplinary action (NRS 284.065, 284.155, 284.383). Appropriate disciplinary or corrective action may be taken for the following causes:

NAC 284.650(1) Activity which is incompatible with an employee's conditions of employment established by law or which violates a provision of NAC 284.653 or 284.738 to 284.771, inclusive.

NAC 284.650(10) Dishonesty.

NAC 284.650(21) Any act of violence which arises out of or in the course of the performance of the employee's duties, including without limitation, stalking, conduct that is threatening or intimidating, assault, or battery.

**Nevada Department of Corrections Administrative Regulations
AR 339.07 CLASS OF OFFENSE GUIDELINES**

AR 339.07.9 FALSE OR MISLEADING STATEMENTS

A. Knowingly providing false or misleading statements, including omissions, either verbally or in written reports or other documents, concerning actions related to the performance of official duties. Or knowingly providing false or misleading statements, including omissions,

in response to any question or request for information in any official investigation interview, hearing, or judicial proceeding. CLASS 5

AR 339.07.17 UNAUTHORIZED USE OF FORCE

A. Willfully employing or permitting the use of unnecessary, unauthorized, or excessive force. CLASS 4-5

A Pre-Disciplinary Hearing took place on April 17, 2017. Perry Russell, then Associate Warden of High Desert State Prison served as the Pre-Disciplinary Officer. At the Pre-Disciplinary Hearing the Employee presented his side of the events and any mitigating factors. After reviewing the SOC and hearing from Employee, the Pre-Disciplinary Hearing Officer concurred with the recommended discipline of a dismissal from State service. The Pre-Disciplinary Hearing Officer stated that it would be in the best interest of the State for Employee to be dismissed because he allowed excessive force and wrote a report that did not accurately depict what occurred.

On April 19, 2017, Director James Dzurenda notified Employee of NDOC's decision to terminate his employment effective April 21, 2017. Employee appealed his discipline on May 8, 2017.

II. CONCISE STATEMENT OF THE CLAIMED FACTS SUPPORTING THE PARTY'S CLAIMS OR DEFENSES.

For no apparent or justified reason, Valdez required inmate Norelus to stand with his hands on the wall above his head for ten minutes. During those ten minutes, inmate Norelus remains on the wall, while Valdez paces directly behind him, and Employee appears unconcerned, as he leans casually against the wall near the inmate. Employee does not intervene and release the inmate. After those ten minutes, Valdez engaged in an unauthorized use of force, taking the inmate to the ground. There is no evidence of any serious threat to the safety of the staff, public, inmates, or security of the prison. There is no evidence that the inmate was making physical threats towards Employee or Valdez. In fact, the inmate's hands were on the wall when Valdez pulled him from the wall. Employee as a senior officer and lead search and escort officer did nothing to intervene in this incident.

Thereafter, Employee made materially false statements in his report when he stated that the inmate "came off the Culinary wall while C/O Valdez was attempting to restrain him resulting in a spontaneous use of force." Nothing in the video demonstrates that the inmate came off the wall, until Valdez pulled him off the wall. Additionally, nothing in the video demonstrates that Valdez was attempting to restrain

1 the inmate until after he was on the ground.

2 It is important to note that inmate Norelus is only 5'6, weighing no more than 150 pounds, did
3 not come off the wall, and posed no physical threat to Employee or Valdez at the time of the incident.

4 At no time leading up to this altercation did the inmate come off the wall, or make any physical
5 acts of aggression towards Valdez or Employee. This was an entirely unprovoked and unnecessary use
6 of excessive force on an inmate.

7 Even worse, Employee's incident report falsely reported that the spontaneous use of force was
8 required because of the inmate's actions. Accordingly, dismissal from State service was required.

