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# County of San Diego

## CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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[www.sdcounty.ca.gov/clerb](http://www.sdcounty.ca.gov/clerb)

### REGULAR MEETING AGENDA

#### Thursday, FEBRUARY 6, 2025, 5:30 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://sdcounty-ca-gov.zoom.us/j/86519024945?pwd=fzLZLNNGTeK4m3RlqQS8HEbrku43KJu.1>

Phone: +1 669 444 9171

Webinar ID: 865 1902 4945

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 1600 Pacific Highway, Ste. 251, San Diego, CA 92101.

- 1. ROLL CALL (1 minute)
- 2. STATEMENT (just cause) and/or consideration of a request to participate remotely. (emergency circumstances) by a Board Member, if applicable. Voting item as necessary (0 minute)
- 3. PUBLIC COMMENT (45 minutes)

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board's jurisdiction but not an item on today's open session agenda. Each speaker shall complete and submit a "Request to Speak" form. If you wish to speak on this item, non-agenda public comment, please make sure to place the #3 on your Request to Speak form. Each speaker will be limited to two minutes; however, the time allotted for in-person, virtual and written public comment may be adjusted by the Board Chair in their discretion. This meeting will also be held remotely via the Zoom Platform. Click the link in the agenda header above to access the meeting. Contact CLERB at [clerb@sdcounty.ca.gov](mailto:clerb@sdcounty.ca.gov) or 619-238-6776 if you have questions.

- 4. MINUTES APPROVAL (2 minutes)

a) Draft Meeting Minutes for December 17, 2024

**5. PRESENTATION/TRAINING (35 minutes)**

a) Probation Chief Tamika Nelson

(Public Comment is 20 minutes for this item. Each speaker shall submit a Request to Speak form PRIOR to the start of the item)

**6. EXECUTIVE OFFICER'S REPORT (10 minutes)**

a) Overview of Activities of Executive Officer and Staff

b) Workload Report – Open Complaints/Investigations Report (Attachments B(1) and B(2))

c) Case Progress and Status Report (Attachments C)

d) Executive Officer Correspondence to Full CLERB (Attachment D)

e) CLERB 2025 Goals- Engagement Page stat (Attachment E)

**7. BOARD CHAIR'S REPORT (5 minutes)**

**8. NEW BUSINESS (0 minutes)**

a) None

**9. UNFINISHED BUSINESS (25 minutes)**

a) The State Audit and The San Diegans for Justice Recommendations

(Public Comment is 20 minutes for this item. Each speaker shall submit a Request to Speak form PRIOR to the start of the item)

b) Approval of Amended Rules & Regulations to Conform to Current Version Approved by Board of Supervisors

**10. BOARD MEMBER COMMENT (10 minutes)**

**11. BOARD MEMBER QUERY for SHERIFF/PROBATION LIAISON(S) (10 minutes)**

**12. CLOSED SESSION: TIME CERTAIN – 8:00 pm**

a) CONFERENCE WITH LEGAL COUNSEL

**Pending Litigation:** Pursuant to Government Code Section 54956.9

Civil Service Appeal, Case No. 2024-040P; Civil Service Appeal, Case No. 2024-041P; CLERB Case #23-118

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).

## CASES FOR SUMMARY HEARING (16)

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.

### 23-070/DAVIS (Death)

1. Death Investigation/In-Custody Medical – Zeke Samuel Davis died while in the custody of the Sheriff's Office on 07-08-23.

Recommended Finding: Action Justified

Rationale: Zeke Samuel Davis was booked into the Vista Detention Facility by Oceanside Police Officers on 06-29-23. During the booking process, Davis complained of illness. Davis was transferred to a local hospital for further medical evaluation. Davis was placed in the Hospital Guard Unit in compliance with Sheriff's P&P Section 6.46, Guarding Hospitalized Inmates. While at the hospital Davis's health continued to decline until 07-08-23, when Davis was pronounced deceased. The autopsy report stated, "Based on the examination findings and the circumstances surrounding the death, as currently understood, the cause of death is complications of invasive laryngeal squamous cell carcinoma, and the manner of death is natural." A review of evidence revealed no misconduct. The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper.

