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December 20, 2021

MEMORANDUM FOR RECORD: Review of the Officer Involved Shooting (**OIS**) by Bexar County Sherriff's Office (BCSO) Deputy John Rodriguez #208, resulting in the death of Damian Daniels, 2020-BCSO-016465; October 25, 2020.

1. Standard of Review: The purpose of the review for any officer-involved shooting by the District Attorney's Office is to determine whether there is sufficient evidence to prove a criminal offense under state law. To successfully prosecute any case in court, our office must prove every element of a charge beyond a reasonable doubt and overcome all potential defenses and/or justifications also at a beyond a reasonable doubt standard. A decision, based on standards of state criminal law does not address or limit administrative action by the employing law enforcement agency where tactical or procedural issues may be reviewed. Neither does this decision address or limit other civil actions or federal criminal action, where other laws, rules and/or lower levels of proof may apply.

2. Summary of facts: When quotation marks ("...") are used in this document, the language within is taken directly from evidence contained in the investigative file and/or judicial proceedings. The source for these quotes are witness statements (oral or written), and or sworn testimony if available; oral statements which are captured on either audio or video recordings (public or private). Where Body Worn Camera (BWC) footage is referenced, the time stamp of the footage depicts Greenwich Mean Time (GMT) or "Zulu" Time which is five hours ahead of Bexar County local time. Events as described below happened both sequentially and simultaneously.

a. Background of events leading up to the OIS.

(1) At 4:04 pm, Monday August 24, 2020, Bexar County 911 received a call from the American Red Cross requesting police and medical assistance for a Bexar County resident that "...was in need of medical assistance ... the family says that he is having some mental health problems and he is suicidal." The address was specified as 11207 Liberty Field, San Antonio, TX 78254, and the Bexar County citizen and homeowner was identified as Damian Daniels – an honorably discharged, medically retired Afghanistan War veteran. The call was placed by SGT Daniels brother (BD) who lived

in another state. While researching the information, 911 personnel contacted BD to confirm SGT Daniels address. Two deputies were dispatched to 11207 Liberty Field, arriving at 4:19 pm. The officers made several attempts to contact the occupant to no avail. The call was closed at as a “Welfare Check” at 4:31 pm.

(2) At 10:32 pm, SGT Daniels called San Antonio Fire & EMS; when he gave the operator his address, the operator realized that the residence was in the county and transferred SGT Daniels to Bexar County 911. Bexar County operators spoke to SGT Daniels who said *“I need emergency...I need to go to the hospital...for paranoia...”* [https://home.bexar.org/videos/da/P2para2 Damians call to 911.mp3](https://home.bexar.org/videos/da/P2para2%20Damians%20call%20to%20911.mp3)

(3) Two deputies were dispatched to 11207 Liberty Field, arriving at 11:29 pm. SGT Daniels meets the first officer in his driveway and tells him *“... there’s something wrong with my house.... It’s haunted....”* SGT Daniels interacts with the officers sporadically, and then turns away when they ask him if he’s willing to go to a hospital. The call is closed out as a “Welfare Check” at 11:42 pm. [https://home.bexar.org/videos/da/P2para3 Field Contact DDaniels 242230Aug20.wmv](https://home.bexar.org/videos/da/P2para3%20Field%20Contact%20DDaniels%20242230Aug20.wmv)

(4) At 3:46 pm, Tuesday August 25th, BD calls Bexar County 911 again to request assistance to SGT Daniel’s home because *“he’s in a state of paranoia...he’s having a mental episode...he thinks someone broke into his house, he’s been telling me he’s been hearing things and seeing things that are not there....he’s not been diagnosed with anything, but we’ve had some recent deaths in the family that might have triggered him into staying, up not getting any sleep. I just spoke to him about 10 minutes ago... he was whispering on the phone that tells me that he thinks someone is in the house with him, and he lives alone....he’s on edge because he thinks that he’s being followed, and that people are watching him,”* .