9 **III. STATEMENT OF ISSUES OF LAW AND LEGAL ARGUMENT**

10 **A. NDOC has Statutory Authority to Terminate Employee**

11 The Nevada legislature delegated the authority to run State agencies under the Executive Branch
12 to the department heads of those agencies as they deem appropriate. NRS 284.020(2) provides that the
13 provisions of Chapter 284 of the Nevada Revised Statutes, which address the State personnel system,
14 "does not limit the authority of elected officers and heads of departments to conduct and manage the
15 affairs of their departments as they see fit." NRS 284.020(2). This statute is to be given its plain meaning.
16 *See Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 545, 2 P.3d 850, 852 (2000) (*quoting Alsenz v.*
17 *Clark Cnty. Sch. Dist.*, 109 Nev. 1062, 1065, 864 P.2d 285, 286 (1993)). Accordingly, the State
18 Legislature determined that it was most appropriate to defer to department heads regarding the
19 management and conduct of the operations of the Executive Branch.

20 Upon this deferential legal foundation, the State Legislature established a statutory scheme for the
21 executive branch to manage its personnel matters including the administering of discipline to permanent
22 classified State employees in Chapter 284 of the Nevada Revised Statutes. *See* NRS 284.383. Under NRS
23 284.383, the Personnel Commission has authority to adopt by regulation a system for administering
24 appropriate discipline of a State employee. The system adopted by the Personnel Commission provides
25 that in cases of serious violations of law or regulations, severe measures may be applied, without first
26 imposing progressive discipline. *See id.*

27 NAC 284.646(1) provides:

- 28 1. An appointing authority may **dismiss** an employee for **any cause** set
forth in NAC 284.650 if:

- 1 (a) The agency with which the employee is employed has adopted
2 any rules or policies which authorize the dismissal of an
3 employee for such a cause; or
4 (b) The seriousness of the offense or condition warrants such
5 dismissal. (emphasis added).

6 Here, NDOC properly dismissed Employee pursuant to NAC 284.646(1). First, its own
7 Administrative Regulation, AR 339, allows for dismissal when an employee engages in false and/or
8 misleading statements and for allowing or engaging in unauthorized or excessive force. Second,
9 Employee's commission of serious offenses under NAC 284.650, i.e. acts incompatible with the
10 conditions of employment, dishonesty and any act of violence which arises out of in the course of the
11 performance of the employee's duties allows for Employee's dismissal. Accordingly, NDOC is statutorily
12 permitted to terminate an Employee who commits a serious act of misconduct.

13 **B. *O'Keefe v. DMV* mandates that the hearing officer defer to NDOC**

14 The Supreme Court recently clarified the appropriate role of a hearing officer. In *O'Keefe v. Dep't.*
15 *of Motor Vehicles*, the Supreme Court established the correct three-part test hearing officers should apply
16 when evaluating a termination appeal. 134 Nev. Adv. Op. 92, ___ P.3d ___ (Dec. 6, 2018). **First**, the
17 hearing officer reviews de novo whether the employee in fact committed the alleged violation. *O'Keefe*
18 *at* *12. The hearing officer applies a substantial evidence standard when determining if a violation
19 occurred. *See id.* at *9 (explaining the reasonableness standard is the substantial evidence standard of
20 review); *id.* at *10 (noting a discharge for just cause is one that is supported by substantial evidence); *id.*
21 *at* * 13 (noting that substantial evidence supported the appointing authority's decision). **Second**, the
22 hearing officer determines if the violation is serious enough to support termination as a first-time
23 disciplinary action. NRS 284.383(1). "If the agency's published regulations prescribe termination as an
24 appropriate level of discipline for a first-time offense, then that violation is necessarily 'serious' as a
25 matter of law." *O'Keefe* at 134 Nev. *12-13. **Third**, "the hearing officer applies a deferential standard of
26 review to the agency's determination that termination will serve 'the good of the public service.'" *Id.* at
27 *13. The appointing authority must merely demonstrate a "rational connection between the facts found
28 and the choice made[.]" *Id.* at *13 (internal citation omitted). This constitutes the just cause analysis.

