

BOARD MEMBERS

SUSAN N. YOUNGFLESH
Chair
EILEEN DELANEY
Vice Chair
ROBERT SPRIGGS JR.
Secretary
BUKI DOMINGOS
NADIA KEAN-AYUB
BONNIE KENK
MARYANNE PINTAR
TIM WARE
GARY I. WILSON



EXECUTIVE OFFICER
PAUL R. PARKER III

County of San Diego

CITIZENS' LAW ENFORCEMENT REVIEW BOARD

555 W BEECH STREET, SUITE 220, SAN DIEGO, CA 92101-2938
TELEPHONE: (619) 238-6776 FAX: (619) 238-6775

www.sdcounty.ca.gov/clerb

MEETING AGENDA

Tuesday, May 10, 2022, 5:30 p.m.

Remote Meeting Zoom Platform

<https://us06web.zoom.us/j/85217957238?pwd=N01KZFdRV1YyTEh1ekdYRUtwaloxZz09>

Phone: +1 669 900 6833
Webinar ID: 852 1795 7238
Passcode: 956031

Pursuant to Government Code Section 54954.2 the Citizens' Law Enforcement Review Board will conduct a meeting at the above time and place for the purpose of transacting or discussing business as identified on this agenda. Complainants, subject officers, representatives, or any member of the public wishing to address the Board should submit a "Request to Speak" form prior to the commencement of the meeting.

DISABLED ACCESS TO MEETING

A request for a disability-related modification or accommodation, including auxiliary aids or services, may be made by a person with a disability who requires a modification or accommodation in order to participate in the public meeting. Any such request must be made to CLERB at (619) 238-6776 at least 24 hours before the meeting.

WRITINGS DISTRIBUTED TO THE BOARD

Pursuant to Government Code Section 54957.5, written materials distributed to CLERB in connection with this agenda less than 72 hours before the meeting will be available to the public at the CLERB office located at 555 W Beech Street, Ste. 220, San Diego, CA.

1. ROLL CALL

2. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction but not an item on today's open session agenda. **Each speaker shall complete and submit an online "Request to Speak" form.** Each speaker will be limited to three minutes. This meeting will be held remotely via the Zoom Platform. Click the below link to access the meeting using the **Google Chrome web browser**: <https://us06web.zoom.us/j/85217957238?pwd=N01KZFdRV1YyTEh1ekdYRUtwaloxZz09> Contact CLERB at clerb@sdcounty.ca.gov or 619-238-6776 if you have questions.

3. MINUTES APPROVAL (Attachment A)

4. PRESENTATION/TRAINING

- a) The San Diego County Medical Examiner's Office Role in In-Custody Deaths by Chief Medical Examiner Steven C. Campman, M.D.

5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and Staff
- b) Workload Report – Open Complaints/Investigations Report (Attachment B)
- c) Case Progress and Status Report (Attachment C)
- d) Executive Officer Correspondence to Full CLERB (Attachment D)
- e) Policy Recommendation Pending Responses
 - i. 20-113 / Alvarez (Death) – SDSO
 - It is recommended that the San Diego Sheriff's Department (SDSO) revise its Detention Policies and Procedures Section I. 64, entitled, "Safety Checks: Inmates, Housing, and Holding Areas," to mandate proof of life verification through visual checks every 60 minutes during the booking process.
 - It is recommended that the San Diego Central Jail (SDCJ) only utilize cells with operable cameras unless all cells with operable cameras are in use.
 - ii. 21-004 / Moreno (Death) – SDSO
 - It is recommended that the San Diego Sheriff's Department (SDSO) identify who answers the "Arresting Officer Questions" on the Receiving Screening Questionnaire during the Booking process.
 - iii. 21-014 / Calhoun (Death) – SDSO
 - It is recommended that SDSO modify P&P Section 6.43 – Vehicle Pursuit, to mandate that deputies shall not initiate or participate in a pursuit in which the only known offense at the time of the initiation or subsequent participation is a non-violent crime, to include a stolen vehicle.
 - It is recommended that SDSO modify P&P Section 6.43 – Vehicle Pursuit, to indicate that when initiating a pursuit, a deputy must not only consider all public safety factors applicable to the particular facts and circumstances, but "shall" (as opposed to the current standard of "may") consider the applicable public safety factors listed in the P&P.
 - iv. 21-038 / Whitlock (Death) – SDSO
 - It is recommended that the San Diego Sheriff Department update its Detention Services Bureau (DSB) P&P Section I.50 Body Scanners and X-Rays, as it pertains to Subsection III C and require that body scans be completed to include inmates transferred between facilities.
 - v. 21-060 / Meadows – SDSO
 - It is recommended that the San Diego Sheriff's Department (SDSO) create a policy that mandates conducting all Detentions Investigative Unit (DIU) interviews in a private area, out of view from other inmates.
 - vi. 21-078 / Blakeney – SDSO
 - It is recommended that the San Diego Sheriff's Department (SDSO) change SDSO P&P Section 6.131 titled "Body Worn Camera," to direct that deputies shall begin recording prior to initiating any law enforcement related contact.
 - vii. CLERB Staff Response to Death Scenes – Probation
 - Allow a CLERB staff member with extensive death investigation experience to be present at the initial death scene and any related incident scene and, without compromising or obstructing the law enforcement investigation, receive a briefing, participate in a scene walk-thru, and have any questions about the circumstances surrounding the events leading up to, and including the death, answered.
 - viii. Expansion of Family Liaison Program – SDSO
 - It is recommended that the SDSO update P&P Section 6.134 entitled, "Family Liaison Protocol," to mandate that the Family Liaison, or designee, meet with the family at the conclusion of the

investigation into a shooting, use of force resulting in significant injury or death, or an in-custody death. The purpose of the meeting will be to advise the family of the investigative outcome, answer questions, and provide information when appropriate. As currently stated in the P&P, when information cannot be released, the family will be provided with an explanation, follow-up, or referrals to appropriate agencies.

