



MEMORANDUM

Austin Police Department
Office of the Chief of Police

TO: Susan Sinz, Director of Civil Service
FROM: Lisa Davis, Chief of Police
DATE: March 26, 2025
SUBJECT: Indefinite Suspension of Police Officer Joshua Lugo #9084
Internal Affairs Control Number 2024-0984

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have indefinitely suspended Police Officer Joshua Lugo #9084 from duty as a City of Austin, Texas police officer effective March 26, 2025.

I took this action because Officer Lugo violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Officer Lugo in violation of Rule 10:

I. September 28, 2024, Incident

On September 28, 2024, 9-1-1 received a call for service to a residence in New Braunfels, Texas. The complainant, identified as [REDACTED], reported to 9-1-1 that she had been involved in a

physical disturbance with her [REDACTED]. She stated in part "[M]e and my [REDACTED] - [REDACTED] [REDACTED]. And he put his hands on me and threw me down on the ground and threw a water bottle at my head...I just wanna leave. I'm just shaking..." [REDACTED] was later identified as off-duty Austin Police Department (APD) Officer Joshua Lugo (Ofc. Lugo).¹

New Braunfels Police Department (NBPD) Officers, Ofc. SL and Ofc. JM responded to the call. Once on scene (about 17:08), Ofc. SL contacted [REDACTED], who was outside a nearby neighbor's home, while Ofc. Lugo was inside the [REDACTED] home. Once Ofc. JM arrived on scene six minutes later (about 17:14), he went to the home to make contact with Ofc. Lugo, while Ofc. SL continued to speak to [REDACTED] (see below for her account of the events). When Ofc. JM went to speak with Ofc. Lugo, Ofc. JM instantly noticed Ofc. Lugo's badge and gun at the entryway of the home, prompting Ofc. Lugo to identify himself as an APD officer.

Ofc. SL entered the home shortly after Ofc. JM. As captured on NBPD Body Worn Camera (BWC) footage Ofc. Lugo ultimately stated to Ofc. JM and Ofc. SL that he and [REDACTED] [REDACTED], but still cohabitated with one another. He then explained that "I did cause the argument." Ofc. Lugo told NBPD Officers he called [REDACTED] names, to include a "shut." Ofc. Lugo also indicated that [REDACTED] insulted him. (Ofc. Lugo later recanted this assertion, amongst other assertions, when confronted with indisputable evidence, during his Internal Affairs (IA) interviews. That will be explained later in this memorandum.)

Ofc. Lugo explained that the argument continued from upstairs to "the laundry room." Ofc. Lugo then asserted that [REDACTED] pressed him during this argument as to whether he was going to use recordings that he had secretly taken of her in past months that hurt her position in their upcoming [REDACTED]. Ofc. Lugo stated these recordings "benefited" him because they showed she had credibility issues and, "she asked me, 'Are you still gonna use the - the videos in court?' And I was like, 'I'm - I probably am', 'cause we're [REDACTED]". Ofc. Lugo went onto say, "While we're arguing about [using the videos in court] right now when she finds out that - well when I tell her that I am she just starts, like, wailing on me." (Ofc. Lugo later recanted the assertion to IA that these "videos" were part of this particular verbal disturbance that immediately proceeded the physical disturbance. He recanted when confronted by indisputable evidence. That will be explained later in this memorandum.)

Ofc. Lugo then explained how [REDACTED] initiated physical contact with him and how he (Ofc. Lugo), "felt some slaps...in the face." Ofc. JM then pointed out fresh scratches and/or cuts to Ofc. Lugo's face. Ofc. Lugo then stated in an effort to get [REDACTED] off of him, he pushed her, "I did - I did put my hands on her. I pushed her 'cause she was, like, wailing on me and when I pushed her...She fell pretty - pretty hard from that push."

Ofc. Lugo said [REDACTED] got up, ran away, and picked up his off-duty handgun, which had been left on the entryway table and pointed it at him. He then elaborated that [REDACTED] verbally threatened to kill him as she pointed the handgun at him in the moment after the push and her fall. He indicated that [REDACTED] stated, "I'll fucking kill you." "And I was like, [REDACTED] what the

[REDACTED]

fuck are you doing?" (Ofc. Lugo also later recanted that [REDACTED] made these verbal threats once IA confronted him with indisputable evidence to the contrary. That will be explained later in this memorandum.)

Ofc. Lugo said [REDACTED] then placed the handgun back on the table where she retrieved it *"and starts yelling hysterically as she's running out."* When asked about the water bottle, Ofc. Lugo was unsure about it, but he was certain that he did not have, nor did he throw a water bottle. He said, *"The water bottle did bust but she was holding the water bottle. I don't know if she threw the water bottle at me or if she fell and - but I - I did push her after she - while she was wailing on me. And it just - it spilled all over the place here if you see...I don't remember the water bottle but - I didn't have a water bottle in my hand..."*

Later he said to NBPD, *"I - did push her. Yes, she did fall - and the fall was, like, she fell back. It was - a pretty good - and - I don't know if it was because of - the water was already there."*

Ofc. Lugo also elaborated to NBPD, *"while we were here [the hallway area], like, yeah I did get in her face 'cause we're going back and forth. We're saying some crazy shit to each other.... She said something, like, 'are you fucking headbutting me' or something? I'm, like, and I called - I said, 'No bitch.' What are you talking about? 'I'm not headbutting you. I got - I got in your face but I'm not headbutting you.'"*

In response to Ofc. Lugo saying he got in her face and called [REDACTED] a "bitch," Ofc. SL asked:

Ofc. SL: *Uh, and she made the comment about telling you to back up.*

J. Lugo: *Yeah.*

Ofc. SL: *Um, and using some choice words as well so - and that's when she told me that you threw her down - threw her down.*

J. Lugo: *Yeah the - but the reason why I threw her down is 'cause she's just going - I have the videos if you wanna see the videos where she's, like, plainly saying this.*

Ofc. Lugo again reasserted that [REDACTED] "wailed" on him immediately after he told her that he was going to use previous "videos" [REDACTED]. Ofc. Lugo also stated, while she was "wailing" on him, he said *"what the hell are you doing?"* (Similarly, once IA later confronted him with the truth, Ofc. Lugo recanted this assertion. That will be explained later in this memorandum.)

Ofc. SL then explained to Ofc. Lugo that [REDACTED] had a complaint of pain from the push and subsequent fall, which Ofc. Lugo confirmed was consistent with how hard she fell.

Ofc. SL: *Yeah 'cause she's claiming some pain, right, from...Falling.*

J. Lugo: *No, no. It - it - it wa- I'm not gonna lie to you man. It - she fell pretty - pretty hard from that push.*

However, after confirming this Ofc. Lugo immediately reminded NBPD officers that [REDACTED] then pointed a gun at him. This prompted NBPD officers to ask Ofc. Lugo if the gun was in or out of the holster and the threat it posed to him when [REDACTED] pointed it at him. Ofc. Lugo could not definitively answer these questions, which seemingly perplexed the officers. This however, prompted Ofc. Lugo to reiterate:

J. Lugo: *I just remember her coming up and saying, "I'll fucking kill you." And I was like, "What - what the fuck are you doing?"*

(As mentioned above, Ofc. Lugo subsequently admitted to IA that [REDACTED] did not make these verbal threats as he recounted to NBPD.)

