PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

October 9, 2025
AGENDA
10:00 AM

Meeting Location: CA Commission on POST Headquarters, 860 Stillwater Road - Training Rooms A/B, West Sacramento, CA 95605.

The Peace Officer Standards Accountability Advisory Board (Board) operates under the requirements set forth by the Bagley-Keene Open Meeting Act (Bagley-Keene) under Government Code sections 11120 through 11132. Bagley-Keene generally requires that the Board publicly notice meetings, prepare agendas, allow public participation, and conduct meetings in a location accessible to public members unless specifically authorized by Bagley-Keene to meet in closed session.

Public comment will be limited in time at the discretion of the Board Chair. The public comment period preceding items on the agenda will allow members of the public to comment on items not on the agenda but that are within the Board's jurisdiction. The Board cannot act on or deliberate on items not on the agenda and can discuss the matter only to the extent necessary to determine whether it should be made an agenda item at a future meeting, to respond briefly to statements or questions posed during public comment or to request clarification, or to refer the item to staff. Agenda items may be taken out of order and action (e.g., voting) may be taken on any agenda item. Public comment relating to each item on the agenda will be allowed at the time each matter is heard. Members of the public who wish to participate during public comment may do so in person by attending the meeting, or, as stated hereafter, by telephonic means or by submitting written public comment.

Written public comment is intended to allow members of the public, if unable to attend in person, an opportunity to participate to the same degree as if they attended in person; as such, written comments should be limited to no more than three pages in length and longer written comment will not be accepted or distributed to Board members. To be considered for inclusion in the meeting record, written comments by no later than 10 a.m. on the fourth business day before the scheduled meeting. Accepted written public comments will be published on POST's website under the Public Comment section under the corresponding meeting date. Written public comments can be submitted via email to posadpc@post.ca.gov. Telephonic public comment can be made by dialing +1 669 444 9171 US or +1 669 900 6833 US and entering the Webinar ID: 817 3463 0494 and Passcode: 749503

Persons requesting disability-related accommodations or modifications may do so by contacting the Board assistant at (916) 227-3909 (voice), posadpc@post.ca.gov (email), or Speech-to-Speech users may dial 7-1-1 for the California Relay Service to request special accommodations. Please note: This meeting and all public meetings will be recorded.

No weapons are allowed on the premises during public meetings. Upon entering POST's

facility, you are subject to a weapons screening and will be denied entry if you possess any weapon. POST's Executive Director retains the discretion to grant exceptions for duly-authorized individuals, such as on or off-duty law enforcement officers who are not the subject of a POST administrative investigation, suspension, or decertification action.

I. **CALL TO ORDER**

II. **ROLL CALL OF POSAAB MEMBERS**

Dr. Nicole Clavo Psy.D - Governor Appointee - Public Member
Regina Hatcher-Crawford - Governor Appointee - Public Member
Robert Doyle - Governor Appointee - Former Command Rank Peace Officer
Joyce E. Dudley - Chair - Governor Appointee - Attorney
Professor Jack Glaser - Governor Appointee - Public Member
Cephus Johnson - Governor Appointee - Public Member
Captain Charles Lara - Governor Appointee - Management Rank Peace Officer
Margaret Pena - Speaker of Assembly Appointee - Public Member
Vacant - Senate Rules Appointee - Public Member

III. **PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**

The Board Chair will advise the audience of the following:

This time is set aside for members of the public who wish to comment on items not on the agenda but within the board's jurisdiction. Public comment on matters on the agenda will be heard at the time each item is called. Public comment on specific peace officer revocation cases to be heard today will be heard at the time of the hearing of each such matter. Members of the public who wish to speak during the public comment period may be asked to limit their remarks in time at the discretion of the Board Chair.

IV. **ASSISTANT EXECUTIVE DIRECTOR COMMENTS**

V. **NEW BUSINESS**

a. Report on Data for Serious Misconduct Reporting, Investigations, and Disciplinary Action Outcomes

This item is presented for information only. No action is required.

VI. **APPROVAL OF MEETING TRANSCRIPTS**

Approval of meeting transcripts from the previous Peace Officer Standards Accountability Advisory Board Meeting held on July 16-17, 2025.

a. Approval of Meeting Transcript from the July 16-17, 2025 Meeting

If the Board concurs, the appropriate action would be a **MOTION** to approve the meeting transcripts from the last Board meeting.

VII. **NEW CASES - REVIEW, DISCUSSION AND RECOMMENDATIONS TO COMMISSION**

a. POST2410050 - Michael Kim (POST ID: A63-W93) Last Employing Agency: San

Francisco Sheriff's Office (Current)

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigations presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

b. POST2402562 - Armando R. Montalvo (POST ID: C89-U13) Last Employing Agency: Orange County Sherriff's Department (Current)

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigations presented by the Peace Officer Standards Accountability Division (POSAD) and make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

VIII. CLOSED SESSION

At this time the meeting will adjourn into closed session for for deliberations on the cases presented today.

IX. FUTURE BOARD MEETING DATES

Upcoming Board meetings will be held:

- February 04-05, 2026 - POST, West Sacramento
- April 15-16, 2026 - POST, West Sacramento
- July 15-16, 2026 - POST, West Sacramento
- October 14-15, 2026 - POST, West Sacramento

Board meeting dates are tentative and subject to cancellation pending POST receiving requests from subject officers to have their cases heard before the Board.

X. ADJOURNMENT

AGENDA ITEM REPORT

Title: REPORT ON DATA FOR SERIOUS MISCONDUCT REPORTING, INVESTIGATIONS, AND DISCIPLINARY ACTION OUTCOMES

REPORT PROFILE

MEETING DATE 10/09/2025	**BUREAU SUBMITTING THE REPORT** Executive Office	
RESEARCHED BY	**REVIEWED BY**	
REPORT DATE	**APPROVED BY** Manuel Alvarez, Jr.	**DATE APPROVED** 09/23/2025
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

This report provides updates on the operations of the Peace Officer Standards Accountability Division, as well as statistical data and outcomes of serious misconduct cases received by POST and cases that have moved forward with disciplinary action.

This report is presented for information only. No action is required.

BACKGROUND:

On September 30, 2021, Governor Gavin Newsom signed Senate Bill 2, which established the Peace Officer Standards Accountability Division and outlined its primary responsibilities of reviewing cases of serious misconduct that could result in the revocation or suspension of a peace officer's certification, as well as presenting its findings and recommendations to the Peace Officer Standards Accountability Advisory Board and Commission on Peace Officer Standards and Training for their deliberation.

The process for handling serious misconduct cases has been implemented within the Division, which has has been receiving and reviewing cases of serious misconduct since January 1, 2023. Pursuant to Penal Code section 13512, POST staff reports on the relevant statistics and outcomes related to cases of serious misconduct that will assist in the Board's evaluation of the Division's operative functions related to certification and decertification.

ANALYSIS:

As the final provisions authorized under Senate Bill 2 took

effect on January 1, 2023, POST staff reports out on the activities and relevant actions of the Peace Officer Standards Accountability Division, Peace Officer Standards Accountability Advisory Board, and Commission on Peace Officer Standards and Training.

RECOMMENDATION: This item is presented for information only. No action is required.

ATTACHMENT(S):

POSAAB Memo_091925.pdf

October 2025 POSAAB Hearing - Cert_Decert Stats 2.pdf

COMMISSION ON
PEACE OFFICER STANDARDS AND TRAINING

POST

MEMORANDUM

Date: September 19, 2025

From: Peace Officer Standards Accountability Division – Board Assistant, Chandler Knapp
To: Peace Officer Standards Accountability Advisory Board Members
Subject: October 08-09, 2025, Board Hearing and Outcome of Recent Commission Misconduct Case Review

Dear Esteemed members of the Board,

I trust this message finds you well as summer weather lingers and anticipation of fall grows. This memo aims to provide you all with two particularly important administrative updates that impact you as Board members:

1. October 08- 09, Peace Officer Standards Accountability Advisory Board Hearing will be limited to one day, Thursday October 09, 2025, at POST Headquarters in West Sacramento beginning at 10:00 AM.

2. A brief overview on the outcome of case review from September 09-10, 2025, Commission Meeting.

First, during the recent cycle, Division personnel issued four Notices of Intent to Revoke. Of those four, two have resulted in default revocations, and two have appealed.

As such, we will be conducting a **single-day hearing on Thursday October 09, 2025**, at POST Headquarters in West Sacramento beginning at 10:00 AM.

Secondly, the Commission met on September 09-10, 2025, in Huntington Beach, CA to review the recommendations made by you – the Board – at the July 16-17, 2025, Board hearing. Below are the results of the Commission's review. The following is a summary of those results – any further questions/discussion may be addressed during the Board hearing on 10/09/2025.

POST2305110 – Brian Kawamoto (POSAAB Recommendation: Revocation)

The subject officer and his counsel were notified of the details of the Commission's review and notified of their opportunity to issue public comment. Neither the subject officer nor their counsel was present and did not issue public comment. One member of the public issued comment. Following the Law Enforcement Consultant's presentation and review of the record from the Board hearing of July 16, 2025, the Commission voted unanimously to revoke the subject officer's certification. This case will now move forward for the filing of an accusation and a full evidentiary hearing before an Administrative Law Judge (ALJ), pending an appeal by Mr. Kawamoto.

POST230511 – Christopher Allen-Young (POSAAB Recommendation: Revocation)

The subject officer and their counsel were provided notice of the Commission's hearing and given notice of their opportunity to speak. No correspondence was received, and no public comment was issued by the subject officer or his counsel. One member of the public issued comment. At the conclusion of the presentation by the Law Enforcement Consultant and review of the record and recommendation from the Board hearing of July 16, 2025, the Commission voted unanimously in support of the Board's recommendation to revoke the subject officer's certification. This case will now move forward for the filing of an accusation and a full evidentiary hearing before an Administrative Law Judge (ALJ), pending an appeal by Mr. Allen-Young.

POST2306324 – Luke Baxter Walden (POSAAB Recommendation: Revocation)

The subject officer and his counsel were notified of the details of the Commission's review and notified of their opportunity to issue public comment. Counsel for the subject officer was present and provided public comment during the Commission's hearing. One member of the public issued comment as well. Following the Law Enforcement Consultant's presentation, the Commission met in closed session and returned with direction for the Division to investigate the matter further citing concerns regarding missing documents such as the Board of Rights transcripts and disciplinary rational. The Commission also expressed concern that the Los Angeles Police Department did not pursue a dishonesty allegation, however dishonesty is one of the serious misconduct charges brought by POST. The Division will now produce the requested documentation and bring the matter back before the Board and Commission. As such, we will need to schedule a separate remote hearing for the Board prior to the Commission's December hearing.

POST2316745 – Jared Brittain (POSAAB Recommendation: Revocation)

At the conclusion of the Law Enforcement Consultant's presentation and review of the record from the Board hearing of July 17, 2025, and the recommendation made by the Board at said hearing, the Commission adopted the Board's recommendation of revocation of the subject officer's POST certification. Before adjourning into closed session, the subject officer and his counsel issued public comment followed by members of the public. A motion was made to adopt the Board's recommendation. The motion was seconded and carried, with a 12-1 vote, to revoke the subject officer's certification. The case will now move forward for the filing of an accusation and a full evidentiary hearing before an ALJ, pending an appeal by Mr. Brittain.

POST2318309 – Robert Sasek (POSAAB Recommendation: Revocation)

At the conclusion of the Law Enforcement Consultant's presentation and review of the record and recommendation from the Board's July 17th hearing, the Commission adopted the Board's recommendation of revocation of the subject officer's POST certification. At the hearing, Commission Chair Long opened the floor for public comment. The subject officer spoke, followed by members of the public. The motion was seconded and carried unanimously 13-0, to revoke the subject officer's certification. The case will now move forward for the filing of an accusation and a full evidentiary hearing before an ALJ, pending an appeal by Mr. Sasek.

We understand that you may have questions or concerns in reference to the aforementioned case outcomes. This memo aims to provide a summary of those case outcomes; however, staff can elaborate on the outcome of any of these cases at the Board's next scheduled meeting on October 09, 2025, at POST Headquarters in West Sacramento.

We sincerely hope that fall treats you well and look forward to seeing you all in October. If you have any general questions or concerns about POSAAB business, please do not hesitate to reach out to me at any time.

Very truly yours,

Chandler T. Knapp

Chandler T. Knapp
POSAAB Assistant - Executive Office

Peace Officer Standards Accountability Division

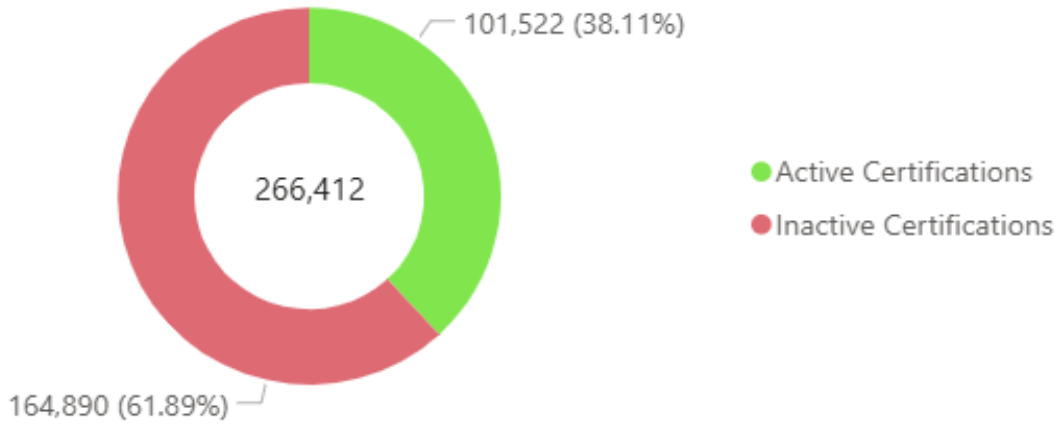
Certifications Statistics

October 2025

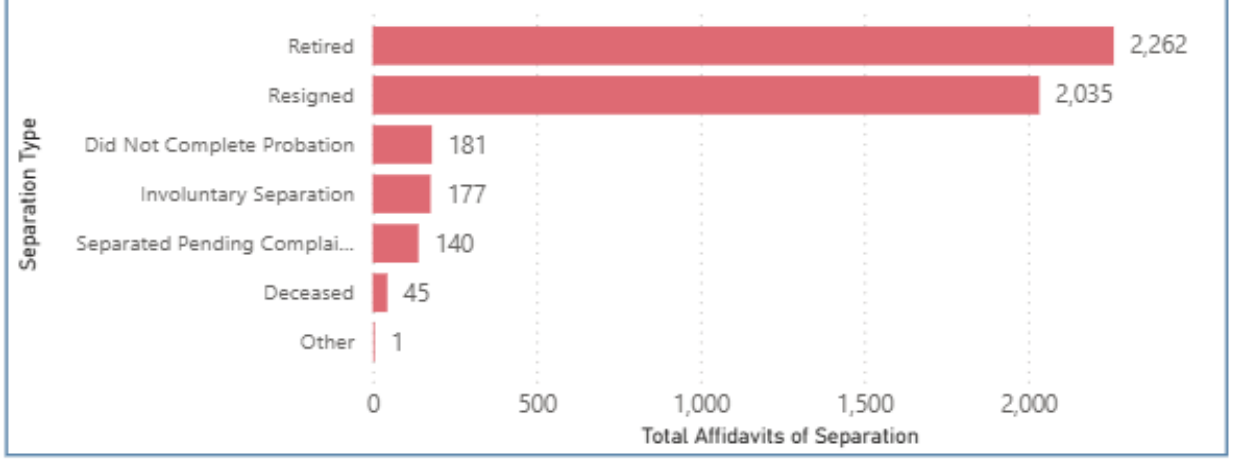
Peace Officer Certification Statistics

Report Year : 2025

Current Active and Inactive Certifications



Affidavits of Separation (AOS)



Current Full-time Peace Officers	82,595

Basic Certificates Issued	Appointments Approved	Proof of Eligibilities Issued
2,640	4,865	3,728

Serious Misconduct Count
299

Distinct Officers with Serious Misconduct
218

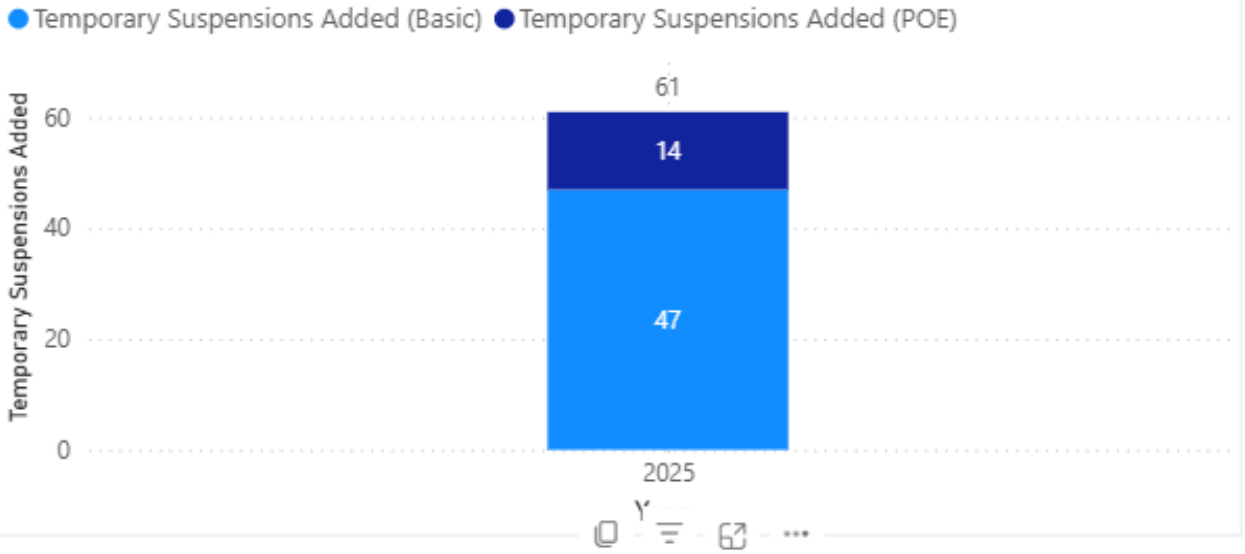
Total AOS	4,858

Serious Misconduct Reason	Count of Affidavits
Abuse of Power	28
Demonstrating Bias	30
Dishonesty	79
Egregious Repeated Acts	82
Failure to Cooperate with Investigation	10
Failure to Intercede	1
Law Enforcement Gang	3
Physical Abuse	41
Sexual Assault	25

Peace Officer Certification Statistics

Report Year : 2025

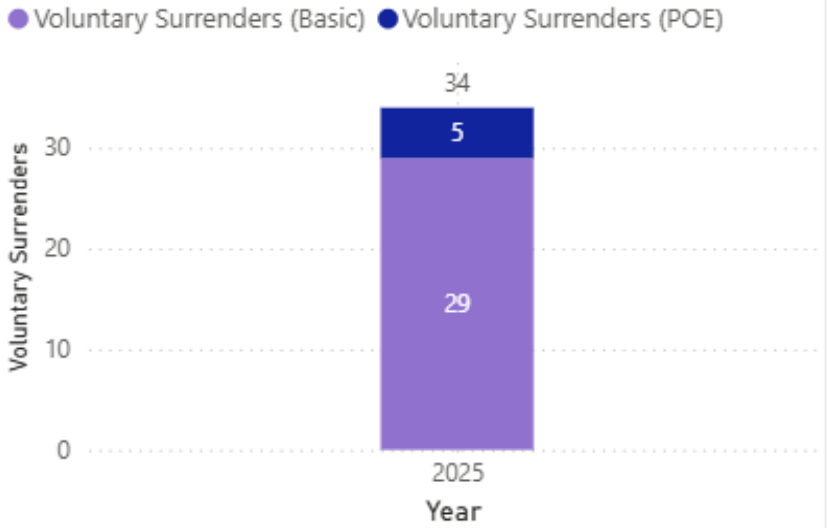
Temporary Suspensions Added by Year



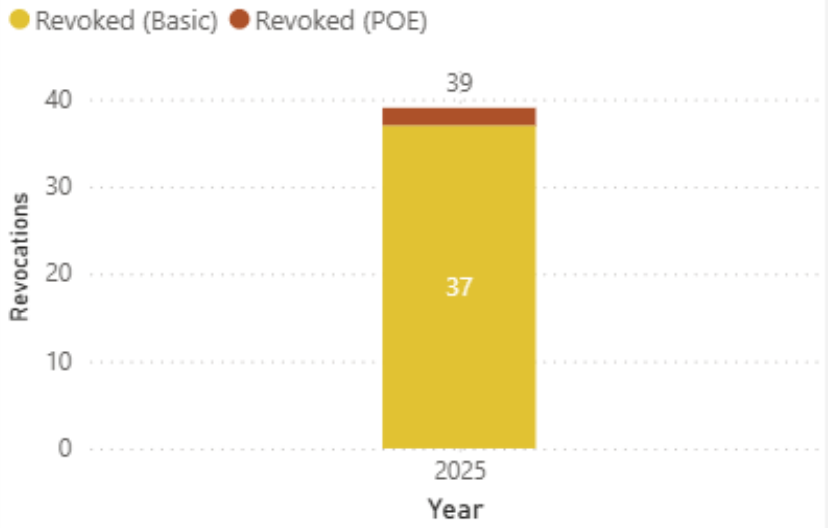
Temporary Suspensions Removed by Year



Voluntary Surrenders by Year



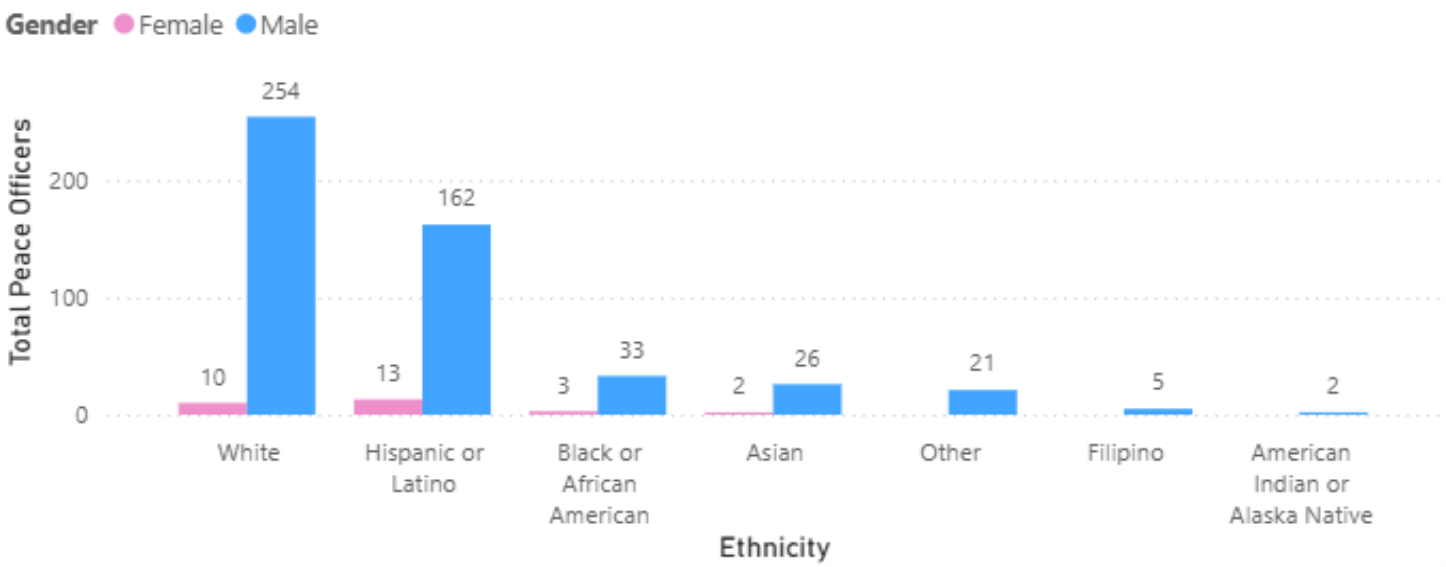
Revocations by Year



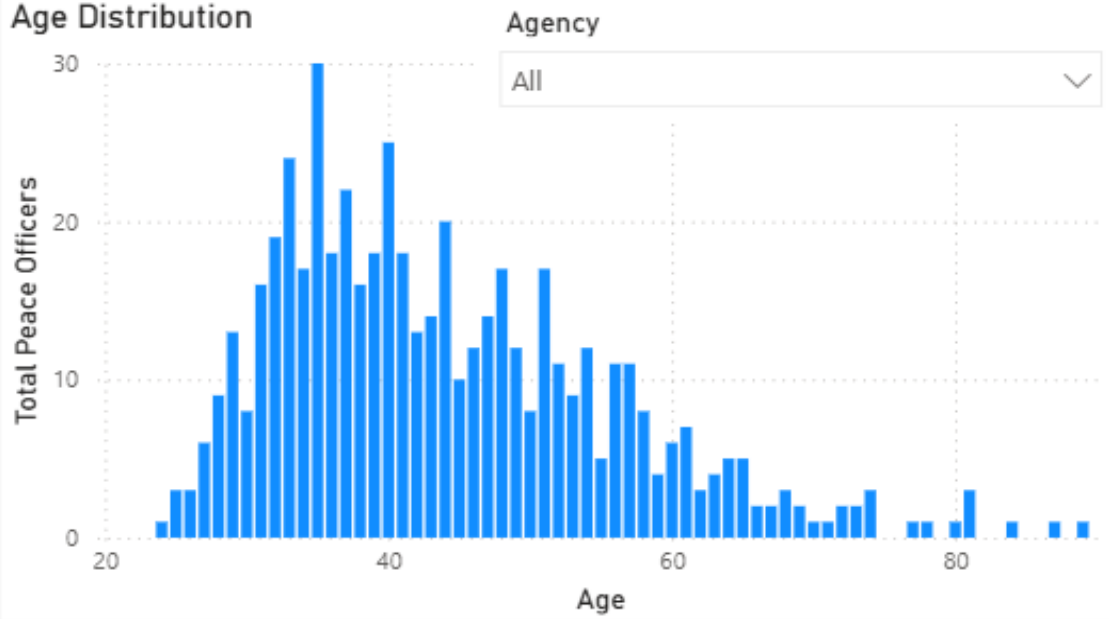
1029 Ineligibilities Added

14

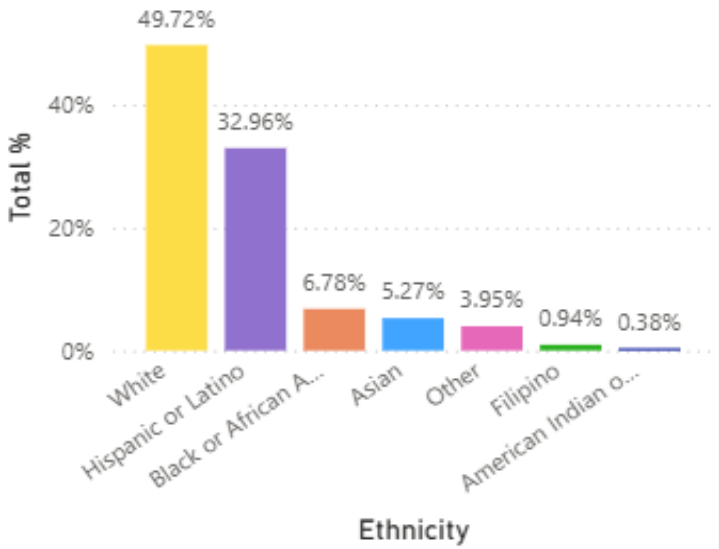
Demographics of peace officers that POST has taken action against



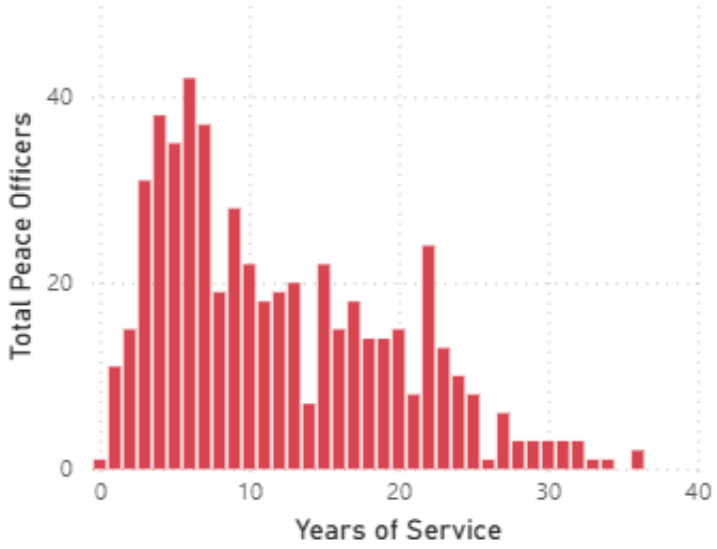
Age Distribution



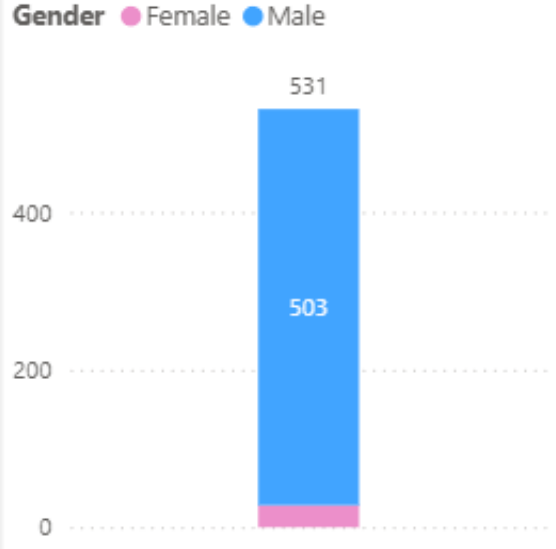
Total % by Ethnicity



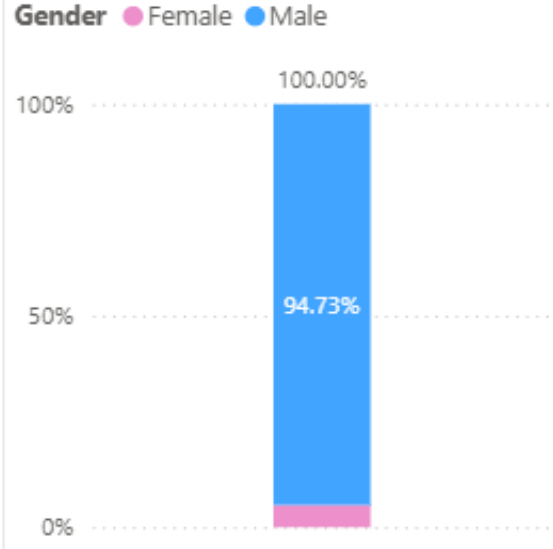
Years of Service Distribution



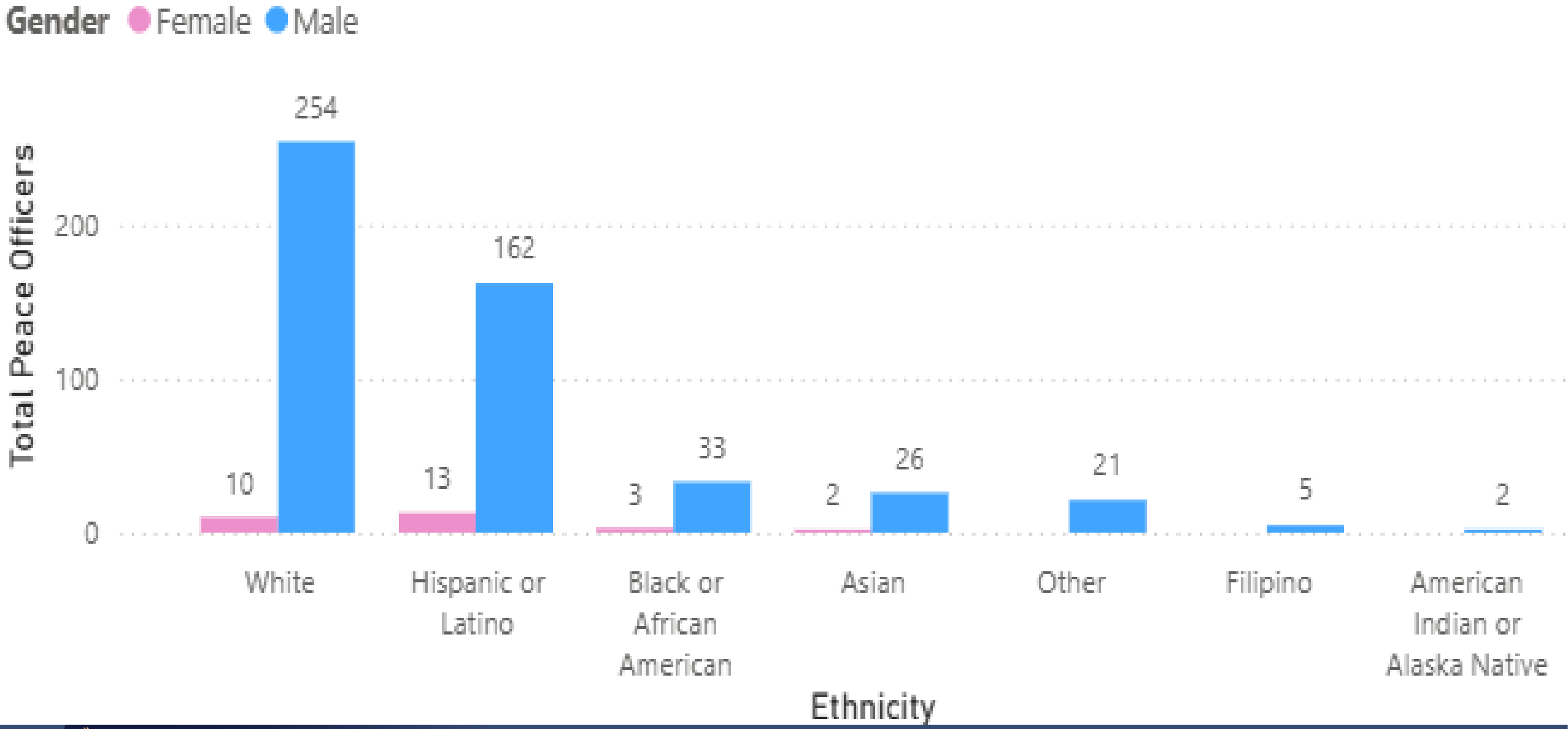
Female vs Male

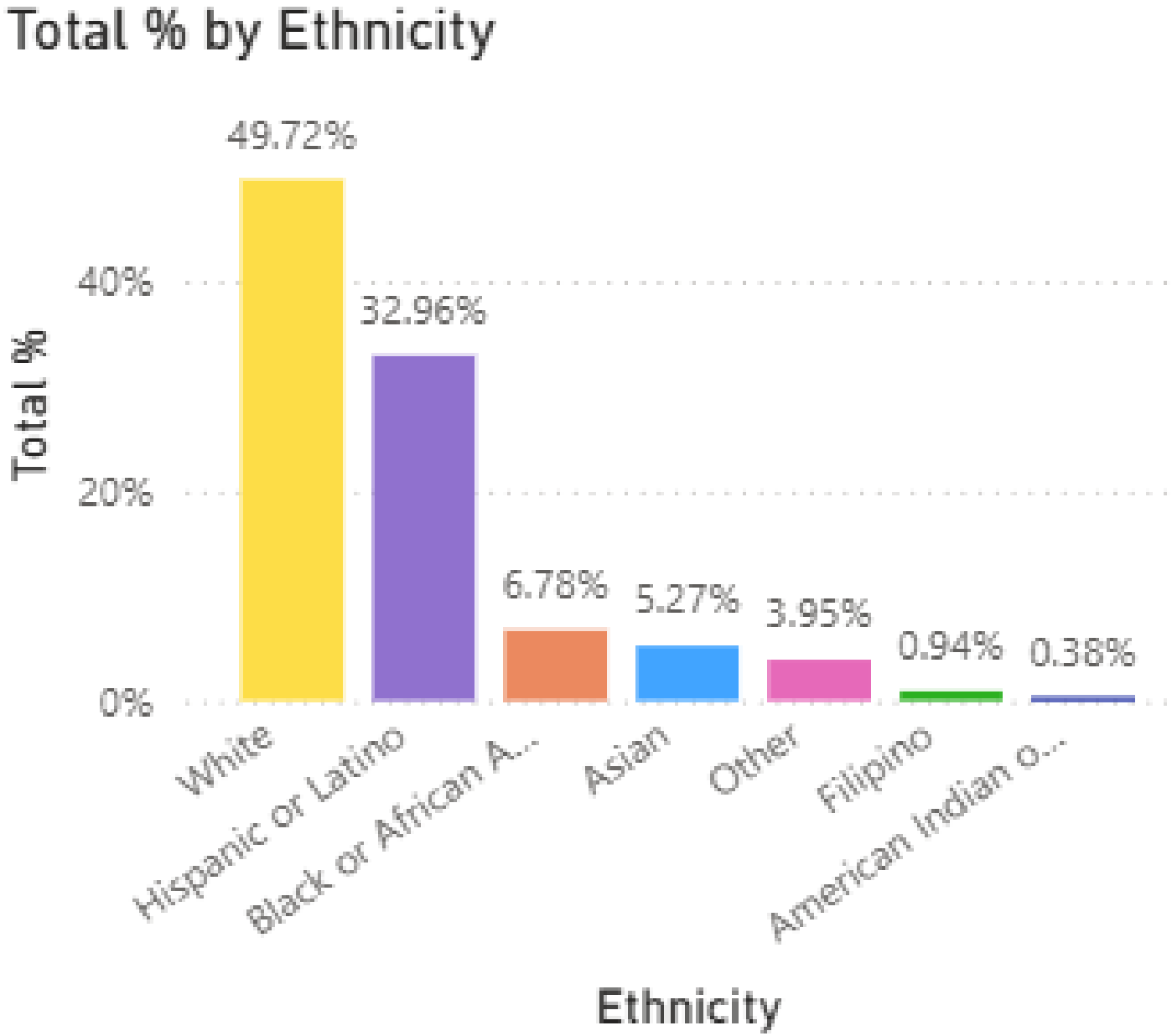


Female vs Male (%)



Demographics of peace officers that POST has taken action against

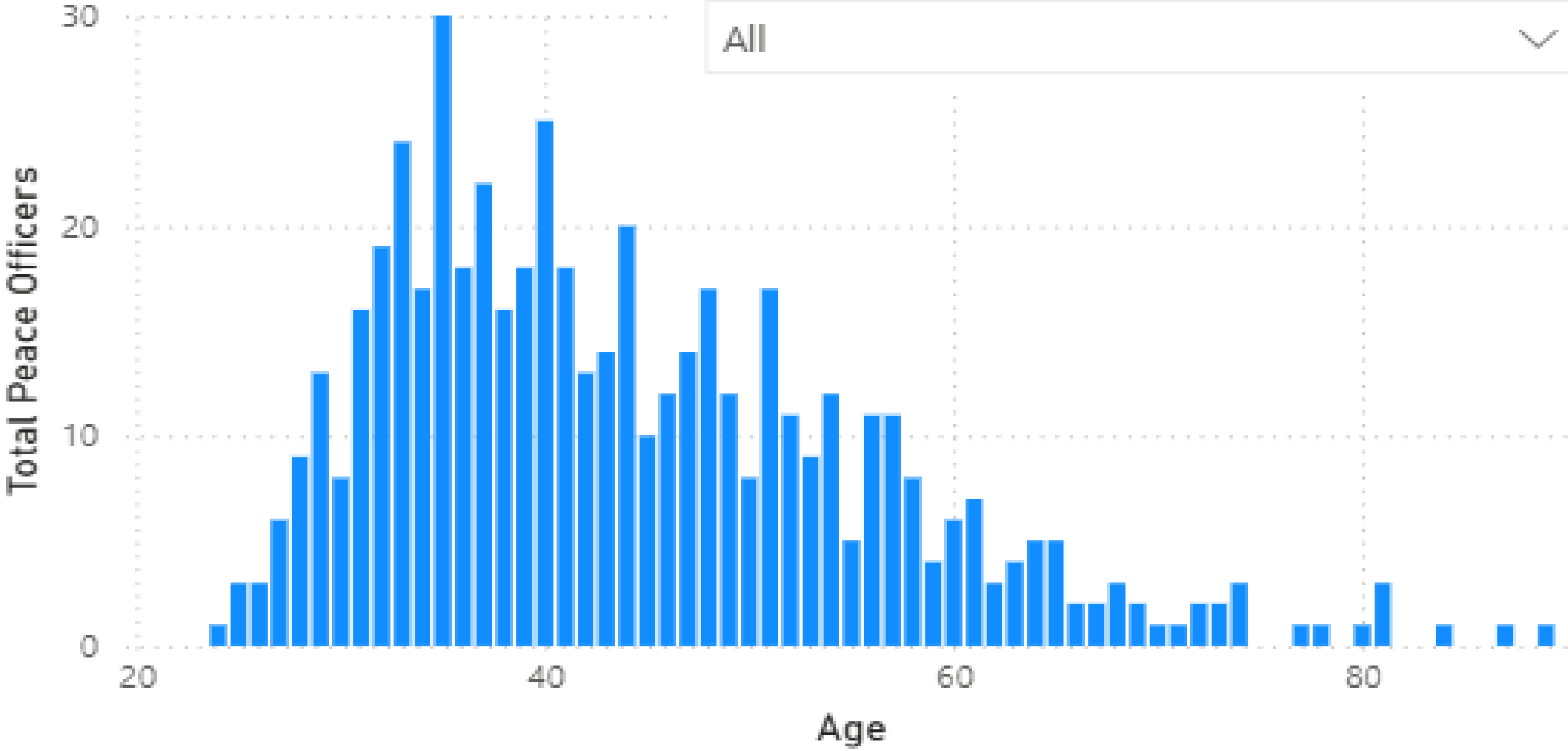


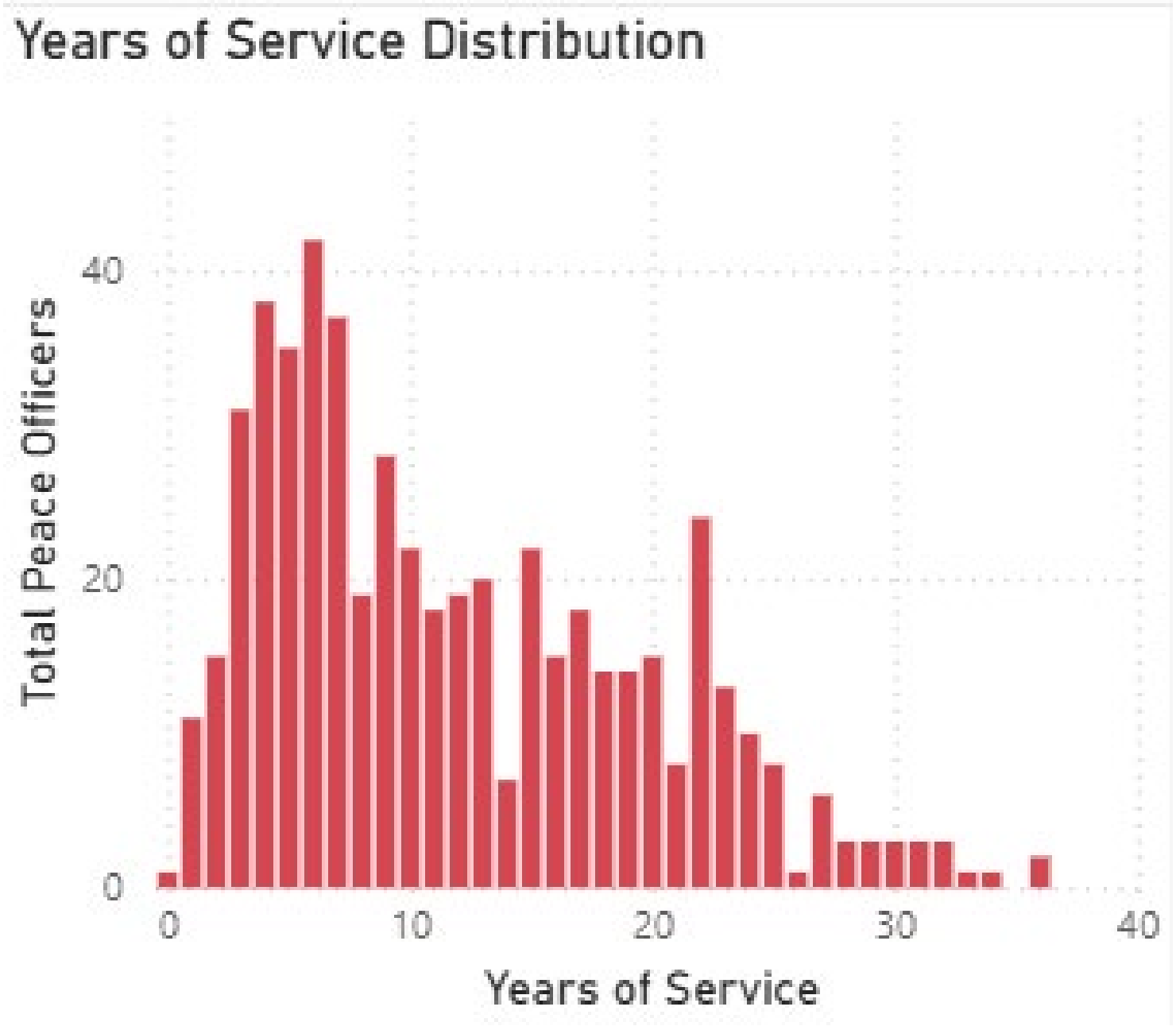

Total % by Ethnicity
49.72%
32.96%
6.78%
5.27%
3.95%
0.94%
0.38%
40%
20%
0%
Total %
White
Hispanic or Latino
Black or African A...
Asian
Other
Filipino
American Indian o...
Ethnicity

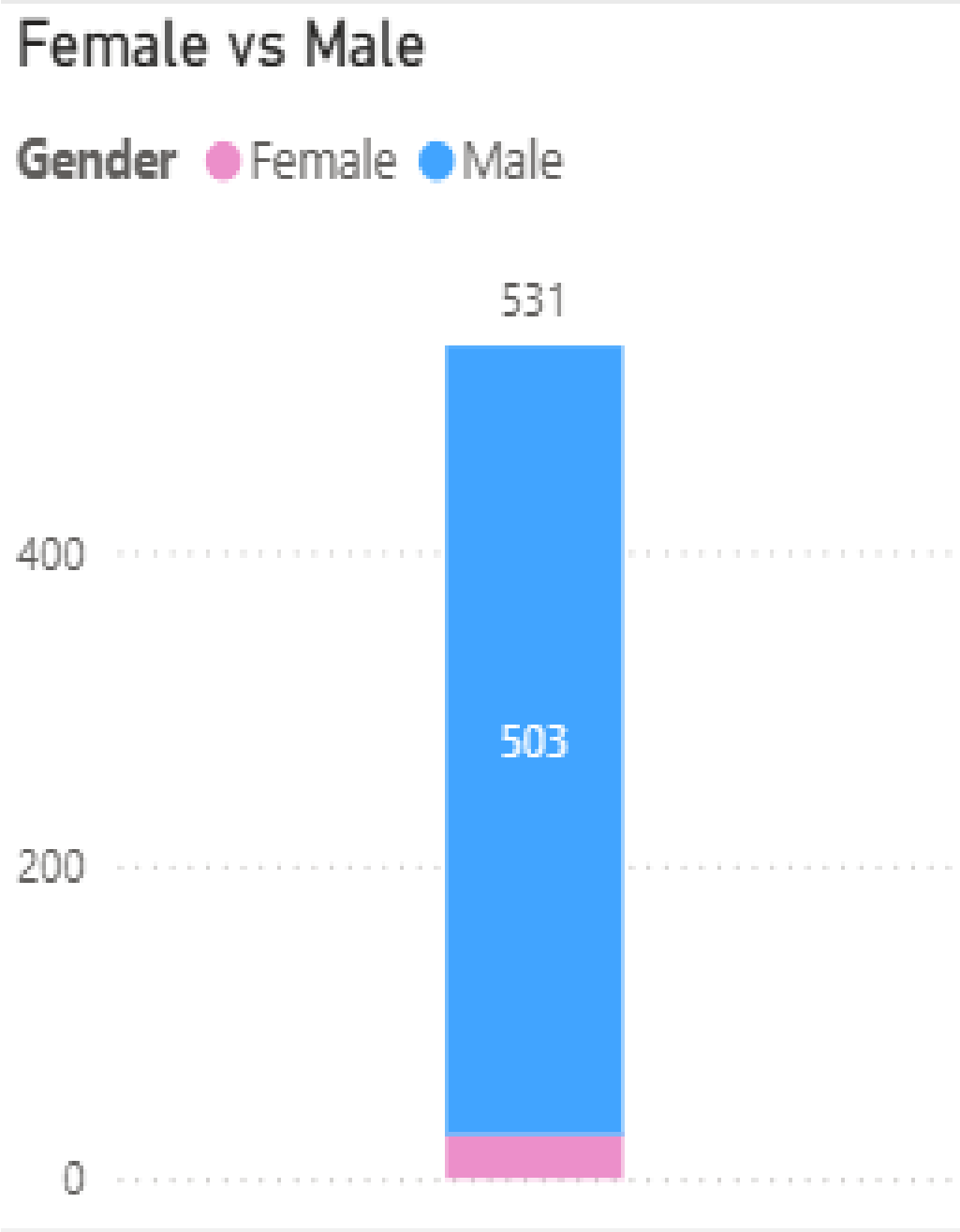
Age Distribution

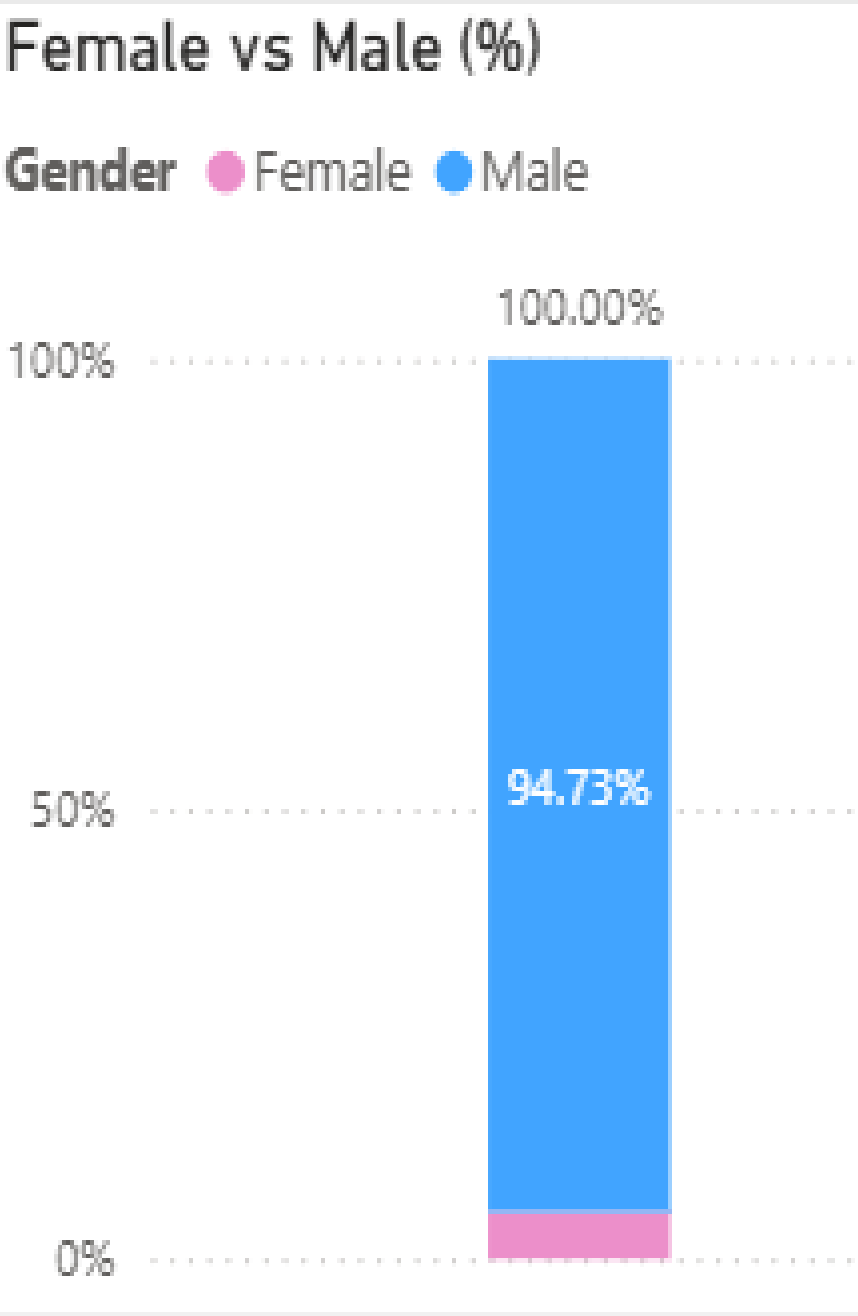
Agency

All




Years of Service Distribution
Total Peace Officers
40
20
0
0
10
20
30
40
Years of Service


