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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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The Citizens' Law Enforcement Review Board made the following findings in the closed session portion of its September 20, 2022, meeting held via the Zoom Platform. Minutes of the open session portion of this meeting will be available following the Review Board's review and adoption of the minutes at its next meeting. Meeting agendas, minutes, and other information about the Review Board are available upon request or at [www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb).

**CLOSED SESSION**

a) PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE

**Discussion & Consideration of Complaints & Reports:** Pursuant to Government Code Section 54957 to hear complaints or charges brought against Sheriff or Probation employees by a citizen (unless the employee requests a public session). Notice pursuant to Government Code Section 54957 for deliberations regarding consideration of subject officer discipline recommendation (if applicable).

DEFINITION OF FINDINGS	
Action Justified	The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.
Not Sustained	There was <u>insufficient evidence</u> to either prove or disprove the allegation.
Sustained	The evidence supports the allegation and the act or conduct was not justified.
Unfounded	The evidence shows that the alleged act or conduct did not occur.
Summary Dismissal	The Review Board lacks jurisdiction or the complaint clearly lacks merit.

**CASES FOR SUMMARY HEARING (10)**

**ALLEGATIONS, BOARD FINDINGS & RATIONALES**

**21-083/PARK**

- Misconduct/Procedure – Numerous unidentified deputies denied Incarcerated Person Park food and water during her incarceration.

Board Finding: Unfounded

Rationale: According to Incarcerated Person Park, she was arrested by San Diego Police Department officers and transported to the San Diego Sheriff's Department Las Colinas Detention and Reentry Facility. Park alleged that "during the 14 hours I was in a holding cell, detention deputies denied me food and water. Because I was not given any food and was not told that there was water available in the holding cell." During the course of this investigation, 24 jail surveillance video recordings, totaling over 290 hours was viewed. Coupled with documented evidence and a scene investigation, it was determined for the allegation that Park was denied food and water for 14 hours was untrue and the complainant lacked credibility. The surveillance video evidence indicated Park was fed numerous times during her 25 hours of incarceration and had free access to water. The evidence showed the alleged act did not occur.

**POLICY RECOMMENDATIONS:**

- It is recommended that deputies be required to notate in the Jail Information Management System (JIMS)

each meal distribution in each housing unit, in conformance with California Title 15 Minimum Standards for Local Detention Facilities. If an incarcerated person misses a regularly scheduled facility meal and they are provided with a substitute meal and beverage, it will be notated in JIMS.

2. It is recommended that the completion or incompleteness (and reason for incompleteness) of all California Title 15 Minimum Standards for Local Detention Facilities requirements shall be noted in JIMS (showers, mail, etc.).

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## **21-105/LENARZ**

1. False Arrest – Deputy 1 arrested Lenarz on 01-28-21.

Board Finding: Action Justified

Rationale: Complainant Lenarz stated, *“I was woken from my sleep, was handcuffed, and was taken to the Sheriff’s station in Santee. I was taken to the San Diego jail.”* The primary duty of officers, when responding to a domestic violence situation, is to enforce the laws allegedly violated and to protect the complaining party. During a domestic dispute, the victim alleged that his domestic partner, Lenarz, assaulted him by striking his face. The victim sustained scratches to his face. For this reason, and after conducting an initial investigation, Deputy 1 arrested Lenarz for violation of California Penal Code Section 273.5(a) - Spousal/Cohabitant Abuse with Injury. Lenarz was transported to the San Diego Central Jail where he was booked into custody. According to California Penal Code §13701, the written policies shall encourage the arrest of domestic violence offenders if there is probable cause that an offense has been committed. An arrest shall be made when there is probable cause to believe that a felony or misdemeanor domestic violence offense has been committed. Peace officers shall make reasonable efforts to identify the dominant aggressor in any incident. The dominant aggressor is the person who has been determined to be the most significant. The evidence showed that the alleged act did occur, and it was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 failed to interview Lenarz and/or conduct an investigation.

Board Finding: Action Justified

Rationale: Lenarz alleged that Deputy 2 made no attempt to get his side of the story and was negligent in his duties by not conducting an investigation. In his written complaint, Lenarz stated, *“I believe that Deputy 2 was negligent in not conducting an investigation. Before people are put through that, tell Deputy 2 to check the facts.”* Though Lenarz specifically mentioned Deputy 2 in his complaint, the entirety of the investigation was a collective effort of all responding deputies, detectives, and outside agencies. Commonly, in domestic violence cases, peace officers focus on evidence that a crime was committed and the identity and arrest of the suspect/perpetrator. Deputy 1 led the initial investigation and made the decision to arrest. Deputy 2 conducted a follow-up investigation, which incorporated Deputy 1’s investigation, and submitted the investigation to the District Attorney’s office. Deputy 1 interviewed Lenarz prior to his arrest. As such, Deputy 2 did not interview the complainant as part of his follow-up investigation. The evidence showed that the alleged act did occur, and it was lawful, justified and proper.

