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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 April 11, 2023, meeting held in person. 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.

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 (13)

ALLEGATIONS, BOARD FINDINGS & RATIONALES

21-082/SALYERS

1. Death Investigation/In-Custody Homicide – Richard Lee Salyers, while in San Diego Sheriff's Department Custody at San Diego Central Jail, was assaulted by another incarcerated person and died from his injuries.

Board Finding: Action Justified

Rationale: The evidence indicated that Salyers was properly classified upon his entry into the SDCJ jail system after his contempt of court arrest. There was no indication that Salyers' classification or placement in the cell with his cellmate was inappropriate. There was no evidence Salyers expressed concern about his classification or cell placement. The safety check in which Salyers was discovered was conducted late due to an unrelated emergency, but documented and completed, in accordance with policy. Upon discovering Salyers unconscious in his cell, sworn personnel expeditiously responded and immediately initiated lifesaving measures. The cause of death was strangulation, and the manner of death was homicide. Salyers' cellmate, Steven Young, was arrested on suspicion of Salyers' murder. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel.

22-034/VINDIOLA

1. Misconduct/Procedure – Deputy 3 placed Vindiola in a holding cell without a toilet.

Board Finding: Action Justified

Rationale: The complainant stated, *“On the date of 02-20-22 at approximately 10am I was attacked and involved in a fight. I was placed in a holding cell right outside of 2-C but still in Module 2 House. There was no restroom inside of this holding cell. An hour later I had to use the restroom so I called the Deputy on the holding cells speaker box. I was denied access to a restroom because there was “none available. To which I responded ‘man look at what you made me do.’ Referring to how I was forced to use the restroom in the middle of the holding cell...”* According to an SDSD Rule Violation Report and a Department Crime Incident Report, Vindiola and another incarcerated person were involved in a physical altercation. The two inmates were separated and Vindiola was placed in the module’s Medical Holding cell, pending an investigation into the assault. The Medical Holding cell is a temporary holding cell within the module, and it was not equipped with a toilet. The Medical Holding cell was the only holding cell available within the housing unit and as general practice, an incarcerated person may be temporary placed there for safekeeping. In Vindiola’s case, he was placed in the Medical Holding cell pending an investigation. Per review of the jail surveillance video recordings, Vindiola remained in the Medical Holding cell for approximately 44 minutes while sworn staff conducted a suspect and witness check within the module. Jail surveillance video recordings and written reports were reviewed. According to San Diego Sheriff’s Department (SDSD) Policy & Procedure (P&P) Section 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. Being that the Medical Holding cell was the only appropriate place Vindiola could have been held within the housing unit, the evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 2, 3, 5, 6, 7, 8, and/or 9 ignored Vindiola’s medical emergency.

Board Finding: Not Sustained

Rationale: The complainant stated, *“Soon after I started to have chest pains because I was forced to hold in my poop and pee. The pain got worse and worse so I called the deputy on the box again saying ‘I know I just asked for the restroom officer but I am now having chest pains and I think I need help. I think I need medical attention.’ I even went as far as to say ‘Man Down’ which is a jail house term that means somebody is in serious trouble and needs immediate medical attention. To which the officer responded for me to leave him alone and for me to stop calling them on the box. Another 20 minutes went by and I was forced to go poop and pee in excruciating pain right there is the middle of the cell which had no toilet. (I believe this is what triggered the heart attack).* Jail surveillance video recordings and medical records were reviewed. Additionally, Deputies 2,3,5,6,7,8 and 9 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, their statements are privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. Evidence indicated that Vindiola was not seen in the jail’s medical division on the afternoon of 02-20-22. There was no evidence to support or confirm that Vindiola asked any deputy to escort him to medical. In the jail surveillance video recordings, five deputies escorted Vindiola out of the House 2 Medical Holding cell. Vindiola walked without assistance. He did not stagger. He did not appear injured or in medical distress. Upon exiting the holding cell, Vindiola adjusted his baggy pants and walked steady with determination, in a straight line out of the module. The jail surveillance video recordings were without audio, so it was unknown what, if anything, Vindiola said to the deputies who escorted him. According to the deputies’ written reports and other jail documentation, Vindiola was under the influence of Pruno, jail made alcohol. Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction, there was insufficient evidence to prove or disprove the allegation that deputies ignored Vindiola’s medical emergency.

3. Misconduct/Procedure – Deputies 2, 3, 5, 6, 7, 8, and/or 9 refused to take Vindiola to medical.

Board Finding: Not Sustained

Rationale: According to the complainant, “*Shortly after ten to twelve Deputies (Including one sergeant) led by Deputy 8 pulled me out of the cell and escorted me over to right in front of medical. I kept asking for medical attention and they kept denying me medical attention over and over again saying like ‘Why are you crying like a little girl?’ and ‘Dude stop being such a baby’. ‘I’m having real bad chest pains I need help!’ to which they responded, ‘Dude your not having chest pains’ and ‘We’re not taking you to medical.’ They then put the handcuffs back on me and took me to the hole without ever receiving medical attention. Note: from the time I was apprehended until the next shift of deputies came in and provided me medical attention was from approximately 10:30am to 7pm.*” According to a SDSA Crime Incident Report, at the conclusion of his interview, Deputy 8 documented that he asked Vindiola if he wanted medical attention since he was involved in a physical altercation. Per his written report, Deputy 8 reported that Vindiola replied, “No.” Numerous jail surveillance video recordings were reviewed; however, the jail surveillance video recordings were without audio. It was unknown what, if anything, Vindiola said to Deputy 8 or any other deputy in regard to him going to medical. There was no documentation that Vindiola went to medical on the afternoon of 02-20-22. Deputies 2, 3, 5, 6, 7 and 8 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, their statements are privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. There was no additional evidence that confirmed or refuted that Vindiola requested to go to medical or that Deputy 8 or any other unidentified deputy refused to take Vindiola to medical. There was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Intimidation – Deputy 3 provoked Vindiola to fight.

Board Finding: Not Sustained

Rationale: The complainant stated, “*At this time Deputy 3 took off my handcuffs and started to try to provoke me to fight him telling me things like ‘come on hit me’ and ‘let’s fight come on’ to which I told him ‘there’s no way I’m gonna hit you there’s twelve of you.’*” Numerous jail surveillance video recordings were review. The jail surveillance video recordings were without sound and illustrated Vindiola’s interactions with the deputies. After Vindiola was placed in the House 2 Medical Holding cell, pending an investigation, Deputy 3, along with other deputies, approached and entered the cell and went out of view of the jail surveillance camera. The deputies remained in the cell with Vindiola for approximately 4-7 minutes. According to the SDSA Crime Incident Report, Deputy 3 entered the holding cell in an attempt to interview Vindiola. Vindiola was observed to be hostile and belligerent, so additional deputies stood by for cover. Additionally, it was noted that as soon as the deputies opened the door and entered the holding cell, they could immediately “smelled the strong odor of Pruno.” Pruno is jail made alcohol, made from the fruits and sugars. The strong odor of the Pruno had emitted from Vindiola. Deputy 3 read Vindiola the Miranda Admonishment verbatim and questioned Vindiola about the altercation. Deputy 3 responded to a SERF and provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. That information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. According to SDSA P&P Section 2.22 titled “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. According to SDSA P&P Section 2.48 titled “Treatment of Persons in Custody,” employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody.” Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction, there was insufficient evidence to prove or disprove the allegation that Deputy 3 provoked Vindiola to fight.