Female vs Male
Gender
Female
Male
531
503
400
200
0

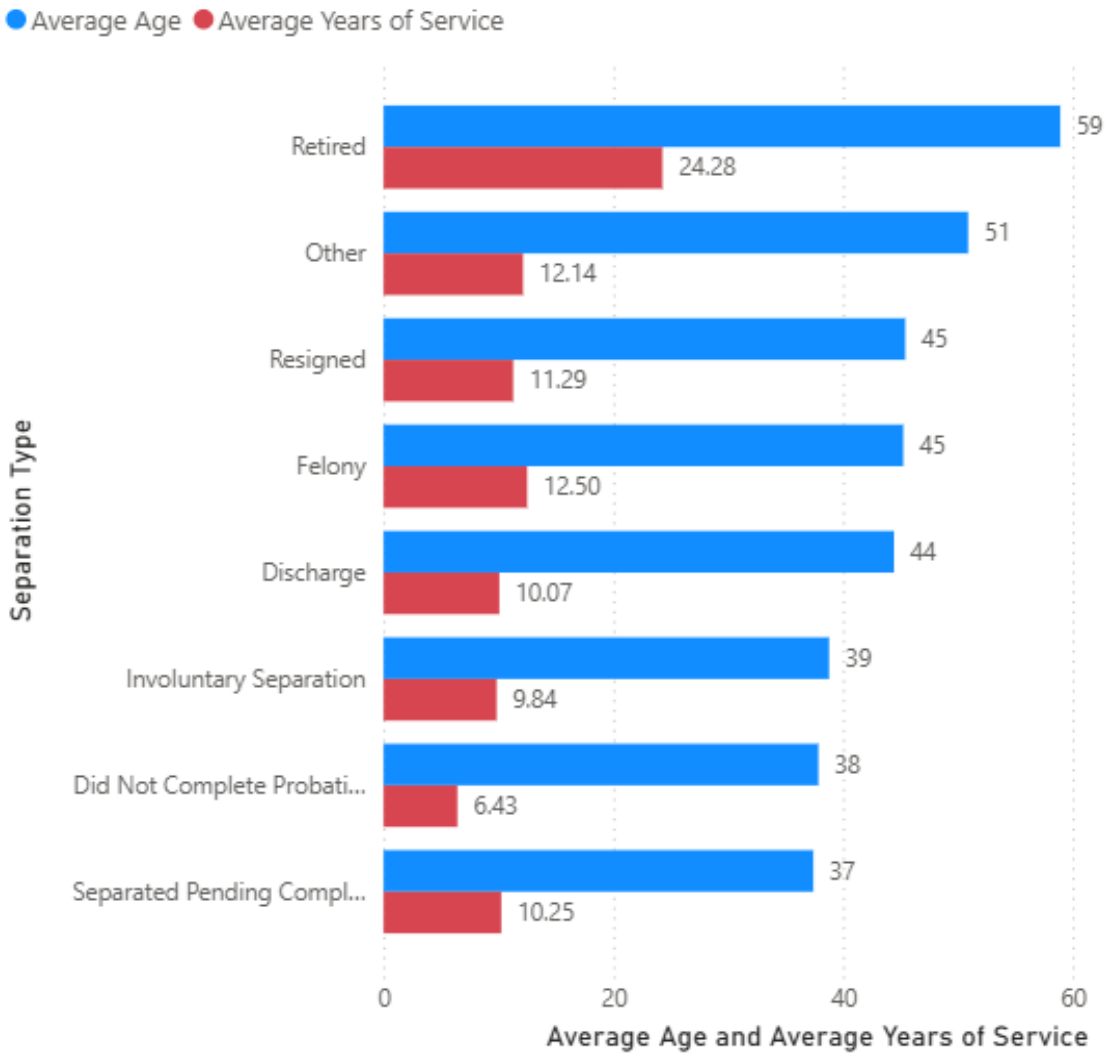

Female vs Male (%)
Gender
Female
Male
100.00%
94.73%
100%
50%
0%

Demographics of peace officers that POST has taken action against

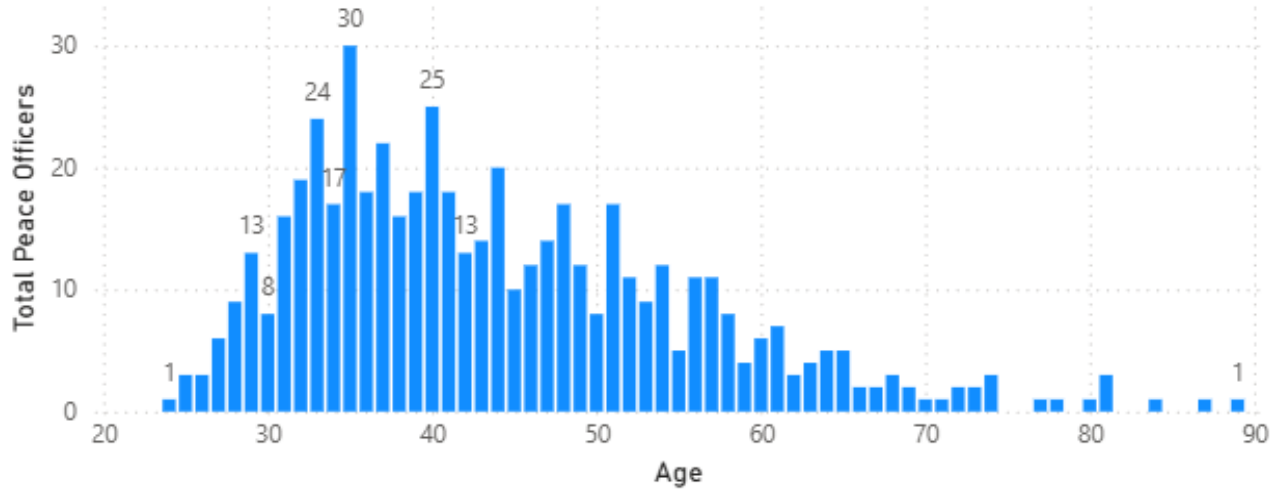
Separation Type: All

Agency: All

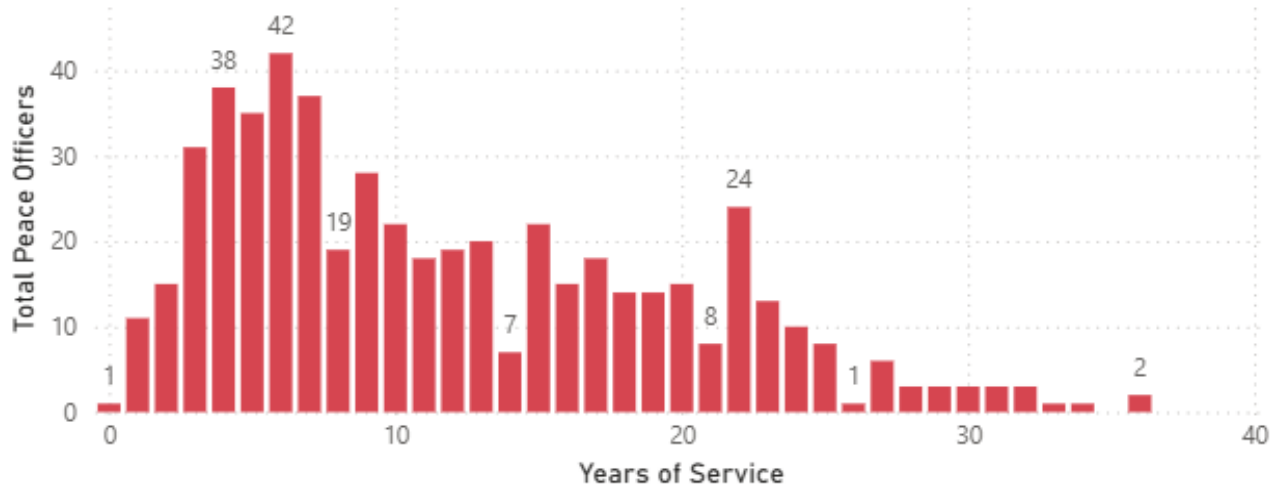
Average Age & Average Years of Service by Separation Type



Total Peace Officers by Age



Total Peace Officers by Years of Service



Peace Officer Education Statistics (Statewide)

Statewide Data | Misconduct Data

Latest Degree (Select Blank for POs w/o Degrees): All

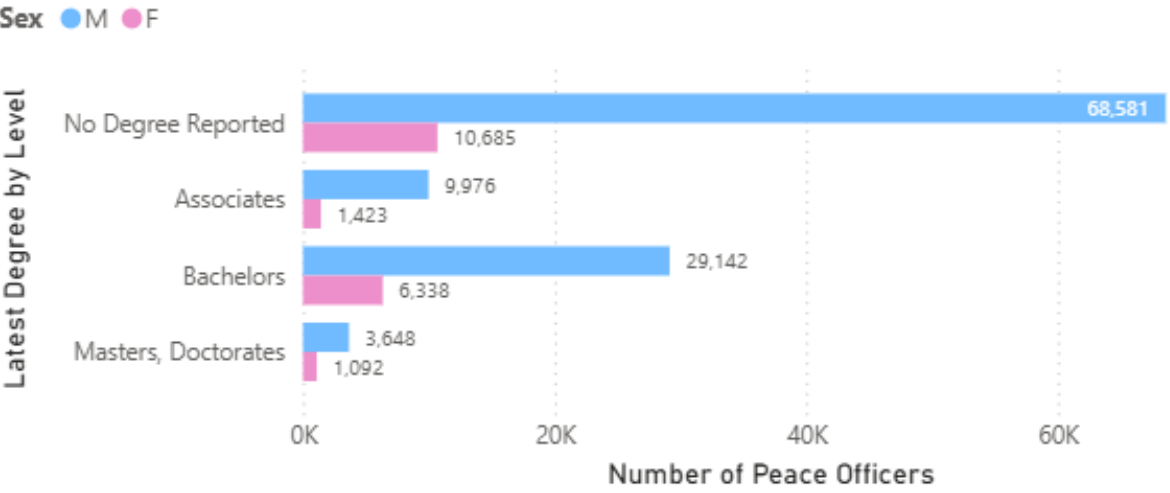
Rank: All

Sex: All

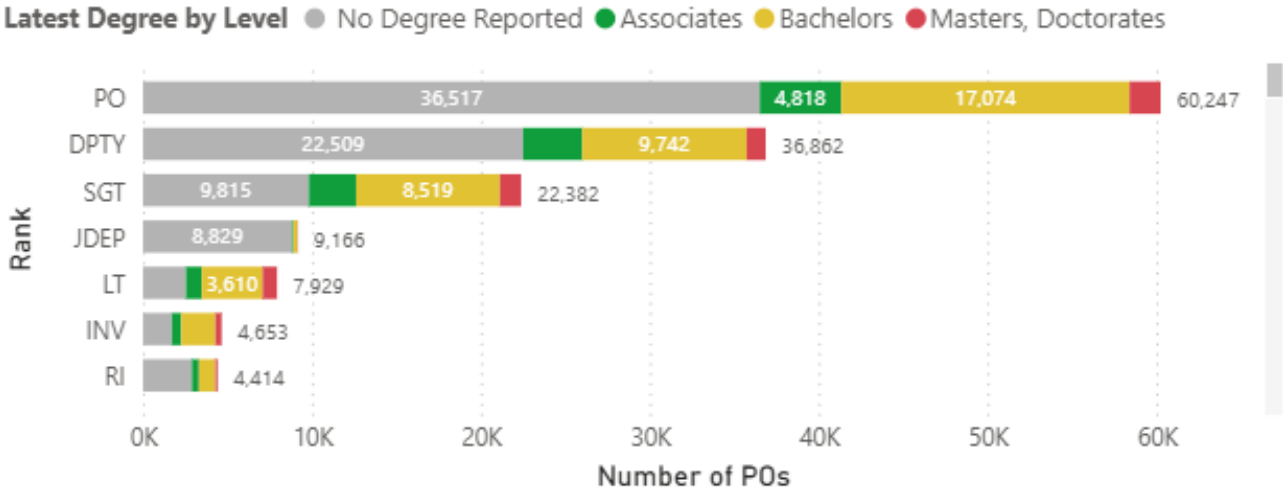
Ethncity: All

Agency: All

Number of Peace Officers by Latest Degree Earned (Statewide)



Number of POs by Rank and Latest Degree Earned (Statewide)

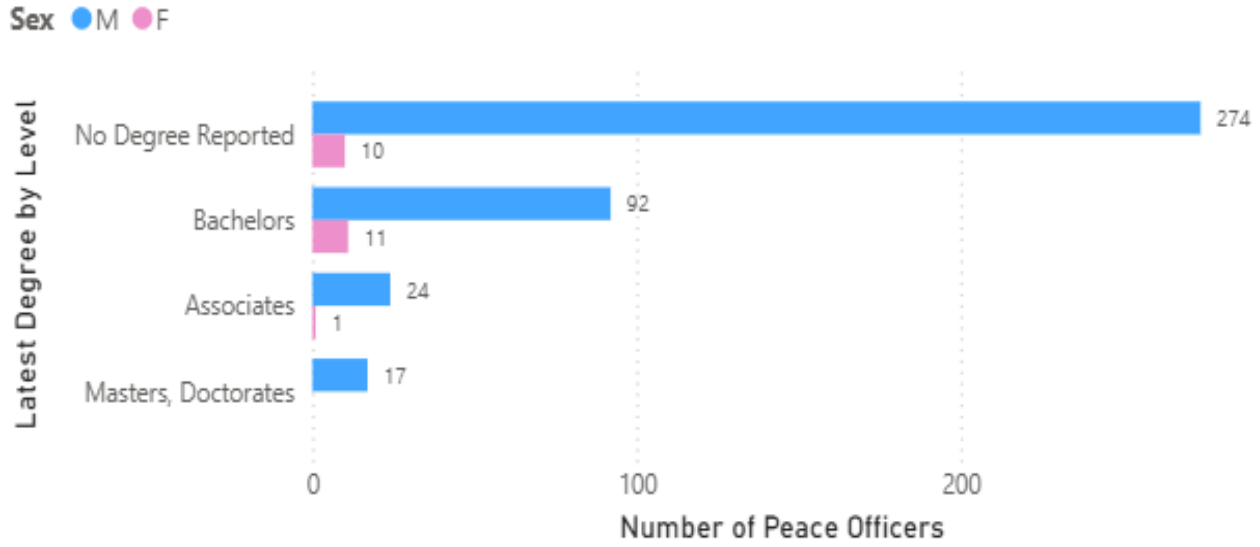


Peace Officer Education Statistics (Misconduct)

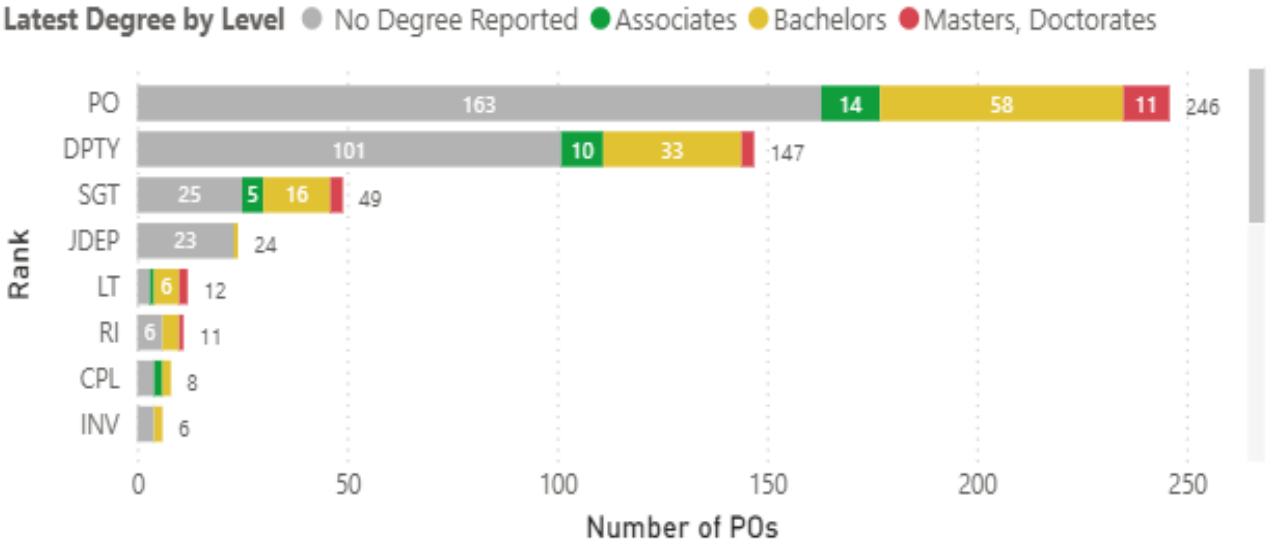
Statewide Data | Misconduct Data

Latest Degree (Select Blank for POs w/o Degree... All | Rank All | Sex All | Ethnicity All | Agency All

Number of Peace Officers by Degrees Earned (Misconduct)



Number of POs by Rank and Latest Degree Earned (Misconduct)



Peace Officer Standards Accountability Division

Statistical Data Profile

October 2025

Data through 09/15/2025

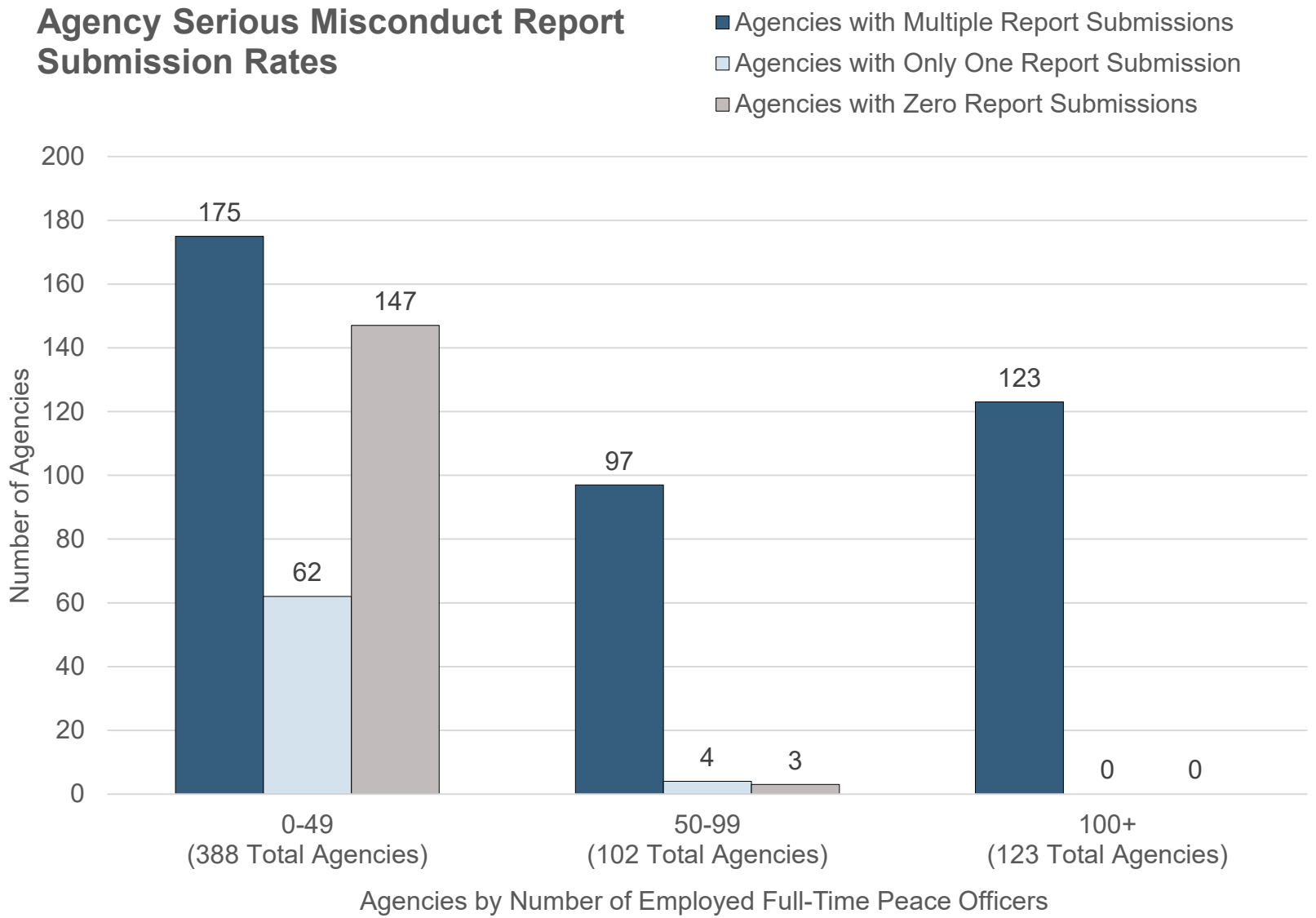
Agency participation for serious misconduct report submissions is at its highest since the implementation of SB 2.

611 agencies must report serious misconduct to POST.

Most agencies have submitted multiple serious misconduct reports to POST.

24% of agencies have not reported. Over half of these agencies employ less than 10 full-time peace officers.

Agencies with a smaller number of peace officers are statistically expected to have less serious misconduct incidents and allegations.



The Division's intake of serious misconduct reports was heavily driven by the statutory retroactive reporting mandate, but numbers have since stabilized at ~2.5k reports per quarter.

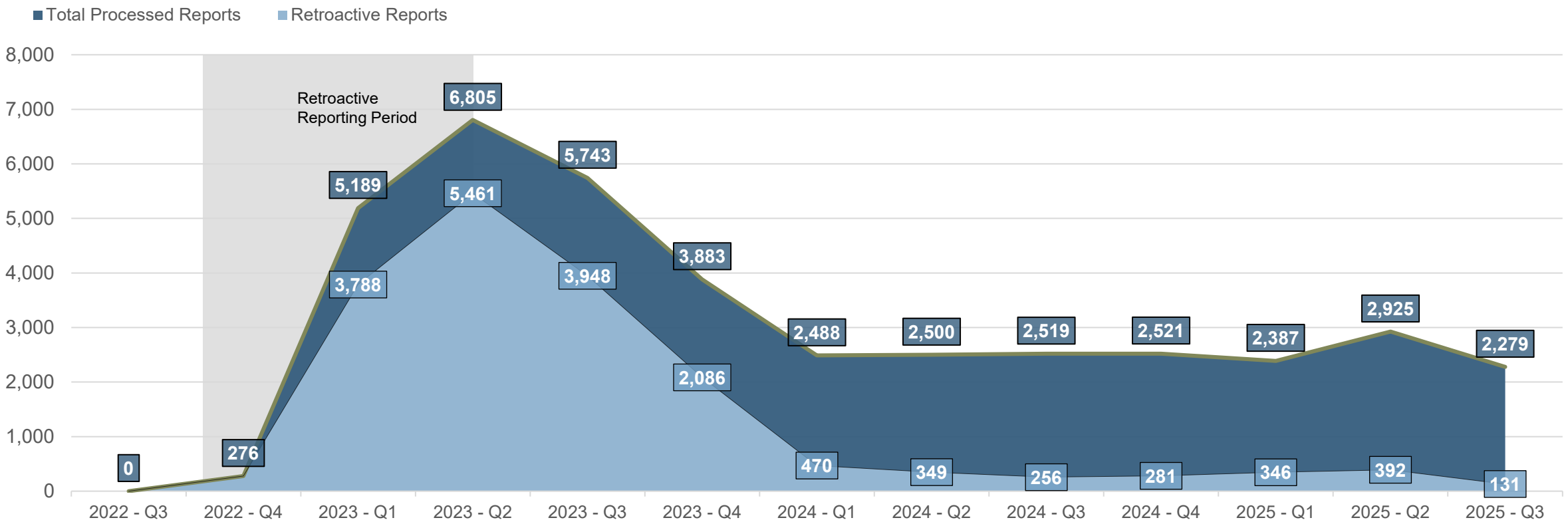
The Division processed over **39,000 Agency Misconduct reports.**

46% were received prior to the statutory retroactive reporting deadline: July 1, 2023.

Approximately 45% of all reports were **retroactive reports** (incident date between January 1, 2020, and January 1, 2023.)

Since the 1st quarter of 2024, the Division routinely processes approximately **2,500 reports per quarter.**

Composition of Reports Processed by the Division



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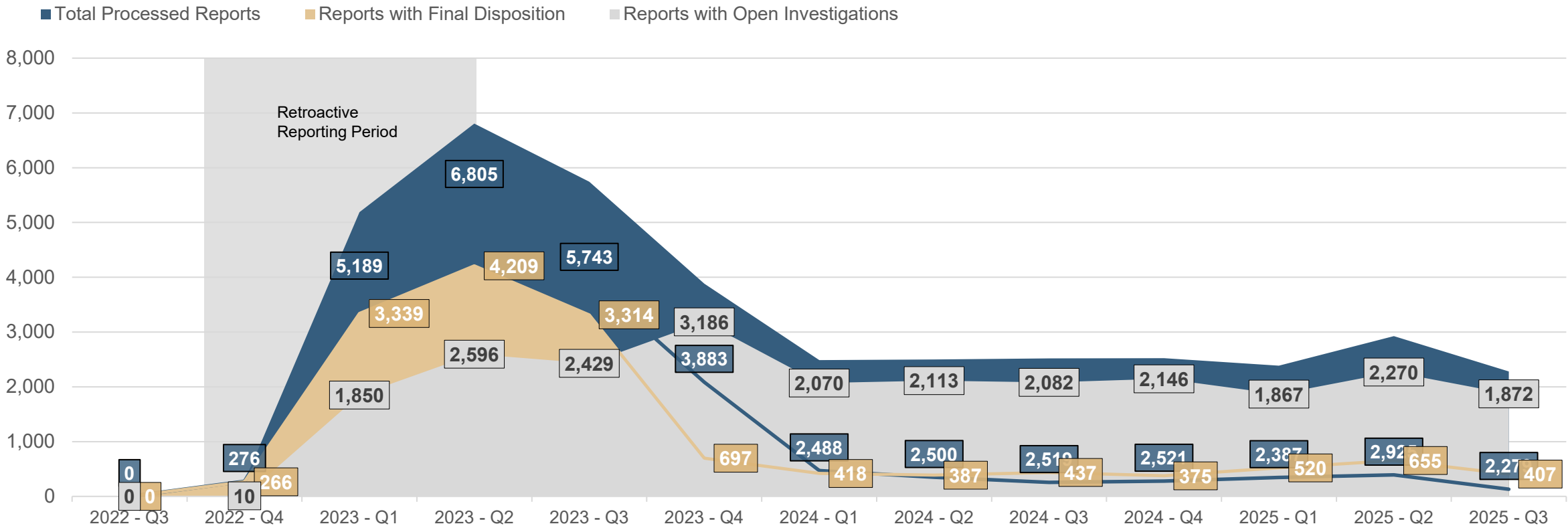
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46% were received prior to the statutory retroactive reporting deadline: July 1, 2023.

Approximately 45% of all reports were **retroactive reports** (incident date between January 1, 2020, and January 1, 2023.)

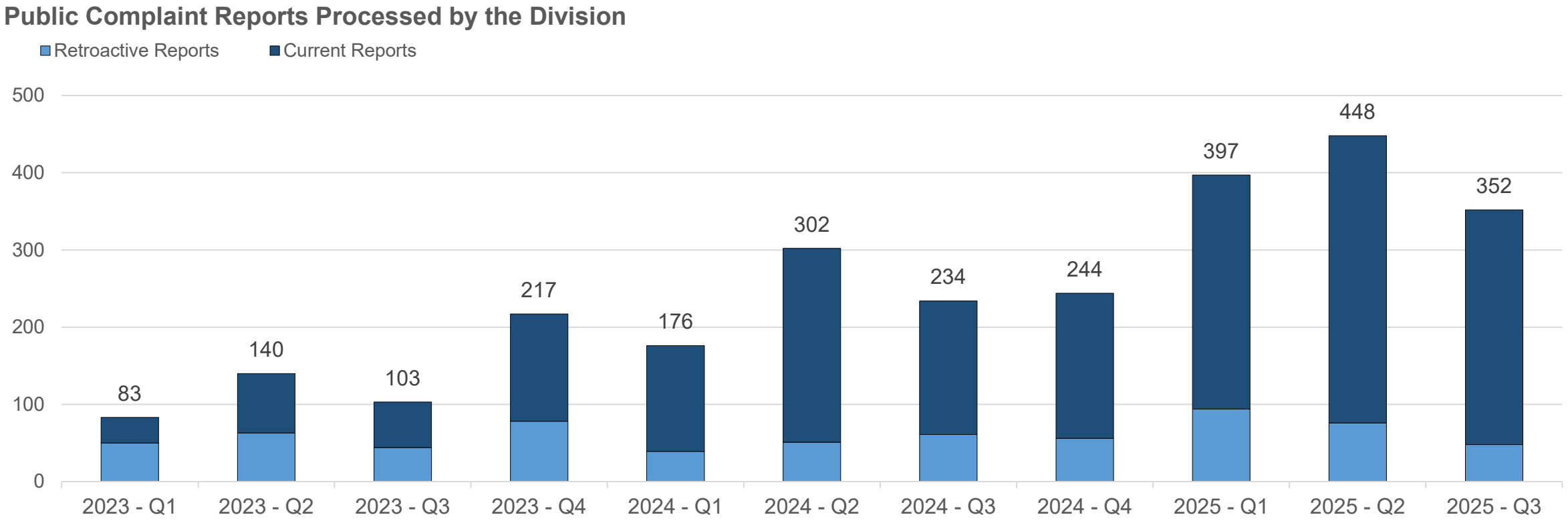
Since the 1st quarter of 2024, the Division routinely processes approximately **2,500 reports per quarter.**

Composition of Reports Processed by the Division



Nearly 2,700 public complaint reports processed by the Division; increasing public awareness of POST and the decertification process has resulted in a steady increase of public complaint submissions.

POST has received complaints against **over 2,500 (~1,600 unique) officers** from a pool of approximately 2,700 complainants.



Total reflects the **number of officers** with potential serious misconduct allegations rather than the actual number of public complaints submitted by members of the public; if an individual files a complaint that contains multiple officers, POST will create a respective report for each named officer.

Overview of POST's public complaint process:

When POST receives a public complaint, it is reviewed to determine if it is against a peace officer within POST's jurisdiction.

The complaint is forwarded to the agency for its investigation; if the complaint is against an agency head or reporter in POST's records management system, it will be forwarded to the agency at the Bureau Chief's discretion. These complaints may also be investigated by POST or a third-party investigator.

Complaint reports are assigned into cases to staff to conduct outreach to ensure an agency response is received, whether it be agency findings, initiation of an investigation, or a detailed, sufficiently justified reasoning as to why the conduct within the complaint does not rise to the level of serious misconduct.

POST receives complaint from a member of the public.

The complaint is reviewed by staff to ensure the officer is jurisdictional. If a previous complaint was filed, the complaint is added to the initial complaint.



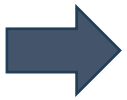
POST forwards the complaint to the agency for its response.

If the complaint is against an agency head or reporter, the complaint will only be forwarded to the agency at the Bureau Chief's discretion.



POST receives a thorough response from the agency.

POST staff continuously conduct outreach to receive an agency response. The response must be thorough and sufficient.

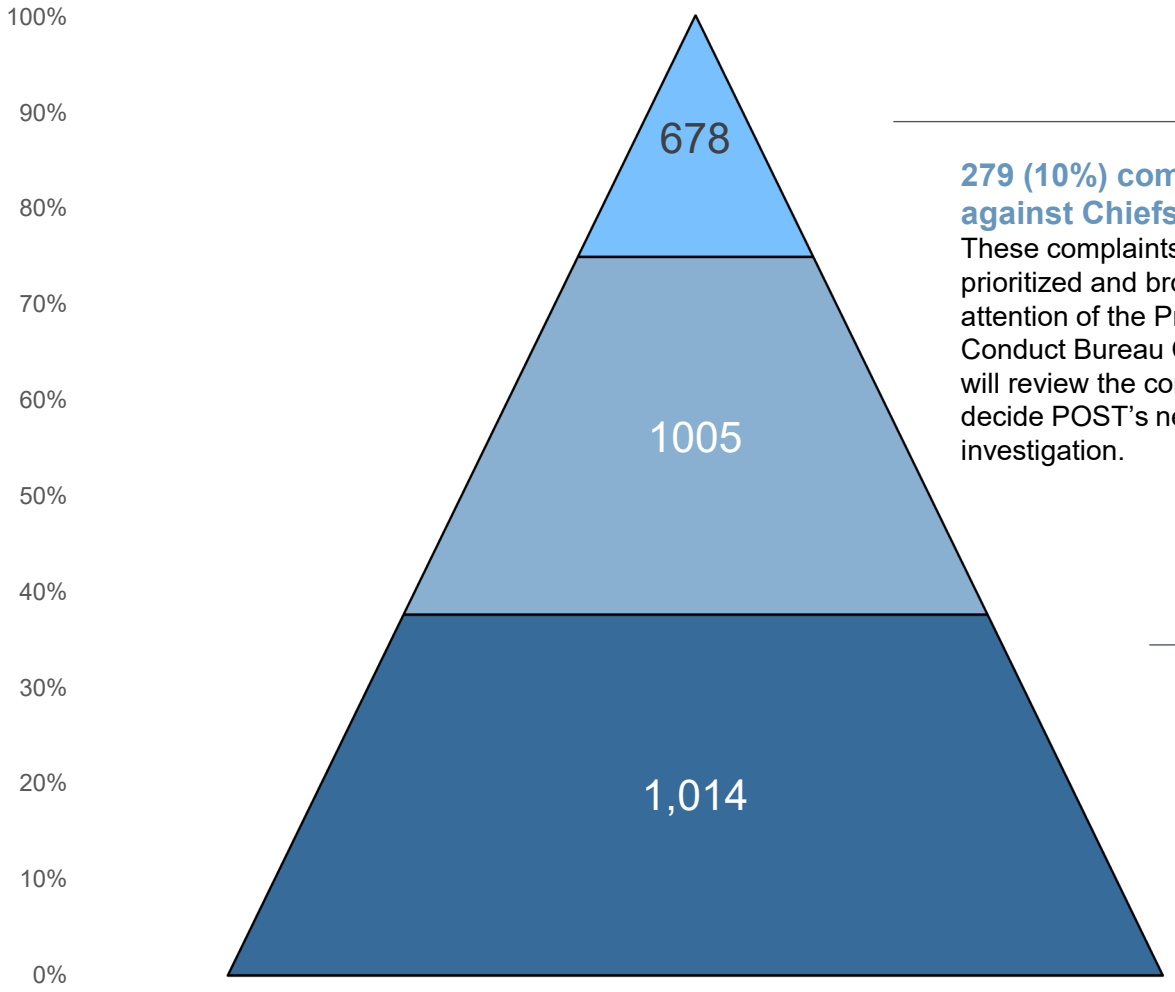


POST conducts its review of the complaint and incident.

Once sufficient documentation is obtained, POST has up to three years to complete its investigation into the public complaint.

POST is actively reviewing complaints and coordinating with agencies for documentation; 37% are undergoing review for potential serious misconduct, while 38% have been closed.

Public Complaint Composition



279 (10%) complaints are against Chiefs/Sheriffs.
These complaints are highly prioritized and brought to the attention of the Professional Conduct Bureau Chiefs, who will review the complaint and decide POST's next steps for investigation.

10 (0.3%) complaints have resulted in certification action.
These complaints have been reviewed by POST and resulted in revocation, ineligibility, or voluntary surrender of the subject officer's certification.

678 (25%) complaints require additional agency documentation.

POST communicates with agencies to receive ample documentation prior to its review.

1,005 (37%) complaints are undergoing POST review.

POST has received sufficient agency documentation to move forward with review. These complaints were identified for containing potential serious misconduct.

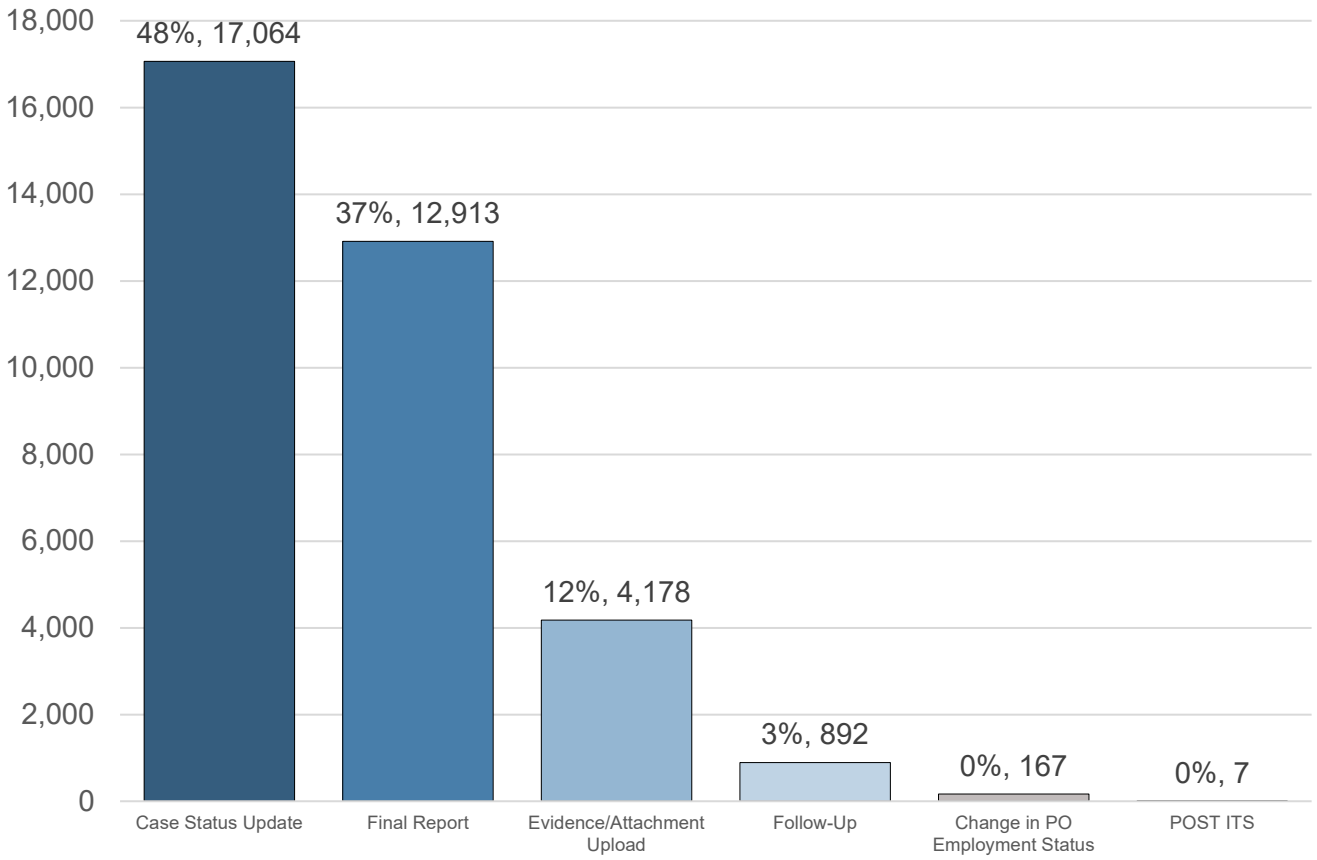
1,014 (38%) complaints are closed.

These complaints were reviewed by POST and determined to be serious misconduct, not serious misconduct, or non-jurisdictional. POST can only take certification action against peace officers described in Penal Code section 13510.1(a**)**.

The Division has received over 35,000 report updates from agencies, most consisting of case status updates, evidence uploads, and agency findings.

Over 35,000 Agency Supplemental reports were submitted to provide additional information to Agency Misconduct reports and public complaints.

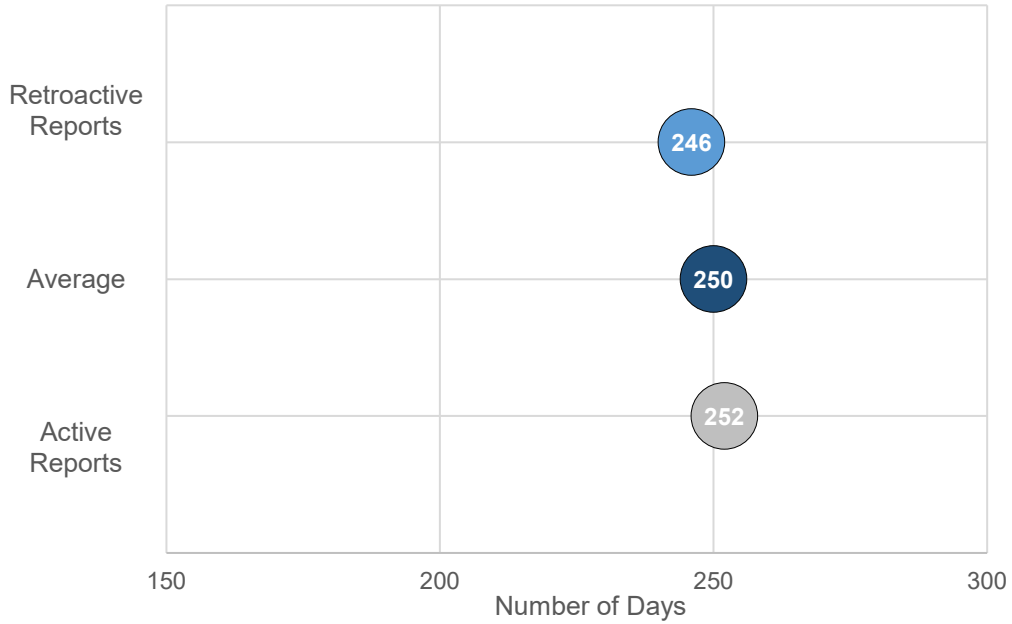
Types of Agency Supplemental Reports Submitted to POST



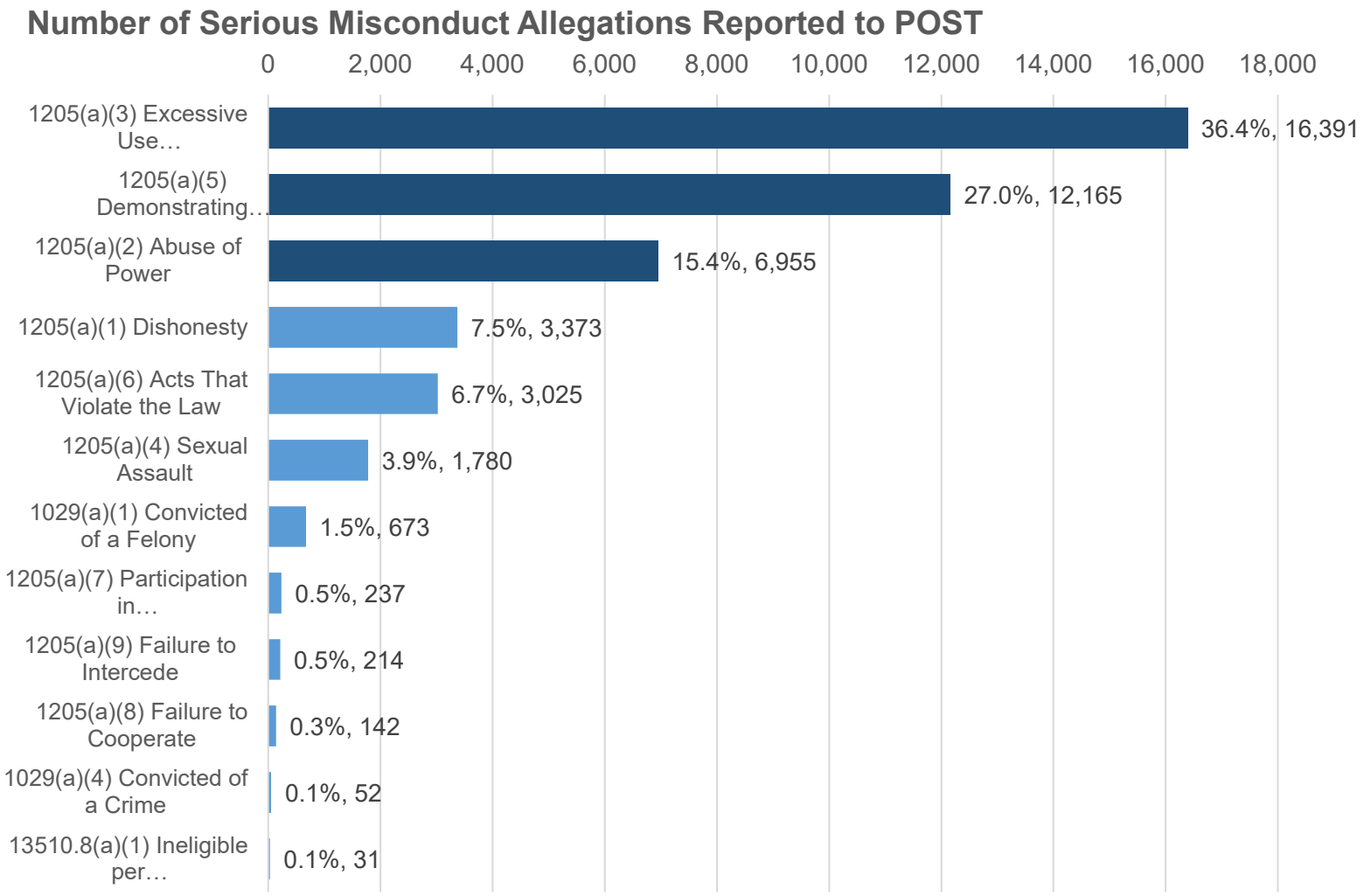
The average timeframe in which an open Agency Misconduct report receives agency findings through an Agency Supplemental report is **250 days**. This timeframe fluctuates when discerning active and retroactive reports.

On average, **retroactive reports** received agency findings in **246 days**. In contrast, **active reports** received agency findings later, within an average of **252 days**.

Average Agency Finding Submission Times By Incident Date



Over 45,000 serious misconduct allegations spanning 21,800+ officers statewide have been reported to POST; in accordance with statute, only 85% of the allegations are potentially actionable.



A report or complaint may contain multiple allegations.

21,839 unique peace officers (26% of total CA peace officers) received allegations.

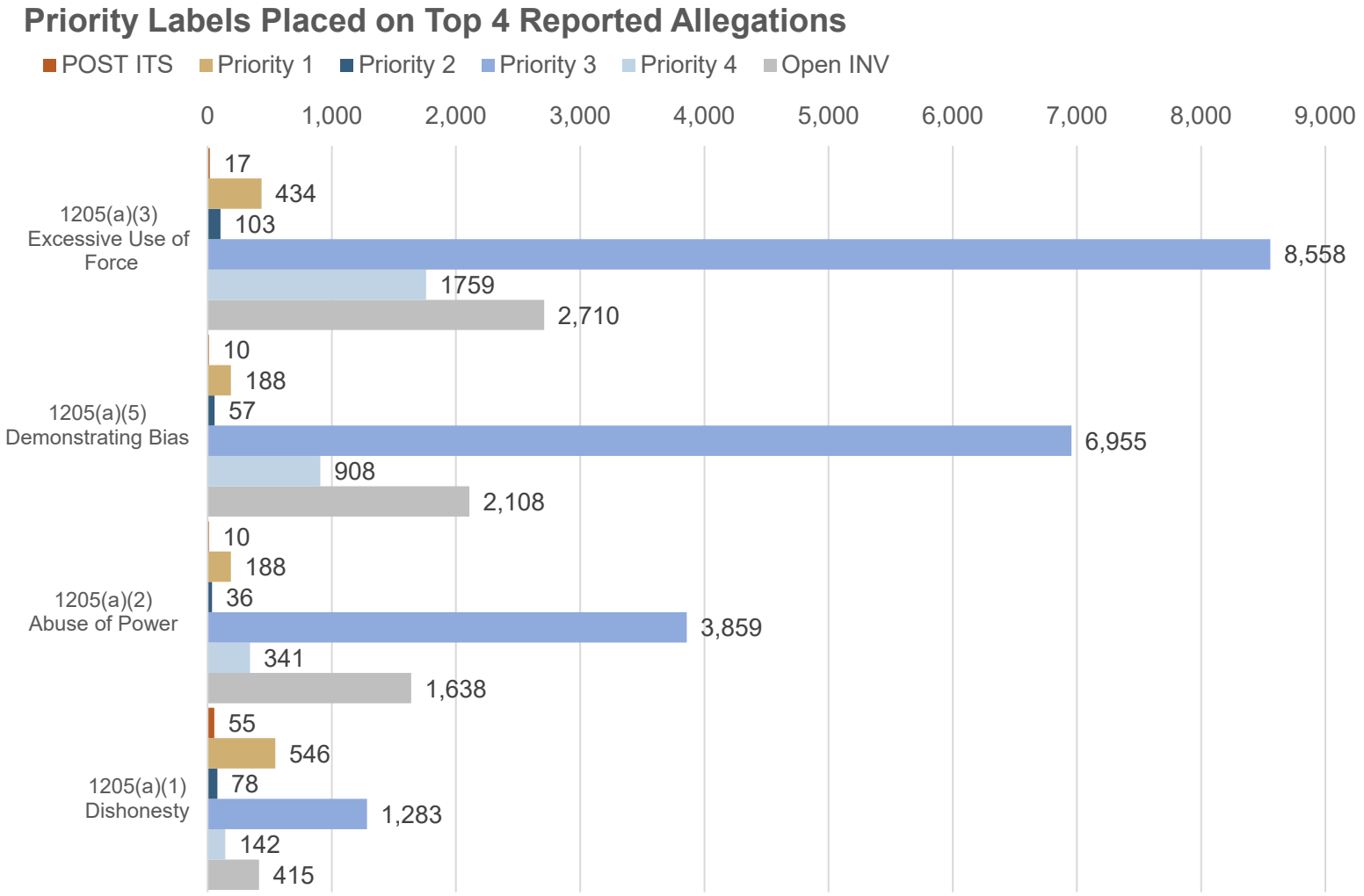
About **32%** of allegations **occurred prior to January 1, 2022**.

POST can only act against conduct that occurred prior to January 1, 2022, **if:**

(1) The subject officer's agency makes a final determination on its investigation **after** January 1, 2022,
or
(2) The allegations include dishonesty, sexual assault, and/or use of deadly force resulting in serious bodily injury or death.

As a result, approximately **31,000** (68%) of the allegations **are considered potentially actionable** by POST.

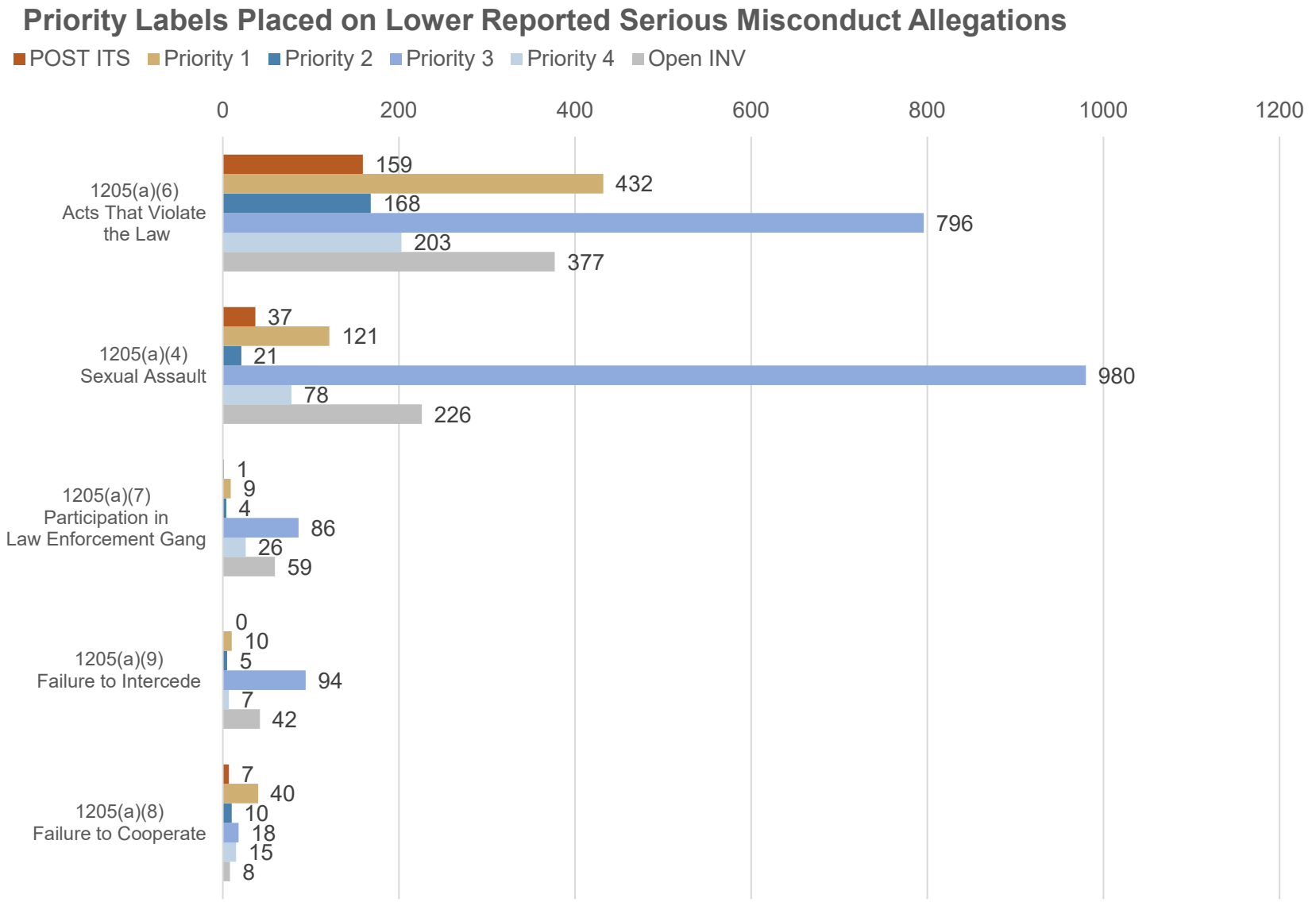
Prioritization of reported allegations to POST: bulk of allegations receive Priority 3 and Open INV labels.



* Labels are assigned upon review by Intake and Disposition Bureau. Prioritization is subject to change when reports are assigned into cases to Professional Conduct Bureau staff.

Label	Definition
POST ITS	Contains a potential ITS basis outlined in Penal Code section 13510.8(d).
Priority 1	Contains politically/media-sensitive content or sustained agency findings, regardless of the incident or agency finding date.
Priority 2	Contains sustained agency findings for policy violations that may or may not fall under the definition of serious misconduct.
Priority 3	Contains an unfounded, exonerated, or not sustained finding with an agency finding date that takes place **after** January 1, 2022.
Priority 4	Contains an unfounded, exonerated, or not sustained finding with an agency finding date that takes place **before** January 1, 2022.
OPEN INV	Contains an ongoing agency investigation without agency findings.

Prioritization of reported allegations to POST: bulk of allegations receive Priority 3 and Open INV labels.

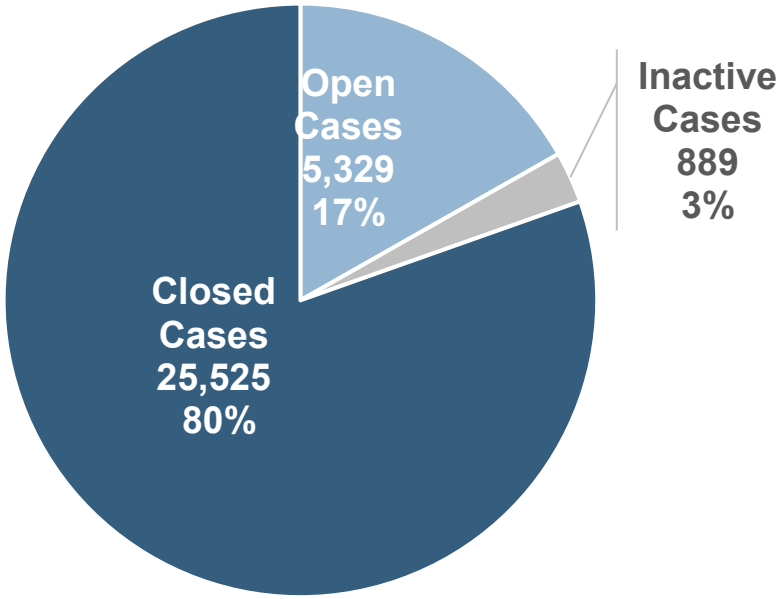


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OPEN INV	Contains an ongoing agency investigation without agency findings.

80% of ITS, Public Complaint, and Priority cases are closed; remaining ongoing caseload is prioritized based on agency findings and potential risk to public safety.

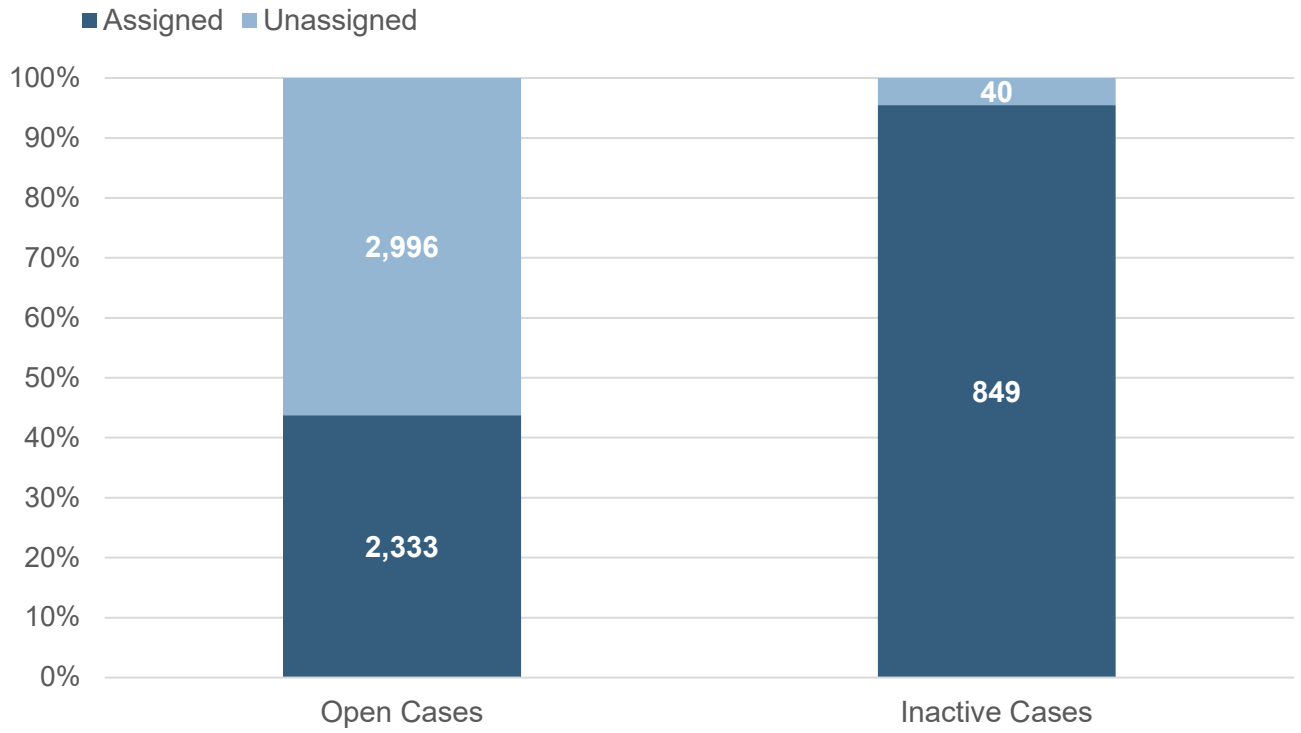
80% of ITS, Public Complaint, and Priority cases were closed following POST's review**.**
17% of these cases are open for POST's review.
The remaining **3% are considered inactive.**

Case Statuses Among ITS, Public Complaint, and Priority Case Types



44% of open cases have been assigned to staff for review. The remaining 56% are pending assignment.
96% of inactive cases have been assigned to follow up with agencies on their investigation findings and/or monitor cases that pose a potential risk to public safety. 4% are unassigned due to the absence of agency findings.