### 23-156/SANCHEZ (Routine)

1. Illegal Search and Seizure – Deputies 2 and 4 searched the Sanchez home.

Recommended Finding: Action Justified

Rationale: Flor Sanchez, the complainant, alleged that deputies forced entry into her home without a warrant and that she did not give consent for them to enter her residence. Deputy reports and Body Worn Camera (BWC) footage showed Deputy 1 asked permission to check inside the residence due to the nature of the call. Sanchez nodded her head in agreement and escorted Deputies 2 and 4 inside her home. Deputies checked for potential victims, and completed the search in approximately 2 minutes, all while exercising care for Sanchez's home. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

2. Excessive Force – Deputy 3 "smashed" Sanchez's sons (aggrieved) face on the concrete.

Recommended Finding: Action Justified

Rationale: Flor Sanchez alleged, "mean while [sic] they had my son on the floor with his face smashed on the concrete bleeding..." Deputy reports and BWC footage showed the initial contact with the aggrieved. BWC audio recorded the aggrieved yelling that deputies could not search the residence without a warrant. The aggrieved then became assaultive towards deputies on scene, striking Deputy 3 in the chest with his shoulder. According to SDSO Use of Force guidelines, Deputy 3's use of force and takedown was appropriate and proportional to the aggrieved's assaultive actions during a lawful detention attempt. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

3. Misconduct/Intimidation – Deputy 4 yelled at Sanchez's children.

Recommended Finding: Action Justified

Rationale: Complainant Sanchez alleged that deputies told her minor children, "...shut up or you'll be the one on the floor next." Deputy reports and BWC footage showed Deputy 4 interviewing a witness and the aggrieved begin to resist detention. As the aggrieved yells at deputies using expletives, family members emerge from the residence and approached deputies, who are on the ground with the aggrieved. Deputy 4 remained standing and orders family members, to 'get back, stay back!' The juvenile responds, 'That's my

fucking brother, chill the fuck out' and continues approaching the deputies as they subdue the aggrieved. Deputy 4 responds, "Do you want to join him? Stay where you are!" The juvenile responded, "I'm 16, shut your fucking mouth." The juvenile followed Deputy 4 commands, and additional Sheriff's deputies arrived at the scene. Sheriff's policy mandates employees to be courteous to the public and their 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. CLERB has determined that the investigation found the alleged actions to be lawful, justified, and proper by a preponderance of the evidence.

#### **24-022/VALENZUELA** (Routine)

1. Illegal Search and Seizure – Deputy 1 conducted a traffic stop on Nicholas Valenzuela's vehicle.

Recommended Finding: Action Justified

Rationale: The complainant, Nicholas Valenzuela, contacted CLERB and reported his concerns of an illegal search and seizure and a false arrest. On the morning of 02-14-23, Valenzuela was the driver and solo occupant of a vehicle. According to Deputy 1's arrest report, Deputy 1 documented his reasons for conducting a traffic stop on Valenzuela. Deputy 1 reported that he and Deputy 2 were driving in their patrol vehicle when they observed Valenzuela driving a vehicle with tinted windows, with a large crack in his windshield, and with Valenzuela using his cell phone while he was driving. For these reasons, Deputy 1 conducted a traffic stop on Valenzuela. By a preponderance of the evidence, CLERB determined the investigation proved the alleged actions were lawful, justified, and proper.

2. Illegal Search and Seizure – Deputy 1 searched Valenzuela's vehicle.

Recommended Finding: Action Justified

Rationale: Per his written report, Deputy 1 documented that he conducted a search of Valenzuela's vehicle based on probable cause; citing the odor of fresh marijuana, an unsealed bag in the center console, a marijuana bong, and the need to check for weapons as justifications. He also reported that Valenzuela was identified as a "potential gang member." According to SDDS P&P Section 2.51 titled, "Arrest, Search and Seizure," employees shall not make any arrest, search or seizure, nor conduct any investigation or official Department business, in a manner which they know or ought to know is not in accordance with law and established Department policies and procedures. Deputy 1 provided information during CLERB's investigation that was considered in arriving at the recommended finding. That information is privileged and cannot be publicly disclosed. By a preponderance of the evidence, CLERB determined the investigation proved the alleged actions were lawful, justified, and proper.