5. Misconduct/Procedure – An unidentified sergeant failed to intercede.

Board Finding: Not Sustained

Rationale: The complainant stated, that in regard to allegation #4, “*Reminder that the unknown Sergeant*

was right there and seen and heard all of this.” In review of the numerous jail surveillance video recordings of the incident, and in relation to allegation #4, an unidentified deputy, who appeared to be a sergeant based on the striped insignia on his jacket was present with other deputies when Deputy 3 interviewed Vindiola after the altercation. There was insufficient evidence to prove or disprove the allegation that Deputy 3 provoked Vindiola to fight. As such, there was insufficient evidence to prove or disprove that there was a need for a sergeant to intercede. In review of the jail surveillance video recordings, no deputy, corporal, sergeant, nor lieutenant was observed to harassed, intimidated, or provoked Vindiola while he was held in the holding cell, nor while he was escorted to disciplinary isolation, or after he was placed in disciplinary isolation. According to SDDS P&P Section 2.57 titled “Duty to Intercede,” any on-duty sworn staff employee who has knowledge of another employee’s criminal activity or potential excessive force, has a duty to intercede and immediately report the activity to a supervisor. According to a SDDS Inter-Departmental Correspondence, titled, “Directive #2006-01 Duty to Intervene,” dated 06-23-20, every member of the Sheriff’s Department who has knowledge of another employee’s misconduct, including but not limited to violations of policy, illegal activity, or excessive use of force, has a duty to intervene. An employee witnessing such misconduct shall immediately take necessary action to stop it. The presence of a supervisor does not relieve an employee from their duty to stop misconduct from continuing. Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction, there was insufficient evidence to prove or disprove the allegation that an unidentified sergeant failed to intercede.

6. Misconduct/Procedure – Deputy 3 placed Vindiola in disciplinary isolation.

Board Finding: Action Justified

Rationale: Vindiola stated, *“They then put the handcuffs back on me and took me to the hole...”* In review of the jail surveillance video recordings, Vindiola and another incarcerated person were involved in a physical altercation. As observed in the jail surveillance video recordings, and as noted in the deputies’ reports, Vindiola was deemed the aggressor in the assault. Vindiola was in violation of SDDS inmate rules for threatening and assaulting another incarcerated person and for interfering with jail operations. The purpose of SDDS DSB P&P Section O.3 is to set forth rules governing inmate behavior in an effort to provide a safe and healthy environment for visitors, staff and inmates within the Sheriff’s detention facilities. As such, Deputy 3 escorted Vindiola to a disciplinary isolation cell where he was pending a disciplinary hearing. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified, and proper.

7. Misconduct/Discourtesy – Deputies 2, 4, 5 and/or 7 “ridiculed” Vindiola.

Board Finding: Not Sustained

Rationale: The complainant stated, *“I called for help on the speaker box non-stop pressing the button on the speaker box well over 200 times (two hundred) but was ridiculed by staff when they answered the speaker box their one and only time saying things like ‘how can you be man down if your calling us on the speaker box’ and ‘stop being a baby’ and to ‘stop bugging them.’”* After the physical altercation, Vindiola was moved to House 6. Each jail cell that Vindiola was held in was equipped with a wall mounted intercom box for incarcerated persons to use to contact deputies. Though numerous jail surveillance video recordings were reviewed, it was noted none of the jail surveillance video recordings illustrate the interior of the holding cells, nor do they record audio. As such, it was unknown what deputies communicated to Vindiola. Deputies 2, 4, 5, and 7 were served with a Sheriff’s Employee Response Form (SERF). Each deputy responded to their SERF and provided information that was considered in arriving at the recommended finding. That information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. There was insufficient evidence to either prove or disprove the allegation deputies mocked or teased Vindiola.

8. Misconduct/Procedure – Deputies 2, 4, 5, and 7 did not respond Vindiola’s medical emergency.

Board Finding: Not Sustained

Rationale: The complainant stated, that after he was moved to disciplinary isolation, he attempted to inform

deputies that he was experiencing a medical emergency. Vindiola attempted to contact deputies on the wall mounted intercom box, but the deputies refused to respond. Vindiola stated, *"I will repeat, they only answered the speaker box one time while I was in the hole for several hours, and never again."* According to jail documents, safety/security checks were conducted in a timely manner. Numerous jail surveillance video recordings were reviewed; however, the video recordings did not capture the interior of the holding cells, nor do they record audio. As such, it was unknown what Vindiola communicated to deputies, nor what the deputies communicated to Vindiola. The purpose of SDSB Detention Services Bureau (DSB) Policy & Procedure (P&P) Section M.1, titled "Access to Care," is to establish guidelines for reasonably prompt access to medical services for any inmate complaining of illness or injury. The policy explains that any incarcerated person in the custody of the San Diego Sheriff shall have quality and timely access to care for their medical needs. Inmates must have access to health care services free from unreasonable barriers that deter them from seeking care for their health needs. The purpose of SDSB DSB P&P Section M.5 titled "Medical Emergencies," is to provide guidelines for deputies in their response to medical emergencies. The policy directs that all facility staff shall be responsible for taking appropriate action in recognizing, reporting or responding to an inmate's emergency medical needs. In any situation requiring medical response, emergency medical care shall be provided with efficiency and speed without compromising security. The purpose of SDSB Detention Services Bureau Policies and Procedures (DSB P&P) Section I.2 titled "Intercom Systems," is to provide a means of communication between sworn staff and incarcerated persons. Intercom systems should be primarily used as a means of relaying and or summoning emergency assistance. An incarcerated person is to depress the intercom call button which activates an alarm on the receiving end. Sworn staff will answer all intercom calls in an expeditious manner and follow-up on the nature of the call. Deputies 2, 4, 5, and 7 were served with a Sheriff's Employee Response Form (SERF). Each deputy responded to their SERF and provided information that was considered in arriving at the recommended finding. That information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. There was insufficient evidence to either prove or disprove the allegation Deputies 2, 4, 5, and 7 were made aware of Vindiola's medical emergency and failed to respond.

9. Misconduct/Procedure – An unidentified sergeant failed to respond to Vindiola's medical emergency.

Board Finding: Unfounded

Rationale: The complainant stated, *"While I was in the hole an unknown sergeant walked up to my door as I called out to him for help. He tried asking me questions but all I could do was repeat 'help me, I need help, I need medical attention' Because of the pain I was in. He must have gotten frustrated because he just walked away never to return again."* According to jail documents, the sergeant assigned to that housing unit visited the unit prior to Vindiola being placed in disciplinary isolation. The evidence showed that the alleged act or conduct did not occur.

10. Misconduct/Procedure – Deputy 9 failed to respond to Vindiola's medical emergency.

Board Finding: Not Sustained

Rationale: The complainant stated, *"Deputy 9 then came to my cell with a camera And took multiple photos of me while I was on the floor with one hand in the air begging for help. I said, '[Deputy] 9 thank God you're here, please help'. But all he did was take six or seven photo's of me then also left never to return."* According to jail documents, Deputy 9 had gone to House 6 to take photos of Vindiola to assist Deputy 8 with his written report. Deputy 9 responded to a SERF and provided information that was considered in arriving at the recommended finding. That information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. There was insufficient evidence to either prove or disprove the allegation that Deputy 9 failed to respond to Vindiola's medical emergency.

11. Misconduct/Procedure – Deputy 5 failed to respond to Vindiola's medical emergency.

Board Finding: Not Sustained

Rationale: The complainant stated, *"One more unknown Deputy stopped by tapping on my door. I called out for help, but he did nothing (I think it might have been Deputy 5 but I'm not for sure.)"* Deputy 5

responded to a SERF and provided information that was considered in arriving at the recommended finding. That information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. There was insufficient evidence to either prove or disprove the allegation that Deputy 5 failed to respond to Vindiola's medical emergency.

