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CITIZENS’ LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA

Tuesday, May 9, 2023, 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://us06web.zoom.us/j/88407992719?pwd=KzVteWFGNTc4ejZaeVNkQzg4dHpNdz09>

Phone: +1 669 990-6833

Webinar ID: 884 0799 2719

Passcode: 983684

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

DISABLED ACCESS TO MEETING

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

WRITINGS DISTRIBUTED TO THE BOARD

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

1. ROLL CALL

2. PUBLIC COMMENTS

This is an opportunity for members of the public to address the Board on any subject matter that is within the Board’s jurisdiction but not an item on today’s open session agenda. **Each speaker shall complete and submit an online “Request to Speak” form.** Each speaker will be limited to three minutes. This meeting will also be held remotely via the Zoom Platform. Click the link in the agenda header above to access the meeting using the Google Chrome web browser. Contact CLERB at clerb@sdcounty.ca.gov or 619-238-6776 if you have questions.

3. MINUTES APPROVAL (Attachments A1 and A2)

4. PRESENTATION/TRAINING

a) None

5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and Staff
- b) Workload Report – Open Complaints/Investigations Report (Attachment B)
- c) Case Progress and Status Report (Attachment C)
- d) Executive Officer Correspondence to Full CLERB (Attachment D)
- e) Policy Recommendations Pending Response, Listed by Department in Order of Date Sent to Department

Sheriff's Department (10)

- i. 21-096 / Cernilia
Recommendation Sent to SDSO on 10-02-22
 - It is recommended that the SDSO expand Policy and Procedures Section 6.131 entitled, "Body Worn Camera (BWC)" to incorporate the use of BWC to record all law enforcement-related contacts/interactions (i.e., telephonic calls for service, deputy call-backs, etc.), not just those contacts arising out of in-person scene responses or in-person deputy-initiated contacts.
- ii. 21-100 / Richardson
Recommendation Sent to SDSO on 10-02-22
 - This is the third incident over the past two years in which CLERB received complaints alleging that deputies assigned to the Imperial Beach Substation either failed to respond to community members while being videorecorded or attempted to interfere with a community member's right to videorecord law enforcement activity. In CLERB Case #20-025, there was insufficient evidence to determine whether, during nighttime hours, a deputy shined a flashlight toward the complainant for the purpose of interfering with his recording of the deputy's activities. In CLERB #21-024, CLERB sustained findings of a deputy refusing to acknowledge a complainant and provide identification upon request while being videorecorded. During that time, CLERB did not receive similar allegations about deputies assigned to any other station. As such, CLERB makes the following recommendation:
 - The SDSO update the Legal Affairs Update entitled "The Public Can Record the Police" dated 11-14-14, and document its review with all deputies, specifically those assigned to the Imperial Beach Substation.
- iii. Provision of Eviction Documentation in Threshold Languages
Recommendation Sent to SDSO on 10-23-22
 - Create and provide an additional notice when posting or serving a "Notice to Vacate" to include a summary of interpreter services offered by the County of San Diego. Further, the notice should include information on how to access a summary of eviction timelines and processes, translated in the eight languages the County of San Diego has identified as having a substantial number of limited English-speaking persons.
- iv. Proactive Review of Employee Social Media
Recommendation Sent to SDSO on 11-17-22
 - Add the following, or words to that effect, to the SDSO Policy and Procedures (P&P) Section 7.14 "Social Media:"
 - Management will routinely review employees' publicly available social media posts and department-issued cellphones and computers to ensure there is no biased content

or other activity that would tend to indicate discriminatory conduct, as such conduct undermines the credibility and legitimacy of SDSA and creates doubt that all communities will be served equitably.

v. 21-117 / Tuck

Recommendation Sent to SDSA on 12-16-22

- It is recommended that the SDSA implement a policy that provides guidelines for handcuffing. These guidelines should cover, at minimum, such topics as the proper placement of handcuffs; checking to ensure the handcuffs are not so tight as to cause injury, and mandatory engaging of the double-locking function when tactically safe. A comprehensive handcuffing policy should also provide guidelines covering the documentation of injuries and/or complaints of pain allegedly due to handcuffs and the provision of medical treatment to prisoners claiming said injuries.

