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CITIZENS' LAW ENFORCEMENT REVIEW BOARD

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REGULAR MEETING AGENDA
TUESDAY, AUGUST 11, 2020, 5:30 P.M.

Remote Meeting via BlueJeans Platform

<https://primetime.bluejeans.com/a2m/live-event/euedjgkr>

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 should complete and submit an online "[Request to Speak](#)" form. Each speaker will be limited to three minutes. This meeting will be held remotely via the BlueJeans Platform. Click this link <https://primetime.bluejeans.com/a2m/live-event/euedjgkr> to access the meeting. You will need to download the BlueJeans application prior to participating in the meeting or you may copy and paste the link using the Google Chrome web browser. Please contact CLERB at clerbcomplaints@sdcounty.ca.gov or 619-238-6776 if you have questions.

3. MINUTES APPROVAL (Attachment A)

4. PRESENTATION/TRAINING

- a) Presentation by Ebony N. Shelton, County of San Diego Chief Financial Officer and Deputy Chief Administrative Officer of the Finance and General Government Group.

- b) Presentation by Attorneys James Sandler and Jessica Kondrick of Sandler, Lasry, Laube, Byer & Valdez LLP.

5. EXECUTIVE OFFICER'S REPORT

- a) Overview of Activities of CLERB Executive Officer and staff for the month of July
- b) Workload Report – Open Complaints/Investigations Report (*Attachment B*)
- c) Case Progress and Status Report (*Attachment C*)
- 19-021/Pitau – SDS Response to CLERB Letter
 - 19-076/Burgess – SDS Response to CLERB Letter
 - 19-091/Brooks – SDS Response to CLERB letter

PENDING RESPONSES

Policy Recommendations

17-020 / Lindhardt – SDS
17-150 / Horsey – SDS
19-018 / Thornton - Probation
19-021 / Pitau - SDS
19-037 / Ortiz - SDS
19-076 / Burgess -SDS
19-091 / Brooks - SDS
19-116 / July – SDS

Sustained Findings

17-150 / Horsey - Deputy 1
19-037 / Ortiz – Deputy 1

6. BOARD CHAIR'S REPORT

7. NEW BUSINESS

- a) N/A

8. UNFINISHED BUSINESS

- a) Detention Facility Subcommittee Update
b) Revise Process of Nomination and Selection of CLERB Board Members

9. BOARD MEMBER COMMENTS

10. SHERIFF/PROBATION LIAISON QUERY

11. CLOSED SESSION

- a) PUBLIC EMPLOYEE PERFORMANCE EVALUATION – CLERB Executive Officer
(Subdivision (b)(1) of Government Code Section 54957)
- 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).

| DEFINITION OF FINDINGS | |
|-------------------------------|--|
| Action Justified | The evidence shows that the alleged act or conduct did occur but was lawful, justified and proper. |
| Not Sustained | There was insufficient evidence to either prove or disprove the allegation. |
| Sustained | The evidence supports the allegation and the act or conduct was not justified. |
| Unfounded | The evidence shows that the alleged act or conduct did not occur. |
| Summary Dismissal | The Review Board lacks jurisdiction or the complaint clearly lacks merit. |

CASES FOR SUMMARY HEARING (9)

11-105

1. Discrimination/Racial – Homicide detectives denied Rebecca Zahau due process because she was “Asian and had no monetary wealth.”

Recommended Finding: Summary Dismissal

Rationale: Following the complainant’s request for CLERB Rules & Regulations 16.9, Reconsideration of Final Report, a thorough comparison of all available information was conducted and concluded that there was no new evidence to alter the case findings, all subject officers have retired, and CLERB has no jurisdiction over Deputy 1. The Review Board lacks jurisdiction based upon 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 in the Sheriff’s Department... And because the incident giving rise to the complaint occurred in 2011, 4.1.2 Complaints: Jurisdiction: The Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint... The Review Board lacks jurisdiction.

2. Discrimination/Other - Homicide detectives “catered to the white and privileged” Shacknai family.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1

3. Misconduct/Procedure – Coronado Police Department did not protect Zahau’s body at the crime scene from onlookers and/or media coverage.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1

4. Misconduct/Procedure – Homicide detectives did not interview the victim’s family members.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1

5. Misconduct/Procedure – Homicide detectives disclosed information to Zahau’s boyfriend.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

6. Misconduct/Discourtesy – Deputy 3 told the victim’s family not to come to California.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

7. Misconduct/Discourtesy – Deputy 2 told the Zahau family that “he knew Asian women.”

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

8. Misconduct/Procedure – Deputy 4 ignored evidence provided by the victim’s family.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

9. Misconduct/Procedure – Homicide detectives provided information to a potential suspect but denied information to the victim’s family.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

10. Misconduct/Procedure – Deputy 2 and/or 3 “interrogated” the victim’s family.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

11. Misconduct/Truthfulness – Detectives “lied” about a suspect’s polygraph results.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

12. Misconduct/Procedure – Detectives failed to properly drug test Zahau for evidence.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

13. Misconduct/Truthfulness – Detectives lied to the Zahau family about details associated with the victim’s death.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

14. Misconduct/Truthfulness – Deputy 4 and/or the Chief Deputy Medical Examiner, reported different details at a press conference than what they disclosed to the Zahau family.

Recommended Finding: Summary Dismissal

Rationale: The Review Board shall not have jurisdiction to take any action in respect to complaints received more than one year after the date of the incident giving rise to the complaint, except that if the person filing the complaint was incarcerated or physically or mentally incapacitated from filing a complaint following the incident giving rise to the complaint, the period of incarceration or incapacity shall not be counted in determining whether the one year period for filing the complaint has expired. In this case, the Review Board lacks jurisdiction. The Chief Deputy Medical Examiner was employed at the San Diego County Medical Examiner’s Office (SDMEO) and his actions were covered by the Chief Medical Examiner. The review Board lacks jurisdiction over the SDMEO.

15. Misconduct/Procedure – Homicide Detectives failed to process a crime scene.

Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

16. Misconduct/Procedure – Detectives accessed, downloaded, and/or “wiped” Zahau’s cell phone while in Sheriff’s custody.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
17. Misconduct/Procedure – Detectives failed to “forensically download” Zahau’s cell phone in a timely manner.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
18. Misconduct/Procedure – Detectives deleted a voicemail message prior to having a search warrant.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
19. Misconduct/Procedure – Unidentified personnel charged Zahau’s cell phone, allowed remote access, and/or permitted massive data to be remotely transferred and deleted.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
20. Misconduct/Procedure – Deputy 4 delayed retrieving a voicemail to benefit the Shacknai family.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
21. Misconduct/Procedure – Homicide Detectives failed to collect cell phone evidence from Jonah Shacknai.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
22. False Reporting – Detectives call log did not match Zahau’s cell phone records.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
23. Misconduct/Procedure – Deputy 4 released Zahau’s personal effects to a non-family member.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
24. Misconduct/Truthfulness – Detectives lied about a receipt.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
25. Misconduct/Procedure – Detectives have not made Zahau’s body parts available for follow-up testing.
Recommended Finding: Summary Dismissal
Rationale: Please see rationale in allegation # 1.
26. Misconduct/Procedure – Deputy 1 had a personal and/or business relationship with Jonah Shacknai.
Recommended Finding: Summary Dismissal

Rationale: Please see rationale in allegation # 1.