ix. Reduction of Racially Disparate Policing Practices – SDSD

- Reduce discretionary stops or contacts, traffic or otherwise, pertaining to low-level offenses that do not compromise actual public safety. Many of these stops are pretextual in nature and oftentimes used to make an initial contact with the primary goal of locating weapons, drugs, warrants, suspended licenses, etc.
- Eliminate stopping or contacting people solely for lower-level traffic offenses, such as:
 - Expired registration,
 - Equipment violations, and
 - No seatbelt in use.
- Eliminate contacting people solely for quality-of-life issues not jeopardizing public safety, such as loitering or jaywalking.
- Add to Subsection B of Field Operation Manual Policy 1, “Use of Discretion,” that discretionary decisions should be evaluated for whether they will result in racially disparate treatment or outcomes.
- Provide justification for a stop or contact on body worn camera (BWC).
- Proactively review BWC footage for the sole purpose of analyzing deputy interactions with people of color in comparison to interactions with white people.
- Institute pre-employment screening for existing implicit and explicit bias.

x. Use of Technology to Monitor Health and Safety of Inmates – SDSD

- Research, and publicly report the results of its research efforts, i.e., associated costs, technology considered, reasons for not implementing, if applicable, etc., the use of technological devices to identify and subsequently aid inmates who may be in medical distress.
- Incorporate into policy the use of technological devices to identify and subsequently aid inmates who may be in medical distress.

xi. Use of Technology to Monitor Health and Safety of Inmates – Probation

- Research, and publicly report the results of its research efforts, i.e., associated costs, technology considered, reasons for not implementing, if applicable, etc., the use of technological devices to identify and subsequently aid inmates who may be in medical distress.
- Incorporate into policy the use of technological devices to identify and subsequently aid inmates who may be in medical distress.

f) Policy Recommendation Response

- i. None

g) Sustained Finding Pending Responses

- i. None

h) Sustained Finding Response

- i. 20-104 / Chon (Death) – SDSD (Attachment E)
- ii. 21-014 / Moreno (Death) – SDSD (Attachment F)
- iii. 21-089 / Rau – SDSD (Attachment G)

6. BOARD CHAIR’S REPORT

7. NEW BUSINESS

- a) Continuance of Teleconferencing Meeting Option Pursuant to Government Code Section 54953(e)
- b) Recognition of James Sandler, Retiring Outside CLERB Counsel
- c) De-Brief CLERB Town Hall: CLERB Independent In-Custody Death Data Report by Analytica Consulting
- d) Policy Recommendation to SDSD: Provide Inmate Access to Naloxone (Narcan) (Attachment H)
- e) Policy Recommendation to SDSD: Create Fentanyl Dog Policy and Procedures (Attachment I)
- f) Countywide Protocol for the Investigation of Officer-Involved Shootings (Attachment J)

8. UNFINISHED BUSINESS

- a) Vote to Continue or Terminate Investigation of CLERB Case #20-050/Bils (Death) Pursuant to CLERB Rules and Regulations Section 5.8
- b) Update: Authority for the Executive Officer to Work with County Staff to Pursue Legislation and/or to Add a Policy to the County Legislative Program in Support of Increased Transparency in Civilian Oversight of Peace Officers and Custodial Officers
- c) Update: Authority for the Executive Officer to Work with County Staff to Request that the County Board of Supervisors Expand CLERB’s Jurisdiction to Include Personnel Involved in Providing Medical Care in County Detention Facilities
- d) Update: San Diegans for Justice CLERB Report Subcommittee

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. 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.

NOTICE: THE CITIZENS LAW ENFORCEMENT REVIEW BOARD (CLERB) MAY TAKE ANY ACTION WITH RESPECT TO THE ITEMS INCLUDED ON THIS AGENDA. RECOMMENDATIONS MADE BY STAFF DO NOT LIMIT ACTIONS THAT THE CLERB MAY TAKE. MEMBERS OF THE PUBLIC SHOULD NOT RELY UPON THE RECOMMENDATIONS IN THE AGENDA AS DETERMINATIVE OF THE ACTION THE CLERB MAY TAKE ON A PARTICULAR MATTER.

CASES FOR SUMMARY HEARING (7)

21-028/GOMEZ

1. Death Investigation/In-Custody Medical – Luis Ahyule Gomez, while an inmate at Vista Detention Facility, was found unresponsive in his cell on 03-14-21.