1 **1. Substantial evidence demonstrates Employee allowed the unauthorized use of**
2 **force and made false statements**

3 The hearing officer should uphold NDOC's termination because substantial evidence
4 demonstrates Employee allowed the unauthorized use of force and made false and/or misleading
5 statements in his report. NDOC may terminate an Employee for a single incident of unauthorized use of
6 force and/or making a single false statement. Here, Employee engaged in unauthorized use of force **and**
7 made a misleading or false statements. Substantial evidence has been defined as that which "a reasonable
8 mind might accept as adequate to support a conclusion," *State, Emp. Sec. Dep't v. Hilton Hotels*, 102
9 Nev. 606, 608, 792 P.2d 497, 498 (1986), citing *Richardson v. Perales*, 402 U.S. 389 (1971).

10 **2. Employee's violation is serious as a matter of law**

11 Employee's unauthorized use of force and false and/or misleading statements are serious
12 violations that warrant termination. Like in *O'Keefe*, Employee violated an administrative regulation that
13 recommends only termination (false and/or misleading statements) and an administrative regulation that
14 recommends a maximum of termination (unauthorized use of force). NDOC's Administrative Regulation
15 (A.R.) 339 establishes the Employee Code of Conduct and lists the chart of corrective/disciplinary
16 sanctions that can be imposed if an employee violates the code. Here, Employee was charged with
17 violating AR 339.07.9 (a) which prohibits "knowingly providing false or misleading statements,
18 including omissions, either verbally or in written reports or other documents, concerning actions related
19 to the performance of official duties." The AR states this is a class 5 offense. Employee also was charged
20 with violating AR 339.07.17 (a) which prohibits "willfully employing or permitting the use of
21 unnecessary, unauthorized or excessive force." The AR states this is a class 4-5 offense. Pursuant to the
22 disciplinary matrix, termination is warranted for a first-disciplinary offense on a class 5 violation and a
23 class 4 violation.

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27 ///

28 ///

	First Offense		Second Offense		Third Offense	
Class	Minimum	Maximum	Minimum	Maximum	Minimum	Maximum
1	Verbal Counseling	Written Reprimand	Written Reprimand	Suspension	Suspension	Dismissal
2	Written Reprimand	Suspension	Suspension	Suspension Demotion	Suspension Demotion	Dismissal
3	Suspension	Suspension Demotion	Suspension Demotion	Dismissal	Dismissal	N/A
4	Suspension Demotion	Dismissal	Suspension Demotion	Dismissal	Dismissal	N/A
5	Dismissal	Dismissal				

Pursuant to *O'Keefe*, Employee's violation is serious as a matter of law. *See O'Keefe* at *12-13 (noting if an agency's published prohibitions recommend termination then it is a serious violation as a matter of law). NDOC may therefore terminate Employee for this offense without employing progressive discipline. In fact, in both *O'Keefe* and its sister case, *Office of the Military v. Simpson*, the Supreme Court reversed hearing officers who concluded that while a violation occurred, termination was too harsh of a penalty. *See id* at *13-14; *Office of the Military v. Simpson*, No 72618, *8-9 (noting the hearing officer erred by concluding termination was unreasonable).

Furthermore, employee's conduct jeopardized the safety and security of the prison and the testimony at the hearing will support that this was a serious violation. The "critical need to maintain a high level of security within the prison system entitles the appointing authority's decision to deference by the hearing officer whenever security concerns are implicated." *Dredge v. State ex. rel. Dep't of Prisons*, 105 Nev. 39, 42, 769 P.2d 56, 58; *See* NAC 284.650(3). Therefore, the hearing officer should uphold the termination as the violation is a serious matter of law.