19-045

1. Death Investigation/ In Custody Medical– While incarcerated at the San Diego Central Jail, Victor White fell from his bunk bed. He was transported to a hospital where he was diagnosed with a stroke. Despite medical intervention, White’s condition failed to improve, and he was eventually pronounced dead.

Recommended Finding: Action Justified

Rationale: Victor White was incarcerated into the SDCJ jail system after his 3-20-19 arrest. During his medical intake screening and subsequent interactions with SDCJ medical personnel, to include psychiatric staff, White never expressed any acute or chronic symptoms or medical complaints. White’s past medical history included uncontrolled hypertension (high blood pressure). A review of White’s jail medical records revealed that during his incarceration, he was medically followed, he was prescribed appropriate medications, and his medications were adjusted accordingly throughout his incarceration. On 04-13-19, Victor White collapsed and fell from his bunk bed. His cellmate summoned deputies, and upon their arrival, White was found with an altered mental status. Deputies and medical personnel responded to the scene and immediately assessed and treated White. Paramedics were summoned to the jail. Upon their arrival and after assessing White, paramedics transported White to the University of California San Diego (UCSD) Medical Center, where he was diagnosed with a stroke. White’s condition failed to improve, and his death was pronounced on 04-14-19. The cause of death was listed as spontaneous intracerebral hemorrhage (stroke), due to hypertensive cardiovascular disease (chronic high blood pressure) and the manner of death was natural. There was no evidence to support an allegation of procedural violation, misconduct, or negligence on the part of Sheriff’s Department sworn personnel.

19-064

1. Misconduct/Procedure – Unidentified deputies “abused” the complainant.

Recommended Finding: Not Sustained

Rationale: The complainant reported, “that as a way of protest the abuse by the staff I posted signs on my window with the number of days I have been without dayroom to shower and use the phone, rec yard, commissary, and razors. All that per policy we are entitled while in custody.” Inmates are prohibited from affixing any item to walls, vents, intercoms, or other structures within the facility, per Inmate Rules & Regulations 710. Title 15 Guidelines and Detention policies to include L.7-Razors, L.11-Personal Hygiene, P.2-Telephone Access, T.9-Commissary, and T.11-Exercise/Recreation, outline specific protocol for all inmates with regard to these specified services. The complainant grieved about these issues which were logged in accordance with N.1 Grievance Procedures. A sergeant investigated, met with the complainant, and determined based upon the housing activity logs and individual history that he had access to the disputed areas/items, and the matter was closed. CLERB’s review of the complainant’s Inmate History Summary Report documented both the complainant’s use of and/or refusal for the amenities. Without further identification of personnel or clarifying information from the complainant, there was insufficient information to prove or disprove the allegation.

2. Misconduct/Procedure – Unidentified deputies transferred the complainant.

Recommended Finding: Action Justified

Rationale: The complainant said that after being abused by other staff, he went on a hunger strike and was removed from the facility where he was near his family that often visited. Inmates are routinely transferred to different detention facilities based upon the inmate census and a variety of other individualized factors. According to the complainant’s classification records, he was specifically restricted from placement in three of the seven local detention facilities. According to his Inmate History Summary Report, on 08-03-18, the complainant was booked into San Diego Central Jail (SDCJ) and then transferred to George Bailey Detention

Facility (GBDF) the following day. On 02-26-19, he was transferred to SDCJ due to his request for Pro Per status (propria persona-representing oneself). On 06-19-19 the complainant was transferred from SDCJ to GBDF after he relinquished his Pro Per status in Court on 05-20-19. Furthermore, as documented in Sheriff's medical records, the complainant informed a psychologist on 02-06-19 that he was on a hunger strike "because his attorney would not advocate for him representing himself in Court." The complainant was found not to be credible in his recall of these events. The evidence confirmed that a hunger strike and facility transfers were initiated by the complainant. The actions that occurred were lawful, justified, and proper.

3. Misconduct/Procedure – Unidentified deputies failed to resolve the complainant's grievances.

Recommended Finding: Not Sustained

Rationale: The complainant stated he wrote grievances that were not resolved. There were seven Inmate Grievances submitted by the complainant that were logged into the Jail Information Management System (JIMS) from March through September 2019. A sergeant investigated the complainant's issues, discussed them with him, and resolved them in accordance with Detentions Policy N.1, Inmate Grievances. The complainant did not offer any evidence to support his allegation and it was unknown if there were other unspecified grievances. As the complainant was unavailable for clarification, there was insufficient information to prove or disprove the allegation.

19-065

1. Misconduct/Procedure – The San Diego Sheriff's Department (SDSD) displayed "racism, unprofessional conduct, deception, and/or unethical decisions and actions" toward Rebecca Zahau and/or her family.

Recommended Finding: Not Sustained

Rationale: The complainant stated, "SDSD has displayed racism, unprofessional conduct, deception, and unethical decisions and actions towards my sister Rebecca and her family. As a result, SDSD has denied my sister due process." A thorough review of the Sheriff's Department's Reports revealed that the investigation took place in a methodical and thorough manner. There was insufficient evidence of wrongdoing and all the evidence was analyzed and taken in consideration. There was insufficient evidence to indicate that any member of the SDSD displayed racism, unprofessional conduct, deception, and/or unethical decisions and actions towards Zahau and/or family. There was insufficient evidence to either prove or disprove the allegation.

2. Misconduct/Procedure – Detectives released Rebecca Zahau's body parts without her family's consent.

Recommended Finding: Summary Dismissal

Rationale: The complainant stated, "A second autopsy revealed that her throat and brain were missing! My parents or family were never notified. There is no documentation that these body parts were being removed, discarded, or sent for testing." The release of a decedent's body and/or parts are made by and under the authority of the SDMEO. Any concerns about the release of a decedent's body and/or parts should be reported to the Chief Medical Examiner. The Review Board lacks jurisdiction over the SDMEO.

