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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

SPECIAL MEETING AGENDA

Tuesday, July 11, 2023, 4:00 p.m.

County Administration Center

1600 Pacific Highway, Room 302, San Diego, 92101

(Free parking is available in the underground parking garage, on the south side of Ash Street, in the public parking spaces.)

-AND-

Zoom Platform

<https://us06web.zoom.us/j/89887314660?pwd=cXVXZnVhY3Mybkc2S2VCVE4zQ1dXUT09>

Phone: +1 669 444 9171

Webinar ID: 898 8731 4660

Passcode: 473451

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 COMMENT

3. CLOSED SESSION

a) **PUBLIC EMPLOYEE PERFORMANCE EVALUATION**

Notice pursuant to Government Code section 54957

Title: Executive Officer, CLERB

b) **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).

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 (19)

22-027/VIESCA

1. Use of Force Resulting in Great Bodily Injury – Deputies Michael Lee and Brittany Palmer used force towards Eric Viesca while serving a Court Order on 02-01-22.

Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. According to SDSA documentation, on 02-01-22, Deputies Lee and Palmer responded to Eric Viesca's residence to serve a Domestic Violence (DV) Temporary Restraining Order (TRO)/Order for Removal. As stated in the Court Services Bureau (CSB) Training Manual, the purpose of a TRO is to prohibit a defendant from specific activity and must be served personally. According to SDSA documentation, deputies arrived at the residence, knocked and announced themselves as the San Diego Sheriff's Department, verified Viesca's identity and entered the apartment. Deputy Lee explained the terms of the TRO/Move out Order and told Viesca that he must comply, or he would be arrested. Viesca questioned their authority, told the deputies to leave the house and even called 911 to report that the deputies were in his home. Deputies allowed Viesca ample time to retrieve his personal items. Viesca was instructed that once he exited the apartment, he could not re-enter. Once Viesca exited the apartment, he made his way back into the apartment, against deputy commands. Deputy Palmer pushed open the door while Viesca attempted to close it. Deputy Lee then arrived, entered the apartment, and attempted to arrest Viesca for violating the court order. Viesca resisted arrest, so Deputy Lee dropped him to the floor where they wrestled. Viesca remained non-compliant to deputy commands and became assaultive as he attempted to grab Deputy Palmer's body worn camera, thrashed his body on the floor and kicked his legs. Deputy Lee placed his knee on Viesca's upper body to prevent him from getting up and finally handcuffed Viesca. Viesca complained of pain, so paramedics were contacted, medically assessed Viesca and transported him to the hospital for treatment. Viesca was medically cleared and booked into San Diego Central Jail with charges of resisting an officer and violation of a domestic violence order. Given the totality of circumstances, the force that Deputies Lee and Palmer used to apprehend Viesca was reasonable and within SDSA policy. Addendum F, Use of Force Guidelines stated that the preservation of order and the observance of law are best achieved through voluntary compliance rather than force or compulsion. In this incident, deputies provided Viesca with many opportunities to comply voluntarily with the terms of the Court order. Furthermore, Use of Force Guidelines states that deputies may only use a level of force they reasonable believe is proportional to the reasonable perceived level of actual threatened resistance. Viesca's behavior escalated as he first defied deputies' commands, violated his court order, resisted arrest and became combative towards deputies. The force used was necessary to apprehend Viesca. There was no evidence of any violation of policy during this use of force. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

2. Illegal Search and Seizure – Deputies 1 and 2 forced entry into Viesca's residence.

Recommended Finding: Sustained

Rationale: According to SDSA documentation, deputies had a valid civil court order to serve and remove Viesca from his residence. Deputies 1 and 2 went to Viesca's address, knocked, and announced, "Sheriff's Department." Viesca answered the door and verified his identity. Deputy 1 said they had "paperwork", placed his hand on the door, his foot inside the doorway and told Viesca to open the door. As Deputy 1 attempted to enter the apartment, Viesca verbally expressed and physically signaled for him to stop. Both deputies stated they had the right to enter, went inside, then explained their purpose for being there. As stated in the Court Services Bureau (CSB) Training Manual, the purpose of a TRO is to prohibit the defendant from specific activity and must be served personally. CSB P&P states that the Sheriff's shall serve all process and notices

in the manner prescribed by law. According to CSB Section D.3, Orders for Forthwith Removal, if at the time of service of the Order for Removal, the respondent and/or restrained person refuses to comply to allow the deputies to enter, a forcible entry may be made if: (A) Probable cause exists to believe the subject of the Order for Removal is inside and (B) The requirements of “knock and notice” per Penal Code section 844, have been complied with. Furthermore, the California Peace Officer Legal Sourcebook (CPOLS), states Forcible Entry of Premises/“knock and notice” is as follows: Penal Code §844 Breaking into House to Arrest, requires you to convey to the occupant who you are and what your purpose is. Specifically, before you enter you must: knock, identify yourself as a police officer, explain your purpose, demand entry and then wait a reasonable period before entering. A civil order can only be legally enforced if a subject is informed of the purpose for service. The simple statement made of “paperwork” by the deputy, did not “explain the purpose” of the contact as required by policy. Furthermore, deputies demanded access within seconds; there was no reasonable period allotted prior to entry. The evidence confirmed deputies did not comply with the requirements of knock and notice and there were no exigent circumstances that applied. Deputies 1 and 2 provided confidential statements to CLERB, which were considered in arriving at the recommended finding. And a confidential legal opinion by CLERB Counsel was provided and used in the determination of the recommended finding. The evidence supports the allegation, and the act or conduct was not justified.

22-078/SALINAS

1. Discharge of Firearm without Complaint – Deputy 1 utilized force when his firearm was taken and discharged by Nicholas Andrew Salinas.

Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 07-01-22, Incarcerated Person Nicholas Andrew Salinas was confined at the San Diego Sheriff’s Department George Baily Detention Facility. On 07-01-22, Salinas went to court. After attending court, and while en route back to the jail, via a Sheriff’s transportation bus, Salinas claimed to have sustained numerous injuries when the bus executed an evasive maneuver and successfully avoided a vehicle collision. Once Salinas arrived at the jail, he complained of pain and paramedics were summoned to the jail. Salinas was subsequently transported to Scripps Mercy Hospital, via ambulance. While at the hospital and upon discharge, Deputy 1 attempted to remove Salinas’ leg/ankle chains. Upon doing so, Salinas reached for and removed Deputy 1’s department issued firearm from his gun holster. Deputy 1 and Salinas struggled for control of the gun when the gun discharged three times. Deputy 1 deployed his Conducted Electric Device (Taser) and was able to regain control of his gun. With the assistance of hospital medical staff, Deputy 1 was able to subdue and secure Salinas. According to SDDS Policy & Procedure (P&P) Section 2.49 titled “Use of Force,” and Section 2.50 titled “Use of Lethal/less Lethal Weapons,” employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing. According to Addendum F, Use of Force Guidelines, it shall be the policy of the SDDS that any Sheriff’s deputy, in the performance of his/her official law enforcement duties, who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Deputies shall not lose their right to self-defense by the use of objectively reasonable force to effect an arrest, prevent escape, or overcome resistance. Lastly, according to SDDS P&P Section 8.2 titled “Discharge of Firearms,” deputies shall exercise the utmost care in their handling and use of firearms while engaged in the performance of their duties. Deputy 1 expeditiously recognized and responded when Salinas exhibited aggravated active aggression. Deputy 1 sustained a thumb fracture during this incident. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel. The evidence showed that the alleged act or conduct did occur and Deputy 1’s response was lawful, justified and proper.

22-129/HOUSER

1. Use of Force Resulting in Great Bodily Injury – Deputies Jose Almaraz Macias, Gloria Barrera-Guijarro, Cassey Hawkins, and Dylan Noland used force to subdue and arrest William Jeffrey Houser at the Hall of Justice on 09-09-22.