3. Misconduct/Procedure – An unidentified deputy failed to take a crime report.

Board Finding: Action Justified

Rationale: Lenarz stated, *“Hayhurst should be charged with making a false police report. He stole my gold coins when he left me. I paid 5000 dollars for them. When I reported this to the police I was told that since he was my domestic partner this was a civil crime and not a statute crime.”* The complainant alleged that after his arrest, Hayhurst stole his personal property. When Lenarz reported the missing items to the Sheriff’s deputies, he was told that since the suspected thief was his domestic partner, whom he resided with, that the incident was a civil matter, and not a crime. As such, no crime report was taken. According to California Penal Code Section 484, theft is defined as wrongfully taking or stealing someone else’s property; however, in a situation where the victim and the alleged theft reside together or have dual

ownership, the question arises if the victim acted with the property owner's consent, and/or if the alleged thief asserted a claim of right over the property. A claim of right is a legitimate defense for any charge of theft. This defense asserts that the accused may have had a right to the property he took. For these reasons, the allegation of theft between cohabitates can be perplexing and is treated as a civil matter, versus a criminal matter. The evidence showed that the allegation that an unidentified deputy failed to take a crime report did occur, and it was lawful, justified and proper.

4. Misconduct/Procedure – SDSD staff failed to provide a crime report to the complainant upon request.

Board Finding: Summary Dismissal

Rationale: Lenarz stated that he attempted to obtain a copy of the report via Sheriff's Records but was denied. The SDSD Records & ID Division processes all arrest and booking records, identifies in-custody inmates, maintains all San Diego Sheriff crime and arrest reports, and maintains a county-wide repository of warrants and temporary restraining orders. The SDSD Records & ID Division is staffed by professional staff members, not sworn Sheriff deputies. Professional staff and their decisions reside outside of CLERB's purview as they are non-sworn personnel over which CLERB has no authority per CLERB Rules & Regulation 4.1 Citizen Complaints: Authority. The Review Board lacks jurisdiction.

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## **21-107/BUCKELEW**

1. Excessive Force – Deputy 2 picked Buckelew up by his shirt, "threw" him in a wheelchair, and "excessively" chained him on 02-13-20.

Board Finding: Unfounded

Rationale: Buckelew stated, "On February 13, 2020, Deputy 2, at Vista Detention Center, physically assaulted me, while I was in emergent medical distress by picking me up off of the ground by the front of my shirt and throwing me back into my wheelchair, while waist chaining, handcuffing and leg chaining me as tight as he possibly could. An ambulance was called and I was hospitalized for several days." According to SDSD Policy 2.48 Treatment of Persons in Custody, "Employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures." SDSD Policy 2.49 Use of Force, states in part, "Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing." Review of all records provided to CLERB were reviewed and produced no Use of Force Reports. Buckelew stated he filed a complaint with IA (Internal Affairs) regarding this alleged incident. According to SDSD Internal Affairs Policy Manual 2.5 Investigations, "The Internal Affairs Unit has the primary responsibility for the investigation of all complaints. The Internal Affairs Lieutenant will make the determination where the complaint will be investigated." SDSD CLERB liaison confirmed Buckelew filed a complaint with IA, however, CLERB is not privy to IA investigation documents. Buckelew's hospital medical records were reviewed. There was nothing in medical records about any use of force incident and/or any injuries sustained as a result of use of force. Deputy 2 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence refuted Buckelew's allegations and showed that the alleged act or conduct did not occur.

2. Misconduct/Discourtesy – Deputy 2 called Buckelew a "fucking piece of shit" on 02-13-20.

Board Finding: Unfounded

Rationale: Buckelew stated, "On February 13, 2020, Deputy 2, at Vista Detention Center, verbally assaulted me by calling me a 'Fucking piece of shit' several times." SDSD Policy 2.22 states in part, "Deputies shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Coarse, profane, or violent language is generally prohibited." Deputy 2 provided information during the course of CLERB's investigation that was considered

in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. See Rationale #1.

3. Misconduct/Discourtesy – Deputy 3 “spit” on Buckelew on 06-07-21.

Board Finding: Unfounded

Rationale: Buckelew stated, “6-7-21, verbally and subsequently physically assaulted by being spit on by Deputy 3 on the rec. yard of 5<sup>th</sup> floor for asking what Title 15 said about Haircuts.” Per SDSD Policy 2.22 Courtesy, “Employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Coarse, profane, or violent language is generally prohibited. Employees shall not use insolent language or gestures in the performance of his or her duties.” Deputy 3 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. Review of jail surveillance video corroborated Deputy 3’s documentation of the incident. Furthermore, Deputy 3 was observed in video surveillance with a mask on the entire time. The evidence showed that the alleged act or conduct did not occur and Buckelew was not credible.

4. Misconduct/Procedure – Deputy 18 turned off the module phones on 06-17-21.

Board Finding: Unfounded

Rationale: Buckelew stated, “Deputy 18 was working in the tower tonight. He cut the phones off mid conversation.” DSB Policy P.2 Telephone Access, “All inmates will be provided reasonable access to a telephone. Sworn staff members shall not turn off telephones as a punitive measure. According to Buckelew’s jail phone log, dated 06-17-21, he made three phone calls at the following times 2:36pm, 8:54pm and 9:58pm, for a total time of 43 minutes. Furthermore, Deputy 18 was not working on 06-17-21. Deputy 18 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed the alleged act or conduct did not occur and Buckelew was not credible.