19-083

1. Misconduct/Procedure – Deputies 2 and 7 delayed responding to the aggrieved.

Recommended Finding: Action Justified

Rationale: The complainant stated, "Officer 2 was on duty during this time period of the attack and did not respond to the aggrieved until more than 20 minutes." During CLERB's investigation, Deputy 7 was identified as the deputy who responded to the module after being alerted by Deputy 2. In an interview with news media outlet NBC 7, the aggrieved reported the following, "the aggrieved said guards didn't respond for more than 20 minutes after the attack began. They kept waving at the cameras for guards to act but nothing happened,

the aggrieved recalled. By the time it had ended, blood was everywhere and a piece of my face was laying on the ground.” Review of the jail surveillance video inside the module refuted the complainant’s allegation and the aggrieved’s statement to the media that inmates in the module were attempting to get the deputies attention to get help. Of the 54 other inmates in the module at the time of the incident, most of whom were in the dayroom, several watching the fight, none were observed to take any action to get deputies attention, none waved at the cameras, and there appeared to be no sense of urgency exhibited by the inmates to alert deputies to the incident. The jail surveillance video captured the fight, which started at 4:19:39 P.M. Deputy 7 walked into the module at 4:33:13 P.M., a deputy response time of 13 minutes and 34 seconds. Deputies 2 and 7 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights and cannot be publicly disclosed. According to SDSA jail records, at the time of the fight, Deputy 2 was working as the Floor Control Deputy. As soon as Deputy 2 was aware of the incident, he alerted Deputy 7, who proceeded to the module to investigate the situation. In his Officer’s Report, Deputy 7 stated that when he entered the module and approached the aggrieved, he asked the aggrieved what had happened. The aggrieved stated that he had been working out in his cell, slipped and hit his cheek on the desk. Deputy 7 escorted the aggrieved to the medical floor where he was evaluated by a detentions nurse. The aggrieved was asked what had happened and he again stated that he had been working out in his cell, slipped and hit his cheek on the desk. The detentions nurse determined the aggrieved would need to be transported to the hospital for treatment. Deputy 7 reviewed closed-circuit television footage (CCTV) to try to determine how the aggrieved’s injury had occurred. According to his report, Deputy 7 observed a fight had taken place between the aggrieved and the suspect and that the suspect was determined to be the aggressor in the battery. When the aggrieved was questioned again about his injury, and the importance of medical staff knowing exactly what happened for proper treatment, the aggrieved stated that he had been assaulted and bit by another inmate. According to SDSA DSB P&P Section 2.27 titled, Neglect of Duty, employees shall not read, play games, watch television or movies or otherwise engage in entertainment while on duty, except as may be required in the performance of duty. They shall not engage in any activities or personal business, which would cause them to neglect or be inattentive to duty. There was no evidence to support an allegation that Deputies 2 and 7 were negligent or inattentive to their duties. When alerted to the situation, Deputies 2 and 7 acted immediately. The evidence showed that the conduct that occurred was lawful, justified and proper.

2. Misconduct/Procedure – Deputy 5 housed a “violent, high level offender” in mainline housing.

Recommended Finding: Action Justified

Rationale: The complainant alleged that deputies housed a “known violent” inmate in mainline housing, putting other inmates at risk. The complainant stated, “the aggrieved was attacked by the suspect, unprovoked and we learned that the suspect was moved and that he should have never been in the same module as the aggrieved, due to his history of violence.” The aggrieved’s attorney stated the following in a letter addressed to CLERB, “Based on information and belief, the aggrieved’s attacker was inappropriately housed as he was a 1) high level offender and 2) had attacked another inmate days prior. Based on available information, the aggrieved was housed with his attacker because the jail is short-staffed and unable to house difficult inmates in administrative segregation.” Additionally, the aggrieved wrote in a grievance, “I was attacked by a inmate that’s a high level 5 and he should have never been in my module. My module is for level 4 and lower.” Deputy 5 was identified as the deputy that Classified the suspect when he was booked into custody. Deputy 5 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights and cannot be publicly disclosed. A Department Information Source for the Jail Population Management Unit (JPMU), provided that the suspect was properly classified at the time of the incident, and stated, “both the aggrieved and the suspect were classified as level 4 (high).” Additionally, the Department Information Source provided the following, “Per our JPMU manual, JPMU deputies will take note of all violent assaultive felonies per the inmate’s criminal history. However, if the assaultive felony charge was more than 10 years from the time of Classification, we will not make the inmate a high-level inmate for prior assaultive felony charge. Per our Jail Information Management System (JIMS), the 243(D) PC, Battery with Serious Bodily Injury was in 2003, and the District Attorney’s office did not file charges. Thus, why the suspect was classified as a level 4 at the time of June 1, 2019.” According to SDSA DSB P&P Section Q.7 titled, Inmate Processing, is to ensure the processing of inmates entering the detention system is consistent, legal, and accurate. The policy was established to receive and process arrestees efficiently, in accordance with established state and federal

laws. After the booking process is complete, the inmate will be taken to the designated holding area to await the classification process. The Jail Population Management Unit (JPMU) will determine the appropriate housing assignments for each inmate. According to SDSO DSB P&P Section R.1 titled, Inmate Classification, is to screen, assess and house inmates in a manner that will protect the safety of the community, staff and other inmates. An inmate's initial classification is determined by their original booking charges, criminal history information, medical and psychiatric issues or additional special conditions, and information obtained from the inmate interview. The inmate will be assessed and assigned to the most appropriate location based on their classification designation. At the time of his booking and classification, the suspect's SDSO JIMS record did not list any hazards or special conditions indicating that he was assaultive and needed to be housed accordingly. His record, however, was flagged "gang member." According to SDSO DSB SDCJ Green Sheet Section R.12.C.2 titled, Programming Participation Housing (PPH), PPH is intended for level 4 and 5 inmates desiring to attend programs; priority will be given to those inmates wishing to program. **On occasion, PPH housing bed space may be needed when facility bed space is limited. JPMU staff may approve inmates to be temporarily housed in the PPH module. If PPH bed space is utilized and the inmates do not meet the PPH admission requirements, they should be moved to more appropriate housing upon bed space becoming available (emphasize added).** One of the admission requirements for PPH housing is, "Inmates may not have any gang affiliation or history." The policy, however, states "should be moved as opposed to shall be moved, and may not have as opposed to must not have," therefore, there was no violation of policy housing the suspect in the PPH unit, even temporarily while waiting for available bed space elsewhere. Additionally, the following information was provided to CLERB during the investigation when questioning why the suspect was placed in the PPH unit, with the gang member flag. CLERB Sheriff Liaison provided that the suspect's record had been flagged as a gang member since 2007, however, he has had no gang related incidents since 2007 and the incident between the aggrieved and the suspect was not gang related. JPMU Department Information Source, provided SDCJ's Green Sheet R.12.C.2 specifies that inmates MAY not have any gang affiliation or history, however, a considerable amount of inmates tend to be gang members or have associated at some point with gangs. That alone would present a challenge if JPMU automatically excluded every known gang member/associate from Programming Participation Housing (PPH) or Incentive-Based Housing (IBH). Every time an inmate is classified, gang membership, affiliation, association is asked by the JPMU deputy. The suspect told the JPMU deputy during his classification interview that he was an inactive gang member. At some point JPMU finds that most inmates age out of gang activity and become inactive. When attempting to provide programming services to inmates who meet the classification code level criteria, an inactive gang status may be considered when trying to house them for PPH or IBH. The evidence showed that Deputy 5's classification of the suspect was conducted per policy, and as such, was lawful, justified and proper.