Recommended Finding: Action Justified

Rationale: This incident was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 09-09-22, William Jeffery Houser violated a court ordered protective order that was filed against him by his wife, Mrs. Houser. Mrs. Houser was able to make her way to the San Diego Hall of Justice (HOJ) and flagged down a deputy to report the restraining order violation and the incident of domestic violence. When deputies attempted to detain William, he resisted them, and a use of force ensued. William was subdued, arrested, and transported to the hospital for injuries he sustained during the use of force to arrest. William was found to have sustained a head injury. During a search incident to his arrest, William was found to be in possession of illicit controlled substance and marijuana. The deputies' use of force coincided with the actions observed in the courthouse surveillance video recordings. In review of evidence in this case, which included numerous Body Worn Camera recordings, courthouse surveillance video recordings, photographs, reports, and statements, the force used against William was determined to be necessary, appropriate, effective, and reasonable given the circumstance and for deputies to gain compliance. During the incident, William exhibited active and passive resistance towards the deputies. In response, the deputies executed physical force control techniques. The actions executed by the deputies were in accordance with SDSD Policies and Procedures. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff's Department sworn personnel. The deputies who responded to the use of force acted within policy and procedure and law. The evidence showed that the alleged act or conduct did occur, and it was lawful, justified and proper.

22-130/JONES

1. Use of Force Resulting in Great Bodily Injury – Deputies Christopher Acosta, Jose Aguirre and Estevan Zapien used force towards Carolyn Dixon Jones on 09-29-22.

Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. According to SDSD documentation, deputies responded to a domestic disturbance where Jones became assaultive with deputies, so force was used to subdue her. Deputies arrived and searched for Jones on the property. Deputy Zapien ultimately found Jones and gave her commands to show her hands and walk towards him, but Jones refused and walked away. As the deputy approached her, she turned around and flailed/swung her arms at the deputy. Pursuant to SDSD Addendum F, Use of Force Guidelines states that any Deputy Sheriff, in the performance of his/her official law enforcement duties, who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. Deputies verified that Jones had an active bench warrant and was in violation of a restraining order. Deputy Zapien attempted to achieve voluntary compliance from Jones when he called her name and gave her a command. Jones' response escalated from passive resistance to assaultive behavior when she ignored deputy commands, resisted, and flailed her arms towards the deputy. Deputy Zapien grabbed her left wrist and used a hands-on control technique to take Jones down to the ground. In addition, Deputies Aguirre and Acosta assisted as they placed downward pressure on her legs to prevent her from getting up and/or kicking deputies. Given Jones' non-compliance and assaultive behavior, the force used towards Jones was reasonable and necessary. Deputies Acosta, Aguirre and Zapien also provided confidential statements during the course of CLERB's investigation that were considered in arriving at the recommended finding. The evidence showed the conduct that occurred was lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1-4 failed to provide medical attention for Jones following deputies' use of force.

Recommended Finding: Sustained

Rationale: Applicable policies were reviewed pertaining to the use of force involving great bodily injury examined in Allegation #1. SDSD Addendum F, Use of Force Guidelines states, “Whenever a subject **requires or reasonably requests** medical attention after a use of force incident, a deputy **shall provide medical attention, request medical aid, and/or transport them to a medical facility** as soon as it is safe and practical.” [emphasis added] Body Worn Camera (BWC) and San Diego Sheriff’s Department (SDSD) documentation showed that after deputies used force towards Jones, handcuffed her and placed her in the back of the patrol vehicle, she was taken to Vista Detention Facility (VDF). BWC also showed that Jones complained multiple times that her arm hurt. A SDSD departmental Use of Force expert reported to CLERB that “complaints of pain” suffice for a subject to require medical attention and deputies are expected to offer medical aid. The departmental information source also clarified that a “medical facility” is, in general, referring to a hospital. The associated evidence substantiated that deputies did not comply with SDSD Addendum F, Use of Force Guidelines as they did not provide, request, and/or transport Jones to a medical facility following a use of force and after Jones complained of pain. SDSD documentation showed that Jones was later evaluated by jail medical staff as she continued to complain of arm pain, and she was transported to a hospital for further treatment. Deputies 1-4 provided confidential statements during the course of CLERB’s investigation that were considered in arriving at the recommended finding. The evidence supports the allegation, and the conduct was not justified.

22-145/MORGAN

1. Misconduct/Procedure – Board of Supervisor Chair, Nathan Fletcher, issued warnings to Audra Morgan.

Recommended Finding: Summary Dismissal

Rationale: Complainant Paul Henkin stated, “The Supervisor Chair Nathan Fletcher gave only 2 warnings to Audra Morgan (that is, 1 and 3 in quick succession- no 2nd, giving little time to react) rather than 3 normal warnings for her verbal defense of a woman”. Morgan stated, “as soon as I made a sound Nathan Fletcher in one breath gave me 3 warnings, kicked me out of the meeting and request the Sheriffs remove me from the Chambers.” Per CLERB rules and regulations 4.1 Complaints: Authority. Pursuant to the Ordinance, CLERB shall have authority to receive, review, investigate, and report on Complaints filed against Peace Officers or Custodial Officers employed by the County of San Diego in the Sheriff’s Department. Board Supervisor, Nathan Fletcher, is not a Peace Officer or Custodial Officer employed by the County of San Diego in the Sheriff’s Department. Furthermore, Fletcher resigned effective 05-15-23. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Deputy 1 failed to “de-escalate” a situation involving Morgan.

Recommended Finding: Unfounded

Rationale: Complainant Henkin stated, “Deputy 1 did not attempt to de-escalate the situation, but instead, without warning, grabbed Audra Morgan by the arm and proceeded to physically and aggressively drag her body out of the Chambers and into the hallway-out of view of both the audience and the County cameras”. Per SDSD P&P Addendum F, “De-escalation is defined as actions taken in an attempt to stabilize an incident in order to try and reduce the immediacy of a threat by obtaining more time, tactical options or resources to resolve an incident. The goal of de-escalation is to gain voluntary compliance of subjects, when feasible, and or to potentially reduce or eliminate the need to use force on a subject.” Video evidence showed Deputy 1 pointed to the door and said “Audra, let’s go”. Deputy 1 appeared to place his hand on Morgan’s shoulder. Deputy 1 stated, “let’s talk about it outside, let’s go”. Morgan stated, “don’t touch me”. Another Deputy stated, “you can walk out, but you have to be escorted.” Morgan continued to sit and stated, “I didn’t do anything. Her husband was murdered from the inside out”. Morgan then stood up (on her own will) and pointed at the Board of Supervisors BoS and stated, “you gave three warnings”. Morgan continued to yell “don’t touch me”. The evidence showed Morgan was asked by Deputy 1 and another deputy to leave the Chambers, but she ignored deputy commands. Furthermore, when Deputy 1 guided Morgan to the door she appeared to resist and throw her body away from the exit. Morgan continued to resist while being detained. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during CLERB’s investigation that

were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did not occur.

3. Excessive Force – Deputy 1 used force on Morgan.

Recommended Finding: Action Justified

Rationale: Complainant Henkin stated, “Deputy 1 did not attempt to de-escalate the situation, but instead, without warning, grabbed Audra Morgan by the arm and proceeded to physically and aggressively drag her body out of the Chambers and into the hallway – out of view of both the audience and the County cameras.” Morgan stated “upon standing I was violently grabbed by my arm by 1 and dragged out first by my arm as he is throwing my body about then grabbed my leg as he continued to drag me then throw my leg to turn me over before violently throwing me onto my stomach as my shoe flies off. He proceeds to aggressively mount me (with his knee in my back all while I’m screaming for my life as he twists my arm behind me as far as it will go for several minutes”. Furthermore, Morgan stated “Deputy 1 slammed my face/head into the carpet covered concrete then rolled his arm across my head/neck while my face was ground into the floor”. According to Addendum F, Use of Force Policy, “it shall be the policy of this Department that any Deputy Sheriff, in the performance of his/her official law enforcement duties, who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance.” According to Penal Code 403, “Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character, is guilty of a misdemeanor.” The evidence showed Morgan committed a public offense, ignored multiple deputy commands, and resisted Deputy 1. The use of force was in accordance with policy. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Procedure- Deputy 1 failed to give warning and/or directions to Morgan.