5. Misconduct/Procedure – Deputies 4, 5, 6, 8, 11, 13, and 17 “violated” grievance procedures.

Board Finding: Unfounded

Rationale: Buckelew stated, “On 08-16-21, Deputy 11 violated grievance procedures by refusing to sign my grievances. On 08-18-21, Deputy 5 refused to process my grievance. Deputy 17 refused to sign, return my yellow copies, and provide me a JIMS number. On 08-27-21, Deputy 4 refused to sign grievances. On 09-12-21, grievance on Deputy 6 for not following grievance procedures. On 09-14-21, Deputy 12 ignored my grievances. On 09-25-21, Deputy 8 took 3 grievances from me and refused to sign them. Deputy 13 did not follow grievance procedures on 09-26-21.” DSB Policy N.1 Grievance Procedure, states in part, “The inmate grievance procedure is designed to address inmate complaints related to any aspect of condition of confinement that directly and personally affects the inmate grievant. Inmates may utilize the inmate grievance procedure regardless of their disciplinary status, housing location or classification. Inmates may submit their grievances on a J-22 form and any employee who initially receives a grievance will sign his or her name and ARJIS number on the J-22 form along with the date and time and return a copy to the grievant.” According to Buckelew’s JIMS records, he filed 69 grievances. Records documented that each grievance was addressed, responded to, and entered into JIMS per policy. The evidence showed that the alleged act or conduct did not occur and Buckelew was not credible.

6. Misconduct/Procedure – Deputy 10 “denied” Buckelew access to a telephone on 08-22-21.

Board Finding: Unfounded

Rationale: Buckelew stated, “On 08-22-21, Deputy 10 denied me an emergent phone call to check on my

elderly parents and sickly brother.” According to jail operations, inmates are offered phones during their scheduled dayroom time, which is offered numerous times throughout the day, depending on the housing schedule, and pending any operational needs. The SDSD JIMS Area Activities Summary Report is the general housing log for all inmates. The report contains all required log entries for a housing floor, including dayroom/phone times. A review of the SDSD JIMS Area Activities Summary Report produced no notations indicating that the complainant refused phone time nor that he was denied phone time due to an unforeseen circumstances or jail operational issues. SDSD DSB Policy P.2 Telephone Access, states in part, “All inmates will be provided reasonable access to a telephone. Telephones shall not be turned off by any deputy as a punitive measure. Telephones will be located in areas accessible to inmates during dayroom or recreation time when they are allowed outside of their cells or dorm living units. Nothing in this section is intended to limit the authority of the facility commander to revoke an inmate’s telephone access as necessary to preserve institutional safety and security or prevent criminal activity. When such action is taken, the facility commander shall implement a plan that allows an inmate to contact by telephone his/her attorney and the courts.” A preponderance of evidence refuted the allegation and showed the alleged act or conduct did not occur. Buckelew was found not credible.

7. Misconduct/Discourtesy – Deputy 16 “antagonized, demeaned, disrespected, and/or was hostile” to Buckelew on 08-28-21.

Board Finding: Unfounded

Rationale: Buckelew stated, “On 08-28-21, Deputy ‘16’ intentionally and deliberately antagonized, demeaned, disrespected, and created hostility.” According to SDSD Policy 2.48 Treatment of Persons in Custody, “Employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures.” Buckelew did not provide any explanation as to how and/or what Deputy 16 did or said to support his allegation. There were no documented ISR’s or filed grievances about such an incident. Given Buckelew’s propensity to file false grievances, and the lack of any documented incident, the preponderance of evidence failed to corroborate Buckelew’s allegation. Deputy 16 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did not occur.

8. Misconduct/Procedure – Deputy 7 “refused” Buckelew access to his attorney on 09-13-21 and 09-14-21.

Board Finding: Unfounded

Rationale: Buckelew stated, “On 09-13-21, Deputy 7 refused to allow me to call my attorney. On 09-14-21, Deputy 7 refused to allow me to call my attorney. I had received an attorney call back on Friday night 09-10-21 late at night.” According to Buckelew’s JIMS Inmate History Report, he received an attorney call back on 09-15-21 and was given time to call his attorney. DSB Policy P.2 Telephone Access, states in part, All inmates will be provided reasonable access to a telephone beyond those telephone calls required by section 851.5 PC. Nothing in this section is intended to limit the authority of the facility commander to revoke an inmate’s telephone access as necessary to preserve institutional safety and security or prevent criminal activity. When such action is taken, the facility commander shall implement a plan that allows an inmate to contact by telephone his/her attorney and the courts. Additionally, DSB Policy N.5 Access to Courts/ Attorneys/ Legal Advice, states in part, personnel shall ensure inmates have access to courts and legal counsel including confidential correspondence with courts and any member of the State Bar, and confidential consultation with attorneys. Deputy 7 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence refuted Buckelew’s allegation and showed that the alleged act or conduct did not occur.

9. Excessive Force – Deputy 9 “shoved” Buckelew to the floor on 09-14-21.

Board Finding: Unfounded

Rationale: Buckelew stated, “On 09-14-21, I was assaulted by Deputy 9, he shoved me out of my wheelchair to the floor.” According to a JIMS ISR, on 09-14-21, Deputy 9 and another deputy were tasked with re-housing an incarcerated person into Buckelew’s cell. Buckelew blocked the doorway with his wheelchair and refused to move. Buckelew wheeled himself into the dayroom and refused to go into his cell. When Deputy 9 and the other deputy attempted to wheel Buckelew back into the cell, Buckelew engaged the brakes and threw himself forward onto the floor, then accused Deputy 9 of assaulting him. Deputy 9 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. Following the incident, the surveillance video was viewed and showed Buckelew deliberately fell out of his wheelchair. The evidence showed the alleged act or conduct did not occur.