(5) A deputy was dispatched to SGT Daniels’ home arriving at 3:59 pm. Before getting out of his unit the deputy reviews information on the previous calls, and he then places a call to BD to *“...get a few things from you before I try to make contact.”* The deputy dismounts and goes to the front door at 4:05 pm and makes several attempts to communicate with SGT Daniels. At 4:10 pm the deputy returns to his unit and calls BD to discuss the failed attempts and to advise the family of the process necessary to obtain a Mental Health Warrant. The deputy also told BD *“ ... make sure you explain to him that you called the sheriff’s office and tell him that they’re going to come to check on you and try to get you to a hospital...”* The deputy also provided the case incident number to support those efforts and then closed the call as a “Welfare Check” at 4:20 pm.

(6) At 4:48 pm BD called Bexar County 911 and requested the last incident number be reopened. BD told the operator that *“...my mom just spoke with him telling him that we had called the police to get him help...and he called her and told her that he needed help and that he was willing to open the door when they come this time...”* The incident was re-opened and Deputy Enrique Cepeda # 2069 was assigned to the incident arriving at 5:38 pm. Deputy Michelle Garraffa #339 and Deputy Rodriguez were also assigned arriving at 5:44 pm.

b. Interaction with SGT Daniels August 25; 5:48 pm thru 6:24 pm.

(1) When Deputy Cepeda arrived, he approached the house and knocked on the door several times and received no response. He contacted dispatch and requested they contact BD. At 5:44 he returned to the front door, knocked again and SGT Daniels opened it. Cepeda tried to engage SGT Daniels telling him that “*your family is very concerned about you*”, but Daniels still doesn’t respond. Cepeda backs away from the door onto the lawn and continues to try to engage with SGT Daniels; he also notices that Daniels has a noticeable bulge¹ at his right hip. When Rodriguez and Garraffa arrive, Cepeda briefs them on his observations, while SGT Daniels retreats back inside the house and closes the door. Deputy Rodriguez walks around the side of the house to try and get a visual of SGT Daniels.

(2) Deputy Cepeda continues knocking on the door and SGT Daniels finally comes out of the house and stands erect with his back against the garage wall facing Cepeda who is standing on the downhill slope of the front lawn on the west side of onto the front porch; there is a noticeable bulge under his shirt at his right front hip. Both Cepeda and Garraffa attempt to talk to SGT Daniels, and get him to engage with them, but he remains mute. Deputy Rodriguez comes back to the front yard at 5:54 pm and joins the efforts to engage SGT Daniels asking “...*do you know BD? ... he’s the one that called us.*” Rodriguez falls back to a patrol unit and places a call to BD to gain any insight that would help in communicating with SGT Daniels. https://home.bexar.org/videos/da/P3para2_Rodriguez_Call_to_BD_25Oct20.wmv



(3) Rodriguez returns to the front of the porch and tries again to engage SGT Daniels using information gained from BD in the just completed call. SGT Daniels remains non-responsive despite the mention of his brothers’ name and other family members. At 6:09 pm Rodriguez looks at Cepeda – holds the gaze - and says “*he does have weapons...*” Rodriguez then nod’s his head to the right and gestures with his left hand for Garraffa to reposition and provide cover from the sidewalk to Rodriguez’ right rear area. Rodriguez then closes the distance with SGT Daniels and re-positions to the front of the covered porch and continues to try and engage with SGT Daniels. https://home.bexar.org/videos/da/P3para3_Cepedas_BWC_Rodriguez_after_BD_Call_Close_Signal.wmv

¹ Ultimately a black Glock 22 .40 Caliber Handgun, SN# AARN445 with a magazine inserted in the butt of the gun, taken into evidence by Deputy Schroeder. Potential blood was observed on the slide of the gun; the 15 round magazine contained 9 live rounds. When unloaded at the scene 1 live round (Hornady .40 MM S&W) was found in the chamber.

(4) At 6:16 pm, Rodriguez asks “...have you had anything to eat today? brother-man have you had anything to eat? SGT Daniels turns his head to the left to look at Rodriguez; when he does that Deputy Cepeda moves quickly towards SGT Daniels placing his right hand on top of the bulge in Daniels’s waist band, and his left hand on Daniels’ right wrist which is moving towards the bulge at the right hip. When Cepeda moves, Deputy Rodriguez closes in on Daniels