Recommended Finding: Unfounded

Rationale: Complainant Henkin stated, “What can be seen next in Luke's video is Deputy 1 grabbing Audra Morgan by the leg, which sends her right shoe flying, and then he flips her body over without any verbal demands or directions ever given to her”. Henkin also stated, “Deputy 1 failed to de-escalate the situation, failed to give proper warnings and directions in clear, concise terms before, during, or after the incident.” Video evidence showed Deputy 1 pointed to the door and said “Audra, let’s go”. Deputy 1 appeared to place his hand on Morgan’s shoulder. Deputy 1 stated, “let’s talk about it outside, let’s go”. Morgan stated, “don’t touch me”. Another deputy stated, “you can walk out, but you have to be escorted.” Morgan continued to sit and stated, “I didn’t do anything. Her husband was murdered from the inside out”. Morgan then stood up and pointed at the BoS and stated, “you gave three warnings”. Morgan continued to yell “don’t touch me”. There was sufficient evidence to indicate Morgan was told to leave and ignored deputy commands. Deputy 1 then took Morgan’s arm and appeared to attempt to guide her out of the room. In the video, Morgan appeared to resist and pulled her arm and body away from Deputy 1. Morgan used her body weight and leaned away from Deputy 1. Morgan grabbed onto another person present in the meeting to resist Deputy 1. Furthermore, Morgan grabbed onto the doorframe and pulled her body away from the exit in an attempt to stay in the Chambers. Per Addendum F, Use of Force Guidelines, “when verbalization proves ineffective, arm guidance or a grip may suffice to overcome resistance.” Once exiting the Chambers, it is difficult to hear the commands from BWC due to Morgan’s friend yelling loud profanities at deputies. However, there was audio that can be heard of another Deputy that told Audra to put her hands behind her back and several other comments where the words “hands” and “arms” were heard. Furthermore, Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence showed warnings and directions were given to Morgan, but she did not comply. The evidence showed that the alleged act or conduct did not occur.

5. False Arrest– Deputy 1 handcuffed Morgan.

Recommended Finding: Action Justified

Rationale: Complainant Audra Morgan stated, “after he abused me, he cuffed me and got off of me after having mounted me for several minutes”. Per California Peace Officer Legal Sourcebook, Section IV. Titled “Arrests”, “An arrest occurs when you take a person into custody. This requires either (1) that you physically restrain or at least touch the person with the intent to restrain or (2) that she submits to your authority.” Morgan committed a public offense and as such the arrest and handcuffing was in accordance with policy. Morgan was in violation of Penal Code 403, “Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting that is not unlawful in its character, is guilty of a misdemeanor.” Furthermore, Morgan was issued a citation for Penal Code 148- Resist, Obstruct, Delay of Peace Officer or EMT. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure – Deputy 1 failed to consider Morgan’s limitations.

Recommended Finding: Unfounded

Rationale: Complainant Henkin stated, “Deputy 1 failed to consider factors such as Audra Morgan’s age, physical stature and condition, and physical, mental, or developmental disabilities.” Per SDDS P&P Addendum F-Use of Force Guidelines, states deputies should consider factors such as a subject’s age, physical stature, and physical disabilities when evaluating choice of force. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence shows that the alleged act or conduct did not occur.

7. Misconduct/Procedure – SDDS never informed Morgan that she was under arrest.

Recommended Finding: Unfounded

Rationale: Complainant Morgan stated, “at no point during the brutal assault was I told I was under arrest”. As per the California Peace Officer Legal Sourcebook, “Normally, you must tell the arrestee (1) you intend to arrest him or her, (2) the reason for the arrest, and (3) your authority (i.e., that you are a peace officer). (Pen. Code, § 841.) You are excused from giving any of these advisements if they are obvious from the circumstances.” The evidence showed Deputy 1 was in his uniform and issued a citation which was signed by Morgan. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The citation given was for Penal Code 148- Resist, Obstruct, Delay of Peace Officer or EMT. The evidence showed that the alleged act or conduct did not occur.

8. Misconduct/Procedure – Deputy 2 witnessed the “assault” on Morgan and did not act.

Recommended Finding: Summary Dismissal

Rationale: Complainant Morgan stated, “Deputy 2 witnessed this assault and sat by while it took place.” Per CLERB rules and regulations 4.1 Authority, CLERB shall have authority to investigate complaints filed against peace officers or custodial officers employed by the County in the Sheriff’s Department or Probation Department. Deputy 2 was no longer with the department as of 01-03-23. The Review Board lacks jurisdiction.

9. Misconduct/Procedure – SDDS personnel personally attacked Morgan.

Recommended Finding: Unfounded

Rationale: Complainant Morgan stated, “this felt like a personal attack as they (presumably deputies) have

been getting increasingly more aggressive with me at the meetings.” The evidence showed Morgan disrupted the Board of Supervisors Meeting and was asked to leave but refused. Morgan ignored deputy commands and resisted arrest. There was no evidence to suggest that this was a “personal attack” of Morgan. The evidence showed that the alleged act or conduct did not occur.

10. Misconduct/Procedure – Deputy 1 failed to activate his Body Worn Camera (BWC).

Recommended Finding: Sustained

Rationale: Through the course of CLERB’s investigation, it was discovered Deputy 1 did not activate his BWC prior to or when using force on Audra Morgan. Per SDSD P&P 6.131 Body Worn Camera, “It is the intent of the Sheriff’s Department to record all law enforcement related contacts, and other contacts deemed appropriate”. Furthermore, SDSD P&P 6.131 defines law enforcement related contacts to include but are not limited to the following: issuing of citations, detentions, arrests, deputy initiated consensual encounters and private person-initiated contacts of a confrontational nature. Deputy 1 provided confidential information, via questionnaire and a subsequent interview, during CLERB’s investigation that were considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence supports the allegation, and the act or conduct was not justified.

22-151/DELAROSA

1. Misconduct/Procedure – Unidentified deputies “denied” Delarosa access to her attorney.

Recommended Finding: Unfounded

Rationale: In her written complaint, Delarosa reported that during her incarceration, she was not allowed to see or speak with an attorney. During a telephonic interview with a CLERB Special Investigator, Delarosa was unable to identify any particular deputy, or a date of incident, but explained that she was denied access to her attorney when she asked an unidentified deputy for her attorney’s contact phone number and the deputy would not give her the attorney’s phone number. Detention documents showed that Delarosa first attended court on 11-01-22. An incarcerated person is usually introduced to their public defender or privately retained lawyer the day they go to court. It is up to the assigned public defender or private lawyer to provide their client with their contact information. Detention deputies are not privy to each incarcerated person’s legal information, to include contact details for incarcerated person’s legal contacts/attorney. During her incarceration, Delarosa had access to telephones. Additionally, Delarosa did not have any visitors, neither profession nor personal, during her incarceration. Moreover, there was no documentation that Delarosa was denied visits. Lastly, Delarosa’s In-custody [Phone] Call Detail Report was reviewed and indicated that Delarosa had access to and made numerous free and debited phone calls during her incarceration. The following SDSD Detention Services Bureau (DSB) P&P sections were reviewed; Section N.5 titled “Access to Courts/Attorneys/Legal Advice,” Section P.2 titled “Telephone Access,” Section P.9 titled “Social Visiting,” and Section P.15 titled “Professional Contact Visits.” There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel. The evidence showed that the alleged act or conduct did not occur.

2. Misconduct/Discourtesy – Deputy 1 “cussed” at Delarosa.

Recommended Finding: Not Sustained

Rationale: Delarosa alleged that sometime between 11-22-22 and 11-27-22, Deputy 1 “cussed” at her and other incarcerated persons. Delarosa stated that Deputy 1 told her, “I don’t fuckin care if you get released.” In review of LCDRF Deputy Daily Deployment Logs, Deputy 1 was identified as working the housing unit that Delarosa was assigned to. According to San Diego Sheriff’s Department (SDSD) Policy & Procedure (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. Deputy 1 provided

information during the course of CLERB's investigation that was considered in arriving at the recommended finding, however, that information is privileged, per the Peace Officer Bill of Rights (POBR), and cannot be publicly disclosed. Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction, there was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Procedure – Unidentified jail medical services/health staff denied Delarosa food.