It is anticipated that Employee will argue NDOC cannot rely upon its ARs because the Board of Prison Commissioners approved them and not the Personnel Commission. This is incorrect. **First**, NAC 284.646(1)(a) expressly authorizes agency prohibitions that terminate employees for engaging in dishonesty. **Second**, the Nevada Constitution and Nevada Legislature have both delegated the

1 administration of NDOC to the constitutionally created Board of Prison Commissioners.

2 NAC 284.646(1)(a) states an appointing authority may dismiss an employee for any cause set
3 forth in NAC 284.650 if “the agency with which the employee is employed has adopted any rules or
4 policies which authorize the dismissal of an employee for such a cause[.]” NAC 284.650(10) lists
5 dishonesty as an act that allows for disciplinary action. Pursuant to NAC 284.646(1)(a), NDOC adopted
6 a rule (AR 339.07.9(a)) that authorizes dismissal for an employee for engaging in dishonesty.
7 Accordingly, NDOC’s AR is supported by NAC 284.646(1)(a). NAC 284.646(1)(a) and NAC
8 284.650(10) further reinforce that dishonesty by a peace officer is a serious violation as a matter of law.

9 Even without NAC 284.646(1)(a), NDOC’s A.R.s can serve as an independent basis for
10 termination. The Board heads NDOC and the governor serves as its president. NRS 209.101(2),(3). Per
11 the Nevada Constitution, the Board consists of the Governor, Secretary of State, and Attorney General.
12 NEV. CONST. art. 5, § 21; *see also* NRS 209.101. Further, the Nevada Constitution states that the Board
13 “shall have supervision of **all** matters connected” with Nevada’s prisons, as provided by law. *Id.*
14 (emphasis added). “Prison regulations are promulgated by the Board of State Prison Commissioners,
15 pursuant to authority granted in NRS 209.111(3).” *Michenfelder v. Sumner*, 624 F. Supp. 457, 463 (D.
16 Nev. 1985) *aff’d*, 860 F.2d 328 (9th Cir. 1988). NRS 209.111(3) states that the Board shall, “[p]rescribe
17 regulations for carrying on the business of the Board and the Department.” NRS 209.131(1) further
18 confirms that the Board is responsible for regulating NDOC as it instructs NDOC’s director to
19 “[a]dminister the Department under the direction of the Board.” NRS 209.131 further states that NDOC’s
20 Director shall “[e]stablish regulations with the approval of the Board and enforce all laws governing the
21 administration of the Department and the custody, care and training of offenders.” The Board, pursuant
22 to its constitutional and statutory authority, approved AR 339. Thus, it is a valid and lawful administrative
23 regulation. *See United States v. Short*, 240 F.2d 292, 298 (9th Cir. 1956) (“An administrative regulation
24 promulgated within the authority granted by statute has the force of law and will be given full effects by
25 the courts.”).¹

26 NRS 209.131 clearly provides that the Director **shall** administer the department under the
27 direction of the Board. This includes establishing regulations, with the approval of the Board. NRS
28

¹ Additionally, the NDOC is “entirely exempted from the requirements of” the Nevada Administrative Procedure Act, which is codified in NRS 233B. *See* NRS 233B.039(1)(b).

209.131(6). Further, the Nevada Court of Appeals previously stated, “NRS chapter 209 plainly gives the NDOC director and the Board of State Prison Commissioners the authority to create and implement regulations with respect to the management of the prisons.” *Corzine v. State, Dep. Of Corrections*, No. 68086, WL 5517030, *2 (Nev. Ct. App. 2015). Additionally, the legislative intent regarding NRS 209.131 clearly demonstrates that the Legislature intended for the Board to retain control over NDOC. *See State v. Lucero*, 127 Nev. 92, 96, 249 P.3d 1226, 1228 (2011) (Legislative intent is the controlling factor when interpreting a statute). Specifically, the legislative summary of Senate Bill 116, which in 1977 created NRS 209.131, states “[t]he prison system is **still** under the control of the constitutional board of prison commissioners composed of the governor, secretary of state, and attorney general.” (Exhibit G.) Further, as is clear from the Board’s website, it derives its authority to create regulations from NRS 209.111 and NRS 209.131. (Exhibit H). Furthermore, the website reveals that a substantial portion of the Board’s work is directed at reviewing proposed administrative regulations. (Exhibit H). Accordingly, it is clear that the Nevada Constitution and Nevada Legislature intend for the Board to promulgate NDOC’s ARs.