22-065/MILLS

1. Criminal Conduct – Deputy 1 “roughly fondled” Mills.

Board Finding: Not Sustained

Rationale: According to the complainant David Mills, on the afternoon of 02-11-22, he was sent from the LCDRF to the GBDF's medical unit. Upon his arrival to the GBDF, Mills was escorted to a holding cell where he was searched. Mills reported that he was pat down searched by Deputy 1. During the search, Mills informed the deputy that he had a “hernia belt.” In a follow-up letter to CLERB, Mills reported, “*I told Officer 1 I had a hernia belt lower on he under on my balls and private area.*” Mills reported that Deputy 1 “*proceeded to me pat down and fondled my genitals roughly.*” Mills informed the deputy “*I am not gay. I told the officer what up with that.*” Mills said the deputy replied, “*Well you should not come to jail.*” Though Mills repeatedly reported that he was transferred on the afternoon of 02-11-22, it was noted through numerous sources that he was transferred to the GBDF on the night/evening of 02-10-22. Numerous jail surveillance videos recordings were reviewed. The recordings were grainy, and the view of the incident was from a distance, down the court corridor/hallway. Mills entered the Court Corridor and stood against a wall while Deputy 1 performed a pat down search on him. The details of the search were not viewable; however, the search only took seconds to complete and appeared to be without incident. After the search, Mills was escorted to a holding cell. A pat down search, also known as a cursory search, is performed when a deputy pats down the outer surfaces of a person's clothing in an attempt to find weapons and contraband. Pat down searches serve to ensure the officer's safety, as well as the safety of other incarcerated persons, and thus, the search does not exceed what is necessary to ensuring against threats to safety. The pat down search was performed over Mills' garments. There was insufficient evidence to either prove or disprove the allegation that Deputy 1 touched Mills in an inappropriate manner.

2. Misconduct/Procedure – An unidentified deputy placed Mills in a holding cell for an extended period of time.

Board Finding: Unfounded

Rationale: In his written letter to CLERB, Mills reported that he was left in a holding cell for approximately nine hours. Mills reported, “*I stay in holding tank from 3:30pm to 12:30am on 02-12-22.*” According to Mills' jail documents, he was transferred from the LCDRF to the hospital, to the GBDF, and to the SDCJ between 02-09-22 to 02-11-22. He was held at the GBDF, in different holding cells, for approximately six hours while he was processed and medically evaluated. Ultimately, Mills was transferred to the SDCJ. He was placed in the medical unit shortly upon his arrival and was eventually moved to mainline housing. Mills remained in the SDCJ housing unit from 02-11-22, until the morning of 02-16-22, when he had court. In review of Mills' entire movement history, coupled with review of numerous jail surveillance video recordings, CLERB was unable to identify any timeframe where Mills was left in a holding cell for an extensive duration of time.

3. Misconduct/Procedure – An unidentified deputy withheld Mills' inhaler.

Board Finding: Unfounded

Rationale: In his written letter to CLERB, Mills advised, “*I have COPD bronchitis and I asked for an inhaler out of my property sooner or later. He [unidentified deputy/staff] finally gave that to me I was coughing up blood and shitting blood as well.*” Mills alleged that an unknown deputy and/or jail medical/health staff failed to give him his inhaler. Mills allegedly asked for his prescribed inhaler medications, but did not receive them. According to an Inmate Grievance, handwritten by the complainant and dated 05-13-22, while he was housed at the GBDF, Mills stated, “*I need my property It has my medical inhalers in the*

property I can hardly breath ASAP.” Mills’ Inmate Grievance was responded to by a sergeant and was dated 05-13-22. In his response, the sergeant replied, “Module property found and given to you on 05-13-22. 5 bags including 1 inhaler.” According to SDS DSB P&P Section M.18 titled, “Medication Pass Security,” deputies and nurses will collaborate to ensure inmates receive medications in an organized and supervised manner. According to SDS DSB P&P Section M.19. entitled, “Emergency Medication Administration,” deputies will not distribute or administer medication to inmates except in emergency situations. According to jail documents, there were not emergent circumstances where a deputy would have administered medication, to Mills. Mills’ received his module property, which was found to contain an inhaler, when he transferred housing units. The evidence showed that the allegation that an unidentified deputy withheld his inhaler did not occur.

4. Misconduct/Medical – Jail Medical/Health staff withheld the complainant’s inhaler.

Board Finding: Summary Dismissal

Rationale: In his written letter to CLERB, Mills advised, *“I have COPD bronchitis and I asked for an inhaler out of my property sooner or later. He [unidentified staff] finally gave that to me I was coughing up blood and shitting blood as well.”* Mills alleged that he asked for his prescribed inhaler medication but did not receive it. According to an Inmate Grievance, handwritten by the complainant and dated 05-13-22, while he was housed at the GBDF, Mills stated, *“I need my property It has my medical inhalers in the property I can hardly breath ASAP.”* According to SDS DSB P&P Section M.18 titled, “Medication Pass Security,” deputies and nurses will collaborate to ensure inmates receive medications in an organized and supervised manner. Medical 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.

5. Misconduct/Procedure – Unidentified deputies placed the complainant into an unsanitary jail cell.

Board Finding: Not Sustained

Rationale: In Mills’ written report he stated, *“I was transferred again into isolation the room was supposed to be sterile, but was not had to clean it myself had shit stains on the walls etc.”* A review of Inmate Grievances did not reveal any grievances submitted by Mills that expressed any concerns or complains about the cleanliness of any of the jail cells he was assigned to. Incarcerated persons are encouraged to clean their assigned cells. Cleaning of the individual cells is the responsibility of the incarcerated person. Incarcerated persons are given cleaning supplies when they are out for day room time, and they need only as ask the floor/housing deputies for access to cleaning supplies. According to SDS DSB P&P Section L.2 titled “Sanitation and Hygiene Inspections.” The purpose of Section L.2 is to ensure the facility will be kept clean and sanitary. Each facility has scheduled weekly hygiene inspections which is conducted by designated staff members. There was insufficient evidence to either prove or disprove the allegation that unidentified deputies placed Mills into an unsanitary jail cell.

6. Misconduct/Procedure – Food Service staff failed to provide the complainant with a Kosher meal.

Board Finding: Summary Dismissal

Rationale: In Mills’ written statement, he stated, *“I also file an [I/A] at Vista VDF for not giving me my Kosher diet.”* According to a handwritten note, Mills advised that he had *“written a grievance for Kosher diet I am Messiah Jew...”* The purpose of SDS DSB P&P Section K.8 titled, “Religious Diets,” is to provide inmates with a diet that is aligned with their religious guidelines and beliefs. The policy dictates that the Sheriff’s Department will make reasonable efforts to provide religious diet options for those incarcerated persons whose religious beliefs require the adherence to religious dietary guidelines. All religious dietary requests will be processed by Reentry Services Division (RSD) staff (correctional counselor or designee). The allegations against the RSD staff are summarily dismissed, as CLERB does not have any jurisdiction against the RSD. Correctional Counselor are not sworn staff. The CLERB Review Board lacks jurisdiction as it cannot take any action in respect to complaint against non-sworn SDS employees, per CLERB Rules and Regulations 4.1.2.

7. Misconduct/Procedure - Unidentified deputies lost the complainant's property and/or commissary items.

Board Finding: Not Sustained

Rationale: In Mills' statement to CLERB he reported, *"I just want justice for these actions because every time I get transferred they lose my property and even canteen."* In a follow-up letter to CLERB, Mills also stated, *"Secondly, while being transferred for San Diego county jail to Wasco State Prison, they lost all my personal property they sent me to George Bailey on 07-26-22 for transferred to Wasco on 07-27-22. My property was with when I went to George Bailey, but when I transferred to Wasco state prison, none of it showed up I filed a state, but was notified. It was not state issued all the property that was lost was all my medical issues and copies of my i.e. reports I have filed medical claims and government against San Diego county medical, which they just happen to lose on my property. This is plain and simply done on purpose I believe."* The evidence indicated that Mills claimed he lost property and commissary items. He filed an Inmate Grievance which was investigated by a sergeant. The sergeant physically went to Mills' previous housing units and looked for his missing property. When the sergeant was unable to locate it, he responded to Mills in writing and provided him with a claim form. The purpose of SDSD DSB P&P Section Q.63 titled, "Lost Incarcerated Person Money or Property," is to standardize the procedure for processing lost/missing inmate property claims for both module property and personal property, filed by incarcerated persons. Whenever an incarcerated person claims to be missing personal property (including money or other valuables) or module property (such as commissary or hygiene products), the watch commander shall be notified. The grievance process should be followed for claims of missing module property (to include commissary and hygiene products). When moving an inmate to another housing unit, facility, or an inmate is released, the deputy doing so shall ensure the inmate's module property is moved with the inmate. The purpose of SDSD DSB P&P Section Q.66 titled, "Transfer of Incarcerated Person Property," is to establish a uniform policy for the inter-facility/agency transfer of inmate property. When transferring inmate property between facilities/agencies, employees shall observe proper handling procedures to minimize damage or loss. Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction, there was insufficient evidence to prove or disprove the allegation.