Recommended Finding: Summary Dismissal

Rationale: Delarosa alleged that jail medical services/health staff did not provide her with food. During her telephonic interview with CLERB staff, Delarosa explained that jail medical staff denied her "snacks," versus a meal, during her incarceration. In the detention setting, it is the medical services staff who are tasked with approving incarcerated persons with a medical approved diet, which includes snacks being allocated between meals. Health Services staff members are not sworn staff. Allegations against the jail medical services/health staff are summarily dismissed, as CLERB does not have any jurisdiction against the Medical Services Division. The CLERB Review Board lacks jurisdiction as it cannot take any action in respect to complaint against non-sworn SDSD employees, per CLERB Rules and Regulations 4.1.2.

4. Misconduct/Discourtesy – An unidentified deputy "dismissed" Delarosa from court.

Recommended Finding: Not Sustained

Rationale: Delarosa reported that an unidentified court deputy or staff member "dismissed" her while she was at court. During her telephonic interview with CLERB staff, Delarosa reported that she was at court when a deputy told her that she was "dismissed." Delarosa advised that she did not know what was meant by her being "dismissed," but she found it discourteous. In court, a dismissal refers to the court's decision to terminate a court case without imposing liability on the defendant. To dismiss a case means that a case is closed without finding guilt, meaning there are no convictions for the defendant in a criminal case by a court of law. According to Delarosa's court documents, she attended court five days during her incarceration. In review of Delarosa's court documents, she attended a mental competency hearing on 12-22-22. The court found that Delarosa was not mentally competent to stand trial. As such, Delarosa was committed to Patton State Hospital. According to the SDSD Employee Roster, there were no current nor recently past employee by the name provided by Delarosa, nor were there any deputies' names with similar spellings or pronunciations. There was insufficient evidence to either prove or disprove the allegation that an unidentified deputy dismissed Delarosa from court.

22-152/SANTANA

1. Misconduct/Procedure – An unidentified deputy failed to transfer Joshua Santana's property.

Recommended Finding: Not Sustained

Rationale: Complainant Joshua Santana reported he was moved to a different module, but his property to include legal documents/mail, books, writing tools & personal hygiene items were not transferred with him. Santana did not identify any specific deputy and reported he did not file a grievance about his property. SDSD DSB P&P Section Q.63 Lost Incarcerated Person Money or Property states that when moving an incarcerated person to another housing unit, the deputy doing so shall ensure the person's module property is moved with the incarcerated person (I/P). A Departmental Information Source stated if an I/P had property that needed to be moved/transferred to new housing that a deputy from that shift or incoming shift would have gathered and moved the property. According to SDSD records there was no claim for lost or damaged personal property filed, nor were there any Incoming/Outgoing Property receipts on file. Per policy, the movement of module property did not need to be documented for this incident. As there was no documentation provided by Santana or SDSD that provided information about "missing" module property, it was unknown if Santana had property in the module or who was responsible for its transfer. There was insufficient evidence to either prove or disprove the allegation.

23-004/THOMAS

1. Excessive Force – Deputy 2 “punched” Damaree Thomas.

Recommended Finding: Not Sustained

Rationale: Complainant Damaree Thomas stated, “I look over my right should and Deputy 2 then punched me in my right Temple. (I’m) falling (and) he hits me again and once more.” SDSD P&P Section 2.49, Use of Force, stated, “Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing.” Regarding the control of assaultive individuals, Addendum Section F, Use of Force Guidelines stated, “Hands-on control is used as a means of overcoming resistive or assaultive behavior. Soft hand control may be used to control subjects whose behavior does not demand more severe tactics. Hard hands control, powerful hand or leg strikes, etc., are techniques used to control more assaultive suspects.” Additionally, “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.” Addendum Section F defined “Imminent” as, “A threat of death or serious bodily injury is imminent when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that, from appearances, must be instantly confronted and addressed.” After evaluating all the circumstances, it was unclear if the use of force was necessary and objectively reasonable. This determination was made as, during the incident, CCTV footage did not clearly show Thomas displayed assaultive behavior during, or prior to, force being used against him. However, multiple deputy reports indicated Deputy 2 was at risk of imminent harm and that force was used to prevent injury. Penal Code Section 835a, stated, “... the decision by a peace officer to use force shall be evaluated from the perspective of a reasonable officer in the same situation, based on the totality of the circumstances known to or perceived by the officer at the time, rather than with the benefit of hindsight...” Additionally, Deputy 2 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding. There was insufficient evidence to either prove or disprove the allegation.

2. False Reporting – Deputy 2’s written report differed from CCTV footage of the incident.

Recommended Finding: Not Sustained

Rationale: While investigating Thomas’ complaint of excessive force, discrepancies were discovered in Deputy 2’s report from what was observed on CCTV footage for this incident. SDSD P&P Section 2.41, Departmental Reports, stated, “Employees shall submit all necessary reports on time and in accordance with established Departmental procedures. Reports submitted by employees shall be truthful and complete; no employee shall knowingly enter or cause to be entered any inaccurate, false, or improper information, nor omit pertinent information reasonably expected to be included.” Ultimately, there was a lack of evidence regarding this allegation. Deputy 2’s recollection of events may differ from what is observed due to numerous factors such as stress, perception, training and experience. There was insufficient evidence to either prove or disprove the allegation.

3. Excessive Force – Deputies 1 and 2 applied “pressure” to Thomas’ “neck and head.”

Recommended Finding: Action Justified

Rationale: Thomas stated, “Both (Deputy 1 and 2,) while I’m dazed are still applying pressure to my neck and head.” Deputy reports of this incident acknowledged that while on the ground, Deputy 2 applied pressure to Thomas’ head, and Deputy 1 applied pressure to Thomas’ right shoulder. SDSD P&P does not prohibit this action. SDSD P&P does prohibit the “carotid restraint”, which Addendum Section F stated, “The carotid restraint is a method of rendering a subject unconscious by restricting the flow of blood to the brain by

compressing the carotid sheaths on the side of the neck. The use of the carotid restraint was prohibited.” Additionally, Assembly Bill No. 490, approved on 09-30-21, required that “A law enforcement agency shall not authorize techniques or transport methods that involve a substantial risk of positional asphyxia.” Positional asphyxia is described in the Bill as, “...situating a person in a manner that compresses their airway and reduces the ability to sustain adequate breathing. This includes, without limitation, the use of any physical restraint that causes a person’s respiratory airway to be compressed or impairs the person’s breathing or respiratory capacity, including any action in which pressure or body weight is unreasonably applied against a restrained person’s neck, torso, or back, or positioning a restrained person without reasonable monitoring for signs of asphyxia.” A review of the associated evident showed a carotid restraint was not used on Thomas. Additionally, A review of the associated evident showed pressure was not unreasonably applied to Thomas’ head and back, that the pressure appeared minimal and that no pressure was observed applied to Thomas’ neck. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

4. Misconduct/Discourtesy – Deputy 2 was discourteous towards Thomas.

Recommended Finding: Not Sustained

Rationale: Thomas stated, “I scream Hey I (can’t) breathe. If you can talk you can breathe don’t start that George Floyd Shit.” This response from a deputy as alleged by Thomas is clearly inappropriate and would violate SDSD P&P Section 2.22, Courtesy, which stated, “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.” Based on the available evidence from Thomas, the statements from Deputies 1 and 2 in their reports and Sheriff Employee Response Form (SERF) responses, and that CCTV footage of the incident does not include audio, there was insufficient evidence to either prove or disprove the allegation.

5. False Reporting – Deputy 2 “forged” documents.

Recommended Finding: Unfounded

Rationale: Thomas stated, “Then (Deputy 2) forged documents by putting a different (incident) number with a different inmate name.” Thomas did not provide any evidence showing a prima facie of misconduct. Additionally, based on a review of the associated SDSD deputy reports of this incident, the incident was documented appropriately. The evidence shows that the alleged act or conduct did not occur.