3. Misconduct/Procedure – Unidentified deputies failed to take action when alerted to the suspect's "bizarre behavior."

Recommended Finding: Not Sustained

Rationale: The complainant alleged that unidentified deputies failed to take action when alerted to the suspect's behavior, stating, "The aggrieved reported another inmate alerted an officer a few days earlier about the suspect's bizarre behaviors." Additionally, in an interview with NBC 7, the aggrieved said he and other inmates had warned guards about the suspect's erratic behavior and mental instability. "We told the guards that it wasn't the right place for him and we just got ignored, he needed help and they should have seen that when they assessed him instead of throwing him into general population," said the aggrieved. In his Crime/Incident Report, the clinic deputy stated, "the aggrieved told me he was assaulted and bit by another inmate in Module B. I asked the aggrieved if he could identify the suspect; the aggrieved stated that he did not know the inmate. I asked if the aggrieved could describe the inmate; the aggrieved stated, "He was a black guy, but I don't remember his face. It happened really fast." I asked the aggrieved to walk me through the incident as he remembers it. The aggrieved stated that an unknown black inmate punched him once and they began to wrestle beneath the stairs. The aggrieved then stated, "that the inmate placed his mouth on the aggrieved's right cheek and bit his right cheek with his teeth." The jail surveillance video inside the module captured the fight. At the time, there were 54 other inmates in the module, most of whom were in the dayroom, several watched the fight and none were observed to take any action to get deputies attention. There appeared to be no sense of urgency exhibited by the inmates to alert deputies to the incident. When the aggrieved and the suspect separated, the aggrieved was observed to go behind the pillar, out of

sight. Shortly after the aggrieved walked to the water fountain and washed his face. Another inmate provided a towel that the aggrieved held to his cheek. Additionally, the surveillance video showed a couple inmates used jail issued clothing and towels to clean the floor area where the fight took place and then proceed to the trash can and bury the items in the trash. Review of SDSA documents, provided to CLERB during the course of CLERB's investigation, did not provide any documented reports that deputies were alerted or informed of the suspect's "bizarre behavior." According to SDSA DSB P&P Section F.5, Inmate Incident Report, all inmate movements, other than for population management reasons, including applicable inmate actions, shall be documented in the incidents module within the Jail Information Management System (JIMS). Completed incident reports shall be reviewed, approved, forwarded and disseminated as required. Absent any incident reports and lack of any witnesses, there was insufficient evidence to either prove or disprove the allegation.

4. Misconduct/Medical – Jail medical staff failed to provide adequate care for the aggrieved's injury.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that jail medical staff failed to address the aggrieved's injury. The complainant stated, "jail medical team not equipped to handle injuries." When the complainant visited the aggrieved at the jail, she stated, "observed his bandage not secure on his face. Drainage coming from facial wound. I grew very concerned about the aggrieved as his wound did not appear to be dressed well: tape falling from his face due to ongoing wound drainage. The aggrieved's face appeared distorted-very swollen. The aggrieved complained of pain at the injury site." The complainant added, "at some point the aggrieved informed family that his wound had become infected (hyper-granulation) after physician placed a different dressing on his wound in an attempt to have the skin heal. As a result, the skin tissue was in fact an infection that needed to be cut from the aggrieved's face." Additionally, the aggrieved's attorney stated in her letter to CLERB, "The aggrieved was given such inappropriate treatment that he developed an infection on his face." According to jail medical records, the aggrieved was initially seen in the hospital emergency room for initial evaluation and treatment following the assault. According to jail medical records, the aggrieved was seen and treated by medical staff on numerous occasions. Additionally, according to medical records, the aggrieved refused medical treatment. Medical staff reside outside CLERB's jurisdiction as they are non-sworn personnel. Per CLERB Rules & Regulations 4.1, Complaints: Authority. Pursuant to the Ordinance, CLERB shall only 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 such, the Review Board lacks jurisdiction.

5. Excessive Force – Deputy 3 "snatched" the aggrieved by the arm.

Recommended Finding: Summary Dismissal

Rationale: The complainant alleged that the aggrieved was mistreated by Deputy 3, stating the following, "The aggrieved also reported that when he requested to go to medical to have his dressing changed by medical, Officer 3 told him to pack up his mat. When the aggrieved attempted to ask what he had done wrong, he was snatched by his arm and told to get his belongings and was moved to another unit for higher level offenders." According to the Jail Population Management Unit (JPMU) Daily Deployment Logs, Deputy 3 was not on duty on the day or night of the incident in which the aggrieved alleged that Deputy 3 snatched him by his arm and moved him to another module. During the course of CLERB's investigation, it was determined the deputy involved, in the alleged incident, was Deputy 4. According to the aggrieved's Inmate History Summary Report, he was moved temporarily on 06-25-19, due to reported disrespect toward deputies. Deputy 4 stated in his Incident Report, "During a security check the aggrieved asked why he was not going to lab and treatment today. I informed the aggrieved I would check on the situation. The aggrieved began to yell at me and tell me I was taking his rights away. I once again informed the aggrieved I would check on the situation with medical. The aggrieved continued to argue and yell at me stating, 'You are taking my right away.' I instructed the aggrieved to get all his belongings, because he is leaving the module." According to SDSA P&P Section 2.48 titled, Treatment of Persons in Custody, employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. At the time of the incident the aggrieved was housed in the Program Participation Housing Unit (PPH). According to SDSA SDCJ Green Sheet Section R.12.C.2 titled, Programming Participation Housing (PPH), Inmates housed in PPH shall maintain

compliance with the admission criteria and established facility rules. Non-compliance with established PPH rules or Inmate Rules and Regulations may result in PPH participation being discontinued. According to SDS DSB Section O.3 titled, Inmate Rules and Regulation, Inmates shall treat members of facility staff in a civil fashion, and inmates shall not take part in aggressive or boisterous activity. According to SDS DSB P&P Section I.89 titled, Use of Force, during the course of their official duties, Detention Services Bureau personnel, may use physical force to the extent that is necessary and objectively reasonable to effect an arrest, prevent escape, overcome resistance, and maintain or restore order. Personnel shall use the Department approved techniques, equipment and tactics in controlling the inmate or incident. The aggrieved failed to respond to attempts to obtain his first-hand account of the alleged use of force incident, and proper identification of the deputy involved. During the course of this investigation, Deputy 4 was identified as the deputy involved in the incident, versus Deputy 3. Deputy 4 separated from the department on 03-02-20. As such, CLERB lacks jurisdiction. Per CLERB Rules & Regulations Section 15, Summary Dismissal: Summary Dismissal may be appropriate in the following circumstances: (d) The Subject Officer is no longer employed by the Sheriff or Probation Departments.