3. False Arrest – Deputy 1 arrested Valenzuela.

Recommended Finding: Action Justified

Rationale: During the search of Valenzuela's vehicle, Deputy 1 found ammunition in the vehicle. Deputy 1 arrested Valenzuela for violation of California Penal Code Section 30305-Felon in possession of ammunition and violation of California Vehicle Code Section 14601.2(a)–Driving on a Suspended License, which was admitted by the complainant. Valenzuela was taken into custody and was transported to jail where he was incarcerated. Deputy 1 provided information during CLERB's investigation that was considered in arriving at the recommended finding. That information is privileged and cannot be publicly disclosed. By a preponderance of the evidence, CLERB determined the investigation proved the alleged actions were lawful, justified, and proper.

4. Misconduct/Procedure - Deputy 1 failed to place a seatbelt on Valenzuela.

Recommended Finding: Sustained

Rationale: In review of Deputies 1's and 2's BWC recordings, Deputy 1 placed Valenzuela in the back of his patrol vehicle before transporting him to jail. Deputy 1 was not observed to place a seatbelt on Valenzuela. In a telephonic interview with Valenzuela, Valenzuela confirmed that a seatbelt was not placed

on him. Deputies 1 and 2 provided information during CLERB's investigation that was considered in arriving at the recommended finding. That information is privileged and cannot be publicly disclosed. According to SDSO P&P Section 5.5 titled "Safety Belts," the driver of any county vehicle shall use and ensure all passengers use the available safety belt/shoulder harness restraint equipment installed in the vehicle before moving that vehicle." By a preponderance of the evidence, CLERB determined the evidence supported the allegation and the act or conduct was not justified.

5. Misconduct/Procedure – Deputies 1 and 2 failed to document that they muted the audio on their Body Worn Camera.

Recommended Finding: Sustained

Rationale: In review of Deputies 1 and 2's BWC recordings, it was noted that both deputies muted their BWC recordings. In review of the records associated with the incident, neither deputy notated why they muted their BWC recordings. According to SDSO P&P Section 6.131 titled "Body Worn Camera, the SDSO authorizes the use of BWC technology, with the goal of providing an additional layer of documentation for events, actions, conditions and statements made during critical incidents and to improve reports, collection of evidence and testimony in court. Muting is generally discouraged; however, there are situations in which muting may be beneficial. In all instances of muted audio, the deputy will document the reason for muting." Deputies 1 and 2 provided information during CLERB's investigation that was considered in arriving at the recommended finding. That information is privileged and cannot be publicly disclosed. By a preponderance of the evidence, CLERB determined the evidence supported the allegation and the act or conduct was not justified.

#### **24-023/GILLETE** (Priority)

1. Criminal Conduct – Unidentified deputies assaulted Derek Gillete.

Recommended Finding: Unfounded

Rationale: Derek Gillete stated, "On this date I went to court, I was beat up by 16-17 deputies for 8 minutes. They jumped me, kicked me, punched me. I also was sexually abused." San Diego Central Courthouse video surveillance showed in entirety the time Gillete was in the hallways with deputies as well with other IP's with no evidence that Gillete was assaulted, beat up or raped. During the investigation Gillete gave contradicting statements and he was found not credible. The complaint was so clearly without merit that no reasonable person could sustain a finding based on the allegation and there was no prima facie showing of misconduct. A preponderance of the evidence showed the alleged act or conduct did not occur.

#### **24-027/CHAVEZ** (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Brandon Hutchins, Celso Lopez, Evan Maldonado, Kevin McCauley, Cristian Ortega, Michael Pacheco, Joshua Price, Michael Proffitt, Cody Roberts, Samuel Robison and Cedric Roldan utilized force to arrest Gersain Guzman Chavez on 01-05-24.

Recommended Finding: Action Justified

Rationale: On 02-14-24, CLERB was notified of a San Diego Sheriff's Office (SDSO) use of force incident which resulted in an injury. This case was reviewed in accordance with CLERB Rules & Regulations 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents. On 01-05-24, deputies attempted to first detain and eventually arrest Chavez following a 911 call from a female claiming someone was trying to kill her. Deputies approached Chavez while the female was in the front passenger seat. Chavez failed to obey verbal commands and jumped into driver's seat, slamming the door on a deputy's finger. Chavez fled the scene and attempted to run over a different deputy in the process. A traffic stop was attempted but Chavez failed to stop the vehicle for approximately two miles while intentionally striking a patrol vehicle during the attempted stop. Chavez eventually was cornered in a dead-end but backed up into patrol vehicles many times before Chavez's vehicle stopped running. The female was able to flee the vehicle. Chavez disobeyed all verbal commands and refused requests to exit the vehicle on his own. Deputies used less-lethal munitions and deployed a canine to affect the arrest, which resulted in injuries to Chavez. Many

deputies were injured as a result of Chavez's assaultive actions and life-threatening behavior. According to SDO Use of Force Guidelines, deputies' use of force was appropriate and proportional to Chavez's assaultive actions and life-threatening behaviors. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

#### **24-028/SALAZAR** (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Michael Benninger, Arturo Lopez Jr., Clinton Riddell and Sergio Vicencio used force against Jesse Joaquin Salazar on 01-30-24.