23-007/STEWART

1. Illegal Search & Seizure – Deputy 1 “pulled over” Christain Stewart and her husband.

Recommended Finding: Action Justified

Rationale: Christain Stewart submitted a complaint to CLERB and reported that on 11-13-22, she and her husband toured an apartment complex in San Marcos. She said they sat in their parked vehicle as they discussed their potential move and when they drove away, they were pulled over by Deputy 1. Christain described the situation as “beyond inappropriate and unnecessary.” According to SDSD documentation, an unidentified witness saw two people (suspects) trying to open car door handles in a neighboring parking garage. The witness provided this information to a restaurant employee (reporting party) who then contacted the SDSD. Body Worn Camera (BWC) showed Deputy 1 responded to investigate, spoke to the reporting party and obtained a cell phone image, then conducted surveillance in the vicinity. The deputy located a vehicle and suspects matching the reported descriptions and initiated a traffic stop. CPOLS defines detentions/stops as follows, “A temporary ‘detention’ or ‘stop’ is an exertion of authority that is something less than a full-blown arrest but more substantial than a simple ‘contact’ or ‘consensual encounter.’” Furthermore, CPOLS states, “The purpose of a detention is to resolve whether suspicious behavior is ‘innocent’ or relates to crime.” Deputy 1 had reasonable suspicion to investigate the reported allegation and initiate a traffic stop. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Illegal Search & Seizure – Deputies 1 and 2 handcuffed and detained Christain Stewart and her husband.

Recommended Finding: Action Justified

Rationale: Christain Stewart stated that she and her husband were handcuffed and detained by deputies. After Deputy 1 initiated a traffic stop, additional deputies arrived. Deputies explained that the couple matched the description of a suspicious person(s) that had looked through vehicles. Deputies 1 and 2 asked the couple to individually step out of their vehicle, handcuffed them, performed a pat-down search, then escorted them to a patrol vehicle for questioning. Deputies searched the suspect vehicle and found nothing of evidentiary value. Deputies took photographs for their Field Incident report and released the couple after approximately fifteen minutes. In accordance with SDSD P&P, Section 2.55 Non-Biased Policing states that all investigative detentions and traffic stops by employees will be based on a standard of reasonable suspicion or probable cause as required by the Fourth Amendment of the Constitution. Correspondingly, California Peace Officers Legal Sourcebook (CPOLS) states a detention is valid if you have “reasonable suspicion” that (1) something relating to criminal activity has just happened; and (2) the vehicle or the person in the vehicle you are about to detain is connected to that activity. In addition, CPOLS defines detentions/stops as follows, “A temporary ‘detention’ or ‘stop’ is an exertion of authority that is something less than a full-blown arrest but more substantial than a simple ‘contact’ or ‘consensual encounter’.” Lastly CPOLS states, “The purpose of a detention is to resolve whether suspicious behavior is ‘innocent’ or relates to crime.” Deputies had reasonable suspicion to handcuff and detain the couple, as they were considered suspects to alleged criminal activity; the potential crime was listed as Petty Theft. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputies 1 and 2 “accused” Christain Stewart and her husband of illegal activity.

Recommended Finding: Action Justified

Rationale: Christain Stewart reported, “We were accused of opening car doors and breaking into cars. Apparently, we matched the description.” The “accusation” stemmed from a third-party witness and deputies conducted their duties as Peace Officers. California Police Officer Legal Sourcebook (CPOLS) states that detention law “accepts the risk that officers may stop innocent people.” Deputies investigated, determined there was no wrongdoing, and subsequently released the couple. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

4. Illegal Search & Seizure – Deputies 1 and 2 searched Christain Stewart and her husband’s vehicle.

Recommended Finding: Action Justified

Rationale: Christain Stewart reported that deputies searched their car. The Stewart’s reported and Body Worn Camera (BWC) confirmed that her husband provided deputies with verbal consent to search the vehicle. The California Police Officer Legal Sourcebook (CPOLS) states, “If you obtain a valid consent to search a vehicle and/or something inside it, the search should always be upheld as legal.” Also, “You may lawfully seek a voluntary consent to search during a consensual encounter or during a lawful detention.” Given that the detention was lawful, there was no policy violation. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

5. Discrimination/Racial – Deputies 1 and 2 “harassed and bullied” Christain Stewart and her husband based on their race.

Recommended Finding: Unfounded

Rationale: Christain Stewart reported, “I feel we were harassed and bullied because we are an interracial couple.” Christain reported deputies asked them to pull down their mask to take pictures of their face and they also took pictures of their identification cards. Christain and her husband denied that deputies made any comments or displayed any actions that were racial or discriminatory in nature. Christain stated deputies asked her questions about her husband, but they did not ask her husband questions about her, which she felt was discriminatory. In addition, Christain’s husband said after the incident occurred, he felt as if race was a factor as to why they were stopped but did not provide additional information. SDSD P&P 2.53 Discrimination, states employees shall not express any prejudice or harassment concerning race, color, national origin...etc. Policy also states that examples of discriminatory acts which will not be tolerated include

verbal derogatory comments, slurs and actions which result in a person being treated unequally. BWC displayed no discriminatory/racial actions/comments toward the interracial couple. The evidence showed that the alleged act or conduct did not occur.

6. Excessive Force – Deputy 2 “jerked” Christain Stewart “aggressively.”

Recommended Finding: Unfounded

Rationale: Christain Stewart reported, “I also feel the Sheriff who pulled me out to release me jerked me around a little too aggressively...” BWC confirmed that Deputy 2 opened the patrol vehicle door, took Christain by the elbow and assisted her from the car, then removed her handcuffs. Christain demonstrated voluntary compliance so there was no need for the deputy to use force. BWC refuted the allegation that the deputy “jerked” or pulled Christain other than to assist her in stepping out of the vehicle, since her hands were cuffed behind her back. The evidence showed that the alleged act or conduct did not occur.

23-010/ACKLES

1. Use of Force Resulting in Great Bodily Injury – Deputy Paul Jones Brown used force resulting in injury on Calvin Ackles in an incident occurring at the George Bailey Detention Facility.

Recommended Finding: Sustained

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) documents showed that on 12-29-22, during an escort of Calvin Ackles at the George Bailey Detention Facility (GBDF), force was used against Ackles by Deputy Jones Brown, which resulted in Ackles sustaining an injury. SDSD deputy reports of this incident reported, and CCTV footage from GBDF showed, that Ackles and another incarcerated person were observed having a physical altercation in their housing module. Deputies subsequently responded and restrained both Ackles and the other incarcerated person in handcuffs, prior to escorting them out of the housing module. Deputy Jones Brown and two other deputies were present during the escort of Ackles. SDSD P&P Section 2.49, Use of Force, stated, “Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing.” A review of this incident raised concerns about Deputy Jones Brown’s decision to use force, particularly given Ackles’s hands were handcuffed to the rear, that Deputy Jones Brown had two additional deputies present to assist with the escort, and that CCTV footage of the incident did not show Ackles continuing to resist Deputy Jones Brown’s attempt to escort him at the time Deputy Jones Brown utilized a takedown against Ackles. Regarding the actual force technique Deputy Jones Brown used to take Ackles to the floor, SDSD P&P, Addendum Section F, stated, “Hands-on control is used as a means of overcoming resistive or assaultive behavior. Soft hand control may be used to control subjects whose behavior does not demand more severe tactics. Hard hands control, powerful hand or leg strikes, etc., are techniques used to control more assaultive suspects.” Based on a review of CCTV footage and deputy reports of this incident, “soft hand control” appeared initially appropriate given Ackles’ reported verbal threats towards the deputies. However, given all the circumstances, particularly that Ackles’ hands were handcuffed to the rear, was being escorted by three deputies, and did not appear to offer any further resistance, the force used to take Ackles to the ground was not reasonable. The evidence supports the allegation, and the act or conduct was not justified.

23-012/HARRELL

1. Misconduct/Procedure – George Bailey Detention Facility (GBDF) staff failed to return Derek Harrell Sr.’s telephone calls on 01-31-23 and 02-01-23 regarding Derek Harrell Jr.’s safety.

Recommended Finding: Summary Dismissal

Rationale: Harrell Sr. alleged he spoke with an information Clerk on 01-31-23, and no one returned his call.