Recommended Finding: Not Sustained

Rationale: The evidence supported that Gomez was properly classified and placed into Protective Custody upon his entry into the SDSA jail system after his arrest for attempted rape. After his medical intake screening and subsequent interactions with SDSA medical personnel, to include psychiatric staff, Gomez never expressed concerns about his physical well-being to any member of SDSA, sworn or personnel. On 03-14-21, Gomez's cellmate expressed concerns about the physical well-being of Gomez to Deputy 1 directly on two separate occasions, once during hard count and once through a call box. Inmate Jimenez also expressed concerns about Gomez's well-being through the call box to the Tower Deputy who then passed the information to Deputy 1. Furthermore, another inmate expressed concerns about Gomez's well-being to Deputy 1. There was a preponderance of evidence that showed Deputy 1 was notified multiple times of concerns for Gomez's well-being but failed to take action to summon medical aid. Based on SDSA records, interviews, and policy, a preponderance of evidence showed Deputy 1 did not conduct hard count (day) or COVID-19 temperature check in accordance with policy. Deputy 1's actions were not justified (*see allegations 2&3*). The evidence suggested there was a lapse of approximately 48 minutes from when Deputy 1 had the opportunity to identify a medical emergency to when another deputy discovered Gomez unresponsive. The evidence suggested Gomez was alive during hard count, but in and out of consciousness. There was insufficient evidence to determine if the improper hard count or temperature check would have prevented Gomez's death by summoning medical aid sooner.

2. Misconduct/Procedure – Deputy 1 failed to conduct a hard count (day).

Recommended Finding: Sustained

Rationale: Deputy 1 failed to conduct a hard count (day). According to SDSA DSB P&P section I.43 entitled "Inmate Count Procedure" applies, "All inmates at each detention facility shall be accounted for. Sworn staff will physically conduct counts of inmates. All counts require sworn staff to verify each inmate's well-being through "verbal or physical acknowledgement" from the inmate. I.43 defines verbal or physical acknowledgement as "a response from the inmate to sworn staff that proves the inmate is alive, awake, conscious, and responsive. Verbal acknowledgment includes the use of spoken words, while physical acknowledgment includes actions of the body (i.e., hand gestures, head nod, etc.), in confirmation that the inmate notices and is responding to sworn staff." In addition, sworn staff will look for any obvious signs of medical or physical distress (e.g., asthma attack, chest pain, etc.), trauma (e.g., bleeding, ligature marks, etc.) and/or criminal activity (e.g., drug usage, fighting, etc.)." Video surveillance showed Deputy 1 stopped at Gomez's cell at 10:03AM. (Please note the video surveillance was time stamped one hour behind the actual time due to daylight savings). Deputy 1 appeared to converse with someone inside the cell until approximately 10:05AM. In a letter received, from Gomez's cellmate, he stated he saw [Deputy 1] handing out lunches, "As [Deputy 1] opens #22 tray slot, I notify him that my celly's man-down and unconscious, I also let the deputy know this is Mr. Gomez's second time passing out. As I do so I point out to Mr. Gomez's abdomen and voice to [Deputy 1] that Mr. Gomez is still breathing as his shirt is partially lifted and the up and down motion of his stomach is visible. [Deputy 1] verbally addresses Mr. Gomez several times unsuccessfully. He then closes the tray slot and continues the feeding". In a statement with Homicide Detectives, Deputy 1 recalled calling out to Gomez and asking him to come to the door. Deputy 1 continued to call Gomez and ask him to come to the door, but Gomez did not verbally respond or come to the door. Video surveillance showed Deputy 1 returned to cell 22 at 10:07AM and opened the cell door at approximately 10:09AM. In an interview with Homicide Detectives, Deputy 1 had no recollection of returning to cell 22 a second time. Deputy 1 indicated it was difficult to hear in the module, but he did notice Gomez's stomach was moving so he believed he was breathing. Confidential information provided by Deputy 1 and a Departmental Information Source were considered in arriving at the recommended finding. Deputy 1 exercised his option to decline participation in an interview pursuant to a long-standing agreement between CLERB and the Deputy Sheriff's Association. Based on SDSA records, interviews and policy, a

preponderance of evidence showed Deputy 1 failed to obtain a response from Gomez that proved he was alive, awake, conscious, and responsive. The evidence supports the allegation, and the act or conduct was not justified.

3. Misconduct/Procedure – Deputy 1 failed to conduct a temperature check.

Recommended Finding: Sustained

Rationale: Deputy 1 failed to conduct a temperature check. According to SDDS media releases, due to stepped up COVID-19 measures in the jail, temperature checks were conducted in conjunction with hard count. In a Medical Services Division Training Unit Bulletin published in December 2020, "All inmates will be checked by Sworn Staff at Hard Count on Day & Night Shift. Sworn staff will document temperature of every inmate on floor count sheets in all housing units and deliver a copy of floor count sheets to medical for review". Furthermore, a CLERB liaison provided two different training bulletin PowerPoints which were posted on the Detentions Training Unit SharePoint website. The PowerPoints stated all inmates will be checked during hard count and logged in JIMS. SDDS records showed Gomez's temperature was scribbled out on the floor count sheet. Furthermore, in an interview with Homicide Detectives, Deputy 1 indicated Gomez never came to the door or responded during hard count. As per SDDS P&P 2.1 entitled Rules of Conduct for Members of SDDS, "All employees shall conform to Federal, State, and Local laws, as well as to the policies of this Department. It shall be the responsibility of all employees to familiarize themselves and comply with all such policies, orders, directives, rules and regulations of this Department." Furthermore, SDDS P&P 2.3 entitled Violation of Rules, "Employees shall not commit or omit any acts which constitute a violation of any of the rules, regulations, directives, orders or policies of this Department, whether stated in these Rules of Conduct or elsewhere." Additionally, SDDS P&P 10.6 Continuing Professional Training-Sworn, states it is the responsibility of all employees to remain current, and each command will ensure line-up training includes policy and procedure changes Confidential information provided by Deputy 1 and a Departmental Information Source were considered in arriving at the recommended finding. Deputy 1 exercised his option to decline participation in an interview pursuant to a long-standing agreement between CLERB and the Deputy Sheriff's Association. Based on SDDS records, interviews and policy, a preponderance of evidence showed Deputy 1 failed to conduct a temperature check on Gomez in accordance with policy and his actions were not justified.