6. Misconduct/Procedure – Deputies 1, 6 and 8 failed to process and respond to the aggrieved’s grievances.

Recommended Finding: Sustained

Rationale: The complainant stated, “The aggrieved originally filed a grievance on 6-27-19 and handed to unknown officer, who failed to sign form. On 7-1-19 the aggrieved filed second grievance with officer. The aggrieved checked on the status of his grievance on 7-6-19, and was informed that he did not have a grievance on file. The aggrieved filed an appeal on 7-8-19 when he did not receive follow up on his grievance. The appeal was filed with another officer.” On 07-22-19, records were requested from the Sheriff and on 08-14-19 those records were received. Included in CLERB’s request for records, # 7, on the CLERB request form asked for Jail Inmate Management System (JIMS) grievances, and the following was noted in response, “**None entered in JIMS,**” (*emphasis added*). On 07-31-19, correspondence was received from the attorney representing the aggrieved. Attached to her correspondence were copies of three grievances that the aggrieved submitted to deputies. The grievance submitted on 06-27-19 was not signed by a deputy. The grievance submitted on 07-01-19 was signed by Deputy 1 and the grievance submitted on 07-08-19 was signed by Deputy 6. Additionally, the aggrieved’s attorney included a letter that was addressed to the complainant on 07-16-19, from the Sheriff’s Department that included the following statement, “In response to your inquiry regarding the jail grievance form, San Diego Central Jail staff checked the Jail Information Management System’s grievance history, the aggrieved’s booking jacket, and his medical record file. They were unable to locate any grievance in those records submitted by the aggrieved. The first two grievances submitted by the aggrieved contained the exact same content, “I’m entitled to having my incident reviewed. I was attacked by a inmate that’s a high level 5 and he should have never been in my module. My module is for level 4 and lower. I’m asking for compensation for my pain and suffering and more importantly for a follow up on my surgery. The hospital told me I would need a skin graph.” The third grievance submitted included the same verbiage as the first two with the additional following statement, “On 07-01-19 turned in Grievance but no reply has been giving so I’m taking that as denied I am now filing an appeal.” Deputies 1 and 6 provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however, it is privileged per the Peace Officer Bill of Rights and cannot be publicly disclosed. According to SDS DSB P&P Section N.1 titled, Grievance Procedure, the purpose of the policy was to establish uniform procedures for the resolution of inmate grievances relating to disciplinary actions and/or conditions of incarceration. Grievances can be submitted in writing by any inmate. The deputy or other staff member who receives and signs for a grievance will be responsible for entering it into JIMS, making sure to link the inmate(s) to the grievance report. When completing the “summary” in JIMS, the inmate’s grievance may be summarized, but must clearly articulate the nature of the grievance. Once the grievance has been entered into JIMS, the JIMS generated grievance number will be entered on the J-22 form, along with the date and time that the grievance is entered into JIMS. The exception to this is for medical grievances, which shall be given directly to medical staff without first being entered into JIMS. A deputy or other staff member at the lowest appropriate level will investigate the grievance, resolve the issue, and direct a written response to the inmate within 7 calendar days of the receipt of the grievance. The grievance review officer has 10 calendar days to respond. The facility commander has 10 calendar days to respond. The decision of the facility commander is final. All three grievances were eventually filed into the JIMS system; however, they were not entered timely, per the above noted policy. The grievances were eventually responded to, however,

not within the 7 or 10 day requirement per the above noted policy. Deputies 1, 6 and 8's actions were in violation of SDSD P&P Section N.1 titled, Grievance Procedure which states, in part, the deputy or other staff member who receives and signs for a grievance will be responsible for entering it into JIMS, making sure to link the inmate(s) to the grievance report, and SDSD P&P Section 2.30 titled, Failure to Meet Standards, Employees shall properly perform their duties and assume the responsibilities of their positions. Employees shall perform their duties in a manner which will tend to establish and maintain the highest standards of efficiency in carrying out the mission, functions, and objectives of this Department. The evidence supports the allegation that the aforementioned deputies failed to process the aggrieved's Inmate Grievances and the conduct was not justified.

19-107

1. Excessive Force – An unidentified San Diego Police Department officer assaulted the complainant during his arrest on 05-05-19.

Recommended Finding: Summary Dismissal

Rationale: According to the complainant's written statement, he reported that an unidentified San Diego Police Department (SDPD) officer used excessive force when he was arrested 05-05-19. The complainant reported, "*I was beaten up by San Diego Police Department on May 5, 2019, where I suffered from a broken nose, two black eyes, my front teeth were broken and severe handcuff wounds to both my hands were from these wounds. I've suffered nerve damage my hands lock up and I can't feel my hands.*" As the allegation is not against a San Diego Sheriff's deputy, nor a San Diego Probation officer, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 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 in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction, but has referred this matter to SDPD.

2. Misconduct/Procedure - Unidentified Sheriff's personnel denied the complainant medical treatment.

Recommended Finding: Unfounded

Rationale: According to the complainant's written statement, he stated, "*When I was booked into the Sheriff's Department I was denied medical with my hand and my wounds.*" According to SDSD Jail Medical Records, upon his entrance into the jail, the complainant underwent medical screening. He underwent an initial medical intake questionnaire. A jail nurse evaluated the complainant upon his arrival to jail, and after he was medically cleared from a local hospital. Upon completion of his medical screening, the complainant was determined to be fit for jail. Additionally, it was recommended he be placed in a Sobering Cell. Within days of his incarceration, the complainant was seen by a nurse practitioner for his complaints of pain from injury. According to SDSD policy and procedure, a Sheriff's deputy is present with the jail medical staff and the complainant during these medical treatments. According to SDSD Policy & Procedure Section M.9, titled "Intake / Medical Screening," all arrestees presented by arresting agencies shall be medically screened prior to acceptance for booking at a Sheriff's detention facility. All inmates to be housed at a detention facility shall be medically screened. This process will be conducted by a registered nurse. The evidence showed that the complainant underwent numerous medical procedures, visits, and treatments during his incarceration. Various unidentified Sheriff's deputies were present with the complainant during each medical visit and treatment. He was not denied medical treatment on the part of a Sheriff's deputy. Likewise, CLERB does not have jurisdiction over jail medical staff or medical decisions. The evidence showed that the alleged act or conduct did not occur.