Ofc. Lugo then proceeded to play "the videos" to NBPD officers that he had of [REDACTED] from the past months that he stated he held over her head and that prompted her to "wail" on him in the immediate moments before the physical contact between them. (As mentioned, Ofc. Lugo later recanted this claim during his later interview with IA.)

[REDACTED] gave NBPD a somewhat different account of the events. [REDACTED] told Ofc. SL that "Joshua" (Ofc. Lugo) approached her and she said, "We started talking [REDACTED] She said "Joshua" called her insulting names and then approached her very close to her face, and "almost headbutted me." She then said, "He ended up throwing me down, got a water bottle, and threw it straight at my head... it busted...all over the hallway...it busted right over my head when he threw it at me." She believed the bottle hit her head area. [REDACTED] also stated, "I was on the ground. I caught myself, so my arm hurts a little bit," from being thrown to the ground. [REDACTED] also complained of pain when she "moved in a certain way", referring to her left side, arm, wrist, and shoulder.

[REDACTED] denied ever assaulting Ofc. Lugo and said, "I never touched him, like, at all." [REDACTED] also denied ever threatening him with a handgun by saying, "He fucking set that shit up."

She also stated, "[REDACTED] heard it. He ran downstairs asking me if I was okay." "I tried to get [REDACTED] [REDACTED] wouldn't let him." She went onto say, "[REDACTED] is with me now. Because I told him if any...anything bad happened to run across the street... And [the neighbors] brought him over here." [REDACTED] sat in the back of her car, and Ofc. SL walked over to join Ofc. JM make initial contact with Ofc. Lugo. Ofc. SL advised dispatch that "And the [REDACTED] crying, visibly scared. He does not want to go back in that house. But yeah, I have [REDACTED]"

[REDACTED] advised Ofc. SL that she had secretly recorded the incident and provided NBPD officers with the audio recording. The audio recording largely confirmed [REDACTED] account. The recording of the interaction revealed that Ofc. Lugo initiated the argument and [REDACTED] tried to disengage and/or de-escalate on multiple occasions to no avail. The recording also showed this argument was mainly focused on their living situation, Ofc. Lugo's financial obligations from the [REDACTED] and the pending hardship it would cause him. Additionally, it revealed Officer Lugo was pressing [REDACTED] for answers and he called [REDACTED] insulting names. He also brought up [REDACTED] insulting her as well. The recording also shows that when [REDACTED] tried to end the argument, this only further upset Ofc. Lugo. The argument then escalated into the physical

disturbance, and [REDACTED] screaming, before going outside and calling 9-1-1, which was also captured on the recording (See also Audio Recording Transcript (ART)). The recording captured some of these noteworthy facts:

At the 15:41 mark in the audio [REDACTED] states, *"Okay. We're done talking...I don't...'Cause, you know, we're gonna start arguing. Just go away, (ART, 245-249)."* Ofc. Lugo responded, *"No. Because it just pisses me off that you're right away fixated on [REDACTED], yeah. You're gonna get more money, (ART, 251-252)."*

[REDACTED] can again be heard trying to avoid a further escalation when she stated, *"Okay. This conversation's done, Josh 'cause I'm gonna...We're gonna start arguing. And I said please, (ART, 267-271)."*

Ofc. Lugo responded stating, *"'Cause I cannot stand when you dictate everything, (ART, 273)."* Then at the 16:16 mark J. Lugo began to insult [REDACTED] saying she is *"Just like your fucking bitch [REDACTED]. Like, you guys have, like, these big fuckin' heads...And you've never even done shit, (ART, 285-293)."*

[REDACTED] again tried to break off the argument stating, *"Told you that conversation was over, (ART, 295)."*

Then at 16:30 Ofc. Lugo stated, *"Yeah. It's always whenever you decide, that's the thing. And you can...I know. But you are nobody to be telling me that shit... You are nobody, (ART, 297-305)."* *"...I cannot stand that you have this big head like you're somebody. Like, telling me to, like, stop. No. I'm not gonna stop...you're nobody", (ART 338-343).*

The argument continued with Ofc. Lugo insulting her and seemingly instigating the argument further as it appears on the recording that [REDACTED] was again trying to break off the argument. This all led up to the following exchange at 17:53:

Ofc. Lugo stated, *"No, I'm telling you."*

[REDACTED] said, *"Don't get in my face."*

Ofc. Lugo yelled, *"No, fuck you, you bitch."*

[REDACTED] stated, *"you're gonna fucking headbutt me."*

Ofc. Lugo replied, *"I didn't headbutt you."*

Then the sound of the grabbing of a set of keys could be heard (jingling) and [REDACTED] stated, *"get out of my face."*

Ofc. Lugo's voice got strained as he stated, *"I can't fucking stand you, you stupid bitch."* There was a rustle, and a thump is heard and then [REDACTED] is heard screaming. Then another thump is heard followed by more screaming from [REDACTED]. This is the point in time where Ofc. Lugo later told IA that *"she wailed"* on him and he responded by throwing her to the ground. Apparently, [REDACTED] then exited the house within several seconds after getting up (the wind is heard as she

opens the door). She then re-entered the residence to get ██████ but Ofc. Lugo would not allow her to take him. (ART, 381-401). She went back outside and dialed 9-1-1.

The audio recording also revealed that at no point in time during this argument did the subject of previous secret recordings being used in a ██████ come up. Ofc. Lugo repeatedly had claimed to NBPD officers that this is what prompted or gave ██████ the motive to “wail” on him or be in his face. Moreover, at no point in time on the audio can ██████ be heard “threatening to kill” Ofc. Lugo, as he stated to NBPD officers. Moreover, the audio revealed at no point did Ofc. Lugo state “██████ what the fuck are you doing?” when she purportedly pointed a gun at him. Also, at no point in the audio, could Ofc. Lugo be heard verbally reacting to ██████ striking him, as he claimed when he spoke to officers. In fact, NBPD officers concluded that the allegation that ██████ pulled a gun on Ofc. Lugo after he threw her to the ground was not credible and/or possible, due to the minimal amount of time between her falling, screaming, and calling out for ██████ and leaving the residence, also factoring in his other false assertions.

NBPD officers placed Ofc. Lugo under arrest for Assault with Injury - Family Violence (complaint of pain) and transported him to the Guadalupe County Jail. NBPD Ofc. SL later told IA in part, “I do feel Mr. Lugo was the aggressor with this, looking at the - the demeanor for both parties.”

On January 20, 2025, IA was notified the criminal charge was dismissed by the Guadalupe County Attorney’s Office, which allowed IA to then move forward with the administrative investigation. On February 27, 2025, IA was notified that the case was dismissed due to an uncooperative witness. ██████ also did not reply to IA’s attempts to reach her. Unfortunately, it is quite common for victims of Family Violence to not cooperate with the police and prosecution.