vi. Search or Scan All Persons Entering Detention Facilities

Recommendation Re-Submitted to SDSA on 01-18-23

- Physically search or body scan all persons entering a SDSA-operated detention facility, to include all SDSA employees, County employees, contractors, and those persons conducting county-related business.
 - “All persons” also includes social and professional visitors and incarcerated persons (I/Ps) upon booking and transferring between facilities or re-entering a facility after having departed it for court, medical treatment, etc.

vii. Publicly Release Reviews Conducted by the Critical Incident Review Board (CIRB)

Recommendations Sent to SDSA on 02-03-23

- Upon completion of the Critical Incident Review Board (CIRB) proceedings of an in-custody death, publicly release the CIRB Final Report.
- If unwilling to release the CIRB Final Report, consider establishing a separate public process for internally reviewing deaths and making necessary changes, as recommended in California State Auditor (CSA) Report 2021-109 entitled, “San Diego Sheriff’s Department.”
- Clarify the role of CIRB, specifically reconciling what is listed on the SDSA website with SDSA P&P Section 4.23. Is CIRB’s purpose to assess “civil exposure” and avoidance of “potential liability...in the future,” is it to make the facilities safer for all, or is it both?
- Codify any implemented changes into SDSA P&P Section 4.23.

Probation Department (4)

viii. Use of Technology to Monitor Health and Safety of Inmates

Recommendations Sent to Probation on 04-12-22

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

ix. White Supremacy and Extremist Groups in Law Enforcement

Recommendation Sent to Probation on 11-17-22

- Amend Probation Policy and Procedures (P&P) Section 903.6.4, “Relationships,” or create a new, stand-alone P&P that captures the following, or words to that effect:
 - Employees shall not participate and/or associate, whether in-person, electronically, or via social media, with groups or individuals who espouse beliefs which discriminate against an entire class of people, typically for their immutable characteristics. Such participation or association undermines the credibility and legitimacy of the Probation

Department and creates doubt that all communities will be served equitably.

- x. Prohibition of Law Enforcement Gangs
Recommendation Sent to Probation on 11-17-22
 - Comply with Penal Code §13670, “Law Enforcement Gangs” by implementing a policy prohibiting participation in a law enforcement gang.

f) Policy Recommendation Responses

- i. None

g) Sustained Finding Pending Response

Sheriff’s Department (2)

- i. 22-109 / Bandy
- ii. 22-143 / Lowder

h) Sustained Finding Response

- i. None

6. BOARD CHAIR’S REPORT

7. NEW BUSINESS

- a) Update on SB 519 (2023)
- b) Appointment of CLERB Officer Ad Hoc Nomination Committee

8. UNFINISHED BUSINESS

- a) None

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

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

CASES FOR SUMMARY HEARING (6)

22-054/ROBINSON

- 1. Misconduct/Procedure – Deputy 1 failed to return Robinson’s phone call.

Recommended Finding: Unfounded

Rationale: In Kirby Robinson’s written statement, she reported “Kirby [Robinson] notified Deputy 1 of the

theft and break in he told Kirby to calculate the amount Kirby called back and spoke with a dispatcher who was able to transfer me to Deputy 1 to leave a message Deputy 1 never responded or filed the report even after me notifying him of the amount and items stolen along with witnesses whom were the neighbors..." The officer said that they would come out to the house unlocked occasions and they never did they stated that they would follow up on the police report they never did they told me to contact them in an email or leave them a message about the statements I did and they never responded back." Through the course of the investigation, the complainant's cell phone call logs were viewed, coupled with the Department's documentation of the service call. 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. The evidence shows that the alleged act or conduct did not occur.