Harrell Sr. called GBDF again on 02-01-23 and spoke with an information clerk, and then a supervisor. Harrell alleged his calls were never returned. Telephone calls are answered by detention processing staff who are non-sworn personnel. Pursuant to CLERB Rules and Regulations, Section 4.1 Complaints: Authority, stipulates that CLERB only has authority to investigate complaints filed against peace/custodial officers employed by the San Diego Sheriff's Department. CLERB has no authority to investigate the actions of detentions processing staff and as such was unable to investigate further. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – GBDF deputies failed to keep Harrell Jr. safe while in custody.

Recommended Finding: Not Sustained

Rationale: Harrell Sr. stated, "people have the right to be safe while incarcerated." Furthermore, Harrell Sr. expressed concern for his son's safety due to the media reports about people dying in custody. According to Harrell Sr., he called GBDF on 01-31-23 and again on 02-01-23 to express concerns about his son's safety. SDSL records showed SDSL deputies followed up on Harrell Sr.'s phone calls on 02-02-23. According to SDSL records, an incident report from 02-02-23 stated, "at approximately 0130 hours, I spoke to Harrell at the 3A module gate and explained to him his father had contacted GBDF stating he was concerned because his son had been assaulted. Harrell denied being assaulted. I asked him what was going on and he stated, "I'm good". I requested Harrell removed his shirt in order to see if there was any visible evidence of being assaulted. Harrell complied. I was unable to locate any visible injuries on his person." As per SDSL DSB P&P R.3, entitled "Incarcerated Person Classification Code-Descriptor Definitions", JIMS records can be noted with a "Keep Separate (KS)", if an incarcerated person has enemies in JIMS. Since Harrell Jr. did not provide any information regarding the assault to deputies, there were no KS notations on his classification records. According to the Division of Inspection Services/CLERB liaison, the Deputy who wrote the report no longer worked for the department as of 02-19-23. The following day, on 02-03-23, Harrell Sr. bailed out Harrell Jr. and came to the CLERB office to complete follow-up. Harrell Jr. was photographed at the office and had visible signs of bruising on his eye, under his lip, and a laceration on his back. While the evidence suggested Harrell Jr. may have had injuries on 02-03-23 that were missed by the deputy, the evidence suggested the assault already occurred by the time SDSL followed up on Harrell Sr.'s phone call. CLERB was unable to determine if any further actions would have been taken by SDSL to keep Harrell Jr. safe before the incident, especially since Harrell Jr. denied the altercation. There was insufficient evidence to either prove or disprove the allegation.

3. Misconduct/Medical – GBDF medical staff failed to treat Harrell Jr. after he was assaulted.

Recommended Finding: Summary Dismissal.

Rationale: Harrell stated, "My son never received medical treatment from medical staff after he was brutally beaten". Jail Medical records showed Harrell Jr. was last seen by medical staff at his intake on 01-21-23. The medical records indicated Harrell Jr. had no further contact with medical after booking. Pursuant to CLERB Rules and Regulations, Section 4.1 Complaints: Authority, stipulates that CLERB only has authority to investigate complaints filed against peace/custodial officers employed by the San Diego Sheriff's Department. Medical decisions such as medical treatment fall outside of CLERB's jurisdiction and as such, CLERB was unable to investigate further. The Review Board lacks jurisdiction.

23-016/GOAZIOU

1. Excessive Force – Deputy 3 "tased" Goaziou.

Recommended Finding: Action Justified

Rationale: Goaziou stated, "I would like to file a complaint and open an investigation into my arrest, beating, tasing, hospital visit, and subsequent booking". The Body Worn Camera (BWC) evidence showed Deputy 3 asked Goaziou to exit the vehicle **six** times, but he refused. Deputy 3 told Goaziou if he did not comply with orders that force would be used. According to Deputy 3's report, he attempted to extend Goaziou's right arm in the process of escorting him out of the vehicle. Goaziou stood up from his seat and grabbed a hold of the

passenger door. According to Deputy 3's report he was concerned with Goaziou assaulting him and fleeing. Deputy 3 attempted to pull him downward. Goaziou turned his body towards Deputy 3 and grabbed a hold of his vest. Deputy 3 recognized Goaziou's actions as assaultive and swung his right fist to attempt to strike Goaziou in the face. Goaziou pushed and pulled Deputy 3's vest, causing Deputy 3 to miss. Deputy 3 punched Goaziou twice in the left torso, while Goaziou held onto his vest. The strikes were effective and Goaziou released his grip from Deputy 3's vest. Deputy 3 lost his footing and Goaziou fled and began a struggle with Deputy 1. Deputy 3 deployed his Conducted Energy Device (CED), AKA "taser", to prevent Deputy 1 from being assaulted and prevent Goaziou from fleeing. The CED was not immediately effective, and Deputy 4 assisted in taking Goaziou to the ground. Downward pressure was applied and Goaziou was placed in handcuffs. According to Addendum F use of Force Guidelines, "It shall be the policy of this Department that any Deputy Sheriff, in the performance of his/her official law enforcement duties, who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance." The policy states the goal of de-escalation is to gain voluntary compliance of subjects to reduce or eliminate the need to use force on a subject. BWC showed Deputy 3 attempted several times to gain voluntary compliance from Goaziou before using force. Per Addendum F-Use of Force Guidelines, CEDs, "The CED is an intermediate force option. The CED is an electronic control device that is extremely effective for temporary immobilization of subjects. The CED produces 50,000 volts of electricity that cause involuntary muscle contraction and temporarily incapacitates a subject. 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." According to Deputy 3's report "based on Goaziou's assaultive behavior, had I not used force, I believed that my partners or I could have been physically assaulted and injured causing serious bodily injury or death". The Use of Force was justified and documented in accordance with policy. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

2. Excessive Force – Deputies 1, 3 and 4 "beat" Goaziou.

Recommended Finding: Unfounded

Rationale: Goaziou stated, "I would like to file a complaint and open an investigation into my arrest, beating, tasing, hospital visit, and subsequent booking". The evidence showed a use of force ensued due to Goaziou's non-compliance, there was no "beating". The evidence showed that the alleged act or conduct did not occur.

3. False Arrest – Deputy 1 arrested Goaziou.

Recommended Finding: Action Justified

Rationale: Goaziou stated, "I would like to file a complaint and open an investigation into my arrest, beating, tasing, hospital visit, and subsequent booking". SDSA records showed Goaziou was arrested for possession of methamphetamine and an outstanding felony warrant. Additional charges of possession of stolen property, felon in possession of firearms, grand theft, transporting an assault weapon, commit a felony armed with a firearm, and obstruct a peace officer with injury were added to Goaziou's arrest. SDSA recovered over twenty stolen items from the vehicle, the vehicle itself was stolen, and Goaziou was illegally in possession of six firearms (as a convicted felon). Video evidence captured by security cameras showed Goaziou stealing various items that were found in his possession. Based on the evidence recovered on Goaziou's person and vehicle, the arrest was justified and proper.

4. Misconduct/Medical – Medical staff did not treat Goaziou's concussion.

Recommended Finding: Summary Dismissal

Rationale: Goaziou stated, "I suffered a concussion that wasn't treated at the hospital". SDSA records show Goaziou was evaluated by Ramona Fire Paramedics and then later transported by SDSA to Sharp Coronado Hospital for treatment. Pursuant to CLERB Rules and Regulations, Section 4.1 Complaints: Authority, stipulates that CLERB only has authority to investigate complaints filed against peace/custodial officers employed by the San Diego Sheriff's Department. Ramona Fire Paramedics and Sharp Coronado Medical staff are not peace/custodial officers and are not employed by SDSA. The Review Board lacks jurisdiction.

5. Misconduct/Procedure – Deputy 2 failed to relay pertinent information regarding Goaziou’s injuries to hospital staff.

Recommended Finding: Unfounded

Rationale: Goaziou stated, “I suffered a concussion that wasn’t treated at the hospital because with myself in a wheelchair and the transport deputy not being at the arrest, when the doctor asked what happened, neither of us could tell him.” Deputy 2 provided confidential information, via questionnaire, during CLERB’s investigation that was considered in arriving at the recommended finding. Deputy statements provided during the course of administrative investigations are deemed confidential by law and cannot be publicly disclosed. The evidence showed that the alleged act or conduct did not occur.