21-032/HAVINS

1. Illegal Search and Seizure – The San Diego Sheriff's Department (SDDS) ordered the complainant from his home.

Recommended Finding: Action Justified

Rationale: The complainant stated, "I heard a voice over a loudspeaker coming from down my dirt Rd. It sounded like the message over the loudspeaker said, occupants, this is the San Diego County Sheriff's with a search warrant, come out with nothing in your hands." On 02-09-21, deputies arrived at the complainant's residence to serve and execute a search warrant, issued by the court on 02-02-21. According to deputies reports, the complainant was believed to be in possession of firearms, had a history of "resisting law enforcement, citing a sovereign citizen ideology." The Special Enforcement Detail (SED) team was requested to help serve the search warrant. SDDS P&P Section 6.38 titled Special Enforcement Detail states in part, "SED will be contacted to serve a warrant when execution of a warrant by conventional law enforcement techniques would expose Deputies to extreme and unnecessary danger. Situations requiring SED include any of the following: Suspects are known or suspected of being armed." Body Worn Camera (BWC) evidence, which included audio, showed that when SED deputies arrived, they issued the first of several announcements over a loud speaker. There were numerous announcements throughout the approximate three hour attempt to serve the search warrant and have the complainant exit his R.V. SDDS P&P Section 6.116 titled Search Warrant Service, states in part, "All Sheriff's Department employees shall execute search warrants according to established rules of law and shall not willfully violate the constitutional rights of citizens." The evidence showed that the actions of SDDS sworn personnel were carried out according to policy and were lawful, justified and proper.

2. Illegal Search and Seizure – Deputy 2 “detonated explosives” at the complainant’s front door.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I was in the shower when I heard an explosion outside of my RV motorhome. The explosion shook my motor home. The explosion was right outside my door. It was at that point that I realized that I was under attack. I was not safe to step out of my door.” BWC video showed that approximately fifteen minutes after deputies arrived on scene, a Sheriff’s siren went off briefly, followed by announcements issued over a loud speaker. The complainant did not respond. In an attempt to have the complainant exit his R.V., SED deployed a Light and Sound Diversionary Device (Flashbang) in order to prompt the complainant to exit his R.V. According to an Officer’s Report, “the flashbang landed and deflagrated about 10 yards away from the RV... The complainant did not respond at all.” SDSD P&P Section 6.38 Special Enforcement Detail, states in part, “Tactical assistance at critical incidents is provided when patrol personnel are not adequately equipped or trained to apprehend an armed barricaded suspect.” The evidence showed that the alleged act or conduct did occur and was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 9 “shot” at the complainant’s R.V. (Recreational Vehicle).

Recommended Finding: Action Justified

Rationale: The complainant stated, “The San Diego County Sheriff’s Department ‘utilized’ a 12-Gage shotgun to shoot holes through my R.V. Every shot from the 12 Gage shotgun that tore through my RV was terrifying.” Review of BWC video showed the complainant’s R.V. had a pole affixed to the top of the R.V. with a camera attached at the top. Deputy 11 documented in his Officer’s Report, “To disable the security camera, Deputy 9 utilized his Less Lethal Shotgun and fired about 7 beanbag rounds at the camera separating it from its base.” The Peace Officers Legal Sourcebook Section 2 titled, Search and Seizure Persons, states in part, “During a lawful detention, officers are authorized to take such steps as [are] reasonably necessary to protect their personal safety.” The evidence showed Deputy 9 was in compliance with policy and his actions were lawful, justified and proper.

4. Illegal Search and Seizure – SDSD failed to provide “knock and notice” to the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, “The entire time they had me trapped in my motorhome, shooting holes through my home, throwing grenades at my front door, never once did any officer think to ‘knock’ on my front door and let me know that they will stop shooting so I can safely exit without being shot to death.” California Penal Code (PC)§1531, the knock and announce rule requires police to announce their presence and purpose before executing a search warrant and they must wait a reasonable amount of time before forcing their way in. There were numerous announcements throughout the approximate three hour attempt, to serve a search warrant and have the complainant exit his R.V. With every announcement the SDSD identified themselves and stated the purpose of their presence. SDSD P&P Section 6.116 titled Search Warrant Service, states in part, “All Sheriff’s Department employees shall execute search warrants according to established rules of law and shall not willfully violate the constitutional rights of citizens.” Evidence refuted the complainant’s allegation and showed the alleged conduct did not occur.

5. Misconduct/Procedure – SDSD failed to use de-escalation tactics.

Recommended Finding: Unfounded

Rationale: The complainant stated, “Not once did they try to de-escalate the situation, or reach out to me in a non-violent manner.” SDSD records and BWC evidence provided that de-escalation tactics were initiated and carried out by the Crisis Negotiation Team (CNT). According to the CNT policy, Section N.3, in part, “The Crisis Negotiations Team may be utilized in incidents that do not involve the taking of hostages. Incidents such as barricaded suspects, where the verbal skills of influence and persuasion would be appropriate are situations where the Crisis Negotiations Team might be called. The criteria for activating Crisis Negotiators will be based upon the following: The suspect is believed to be a threat to the lives and safety of himself/herself or others, the suspect is believed or known to be armed, the suspect refuses or appears to be unwilling to respond to deputies at the scene. Deputy 6 documented the following in his Arrest Report,

“Deputies from the SED and CNT attempted to establish a line of communication with the complainant for over three hours, they made numerous phone calls and left messages for the complainant on his phones, however, he would not respond. Additionally, CNT deputies went to the complainant’s parents’ home and obtained recorded messages to be delivered to the complainant if needed. The evidence showed that the alleged conduct did not occur.