3. The Hearing Officer must defer to NDOC’s disciplinary decision

In *State of Nev. Office of the Military v. Simpson*, the Supreme Court, sitting en banc, found that the employer “is in a better position than the hearing officer to determine what is best for the public service.” No. 72618, 2018 WL 6617971 at *9 (Dec. 2018). Further, in *O’Keefe*, the Supreme Court overruled all prior case law that suggested “that the hearing officer decides de novo whether the employee’s termination serves the ‘good of the public service.’” *O’Keefe* at *12. “The inquiry is not what the hearing officer believes to be the good of the public service, but whether it was reasonable for the agency to ‘consider [] that the good of the public service w[ould] be served by’ termination. *Id.* at *13. The appointing authority need only articulate “a rational connection between the facts found and the choice made[.]” *Id.* quoting *Port of Jacksonville Mar. Ad Hoc Comm., Inc. v. U.S. Coast Guard*, 788 F.2d 705, 708 (11th Cir. 1986).

Here, NDOC can easily articulate a rational basis for terminating Employee. **First**, Employee committed a class 5 offense and thus the A.R.s recommend only termination. **Second**, Employee’s false statement was an attempt to avoid consequences for allowing this unauthorized and excessive use of force. The video of the incident does not substantiate the written report submitted by Employee. The video does not demonstrate that the inmate came off the wall while Valdez was restraining him. **Third**,

1 Nevada Courts have previously recognized that honesty is fundamental to a law enforcement officer's
2 ability to effectively perform his or her job. *See Bisch v. Las Vegas Metro. Police Dep't.*, 129 Nev. Adv.
3 Op. 36, 302 P.3d 1108, 1115 (2013) ("A police officer's job is to uphold the law, and the act of
4
5 lying...could plausibly bear directly upon [his or her] fitness to be an officer"), *Dutchover v. State, Dep't*
6 *of Pub. Safety*, No. 61491, 2014 WL 2938414, at *2 (Nev. June 25, 2014). **Fourth**, correction officers
7 are often expected to testify in criminal proceedings and NDOC would be forced to reveal that CO
8 Navarrete has been charged with false and misleading statements. *See Mike v. Ryan*, 711 F.3d 998 (9th
9 Cir. 2013) (noting prosecutors committed a *Brady* violation by not revealing that the investigating officer
10 had lied during the course of his official duties in a prior matter). **Fifth**, there was no evidence that the
11 inmate was displaying physical threats towards staff, other inmates, the public or endangering the safety
12 of the prison. **Sixth**, the testimony will support that Employee and Valdez's action were not in accordance
13 with NDOC policy. Accordingly, NDOC has a reasonable basis to recommend termination.

14 **IV. CONCLUSION**

15 The hearing officer should uphold NDOC's termination decision. Substantial evidence
16 demonstrates that Employee engaged in the unauthorized use of force and made a false and/or misleading
17 statement when reporting the spontaneous use of force. Further, both allowing unauthorized use of force
18 and making a false statement are serious offenses as a matter of law and thus progressive discipline need
19 not apply. Finally, NDOC has a rational basis for terminating Employee based on his conduct.