and withdraws his Taser for non-lethal cover, but Daniels grabs the barrel of the Taser with his left hand. Rodriguez breaks contact with Daniels to regain control of his Taser; he also directs Garraffa to fire her Taser at Daniels to try and incapacitate him, and Daniels does release the Rodriguez’ Taser. At the same time Cepeda maintains pressure on the gun with his right hand, and with his left hand tries to lift the shirt to get to Daniels’ gun. SGT Daniels responds to this by using his left hand to rebuff Cepeda’s effort. Rodriguez uses his right hand to secure Daniels left arm, and then uses his left hand to sweep Daniels’ right leg to force him to the ground and gain leverage. While on the ground, Deputies Rodriguez and Garraffa both use their Tasers to “drive-stun” Daniels, while Rodriguez (his left hand) and Cepeda (his right hand) continue to struggle with Daniels for control of the gun under his shirt. SGT Daniels is eventually able to get his right hand free from the grip of Deputy Rodriguez’ left hand and it rests at his right front hip. As the struggle continues, the gun is dislodged from its holster - SGT Daniels holds onto the handle, while Deputy Rodriguez’ left hand holds onto the slide – and the gun begins to move up SGT Daniels body, first to his midsection, then too his right chest area, then his right shoulder, across his face to the left side of his head, then above his left ear. As this movement occurs, both Deputies Rodriguez and Cepeda repeatedly tell SGT Daniels to “let go of the gun!” Ultimately Deputy Rodriguez draws his service weapon and fires two rounds into SGT Daniels torso at 6:18:40 pm. Deputy Rodriguez notified at 6:20 pm, and requested EMT’s 6:21 pm while Garraffa retrieves the medical kit from the unit, and Deputy Rodriguez begins CPR. See: https://home.bexar.org/videos/da/P4para4_Cepeda_BWC_Att_to_Disarm.wmv and https://home.bexar.org/videos/da/P4para4_Rodriguez_BWC_Att_to_Disarm.wmv

(5) Bexar County District 7 Fire Rescue (D7FR) Unit 115 arrives on scene at 6:28 pm, to provide emergency medical treatment. To support those efforts SGT Daniels was moved from the porch to the walkway for continued medical treatment. Ultimately medical personnel pronounced SGT Daniels deceased at 7:00 pm. The Bexar County Medical Examiner’s Office performed an autopsy at 8:00 am on August 26. The findings of that examination were that SGT Daniels suffered two closely spaced gunshot wounds to the chest and died as a result. The manner of death was deemed homicide.²

² Bexar County Medical Examiners Autopsy Report, CIL 2020-2204, dated August 26, 2020; homicide is defined in Black’s Law Dictionary as “the killing of one person by another”.

c. BCSO Investigation. Investigator H. Pons was assigned as the lead investigator. Three deputies were assigned to conduct interviews of the private residences surrounding 11207 Liberty Field.

(1) Witness “VC” told investigators that “...*I heard screaming at approximately 6:00 pm. I looked out my window and saw a deputy pointing a Taser at my neighbor.... I walked away from the window and heard two gunshots.*” Neighbor “AA” told investigators that “*I heard what seemed to be a gunshot coming from the backside of my house around 11:30 pm yesterday (August 24th) ... I didn’t see anything when I looked out the back window ... I woke up about 4:20 am this morning (August 25th) by what sounded like a single gunshot ... I looked outside but didn’t see anything ... I heard another single gunshot about 4:50 am and again at 5:20 am ... at 6:17 pm today I heard two gunshots back-to-back, I looked out the window and saw deputies outside. I left the house and went to the corner of Liberty Field and Barhill Post to tell the police what I heard.*” Neighbor “BC” told investigators that he was awoken by two gunshots. Neighbor “RS” live with “KM”. RS told investigators that around 5:50 pm he “*saw a male officer in his neighbor’s backyard looking around. I did hear a single gunshot last night about 10:30 pm.*” KM told investigators that “*I heard a single gunshot at 10:50 pm last night (August 24th) ... I heard another single gunshot this morning between 1:30 am and 2:00 am followed by some noise between my house and my neighbor’s house.*”³