2. Misconduct/Procedure - Deputies 1-7 failed to investigate Robinson's calls for service.

Recommended Finding: Unfounded

Rationale: In Robinson's written statement, she advised, "*Kirby notified the deputy that this was ongoing abuse and harassment that Kirby had been reporting she notified the deputy she had called 2 other times within the week prior due to abuse and harassment and more but police have not helped, but instead enabled the abuser, allowing Kirby Robinson, the victim, to continue to be abused along with her child. I also want to note that due to the San Marcos department's incompetence my life and my child's life have constantly been at risk and in danger and they chose not to fill out the reports or follow up even though they'd been called for the same issues over 20+ times. They failed to do their job which is to protect and serve. Reports were either filed improperly or not at all the deputies falsified reports and refused to document vital evidence. Police doing their job which is to protect and serve the citizens of this country. San Marcos Police Department is completely corrupt and have not been handling cases properly for over decades I've come to them with rape cases, domestic abuse cases. None in which we're documented properly in fact all we're falsified by the deputies dispatched.*" Though Robinson alleged procedural misconduct and false reporting over the span of three years, per CLERB's jurisdiction, only those calls of service made over the past year of the date of her complaint were investigated. According to the multiple documents provided by the San Diego Sheriff's Department (SDSD), deputies responded to Robinson's residence nine times between February 2022 and June 2022. Each time a deputy responded to a call of service at the residence, the circumstances and outcome of the call were documented in the Department's Background Event Chronology Events (CAD). On one occasion, there was probability that an assault occurred, and for that incident, a crime report was written. An area detective conducted a follow-up investigation. The allegation that Deputies 1-7 failed to investigate the complainant's calls for service were found to be unfounded. The evidence showed that the alleged act or conduct did not occur.

3. False Reporting - Deputies 1 and 4 falsified their reports.

Recommended Finding: Unfounded

Rationale: In Robinson's written statement, she alleged that Deputies 1 and 4 falsified their written reports. Robinson stated, "*They decided to falsify a police report this damn shame Vista not take vital evidence and my reports and then when confronted about statements in which they put reports they claimed I could not change them.*" On 02-24-22, Deputy 1 responded to Robinson's residence in reference to her vehicle being burglarized. At the time of his response, Robinson was unable to provide specifics on the theft, so Deputy 1 requested she contact him when she was able to provide the information. Robinson failed to provide the requested information, so no crime report was documented. Since a report was not written, the information from the call of service was documented in Deputy 1's CAD notes. Deputy 1 provided Robinson with his name, identification number, and the incident event number. The call for service was closed as "information only," pending further details for a case report. On 03-05-22, Deputy 4 responded to Robinson's residence in reference to an assault. After conducting an investigation and interviewing the involved parties, Deputy 4 determined that Robinson was the dominate aggressor in the incident, versus the victim. As such, Deputy 4 documented his findings in his written report. Robinson did not agree with his report and alleged that it contained falsified information. The allegation that Deputies 1 and 4 falsified their reports was unfounded. The evidence showed that the alleged act or conduct did not occur.

4. Misconduct/Procedure – SDSD did not provide reports to Robinson.

Recommended Finding: Unfounded

Rationale: In Robinson’s written statement, she reported, “...they’ve refused to provide me with requested police reports. When Kirby went to the police station to obtain police reports to file for a restraining order the reports weren’t filed the deputies refused to provide the documents they refused to provide the report and documents phone number and complaints number they refused to provide the deputies involved email and contact information along with sergeant contact information the deputies discriminated upon Ms. Kirby Robinson.” Request for records from the SDSD did not produce any evidence indicating that Robinson appeared in person at the Sheriff’s San Marcos substation. In Deputy 5’s Body Worn Camera (BWC) recording, Robinson attempted to explain to Deputy 5 that she went to the San Marcos substation and tried to get a copy of a report. When Deputy 5 asked her specifics, Robinson appeared confused and vaguely said that “the lady at the counter said I couldn’t get a copy of the report. I don’t know why.” Deputy 5 explained the process to obtain a report and informed Robinson she would have to pay a fee. Being that Robinson appeared confused and was unfamiliar with the process of obtaining a Crime Report, coupled with her lack of merit through the case, it was unlikely that Robinson attempted to obtain a report. Robinson failed to identify the involved personnel or provide evidence to corroborate her allegations. The allegation that unidentified deputies refused to provide Robinson with a written report was unfounded. The evidence showed that the alleged act or conduct did not occur.