6. Misconduct/Procedure - SDSD booked Goaziou into custody.

Recommended Finding: Action Justified

Rationale: Goaziou stated, “I would like to file a complaint and open an investigation into my arrest, beating, tasing, hospital visit, and subsequent booking”. SDSD records showed Goaziou was booked at San Diego Central Jail after being cleared by Sharp Coronado Hospital. Per DSB P&P Q.1 titled “Intake information”, arresting agencies must present a properly completed J-15 form for felony and misdemeanor field arrests. Furthermore, for any arrest for an outstanding warrant, the warrant abstract must be presented prior to the acceptance of the arrested person. SDSD records showed a completed J-15 form and a warrant abstract, and as such Goaziou was booked in accordance with policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

7. Misconduct/Procedure – SDSD failed to produce Body Worn Camera footage of Goaziou’s arrest/incident.

Recommended Finding: Action Justified

Rationale: Goaziou stated, “and now no Body Cam oddly 6 weeks later.” Per SDSD P&P 6.131 entitled Body Worn Camera, “All audio, images and media associated with the BWC are the property of the San Diego County Sheriff’s Department and will not be copied, released or disseminated in any form or manner outside the parameters of this policy without the express written release from the San Diego County Sheriff or his/her designee.” SDSD records produced (1) Body Worn Camera (BWC) recording of the incident to CLERB. The other involved deputies were in a plain clothes capacity, and as such were exempt from BWC recording per SDSD P&P 6.31 Body Worn Camera policy. Furthermore, “Deputies/CSO’s will typically not allow citizens to review recordings; however, deputy/CSO discretion is allowed to replay the recording for citizens at the scene in order to mitigate possible minor complaints.” As per SDSD P&P 2.37 entitled, “Dissemination of information” employees shall treat the official business of the Department as confidential. Information regarding official business shall be disseminated only to those for whom it is intended, in accordance with established Departmental procedures. Gov Code 7923.625, formerly Gov Code 6254(f)(4), mandated the release of audio and video recordings of “Critical incidents” via a Public Records Act (PRA) request, absent certain circumstances relating to an active criminal investigation, an administrative investigation, or privacy interests. "Critical incidents" are classified as incidents that involve either the discharge of firearm by law enforcement or result in death, or great bodily injury from a use of force by law enforcement. Furthermore, Penal Code 832.7, allowed the release of records, which includes audio and video evidence, via a PRA request relating to incidents that involve either the discharge of firearm by law enforcement or result in death or great bodily injury from a use of force by law enforcement, or sustained findings that involve unreasonable or excessive force, sexual assault, prejudice or discrimination, unlawful arrest, or unlawful search. This incident was not legally required to be released as per CA law and SDSD policy. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

23-018/MILKOVITS

1. Criminal Conduct – An unidentified deputy “stole” Ryan Milkovits’ notebook.

Recommended Finding: Unfounded

Rationale: Milkovits stated, "I have already put a complaint into the SD Sheriff's Department online complaint form about another notebook of mine (with 113 inventions worth \$50,000 each) being stolen by Deputy '1' in San Diego Central Jail." The information provided by the complainant was insufficient to make a positive identification of the subject deputy. SDS DSB P&P Q.63 titled "Lost Inmate Money or Property" standardizes the procedure for processing lost/missing inmate property claims. The grievance process is used for claims of lost/missing property or commissary items. Furthermore, if a claim cannot be resolved the incarcerated person fills out a Claim for Lost or Damaged Personal Property (RM-122) form. Records provided by SDS failed to produce any documented evidence for the alleged notebook. Milkovits did not file any grievances during his time in custody. Furthermore, Milkovits' records had no documented Claim (RM-122) forms for lost or damaged personal property. At the time of his release, Milkovits signed an Inmate Personal Property Receipt that he had received all his personal property upon release. Several attempts were made to reach Milkovits by phone and email to obtain more information and evidence to corroborate his allegation, however, Milkovits did not respond. Milkovits' allegation, signed under penalty of perjury, did not establish a prima facie showing of misconduct arising out of the performance of the unidentified deputy's duties and this complaint lacks merit. The preponderance of evidence showed that the alleged act or conduct did not occur.

23-026/HANSON

1. Misconduct/Discourtesy – Deputy 1 was "arrogant, rude and instigated" conflict with Hanson.

Recommended Finding: Summary Dismissal

Rationale: On 03-06-23, Timothy Hanson submitted a signed complaint to CLERB. On 06-23-23, in a telephone conversation with the CLERB assigned investigator Hanson expressed his desire to withdraw his complaint. CLERB sent a withdrawal form to Hanson on 06-23-23. As per CLERB Rules & Regulations 5.7 Withdrawal of Complaints states "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 Review Board member recommends that the investigation continue and the Review Board, in its discretion, concurs."

2. Misconduct/Procedure – Deputy 1 "refused" to provide his name to Hanson.

Recommended Finding: Summary Dismissal

Rationale: See Rationale 1.

3. Misconduct/Procedure – Santee Sheriff Deputies showed "preferential treatment to wealthy citizens."

Recommended Finding: Summary Dismissal

Rationale: See Rationale 1.

4. Misconduct/Harassment – Deputies 2 and 3 "assisted" a private citizen to "harass" another private citizen "through personal use of the Sheriff's department."

Recommended Finding: Summary Dismissal

Rationale: See Rationale 1.

5. Misconduct/Harassment – Santee Sheriff Deputies retaliated against Hanson for parking in front of resident homes.

Recommended Finding: Summary Dismissal

Rationale: See Rationale 1.

6. Misconduct/Procedure – Santee Sheriff Deputies "ignored" violations of the law.

Recommended Finding: Summary Dismissal
Rationale: See Rationale 1.

7. Discrimination/Other – Unidentified personnel “forewarned” certain residents to avoid enforcement action.

Recommended Finding: Summary Dismissal
Rationale: See Rationale 1.

23-031/TURNER

1. Use of Force Resulting in Great Bodily Injury – Deputies Carlos Cosio, Abdelkarim Farha, Braulio Gallegos, August Mansheim, Mozell Mitchell, and Gabriel Sanvictores used force on Troy Turner which resulted in Turner sustaining an injury.

Recommended Finding: Action Justified

Rationale: This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 02-01-22, Troy Turner was housed at George Bailey Detention Facility, and was involved in a use of force incident. Reports of the incident depicted Turner headbutted two deputies, resulting in force being used to stop his assaultive actions. Turner sustained an injury as a result of the force used and was transported to a hospital for treatment. Additionally, an involved deputy was taken to the hospital for further evaluation after the incident occurred. On 03-21-23 CLERB was notified of this reportable incident. SDSD P&P Section 2.49, Use of Force, stated, “Employees shall not use more force in any situation than is reasonably necessary under the circumstances. Employees shall use force in accordance with law and established Departmental procedures, and report all use of force in writing.” Additionally, SDSD P&P Addendum Section F, which provided use of force guidelines, stated, “Deputies may only use a level of force they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance. To be proportional, the level of force applied must reflect the totality of circumstances surrounding the situation at hand, including the nature and immediacy of any threats posed to officers and others.” A review of deputy reports, and CCTV footage of this incident, showed “Hands-on control” was used to overcome the assaultive actions demonstrated by Turner. Addendum Section F described “hands-on control” as, “...used as a means of overcoming resistive or assaultive behavior. Soft hand control may be used to control subjects whose behavior does not demand more severe tactics. Hard hands control, powerful hand or leg strikes, etc., are techniques used to control more assaultive suspects.” Additionally, regarding “control compliance techniques,” Addendum Section F stated, “When a deputy needs to make an arrest or restrain an in-custody subject and the individual's actions are actively resistant or; assaultive, reasonable compliance techniques such as arm locks, wrist locks, pressure point tactics (touch & penetrating pressure, non-striking), and baton compliance techniques (non-striking) may be necessary to obtain control and compliance. Control compliance, as identified above, are considered less lethal.” Based on a review of the available evidence, the involved deputies actions to prevent Turner’s assaultive actions were justified. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

23-038/RICHARDSON

1. Misconduct/Procedure – Deputy 1 issued a citation without his identifying information.

Recommended Finding: Not Sustained

Rationale: The complainant, Danielle Richardson, stated, “Why did (Deputy 1) not sign my traffic ticket or put his ID number on the traffic citation?” A review of the “notice to appear” form showed that Deputy 1 dated and wrote his ID number on the form but did not write his name. As Deputy 1 did write his ID number on the Notice to Appear, he would be able to be identified as each ID number is unique to a specific deputy. Additionally, a review of SDSD policy and procedures (P&P) and the SDSD Traffic Manual, Section 6, Traffic Citations, revealed there is not a policy specifically related to signing Notice to Appear forms, and no

misconduct could be identified. Given this allegation did not show prima facie of misconduct, and that SDS D P&P does not clearly define responsibilities of the deputy completing a traffic citation, there was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure - Deputy 2 towed Danielle Richardson's vehicle.