(2) Inspection of 11207 Liberty Field revealed a black leather holster for a handgun in the grass adjacent to where medical personnel had administered treatment for SGT Daniels. Near the holster was a key fob and a piece of paper with the phrase “*God, We Need You*” written on it. Items found and collected from the covered front porch area were a Taser cartridge, a Samsung cell phone, the black Glock model 22 handgun, a black switch blade, a black wallet, a black iPhone, two live rounds, a magazine with live rounds, a second key fob with keys attached and a Taser without cartridge loaded. At 11:00 pm a search warrant⁴ was executed for the search of the residence at 11207 Liberty Field. Inspection revealed a bullet defect in a hallway wall, the hallway floor, and a hallway storage closet where the AC unit is located. CSU Garza was able to retrieve a bullet projectile from the closet door as well as a .40 SW Hornady bullet casing from the hallway. A box of ammunition was located in the master bedroom closet and a (.40 caliber) high-capacity magazine located in the hallway closet.⁵ Each of these items was seized and stored in the BCSO Property Room.

(3) Deputies Rodriguez, Cepeda and Garraffa were relocated to Bexar County CID for photographs, examined for gunshot residue and their weapons were inventoried. When Deputy Rodriguez was photographed, he told investigators that he had washed blood off of his hands before leaving 11207 Liberty Field. Rodriguez also had apparent blood on his uniform outer vest and duty belt. On inspection of his service weapon – a Glock 22 .40 Caliber handgun SN# WXW418 displayed apparent blood on the gun barrel, slide and trigger guard area. The magazine loaded in the weapon contained 13 WIN 30

³ Inv Pons’ Supplemental Investigation Report pp’s 33 – 34 of 59.

⁴ CM075705 Search Warrant and supporting affidavit, issued 10:54 pm, August 25th, 2020.

⁵ Inv Pons’ Supplemental Investigation Report pp’s 37 – 38 of 59.

S&W rounds with 1 WIN 30 S&W round in the chamber. Rodriguez also had 3 additional magazines on his duty belt, each loaded with 15 rounds for a total of 59 rounds inventoried.⁶ Initial inspection of the area did not reveal the shell casings for the two rounds fired on August 25. After viewing BWC video, Pons revised his estimate of where Rodriguez' shell casings would land. On August 26, a subsequent inspection – with use of a metal detector - of the grassy area adjacent to the covered front porch area recovered 2 .40 caliber shell casings.⁷

(4) The investigation revealed that SGT Daniels was a decorated combat veteran, who served 2 campaigns in Afghanistan. His Certificate of Discharge reflects that he also received instruction in close quarters combative training⁸. His records also indicate that he was 100% disabled with multiple service-connected disabilities. The investigation was completed, and the case file submitted to the District Attorney's Office on May 3, 2021.

(5) The investigative file was also provided to the BCSO Internal Affairs Division for Administrative Review on May 5, 2021. After review of the above file the review board brought no allegations of misconduct against any officer involved in the incident; the findings were submitted to the Sherriff's Command Group for review on June 28, 2021.

3. District Attorney Actions.

After review of the file, SGT Daniels' were received by the District Attorney and the Civil Rights Division on June 9, 2021 and given the opportunity to view all video of BCSO interactions with SGT Daniels.

4. Applicable Law.

a. Texas Penal Code.

(1) **Chapter 9 Justification Excluding Criminal Responsibility** chapter 9 of the code and all of its subchapters and sections provide the statutory basis to examine and assess an actor's use of force and deadly force to determine whether criminal charges – for any use of force – are viable. § 9.02 **Justification as a Defense** specifically states "**It is a defense to prosecution that the conduct in question is justified under this chapter.**"

(2) § 9.22 **Necessity**; conduct is **justified** if the actor reasonably believes the conduct is immediately necessary to avoid imminent harm.

(3) § 9.31 **Self-Defense** a person is justified in using force against another when and 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.

⁶ Inv Pons' Supplemental Investigation Report pp's 38 – 39 of 59

⁷ Inv Pons' Supplemental Investigation Report pp's 50 of 59

⁸ See [Fort Benning | Modern Army Combatives](http://www.benning.army.mil/Armor/316thCav/Combatives/); available at: <http://www.benning.army.mil/Armor/316thCav/Combatives/>

(4) § 9.32 (a) (2) **Deadly Force in Defense of Person** the use of deadly force is justified where the actor(s) reasonably believe that deadly force is immediately necessary to protect the actor(s) against another person's use or attempted use of unlawful deadly force.