6. Misconduct/Procedure – A SDDS deputy “slammed” into the complainant’s R.V.

Recommended Finding: Unfounded

Rationale: The complainant stated, “I heard the sound of a diesel engine outside and as it got closer I thought the only thing that that diesel could be would be a tow truck, then slam it hit the front of my RV, and hit it hard, shaking everything. The diesel sound that I was hoping was a tow truck was one of two tanks that were on my dirt Rd. That’s what smash the front of my RV.” The evidence refuted the complainant’s allegation that deputies “slammed” into his R.V. Records and BWC evidence documented one of the two SED vehicles on scene moved slowly, approached the complainant’s R.V. until they touched. The alleged conduct did not occur.

7. Illegal Search and Seizure – Deputy 11 “broke” the windows in the complainant’s R.V.

Recommended Finding: Action Justified

Rationale: The complainant stated, “The San Diego County Sheriff’s we’re just getting ready to escalate their attack to another level, a more deadly level of attack. My hopes of them letting me exit from under their attack was rocked by two more explosions, one at my front door, and one at the opposite side, followed immediately by an explosion at the front door of my RV that broke the windows out at the front cab part of the Motorhome.” PC§ 1531 Forced Entry, states in part, “The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.” The alleged conduct did occur and was lawful, justified and proper.

8. Excessive Force – Deputy 11 “threw” a chemical agent into the complainant’s R.V.

Recommended Finding: Action Justified

Rationale: The complainant stated, “After the explosive blew out the windows an officer threw a grenade filled with ‘Orthochlorobenzylmolononitrile’ or ‘CS’ for short. The Grenade exploded 4 feet from my head and filled my home with the deadly chemical agent.” SDDS P&P Section 6.66 titled Chemical Agents, states in part, “Non-lethal chemical agents may be used to accomplish any of the following objectives: To apprehend suspects who refuse to submit to arrest.” Additionally, SDDS P&P Section 2.50 Use of Lethal/less Lethal Weapons, states in part, “Employees shall not use or handle lethal or less lethal weapons (including chemical agents) in a careless or imprudent manner. Employees shall use these weapons in accordance with law and established Departmental procedures.” According to his report, and evidenced on BWC video, Deputy 11 utilized a bang pole with an indoor less-lethal chemical agent attached at the end. He introduced the bang pole into the driver side window of the R.V., and deployed the chemical agent. The complainant exited the R.V. and was taken into custody without incident. The evidence showed Deputy 11 was in compliance with policy and his actions were lawful, justified and proper.

9. Excessive Force – SDDS deputies “pointed” their machine guns at the complainant’s head.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I opened the front door, then I walked out with my hands in the air, and was met by the tip of a machine gun pushed to the side of my face, behind the first man with his machine gun, there were at least 12 more men with machine guns, all pointed at my head.” The evidence showed when the complainant walked out of his R.V. with his hands in the air, four deputies approached him and took him into custody, and handcuffed him without incident. One of the four deputies had a rifle in his hand, however, it was pointed up, not at the complainant. BWC evidence did not show any deputy with their rifle “pushed” to the side of the complainant’s face. Other SED deputies had their rifles pointed at the complainant until he was apprehended, however, they were not in direct contact with the complainant. Deputies utilized

their Department approved weaponry to effect an arrest in accordance with applicable policies. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

10. Illegal Search and Seizure – SDS D deputies handcuffed and searched the complainant.

Recommended Finding: Action Justified

Rationale: The complainant stated, “I asked the man who grabbed my arms and put me into handcuffs ‘where is the search warrant?’ He told me ‘we don’t have one.’ I said, ‘what do you mean you don’t have one?’ ‘We don’t have one he said.’ I told him ‘I don’t consent to any searches or seizures.’” SDS D P&P Section 2.51 Arrest, Search and Seizure, states, “Employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures.” BWC evidence, showed Deputy 6 provided a copy of the search warrant to the complainant. The complainant stated that he did not consent to any search, however, the search of his person and property was conducted under authority of the search warrant. The evidence showed the alleged act or conduct did occur and was lawful, justified and proper.

11. Illegal Search and Seizure – Deputies 4, 5, 6, 12 and 13 searched and seized items from the complainant’s home.

Recommended Finding: Action Justified

Rationale: The complainant stated, “The entire time, beginning from when I came out, they were searching my home and removing my belongings from my home. They put me in the back of a cop car and kept searching my property.” California Penal Code PC§ 1524 Search Warrants, states in part, “A search warrant may be issued upon any of the following grounds: When the property or things to be seized consist of an item or constitute evidence that tends to show a felony has been committed, or tends to show that a particular person has committed a felony.” PC§ 1523, Search Warrants, authorizes law enforcement to search a person, a residence, a vehicle, a place of business, or any other specified area suspected of containing evidence of illegal activity. Once police find the evidence they are seeking, the search warrant allows officers to seize that evidence. The following property was seized during the search; eight firearms, approximately 6100 rounds of firearm ammunition, and several items deemed illegal. Deputies 4, 5, 6, 12 and 13 searched and seized items from the complainant’s home and their actions were lawful, justified and proper.

