

# The Florida Times-Union

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## El Faro Investigation

# Investigators pledge to find answers leading to changes



The families of the crew members of the El Faro gather for a prayer Friday after the final hearing was adjourned. The U.S. Coast Guard Marine Board of Investigation into the sinking of the El Faro ended its sixth week of hearings at the Prime Osborn Convention Center into the October 2015 sinking of the cargo ship that killed all 33 crew members. (Photos by Bruce Lipsky/Florida Times-Union)

## Emotions run high as Coast Guard ends final hearing into sinking

By Sebastian Kitchen  
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The final Coast Guard hearing into the El Faro sinking concluded Friday with emotional statements and vows from investigators to find answers to the tragedy that claimed 33 lives and disrupted the maritime industry.

"We all owe it to the El Faro 33 to learn what happened," said Tim Nolan, president of ship operator Tote Maritime Puerto Rico. He said others will never truly know the pain of the family members, several of whom sat through every day of six weeks of hearings.

Nolan and William Bennett, attorney for the wife of El Faro captain Michael Davidson, cried reading statements on the final day of the Coast Guard Marine Board of Investigation hearing into the Oct. 1, 2015, sinking dur-

EL FARO continues on A-4



On the final day of the El Faro hearings the 33 seats in the first three rows were adorned with black ribbons in memory of the crew.

**"We all owe it to the El Faro 33 to learn what happened."**

Tim Nolan  
President of Tote Maritime Puerto Rico, operator of the El Faro

## Pension fund on deadline: 'No way'

Mayor says it can be done, board will have financial analysis it wants

By David Bauerlein  
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The chairman of the Police and Fire Pension Fund said Friday "there is no way" the board can meet Mayor Lenny Curry's deadline of March 15 to vote on killing a 2015 agreement that contains a schedule for the city pumping several hundred million dollars of extra payments into the financially troubled pension plan.

Board Chairman Richard Tuten said it's unrealistic for the board to make such a momentous decision in 30 days, particularly since Curry has given it no financial analysis about the impact on the pension fund.

Curry issued a statement later in the day saying the timeline is achievable and the board will get the financial information it needs. The five-member board oversees the Police and Fire Pension Fund and is an independent agency within city government.

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Weather  
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66 PAGES



## National Guard was considered for immigration roundups

Homeland Security official: Proposal for 100,000 troops was early draft

By Garance Burke  
Associated Press

The Trump administration considered a proposal to mobilize as many as 100,000 National Guard troops to round up unauthorized im-

migrants, including millions living nowhere near the Mexico border, according to a draft memo obtained by The Associated Press.

Staffers in the U.S. Department of Homeland Security said they had been told by colleagues in two DHS departments that the proposal was still being considered as recently as Feb. 10. A DHS official described the docu-

ment as a very early draft that was not seriously considered and never brought to Homeland Security Secretary John Kelly for approval.

The 11-page document calls for the unprecedented militarization of immigration enforcement as far north as Portland, Ore., and as far east as New Orleans.

Four states that border on Mexico were included in the

proposal — California, Arizona, New Mexico and Texas — but it also encompasses seven states contiguous to those four — Oregon, Nevada, Utah, Colorado, Oklahoma, Arkansas and Louisiana.

White House spokesman Sean Spicer said Friday the document was "not a White

MEMO continues on A-4

### READ IT FOR YOURSELF

The document can be accessed at <http://apne.ws/2l1Dj0k>



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## EL FARO

Continued from A-1

ing Hurricane Joaquin.

Theresa Davidson, through her attorney, shared her condolences with the families and said she and her daughters and her husband's parents and siblings know their pain.

Several people, in their closing statements, talked about the grace, dignity, dedication and selflessness of the family members.

Capt. Jason Neubauer, chairman of the marine board and chief of investigations for the Coast Guard, finished the hearing with 33 seconds of silence in memory of the crew while their names were displayed.

The day began with family members roping off and placing black ribbons on 33 seats in the meeting room to honor their lost loved ones. After the hearing they gathered in a circle to pray for current mariners and for changes to prevent a similar tragedy.

Neubauer said it was difficult to watch and listen as the family, friends and fellow crew members struggled to come to terms with the tragedy, but added it is "important for investigators to observe the emotional toll."

Lead investigators with the Coast Guard and National Transportation Safety Board, which participated in the hearing, said seeing the family members and their dedication strengthened their resolve to finish the investigation and prevent future tragedies. Each agency will release a report with findings about the causes of the accident and recommendations for changes in the industry.

"I believe we have gathered the factual information necessary" for the investigation, Neubauer said, although he said the board would continue to accept and review any evidence.