10. Excessive Force – Deputy 14 “dragged” and then “dropped” Buckelew on 09-14-21.

Board Finding: Unfounded

Rationale: Buckelew stated, “On 09-14-21, while in medical on the 3<sup>rd</sup> floor, Deputy 14 lifted up the foot end of the stokes basket by himself, waving off other deputies, dragged me into a cell causing severe pain, and dropped the foot end of the stokes basket.” The records documented for this incident identified sworn staff who were involved; however, Deputy 14 was not named. Deputy 14 provided information during the course of CLERB’s investigation that was also considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did not occur.

11. Misconduct/Procedure – Deputy 12 “ignored” Buckelew’s grievances on 09-14-21.

Board Finding: Unfounded

Rationale: Buckelew stated, “On 09-14-21, Deputy 12 ignored my grievances.” Buckelew had no filed grievances for 09-14-21. Furthermore, Deputy 12 retired from the Sheriff’s Department in 2020. According to CLERB’s Rules and Regulations Section 5.8, Termination, Resignation or Retirement of Subject Officer, The Review Board shall have the discretion to continue or terminate an investigation, if, after a complaint is filed and before the Review Board completes its investigation, the subject officer terminates employment with the Sheriff’s Department or the Probation Department. However, the evidence refuted the allegation and showed that the alleged act or conduct did not occur.

12. Misconduct/Procedure – Deputies 1, 13, and 15 placed Buckelew in Administrative Segregation on 09-14-21.

Board Finding: Action Justified

Rationale: Buckelew stated, “On 09-14-21, Deputies 1, 13 and 15 unlawfully and unconstitutionally placed me in permanent Administrative Segregation (Ad. Seg.) or the Hole.” DSB Policy J.3 Segregation; Definition and Use, states in part, “The guidelines for inmate segregation shall conform to all local, state, and federal laws. Disciplinary separation may be used when other less stringent methods have failed to correct behavior or when the violation is of such a nature that other methods would be ineffective or inappropriate. The use of separation as a disciplinary measure should be reserved for major sanctions and/or multiple sustained offenses. JPMU will ensure the status of each segregated inmate listed in sections II and III.D is reviewed at least every seven days. The objective is to return segregated inmates to the general inmate population or designated special housing when appropriate. The seven day review will be documented in JIMS.” According to an AdSeg ISR, on 09-14-21, Buckelew was placed into AdSeg

for his continued failure to conform to the minimum standards expected of all inmates, being verbally and actively assaultive towards staff and inmates, continuously expressing negative behavior, multiple boisterous statements and threats to deputies, influence over other inmates in the module and actively disrupting jail operations. Reviews of Buckelew's placement in AdSeg were conducted every seven days and documented per policy, until his release back to mainline housing on 11-07-21. Buckelew was not credible regarding this being a "permanent placement". The evidence showed the complainant's segregated housing placement did occur and was lawful, justified and proper.

13. Misconduct/Procedure – Deputy 9 did not provide dayroom time to Buckelew on 09-24-21.

Board Finding: Unfounded

Rationale: Buckelew stated, "09-24-21, I did not get my hour of dayroom while Deputy 9 was working." Buckelew's JIMS Inmate History Summary Report documented that he had dayroom on 09-24-21, at 10:20pm until 4:26am on 09-25-21. Deputy 9 provided information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights (POBR) and cannot be publicly disclosed. The evidence refuted Buckelew's allegation and showed that the alleged misconduct did not occur.

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## **21-108/MORENO**

1. Misconduct/Procedure – Unidentified deputies failed to provide Moreno access to his counsel.

Board Finding: Unfounded

Rationale: Moreno stated, "On 10-07-21, my husband attorney placed an attorney call back as usual the message was never given to Mr. Moreno." Mr. Moreno stated, "Attorney have called for attorney call back and we have not been pulled out to talk to our attorney." SDSL DSB P&P N.5, states in part, "Personnel shall ensure inmates have access to courts and legal counsel including confidential correspondence with courts and any member of the State Bar, and confidential consultation with attorneys. All inmates have the availability of unlimited collect telephone use for communication with their attorneys." According to Moreno's jail phone log, he placed a call back to his attorney on 10-08-21. Moreno's phone log showed the call was placed collect; however, it was not accepted. Furthermore, there were 37 documented private calls on Moreno's phone log. Per CLERB SDSL liaison, all calls marked private are either attorney/legal calls or medical calls. Follow-up correspondence was sent to Moreno's attorney to inquire about Moreno's call back not being accepted, however, a response was not received. Moreno failed to respond to CLERB's request for further information. Jail records showed in addition to the 37 private phone calls, Moreno had four in-person visits with his attorney. The evidence refuted the allegation and showed that the alleged conduct did not occur.