5. Misconduct/Procedure - Deputies 1, 4, and 6 did not provide their badge numbers to Robinson.

Recommended Finding: Unfounded

Rationale: In Robinson’s written statement, she advised, “they’ve refused to provide badge numbers and contact information.” According to SDSD Policy & Procedure Section 2.20 titled “Identification,” while on duty, all employees shall furnish their first and last name or ARJIS number to any person requesting his or her identity, except when the withholding of such information is necessary for the performance of police duties. In Robinson’s numerous interactions with numerous deputies, each deputy documented that they supplied Robinson with their name, identification number/ARJIS, and the incident event number. Additionally, Robinson’s interactions with Deputies 1, 4, and 6 were captured on their BWC recordings. Each deputy was observed, upon her request, to provided their name, identification number, and the incident/event number for the incident each responded to. The allegation that Deputies 1, 4, and 6 did not provide their badge numbers to Robinson was unfounded. The evidence showed that the alleged act or conduct did not occur.

6. Misconduct/Procedure - Unidentified deputies refused to contact a sergeant at Robinson’s request.

Recommended Finding: Summary Dismissal

Rationale: In Robinson’s written statement, she alleged “[they] refused to allow me to contact or speak with the sergeant.” The allegation the that unidentified deputies refused to contact a sergeant at the complainant’s request was previously investigated in CLERB case #22-097, allegation #4. The allegation was found to be unfounded. The Review Board lacks jurisdiction to reinvestigate the same allegation.

7. Misconduct/Procedure - SDSD did not provide Robinson with Body Worn Camera (BWC) recordings.

Recommended Finding: Action Justified

Rationale: In Kirby’s complaint letter she said, “They’ve also refused to provide the body cam footage.” Kirby was not witnessed to inquire about BWC in any of the audio or visual recordings, to include any of the involved deputies BWC recordings. According to SDSD P&P Section 6.131 titled “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. Accessing, copying, forwarding or releasing any digital evidence for other than official law enforcement use, or contrary to this procedure, is strictly prohibited. Public release of digital evidence is prohibited unless approved by the Sheriff or their designee.

8. Misconduct/Discourtesy - Unidentified deputies "victim shamed" Robinson.

Recommended Finding: Unfounded

Rationale: In Robinson's written statement, she reported "*they have no knowledge of how to deal with woman or abuse/rape victims they victim shame and make it so it's unsafe to file a report.*" In the span of this investigation, Robinson was involved in seven documented incidents with numerous deputies. All interactions were captured on the deputies' BWC recordings. Additionally, the interactions were notated in the SDSA Background Event Chronology Events (CAD), and in the audio recordings that the complainant provided. All deputies were courteous, tactful in the performance of their duties, and exercised patience and discretion. Deputies acted properly and judiciously and acted consistent with established Department procedures. The evidence showed that the alleged act or conduct did not occur.

22-116/GUTIERREZ

1. Discrimination/Racial – Unidentified San Diego Police Department (SDPD) "taught" new recruits "racial and discriminatory" practices.

Recommended Finding: Summary Dismissal

Rationale: Gutierrez stated, "so far I have at least four videos of police officers breaking the law and indoctrinating new officers. I've witnessed all four times older police are teaching the new recruits racially and discriminatory practices. The recruits assume they are getting trained and not racially indoctrination." On 10-18-22 In a telephonic conversation with an intake investigator, Gutierrez stated the allegation about officers teaching new recruits about discrimination was against San Diego Police Department (SDPD). 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 San Diego Police Department (SDPD) as such was unable to investigate further. The Review Board lacks jurisdiction.