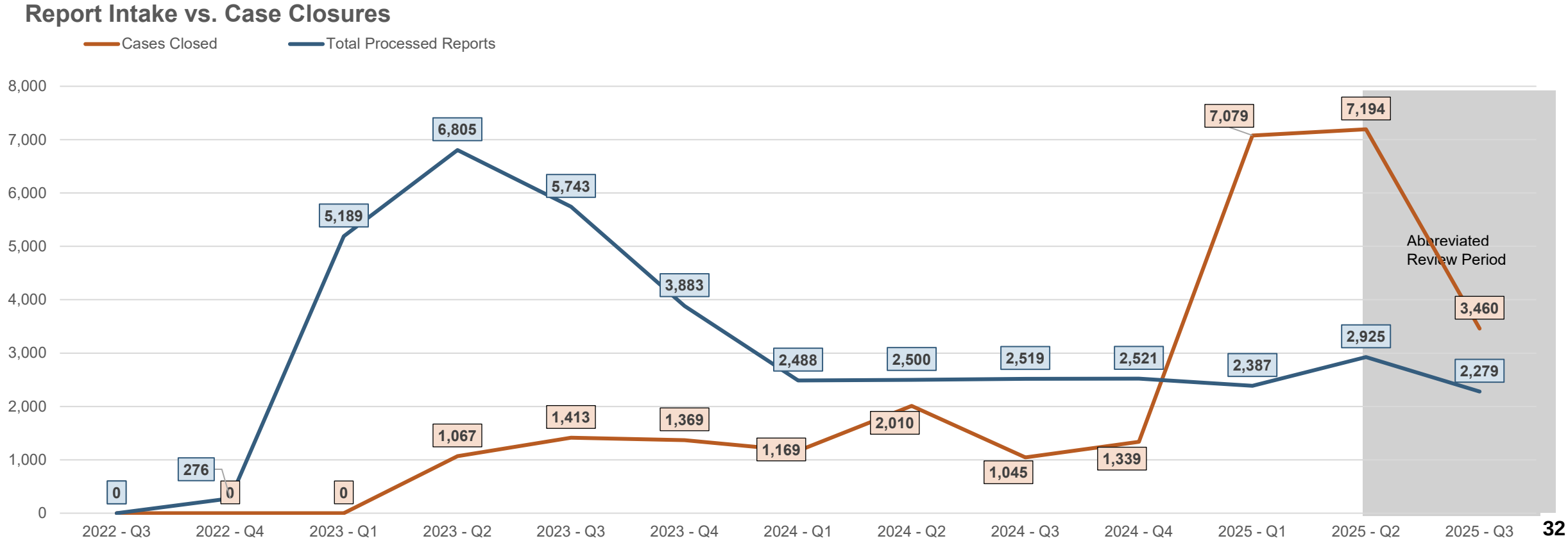
Assigned and Unassigned Open and Inactive ITS, Public Complaint, and Priority Cases



POST's case closures are catching up to its initial report intake; its abbreviated review process is aiding in backlog clearance.

In 2025 Quarter 1, the Division saw a spike in case closures due to a limited-time **Abbreviated Review** process to address the backlog of Priority 3 cases. Agency and POST's findings within Priority 3 cases saw little discrepancies in outcomes, and the Division determined it would be most responsible to prioritize and investigate cases that may contain serious misconduct.

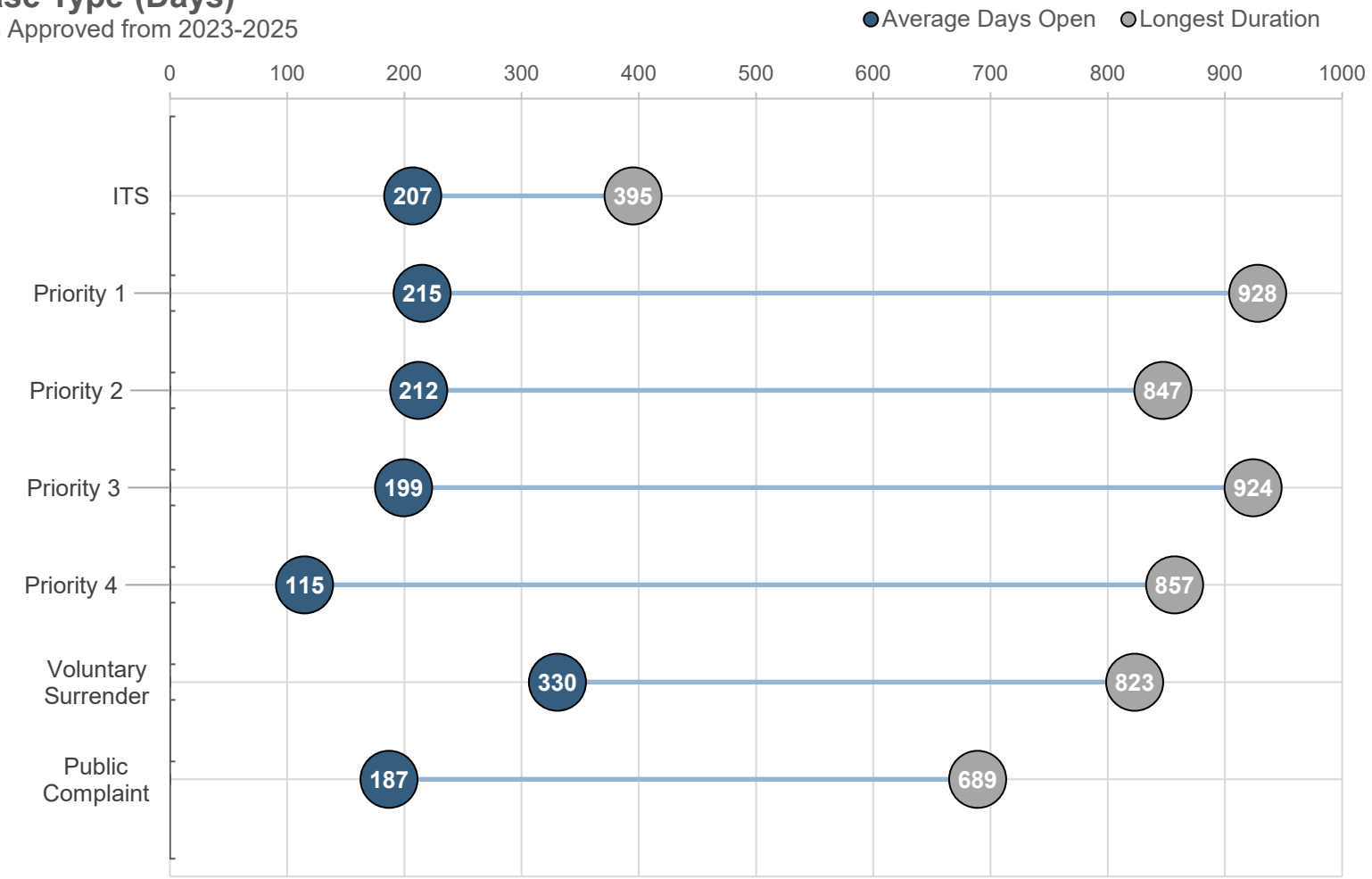
With most Priority 3 cases now closed under the Abbreviated Review process, the Division has initiated an audit phase to ensure proper case analysis and closure.



To date, all closed cases have been closed well within the 3-year statutory timeframe, with ITS cases accelerated due to public safety risk.

Average vs. Maximum Case Closure Timeframes by Case Type (Days)

Reports Approved from 2023-2025



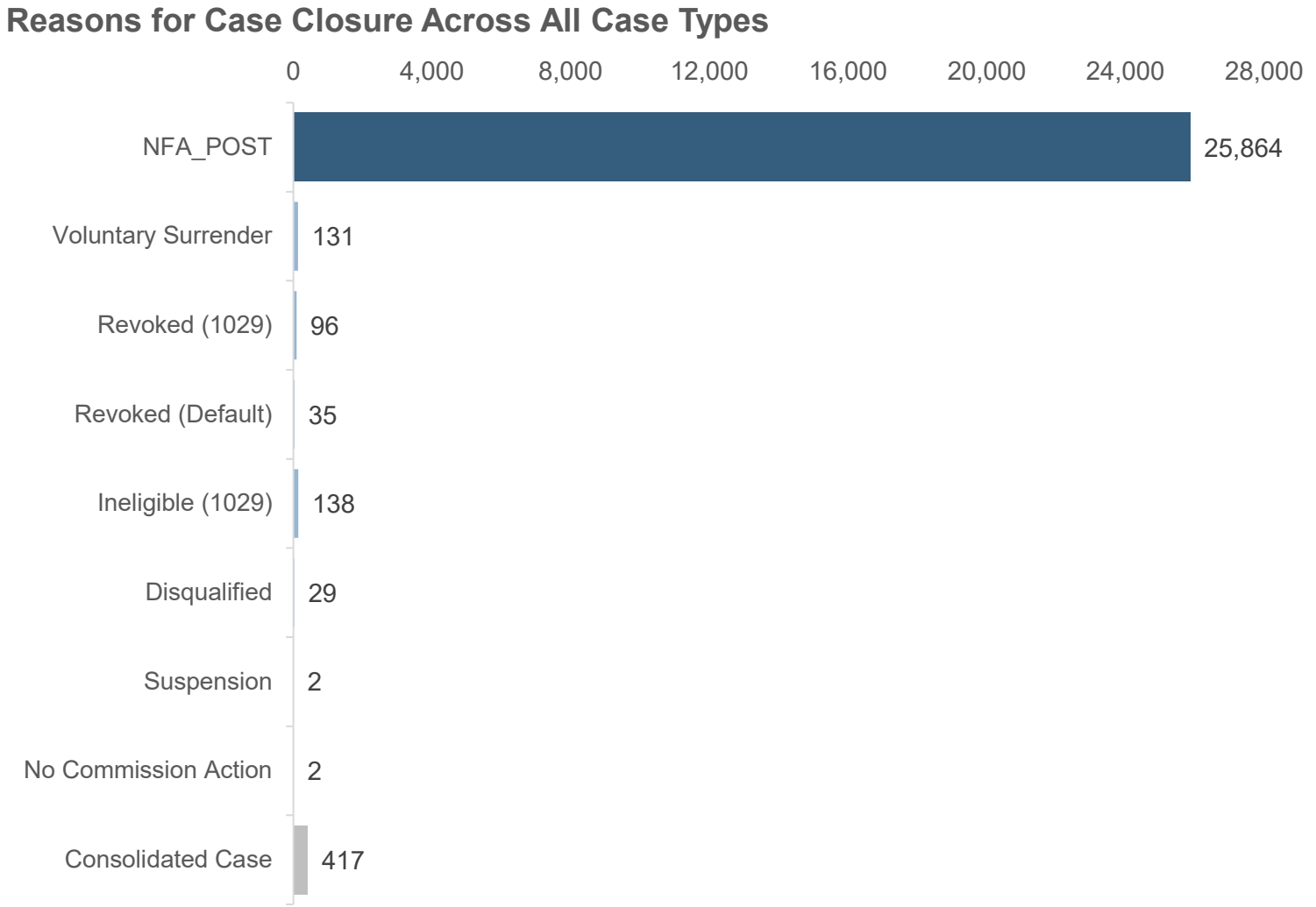
A case is considered open when POST receives the agency's findings up to the point in which POST comes to a determination on the case.

POST has three years upon receipt of the agency's findings to complete its investigation into serious misconduct.

On average, cases are closed within 258 days.

Cases with longer investigation durations comprise of **0.4% of the closed cases**.

Approximately 1% of cases closed by POST resulted in disciplinary action. About 95% of cases were closed without further action.



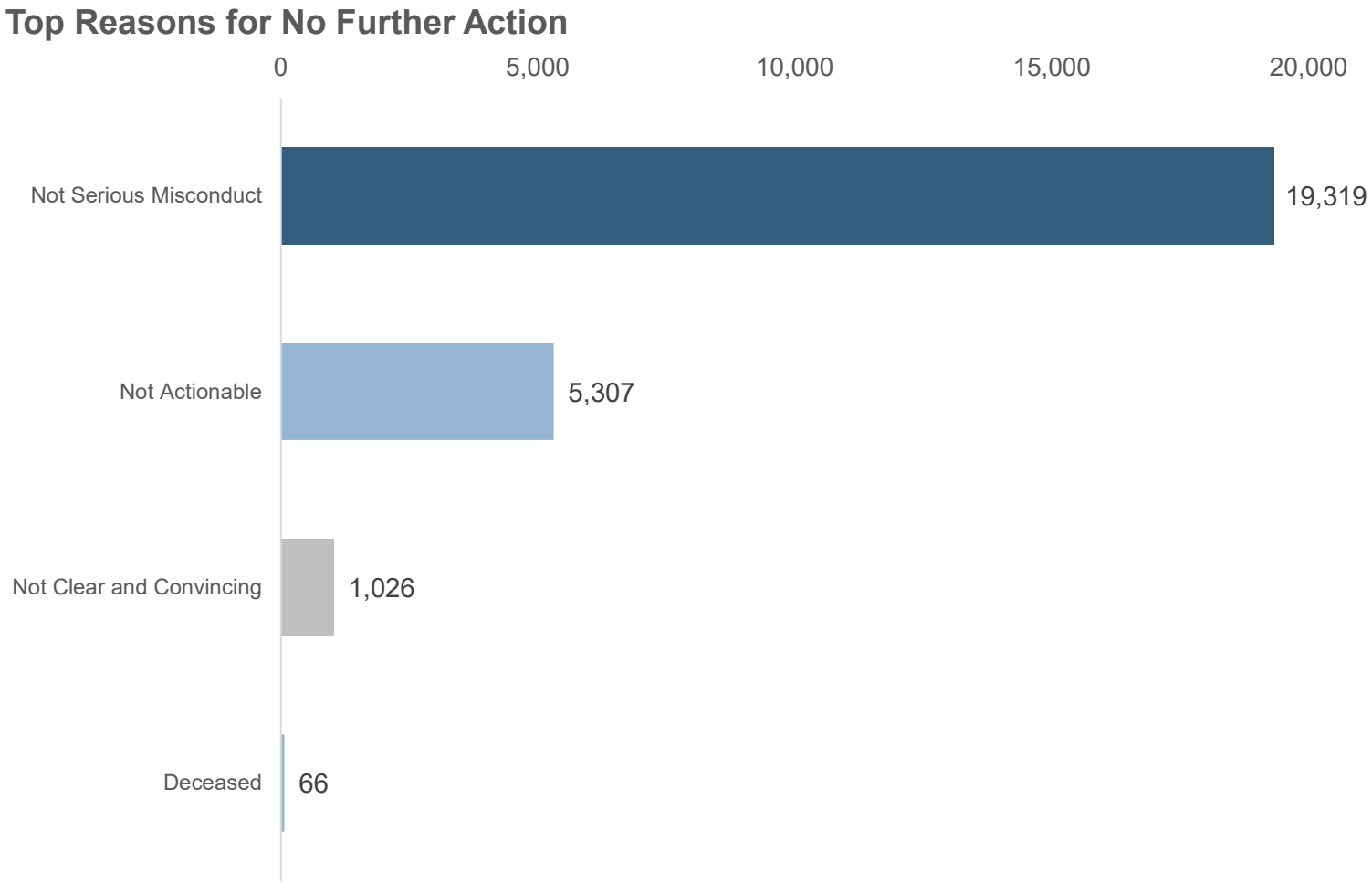
No Further Action (NFA_POST) accounted for **95% of POST's case closures.**

Cases closed due to **revocation, Voluntary Surrender, and Ineligibility** make up **1.4%** of all closures.

There are 29 Disqualification cases for individuals that do not hold a Proof of Eligibility or certificate from POST.

A total of 417 cases were consolidated into other cases due to duplicate submissions from agencies.

Breakdown of No Further Action case closures: 75% considered not serious misconduct, 21% non-actionable, and 4% contained insufficient evidence.

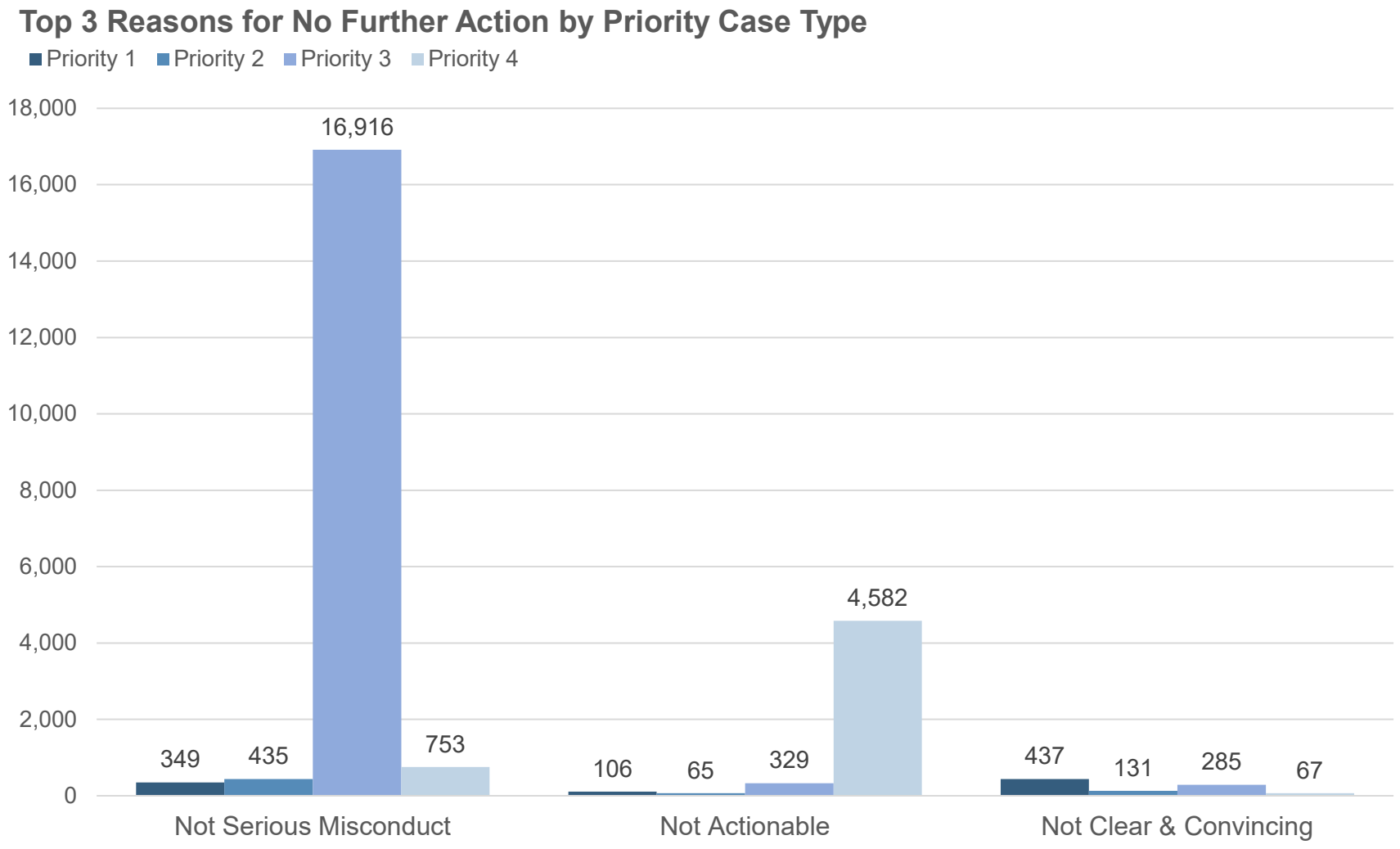


75% of NFA_POST cases were closed because they **did not meet the definition of serious misconduct.**

21% of these cases were closed for being **non-actionable**, meaning POST did not have the statutory authority to act on the case.

Only **4%** of NFA_POST cases were closed because there was **insufficient clear and convincing evidence**. Conduct within these cases may rise to the level of serious misconduct, but POST could not meet the burden of proof.

Closure trends among priority case types: most not serious misconduct and non-actionable cases are Priority 3 and 4, while Priority 1 cases see most evidentiary gaps.



92% of closures for failure to meet serious misconduct were **Priority 3 cases.**

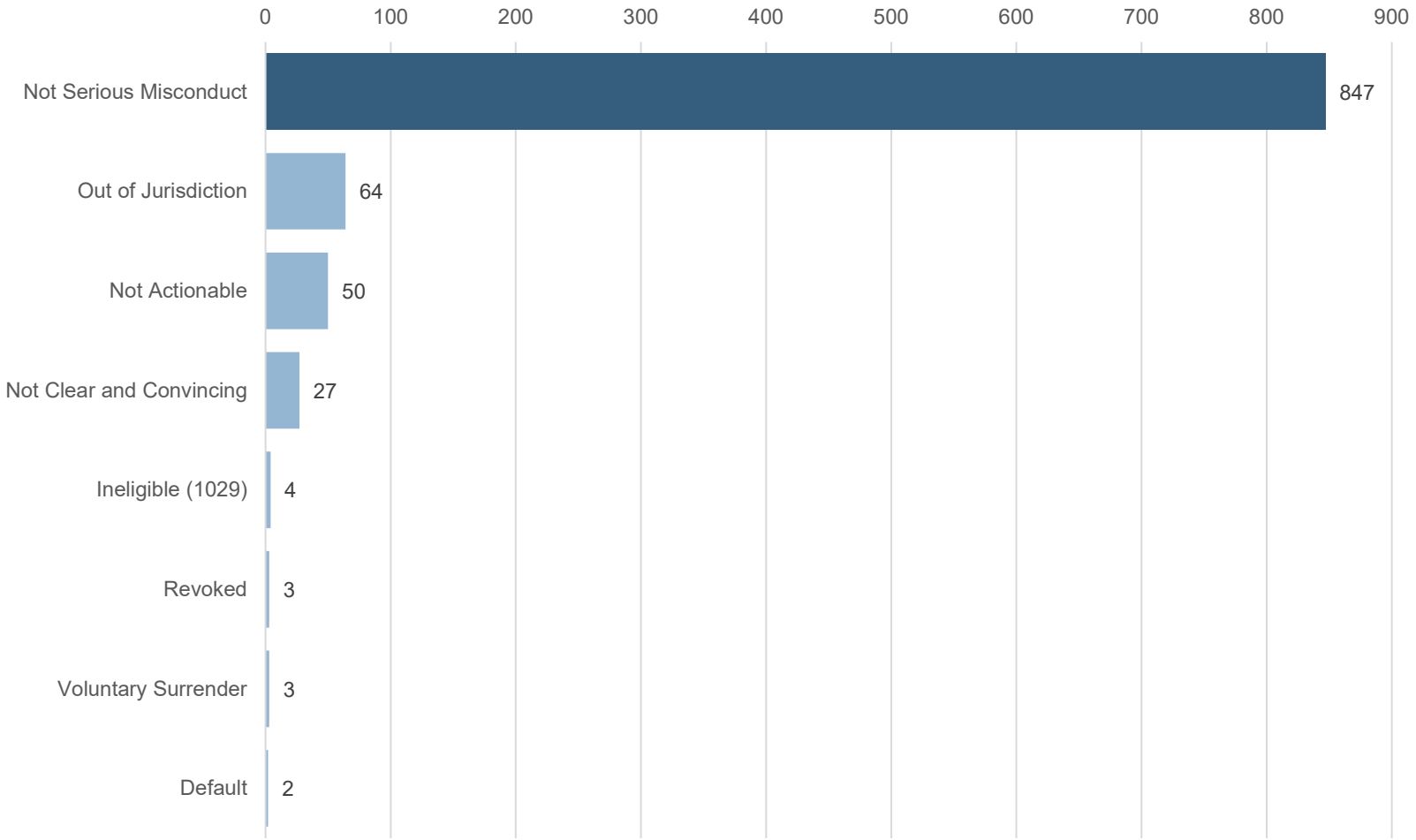
90% of non-actionable closures were **Priority 4 cases**, which aligns with expectations.

48% of cases closed for not meeting the clear and convincing evidentiary standard are **Priority 1 cases**.

Priority 1 and Priority 2 cases combined account for 62% of not clear and convincing closures.

Closure trends among public complaints: most complaints are closed out as not serious misconduct, non-jurisdictional, and non-actionable. A handful have resulted in certification action.

Top Reasons for Case Closure Among Public Complaints



84% of closed cases containing public complaint reports were closed out as **not serious misconduct.**

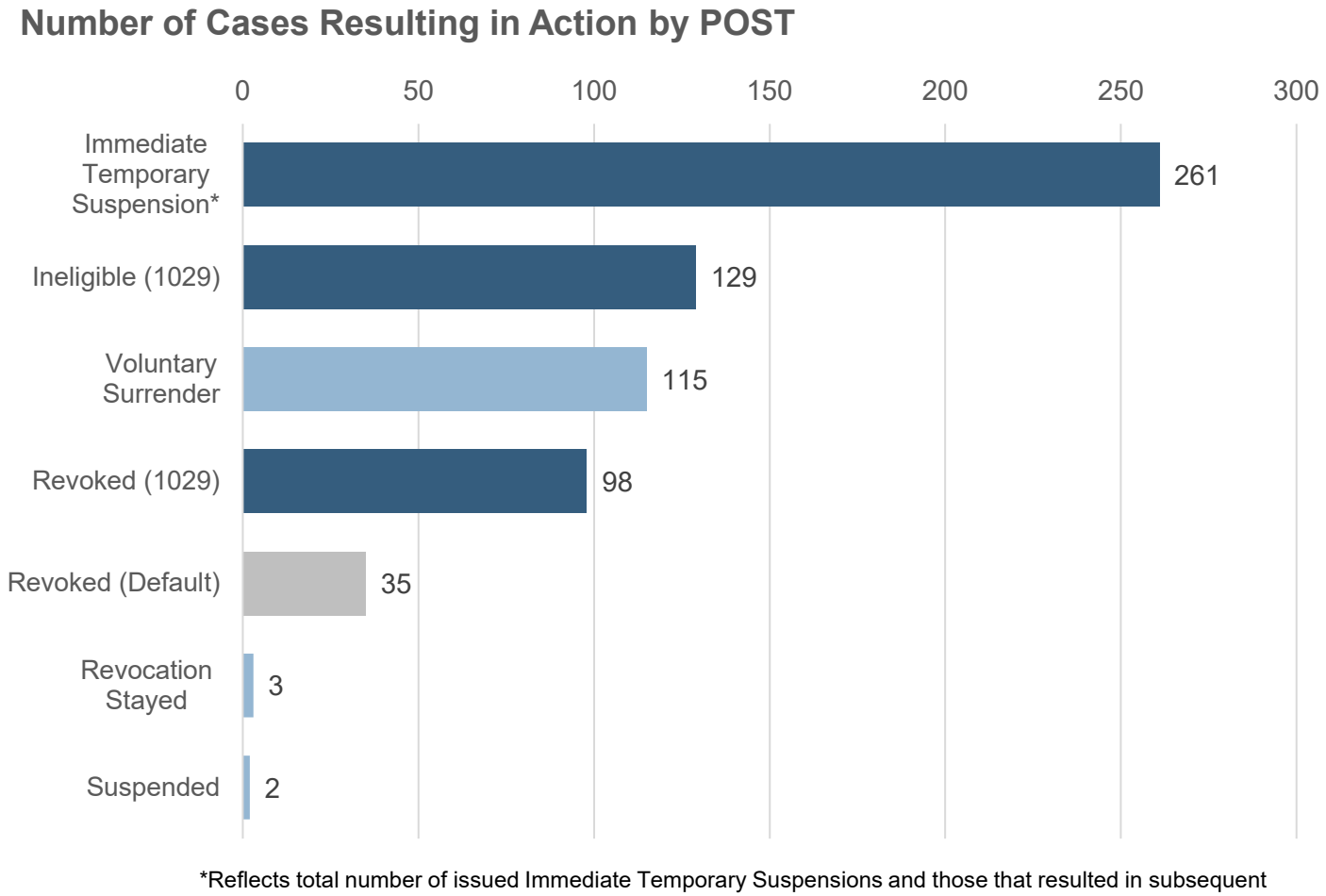
About 6% were closed out as **non-jurisdictional**, which occurs when a complaint indicates a person **not defined within Penal Code section 13510.1(a)**.

5% were closed out as non-actionable.

3% of may have met serious misconduct, but did not meet the clear and convincing evidentiary standard.

1% resulted in certification action.

The number of disciplinary actions taken by POST is above average compared to other California regulatory licensing agencies.



*Reflects total number of issued Immediate Temporary Suspensions and those that resulted in subsequent

643 disciplinary actions have been imposed by POST. This amounts to **0.8% of actions** on POST's licensee population (~80k) annually.

This is above average compared to other CA licensing agencies:

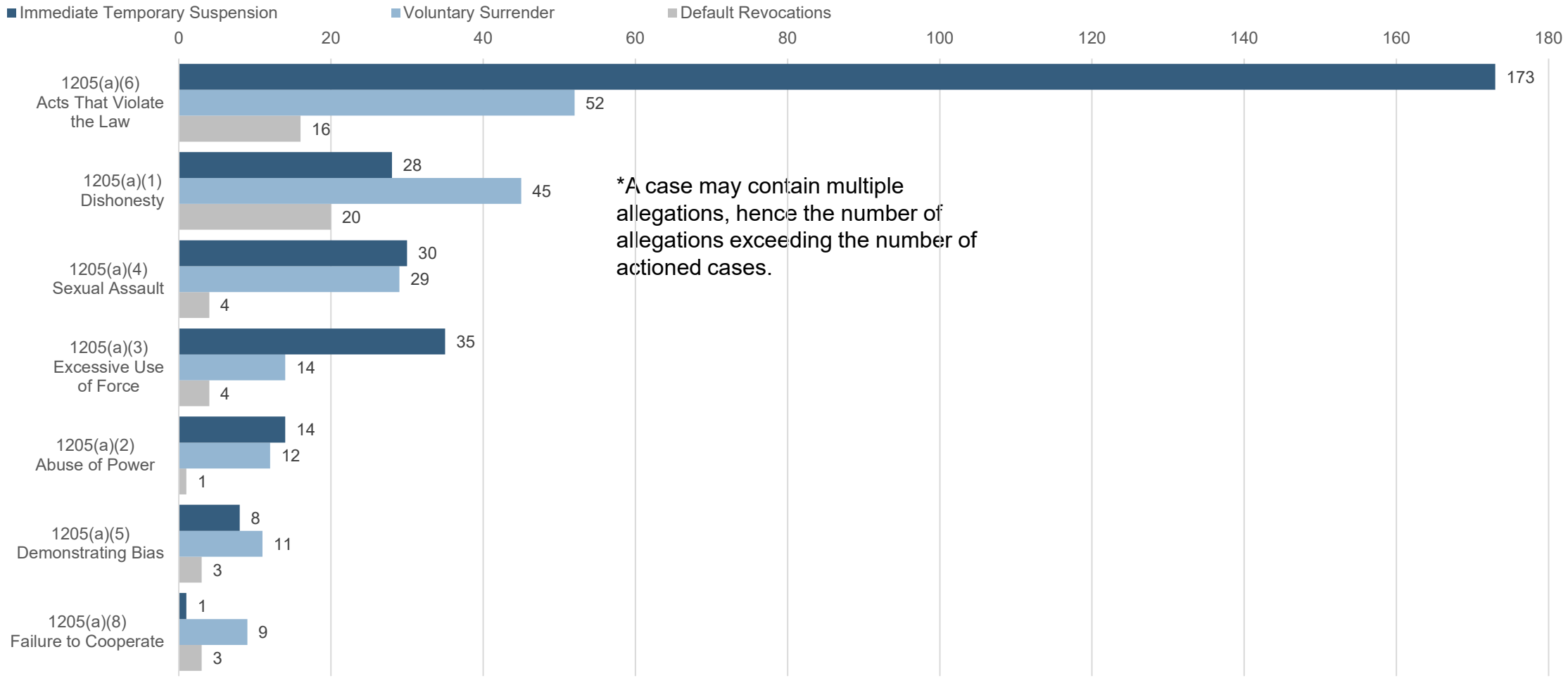
- **CA Board of Registered Nursing** (**0.1% actions** annually; ~650k licensed nurses): 1,509 administrative outcomes across FY 22-23 and FY 23-24.[1]
- **The State Bar of California** (**0.01% actions** annually; ~266k licensed attorneys): 472 administrative outcomes across FY 22-23 and FY 23-24.[2]
- **Medical Board of California** (**0.2% actions** annually; ~156k licensed physicians and surgeons): 645 administrative outcomes across FY 22-23 and FY 23-24.[3]

POST has attempted to compare its action rates to other state's peace officer training commissions and federal agencies, but found that comparisons were invalid due to dissimilar disciplinary systems and agency sizes.

1. California Department of Consumer Affairs, "Fiscal Year 2022-2023" and "Fiscal Year 2023-2024 Annual Report."
2. The State Bar of California, "Fiscal Year 2024 Annual Discipline Report."
3. California Department of Consumer Affairs, "Fiscal Year 2022-2023" and "Fiscal Year 2023-2024 Annual Report."

The top allegations resulting in action by POST are Acts that Violate the Law, Dishonesty, and Sexual Assault.

Serious Misconduct Allegations in Cases Resulting in Action



*A case may contain multiple allegations, hence the number of allegations exceeding the number of actioned cases.

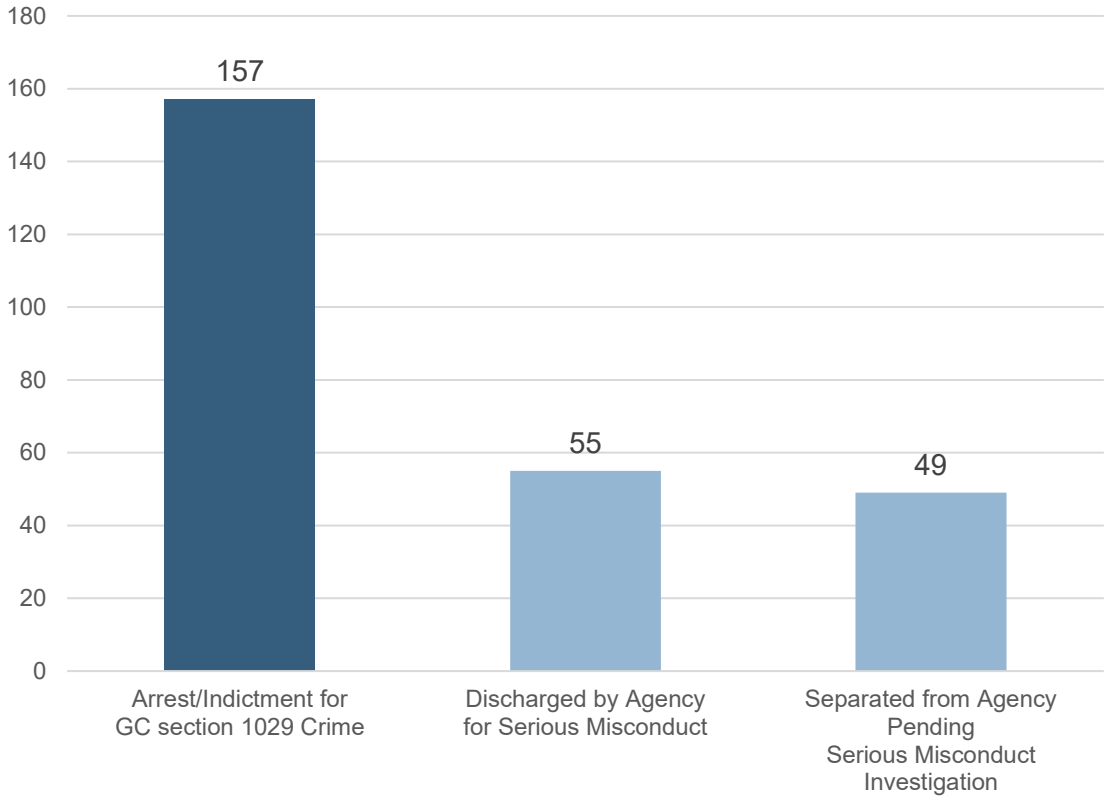
Arrests and indictments for Government Code section 1029 crimes are the highest basis for issued immediate temporary suspensions, contributing to relatively high revocation outcomes.

Bases for an immediate temporary suspension (ITS) are outlined in Penal Code section 13510.8(d). An ITS may be issued for one or more bases.

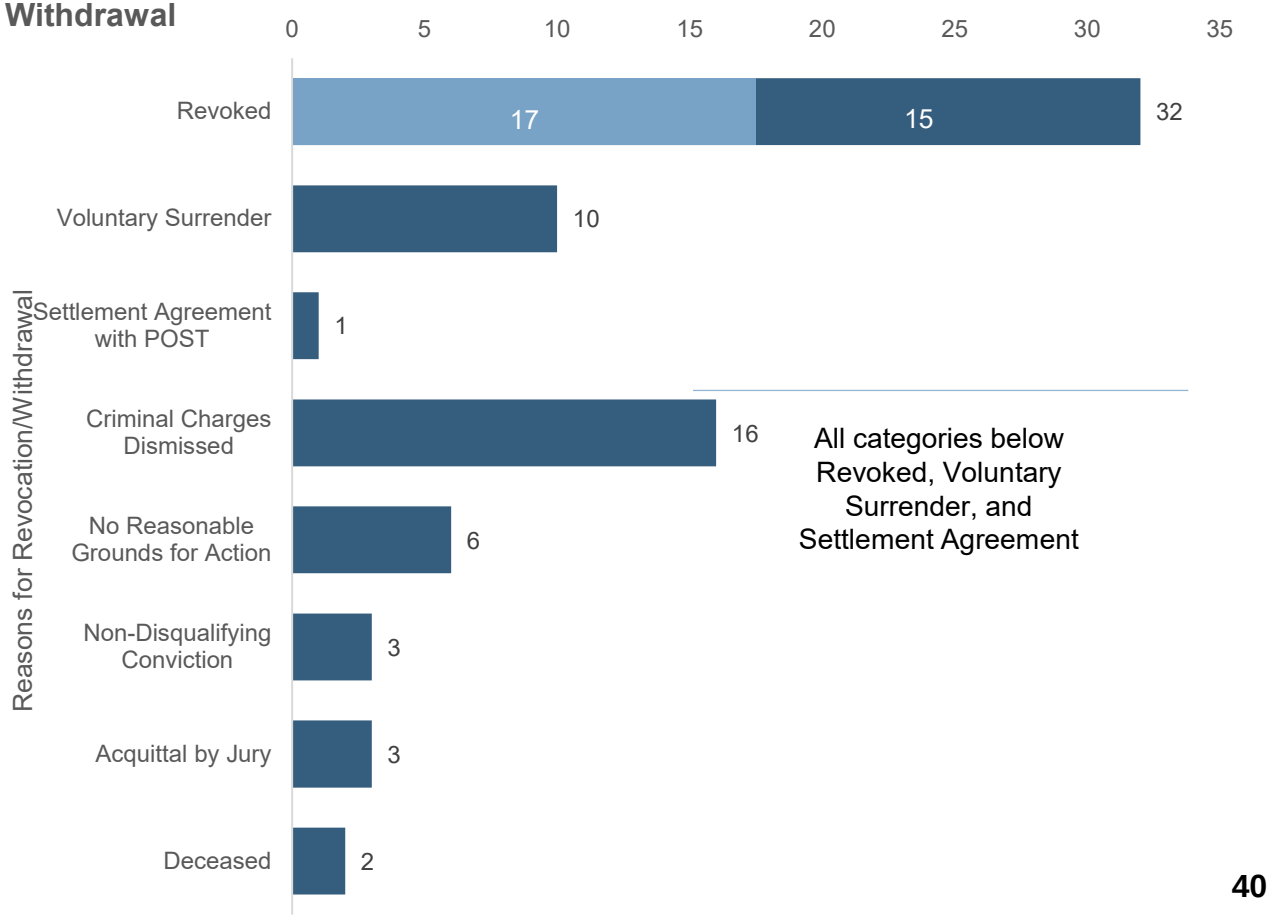
An ITS remains in effect until a final determination is made by the Commission, or the Executive Director withdraws the temporary suspension.

Number of Bases Considered for Issued Immediate Temporary Suspensions

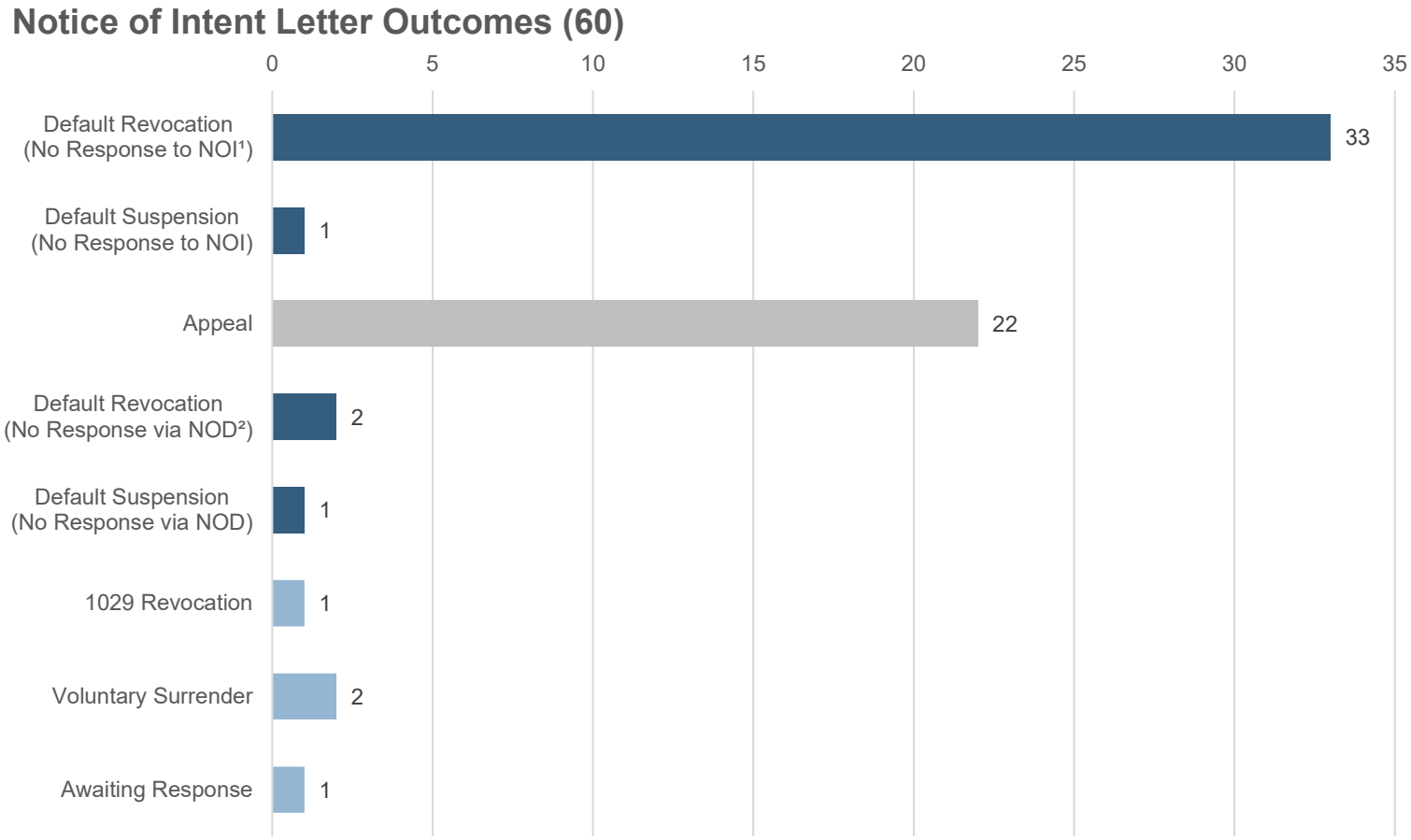
June 2025



Immediate Temporary Suspensions Resulting in Action or Withdrawal



Over half of subject officers who have received a Notice of Intent letter did not respond, resulting in default outcomes.



A total of 60 Notice of Intent letters have been sent.

37 Notices resulted in a default decision:

- 34 defaulted from failure to respond to the Notice within the 30-day appeal timeframe
- 3 defaulted after hearing before the Board and Commission due to failure to timely respond to POST's accusation with a Notice of Defense.

22 Notices resulted in appeals; of these appeals, 20 have been heard by the Board and Commission and 2 are still pending hearing.

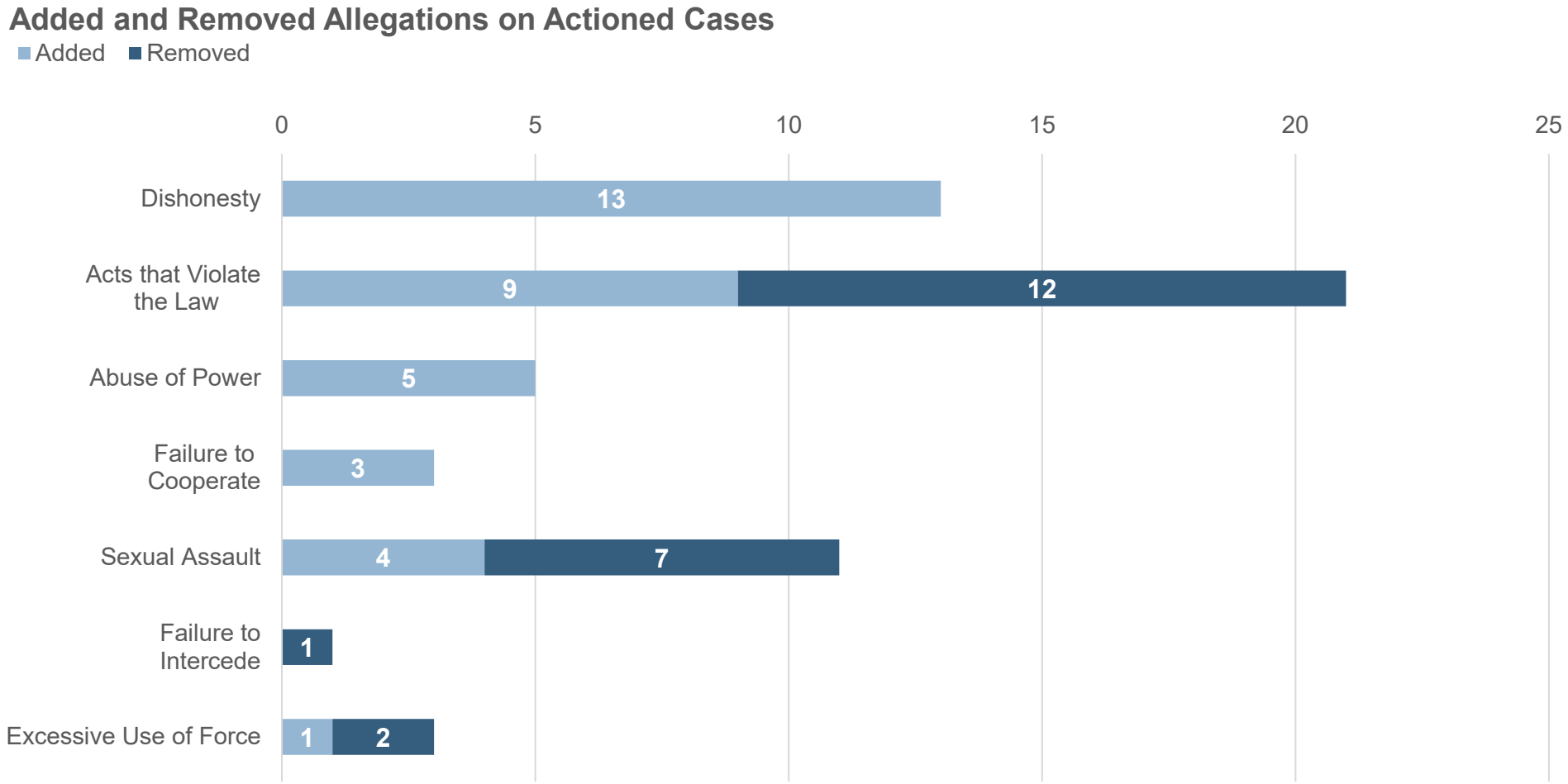
1. **Notice of Intent to Revoke letter**. Failure to respond within 30 days of the Notice's mailing date results in a default action without any further proceedings.
2. **Notice of Defense**. When the Commission deems that action against a peace officer's certification is warranted, POST works with the Attorney General's Office to file an accusation against the subject officer. In accordance w Government Code section 11520, failure to respond to this accusation with a Notice of Defense within 15 days results in the imposition of the Commission's determination without further proceedings.

Almost half of the cases receiving Notice of Intent letters involve POST capturing additional causes for action or amending the agencies' causes for action to align with the regulatory definitions of serious misconduct.

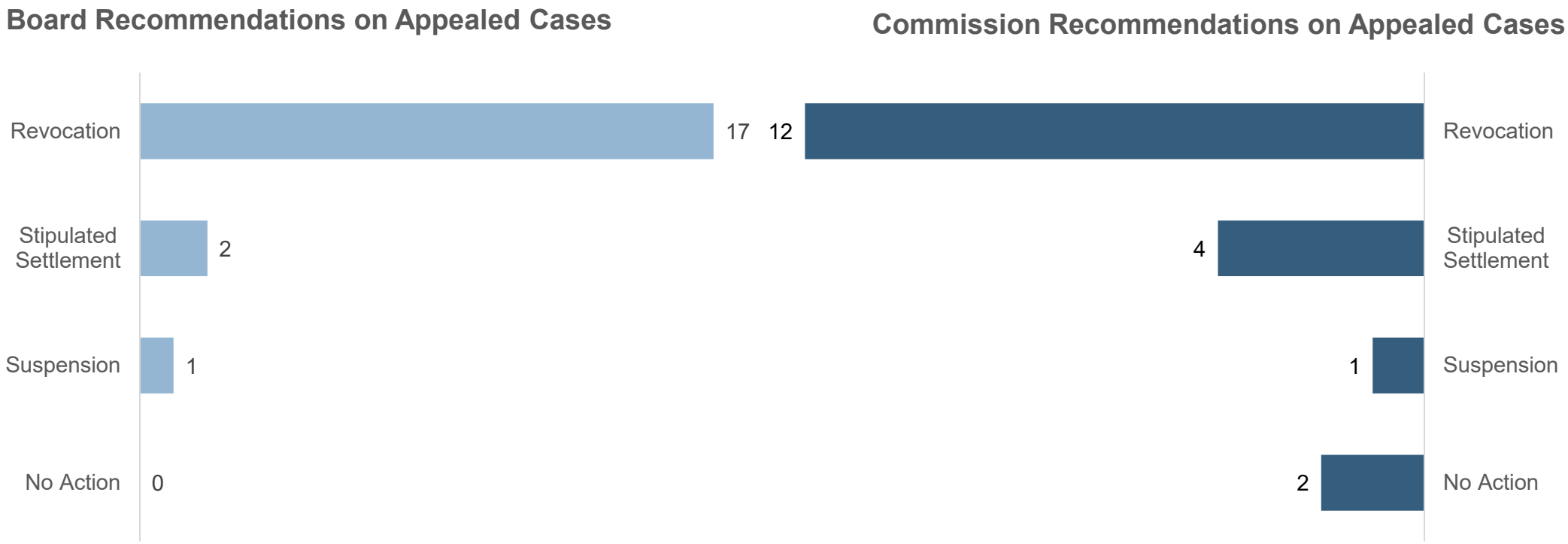
POST revised the original allegations submitted by agencies in **29 of the 62 cases** that received a Notice of Intent letter.

The **most frequent additions** were allegations of **Dishonesty** and **Acts that Violate the Law.**

The **most common removals** were allegations of **Acts that Violate the Law** and **Sexual Assault**.



Comparing Board and Commission recommendations on appealed cases:



The Board has moved to revoke in most cases (17 out of 20), across a range of allegations. The exceptions include cases involving DUIs; one resulted in a suspension, which occurred before awareness of the stipulation process, while two were resolved through stipulated settlements.

The Commission has moved to revoke in just over half of cases (12 out of 20). Two cases with Dishonesty allegations resulted in no action. All DUI-related cases reviewed by the Commission (4) were resolved through stipulated settlements. One case involving excessive use of force resulted in suspension.

Appendix

Glossary of Terms, Part One – General Terms

Accusation	A written statement of charges against a respondent. This statement also outlines the agency's jurisdiction and intended discipline over alleged conduct.
Agency Misconduct Report	A report created in Mark43 that provides information about serious misconduct allegations against a peace officer or law enforcement agency.
Agency Supplemental Report	A report created in Mark43 to provide additional information to an Agency Misconduct or Public Complaint report.
Case	When a serious misconduct report is approved, it is created into a case and assigned to POST staff for review. A case will contain at least one Agency Misconduct report or Public Complaint report (or both). It may also contain an Agency Supplemental report if the agency provides POST with further updates on the incident.
Commission	A group of up to 18 commissioners consisting of city and county administrators, law enforcement professionals, educators, and public members which meets at least three times a year to establish standards, regulations, and give direction to POST staff.
Default Revocation/Suspension	Disciplinary action taken against a peace officer's certification after failure to appeal the Division's Notice of Intent letter within 30 days or accusation with a Notice of Defense within 15 days.
Disqualified	An individual that is disqualified from eligibility to be a peace officer based on a disqualifying event as set forth in Government Code section 1029 and does not hold a Proof of Eligibility or certificate from POST.
Ineligible	An individual that is disqualified from eligibility to be a peace officer based on a disqualifying event as set forth in Government Code section 1029 prior to the enactment of SB 2 (January 1, 2022).
Mark43	The secure electronic records management system used by the Division to receive and manage serious misconduct reports and cases.
Notice of Defense	The document submitted by the respondent to preserve their right to a hearing after receiving an accusation. If a Notice of Defense is not timely filed within 15 days of the accusation's service, the agency may impose the outcome by default.
Notice of Intent Letter	Notice that provides the subject officer with a detailed explanation of the decertification procedure and the officer's rights to contest and appeal the Division's intent to take action against their peace officer certification.
Peace Officer Standards Accountability Advisory Board (Board)	An advisory body to the Commission that reviews serious misconduct cases involving peace officers. The Board was created by Senate Bill 2 and is comprised of 9 appointed members.
Peace Officer Standards Accountability Division (Division)	A new division created by Senate Bill 2 that is responsible for the intake and investigation of serious misconduct allegations that may provide grounds for suspension or revocation of a peace officer's certification.
Public Complaint	A complaint of potential serious misconduct from a member of the public.
Public Complaint Report	A report created in Mark43 that provides information about potential serious misconduct allegations from a public complaint.
Revoked	The peace officer has been decertified and may not exercise the duties and powers of a peace officer. A revocation is permanent, and the certification shall not be reactivated.
Immediate Temporary Suspension	The immediate suspension of a peace officer's certification, pending the outcome of an investigation related to allegations of serious misconduct, pursuant to Penal Code section 13510.8(d). The "temporary suspension" may be issued under the following circumstances: When a peace officer is arrested or indicted for a felony or other crime listed in Government Code section 1029, When a peace officer is discharged from a law enforcement agency for serious misconduct, or When a peace officer has separated from employment as a peace officer during a pending investigation into allegations of serious misconduct.
Suspension	A disciplinary action wherein a peace officer certification has been suspended for a specified period of time, not to exceed three years. A peace officer whose certification has been suspended may not be assigned duties which include the exercise of peace officer powers.
Voluntary Surrender (Surrender)	A person who holds a certificate issued by the commission, knowingly and willingly, returns the certificate to the commission, forfeiting all rights and privileges associated with tha certificate. A "surrender" has the same effect of a revocation in that it cannot be reactivated.

Glossary of Terms, Part Two – Case Terms and Priority Labels

Case Statuses	
Consolidated Case	Case status applied when a case is consolidated into another case due to multiple cases for the same individual/incident.
Deceased	Case status applied to cases that cannot be actioned due to the peace officer being deceased.
Disqualified	Case status applied to cases that result in an individual being disqualified from eligibility to be a peace officer based on a disqualifying event as set forth in Government Code section 1029 and does not hold a Proof of Eligibility or certificate from POST.
Ineligible	Case status applied to cases that result in an individual being disqualified from eligibility to be a peace officer based on a disqualifying event as set forth in Government Code section 1029 prior to the enactment of Senate Bill 2 (January 1, 2022).
Issued in Error	Case status applied to cases with reports/investigations that are generated in error.
NFA_POST	Case status applied to cases when the Division does not take action against a case due to insufficient evidence, absence of serious misconduct, or statutory limitations, etc.
No Commission Action	Case status applied to cases where the Commission's determines no action against a peace officer's certification following the Commission's review of the Board's recommendation.
Non-Jurisdictional	Case status applied to cases with allegations against an individual **not** appointed pursuant to Penal Code Section 830.1, 830.2 with the exception of subdivision (d), 830.3, 830.32, or 830.33.
Revoked	Case status applied to cases that result in the commission's revocation of a peace officer's certification.
Suspension	Case status applied to cases when the Commission's decision is to suspend the peace officer's certification.
Voluntary Surrender	Case status applied to cases where a peace officer voluntarily surrenders their certification.
Not Actionable	A closure justification for cases that cannot be acted upon due to lack of statutory authority, e.g, conduct and findings took place prior to January 1, 2022.
Not Clear and Convincing	A closure justification for cases where the clear and convincing evidentiary standard could not be established upon review and analysis of case facts.
Not Serious Misconduct	A closure justification for cases that did not involve acts of serious misconduct as defined in Commission Regulation 1205.
Labels	
POST ITS	Contains a potential ITS basis outlined in Penal Code section 13510.8(d).
Priority 1	Contains politically/media-sensitive content or sustained agency findings, regardless of the incident or agency finding date.
Priority 2	Contains sustained agency findings for policy violations that may or may not fall under the definition of serious misconduct.
Priority 3	Contains an unfounded, exonerated, or not sustained finding with an agency finding date that takes place **after** January 1, 2022.
Priority 4	Contains an unfounded, exonerated, or not sustained finding with an agency finding date that takes place **before** January 1, 2022.
OPEN INV	Contains an ongoing agency investigation without agency findings.

Questions?

Thank you!