A. Distinctions Between the Administrative Case and the Criminal Case

Before discussing my findings, it is important to note some of the legal and factual bases for my decisions in this matter and, in particular, to highlight the differences between administrative and criminal investigations/cases. My conclusions in this case are based upon the indisputable evidence gathered by IA, including the audio recording from this incident and matters that Ofc. Lugo and ██████ corroborate. In the instances where matters were in dispute, and the only evidence is Ofc. Lugo’s word versus ██████, the COC has chosen to give him the benefit of the doubt. By doing so, our decision was not reliant on the credibility of ██████ over Ofc. Lugo.

It is also noteworthy that, unlike in a Guadalupe County criminal case, the rules of evidence do not apply in this administrative case, pursuant to the City of Austin and the Austin Police Associations Meet and Confer Agreement and/or Chapter 143 of the Local Government Code. In fact, Article 17 section 11, “Procedures before Hearing Examiners” states:

“It is expressly agreed that Police...hearings before a Hearing Examiners under 143.057 are informal administrative hearings and are not subject to discovery or evidentiary processes. Specifically, it is understood that neither the Texas Rules of Evidence nor the Texas Rules of Court apply to such hearings.”

Moreover, the Guadalupe County Attorney could not compel Ofc. Lugo to give a statement nor are they availed the lower burden of proof of preponderance of the evidence. The Guadalupe

County Attorney determined they wanted victim cooperation, to prove beyond a reasonable doubt, the criminal charges against Ofc. Lugo. This is unnecessary in an administrative case, as APD will be able to use all of the statements [REDACTED] gave to NBPD officers, captured on BWC. Even if the rules of evidence applied, APD will be able to use [REDACTED] excited utterances and presence sense impression statements in the immediate aftermath of the disturbance, which are both exceptions to the hearsay rule.

Also, unlike the Guadalupe County Attorney's plight, in this administrative case APD was able to compel Ofc. Lugo to give two *Garrity* protected statements. Thus, while those *Garrity* protected statements cannot be used against him in a criminal matter, they most certainly can be used against him in my administrative employment decision, as prescribed by *Garrity vs. New Jersey* 385 U.S. 493 (1967). Thus, Ofc. Lugo's admissions in this case alone prove the conclusions made by me and the COC. My decisions are further supported by the audio/video evidence in this matter. In sum, the fact that there were no formal criminal charges has no bearing on this administrative case, pursuant to LGC 143.056 (f), which states:

"Acquittal or dismissal of an indictment or a complaint does not mean that a fire fighter or police officer has not violated civil service rules and does not negate the charges that may have been or may be brought against the fire fighter or police officer by the Department head."

B. Conclusions from the September 28, 2024, Incident: APD GO 900.1.1 Responsibility to Know & Comply: to wit: Assault/Family Violence

APD GO 900.1.1 states in part:

Employees will... comply with the laws, ordinances, statutes...

The COC and I concluded that Ofc. Lugo violated APD GO 900.1.1 Responsibility to Know and Comply to wit: by violating Texas Penal Code (TPC) 22.01. Assault and/or Family Violence (complaint of pain), by at least the preponderance of the evidence when he intentionally, knowingly, and/or recklessly caused bodily injury (physical pain) to [REDACTED] by pushing her to the ground, where he said she fell "hard" to the ground as a result of "pushing her" and in which she described her physical pain from the push/fall in the immediate aftermath of the incident to on-scene NBPD officers. By violating the TPC, by at least the preponderance of the evidence standard, Ofc. Lugo failed in his responsibility as an APD officer to comply with the policy and/or the law.

The COC and I unanimously agree that he be sustained for Failure to Know and Comply to wit: Assault with Injury (complaint of pain) Family Violence as we all believe that Ofc. Lugo was the primary aggressor in this September 28, 2024, incident.

Separately, even if I credited Ofc. Lugo's account that [REDACTED] struck him first, I do not believe that he can make out a valid self-defense claim under Texas law. Thus, the COC and I would still have reached the same unanimous conclusion that he be sustained for Failure to Know and Comply

to wit: Assault with Injury (complaint of pain) and/or Family Violence by at least the preponderance of the evidence.

In fact, during Ofc. Lugo's second interview with IA investigators on February 18, 2025, he could not dispute the audio recording, which showed that he instigated and/or provoked ██████ who was trying to deescalate and diffuse the argument.

IA: *Based on the audio recording, would you say that you were instigating the insults?*

J. Lugo: *Yeah. Probably, yeah. Definitely.*

IA: *Why are you doing that?*

J. Lugo: *I was still upset...(Lugo 2nd IA interview Transcript, 939-946 & 902).*

Ofc. Lugo further detailed how he instigated an argument with ██████, which led to the physical altercation. During this physical altercation he stated that ██████ struck him several times and he responded by physically pushing her down to the ground.

After the incident ██████ called 9-1-1 and reported that Ofc. Lugo had pushed her down causing pain to her shoulder, wrist and/or arm area. The responding NBPD officers concluded from their investigation and after consulting with their supervisor that Ofc. Lugo had been the primary aggressor in the situation. They too noted that ██████ tried to deescalate the argument multiple times before it turned physical as Ofc. Lugo continued to instigate and/or provoke her.

These indisputable facts are important because TPC section 9.31 *Self-Defense* states:

(b) *The use of force against another is not justified:*

(4) *if the actor provoked the other's use or attempted use of unlawful force...*

Before going to the next section of this memorandum, I want to note that if this were the only sustained violation, I would have made the decision to indefinitely suspend Ofc. Lugo for this alone, without consideration of the other violations in this memorandum.

II. May 5, 2024, Incident

In Ofc. Lugo's statement to NBPD officers on September 28, 2024, he admitted to previously calling 9-1-1 on or about May 5, 2024, and hanging up because he wanted ██████ to leave the home on that date. He stated to NBPD officers, "I called y'all the previous times but that was just a scare tactic just to fucking get her away. Um, she took off. Cop came and I told him like, 'No, it - it's bullshit. It was uh - uh, ██████ was just messing around.' (Ofc. JM BWC Tr. 464-467)."

IA investigators verified with NBPD that on May 5, 2024, they received a 9-1-1 hang up call from Ofc. Lugo's cell phone. When confronted with this information, Ofc. Lugo had no choice but to admit to doing so in his February 18, 2025, IA interview. He stated:

I don't remember in detail, but again, we were arguing about our current [REDACTED] [REDACTED]...I don't know what prompted it, but we started, verbally insulting each other, and at some point she used the knuckles-and started hitting me on the chest area and then on the forehead. As I tried to back away, I continued my insults, and then she just began using an open hand to my face. Right away, I grabbed the phone. I told her that I'm calling the police. She starts to panic, grabs her stuff, leaves. I think this is the one where I called and I just hung up, if I remember correctly. They come out. It took them a while to get out there, a few minutes. And during this time, I'm just thinking to myself, okay, well, yes, - we're in a pretty rough spot, but all these thoughts were going through my head, like, you know, what's going to happen if she gets arrested? I think the [REDACTED], if they see it. You know, what's gonna happen to our [REDACTED], [REDACTED]. So by - when I - by the time they got out there, I was - I had made up my mind that I wasn't gonna let that happen... I just told them that [REDACTED] had my phone, and - and they must have dialed accidentally. They said, "Okay. That's fine." And that was the end of it. (Lugo 2nd IA interview Transcript, 191-207 and 246-247).