12. Illegal Search and Seizure – Deputies 1, 3, 6, 7, 8 searched then seized items from the complainant’s vehicles.

Recommended Finding: Action Justified

Rationale: See Rationale #11. Deputies 1, 3, 6, 7, 8 searched then seized items from the complainant’s vehicles and their actions were lawful, justified and proper.

13. Illegal Search and Seizure – Deputy 10 searched then seized items from the complainant’s vehicles.

Recommended Finding: Summary Dismissal

Rationale: At the time of this incident, Deputy 10 was an active employee of the Sheriff’s Department; however, SDS D CLERB Liaison notified CLERB that Deputy 10 retired from service on 03-25-21. CLERB’s Rules and Regulations Section 5.8, Termination, Resignation or Retirement of Subject Officer, dictates, “CLERB 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.” As such, the allegation is summarily dismissed.

14. Misconduct/Procedure – SDS D “destroyed” the complainant’s property.

Recommended Finding: Action Justified

Rationale: The complainant stated, “They destroyed most of what I own. They used battering rams and crow bars to break into storage containers and cabinets. They threw my mattress’ into my bonfire pit.” SDS D P&P Section 2.51 Arrest, Search and Seizure, states, “Employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures.” The evidence, to include

BWC video, showed deputies utilized bolt cutters, a crow bar and a battering ram to break open metal boxes, a compartment on the underside of an old military vehicle, and other locked containers scattered around the property. Mattresses were removed from the R.V., and power tools were used to remove boards for access to compartments underneath. Under California state law, police officers have immunity under Government Code Section GC§ 821.6 for property damage sustained during the execution of a search warrant. The alleged act or conduct did occur and was lawful, justified and proper.

15. Misconduct/Procedure – Deputy 6 was misinformed/in error regarding the complainant’s probation status.

Recommended Finding: Unfounded

Rationale: The complainant stated, “When I was being transported by officer 6, he asked me again if I was on probation. I told him that I was not. He tried to tell me that I was, the fact is that I was released from probation on 01-21-21, which was an early termination of probation due to AB1950, which means that at the time of their assault on me, I was not on probation and not a fourth waiver.” Assembly Bill (AB) 1950 was signed into law, by the California Governor, in September 2020 and went into effect on 01-01-21. The law was passed as a way to address the lengthy probation terms as well as the fact that many probationers were subjected to lengthy and unjust prison sentences after violating probation. Deputy 6 confirmed that on 06-26-18, the complainant was sentenced to probation for three years, with an expiration of 06-25-21. On the day of the search warrant execution, Deputy 6 confirmed with the complainant’s probation officer that he was currently on probation. The complainant’s belief that he was not on probation at the time the search warrant was issued, and then executed, does not negate the search warrant, as his “probation status,” was only one of several reasons attested to by Deputy 6, as probable cause for the search warrant. The evidence showed that the alleged act or conduct did not occur.

16. Misconduct/Procedure – SDSD responded to a “noise complaint.”

Recommended Finding: Action Justified

Rationale: The complainant stated, “I can't understand why the Sheriff's would respond to a noise complaint in such a deadly manner. It is totally obvious that I was / am a victim of ‘swatting.’ It is so scary that the San Diego County Sheriff's escalated this situation in such a deadly manner.” “Swatting,” as defined by the FBI: “making a hoax call to 9-1-1 to draw a response from law enforcement, usually a SWAT team. PC§ 148.5 makes it illegal to make a false police report of a crime. “Every person who reports to any peace officer that a felony or misdemeanor has been committed, knowing the report to be false, is guilty of a misdemeanor.” There was no evidence to support the alleged “swatting,” or that the call placed by the reporting party to SDSD was based on false information. The BWC video evidence along with SDSD reports showed the actions of deputies were handled per policy and were lawful, justified and proper.

17. Illegal Search and Seizure – SDSD towed the complainant’s vehicles.

Recommended Finding: Unfounded

Rationale: The complainant stated, “they towed three of my automobiles off of my private property and impounded them in an attempt to further damage me. The sheriff's actions are un-excusable!” There was no evidence that deputies had the complainant’s vehicles towed. When questioned, the complainant was unable to verify who towed his vehicles. CLERB Sheriff liaison confirmed that no vehicles were towed or impounded by SDSD. The evidence showed that the alleged act did not occur.

21-057/ANDERSON

1. Death Investigation/Officer-Involved Shooting – Deputies 1 & 2 shot and killed Eric Scott Anderson on 06-18-21.

Recommended Finding: Action Justified

Rationale: There was no complaint of misconduct, and this case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. According