2. Misconduct/Procedure – Unidentified SDSL staff did not accept and/or return Moreno's telephone calls.

Board Finding: Action Justified

Rationale: Moreno stated, "On 10-07-21, I contacted the facility in which a Detentions Assistant took my call. I explained my concern that our attorney requested a call earlier in the day and no call had been returned by 4:30pm. Between that time and 9:30pm I placed 3 calls all in which I spoke with the Detentions Assistant. She confirmed the notice was in the system and confirmed with staff in the housing unit that stated when time allowed my husband will have his call on 10-08-21. I spoke with Mr. Moreno who stated no one ever notified him of the call back request. On 10-08-21, I spoke with the Detentions Assistant and advised her I would like to escalate my concerns. She stated she was going to pass my complaint to the sergeant supervisor on shift and give me my contact information. I proceeded to call as no one was returning my call in which she stated, they are walking the jail, he is not in his office or he has a lot of other tasks and will reach out when the chance is given." According to DSB Policy A.3 Table of Organization, each facility captain, lieutenant, and unit manager/administrator are responsible for the efficient and effective daily operation of their assigned facilities/unit. The information Moreno was seeking was provided by

housing unit staff and provided to Moreno via the Detentions Information Assistant. There was no reason for the detentions sergeant to respond and disseminate the same information. Furthermore, Moreno's concern that her husband was not being allowed to call his attorney was being handled. See Rationale #1. The evidence showed that the alleged act or conduct did occur and was lawful, justified, and proper.

3. Misconduct/Procedure – Unidentified SDSA staff failed to assist Moreno with her complaint.

Board Finding: Unfounded

Rationale: According to Moreno's statement, she contacted the detentions unit, to file a complaint that her husband was not given his attorney call back request. SDSA Policy 2.21 Citizen Complaints, states in part, "Employees shall courteously and promptly accept any complaint made by a citizen against any employee or any Department policy or procedure. The employee receiving the complaint must decide whether to handle it informally; i.e., verbally, or document the complaint in writing. Employees may attempt to resolve the complaint but shall never attempt to dissuade any citizen from lodging a complaint." The evidence verified the Detentions Information Assistant provided assistance to Moreno. See Rationale #2. The evidence showed that the alleged conduct did not occur.

4. Misconduct/Procedure – A SDSA Detentions Assistant, failed to identify employees who neglected to help/assist Moreno.

Board Finding: Summary Dismissal

Rationale: Moreno stated, "On 10-09-21, I called requesting to talk with the Detentions Assistant, at this point my concern was to obtain the names of employees who failed to help in which the response was 'I didn't get the names and I don't know them.'" The employee was a Detentions Information Assistant and the allegation did not describe any deputy misconduct. As such, CLERB lacks jurisdiction as it cannot take any action in respect to complaints against non-sworn SDSA employees, per CLERB Rules & Regulations 4.1 Complaints: Authority, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against peace officers or custodial officers employed by the County in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction.

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## **21-118/MONIGER (DEATH)**

1. Death Investigation/In-Custody Medical – Robert Duane Moniger collapsed in his jail cell and despite lifesaving measures, he was pronounced deceased on 11-27-21.

Board Finding: Action Justified

Rationale: Robert Duane Moniger was a 57-year-old, white male who was incarcerated at the San Diego Sheriff's Department San Diego Central Jail. During his incarceration, Moniger expressed concern for his physical wellbeing after he experienced cold/flu like symptoms. Moniger was immediately tested for COVID-19. He was found to be positive for COVID-19 and was treated accordingly; he was transferred to a different jail where he was quarantined, he was treated with medications, his temperature was checked daily, and he was frequently seen by jail medical/health staff. On the morning of 11-27-21, Moniger requested medical assistance. Detention deputies obliged his request and attempted to assist him to medical when he collapsed unresponsive. Advanced cardiac life support measures were initiated. A total of ten rounds of Narcan doses were administered to Moniger and jail medical staff applied the AED. Paramedics were summoned and responded to the jail. Upon their arrival, paramedics took over lifesaving measures. After vigorous attempts to revive Moniger failed, his death was pronounced on scene. The evidence indicated that Moniger was properly classified upon his entry into the SDSA jail system after his 10-22-21 arrest. During his medical intake screening and subsequent interactions with SDSA medical personnel, to include psychiatric staff, Moniger was medically assessed and was found to be fit for jail. When Moniger requested to be seen by jail medical staff, sworn personnel responded and acted on his request. When Moniger became unresponsive, deputies immediately assessed him and initiated lifesaving measures. After Moniger's death was pronounced, the San Diego County Medical Examiner's Office (SDMEO) was notified of the death. Moniger's body was transported to the SDMEO



where on 11-28-21, an autopsy was performed. Moniger's cause of death was determined to be COVID-19 viral pneumonia, with atherosclerotic and hypertensive cardiovascular disease being a contributing factor. The manner of death was natural. Toxicology testing of blood specimens were negative for alcohol or common drugs of abuse. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

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## **21-126/GUERRERO**

1. Use of Force Resulting in Great Bodily Injury - Deputies 1, 2, 3, and 5 used force toward Pedro Guerrero while he was housed at the George Bailey Detention Facility (GBDF).