##### 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 1-30-24, Deputies Vicencio and Benninger approached Salazar in a parking lot of the Days Inn Hotel in San Marcos, CA, while drinking a beer. Despite warnings that it was illegal to have an open container, Salazar picked up the beer again and drank in front of the officers. Deputy Vicencio told Salazar to put his hands behind his back but Salazar ran for a short distance until he was taken to the ground by Deputy Benninger. Deputy Benninger struck Salazar in the head with his right hand while trying to restrain Salazar's left hand. Deputies continued to warn Salazar "not to reach for it" but Salazar continues to try and put his hands in his shorts. Deputy Vicencio said "I'm going to fucking shoot you. Put the gun down." Salazar claimed he did not have a gun. Salazar was repeatedly warned to put the gun down or he would get shot. Deputies Lopez Jr and Riddell arrived shortly and assisted the other officers in restraining and cuffing Salazar. Salazar was exhibiting life threatening behavior by reaching for a loaded handgun and actively resisting. According to SDO Use of Force guidelines, Deputies Vicencio, Benninger, Lopez Jr. and Riddell's use of force and takedown were appropriate and proportional to the Salazar's assaultive actions and life-threatening behavior during a lawful detention attempt. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 4 muted his body worn camera on two occasions.

##### Recommended Finding: Sustained

Rationale: During review of Deputy 4's body worn camera (BWC), it was noted that Deputy 4's BWC was muted from 7:06 until 12:21 and from 16:20 to the end of the video at 31:38. While there was no interaction with Salazar while the camera was muted, Deputy 4 failed to document the reason for muting his camera in violation of San Diego Policy and Procedures Manual, Section 6.131, Body Worn Camera "In all cases where BWC video is muted, it shall be documented in writing." By a preponderance of the evidence, CLERB determines the investigation proved the evidence supports the allegation and the act or conduct was not justified.

3. Misconduct/Discourtesy – Deputies 1 and 4 used profanity during their contact with Salazar.

##### Recommended Finding: Action Justified

Rationale: During CLERB's investigation, it was noted Deputies 1 and 4 could be heard swearing at Salazar including put the "fucking gun down", "I will fucking shoot you" and calling Salazar a "dumbass". Deputy 4 documented these statements in the arrest report. Per SDO Policies and Procedures Section 2.22 Courtesy, "Employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. Coarse, profane, or violent language is generally prohibited." Although deputies used profane language, it should be noted the deputies were calm and courteous to Salazar up until the time Salazar actively resisted and continued to reach for a loaded weapon. The heightened intensity of the situation was the result of Salazar's life-threatening behavior. By a preponderance of the evidence, CLERB determined the investigation proved the alleged actions were lawful, justified and proper.

#### **24-035/CATES** (Routine)

1. Misconduct/Procedure - Deputies 1 and 2 responded to a call for service.

Recommended Finding: Action Justified

Rationale: In Cates' complaint he reported that he was at work and on his break when he was approached by Sheriff deputies. Cates explained, "*On 12-21-23 Poway sheriff's deputies were "responding to a burglar call" at around 2:45pm at the address 12245 Kirkham Rd in Poway. I was on my 3pm break sitting in my vehicle at 12525 Stowe Dr. A different parking lot and different address. I look up to my left only to see the deputies staring at me before they turn left into the parking lot behind me. They stop directly behind and accuse me of being part of "the call".*" The evidence reveals that Deputies 1 and 2 responding to the area for a call for service did occur. CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

2. Misconduct/Harassment - Deputies 1 and 2 "harassed" Cates.

Recommended Finding: Action Justified

Rationale: Cates alleged that Deputies 1 and 2 "harassed" him. Cates explained, "*They harass me and ask for my ID, I said I have absolutely nothing to do with that situation and am on my break and to leave me alone. I asked kindly at first until they start to approach me. That's when I say louder to stop approaching me.*" Per Body Worn Camera footage Cates never "kindly" asked the officers to stop approaching him but was agitated and screaming from the very beginning of the footage. Deputies 1 and 2 calmly approached Cates and asked him to relax numerous times. Additionally, Deputies 1 and 2 were in the area responding to a call which gave them reason to be in the area where Cates was located. CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