8. Misconduct/Procedure – Unidentified deputies relocated the complainant numerous times during his incarceration.

Board Finding: Action Justified

Rationale: In Mills' written complaint, he reported, *"I have been moved 18 times since 12-14-21 to present date."* According to an Inmate Grievance, handwritten by the complainant and dated 03-08-22, Mills stated, *"So now I have been moved 16 times in 85 days and not be written up for nothing been hospital Grossmont, MLB and George Bailey moved module to be then yeah then six a the hole received blank and never had yet for medical reasons and to be fed, I have to going back to central jail MLB in one day. Then moved to 4E for isolation then seven a before I was cleared then Vista and the medical bay is best to E7 now EH5 and I always get burned for day room, and all waiting."* Mills' Inmate Grievance was responded to; in the response, Mills was advised "Space is limited in custody at moment. Moves are made based on space/needs of facilities and not necessarily due to discipline." According to Mills' jail documents, Mills was moved to different facilities, housing units, and cells approximately twenty times during his incarceration. Mills had an extensive medical history which required him to be transferred to different facilities to meet his medical needs. The allegation that Mills was moved numerous times during his incarceration did occur, and it was lawful, justified, and proper.

22-086/YACH

1. Misconduct/Procedure – A San Diego Police Department (SDPD) officer transported and booked Yach into the San Diego Central Jail (SDCJ).

Board Finding: Summary Dismissal

Rationale: After her arrest, Erich 'Nikki' Yach was transported and booked into custody as a male at a

male-only intake facility. According to Yach's SDCSD jail booking intake documents, Yach was arrested by a San Diego Police Department officer. During the SDPD officer's interaction with Yach, the police officer determined Yach was a male, and on the SDPD Booking Intake/Personal Property Inventory form, the police officer notated that Yach was 'male' on the booking document. As such, the SDPD officer transported Yach to the male-only intake facility, the San Diego Central Jail (SDCJ). The SDPD officer was a peace officer employed by the SDPD and as the arresting and transporting officer, it was her decision to note Yach as 'male' on her booking documents and to transport Yach to the male-only intake facility. The allegation against the SDPD officer's actions are summarily dismissed, as CLERB does not have any authority or jurisdiction over the peace officers employed by another agency. The CLERB Review Board lacks jurisdiction as it cannot take any action in respect to complaint against non SDCSD employees, per CLERB Rules and Regulations 4.1.2.

2. Misconduct/Procedure – The San Diego Sheriff's Department (SDSD) housed Yach in a male-only detention facility.

Board Finding: Action Justified

Rationale: Yach expressed that she believed that she should not have been incarcerated at the male-only SDCJ. Yach advised that she is a transgender female. Yach explained that she was born a biological male and identifies as a transgender female. For this reason, she believed that she should have been in a female facility. Yach believed she should have been incarcerated at either the Vista Detention Facility (VDF) or the Las Colinas Detention and Reentry Facility (LCDRF). The VDF serves as the primary point of intake for male and female arrestees in the northern San Diego County. The LCDRF serves as the primary point of intake for incarcerated females in San Diego County. The purpose of SDCSD Detention Services Bureau Policies and Procedures (DSB P&P) Section R.13 titled "Transgender, Intersex, and Non-Binary Inmates," is to ensure decisions regarding the searching, housing, programming, and in-custody services such as clothing, commissary and toiletries are applied in a manner consistent with an incarcerated person's declared gender identity. Classification deputies are consulted to determine individualized housing assignments for all transgender, intersex or non-binary inmates in custody. Classification staff use the information obtained from the J-350 form along with other factors, such as the inmate's safety, the safety of other inmates and the safety of staff to determine the most suitable housing assignment. An incarcerated person's own views with respect to their safety shall be given serious consideration. The inmate's gender identity may differ from their assigned housing status. It is the policy of the SDCSD to receive, evaluate, house, and provide secure, safe and humane custody of all persons, including transgender, intersex and non-binary which are committed or held for confinement by the Sheriff until their lawful and appropriate release or transfer to another authority. At the time of Yach's incarceration the SDCSD P&P dictated for Yach to be housed separately, in Protective Custody, as she could not be in the general population. Protective Custody is the voluntary or involuntary placement of an incarcerated person into separate and secure housing when there is a verified threat against their life, whether stated or implied, or when an incarcerated person's circumstances render them a target for physical violence. According to Yach's SDCSD Segregated Housing Order, Yach was placed in Protective Custody "by virtue of his/her gender nonconformance or other risk factors and characteristics, and may be a danger of abuse from incarcerated persons in general population." Yach was placed in the SDCJ's Protective Custody housing involuntary after an assessment of all available housing alternatives showed there are no other means of protecting her without depriving her of privileges. In deciding whether to assign a transgender, intersex or non-binary incarcerated person to a facility for male or female inmates, and in making other housing and programming assignments, the SDCSD shall consider, on a case-by-case basis, whether the placement would ensure the incarcerated person's health and safety and whether the placement would present a security risk to the incarcerated person. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

3. Misconduct/Procedure – The SDCSD failed to protect Yach from being sexually harassed by other incarcerated persons.

Board Finding: Unfounded

Rationale: Yach alleged that while in the custody of the SDCSD, she was not protected from other

incarcerated persons. Yach reported, *“Deputies do not protect us. They continuously put us with people that are violent and have history of sexual assault.”* Yach advised that she was housed in a module with incarcerated persons *“who have history of sexual assault.”* Yach stated that she should have been *“classified for safety.”* According to SDSD P&P Section 2.54 titled, “Sexual Harassment,” employees shall not participate in or allow behaviors or situations that they know or should know, constitute sexual harassment as outlined in state and federal law. Employees shall take swift action to stop the offensive behavior or correct the situation. The Prison Rape Elimination Act (PREA) of 2003 is a federal law that provides guidelines to detect, prevent, identify and deter incidents of sexual misconduct of persons in custody. The federal law was enacted to establish a zero-tolerance standard for incidents of sexual misconduct in prisons, jails, lockups and other confinement facilities. According to SDSD P&P Section 6.127 titled “Prison Rape Elimination Act,” the Department has a zero-tolerance policy for all forms of sexual misconduct. All allegations of sexual misconduct will be investigated. Yach was asked if she reported these threats of violence to any deputy or jail staff. Yach advised that she did not report the threats to deputies. According to SDSD DSB P&P Section R.1 titled “Inmate Classification,” all person booked into a detention facility undergo a classification evaluation to determine an appropriate housing assignment. SDSD DSB P&P Section R.1 explains that the purpose of the “Inmate Classification System” is to screen, assess and house incarcerated persons in a manner that would protect the safety of the community, staff and other incarcerated persons. According to the policy, all incarcerated persons are screened to assess their risk of being sexually abused by other incarcerated persons or being sexually abusive toward other incarcerated persons. Depending on the risk factors, including vulnerability, the screening for risk of victimization or abusiveness is completed on a case-by-case basis, tailored for that individual incarcerated person. Per her own omission, Yach confirmed that she failed to inform any jail staff that she was threatened with violence or that she was sexually harassed by another incarcerated person. The evidence indicated that once Sheriff’s staff became aware from an outside entity that Yach feared for her safety, Sheriff’s staff acted quickly to move Yach to a safer environment. Numerous deputies documented their attempts to assist Yach, but Yach refused to cooperate with deputies in their investigations and refused to provide vital information to help them in protecting her. Yach’s telephonic interview with CLERB’s staff, coupled with the numerous written deputy reports, was considered in arriving at the recommended finding. The evidence showed that the alleged act or conduct did not occur.