IA then followed up:

IA: *Can you tell me why you told them that?*

J. Lugo: *After thinking about it, before they got there, I just didn't wanna kinda throw more fuel in the fire by getting her arrested and [REDACTED]. They were upstairs. And then not only that, but I was also thinking about my job as well. Like, okay, well, if I'm away, if I'm working, who's gonna [REDACTED]. My biggest concern was having to explain to [REDACTED] what happened... (Lugo 2nd IA interview Transcript, 249-255)*

In spite Ofc. Lugo's best efforts to not admit an "intent to deceive" to IA, Ofc. Lugo revealed his "intent to deceive" on countless occasions. IA asked Ofc. Lugo about his claim that he had no intention to lie or deceive, by rephrasing questions in different ways. He maintained his denial, but unknowingly explained away the reasoning and his full intent for lying and/or to deceive and that he consciously did so. Below are some examples:

IA: *And why did you tell the officer something that wasn't true?*

J. Lugo: *...my intentions weren't to - to lie or - or deceive. It was - it was more - along the lines of straw- at that time, I was just trying to keep [REDACTED]. I knew that if I were to say what had occurred that day, then more than likely she was gonna get arrested, and that would have pretty much, like, ended all, as far as trying to get [REDACTED] together.... So that was my reasoning. (Lugo 2nd IA interview Transcript, 568-75)*

In response to another line of questions:

IA: *When you say it's not your intentions to lie, what do you mean?*

J. Lugo: *Well, I didn't wanna say something that wasn't true. That's what I meant. I mean, I wanted to come forward and - and state what happened, but I mean, I've - I've investigated cases like this before, incidents like this before, so I knew that more than likely this would lead to - to her arrest, and I didn't want that to happen to her. I didn't want - again, I was trying to keep ██████ together. I don't know how I would explain that to ██████. They were upstairs at the time, and I just didn't wanna see them. I just didn't want them to see ██████; you know in handcuffs being taken to jail, so. (Lugo 2nd IA interview Transcript, 579-88)*

IA: *So - so then what was the reason for not telling the truth?*

J. Lugo: *That - that was my reason. That was - I just - the whole reason was just me, just keeping ██████ together, that - that was the whole reason. (Lugo 2nd IA interview Transcript, 590-93)*

A. Distinctions Between the 180-rule in a Criminal vs. Non-criminal Case

Typically matters that occurred more than 180 days from the date of the incident are not subject to discipline, with a very notable exception found in the Texas Local Government Code (TLGC). TLGC 143.052(h) states:

...The department head may not complain of an act that occurred earlier than the 180th day preceding the date the department head suspends the... police officer.

TLGC 143.052(h), however, also provides an exception (or an extended time frame) regarding acts that are "*related to criminal activity.*" The statutory 180-day clock for discipline on those matters does not begin on the date of occurrence, but rather, the clock begins on the date of discovery of those criminally related activities:

If the act is allegedly related to criminal activity including the violation of a federal, state, or local law for which the fire fighter or police officer is subject to a criminal penalty, the department head may not complain of an act that is discovered earlier than the 180th day preceding the date the department head suspends the fire fighter or police officer. The department head must allege that the act complained of is related to criminal activity.

Therefore, all the acts that are related to criminal activity discovered by APD on or about September 28, 2024, in this memorandum had a disciplinary deadline of no earlier than March 27, 2025. This applies to all the allegations and GO violations in this memorandum from May 5, 2024, May 15, 2024, and/or September 28, 2024, since each incident was criminally related.

B. Conclusion from May 5, 2024, APD GO 900.1.1 Responsibility to Know & Comply: to wit: Silent or Abusive Calls and/or False Report to Peace Officer

The COC and I concluded that Ofc. Lugo violated APD GO 900.1.1 Responsibility to Know and

Comply to wit: by violating TPC 42.061. Silent or Abusive Calls to 9-1-1 service on May 5, 2024, when he intentionally called 9-1-1 and remained silent. Ofc. Lugo's actions initiated a response to his residence by NBPD. By these actions Ofc. Lugo violated the TPC, and through his actions, he failed in his responsibility as an APD officer to comply with the law. He revealed this criminal-related misconduct for the first time to NBPD during his September 28, 2024, on-scene interview, and then when confronted, he verified it during his February 18, 2025, IA interview.

Additionally, Ofc. Lugo admitted that he provided a false, untruthful statement(s), lied and/or deceived NBPD on May 5, 2024, when he told them that:

- 1) It was one of [REDACTED] who called 9-1-1, when it was in fact him who called.
- 2) Ofc. Lugo explained that he provided this false, untruthful statement(s), lied and/or deceived them because he did not want to tell NBPD about the physical altercation between him and [REDACTED] and because he was concerned about the impact it could have on his job, [REDACTED], and/or his [REDACTED], amongst other factors.

Therefore, the COC and I also concluded that Ofc. Lugo violated APD GO 900.1.1 Responsibility to Know and Comply to wit: by violating TPC § 37.08. False Report to Peace Officer on May 5, 2024, when he had the intent to deceive, and he knowingly made false statements material to a criminal investigation to a Peace Officer and/or a member of a law enforcement agency authorized to do an investigation. Additionally, the COC and I concluded that the evidence shows that he violated APD GO 900.3.1 Honesty.

Ofc. Lugo's admissions show that he violated this statute and/or GOs by at least the preponderance of the evidence. His explanation or the excuses that he offered as a justification ("*keeping the [REDACTED]*") do not meet the elements that justify his actions under the law or APD policy.

Before going to the next section of this memorandum, I want to note that if the violations from the May 5, 2024, incident were the only sustained violations, I would have made the decision to indefinitely suspend Ofc. Lugo for this alone, without consideration of the other violations in this memorandum. APD cannot tolerate one of our officers providing false information, let alone to another law enforcement agency. Ofc. Lugo like any citizen could have declined to speak to officers. And like any citizen, by choosing to speak, he was also obligated to speak the truth.

III. May 15, 2024, Incident

In Ofc. Lugo's statement to NBPD officers on September 28, 2024, he also revealed that he previously called 9-1-1 in another [REDACTED] between him and [REDACTED] on or about May 15, 2024. IA investigators verified that there was an additional call to NBPD on May 15, 2024, where a male calling from Ofc. Lugo's residence and from the same phone number as the May 5, 2024, 9-1-1 call. During Ofc. Lugo's February 18, 2025, IA interview he admitted that he made that call. Ofc. Lugo again asserted he provided false information in this call to NBPD. Ofc. Lugo also admitted to colluding with and/or directing [REDACTED] to lie to NBPD officers to advance the false statement(s). Ofc. Lugo elaborated that on May 15, 2024, he and [REDACTED] had a [REDACTED] encounter that devolved into another disturbance. Ofc. Lugo claimed during this disturbance, he threw insults at [REDACTED], and she physically assaulted him. He specifically stated:

...we were talking, and then we started getting into the [REDACTED] and then she starts bringing up the past about why we're in this situation and she starts bringing up the dating stuff, - she starts accusing me of still doing it [REDACTED] but I did take a small break during that time 'cause I felt like, you know, you might make it out of this. Then it just went into just full insults. At the time...she was just sitting on top of me. And she just starts doing the same thing with the knuckles. And I'm like, "What the hell's wrong with you?" And then all of a sudden, she starts striking me on the face. My phone was right next to me... I tell her that I'm calling police. As I'm dialing, she says, "Well- if you're gonna call them, I'm gonna to tell them that you [REDACTED] me." So at that point, I'm like, "Oh, crap." So I start recording and I tell her, I've been recording the whole time. But she thinks that I started recording well before that so I'm like, "You're lying, we didn't." So she starts freaking out crying hysterically telling me not to tell police anything, 'cause I knew - they were already on their way. And she's begging me not to say anything, she ends up just grabbing her stuff again and leaves. (Lugo 2nd IA interview Transcript, 376-92)

Ofc. Lugo continued by saying:

I call her to make sure she's okay because she was crying hysterically. And I just told her like, "Hey come back, we'll figure something out." She's like, "No. you gotta tell them that, you know, what happened I'm gonna end up going to jail, I'm gonna [REDACTED] this is what you wanted." And then finally I just said, like, hey I'm just gonna tell them that we had a verbal - [REDACTED] and I don't want them to see this. Again, it took, I don't know, 15, 30 minutes to get there. And again, at this time, everything's just kinda going through my head, like, oh, police get here, they're gonna see her, [REDACTED] are gonna see her in handcuffs, neighbors are gonna see her in handcuffs. What do I do about [REDACTED]? What do I do? How do I explain this to [REDACTED] (Lugo 2nd IA interview Transcript, 392-402)

Ofc. Lugo was asked by IA what he specifically told the responding NBPD officer. He replied:

I just told him it was a verbal - the incident was just verbal, we were just arguing about - about [REDACTED]. If I remember correctly, I'm sorry, I don't remember exactly what I told him, but-I think it was along the lines of, we're going through a [REDACTED] we're trying to figure things out, but it was just verbal and I didn't want things to escalate, so that's why I just called.... And she was pretty upset, and she wanted [REDACTED] so she drove off. (Lugo 2nd IA interview Transcript, 510-518)

IA followed by asking an additional series of questions:

IA: *So on the second disturbance call, you told New Braunfels PD, which is on Page 11 of the body-worn camera transcript, Lines 472 to 475, that you called and said, "But honestly- I gave her a heads up before that. I was like, hey, they're coming, just tell them. I'm not going to tell them what you did. Just tell them it was just - um, we were just arguing and that was it." What exactly was it that - that did she do that you did not want to tell the police?*

J. Lugo: The hitting while she was on top of me - that's the incident that I'm referring to. The strikes to the chest and the forehead and- the slaps as well. So again, I just called them just to get her to stop, get her to calm down. And then was hoping that maybe in the future she would be like, okay, well, again, if he's called this many times. He's probably serious about calling police- if I hit him, - that's what I meant - by that.

IA: Why did you feel it necessary to give [REDACTED] a heads up?

J. Lugo: I had called her 'cause I told her like, "Hey, just come back 'cause - they're gonna wanna talk to you. 'Cause now we called twice - or I called twice, so they're gonna know that something happened. They're gonna wanna talk to you. I'm just gonna tell them that." And then she was like, "No, you're gonna tell them what happened. I'm gonna end up going to jail. [REDACTED] are there. Like, what - like, you're really gonna do this to me?" And I'm like - like, "You know what? Just come home. They're gonna talk to you and, you know, I'm just gonna tell them it was just verbal." Which most of it was, but - but again, I - I just couldn't go through with having to get her arrested and then having to deal with everything I said before about [REDACTED], work, so.

IA: By doing these things, was your intent to influence the outcome of the potential investigation?

J. Lugo: For that day or?

IA: Mm-hm.

J. Lugo: I mean, I didn't want her to get arrested, so I guess you could say, yes. (Lugo 2nd IA interview Transcript, 609-644)

A. Conclusion from May 15, 2024, APD GO 900.1.1 Responsibility to Know & Comply: to wit: False Report to Peace Officer and/or Hindering Apprehension or Prosecution

The COC and I concluded that Ofc. Lugo violated APD GO 900.1.1 Responsibility to Know and Comply to wit: Texas Penal Code 37.08 False Report to a Peace Officer, and/or Texas Penal Code 38.05 Hindering Apprehension or Prosecution, on May 15, 2024, when Ofc. Lugo intentionally and admittedly provided (and agreed with [REDACTED] to provide) false statements to NBPD officers in a criminal investigation, with intent to hinder the investigation and/or to avoid the potential arrest of [REDACTED]. He violated the TPC, and through his actions failed in his responsibility as an APD officer to comply with the law. He revealed this criminal related misconduct for the first time to NBPD during his September 28, 2024, on scene interview and then when confronted with this evidence he verified that he had done so during his February 18, 2025, IA interview.

Ofc. Lugo's admissions that he colluded with [REDACTED] to agree to both make false statements, deceive, and/or lie to NBPD show that he violated these statutes by at least the preponderance of the evidence. His explanation or the excuses as to why he offered false statements, lied, and/or

deceived that he apparently offered as a justification (“keeping [REDACTED]”) do not meet the elements that justify his actions under the law and/or APD policy.

Moreover, Ofc. Lugo’s COC aptly noted in his Notice of Sustained Allegations (NOSA) that his dubious justifications are also belied by the fact that he indicated that some of the disputes were over the fact that [REDACTED] discovered that he was on dating applications and/or her getting into his phone and discovering that Ofc. Lugo was seeking relationships with other women and/or [REDACTED] perception that he was cheating [REDACTED], which would not help “keep [REDACTED]” Ofc. Lugo even stated the following:

J. Lugo: *...She found out by going into my cell phone account...*

...she already knew about me getting on dating apps. So she made comments about that as well. I don't remember exactly what they - what they were, word for word, but it was relating to that. Basically calling me a cheater, POS [REDACTED]

... I think that's probably why she got so upset about the dating apps & the dates. (Lugo 2nd IA interview Transcript, 301-304, 308-309, 339-340)

These statements corroborate Ofc. Lugo’s admission to IA that he [REDACTED] [REDACTED] in 2009, but that she did not find out about his [REDACTED] until 14 years later in 2023, leading to their conflicts.

Before going to the next section of this memorandum, I want to note that if the violations from the May 15, 2024, incident were the only sustained violations, I would have made the decision to indefinitely suspend Ofc. Lugo, without consideration of other violations in this memorandum. As mentioned in section II of this memorandum, APD cannot tolerate an officer providing false information, let alone to another law enforcement agency. And as mentioned above, Ofc. Lugo did not have to speak to NBPD officers, but once he chose to, he was obligated to speak the truth.