2. Discrimination/Racial – Unidentified SDSA deputies "taught" new recruits "racial and discriminatory" practices.

Recommended Finding: Summary Dismissal

Rationale: In Gutierrez's complaint, he stated he had "four videos of police office breaking the law". Gutierrez submitted the video evidence one week following the signed complaint. The video evidence included one video submitted of the alleged "false arrest" and the remaining videos were SDSA incidents that occurred after Gutierrez had submitted his signed complaint. The video evidence was emailed a week following Gutierrez's signed complaint. Pursuant to CLERB Rules and Regulations, Section 5.4, Time Limitations for Filing Complaints, all complaints shall be received within one year **after** the day of the incident giving rise to the complaint. Gutierrez was advised to submit a new complaint to investigate the videos that occurred after his initial complaint. However, he stated he only wanted the "false arrest" investigated at this time. The Review Board lacks jurisdiction.

3. Misconduct/Discourtesy - Deputy 1 was discourteous to Gutierrez upon contacting him in public.

Recommended Finding: Sustained

Rationale: Through the course of investigation, it was discovered Deputy 1 was discourteous towards Gutierrez. Video evidence submitted by the complainant showed deputies exit their patrol vehicle and walk towards Gutierrez. Gutierrez asked the deputies, "what's this for?" and "what are you doing?" The deputies asked Gutierrez what the burning object was, Gutierrez responded "it is sage, it is for my religion, is there a problem that I burn sage?" Deputy 1 stated, "put that shit on the ground". Per SDSA P&P 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." The video evidence showed Deputy

1's first words to Gutierrez following the exit of his vehicle were "put that shit on the ground". Deputy 1 provided confidential information 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. In a telephonic interview with Gutierrez on 03-24-23, Gutierrez stated when Deputy 1 referenced "put that shit down", he knew he was referring to the sage. Gutierrez stated he was surprised by his strong language and knew that his demeanor was negative in nature. Based on his language, Gutierrez stated he knew it wasn't going to be a simple stop and frisk. CLERB requested an interview with Deputy 1, but he exercised his right to decline participation in an interview pursuant to a long-standing agreement between CLERB and the Deputy Sheriff's Association. The evidence supports the allegation, and the act or conduct was not justified.

4. False Arrest – Deputy 1 arrested Gutierrez.

Recommended Finding: Action Justified

Rationale: Gutierrez stated, "I get kidnapped and robbed by the police". SDSL P&P 6.67 policy entitled Forced Blood Draws in Specific intent crimes states, "all arrests for 11550 H&S, 647(f) (drugs) P.C. and D.U.I. will be supported by probable cause. Reports shall clearly articulate the reason for the contact and the probable cause for the arrest. Detailed descriptions of the signs of drug influence and/or alcohol influence observed by the deputy, along with the results of any field coordination or drug influence tests conducted by the deputy, shall be included in the report." In Deputy 1's arrest report, he stated he immediately observed signs and symptoms of Gutierrez being under the influence of a controlled substance. Deputy 1 stated Gutierrez's arms and hands displayed muscle rigidity while his fingers moved rapidly. Furthermore, Gutierrez refused to participate in any field coordination or sobriety tests conducted by the deputy. Deputy 1 provided confidential information 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 shows that the alleged act or conduct did occur but was lawful, justified and proper.

5. False Arrest – Deputy 2 arrested Gutierrez.

Recommended Finding: Unfounded

Rationale: Gutierrez stated, "I get kidnapped and robbed by the police[sic]". SDSL records showed Deputy 1 arrested Gutierrez, not Deputy 2. Deputy 2 provided confidential information 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 the alleged act or conduct did not occur.

6. Misconduct/Procedure – Unidentified SDSL deputies "kept" Gutierrez's property.

Recommended Finding: Summary Dismissal

Rationale: Gutierrez stated, "Sheriff kept my cash, wallet, keys, speaker, and backpack". Gutierrez wrote underneath his complaint, "I eventually picked up my stolen property from Rancho San Diego Sheriff's Department." In a telephonic conversation with Gutierrez on 12-07-22, he stated he received his property back and no longer desired CLERB to investigate this allegation. The review board lacks jurisdiction.