3. Excessive Force - Deputies 1 and 2 used force to subdue and arrest Cates.

Recommended Finding: Action Justified

Rationale: Cates alleged that Deputies 1 and 2 "*rushed me, taking me to the ground, and cuff me. They abused me that day and roughed me up. They caused me stress, anxiety, emotional stress, emotional anxiety and cuts on my elbows and hands, hurt my left knee and ruined my brand new pair of Carhartt overalls. In a matter of about 20 seconds, I went on being on my peaceful break to being handcuffed and arrested.*" And that "*my former supervisor vouched for me and explained to one deputy that I was on my break. The sheriffs still arrested me. All my former coworkers were outside watching as this embarrassing and humiliating encounter happened all because 1 and his partner, (2) had it set out that they were going to harass me instead of going to the correct warehouse.*" Per Body Worn Camera footage, Deputies 1 and 2 calmly approached Cates and asked basic information questions while Cates continually screamed at them to leave him alone. Cates behavior was erratic and once expired registration confirmation came, deputies told Cates he was under arrest and to put his hands behind his back. Cates immediately ran from deputies instead of complying. Upon catching up to him, a use of force ensued. During the use of force, Cates exhibited active resistance. Eventually, deputies were successful in securing Cates in handcuffs. According to SDSO Use of Force Guidelines, deputies' arrest and use of force was appropriate and proportional to Cate's passive and active resistance. CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

4. Misconduct/Discrimination – Deputy 3 conducted a "biased and opinionated" investigation.

Recommended Finding: Unfounded

Rationale: In Cates' complaint, he alleged that Deputy 3 of the SDSO Internal Affairs Division provided a "bias, opinionated internal investigation" letter. According to SDSO policy, the Internal Affairs Unit has the primary responsibility for the investigation of all complaints, and an Internal Affairs lieutenant determines when a complaint will be investigated. According to the SDSO, Cates' complaint was closed. Cates did not supply a copy of the response letter to CLERB, and SDSO can not disclose details of their investigation to CLERB. CLERB determines the investigation proved the evidence shows the alleged act or conduct did not occur.

5. Misconduct/Procedure – Unidentified deputies did not provide Cates with Body Worn Camera (BWC) recordings.

Recommended Finding: Action Justified

Rationale: In Cates' complaint he alleged that he was denied copies of the deputies BWC recordings. Cates explained, "I've requested body cam footage from that day, and they are declining to release any of it." According to SDSO P&P Section 6.131 titled "Body Worn Camera," all digital evidence collected using the BWC is considered property of the SDSO and is for official use only. 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. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

6. Misconduct/Procedure - Deputy 1 failed to comply with SDSO Body Worn Camera (BWC) policy.

Recommended Finding: Sustained

Rationale: During review of Deputy 1's body worn camera, (BWC) it was noted Deputy 1 had not activated the BWC prior to contact with Cates. Deputies had already exited their patrol vehicle and approached Cates. The deputies were responding to a commercial burglary which had the potential to involve immediate law enforcement action. According to SDSO P&P Section 6.131, it is the intent of the Sheriff's Office to record all law enforcement related contacts, and other contacts deemed appropriate. When responding to a call for service, a deputy shall activate their BWC in record mode prior to arriving on scene or upon arrival and prior to exiting their patrol vehicle. Deputies should also begin recording prior to initiating any law enforcement related contact. Deputies shall begin recording prior to arriving to an incident if the call has the potential to involve immediate enforcement action upon arrival. Deputy 1 provided confidential information during CLERB's investigation that was considered in arriving at the recommended finding. CLERB determines the investigation proved the evidence supports the allegation and the act or conduct was not justified.