Neubauer would not be specific, but expects what he said is one of the largest investigations in Coast Guard history to be a major factor in marine safety moving forward and to lead



Cheryl Crawford-Glenn (left), whose son Sylvester Crawford Jr. died aboard the El Faro, is hugged by Tim Nolan, president of Tote Maritime Puerto Rico, after the final hearing was adjourned Friday. (Bruce Lipsky/Florida Times-Union)

to changes.

"I definitely see recommendations coming as a result of this investigation," he said.

Brian Young, lead investigator with the NTSB, said his team will do "everything in their power" to prevent another tragedy.

### GAVE UP OPPORTUNITY TO FIGHT FOR HIS LIFE

Theresa Davidson, in her statement, pointed to testimony of her husband as a meticulous captain concerned with safety and the well-being of his crew. She pointed out the woeful forecasts of the National Weather Service in the days leading up to the El Faro's loss of propulsion, leaving the 790-foot cargo ship helpless in the path of the hurricane.

She also referred to one of the most emotional moments in the entire ordeal, when Davidson at the end of audio recorded as the ship was sinking told a struggling crew member pleading for help he would not leave him.

Davidson willingly gave up the opportunity to fight for his own survival because he refused to leave a crewman, she wrote.

"Some are surprised Michael made that choice. I was not."

She said that spoke to who "Michael was at his core."

Neubauer said, "I think captain Davidson's actions showed that he was committed to every crew member on that vessel and the voyage. ... I thought it was heroic that he stayed to the end and tried to help his crew."

There was mixed testimony about Davidson during the six weeks of hearings. Some also chastised Tote, which has settled wrongful deaths with 28 of the 33 estates.

### 26 HOURS OF AUDIO

The third hearing was the first since investigators recovered the ship's voyage data recorder from the ocean floor 3 miles below the surface. Neubauer had said the investigation could be completed without the recorder, but he said Friday it is vital to the investigation with 26 hours of audio from crew members on the ship's navigation bridge.

"It really tightened up on some of the facts we would have had to speculate on," fills in gaps and helped produce several leads in the investigation, he said.

Neubauer listened to the entire 26 hours of audio "to gain better perspective of what happened."

"For me, it was heart-wrenching. Even on paper, the situation comes across. It's emotional to watch the actions, the final actions by the crew. I do agree the

crew tried as hard as they could. There was definitely heroic actions done to try to save other members and the ship itself. For me, it is something I will always think about."

The captain said gathering evidence over 16 months has been challenging. Along with collecting thousands of pages of documents, the board interviewed dozens of witnesses and toured a sister ship, the El Yunque.

### TAKEN FOR GRANTED

Pastor Robert L. Green, father of El Faro chief cook LaShawn Rivera of Jacksonville, said people take the maritime industry for granted when they grab goods off the shelf or drive a car off the lot. He said the industry saved his son, who did not always make the best choices. Green said he sat through those six weeks of hearings for his son.

Green predicted there will be changes in the industry. He said it has been a long process, but he is encouraged by the work of investigators and expects positive changes.

Green does not expect all of the answers families want and said some things will be left to conjecture.

The El Faro traveled between Jacksonville, where many of the crew members including Rivera lived, and San Juan,

Puerto Rico.

### LOADING AND SECURING CARGO

Federal investigators drilled down on the final day into incidents of the ship leaning during loading, enough that the captain stopped loading in one instance, and about whether there were sufficient straps and chains on board for additional securing of cargo if necessary.

A Coast Guard investigator asked Don Matthews, marine operations manager for Tote Maritime Puerto Rico, about possible effects of the loading that could have affected the integrity of the ship. Matthews, who testified in a previous hearing, was the final witness.

Investigators asked about two incidents, one in San Juan on Sept. 18 and another on the final loading on the El Faro on Sept. 29 in Jacksonville, when the ship had an excessive list, or lean.

The captain stopped loading in San Juan because of concerns with the list. The excessive list could be a risk for the vessel, the chief mate warned in an email.

Several company officials emailed about the "excessive list" and addressing the concern.

Matthews, who was on vacation at the time of loading for the final voyage, said he does not believe they stopped loading the ship in Jacksonville.

The chief mate talked to Davidson in the final hours on board the ship, in the recovered audio, about those loading the ship not properly securing the cargo with lashings.

Bennett, Davidson's attorney, pointed to Davidson saying in the transcript he went directly to the foreman "all the time" with concerns about loading and skipped the middleman.

During the ship's final voyage, crew members are heard in the recovered audio talking about there not being enough lashings to secure cargo and saying those on board were damaged.