### Board Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 11-03-21, deputies conducted a cell extraction, used force and assisted medical in administering emergency sedation medication to Pedro Guerrero while he was incarcerated at the GBDF. According to SDSA documentation, Guerrero had a prior incident on 11-01-21, where he verbalized to deputies that he wanted to hang himself and attempted to grab a deputy's taser from his belt. Deputies escorted Guerrero to medical where they used force when Guerrero attempted to pull away from a deputy's grip. This incident was captured on jail surveillance video and corroborated deputy reports. (Please note this was a separate incident, and as Guerrero was reportedly uninjured, it did not meet the criteria for a reportable incident with great bodily injury.) Officer reports stated that due to Guerrero's medical history and refusal to take medication, jail medical staff ordered his prescribed medication to be administered via injection. According to SDSA documentation, on 11-03-21, a deputy assisted GBDF nursing staff with medication distribution and when the deputy opened a food flap, Guerrero reached through the flap and grabbed the deputy's keys. Additional deputies responded and as they attempted to free Guerrero's grip from the keys, he grabbed a hold of the food flap which prevented deputies from closing it. Guerrero was non-compliant and actively resisted deputies, so deputies used force and deployed a Conducted Energy Device (taser) towards Guerrero. (Please note this was a separate incident, and as Guerrero was reportedly uninjured, it did not meet the criteria for a reportable incident with great bodily injury.) The GBDF Watch Commander Log, dated 11-03-21 was reviewed and showed that after the use of force, it was determined by a psychiatric doctor that Guerrero should receive emergency sedation medication via injection. The log also noted that a Tactical Team extracted Guerrero from his cell to secure him for emergency sedation medication. SDSA Medical Services Division (MSD) Operations Manual Section G.3.1 Emergency Psychotropic Medication, states that the use of forced sedation using psychotropic medication is used in the event of a behavior health/mental health emergency. Furthermore, emergency forced psychotropic medications are defined as the administration of Central Nervous System (CNS) depressant medication to induce sedation (e.g. Forced Sedation), given without the patient's consent for the purpose of rapid sedation in the event of a mental health/behavioral health emergency, where the health and welfare of the patient and others are considered to be threatened. Medical decisions by jail medical staff reside outside CLERB's authority and CLERB was unable to obtain a medical waiver from Guerrero for access to his medical records. Per SDSA documentation, on 11-03-21 a Tactical Team was assembled and briefed for a cell extraction and emergency sedation medication for Guerrero. Guerrero was given the opportunity to comply with the medication and get on his stomach, but he refused deputies' commands, which prompted the Tactical Team to enter his cell. The team of deputies used force to take him to the ground, secured him on a gurney, and assisted medical as they administered the medication via injection. The Tactical Team recorded the incident in accordance with policy. The video was reviewed and showed that Guerrero did not respond to the initial warnings he was provided by sworn staff. The video showed the team entered his cell and deputies use of tactical shields to take Guerrero down to the ground. The team was inside the cell for a few minutes and eventually carried Guerrero out and secured him onto a gurney. Guerrero was taken to another room where medical administered his medication. Paramedics then arrived on scene and transported him to the hospital for treatment of a fractured arm. Given the totality of circumstances, the evidence showed that sworn staff followed policy in the cell extraction and use of force(s) towards Guerrero. The Tactical Team was

assembled and responded in accordance with policy. The use of force was documented, and a supervisor responded in accordance with policy. Guerrero was also medically treated for his injury. Furthermore, DSB P&P Use of Force, subsections Emergency Sedation Administration and Involuntary Medications explain that deputies may use appropriate measures to restrain the inmate during health staff's administration of the medication. The evidence showed the force used to gain compliance was lawful, justified and proper.

2. Use of Force Resulting in Great Bodily Injury – Deputy 4 used force toward Pedro Guerrero while he was housed at the George Bailey Detention Facility (GBDF).

Board Finding: Summary Dismissal

Rationale: See Rationale #1. On 11-03-21, Deputy 4 was part of a Tactical Team that used force towards Pedro Guerrero. As of 12-16-21, Deputy 4 is no longer employed with SDSO; CLERB does not have jurisdiction to investigate his involvement with this incident. CLERB Rules & Regulations, Section 4: Authority, Jurisdiction, Duties and responsibilities of CLERB, subsection 4.1 Complaints: Authority states CLERB shall have authority to receive, review, investigate, and report on Complaints filed against custodial officers employed by the County in the Sheriff's Department. Therefore, the Review Board lacks jurisdiction.

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## **22-011/ROJAS**

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-5 used force toward Omar Rojas while he was incarcerated at the Vista Detention Facility.

Board Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. According to SDSO documentation, Omar Rojas was arrested by the San Diego Sheriff's Department on 11-30-21 for charges of assault, obstruction, and vandalism. SDSO documentation showed that on 01-30-22, while incarcerated at the Vista Detention Facility, Rojas assaulted and caused injury to Deputies 4 and 5. Deputies 4 and 5 opened Rojas' cell door to hand him dinner, and Rojas responded, "Fuck you mother fuckers" and struck Deputy 4 in the face with a right clenched fist. Rojas continued to assault the deputies as they attempted to restrain him. Rojas and the two deputies fell into the doorway of the neighboring cell and deputies reported they used hand strikes to Rojas' facial area as they attempted to subdue him. (Please note that at the time of this incident, there were two high level incarcerated individuals in the cell, which caused an urgency for the deputies to subdue Rojas.) Additional deputies responded and assisted as they pulled Rojas out of the cell, pinned his legs to the floor until they were able to restrain him. Deputies ultimately placed handcuffs and leg restraints on Rojas. Rojas was transported to Tri-City Hospital and treated for a nasal fracture. According to SDSO documentation, Deputy 4 sustained a fractured nose and chipped tooth while Deputy 5 sustained a swollen nose and a broken pinky. According to SDSO DSB P&P Use of Force states, sworn staff may use objectively reasonable force to overcome resistance or restore order. In accordance with Addendum F, Use of Force Guidelines, deputies used hands-on control and control compliance techniques, such as hand strikes and punching techniques, to overcome Rojas assaultive behavior. In review of all evidence, deputies were not given the opportunity to utilize de-escalation techniques, as policy states that de-escalation does not require that a deputy risk their safety. Rojas immediately displayed aggravated active aggression when he punched Deputy 4 without provocation. Jail surveillance video and handheld video taken by sworn staff was reviewed and corroborated with deputy reports. Given the totality of circumstances, deputies used force in accordance with the law and established departmental procedures per SDSO P&P, Section 2.49 Use of Force. The use of force used towards Rojas was reasonable according to policy, the force was properly documented, Rojas was provided adequate medical treatment, and all follow-up interviews were conducted. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 6 opened two cell doors simultaneously.