3. Misconduct/Procedure - Unidentified Sheriff's Food Services staff had served the complainant "old or missing food."

Recommended Finding: Summary Dismissal

Rationale: In the complainant's written statement, he reported, "*Since being here I've file for my religious meals which is Kosher and since I've been in jail my food is old or missing food I receive this meal for the*

last 10 years since being in jail and prison where the meal come a Kosher cold and hot for breakfast and dinner the same thing but when served by the Sheriff staff the meal was missing one or the other part.” SDSA P&P Section K.8 titled, “Religious Diets,” was established to provide a guideline and procedure for the Chaplain Coordinator in order to approve or deny an inmate’s request for a religious diet while in custody. The policy states that the religious diet arrangements are provided by the Sheriff’s Department for inmates of the Jewish faith, Muslim faith and/or any proclaimed faith that require special meals. Medical diets shall take precedence over religious diets. The person responsible for determining the content and presentation of all religious diets is the Sheriff’s Food Service Manager. Kosher diets are purchased through a vendor, pre-packaged and prepared. All meals conform to Kosher standards for content, preparation and presentation. As the allegation is against Food Services staff, not against a San Diego Sheriff’s deputy, nor a San Diego Probation officer, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 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 in the Sheriff’s Department or the Probation Department. The Review Board lacks jurisdiction.

4. Misconduct/Procedure - Deputies 1-8 failed to respond to or act on the complainant’s Inmate Grievances.

Recommended Finding: Action Justified

Rationale: The complainant reported, *“then when you write them up [Inmate Grievances] there is nothing done about the issue and I get the runaround about the issue of my hands and food.”* Upon review of the complainant’s jail booking file, Jail Information Management System (JIMS), and his medical file, 35 Inmate Grievances and Grievance Reports were documented and responded to by the aforementioned deputies. According to the complainant, the aforementioned staff failed to process his Inmate Grievances; however, evidence revealed that the complainant’s 35 grievances were received, documented, and responded to by staff. According to SDSA Detention Services Bureau Policies and Procedures (DSB P&P) Section N.1 titled, “Grievance Procedure,” the purpose of the policy was to establish uniform procedures for the resolution of inmate grievances relating to conditions of incarceration. The policy states, in part, that each facility shall attempt to resolve inmate grievances. Inmates may submit written grievances directly to deputies. The deputy or other employee who initially receives a grievance will sign his or her name and ARJIS number on the J-22 form along with the date and time. The second page of the J-22 form will immediately be given to the inmate as a signed receipt for the grievance. The deputy who receives and signs for a grievance will be responsible for entering it into the Jail Information Management System (JIMS). If the grievance must be routed to another individual or unit for resolution (e.g. the shift sergeant, food services, commissary.), the person who initially received the grievance will make an entry into the “action taken” area of the grievance in JIMS. After investigating the nature of the grievance, a written response to the inmate will be entered. The evidence revealed that the aforementioned deputies processed the complainant’s Inmate Grievances according to SDSA policy. While the resolution may not have been what the complainant expected or wanted, the actions taken by Deputies 1-8 were lawful, justified, and proper.

5. Misconduct/Procedure - Unidentified Sheriff’s deputies failed to respond to or act on the complainant’s Inmate Grievances.

Recommended Finding: Not Sustained

Rationale: The complainant reported, *“then when you write them up [Inmate Grievances] there is nothing done about the issue and I get the runaround about the issue of my hands and food.”* Upon review of the complainant’s jail booking file, JIMS, and his medical file, 35 Inmate Grievances and Grievance Reports were received, documented, and responded to by Sheriff’s staff. Though 35 Inmate Grievance forms were noted in the complainant’s booking file, JIMS, and his medical file, CLERB was unable to certify that all Inmate Grievances the complainant may have submitted during the span of his incarceration were processed properly; it was undetermined if the complainant submitted other Inmate Grievances which were not processed according to SDSA Policies and Procedures. According to SDSA DSB P&P Section N.1 entitled, Grievance Procedure, the purpose of the policy was to establish uniform procedures for the resolution of inmate grievances relating to disciplinary actions and/or conditions of incarceration. Grievances can be submitted in writing by any inmate. Inmates may submit their grievances on a regular Inmate Grievance (J-22 form) or any other writing material. CLERB was unable to certify that all Inmate Grievances the complainant submitted

- during the span of his incarceration were process properly. There was insufficient evidence to either prove or disprove the allegation that unidentified deputies failed to process the complainant's Inmate Grievances.
6. Misconduct/Procedure - Sheriff's Detentions Medical staff and Sheriff's Food Services staff failed to respond to or act on the complainant's Inmate Grievances.

Recommended Finding: Summary Dismissal

Rationale: The complainant reported, *"then when you write them up [Inmate Grievances] there is nothing done about the issue and I get the runaround about the issue of my hands and food."* Upon review of the complainant's jail booking file, JIMS, and his medical file, 35 Inmate Grievances and Grievance Reports were received, documented, and responded to by the aforementioned Sheriff's Professional staff. As the allegation is not against a San Diego Sheriff's deputy, nor a San Diego Probation officer, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 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 in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction.