4. Discrimination/Gender - The SDSD and/or unidentified Sheriff’s deputies denied privileges to Yach.

Board Finding: Unfounded

Rationale: Yach reported that during her incarceration, she was approached by two unidentified Sheriff’s sergeants. The two sergeants escorted Yach out to the recreation yard and asked her if she wanted to go to the LCDRF. Yach reported that the two unidentified sergeants told her that she wanted to go the LCDRF, that she would be placed in “isolation/segregation,” and would only be able to leave her jail cell for one hour a day. Yach clarified that if she agreed to go to the LCDRF, that she would have been held in her jail cell for 23 hours a day. She would not be allowed to access or participate in programs. Yach reported, *“either we lose everything we have, or we can stay where we are and be quiet.”* At the time of this complaint, transgender females were not housed at the LCDRF. For this reason, Yach was housed at the SDCJ where she was able to access programs and activities. According to SDSD DSB P&P Section R.13 titled “Transgender, Intersex and Non-binary,” incarcerated persons shall not be denied access to programs or services they would otherwise be eligible for based on their sexual orientation and/or gender identity. The evidence showed that the alleged act or conduct did not occur.

5. Misconduct/Procedure - Deputies 1 and 2 performed a patdown search on Yach.

Board Finding: Action Justified

Rationale: Yach reported that in June 2022, she went to the San Diego Central Courthouse to attend her court hearing. Upon her enter to the incarcerated person’s court holding hallway, Yach was meet by Deputies 1 and 2. Yach entered the holding area but refused to pass through the metal detector without her cane. Deputies instructed Yach to stand to the side to have a patdown search performed to ensure she was not carrying any contraband or weapons. (Male) Deputy 2 attempted to conduct a pat down search on Yach; however, Yach made multiple attempts to face Deputy 2 instead of facing the wall as

instructed. Yach disobeyed Deputy 2's orders. According to Yach, she attempted to tell the deputies that she was transgender and that her "search clauses were female only." Contrary to Yach's statement, Yach was born as a biological male and identified as a transgender female. Per the information she provided on the J-350 Voluntary Gender Identity Statement of Preference Form, she reported that she preferred to be searched by a female deputy/officer and that she preferred to be housed with females. Yach signed the form stating that she understood that the form expressed her **preferences**, and that the ultimate decision would be based on several factors, to include her safety, the safety of staff, and the safety of others. In a report written by Deputy 2, he noted that in his previous interactions with Yach, Yach had always been held on the male side of court holding. Yach had "always been transported and held with the Protective Custody male incarcerated persons. Yach reported she had the paperwork in her hands regarding her transgender status and attempted to show the deputies. When Deputy 2 checked Yach's waistband and patted underneath her arms, Yach turned away from the wall, faced Deputy 2, and said, "*Why are you grabbing my tits? I'm transgender.*" According to SDSD Court Services Bureau (CSB) Manual of Policies & Procedures Section According to SDSD CSB Section F.16 titled "Inmate Searches," all persons and their property are to be screen for weapons and/or contraband prior to entering a court facility. The purpose of a policy is to establish guidelines and procedures within the court services bureau for inmate searches. All inmate searches will be conducted for the purpose of providing a safe and secure environment for inmates and staff in compliance with the alcohol legal standards. Pat down searches: All inmates are subject to a pat down search, metal detector, searches, and thorough searches of their clothing and belongings. No pat down search of an incarcerated person of the opposite gender shall be conducted, except in the company of an employee of the same gender as the inmate. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

6. Criminal Conduct - Deputy 2 "groped" Yach.

Board Finding: Unfounded

Rationale: Yach reported that she went to the downtown courthouse to attend court. Upon her entry to the incarcerated person's court holding hallway, Yach was met by Deputies 1 and 2. When Deputy 2 attempted to perform a patdown search for contraband and weapons, Yach alleged that Deputy 2 sexually assaulted her. Yach reported that Deputy 2 "*groped her breasts.*" When Yach tried to step away from Deputy 2, she was surrounded and restrained by several deputies. Court surveillance video recordings were viewed. Deputy 2 was not observed to grope, fondle, or touch Yach's pectoral area. Deputy 2 was observed to start his patdown search at the top of Yach's shoulders and worked his way down her arms to her elbows, to the ends of the sleeve of her shirt. From her elbows, he came back up to her arms to the top of her shoulder and reached under her arms (arm pit). Deputy 2's hands never touched Yach's pectoral area. Yach made multiple attempts to face away from the wall as instructed. Yach disobeyed Deputy 2's orders and attempted to stop him from performing his pat down search on her. Numerous court surveillance video recordings that captured the incident were reviewed during the course of CLERB's investigation and aided in arriving at the recommended finding. The evidence showed that the allegation that Deputy 2 touched Yach in an improper manner did not occur.

7. Discrimination/Gender – Sheriff's staff referred to Yach using masculine terms.

Board Finding: Not Sustained

Rationale: Yach, a transgender female, stated that deputies and jail medical staff refer to her as "sir or mister." According to jail documents and written reports, Yach had a "scruffy beard as if he had not shaved in many days." Upon speaking to Yach, it was noted that she "had a deep masculine voice and did not speak in a feminine tone. Yach was dressed in clothes typically worn by males." Misgendering Yach, mistakenly assuming her gender identity based on her location, appearance, and/or her name invalidated who she was as a person. Being that Yach was unable to identify a particular staff member, date, or location made investigating this allegation not possible. According to SDSD P&P Section 2.22 titled, "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. According to SDSD P&P Section 2.53 titled Discrimination, employees shall not express any prejudice or harassment concerning race, religious creed, color, gender, age, political beliefs,

sexual orientation, lifestyle or similar personal characteristics.” Furthermore, per SDCSD P&P Section 2.1 titled “Rules of Conduct for Members of the SDCSD” it is the responsibility of all employees to familiarize themselves and comply with all policies, orders, directives, rules and regulations of the department. In March 2017, a Training Bulletin: Working with Inmates who Identify as Lesbian, Gay, Bisexual, Transgender, Intersex, and Queer or are Questioning (LGBTIQ+) was disseminated to sworn personnel and directed that “All sworn personnel are responsible for providing professional detention services in a safe and humane environment. Treatment of all inmates, to include those that identify as LGBTIQ, shall be nondiscriminatory. The use of gender specific pronouns is a sensitive subject within the LGBTIQ community. It is their expectation that they be addressed by the pronoun of the gender they identify with.” Additionally, in May 2020, a Line-Up Training, mandated for sworn personnel, emphasized professionalism in the workplace and directed that sworn staff are “expected to exude professionalism and respect in the course of their duties. Staff shall treat all inmates with respect. Deviation from equitable treatment can lead to criminal and civil liability as well as disciplinary action. When communicating with an individual, use the pronouns that match the individual's gender identity. A person who identifies as a certain gender, whether or not that person has taken hormones or undergone surgery, should be referred to using the pronouns appropriate for that gender identity. If you are not certain which pronoun to use, ask the individual how they would like to be addressed.” There was insufficient evidence to either prove or disprove the allegation that Sheriff’s staff referred to Yach using masculine terms.