7. Misconduct/Procedure – Deputy 2 failed to comply with SDSO Body Worn Camera (BWC) policy.

Recommended Finding: Sustained

Rationale: During review of Deputy 2's body worn camera (BWC), it was noted Deputy 2 had not activated the BWC prior to contact with Cates. Deputies had already exited their patrol vehicle and approached Cates. The deputies were responding to a commercial burglary which had the potential to involve immediate law enforcement action. According to SDSO P&P Section 6.131, it is the intent of the Sheriff's Office to record all law enforcement related contacts, and other contacts deemed appropriate. When responding to a call for service, a deputy shall activate their BWC in record mode prior to arriving on scene or upon arrival and prior to exiting their patrol vehicle. Deputies should also begin recording prior to initiating any law enforcement related contact. Deputies shall begin recording prior to arriving to an incident if the call has the potential to involve immediate enforcement action upon arrival. Deputy 2's BWC was also muted from 9:37 until 14:06. While there was no interaction with Cates or witnesses while the camera was muted, Deputy 2 failed to document the reason for muting his camera in violation of policy, "In all cases where BWC video is muted, it shall be documented in writing." Deputy 2 provided a confidential statement that was considered for the recommended finding. By a preponderance of the evidence, CLERB determines the investigation proved the evidence supports the allegation and the act or conduct was not justified.

**24-054/ALHOUT** (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Sage Banegas-Saska, Julien Blanc, Jacob Fisher, Sergio Gonzalez, Michael Johnson, Jose Lopez-Martinez, Thomas Mace, Sean Miller, Timothy Morphey, and Anthony Oliver utilized force against Hussein Essam Alhout on 03-01-24.

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 03-01-24, deputies attempted to transport Alhout for a court-ordered appearance and he resisted. After numerous attempts to calmly convince Alhout to comply, deputies attempted to restrain Alhout. For many minutes, Alhout exhibited assaultive behavior and active resistance by grabbing, punching and kicking deputies even after numerous taser deployments



and body strikes which caused injury to Alhout. Many deputies were injured as a result. According to SDSA Use of Force guidelines, deputies' use of force was appropriate and proportional to Alhout's assaultive actions and active resistance. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

#### **24-056/ESTRADA** (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Evan Carey and Frank Spinelli used force to arrest Sunny Estrada on 03-30-24.

Recommended Finding: Action Justified

Rationale: According to SDSA documentation, on 3-30-24, deputies responded to a Domestic Violence (DV) call between Estrada and his partner at their residence. Estrada's partner stated there was a physical altercation between her and Estrada in front of their minor child and she left the apartment. Body Worn Camera (BWC) showed when deputies found an AR-15 magazine on the floor of their shared apartment, but Estrada was not there. Deputies ultimately found Estrada and the minor child inside a neighbor's bedroom. Deputies entered the bedroom and instructed Estrada to surrender, but he did not comply with deputy commands. Deputies moved the child to safety and attempted to detain Estrada, but he continued to resist. Deputy Carey grabbed Estrada by his wrists and began to place his arms behind his back, but Estrada resisted and refused to comply with deputy commands. Deputies delivered closed fist strikes to Estrada's face in attempts to gain compliance. As a result of the force used, Estrada sustained an injury and was treated for his injuries prior to being booked into custody. SDSA Addendum F, use of Force Guidelines states that 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. Deputies used force with physical control techniques and body strikes to counteract Estrada's active resistant behavior. By a preponderance of the evidence, CLERB determined the investigation proved the alleged actions were lawful, justified and proper.

#### **24-060/LASTER** (Summary Dismissal)

1. Misconduct/Medical – SDSA medical staff failed to provide adequate medical treatment and nutrition to a pregnant Incarcerated Person (IP).

Recommended Finding: Summary Dismissal

Rationale: On 04-24-24, Christina Laster reported an Incarcerated Person (IP) was not receiving proper medical treatment for her high-risk pregnancy and adequate nutrition for the health of herself and her unborn child. CLERB reviewed SDSA records and confirmed the IP received medical care requested in accordance with SDSA policy and procedures. Medical charts indicated the IP's chief complaint was, "Still being hungry." Medical records also indicated the IP was on a special diet that all IPs receive when pregnant. Neither the complainant nor the investigation found that any sworn staff member of SDSA hindered, interfered with, or obstructed health care services, and therefore, CLERB lacks jurisdictional authority over complaints lodged against medical staff, as per CLERB Rules & Regulations 4.1 Complaints: Authority.