7. Misconduct/Discourtesy - Deputy 7 "harassed" the complainant.

Recommended Finding: Unfounded

Rationale: In the complainant's written statement, he reported, *"I've been harassed by sheriff staff."* In a follow-up questionnaire, the complainant provided the following additional information: *"When I was housed downtown 06-10-19 while living 5C a lived in 5C cell 20 fell in the cell where he suffered from wounds on his feet where he was not receiving medical treatment he was my cellmate. I was calling for deputies or staff for medical help which they would not answer the call button. When they finally did he was on the floor and was bleeding from both feet. I was expressing to the deputy on duty Deputy 7 and his coworker how this was neglecting to help the inmate who had fell. I was placed in handcuffs where I was suffering from wounds to hand from the San Diego Police Department had injured my hands from placing handcuffs on my hands to tight where I lost feeling in both hands. Deputy 7 proceed to twist the cuffs and inflict pain to my hands while I was lead from the module. Then when I wrote classification about lowering my class I was denied because of the write up from Deputy 7,"* According to an Incident Report, dated 06-10-19, two deputies were assisting an inmate in medical distress when the complainant refused to comply with their instruction, engaged in boisterous activity, and impaired/interfered with the operations of the facility. The complainant was briefly handcuffed without incident, and was escorted to a holding cell. According to the facility's documents, dated 06-10-19, not only was Deputy 7 not assigned to work on the 5th Floor that day, he was not assigned to work at facility at all on that day. Deputy 7 responded to a Sheriff's Employee Response Form (SERF) with a signed statement and provided the relevant and conflicting information. According to SDSO P&P Section 2.22 titled, "Courtesy," employees shall be courteous to the public and fellow employees. They shall be tactful in the performance of their duties, shall control their tempers, exercise patience and discretion even in the face of extreme provocation. According to SDSO P&P Section 2.48 titled, "Treatment of Persons in Custody," employees shall not mistreat, nor abuse physically or verbally, persons who are in their custody. Employees shall handle such persons in accordance with law and established Departmental procedures. Absent information provided by an independent witness to the incident or additional video or audio recordings of the interaction, there was insufficient evidence to prove or disprove the allegation that Deputy 7 "harassed" the complainant.

8. Misconduct/Procedure - Unidentified Sheriff's medical staff "harassed" the complainant.

Recommended Finding: Summary Dismissal

Rationale: According to the complainant's written statement, he alleged that unidentified medical staff "harassed" him. The complainant stated, *"I've been harassed by a sheriff medical staff."* As the allegation is not against a San Diego Sheriff's deputy, nor a San Diego Probation officer, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 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 in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction.

9. Misconduct/Procedure - Unidentified Sheriff's deputies placed the complainant in housing units where he was "harassed" by other inmates.

Recommended Finding: Action Justified

Rationale: In the complainant's written statement, he reported, "*I've been jumped by three inmates since being in jail. I've been put in units where I was harassed by inmates because of my sexual preference.*" In a follow-up questioner, the complainant provided the following additional information: *I was jumped in [jail] by inmates I scared to identify due to their gang ties. Then since I am a gay Black male which has never serve time in protective custody but main population when I was placed in module I was harassed due to my sexual preference when I asked sheriff staff to put me in Ad-Seg [Administrative Segregation] due to the fact I'm not PC [Protective Custody] I was denied and forced to live were I was jumped and sexually harassed.*" According to the complainant's SDSA Intake Forms, he was arrested by a SDPD officer for assault with a deadly weapon, assault on a peace officer, exhibiting a weapon, and warrant, as he was previously released from custody and was on bail. According to the complainant's jail classification documents, he had medical limitations which restricted his transfers to certain facilities, he was sentenced, he was a general population inmate, and he had no prior strikes. Due to his current arrest charges, he was a level five inmate (high level). Additionally, during his incarceration, the complainant was involved in incidents which deemed a change in his classification as unwarranted. The jail rule violation write-up coupled with his high-level security status deemed him ineligible to have his classification lowered and there was no room for him to be moved to another jail. In regard to his safety in his assigned housing units, the complainant was in mainline, general population housing when he was assaulted by other inmates. For his safety, he was immediately removed from the module and was moved to another detention facility. According to jail documents, the only time the complainant was placed in Administrative Segregation was on 06-10-19, when he was pending a hearing or investigation for a rule violation. The evidence indicated that the complainant was properly classified upon his entry into the SDSA jail system after his 05-04-19 arrest. Upon being advised that the complainant was involved in an altercation, the complainant was quickly moved for his safety and a 'Keep Separate' status was placed. 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 but was lawful, justified and proper.

19-108

1. Misconduct/Procedure – Deputy 1 failed to investigate the complainant's grievances.

Recommended Finding: Unfounded

Rationale: In the complainant's written statement to CLERB, he alleged that Deputy 1 failed to investigate his complaint regarding a lack of medical treatment, unsatisfactory meals, and a request to be reclassified. The applicable content of SDSA Internal Affairs Policy and Procedures Manual Section 2.4 entitled, "Complaints," reads, in part, as follows: The Internal Affairs Unit is responsible for the administration of all formal complaints which includes: review the complaint for classification and assignment, review of the completed investigations, filing of completed investigations, and maintain an index of all complaints. Reasons for not immediately investigating a complaint may include: Pending criminal case which would conflict with the investigation, inmate grievance procedure not followed, frivolous complaint (per 832.5 PC) or no nexus to employment, and no policy or law violation. It shall be the policy of this Department not to investigate those complaints, of a minor nature, which are received 30 days or more after the date of the alleged incident. If a complaint of this nature is received in writing, it shall be the responsibility of Internal Affairs to respond to the complainant. Additionally, the applicable content of SDSA Internal Affairs P&P Manual Section 2.5 entitled, "Investigations," reads in part as follows: The Internal Affairs Unit has the primary responsibility for the investigation of all complaints. The Internal Affairs Lieutenant will make the determination where the complaint will be investigated. According to CLERB's liaison with the SDSA, the complainant had filed complaints with the SDSA Internal Affairs division. CLERB's liaison with the SDSA confirmed that a preliminary investigation was performed; however, due to California's Police Officer's Bill of Rights, the details of the investigation were not disclosed to CLERB. The complaint was closed, via written correspondence, with no administrative investigation performed, as the allegation was found not have been a violation of Sheriff's policy, nor was the allegation a violation of the law. On 07-29-19, Deputy 1 wrote a letter in response

to the complainant's letter, and that letter was provided to CLERB by the complainant. The letter advised that a cursory investigation was initiated, and no policy or criminal law violation was found upon receipt of the initial complaint. The complainant alleged that his complaint to the Sheriff's Department Internal Affairs Unit was not investigated. The allegation that Deputy 1 failed to investigate the complainant's complaint was untrue, as a preliminary investigation was performed. The evidence showed that the alleged act or conduct did not occur.