B. APD GO 908.4(b)(2) Reporting of Employee Arrests and Police Involvement

APD GO 908.4(b)(2) states:

(b) Employees shall immediately report to their supervisor, with a follow-up memorandum through the chain-of-command to the Chief, of:

- 2. Anytime an employee is involved in an off-duty incident that results in a response from any law enforcement agency except in the case of minor traffic violations, minor collisions (non-DWI related), and other minor calls for service where the employee is not considered to be a suspect (e.g., alarm calls, noise complaints);*

Officer Lugo was asked by IA if he ever notified his COC after this May 15, 2024, incident or the May 5, 2024, incident of the [REDACTED] disturbances. During Ofc. Lugo’s February 18, 2025, he admitted that he violated this policy. He also said the following:

IA: *Okay. Did you ever notify your chain of command on any of these disturbance 911 calls?*

J. Lugo: *I did not.*

IA: *Why?*

J. Lugo: *I did not. I didn't want anybody to know my - my - my, situation. And not only that, but I mean, if I did - if I would have said something, then more than likely I would have had to tell them what actually did happen. 'Cause now I'm reporting to them and then now it comes up with, Oh, she actually did hit me. I just - I felt ashamed because I knew that they would probably go more in depth on like, okay, what was going on? Not only that, but it was still something that I was still trying to hang onto. So I just - I didn't - I didn't wanna, nobody knew, nobody - I didn't tell anybody, not even my - not even [REDACTED] closest friends, some of my closest friends here have no idea about those two incidents. Actually, all of them don't. So - yeah. That's the reason why."*

IA: *Did you ever consider making a notification to your chain of command?*

J. Lugo: *I mean- I knew that I - that I should, but I don't know if I actually really sat back and planned on telling them, because again, I - I just didn't want this to get out.*

IA: *Why do you - why you say that you should have?*

J. Lugo: *'Cause I know it's something that I should have done. I know it's - it's required of me. (Lugo 2nd IA Interview Transcript, 777-805).*

Not only is this a violation of GO 908.4(b)(2), but it is also a violation of GO 900.3.1 Honesty, which prohibits the intentional omission of pertinent information. Ofc. Lugo states "*knew he was required to*" notify his COC but he intentionally omitted pertinent information by failing to notify his COC about the May 5, 2024, incident and/or the May 15, 2024, incident. His intentional omission(s) constitutes a violation of GO 900.3.1 (a), (c), and/or (d), which alone could have been grounds for an indefinite suspension.

IV. Other Violations that Alone Would Have Resulted in an Indefinite Suspension

A. GO 900.3 and 900.3.1: General Conduct and Responsibilities: Honesty

APD GO 900.3 states in part:

This section contains the expectations and requirements of employee conduct, both on-duty and off-duty, and causes for disciplinary action due to employee misconduct. This is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient Department service.

APD GO 900.3.1 states in part:

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

- (a) *Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement...*
- (c) *Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.*
- (d) *Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.*

APD GO's and/or the disciplinary matrix also say:

1. *Employees who are found to have given a false official statement are subject to indefinite suspension as outlined in the Discipline Matrix ("Dishonesty - False Official Statements").*

Below is a list of statements that violate GO 900.3.1. Per APD's disciplinary matrix, any single violation of this GO would have resulted in an indefinite suspension, without consideration of the collective Honesty or non-Honesty violations in this memorandum.

- 1) Ofc. Lugo omitted pertinent information, mislead, lied, provided a false and/or inaccurate statement(s) to NBPD officers about [REDACTED] motive for striking him by claiming she struck him immediately after telling her that he was going to use previous audio/video recordings that shed her in a bad light in a [REDACTED]. Audio evidence clearly refutes this allegation by him.
- 2) Ofc. Lugo omitted pertinent information, mislead, lied, provided a false and/or inaccurate statement(s) to NBPD officers by claiming [REDACTED] verbally threatened to kill him with his gun and that he verbally retorted to this threat. Audio evidence clearly refutes this allegation by him.
- 3) Ofc. Lugo omitted pertinent information, mislead, lied, provided false statements to NBPD officers and/or IA as he continuously offered differing versions of events, including differing timelines of events, especially when he was confronted with the surreptitious recording of the September 28, 2024, incident.
- 4) The COC and I find his assertion to IA that he confused an earlier argument with the argument where he assaulted [REDACTED] to be not truthful nor credible. The COC and I, like NBPD on-scene officers concluded that Ofc. Lugo's story began to change once he realized there was a recording of the event. It continued to change further after he was able to listen to the contents and was further confronted by IA. (Ofc. Lugo advised IA in his second interview on February 18, 2025, that he and [REDACTED] were involved

in a verbal argument in the morning, hours earlier, about the older "videos" that he had of ██████ that shed her in a bad light. He claimed that she grabbed his gun, pointed it at him, and verbally threatened him in this earlier argument. He claimed he confused the two incidents with each other when speaking with NBPD officers.)

- 5) The COC and I find his new assertion, in his February 18, 2025, IA interview, that ██████ pointed a gun at him twice on September 28, 2024, to not be truthful nor credible.
- 6) Ofc. Lugo admittedly lied, deceived, and/or offered false and/or untruthful statement(s) to NBPD officers on May 5, 2024. Any of those lies or false statements which were tied to a criminal related investigation violate GOs 900.3/900.3.1 and/or Texas law.
- 7) Ofc. Lugo admittedly lied, deceived, and/or offered false and/or untruthful statement(s) to NBPD officers on May 15, 2024. Any of those lies or false statements which were tied to a criminal related investigation violate GOs 900.3/900.3.1 Furthermore, he admitted to instructing ██████ at the time, ██████ to lie as well and claim that the disturbance was only verbal.
- 8) Ofc. Lugo offered a series of statements to NBPD officers and/or IA where he attempts to divert, mitigate, and/or conceal his true culpability.
- 9) Ofc. Lugo also admitted to intentionally omitting pertinent information by failing to notify his COC about the May 5, 2024, and/or the May 15, 2024, incident.
- 10) Ofc. Lugo gave inconsistent statements to NBPD officers and/or IA regarding the proximity between he and ██████ during portions of the September 28, 2024, disturbance.

In sum, any one of these statements violates GOs 900.3/900.3.1 Honesty. Any of these statements compromise Ofc. Lugo's future integrity and qualify as Brady, Giglio, and/or Morton, material and must be reported by APD to surrounding County and DA's offices that could call on him to testify in future cases. Therefore, any one of these violations also leave me with no choice but to indefinitely suspend him.

B. GO 900.3.2(a) Acts Bringing Discredit Upon the Department

This GO states in part:

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) *Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.*

Upon review of all evidence presented to Ofc. Lugo's COC by IA, the COC and I concluded that during the incident on September 28, 2024, through his actions, he failed to control his emotions and restrain himself verbally and/or physically. The results of Ofc. Lugo's actions ultimately led to his arrest by NBPD officers who knew at the time of the incident about his status as an APD officer.

Additionally, on previous occasions, specifically May 5, 2024, and May 15, 2024, the details of which are outlined in previous sections, Ofc. Lugo intentionally manipulated the NBPD for personal gain. His claimed intent, as he stated to IA, whether to protect against the potential arrest of [REDACTED], or other reasons, to include but not limited to protecting himself from potential criminal charges, protecting himself from Departmental disciplinary actions or embarrassment, or to manifest evidence that could be favorable to him during [REDACTED] bears no weight. Ofc. Lugo violated the law, and he violated Department policies that are counter to the values that serve as the foundation for the Law Enforcement profession.

Furthermore, during the on-scene investigation by NBPD, he admitted to the responding officers that he had lied, manipulated [REDACTED] and the situation, and concealed potentially criminal acts when he had previously called 9-1-1 on May 5, 2024, and May 15, 2024.