AGENDA ITEM REPORT

Title: APPROVAL OF MEETING TRANSCRIPT FROM THE JULY 16-17, 2025 MEETING

REPORT PROFILE

MEETING DATE 10/09/2025	**BUREAU SUBMITTING THE REPORT** Executive Office	
RESEARCHED BY	**REVIEWED BY**	
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PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

BACKGROUND:

ANALYSIS:

RECOMMENDATION: If the Board concurs, the appropriate action would be a **MOTION** to approve the meeting transcripts from the last Board meeting.

ATTACHMENT(S):
2025 07-16 POSAAB - open session.pdf
2025 07-17 POSAAB open session.pdf

STATE OF CALIFORNIA

COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

(POSAAB) MEETING

WEDNESDAY, JULY 16, 2025

10:04 A.M.

MEETING HELD

AT THE OFFICES OF

COMMISSION ON POST

860 STILLWATER ROAD, SUITE 100

WEST SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Stenographically Reported By:
Connie J. Parchman,
California Certified Shorthand Reporter #6137

A P P E A R A N C E S

POSAAB MEMBERS PRESENT

JOYCE DUDLEY
Governor Appointee
Attorney
(Chairperson)

NICOLE CLAVO, Psy.D.
Governor Appointee
Public Member

REGINA HATCHER-CRAWFORD
Governor Appointee
Public Member

JACK GLASER
Governor Appointee
Public Member

CEPHUS JOHNSON
Governor Appointee
Public Member

CHARLES LARA
Governor Appointee
Management Rank Peace Officer

MARGARET PENA
Speaker of Assembly Appointee
Public Member

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PEACE OFFICER STANDARDS ACCOUNTABILITY
ADVISORY BOARD LEGAL COUNSEL

CHRISTOPHER BEATTY
Deputy Attorney General
Department of Justice
Office of the Attorney General

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A P P E A R A N C E S C O N T I N U E D

POST STAFF

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Assistant Executive Director
Peace Officer Standards
Accountability Division
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WILLIAM DARDEN
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ROBERT GUYTON
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Staff Services Manager
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A P P E A R A N C E S C O N T I N U E D

ALSO PRESENT

LUKE BAXTER WALDEN
Peace Officer, POST ID A95-T18

MARLON MARRACHE

--o0o--

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WEDNESDAY, JULY 16, 2025 10:04 A.M.

West Sacramento, California

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CHAIRPERSON DUDLEY: Good morning, everyone.

Great to see all of you.

Today is Wednesday, July 16th, and the time is 10:04.

Thank you all for attending the Peace Officer Standard Accountability Advisory Board hearing.

Please note that this hearing is being live streamed, recorded and transcribed.

Thank you so much to the transcriber.

Further, please note that the microphones are auto on/off. When you begin speaking, they will go live. With this, you will need to watch your crosstalk. That too will go live.

We will now call the roll of Board Members.

MR. KNAPP: Thank you, Madam Chair.

Good morning, Members of the Board.

Member Clavo.

MEMBER CLAVO: Present.

MR. KNAPP: Member Crawford.

MEMBER CRAWFORD: Present.

MR. KNAPP: Member Doyle.

(No response.)

MR. KNAPP: Member Dudley.
CHAIRPERSON DUDLEY: Here.
MR. KNAPP: Member Glaser.
MEMBER GLASER: Here.
MR. KNAPP: Member Johnson.
MEMBER JOHNSON: Here.
MR. KNAPP: Member Lara.
MEMBER LARA: Here.
MR. KNAPP: And Member Pena.
MEMBER PENA: Here.
MR. KNAPP: Thank you.
Madam Chair, seven of nine.
CHAIRPERSON DUDLEY: Thank you. A quorum has been established.
And thank you, Mr. Knapp, for all the work you did to get us all here today. Very much appreciated.
I would now like to introduce Board Counsel. To my left, Christopher Beatty.
And POST Assistant Executive Director, Annemarie Del Mugnaio. I do this every time. I have so much respect for our Assistant Director and I never can get the name just perfect. But, Del Mugnaio?
MS. DEL MUGNAIO: Del Mugnaio.
CHAIRPERSON DUDLEY: What?
MS. DEL MUGNAIO: Del Mugnaio.

CHAIRPERSON DUDLEY: Del Mugnaio.

MS. DEL MUGNAIO: There you go.

CHAIRPERSON DUDLEY: Del Mugnaio.

This time is set aside for members of the public who wish to comment on items not on the agenda, but those within the Board's jurisdiction.

Public comment on matters on the agenda will be heard after each item is presented. Public comment on specific peace officer revocation cases to be heard today will be heard at the time of the hearing of each of the matters.

Please be advised that the Board cannot take action on items not on the agenda and may discuss those matters only to the extent necessary to determine whether any matter should be made an agenda item at a future meeting, to respond briefly to statements or questions posed, to request clarification or to refer the items to staff.

Please remember that this meeting is being transcribed, so I may politely interrupt and ask you to repeat or speak slowly and clearly so your comment can be correctly captured in the transcript.

As the Board Chair, I may ask members of the public to limit their remarks to no more than three minutes, pursuant to existing Board policy.

I may conclude the public comment period if multiple speakers are voicing repetitive or similar statements, and the 15-minute public comment period has expired.

You will be given five minutes to speak and the time limits will be strictly enforced, so please ensure that you complete your thoughts within the allotted time.

Before I open public comment on matters not on the agenda, please note that if you wish to comment on disciplinary matters scheduled to be heard today or tomorrow by the Board, you must wait until the matter is called to offer public comment.

If you have a specific complaint about an officer that is not on today's agenda, you should file a complaint with POST or with the officer's employing agency. Staff will assist you in this regard.

I would like to remind individuals making comments to not discuss pending complaints or pending disciplinary actions that may later come before the Board for recommendation.

If the Board takes action on your complaint, you will have an opportunity to address the Board at that time.

Following these rules is necessary to comply with

the law and to avoid compromising the Board's mission.

Now, is there anyone present in the audience or appearing remotely who would like to address the Board during public comment?

Let's start with people present first. Anyone present?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, let me inquire, is there anybody remotely?

(No response.)

CHAIRPERSON DUDLEY: Okay. Moving on.

Let's go to the approval of the minutes.

Is there anyone present or appearing remotely or by phone who would like to address the Board regarding the approval of the January 16th, 2025, transcripts?

(No response.)

CHAIRPERSON DUDLEY: Seeing none. Are there any questions or comments from the Board regarding the minutes?

Seeing none.

If the Board concurs, the appropriate action would be a motion to approve the meeting transcript from the January 16, 2025, meeting.

Is there a motion?

MEMBER CLAVO: I make a motion to approve the

minutes.

CHAIRPERSON DUDLEY: Thank you.

Second?

MEMBER CRAWFORD: Second.

CHAIRPERSON DUDLEY: Any opposed?

(No response.)

CHAIRPERSON DUDLEY: Any abstentions?

(No response.)

CHAIRPERSON DUDLEY: Okay. Therefore, that motion passes.

At this time, POST Assistant Executive, Annemarie Del Mugnaio, would like to address the Board and introduce the new business items.

Ms. Del Mugnaio.

MS. DEL MUGNAIO: Thank you, Madam Chair.

Members of the Board, appreciate you guys all being here today and reviewing all of the matters that are before you.

One of the items that was sent to you early on by Chandler was an update on all of the serious misconduct cases that you've heard thus far, excluding those today, obviously, and the status of those cases.

This is an opportunity to ask any questions you may have about any of those cases in terms of their status, upcoming hearings, et cetera.

Are there any questions about case status?

(No response.)

MS. DEL MUGNAIO: Okay. Seeing none, with the Chair's permission, I'm going to move on to our report on the data for serious misconduct under new business?

CHAIRPERSON DUDLEY: Please.

MS. DEL MUGNAIO: Okay. So at this time I would like to call a couple of the folks from our Peace Officer Standards Accountability Division. I would like to call Chelsea Wijaya, Analyst; Sarah Wallace, Bureau Chief; and Rob Guyton, Bureau Chief.

Before we begin the presentation -- and we'll have some slides for you -- I just want to announce, the Board has all received the Data Statistical Report in great detail.

There is pretty explicit explanations as to what is in each one of these slides.

What you will be seeing on the screen is an abbreviated kind of version of that presentation. I've asked Chelsea to go through each slide and just give you an overview of what you're looking at. And that's your opportunity to ask questions.

As you can tell through the presentation, we've done a much deeper dive into the data to try to give you more of a flavor of the volume of cases that we're

seeing and where those cases fall in terms of our investigation, our review.

One comment I want to make before we turn it over is, you're going to notice something in the slides called an abbreviated review. And that is in cases where we receive reports from agencies that are exonerated, unfounded or not sustained.

Outside of use of force cases, which are reviewed by our law enforcement consultants, those cases that are unfounded, exonerated, or not sustained, are going through an abbreviated review.

The reason for this is up to the point, probably about six months ago, we had been doing an extensive review of all those cases, a thorough investigation or analysis into the reports that we were receiving from the agency.

We were not finding discrepancies in terms of the findings themselves from the agencies.

And because of the volume that we were dealing with and needing to be able to get to those, what we consider our priority one cases -- we can talk about that a little bit more today -- we needed to exercise an abbreviated review, where we look at the finding of the agency, we review their evidence and then we write a closure statement based on the finding and the evidence.

So it doesn't go through the full extensive review by a law enforcement consultant that other cases that are sustained do.

And I'm sure that causes some level of concern.

We are going back -- and you'll hear about this throughout the report today -- and auditing those closures. So a law enforcement consultant is going back and auditing a certain number of those cases to make sure there was nothing missed.

And I'm not going to steal Chief Guyton's thunder, because he's going to go into the audit a little bit further to talk about cases that are excluded from that abbreviated review, because there are cases where we say there's a higher risk to us doing that abbreviated review and therefore, they're exclusions.

You'll hear about that more today.

But I wanted to preface this, preface the presentation, because I'm sure that's something that's of concern is, what does it mean, abbreviated review?

Why did we do that?

And what are our audit findings?

So you are going to hear about some of that today.

Thank you.

CHAIRPERSON DUDLEY: Thank you, Ms. Del Mugnaio.

Do you have any questions before we start of

Ms. Del Mugnaio what she just explained about the abbreviated review?

Okay. I want to encourage you to ask questions. She and I did discuss -- Chelsea has done a magnificent job and her presentation would clearly take an hour and she wouldn't have a wasted word within that hour.

But she's giving us a condensed version, so please if you have any questions, don't hesitate to ask.

Do you want to answer that at all?

Okay. Please. Thank you.

MS. WIJAYA: Thank you. Good morning, Madam Chair, Members of the Board. My name is Chelsea Wijaya. I am an analyst with the Intake and Disposition Bureau.

To my left is Bureau Chief Sarah Wallace of the Intake and Disposition Bureau.

And to my right is Bureau Chief Rob Guyton from Professional Conduct, Northern Bureau.

So today is a statistical data report that is aimed at helping tell the story of the Division and its numbers. It's intent is to help give the Board, the field, the public, a better understanding as to our workload, our business practices, as well as our disciplinary action and case outcome figures and to show that we hear the questions and the feedback and we aim to be transparent in providing confidence to the public

and to the field as to our decisions.

So first we'll be going over the intake of serious misconduct reports.

We'll then talk about the volume and statuses, cases with POST.

We'll then talk about our case outcomes, why we see so many outcomes resulting in no action, as well as highlighting those cases that do result in action.

And then lastly, we'll talk about those number of cases that make it through the decertification process and are ultimately heard by the Board and Commission.

Just another note before we dive in, all of the data is updated up 'til June 30, 2025, so that we can capture the entirety of fiscal year 2024 to 2025.

And as Annemarie had mentioned, the version that is presented today will be more brief, but the agendized version that is published online for the public and that is presented or -- apologies -- provided for you today does contain the full analysis.

All right. Starting off, we'll be going over the agency participation rates, as they are our main source of serious misconduct reports.

So we're seeing that agency participation for serious misconduct report submissions is at its highest since the implementation of Senate Bill 2.

Now, if you take a look at the chart on the right-hand side here, you will see the agencies that have submitted multiple reports in dark blue; those that have only submitted one in light blue; and those with zero submissions in gray.

Across the board we see that most agencies have submitted multiple serious misconduct reports. And those that have submitted zero mostly comprise of those smaller agencies that only employ zero to 49 full-time peace officers.

We do have two moderately sized agencies that have not reported any serious misconduct to POST and we are in the midst of conducting outreach to those agencies.

Any questions on the slide?

MEMBER CRAWFORD: You mentioned that two of them -- Okay. You mentioned that two of them, agencies, have not submitted any reports, which is cause of great concern.

And it kind of -- kind of gave me the impression that this agency feels that it's an option or they don't fully understand SB 2.

And that would be concerning for -- for -- like my group of people I represent that SB 2 is a law.

So when you say you're reaching out to them, is it like a small tap? Say, you know, by the way, SB 2 is

implemented, whether it's awareness, how does the community make sure that they have the rights that fall within SB 2 in your outreach?

So I guess I wanted to know what did you mean by, you know, you're reaching out to them? What is, kind of, where are you going?

MS. WIJAYA: Thank you.

MEMBER CRAWFORD: I hope I didn't say too much.

MS. WIJAYA: No, you're okay. Thank you, Board Member Crawford.

So annually POST does send out letters to non-reporting agencies to essentially confirm whether the agency has serious misconduct allegations to report or if they're in the midst of submitting a report of serious misconduct.

We have identified these two moderately sized agencies, and during our initial round of those letters, we did not receive a response.

So we are -- Bureau Chief Guyton on my right here is in the midst of conducting outreach to those agencies for further confirmation.

Do you have anything?

MR. GUYTON: Sure. So just to add to that, so from my perspective in the Northern Bureau, if I have agencies that have not reported, then I reach out to the

chief; right? I'll make a phone call. I'll offer up SB 2 training for their command staff to bring everybody up to speed.

We have been going around the state doing SB 2 presentations and meeting folks from the impacted departments here.

And we're offering that up.

So yeah, we do reach out.

MEMBER CRAWFORD: I guess my concern is -- I appreciate it. Yeah, okay. I appreciate, you know, the director and Ms. Annemarie coming to Ventura County for us.

And even at the higher level, when you're talking to the chiefs and the sheriffs, you know, I always wonder, are the field officers getting that type of training as well?

Because it seems like maybe they don't really understand what SB 2 and the impacts of their actions, of what's going on.

So when you reach out to the chiefs, are you assuring it's going down to the field officers as well?

MR. GUYTON: So, yeah, so that's a great question.

So we have partnered up with PORAC to get that general membership the SB 2 training.

So we did a podcast, I want to say it was back in

March with PORAC. Several of the law enforcement consultants in attendance here today were on that board to provide that information and get it out there.

We've also held different presentations for the PORAC general membership all throughout the state.

So, yes, we are reaching out not only to command staff and the chiefs and sheriffs, but to the line membership as well.

MEMBER CRAWFORD: Thank you.

MR. GUYTON: You're welcome.

CHAIRPERSON DUDLEY: Let me follow up with that.

First of all, tell me the names of those agencies, please.

MS. WIJAYA: Absolutely. So those agencies are University of California San Francisco Police Department. And the other agency is the Department of Healthcare Services.

CHAIRPERSON DUDLEY: I'm sorry, the director --

MS. WIJAYA: The Department of Healthcare Services.

CHAIRPERSON DUDLEY: Okay. And what are they being told is the ramifications of their decisions not to report if there is something they should, in fact, report.

MS. DEL MUGNAIO: Thank you, Chair Dudley. I'll handle that one.

There is no -- in the law, there is no recourse and that's one of the challenges.

There is nothing that says if you don't report, there are penalties, sanctions, punitive action against the agency.

That is something that we've talked about universally within POST.

There's the option of, well, do then we not reimburse for training for those agencies?

Because that would be the hammer that POST currently has is they're not a POST-approved program and therefore they would not have their training reimbursed.

That seems, like, counterintuitive.

We don't want officers not to have training just because they may not be complying with this area of law.

But perhaps, in the future, there will be some mechanism by which leverage to encourage this, if they're not doing it on their own.

When we talk about moderate-sized agencies, we're talking about 50 to 99 officers employed full time, peace officers employed by those agencies.

It stands to reason over the course of the last three years -- now four years or almost four years -- there would be some activity which would result in reporting to POST.

So, in addition, to the letters, the outreach, we do, at every conference we go to, encourage that this is something that actually helps your agency to ensure that the integrity of the agency is upheld by reporting individuals and actions by peace officers that do not represent the best of your agency.

And that should be incentive. And we hope that we get all of these agencies up to this reporting metrics.

We're talking about zero reporting, one reporting, and, you know, there's a whole other discussion about proportionate reporting of agencies.

Agencies that have 10,000 peace officers like LAPD, you know, LASD, are they reporting proportionate to the size of their agency?

That's whole other discussion; right?

But at this basic level, what we can at least tell you is that the majority of the agencies are reporting, whether or not they're reporting proportionate to what we see generally, complaints, charges, allegations, that's a whole other discussion and we probably will get there at some point.

But to answer the Chair's questions, currently there really is no recourse built into Senate Bill 2.

CHAIRPERSON DUDLEY: Let me suggest, based upon Ms. Crawford's comments and my own feelings, I think the

communities where these agencies are would want to know that.

And there may not be a Penal Code provision, and there may not be a funding provision, but there is the ramifications of their decision and how it affects the individual communities. And I think that's something we want to keep in mind.

So thank you, Ms. Crawford.

Please go on, Chelsea.

MEMBER GLASER: Sorry I have a question just for clarification.

CHAIRPERSON DUDLEY: Yes.

MEMBER GLASER: So in this particular case, what is the reporting procedure for these departments?

Are they only required to report when they have something to report? Or are they required to affirmatively report that they have no cases to report?

Because if it is the latter and they're not even providing a report that they have zero cases, that's a much bigger problem than -- it's possible they have no cases.

MS. DEL MUGNAIO: Great question.

They are not required to report if they have no reports to report.

However, when we sent the letter, we did request

that they respond.

And if they have zero reports, to confirm they have nothing to report or had nothing to report the previous year.

So from a, you know, a Senate Bill 2 perspective, they're not required to report that they had nothing to report.

So great question. Thank you.

MEMBER GLASER: Is that something that can be addressed in, you know, revisions to the regulations?

MS. DEL MUGNAIO: Perhaps yes. Thank you.

MEMBER LARA: There are other instances -- There are other instances of affirmatively reporting that you have nothing to report.

Such as the use of kinetic energy weapons that are used during protests so we do a zero -- I know our department has to comply with that law.

That says, hey, there hasn't -- there -- if we have, with we call them zero reporting, basically saying that we were not, in utilizing a kinetic energy weapon.

So there are -- it has some antecedents in the law where that is something that could be -- I think could be amended. Such that you have to affirmatively state that you have no cases.

CHAIRPERSON DUDLEY: I believe that's also true for

hate crimes.

Yes, Ms. Pena.

MEMBER PENA: Does the Department have the ability to go in and do audits of reporting systems and look at the processes that are used in the forms and evaluate how they are conducting investigations?

CHAIRPERSON DUDLEY: Just to be clear, Ms. Pena, when you're referring to "the Department," do you mean the individual law enforcement departments or POST?

MEMBER PENA: POST.

MS. DEL MUGNAIO: No. Currently there is not an auditing provision of Senate Bill 2.

There is general auditing authority for POST in terms of looking at background files. And there might be a method by which to expand that auditing mechanism to look at serious misconduct.

That would be something we would have to address with our Chief Counsel.

But currently as part of this whole Senate Bill 2 process, there wasn't an audit mechanism built in. It's something we've discussed.

Does our general POST authority to audit peace officer files, perhaps, give us the authority to go in and audit serious misconduct cases?

I'm not sure it's that broad at this point. And I

don't know if you want the Chief Counsel to address that, Toby Darden to address that today.

But it is something we discussed that -- could we expand that audit authority and should the law expand that audit authority so that we can get a handle on that proportionate reporting as well as the zero reporting.

MEMBER PENA: Thank you.

CHAIRPERSON DUDLEY: Ms. Pena, do you want a response from Mr. Darden now? Or today? Or what would you like?

MEMBER PENA: Oh, in the future. Not -- not today.

CHAIRPERSON DUDLEY: Okay. Thank you.

MEMBER PENA: Thank you.

CHAIRPERSON DUDLEY: Maybe Mr. Darden could prepare that for tomorrow. I think we'll have more time tomorrow after the cases.

Thank you.

MEMBER PENA: Thank you.

CHAIRPERSON DUDLEY: Okay. Anything else for now?

Okay, Chelsea, I think we already had a few questions before we even started. So please, go ahead. We haven't slimmed this down much.

MS. WIJAYA: Onto our in-take of serious misconduct reports.

So we've observed that the Division's initial

in-take of serious misconduct reports has been heavily driven by the statutory retroactive reporting mandate under SB 2enate Bill 2, which established a deadline that all retroactive reports should be reported to POST by July 1st, 2023.

But since that retroactive reporting deadline, we've seen that our report in-take has stabilized at about 2,500 reports per quarter.

So as of June 30, 2025, the Division has processed over 37,000 agency misconduct reports.

The chart below represents our reports processed over time.

The area and number labels in dark blue represent the total number of processed reports per quarter and the number in light blue represents the number of reports that are retroactive.

So those retroactive reports have an incident date prior to January 1st, 2023.

So most of our reports have been processed around that retroactive reporting period with that gray background, we reached a peak of 6,800 reports within one quarter.

That fell right prior to that deadline of July 1st, 2023.

And you will see that in the light blue, most of

those reports are retroactive reports.

But since that retroactive reporting deadline, we see a decline in total number of reports processed, as well as retroactive reports, and we see this plateau and average about 2,500 reports per quarter.

Any questions before we move on to the next slide?

Seeing none.

Okay. So we have another chart here, which still represents that total number of processed reports in dark blue. But we now have in yellow the number of reports that initially come in with a final disposition from the agency.

Within the gray are the number of reports that come in with an open investigation by the agency. And this provides a general overview of the upfront and ongoing workload for the Division.

Those reports that come in with a final disposition are within POST's purview to review. And then those open investigations reports will eventually receive agency findings and a subsequent report.

CHAIRPERSON DUDLEY: Chelsea.

MS. WIJAYA: Yes.

CHAIRPERSON DUDLEY: Question.

In terms of the open investigations, can you tell us how many of those officers are presently employed?

MS. WIJAYA: I don't have that -- I don't have that information available for you today, but we can bring that to you at later meeting.

CHAIRPERSON DUDLEY: I think the Board would be interested in knowing that. Thank you.

MS. WIJAYA: So in addition to agency misconduct reports, POST also receives and reviews allegations of serious misconduct from members of the public, through public complaints.

POST has received over 2,300 public complaints from a pool of approximately 1,200 complainants.

And we see a steady increase of public complaint submissions over time as the public becomes more aware of POST and the decertification process.

So we've received about 1,700 responses from agencies to our public complaints.

500 of those which -- agency misconduct reports which are sent over as an acknowledgment that there may be serious misconduct within that complaint.

And 300 of those were sent prior to POST's receipt of the complaint, which is reflective of proactive and timely reporting by the agencies.

1,200 of those responses were by way of agency supplemental.

So those are mainly to indicate that the complaint

that was forwarded over did not rise to the level of serious misconduct, or to indicate that the complaint was not against an officer employed at the agency.

Any questions on this slide?

All right. Moving on, we have an even further breakdown of the composition of our public complaints.

So POST staff will review all of the complaints and actively coordinate with agencies should there be a requirement for additional documentation.

If you take a look at the pyramid, about 631 of those complaints require additional agency documentation.

884 of those complaints are currently undergoing POST review, meaning we have received sufficient agency documentation to move forward.

And then 826 of those complaints are closed.

So POST has done its review and determined that the complaint was either serious misconduct, not serious misconduct or non-jurisdictional.

And complaints are considered to be non-jurisdictional when they indicate an individual that is not defined under Penal Code Section 13510.1(a).

If you take a look at the squares near the pyramid, within those first two segments are those complaints against agency heads or Mark43 reporters. So we have

about 256 complaints that fall into that ballpark.

Near the bottom we have ten complaints that have resulted in certification action.

We'll do an even deeper dive into those closed complaints and their outcomes in a future slide.

But are there any questions on this slide before we move on?

CHAIRPERSON DUDLEY: Yes, Dr. Glaser.

MEMBER GLASER: Yes, a little clarification.

So the ten complaints that have resulted in certification, those are -- those were public complaints.

Did they all correspond to actions that were already being taken by the departments?

Because I thought I heard reference to -- somewhere that the public complaints tend -- tend not to -- without -- well, we know, in fact, that non-sustained allegations of misconduct tend not to result in decertification.

So I'm wondering if any of these public complaints that did result in recommendation of revocation, or whatever the action that's being specified here means, if any of these were public complaints that don't correspond to an action being taken by the officer's agency?

MS. WIJAYA: All of the complaints that are listed in that ten did result in action by POST, if I'm understanding your question correctly.

MEMBER GLASER: That part it is clear.

MS. WIJAYA: Okay.

MEMBER GLASER: But I'm wondering if any or all of them also reflected action taken by their local agency.

MR. GUYTON: If I can jump in here real quick. So we have had public complaints that have corresponded to a formal complaint that was submitted by an agency.

CHAIRPERSON DUDLEY: I think the question is the opposite.

MEMBER GLASER: Yeah.

CHAIRPERSON DUDLEY: Have you had complaints from individuals where there wasn't a complaint or follow-up by the agency?

Is that right, Dr. Glaser?

MEMBER GLASER: That resulted in --

CHAIRPERSON DUDLEY: Right.

MEMBER GLASER: That resulted in action by POST.

MR. GUYTON: So then, yes. So I have had complaints that have come in from the public that we have pushed to the agency, that have resulted in the agency submitting that agency misconduct report.

MEMBER GLASER: And --

CHAIRPERSON DUDLEY: Are you still asking about the absence?

MEMBER GLASER: That's -- we're getting closer.

CHAIRPERSON DUDLEY: Right.

MEMBER GLASER: And I -- I apologize for the lack of clarity in my question.

The -- I'm just wondering, among these ten where there has been action by POST, or by POSAAB, has -- are any of those that do -- are any of those cases where there was not action by the agency prior to the public complaint?

MS. WALLACE: So to answer that question, of these ten, the majority of which were already previously reported by the agency and they had taken action.

So we do frequently see in the case of these ten cases, where either POST is already in the process of taking action, the agency's already taken action or there's already been a media report and members of the public then re-report the information back to POST.

And so it is tied to those cases.

But we will track, for future statistical reporting, the cases that result or -- or results of the initial public complaint that comes in. And then the agency's response and whether or not they take action or not.

MEMBER GLASER: Just to clarify again, I strongly support there being a public complaint mechanism.

I'm just trying to get a handle on the value added of the public complaint mechanism above and beyond what happens automatically.

MEMBER CRAWFORD: Well --

MS. WALLACE: I'm sorry --

MEMBER CRAWFORD: Go ahead.

MS. WALLACE: To speak to Board Member Guyton's comment, there are frequently cases that come in as a result of a public complaint that generate a response from the agency.

So I do think it is an effective process, currently.

It's just that, at this point in time, of those ten I can't say that those -- the -- the disciplinary action wasn't a direct result of having received a public complaint.

CHAIRPERSON DUDLEY: And I think Dr. Glaser would like to have that in the future, as would all of us. Thank you.

MEMBER CRAWFORD: And I guess -- when we talk about the public complaints process, one, I'm knowing -- I do know that a lot of people don't know that they can file these public complaints.

So I'm always the first one saying, yes, you do have the rule to file them.

My concern is, though, although we know -- we're not attorneys, we know what are some of the things that POST is looking for.

But I don't -- again, I don't -- I'm not really sometimes clear, because like in some of what I've read, when you say misconduct, what does misconduct look like?

You know, how you -- how do you break that down?

Is this rightfully a misconduct action or not?

You know, so I guess I'm looking at what are some of the policies that the analyst is looking for, you know?

What checks the box to -- to make that determination?

Because sometimes everything is not just white and black, or, black and white, and it's not just as easy as we're seeing incidents of -- I mean, this is egregious, but I don't think it's happening where an officer may have slapped somebody.

CHAIRPERSON DUDLEY: Let me make a suggestion.

I think what Ms. Crawford is asking for, please correct me if I'm wrong, is you want there to be some kind of education to the communities. So we're talking about education to law enforcement agencies, we're

talking about education to law enforcement officers directly.

But how about to the communities to say: POST exists, this is what POST is, these are the kind of cases we want reported to POST.

Is that right?

MEMBER CRAWFORD: You're right on that. And it is awareness.

When I look at Title VII, I'm able to check off the boxes.

CHAIRPERSON DUDLEY: Right. And you're looking for POST to create such a checklist.

MEMBER CRAWFORD: Right. And I'm not able -- I really don't see that --

CHAIRPERSON DUDLEY: Okay.

MEMBER CRAWFORD: When I read it, you know.

CHAIRPERSON DUDLEY: Okay.

MEMBER CRAWFORD: Where it's kind of checked off.

CHAIRPERSON DUDLEY: Okay.

MEMBER CRAWFORD: And like I said, Title VII I'm using that one.

CHAIRPERSON DUDLEY: Yeah, we've had some training on that. But I think your point is well-taken. You want to make sure the community understands what that looks like. And that makes perfect sense.

Thank you.

MS. DEL MUGNAIO: May I respond to Dr. Glaser?

CHAIRPERSON DUDLEY: What?

MS. DEL MUGNAIO: May I respond to Dr. Glaser?

Board Member Glaser, I want to respond to your question, because I picked up on it right away.

I think there is a statistic here. 27 percent of the cases that we receive that are public complaints, we do not have a full picture of that serious misconduct, which means we have to go back to the agency and ask for further review, further documentation. They may not have investigated it yet.

So that speaks to the validity that the public is stimulating or initiating some of this activity in terms of it's driving investigations.

So 631 of those did not have a full picture completed IA, et cetera, of the complaint itself that was received by the public.

So I think that speaks to the value.

MEMBER JOHNSON: Question?

CHAIRPERSON DUDLEY: Please.

MEMBER JOHNSON: So when we talk about public complaints, are we including in that complaint citizen oversight boards that actually receive complaints from communities?

MS. WIJAYA: That's correct.

MEMBER JOHNSON: And then in regards to the training process I believe you were speaking to, I think I heard you say that the Division offered training to different agencies concerning the process, right, in certain areas in the State of California.

With that being said, most folks still, especially the community, is unaware of SB 2 and the Advisory Board.

So some kind of way maybe we should have a conversation about when these trainings do occur for the police officers' agencies, during that same time period we should have an open door for the community to hear how the process work.

MS. DEL MUGNAIO: Thank you, Board Member Johnson.

In Ventura that's what it was. It was a blend of peace officers and community members that came to kind of reflect the whole, you know, stakeholder group regarding Senate Bill 2.

And that's not the only forum where we've had community members and law enforcement in the same room while we're providing this type of oversight, overview, if you will.

So there's different aspects of training, as you, I'm sure, can appreciate.

There's the procedural training to the law enforcement agencies.

How do we report?

How do we put things in Mark43?

What are you looking for in terms of a finding so that you can pursue your analysis and investigation?

And then there's an overview of what Senate Bill 2 intended. And that is more of, I think, the overview we're talking about, is what constitutes serious misconduct?

Why is it these nine categories?

How do you look at public policy versus what might be clearly articulated or not clearly articulated in the law?

And how do you find that balance between does this policy rise to the level of violating this -- one of the nine aspects of serious misconduct?

That's the type of overview that we want to provide to the community, to law enforcement generally, to get a blend to understand the intention, the overall application, and what we're seeing as a result.

And so we are making an effort to do those things.

But there's never -- there's never going to be enough of us to reach all of you. And that's one of the issues that we will always contend with.

So we can always do more in that regard, I think, is my point.

Thank you.

MEMBER JOHNSON: One more question -- Johnson -- in regards to complaints being filed.

So I notice when we look at the data concerning officers that has been impacted by SB 2, you know, you have, of course, their name, certification, action, effective date, pleading order, current, former agency and basis.

Maybe we should have a category for the initial complaint, whether it came from the community, the agency, or a citizen oversight committee.

This way we can really see who is actually filing complaints.

And not only that, help engage the community so they can be aware that there's just different avenues.

MS. DEL MUGNAIO: I think it's a generality.

I'm sorry, may I --

CHAIRPERSON DUDLEY: No, please.

MS. DEL MUGNAIO: Board Member Johnson, I think you're right from a generality perspective.

I think we can generally specify whether it was driven by a public complaint, driven by an oversight board, driven by the agency without specifying the

individual. Because we would not do that; right?

Some people do not want their name broadcasted or to become public in terms of their ability to complain to POST.

In some way, there's a bit of a safeguard there for them to come to POST and not directly to the agency, if they feel like there might be some retaliation, you know, from the agency.

So I would definitely caution against, you know, removing that anonymity. But generally speaking, I think as part of our investigative summary and findings, we could include a category that shows which population this comes from. And I think that might be helpful for you folks.

So I appreciate that suggestion.

MEMBER JOHNSON: Right. Well, just one point of clarity.

MS. DEL MUGNAIO: Yeah.

MEMBER JOHNSON: I wasn't speaking on the individual filing the complaint.

MS. DEL MUGNAIO: Okay. Yeah.

MEMBER JOHNSON: You know, because different individuals ask me in the community, has such-and-such an officer came before the Board; right?

MS. DEL MUGNAIO: Yeah.

MEMBER JOHNSON: It could be in the pipeline. I don't know. You know what I'm saying?

But at the same time, I think it helps the community to know if a particular officer in their community has had numerous complaints filed; right?

And their name do show up in the data concerning some form of action. Then the community will say: I can remember such-and-such filed that complaint and at least it did result into some kind of action.

MS. DEL MUGNAIO: Yeah. Thank you. Well taken. Thank you.

MEMBER CRAWFORD: I think -- thank you. And that was a great suggestion.

I think when we think about SB 2, and I know when we're talking about SB 2, it works on two sides. When you came to Ventura County, you know, my law enforcement, I have to say "mine," in Ventura County walked away with a tool. And being able to address some of the issues that they were dealing with their officers. And I have seen impacts. When I was working on the Board, my sheriff is filing SB 2. And my chiefs are filing SB 2.

So it was a -- it was a good thing along. But I'm still not feeling the community clearly understands: How do we articulate it, as you say. What quantifies to

what SB 2 is or is not.

And more importantly, I think the officers need to understand -- understand it.

Because in this age that we are in right now, I just think things can possibly escalate up. And so that was my concern about it. And so that you cannot put in data. Absolutely you can't.

But there's got to be some way of, like I said, check-off boxes for the public to use.

CHAIRPERSON DUDLEY: Thank you. Chelsea?

MS. WIJAYA: Moving on to our last segment of the in-take of serious misconduct reports. We're moving on to agency supplemental reports, which are provided to POST to provide additional information to agency misconduct reports or public complaints.

So we've received over 31,000 agency supplemental reports from agencies. Most of which consist of case status updates, evidence uploads and agency findings.

If we take a look on the right-hand side, we see the average time frame in which an initially opened agency's misconduct report receives agency findings through an agency supplemental report and that average is 241 days.

When we discern between those reports that are retroactive and active, though, so those retroactive

reports with incident date prior to January 1st, 2023, we see a difference.

So those retroactive reports are seeing, on average, agency findings within 177 days.

Our more active reports, however, incident date after January 1st, 2023, are receiving agency findings later with an average of 260 days.

CHAIRPERSON DUDLEY: Chelsea, I'm confused.

I'm not sure exactly what that means. So from the -- from when to when? From the time an action occurs?

From the time there's a report?

Just break that down a little more for us, if you would.

MS. WIJAYA: Absolutely.

So once we receive an agency misconduct report, and approve it and it has an open investigation, it is in POST's hands; right?

When that agency supplemental comes in with agency findings, on average we're seeing that it comes in in 241 days.

CHAIRPERSON DUDLEY: So from the time you get a report until the time you get the supplemental information, which really you need before you begin your investigation, is 240 days?

MS. WIJAYA: Correct.

CHAIRPERSON DUDLEY: Okay. Anybody have any questions about that?

Okay.

MEMBER GLASER: Okay. Then since there's concern about the length of that, I'm going to ask a stats nerd question, which is: What does the median look like?

Because are these means somewhat distorted by some really slow ones?

Or, you know, so I'm just trying to get a sense of the typical amount of time as opposed to the average.

MS. WIJAYA: Yes. So the median, as observed, was about 240 days as well. And this is not unusual. So under the Peace Officer Bill of Rights, POBAR, an agency has one year, 365 days, to complete its internal affairs investigation upon discovering that their officer has committed misconduct.

MEMBER GLASER: Okay.

CHAIRPERSON DUDLEY: So what does that mean in terms of a law enforcement officer's actions?

If a law enforcement officer has committed an action where there's some concern on the agency's part that this is, in fact, a significant act of misconduct, then a report comes to us.

And then 240 days go by before we can actually

begin our investigation.

So just to be clear for everyone, during those 240 days, that agency can decide whether to put them on administrative leave, whether they decide to keep them, whether they decide to do -- whatever actions to take.

So is that clear to everyone? Okay.

MEMBER JOHNSON: I have -- Johnson -- a question, concerning that.

So retroactively, an officer has been put on temporary suspension in 2017.

The agency, of course, files to POST concerning that individual. The agency investigation, I'm assuming, would have already been completed. Now it's just what POST completes; correct?

So POST's completion time is 240 days.

CHAIRPERSON DUDLEY: Huh-huh.

MEMBER JOHNSON: Or 177 days, I think I heard.

CHAIRPERSON DUDLEY: Let Chelsea explain it.

MS. WIJAYA: So this average time frame that is presented here is after an agency has submitted a report to POST on that serious misconduct incident that is currently either open or has already been completed at the agency.

MS. WALLACE: Let me clarify.

So in statute, agencies are required to report any

allegations of serious misconduct within ten reporting days.

And so it's just that. It's just an allegation at that point. We don't know what the incident was. The agency might not know what the incident was.

And so they are doing their due diligence in reporting it to POST. We're on notice. We classify it as an open investigation and then we're waiting for that period of time.

So these are only relating to those reports that come in as open investigations within that ten-day reporting period. And then it's taking an average time frame of 241 days to reach us with their final disposition.

MEMBER JOHNSON: A little more clarity.

So we know retroactively, right, that -- I think it was the 23rd, I forget what month -- that you had to have your reports in concerning those retroactively in violation of SB 2.

So it comes in June of 2023. They have already completed, I would assume, the investigation.

So now the only part of the investigation to determine whether their license is going to be decertified is what POST does, based on that time period that they receive.

So is if they received it on June 23rd of 2023, it would take 242 more days before the investigation is complete.

MS. WALLACE: So I think we're going to address that question in a future slide where we look at our average time frame for our case investigation.

So that will capture the point in time when we received that final disposition report to the point in time we have completed our investigation.

So during that retroactive reporting period, cases came in twofold. There were cases that came in with retroactive allegations that had final dispositions and then those that did not have final dispositions and those were categorized as open investigations.

This matrix only focuses on the open investigations and the time frame it takes between that point in time we get that information and the final disposition coming in.

So -- and we can fine tune this as we move forward. So when we get to that slide hopefully we can re-address this.

CHAIRPERSON DUDLEY: So, just to be clear, responding to Mr. Johnson's concerns, some action occurred prior to 2022, between 2022 and 2025, and that action was not deemed to be necessarily misconduct or

substantial misconduct.

So now that the definition of substantial misconduct arose and was clear, with litigation, then people then had to look back and stay, huh, this apparently fits into that category. And now we're going to send the report.

So there was all kinds of retroactive cases, some of those law enforcement officers were still employed. Some were employed at different agencies, some weren't employed at all.

But it was all of that within that same category; is that correct?

MS. WALLACE: (Nods head; no audible response.)

CHAIRPERSON DUDLEY: Okay. Thank you for raising those issues, Mr. Johnson.

Okay. Chelsea.

MS. WIJAYA: All right. We're now going to move on to the allegations that POST has received.

So just to note, a report or complaint may contain multiple allegations, hence the number of allegations exceeding the number of complaints and reports received.

So over 42,000 serious misconduct allegations spanning 21,000 unique peace officers statewide have been reported to POST.

But in accordance with statute, only 85 percent of

these allegations are potentially actionable.

So about 34 percent of those allegations occurred prior to January 1st, 2022.

But POST can only take action against conduct that occurred prior to January 1st, 2022, if the subject officer's agency has made a final determination after January 1st, 2022, or if those allegations include dishonesty, sexual assault and/or use of deadly force that results in serious bodily injury or death.

So when we consider all of those factors, only about 36,000 of those allegations -- or 85 percent -- are considered potentially actionable by POST.

On the left-hand side we have the serious misconduct allegations broken down. Our top three are excessive use of force, demonstrating bias and abuse of power.

Any questions?

CHAIRPERSON DUDLEY: Seeing none. Okay.

MEMBER CRAWFORD: Thank you. So when we look at the top three, excessive force, demonstrating bias and abuse of power, they can -- those three alone are kind of, if -- iffy. That's not the word I'm looking for.

Iffy in the sense of who sets those determinations?

It's too subjective, and meaning it's not black and white, again.

We have seen cases where, you know, it was applied use of force, but based on a technique, it wasn't excessive use of force.

Sorry, I'm bringing in your agency.

We've seen where recently in Sacramento, a woman who was being released and an officer pushed her.

MEMBER CLAVO: Sheriff's Department.

MEMBER CRAWFORD: Sorry. Wrong department.

Pushed her. And it was a immediate response for -- from the agency, you know. I'm sure the officer felt like it wasn't excessive use of force, him pushing her.

What I'm saying, again, is the public -- those three things could be so subjective that it may not apply to SB 2.

And that's concerning to me. You know, I'm -- I'm sorry, I want to keep everything as simple as possible when explaining it.

And thank you. You are doing an excellent job. I'm not saying it's nothing that you're doing. But I'm going back to how we're looking at policies and, you know, and practices and how we go about making these determinations.

And so that's all I have to say. Sorry.

CHAIRPERSON DUDLEY: Chelsea, anything else?

MS. WIJAYA: Not for that slide.

CHAIRPERSON DUDLEY: Okay. So any questions -- Chelsea's reached the end of her presentation.

MS. WALLACE: She has a couple more.

MS. WIJAYA: No, four.

CHAIRPERSON DUDLEY: There is -- you have not reached the end?

MS. WIJAYA: No. We just finished with that slide.

CHAIRPERSON DUDLEY: Okay. Chelsea, I thought when I said "anything else" you would say yes, there is. There is more. So please.

MS. WIJAYA: We're just going to break down the prioritization of those reported allegations to POST.

So the bulk of those allegations received priority 3 and open investigation labels.

So we have our most-used priority labels and their definitions on the table to the right there.

It's quite small so I'll read it off for you.

Our POST ITS, or POST immediate temporary suspension labels are a reply to those reports that contained an ITS basis.

Priority 1 labels are applied to reports that contain politically or media sensitive content or sustained agency findings with -- at any agency finding date.

Priority 2 labels are similar, though they are

applied to reports with sustained policy violations that may not rise to level of serious misconduct.

We have priority 3 labels that are applied to non-sustained findings reported by the agency after January 1st, 2022.

And priority 4, similar but those findings must be reported -- or those findings must take place prior to January 1st, 2022.

And we have our open investigation labels that indicate when a report is -- still has an ongoing investigation.

So on the chart on the left, we are seeing that most reports are receiving priority 3 and open investigation labels, meaning that the agencies are submitting many non-sustained findings to POST. Or many reports that still have ongoing, open investigations.

A notable data point here relates to those dishonesty allegations. So we're seeing that reports with dishonesty allegations respective to their reporting numbers are receiving quite a high number of priority 1 labels or sustained agency findings.

What we've observed on the Division side is that sustained dishonesty at the agency level is not necessarily reflecting that serious misconduct definition established under Senate Bill 2.

MEMBER JOHNSON: Johnson again, sorry.

So 2021, before that it's retroactive.

And then 2023 is the time frame that they had to get it in and then open cases going forward.

But I'm hearing a lot about 2022. What's that representing?

MS. WIJAYA: Yeah, so under statute, conduct prior to January 1st, 2022, can only be actionable by POST if the agency's investigation findings take place after January 1st, 2022, or if those allegation include dishonesty, sexual assault or serious -- excessive use of force resulting in serious bodily injury or death.

That's why we're using that time frame for our prioritization.

MS. WALLACE: The retroactive reporting period, the deadline of July 1st, 2023, were for all of those reports that came in. So by, I believe, January 1st of 2023, if they had cases in 2022 or prior, they had to report them to POST by July 1st, 2023.

That's why we have the difference in the dates.

MEMBER GLASER: I have a question and a comment.

These -- these are great analyses and really very useful and illuminating.

I'm looking at these priority 2 bars and they're big numbers. You know, 7,000, 6,000, 3,500.

And those are the cases where there have been sustained agency findings. And I understand that the agency standards for sustaining a finding don't necessarily -- they may be -- they may have higher standards with -- and so they don't necessarily implicate revocation.

Nevertheless, these are big numbers and the numbers that we see in the numerator of that equation, how many revocation we've had, are very small.

And this is sort of my first indication for these -- you know, particularly for these very serious types of excessive force and demonstrating bias and abuse of power that we have this many cases with sustained findings, I think it would be really useful to get a breakdown -- a further breakdown -- of the cases where we have sustained findings from the agency, and non-revocation recommendation from -- and what the basis for that discrepancy is.

MS. WALLACE: I think the color coding may be slightly off in the labeling, but the 7 -- the 7,500, those are actually priority 3 cases. So those are all exonerated, unfounded, so the priority 2 cases would be the second blue, so the 102.

So what we're seeing is the priority 3 and the priority 4 and the open investigations are the bulk of

those cases for each of those allegations.

We'll work on the color coding a little bit more.

MEMBER GLASER: That's great. Thank you.

MS. WIJAYA: The feedback is well-received and we'll try to implement that in the future reports.

MEMBER GLASER: That's a much smaller problem.

I thought it was --

MS. WIJAYA: On our next slide here, we have those priority labels placed on the lower reported serious misconduct allegations. Again, that table with the labels and their definitions are to the right for your reference.

Across the board on the lower reported serious misconduct allegations, we're still seeing that a bulk of allegations receive priority 3 and open investigation labels.

But something notable, within the acts that violate the law allegations are a higher number of POST ITS and priority 1 labels and priority 2 labels, which can be attributed to one of the bases considered for immediate temporary suspensions, which is arrest or indictment for any Government Code Section 1029 crime.

CHAIRPERSON DUDLEY: Any questions on that slide?

(No response.)

CHAIRPERSON DUDLEY: If not, then it is time for a

break. And we'll resume at 11:15.

(Brief break in proceedings.)

CHAIRPERSON DUDLEY: Okay. Thank you. Chelsea, part two.

MS. WIJAYA: Next slide, please.

All right. I just wanted to provide a note before we delve into this slide.

So we are currently undergoing some data cleanup to refine our numbers, so a small percentage of cases is not going to be reflected. Once we finish that data cleanup we aim to have those additional cases added on at the next hearing.

That being said, 76 percent of ITS public complaint and priority cases are closed. Our remaining ongoing caseload has been prioritized based on agency findings and a potential risk to public safety.

So we have a breakdown of our case statuses in the pie chart on the left here. Aside from the 76 percent that have been closed, we have that 21 percent which are open with POST for its review and then the remaining 3 percent which are inactive, meaning we are still waiting agency findings for a review.

Any questions on this slide?

(No response.)

MS. WIJAYA: Moving on to our case closure rates

over time.

So we're observing that POST's case closures are catching up to its initial report in-take. And that is due to the limited time abbreviated review process that we launched to aid in that backlog clearance.

So if you take a look at the chart on the bottom, the dark blue reflects those total number of reports that have been processed. And in the dark red, we have the number of cases closed.

So if you take a look in that gray background, you'll see in quarter three of fiscal year 2024 to 2025, the Division sees a spike in case closures and that is due to that limited time abbreviated review.

Are there any questions on the abbreviated review process? Bureau Chief Robert Guyton is here to answer those questions.

CHAIRPERSON DUDLEY: Dr. Glaser.

MEMBER GLASER: Yeah, I just have a question. I guess I need more clarity on what these mean, because I would think that -- that cases closed would be a subset of total processed reports, that you can't close a case unless there's been a processed report.

But you've got, in the last two periods, way more closed cases than processed reports.

MS. WALLACE: So I think what we're trying to

demonstrate here is just a visual of what our workload is and what we're having coming in on a regular basis versus what we're able to sustain in closures on a regular basis, to give us a perspective of do we have adequate resources to be able to maintain this case closure?

They are two different subsets. But it's intended to show you in-take versus what we're able to close.

MS. DEL MUGNAIO: So, Dr. Glaser, it's cumulative. So meaning that we're showing what the in-take is, the total processed reports are collective since the beginning.

So you will have all these reports sitting in queue that continue to build, until we started doing the abbreviate review, by which then we closed a lot of those cases that accumulated from the beginning of time.

Does that make more sense?

MEMBER GLASER: Right. So some of those closed cases in the 7,000s there are from cases that were processed earlier on.

MS. DEL MUGNAIO: Correct.

MEMBER GLASER: Thank you.

MS. WIJAYA: Any other questions?

(No response.)

MS. WIJAYA: Moving on to our case closure time

frames.

So we are seeing that to date all closed cases have been closed well within the three-year statutory time frame established under Senate Bill 2. And we're seeing that ITS cases are being accelerated due to that public safety risk.

So, again, a case is considered opened when POST receives the agency's findings up to the point in which POST makes its determination on a case.

So the time in which a case is at the stages of Board, Commission, ALJ, those times -- those time frames are not reflected in this dataset here.

So POST has three years upon receipt of the agency's findings to complete its investigation.

And on average, cases are closed well within 200 days.

CHAIRPERSON DUDLEY: Thank you.

MS. WIJAYA: All right. Moving on to our case outcomes.

Something to note here is that these closure numbers on this slide include all case types. So if you recall on that previous slide on case statuses, we only focused on our major case types due to that data cleanup. But this dataset will reflect the closures of all case types. So our numbers are going to be slightly

higher here.

Approximately two percent of our cases closed by POST resulted in disciplinary action. About ninety-five percent of cases were closed without further action.

If you take a look at the chart on the left, you will see that the NFA_POST, or No Further Action POST, cases accounted for 95 percent of case closures.

Now 88 percent of those closures are priority 3 and 4 cases. So again, those are the those cases with non-sustained agency findings, retroactive, and non-actionable.

We'll do a further breakdown of these case closures in subsequent slides.

Any questions?

MS. DEL MUGNAIO: Is this the slide that you did the comparison of how peace officers are faring in comparison to other professions in terms of the percentage?

MS. WIJAYA: That will be a bit later.

MS. DEL MUGNAIO: Okay.

MS. WIJAYA: Yeah.

MS. DEL MUGNAIO: Thank you.

MS. WIJAYA: So here's our breakdown as to why cases are resulting in no further action.

So we have 72 percent that were considered not

serious misconduct or POST did not have reasonable grounds for action.

Then we have 23 percent that were considered non-actionable, meaning that POST did not have statutory authority to act on the case due to the allegations and the agency finding date.

Then we have 4 percent that did not contain sufficient evidence to meet POST's burden of proof of clear and convincing.

And then lastly, we have 60 cases that were closed for no further action because the subject officer was deceased.

We have an even further breakdown here.

Now we're examining the closure trends among our priority case types. So most we're seeing closed out as not serious misconduct and non-actionable are those priority 3 and 4 cases. While our priority 1 cases are the cases that are seeing the most evidentiary gaps.

So in the chart here, we have the top three reasons for no further action, broken down by priority case type.

In the left-hand category, we have the number of cases closed out as not serious misconduct. So priority 3 cases are accounting for about 14,000 of those closures.

In the center category, we have those cases closed out as non-actionable, which predominantly involved priority 4 cases. And this distribution does align with our expectation since those priority 4 cases are being prioritized as retroactive and non-actionable. But upon further review, the Professional Conduct Bureaus have seen other priority case types result in a non-actionable closure.

And then, lastly, we have those cases that were closed for not meeting the clear and convincing evidentiary standard. We're seeing that priority 1 and 2 cases make up most of those closures due to the lower burden of proof required to sustain internal affairs investigations at the agency level.

So they're using a preponderance of evidence standard, while POST is using a higher, clear and convincing, evidentiary standard.

CHAIRPERSON DUDLEY: Okay. Thank you.

MS. WIJAYA: We also have our closure breakdown for public complaints within cases.

So we're seeing that most complaints are closed out as not serious misconduct, non-jurisdictional and non-actionable. And only a handful have resulted in certification action.

Those being four that resulted in ineligibility

under Government Code Section 1029, four which were revoked and two which resulted in the subject officer voluntarily surrendering their certification.

Questions?

(No response.)

MS. WIJAYA: So moving on to our cases that have resulted in action.

Now, when we take a look at the number of disciplinary actions taken by POST, we are observing that this is above average compared to other California regulatory licensing agencies.

So POST has taken 544 disciplinary actions across these two and a half years that we've been in operation. This amounts to about 0.2 percent of actions on POST's licensee population annually.

And then when we take a look at other licensing agencies that require specialized training and ongoing professional development, we observe that POST's action rate is above average.

And we have calculated the annual number of these action against the agency's licensee population to have a more comparable percentage rate.

So California Board of Registered Nursing is seeing 0.1 percent action rate annually.

The State Bar of California, is seeing 0.01

percent.

And then the Medical Board of California, in which we only considered the licensed physicians and surgeons here, is quite on par with POST's action rate, at 0.2 percent.

We have the number of disciplinary actions listed on the left here.

CHAIRPERSON DUDLEY: Just for clarity sake, the disciplinary action is defined as either a suspension or what?

MS. WIJAYA: So we're seeing suspensions, revocations, those that are considered ineligible under Government Code Section 1029, revocation stayed under entering a stipulated settlement with --

CHAIRPERSON DUDLEY: So it's any action, whatsoever, except your fine, essentially.

MS. WIJAYA: Yeah.

CHAIRPERSON DUDLEY: Okay. Just wanted to make that clear. Thank you.

MS. WIJAYA: I will note that administrative outcomes that are considered within those three other agencies listed here also include, reprovals, fines.

CHAIRPERSON DUDLEY: Yes.

MEMBER PENA: Have you done any comparison with other states that have similar procedures on

decertification to see how the -- we rank as -- how we compare to them in terms of our rates?

MS. WIJAYA: Not yet. But, that would be something good to bring at the next hearing. We'll definitely consider that.

MS. DEL MUGNAIO: Member Pena, when we looked at other states in order to kind of construct our operational procedures for Senate Bill 2, unfortunately there are no other states that have as robust -- or maybe that's fortunately that our is so robust.

We didn't have an apples-to-apples comparison.

So Arizona probably the most like California in terms of what they're doing in the decertification realm. But the cases only come to them.

In fact, their Board has to approve complaints to be processed through the Arizona POST. So there isn't a true replication.

But we can look at what their statistics are. Most states don't get these cases unless there is some sort of felony conviction or sustained action by the agency resulting in the agency's termination.

So they don't get complaints, charges and allegations. And that's what makes our situation very unique in that we're getting them before there is any finding on the part of the agency or any conviction.

So the volume is going to be much greater in California, so it's hard to do that comparison.

MEMBER PENA: Right. How about at the federal level?

MS. DEL MUGNAIO: Yeah, I'm not aware of something at the federal level that would be comparable, but it is research we can definitely do.

Yeah. Thank you.

MS. WIJAYA: Next slide. Thank you.

Here are our top allegations that have resulted in action by POST and we're seeing that they are acts that violate the law, dishonesty and sexual assault.

And, again, just to note that a case may contain multiple allegations, hence the number of allegations exceeding the number of actioned cases.

So we're seeing that ITS numbers, immediate temporary suspension numbers, for acts that violate the law allegations are the highest. And, again, we can attribute that to the ITS basis of arrest or indictment of any of Government Code Section 1029 crime.

This slide showcases an even further breakdown of those immediate temporary suspensions. Arrests and indictments for Government Code Section 1029 crimes are the highest basis for issued immediate temporary suspensions. And we're seeing that this contributes to

relatively high revocation outcomes.

On the right-hand side we have that chart that shows some of the outcomes of our ITSs. So 30 of those have resulted in revocation. 17 of which were a 1029 revocation. And then 13 of those which resulted in a default revocation. Ten resulted in a voluntary surrender. And we have one that resulted in a revocation stayed due to entering a settlement agreement with POST.

All of the categories below are considered withdrawals.

And I did just want to make a note about the criminal charges dismissed.

So just because a criminal charge has been dismissed doesn't necessarily mean that the case is dropped with POST, just that POST has lost jurisdiction on that immediate temporary suspension.

CHAIRPERSON DUDLEY: Chelsea, say the last sentence again. I want to make sure I understood that.

MS. WIJAYA: Of course.

So just because a -- the criminal charges have been dismissed from an ITS case doesn't mean that the case is entirely dropped with POST, just that POST has lost jurisdiction over the immediate temporary suspension.

CHAIRPERSON DUDLEY: Okay. Well, because there's a

significantly different standard. In criminal, it would have to be beyond a reasonable doubt. So -- and then when you're saying there was a loss of jurisdiction, how so?

MS. WIJAYA: So if the criminal charges have been dismissed, there is no more arrest or indictment for that Government Code Section 1029 crime. So POST therefore loses jurisdiction over that suspension.