to San Diego Sheriff's Department (SDSD) records and Body Worn Camera (BWC) evidence, Deputies 1 & 2 received a radio call of a suspicious person sleeping under a tree in a vacant lot in Encinitas on 06-18-21. Deputies 1 & 2 lawfully detained Anderson while conducting a field investigation in efforts to identify him. Anderson was initially cooperative but became unsettled and began to stand and subsequently ignored commands to sit down. Anderson pulled out an object wrapped in a cloth and pointed it toward deputies, then fled down a hill toward a heavily travelled interstate. Deputies 1 & 2 lawfully pursued Anderson on foot and closed in on him at which point Anderson stopped and abruptly turned toward Deputy 2. Anderson had his left arm extended out toward Deputy 2 who clearly saw a black semi-automatic handgun pointed at him. In fear for their lives coupled with the safety and concern of those who lived in the nearby community, both deputies fired their service weapons and struck Anderson who fell to the ground. Deputies 1 & 2 rendered emergency aid and Anderson was transported to a hospital where he never regained consciousness and death was pronounced. An autopsy was performed and documented three gunshot wounds of the body. The cause of death was listed as perforating gunshot wound of torso and the manner of death was homicide; at the hands of another. Anderson's toxicology results confirmed the presence of amphetamines and cannabinoids. According to all known factors, the use of deadly force was reasonable and justified based upon SDSD P&P 8.1, Use of Firearms/Deadly Force in that deputies shall use deadly force upon another person only when the officer reasonably believes, based on the totality of the circumstances, that such force is necessary to defend against an imminent threat of death or serious bodily injury to the officer or to another person. Anderson created a deadly force situation by pointing a handgun at the deputies. The use of less than lethal force option in this situation was not reasonably safe or feasible. Anderson's firearm was loaded and capable of shooting but malfunctioned. Deputies 1 & 2 reasonably believed that Anderson posed an imminent threat. Both deputies responded with deadly force in efforts to stop the threat and acted in accordance with department policy. The evidence showed the actions that occurred were lawful, justified and proper.

21-063/ESTRADA

1. Death Investigation/Drug Related - Ronaldino Estrada was found unresponsive in his cell while he was housed at the Vista Detention Facility (VDF) on 07-05-21.

Recommended Finding: Not Sustained

Rationale: Ronaldino Estrada was a 24-year-old single Hispanic male, who resided in Escondido with his family. Family reported that Estrada had a heart condition, was not known to use narcotics, but he was known to drink heavily and possibly smoke marijuana. Estrada had recent charges for driving under the influence, which led to him to acquire a court ordered ankle monitor through The Secure Continuous Remote Alcohol Monitoring (SCRAM) Program. SCRAM reported Estrada was active on the program from 05-11-21 to 07-02-21, where the system detected two alcohol consumptions. On 07-02-21, Estrada attended his court date where the Judge remanded him into custody of the San Diego Sheriff's Department, and he was booked into the Vista Detention Facility with a release date of 07-07-21. Per SDSD documentation, Estrada was fit to complete the booking process, noted he had hypertension and denied any history of drug and/or alcohol use. Estrada was prescribed Lisinopril (Per WebMD, Lisinopril is used to treat high blood pressure and heart failure), was classified as low-level 2 and housed in Lower West Module 4, cell 26. According to SDSD documentation and jail surveillance video, on 07-05-21 Deputy 1 assisted jail medical staff with the distribution of medication. Deputy 1 opened Estrada's cell door and stated he saw two inmates lying in their bunks who appeared to be asleep. Deputy 1 reported he called out to Estrada, but he would not respond so the cell mate attempted to wake him as well. Deputy 1 entered the cell, extracted the cell mate, checked for a pulse (which he reported was faint) and called for assistance. Deputy 2 and an additional deputy arrived on scene. Deputy 2 stated he checked for a pulse as well but did not feel anything and instructed another deputy to contact medical via radio. SDSD documentation showed that four doses of naloxone were administered by sworn and medical staff. Deputies moved Estrada from the top bunk to the floor where medical staff initiated chest compressions. Additional sworn and medical staff arrived on scene and resuscitative efforts were continued such as oxygen, AED (automated external defibrillator), and compressions. Oceanside Fire Department arrived on scene, began life-saving measures and transported Estrada to Tri-City Emergency Department. Per SDSD documentation and Tri-City medical records, Estrada

arrived at Tri-City Emergency Department at 11:13 am and was pronounced deceased at 11:20 am. Based on the autopsy finding, the cause of death was acute fentanyl intoxication with a contributing factor of hypertensive and atherosclerotic cardiovascular disease, and the manner of death was determined an accident. Deputies 1, 2 and an additional deputy also provided confidential information during the course of CLERB's investigation that was considered in arriving at the recommended finding. Deputies took immediate and appropriate action as they recognized and responded to Estrada's emergency medical needs in accordance with policy. Inmate counts and hourly security checks were completed in compliance with policy as evidenced by SDSD documentation and jail surveillance video. Detectives searched Estrada's cell and interviewed other inmates in the module but did not find anything of evidentiary value. Although SDSD has implemented numerous measures to deter drugs from entering its detention facilities, there is no doubt that Estrada while as an inmate in the custody and under the care of the SDSD, either acquired or possessed and subsequently consumed fentanyl, which resulted in his death. According to the SDSD News Release, "Stopping Drug Smuggling in County Jails", dated 04-19-21, the SDSD is active in their attempts to intercept drugs into the facilities. Some efforts being made are the use of body scanners at all intake facilities and GBDF, inmate screening and flagging of potential smugglers. Also, the mail processing center has special equipment for drug detection, drug detection K-9's, and a "no questions asked" drug drop box. SDSD also provides drug education and awareness in the facilities. Additionally, in accordance with DSB P&P I.41, Inmate Cell Searches and DSB P&P L.2 Sanitation and Hygiene Inspections, cell searches and inspections were performed in an effort to provide a safe and secure environment free of contraband. Despite all interdiction efforts, fentanyl, in part, contributed to Estrada's death, and, therefore, this death was preventable. As the investigation failed to determine how the fentanyl contributing to Estrada's death entered the detention facility, there was insufficient evidence to either prove or disprove misconduct on the part of SDSD sworn personnel.