The two NBPD officers who addressed IA during the administrative process stated the following (one via written correspondence and one via interview):

NBPD Ofc. JM wrote regarding the September 28, 2024, incident:

Mr. Lugo was cooperative, but he told a story depicting a scene that had me thinking I initially that the other party was at fault.

Then [REDACTED] had an audio recording that unequivocally revealed multiple aspects of Mr. Lugo's story to be false and on some points impossible.

When Mr. Lugo was informed an audio recording existed he had a noticeable demeanor change which indicated he knew things were not good.

Probable Cause for Assault B.I. Family Violence was established and Mr. Lugo was arrested.

Whereas NBPD Ofc. SL also concluded that Ofc. Lugo committed Assault and/or Family Violence (complaint of pain). He also stated that he believed that Ofc. Lugo staged his gun, telling IA:

I - I felt that the firearm in the bag was staged. I don't feel that the firearm was in play at all. Could he have put it there, like he said, in preparation to leave the house? Yeah. Sure. Could he have put it there post-incident, knowing we were on the way? Sure, totally.

Since Ofc. Lugo made so many false assertions, everything he said was being questioned. [REDACTED] asserted the same thing about the gun being staged and [REDACTED] on-scene assertion to NBPD officers about where he generally kept his firearm supported this conclusion. Lastly, at least one member of the COC believed Ofc. Lugo staged the gun. More importantly, the entire COC and I agreed that his changing story(s) about the gun, how it happened twice that day, and how [REDACTED] verbally threatened him the first time and not the second, amongst other changes in his story throughout this case, were not credible.

NBPD Ofc. SL also felt Ofc. Lugo had other credibility issues, and while he did not want to impugn Ofc. Lugo's behavior on the whole Austin Police Department, he did identify Ofc. Lugo as an

APD officer. Thus, Ofc. Lugo's dishonesty with NBPD officers nonetheless brings discredit upon the Department. NBPD Ofc. SL stated the following:

Not the Austin Police Department, Mr. Lugo, as an officer, yes, ma'am. Every department has individuals that do well at their job. We have some here, we had some at my prior department. They were good at their job, their home life not so much. There are officers that I would not want to want to come to my scenes. I know Austin PD has some great officers. We have some great officers here at the Braunfels that came from Austin PD. And I would go to a call with him in a heartbeat. After meeting with Mr. Lugo and being on this scene with him, I cannot attest that I would want to be on a call with Mr. Lugo. Nor would I want to - to meet with him - and be a, I'm gonna say friend, but in an acquaintance outside of the peripheral - if he can't handle his anger in his own home, [REDACTED], how can he handle his anger out in the street with a call? Or out in public with other individuals?

Ofc. Lugo also brought discredit to himself and APD in the eyes of the Guadalupe County Attorney's Office, as they were aware of the totality of his misconduct. It is noteworthy that the County Attorney chose not to prosecute Ofc. Lugo for Assault with Injury (complaint of pain) on [REDACTED], not because the evidence did not bear out that he committed the assault, amongst other offenses, but due to [REDACTED] no longer cooperating with them and/or to respect her wishes. He also brought discredit to APD in the eyes of his neighbors who knew he was an APD officer and who witnessed and/or heard of him being arrested that day.

In sum, Ofc. Lugo's personal conduct during these incidents was unacceptable, and he failed to meet the standards and expectations of his position as an officer with the APD. The COC and I have lost faith in his credibility as a Peace Officer, his ability to exhibit self-discipline. His actions have shed a negative light on the APD which could tend "to destroy public confidence in, and respect for, the Department."

Lastly, it is important to note that even if I did not sustain Ofc. Lugo for committing assault and/or family violence his COC and I unanimously agreed that he should be sustained for this GO violation as he brought significant discredit to APD by admittedly lying to NBPD officers on at least two occasions in May of 2024. Moreover, Ofc. Lugo demonstrated to his COC and I that we cannot in good conscious send him to future Family Violence calls for service.

He demonstrated his unfitness to us, not only because of the assault, but because of the aggressive and abusive language throughout this incident to [REDACTED], whereby he could be heard calling her a whore, slut, bitch, amongst other insults. He can also be heard escalating a situation. The APD academy and policy mandates that an officer keep his/her professional and personal life unsullied. Ofc. Lugo certainly did not meet the expectations established at the APD academy and/or APD's ICARE values. This is the final GO that alone without consideration of any of the other GO's would have been grounds for his indefinite suspension.

Conclusion

As stated above, Ofc. Lugo gives me a multitude of individual reasons to indefinitely suspend him. I would have indefinitely suspended for any one of the individual criminal offenses listed in this suspension memorandum, including the Assault with Injury Family Violence (complaint of pain) offense. The COC and I unanimously agreed that his actions—including violating several of the laws that he is regularly called upon to enforce—have brought significant discredit to the APD.

Moreover, it would be hypocritical of the COC and I, as Chief of Police, to allow Ofc. Lugo to continue to enforce the laws that he could not adhere to and/or to not hold him accountable for not being completely truthful with another law enforcement agency and/or IA. The law does not condone providing false statements, making it criminal in nature as delineated in some of the offenses listed in this memorandum. As an APD officer, Ofc. Lugo was required by policy to know and comply with all laws, and he failed to do so.

Ofc. Lugo was not obligated to speak to the NBPD officers in any of the instances that he chose to speak to them, as he had a 5th Amendment right against self-incrimination. However, in the three different instances, he chose to do so. Once he made that choice, Ofc. Lugo had an obligation by law to be honest with NBPD officers. He was also obligated to speak the truth with NBPD officers and IA pursuant to APD values, policy, and GOs, including but not limited to GO 900.3/900.3.1 Honesty.

Even though Ofc. Lugo admitted he did not speak the truth in two, if not all three of the instances he encountered NBPD officers, he still did not admit to violating any GOs, other than his failure to report the May 5, 2024, and/or May 15, 2024, incident to his COC. Even if I had not sustained Ofc. Lugo for violating GO Honesty 900.3.1, he was admittedly not completely truthful with NBPD officers. This lack of credibility and complete candor cuts at the core of Ofc. Lugo's integrity. Therefore, the facts and circumstances of this case must be shared with members of the criminal justice system as this qualifies as Brady (*Brady v. Maryland*, 373 U.S. 83 (1963)) Giglio (*Giglio v. United States*, 405 U.S. 150 (1972)) and Michael Morton Act material that must be disclosed to prosecuting attorneys. Moreover, it compromises his credibility to testify in the future. This makes him unfit to serve as a police officer, which also leaves me with no choice but to indefinitely suspend him. In sum, the collective reasons lead me to only one conclusion. Therefore, I accept the COC's unanimous recommendation to me that Ofc. Lugo be indefinitely suspended.

By these actions, Ofc. Lugo violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

- **Austin Police Department Policy 900.1.1: General Conduct and Responsibilities: Responsibility to Know and Comply**

900.1.1 Responsibility to Know and Comply

The rules of conduct set forth in this order do not serve as an all-inclusive list of requirements, limitations, or prohibitions on employee conduct and activities; employees are required to know and comply with all Department policies, procedures, and written directives.