#### **24-064/COLES** (Routine)

1. Misconduct/Procedure – PO 1 denied Gyasi Coles a travel pass.

Recommended Finding: Summary Dismissal

Rationale: On 05-01-24, Gyasi Coles reported he wanted to sign up for a program outside the county and Probation Officer 1 allegedly said he would not receive a travel pass unless some died. A request for records was sent to the Probation Department who responded on 05-23-24, stating the complaint does not fall within CLERB's jurisdiction and CLERB was not entitled to the probationers records. Furthermore, on 01-23-25, CLERB was informed PO 1 separated from the Probation Department. Please note, CLERB counsel had filed a Petition with the Superior Court to obtain the records, which was pending at the time CLERB was

informed of the Probation Officer's separation from the department and that counsel continues to work on obtaining access to records in other adult Probation Department cases. CLERB Rules & Regulations 4.1, Complaints: Authority states 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 in the Sheriff's Department or the Probation Department... As the subject Probation Officer is no longer employed by the County of San Diego, CLERB lacks jurisdiction.

2. Misconduct/Procedure – PO Montoya ordered Coles to take non court-ordered classes.

Recommended Finding: Summary Dismissal

Rationale: Coles reported he was made to take Domestic Violence classes that were not court ordered. See Rationale #1.

3. Misconduct/Procedure – PO Montoya drug tested Coles.

Recommended Finding: Summary Dismissal

Rationale: Coles reported he was told he could not smoke legal recreational marijuana and was drug tested. See Rationale #1.

#### **24-078/CARTER** (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Andre Hollister, Matthew Milke, and Peter Vander Horn used force against Dwayne Carter on 04-25-24.

Recommended Finding: Action Justified

Rationale: On 04-25-24, San Diego Sheriff's Office (SDSO) deputies initiated a high-risk vehicle stop on a stolen vehicle. Dwayne Carter and Randi Davis were the occupants of the vehicle. Carter, the driver of the stolen vehicle, fled from deputies. A traffic pursuit was initiated, and force was subsequently used to apprehend Carter. As a result of the force used, Carter sustained an injury. SDSO 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." According to SDSO Use of Force guidelines, the deputies' use of force was appropriate and proportional to Carter's active resistance and assaultive behavior. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputies 1 and 4 failed to activate their body worn cameras as required by policy.

Recommended Finding: Sustained

Rationale: During CLERB's investigation, it was noted Deputies 1 and 2 did not activate their BWC's pursuant to P&P. SDSO P&P Section 6.131, Body Worn Cameras, stated, "when responding to a call for service, a deputy/CSO shall activate their BWC in record mode prior to arriving on scene or upon arrival and prior to exiting their patrol vehicle. In situations where activation was not accomplished prior to arriving on scene, those reasons shall be articulated in writing via case related report, or if no report, in CAD." By a preponderance of the evidence, CLERB determines the investigation determined there is evidence sufficient to prove the allegation.

#### **24-085/CHOE** (Routine)

1. Illegal Search and Seizure – Deputies 1 and 2 detained Daniel Choe on 03-21-24.

Recommended Finding: Action Justified

Rationale: The complainant, Daniel Choe, alleged San Diego Sheriff's Office (SDSO) deputies illegally detained him in an incident occurring on 03-21-24. Reports and body worn camera (BWC) footage from SDSO was received and reviewed as a part of this investigation. The evidence showed on 03-21-24, SDSO deputies responded to a report of a trespassing individual at San Marcos High School. Deputies 1 and 2 contacted Choe and detained him while conducting their investigation. The evidence showed no misconduct associated with Choe being detained pursuant to an investigation. SDSO P&P Section 2.51, Arrest, Search

and Seizure, stated, "Employees shall not make any arrest, search or seizure, nor conduct any investigation or official Office business, in a manner which they know or ought to know is not in accordance with law and established Office policies and procedures." By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

#### **24-090/SANDOVAL** (GBI)

1. Use of Force Resulting in Great Bodily Injury – Deputies Leena Alyashaa, Fernando Bonifacio Jr., Luis Duran, Matthew Milke, and Peter Vander Horn used force against Andres Sandoval on 05-10-24.