(5) § 9.33 **Defense of Third Person** the use of deadly force against another to protect a third person if:

(A) ...under the circumstances as the actor **reasonably believes them to be**, the actor would be justified under §§'s 9.31 and 9.32 in using deadly force to protect themselves against the unlawful deadly force he reasonably believes to be threatening the third person he seeks to protect; and

(B) The actor reasonably believes that his intervention is immediately necessary to protect the third person.

(6) § 19.02 (b) **Murder**. A person commits murder if he intentionally or knowingly causes the death of an individual or with the intent to cause serious bodily injury, commits an act clearly dangerous to human life that causes the death of an individual.

(7) In addition to the statutory law above, Texas case law has expanded the body of legal justifications to address situations where an actor's reasonable belief is proven factually wrong⁹ referred to as the doctrine of "**Apparent Danger**". The Texas Pattern Jury Charge for Apparent Danger instructs jurors.

(A) When a person is attacked with unlawful deadly force, **or he reasonably believes he is under attack or attempted attack** with unlawful deadly force...

(B) ...and there is created in the mind of such person **a reasonable expectation or fear** of death or serious bodily injury, then the law excuses or justifies such person in resorting to deadly force by any means at his command to the degree that he reasonably believes immediately necessary, **viewed from his standpoint at the time** to protect himself from such attack or attempted attack...

(C) ...it is not necessary that there be an actual attack or attempted attack, as **a person has a right to defend his life from apparent danger as fully and to the same extent as he would, had the danger been real**, provided he acted upon a reasonable apprehension of danger...

(D) ...as it appeared to him from his standpoint at the time, and that he reasonably believed such deadly force was immediately necessary to protect himself against the other person's use or attempted use of unlawful deadly force.

(E) ...if you (the jury) have a reasonable doubt as to whether or not the defendant was acting in self-defense on said occasion and under the circumstances, **then**

⁹ See *Valentine v. State*, 587 S.W. 2nd 399, Tex. Court Crim. App, Sep 19, 1979.

you should give the defendant the benefit of that doubt and say by your verdict “not guilty”.

b. Health and Safety Code.

(1) Chapter 573. Emergency Detention. Subchapter A of this code establishes state law, authority and the governing criteria for the apprehension and seizure of any person by a peace officer for an emergency detention.

(2) § 573.001. APPREHENSION BY PEACE OFFICER WITHOUT WARRANT. (a) A peace officer, without a warrant, may take a person into custody, regardless of the age of the person, if the officer:

(1) has reason to believe and does believe that:

(A) the person is a person with mental illness; and

(B) because of that mental illness there is a substantial risk of serious harm to the person or to others unless the person is immediately restrained; and

(2) believes that there is not sufficient time to obtain a warrant before taking the person into custody.

(b) A substantial risk of serious harm to the person or others under Subsection (a)(1)(B) may be demonstrated by:

(1) the person's behavior; or

(2) evidence of severe emotional distress and deterioration in the person's mental condition to the extent that the person cannot remain at liberty.

(c) The peace officer may form the belief that the person meets the criteria for apprehension:

(1) from a representation of a credible person; or

(2) on the basis of the conduct of the apprehended person or the circumstances under which the apprehended person is found.

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(h) A peace officer who takes a person into custody under Subsection (a) may immediately seize any firearm found in possession of the person. After seizing a firearm under this subsection, the peace officer shall comply with the requirements of § 18.91, Code of Criminal Procedure.¹⁰

c. Application of Law to Facts and Prior History.

(1) The evidence in this case clearly establishes that BCSO deputies were requested to appear at 11207 Liberty Field two times on August 24, 2020, to provide aid to SGT Daniels whom family members reported “*was experiencing a mental health emergency*”

¹⁰ §18.191 Tex. Code. Crim. Ann. Specifies that a law enforcement officer who seizes a firearm under the provisions of § 573.001 Health and Safety Code and not in connection with an offense under Chapter 46 Tex. Pen. Code. Ann shall immediately provide that person a written copy of the receipt for the firearm and a written notice of the procedure for the return of a firearm under this section.