- (a) Employees will maintain a working knowledge and comply with the laws, ordinances, statutes, regulations, and APD written directives which pertain to their assigned duties.
- (b) Employees who do not understand their assigned duties or responsibilities will read the relevant directives and guidelines, and will consult their immediate supervisor for clarification and explanation.
- (c) A lack of knowledge of an APD written directive is not a defense to disciplinary action.

To Wit:

Texas Penal Code Section 22.01: Assault

- (a) A person commits an offense if the person:
 - (1) intentionally, knowingly, or recklessly causes bodily injury to another, including the person's spouse;
 - (3) intentionally or knowingly causes physical contact with another when the person knows or should reasonably believe that the other will regard the contact as offensive or provocative.
- (b) An offense under Subsection (a)(1) is a Class A misdemeanor.

Texas Penal Code Section 1.07: Definitions

- (a) In this code:
 - (8) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

Texas Penal Code Section 9.31: Self-Defense

- (a) Except as provided in Subsection (b), a person is justified in using force against another when and to the degree the actor reasonably believes the force is immediately necessary to protect the actor against the other's use or attempted use of unlawful force.
- (b) The use of force against another is not justified:

- (1) in response to verbal provocation alone;
- (4) if the actor provoked the other's use or attempted use of unlawful force...

To Wit:

Texas Penal Code Section 42.061: Silent or Abusive Calls to 9-1-1 Service

- (a) In this section "9-1-1 service" and "public safety answering point" or "PSAP" have the meanings assigned by Section 771.001, Health and Safety Code.
- (b) A person commits an offense if the person makes a call to a 9-1-1 service, or requests 9-1-1 service using an electronic communications device, when there is not an emergency and knowingly or intentionally:
 - (1) remains silent;
- (d) An offense under this section is a Class B misdemeanor

To Wit:

Texas Penal Code Section 37.08: False Report to Peace Officer, Federal Special Investigator, Law Enforcement Employee, Corrections Officer, or Jailer

- (a) A person commits an offense if, with intent to deceive, he knowingly makes a false statement that is material to a criminal investigation and makes the statement to:
 - (1) a peace officer of federal special investigator conducting the investigation;
 - (2) any employee of a law enforcement agency that is authorized by the agency to conduct the investigation and that the actor knows is conducting the investigation; or
- (c) An offense under this section is a Class B misdemeanor

To Wit:

Texas Penal Code Section 38.05: Hindering Apprehension or Prosecution

- (a) A person commits an offense if, with intent to hinder the arrest, prosecution, conviction, or punishment of another for an offense or, with intent to hinder the arrest, detention, adjudication, or disposition of a child for engaging in

delinquent conduct that violates a penal law of the state, or with intent to hinder the arrest of another under the authority of a warrant or capias, he:

- (2) provides or aids in providing the other with any means of avoiding arrest or effecting escape;
- (c) Except as provided by Subsection (d), an offense under this section is a Class A misdemeanor.

➤ **Austin Police Department Policy 900.3.1: General Conduct and Responsibilities: Honesty**

This section contains the expectations and requirements of employee conduct, both on-duty and off-duty, and causes for disciplinary action due to employee misconduct. This is not intended to cover every possible type of misconduct and does not preclude the recommendation of disciplinary action for specific action or inaction that is detrimental to efficient Department service.

900.3.1 Honesty

Honesty is of the utmost importance in the police profession. Employees are expected to be truthful at all times in the performance of their duties.

- (a) Employees will speak the truth at all times and reflect the truth in all reports and written communications. Any statement or omission of pertinent or material information which intentionally misrepresents facts or misleads others through an official statement will be considered a false official statement. The following are examples of an "official statement":
 - 1. Documents prepared by an officer in connection with their official duties, including but not limited to incident reports or supplements, sworn affidavits, and citations.
 - 2. Verbal or written statements made by an officer in connection with their official duties to:
 - (a) An investigator conducting an administrative or criminal investigation of the officer or another person's conduct.
 - (b) A supervisor conducting an inquiry into the officer's use of force.
 - (c) A fact finder in an administrative, civil, or criminal proceeding in which the officer testifies.
- (c) Employees will not attempt to conceal, divert, or mitigate their true culpability in a situation, nor will they engage in efforts to thwart, influence, or interfere with an internal or criminal investigation.

- (c) Employees will not use any improper or dishonest means to affect the outcome of any official test, process, or procedure.

➤ **Austin Police Department Policy 900.3.2(a): General Conduct and Responsibilities: Acts Bringing Discredit Upon the Department**

900.3.2(a) Acts Bringing Discredit Upon the Department

Since the conduct of personnel both on-duty or off-duty may reflect directly upon the Department, employees must conduct themselves at all times in a manner which does not bring reproach, discredit, or embarrassment to the Department or to the City.

- (a) Employees will not commit any act which tends to destroy public confidence in, and respect for, the Department or which is prejudicial to the good order, efficiency, or discipline of the Department.

➤ **Austin Police Department Policy 908.4(b)(2): Reporting of Employee Arrests and Police Involvement for Sworn Employees: Reporting Procedures**

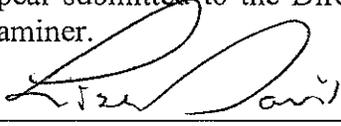
908.4(b)(2) Reporting Procedures

- (b) Employees shall immediately report to their supervisor, with a follow-up memorandum through the chain-of-command to the Chief, of:
 - 2. Anytime an employee is involved in an off-duty incident that results in a response from any law enforcement agency except in the case of minor traffic violations, minor collisions (non-DWI related), and other minor calls for service where the employee is not considered to be a suspect (e.g., alarm calls, noise complaints);

By copy of this memo, Ofc. Lugo is hereby advised of this indefinite suspension and that the suspension may be appealed to the Civil Service Commission by filing with the Director of Civil Service, within ten (10) days after receipt of a copy of this memo, a proper notice of appeal in accordance with Section 143.010 of the Texas Local Government Code.

By copy of this memo and as required by Section 143.057 of the Texas Local Government Code, Ofc. Lugo is hereby advised that such section and the Agreement Between the City of Austin and the Austin Police Association provide for an appeal to an independent third-party hearing examiner, in accordance with the provisions of such Agreement. If appeal is made to a hearing examiner, all rights of appeal to a District Court are waived, except as provided by Subsection (j) of Section 143.057 of the Texas Local Government Code. That section states that the State District Court may hear appeals of an award of a hearing examiner only on the grounds that the arbitration panel was without jurisdiction or exceeded its jurisdiction, or that the order was procured by fraud,

collusion or other unlawful means. In order to appeal to a hearing examiner, the original notice of appeal submitted to the Director of Civil Service must state that appeal is made to a hearing examiner.



LISA DAVIS, Chief of Police

3-26-25

Date

TO WHOM IT MAY CONCERN:

I hereby acknowledge receipt of the above and foregoing memorandum of indefinite suspension and I have been advised that if I desire to appeal that I have ten (10) calendar days from the date of this receipt to file written notice of appeal with the Director of Civil Service in accordance with the provisions of Chapter 143 of the Texas Local Government Code.



Police Officer Joshua Lugo #9084

3-26-25

Date