CHAIRPERSON DUDLEY: Over that particular, specific -- but it could fall under dishonesty, it could fall under sexual assault, it could fall under any other -- okay.

MS. WIJAYA: Correct.

CHAIRPERSON DUDLEY: Just wanted to be clear on that. Okay. Thank you.

MS. DEL MUGNAIO: We're only losing jurisdiction on the ITS, not the case.

CHAIRPERSON DUDLEY: Right.

MS. DEL MUGNAIO: Even for that allegation.

CHAIRPERSON DUDLEY: Okay.

MS. DEL MUGNAIO: So if it's an act that violates the law, even if the criminal charges are dismissed, we still have jurisdiction for POST, with the act that violates the law. We just lose jurisdiction on the immediate temporary suspension.

CHAIRPERSON DUDLEY: Yes. Got it.

MS. DEL MUGNAIO: Thank you.

MEMBER GLASER: I have a question.

CHAIRPERSON DUDLEY: Dr. Glaser.

MEMBER GLASER: Thank you.

The numbers on the right side -- oh sorry, of the previous -- yeah. Thank you.

The numbers on the right side add up to a much smaller number than the numbers on the left side. So there are a lot more ITSs than -- than can be accounted for by resulting in action or withdrawal. So what are the rest?

MS. WIJAYA: So the number on the left side actually just reflects the number of bases that have been considered for an issued ITS and multiple bases may be considered.

The chart on the right reflects those immediate temporary suspensions that either resulted in action or withdrawal. And we have a number of immediate temporary suspensions that are still in effect. So those are not represented within the chart on the right.

MEMBER GLASER: Okay. Thank you.

MS. WIJAYA: So we're now getting into those cases that are moving along the decertification process.

So as June 30th, 2025, we've had a total of

56 notice of intent letters sent out to peace officers.

And just to reiterate the Division was sent that notice of intent letter to the subject officer when it has determined that the officer has engaged in serious misconduct under clear and convincing evidence and there are reasonable grounds to take action.

And to contest the notice, the subject officer must appeal within 30 days of that mailing of the notice. Failure to appeal will result in a default decision.

So a total of 56 notice of intent letters have been sent and 36 resulted in a default decision.

So 33 defaulted from failure to respond to that notice, but then three defaulted after a hearing before the Board and Commission due to failure to timely respond to POST's accusation with a notice of defense.

Twenty-one of those notices resulted in appeals. And of those appeals, 15 have been heard by the Board and Commission and 6 are still pending hearing, 5 of which will be heard across the course of the next couple of days.

Breaking down the allegations of the cases receiving a notice.

The top three allegations were dishonesty found within 32 of those cases, acts that violate the law within 27 of those cases, and sexual assault within 7.

Almost half of the cases that have received a notice of intent letter involved POST capturing or amending the agency's causes for action to better align with the regulatory definitions of serious misconduct.

So the most frequent additions were dishonesty and acts that violate the law showcased in the light blue on the chart there.

And the most common removals were allegations of acts that violate the law and sexual assault.

So acts that violate the law allegations were often removed when the conduct did not meet the definition of serious misconduct. So whether it lacked the egregiousness or repetition to meet that definition.

And then we also see sexual assault allegations being dropped in cases where the conduct had occurred off duty, therefore not meeting the statutory Division -- definition and falling outside of POST's jurisdiction.

We finally move on to the cases that have been heard before the Board and Commission.

So 15 cases have been heard, many of which contain multiple allegations, but the top two are dishonesty and acts that violate the law.

The Board has moved to revoke in most cases, 12 of the 15. The exceptions include cases involving DUIs or

acts that violate the law allegations.

So, one of those had resulted in a suspension prior to the stipulated settlement process becoming more conventional. And two were resolved through the stipulated settlements.

In contrast, the Commission has moved to revoke in just over half of those cases, 8 of the 15. So two cases, both which involved dishonesty allegations, resulted in no action.

All of the DUI related cases were resolved through stipulated settlements. And in one case involving excessive use of force resulted in suspension.

We just have an appendix here that includes a glossary of terms for reference if you want to go back to the presentation and refer to any of these terms.

That concludes the presentation.

And we're happy to take any questions or feedback.

CHAIRPERSON DUDLEY: The appendix is very helpful. Thank you. Especially after we leave here today and we want to go back and say what did she mean by that term?

I'm sure it was the lawyers, but appreciate it.

Questions? Comments?

MEMBER JOHNSON: Yes. Johnson. Question.

On the suspension aspect, you know, if I remember correctly, we had recommended a suspension I think it

was for -- or was it a settlement -- about ten years. And I noticed that POST actually changed it to five years. And I see a consistency of five years.

Is that a standard?

CHAIRPERSON DUDLEY: No, that's not a standard. We should continue to do what we think is in the best interest.

MEMBER JOHNSON: Well, I was speaking in regards to POST.

MS. DEL MUGNAIO: No, I don't think there's has been an established standard in terms of the time, so that's considered a probationary period.

I will tell you for other licenses that -- outside of peace officers, you see anything from three, five to seven years. Anything beyond seven years usually warrants a higher disciplinary action.

If you feel like you need to put someone on probation for seven to ten years, the question is whether or not probation is the right solution, because that's a long time to monitor someone's behavior.

So typically just across the board, Board Member Johnson, we see three years, five years, seven years. And seven years is kind of an anomaly sometimes as well.

So that's just -- I don't think there's a standard, necessarily, for peace officers, but I can tell you for

other licensed practitioners, they usually don't go beyond that.

CHAIRPERSON DUDLEY: Any other comments? Questions?

Anything else from any of the three of you?

(No response.)

CHAIRPERSON DUDLEY: Thank you.

All right. We're going to move on for the next 20 minutes.

Is there anyone present or appearing remotely or by phone who would like to address the Board regarding the data for the serious misconduct reporting investigations and disciplinary action outcomes?

Anyone present?

(No response.)

CHAIRPERSON DUDLEY: Anyone on the phone?

(No response.)

CHAIRPERSON DUDLEY: Okay.

Well, let's start on new cases.

We now move to the next item on the agenda.

We have three cases to hear today.

We will only be reviewing the facts and evidence as presented by this Division. This is not an evidentiary hearing. The rules of evidence do not apply here. Evidence is not formally admitted into the record.

There is no need to make any form objections and objections will not be ruled upon under the Penal Code and applicable State regulations.

Excuse me.

This initial hearing will determine only if the matter will proceed forward for Commission review. And then should the Commission approve for a full evidentiary hearing before an administrative law judge to determine whether the allegations are true and justify discipline.

For those commenting on each item at this early stage, the Board must only consider the facts as the Division -- that the Division, after investigation, believes can be proven at a later evidentiary hearing.

For that reason, today the Board will entertain arguments as to whether or not those facts, as presented by the Division, demonstrate clear and convincing evidence.

In other words, a high probability that serious misconduct as defined in Penal Code Section 13510.8 and Commission Regulation 1205 occurred.

This finding results in the matter being moved forward.

No action by the Board or the Commission prior to a full evidentiary hearing amount to a final determination

that an officer did, in fact, engage in misconduct or that revocation or suspension is ordered.

That will be determined after the evidentiary hearing.

At the conclusion of each law enforcement consultant's presentation, the Board will have the opportunity to ask questions. Then public comment from the subject officer and/or their counsel will be taken, followed by members of the public.

Further discussion by the Board will be allowed if necessary.

The Board may then go into closed session, deliberations, after each case or wait until all cases have been presented and adjourn into closed session to deliberate on all cases presented.

After reconvening into regular session, votes will be taken on each case.

At this time I will call upon Law Enforcement Consultant Robert Bringolf, Professional Conduct, Los Angeles Bureau, and Bryant Henley, Attorney IV, Legal Affairs Bureau, to provide a report on POST -- on case POST2305110, Brian Kawamoto, who at the time of the events at issue in this case was employed with the Torrance Police Department.

Thank you, gentlemen.

MR. BRINGOLF: Well, I've been the guy coughing obnoxiously in the back, so now I'm going to be the guy coughing obnoxiously in the front. So I apologize.

Good morning, Chair and Members of the Board. My name is Robbie Bringolf. I'm one of the law enforcement consultants assigned to Professional Conduct Southern Bureau, previously LA County Bureau in the Peace Officer Standards Accountability Division.

With me today is Bryant Henley, an attorney with our legal affairs bureau.

CHAIRPERSON DUDLEY: Mr. Bringolf.

MR. BRINGOLF: Ma'am?

CHAIRPERSON DUDLEY: I'm going to ask you just to slow down a bit.

MR. BRINGOLF: You got it.

CHAIRPERSON DUDLEY: Look over at the reporter. She doesn't look happy.

MR. BRINGOLF: The smoke coming off her fingers? Okay.

CHAIRPERSON DUDLEY: If she doesn't look happy, it's your fault.

MR. BRINGOLF: That's fair. I take full responsibility.

CHAIRPERSON DUDLEY: And slow down. And I'll remind you, too.

MR. BRINGOLF: Thank you.

I'm here today to present case 235110 involving Brian Keith Kawamoto.

It's the Division's determination that clear and convincing evidence exists to demonstrate that Brian Kawamoto committed an act of serious misconduct as set forth in Penal Code Section 13510.8 while sending text messages to coworkers between March 2019 and December 2019.

Specifically, the Division has determined that Brian Kawamoto committed the following acts of serious misconduct demonstrating bias as defined in section 13510.8(b)(5) PC.

This morning I will present a brief outline of the Division's findings of investigation in this matter.

Mr. Kawamoto began his law enforcement career with the San Bernardino County Sheriff's Office as a deputy sheriff on March 12th, 2011. He was hired by the Torrance Police Department on November 17th, 2014. He was terminated from the Torrance Police Department on October 4th, 2022.

On March 26, 2023, Torrance Police Department reported allegations of serious misconduct against Mr. Kawamoto to POST pursuant to California Penal Code Section 13510.9(a)(3).

The allegations stem from the discovery of homophobic, transphobic and racist texts sent between members of the TPD between May 2018 and February 2022.

When analyzing the serious misconduct allegations of Penal Code Section 13510.8(b)(5) and regulation 1205(a)(5), demonstrating bias, the Division evaluates whether the subject officer through words, action or other conduct showed prejudice, intolerance, contempt or hatred towards a protected class of persons.

If the subject officer did show prejudice, intolerance, contempt or hatred towards a protected class of persons, the Division then considers whether the words, action or conduct would lead a reasonable person to conclude that the officer has not or will not fairly and impartially perform the officer's law enforcement duties.

If so, serious misconduct is shown if the officer's words, action or conduct either, one, violates applicable law; two, violates department policy; or three, is inconsistent with the officer's obligation to carry out the officer's duties in a fair and unbiased manner.

During the analysis of each instance of potentially biased behavior, the conduct was analyzed based on the guidelines I just mentioned to determine whether the

allegation of bias was true to a clear and convincing standard.

On March 25th, 2019, Torrance Police Officer Weldin texted Mr. Kawamoto stating, "Just had a shooting."

Mr. Kawamoto replied, "Fuck." And, "I trust y'all have them moon crickets in custody in no time."

During Mr. Kawamoto's Internal Affairs interview, when asked about the use of his term "moon crickets," Mr. Kawamoto stated the following, "So 'moon crickets' is a word that I heard it, like, in training or something once that I thought was funny. But refers to Black people. And I don't know why specifically I said that. But yeah, I shouldn't have said -- have sent that either, sir. It's offensive." End quote.

When the Internal Affairs investigator asked if the March 25th, 2019, message represented the only time when Mr. Kawamoto ever used the term "moon cricket" when referring to Black people, Mr. Kawamoto answered, "Probably not, sir."

As Mr. Kawamoto acknowledged during his Internal Affairs interview, the exchange between Officer Weldin and Mr. Kawamoto is inherently offensive. It's also racist.

Mr. Kawamoto's conduct in sending the message, "I trust y'all have them moon crickets in custody in no

time" shows prejudice and intolerance towards a protected class of persons.

Mr. Kawamoto's message also violated several of the Torrance Police Department's policies including, but not limited to TPD's anti-harassment policies and several of their General Orders.

Even when viewed in the light most favorable to Mr. Kawamoto, the racist epithet used to describe the suspects in the shooting who might be subject to enforcement action from the Torrance Police Department, necessarily erodes the public's confidence in Mr. Kawamoto's ability to fairly perform his law enforcement duties.

A reasonable person would conclude that Mr. Kawamoto's message shows Mr. Kawamoto has not or will not fairly and impartially perform his law enforcement duties when interacting with certain protected classes of persons in the Torrance community, specifically, because Mr. Kawamoto makes a statement indicating he assumed the suspects in the shooting would be Black without possessing any other information about the crime.

On May 2nd, 2019, Officer Weldin texted Mr. Kawamoto directly, "If it's any consolation, I like sober beating up savage monkeys Brian and I also like

drunk hood rat shit with my friends Brian."

Mr. Kawamoto replied, "Well, I appreciate that, LOL."

This message is another example of the use of a racist epithet and an indication of the use of force on a protected class of persons.

When Mr. Kawamoto was asked what Officer Weldin meant when he texted, "I like sober beating up savage monkeys," Mr. Kawamoto answers, "Sounds like he's referring to beating up Black people, sir."

While the racist epithet was not used by Mr. Kawamoto, his reply to Officer Weldin, "Well, I appreciate that, LOL" indicates a tacit approval of the use of dehumanizing and racist language and shows intolerance and prejudice towards Black people.

It is also reasonable to believe that Officer Weldin is indicating Mr. Kawamoto is known for using physical force against Black people or that using physical force against Black people is a foregone conclusion between these two officers.

This message exchange also violated several of the Torrance Police Department policies including, but not limited to, their anti-harassment policies and several of the General Orders.

After reading this message exchange, a reasonable

person would conclude that Mr. Kawamoto has not or will not fairly and impartially perform his law enforcement duties when interacting with certain protected classes of persons in the Torrance community.

On September 10th, 2019, Mr. Kawamoto texted Officers Weldin, Tomsic and Alonso a photo of coffins, saying, "This is from the coffin display at Rice Mortuary. Look at the one on the bottom."

Weldin responded, "For all them niglets we put down."

Mr. Kawamoto replied, "Ha-ha, yeah, I got a water heater box just as good I can sell you for half the price if you're interested though."

When asked during his Internal Affairs interview what Officer Weldin meant when he texted, "For all the niglets we put down," Mr. Kawamoto answered, "It sounds like Officer Weldin is talking about being for all the Black children that he said we've put down."

The Internal Affairs investigator then asked what Mr. Kawamoto believed the term "niglets" meant.

Mr. Kawamoto answered, "I think it refers to Black children. I think he's mixing the "N" word with the piglet type thing."

I find this another example of a pervasive theme among Mr. Kawamoto and several of his coworkers. I find

that a reasonable person would consider the use of the term "niglets" to be racist and an explicit demonstration of bias.

Further, the officers made jokes about a cardboard box being used for all the niglets they put down.

I find a reasonable person here would infer that the officers were saying the cardboard coffins were for all the Black children the officers have killed or will kill.

The fact that Mr. Kawamoto laughed, agreed, and then offered a water heater box as an alternative shows participation in joking about killing Black children and using cardboard coffins to bury the decedents.

Further, it's inferred that they are making light of a fatal police enforcement contacts involving Black people.

I find this text and the perpetuation of the discourse to be an explicit demonstration of bias, which is inconsistent with Mr. Kawamoto's obligation to carry out his duties in a fair and unbiased manner.

This message, like the others, also violated several of the Torrance Police Department's policies, including, but not limited to, their anti-harassment policies and several General Orders.

A reasonable person, after viewing the disparaging

communications between these officers, would conclude that Mr. Kawamoto has not or will not fairly and impartially perform his law enforcement duties when interacting with certain protected classes of persons in the Torrance community.

In a November 19th, 2019, text conversation, Mr. Kawamoto texted Officer Weldin, "Happy birthday, Niggah."

Weldin responded, "Just making sure you don't go to that location due to the fact that they have seven fewer employees now to serve up some spicey chicken sandwiches."

Mr. Kawamoto sent, "Good call. What's the game plan for your birthday?"

Weldin texted, "Make money, beat niggahs."

Mr. Kawamoto replied, "I know nothing puts a bigger smile on yo grill."

I find this is another example of a pervasive thing -- theme among Mr. Kawamoto and several of his coworkers in which they mock Black people.

These messages are inherently offensive and racist. The messages also violated several of the Torrance Police Department's policies, including, but not limited to, their anti-harassment policy and their General Orders.

Mr. Kawamoto's conduct in sending the message shows prejudice and intolerance towards a protected class of persons.

And again, even when we view this in the light most favorable to Mr. Kawamoto, this message erodes the public's confidence in Mr. Kawamoto's ability to fairly perform his law enforcement duties.

A reasonable person would conclude that Mr. Kawamoto's message shows Mr. Kawamoto has not or will not fairly and impartially perform his law enforcement duties when interacting with certain protected classes of persons in the Torrance community.

In a December 24th, 2019, text, Mr. Kawamoto sent an image meme to Officers Alonso, Tomsic, and Weldin which referenced hanging a person.

In that image meme there were three Christmas-related images, a star for the top of a Christmas tree, a Christmas ornament and a candy cane, then an old black and white image of a Black person appearing to be a slave. On the top of the image meme were the words, "Which one doesn't belong?"

At the bottom of the meme were the words, "That's right. You don't hang the star."

After Officer Weldin replied, "I done nearly pissed myself," Mr. Kawamoto texted, "Happy Kwanzaa."

When asked by the Internal Affairs investigator if he remembered sending the messages, Mr. Kawamoto replied, "Yes, sir, I do. There's no excuse, I understand it's offensive."

The Internal Affairs investigator subsequently asked Mr. Kawamoto whether this message was disparaging or discriminatory towards Black people.

Mr. Kawamoto replied, "I feel like it was offensive to Black people because it's making references to when Black people had been hung in the perspective."

This image in the messaging associated with the image is inherently offensive and racist. The image and messages also violated several of the Torrance Police Department's policies, including, but not limited to, their anti-harassment policies and several of their General Orders.

Mr. Kawamoto himself acknowledged that he knew the message was offensive to Black people. Mr. Kawamoto's conduct in sending the message shows prejudice and intolerance towards a protected class of persons.

Even when viewed in the light most favorable to Mr. Kawamoto, sending a picture of a Black person and suggesting that the Black person should be hanged followed by the message, "Happy Kwanzaa," is unequivocally racist and erodes the public's

confidence in Mr. Kawamoto's ability to fairly perform his law enforcement duties.

A reasonable person would conclude that Mr. Kawamoto's message shows that Mr. Kawamoto has not or will not fairly and impartially perform his law enforcement duties when interacting with certain protected classes of persons in the Torrance community.

These types of statements and messages discredit the Torrance Police Department in potentially irreparable ways. And they violated several of the Torrance Police Department policies.

Accordingly, the Division finds that Mr. Kawamoto demonstrated bias within the meaning of Penal Code Section 13510.8(b)(5) and regulation 1205(a)(5) when he sent the above list of messages.

The facts that I've just recited support the Division's finding that Brian Kawamoto was involved in serious misconduct, specifically demonstrating bias.

For purposes of the Division's analysis, clear and convincing evidence means evidence of a charge which is clear and convincing so long as there's a high probability that the charge is true.

The evidence need not establish a fact beyond a reasonable doubt.

The Division recommends that Brian Kawamoto's POST

certification be suspended or revoked.

With that I'm happy to answer any questions that the Board may have.

CHAIRPERSON DUDLEY: Does the Board have any questions or comments?

(No response.)

CHAIRPERSON DUDLEY: Seeing none.

At this time, does the subject officer or their counsel wish to make public comment? If so, you will each be given five minutes to speak and the time limits will be strictly enforced, so please ensure that you complete your comments within the allotted time.

While commenting, keep in mind that the Board will only consider the facts as presented by the Division today and will not consider any additional facts or defenses at this time.

The sole question before the Board today is the following: If the facts offered by the Division today are, in fact, proven at a later hearing, do those facts demonstrate clear and convincing evidence, a high probability that serious misconduct, as defined in Penal Code Section 13510.8 and Commission Regulation 1205 occurred?

So is there anyone from the public who would like to address the Board at this time?

(No response.)

CHAIRPERSON DUDLEY: Okay. Just checking. First let me check on the audience.

Nobody here seeking to address the Board.

And is there anybody on the phone?

UNIDENTIFIED SPEAKER: No.

CHAIRPERSON DUDLEY: Okay.

MR. HENLEY: Madam Chair, if I may, just for the record, we, the Division, this is Bryant Henley on behalf of the Peace Officer Standards Accountability Division, we, in the Division, communicated with Officer Kawamoto's counsel, Mr. Sinsley. Mr. Sinsley did request a link, a Zoom link, so that he could appear remotely for this -- for this event. And he was provided, via email, with a notice, the agenda, the dates and times of the hearing. We did anticipate that he would be here and want to present comment.

And so I understand we do not have anyone requesting comment, but I wanted the record to reflect that we expected him to be here and he expressed the intent to be here to present comment.

CHAIRPERSON DUDLEY: Okay. Thank you.

And, again, checking anybody there remotely?

(No response.)

CHAIRPERSON DUDLEY: No.

Okay. At this time, does the Board wish to adjourn into closed session for deliberations on this case?

Or is the Board ready to take a vote on a recommendation on this case?

MEMBER LARA: I personally -- Lara -- I have no need to deliberate.

CHAIRPERSON DUDLEY: I'm sorry?

MEMBER LARA: I do not need to -- I don't want to speak for the rest of -- the other body, but I do not need to go.

CHAIRPERSON DUDLEY: Okay. Does anybody feel the need to go into closed session?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, is there a motion? Yes.

MEMBER LARA: I would like to make a motion for revocation.

CHAIRPERSON DUDLEY: Is there a second?

MEMBER CLAVO: I second.

CHAIRPERSON DUDLEY: Okay. And could we have the roll call?

MR. KNAPP: Yes, Madam Chair. Thank you.

Clavo.

MEMBER CLAVO: Aye.

MR. KNAPP: Clavo, aye.

Crawford.
MEMBER CRAWFORD: Aye.
MR. KNAPP: Crawford, aye.
Dudley.
CHAIRPERSON DUDLEY: Aye.
MR. KNAPP: Dudley, aye.
Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Glaser, aye.
Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Johnson, aye.
Lara.
MEMBER LARA: Aye.
CHAIRPERSON DUDLEY: Lara, aye.
Pena.
MEMBER PENA: Aye.
MR. KNAPP: Pena, aye.
The motion is unanimous.
CHAIRPERSON DUDLEY: Okay. The motion passes.
And it's time for lunch. So let's take a break and we'll start up again, what do you think?
In half an hour?
Is that agreeable with everybody?
Yeah. Okay. We'll start up again at 12:30.

Thank you.

(Time noted: 12:00 P.M.)

---o0o---

(Break taken in proceedings:
12:00 P.M. to 12:38 p.m.)

---o0o---

CHAIRPERSON DUDLEY: Okay, everyone.

At this time, I will now call upon Law Enforcement Consultant Robert Bringolf, Professional Conduct Los Angeles County Bureau, and Bryant Henley, Attorney IV, Legal Affairs Bureau to provide a report on POST2305111, Christopher Allen-Young, who at the time of the events at issue in this case was employed with the Torrance Police Department.

Gentlemen.

MR. BRINGOLF: Thank you, Madam Chair.

Good afternoon, now, everybody.

I'm still Robbie Bringolf and I am the law enforcement consultant assigned to the Professional Conduct Southern Bureau formerly the Los Angeles County Bureau.

With me is Bryant Henley, an attorney with our Legal Affairs Bureau.

I'm going to present case 23-5111 involving Christopher W. Allen, hyphen, Young.

It's the Division's determination that clear and convincing evidence exists to demonstrate that Christopher Allen-Young committed an act of serious misconduct as set forth in Penal Code Section 13510.8 while sending text messages to coworkers between February 2019 and December 2019.

Specifically, the Division has determined that Christopher Allen-Young committed the following acts of serious misconduct: Demonstrating bias as defined in Section 13510.8(b)(5) PC.

This afternoon I'll present a brief outline of the Division's findings of investigation in this matter.

Mr. Allen-Young began his law enforcement career with the Los Angeles County Sheriff's Department as a deputy trainee on November 18th, 2013.

He was promoted to deputy sheriff on April 6, 2014, and his last day as a deputy sheriff at Los Angeles County Sheriff's Department, April 24th, 2017, was also his first day as a police officer at the Torrance Police Department.

On March 26, 2023, Torrance Police Department reported allegations of serious misconduct against Mr. Allen-Young to POST pursuant to California Penal Code Section 13510.9(a)(3).

The allegations stem from the discovery of

homophobic, transphobic and racist texts sent between members of the TPD between May 2018 and February 2022.

When analyzing the serious misconduct allegation of Penal Code Section 13510.8(b)(5) and regulation 1205 (a)(5), demonstrating bias, the Division evaluates whether the subject officer through words, actions or other conduct showed prejudice, intolerance, contempt or hatred toward a protected classes of persons.

If the subject officer did show prejudice, intolerance, contempt or hatred toward a protected class of persons, the Division then considers whether the words, actions or conduct would lead a reasonable person to conclude that the officer has not, will not fairly and impartially perform the officer's law enforcement duties.

If so, serious misconduct is shown if the officer's words, actions or conduct either one, violates applicable law; two, violates department policy; or three, is inconsistent with the officer's obligation to carry out the officer's duties in a fair and unbiased manner.

During the analysis of each instance of potentially biased behavior, the conduct was analyzed based on the guidelines I just mentioned to determine whether the allegation of bias was true to a clear and convincing

standard.

On February 14th, 2019, Mr. Allen-Young sent a WhatsApp message in a group chat with 14 other members of the Torrance Police Department. In that message Mr. Allen-Young sent an image of the -- an image meme of Dave Chappell that said, "Modern problems require modern solutions." And "When your girlfriend is fucking a Black guy, so you break a taillight on his car so the police will stop him and shoot him."

The Division finds this message was inherently offensive and racist and Mr. Allen-Young's conduct in sending the image meme message showed prejudice towards a protected class of persons.

Mr. Allen-Young's message violated several of the TPD's policies including, but not limited to, their anti-harassment policies and several of their General Orders.

A reasonable person would conclude that Mr. Allen-Young's conduct demonstrates that he has not or will not fairly and impartially perform his law enforcement duties when interacting with certain protected classes of persons in the Torrance community.

Accordingly, the Division finds that Mr. Allen-Young demonstrated bias within the meaning of Penal Code Section 13510.8(b)(5), when he sent the image

meme of Dave Chappelle.

On March 31st, 2019, Mr. Allen-Young, while on duty, sent a text message to Officer Weldin which stated, quote, "Moon cricket hunting," exclamation mark.

Officer Weldin responded, "They're chirping for sure."

The exchange between Officer Weldin and Mr. Allen-Young is inherently offensive and racist.

Mr. Allen-Young's conduct in sending the message "moon cricket hunting" violated several of the TPD's anti-harassment policies and General Orders.

And again, when we view this in the light most favorable to Mr. Allen-Young, his racist epithet used to describe members of the Torrance community who might be subject to enforcement action from the Torrance Police Department necessarily erodes the public's confidence in Mr. Allen-Young's ability to fairly perform his law enforcement duties.

A reasonable person would conclude that Mr. Allen-Young's message shows that he is not or will not fairly and impartially perform his law enforcement duties when interacting with certain protected classes of persons in the Torrance community, specifically because hunting indicates that Mr. Allen-Young is targeting a certain demographic for enforcement action

because of their race.

Accordingly, we in the Division find that Mr. Allen-Young demonstrated bias within the meaning of Penal Code Section 13510.8(b)(5) when he wrote, "moon cricket hunting."

On December 19th, 2019, Officer Weldin texted Mr. Allen-Young directly, "What's up, Monkey Thumper?"

Mr. Allen-Young replied, "Hahaha, what's up, Bud?"

This message is another example of the use of a racist epithet and an indication of the use of force on a protected class of persons.

Mr. Allen-Young's response and involvement in this message exchange violated several of the TPD's policies.

And while the racist epithet was not used by Mr. Allen-Young, his reply to Officer Weldin indicates a tacit approval of the use of dehumanizing and racist language and shows an intolerance and prejudice towards Black people.

When reading this text exchange, a reasonable person would conclude that Mr. Allen-Young cannot or will not fairly and impartially perform his duties as a law enforcement officer.

The message exchange also implies that Officer Weldin is indicating Mr. Allen-Young is known for using physical force against Black people. Or that

using physical force against being Black people is a foregone conclusion between these two.

Accordingly, the Division finds that Mr. Allen-Young demonstrated bias within the meaning of Penal Code Section 13510.8(b)(5) when he wrote, "Hahaha what's up, Bud" in a response to a message in which Officer Weldin called Mr. Allen-Young a monkey thumper.

The facts I've just recited support the Division's finding that Christopher Allen-Young was involved in serious misconduct, specifically demonstrating bias.

For purposes of the Division's analysis, clear and convincing evidence means evidence of a charge is clear and convincing so long as there's a high probability that the charge is true. The evidence need not establish a fact beyond a reasonable doubt.

The Division recommends that Christopher Allen-Young's POST certification be suspended or revoked.

With that, I'm happy to answer any questions that the Board may have.

CHAIRPERSON DUDLEY: Any questions?

(No response.)

CHAIRPERSON DUDLEY: At this time, does the subject officer or their counsel wish to make public comment?

If so, you will be given five minutes to speak and

the time limits will be strictly enforced, so please ensure that you complete your comments within the allotted time.

While commenting keep in mind that the Board will only consider the facts as presented by the Division today and will not consider any additional facts or defenses at the time.

The sole question before the Board today is the following: If the facts offered by the Division today are, in fact, proven at a later hearing, do those facts demonstrate a high probability that serious misconduct, as defined in Penal Code Section 13510.8 and Commission Regulation 1205 occurred?

Is there anyone from the public who would like to address the Board at this time?

Looking out to the audience, I see no response.

And is there anyone on the telephone?

Counsel?

MR. HENLEY: Thank you, Madam Chair.

If I may, again, Bryant Henley on behalf of the Peace Officer Standards Accountability Division.

I wanted to advise the Board, and for the record, that -- inform the Board that we notified Officer Allen-Young back in May of the intent to revoke his license.

His counsel, Cory Glave, communicated with the Division on May 22nd indicating that he requested review of the Division's recommendation. And also requested the information that supported the decision intending to revoke Mr. Allen-Youngs's license.

POST's Division provided those materials to Mr. Glave as counsel for Mr. Allen-Young.

Then on June 13th, provided to Mr. Glave at the same address that Mr. Glave gave us to provide communications provided a notice of hearing, giving the date and time for the hearing.

We did not receive a response. The Division did not receive a response.

Then on June 25th, we emailed Mr. Glave and asked for confirmation as to whether he intended to attend or not attend the hearing and whether he needed a virtual link in order to attend virtually.

We did not receive a response to that email either.

CHAIRPERSON DUDLEY: Okay. At this time, does the Board wish to adjourn into closed session for deliberations on this case?

Or is the Board ready to discuss and then vote on recommendation in the case?

Does anyone feel the need to adjourn to closed session?

(No response.)

CHAIRPERSON DUDLEY: Okay. Seeing none, before I call for a vote, is there any discussion?

Dr. Glaser?

MEMBER GLASER: Thank you.

I just wanted to articulate that the evidence seems clear and convincing. The statement "moon cricket hunting," unsolicited, with no response from the respondent about the context or any other kind of explanation seems to me to be very clear evidence of racial bias that, you know, implicates that somebody should not -- would not be able to conduct their duties in an unbiased manner. So I'm very much in favor of revoking.

CHAIRPERSON DUDLEY: And Dr. Glaser, I -- this morning, I did not ask if there was any comments that the Board had.

Did you have any comments about this morning's case as well?

MEMBER GLASER: I would say my sentiments about this morning's case were pretty much identical to what I just expressed.

CHAIRPERSON DUDLEY: Thank you.

Anybody else on the Board wish to be heard before we have a motion?

(No response.)

CHAIRPERSON DUDLEY: Okay. Is there a motion?

MEMBER GLASER: I move to revoke certification.

CHAIRPERSON DUDLEY: Is there a second?

MEMBER JOHNSON: Second. Johnson, second.

CHAIRPERSON DUDLEY: Okay. And roll call, please.

MR. KNAPP: Thank you, Madam Chair.

Clavo.

MEMBER CLAVO: Aye.

MR. KNAPP: Clavo, aye.

Crawford.

MEMBER CRAWFORD: Aye.

MR. KNAPP: Crawford, aye.

Dudley.

CHAIRPERSON DUDLEY: Aye.

MR. KNAPP: Dudley, aye.

Glaser.

MEMBER GLASER: Aye.

MR. KNAPP: Glaser, aye.

Johnson.

MEMBER JOHNSON: Aye.

MR. KNAPP: Johnson, aye.

Lara.

MEMBER LARA: Aye.

MR. KNAPP: Lara, aye.

Pena.

MEMBER PENA: Aye.

MR. KNAPP: Pena, aye.

That's seven in favor. Motion carries.

CHAIRPERSON DUDLEY: Okay.

Let's move on to the next case.

This is -- thank you, both. I know that was a difficult case to report on. Very much appreciate your professionalism.

POST2306324, Luke Baxter Walden POST A95-T18.

At this time, I will now call upon law enforcement consultant William Imboden, Professional Conduct Los Angeles County Bureau and Simone Renteria, Attorney IV, Legal Affairs Bureau to provide a report on case POST2306324, Luke Baxter Walden, who at the time of the events at issue in this case was employed by the Los Angeles Police Department.

Thank you.

MR. IMBODEN: Good afternoon, Madam Chair, Members of the Board.

My name's William Imboden, I'm one of the law enforcement consultants assigned to the Professional Conduct Bureau for Southern California in the Peace Officer Standards and Accountability Division.

With me today is Simone Renteria, an attorney with

our Legal Affairs Bureau.

And I'm here today to present case POST2306324 involving Luke Baxter Walden with the Los Angeles Police Department.

It's the Division's determination that clear and convincing evidence exists to demonstrate that the respondent, Luke Walden, committed an act of serious misconduct as set forth in Penal Code Section 13510.8 on March 17th, 2021.

Specifically, the Division has determined that respondent committed the following acts of serious misconduct.

Dishonesty, relating to the reporting, investigation or prosecution of a crime or relating to the reporting of or investigation of misconduct by a peace officer, or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with falsifying, destroying or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.

And acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public as determined by the

Commission.

In this presentation I will present a brief outline of the Division's findings of the investigation in this matter.

Respondent began his career with the Los Angeles Police Department on July 6, 1998; on October 7th, 2012, was promoted to the rank of detective; on June 15th, 2014, was promoted to the rank of supervisor.

On June 5th, 2022, respondent was demoted back to the rank of detective.

Respondent holds the following POST certifications: Basic, intermediate, advanced and supervisory.

During respondent's 24-year career, he has received 155 citizen and department commendations. His service records do not show any prior discipline or complaints for similar allegations.

On April 22nd, 2021, US Customs and Border Patrol -- Border Protection intercepted a suspicious package from China at the Los Angeles International Airport mail facility.

The package, which was labeled, quote, fuel filter, and addressed to respondent at his home address, actually contained an illegal firearm silencer.

The label also contained graphics in Chinese which,

when translated, stated, quote, "spiral 1/2 to 28 single core automobile fuel filter, parentheses, six-inch half to 28 black spiral P0171289910," close parentheses.

Half inch to 28 and 5/8 to 24, as will be mentioned throughout this presentation, refers to the thread size and count. For example half-inch diameter shaft with 28 threads per inch.

Upon learning respondent was a current LAPD officer, the investigation was turned over to the LAPD Internal Affairs Bureau.

Once the seized item was booked into evidence at LAPD, criminalist Fadil Biraimah of the Forensic Science Division examined it and its components. Next slide.

His report described the item as having the following characteristics:

Quote, "it has the general appearance of a silencer. The components are all consistent with machined aluminum with a dark, smooth surface finish.

"There is an internally threaded collar at one end and an unthreaded opening at the other.

"The internal inspection revealed a well-made, single piece monocore baffle with an open channel from end to end.

"The monocore baffle divides the tube into eight chambers which are open to the central channel.

"The first area is larger and is consistent with an entrance chamber. The threaded collar is consistent with a muzzle attachment point.

"These features are conspicuous suppressor silencer design elements that substantiate the classification as a silencer," end quote.

He concluded his report by stating, the assembly as received, was a firearm silencer as defined in California Penal Code Section 17210, which states: A silencer is any device or attachment designed to silence, diminish or muffle the report of a firearm or any parts intended for their assembly or fabrication.

A search through the California Department of Justice revealed respondent had 54 registered firearms, many of which were compatible with the half-inch, 28-thread barrel size.

LAPD conducted an audit of Respondent's internet search history on department computers between January 1, 2020, and April 28, 2021.

Using search words including, quote, silencer, fuel filter, solvent trap, China, threaded barrel and others.

The audit revealed that during that time frame, respondent conducted 21 internet searches and searched numerous websites that advertised the sale of threaded barrels for weapons registered to him as well as

additional weapons not registered to him.

The audit also revealed that respondent searched websites that are advertised -- that advertised the sale of, quote, fuel filters. The search focused on filters that had an inner thread size of half -- 1/2 to 28 converting to an outer thread side of 5/8 to 24.

The 1/2 to 28 thread size would apply to many of the weapons registered to respondent.

LAPD's IA consulted their acting general automotive supervisor who reviewed the websites that respondent visited that advertised the sale of fuel filters and inspected the item that Customs and Border Protection seized.

Next slide.

It was his opinion, based on the dimensions of the items respondent researched, that none of them were consistent with any fuel filter for a vehicle and that the items seized could not be used as a fuel filler because it had no internal filtration component.

Inline automobile fuel filters work by trapping dirt, rust and other debris as fuel flows through them preventing these contaminants from reaching the engine's fuel system.

The fuel -- sorry, the filter contains a pleated paper element or other filter medium that captures

particles and contaminants as the fuel passes through.

Modern fuel filters are designed to trap all particles larger than 30 microns or .03 millimeters.

Next slide.

The Bureau of Alcohol Tobacco and Firearms issued law enforcement bulletins on April -- in April of 2017 and October of 2019. These bulletins advised that devices that are specifically manufactured as firearm silencers were being marked online as inline fuel filters despite having no filtering medium.

One such product is marketed as a quote, "Napa 4003," end quote, inline fuel filter.

When LAPD served a search warrant on the Respondent's PayPal account, the search revealed that on March 17th, 2021, at 8:28 A.M. a transaction was completed for $45.96 for the purchase of a quote, "Napa 4003 WIX24003 1/2 to 28, 5/8 to 24 fuel filter, aluminum solvent trap, half inch to 28 XH," end quote.

The recipient of the payment was Xu Shi Qi International Limited in Hong Kong, China.

Respondent was arrested by LAPD on November 14th, 2022, and booked into the LA County Jail.

On November 16th, 2022, the LA County District Attorney Office filed one count of Penal Code Section 664 and 33410, attempted possession of a silencer, a

felony.

On March 9th, 2023, Respondent was held to answer for the felony at a preliminary hearing. And on September 29th, 2023, as a result of a plea bargain, Respondent pled no contest to one count of attempt to possess an assault weapon, a misdemeanor.

The felony was only dismissed as part of the plea agreement.

Despite Respondent's misdemeanor plea resulting in the dismissal of the felony charge, clear and convincing evidence exists to show that Respondent committed the act of purchasing an illegal firearm silencer in violation of California Penal Code Section 33410, a felony.

This conduct occurred despite his extensive firearms training through POST, in-service training, and on-the-job exposure to firearms crimes, both generally and as a part of Los Angeles PD's gun unit.

Although the investigation was turned over to local law enforcement for prosecution, Respondent also violated federal law under Section 27 CFR 447.21 and 27 CFR 447.52, as well as the National Firearms Act USC Title 26, Section 5844.

Respondent is an experienced peace officer with almost 27 years with the -- in the LAPD and his position

as an LAPD officer, Respondent was not only charged generally with getting illegal guns off the street, but had been part of the LAPD's gun and narcotics division gun unit for approximately three years.

By illegally purchasing a silencer from China, Respondent was, in effect, committing the same type of crime that he was sworn to prevent.

During the administrative investigation into the alleged serious misconduct of acts that violate the law, Respondent was dishonest when he stated several times to the IA investigators that he did not try to purchase a firearm silencer.

Respondent stated he ordered a fuel filter a, quote, "Universal fuel filter for a 1985 Toyota Celica, which never arrived." He could not recall the vendor or when he ordered the filter. He later ordered another fuel filter through Amazon.com which he did receive. In looking at them in comparison, they look nothing alike.

Respondent denied ordering or attempting to obtain a firearm silencer despite the ceased item being addressed to him at his home address and despite the use of his PayPal account to purchase it.

The item is the exact same brand and size as was located in LAPD's internet audit of the Respondent's internet searches for firearm silencers and was

determined to fit many of the firearms Respondent owned.

Next slide.

Additionally, the exact name, type and size of the item are listed on ATF training documents to help law enforcement recognize illegal firearm silencers.

Next slide.

Respondent stated he only had a cursory knowledge of silencers, but was not an expert. He admitted he knew they were illegal to possess and he did not dispute the results of the internet search audit, but said those searches were for work-related purposes only.

However, he could not provide specific cases or reports that required searches he conducted. And his internet searches ceased two days prior to the items being purchased using Respondent's personal PayPal account.

Next slide.

LAPD sustained the allegation of attempting to possess a firearm silencer and referred the Respondent to a Board of Rights with a recommendation for termination from employment.

At the Board of Rights Respondent continued to deny that he tried to buy a firearm silencer and repeated that he attempted to buy a fuel filter for his 1985 Toyota Celica.

However, the item seized would not only not fit a 1985 Toyota Celica, it would be useless as a fuel filter because it has no filtering properties.

At the Board of Rights hearing, LAPD criminalist Biraimah stated that, quote, Napa 4003, end quote, is a code word for suppressers known to firearm buyers.

After examining the seized item, he determined it was a firearm suppresser compatible with a number of firearms.

After examining the list of firearms possessed by Respondent, Mr. Biraimah found a number of them could be used with a silencer if modified with a threaded barrel.

Respondent's supervisor, LAPD Lieutenant Eric Bixler testified at the Board of Rights hearing that one of Respondent's job responsibilities was to identify suppressors and that the Respondent would have been aware of the seized item's purpose as a suppressor.

At the conclusion of the Board of Rights hearing, the Board unanimously agreed that Respondent was guilty of the allegation that he attempted to obtain a firearm silencer.

The facts I've just recited support the Division's finding that Respondent was involved in serious misconduct, specifically dishonesty and acts that

violate the law.

For purposes of the Division's analysis, clear and convincing evidence means evidence of a charge is clear and convincing so long as there's a high probability that the charge is true.

The evidence need not establish a fact beyond a reasonable doubt.

The Division recommends that Respondent's POST certification be suspended or revoked. And the Division's recommendation is based on the following:

Clear and convincing evidence exists to show Respondent purposefully committed a felony after conducting research for weeks in advance and then purchasing an item that was clearly intended to be used as a firearm silencer.

This is in direct conflict with Respondent's general duty to uphold the law. And is, in fact, the exact type of crime Respondent was charged with preventing as part of the specialty unit he was assigned to.

His blatant dismissal of the law alone is egregious enough to warrant revocation of Respondent's peace officer certification, but in addition to violating the laws he was sworn to uphold, Respondent lied repeatedly to IA, and at his Board of Rights, when he was

confronted with his behavior, in an obvious attempt to keep his job through consistent denial, despite the evidence of his guilt.

Respondent has broken the public trust through his actions and his words and cannot be entrusted to truthfully, honestly, and ethically uphold the law or to respect the rights of the members of the public.

With that, I'm happy to have answer any questions the Board may have.

CHAIRPERSON DUDLEY: Does the Board have any questions or comments?

Yes.

MEMBER PENA: There was an earlier slide that showed a -- an authentic filter; right? A real one; right?

MR. IMBODEN: Correct.

MEMBER PENA: Okay. I just wanted to make sure.

CHAIRPERSON DUDLEY: Any other comments?

(No Response.)

CHAIRPERSON DUDLEY: Questions?

(No Response.)

CHAIRPERSON DUDLEY: At this time, does the subject officer and/or their counsel wish to make public comment?

If so, you will each be given five minutes to speak

and the time limits will be strictly enforced. So please ensure that you complete your comments within the allotted time.

While commenting, keep in mind that the Board will only consider the facts as presented by the Division today and will not consider any additional facts or defense at this time.

The sole question before the Board today is the following:

If the facts offered by the Division today are, in fact, proven at a later hearing, do those facts demonstrate a high probability that a serious misconduct as defined by Penal Code Section 13510.8 and Commission Regulation 1205 occurred?

Is there anyone from the public who would like to address the Board at this time?

Looking to the audience?

(No response.)

CHAIRPERSON DUDLEY: Anyone on the phone?

MR. KNAPP: Yes.

CHAIRPERSON DUDLEY: Okay. Please.

MARLON MARRACHE: Hi, yeah, my name is Marlon, M-A-R-L-O-N, last name Marrache, M-A-R-R-A-C-H-E, representing my classmate, Luke Walden. Just wanted to add a couple of facts, if you will, about this

particular matter.

We want to talk about the dishonesty allegation.

In the presentation by Mr. Imboden that he said that March 17th, 2021, that the department considered dishonesty, that's not the case.

As a matter of fact, throughout this whole process, the allegation of dishonesty is what we consider a false statement or a misleading statement around truthfulness, et cetera, was never, ever discussed.

And we just wanted to point out that during this whole process, from the beginning, when there is an investigation of internal affairs initiated, all the way up to the levels of review, including the inspector general, please bear in mind that at no point did the Los Angeles Police Department in their process ever consider an allegation of dishonesty.

You're talking about a Captain I and a Captain III from the department in that division. You're talking about a commander and deputy chief from Internal Affairs; a commander and a deputy chief from the bureau as well.

And they all have to go to the tenth floor where the chief is and present these allegations.

And yes, it was directed to a Board of Rights, it was serious misconduct. But at no point was it ever

considered to have a dishonesty allegation.

In fact, what Mr. Imboden also forgot to mention is that there is a process with LAPD called a masked complaint, which means that the accused employee is unaware of the actual allegations or unaware that they're actually being investigated by Internal Affairs.

And so it wasn't until September 14th, 2021, when Luke Walden was actually aware of this particular matter, this particular alleged misconduct.

So I just really wanted to point that out to make sure that the Board understands what the process of the Los Angeles Police Department is.

And just a little bit of my background is I've been involved in discipline since 2008. I have put on over 30 Board of Rights when I worked Internal Affairs for over five years.

I actually teach a POST-certified course in Internal Affairs and I've been hired as a witness, expert, as it relates to IA matters alone.

So my expertise is -- my scope is very, very narrow. And just based on my experience -- not just because he's my classmate -- is the fact that this allegation should have never been framed in the first place. In fact, when I attended the SB 2 seminar, I was told that POBAR, Peace Officers Bill of Rights do not

apply.

And for the fact that the SB 2 panel, or Mr. Imboden, actually consider an allegation of dishonesty to frame, that would be considered a 3304 issue, which means it's beyond the statute of limitations.

So just wanted to that know.

And Luke is also present. And I'm going to hand the mike over to Luke to let you know what he's doing now and what he's been doing ever since his Board of Rights concluded.

Thank you.

LUKE WALDEN: Hello?

CHAIRPERSON DUDLEY: Yes.

LUKE WALDEN: Hello. Hello, this is Detective Walden.

Hey, so I have about -- I have over 27 years of service with the Los Angeles Police Department.

I've worked in multiple capacities within the department, undercover, buying narcotics, I've gone through multiple polygraphs.

When you go to a federal task force you're polygraphed. They do extensive background.

And based on the information provided in the rationale where I spoke to Mr. Imboden to kind of

understand what the whole process was, because I thought it was already done.

I had gone through the process, I made some decisions based on financial needs to not pursue fighting it all the way to the end, because it's either pay my mortgage and take care of my kids or be homeless. I made those decisions. And that's the reasons I did take the plea deal.

I know that we wrote an outline. We provided it to the Board.

I think it's a three-page document laying out all the discrepancies within the POST rationale.

When I spoke with Mr. Imboden regarding it, he advised me that he did not have all the information from the Los Angeles Police Department Internal Affairs.

When I asked how is a rationale written up without all the facts, being a detective of, I don't know, 15, 16 years, he couldn't give me an answer for that.

There's a lot of discrepancies in here. He talks about my training. As far as POST training that's all qualification. Has nothing to do with expertise, firearms expertise.

I was assigned to the gun unit. It was only for a year. The three years is incorrect.

Because after that year I went to the federal task

force. And I went through extensive background.

My sole purpose was to deal with apps, which is prohibited possessors, people who have mental illness and/or they have a criminal background.

And there were -- when I was there, we authored about 44 search warrants to deal with that. I never have nor attended any training regarding suppressors. I've never been trained on suppressors.

Currently the department has no training of suppressors or silencers.

When they provided the document regarding the ATF information, written by the ATF, I had never seen that, no one ever taught me that.

The other issues that were in there as far as training experience, yes, I was responsible for getting guns off the street.

That was part of the job that I did with the feds, because I did have experience with AR-15s, Glocks and 1911s and the ghost guns.

And I've testified as an expert.

There's issues with the firearms that they say that I own that will accept a suppressor. None of them were found during the preliminary hearing. And it was admitted to by the investigator to find threaded barrels, I didn't have threaded barrels. And during the

search of the computer, threaded barrels were not located.

I know Mr. Imboden talks about the search ending at a certain time. From what I understand, they had a scope of certain days that they chose to do.

I don't know that scope, but I think that's just a little bit reaching.

I haven't lied in the 27 years that I've been on the job. I haven't perjured myself. I have no complaints of lying and denying. I've currently been back to work about a year and a half.

I've currently filed probably over 100 cases.

I work with victims, suspects, interview them, I'm still working with -- still working as a police officer.

A Board of Rights deemed me, which is like yourself, civilians or sworn, that deemed me okay to return to work.

It didn't meet the egregious nature that is being told today.

So I hope that you guys take into consideration the write-up that was provided.

I understand that not everybody was privy to the Los Angeles Police Department's policies and procedures. And I understand that the Los Angeles Police Department doesn't always provide all the information when needed

because I work there.

So I understand how that works.

But I hope you that you take all this into consideration for your decision today.

Thank you.

CHAIRPERSON DUDLEY: Detective Walden, are you still there?

LUKE WALDEN: Yeah, I'm still here.

CHAIRPERSON DUDLEY: Okay. Good. This is Joyce Dudley, the Chair of this Board.

It was unclear to me whether the first person who spoke was an attorney or not. Or if he was just a colleague of yours?

LUKE WALDEN: He's acting as my attorney. He's not an attorney, but he has a law degree. He doesn't have a bar degree -- he's not bar -- he's my representation.

CHAIRPERSON DUDLEY: Okay. So I just want to be clear on this. He's representing you, but not as an -- but he is not someone who's been sworn in by the California Bar; is that correct?

LUKE WALDEN: That's correct.

CHAIRPERSON DUDLEY: Okay.

MARLON MARRACHE: That would be correct, ma'am.

CHAIRPERSON DUDLEY: That's fine. I understand.

And do you have an attorney representing you in

this matter?

LUKE WALDEN: No, I do not.

CHAIRPERSON DUDLEY: Okay. Fine.

Is there anything else you wanted to say?

LUKE WALDEN: No, ma'am.

CHAIRPERSON DUDLEY: Okay. Is there any questions from the Board?

MEMBER CLAVO: I have a question.

CHAIRPERSON DUDLEY: Yes. Dr. Clavo.

MEMBER CLAVO: The question I have, is, is it my understanding, did I mishear or did I hear correctly that you took a plea deal for the initial charges of purchasing a silencer?

LUKE WALDEN: No. The district attorney -- the district attorney offered a plea deal at the arraignment, which was like in January. And because he said based on the information provided by the Internal Affairs investigator, I guess there was a 13 seized -- 13 potential suppressors seized on that day when they went to go find it. And I was the only person charged.

No other people -- no other person in LA County. And it was because I was a police officer.

I was -- I believe I was targeted. It was not my intent in any way to purchase a suppressor.

I truly am -- I provided information to Internal

Affairs with all the stuff I'm doing with my kids, building cars. I had photos.

At the Board of Rights, Jiz Bagian (phonetic), who was the administrative investigator, when they asked -- when counsel asked him that, he said we didn't do anything with that evidence.

That could have exonerated me, so I kind of feel like I got shortchanged by my own department in our -- our -- in our due process of, you know, doing what's right.

I think that I'm supposed to do investigation, I'm supposed to take all the facts, put it together and present it to a district attorney and they make the ultimate decision whether or not they're going to file the case.

It was almost kind of like: We're going to let this guy take the hit. And I -- you know, when you're going through this, it's very stressful. It's high anxiety. You're not getting paid, you're -- I was assigned home for two years. I'm not getting paid.

And I have to live off of whatever I saved to combat this. And I just didn't have the money to battle this.

And so they offered a plea deal which was a misdemeanor. And I took it for financial reasons in

hopes that it didn't violate POST, which it did -- based on -- researched it, so I could go back to work if the Board allows me.

And the Board did.

And so I went back to work.

Yes, I got demoted. Yes, I worked a bunch of special details. Yes, I have probably a little bit more knowledge than most. But I don't have the experience that they're talking about.

I read the rationale and I seen the write-up regarding the training that I've had and that's all my qualification.

It has nothing to do with firearms training in the sense of how they work, how to take them apart. That's all qualification.

So to use that is like bolstering a report to make it look more egregious than it truly is.

CHAIRPERSON DUDLEY: Thank you, Detective Walden. One moment, please.

Dr. Clavo.

MEMBER CLAVO: Just a follow-up on that, Ma'am.

CHAIRPERSON DUDLEY: Yes.

Okay. Hang on one second.

Detective Walden, Dr. Clavo has a follow-up question or statement. Just standby.

MEMBER CLAVO: So just for clarity purposes, for myself. My initial question was: Did you take a plea deal?

You said no. But in the end of your statement you said yes.

So is it yes you took a plea deal, or no you took a plea deal?

LUKE WALDEN: All right. I think your initial question was for the silencer and the answer was no.

I took a plea deal for a lesser charge based on what the district attorney's office offered.

MS. RENTERIA: And Madam Chair, if I may answer that question for Board Member Clavo?

CHAIRPERSON DUDLEY: One moment, please.

Dr. Clavo, anything else?

MEMBER CLAVO: I'm fine.

CHAIRPERSON DUDLEY: Okay. Thank you. Yes.

MS. RENTERIA: Just to clarify, Mr. Walden was charged and arrested for a felony, which was attempted possession of a silencer. That was pled down. And so he pled no contest to a misdemeanor, which was attempted possession of an assault weapon.

CHAIRPERSON DUDLEY: Yes. I think Dr. Clavo understood that.

MEMBER CLAVO: Yes.

CHAIRPERSON DUDLEY: Thank you. Any other questions or comments from the Board?

Yes, Dr. Glaser.

MEMBER GLASER: Thank you.

So, Mr. Walden, I just would like to get clarity.

Are you -- are you denying that you ordered that item?

And that you conducted the internet searches that are in the record relating to a suppressor with a threaded barrel?

LUKE WALDEN: Am I -- did I -- no, I ordered the part. It was for my car. It was -- based on the information that was provided on the internet, I thought it was for my car. Because I'm putting in a bigger engine. And I thought it would allow additional -- more fuel. The car originally comes with a four cylinder, 22R. I'm putting in a V-8 because I want to hotrod it with my kid. So I can do drifting and rally and stuff.

So the way it was presented on the internet, is that it was a high-flow fuel filter. That's what I thought and --

MEMBER GLASER: Would you --

LUKE WALDEN: If I can explain, sir, about the searches on the internet.

MEMBER GLASER: Uh-huh.

LUKE WALDEN: That's the next question?

MEMBER GLASER: Yes, please do.

LUKE WALDEN: Okay. So, assigned to the FBI gang task force. I provided some expertise when it came to us purchasing guns. We bought a lot of guns. We worked the MS task force, MS-13, so we were buying guns and a lot of them were attached to murders.

We did have external informants. And when I say that, I worked with informants since 2009. The informants -- these informants are federal informants.

When you work with the fed -- when you work with an informant that's assigned to you and you're an LAPD agent, LAPD, those -- there's documentation that is required. It's called an informant contact sheet and every time you talk to them, every time, they call you 20 times you got to fill out 20 pieces of paper.

They give you information, you write it down.

With the federal informants, they are not required that, because their informant information is captured by the feds, we don't have that documentation.

So what had happened was, in over -- over that time frame, from January to February -- because we -- we were in a lull waiting for the Assistant US Attorney to give us direction on several of the murder suspects from MS-13 how they were going to, what we were going to do,

when we were going to make the takedowns and arrests.

And so we were -- we had these informants that were providing information regarding guns sales, firearms sale and narcotics sales.

But it was ultimately up to the federal -- the FBI agents to make the determination whether or not they wanted to move forward on these cases.

The -- since these -- these guns with suppressors -- that's how the pictures came through and the information came through. So I started researching it because I didn't have the knowledge base. And the guys would say, well, you should know this. You had worked the gun unit.

Yeah, but I didn't have the training.

So I went on Google and I put in "silencer." I put in -- and then I tried to figure out how it would work or how it would work based on what you need to get the filing. Or at least make the arrest.