Board Finding: Action Justified

Rationale: While investigating this Specified Incident, CLERB believed there may have been a policy violation when two cell doors were opened simultaneously while deputies distributed food. This incident occurred in the Upper West House Module, which is where High Level (4-5) incarcerated persons are housed. According to SDSD documentation, Deputy 6 was assigned as the Control Deputy, which according to SDSD DSB P&P Section I.61 Facility Security – Central Control, is ultimately responsible for monitoring facility access, key control and maintaining the overall safety and security of the facility. SDSD documentation showed that the Control Deputy mechanically opened the cell doors the day of the incident. After researching SDSD DSB P&P and consulting with the Division of Inspectional Services, it was revealed that more than one cell door may be opened at one time; therefore, there was no policy violation. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

### **POLICY RECOMMENDATIONS:**

1. It is recommended that the San Diego Sheriff's Department (SDSD) revise Detention Services Bureau (DSB) Policy and Procedure (P&P), Section I.63 Facility Security – Housing Units to mandate that all high-level Incarcerated Persons will be housed in cells that have food flaps.
2. It is recommended that the SDSD revise DSB P&P, Section I.63 Facility Security – Housing Units to mandate that only one cell door is open at a time while deputies conduct daily facility operations, e.g., meal/medication distribution, cell searches, etc., in the housing modules.

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### **22-028/ELWOOD**

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-8 used force toward Nathan Elwood while he was incarcerated at the Vista Detention Facility.

Board Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. San Diego Sheriff's Department (SDSD) documentation showed that on 02-01-22, Nathan Elwood was incarcerated at the Vista Detention Facility when he used a chair to shatter a window in the professional visit room which resulted in a use of force. Elwood did not comply with deputy commands, resisted deputies, and showed assaultive behavior towards them. SDSD documentation showed after Deputy 8 placed one handcuff on Elwood's wrist, he turned to face deputies and kicked Deputy 2's leg. Deputies 2, 7, and 8 reported to prevent Elwood from further attacking them, they used force to take him down to the floor and administered hand strikes to gain control of Elwood. Deputy 7 assisted in taking Elwood to the floor and applied downward pressure. Elwood thrashed his body on the floor, grabbed Deputy 2's hand, and attempted to grab his Conducted Energy Device (CED) from his holster. Per DSB P&P I.89 Use of Force, sworn staff may use objectively reasonable force to overcome resistance and maintain or restore order. Elwood's actions displayed he was non-compliant when he refused to obey deputies' commands; he actively resisted when Deputy 8 attempted to place his hands behind his back and showed assaultive behavior when he kicked Deputy 2. Deputies responded and used hands-on control technique to gain control of him (hand strikes and downward pressure) in accordance with Addendum F, Use of Force Guidelines. A cover call was made and Deputies 3-6 arrived on scene and applied downward pressure, to assist in controlling and restraining Elwood. Deputy 1 pulled Elwood's hands behind his back and Deputy 5 secured his remaining hand into the handcuffs. The use of force was properly documented in accordance with policy. Elwood was eventually restrained using a WRAP restraint device. Elwood sustained a fractured right orbital and bruising and swelling to his face. Elwood was transported to Tri-City Medical Center where he was treated for his injuries. Jail surveillance video was reviewed and corroborated the associated documentation. Given the totality of circumstances, the use of force was reasonable in accordance with policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

## **22-036/ZHAO**

1. Illegal Search & Seizure – Deputies 1 and 2 evicted Zhao on 02-17-22.

Board Finding: Action Justified

Rationale: Zhao alleged Deputies 1 and 2 "... did not give me a notice before they evict me. According to the legal process, they should give me the notice 5 days before the eviction. If I get 5 days notice, I would contact the sheriff's office and tell them I filed bankruptcy..." In this instance, Zhao was provided proper notice of eviction. The complainant was initially served notice of eviction on 01-25-22, with a scheduled eviction date of 02-01-22. A Court Minute Order dated 01-27-22, indicated Zhao appeared in Court, and the eviction was stayed until 02-14-22. Deputies subsequently evicted Zhao on 02-17-22. The evidence showed the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 2 refused to accept legal documents from Zhao.