22-133/SANTANA

1. Excessive Force – Deputies 1, 2 and/or 4 "beat" Joshua Santana.

Recommended Finding: Action Justified

Rationale: The complainant, Joshua Santana, reported that on 11-05-22, while he was incarcerated at San Diego Central Jail (SDCJ), he engaged in an altercation with another incarcerated person (I/P) and was moved into a different cell. He stated that his new cell had a clogged toilet, but Deputy 2 instructed him to "occupy anyway." Santana reported, "As (Deputy) 2 came to deliver my belongings, I retaliated by splashing

a 'liquid substance' at the deputy." Santana reported deputies responded and "beat him and kicked him in the face." Deputy 2's report stated when Santana's cell door opened, he threw a liquid substance at him (which was later identified as water) and took on a fight stance towards the deputy. Deputy 2 reported that he used force/hand strikes towards his face and ultimately took him down to the floor. Deputy 1 responded and assisted Deputy 2, used force/hand strikes on Santana's torso/shoulder area and ultimately subdued Santana. Deputy reports stated that Santana did not comply with deputy commands, resisted, and thrashed his body on the floor. SDSL documentation showed that Santana was evaluated/treated by jail medical staff and cleared to return to his cell. Jail surveillance video showed Deputy 2 approach Santana's cell with the I/P's property and enter the cell. The surveillance video did not capture the incident within the cell, but Santana admitted in his complaint that he retaliated towards Deputy 2 and SDSL documents confirmed he had a history of assaultive and boisterous behavior towards sworn staff. Also, Santana threw a "liquid substance" at a deputy which according to SDSL DSB P&P, O.3 Rules and Regulations of Incarcerated Persons is a rule violation under Section 100 Conduct and Demeanor and Section 700 Facility Security/Safety. Section 6.48 Physical Force states that while a deputy is performing their official law enforcement duties, deems it necessary to utilize any degree of physical force shall only be that which the Deputy Sheriff believed necessary and objectively reasonable to effect the arrest, prevent escape or overcome resistance. Deputies 1, 2 & 4 provided confidential statements during the course of CLERB's investigation that were considered in arriving at the recommended finding. Given the totality of circumstances, the force used towards Santana was reasonable. The evidence showed that the alleged act or conduct did occur but was lawful justified and proper.

2. Excessive Force – Deputies 1 and/or 4 “kicked” Joshua Santana’s face.

Recommended Finding: Not Sustained

Rationale: Joshua Santana, the complainant reported that he was “kicked in the face” by a deputy. Also see Rationale #1. Santana reported to CLERB that he was kicked in the face one time by an unidentified deputy, but stated it was not Deputy 2. Santana stated he obtained a black eye as a result of the incident. Use of Force policy states that deputies should avoid kicking a subject's head; striking this area should be avoided unless the subject's actions suggest imminent threat of death or serious injury to the deputy or others and no reasonable alternatives are available. Policy states that using force must be clearly articulated in writing and there was no documentation that deputies delivered “kicks” towards Santana. Deputies 1,2 & 4 provided confidential statements during the course of CLERB's investigation that were considered in arriving at the recommended finding. Due to the lack of video surveillance inside the cell, there was not enough evidence to prove or disprove if deputies “kicked” Santana in the face. Jail medical records were reviewed and inconclusive. There was insufficient evidence to either prove or disprove the allegations.

3. Excessive Force – Deputy 4 used force towards Santana.

Recommended Finding: Unfounded

Rationale: Santana identified Deputy 3 as a subject officer/witness. See Rationale #1. Through the course of investigation, it was determined that Deputy 3 was not involved in the use of force incident. SDSL documentation showed that Deputy 3 was not scheduled to work on 11-05-22 at San Diego Central Jail; this information was also verified through the SDSL Division of Inspectional Services. Deputy 3 was not present the day of the incident and the evidence showed that the alleged act or conduct did not occur.