8. Misconduct/Procedure – Unidentified deputies failed to respond to Yach’s Inmate Grievances.

Board Finding: Not Sustained

Rationale: Yach reported she has filed Inmate Grievance Forms but had not received any responses. In review of Yach’s filed Inmate Grievances, it was noted that she had two Inmate Grievance forms within her booking file. Yach’s grievances were complaints regarding the type of meal/diet she was given. Both Inmate Grievances were noted in Yach’s booking file and in the jail systems computer system, verifying that staff accepted the forms and entered them into the JIMS computer system. In accordance with SDCSD DSB P&P Section N.1 titled “Grievance Procedure,” incarcerated persons may submit written grievances directly to deputies or other employees at any time when they are in a place they have permission to be. Absent exigent circumstances, any deputy or other staff member who is presented with a written grievance will accept it. The deputy or other employee who initially receives a grievance will place their signature, ARJIS number, date and time on the J-22 form. The second page of the J-22 form will immediately be given to the incarcerated person as a signed receipt for the grievance. As an alternate means for submitting grievances, secured boxes may be provided for inmates to deposit their grievances into. The deputy or other staff member who receives and signs for a grievance will be responsible for entering it into JIMS. CLERB was unable to confirm or refute if Yach submitted other Inmate Grievance forms that were allegedly unaccounted for; however, the evidence indicated that at least two Inmate Grievances were accepted from her, by staff, and were responded to. There was insufficient evidence to either prove or disprove the allegation that deputies failed to respond to Yach’s Inmate Grievances.

22-102/(REDACTED)

1. Misconduct/Procedure – The San Diego County Probation Department (SDCPD) failed to protect the complainant’s personal information.

Board Finding: Not Sustained

Rationale: On 08-16-22, the complainant, a former San Diego County Probation Department (SDCPD) Supervising Probation Officer (SPO), alleged that the SDCPD failed to protect their personal information. The complainant reportedly was instructed to conduct an Internal Affairs (IA) investigation involving PO 1. The complainant requested that their name be redacted from the IA case file. They subsequently received insulting text messages. A SDCPD Departmental Information Source reported that names of investigating officers would not be redacted, but personal contact information would be redacted from the case file. The Department also reported that if an investigating officer requests his/her name to be redacted from a case file, they will confer with County Counsel and their chain of command and identify a plan of action. Per

SDCPD, IA files are not releasable due to privileged information. It was unknown what information, if any, PO 1 received from the IA investigation. Following notification of this complaint, PO 1 was unavailable and then retired prior to the completion of CLERB's investigation. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Harassment – Probation Officer (PO) 1 sent threatening/derogatory text messages to the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant stated that threatening and/or derogatory text messages were sent to their personal cell phone on 06-12-22 and 08-15-22. The complainant reported that PO 1 was a colleague who they worked with throughout their career at the SDCPD. After the complainant conducted an IA investigation involving PO 1, they received derogatory texts. Following notification of this complaint, PO 1 was unavailable and then retired prior to the completion of CLERB's investigation. Pursuant to CLERB Rules & Regulations, a Summary Dismissal may be appropriate when the Subject Officer is no longer employed by the Probation Department. In accordance with CLERB R&R, Section 5.8 Termination, Resignation, or Retirement of Subject Officer CLERB shall have the discretion to continue or terminate an investigation, if, after a complaint is filed and before CLERB completes its investigation, the Subject Officer terminates employment with the Probation Department. The Review Board lacks jurisdiction.

22-103/(REDACTED)

1. Misconduct/Procedure – The San Diego County Probation Department (SDCPD) failed to investigate misconduct and/or criminal conduct committed by Probation Officer (PO) 1.

Board Finding: Summary Dismissal

Rationale: The complainant a former SDCPD Supervising Probation Officer, reported that SDCPD has historically failed to fully investigate allegations of PO 1's misconduct at work, violence in the workplace, and threats of violence in the workplace on multiple occasions between years 2013–2021. The complainant provided details of several alleged workplace incidents that involved PO 1, however, the incident dates occurred outside of CLERB's authority due to time limitations. CLERB Rules & Regulations (R&R), Section 4.1.2 Complaints: Jurisdiction state that CLERB shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint. Pursuant to CLERB R&R, a Summary Dismissal may be appropriate when complaint was not timely filed. The Review Board lacks jurisdiction as the complaint was untimely.

2. Misconduct/Procedure – The SDCPD failed to protect the complainant's personal information.

Board Finding: Not Sustained

Rationale: The complainant reported that the SDCPD “failed to protect them by releasing Internal Affairs (IA) documents that had their name and a colleagues contact information to subject officer PO 1.” A SDCPD Departmental Information Source reported that names of complainants and/or witnesses would not be redacted, but personal contact information would be redacted from the case file. It is unknown what information (if any) the SDCPD released to PO 1 or if she requested to see her IA case file. Per SDCPD, IA files are not releasable due to privileged information. Therefore, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Harassment – PO 1 sent threatening and/or derogatory texts to the complainant.

Board Finding: Summary Dismissal

Rationale: The complainant reported that PO 1 sent them and numerous colleagues threatening and/or derogatory text messages. Following notification of this complaint, PO 1 was unavailable and then retired prior to the completion of CLERB's investigation. Pursuant to CLERB Rules & Regulations, a Summary Dismissal may be appropriate when the Subject Officer is no longer employed by the Probation

Department. Please note that in accordance with CLERB R&R, Section 5.8 Termination, Resignation, or Retirement of Subject Officer CLERB shall have the discretion to continue or terminate an investigation, if, after a complaint is filed and before CLERB completes its investigation, the Subject Officer terminates employment with the Probation Department. The Review Board lacks jurisdiction.

22-155/(REDACTED)

1. Misconduct/Retaliation – Deputy 1 submitted an Internal Affairs complaint against the complainant (retired SDSA Deputy).

Board Finding: Not Sustained

Rationale: In his complaint to CLERB, the complainant alleged, “I felt that (Deputy 1) was finding ways to indirectly retaliate...” after the complainant met with Deputy 1 to discuss concerns about Deputy 1’s behavior, while the complainant was still an active SDSA Deputy. Additionally, the complainant alleged Deputy 1 then filed a complaint against the complainant. It should be noted, as what was being alleged by the complainant was largely related to personnel records, the only documents CLERB had access to in this matter was the publicly released San Diego Sheriff’s Department (SDSD) redacted Internal Affairs (I.A.) public report against the complainant. Based on the I.A report, and given confidential statements made in Deputy 2’s Sheriff Employee Response Form (SERF) response, SDSD was listed as the complainant in the I.A. investigation, not Deputy 1. At this juncture CLERB would not have access to the unredacted reports to examine who initially submitted a complaint against the complainant. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Deputy 2 investigated a complaint against the complainant and Deputy 1.

Board Finding: Action Justified

Rationale: In his complaint to CLERB, the complainant alleged Deputy 2 acted in violation of SDSD P&P 3.59, Fraternalism and Nepotism, which stated in part, “Department employees, and especially supervisors and managers, must avoid situations where a conflict of interest may arise, and/or where a conflict of interest may be perceived.” Based on a review of the redacted I.A. report, that independent witness statements were used as evidence against the complainant, and given Deputy 2’s confidential SERF responses, Deputy 2 did not engage in behavior that would violate SDSD P&P 3.59, Fraternalism and Nepotism, and that his completion of the I.A. investigation was within policy. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputy 2 investigated an allegation of discrimination against the complainant.

Board Finding: Action Justified

Rationale: In his complaint to CLERB, the complainant alleged that given he retired from SDSD prior to an I.A. investigation against him was completed, the investigation should have been closed as “Resolved.” SDSD P&P Section 3.2, Complaints Against Sheriff’s Employees, provided guidance on how I.A receives and processes complaints against SDSD staff. Included in the policy, section Complaint Conclusion, stated “The burden of proof in an administrative investigation is ‘preponderance of evidence,’ which is defined as such evidence, when weighed with that opposed to it, has more convincing force and the greater probability of truth. Complaint conclusions are defined as follows: SUSTAINED: A true finding supported by facts. NOT SUSTAINED: Facts revealed do not substantiate the allegation – insufficient evidence available. UNFOUNDED: Not true. Actions alleged did not occur. EXONERATED: Allegation is true but actions were lawful. RESOLVED: No other method available to close case. (Examples: Unable to locate complainant, employee has separated from employment, etc.)” Based upon confidential statements made in Deputy 2’s SERF response, current policy in place and the redacted I.A. report, it was appropriate that an investigation was continued despite the complainant’s retirement. Further, SDSD policy does not require that an investigation be concluded as “resolved” because an employee has retired. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

22-159/REMIGIO

1. Use of Force Resulting in Great Bodily Injury – Deputy 1 used force towards Remigio, while he was incarcerated at San Diego Central Jail.