20 **V. LIST OF EXHIBITS**

- 21 A. Investigative File for IA-2016-145 including audio interview and video of October 9, 2016
- 22 from SDCC Culinary
- 23 B. April 19, 2017, Letter from Director James Dzurenda regarding termination with enclosed
- 24 Pre-disciplinary Hearing Report
- 25 C. March 16, 2017, Specificity of Charges with exhibits
- 26 D. AR 405
- 27 E. Administrative Regulations Acknowledgment signed by Employee
- 28 F. Work Performance Standards signed by Employee
- G. S.B. 116

1 H. Board of Prison Commissioners' Agenda

2 NDOC reserves the right to list or present additional documents at the hearing including for
3 impeachment or rebuttal purposes. NDOC reserves the right to utilize any and all exhibits disclosed by
4 Employee. NDOC reserves the right to supplement this list.

5 **VI. LIST OF WITNESSES**

- 6 1. Jerry Howell, Warden, Southern Desert Correctional Center, c/o Michelle D. Alanis,
7 Nevada Office of the Attorney General, 555 E. Washington Avenue, Suite 3900, Las
8 Vegas, Nevada 89101, will testify as to the facts and circumstances of this matter.
- 9 2. Perry Russell, Warden, Warm Springs Correction Center, c/o Michelle D. Alanis, Nevada
10 Office of the Attorney General, 555 E. Washington Avenue, Suite 3900, Las Vegas,
11 Nevada 89101, will testify as to the facts and circumstances of this matter.
- 12 3. David Wachter, Correction Officer, Southern Desert Correctional Center, c/o Michelle D.
13 Alanis, Nevada Office of the Attorney General, 555 E. Washington Avenue, Suite 3900,
14 Las Vegas, Nevada 89101, will testify as to the facts and circumstances of this matter.
- 15 4. Dean Willett, Correctional Officer, Southern Desert Correctional Center, c/o Michelle D.
16 Alanis, Nevada Office of the Attorney General, 555 E. Washington Avenue, Suite 3900,
17 Las Vegas, Nevada 89101, will testify as to the facts and circumstances of this matter.
- 18 5. Rod Moore, Supervisory Criminal Investigator, Office of the Inspector General, c/o
19 Michelle Di Silvestro Alanis, Nevada Office of the Attorney General, 555 E. Washington
20 Avenue, Suite 3900, Las Vegas, Nevada 89101, will testify as to the facts and
21 circumstances of this matter.
- 22 6. Jo Gentry, former Warden for Southern Desert Correction Center, will testify as to the
23 facts and circumstances of this matter.
- 24 7. Minor Adams, former Associate Warden for Southern Desert Correction Center, will
25 testify as to the facts and circumstances of this matter.
- 26 8. David Molnar, former investigator for Inspector General's Office, will testify as to the
27 facts and circumstances of this matter.
- 28 9. Rickie Norelus, 11231 Accentare Court, Las Vegas, NV 89141 will testify as to the facts
and circumstances of this matter.

10. Jose Navarrete, Petitioner/Employee, c/o Daniel Marks, Law Office of Daniel Marks, 610 S. Ninth Street, Las Vegas, Nevada 89101, will testify as to the facts and circumstances of this matter.

11. All witnesses identified by Employee.

NDOC reserves the right to list and/or call additional witnesses including for impeachment or rebuttal purposes. Employee is to subpoena her own witnesses.

VII. CERTIFICATION REGARDING DISCOVERY

Employee requested that NDOC provide the complete investigatory file including the audio recordings of all interviews and video. NDOC has provided this information. There are no outstanding discovery matters.

DATED this 22nd day of March, 2019.