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.

23-020/MACIAS

1. Use of Force Resulting in Great Bodily Injury – Deputy 1 utilized force to effect an arrest of Guillermo Macias on 01-18-23, which resulted in Macias 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. According to documents received from SDSL related to this incident, on 01-18-23, deputies were dispatched to a burglary at a Fallbrook business which sell firearms. The reporting party, was able to access a live feed of the CCTV cameras in the business which showed Macias breaking into display cases, retrieving multiple firearms, and subsequently loading them with ammunition. This information was relayed to responding deputies who set up a perimeter and

attempted to communicate with Macias without success. Macias was barricaded inside of the business for approximately two and a half hours. Ultimately, Macias exited the business, but did not comply with deputies' directives to stop and get on the ground, and Deputy 1 deployed his SDDS canine. The canine engaged with Macias, and deputies subsequently approached Macias and were able to secure him in handcuffs. A subsequent search of Macias revealed he had six loaded firearms around his waistband and in his pockets. After Macias was secured, he was transported to a hospital and treated for his injuries. SDDS Policies and Procedures (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." Further, SDDS P&P Addendum Section F – Canines, stated, "Law enforcement trained canines are a viable intermediate force option when employed under the direction of their handlers according to the department's Canine Unit Manual. Canines are typically used in search scenarios, for deputy protection and for apprehension of fleeing subjects wherein this degree of force is justifiable. Canines certified and approved for department use may be used under the following circumstances: For the protection of the handler, other law enforcement officers and citizens. To locate, apprehend or control a felony suspect when it would be unsafe for the deputies to proceed into the area. To locate, apprehend or control armed misdemeanor suspects. To search for narcotics. For crowd control. For the protection of deputies during prisoner movement. And article searches." Based on a review of deputy reports, in conjunction with Body Worn Camera (BWC) footage of the incident, the use of force was appropriate and within policy given the totality of circumstance presented to deputies at the time. Additionally, the use of an SDDS canine in this incident very likely prevented deputies from having to use lethal force in defense of their lives. The evidence showed that the conduct that occurred was lawful, justified and proper.

23-027/KHOURY

1. Excessive Force – Deputies 1 and 3 "very roughly" removed Khoury from her (bed)room.

Recommended Finding: Unfounded

Rationale: Khoury stated, "the officers came into my room and immediately escorted me very roughly out of my room, treating me as if I were a criminal." BWC evidence showed when SDDS Deputies arrived Khoury was extremely upset and crying in her room. Deputies asked Khoury to come outside so they can talk outside where her family can't hear. BWC showed SDDS Deputies gently guided Khoury by the arm and walked her outside. SDDS P&P Addendum F Use of Force Guidelines, "When verbalization proves ineffective, arm guidance or a firm grip may suffice to overcome resistance. Arm guidance or a firm grip that results in injury requires documentation." The BWC did not show any evidence of SDDS deputies being "rough". The evidence showed SDDS deputies gently guided Khoury outside by her wrist and arm with very limited touch and/or force. The evidence showed that the alleged act or conduct did not occur.

2. Misconduct/Procedure – Deputies 1, 2, 3, and 4 did not allow Khoury access to her (bed)room.

Recommended Finding: Action Justified

Rationale: Khoury stated, "I was so distressed by the beating I had endured, and by the treatment of the officers, that I urinated uncontrollably as they were forcing me to leave the room. I took off my wet underwear, and then the officers would not allow me to return to my room to get clean underwear." Per SDDS P&P 6.32 titled "Mentally Ill Persons" states, "upon determining an individual requires an evaluation for a 72-hour hold pursuant to 5150 of the Welfare and Institutions Code, the required documentation will be completed, and the individual will be transported to the appropriate mental health facility." Welfare Institutions Code 5150 states, in summary, when a person, as a result of a mental health disorder is a danger to others, a peace officer or member of a mobile crisis team, upon probable cause, can take a person into custody for a 72-hour assessment, evaluation, and crisis evaluation. BWC evidence showed Khoury was not allowed back in the house since it was determined she was a danger to others. Khoury was transported to Alvarado Parkway Institute for further care and documentation was completed in accordance with policy. BWC evidence showed Deputy 1 repeatedly followed up on Khoury's request for a clean pair of underwear. BWC showed Deputy 1 returned to Khoury's room and retrieved a clean pair of