As you guys may or may not know, federal charges are different than state charges.

And a lot of times if it's going to go federal, they need specific -- it needs to be from -- the gun was manufactured in -- from state to state. So state -- interstate commerce.

And so that's -- that's why I did it. We had three

separate cases from two informants that provided information, they provided pictures. I didn't see captured those pictures they were on the FBI's -- the agents' cell phones.

I think my phone died.

Can you guys still hear me?

MEMBER GLASER: Yeah, we hear you.

LUKE WALDEN: Okay. So --

CHAIRPERSON DUDLEY: Okay. Dr. Glaser, do you need more information?

MEMBER GLASER: I'm going to follow up.

CHAIRPERSON DUDLEY: Okay. I think Dr. Glaser has a follow-up question and that may address whatever else you wanted to add to this.

And I know that we have at least two more Board Members who want to be heard.

But go ahead, Dr. Glaser.

MEMBER GLASER: Yeah, I would just like more clarity. You are acknowledging that you ordered that item. And it's your claim that it's just coincidentally while you were trying to order a filter for a car, you -- the item that you ended up ordering happened to be a functioning suppressor for a firearm that would not function as a filter for a car?

LUKE WALDEN: Yeah, basically -- based on what I

was told, because I never received it. And over the course of a couple months, I didn't know I was under investigation.

So that was sometime in April, I believe, what I was told by the Internal Affairs.

Then I realized, hey, it never came, I figured the porch pirates stole my packages because I was working probably 12 to 15 hours a day, a week, because we were after -- we were working a lot of murder cases, so our hours were always crazy.

And then -- so I ordered another fuel filter -- because the other one didn't come.

So I said, well, at least with Amazon, I will get a receipt and I will get a -- I'll get confirmation. And also if it doesn't show up, you know, I can ask for an additional one. Which I should have done in the first place --

CHAIRPERSON DUDLEY: Okay. Thank you.

LUKE WALDEN: And this could have all been avoided.

CHAIRPERSON DUDLEY: Detective Walden, thank you. I think you've -- you've answered --

LUKE WALDEN: Oh. Okay. Sorry.

CHAIRPERSON DUDLEY: -- Dr. Glaser's question.

Now I know that next was Mr. -- Lieutenant Lara and then after that is Regina. Okay. Go ahead. Crawford.

MEMBER LARA: Charles would do just fine.

So normally speaking, my question is, say I go on to Amazon. And I'm going to order an item. I generally order online to the specific item that I need. Say if I -- it was for the Celica or the enhanced V-8, I would order the item to match the engine to which I -- I'm building out.

So how is it that by pure coincidence you end up with what is essentially a functioning silencer that's purely coincidentally, what you ordered online?

Can you explain that to me?

LUKE WALDEN: I was -- well, that's how it was presented. I ordered the part for my car. And it was a high-flow fuel filter. I never got it.

Then I went on Amazon and I did the same thing.

And, no, based on what you're saying, as a former mechanic, the -- because I worked on cars prior to becoming a law enforcement agent, police officer, I never -- these -- the fuel filter never came. So I ordered a second one.

And they're called universal fuel filters. I think it was in the slides. And that's the one I ordered.

And it's a high-flow universal fuel filter.

Based on all the research, there's -- in that -- in the ATF document, there's a ton of things in there

that -- I had no idea that could be used as a suppressor.

Which, I would assume that they're fuel filters based on what -- how they're sold. They're sold on Amazon. They're sold on eBay. They're sold on all these different websites, which is not illegal. And you're taking -- you're purchasing that.

So I didn't know that it was a suppressor. Otherwise, I would not have -- I would have avoided this whole situation.

MEMBER LARA: Okay. Presumably one buys a fuel filter to filter fuel.

Meaning there will be some medium by which particulate or contaminants will be extracted from said fuel.

So I'm not going to deny that it's high-flow, there's no baffling in this and there's an expression in Latin, caveat emptor, which means "buyer beware."

I imagine that with as much background as you have -- or purport to have in mechanics, that you would recognize that this item would not function as a fuel filter because it has no medium by which to filter fuel.

Can you explain that to me?

LUKE WALDEN: No. I believed it can because it showed -- I don't have the documentation, because I

didn't take pictures of it. I didn't know I was going to get in trouble for buying a fuel filter.

But it -- on the -- on the website, it showed filtration, it showed it hooked up to a car with a -- with a line going from the -- from the fuel line from the back, from the gas tank, up.

So based on the subject, I didn't look for the filament, which is the item that traps the debris, because it showed everything in the -- in the -- on the website.

And based on what I was understanding when they did the Board of Rights they tried to pull the link up from the website to use it in their investigation and they couldn't find it because it had been taken down.

MEMBER LARA: Thank you.

CHAIRPERSON DUDLEY: Detective Walden, were you being honest when you pled guilty or no contest to attempting to purchase an assault rifle? An assault weapon?

LUKE WALDEN: As far as honest how? Because that was the charge that they offered. So I wasn't trying to buy an assault weapon, but that's the charge that they gave me for the plea deal.

CHAIRPERSON DUDLEY: Okay. That was the one they offered.

LUKE WALDEN: Yeah.

CHAIRPERSON DUDLEY: And that was the one you pled guilty or no contest to.

LUKE WALDEN: Yes.

CHAIRPERSON DUDLEY: And when you did that, were you being honest?

LUKE WALDEN: Yes, ma'am.

CHAIRPERSON DUDLEY: Okay. Thank you.

Ms. Crawford.

MEMBER CRAWFORD: So reading your report, you sound like you were a car enthusiast. And --

LUKE WALDEN: Yes.

MEMBER CRAWFORD: And given your background and being a mechanic and an officer of the law, one of the things that kind of caught me, and it was an "aha" moment, was how many guns that you owned in the house.

So answer this question.

As LAPD, if you were to come into my home and I owned -- what was it 54 guns, and rifles. That wouldn't be a little bit alarming?

LUKE WALDEN: No, ma'am. I know that it -- in today's society based on -- that people are afraid of guns.

I was raised around guns. I fired my first firearm at five years old. My family was raised on a farm. So

for me guns is kind of like having a hammer.

The intention is not there to run around murdering people.

It -- I shoot competitively. I have for years. Under IDPA.

As far as the amount of guns, I worked -- when I did work the gun unit, we did have a lot of people who owned guns.

Now a lot of the guns I owned, they're worth thousands and thousands of dollars. So they're -- it's like an investment. And I buy them. I sell them.

Of the guns that I owned, half of them were not mine. And when I say that they weren't originally mine.

My brother died in '96 in a car accident. And some of them were his. And then some of them were my father's, so I inherited them either from my father or from my brother, who passed away.

So most of the -- a bulk of them, maybe two-thirds of them, were originally not mine.

But because of registration and following the law and all the -- Senate Bills, I uphold the law and basically registered them to me so that they would be in safekeeping, because I was working in law enforcement. There are locked up in safes so that no one has access to them. Not even my kids.

If I go recreational, we take safety and take the kids and go through the safety rules and go shooting as -- you know, at the local range.

MEMBER CRAWFORD: Mr. Walden, you said something that was very interesting.

Being in law enforcement, you wanted to follow the law.

I work formerly for the Department of Defense. And knowingly, if I purchased something or had something in my house that could give pause or question to -- you didn't -- did you report that to your senior leadership?

LUKE WALDEN: Report what?

MEMBER CRAWFORD: That you were buying these items that --

LUKE WALDEN: No --

MEMBER CRAWFORD: You're an expert. You're an expert.

LUKE WALDEN: No, I'm not an expert in suppressors.

MEMBER CRAWFORD: You are not, okay.

LUKE WALDEN: I know that the POST has tried to frame it that way. But, no, I've never dealt with a suppressor. I've never seen one in real life.

Based on my -- as far as how they come apart, how they work, I've had no formal training.

When it comes to suppressors, I have -- based on

what I did, I would buy a fuel filter for my car. I never got it. I bought another one. And then all of a sudden I was under investigation.

If it had come and I found out that it was in this suppressor type form, I would have booked it into evidence and told them.

CHAIRPERSON DUDLEY: Okay. Thank you. Thank you, Detective Walden.

Anything else? Any other questions?

MEMBER CLAVO: I have two.

CHAIRPERSON DUDLEY: Yes, Dr. Clavo.

MEMBER CLAVO: The first one is for Mr. Imboden.

I want to make sure I heard you. I think -- I believe it was you and not Mr. Walden that stated that the fuel filter that was ordered was listed under a name that is known by gun enthusiasts or individuals who are purchasing illegal silencers and is known to be listed under the name in which the fuel -- fuel filter was purchased; is that correct? Did I make sense?

MR. IMBODEN: That's correct. The code -- the term "Napa 4003" is known amongst the gun enthusiasts as a code word for "silencer."

MEMBER CLAVO: Mr. Walden, did I understand that you said you are currently working back as a police officer for the last year and a half?

LUKE WALDEN: Yes.

MEMBER CLAVO: I lied. I have a third question.

So with that, you were doing research on silencers on a work computer prior -- two days prior, I believe, to receiving, or being arrested, or being notified that you had received silencers in the mail.

LUKE WALDEN: No. That's incorrect.

MEMBER CLAVO: Okay.

MS. RENTERIA: Two days prior to him purchasing the item, the silencer, he had been researching the Napa 4003 inline fuel filters, as well as threaded barrels.

Mr. Walden claimed that he was doing that for work-related purposes, based on FBI informants, information that they had received.

So from POST's perspective it demonstrates knowledge of the item that he was purchasing, because he had spent so much time researching those items, by his own admission, and then bought the item he was in fact researching.

MEMBER CLAVO: Thank you. That was the clarity I was seeking. Appreciate that.

CHAIRPERSON DUDLEY: And just so I'm clear on this, was he saying that he was researching filters? Or suppressors?

MS. RENTERIA: He said he was researching

suppressors, silencers, for an illegal firearm sales that they were investigating.

Those silencers were being marketed as Napa 4003 fuel filters or solvent traps.

CHAIRPERSON DUDLEY: Thank you.

Anything else?

Yes, Mr. Johnson?

MEMBER JOHNSON: For Mr. Walden.

LUKE WALDEN: Yes, sir.

MEMBER JOHNSON: The question I have is, has others bought this particular so-called fuel filter that you was confused on and made complaints?

Or did you make a complaint that this particular suppressor would not work as a fuel filter?

LUKE WALDEN: As far as people buying it and using it, I don't know.

I know that based on what was told to me that there were 13 fuel filters recovered that they believe to be silencers. And I was the only one charged, as far as the District Attorney's Office.

MEMBER CRAWFORD: So there were others is what you're implying?

LUKE WALDEN: Yeah. And they -- based on what I was told by the -- because I had -- in our FBI unit, we had members of HSI and Homeland Security and they do all

the checks on what comes in and out of the searches.

They basically told me that, generally, they send a letter to the person and say, hey, you can't own this.

And they said that they have thousands of those things coming in.

CHAIRPERSON DUDLEY: Okay. Thank you.

Yes, Ms. Clavo. Pena.

MEMBER PENA: Mr. Walden, I have a few questions for you.

What type of car was it that you were seeking to buy a filter for?

LUKE WALDEN: A 1985 Celica GT hatchback.

MEMBER PENA: What kind again? I'm sorry.

LUKE WALDEN: It's all right. Okay. It's a 1985 Toyota Celica.

MEMBER PENA: Okay. Is it running?

LUKE WALDEN: Right now it's been disassembled. So I took all of the -- the fuel system out. And I'm currently taking the engine out so that I can put a larger or better running engine in. Because the engine in there is old and I need to put a new bigger -- bigger engine in.

MEMBER PENA: Okay. So that's -- that's the car that you were attempting to order a filter for?

LUKE WALDEN: Yes.

MEMBER PENA: You said you subsequently ordered another filter when you didn't receive the first one; is that right?

LUKE WALDEN: Yes, ma'am.

MEMBER PENA: Did you install that filter?

LUKE WALDEN: No, because I was told I was under investigation. And then I was sent home. And I didn't have the money to work on the project.

MEMBER PENA: Okay. How soon after ordering the first filter that was intercepted by the Border Patrol, did you order the second filter?

LUKE WALDEN: I think April, so -- about four months. So the first one didn't come, which I assumed it got stolen.

And we were working the murder cases, so I was never home. I hadn't -- I was working seven days a week doing surveillance.

And so I realized, hey, that part never came. Because suspension pieces came, shocks came, brakes came, which was all being put together. And I realized that the fuel filter wasn't here. So I --

MEMBER PENA: Did you --

LUKE WALDEN: -- went on Amazon and ordered a new one.

MEMBER PENA: Did you know at that point that you

were under investigation?

LUKE WALDEN: No, ma'am. I wasn't told -- so I got a notice -- I ordered it in, I believe, August. I got an email from Internal Affairs, because it was masked, in September. Like middle of August is when it showed up. September I was told I was under investigation. I still wasn't told what for.

I had to get legal counsel.

Once I got legal counsel, it was like maybe the end of September, November, somewhere around there, where they told -- you know, IA told the -- my counsel. Then we set up an interview. And that was done over the phone I think in January.

I can't remember the exact dates.

MEMBER PENA: Okay. Thank you.

CHAIRPERSON DUDLEY: Yes. Okay. So Mr. Johnson, then Mr. Lara.

MEMBER JOHNSON: On that first fuel filter that you never received, did you make a complaint to Amazon?

Or is there some documentation that you have that you never received the first item you ordered? If --

LUKE WALDEN: No. So the -- I never received it. I was working -- I was working 15 hour days for -- every day. So I never received it.

Once I realized it was there, to me it was like --

I thought it was 20 bucks. But guess it was 45 bucks. I didn't remember the price.

So I figured it had got stolen. I went looking for the website. I couldn't remember how to find it.

So I said I'm going to go on Amazon and order my -- that part and I'll just eat the 20 bucks. Which, I thought -- the whole time I thought it was 20 bucks.

CHAIRPERSON DUDLEY: In the past when Amazon did not deliver items to you, did you complain and seek to get your money back?

LUKE WALDEN: In the past, I've had front bumpers for 300 bucks and I haven't gotten it. So sometimes I complain, sometimes I figure someone steals it. Sometimes there's no recourse if you don't do it within a certain time period.

This company, the website --

CHAIRPERSON DUDLEY: Okay. Thank you. Mr. Lara.

MEMBER LARA: Mr. Johnson asked the first question I was going to ask, which was have you requested a refund or filed a complaint?

But out of curiosity, why didn't you order the same filter you had previously ordered?

LUKE WALDEN: Why didn't I order the same -- it was a universal fuel filter. That's what I ordered on the first one. It never came.

The second one, I ordered a universal fuel filter and that came.

That's how it was -- that's how it was sold on the internet. It was a universal, high-flow fuel filter.

I ordered the first one, never came.

I went looking for the same thing on the Amazon, that one, they had a different versions and I wanted a more compact one so it wouldn't get swiped off the bottom of the car. And so I found the other one, which is the one that I purchased.

It's very similar in dimensions, as far as length, I believe.

CHAIRPERSON DUDLEY: I think I lost track.

When you got the second one, did you install it?

LUKE WALDEN: No. That was asked before.

CHAIRPERSON DUDLEY: Why didn't you install it?

LUKE WALDEN: Oh, because I had taken the whole car apart. I took the whole fuel system. I had to put a bigger -- I was putting in larger fuel pump to put the fuel through the fuel filter. So I bought all the fuel --

CHAIRPERSON DUDLEY: I'm sorry. I don't know much about cars. So just if you could give me a simple answer to this.

LUKE WALDEN: Okay.

CHAIRPERSON DUDLEY: You purchased a filter --
LUKE WALDEN: Yes.
CHAIRPERSON DUDLEY: -- that didn't come.
LUKE WALDEN: Right.
CHAIRPERSON DUDLEY: And then you purchased a filter that had the same name that did come. And --
LUKE WALDEN: Yes.
CHAIRPERSON DUDLEY: I'm asking if you attempted to install the second filter with the same name as the one that didn't come?
LUKE WALDEN: I attempted to install it? No, I did not, because that's when I was made aware -- like maybe a couple months later. Because we were still working a lot, I just didn't have the time to work on the project.
CHAIRPERSON DUDLEY: Okay. Thank you.
LUKE WALDEN: So I was ordering the entire fuel system.
CHAIRPERSON DUDLEY: Okay. Thank you.
Anything else?
MEMBER CLAVO: One more question.
CHAIRPERSON DUDLEY: Go ahead, Dr. Clavo.
MEMBER CLAVO: I'm not going to say one more. I might have several.
So it was my understanding that the initial fuel filter was purchased through PayPal. I believe one of

my fellow members here asked about filing a complaint.

I know with PayPal, because I'm a internet shopper, I have disputed many things that I've received or did not receive.

So did you -- and PayPal's pretty good about giving you your money back when you don't receive an item or it's the wrong item or you don't get it in time.

Did you -- and they usually have the purchaser's information listed there where you can send an email, because they ask you to send an email to the seller first.

LUKE WALDEN: Right. Right.

MEMBER CLAVO: Prior to them taking action.

Did you do any of those things?

LUKE WALDEN: No, because the website was down when I went to go look for the thing. So it wasn't -- it didn't work anymore, the link.

MEMBER CLAVO: The PayPal website was down or the --

LUKE WALDEN: No, no --

MEMBER CLAVO: Or the seller's website?

LUKE WALDEN: Seller's.

MEMBER CLAVO: Okay. I'm going to ask this question again. Maybe I didn't say it clear.

So when you go on to PayPal, if you have a PayPal

account and you log into your PayPal account it has all the purchases you bought through PayPal or through the original websites.

LUKE WALDEN: Right.

MEMBER CLAVO: And so when you go on there, and you hit the item that you purchased, you're able to say whether or not you received it, if you have an issue, whether it didn't come timely, whether it's the wrong thing.

And then you can dispute that purchase through PayPal. And PayPal's pretty good at crediting you your money back to your account.

So did you do any of those things?

LUKE WALDEN: No.

MEMBER CLAVO: Okay. Thank you.

CHAIRPERSON DUDLEY: Anything else?

MEMBER CLAVO: No, ma'am.

CHAIRPERSON DUDLEY: Okay. Any other Board Member?

Okay. Thank you, Detective Walden. You can hang --

MS. RENTERIA: I'm sorry, ma'am, if I may, just for the record, clarify two things or respond to two items from Mr. Marrache?

CHAIRPERSON DUDLEY: Do you need Detective Walden on the phone for that?

MS. RENTERIA: I do not.

CHAIRPERSON DUDLEY: Okay. Anything else, Detective Walden?

(No response.)

CHAIRPERSON DUDLEY: Okay. Thank you, Detective Walden.

Please go ahead.

MS. RENTERIA: I just wanted to respond to two statements that were made by Mr. Marrache, Mr. Walden's representative.

With regard to POST jurisdiction he had made a comment that the LAPD had not pursued a dishonesty charge and so therefore he questioned POST's ability to also do that.

I just wanted to clarify that POST, the Board and the Commission, are not bound by the decisions of the law enforcement agencies.

So therefore, LAPD's decision not to pursue a dishonesty charge has no bearing on whether or not POST can do so.

And then secondarily, he also seemed to, in the same vein, also make a statement that because the -- our claim of the dishonest conduct occurred before January 1st, 2022, that it was beyond POST's ability to hear that.

However, dishonesty is one of the categories of misconduct that POST can consider prior to January 1st, 2022. I just wanted to clarify that for the record.

CHAIRPERSON DUDLEY: Thank you. Those are helpful clarifications.

Okay. At this time, does the Board wish to adjourn into closed session for deliberations on this case?

Or is the Board ready to take a vote or recommendation of the case?

MEMBER CLAVO: We'll go into deliberation, I think.

CHAIRPERSON DUDLEY: Okay. So here we go.

(Time noted: 1:49 P.M.)

---o0o---

(Closed session was held:
1:55 P.M. to 2:07 P.M.)

---o0o---

(Time noted: 2:11 P.M.)

CHAIRPERSON DUDLEY: Okay. Are we all set?

We will now reconvene in the regular session to take a vote on the Board's recommendation in the matter of case POST2306324, Luke Baxter Walden, who at the time of the events at issue in this case was employed with the Los Angeles Police Department.

What comments does the Board have on this matter?

Okay. I have a few comments.

In listening to my fellow Board Members, it seemed critical to all of us that someone who has a badge and has authority and has the authority to arrest, has the authority to use potential great bodily injury, it's so important that that person be honest.

And what seemed very important to all of you was that law enforcement officials throughout California and our country be honest.

And that was what I heard over and over again from this Board.

Does anybody want to dispute that? Or add to that?

MEMBER CRAWFORD: I would like to add that just as you said, as law officials, we, as a people, expect for you to be there to protect and serve. And when we come across -- or the public comes or the community comes across an officer who seems dishonest, overzealous, it's a recipe, sometimes, for disaster.

And so I would like to make a motion if it's okay with my Board Members.

CHAIRPERSON DUDLEY: Please.

MEMBER GLASER: May I just add one more comment. So just to sort of close this circle here, in this particular case, I think it -- Mr. Walden's arguments just strained credulity, that he would have -- had been

researching suppressors and then within a few days order one. And that he had intended to order something else entirely. That just -- the probability of that occurring by chance is so vanishingly small that it -- that it seems like it can't be true.

And hence, there -- him having denied that raises an honesty issue, which is, as we say, so important to law enforcement.

CHAIRPERSON DUDLEY: Thank you. Anybody else want to make a comment?

MEMBER JOHNSON: I think --

CHAIRPERSON DUDLEY: Mr. Johnson.

MEMBER JOHNSON: Yes. Johnson.

In regards to that honesty, we definitely made it clear to ourselves, the Board that is, that though LA, Department of Police, didn't charge him or see any dishonesty, that wasn't the issue with us. It was the fact that he was dishonest.

CHAIRPERSON DUDLEY: Okay. Thank you.

Anything else before a motion is made?

Okay. You wanted to make a motion?

MEMBER CRAWFORD: Regina Crawford. And I would like to make a motion to decertify Mr. Walden.

CHAIRPERSON DUDLEY: Is there a second?

MEMBER LARA: I second.

CHAIRPERSON DUDLEY: Okay. Thank you.
Okay. We need roll call, please.
MR. KNAPP: Yes, Madam Chair. Thank you.
Clavo.
MEMBER CLAVO: Aye.
MR. KNAPP: Clavo, aye.
Crawford.
MEMBER CRAWFORD: Aye.
MR. KNAPP: Crawford, aye.
Dudley.
CHAIRPERSON DUDLEY: Aye.
MR. KNAPP: Dudley, aye.
Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Glaser, aye.
Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Johnson, aye.
Lara.
MEMBER LARA: Aye.
MR. KNAPP: Lara, aye.
Pena.
MEMBER PENA: Aye.
MR. KNAPP: Pena, aye.
That's seven ayes, motion passes.

CHAIRPERSON DUDLEY: Thank you.

As this was the last item on the agenda for today, let me just ask, I hate for any of you to leave if there was anything unsaid.

Do any of the members of the Board have any additional comments before we adjourn for the day?

Dr. Glaser.

MEMBER GLASER: I would like to thank the staff of the Division for the excellent data presentation earlier and the progress that you've made in producing useful, valuable data for our consumption and for the public consumption. Thank you.

CHAIRPERSON DUDLEY: Yeah, I would second that motion.

MEMBER CRAWFORD: I third.

CHAIRPERSON DUDLEY: Anything else?

(No response.)

CHAIRPERSON DUDLEY: Okay. So seeing nothing additional, I will need a motion to amend.

MEMBER CLAVO: I make a motion to adjourn.

CHAIRPERSON DUDLEY: Thank you. Thank you.

MEMBER CRAWFORD: Second.

CHAIRPERSON DUDLEY: Thank you.

And the meeting is then adjourned. I don't think we need a roll call on that.

And we will reconvene tomorrow at 9:00 A.M. And to review the last two cases.

Thank you very much.

(Proceedings concluded at 2:13 P.M.)

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CERTIFICATE OF REPORTER

I, CONNIE J. PARCHMAN, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported, to the best of my ability, in shorthand by me, Connie J. Parchman, Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 30th day of July 2025.



Connie J. Parchman, CSR
Certified Shorthand Reporter
License No. 6137

E R R A T A S H E E T

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STATE OF CALIFORNIA

COMMISSION ON

PEACE OFFICER STANDARDS AND TRAINING

PEACE OFFICER STANDARDS ACCOUNTABILITY ADVISORY BOARD

(POSAAB) MEETING

THURSDAY, JULY 17, 2025

9:02 A.M.

MEETING HELD

AT THE OFFICES OF

COMMISSION ON POST

860 STILLWATER ROAD, SUITE 100

WEST SACRAMENTO, CALIFORNIA

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Stenographically Reported By:
Connie J. Parchman,
California Certified Shorthand Reporter #6137

A P P E A R A N C E S

POSAAB MEMBERS PRESENT

JOYCE DUDLEY
Governor Appointee
Attorney
(Chairperson)

NICOLE CLAVO, Psy.D.
Governor Appointee
Public Member

REGINA HATCHER-CRAWFORD
Governor Appointee
Public Member

JACK GLASER
Governor Appointee
Public Member

CEPHUS JOHNSON
Governor Appointee
Public Member

CHARLES LARA
Governor Appointee
Management Rank Peace Officer

MARGARET PENA
Speaker of Assembly Appointee
Public Member

---o0o---

PEACE OFFICER STANDARDS ACCOUNTABILITY
ADVISORY BOARD LEGAL COUNSEL

CHRISTOPHER BEATTY
Deputy Attorney General
Department of Justice
Office of the Attorney General

---o0o---

A P P E A R A N C E S C O N T I N U E D

POST STAFF

ANNEMARIE DEL MUGNAIO
Assistant Executive Director
Peace Officer Standards
Accountability Division
Executive Office

WILLIAM DARDEN
Chief Counsel
Legal Affairs Bureau

PAUL NANFITO
Law Enforcement Consultant
Professional Conduct Los Angeles County Bureau

CARRIE WOOLLEY
Attorney IV
Legal Affairs Bureau

SCOTT BALAND
Law Enforcement Consultant
Professional Conduct Northern Bureau

BRIAN HOFFMAN
Attorney IV
Legal Affairs Bureau

CHANDLER KNAPP
Staff Services Manager
Executive Office

---o0o---

A P P E A R A N C E S C O N T I N U E D

ALSO PRESENT

JARED BRITTAIN, POST ID C63-Z34

ROBERT SASEK, POST ID C81-Z88

APPEARING REMOTELY:

KYLIE COLEMAN, ESQ.
Representing Jared Brittain

SUKHBIR GILL
Public comment

--o0o--

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THURSDAY, JULY 17, 2025 9:02 A.M.

West Sacramento, California

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CHAIRPERSON DUDLEY: Good morning, everyone. Today's Thursday, July 17th, 2025, and the time is 9:02.

Thank you all for attending the Police Officers Standards Accountability Advisory Board hearing.

Please note that this hearing is being live streamed, recorded, transcribed.

Further, please note that the microphones are auto on/off. When you begin speaking, they will go live. With this, you will need to watch your crosstalk.

We will now call the roll for Board Members.

Chandler.

MR. KNAPP: Thank you, Madam Chair.

Good morning, Members of the Board.

Member Clavo.

MEMBER CLAVO: Here.

MR. KNAPP: Member Crawford7.

MEMBER CRAWFORD: Here.

MR. KNAPP: Member Doyle.

(No response.)

MR. KNAPP: Chair Dudley.

CHAIRPERSON DUDLEY: Here.

MR. KNAPP: Mr. Glaser.

MEMBER GLASER: Here.
MR. KNAPP: Johnson.
(No response.)
MR. KNAPP: Lara.
MEMBER LARA: Present.
MR. KNAPP: And Pena.
MEMBER PENA: Here.
MR. KNAPP: Madam Chair, six members present.
CHAIRPERSON DUDLEY: Okay. A quorum has been established.
I would like to introduce Board Counsel, to my left, Christopher Beatty and Board Assistant Executive Director Annemarie Del Mugnaio.
And this is now the time set aside for members of the public who wish to comment on items not on the agenda, but those within the Board's jurisdiction.
Public comment on matters on the agenda will be heard after each item is presented.
Public comment on specific peace officer revocation cases to be heard today will be heard at the time of the hearing of each such matter.
Please be advised that the Board cannot take action on items not on the agenda and may discuss those matters only to the extent necessary to determine whether any matter should be made an agenda item at a future

meeting, to respond briefly to statements or questions posed, to request clarification or to refer items to staff.

Please remember that this meeting is being transcribed, so I may politely interrupt and ask you to repeat or speak slowly and clearly so your comment can be correctly captured in the transcript.

As the Board Chair, I may ask members of the public to limit their remarks to no more than three minutes pursuant to existing Board policy.

I may conclude the public comment period if multiple speakers are voicing repetitive or similar statements and the 15-minute public comment period has expired.

You'll be given three minutes to speak and the time limits will be strictly enforced.

So please ensure that you complete your comments within the allotted time.

Before I open public comment on matters not on the agenda, please note if you wish to comment on disciplinary matters scheduled to be heard today by the Board, you must wait until that matter is called to offer public comment.

If you have a specific complaint about an officer that is not on today's agenda, you should file a

complaint with POST or with the officer's employing agency.

Staff will assist you in this regard.

I would like to remind individuals making comments to not discuss pending complaints or pending disciplinary actions that may later come before this Board for recommendation if the Board takes action on your complaint. You will have an opportunity to address the Board at that time.

Following these rules is necessary to comply with the law and to avoid compromising the Board's mission.

So now, is there anyone present in the audience or appearing remotely who would like to address the Board during public comment?

Let's start with anyone present in the audience first? Is there anyone present who would like to address the board?

(No response.)

CHAIRPERSON DUDLEY: Seeing none, let me check if there's anyone remotely.

And there is not.

Okay. So we now move on to the next items on the agenda.

We have two cases to hear today. We will only be reviewing the facts and evidence as presented by this

Division.

This is not an evidentiary hearing. The rules of evidence do not apply here. Evidence is not formally admitted into the record. There is no need to make any objections and objections will not be ruled upon.

Under the Penal Code and applicable state regulations, this initial hearing will determine only if the matter will proceed forward to the Commission Review. And then should the Commission approve for an evidentiary hearing before an Administrative Law Judge to determine whether the allegations are true and justify discipline.

For those commenting on each item at this early stage, the Board must only consider the facts that the Division, after investigation, believes can be proven at a later evidentiary hearing.

For that reason, today the Board will entertain arguments as to whether or not those facts, as presented by the Division, demonstrate clear and convincing evidence.

In other words, a high probability that serious misconduct, as defined in Penal Code Section 13510.8 and Commission Regulation 1205, occurred.

This finding results in the matter being moved forward. No action by the Board or the Commission prior

to a full evidentiary hearing amount to a final determination that an officer did, in fact, engage in misconduct or that revocation or suspension is ordered.

That will be determined after the evidentiary hearing.

At the conclusion of each law enforcement consultant's presentation, the Board will have the opportunity to ask questions. Then public comment from the subject officer and/or their counsel will be taken, followed by the members of the public.

Further discussion by the Board will be allowed, if necessary.

The Board may then go into closed session, deliberations, after each case or wait until the end of all cases have been presented and adjourn to closed session to deliberate on all cases presented.

After reconvening into regular session, votes will be taken on each case.

We're now going to move on to POST case number 2316745, Jared Brittain, POST C63-Z34.

At this time, I will now call upon Law Enforcement Consultant Paul Nanfito, Professional Conduct Southern Bureau and Carrie Woolley, Attorney IV, Legal Affairs Bureau, to provide a report on case POST2316745, Jared Brittain who, at the time of the events at issue

in this case, was employed with the Orange County Sheriff's Department.

MR. BEATTY: Madam Chair, I just wanted to recognize --

CHAIRPERSON DUDLEY: Please.

MR. BEATTY: I believe that Board Member Johnson was missed on the roll call and is present.

CHAIRPERSON DUDLEY: Okay. Thank you.

MR. BEATTY: Correct, Board Member Johnson?

MEMBER JOHNSON: Yes.

MR. BEATTY: There you are.

I don't know whether I missed it -- good morning.

CHAIRPERSON DUDLEY: Thank you, Counsel.

And we're now ready for the presentation.

MR. NANFITO: Thank you. Good morning, Madam Chair and Members of the Board.

My name is Paul Nanfito and I'm one of the law enforcement consultants assigned to the Professional Conduct Southern Bureau in the Peace Officer Standards Accountability Division.

With me today is Carrie Woolley, an attorney with our Legal Affairs Bureau.

I am here today to present case number POST2316745.

It involves Deputy Jared Nathanial Brittain from the Orange County Sheriff's Department.

Hereinafter he will be referred to as Respondent.

It is the Division's determination that clear and convincing evidence exists to demonstrate the Respondent committed multiple acts of serious misconduct as set forth in Penal Code Section 13510.8 on multiple days between June 1st, 2022, and October 5th, 2023.

Specifically, the Division has determined that the Respondent committed the following acts of serious misconduct:

Dishonesty, 13510.8(b)(1) providing false statements and information to Internal Affairs investigators during four separate Internal Affairs investigations.

Acts that violate the law.

13510.8(b)(6) acts that are sufficiently egregious or repeated to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of the members of the public as determined by the Commission.

In this presentation, I will present a brief outline of the Division's findings of the investigation in this matter.

The Respondent began his career with the Orange County Sheriff's Department on March 31st, 2017, as a trainee and on November 8th, 2017, he was promoted to

the position of deputy sheriff.

The Respondent holds the following POST certifications: Basic, intermediate and advanced POST certificates.

The Respondent has no prior disciplinary issues to discuss.

Respondent was ordered -- awarded the Orange County Sheriff's Department's Medal of Valor for his response to a critical incident that occurred on August 23rd, 2023.

This was an incident involving an active shooter who shot multiple people and engaged responding deputies in a seven-minute gun battle.

The Respondent was recognized for making a courageous decision to form a team, climb a hill behind the suspect from a flank position.

This is a verbal presentation, which I'm providing from a prepared statement, which will be followed by a PowerPoint presentation.

The PowerPoint will provide a visual representation of the timeline of events and some of the specific statements which you will hear during the verbal presentation.

In summary, this case will cover two different Internal Affairs investigations, which included four

interviews. These events took place over a 17-month period from June 1st, 2022, through October 5th, 2023.

On June 1st, 2022, the Respondent was off duty and was stopped by the California Highway Patrol.

Prior to the traffic stop, the CHP officer made the following observations: The driver of a black Ram 1500 pickup truck driven by the Respondent was bumper-paced at approximately 104 miles per hour.

He was also weaving dramatically from left to right within the traffic lane, crossing over the lines on both sides of the lane.

The CHP officer initiated a traffic stop and contacted the driver who was identified as the Respondent.

He identified himself as an off-duty peace officer and that he had multiple weapons in his vehicle. Respondent had a firearm at his waist and had SWAT weapons inside the pickup.

On October 7th, 2022, the Respondent pled guilty to two misdemeanor counts of driving under the influence of alcohol and admitted to having a blood alcohol content of greater than .20 in the Orange County Superior Court.

As a result of this conviction, the Department of Motor Vehicles suspended the Respondent's driver's license.

The DMV mailed the Respondent a notice of this suspension, which was dated October 14th, 2022. This suspension was effective from October 7th, 2022, through April 7th, 2023.

The notice was sent to the Respondent's home address, notifying him the suspension was effective on October 28th, 2022.

The Respondent was in court when he was advised by the Court of a Superior Court document, which is referred to as a declaration regarding Vehicle Code Section 3 -- 13550, which notified the Respondent his driver's license was confiscated at the time of his arrest and it had not been lawfully reissued.

It was signed by his attorney and was dated October 7th, 2022, and the Respondent was present when this occurred.

The Respondent did not notify his chain of command at the Stanton Substation of his driver's license suspension. He continued to work is regularly assigned patrol shifts at this station.

During the week of December 20th, 2022, the Respondent went to his mailbox and retrieved a notification from DMV which was dated October 14th, 2022.

The document was the DMV order of suspension, which

reads in part: Your privilege to operate a motor vehicle has been suspended effective October 7th, 2022, and shall not be reinstated before April 7th, 2023.

The Respondent acknowledged that it was this document which was the catalyst for him to respond to the DMV on December 20th and obtain the restrictions on his license which would allow him to legally drive a motor vehicle.

On December 20th, the Respondent went to the DMV office where he received and signed a DMV verbal notice of actions. This document lists two separate licenses suspensions one was effective 10-7-2022 and one was effective 10-28-22.

By signing this document the Respondent was notified about both suspensions and the length of those suspensions.

This date and these notifications are critically important because the Respondent attended his first Internal Affairs interview the following day on December 21st, 2022.

This interview was the first inquiry into his DUI arrest by the Orange County Sheriff's Department Internal Affairs investigators.

Now I will provide you of some examples of statements made by the Respondent which have been

determined to be dishonest.

During this interview, the IA investigator asked the Respondent if his license was fully suspended at any time.

In response he said, "for a period of, I believe, 30 days from the sentencing until I could get it restricted."

It is important to note that just the day before making this statement about a 30-day suspension, the Respondent just received those restrictions on his license allowing him to drive legally.

This document which brought him to the DMV that day stated his license had been suspended effective October 7th, 2022, and could not be fully reinstated until April 27th, 2023.

On the day he signed the DMV verbal notice of action, which notified him his driver's license was fully suspended on October 7th, 2022, until December 20th, 2022.

This is clearly not a 30-day suspension and there is not a document which mentions a 30-day suspension.

The IA investigator asked the Respondent the following specific and direct question.

He asked, "How did you get to work?"

The Respondent said, I had a friend drive me that I

work with and I had a trainee in the car I was working with.

The IA investigator specifically asked the Respondent, so you had the trainee driving the whole time while you were doing your patrol work?

The Respondent said, "Yes, sir."

In review of traffic cameras within the City of Stanton, California showed the defendant driving a black Ram 1500 on ten specific dates between October 7th, 2022, and November 7th, 2022.

The Respondent's driver's license was fully suspended during this time frame. Surveillance cameras at the Orange County Sheriff's substation in Stanton, California showed the Respondent driving a black Ram 1500 pickup truck into the parking structure across the street from the substation.

The Respondent attended a follow-up administrative interview regarding the DUI arrest on February 15th, 2023.

This was another opportunity where the Respondent could have been forthright and advised the investigator that he had been driving during the period of his suspension.

Instead, he provided deceptive and dishonest statements. He also provided another affirmative answer

to a question about his trainee driving him while at a work and that he only received a 30-day suspended driver's license.

The following excerpt from this interview illustrates the continuing deception of the Respondent.

The IA investigator asked the Respondent, "You had a 30-day suspended license?" To which he said, "yes, sir."

The IA investigator then specified, "And that was at the time of the conviction, so October 7th to November 7th?"

Respondent answered, "From what I recall, sir."

As previously noted, the Respondent received DMV paperwork on December 20th, 2022, which clearly stated the length of his suspensions.

These statements are simply not true.

The IA investigators focused on the time period between October 7th, 2022, and November 7th, 2022.

They did not focus their inquiry and evidence collection from November 8th, 2022, through December 20th, 2022, because the Respondent kept telling them his license was only suspended for 30 days from October 7th through November 7th.

The Respondent's deception resulted in the loss of traffic camera videos and photos as well as Stanton

substation surveillance photos during the Division's inquiry.

The IA investigator asked a clarifying question, "And I think you mentioned in the video you were getting a ride to and from work and you had a trainee."

The Respondent said, "Yes, sir."

On December 28th, 2022, seven days after his first IA interview, officers from the Anaheim Police Department responded to a call from a citizen who reported finding a firearm in a black Ram 1500 pickup she had rented from a local car dealership on December 14th, 2022.

The reporting party told the officer she was cleaning and checking the rental vehicle at her home with intention of returning the vehicle to the dealership on December 29th, 2022.

The reporting party told the officer -- excuse me -- while checking the vehicle, she lifted the front seat, center armrest and discovered a firearm. The reporting party told the officer she had not noticed the firearm until she lifted the armrest and she immediately called the Anaheim Police Department.

This officer secured the firearm, a Glock 19, which was later determined to have a full magazine of 15 rounds with one round in the chamber.

And Anaheim police officers ran the serial number on the firearm and determined that it belonged to the Respondent and it had not been reported missing or stolen.

Anaheim police officers contacted Respondent on December 28th about the firearm and asked him if it was in his possession.

The Respondent replied, "That's a good question."

Respondent then told the officers he had not seen the firearm in a month or two and did not report it as missing or stolen because he had not noticed it was missing.

On January 3rd, 2023, the Orange County Sheriff's Department initiated a second Internal Affairs investigation regarding the Respondent's personal Glock firearm that was located inside a rental truck on December 28th.

It should be noted that the Respondent returned the Ram 1500 rental truck on December 13th, 2022. The next day it was rented to another citizen in the City of Anaheim.

This citizen drove this vehicle unaware there was a loaded firearm beneath the center armrest for two weeks.

Respondent violated Penal Code Section 25140(b) when he left his handgun unsecured in the rental

vehicle. Under Penal Code Section 25452, a peace officers shall, when leaving a handgun in unattended vehicle, secure the handgun in the vehicle pursuant to Penal Code Section 25140.

The Respondent attended his first IA interview regarding the unsecured handgun on August 9th, 2023.

This would be his third IA interview since December 21st, 2022.

During this interview, the IA investigator asked follow-up questions about the Respondent's truthfulness during his first two administrative interviews.

The IA investigator had located traffic camera video and pictures that showed the Respondent driving a black Ram 1500 pickup in the City of Stanton and into the parking structure across from the Orange County Sheriff's Department Stanton Substation.

He also located surveillance photographs of the Respondent walking into the Stanton Substation.

This IA investigator was aware of the previous IA regarding the DUI arrest. These photographs are what led him to ask the Respondent some follow-up questions about the Respondent's truthfulness during the first two IA interviews.

Respondent's answers to some of these questions continued to be deceptive and dishonest.

During this interview, the IA investigator stated to the Respondent, "I have you on camera driving to work."

The Respondent said, "Yes, sir."

The IA investigator added, "In your rented truck during those days?"

Again the Respondent said, "Yes, sir."

The IA investigator then asked the Respondent very directly, "So when you say you were being driven to work, is that the truth? Or were you driving yourself to work?"

The Respondent said, "I drove myself to work, sir."

The IA investigator assigned to investigate the unsecured firearm scheduled a second interview with the Respondent on October 5th, 2023. This would be the Respondent's fourth interview over the course of approximately ten months.

The critical incident that was previously mentioned occurred on August 23rd, 2023, which is after his third interview, but before his fourth IA interview.

There were several statements Respondent made during his final interview which were determined to be dishonest.

Leading up to this interview, the IA investigator obtained body-worn camera footage showing the Respondent

driving a patrol car between October 7th, 2022, and November 7th, 2022. His license was suspended during this time frame.

The IA investigator asked the Respondent if he remembered stating during the interviews with the first IA investigator and later with him, that your trainee drove your patrol car while you were at work?

The Respondent said, "Yes, sir."

The IA investigator then asked, "Is there anything about that statement you would like to change?"

The Respondent replied, "After you guys advised me of the dates in question, there may have been a day that I had driven, whether it was to move the vehicle or I may have driven on my own. I don't recall specifically what day that was."

During the Respondent's fourth and final interview, he offered an explanation as to why he didn't answer completely about driving during his suspension period.

Specifically, the Respondent said, "I obviously drove during work, and I couldn't recall specifically when or if I did. And in thinking back into it, ultimately I was confused on the dates. There's multiple suspension dates that I was given and the reason I gave the answer that I did."

The evidence shows that any confusion about the

suspension dates on the part of the Respondent was cleared up when the Respondent went to DMV on December 20th, 2022, where he received his verbal notice of actions with the actual suspension dates as well as receiving the order of suspension earlier that week.

At the Respondent's request, he was interviewed by the Division on October 23rd, 2024. During this interview, he again made the assertion that he was confused about the dates of his suspension and said the suspension may have been in effect later in November of 2022.

Respondent stated he would provide copies of DMV paperwork to show the different suspension dates that created his confusion.

The Division later received an email from Respondent's attorney stating he could not locate the DMV paperwork he referenced during his interview; however, the Respondent's attorney did provide the Division with a letter from retired Orange County Sheriff's Department Assistant Sheriff Steven Kea, which was presented at the Respondent's Skelly hearing. A copy of that letter is included as Attachment O to the ISF.

In the letter, Retired Assistant Sheriff Kea addressed several specific points of the Respondent's

interviews and argued that the Respondent was not untruthful because he responded to the questions he was asked, which did not directly ask him whether he ever drove to work or ever drove on patrol.

Not only does this representation of the Respondent's answers misrepresent the evidence, but Retired Assistant Sheriff Kea's summary does not address the Respondent's affirmative statement to investigators that his driver's license was suspended for 30 days from the date of his conviction.

Further, from the contents of this letter, it appears that Retired Assistant Sheriff Kea was unaware the Respondent visited the DMV on December 20, 2022, the day before his first IA interview, where he obtained a restricted license which allowed him to drive legally to and from and in the course of employment.

The document received on this date clearly would have shown Retired Assistant Sheriff Kea the dishonesty in the statements the Respondent made on December 21st, 2022, and during subsequent interviews.

For these reasons, the Division did not find Retired Assistant Sheriff Kea's letter persuasive.

Following this interview, the Division received DMV documents from the Orange County Sheriff's Department Internal Affairs Division. Specifically, the Division

received a copy of the order of suspension dated October 14th, 2022, and the verbal notice of actions dated December 20th, 2022.

Based on the dates of the suspensions listed on these documents, the Division requested additional documentation.

The Division obtained body-worn camera footage, Respondent's patrol schedules, Respondent's time sheets, field training officer and trainee assignment schedules and daily observation reports for two trainees. All the requested documents were for a time period from October 7th, 2022, through December 20th, 2022.

The preceding information was reviewed which revealed the Respondent drove a patrol car on many additional dates during the time he was assigned a trainee.

This information revealed that a trainee was not available frequently enough to be able to drive the Respondent the whole time he was working his patrol shifts.

Based on this new information, the Division requested that the Respondent participate in a second interview. This interview took place on January 14th, 2025.

During this interview, the Division reviewed with

the Respondent the order of suspension and the verbal notice of actions.

The Respondent was asked specifically how long his driver's license was suspended before obtaining the restriction on his driver's license.

The Respondent said, "Knowing what I know now, it was from 10-7 to 12-20, sir."

The Division then asked the Respondent, "So that wasn't explained to you when you obtained this document or you didn't deduce that from receiving this document on December 20th?"

In response he said, "No, sir, like I stated in the interviews, I was confused on the entire process. I had not received a DUI or dealt with a license suspension before. And my experience with it in the field was limited as well."

The documents that Division reviewed with the Respondent were copies of the exact same documents he received on December 20th, 2022.

Based on this, it is highly probable that he had the exact same knowledge about his suspensions on December 20th, 2022, and on December 21st, '22, during his first IA interview.

The Respondent was also asked about who had provided him with rides to and from work.

He specifically mentioned Deputy Minero, a coworker from the Stanton Substation who provided him rides to work.

Based on this information, the Division scheduled an interview with Deputy Minero on March 4th, 2025.

During this interview, Deputy Minero was asked if he had provided rides to work for the Respondent during the time his license was suspended.

His answers were initially vague, but eventually he described some ridesharing the two would do for SWAT training.

At the end of the interview, Deputy Minero's attorney asked a clarifying question about whether Deputy Minero gave the Respondent rides to the Stanton Substation, and I quote, "During the time you guys worked there together."

Deputy Minero responded, "Not that I can remember."

The Division obtained the patrol schedule and time sheets for Deputy Minero.

The information showed that Deputy Minero's schedule was considerably different than the Respondent's making it very improbable that he was even in a position to provide transportation for the Respondent during the time frame his license was suspended.

The facts that I just recited support the Division's finding that Jared Nathaniel Brittain was involved in serious misconduct, specifically dishonesty and repeated and/or egregious acts that violate the law.

The facts of this case clearly establish that the Respondent was untruthful during four administrative interviews, had multiple opportunities to provide complete and truthful answers, but he chose not to.

The acts that violate the law included DUI, driving on a suspended license on multiple dates, and leaving an unsecured firearm in a vehicle.

For purposes of the Division's analysis, clear and convincing evidence means evidence of a charge is clear and convincing so long as there is a high probability that the charge is true.

The evidence need not establish a fact beyond a reasonable doubt.

The Division recommends that Jared Nathaniel Brittain's POST certification be revoked.

I will now present the PowerPoint presentation to provide a visual timeline of the events and information provided during this presentation.

Next slide.

So this slide represents the beginning of the triggering events for this whole investigation

June 1st, 2022. I just want to highlight two things about that DUI arrest.

He was stopped for doing 104 miles an hour and he had a BAC of .20, which is extremely -- more than twice the legal limit.

October 7th is when he pled guilty to the two misdemeanor DUI counts and admitted to having a .20 BAC.

October 14th is the date that I mentioned several times. This is when DMV sent the order of suspension. This is an important document that comes up later on December -- the week of December 20th.

Next slide.

This is the actual screenshot of the order of suspension and it's not very clear, on the screen there, but I want to read that first line above the little spreadsheet there. It is where it says, it's the very first sentence on this document.

It says, your privilege to operate a motor vehicle is suspended effective October 7th, 2022, and shall not be reinstated before April 7th, 2023.

It is a very simple document, one-page document, easy to read, easy to understand.

Next slide, please.

Okay. This is the -- December 20th. This is the day before the first IA interview. It was this week

that he obtained the previous document, the order of suspension. And then on this date he went into DMV and this is the document that he signed. It is the verbal notice of actions.

This is the document, lists two specific suspensions. And as you can see there, one is effective 10-7-2022 through December 20th. The other is 10-28-22 through December 20th.

The Respondent acknowledging in his Division interview that he did sign for this document.

This is actually a written document that notices the person that they were verbally notified of these suspensions by DMV.

Next slide, please.

Again, he attended his first interview on December 21st, the very next day.

Next slide, please.

As we pointed out in the presentation, the Respondent was asked specifically if he, you know, if his license was fully suspended at any time. And his responses do not reflect what he just learned on December 20th. The period that he was suspended is actually 74 days, not 30 days.

Next slide.

Again, in the same interview, he's asked questions

and the BWC footage that was collected at two different points in this investigation, the first five were collected by the IA investigators, the rest were collected when I requested them during the investigation.

He drove 18 times in a patrol car. And I just want to point out that during the investigation, we requested just one sample of driving during those -- we didn't request every BWC footage available on each of those dates.

Next slide, please.

Again, he says, "So you had the trainee driving the whole time while you were doing your patrol work?"

This simply isn't possible. There -- on page 22 of the ISF you'll find a simple spreadsheet that lists all 18 of those dates. There were seven times that he had a trainee in the time where he still drove the patrol car.

Next slide, please.

December 28th is the day that the firearm was located in the rental truck. And as discussed, the investigation was authorized on January 3rd. And on February 15th he had a second interview regarding the DUI arrest.

Next slide, please.

Again, he continues to say that he had a 30-day

suspended license. It's simply not true. The information he obtained on December 20th clearly showed the length of his suspensions.

Again, I want to point out that the suspended license was effective for 74 days before restrictions.

Next slide.

August 9th he has his first interview regarding the unsecured firearm. And this is where the investigator began questioning about his truthfulness in the first two administrative investigations.

Next slide.

Respondent again gives a statement that some days his father and then Deputy Minero, who's the person driving him to and from work. As I noted in my interview with the -- Deputy Minero, he did not recall doing that.

Next slide, please.

October 5th, 2023, this is the final interview and the second one regarding the unsecured firearm.

Next slide.

Again, the BWC footage contradicts his statements.

Next slide.

On December 14th, 2023, the Orange County Sheriff's Department served the Respondent a notice of intent to terminate.

He had a Skelly hearing and following that Skelly hearing, he was provided the last chance agreement which resulted in his demotion and reassigned to the jail.

Next slide.

The Respondent -- Division mailed a letter of investigation on September 12th. At his request, he was interviewed on October 23rd, and then again on January 14th, 2025.

Next slide.

Again he was asked about how he would -- who was driving the patrol car. And he said, "When I had a trainee in the vehicle, yes."

BWC footage contradicts that, shows him driving while he did have a trainee. Also the trainees were not available to drive him during all the dates he worked during that time frame.

Next slide.

So under Vehicle Section 14601.2(a) a person shall not drive a motor vehicle at any time when that person's driving privilege is suspended or revoked for a conviction of violation of 23152 if the person so driving has knowledge of the suspension or revocation.

It also states that knowledge of the suspension or revocation of the driving privilege is conclusively presumed if mailed notice by the DMV pursuant to Vehicle

Code Section 13106.

As previously noted and the documents show, he was mailed that notice on October 14th, 2022.

Next slide.

This is the specific section mentioned in the presentation regarding the unsecured firearm. The important thing that I want to point out about this, this is not a case of an officer leaving a firearm in his truck parked out in front of his driveway.

This is a case where citizen was driving a vehicle for two weeks with a loaded firearm unbeknownst to that person.

Next slide.

That's it.

With that, I'm happy to answer any questions that you may have.

CHAIRPERSON DUDLEY: Okay. From the Board, are there any questions?

MEMBER CLAVO: Yes.

CHAIRPERSON DUDLEY: Yes, Dr. Clavo, did you have a question?

MEMBER CLAVO: Yes, ma'am. The Dodge Ram, that was a police vehicle?

MR. NANFITO: No, it was not. It was a rented vehicle from a dealership.

MEMBER CLAVO: Okay. And then it was -- a Glock that was left in the car 15 rounds and one in the chamber?

MR. NANFITO: Correct.

MEMBER CLAVO: And who notified the department, the DMV? Or did Mr. Brittain notify them eventually?

MR. NANFITO: Of the suspensions?

MEMBER CLAVO: Yes.

MR. NANFITO: The reports reflect that the Respondent did not notify his Stanton Substation that he had a suspended driver's license.

I'm not sure at what point the Department received the DMV documents that I showed you. Those were obtained during the Internal Affairs process.

The Department, I can't explain why they were unaware of the suspension. The typical process would be DMV would notify them, but they apparently weren't notified.

MEMBER CLAVO: And then it was ten days that you guys pretty much pulled that was on camera showing him driving? Was -- did I write that right?

MR. NANFITO: The traffic camera systems in Stanton, California were obtained by the IA investigators for a period of October 7th to November 7th. And those -- those, were the dates that

are -- that are identified.

The dates from November 8th to December 20th, because the Division made that request in 2024, had already been purged. So they were unavailable.

MEMBER CLAVO: Okay. One last question.

Did I -- did I hear or understand right that the Sheriff wrote a supporting letter on -- the Assistant Sheriff wrote a supporting letter on behalf of Mr. Brittain, but not having all the facts?

CHAIRPERSON DUDLEY: That was retired Assistant Sheriff.

MEMBER CLAVO: Okay. It was retired.

CHAIRPERSON DUDLEY: I didn't answer your question, I just wanted to clarify that that was --

MEMBER CLAVO: It was -- retired.

MR. NANFITO: That was Retired Assistant Sheriff, he wrote that letter for the Skelly hearing.

In that letter, and nor in the IA investigations, is there any mention of the documents that the Respondent received on December 20th and the week of December 20th.

So I do not know why or if he had that knowledge, but it was not in the letter.

MEMBER CLAVO: Thank you.

CHAIRPERSON DUDLEY: Thank you, Dr. Clavo.

Dr. Glaser.

MEMBER GLASER: Yeah, thank you.

Just for clarification, and I'm sorry if I missed it.

What was the impetus for the December 21 IA interview?

If -- had they obtained information about the suspension at that point?

MR. NANFITO: No, that -- the December 21st, 2022, interview was regarding the DUI arrest that occurred on June 1st, 2022. It was the first IA interview for that reason.

MEMBER GLASER: And was it -- is it just a coincidence that occurred a day after his visit to the DMV on December 20th?

MR. NANFITO: Yes, presumably.

MEMBER GLASER: Thank you.

CHAIRPERSON DUDLEY: Any other questions? Okay.

(No response.)

CHAIRPERSON DUDLEY: Seeing none.

At this time, does the subject officer and/or their counsel -- I believe the subject officer's present.

I believe that counsel is appearing remotely.

Do either of you wish to make a comment?

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: Yes. If so, you will each be given three minutes to speak. And the time limit will be strictly enforced, so please be sure that you complete your comments within the allotted time.

And while commenting -- comments, keep in mind that the Board will only consider the facts as presented by the Division today and will not consider any additional facts or defense at this time.

The sole question before the Board today is the following: If the facts offered by the Division today are, in fact, proven at a later hearing, do those facts demonstrate clear and convincing evidence of a high probability that serious misconduct, as defined by Penal Code Section 13510.8 and Commission Regulation 1205, occurred.

So, Officer, would you like to be heard?

MR. BRITTAIN: Good morning. And thank you for allowing me the opportunity to speak today.

I want to begin by saying that I --

CHAIRPERSON DUDLEY: Excuse me, Officer, I misspoke. You have at least five minutes. Okay?

MR. BRITTAIN: Yes, ma'am.

I would like to begin by saying that I completely own the mistakes that I made. I do not deny them or make excuses for them.

But I would like to provide some context of why I'm in front of you today.

I've had time to reflect on the decisions I made during the lowest point in my life. I carry the weight of those choices every single day.

Plain and simple, I put others at risk and did not conduct myself as one in the profession should. And that was unacceptable.