and expressing suicidal ideations.” Deputy’s attempts to interview SGT Daniels were either rebuffed when no one answered the door, or they did not have the authority to forcibly enter the residence. When SGT Daniels himself called, he was able to interact with the officers such that they did not have “reason to believe that he was suffering from a mental illness and as a result of that illness there existed a substantial risk of serious harm to himself or others ...” This same pattern repeated itself on August 25, 2020, but on the second attempt at 5:48 pm, deputies were able to observe SGT Daniels first-hand and observed him to be mute, either unable or unwilling to interact with them, nor did it appear that he was able to understand what they were trying to communicate with them. Deputies buttressed their own observations by communicating with the party that initiated the call for assistance. Thus at 6:09 pm the deputies developed reason to believe that SGT Daniels was a person with a mental illness, and under the totality of the interactions over the previous twenty-four hours, he posed a substantial risk of harm to himself or others in the residential neighborhood. Thus, deputies were authorized to perform an emergency detention.

(2) Deputies were also aware that SGT Daniels was a military veteran, and could clearly see that he possessed a firearm, which they were authorized to remove to perform the emergency detention. Deputies attempted to remove the weapon thru a series of steps intended to deny SGT Daniels control of the firearm. First Deputy Cepeda places his right hand over the top of the firearm to keep it in the holster underneath his shirt and used his left hand to control SGT Daniels right hand. Deputy Rodriguez also moved to close the distance with SGT Daniels, and drew his Taser from his left holster to provide non-lethal cover to Cepeda – but Daniels grabbed the barrel of the Taser and negated Rodriguez’ effort. Rodriguez directed Garraffa to engage her Taser, but it also failed to neutralize SGT Daniels resistance to the deputy’s attempts to control and take his gun as evidenced at 6:16:58 pm where video clearly shows SGT Daniels use his left hand to deny Cepeda’s attempt to lift his shirt and get to the gun.



(3) .As the struggle for the firearm extended, Rodriguez swept Daniels’ left leg to force him to the ground. SGT Daniels is able to position his right underneath the hands of both Cepeda and Rodriguez, and at the area of his right hip where the gun was initially holstered. Both Cepeda and Rodriguez repeatedly say “let go!, let go!” At 6:17:38, the gun starts to move from Daniels’ waistband up his torso, to his chest and head. During this



movement Deputy Cepeda's torso, head and face remain at SGT Daniels' right shoulder and in front of the barrel of the gun underneath the shirt.

(4) The combination of the deputy's repeated efforts to control the gun and restrict SGT Daniels' access to it, combined with the incremental movement of the gun up Daniels' body, "...pointing toward Deputy Cepeda's head area."¹¹, and the ineffectiveness of their efforts to neutralize Daniels' resistance to their commands – however unintentional his resistance may have been – all contributed to Deputy Rodriguez' "...fear that the weapon would be discharged by Damian and shoot Deputy Cepeda in the head or upper body."¹² As a result, Deputy Rodriguez fired his service weapon into SGT Daniels body, resulting in his death. Under these facts the state could not prove Deputy Rodriguez' actions were un-justified as Deadly Force in Defense of Person under § 9.32, and Defense of Person under § 9.33.

d. The Grand Jury Determination

The above facts, statements of law and analysis were presented to the grand jury on December 20, 2021, and after deliberation, it declined to return a true bill of indictment.

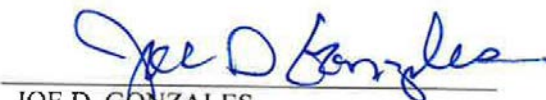
Sgt. Daniels' death is a tragedy. As noted in the STANDARD OF REVIEW above, it is the job of the Grand Jury only to determine if the tragic circumstances of his death constitute a crime. While the Grand Jury declined to issue a true bill of indictment, we must implore all federal, state, and local leaders to recognize that the criminal justice system alone is ill-equipped to define and properly allocate the resources needed to address the mental health crisis in our communities – particularly among our veterans.

- [Body Camera Video from Officer Rodriguez \(1\)](#)
- [Body Camera Video from Officer Rodriguez \(2\)](#)
- [Body Camera Video from Officer Garriffa](#)
- [Body Camera Video from Officer Cepeda](#)

Submitted by:


DARVIL E. HARRIS
Chief, Civil Rights Division

Approved by:


JOE D. GONZALES
District Attorney

¹¹ Deputy John Rodriguez written statement given to Inv Pons on August 31, 2020.

¹² Deputy John Rodriguez written statement given to Inv Pons on August 31, 2020.