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 11-07-22, Remigio was incarcerated at San Diego Central Jail (SDCJ) when he threw up his hands and began to yell at medical staff which resulted in a use of force. Deputy 1 gave verbal commands to Remigio to stop yelling and turn around and place his hands behind his back. Remigio ignored deputy commands and grabbed a hold of Deputy 1's shirt and began to pull him downward. Deputy 1 used his arm to wrap Remigio's upper body and in a twisting motion took Remigio to the floor. Deputy 1 applied downward pressure to place handcuffs on Remigio. Remigio was transported to UCSD hospital where he was treated for his injuries. In accordance with Addendum F–Use of Force Guidelines, the deputy utilized appropriate control techniques or tactics which employed maximum effectiveness with minimum force to effectively terminate or afford the deputy control of the incident. Due to the location of the incident, there was no jail surveillance video. Furthermore, CLERB attempted to contact Remigio, but has been unsuccessful. There was limited evidence due to the camera view and lack of available witnesses. The evidence provided by SDSD showed that the alleged act or conduct did occur but was lawful, justified and proper.

22-160/SAYDYK

1. False Arrest – San Diego Sheriff's Department (SDSD) Deputy 1 arrested Saydyk.

Board Finding: Action Justified

Rationale: In his complaint to CLERB, Saydyk stated, "...I was arrested for Corporal Injury on a Spouse that never even happened." SDSD documents received included Deputy reports and Body Worn Camera (BWC) footage of the arrest, and SDSD booking/release documents. It should be noted, violation of Penal Code Section 273.5(A), Corporal Injury to Spouse, Cohabitant, or Child's Parent, is a Felony. Regarding Deputy 1's authority to arrest Saydyk, the California Peace Officer Legal Sourcebook (CPOLS) Section 2, Subsection IV, Arrests, stated a peace officer, "...may arrest a person (1) with a warrant or (2) without a warrant if you have probable cause to believe he or she committed a felony, regardless of whether or not it was committed in your presence." Subsection IV, Arrests, regarding probable cause, stated, "Probable cause' exists when the totality of the circumstances would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime." Based on a review of Deputy 1's report, BWC footage of the incident and that a Judicial Officer signed an Emergency Protective Order related to this incident, there was no misconduct associated with Saydyk's arrest. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Misconduct/Procedure – Unidentified SDSD deputies released Saydyk's property.

Board Finding: Unfounded

Rationale: Saydyk stated, "It will show the negligence of the Ramona, CA Sheriffs as far as me stating that my wallet with all my bank cards needed to go with me to jail along with my cell phone that had all my banking apps on it... The Sheriffs laughed and gave them both to my girlfriend..." A review associated BWC footage refuted Saydyk's allegation. BWC footage Saydyk was searched and his property was collected prior to being placed into a holding cell at the Ramona Substation. The BWC footage did not show that Saydyk had a phone. The BWC footage showed that his wallet was not released to any other involved party. Further, SDSD booking documents indicated that Saydyk had a wallet and did not have a cell phone, consistent with the search conducted by SDSD. A review of all the evidence showed Saydyk's allegation regarding his property was unfounded. The evidence shows that the alleged act or conduct did

not occur.

3. Misconduct/Procedure – Unidentified SDSL deputies “detained” Saydyk in custody for six days without a Court appearance.

Board Finding: Action Justified

Rationale: Saydyk stated, “I was held for 6 days between the Downtown Central Jail then South Bay Detention Facility... By law I cannot legally be detained for 6 days...” SDSL documents did show Saydyk was in custody for six days, without a Court appearance. However, in this case, no misconduct occurred. CA Penal Code (PEN) section 825, Time for Appearance, Attorney visit, provided that if a defendant is held in custody, they must be taken before a magistrate within 48 hours of their arrest, excluding non-Court days, i.e., weekends and holidays. Given documents showed Saydyk was arrested on a Friday afternoon, and the following Monday was a holiday, the deadline for Saydyk to appear in Court would have been 09-07-22, the day he was released from custody. Further, a letter from the District Attorney’s Office to SDSL dated 09-07-22, stated charges would not be filed against Saydyk. PEN Section 851.6, Detention Certificate, stated, “In any case in which a person is arrested and released and an accusatory pleading is not filed charging him or her with an offense, the person shall be issued a certificate by the law enforcement agency which arrested him or her describing the action as a detention.” SDSL documents showed Saydyk was issued a “detention certificate.” An evaluation of the evidence related to this allegation showed no misconduct on behalf of SDSL. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

22-164/GUTIERREZ

1. Excessive Force – Deputies 1 and 4 used force to remove Gutierrez from her residence.

Board Finding: Summary Dismissal

Rationale: In her complaint to CLERB, Gutierrez stated, “I was kicked out by excessive use of force... by (Deputies 4 and 2)...” SDSL records indicated this incident occurred on 12-27-2021. Further, documents showed Deputies 1 and 4 were involved in the incident, not Deputy 2. A signed complaint from Gutierrez was not received by CLERB until 12-30-22. CLERB Rules and Regulations Section 4: Authority, Jurisdiction, Duties and responsibilities of CLERB, Subsection 4.1.2, Complaints: Jurisdiction, stated in part, “CLERB shall not have jurisdiction to take any action in respect to Complaints received more than one year after the date of the incident giving rise to the Complaint, except that if the person filing the Complaint was incarcerated or physically or mentally incapacitated from filing a Complaint following the incident giving rise to the Complaint, the time duration of such incarceration or incapacity shall not be counted in determining whether the one year period for filing the Complaint has expired.” As the complaint was received one year past the date of the incident, the Review Board lacks jurisdiction.

2. Excessive Force – Deputy 2 used force to remove Gutierrez from her residence.

Board Finding: Summary Dismissal

Rationale: See Rationale #1. The Review Board lacks jurisdiction.

3. Illegal Search & Seizure – Deputies 1 and 4 searched Gutierrez’s residence.

Board Finding: Summary Dismissal

Rationale: Gutierrez stated, “... an illegal search and seizure was taken place (while) both my daughters were inside (residence) and I was being detained in car/vehicle of sheriff.” See Rationale #1. The Review Board lacks jurisdiction.

4. Illegal Search & Seizure – Deputy 2 searched Gutierrez’s residence.

Board Finding: Summary Dismissal

Rationale: See Rationale #1. The Review Board lacks jurisdiction.

5. False Arrest – Deputies 3 and 4 arrested Gutierrez.

Board Finding: Action Justified

Rationale: Gutierrez stated, “This year has been tough due to the harassment upon me by (Sherriff’s Deputies) of Borrego Spring... and not only the (removal) of my personal property but even been charged and placed under arrest for another serious crime... Same (Deputy 4) had arrived on scene... Please investigate this serious matter at hand due to false charged.” According to Deputy 3’s report of incident, he and Deputy 4 were dispatched to a property in Borrego Springs to a report of an individual, identified as Gutierrez, who was engaged in criminal activity. Consequently, Gutierrez was arrested for violation of Penal Code (PC) Section 245(A)(1), Assault with a Deadly Weapon or Force Likely to Produce Great Bodily Injury. The California Peace Officer Legal Sourcebook (CPOLS) Section, 2, Subsection IV, Arrests, stated a peace officer, “...may arrest a person (1) with a warrant or (2) without a warrant if you have probable cause to believe he or she committed a felony, regardless of whether or not it was committed in your presence.” Subsection IV, Arrests, regarding probable cause, stated, “‘Probable cause’ exists when the totality of the circumstances would lead a person of ordinary care and prudence to entertain an honest and strong suspicion that the person to be arrested is guilty of a crime.” Based on a review of the deputies reports and BWC there was no misconduct observed and the arrest was lawful and within policy.