I know I have made mistakes in the past, but I have also learned from them. I understand the difficult decisions this Board has to make and I've read most of the misconduct you have investigated.

I believe this process and your role is absolutely necessary.

I also believe the Board's primary concern in my instance is the issue of my dishonesty and I don't shy away from that. I failed to live to the standards of integrity without compromise.

I know better because I have never omitted or falsified information in the past.

But in this instance, to save my career, I betrayed not just the Department's values, but my own.

Before this I had never been in trouble and on the other side of an investigation. I was nervous and I followed legal advice I thought would guide me through

the process. But looking back, I realize I should have been more direct, forthcoming and transparent.

When I was questioned about whether I drove during my suspension, I tried to shield myself by offering partial truths. I said others drove me, which was true, but I omitted that I also drove myself. I convinced myself I was answering the questions just well enough to move past them.

But omission is deception and failure of integrity on my part.

Once the evidence came out and I was asked, I admitted to it. But by then I had already lost the trust of my department.

I've spent most of my adult life in service. I started as an explorer with the Sheriff's Department, served for six years in the Marine Corps, and the past eight years as a deputy.

I've handled hundreds of investigations, served with distinction, and responded to life-threatening situations without hesitation.

But, I've also struggled.

I've had troubles with PTSD, depression and anxiety, issues I tried to bury instead of address.

I coped poorly with those and I had an unhealthy patterns of alcohol abuse that contributed to my poor

decision-making.

Since then I've done the work. I've gone through constant counseling, joined AA, remained sober and developed healthy ways in order to manage my stress and trauma.

I accepted a demotion and I worked in custody this past year without incident and was repromoted, earning my way back to patrol with strong performance evaluations.

Towards the end of this investigation unfolding, I had the opportunity to be involved in the most critical and traumatic incident in my career and in Orange County.

It was an active shooter who had already killed multiple people and was firing at deputies from an elevated and fortified position.

While under direct fire, I led a team to flank and neutral -- help neutralize the suspect in order to begin life-saving measures. For that I was awarded the Medal of Courage.

That day reminded why I those this career. To serve, protect and act when others are in danger.

The week following that incident, I was placed on administrative leave pending terminations for my actions we're discussing today. I showed myself I had strength

by not resorting to alcohol and maintaining a positive attitude.

I used that time to continue the positive progress that I made, thankful to have a second chance at life and in this profession.

Since returning to work, I have also taken the responsibility of mentoring younger deputies, using my own mistakes to help avoid -- them avoid the same pitfalls.

I'm not here just to keep a job. I'm here because I want to become the kind of deputy that teaches others the value of integrity and what accountability looks like.

I'm not asking for forgiveness, but I'm asking for a chance to continue serving the public and guiding others by example.

I hope the Board can see that I'm not defined by the worst chapter in my career, but by the growth and accountability that came after.

Thank you again for your time and allowing me to speak.

CHAIRPERSON DUDLEY: Thank you.

And let me ask you some rather direct questions.

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: And if you don't want to

answer them, don't.

But you put several things out there that I want to follow up on.

You heard the presentation today. You've read all the documents. You've been accused of multiple acts of dishonesty.

Are you telling us today that you, in fact, committed all those acts of dishonesty.

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: You also said just now that you have found ways to deal with your PTSD.

Can you tell me what you did to deal with the PTSD?

MR. BRITTAIN: Yes. Primarily reached -- returning to faith, attending church consistently and exercising. Begin doing endurance sports that helped me to decompress and come back to reality.

CHAIRPERSON DUDLEY: Did you go to any specific therapy that deals with PTSD, EMDR or anything else?

MR. BRITTAIN: Yes, the counseling that I've been attending with TCTI, I've been doing that very, very consistently. And also tried the EMDR.

CHAIRPERSON DUDLEY: And how many times did you try EMDR?

MR. BRITTAIN: Twice, ma'am.

CHAIRPERSON DUDLEY: I'm sorry?

MR. BRITTAIN: Twice, ma'am.
CHAIRPERSON DUDLEY: And was it helpful?
MR. BRITTAIN: Yes, ma'am.
CHAIRPERSON DUDLEY: Okay. The act that you engaged in that ultimately you ended up at the Medal of Courage, that occurred after your suspension?
Knowledge of your suspension, but before your suspension occurred?
I was unclear on the timing of that.
MR. BRITTAIN: The incident occurred and then I was suspended for six months, the week after.
CHAIRPERSON DUDLEY: Okay. The incident occurred, then you were suspended, and then when did you get the medal of courage?
MR. BRITTAIN: Upon returning back to work.
CHAIRPERSON DUDLEY: Okay. How long have you -- when was the last time you had any alcohol?
MR. BRITTAIN: It's been nine months, ma'am.
CHAIRPERSON DUDLEY: And how long ago was the incident with driving under the influence with the over a .20?
MR. BRITTAIN: Over three years, ma'am.
CHAIRPERSON DUDLEY: Okay. So at some point you stopped drinking, and then you started drinking again?
MR. BRITTAIN: Yes. I've been battling with

sobriety and maintaining it consistently.

It's very hard. When things get difficult, it's easy to go to a drink. I've learned that and have been successful at maintaining that now.

After having short relapses of a few drinks and then feeling guilty about it afterwards.

CHAIRPERSON DUDLEY: Why do you think -- so after the DUI, you stopped. And then you went back to drinking. And then nine months ago you stopped.

Why do you think you've been successful this time, whereas you were intermittently successful in the past?

MR. BRITTAIN: Ultimately realizing the trouble that it has caused me and the risk that I put upon other people and leading me into this situation where I'm losing my career.

CHAIRPERSON DUDLEY: Okay. Have you ever substituted drugs for alcohol? Either prescription drugs or unlawful drugs?

MR. BRITTAIN: No, ma'am.

CHAIRPERSON DUDLEY: So it's always been alcohol?

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: Okay. Is there anything else -- other Board Members may have questions, too, of course.

Is there anything else you want this Board to know

about you that you haven't said?

MR. BRITTAIN: No, ma'am.

CHAIRPERSON DUDLEY: Okay. Thank you very much for your honesty and for coming here today and telling us a little more about you.

Other members of the Board?

Yes, let's start with Ms. Pena.

MEMBER PENA: How many -- how many days sober have you had now?

MR. BRITTAIN: Days?

MEMBER PENA: Days, months.

MR. BRITTAIN: I don't track the days. I try not to focus on the days of sobriety in order to just keep pushing towards them.

MEMBER PENA: Okay. Do you -- did your sponsor come with you today?

MR. BRITTAIN: I do not have a sponsor. I'm not directly involved in AA anymore. I was after the DUI.

MEMBER PENA: Do you go to any other type of counseling program for alcoholism besides your time in AA? Do you do anything else now?

MR. BRITTAIN: With my counselor from TCTI.

MEMBER PENA: What's that exactly?

MR. BRITTAIN: It is an organization that has partnered with our Department to provide counseling for

us.

MEMBER PENA: Okay. How often do you go to that?

MR. BRITTAIN: It's based on availability. And it's about every month or two months, depending on availability.

MEMBER PENA: I'm -- there have been various comments that you've made either on the record or through what's reported in investigations and what you've said here today about -- I think today you said you've taken full responsibility for your actions.

MR. BRITTAIN: Yes, ma'am.

MEMBER PENA: However, you submitted a written statement to us today that I actually had the opportunity to read.

It's dated July 10th, 2025, which is obviously not very long ago, a week ago.

And in your third paragraph where you actually begin to talk about what occurred, the last line in that sentence says -- or paragraph says, in talking about your ability to answer questions honestly, about when you drove et cetera, when you didn't drive.

You say, "That omission, while not an outright lie, was misleading and not in line with the level of transparency expected of someone in our position."

So in that paragraph, which is the first one where

you talk about what occurred, you say an omission was not an outright lie -- was not an outright lie.

I mean, you talk about the investigation as if you didn't lie about anything, you just left things out.

And leaving things out is a lie.

MR. BRITTAIN: Yes, ma'am.

MEMBER PENA: So which is it?

MR. BRITTAIN: It is a lie. An omission is deception and is dishonest.

MEMBER PENA: You also say some of your reasoning for answering questions is because you were following legal advice.

MR. BRITTAIN: Yes, ma'am.

MEMBER PENA: Was the legal advice to mislead? Or omit? Or lie?

MR. BRITTAIN: Yes, ma'am.

MEMBER PENA: It was?

MR. BRITTAIN: Yes.

MEMBER PENA: You got legal advice telling you not to answer questions accurately?

MR. BRITTAIN: Upon concluding the first interview, I realized that I had made incorrect statements.

I looked back in my paperwork and realized the dishonesty of the dates that I knew my license was suspended.

After that, I brought it to the attention of my attorney at the time. And I said, "Hey, I made this mistake, I believe I should tell them."

And he said, "Don't mention it unless they directly ask you in the future."

I know that driving on a suspended was another violation after my DUI and could possibly face termination, so I went with that advice and I answered the questions vaguely and not directly.

MEMBER PENA: Thank you.

MEMBER CLAVO: When you attended AA, how long did you go for?

MR. BRITTAIN: About six months.

MEMBER CLAVO: About six months.

And then do you have any other support mechanisms?

And I heard you say that you have the acronym. EMDR. EMDR. The counselor that you may attend once a month or every other month.

But do you have any family -- I heard you mention faith, that you're leaning in on faith.

So do you have a pastor, a priest, a minister that you meet with regularly that provides you some emotional, mental support?

Or are you leaning in on yourself to do all this by yourself?

I heard you say nine months clean, which isn't very long. You don't know the number of days, which kind of concerns me for -- for a person who's battling with alcoholism.

So do you have a support team? Do you have a support mechanism in place?

MR. BRITTAIN: Yes, ma'am. I have a family that I resort to as well as some friends that I directly worship together with.

And that are also in the profession that can relate and I can open up to things about.

Previously I completely tried to do this on my own and I realized it's very difficult for me to open up to other people. And that did not do well for me.

MEMBER CLAVO: One last question.

I believe I read or heard somewhere that stress, different things, and we know what contributes to PTSD.

So you are in a very stressful job.

MR. BRITTAIN: Yes, ma'am.

MEMBER CLAVO: And any day it can go from zero to 100.

With that being said, how will you cope with the next time you're faced with some -- life or death, or a stressful situation that may push you towards alcohol again?

MR. BRITTAIN: Just resorting back to everything that has happened in the past three years. I've grown tremendously from it. And I know those different coping mechanisms and the outlets that I have, whether it's counseling or friends, in order to open up to and address those issues before they become issues.

MEMBER GLASER: First, I want to thank you for being present today and for answering our questions and presenting your statement.

I also want to thank you for your service both to the nation and to Orange County and law enforcement.

I want to get back to what Board Member Pena was talking about with respect to dishonesty in the context of omission versus commission.

And I'm -- I want to give you another opportunity to talk about whether your dishonesty took the form of only omission or if there was direct deception on your part.

Because, you know, I would characterize it as if the Internal Affairs interviewers had asked you if you ever let your trainees drive and you said, yes, that would be a deception by omission.

But I think that they asked you if you drove and you said no.

And that sounds more like a direct deception. And

I would like to hear your answer with respect to that and other instances in which you gave dishonest responses, and whether you consider them only to be by omission.

MR. BRITTAIN: I do not believe it only to be omission. I believe it to be dishonest now that I have been through this investigates and I knew that. Yes, sir.

MEMBER CRAWFORD: Okay. Thank you for coming and being -- being honest with the Board, as I see it.

I'm -- I don't drink, but I do have a son that has the same issues you have.

It's a difficult -- it's difficult. You know, it's hereditary, it runs in families. And it is a sickness. And I will always say that.

But given -- given the job that you do, and you know, the commitment of being an example, it is one of the things I'm -- I'm struggling with, is that, you know, we expect more for our officers. And I'm speaking from what I do is -- you know, we want you to be honest, because just as we want you to be honest, you expect the public to be honest.

And I kind of sense that you were struggling, you know, you were given poor advice, but I'm not an attorney.

Several attorneys are sitting here. But it's common for them to tell you only answer the question and, you know, and to do that. And so you were put in a position where you look -- sounds like you were struggling, you know, between omission, dishonesty.

And so right now this Board has to look at the fact of dishonesty issue.

And, I'm sorry, I'm always a person that believes in second chances. But it's not only up to me, but I -- the reason why I'm speaking is I want you to understand we are sympathetic. I am, at least, to your struggle.

And that you got a long journey to do and you're, right now, at a crossroads. Like you said, you are fighting for your position. For your job. And I pray that you do take this and -- so that others learn from it.

MR. BRITTAIN: Yes, ma'am, thank you.

MEMBER CRAWFORD: So --

CHAIRPERSON DUDLEY: Thank you.

MEMBER LARA: Deputy, good morning. I wanted to echo the Board, to thank you for your service both to the country, to your county.

You clearly show great martial courage, obviously -- even under fire. And that is not anything to be taken lightly.

I obviously think that the Board understands also that we need to see great ethical courage from deputies and officers that do work.

A couple of questions for you.

Does -- and if you don't know, please, it's fine to say no.

Does your agency intend to keep you on as a deputy?

MR. BRITTAIN: Yes, sir.

MEMBER LARA: And how do you know this?

MR. BRITTAIN: I signed a last chance agreement upon returning to work stating that I was on probation period for the two-years regarding alcohol and drug related and dishonesty.

I completed my demotion period, which was a little over a year. And I have since been repromoted returning to patrol operations.

There's nothing in there that says termination date other than what the determination of POST is.

MEMBER LARA: Okay. If I could just have a moment. That's all I have. Thank you.

MEMBER JOHNSON: Johnson speaking.

Thank you for you are your service. I toured as a vet.

I want you to think about the -- take us back to the truck rental.

MR. BRITTAIN: Yes, sir.

MEMBER JOHNSON: Was your license suspended when you rented the truck?

MR. BRITTAIN: I do not recall the specific dates, but the dealership gave me a loaner vehicle while it was in the shop.

MEMBER JOHNSON: So you are not sure if your license was suspended at the time?

MR. BRITTAIN: I can't recall right now the dates that I received the truck and the suspension, sir.

MEMBER JOHNSON: I will ask clarity for that in a second.

My next question is, you've been employed as an officer for 11 years?

MR. BRITTAIN: No, sir, a little over 8 1/2.

MEMBER JOHNSON: 8 1/2.

During that time period, had it come to knowledge that one of the most important things, about being honest?

MR. BRITTAIN: Yes, sir. And during my time in the military.

MEMBER JOHNSON: Now, in that time period, did you know anyone that was going through any issues concerning being dishonest?

MR. BRITTAIN: Not directly, but I've heard

stories, sir.

MEMBER JOHNSON: So you was pretty much aware of how important honesty is?

MR. BRITTAIN: Yes, sir.

MEMBER JOHNSON: All right. I want to go back to that truck, on the rental vehicle, since you really don't remember if your license was suspended or not.

What was the purpose of having a firearm in the rental vehicle?

MR. BRITTAIN: The firearm was along with multiple firearms that I had when I went shooting. And it was misplaced inside the vehicle, sir.

MEMBER JOHNSON: So you misplaced it in the vehicle and then when asked about it, you could not remember where it was at or what you had done with it?

MR. BRITTAIN: Correct.

MEMBER JOHNSON: That in itself is a violation, unsecured firearm.

MR. BRITTAIN: Yes, sir.

MEMBER JOHNSON: I'll put it there.

I would like to ask about the license suspension and the truck rental.

MR. NANFITO: During my review of the Internal Affairs investigations, it indicated that the Ram 1500 was rented in September of 2022, prior to his conviction

on October 7th, 2022.

The suspensions took effect either on October 7th, 2022, or October 28th, 2022.

MEMBER JOHNSON: Thank you.

CHAIRPERSON DUDLEY: So now I'm confused.

At the time that he rented the truck, did he have a suspended license?

MR. NANFITO: After his arrest, he hired an attorney for the --

CHAIRPERSON DUDLEY: I couldn't hear you.

MR. NANFITO: I'm sorry?

CHAIRPERSON DUDLEY: I couldn't hear you.

MR. NANFITO: Oh. After his arrest, he hired an attorney to handle his admin per se issues and that was stayed until the court adjudicated the case.

The case was adjudicated on October 7th, 2022. That was when the first suspension took effect. A second suspension took effect on October 28th, 2022. And based on the information I reviewed in the Internal Affairs investigations, the Ram 1500 was given to him in September of 2022.

So no license suspensions had taken effect, to my knowledge, at that time.

CHAIRPERSON DUDLEY: Okay. So I'm an attorney, and I didn't understand all that.

So let's -- let's be clear.

So the answer to my question, unless I'm confused, is he rented it on September 22nd and at that point his license was not suspended; is that correct?

MR. NANFITO: To my knowledge, yes.

CHAIRPERSON DUDLEY: Okay. Yes, it was not suspended?

MS. WOOLLEY: And just to be clear, we don't know what date in September he rented it because we did not get that information from the dealership. But it was sometime in late September of 2022.

It might help to explain how the suspensions worked out.

CHAIRPERSON DUDLEY: Okay. Let's do that.

MS. WOOLLEY: Just to clarify, so when you get a driving under the influence charge, there are two suspensions that happen.

You get a suspension as a result of the arrest.

CHAIRPERSON DUDLEY: Right.

MS. WOOLLEY: Which is sometimes called an admin per se.

CHAIRPERSON DUDLEY: Right.

MS. WOOLLEY: That was the suspension implemented on October 28th.

Then there's the suspension that you get as a

result of a conviction when you get convicted in court. And that's the suspension that happened on October 7th.

The reason why there's two is because there's administrative one from the arrest. It's a separate proceeding.

Those can actually happen ahead of time. But it depends. You can ask the DMV to basically continue your hearing out until your court proceedings finish out and the DMV is usually very good about doing that.

So what happened here was that process was still going, while he waited for his criminal proceedings to finish. And at some point he had an issue I think with his truck, Mr. Brittain can certainly correct me if I'm wrong, and he got the truck sometime in late September 2022 while his license was still good and then had it until December 13th, 2022.

But the suspension took place and took effect on October 7th, because that's the day he was convicted in the criminal proceedings.

CHAIRPERSON DUDLEY: Yeah, I did -- I used to prosecute DUIs so I understand that.

But the two suspensions, one began October 7th, one began October 28th. The car was initially rented at the end of the September?

MS. WOOLLEY: Yes.

CHAIRPERSON DUDLEY: Okay. So when you rented the truck, you did not have a suspended license, you had a license. Is that your understanding now?

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: Okay. But, you had the truck until when?

MR. BRITTAIN: It was the date they mentioned in December. I believe the 12th or 13th.

CHAIRPERSON DUDLEY: So at any point when you had the truck, were you driving it on a suspended license?

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: Okay. Now, why did you drive the truck on a suspended license?

MR. BRITTAIN: So the truck in question was not rented it -- in order to deceive or avoid detection.

It was because there were issues with my vehicle and I had it for an extended period of time.

I drove because I had the obligation and -- to show up for work. Because I already had shown that I have caused issues with myself, with the Department, I didn't want to inconvenience the Department anymore. Being a brand new training officer and having to be there. So I wanted to build upon my reputation and come back from the DUI that I had previously received.

CHAIRPERSON DUDLEY: Do you think it builds on your

reputation to unlawfully drive the truck?

MR. BRITTAIN: No, ma'am. And that's where I was getting at. I now realize that I put my partners and everybody else in a more inconvenience because of everything that occurred from driving on a suspended license.

CHAIRPERSON DUDLEY: Okay. So you're driving the truck on a suspended license. You're driving in to your job as a law enforcement officer, breaking the law driving on a suspended license.

You are going hunting, driving on a suspended license; correct?

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: And you are taking your gun and you're -- have your gun in your truck. And the gun is not secured.

Help me understand how you left a gun that was not secured in your truck.

And further, when asked about where's the gun, you said, "I didn't even know it was missing."

This is a deadly weapon. Help me understand why you didn't know where your deadly weapon was?

MR. BRITTAIN: That's a good question.

I've been taught, and whether it was in the military or as a SWAT officer, in order to -- good

weapon accountability and everything like that.

With that being in mind, I have a case that secures my pistols and there's multiple in there. And I take it out when I go and I secured it and I brought that out of the truck.

I was unaware that I left that firearm underneath an armrest when I was clearing out my vehicle.

That case then goes into a safe when I get home. And I was unsure -- I should have maintained accountability and checking that they were all inside there, but I did not.

CHAIRPERSON DUDLEY: Okay. Help me understand a little more about that.

For me it would be tantamount to leaving my child in a car seat. Oops, left the kid in the car seat, you know. Leaving a gun, a loaded gun, in a car unsecured, were you drinking when you were driving then?

What was happening in your thought process?

You have a loaded gun in the car and then weeks later not even know where that gun was.

MR. BRITTAIN: I have no excuse. And no, I was not drinking, I have not drunk -- drank and drove since I was arrested for it and I will never do it that again.

CHAIRPERSON DUDLEY: So you can't help me understand a little more about your thought process, you

just forgot?

MR. BRITTAIN: Yes, ma'am. I don't have any excuse.

CHAIRPERSON DUDLEY: Okay. Anything else? Yes --

MEMBER CLAVO: Yes.

CHAIRPERSON DUDLEY: -- Dr. Clavo?

MEMBER CLAVO: You stated that you signed a last-chance agreement.

When did you sign that?

MR. BRITTAIN: It was in the beginning of 2024.

MEMBER CLAVO: Can you give me some insight on -- on that last chance agreement?

Were you not supposed to have any alcoholic beverages from that time on?

What was the stipulations of that last-chance agreement?

MR. BRITTAIN: From the top of my head, it is no violations of policy regarding alcohol, relating with alcohol, drug use or dishonesty.

No complete abstinence -- abstinence from alcohol use. But --

MEMBER CLAVO: No complete or you were to have complete abstinence from alcohol?

MR. BRITTAIN: It did not mention anything about that.

MEMBER CLAVO: Okay. And then I think I just heard you say that the gun was in the armrest. Is that what you stated? That it was in the armrest? The gun that was found in the Dodge Ram?

Or was it under the seat?

MR. BRITTAIN: So it's a truck with three front seats where the middle seat folds down. And it was underneath that.

MEMBER CLAVO: So it raises up and it was placed under that where it raises?

MR. BRITTAIN: Yes, ma'am.

MEMBER CLAVO: Is it -- is it a normal practice for you, or habit of yours, that you put your -- I'm a gun owner. I own several guns. I just went shooting the other day. So I'm very, you know -- I'm into it.

So is it a normal habit -- because I know where I place my guns when I come from the range. And you say you were coming from the range. So is it a habit for you to have your loaded Glock with 15 rounds and one in the chamber and place it under the seat? A fold-down seat that's in the front seat next to you?

I mean, I'm sure you're a concealed weapons carrier. But still my question remains.

MR. BRITTAIN: No, ma'am. That was a loaner vehicle that I was not familiar with. That is why I did

not normally place it there nor check it after.

MEMBER CLAVO: Okay. Thank you.

CHAIRPERSON DUDLEY: Yes, Mr. Johnson.

MEMBER JOHNSON: Going back to driving to work, you had stated in your interviews that you had a trainee or a partner that drove you to work.

And of course the individual at some point said he didn't remember doing that at all.

Did you ever have a conversation with him about you was going to make that statement?

MR. BRITTAIN: No, sir. I was told not to discuss anything regarding my interview with anybody that could be involved. So that's all I have.

MEMBER JOHNSON: So just out of the blue, you said Morales -- I forget his name. I think it started with an M -- drove you to work.

MR. BRITTAIN: During my license suspension, there was multiple times where I used him, as a close friend, in order to drive me multiple places to include there.

MEMBER JOHNSON: So maybe I'm not clear. I thought he had mentioned that he was unaware that he had driven you to work.

MR. BRITTAIN: Yes, sir, I don't have a reason for that -- his answer. It was -- he was questioned three years after the incident.

MEMBER JOHNSON: Do we have clarity on that?

MR. NANFITO: His interview took place in March of 2025. This time period that we're talking about, it would be in October through December 2022.

So this resulted when his attorney asked a clarifying question and asked had he ever given rides to Mr. Brittain during the time period of his suspension or while they worked together at the Stanton Substation.

His answer was, "Not that I can remember."

MEMBER JOHNSON: It just sounds pretty strange. I'm sure he was aware of your situation.

And he had an opportunity to also be dishonest. And he chose not to be. So it's just kind of curious to me that a good friend of yours would not remember driving you to work.

And so I think about when you said that you've heard other officers getting in trouble by being dishonest, and it appears to me you continue to bury yourself in the situation that you was trying to get out of.

I'm just trying to get a better understanding of why.

I mean, you were clear at some point that you were being dishonesty and then you continued to be. And then you brought other folks in, hoping them to help you in

many ways cover up the dishonesty.

I think you put your friend in a very odd position, his career or you. And he chose his career.

Well, I'm hoping that you learned something from this.

MR. BRITTAIN: Yes, sir.

CHAIRPERSON DUDLEY: Okay. Couple of housekeeping things.

Court reporter's been at it for an hour and 18 minutes.

So the -- there are two more things I'd like to do on this case. One is I want to check with Board Members to see if you have any other questions at this time.

The other thing is I want to give his attorney an opportunity to speak and an opportunity for you to ask questions.

So, just to give me a sense of timing, do you have any more questions for the officer?

(No response.)

CHAIRPERSON DUDLEY: No.

Okay. And let me check, I'm sorry, I don't know your name. Is the attorney here?

MS. COLEMAN: Yes, ma'am. Kylie Coleman with Ferrone Law Group here.

CHAIRPERSON DUDLEY: Okay. And would you like to

use your five minutes to speak?

MS. DEL MUGNAIO: Yes, ma'am.

CHAIRPERSON DUDLEY: Okay. Then what I'm going to do is give the court reporter a break and when we come back, you will have your five minutes.

And then if the Board has any more questions or comments, we can resume that after you speak. Okay?

So it is now 10:18, let's come back at 10:28.

Ten minutes. Thank you, everyone.

(Brief break.)

CHAIRPERSON DUDLEY: Okay. Back on the record when you guys are ready.

And we'll get the attorney back on. Wonderful.

I had another question during the break, because my understanding is the DUI occurred on June 1st, 2022?

Does that sound about right?

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: Yeah. And you rented the car in September. So explain to all of us -- so on June 1st you got the DUI -- and tell me if any of this is incorrect, because I'm just trying to remember back when I prosecuted DUIs.

You got -- you had to hand over your regular license to the police officer who gave you the DUI; is that correct?

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: Then he gave you a paper DUI, excuse me. I'm sorry, a paper license.

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: Okay. And then that paper license was only good for 30 days. So you or your attorney or somebody -- and again, correct me if I'm wrong -- had to get an extension, so beyond July 1, you had a valid license.

Do you remember any of that?

MR. BRITTAIN: Yes, ma'am. My attorney filed for an extension.

CHAIRPERSON DUDLEY: Okay. So you knew that the -- did you know how long that extension was good for?

MR. BRITTAIN: No. I heard that it was still backed up from the time during COVID and --

CHAIRPERSON DUDLEY: I'm sorry, say that again.

MR. BRITTAIN: I was -- I was told that the hearings were still held up from COVID and were delayed. So it was possibly going to be just before or after my court case.

CHAIRPERSON DUDLEY: Okay. So the -- and then your court case was October 28th and so there was that.

So you rented the truck on September 22nd. At that point, you had -- you were still under the extended

license, and so you knew at some point, you were going to be convicted of a DUI and it was going to have some ramification to your license.

Help me understand why you rented the truck if you had a car?

MR. BRITTAIN: My truck had issues, major electrical issues, so I brought it to the dealership where they gave me a loaner vehicle, not as a rental, but a loaner from the dealership.

MR. BRITTAIN: So this Ram truck that you rented was something that your -- the company that was repairing your truck gave you some kind of voucher to go get another one while it was being repaired?

MR. BRITTAIN: It was a loaner vehicle from the dealership, ma'am.

CHAIRPERSON DUDLEY: Okay. So this was the loaner vehicle?

MR. BRITTAIN: Yes, ma'am.

CHAIRPERSON DUDLEY: Okay. That's where my confusion was.

So at that point you still had -- you were still on the -- for lack of a better term -- the extended license, but you knew something was going to be happening in the future with your license, you just hadn't been given that legal determination yet.

Okay. Thank you.

Any other questions on that?

Mr. Johnson, go ahead.

MEMBER JOHNSON: And help me understand too. I've never been pulled over for DUI so I don't understand the process. But I have a nephew that has.

And I think he had told me it took a couple times before he actually lost his license.

So my question is: Was this your first DUI?

MR. BRITTAIN: Yes, sir.

MEMBER JOHNSON: And maybe for clarity, I guess, if you are stopped under the influence and it is a DUI, you automatically loses your license; is that correct?

MR. BRITTAIN: There's an admin hearing through the DMV that determines their suspension and then the court hearing that determines that suspension. It's not automatic, but yes, eventually it could be or it could be overturned.

MEMBER JOHNSON: Why would it be overturned?

MR. BRITTAIN: If the officer did not have probable cause to make the stop. If it was not a good stop in the first place. Or they did not drive under the influence.

MEMBER JOHNSON: If the driver wasn't under the influence. But you had a 2.0 or more.

MR. BRITTAIN: Yes, sir.

MEMBER JOHNSON: So it was obvious that it was a DUI.

And then the officer was procedurally correct in making the stop. So all that was correct.

It was just a matter of your own personal issue now of how to deal with this DUI.

And I think you make a petition to the Court through the DMV to extend; is that correct?

MR. BRITTAIN: Yes.

MEMBER JOHNSON: Get a temporary license?

MR. BRITTAIN: Yes, sir.

MEMBER JOHNSON: And you did that within the time frame. How quick did you do that?

MR. BRITTAIN: I do not recall specifically how quickly I did it, because my attorney did it. But you have up to 30 days to complete it.

MEMBER JOHNSON: Okay. And I think that's the extension you were speaking of? Okay.

CHAIRPERSON DUDLEY: So the 30 -- my understanding is that at the time the license is physically taken away, you know, the license we all carry, you have 30 days to go back to DMV to get the extension. And that's what happened here.

That's my understanding.

MEMBER CRAWFORD: So Board Member --

CHAIRPERSON DUDLEY: Yes, go ahead.

MEMBER CRAWFORD: For clarity, what I learned working with the DA and a former DA, that each county is different in terms of how the process worked.

Ventura County is totally different.

And then you have the other element of the DMV which is totally different.

And the only reason why I wanted to provide some clarity to that -- and it's funny I'm trying to make light of this -- is I just discovered that my license was suspended two years ago but the DMV didn't know it.

And when I went back to ask them, they're like, oh, we have never seen this.

So I just -- people need to understand in context that when you're working with two different agencies, it's a little different.

And then the counties it's different.

And so that's not to excuse anything. Point in case is the fact is that on September 22nd, what I'm hearing from your knowledge is you thought you had a valid license and you went to the dealership. And I know, I love going to the dealership and getting the rental cars there. They give them to you. And sometimes they don't check.

And so I just wanted to point that out.

Board Member Johnson, that was it.

CHAIRPERSON DUDLEY: Thank you.

Okay. Now, your attorney. We're going to hearing from your attorney now.

Please go ahead.

MS. COLEMAN: Thank you, ma'am. Good morning, Board Members. My name is Kylie Coleman and I represent deputy Jared Brittain.

I want to thank you for the opportunity to speak today.

This is a case about accountability, transformation and the ability to rebuild trust after failure.

My client made serious mistakes. There's no question about that. Those missteps driven by personal struggles and deep shame compounded into the dishonest conduct we're here to address today.

Deputy Brittain does not deny it. Instead in his Skelly hearing, he stood before his department with no excuses, just honesty, context and the sincere desire to take responsibility.

Deputy Brittain explained the context of his actions, untreated PTSD and a reliance on alcohol that fueled his shame and poor decisions.

However, he didn't deflect, he owned it. He

submitted over 20 letters of support from colleagues and community members, all affirming his strong character.

One of the most powerful came from his therapist who described the initial investigation as his rock bottom.

Once seen as one of the deputies' best, he had been suffering silently. But instead of continuing down that path he got treatment, regained his health and reconnected with his purpose.

The therapist noted that while sobriety is part of his healing, true change came when he took full accountability.

The Department made the change -- made the decision it rarely takes. It rescinded its determination for a termination and gave him a second chance.

Deputy Brittain accepted a demotion, gratefully, and simply said: Don't take my word, let me prove to you who I am now and who I'm working to become.

He then voluntarily proposed a last-chance agreement holding himself to the highest standard. If he violates any policy regarding dishonesty, alcohol or drug use, he will be immediately terminated.

He put that promise in writing on February 22nd, 2024, and he has lived up to that promise every day since.

He served over a year as a Deputy I in custody without a single incident, like he noted earning strong performance evaluations throughout and was later re-promoted to his Deputy II position and reassigned to patrol where he remains today in good standing.

He was a model deputy with no prior discipline and since this incident over three years ago he's proven that he still is.

Deputy Brittain mentors younger deputies, speaks openly about his past and reinforces that integrity isn't about being perfect, it's about owning your failures and proving you're learned from them. Again, the POST standard of integrity without compromise.

And Commissioners, here I understand, as does he, your duty to protect the credibility of this profession. But I ask that you look at the full picture, not lowest point, but the growth and commitment he has demonstrated since.

The department he has served faithfully for over eight years continues to stand by him. He's earned their trust back and we're respectfully asking you to allow him the opportunity to earn yours.

Deputy Brittain is not asking for leniency. He's asking for a chance to prove your trust won't be misplaced.

If it takes probation, check-ins, additional training, or temporary suspension, he's willing to accept whatever conditions you find appropriate to demonstrate that the man who is standing before you today is not the man who made those mistakes.

And we thank you for your time and commitment to this profession and for considering his future in it.

And that's all I have.

CHAIRPERSON DUDLEY: Thank you.

Do you have the last-chance agreement in front of you?

MS. COLEMAN: I do, ma'am.

CHAIRPERSON DUDLEY: Okay. When was it signed?

MS. COLEMAN: It was signed on February 22nd, 2024.

CHAIRPERSON DUDLEY: Do you know what it said about alcohol use?

MS. COLEMAN: Yes. Let me pull it up.

Are you referring to whether there was any restrictions on drinking in its entirety or --

CHAIRPERSON DUDLEY: Anything about alcohol use.

MS. COLEMAN: Alcohol use personally, no.

It only touches on the fact that if there's any sustained allegation of dishonesty, any sustained allegation of misconduct where alcohol was a factor in Deputy Brittain's behavior or whether there's violation

of any alcohol related policy.

And then similarly for any controlled substance.

CHAIRPERSON DUDLEY: Okay. So misconduct that was alcohol related or --

MS. COLEMAN: Or where -- the violation of any alcohol-related policy.

CHAIRPERSON DUDLEY: Okay. So there was nothing in there about that he has to -- that he has to stop using alcohol or he can't drink at all. Or he can't -- he has to stay out of places where alcohol is the main form of blah-blah-blah.

MS. COLEMAN: No, ma'am. That is not in this agreement.

CHAIRPERSON DUDLEY: So no abstinence at all?

MS. COLEMAN: Correct.

CHAIRPERSON DUDLEY: Okay.

Any other questions for the attorney?

MEMBER CLAVO: Yes.

CHAIRPERSON DUDLEY: Let's go Dr. Glaser, then Dr. Clavo.

MEMBER GLASER: Thank you.

Ms. Coleman, you indicated that the last-chance agreement requires a sustained finding with respect to various categories of offense; is that true?

So that it would require an Internal affairs

Investigation and a sustained finding in order for his position to be revoked?

MS. COLEMAN: Correct. A sustained finding of dishonesty, alcohol or drug use would be an automatic termination.

MEMBER GLASER: Okay. Thank you.

MEMBER CLAVO: I want to go back to the EMDR. That's the only therapy you're in; correct?

MR. BRITTAIN: No, I'm in the normal therapy, with my therapist that I do see on a regular basis. I just tried EMDR for the PTSD.

MEMBER CLAVO: Okay. Then let me go back I may have missed that earlier.

How often are you seeing that therapist?

MR. BRITTAIN: Every one or two months. When it was at the height of this whole incident, I was seeing her every two weeks.

But, I have since stepped back to once a month or every two months.

MEMBER CLAVO: You've been going there since 2022 or --

MR. BRITTAIN: Yes.

MEMBER CLAVO: -- just recently?

MR. BRITTAIN: It's been over three years.

MEMBER CLAVO: Over three years. Okay. That's my

question.

CHAIRPERSON DUDLEY: Anything else?

Yes, Mr. Johnson.

MEMBER JOHNSON: So you signed the last-chance agreement pertaining to dishonesty or alcohol. Is it for seven years? Or is it for a lifetime? Or career time, I should say.

MS. COLEMAN: The specific allegation is a two-year waiver of his rights if any of those sustained -- as I noted, are violated.

And then that is the two-year waiver, sir, to answer your question.

CHAIRPERSON DUDLEY: So that expires 2-22-26?

MS. COLEMAN: Correct. That would then be February 22nd of 2026.

CHAIRPERSON DUDLEY: Six months. Okay.

Anything else?

MEMBER JOHNSON: I guess my last question would be, was there given a choice of time length to determine whether you would sign that last chance?

In other words, was it offered that -- or did you propose the two years yourself?

Or could you have chosen five years?

MR. BRITTAIN: That is what the Department and County Counsel provided with me.

No back and forth from my understanding, sir.

MEMBER JOHNSON: Would you be willing to do five years?

MR. BRITTAIN: I would do whatever time was necessary to maintain my profession.

CHAIRPERSON DUDLEY: Anything else?

Okay. Anything else, Counsel?

MS. COLEMAN: No, ma'am, thank you.

CHAIRPERSON DUDLEY: Okay. Anything else, Officer?

MR. BRITTAIN: No.

MS. COLEMAN: And thank you, Board.

CHAIRPERSON DUDLEY: Thank you for coming forward.

Would you like to go into discussion?

Okay. We'll take a few minutes now and go into --

Oh, is there any public comment?

There was somebody on the --

MS. DEL MUGNAIO: Yeah. Right here.

The gentleman raising his hand.

CHAIRPERSON DUDLEY: Is there a Mr. Gill?

MR. GILL: Yes, the level of standard for this officer is abysmal. He's made multiple mistakes, time and time again.

Regular citizens are held to this kind of standard. The racist remarks, the DUIs, firearms in the seat unsecured, PTSD, emotionally unintelligent.

That's all. Thank you.

CHAIRPERSON DUDLEY: Mr. Gill? Mr. Gill, are you still there?

MR. GILL: Yes.

CHAIRPERSON DUDLEY: I -- first, thank you for calling.

You said something about racist comments by this officer? Or just officers in general?

Do you have any allegations you want to bring forward about this officer? Or just officers in general?

MR. GILL: This officer.

CHAIRPERSON DUDLEY: Well, what is it you want to say, Mr. Gill?

MR. GILL: Actually, I'm saying officers in general.

CHAIRPERSON DUDLEY: Okay. Okay. Is there anything else about this officer that you would like to say?

MR. GILL: Well, yes. The DUI, the PTSD, the un -- loaded firearm in the seat, emotionally unintelligent.

How can someone with PTSD and someone struggling with sobriety be able to carry a loaded firearm and deal with the public?

CHAIRPERSON DUDLEY: Okay. I understand. And --

MR. GILL: Along with dishonest paperwork and lying time and time again.

The integrity is not to lie. Not you get caught and then you take responsibility for it.

It's taking responsibility for your actions. He's -- he's a dishonest officer.

CHAIRPERSON DUDLEY: Yes. Yes. He has been a dishonest officer and that is something that he has told us today and something we've seen, as you have seen, in this past.

And we thank you for your call.

MR. GILL: Thank you.

CHAIRPERSON DUDLEY: Bye-bye.

MR. BEATTY: Madam Chair, do we want to identify the public caller's name?

CHAIRPERSON DUDLEY: His name was Salvador Gill.

The court reporter got it.

I didn't get his first name.

UNIDENTIFIED SPEAKER: Sakhbir.

MS. DEL MUGNAIO: For clarity, they're not required to identify themselves. So it is not an issue. We can just say "public comment."

CHAIRPERSON DUDLEY: Okay. Let's go into chambers, or whatever that is. Conference room.

(Time noted: 10:43 A.M.)

---o0o---

(Closed session was held:
10:45 A.M. to 11:12 A.M.)

---o0o---

(Time noted: 11:15 A.M.)

CHAIRPERSON DUDLEY: We will now reconvene to regular session to take a vote on the Board's recommendation in the matter of case POST2316745, Jared Brittain, who at the time of the events at issue in this case, was employed with the Orange County Sheriff's Department.

Does the Board have any comments in this matter?

Is there a motion to make a recommendation to the Commission in this matter?

MEMBER JOHNSON: Johnson. Recommend revocation, decertification.

CHAIRPERSON DUDLEY: Is there a second?

MEMBER GLASER: Second.

CHAIRPERSON DUDLEY: And Chandler, can you take the roll.

MR. KNAPP: Yes, Madam Chair.

Clavo.

MEMBER CLAVO: Aye.

MR. KNAPP: Clavo, aye.

Crawford.

MEMBER CRAWFORD: Aye.
MR. KNAPP: Crawford, aye.
Dudley?
CHAIRPERSON DUDLEY: Aye.
MR. KNAPP: Dudley, aye.
Glaser.
MEMBER GLASER: Aye.
MR. KNAPP: Glaser, aye.
Johnson.
MEMBER JOHNSON: Aye.
MR. KNAPP: Johnson, aye.
Lara.
MEMBER LARA: Aye.
MR. KNAPP: Lara, aye.
Pena.
MEMBER PENA: Aye.
MR. KNAPP: Pena, aye.
That's seven yeses. Motion carries.
CHAIRPERSON DUDLEY: Motion passes.
Okay. Now we're going to call the second case.
At this time I will now call upon Law Enforcement Consultant Scott Baland, Professional Conduct Northern Bureau and Brian Hoffman, Attorney IV, Legal Affairs Bureau, to provide a report on case POST2318309 Robert Sasek, who at the time of the events at issue in

this case was employed with the Oroville Police Department.

MR. BALAND: Good morning, Chair and Members of the Board. My name is Scott Baland and I'm one of the law enforcement consultants assigned to the Professional Conduct Northern Bureau in the Peace Officer Standards Accountability Division.

With me today is Brian Hoffman an attorney with our Legal Affairs Bureau.

I'm here today to present case number POST2318309, involving the Respondent, Robert Sasek formerly an officer with the Oroville Police Department.

It is the Division's determination that clear and convincing evidence exists to demonstrate that the Respondent committed an act of serious misconduct as set forth in Penal Code Section 13510.8 on September 1st, 2022.

Specifically, the Division has determined that Robert Sasek committed the following act of serious misconduct.

Penal Code Section 13510.8(b)(2), abuse of power.

In this presentation I will present a brief outline of the Division's findings of investigation in this matter.

The Respondent began his career as an officer with

the Oroville Police Department on April 28th, 2021.

The Respondent received a 30-day suspension and a 90-day performance improvement plan penalty as result of the Oroville Police Department investigation into this incident.

Later, the Respondent was terminated from Oroville Police Department on August 9th, 2024, resulting from an investigation into a separate incident, not a POST related matter. And the Respondent currently possesses a basic POST certificate.

There is no other relevant discipline or complaints against the Respondent.

We'll start with the timeline.

On September 1st, 2022, at approximately 1330 hours, or 1:30 P.M., the Complainant was arrested by Butte County Sheriff's Office for trespassing on private property when she was found swimming in the backyard pool of a private residence.

The Complainant was transported without her shoes or purse to Butte County Jail and was later booked.

The Complainant stated in her interview that she had taken methamphetamines earlier in the day, was feeling the effects of the narcotics and was hot and dehydrated, explaining why she was in the pool.

The complainant was released from the jail at

approximately 1617 hours or 4:17 P.M.

At approximately 2052 hours or 8:52 P.M. the Complainant entered a Dollar General store in the City of Oroville and began hiding under some merchandise carts in the back store room.

Employees called and requested Oroville Police Department for assistance.

The Respondent was dispatched to the Dollar General at approximately 2053 hours, 8:53 P.M.

The Respondent arrived on scene at approximately 2055 hours, two minutes later.

The Complainant was ultimately arrested by the Respondent for trespassing at approximately 2121 hours, 9:21 P.M. after removing her from underneath the carts.

Respondent transported the Complainant to Butte County Jail. The Butte County Jail nursing staff refused the Complainant for booking because she was experiencing high blood pressure and required her to get medical clearance prior to booking.

The Respondent began transporting the Complainant to Oroville Medical Center at 2143 hours or 9:43 P.M.

The Respondent arrived at Oroville Medical Center five minutes later at 2148 hours and entered the emergency room. However, the Respondent did not bring the Complainant in for medical treatment. Instead, he

left her in the patrol vehicle.

The Respondent returned a short time later, removed the Complainant from his patrol vehicle and cited and released her and told her she needed to seek medical treatment because that's why she wasn't booked.

A security guard at Oroville Medical Center, who was a former Oroville Police Department officer, advised POST in his interview that he told the Respondent that the Complainant was going to continue to be a problem.

Next slide please.

The Respondent left Oroville Medical Center on his own at approximately 2201 hours, 10:01 P.M.

Immediately after the Respondent left, the Complainant began attempting to access restricted areas of the Medical Center and locked herself in an employee-only restroom in a restricted area.

The security guard advised the Complainant -- advised that the Complainant exited the bathroom after multiple command and announcements.

The security guard advised the Complainant then ran and got underneath an MRI trailer and refused to come out.

The security guard called the Respondent back to have him respond to the Medical Center to deal with the Complainant.

The Respondent was dispatched back to the Medical Center. This call came at approximately 2211 hours, 10:11 P.M. or ten minutes after the Respondent initially left the Medical Center.

When asked, the security guard stated based on his experience as a peace officer he believed that the Complainant was under the influence of methamphetamine at this time.

The Respondent returned to the Medical Center and arrived at approximately 2213 hours, 10:13 P.M.

Sergeant Khan, his supervisor, also arrived on scene around this time.

The Respondent was able to get the Complainant out from underneath the MRI trailer. This was the second time Respondent had to remove the Complainant from underneath a structure or item.

During this encounter, neither the Respondent nor Sergeant Khan had their body-worn cameras activated.

The Respondent walked the Complainant back to his patrol vehicle and placed her in the back seat of his caged patrol vehicle.

There are conflicting statements about whether or not Complainant was handcuffed or not at this time.

Around this time, a separate officer, Officer Isaac Herrera, arrived on seen and parked

near the Respondent's patrol vehicle and remained seated in the driver's seat of his patrol vehicle.

The Respondent and Sergeant Khan stood at the driver's side door of Officer Herrera's patrol vehicle.

At this time, it was decided that the Respondent would transport the Complainant to Chico where she resides.

The Respondent admitted that he was frustrated that he was going to have to drive the Complainant all the way to Chico.

Officer Herrera stated he also observed that the Respondent seemed frustrated and he said he made a joke, or a comment, that the Respondent should quote/unquote drop that bitch off on Neal Road.

Officer Herrera stated the Respondent definitely heard the comment because he smirked afterwards. Officers Herrera stated that Sergeant Khan also heard the comment and just shrugged his shoulders in response.

When asked in follow-up interviews, both the Respondent and Sergeant Khan stated they never heard the joke or comment, even though according to Officer Herrera they were standing in close proximity and were less than a foot away from him at the time the joke or comment was made.

At 2218 hours, 10:18 P.M., the Respondent provided

Oroville Police Department dispatch with his beginning mileage to an unknown location in the Chico area.

It was at this time the Respondent attempted to restart the RIMS application on his work cellphone in an effort to reboot that system because he stated he had been having issues with it throughout the shift.

RIMS is known as Records Information Management System, is an application to receive computer dispatch logs and also has the function to send messages to dispatch and other officers. It runs as an application on a cellphone and doesn't interfere with the cellular phone's capabilities to make or receive calls or text messages.

The Respondent never reported having RIMS issues to anyone that day, including Sergeant Khan.

At the time of transport, Respondent still had not activated his body-worn camera.

The Respondent then began transporting the Complainant towards Chico.

After approximately 15 and a half miles, and as they approached Neal Road -- and just as a reminder, this is the same location mentioned by Officer Herrera's comment -- the Respondent stated that the Complainant's mood, slash, demeanor changed and she demanded to be let out of the patrol vehicle.

The Respondent exited onto Neal Road and traveled in an easterly direction. Respondent stated he pulled over near the entrance to the Old Worm Farm, which is approximately .6 miles from Highway 99.

And if you can go to the next slide, please.

It's hard to see on here, but there's a distance measurement. That area to the left is the entrance to the Worm Farm to the right is Highway 99 and it's, according to my calculations, straight line, it's .63 miles.

CHAIRPERSON DUDLEY: Just a question. Is it literally a worm farm? Or it's just referred to --

MR. BALAND: It was formerly a worm farm. And that's such a thing, I guess. I never heard of it myself.

After the Paradise fires, it was burned down, to my knowledge and never reopened, so it's just a vacant --

CHAIRPERSON DUDLEY: Thank you.

MR. BALAND: If you could do the next slide, please.

This is the entrance to the Worm Farm and Neal Road shown there east and westbound. As you can see, just kind of a dirt shoulder, no overhead lighting from the business or anything like that.

The Respondent stated he opened the rear door of

the caged patrol vehicle and the Complainant exited and began shouting expletives and "mother effing" him, as he said, towards him and kicking rocks.

When asked, the Respondent stated he didn't think to activate his body-worn camera to capture the Complainant's alleged actions.

The Respondent stated he thought to himself "bye," and got into the patrol vehicle and left the scene.

When asked, the Respondent stated he did not try to contact Sergeant Khan or the Oroville Police Department dispatch either by radio or cellphone.

Respondent stated that there's always radio problems when traveling towards Chico, but he admitted he did not attempt to utilize his radio to see if he could successfully broadcast information.

The Respondent also stated that he didn't attempt to change radio frequencies to possibly contact an allied agency, even though he stated, and others have stated, that that is a capability of the radio system.

The Respondent also stated he did not attempt to use either his personal or work cellphone to contact dispatch or Sergeant Khan, because he didn't think about it, even though he stated he has contacted them previously by that method.

The Respondent began traveling back towards the

City of Oroville and reactivated his RIMS as he reentered the Oroville area, at that time, at approximately 2247 hours or 10:47 P.M.

And he put out that any mileage from his transport of the Complainant. The Respondent stated in his interview that he didn't document what the actual ending time or mileage was when he dropped the Complainant off on Neal Road. Instead he just provided what the mileage was as he reentered Oroville.

The Respondent advised Sergeant Khan in person that he had dropped the Complainant off on Neal Road, but didn't explain the circumstances that lead up to him dropping her off.

Sergeant Khan stated in his interviews that at the time he thought Neal Road was the location of a well-known homeless area called "The Estates." And he had known -- and had he known it was a dark, desolate location with no services, he would have made the Respondent return to Neal Road and provide service to the Complainant.

When asked, Sergeant Khan stated the Respondent never advised him of any issues with RIMS that day and there were no other reported issues with RIMS by other officers.

When the Respondent was asked why he didn't reach

out to Sergeant Khan or dispatch, the Respondent said he just didn't think of it. In hindsight, he should have.

Respondent stated the reason he left the Complainant out on Neal Road was he felt it was a courtesy transport and he didn't feel he had the authority to keep her in his car.

When questioned about his responsibility for getting the Complainant to a safe location because she had been experiencing medical issues that required treatment, and was under the influence of a narcotic, he stated that she had been making good decisions and felt she could care for herself. However, when asked in his interview by POST, the Respondent admitted he left the Complainant in a worse position that when he took her into his care or custody and he stated he didn't offer to contact anyone for her or to let her use his cellphone prior to leaving.

When the Complainant was interviewed by POST, she had a conflicting account of the circumstances as they reached Neal Road.

The Complainant advised when she was being transported she thought she was being taken to a hospital or somewhere else to receive services.

The Complainant advised she was still experiencing dehydration and was still feeling the effects of

methamphetamine, so she was laying down in the rear seat of the caged patrol vehicle.

The Complainant stated that she felt the patrol vehicle exiting the freeway on Neal Road, she realized that they were heading towards Paradise, not Chico, so she asked the Respondent where they were going or where he was taking her and he replied, "Just shut the fuck up."

The Complainant stated that the Respondent pulled over, exited the patrol vehicle, opened the door, grabbed her arm and had her exit the patrol vehicle.

According to her federal lawsuit, the Complainant alleged that she was dropped off on Neal Road at the Neal Road Waste Facility, which is approximately 1.1 miles from SR-99 and about a half mile further east from the Worm Farm.

If you can go to the next picture, please.

It's -- again, it's kind of hard to show the distance. The point to the right is the Worm Farm and the point to the lower left is the Waste Facility.

The Complainant stated she asked him, "You're just going to leave me out here?

And the Respondent replied, quote, "You're not my fucking problem anymore, deal with it" and left the scene.

The Complainant was left on Neal Road during hours of darkness with no shoes, no purse, no cellphone, and no available services.

Neal Road, as you have seen, is a two-lane road that is situated in the east-west direction. There are no overhead lights and the only businesses in the general area are Franklin Construction and the Neal Road Waste Facility, neither of which were open at this time of night.

If you could go to the next slide, please.

Again, this just shows those two. On the bottom right is the waste facility. Kind in the upper middle the Franklin Construction. And again the Worm Farm is over on the left-hand side of the screen.

The Complainant stated she was scared, still feeling the effects of methamphetamine, experiencing anxiety, and was feeling nauseous because she had just got left out in the middle of nowhere in the dark. So she started walking back towards the way they came, towards Highway 99.

The Complainant stated she walked for about five minutes and then heard an oncoming vehicle.

The Complainant stated she turned around, saw the vehicle headlights and then felt an impact of being hit by the unknown vehicle. The vehicle did not stop to

render aid.

The Complainant stated she flew into the embankment, hit her head on some rocks, and was in and out of consciousness until the next morning September 2nd, 2022, when she climbed out of embankment and entered the grounds of Franklin Construction, where an employee called 911 at approximately 0934 hours, 9:34 A.M.

If you could show the next picture, please.

The arrow in the middle kind of shows where she was found on the side of Franklin Construction.

Next one, please, again.

This is closer look at it. Again the Worm Farm's on the upper left. The construction and the waste facility would be kind of off the screen down on the bottom. And then she was found near some water tanks on Franklin Construction.

The employee that reported the Complainant was on the property and appeared to be on something, quote/unquote.

The Complainant was ultimately transported to Enloe Medical Center where she was admitted for her injuries.

The California Highway Patrol was never contacted to complete a traffic collision report for the hit and run.

The Respondent completed his Dollar General arrest report the next day, which is September 2nd, 2022, and did not mention anything about his interaction with the Complainant at the Oroville Medical Center or the subsequent transport to Neal Road because the Respondent felt that they were two separate incidents.

However, no other type of incident report or documentation was prepared by the Respondent for the incident at the hospital, nor the transportation of the Complainant to Neal Road.

In his Dollar General arrest report that was completed the following morning, the Respondent stated he felt the Complainant was under the influence of a central nervous system stimulant. And this report was approved by Sergeant Khan.

As a result of being left on Neal Road and getting struck by the unknown vehicle, the Complainant suffered major injuries consisting of multiple contusions and lacerations, a ruptured small intestine, which caused internal bleeding. The Complainant had to have over one foot of her intestines removed. She had 30 to 40 percent of her colon removed, she had to use a colostomy bag and she spent seven days in intensive care and in total, almost a month at Enloe Hospital.

The Complainant developed sepsis from her injuries

and ended up having to have two of her toes amputated.

The facts that I've just recited support the Division's finding that Respondent was involved in serious misconduct, specifically abuse of power.

For purposes of the Division's analysis, clear and convincing evidence means evidence of a charge is clear and convincing so long as there is a high probability that the charge is true. The evidence need not establish a fact beyond a reasonable doubt.

The Division recommends that the Respondent's POST certification be revoked.

The Division's recommendation is based on the following:

The Respondent's actions during this incident were inexcusable and were performed out of frustration from having to deal with the Complainant on multiple occasions.

The willful and deliberate act of leaving the Complainant in a dark, desolate area without shoes, with no means of communication or availability of services, all while she's experienced mental and/or medical issues from narcotics, was significantly egregious, displayed a wanton disregard for public safety and was a complete dereliction and neglect of his duties and oath he took as a peace officer.

The Respondent purposely took the Complainant to this location approximately 15 and a half miles away as a means of removing her from the City of Oroville and to ensure he and the Oroville Police Department wouldn't have to deal with her again that night.

In an effort to conceal his actions, the Respondent deliberately failed to implement any of the safeguards he had available to him: Body-worn camera, radio system and two cell phones during this incident. And did not provide written documentation of the incident at Oroville Medical Center and the resulting transport to Neal Road.

These safeguards were supposed to be utilized to ensure the safety of the public and the officer by accurately documenting and capturing the actions of all involved parties.

As a result of the Respondent's actions on this date, the Complainant suffered life-altering injuries, which required lengthy hospitalizations and multiple surgeries, including the amputation of two of her toes.

The Complainant filed a Federal Civil Rights lawsuit against the City of Oroville, the Oroville Police Department, the Respondent and some others.

The City of Oroville settled the lawsuit for $3 million.

In closing, the Complainant stated in her interview to POST that even after this incident, she doesn't have any hard feelings towards law enforcement and believes that there are good cops that do what they're sworn to do.