her underwear, along with other items she requested. Deputy 1 repeatedly went back to Khoury's room to ensure he gathered all the correct items Khoury requested. Deputy 1 placed all the items in a plastic bag and placed in the back of the patrol vehicle to leave with the hospital after transport to their facility. The evidence showed that the alleged act or conduct did occur but was lawful, justified and proper.

3. Misconduct/Procedure – Deputies 1, 2, 3, and 4 refused Khoury's statement.

Recommended Finding: Unfounded

Rationale: Khoury stated, "I tried to tell the officers what had happened, but they would not listen to me." BWC evidence showed several times during the incident, Deputies asked Khoury what she would like the deputies to do. Khoury repeatedly did not answer the question and at one point stated she was "a standstill" due to her upcoming enrollment in pharmaceutical school. Deputies also asked Khoury what happened and also asked if she needed medical assistance several times. Based on the information provided by Khoury, SDSA deputies determined a Psychiatric Emergency Response Team (PERT) Clinician was needed. SDSA P&P 6.113 titled "Psychiatric Emergency Response Team (PERT)" states, "When the Communications Center receives a call involving a mentally disordered individual, the radio dispatcher will dispatch uniformed deputies as necessary to handle the situation. Once on the scene, the patrol deputies will determine if the PERT team is needed. Should the PERT team not be available for response and the situation is not considered critical, the deputy may submit a referral form for PERT follow-up." SDSA records showed PERT was requested and a PERT Clinician evaluated Khoury.

4. Misconduct/Procedure – Deputies 1, 2, 3, and 4 failed to recognize Khoury was a victim of domestic violence.

Recommended Finding: Unfounded

Rationale: Khoury stated, "I subsequently consulted with a staff attorney at San Diego Volunteer Lawyer Program, Inc., who works with victims of domestic violence. She told me it is a common tactic of abusers to try to convince responding officers that the victim is unstable. I am shocked that the officers who responded to my distress call had not been trained to look out for this behavior. It is unbearable that these officers, in their ignorance and disrespect, magnified my trauma when I had called for help. I believe they need to be trained on recognizing this tactic and to increase their sensitivity to victims of domestic violence." SDSA records showed Deputies requested PERT assistance due to the nature of the incident. BWC evidence showed during the PERT evaluation, a PERT Clinician provided resources to Khoury in case she needs to find a shelter if she feels unsafe.

5. Discrimination/Sex/Gender – Deputies 1, 2, 3, and 4 discriminated against Khoury based on her being a female.

Recommended Finding: Unfounded

Rationale: Khoury stated, "I also believe that their conduct resulted in part because I am female and Middle Eastern." SDSA P&P 2.53 titled "Discrimination" states, "Employees shall not express any prejudice or harassment concerning race, religious creed, color, **national origin**, ancestry, physical or mental disability, medical condition, pregnancy, marital status, **gender**, age, political beliefs, sexual orientation, sexual or gender identity, lifestyle or similar personal characteristics." There was no evidence that showed discrimination on any part of the SDSA. The evidence showed SDSA Deputies treated Khoury respectfully and courteously. The evidence shows that the alleged act or conduct did not occur.

6. Discrimination/National Origin – Deputies 1, 2, 3, and 4 discriminated against Khoury based on her being Middle Eastern.

Recommended Finding: Unfounded

Rationale: Khoury stated, "I also believe that their conduct resulted in part because I am female and Middle Eastern." See *Rationale* #5.

End of Report