Board Finding: Unfounded

Rationale: Zhao alleged, "After I walked out from my home, I showed the documents that the bankruptcy court gave me to (Deputy 2), after (Deputy 2) photographed the documents and sent them to his office, he showed the documents to my landlord, but my landlord still insisted (Deputy 2) evict me. (Deputy 2) asked me if I only had these documents, and I told him these document were the court gave me... I heard him talk about the form 101 on the phone, so I asked him if he needed a form 101, I had it, I would find it and showed it to him. But he refused me to show it to him." In the BWC footage, Deputy 2 was seen accepting the paperwork from Zhao. He further sought counsel related to the validity of the documents in staying the eviction. Deputy 2 was advised by SDSD civil staff the documents provided would not stay the eviction. In this instance, deputies exercised due diligence and acted upon the Court ordered eviction and the information which they were provided by civil staff at the time of the incident. The evidence showed the alleged act or conduct did not occur.

3. Misconduct/Procedure – Deputy 2 failed to communicate effectively or provide an interpreter to Zhao.

Board Finding: Unfounded

Rationale: Zhao alleged "I told (Deputy 2) that my English was not good, but he didn't provide me with an interpreter to communicate with me, he did not speak slowly, nor explain clearly to me, either. It discriminates against my language." A review of the BWC footage showed Zhao at no point requests an interpreter, or said to Deputy 2 her "English was not good." Throughout the encounter, BWC footage showed Deputy 2 and Zhao communicating with each other. The evidence showed the alleged act or conduct did not occur.

4. Discrimination – Deputies 1 and 2 failed to make allowances for Zhao's disability.

Board Finding: Unfounded

Rationale: Zhao alleged "I told (Deputy 2) that I was disabled and my limbs were not functioning properly." The SDSD Eviction Instructions Form did indicate Zhao was disabled. As heard on BWC, Zhao requested a chair to sit in and informed Deputy 2 she was disabled. Deputies responded to the complainant appropriately and provided her a chair to sit in. No other request(s) for accommodation was made. The evidence showed the alleged act or conduct did not occur.

5. Excessive Force – Deputies 1 and 2 "forcibly" evicted Zhao.

Board Finding: Unfounded

Rationale: Zhao alleged "He made the excuse that the documents were incomplete and he asked me to bring the documents to his office, but he forcibly evicted me... He knows that I have a language barrier with him, that my Asian female stature is short, also I have limited physical function, and that I can't resist him." After a review of both deputies BWC footage, it was apparent no force was used to evict Zhao from

her home. The evidence showed the alleged act or conduct did not occur.

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## **22-095/MORGAN**

1. Illegal Search & Seizure – Deputies 1 and 2 scanned the interior of the Morgan home at 10:00pm.

### **Board Finding: Action Justified**

**Rationale:** Complainant Morgan reported, “At approximately 10:00 P.M. on July 26, 2022, I was sitting watching T.V. in our family room. My husband was asleep in our bedroom. I noticed a light reflecting off the sliding door and shutters. At first, I was not alarmed or concerned since our neighbor on several occasions has used a flashlight in his yard at night. Then the lights became very intense and bright, and noticed the light was being shined through the front windows the lights appeared to be scanning the whole interior. I had no window coverings on some of the windows since we had just completed remodeling and we usually leave a window open. My heart was pounding and I became frightened. I thought that someone was trying to possibly enter the home. I went to the front door and used the peep hole to see who might be there. I saw what appeared to be two officers in swat gear. Then, my knees went weak as I thought that perhaps a loved one had been in an accident. I opened the door slightly. I went to turn on the porch light, but learned the bulb was out. I was so dark that I really couldn't see. I asked what was going on and they replied that they had an anonymous report that there had been criminal activity going on around our van. I stated that my husband had moved it early that evening so that it wouldn't be in the way for the trash trucks in the morning. They asked, "Is that your van"? And I said yes it belongs to our son. They asked, "Is your son here? And I said no. They asked, "Where is he and I said Hawaii. At that point they said, "Sorry if we woke you up, and I said that I was going to get my husband. They never identified themselves, and left. I felt that they had no right to be looking through my windows, my privacy was violated and it was a very upsetting and scary, especially for seniors in their seventies. In the 36 years we have lived here, nothing has ever been disturbed and I am not aware of anyone in our area of having anything disturbed.” Body Worn Camera (BWC) footage showed deputies scanned the interior of the Morgan home, as they were there due to an anonymous complaint of suspicious activity. However, this would not constitute a search under the Fourth Amendment to the Constitution of the United States. It should be noted, deputies were in a legal place with plain sight into Morgan's home as there were no window coverings obscuring their view. Further, the California Peace Officers Legal Sourcebook (CPOLS) section 3.8.11 “Binoculars/Vision aid” states, “Binoculars may be used to look onto premises or into a building if what is being viewed could be seen with the naked eye from a lawful position (such as the driveway)... Similarly, the use of night vision goggles to amplify ambient light to see something that is already exposed to public view is not a Fourth Amendment search. This type of technology, which is used by the military, police agencies, and the border patrol and is available to the general public, is no more intrusive than the use of flashlights or binoculars.” It was not unreasonable a deputy would use a flashlight in this instance given the time of night during the call for service and the lack of lighting at the front of the complainant's home. During the encounter with Morgan, deputies advised they were with the Sheriff's Department and were responding to an anonymous call of a suspicious activity related to the vehicle, and as no crime had occurred, left without incident. Evidence showed the alleged act or conduct did occur but was lawful, justified and proper.

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***End of Report***

### **NOTICE**

In accordance with Penal Code Section 832.7, this notification shall not be conclusive or binding or admissible as evidence in any separate or subsequent action or proceeding brought before an arbitrator, court or judge of California or the United States.