Recommended Finding: Action Justified

Rationale: CLERB Rules and Regulations Section 4.3, Complaint Not Required: Jurisdiction with Respect to Specified Incidents, states CLERB shall have authority to review, investigate, and report on the use of force by peace officers employed by the San Diego Sheriff's Office (SDSO) resulting in great bodily injury. On 05-10-24, Deputy Duran responded to conduct a welfare check of Andres Sandoval, after a request was made by the reporting party. During the contact with Sandoval, Sandoval exhibited assaultive behavior and active resistance by verbally and physically displaying an intention to assault Deputy Duran. Additionally, after numerous taser deployments and baton strikes, Sandoval refused to obey multiple commands to get into the prone position. Deputies Alyashaa, Bonifacio Jr., Milke, and Vander Horn, responded, and additional force was required, to detain Sandoval. Sandoval was injured as a result of the use of force. According to SDSO Use of Force guidelines, Deputies' use of force was appropriate and proportional to Sandoval's assaultive actions and active resistance. By a preponderance of the evidence, CLERB determines the investigation proved the alleged actions were lawful, justified and proper.

2. Misconduct/Procedure – Deputy 1 failed to activate Body Worn Camera (BWC) according to policy.

Recommended Finding: Sustained

Rationale: During this investigation, it was noted Deputy 1 did not activate BWC prior to contacting Sandoval. Per Deputy 1's report, "... I realized that I forgot to activate my Body Worn Camera (BWC) and later activated it once Sandoval was being detained." SDSO P&P Section 6.131, Body Worn Cameras, stated, "When responding to a call for service, a deputy/CSO shall activate their BWC in record mode prior to arriving on scene or upon arrival and prior to exiting their patrol vehicle. In situations where activation was not accomplished prior to arriving on scene, those reasons shall be articulated in writing via case related report, or if no report, in CAD." To the deputy's credit, P&P 6.131 was followed by documenting in a report that the BWC was not initially activated. By a preponderance of the evidence, CLERB determines the investigation determined there is sufficient evidence to prove the allegation.

#### **24-098/MCNALLY** (Summary Dismissal)

1. Misconduct/Medical – San Diego Sheriff's Office (SDSO) staff violated the complainant's rights as Durable Power of Attorney.

Recommended Finding: Summary Dismissal

Rationale: The complainant, Elizabeth McNally, said she has Durable Medical Power of Attorney (DPOA) for her father and requested his medical status from SDSO personnel. McNally stated she got the "run around, was passed off to others, and received outdated information" violating her rights as the designated DPOA. CLERB Rules & Regulations 4.1 Complaints: Authority states 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 in the Sheriff's Department. SDSO Medical staff and Case Managers are non-sworn personnel over whom CLERB lacks jurisdiction.

#### **24-110/MADRID** (Routine)

1. Misconduct/Intimidation – Deputy "Nettles" told Rachel Madrid to take off her coat.

Recommended Finding: Summary Dismissal

Rationale: Complainant Rachel Madrid stated, "I have a concern regarding Sheriff Nettles's conduct towards me while I was in line waiting to enter the x-ray area with about 10 other people. I was flagged down by this employee (Nettles) to come closer to the tables surrounding the x-ray area. He told me to take off my coat. I hesitated because underneath my coat I only wore a white see thru tank top and without the coat, you could see my breasts. I explained why I was uncomfortable taking off my coat/jacket, he said to me in a very intimidating voice; I said take it off! I took it off and handed it to the employee." There is no Deputy "Nettles" employed by the Sheriff. CLERB Rules and Regulations (R&R) Section 4.1 Complaints: Authority, states "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 in the Sheriff's Department or the Probation Department." CLERB R&R also states in Section 15 that a Summary Dismissal may be appropriate when CLERB does not have jurisdiction over the subject matter of the complaint. The Review Board lacks jurisdiction.

2. Discrimination/Sexual Harassment – Deputy "Nettles" stated, "Nice jacket and/or nice taste."

Recommended Finding: Summary Dismissal

Rationale: Complainant Madrid stated, "He said as he gave my coat to me, 'nice jacket' or 'nice taste.' I knew in my opinion that the reason to make me take off the coat was not for security reasons. He never checked the coat. See Rationale #1.

3. Misconduct/Intimidation – Deputy "Nettles" stated, "Go ahead and report me, nothing will be done about it."

Recommended Finding: Summary Dismissal

Rationale: Complainant Madrid stated, "I noticed the same employee at the exit line. I just walked passed the employee again, trying not to be noticed, but then I thought to at least look at his name and badge number. As I did this the employee stuck his chest out and held his name badge which was embroidered on his uniform and said 'Nettles, the name is Nettles.' I ignored him as I kept repeating his name over and over in my head so I wouldn't forget it. As I walked out the exit, the employee said, 'go ahead and report me, nothing will be done about it.' See Rationale #1.

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***End of Report***