6. Criminal Conduct – Deputy 4 “lied” under oath.

Board Finding: Summary Dismissal

Rationale: Gutierrez stated, “Readiness was (12-14-22) and Deputy was under (oath) and lied about my medical results.” Gutierrez did not provide any clarifying information in her complaint regarding this allegation. During this investigation, multiple attempts were made to contact Gutierrez to gather further information regarding her complaint. Gutierrez was nonresponsive and provided no further clarification or information. Further, an evaluation of the other allegations submitted with this complaint show Gutierrez’s statements to not be credible. Gutierrez failed to provide prima facie showing of any misconduct or criminal conduct regarding Deputy 4, and the complaint clearly lacks merit.

22-165/MATTHEWSON

1. Misconduct/Procedure – Deputy 1 issued Raymond Matthewson a driving citation.

Board Finding: Not Sustained

Rationale: In his complaint to CLERB, Raymond Matthewson alleged he was pulled over by Deputy 1 for a failure to stop at a stop sign, but that he did make a complete stop. Vehicle Code Section 22450, Stop Requirements, stated, “The driver of any vehicle approaching a stop sign at the entrance to, or within, an intersection shall stop at a limit line, if marked, otherwise before entering the crosswalk on the near side of the intersection.” A review of Deputy 1’s Body Worn Camera (BWC) footage of the traffic stop showed he activated his patrol vehicles emergency lights and parked behind Matthewson’s vehicle. There was no video footage of the actual traffic infraction which initiated the traffic stop. Deputy 1 advised Matthewson that he was writing him a ticket for a “stop sign violation” and that Matthewson’s signature on the citation was not an admission of guilt. Matthewson signed the citation, a copy was provided to him, and Deputy 1 left without incident. Given there was no evidence showing the traffic infraction did or did not occur, and that there was no indication that either Deputy 1 or Matthewson were being untruthful, CLERB lacks the ability to make a finding related to this specific allegation. There was insufficient evidence to either prove or disprove the allegation.

2. Discrimination/Racial – Deputy 1 “targeted” Matthewson based on his race.

Board Finding: Not Sustained

Rationale: Matthewson alleged that Deputy 1 targeted Matthewson based on his race. Based on a review

of the BWC footage of Deputy 1 and Matthewson's interaction, there was no evidence supporting the traffic stop was racially motivated. Throughout the stop, Deputy 1 was courteous during his interaction with Matthewson. Further, Deputy 1 was not overheard making any racially insensitive comments. Without the ability to determine whether there is a pattern or practice of discriminatory behavior on the part of Deputy 1, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Intimidation – Deputy 1's arm was next to his weapon and his demeanor was "threatening."

Board Finding: Unfounded

Rationale: Matthewson stated, Deputy 1, "...approached my vehicle on the passenger side and stopped just behind my rear passenger door. From the position he was standing I could not turn all the way around but I could see his arm disposition next to his weapon... he never came to the driver's side." Later in his complaint to CLERB, Matthewson alleged Deputy 1 "... (pulled) his weapon..." A review of Deputy 1's BWC footage refuted Matthewson's allegation. Deputy 1 was courteous toward Matthewson throughout the interaction, and at no point was seen "pulling his weapon" or engaging in discourteous or intimidating behavior. Further, due to Matthewson not fully lowering his window during the traffic stop, Deputy 1's reflection in Matthewson's window was observed through the BWC footage, and at no point was Deputy 1 observed placing his hand on his firearm, although that on its own would not be misconduct even if it did occur. The evidence shows that the alleged act or conduct did not occur.

4. Misconduct/Procedure – Unidentified San Diego Superior Court staff did not provide Matthewson with a Court date.

Board Finding: Summary Dismissal

Rationale: Matthewson alleged, "I received no notice about a court date..." and that there needed to be an investigation of how Deputy 1 processes his paperwork. Referencing the BWC footage, Matthewson was observed signing the "Notice to Appear," which included a Court date of 03-29-23 at 8:00 am at the East Division Superior Court of San Diego County. On 03-08-23, I emailed Matthewson informing him of his Court date as indicated on the "Notice to Appear" document provided to him by Deputy 1. Matthewson clarified that his complaint was more related to San Diego Superior Court itself, as he did not receive notice of his Court date in the mail, and that after he went to the East Division Court, he did not receive clarification about the Court process related to his citation. Matthewson was advised that CLERB only has jurisdiction over sworn personal of SDSD and the Probation Department, not employees of the Superior Court. Given Matthewson clarified that his complaint is unrelated to Deputy 1, a finding of summary dismissal is recommended per CLERB Rules and Regulations Section 4: Authority, Jurisdiction, Duties and Responsibilities of CLERB.

23-023/BARONE

1. Use of Force Resulting in Great Bodily Injury – Deputies 1-4 used force on Dominic Barone at George Bailey Detention Facility (GBDF) resulting in injury.

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 records showed Deputies 1-4 used force on Dominic Barone who was housed at GBDF, during an escort of Barone to a different cell. The evidence showed Barone attempted to assault Deputy 3 and continued to resist the involved deputies attempts to restrain him. During the incident, Deputies 2 and 3 utilized "hand strikes" to attempt to control Barone, and Deputy 1 utilized his Conducted Energy Device (CED). Detention Services Bureau Policy and Procedure (DSB P&P) Section I.85, Use of Defensive Devices, regarding Conducted Energy Devices (CED), stated, "The CED is authorized to be carried anywhere inside and outside of detention facilities by trained deputies. Deputies shall carry their issued CED on their person during the course of their normal duties." Additionally, SDSD P&P Addendum Section F, Use of Force Guideline, regarding the use of CEDs, stated, "As a force option, the CED shall only be used as a means of subduing

and gaining control where there is an immediate threat justifying an intermediate level of force. Use of the CED shall be restricted for use under circumstances where it is deemed reasonable and necessary to minimize the potential for human injury... The CED may be used in 'drive-stun' mode (placing the unit in direct contact with the suspect/inmate) if reasonable to protect the deputies or others from injury and to gain control of the suspect/inmate, however, caution should be used to avoid the subject gaining control of the CED." Regarding the use of hand strikes, Addendum Section F stated, "Punching techniques may be necessary when a suspect/inmate is assaultive, or the subject exhibits signs of imminent physical attack. A fist strike to a subject's face when reasonable and necessary is not prohibited; however, it is preferable to use an open hand (palm heel) technique to reduce the likelihood of injury to the deputy's hand and subject's face." An analysis of involved deputy reports of this incident, and a review of associated CCTV footage, showed the use of force was justified and that deputies acted within current SDSD P&P. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

23-030/HOLIDAY

1. Criminal Conduct – Unidentified San Diego Police Department Officers violated Juan Holiday's Fourth Amendment Rights.

Board Finding: Summary Dismissal

Rationale: Juan Holiday reported he filed a citizen complaint against the City of San Diego for violation of his Fourth Amendment rights by San Diego Police Officers on 02-07-17 when he was stripped of his right to privacy. Holiday said the Federal Appeals Court concurred that SDPD violated his rights when they opened the door to his residence and crossed the threshold without a warrant or exigent circumstances. Upon review of materials submitted by Holiday, it was determined that the alleged improper act(s) were committed by unidentified members of the San Diego Police Department. CLERB does not have authority over the subject matter per CLERB Rules & Regulations 4.1, Authority, and the Review Board lacks jurisdiction.

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.