Recommended Finding: Action Justified

Rationale: Richardson stated, "I was pulled over on 3/26/23 by (Deputy 1) for an alleged traffic violation. (Deputy 2) was also present during the traffic stop... (Deputy 1) then told me that my tags were expired... I signed the citation and returned home. I parked my car legally directly in front of my home... Without warning, (Deputy 2) came to my house later that night at (1:50 am) in the morning and had my vehicle towed. My complaint is regarding unprofessional behavior. They gave me a citation at 7pm and did not give me enough time to go to the DMV to collect my registration sticker before towing my car. If they wanted to tow my car for not having its sticker on it, why did they not just tell me they were going to do that at our traffic stop? Why wait until 2AM to secretly come to my house and have it towed while I was asleep?" A review of SDS D documents related to this incident, and information provided by Deputy 2 during this investigation, showed Deputy 2 acted on information about Richardson's vehicle which he retrieved from the Department of Motor Vehicles (DMV) database. CLERB cannot access DMV information, however, SDS D's liaison to CLERB audited the information which Deputy 2 accessed, per CLERB's request, and confirmed Deputy 2's action to be correct when towing Richardson's vehicle. Ultimately, based upon DMV records, Deputy 2 reasonably believed that Richardson's vehicle registration was expired, and legally towed her vehicle. A review of SDS D P&P and the CA Vehicle Code showed Deputy 2's actions were lawful and no misconduct occurred. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Retaliation - Deputy 2 towed Danielle Richardson's vehicle.

Recommended Finding: Not Sustained

Rationale: In addition to evaluating if Richardson's vehicle was legally towed, CLERB considered if Deputy 2 engaged in a retaliatory action by towing the vehicle. As stated above, the decision to tow Richardson's vehicle was lawful. However, the fact that Richardson was cited only hours prior to her vehicle then being towed, gave CLERB staff pause. SDS D P&P Section 2.4, Unbecoming Conduct, stated, "Employees shall conduct themselves at all times, both on and off duty, in such a manner as to reflect most favorably on this Department. Unbecoming conduct shall include that which tends to bring this Department into disrepute or reflects discredit upon the employee as a member of this Department, or that which tends to impair the operation and efficiency of this Department or employee." Considering Richardson's complaint to CLERB, and that Deputy 2's actions were lawful, CLERB was unable to make a determination on this allegation. Ultimately, there was insufficient evidence to either prove or disprove the allegation.

23-039/ADAMSON

1. False Reporting – Unidentified deputy reported that Patricia Adamson kicked a deputy.

Recommended Finding: Summary Dismissal

Rationale: Complainant Patricia Adamson reported that a sheriff deputy was cruel to her and falsely claimed that she kicked one of them. During a face-to-face interview with CLERB on 05-01-23, Adamson appeared disheveled & made statements that were nonsensical. Adamson also had difficulty remembering dates & locations of incidents & was unable to identify any of the deputies. On 05-03-23, the Division of Inspectional Services notified CLERB of Adamson's death while at the Las Colinas Detention Reentry Facility. CLERB Case #23-046/Adamson was opened to investigate the circumstances surrounding Adamson's death. As Adamson is deceased, CLERB Case #23-039, will be closed by Summary Dismissal.

2. Excessive Force – Unidentified deputy pushed Adamson to the ground.

Recommended Finding: Summary Dismissal

Rationale: Adamson reported she was trying to leave town and a sheriff deputy pushed her to the ground. See Rationale #1.

3. Misconduct/Procedure – Unidentified deputy issued Adamson a citation.

Recommended Finding: Summary Dismissal

Rationale: Adamson stated a deputy wrote her a ticket for not leaving a property. See Rationale #1.

4. Misconduct/Intimidation – Unidentified deputy threatened to push Adamson.

Recommended Finding: Summary Dismissal

Rationale: Adamson reported as she was attempting to acquire a wheelchair at a hospital, a deputy said, “hurry up and step down these steps or I’ll push you off.” See Rationale #1.

23-052/ZAMBRANO

1. Illegal Search & Seizure – Unidentified Correctional Officers forced entry, searched, then removed “evidence” from Viviana Zambrano’s home.

Recommended Finding: Summary Dismissal

Rationale: On 05-22-23, CLERB received a signed complaint from Viviana Zambrano, who reported that on 03-29-23, correctional officers “knocked down” her door and “yelled” they had a search warrant, which she claims she never received. Zambrano later confirmed the “Correctional Officers” were members of the Investigative Services Unit (ISU) at the California Institution for Women (CIW); a division of the California Department of Corrections and Rehabilitation (CDCR). CLERB does not have authority over the subject matter per CLERB Rules & Regulations 4.1, Authority. CLERB solely has authority to receive, review, investigate, and report on Complaints filed against peace/custodial officers employed by the County of San Diego Sheriff’s Department or Probation Department. The complainant was referred to the Office of the Inspector General Independent Prison Oversight and CLERB forwarded this complaint to the Office of the Ombudsman. The Review Board lacks jurisdiction.

2. Misconduct/Procedure – Unidentified Correctional Officers failed to provide Zambrano with a property receipt for seized items.

Recommended Finding: Summary Dismissal

Rationale: Zambrano reported that on 03-29-23, correctional officers collected her cellphone, work laptop, her son’s school laptop, and “three trunk fulls” of property and she did not receive a receipt. See Rationale #1.

3. False Arrest - Unidentified Correctional Officers arrested Zambrano.

Recommended Finding: Summary Dismissal

Rationale: Zambrano reported that on 03-29-23, after correctional officers searched her home for four hours, they arrested her for something “that only happened because they raided her”. See Rationale #1.

4. Misconduct/Procedure - Unidentified Correctional Officers failed to return Zambrano’s property.

Recommended Finding: Summary Dismissal

Rationale: Zambrano reported she spoke with a sergeant who reportedly said if Zambrano provided her computer passwords it would expedite the return of her property; otherwise the return date was unknown. See Rationale #1.

23-058/REDACTED

1. Misconduct/Procedure – The East Mesa Juvenile Detention Facility (EMJDF) cancelled visits.

Recommended Finding: Summary Dismissal

Rationale: On 06-05-23, the complainant contacted CLERB on behalf of their minor child, currently in custody at East Mesa Juvenile Detention Facility (EMJDF). The complainant did not provide any identifying information for their child. The complainant expressed fear of retaliation and their child had asked they not say anything as they were “very scared” of retaliation. On 06-20-23, the complainant submitted a signed Withdrawal of Complaint. The complainant withdrew their complaint once they were made aware that a copy of the complaint would be provided to the Probation Department. The complainant was adamant that they did not want their or their child’s identity known as a complainant. Per CLERB’s Rules & Regulations Section 5.7, Withdrawal of Complaints, “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 conduct, unless the Executive Officer or a CLERB member recommends that the investigation continue and CLERB, in its discretion, concurs.”

2. Misconduct/Procedure – EMJDF limited meals to twice a day.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

3. Excessive Force – Unidentified Probation Officers “stomped” on the aggrieved’s head.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

4. Misconduct/Intimidation – Unidentified Probation Officers threatened the aggrieved.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

5. Misconduct/Procedure – EMJDF housed youth in “dirty” cells.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.

6. Misconduct/Procedure – EMJDF limited showers for the aggrieved.

Recommended Finding: Summary Dismissal

Rationale: See Rationale #1.