20-060

1. Misconduct/Discourtesy – Deputy 1 “ridiculed” the complainant.

Recommended Finding: Unfounded

Rationale: The complainant stated, “Deputy 1 violated San Diego County Sheriff’s Department Policy Code 2.55 Non-Biased Based Policing; as Deputy 1 ridiculed our “lifestyle” of hunting and providing food for our families, going as far as to mandate his opinion of hunting is “not essential” and he will enforce his opinion with charges etc. His Sergeant agreed hunting is essential and as a hunter himself he felt sympathy for me.” On the date of the incident, a “Stay at Home” order was in effect for San Diego County and the State of California, per the Governor and Public Health Officer. The Sheriff’s Department was tasked with enforcement for all individuals to follow the Governor's Executive order and stay home, except as needed to obtain or perform “authorized essential activities.” Deputy 1 provided information during the course of CLERB’s investigation that conflicted with information reported by the complainant, however it is confidential per the Peace Officer Bill of Rights (POBR) and may not be publicly disclosed. Body Worn Camera (BWC) evidence was reviewed and refuted the complainant’s allegation. Deputy 1 was in compliance with Sheriff’s Policy 2.22, Courtesy, in that employees shall be courteous to the public, tactful in the performance of duties, they shall control their tempers, exercise patience and discretion and he did not use coarse, profane, violent, or insolent language or gestures in the performance of his duties. Additionally, the complainant was not approached based upon his lifestyle, nor was there any expression(s) of prejudice or harassment concerning the complainant’s lifestyle in violation of SDSD P&P policy 2.53, Discrimination, or SDSD P&P policy 2.55, Non-Biased Based Policing. A review of BWC evidence confirmed that Deputy 1’s contact with other unidentified/unrelated citizens, prior to and following his interaction with the complainant, showed that the deputy treated everyone in the same manner. The evidence showed that the alleged act or conduct did not occur.

2. Misconduct/Procedure – The Sheriff’s Department denied the complainant’s request for Body Worn Camera (BWC) evidence and/or assistance.

Recommended Finding: Action Justified

Rationale: The complainant stated, “There under 6253(1) the new SB 1421 I requested the Body Camera Video and assistance the SD sheriff violated my request denying me access and offering no assistance. Claiming 6254(F) as their withholding reason although no arrest were made/etc.” The request to the Sheriff’s Department stated, “I request the release of records under the California Public Records Act, Gov’t Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I,§ 3(b) of the California Constitution. I seek copies of all records¹ in your office's possession, regardless of who created them... I seek a copy of all records relating to the report, investigation, findings related to [Deputy Abuse of Power and Discretion, interaction between two lawful turkey hunters and one still un-identified sheriff's deputy]. Records include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.” Sheriff’s Policy 6.131, Body Worn Camera stipulates that 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. In general, Senate Bill (SB) 1421, states that the public has a right to know about serious police misconduct, such as officer-involved shootings and abuses of force, because concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly force, undercuts the public's faith in the legitimacy of law enforcement, and endangers public safety. The complainant presented correspondence from the Sheriff's Legal Affairs Unit dated 04-28-20, which denied his request pursuant to Government Code section 6254(f): Records of a law enforcement investigation, or any investigatory or security files compiled by a law enforcement agency are exempt from disclosure and because the identified interaction did not qualify as a Penal Code 832.7(b) personnel record. BWC evidence was recorded by Deputy 1 and reviewed by CLERB. The interaction between the complainant and Deputy 1 was a consensual contact and did not meet any of the requirements allowing release of records. The evidence showed that the alleged act or conduct did occur but was lawful, justified, and proper.

3. Misconduct/Intimidation – Deputy 1 “threatened” the complainant with arrest, confiscation, impoundment, and/or criminal charges.

Recommended Finding: Action Justified

Rationale: The complainant stated, “Deputy 1 illegally threatened arrest, confiscation, and impoundment, and criminal charges to gain compliance to follow his unlawful orders.” BWC evidence captured the verbal exchange between the complainant, a witness, and Deputy 1. The complainant explained to Deputy 1 that they were hunting because the stay at home order allowed for citizens to obtain food. On 03-12-20, Governor Newsom’s Executive Order N-33-20 and a County Public Health Order were in effect that directed the public to social distance, self-quarantine, and self-isolate to “flatten the curve” from COVID-19. The Public Health and Governor’s Orders have been amended several times and are in effect until further notice. At the time of this incident, all individuals living in the State of California were to stay at their place of residence except as needed to maintain continuity of operations of the federal critical infrastructure sectors, as outlined at <https://www.cisa.gov/identifying-critical-infrastructure-during-covid19>. The critical infrastructure pertains to commercial food establishments or patronizing a commercial food industry, therefore, hunting would be for sport even if hunters ate what they killed. Although in violation of the Health Order(s), Deputy 1 used discretion to provide information and request compliance, instead of citing the complainant with a misdemeanor infraction. Deputy 1 also provided information during the course of CLERB’s investigation that was considered in arriving at the recommended finding, however it is confidential per the Peace Officer Bill of Rights (POBR) and may not be publicly disclosed. The BWC evidence showed that Deputy 1’s conduct was lawful, justified, and proper.

4. Criminal Conduct – Deputy 1 violated the complainant’s constitutional rights on 04-04-20.

Recommended Finding: Action Justified

Rationale: The complainant stated, “He violated my friend and I’s: 1st Amendment: Freedom of Religion 2nd Amendment: Right to Bear Arms, To use firearms in traditionally lawful purposes. 4th Amendment: To be secure in their persons, house, papers, and effects. 5th Amendment: Due process of law. No person shall be deprived of life, liberty, or property, without process, of law, but Deputy 1 believe he was the law and threatened my friend and I to the point under duress we complied with orders out of fear. Right to travel: Violated. Told if we don’t go home we’d be arrested.” On 03-12-20, Governor Newsom’s Executive Order N-33-20 and a County Public Health Order were in effect that directed the public to social distance, self-quarantine, and self-isolate to “flatten the curve” from COVID-19. The Public Health and Governor’s Orders have been amended several times and are in effect until further notice. At the time of this incident, all individuals living in the State of California were to stay home or at their place of residence except as needed for such necessities as food, prescriptions, and health care. BWC evidence captured the verbal exchange between the complainant, a witness, and Deputy 1. The complainant acknowledged that hunting was not his only means to acquire food and upon legal review, hunting was found not to be a component of the critical infrastructure sector that was permissible in the Governor’s Order(s). Although in violation of the Health Order(s), Deputy 1 used discretion to provide information and request compliance, instead of citing the complainant with a misdemeanor infraction. Law enforcement officials are tasked with enforcing lawful

orders; constitutional issues are matters to be challenged in a court of law. The BWC evidence showed that Deputy 1's conduct was lawful, justified, and proper.

20-062

1. Misconduct/Procedure – Unidentified jail staff denied the complainant an adjustment report for classes attended.

Recommended Finding: Summary Dismissal

Rationale: The complainant contacted CLERB and lodged a complaint on 06-02-20, alleging unidentified jail staff failed to provide him an adjustment report for classes he attended while incarcerated at the Detention Facility. Inmate programs and records are staffed and maintained by professional staff who are non-sworn personnel over whom CLERB maintains no authority. As the allegation is not against a San Diego Sheriff's deputy, nor a San Diego Probation officer, CLERB lacks jurisdiction to investigate the complaint, per CLERB Rules and Regulation 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 in the Sheriff's Department or the Probation Department. The Review Board lacks jurisdiction.

End of Report