Matthews insisted, based on inventories, there were sufficient lashings on the

ship, although testimony indicated there was no record of an inventory in the months before the final El Faro voyage.

Previous witnesses said the El Faro officers never requested, and those loading the ship did not use, the lashings and system intended for heavy weather.

When asked by a Tote attorney, Matthews said the captain and chief mate are responsible for the stability of the ship.

Davidson altered course less than two months before the ship sank to avoid a tropical storm. Investigators asked whether any company officials questioned Davidson about taking the longer route, which would have added time and cost. Matthews said he was not aware of any such conversations.

Investigators have asked about the pressures on captains related to financial concerns, about arriving in port on time and keeping the fuel burned to a minimum.

Matthews indicated there were discussions at times about fuel consumption.

### INVESTIGATION TRANSITIONING

The Coast Guard Marine Board of Investigation is the highest level of investigation for the Coast Guard and the first board since the Deepwater Horizon oil rig explosion in 2010.

The Coast Guard and NTSB, which have conducted separate but coordinated investigations, have collected substantial evidence in the case. Neubauer said the investigations would definitely be independent moving forward.

The marine board will move from a fact-finding phase into an analysis of the causes and of whether there were criminal or negligent acts, and to propose changes to the industry. Neubauer has no timeline to complete the investigation and submit the findings to the Coast Guard commandant.

He said, "It is going to take as long as it takes to get it right."

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## MEMO

Continued from A-1

House document."

"There is no effort to do what is potentially suggested," he said. Spicer called the AP report "100 percent not true," adding that there was "no effort at all to utilize the National Guard to round up unauthorized immigrants."

The AP had sought comment from the White House beginning Thursday and DHS earlier Friday and had not received a response from either.

Governors in the 11 states would have had a choice whether to have their guard troops participate, according to the memo, which bears the name of Kelly, a retired four-star Marine general.

While National Guard personnel have been used to assist with immigration-related missions on the U.S.-Mexico border before, they have never been used as broadly or as far north.

The memo was addressed to the then-acting heads of U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection.

It would have served as guidance to implement the wide-ranging executive order on immigration and

border security that President Donald Trump signed Jan. 25. Such memos are routinely issued to supplement executive orders.

Also dated Jan. 25, the draft memo says participating troops would be authorized "to perform the functions of an immigration officer in relation to the investigation, apprehension and detention of aliens in the United States." It describes how the troops would be activated under a revived state-federal partnership program, and states that personnel would be authorized to conduct searches and identify and arrest any unauthorized immigrants.

If implemented, the impact could have been significant. Nearly one-half of the 11.1 million people residing in the U.S. without authorization live in the 11 states, according to Pew Research Center estimates based on 2014 Census data.

Use of National Guard troops would greatly increase the number of immigrants targeted in one of Trump's executive orders last month, which expanded the definition of who could be considered a criminal and therefore a potential target for deportation.

That order also allows immigration agents to pri-

oritize removing anyone who has "committed acts that constitute a chargeable criminal offense."

Under current rules, even if the proposal had been implemented, there would not be immediate mass deportations. Those with existing deportation orders could be sent back to their countries of origin without additional court proceedings. But deportation orders generally would be needed for most other unauthorized immigrants.

The troops would not be nationalized, remaining under state control.

Spokespeople for the governors of 10 of the states either declined to comment or said it was premature to discuss whether they would participate.

Arkansas Gov. Asa Hutchinson said his state had not had any contact about the proposal, but added, "I would have concerns about the utilization of National Guard resources for immigration enforcement. I believe it would be too much of a strain on our National Guard personnel."

Oregon Gov. Kate Brown said she was "glad to hear" that DHS said they never seriously considered the draft memo," according to her press secretary, Chris

Pair. He said Brown will fight to keep Oregon "a welcoming and inclusive place for all Oregonians, regardless of heritage, religion, or immigration status."

The proposal would have extended the federal-local partnership program that President Barack Obama's administration began scaling back in 2012 to address complaints that it promoted racial profiling.

The 287(g) program, which Trump included in his immigration executive order, gives local police, sheriff's deputies and state troopers the authority to assist in the detection of immigrants who are in the U.S. illegally as a regular part of their law enforcement duties on the streets and in jails.

The draft memo also mentions other items included in Trump's executive order, including the hiring of an additional 5,000 border agents, which needs financing from Congress, and his campaign promise to build a wall between the U.S. and Mexico.

The signed order contained no mention of the possible use of state National Guard troops.

According to the draft memo, the militarization effort was to be proactive, specifically empower-

ing Guard troops to solely carry out immigration enforcement.