21-092/JAMES

1. Use of Force Resulting in Great Bodily Injury – Deputies 1 and 2 used force to apprehend Taj Emory James.

Recommended Finding: Action Justified

Rationale: On 08-12-21, deputies were dispatched to "shots fired" at the Albertsons Grocery Store in Fallbrook. Witnesses reported they saw a suspect, later identified as Taj Emory James, with a gun in the parking lot and heard gunshots. According to SDSD documentation and Body Worn Camera (BWC), Deputy 1 was the first to respond on scene and spotted James in front of Albertsons. Deputy 1 pointed his gun at James and commanded him to put his hands up and drop to his knees. James did not comply, lifted his shirt (gun was visible) and began to slowly walk away. Deputy 1 stated he saw the gun, called for assistance and continued to give commands, but James did not comply. James wandered around, which caused his pants to fall, and he ultimately kicked off his shoes and pants away from him. (The gun was later located inside of his pant pocket.) James walked out of the parking lot towards the street, which prompted a foot pursuit. Deputy 1 chased him with an electrical control device (Taser) in hand. James turned around and attempted to punch the deputy in the face. Deputy 1 reported he grabbed James by his shirt and pulled him to the ground and applied pressure with his forearm against James' left temple area and forced his right temple against his chest. Deputy 1's BWC fell to the ground because of the struggle with James. SDSD documentation and BWC footage showed Deputy 2 arrived shortly after to assist. Deputy 2 reported James did not comply with her commands, so she attempted to gain control of his arm, but he resisted. Deputy 2's BWC was also dislodged due to the struggle. Deputy 2 reported she punched James approximately five times on the upper back and ribs and also applied downward pressure to James' upper back with her knees as she attempted to gain control of his right arm. The deputies were finally able to gain control of James, handcuffed him and lodged their BWC's back onto their person. Addendum F, Use of Force Guidelines states that deputies shall utilize appropriate control techniques or tactics which employ maximum effectiveness with minimum force to effectively terminate or afford the deputy control of the incident. Pursuant to Use of Force Guidelines, Deputy 1 utilized de-escalation techniques as he communicated with James, used verbal persuasion, advisements, and warnings. Deputy 1 commanded James several times and warned James he may be shot if he did not comply. James displayed verbal noncompliance, actively resisted, and used assaultive behavior towards Deputy 1. Deputy 2 arrived on scene and witnessed a struggle between Deputy

1 and James; it was her duty to gain safety/control of the situation. Deputy 2 also gave verbal commands, but James did not comply. Deputy 2 used hand techniques and punched James. Per Use of Force Guidelines, control compliance techniques and hand techniques are considered less lethal and may be used to gain control of a subject that is actively resisting and/or assaultive. Deputies 1 and 2 were confronted with a non-compliant, aggressive and armed suspect, but yet chose not to use deadly force. Deputies 1 and 2 used an adequate and reasonable amount of force towards James to apprehend him. This investigation found that the force was used towards James was lawful, justified and proper. There were no violations of policies and procedures found during this incident.

22-040/HUNTER

1. Excessive Force – An unidentified deputy re-injured the complainant’s shoulder.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, “I claim misconduct, excessive force. Possible false reporting, also, by San Diego Sheriff’s Department, SDSD Employees, VDF Intake personnel...” After his arrest on 07-13-21, the complainant said he informed officers of his recent shoulder surgery, which employees acknowledged. The complainant said SDSD employees at VDF ignored this information and handcuffed him behind his back (multiple times) which caused him excruciating pain then, and continues, so he has requested a compassionate release to receive urgently needed medical care. On 04-07-22, the complainant withdrew his complaint per CLERB Rules & Regulations 5.7: A complaint may be withdrawn from further consideration at any time by a written notice of withdrawal signed and dated by the complainant. The effect of such withdrawal will normally be to terminate any further investigation of the complaint of misconduct, unless the Executive Officer or a CLERB member recommends that the investigation continue and CLERB, in its discretion, concurs.

2. Misconduct/Procedure - Unidentified deputies handcuffed the injured complainant.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

22-047/DAHDOUH

1. Misconduct/Procedure – Deputy 1 used his official position and engaged in a personal relationship with the complainant.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported she engaged in a consensual and personal relationship with Deputy 1. The complainant reported she and Deputy 1 were intimate and after the fact she “did not feel comfortable trusting a public official to use her body then just leave.” The complainant also expressed concern that Deputy 1 did not return her phone calls and he “did not express care or concern for her.” The complainant further reported she did not understand why Deputy 1 told her he “preferred to be independent” and stated, “If someone works for a law enforcement agency, they should treat members of the public with respect and consideration.” Deputy 1 is no longer employed with the San Diego Sheriff’s Department as of 03-24-22; therefore, CLERB lacks jurisdiction to investigate this complaint. Pursuant to CLERB Rules & Regulations, Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB, subsection 4.1 states that CLERB shall have authority to receive, review, investigate and report on complaints filed against peace officers employed by the County in the Sheriff’s Department. Furthermore, CLERB does not have jurisdiction to investigate deputies while off-duty in accordance with subsection 4.2 “Misconduct” which is defined to mean and include any alleged or illegal acts, omissions, or decisions directly affecting the person arising out of the performance of the peace officer’s or custodial officer’s official duties. Given that the complainant reported actions that allegedly took place outside of the scope of Deputy 1’s official duties as a sworn officer, CLERB lacks jurisdiction in this matter.