AARON D. FORD
ATTORNEY GENERAL

By: /s/ Michelle Di Silvestro Alanis
Michelle Di Silvestro Alanis (Bar No. 10024)
Deputy Attorney General
Attorneys for Respondent-Employer
Nevada Department of Corrections

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Mark Gentile
Appeals Officer
Department of Administration
2200 S. Rancho Dr. Ste. 200
Las Vegas, NV 89101
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Daniel Marks (Email and US Mail)
Law offices of Daniel Marks
610 S. 9th St.
Las Vegas, NV 89101
office@danielmarks.net
gguo@danielmarks.net

/s/ Anela Kaheaku
An employee of the Office of Attorney General

EXHIBIT A

EXHIBIT A

Respondent's EXHIBIT # A

Brian Sandoval
Governor



Patrick Cates
Director

Peter Long
Administrator

STATE OF NEVADA
DEPARTMENT OF ADMINISTRATION
Division of Human Resource Management

209 E. Musser Street, Suite 101 | Carson City, NV 89701
Phone: (775) 684-0150 | <http://hr.nv.gov>

MEMORANDUM

January 17, 2017

TO: James Dzurenda, Director
Department of Corrections

FROM: Peter Long, Administrator *Peter Long*
Division of Human Resource Management

RE: 60-day Extension Request – Jose Navarrete

In response to your request for a 60-day extension in order to complete the administrative investigation for Jose Navarrete, Senior Correctional Officer, your request has been granted.

Please be advised pursuant to NRS 284.387(2) any further extension requests regarding Jose Navarrete, Senior Correctional Officer can only be granted by the Governor's Office.

PL:cl

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JA 0998

This is a true and correct copy
of this document as contained
in the official records of the
Nevada Department of Corrections.

Date: 7/10/2017

Signature: *Teri J. Howell*

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JA 0999

AGENCY REQUEST TO EXTEND INTERNAL ADMINISTRATIVE INVESTIGATION

An investigation pursuant to NRS 284.385 must be investigated and the employee notified of the determination within 90 days after the employee is provided notice of the allegations on the *Notice of Employee Rights During an Internal Investigation* (NPD-32) form. This form must be used to request such an extension of not more than 60 days from the Administrator.

Subject of Internal Administrative Investigation	
Employee Name:	Jose Navarrete
Employee Title:	Senior Correctional Officer
Employee ID:	041181
Extension Request Information	
Date employee served Notice of Employee Rights During an Internal Investigation (NPD-32):	10/21/2016
Extension date requested (Please note a request for an extension must be submitted prior to exhaustion of the initial 90-day period):	01/13/2017
Please describe the cause for delay in notifying the employee of determination: The Specificity of Charges is currently under review at the Attorney General's office.	
Appointing Authority or Designee Information	
Agency or Department:	Nevada Department of Corrections
Name:	Sharlet Gabriel
Title:	Division Administrator Human Resources
Phone Number:	702-486-9944
Email:	sgabriel@doc.nv.gov

Please email request to:

Peter Long, Administrator
 Division of Human Resource Management
 c/o Carrie Lee
carrie.lee@admin.nv.gov
 Phone (775) 684-0131

cc: Employee or Employee Representative

This is a true and correct copy
of this document as contained
in the official records of the
Nevada Department of Corrections.

Date: 7/10/2017

Signature: [Handwritten Signature]

COPY

NDOC 0004

00732

JA 1001

Teri Witherell - HR Extensions

From: Katie Gutierrez
To: carrie.lee@admin.nv.gov; gemick@admin.nv.gov
Date: 1/13/2017 1:37 PM
Subject: HR Extensions
Cc: Teri Witherell; John Borrowman; James Dzurenda; Sharlet Gabriel
Attachments: [REDACTED] R-40 Navarrete_1.pdf; [REDACTED]

Hi Carrie,

May we have 60 day extensions on the following cases:

[REDACTED]

[REDACTED]

[REDACTED]

60 Day Extension Needed

Navarrete, Jose (IA-2016-0145-04), Senior Correctional Officer, SDCC, Unauthorized Use of Force
Original Due Date: 01/19/2017

[REDACTED]

Please see requests attached. Thank you and have a wonderful weekend!

Katie Gutierrez

Admin Assistant III to:
Sharlet Gabriel, HR Administrator
3955 W. Russell Rd.
Las Vegas, NV 89118
Phone (702) 486-9914
Fax (702) 486-9974