Allowing Guard troops to operate inside non-border states also would go far beyond past deployments.

In addition to responding to natural or man-made disasters or for military protection of the population or critical infrastructure, state Guard forces have been used to assist with immigration-related tasks on the U.S.-Mexico border, including the construction of fences.

In the mid-2000s, President George W. Bush twice deployed Guard troops on the border to focus on non-law enforcement duties to help augment the Border Patrol as it bolstered its ranks.

And in 2010, then-Arizona Gov. Jan Brewer announced a border security plan that included Guard reconnaissance, aerial patrolling and military exercises.

In July 2014, then-Texas Gov. Rick Perry ordered 1,000 National Guard troops to the border when the surge of migrant children fleeing violence in Central America overwhelmed U.S. officials responsible for their care. The Guard troops' stated role on the border at the time was to provide extra

sets of eyes but not make arrests.

Bush initiated the federal 287(g) program — named for a section of a 1996 immigration law — to allow specially trained local law enforcement officials to participate in immigration enforcement on the streets and check whether people held in local jails were in the country illegally. ICE trained and certified roughly 1,600 officers to carry out those checks from 2006 to 2015.

The memo describes the program as a "highly successful force multiplier" that identified more than 402,000 "removable aliens."

But federal watchdogs were critical of how DHS ran the program, saying it was poorly supervised and provided insufficient training to officers, including on civil rights law. Obama phased out all the arrest power agreements in 2013 to instead focus on deporting recent border crossers and immigrants in the country illegally who posed a safety or national security threat.

Trump's immigration strategy emerges as detentions at the nation's southern border are down significantly from levels seen in the late 1990s and early 2000s.

## PENSION

Continued from A-1

The back-and-forth came Friday as Curry presses to wrap up collective bargaining talks with unions representing police and firefighters so he can submit legislation to City Council in connection with a half-cent sales tax approved by voters in August.

Tuten said the pension fund board won't be rushed.

"I can't do anything no matter how badly a mayor — this one or the next one — wants something if it doesn't add up," Tuten said after the board meeting. "So far, we haven't gotten any numbers."

Curry wants to scrap a 2015 agreement between

the city and the Police and Fire Pension Fund board that calls for the city to make \$350 million in extra payments over a 13-year period that the pension fund would match with \$110 million.

The extra payments are above and beyond the minimum required by state law to pay down the city's huge \$1.8 billion debt for future police and firefighter pensions.

Curry reached tentative agreements Feb. 11 with police and firefighters unions that primarily focus on wages and retirement benefits, but also say none of those changes will happen unless the 2015 agreement is terminated.

"Last weekend, the police and fire union leadership reached a tentative



Curry

agreement with us that keeps our promises to public safety workers, respects taxpayer dollars and is fiscally responsible," Curry said in his statement. "The tentative agreement included a timeline that would ensure that we solve this problem in a timely manner. The PFPF Board will have the financial information they need to make a responsible decision prior to their vote."

The extra payments in the 2015 agreement are intended to pay off the debt faster and save money in the long run. But Curry's position is they no longer are needed because voters approved a half-cent sales tax dedicated

solely to pension costs, giving the city its "long-term funding solution."

That sales tax would not start until after the Better Jacksonville Plan's half-cent sales tax expires in 2030, so board members want to know what will happen to the fund's finances until then.

The 2015 agreement phases in the city's extra payments.

They started at \$5 million the first year, rose to \$10 million this year, and would go to \$15 million next year followed by \$32 million per year for a decade.

Board member Bill Scheu said Curry needs to present the full picture of how pulling back on city payments in the coming years will affect the financial health of

the pension fund.

The state law authorizing the sales-tax election says if the city closes the pension plan to new hires, which Curry's plan would do by giving them 401(k) style accounts, then the city can stretch the debt paydown period over a longer period time, which would reduce the city's costs until the half-cent sales tax starts.

State law also gives the city the option of counting the future sales tax revenue as a present-day asset, which would further lower the city's annual costs because at least on paper, it would show the pension fund is better funded.

"We need to know whether they're going to do that or not," Scheu said. "What's the mayor's posi-

tion on it?"

Tuten said it might take longer than two months for the pension fund to fully assess Curry's proposal by having the fund's own pension experts delve into legal and financial aspects.

During collective bargaining sessions, Curry's representatives said they have done the financial analysis, but they have invoked a provision in state law to keep that information confidential during the talks with unions.

Board member Chris Brown said he wants to work with the city. "But at the same time, for me the biggest responsibility I have is the fiduciary responsibility to the fund," he said.

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