She further stated, and this is a quote, "Regardless of what kind of situation I was in, if I was on drugs or not, I'm still a human being, and I should be treated like a human being. And for me to be left out there in the middle of nowhere with medical issues, and for this to happen to me, it shouldn't have happened because I'm a human being and my life is valuable. I believe that he put me in a worse situation than I was already in. I don't understand it. I never got an answer why, because he tried to cover up everything that he did."

I want to thank you for your time this morning and your consideration of this case.

And with that, I'm happy to answer any questions the Board may have.

CHAIRPERSON DUDLEY: Thank you.

Couple of questions I have while I was reading all this. And appreciate your presentation, I especially appreciate the interview at the very end of your presentation. It gave us all more insight into the

Complainant.

Was there ever an investigation as to whether she was hit by a car?

MR. BALAND: No. Butte County Sheriffs, when they were out there the next morning, they walked the scene to look for vehicle debris and didn't find any. But that's assuming that glass broke or a mirror broke. If it's a glancing blow off a fender, it wouldn't necessarily leave any debris.

And as I mentioned, the California Highway Patrol normally would get called out in a situation like that to investigate the traffic collision, and that did not occur.

CHAIRPERSON DUDLEY: So no one called CHP?

MR. BALAND: Correct.

CHAIRPERSON DUDLEY: Okay. And did the physicians involved form an opinion as to mechanism of injuries?

MR. BALAND: We did not obtain the medical records for that, so I don't know if they made a determination. This is all based on the Complainant's statement.

CHAIRPERSON DUDLEY: So we don't have any other insight into -- that was quite a collection of injuries and somewhat confusing collection of injuries.

And no one opined as to how she got them?

MR. BALAND: We did not, no.

CHAIRPERSON DUDLEY: Okay. Thank you.

Any other questions by other Board Members?

Yes.

MEMBER PENA: One point of clarification.

When you said that she believed she was being transported to a hospital, she thought she was being transported to a hospital in Chico, wasn't that correct?

MR. BALAND: When she first got put in the patrol vehicle, she assumed she was going either to the hospital or to Chico. She didn't -- somewhere to get services, because he had already told her before that she needed medical services.

MEMBER PENA: Did she -- do you know if she ever -- because she was suffering from high blood pressure, which obviously can be very serious.

Was she ever checked that day, any place, for her high blood pressure and treated?

MR. BALAND: So when she was at the jail from the initial arrest, they determined she had high blood pressure. That's why they told her that she had needed to go to the hospital to get medical clearance. She was never brought into the hospital. The Respondent left her in the patrol car instead of taking her into the hospital.

MEMBER PENA: Okay. She also complained of

dehydration, which also can be very serious. And it was -- wasn't it over 100 degrees that day?

MR. BALAND: She said it was over 100 degrees. And I did a cursory check of -- on the internet. It was a summer day in September. It was over 100 degrees that day.

CHAIRPERSON DUDLEY: I don't think she complained about the dehydration until the later interview.

I don't think that there was any indication she complained about it that day.

MR. BALAND: No. In our interview with her is when she said she was dehydrated that day.

CHAIRPERSON DUDLEY: Right.

MEMBER PENA: Did anybody ever offer her water?

MR. BALAND: Not to my knowledge.

MEMBER PENA: I mean, it's a hot day. She's in the back of a patrol car.

MR. BALAND: Yeah.

MEMBER PENA: One would think she might --

CHAIRPERSON DUDLEY: I don't think we know if they did or didn't.

MR. BALAND: Nothing in the report said she was offered up water, but that's just --

MEMBER PENA: Yeah.

MR. BALAND: -- my assumption she was not.

MEMBER PENA: I mean, apparently it's why she was in the bathroom at the hospital, to get water. And why she was in the pool initially was because she was hot.

MR. BALAND: She did state that's why she was in the pool.

MEMBER PENA: That's according to her. And according to her that's why she was in the bathroom was to drink water out of the faucet.

CHAIRPERSON DUDLEY: But again I think we just got that end interview, the most recent one, conducted by this officer.

MEMBER PENA: Uh-huh. Yes.

I think she also said in her interview that when she -- about, regarding her toes being removed, that at one point the doctor -- they wanted to remove a foot, but she argued against that and they ended up just removing her big toe.

MR. BALAND: Yeah, I know she had developed sepsis --

MEMBER PENA: Yes.

MR. BALAND: -- and at one point she said that her daughters got called because she was actually looking at maybe life-ending injuries or medical --

MEMBER PENA: Right.

MR. BALAND: -- illnesses, but she said that the

doctor tried a couple different things and I think that's why he was able to save her foot and just only lose a couple toes.

MEMBER PENA: And her daughters were looking for her that evening or subsequent to that; correct?

MR. BALAND: After this incident, yeah.

MEMBER PENA: Okay. They were calling around trying to find her; right?

MR. BALAND: Correct.

MEMBER PENA: And they were in Chico?

MR. BALAND: I don't know that for certain. I'm assuming that general area, Chico-Oroville. But I don't know where they lived.

MEMBER PENA: Because that's where she lived, apparently; right?

MR. BALAND: Correct. I don't know if she resides with either of her daughters or not.

MEMBER PENA: Okay. All right. Thank you.

CHAIRPERSON DUDLEY: Thank you. Any other questions from other Board Members?

Dr. Glaser.

MEMBER GLASER: One question, this person's referred to as a Complainant, but is that in reference to the civil suit that she's engaged in? Not in reference to her standing with POST?

MR. BALAND: Correct. Yeah, complainant, we were toying with "victim" or you know, just without naming her.

MEMBER GLASER: But she -- this case came to POST through the agency?

MR. BALAND: Correct.

MEMBER GLASER: Through Oroville.

MR. BALAND: Yes.

MEMBER GLASER: Another question I have is, does anybody know if Neal Road is -- has a reputation as a particularly desolate area?

I mean, it's interesting that Officer Herrera suggested it and then that's where the Complainant ended up.

Is there any background on Neal Road that we should know about it? Because it keeps coming up.

MR. BALAND: I mean, not to my knowledge. I mean, it is desolate, as you've seen in the pictures and if you could just picture that at 10:30-ish at night with no streetlights it's, I would just assume, very dark. I've never driven out there at that time.

Again, the only businesses out there are an old, abandoned Worm Farm, Franklin Construction and then Neal Road Waste Facility or for lack of a better term, a dump, so --

MEMBER GLASER: Oh, no common lore about Neal Road?

MR. BALAND: Not that I know of, no.

MEMBER GLASER: And then I was unclear on the purpose of the transport to Chico. It sounded in one -- one part that I read, like it was just -- the mandate was just to take her to Chico because that's where she's from. And there was a question about whether that was to a medical facility or not. Is that -- is there any clarity --

MR. BALAND: From what I read, it doesn't seem like they really knew where they were going to end up.

And speaking from my experience in law enforcement, a lot of times if you're going to an unknown area, you'll get there and then you'll find a place that has services available at that time of night.

So I know in some of the other statements that were made by Sergeant Khan and some others, like oftentimes there's like a Home Depot there that they tend to drop people off at. But, again, at this time of night that wouldn't have been open either. So --

CHAIRPERSON DUDLEY: There was also this thought that she would not know the address, the physical address, but she might be able to point out as she got closer.

MR. BALAND: Correct.

MEMBER GLASER: Thank you.

CHAIRPERSON DUDLEY: Anything else?

MEMBER JOHNSON: Yeah, Johnson.

I thought maybe for clarity, Neal Road, one of the officers said was a homeless camp?

MR. BALAND: So Sergeant Khan said he believed that where Neal Road was at, where he -- where he was told she was dropped was a homeless encampment. He didn't know. That's what he suspected it was. That's when he said he dropped her at off Neal Road, he assumed it was this homeless encampment.

MEMBER JOHNSON: Okay. First question, what's the distance to the nearest services from where she was dropped off at?

MR. BALAND: I couldn't even tell you because I'm not familiar with that area.

But I know the City of Chico was only about another mile and a half, two miles away. So I would imagine there would have been services there.

Coming from Oroville, I'm not sure if there were services prior to that. But, again, if the intention was to go to Chico, another mile and a half, two miles, would have put them in the city proper of Chico.

MEMBER JOHNSON: Is that a dirt road by chance?

MR. BALAND: Is what --

MEMBER JOHNSON: Neal Road.

MR. BALAND: It's an asphalt road, there's -- yeah, it's a two-lane asphalt road, there's dirt shoulders.

MEMBER JOHNSON: Okay. So R-I-M-S, what is that?

MR. BALAND: So it's a Records Information Management System. So as I said, it's an application on your cellphone that you use. And they use it in law enforcement. It's a means of communicating with dispatch. You get your calls sent to that phone, it's a CAD system, computer-aided dispatch. So it will give all the details of the calls that you are responding to. You can also message back and forth with that application.

MEMBER JOHNSON: That wasn't utilized.

MR. BALAND: It was turned off.

MEMBER JOHNSON: It was turned off.

BMC, body-worn camera.

MR. BALAND: BWC, yes.

MEMBER JOHNSON: That was also not activated?

MR. BALAND: Never activated.

MEMBER JOHNSON: Any communication devices were all not utilized to convey what was happening.

MR. BALAND: Correct.

MEMBER JOHNSON: How many times the Respondent came into contact with the Complainant prior to that night?

MR. BALAND: Prior to that incident, they had never encountered each other. But two times that night. The first time at the Dollar General and then the second time at the hospital when he had to re -- get recalled back out there to deal with her. So two times that night.

MEMBER JOHNSON: That answers my questions, thanks.

CHAIRPERSON DUDLEY: Anything else from the Board?

Okay. At this time, does the subject officer and/or their counsel wish to make public comment?

If so, you will each be given five minutes to speak and the time limits will be strictly enforced. So please ensure you complete your comments within the allotted time. While commenting, keep in mind that the Board will only consider the facts as presented by the Division today and will not consider any additional facts or defenses at this time.

The sole question before the Board today is the following: If the facts offered by the Division today are, in fact, proven at a later hearing, do those facts demonstrate a high probability that serious misconduct, as defined in Penal Code Section 13510.8 and Commission Regulation 1205 occurred.

So is there anyone from -- so let me -- before we get to the public, let me find out if either the

attorney or the officer would like to speak.

MR. SASEK: I would like to speak.

CHAIRPERSON DUDLEY: Please, come on up.

Would you identify yourself for the record.

MR. SASEK: My name is Robert Sasek. I'm the officer in question.

CHAIRPERSON DUDLEY: Okay.

MR. SASEK: Good afternoon.

CHAIRPERSON DUDLEY: Good afternoon.

MR. SASEK: Good morning, since it's almost afternoon.

So I would like to take full responsibility for what happened. It was a mistake. I did it with no malice intent. And I've learned from it.

I spent my entire life, my entire adult life, in service from the Army to being an officer. That's what I love to do. And I don't think that one mistake should make me not be able to do that anymore.

CHAIRPERSON DUDLEY: Tell us what the mistake you made was.

MR. SASEK: The mistake that I made was lack of communication. I believe that I interpreted what I determined to be a potential Fourth Amendment violation over the 14th Amendment.

I did not intend to leave her in harm.

But, I also didn't know where to draw the line of what, you know, if she wants out and it's not a detention, I can't -- I can't unlawfully detain her.

CHAIRPERSON DUDLEY: And why was that a mistake?

COURT OFFICER: Because it led to her being placed in a worse position than she was in and she suffered injuries.

CHAIRPERSON DUDLEY: Does Oroville Police Department have a motto?

MR. SASEK: Not that I know of.

CHAIRPERSON DUDLEY: Okay. When I think -- or when you think about the motto of law enforcement or military, what do you think of it being?

MR. SASEK: Protecting people that can't protect themselves.

MEMBER JOHNSON: Okay. Was she someone who could protect herself?

MEMBER JOHNSON: Knowing what I know now, no, I don't believe she was.

CHAIRPERSON DUDLEY: You say knowing what you know now, do you know more about her now than you knew that night?

MR. SASEK: I do know more but about her now.

CHAIRPERSON DUDLEY: What did you learn subsequent to this event that lets you believe that you know more

about her now?

MR. SASEK: I learned about her past history. I'm a wrestling coach and a lot of my parents are parents who had substance abuse issues. And I've had some parents tell me that she has a lifelong history of substance abuse. She's been arrested multiples times for that. And I understand it is a sickness and, you know, I wasn't aware at the time that she had such a prolonged use of it.

CHAIRPERSON DUDLEY: Okay. About how old was she?

MR. SASEK: I would say she was -- I'm guessing -- in her '50s.

CHAIRPERSON DUDLEY: Okay. So this is what I know about her.

I gathered she was around in her 50s. She's barefoot. She's using meth or has some mental health issues. She has high blood pressure.

She's either, you know, erratic in her behavior. Either screaming to get out of the car and screaming, you know, MF and throwing rocks. Or not.

She's all over the board. And when you dropped her off in -- at this desolate place in that condition, did you view that as protecting and serving?

MR. SASEK: No. But I also wasn't sure where she wanted to be.

I know from between Neal Road and Estates Drive which is where I believe Sergeant Khan had mentioned, was nothing but transient camps.

So when I made the decision to let her out of the vehicle when she requested, I did not want to leave her on Highway 99 because I didn't think that that would be a smart decision.

But if I let her make her own decisions from a safe place, that's her decision.

CHAIRPERSON DUDLEY: Okay. Questions?

MEMBER CLAVO: Yes.

CHAIRPERSON DUDLEY: Please. Dr. Clavo.

MEMBER CLAVO: You said that there's a lot of transient camps.

Was there transient camps in that area in which you dropped her off?

MR. SASEK: Not particularly. But, again, I did not want to leave her on Highway 99. I would say from about a quarter mile, maybe a little bit more, from Neal Road north, there starts to be transient camps. There's foliage and grass and like a golf course on the side of the road.

That entire strip, all the way into Chico, had transient camps in it. And I believe there's a wildlife preserve where people go fishing off the eastern side of

the road where I know there were several camps also.

MEMBER CLAVO: So knowing that it was that close in proximity, why didn't you drive her to the transient camps and drop her off, versus dropping her off in a desolate, unlit area?

MR. SASEK: Because the transient camps aren't necessarily accessible. They're behind roads.

So it would be a quarter of mile or half mile extra walk for her to get to a place where I would have been able to drop her off.

But I didn't feel it would be safe or smart leaving her on Highway 99.

MEMBER CLAVO: How many times in the past have you left individuals that were not detained in isolated areas?

MR. SASEK: None.

MEMBER CLAVO: Is that a common practice?

MR. SASEK: None, ma'am. This was a very rare occurrence.

MEMBER CLAVO: Is there a -- do Oroville have any policies or anything in place that give you direction on what to do with such a person?

MR. SASEK: No. I referred to my supervisor. I let Sergeant Khan know that she freaked out and he said, okay.

That would -- that was my interpretation of what I should do.

MEMBER CLAVO: Is there a policy about turning your camera on and off?

MR. SASEK: No. It was common practice of using it in an incident.

And then if it wasn't necessary, you could turn it off.

MEMBER CLAVO: That's your policy?

MR. SASEK: That was our policy, yes. Or at least our common practice.

MEMBER CLAVO: Okay. So there's a difference.

So is it policy or common practice?

MR. SASEK: I'm not sure. I'll give you that answer. I'm not entirely sure.

I know that -- I believe it's -- I believe that it's not required. Because I know that I had an incident when I was just off training where our lieutenant yelled at me about it should be a -- it should be a "shall" section.

MEMBER CLAVO: Okay. Next question.

MR. SASEK: Yes, ma'am.

MEMBER CLAVO: Do you have a daughter?

MR. SASEK: No, ma'am.

MEMBER CLAVO: Do you have a mother?

MR. SASEK: Yes, ma'am.

MEMBER CLAVO: Would you want your mother dropped off in a random, isolated place, not lit, with no shoes on, under the influence of drugs or mental impairment?

MR. SASEK: No, ma'am, I would not.

MEMBER CLAVO: So why would you do someone else's mother that way?

MR. SASEK: Because she said that she wanted out and I didn't feel I had the right to detain her.

MEMBER CLAVO: That's all.

CHAIRPERSON DUDLEY: Yes, Dr. Glaser.

MEMBER GLASER: Do you think she knew where she was when she asked to get out of the vehicle?

MR. SASEK: I'm not sure she knew exactly where it was. It was her idea to go to Chico, so I believe she knew she was between Oroville and Chico.

MEMBER GLASER: Do you think at the time that you should have had questions about whether she was making a good judgment about getting out of that location?

MR. SASEK: Knowing what I know now, yes, I should have asked more questions.

But when she got out of the car, erratic, and trying to start a confrontation I didn't feel the need to ask any more questions.

MEMBER GLASER: At any point later in the night,

did it occur to you that you should alert somebody to her location, given that she was barefoot and in a desolate area?

MR. SASEK: I let Sergeant Khan know right when I got back into town, sir.

MEMBER CLAVO: I have another question.

MR. SASEK: Yes, ma'am.

MEMBER CLAVO: Knowing what you know now. I'm struggling with that statement, because I don't know what you know now that made a difference in how you acted then.

So I'm really -- can you walk me through that?

I'm a little confused.

MR. SASEK: Again, with the 14th Amendment, making sure that we leave people in a safer position, I wasn't as aware of how -- I'm trying to think how to say this.

How -- that it would give me more authority.

MEMBER CLAVO: Did you not know the amendments then?

MR. SASEK: No, ma'am. I knew the amendments, but I wasn't as sure on the 14th Amendment on its -- requirements to make sure you leave somebody in better care after contact.

MEMBER CLAVO: How long have you been an officer?

MR. SASEK: I was an officer at -- 14 months at the

time, ma'am.

MEMBER CLAVO: Fourteen months. And you were in the military prior to that?

MR. SASEK: Yes, ma'am.

MEMBER CLAVO: Thank you.

CHAIRPERSON DUDLEY: Just to follow up on Dr. Glaser. I'm not sure he's done.

You said that she -- remind me of your question again, Dr. Glaser because it was a take off on that.

MEMBER GLASER: Well, I first asked if it was likely that she knew where she was when she asked to get out of the vehicle.

And then I asked if Officer Sasek had contacted anyone -- or I asked if he thought to contact anyone.

CHAIRPERSON DUDLEY: Right. And what you said, I believe you told Sergeant Khan that she freaked out.

MR. SASEK: Yes, ma'am.

CHAIRPERSON DUDLEY: Did you say anything else besides "she freaked out"?

MR. SASEK: I told him she freaked out and demanded to get out of my vehicle and he didn't ask any more questions.

CHAIRPERSON DUDLEY: Okay. And you're aware that he didn't remember you saying she freaked out.

MR. SASEK: I'm aware of that.

CHAIRPERSON DUDLEY: Okay. And did you say, hey, man, you know, she was barefoot. Anything else besides the words she "freaked out" and "demanded."

MR. SASEK: No, ma'am, I did not.

CHAIRPERSON DUDLEY: Okay. And he didn't ask you anything -- any more follow-up questions on that.

And that was about the same time there was a fire and few other things going on.

MR. SASEK: Yes, ma'am.

CHAIRPERSON DUDLEY: Okay. Do you think he heard you when you said she freaked out.

MR. SASEK: Yes, because he acknowledged me. He said "okay."

CHAIRPERSON DUDLEY: Okay. All right. Thank you.

Yes, ma'am.

Yeah, I just -- did you have some questions?

MEMBER JOHNSON: Okay.

CHAIRPERSON DUDLEY: And one second, were you done?

Okay.

Yes, Mr. Johnson.

MEMBER JOHNSON: I think it was asked earlier, the motto of being the police. And what was your response?

MR. SASEK: To protect those that can't take care of themselves, sir.

MEMBER JOHNSON: Okay. I think the people expect

the motto to be, "Serve and protect." Right?

She was in need of service when you first contacted her; right?

And she was eventually of course taken to the hospital, created a commotion, and of course you responded. And the service you provided was to drop her off on a dark, dirt, two-mile, mile and a half, from services, by herself. And then she was struck by a vehicle.

Do you believe you provided her some service?

MR. SASEK: First service that she needed, sir, was she was trespassing so she was arrested for it.

And then afterwards, I believe I was trying to provide her a service because she said she wanted to go home.

And then, again, I go to the point where she wanted out and I didn't feel I had the right to detain her. So I left her off in where I deemed a safe area as quick as possible without violating her rights.

MEMBER JOHNSON: I'm struggling with that.

She thought she was going home. But she said she wanted to get out.

MR. SASEK: Yes.

MEMBER JOHNSON: And you felt it was okay just to put her out on the dark, dirt, lonely road, about a mile

and a half from services.

MR. SASEK: So this is the way I look at it, sir.

I was always explained from the beginning of the academy to -- any time in law enforcement, when it's a consensual encounter, a person has the right to walk away.

It doesn't matter if we're in mid conversation, if they start the conversation, if I start the conversation.

She said she wanted out. It's my legal obligation to allow her her freedom. That's how I interpret it.

MEMBER JOHNSON: I'm done. Yes.

MEMBER LARA: I have a couple of questions.

So you said earlier that one action should not define the sum of your career; is that correct?

MR. SASEK: Yes, sir.

MEMBER LARA: All right. This woman suffered sepsis, loss of toes, she now has to utilize a colostomy bag, and has lost a length of her small intestine.

Where do you draw the line? Does she have to die for you to have that one action define your career?

MR. SASEK: No.

MEMBER LARA: Second question.

Could this situation have been avoided by taking her to the hospital and getting her the medical

attention?

MR. SASEK: Yes, potentially.

But only in the meaning of if I would have gone in and got a medical clearance and then had continued the arrest, versus me arresting her, giving her her citation and saying: Here's the front door, you should go seek medical attention, which was what I did.

The only thing I didn't do was walk her into the hospital.

MEMBER LARA: And again, the best evidence for what transpired on the -- on Neal Road would have been preserved by a body-worn camera; is that true?

MR. SASEK: Yes.

MEMBER LARA: Okay. And do you know currently what the policy is for utilization of a body-worn camera?

MR. SASEK: I don't know if they've altered it or not.

MEMBER LARA: What was it at the time?

MR. SASEK: It was a "may use."

MEMBER LARA: Thank you.

MEMBER JOHNSON: All right. Johnson once again.

For clarity, the Internal Affairs interview, I believe you were asked a question about why the body-worn camera wasn't turned on.

MR. SASEK: Yes, sir.

MEMBER JOHNSON: What was that reason?

MR. SASEK: So the body-worn camera that we had at the time -- so let me ask the question to clarify.

Do you mean when I let her out of the vehicle or do you mean throughout the entirety?

MEMBER JOHNSON: Throughout the entire incident.

MR. SASEK: It wasn't common practice.

When I initially contacted her she was causing issues so my body camera was on.

And then when she calmed down and the arrest continued, we deactivated.

MEMBER JOHNSON: So the policy sits around that?

MR. SASEK: Yes, sir.

MEMBER JOHNSON: That if there's no confrontation, no need to turn it on?

MR. SASEK: That's correct. That's our common practice.

MEMBER JOHNSON: Okay. Is it policy or common practice?

MR. SASEK: I don't believe it's a policy violation.

MEMBER JOHNSON: Okay.

CHAIRPERSON DUDLEY: Thank you.

Ms. Pena.

MEMBER PENA: Thank you.

So she says in her interview that she didn't ask to get out there. That she didn't request to be let out of the car on Neal Road.

And she tried to ask you about it and you answered her very sternly about, don't ask me, basically.

MR. SASEK: So how she said I talked to her, that's not how I talk to people ma'am.

She requested to get out and I let her out. And when I let her out, I tried to say "what's going on?"

And she stormed off.

MEMBER PENA: Okay. So when you initially took her to the jail, they said she has high blood pressure, we can't admit her. Take her to the hospital? Right?

MR. SASEK: Yes, ma'am.

MEMBER PENA: Are you aware that high blood pressure can lead to stroke or heart attack?

MR. SASEK: Yes, ma'am.

MEMBER PENA: She also says in her interview that she was dehydrated.

Did she ever ask you for water?

Or did you offer her water at all?

MR. SASEK: No, ma'am. She did not ask me for water and I didn't have water in my vehicle at the time to offer her.

MEMBER PENA: What was the temperature that day?

MR. SASEK: It was hot. It would have been easily been in the 100s throughout the day.

It was the nighttime, so it was probably dropping down to 90s.

MEMBER PENA: Are you aware that dehydration can lead to delirium and disorientation?

MR. SASEK: Yes, ma'am. She wasn't exhibiting any signs of dehydration when I contacted her.

MEMBER PENA: But sometimes disorientation can look like somebody's on drugs, for example.

Did you know that that's a symptom of dehydration?

MR. SASEK: Yes, ma'am.

MEMBER JOHNSON: Johnson. Oh, I'm sorry.

CHAIRPERSON DUDLEY: Ms. Pena.

MEMBER PENA: Nothing further.

CHAIRPERSON DUDLEY: Okay.

MEMBER JOHNSON: Johnson.

CHAIRPERSON DUDLEY: Mr. Johnson.

MEMBER JOHNSON: Yes.

The other officer had mentioned Neal Road.

And you were on your way to taking her to Oroville, if I remember correctly. Was it Oroville or -- Chico. Chico.

MR. SASEK: Yes, from Oroville to Chico.

MEMBER JOHNSON: And he suggested: Just drop her

off over there.

And it's my assumption that she didn't know where she was at and she questioned why you was taking her there and then she -- maybe out of fear -- wanted to get out the car.

Based on this whole experience for you, if you had a situation like this again, what would you do if -- what would you do differently?

MR. SASEK: If I could do the whole thing over again?

MEMBER JOHNSON: Yeah.

MR. SASEK: I would have got a jail clearance and I would have taken her back to jail. Had I not gotten a jail clearance, and I had to contact her at the hospital, my body-worn camera would have been on the entire time.

When I restarted RIMS, because it was acting up, which I was advised to do that in the past by Sergeant Khan, is when we have issues with RIMS just go do a hard reset on your phone. I would have stopped and waited and let the whole system reboot up.

I don't like to drive and be on my phone, even though we have an exemption, I still think it's unsafe.

So I wouldn't have, you know, stopped at a stoplight and tried to re -- turn it on. And then the

light turns green. And I'm not going to play on my phone. So my body camera would have been on. My RIMS would have been on. And I would have been able to avoid this situation.

MEMBER JOHNSON: And in the direction going to Chico, you probably wouldn't have dropped her off on some dirt road.

MR. SASEK: Had she requested to get out again, I probably would have stopped on the side of the road, contacted my supervisor and figured out what to do next.

MEMBER JOHNSON: Okay.

MR. SASEK: Again, I was a young officer at the beginning of this and I know that I made mistakes and it -- I don't know how to say it nicely. It sucks. Because this woman has experienced, you know, horrible things. And I'm sorry for that.

CHAIRPERSON DUDLEY: Anything else?

Thank you, Officer.

Is your attorney --

MR. SASEK: I don't have any counsel. It's just me, ma'am.

CHAIRPERSON DUDLEY: Okay. Fine. Thank you.

Would the Board like to meet or would you like to -- would anyone like to raise a motion? What would -- oh, is there -- thank you.

Is there public comment?

Yes. Okay. Is there someone on remotely with public comment? Yes? No? No. Doesn't appear that there is someone interested in making public comment remotely.

Okay. So back to the Board.

Would anyone like to make a motion? Or would you like to meet privately? I'm sorry?

MEMBER GLASER: We would like to go into closed session.

CHAIRPERSON DUDLEY: Okay.

(Time noted: 12:09 P.M.)

---o0o---

(Closed session was held:
12:17 A.M. to 12:34 P.M.)

---o0o---

(Time noted: 12:36 P.M.)

CHAIRPERSON DUDLEY: We'll now reconvene to regular session to take a vote on the Board's recommendation in the matter of 2318309, Robert Sasek, who at the time of the events at issue in this case was employed with the Oroville Police Department.

Are there any comments that the Board has on this matter?

Okay. Before we get to a motion -- I'm sorry, did

you have a comment?

MEMBER PENA: No.

CHAIRPERSON DUDLEY: Before we get to a motion, I want to point out that Board Member Regina Crawford left about an hour ago because she had an earlier flight. We still have a quorum here so we're still going to go ahead with a motion, if there is such a motion.

Is there a motion to make a recommendation to the Commission in this matter?

MEMBER PENA: Yes. Move to decertify.

CHAIRPERSON DUDLEY: Is there a second?

MEMBER CLAVO: I second.

CHAIRPERSON DUDLEY: And we will now take a roll call vote on the Board's recommendation.

Mr. Knapp, please take a roll call vote.

MR. KNAPP: Thank you, Madam Chair.

Clavo.

MEMBER CLAVO: Aye.

MR. KNAPP: Clavo, aye.

Dudley.

CHAIRPERSON DUDLEY: Aye.

MR. KNAPP: Dudley, aye.

Glaser.

MEMBER GLASER: Aye.

MR. KNAPP: Glaser, aye.

Johnson.

MEMBER JOHNSON: Aye.

MR. KNAPP: Johnson, aye.

Lara.

MEMBER LARA: Aye.

MR. KNAPP: Lara, aye.

And Pena.

MEMBER PENA: Aye.

MR. KNAPP: Pena, aye.

That's six yeses. Motion carries.

CHAIRPERSON DUDLEY: Thank you. Motion passes.

Future board meeting dates. Upcoming board meetings will be October 8, 9.

And all the board meetings will occur here in West Sacramento.

Next February, 4, 5, 2026.

April 15, 16, 2026.

July 15, 16, 2026.

As this was last item on the agenda, do any of the Members of the Board have any additional comments before we adjourn?

Seeing none, I'll make a motion to adjourn for the record.

Please clearly state -- seeing none, I'll make a motion to adjourn.

For the record, please clearly state your name and your motion.

Hmm, what do I mean by that, Chandler?

I'll just make a motion to adjourn and thank Chandler for doing a superb job.

Do I have a second to adjourn?

MEMBER GLASER: Second.

CHAIRPERSON DUDLEY: Okay. All in favor?

(Ayes.)

CHAIRPERSON DUDLEY: We're adjourned.

(Proceedings concluded at 12:38 P.M.)

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CERTIFICATE OF REPORTER

I, CONNIE J. PARCHMAN, a Certified Shorthand Reporter of the State of California, do hereby certify:

That I am a disinterested person herein; that the foregoing proceedings were reported, to the best of my ability, in shorthand by me, Connie J. Parchman, Certified Shorthand Reporter of the State of California, and thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said proceedings nor in any way interested in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand this 1st day of August 2025.



Connie J. Parchman, CSR
Certified Shorthand Reporter
License No. 6137

E R R A T A S H E E T

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AGENDA ITEM REPORT

Title: POST2410050 - MICHAEL KIM (POST ID: A63-W93)
LAST EMPLOYING AGENCY: SAN FRANCISCO SHERIFF'S OFFICE (CURRENT)

REPORT PROFILE

MEETING DATE 10/09/2025	**BUREAU SUBMITTING THE REPORT** Professional Conduct Central Bureau	
RESEARCHED BY Kevin P. Sherburne	**REVIEWED BY** Brian South	
REPORT DATE	**APPROVED BY** Annemarie Del Mugnaio	**DATE APPROVED**
PURPOSE	**FINANCIAL IMPACT** No	

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

From August 2, 1999, to February 13, 2016, Respondent was employed as a Deputy Sheriff with the San Francisco Sheriff's Office ("SFSO"). He promoted to the rank of Sergeant on February 12, 2005. On February 13, 2016, Respondent resigned from SFSO. On May 25, 2018, Respondent admitted that a Declaration he filed in a criminal case was materially false and pled guilty in federal court to a violation of 18 U.S.C. Section 401(1), a misdemeanor Contempt of Court charge. On December 21, 2024, SFSO rehired Respondent as a Deputy Sheriff.

Audio/Video Evidence Links:

- **BR32 POST2410050 Extraction 3 1 Kim Michael 20250626 mp3**
- **BR33 POST2410050 Dunnigan Ryan 20250625**

ANALYSIS:

Respondent signed a Declaration in Support of Defendant Andy Li's Motion to Reopen Detention Hearing and Reconsider Detention on August 6, 2014, under penalty of perjury. In this Declaration, Respondent, while representing himself as a Deputy Sheriff, made several factual statements that were

material to defendant Andy Li's motion and were materially false. Such materially false statements constituted serious misconduct, specifically, dishonesty relating to the reporting, investigation, or prosecution of a crime in violation of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1) because they were made in connection with the prosecution of Li while Respondent was employed as a peace officer.

The clear and convincing evidence substantiated that Respondent's Declaration contained materially false statements, in that he knowingly and willfully lied to a federal court, and that he obstructed justice in a federal criminal case through his lies.

In addition, Respondent told FBI Special Agents during an interview on August 19, 2014, that he did not know that Andy Li had a ballistic vest, that he dropped off a work-issued ballistic vest with his wife, who was at Li's wife's beauty salon, while he went out drinking with friends, and that he tried to get the vest back but forgot about the vest over time. The clear and convincing evidence substantiated that Respondent's statements to FBI Special Agents were materially false. The clear and convincing evidence further substantiated that Respondent's statements violated California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1) because they were made in connection with a criminal investigation into Kim's criminal activity in submitting a false Declaration to a federal court and the criminal investigation about Li's criminal activities.

RECOMMENDATION: The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigations presented by the Peace Officer Standards Accountability Division (POSAD) and shall make a recommendation regarding what action should be taken, suspension or revocation, on the certification of the subject peace officer.

ATTACHMENT(S):
BR01_POST2410050_Kim_Michael_ISF.pdf
BR02_POST2410050_A_Kim_Michael_ExecReviewDivisionRec.pdf

BR03_POST2410050_B_Kim_Michael_POSTProfile.pdf
BR04_POST2410050_C_US_Opp_to_Li_Motion_to_Reconsider_Detention_Order_Redacted.
BR05_POST2410050_D_Interview_of_Michael_Kim_12_22_2014b_Redacted.pdf
BR06_POST2410050_E_Order_of_Detention_Pending_Trial_Redacted.pdf
BR07_POST2410050_F_Notice_of_Motion_and_Motion_to_Reopen_Detention_Hearing_and_
BR08_POST2410050_G_Declaration_of_Michael_Kim_Redacted.pdf
BR09_POST2410050_H_Declaration_of_Mimi_Li_Redacted.pdf
BR10_POST2410050_I_Minute_Order_Redacted.pdf
BR11_POST2410050_J_Information_Kim_Redacted.pdf
BR12_POST2410050_K_JUDGMENT_Redacted.pdf
BR13_POST2410050_L_US_DIS_CAND_3_18cr124_d10947289e796_Order_signed_11_2_2
BR14_POST2410050_M_Extracted_Michael_Kim_Archived_Triage_Report_pdfReport_-_edits_Redacted.pdf
BR15_POST2410050_N_Wan-ROI_Redacted.pdf
BR16_POST2410050_O_Fonthal_Final_ROI_Redacted.pdf
BR17_POST2410050_P_Extracted_Michael_Kim_Completed_12-12-2024_Redacted.pdf
BR18_POST2410050_Q_Martin_ROI_Redacted.pdf
BR19_POST2410050_R_Letter_from_Paul_Miyamoto_to_To_Whom_It_May_Concern_Redac
BR20_POST2410050_S_Interview_of_San_Francisco_Sheriff_s_Office_Deputy_Michael_She
BR21_POST2410050_T_0002_PLEA_AGREEMENT_v.1_Redacted.pdf
BR22_POST2410050_U_Defendants_Memorandum_in_Aid_of_Sentencing_Redacted.pdf
BR23_POST2410050_V_Redacted_Exhibit_C_to_Memo_in_Aid_of_Sentencing_Redacted.pd
BR24_POST2410050_Michael Kim_Supplement ISF 07 02 2025.pdf
BR25_POST2410050_FW from SO Counsel Masters_ Letters of rec from Paul Miyamoto_Redacted.pdf
BR26_POST2410050_M. Kim LOR_Captain Miyamoto_Redacted.pdf
BR27_POST2410050_M. Kim letter 2024_Sheriff Miyamoto_Redacted.pdf
BR28_POST2410050_Michael Kim 6.25.2025 POST interview transcript_Redacted.pdf
BR29_POST2410050_Ryan Dunnigan 6.25.2025 POST interview transcript.pdf
BR30_POST2410050_Kim_Final report of POST interview.pdf
BR31_POST2410050_Dunnigan_Final Report of POST interview
BR34_POST2410050_scrnshot properties of letter (1) from Miyamoto.pdf
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INVESTIGATIVE SUMMARY AND FINDINGS

Michael Kim

POST ID A63-W93
San Francisco Sheriff's Office
POST2410050

WRITTEN BY: Kevin P. Sherburne
May 2, 2025

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I. Executive Summary

From August 2, 1999, to February 13, 2016, Michael Kim ("Respondent") was employed as a Deputy Sheriff with the San Francisco Sheriff's Office ("SFSO"). He promoted to the rank of sergeant on February 12, 2005. On December 21, 2024, SFSO rehired Respondent as a Deputy Sheriff.

On August 6, 2014, while employed by SFSO, Respondent signed a Declaration under penalty of perjury, which was filed with a federal court.[1] Li's lawyers used the Declaration as part of their effort to gain the release from custody of Andy Li (aka Andy Man Lai Li, Andy M. Li), who was being held without bail in a criminal case involving the Ghee Kung Tong, an organized crime syndicate based in San Francisco, California. Respondent's Declaration was materially false. Specifically, Respondent falsely stated that he had given a ballistic vest to his wife, who had a hair salon appointment with Mimi Li, the wife of Li, and later forgot to pick it up. Respondent knowingly and willfully lied to a federal judge to support a criminal defendant based on his personal friendship with the defendant. Respondent's Declaration obstructed justice in another branch of government.

On August 19, 2014, FBI Special Agents interviewed Respondent, who was employed by SFSO, about the ballistic vest that was the topic of the Declaration. During the interview, Respondent repeated the version of events that he made in his Declaration. Respondent knew that the FBI was investigating Li. Respondent's statements to the FBI were materially false.

On December 22, 2014, FBI Special Agents interviewed Respondent again. During this interview, Respondent admitted that he made materially false statements to them during the interview on August 19, 2014.

On May 25, 2018, Respondent admitted that his Declaration was materially false and pled guilty in federal court to a violation of 18 U.S.C. Section 401(1), a misdemeanor Contempt of Court charge.

On December 23, 2024, I was assigned to conduct an investigation of serious misconduct. In my investigation, I examined the following issues:

1. ***Did Respondent sign a Declaration in Support of Defendant Andy Li's Motion to Reopen Detention Hearing and Reconsider Detention on August 6, 2014, under penalty of perjury that his statements were true and correct, when his statements were materially false? If so, were Respondent's materially false statements Dishonesty relating to the reporting,***

[1] *United States v. Kwok Cheung Chow*, *et al*., CR-14-196, U.S. District Court for the Northern District of California.

investigation, or prosecution of a crime in violation of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1)?

a. Finding: The clear and convincing evidence substantiated that Respondent's Declaration contained materially false statements, that he knowingly and willfully lied to a federal court, and that he obstructed justice in a federal criminal case through his lies. The clear and convincing evidence further substantiated that Kim's false statements violated California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1) because they were made in connection with the prosecution of Li.

2. ***Did Respondent tell FBI Special Agents during an interview on August 19, 2014, that he did not know that Andy Li had a ballistic vest, that he dropped of a work-issued ballistic vest with his wife, who was at Li's wife's beauty salon, while he went out drinking with friends, and that he tried to get the vest back but forgot about the vest over time, when his statements were materially false? If so, were Respondent's false statements Dishonesty relating to the reporting, investigation, or prosecution of a crime in violation of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1)?***

    a. ***Finding: The clear and convincing evidence substantiated that Respondent's statements to FBI Special Agents were materially false. The clear and convincing evidence further substantiated that Respondent's statements violated California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1) because they were made in connection with a criminal investigation into Kim's criminal activity in submitting a false Declaration to a federal court.***

3. ***Did Respondent tell FBI Special Agents during an interview on August 19, 2014, that he did not know that Andy Li had a ballistic vest, that he dropped of a work-issued ballistic vest with his wife, who was at Li's wife's beauty salon, while he went out drinking with friends, and that tried to get the vest back but forgot about the vest over time, when his statements were materially false? If so, were Respondent's false statements Dishonesty relating to the reporting of, of investigation of misconduct by, a peace officer in violation of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1)?***

    a. ***Finding: The clear and convincing evidence substantiated that Respondent's statements to FBI Special Agents were materially false. The clear and convincing evidence further substantiated that Respondent's statements violated California Penal Code***

13510.8(b)(1) and POST Regulation 1205(a)(1) because they were made in connection with Respondent's peace officer misconduct.

Based upon the evidence presented in the investigation, reasonable grounds exist for the Respondent's peace officer certification to be subject to revocation by the Commission pursuant to California Penal Code Section 13510.85(a)(1).[2]

II. Methodology/Investigative Process

A. Methodology and Standard of Proof

This report summarizes the findings related to allegations of serious misconduct. I conducted this investigation pursuant to California Penal Code Section 13509.5(b)'s authority to "conduct additional investigations, as necessary, into serious misconduct that may provide grounds for . . . revocation of a peace officer's certification." I further conducted this investigation in accordance with the regulations and policies of POST. California Penal Code Section 13510.8(b)(1) authorized me to conduct an analysis of the dishonesty allegations pursuant to California Penal Code Section 13510.8(g)(1)(A) and Section 13510.8(g)(1)(B)'s lookback provisions, which allow POST's initiation of proceedings to revoke or suspend a peace officer's certification for conduct that occurred prior to January 1, 2022, where the serious misconduct is Dishonesty. During my investigation, I reviewed court records, summaries of interviews FBI Special Agents conducted of Respondent, and personnel records of Respondent. I also conducted interviews of five witnesses. I requested an interview of Respondent, which he declined through his counsel.[3]

I analyzed the information in this case under the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means "evidence of a charge is clear and convincing so long as there is a 'high probability' that the charge is true. The evidence need not establish a fact beyond a reasonable doubt." Based on the statements of the witnesses, as well as the documentary evidence available, there was sufficient information to reach a fair and reasoned conclusion using the clear and convincing evidence standard.[4]

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[2] Attachment A (Executive Review and Division Recommendation (4/18/2025)).

[3] I also requested interviews of Dr. Ryan Dunnigan, a psychologist who is a former California peace officer (POST ID B04-P04); Matthew Freeman, retired SFSO Undersheriff; and Lieutenant Darrin Martindale. Dr. Dunnigan declined to be interviewed. Mr. Freeman did not respond to my phone calls or U.S. mail. Lieutenant Martindale scheduled an interview but was unavailable due to illness.

[4] A recent California State Personnel Board precedential opinion provides guidance about credibility: "A witness's credibility may be determined based on "any matter that has any tendency in reason to prove or disprove the truthfulness of his testimony." (Evid. Code § 780.) Relevant factors include the witness's demeanor while testifying, ability to perceive or recall, bias or other motive, and attitude toward the pending action, as well as consistency of the witness's testimony with previous statements, and the

I was assigned to investigate the allegations of serious misconduct in this case on December 23, 2024.[5] On January 23, 2025, POST received a report from an anonymous member of the public that Respondent resigned from his deputy position based on his conviction, which complainant stated, "stipulated that he could not reapply for a law-enforcement job." I incorporated the allegations from the public complaint against Respondent in this investigation.

B. Employment History and Peace Officer Certifications

POST issued the following professional certifications to Respondent:

Certificate Type	***Certificate Number***	***Date Issued***
Basic	101039	2/2/2001
Intermediate	78181	8/8/2003
Advanced	80385	8/7/2008

From August 2, 1999, until February 12, 2005, Respondent was employed as a deputy with the San Francisco Sheriff's Office. From February 12, 2005, until February 13, 2016 (when he resigned), Respondent was a sergeant with SFSO. On December 21, 2024, SFSO rehired Respondent as a deputy.[6]

C. Other Allegations of Serious Misconduct

POST is not aware of any other allegations of serious misconduct against Respondent. SFSO did not complete an internal affairs investigation in connection with Respondent's actions that led to his federal conviction. Media reports stated that then-Sheriff Ross Mirkarimi ordered an internal affairs investigation to be opened but that

existence or nonexistence of any fact the witness testified to. (Evid. Code, § 780(a), (c), (d), (f)-(j).) When a witness testifies falsely as to some matters, some or all of his other testimony may be disregarded, whether contradicted or not. (*Halagan v. Ohanesian* (1967) 257 Cal.App.2d 14, 21)."

[5] Respondent is not subject to revocation of his peace officer certificates or disqualification from being a peace officer pursuant to California Government Code Section 1029(a)(9) because his conviction occurred in 2014, and that provision became effective January 1, 2023. *See also* California Penal Code Sections 118(a)(perjury) and 118a (perjury). Had his conviction occurred today, this case would not be subject to a review as a serious misconduct proceeding where the Commission has discretion to decide the status of his certificates but rather as a mandatory revocation case under Section 1029.

[6] According to his EDI profile, Respondent completed two Requalification – Basic Courses: (1) April 30, 2021; and (2) August 2, 2024. Attachment B (EDI Profile).

the department suspended the investigation pending the outcome of the FBI's investigation of Respondent.[7]

III. Findings of Fact and Analysis

A. Background

1. Ghee Kung Tong ("GKT") Crime Syndicate

In 2006, Kwok Cheung Chow (aka Raymond Chow, aka Shrimp Boy) became the leader (or Dragonhead) of the Ghee Kung Tong ("GKT"), an organized crime syndicate based in San Francisco's Chinatown. In 2014, the FBI arrested Chow on money laundering charges related to a public corruption case involving former California State Senator Leland Yee. In July 2014, a 228-count superseding indictment against Chow and 28 other defendants, including Li, charged the group with racketeering, money laundering, firearms violations, fraud, narcotics conspiracy, murder-for-hire, wire fraud, and conspiracy. In 2016, a jury convicted Chow of all 162 counts against him. He is serving two life terms plus 20 years in federal prison.

Li served as one of Chow's enforcers. Media reports state that Li bears burn scars on his face from an arson he committed on Chow's orders and that Chow also ordered Li to kill people, break their legs, and to commit armed robbery.[8] In 2018, Li pled guilty to three felonies and served two years in prison. Li previously also served two years in prison stemming from a 1998 conviction.

2. Respondent's Connection to GKT

The undercover investigation into Chow, the GKT, and Li revealed that Li bragged about having a friend in law enforcement named "Mike."[9] Li tried to introduce an FBI undercover agent to Respondent, saying that Respondent was a former gang member and was "trustworthy," which meant in that context "that [Respondent] would not do anything to stop or arrest [Li and the undercover agent] in connection with their illegal businesses."[10]

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[7] "Sheriff's Deputy Caught Up in 'Shrimp Boy' Case No Longer With the Department," *San Francisco Examiner* (3/8/2016 (https://www.sfexaminer.com/news/sheriff-s-deputy-caught-up-in-shrimp-boy-case-no-longer-with-department/article_c65dce88-afdd-57b6-9f22-c87c5c3426ef.html).
[8] "Gangster Says Shrimp Boy Told Him to Kill," Courthouse News Service (12/9/2015).
[9] "Feds Charge Ex-Deputy Linked to Massive 'Shrimp Boy' Racketeering Case," San Jose Mercury News (3/29/2018) (https://www.mercurynews.com/2018/03/28/feds-charge-ex-sf-deputy-linked-to-massive-shrimp-boy-racketeering-case/).
[10] Attachment C (United States' Opposition to Defendant Li's Motion to Reconsider Detention Order, *United States v. Chow*, CR-14-196, at 4-5 (U.S. District Court for the Northern District of California)(8/22/2014)).

Li and Respondent met in 9th grade and remained friends even after Respondent joined SFSO.[11] Respondent told FBI Special Agents that he knew that Li was a convicted felon and that Li introduced Respondent to Chow. Respondent stated that other people would say that he was part of Chow's crew.[12] Respondent stated that he would accompany Li to collect debts from individuals at casinos and, on occasion, Li gave Respondent some money from the collections.[13]

3. Respondent's Materially False Statements

Pursuant to Title 18, United States Code, Section 3142(d), where a federal court makes a factual determination that a defendant may "pose a danger to any other person or the community," the Court may enter an order denying bail and ordering the temporary detention of the defendant. After the FBI arrested Li in March 2014, the Court issued an Order finding that Li was a danger to the community and ordered him to be held in jail without bail pending trial. The Court found that Li's possession of a ballistic vest at the time of his arrest was a basis for the finding that he was a danger to the community.[14]

Li's lawyer spoke with Respondent about the vest. He told her that he left a ballistic vest at Li's wife's hair salon because he did not want to leave it in the car while he ran errands. Respondent further stated that he asked his wife to bring the vest home but she forgot and Li's wife put it in her own car, intending to return it to Respondent. Time passed and, Respondent stated, he forgot about the vest.

Based upon Kim's version of events to Li's lawyer, she asked Respondent to submit a Declaration to the Court regarding the ballistic vest in support of Li's request to reconsider granting him bail as part of an effort to gain Li's release by establishing that he was not a danger to the community. Prosecutors argued that Li's possession of the ballistic vest, in conjunction with Li's role as a Chow henchman and the criminal allegations against Li, justified his pre-trial detention.

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[11] Caesar Marabuto was also a friend of Li's and Respondent's from their early days in high school. Marabuto joined the San Francisco Sheriff's Office in 2007, where he is currently is a deputy.

[12] Attachment D (FBI Interview of Michael Kim, FD-302 at 4 (12/22/2014)). In a court filing in the Li case, the prosecution stated that Li told an undercover FBI Special Agent that Respondent was an "ex-gang member who had previously assisted defendant [Li] with his gang activity." Attachment C (United States' Opposition to Defendant Li's Motion to Reconsider Detention Order, *United States v. Chow*, *et al.*, CR-14-196 at 8 (U.S. District Court for the Northern District of California)(8/22/2014)).

[13] Attachment D (FBI Interview of Michael Kim, FD-302 at 5 (12/22/2014)).

[14] Attachment E (Order of Detention Pending Trial, *United States v. Li*, CR-14-196, at 2 (U.S. District Court for the Northern District of California)(5/7/2014))(finding that "this case involves trafficking narcotics as well as allegations that defendant trafficked in firearms and a ballistic vest while being a convicted felon;" was an "enforcer" for GKT; and agents found "a shotgun and a ballistic vest").

On August 6, 2014, Respondent signed a Declaration with the United States District Court for the Northern District of California. Li's lawyers filed the Declaration as part of their Motion to Reconsider Detention.[15] In the Declaration, Respondent stated:

- Respondent dropped off a work-issued ballistic vest at Mimi Li's hair salon with Respondent's wife
- Respondent's wife forgot the vest at the salon
- Mimi Li took the vest and placed it in her car, intending to return it to Respondent
- Although Mimi Li made plans to return the vest to Respondent, "both got busy and plans fell through"[16]

Respondent signed the Declaration "under penalty of perjury under the laws of the State of California" as being "true and correct."[17]

On August 5, 2014, Mimi Li signed a Declaration similar to Respondent's Declaration. In her Declaration, Mimi Li echoed Respondent's statements about the ballistic vest.[18]

Respondent's Declaration was a primary component of Li's lawyers' argument to the Court to seek release of Li from jail. Relying on Respondent's Declaration, Li's lawyers argued that the prosecution did not have grounds to argue that Li was a danger to the community.[19] Li's lawyers argued that, in ordering pre-trial detention, the Court's reliance on Li's possession of a ballistic vest at the time of his arrest was misplaced because the ballistic vest belonged to Li.[20]

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[15] Attachment F (Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention, *United States v. Li*, CR-14-196 (U.S. District Court for the Northern District of California (8/6/2014)).
[16] Attachment G (Declaration of Michael Kim in Support of Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention, *United States v. Li*, CR-14-196 (U.S. District Court for the Northern District of California)(8/6/2014)).
[17] Attachment G (Declaration of Michael Kim in Support of Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention, *United States v. Li*, CR-14-196 (U.S. District Court for the Northern District of California)(8/6/2014)).
[18] Attachment H (Declaration of Mimi Li in Support of Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention, *United States v. Chow*, *et al.*, CR-14-196 (U.S. District Court for the Northern District of California)(8/6/2014)).
[19] Attachment F (Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention at 2-3, *United States v. Chow*, *et al*., CR-14-196 (U.S. District Court for the Northern District of California)(8/6/2014)).
[20] Attachment F (Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention at 4, 6-7, *United States v. Chow*, *et al.*, CR-14-196 (U.S. District Court for the Northern District of California)(8/6/2014)("Because the government relied on Mr. Li's possession of a ballistic vest in arguing for his detention, this information [from Respondent's Declaration] demonstrating that Mr. Li did not possess a ballistic vest is material to the issue of whether conditions of release exist that will reasonably assure the safety of the community")). At the time of his arrest, the FBI also found a shotgun in his

On August 19, 2014, FBI Special Agents interviewed Respondent about the version of events related to the ballistic vest that Respondent included in the Declaration. During the interview, Respondent repeated the story he provided in the Declaration. He made materially false statements that he had given a ballistic vest to his wife, who had a hair salon appointment with Mimi Li, and later forgot to pick it up.

The prosecution opposed Li's request for release, arguing that Respondent's story about the ballistic vest was not credible: "the story currently being sold to this Court defies all logic."[21] The prosecution stated that FBI Special Agents interviewed Respondent after reading the Declaration. The prosecution stated:

> In short, the declarations provided by the defendant [Li] are incredible and inconsistent because they are false. According to the defendant himself, it would appear that [Respondent] and defendant's wife are highly compromised and should be given minimal credibility by this Court. It is also clear that defendant filed declarations from his wife and [Respondent] that he knew were false.[22]

On September 26, 2014, the Court denied Li's Motion to Reopen Detention Hearing and Reconsider Detention.[23]

On December 22, 2014, FBI Special Agents interviewed Respondent again. During this interview, Respondent admitted that he made materially false statements to them during his interview on August 19, 2014.[24] On March 27, 2018, prosecutors charged Respondent with committing a federal crime (one count of criminal contempt of court in violation of 18 U.S.C. Section 401(1)) by signing the Declaration, knowing it to contain materially false statements, "for the purpose of assisting Defendant X and knowing that the declaration would be provided to the Court in connection with Defendant X's detention proceedings."[25]

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residence. Li's lawyers argued that the shotgun belonged to his landlord and, therefore, he was not a danger to the community.

[21] Attachment C (United States' Opposition to Defendant Li's Motion to Reconsider Detention Order, *United States v. Chow*, *et al.*, CR-14-196 at 4 (U.S. District Court for the Northern District of California)(8/22/2014)).

[22] Attachment C (United States' Opposition to Defendant Li's Motion to Reconsider Detention Order, *United States v. Chow*, *et al.*, CR-14-196 at 6 (U.S. District Court for the Northern District of California)(8/22/2014)).

[23] Attachment I (Minute Entry (denying pre-trial release of Li), *United States v. Chow*, *et al.*, CR-14-196 (U.S. District Court for the Northern District of California)(9/26/2014)).

[24] Attachment D (FBI Interview of Michael Kim, FD-302 (12/22/2014)).

[25] Attachments J (Information, *United States v. Kim*, 18-CR-124, at 3 (U.S. District Court for the Northern District of California) (3/27/2018)).

On May 25, 2018, Respondent admitted that his Declaration was materially false and pled guilty in federal court to a violation of 18 U.S.C. Section 401(1), a misdemeanor. On October 12, 2018, the court sentenced Respondent to three years of probation and a fine of $30,000.[26] On November 2, 2020, the United States Probation Office requested early termination of probation, which the court granted.[27]

4. Respondent's Re-Employment at San Francisco Sheriff's Office

Respondent sought re-employment as a California peace officer nearly immediately after termination of his probation. Respondent's peace officer certificates were inactive because more than three years had passed since his last qualifying employment as a peace officer, he therefore had to undergo a Requalification Course.[28] On April 30, 2021, Respondent completed a 144-hour Requalification – Basic Course. On May 1, 2021, Respondent initiated the application process to become employed as a Deputy Sheriff at SFSO.[29] SFSO did not assign the application to a background investigator and the background file packet shows it was withdrawn on June 27, 2023, after 790 days.[30]

On June 23, 2023, Respondent re-initiated the application process to become a Deputy at SFSO. By this time, Respondent's peace officer certificates – which he reactivated by attending the Requalification course – had again expired after three years of lack of employment as a peace officer,[31] so he underwent another Requalification Course. On August 2, 2024, Respondent completed a 160-hour Requalification – Basic Course.

On July 13, 2023, Lieutenant Darrin Martindale and Sergeant Mel Fonthal assigned Deputy Ronnie Wan as the background investigator to review the application Respondent submitted on June 23, 2023. Deputy Wan conducted a background investigation, which included, among other things, psychological evaluations,

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[26] Attachment K (Criminal Minute Order, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(10/12/2018)).
[27] Attachment L (Request for Early Termination of Supervision, *United States v. Kim*, 18-CR-124, at 3 (U.S. District Court for the Northern District of California)(11/2/2020)).
[28] POST Regulations 1008(b) and 1202(b)(3)(B).
[29] Attachment M at 002 (Michael Kim Archived Background File at 149. Investigator's Note: Rather than include the entire 376-page background investigation report, which includes highly sensitive and confidential information that would need to be redacted before being produced, I am including only the pages that are material to the findings in this Investigative Summary and Finding. Bates numbers referencing the page numbers of the pages in the original file and the pages that are material are located in the lower left and lower right margins, respectively.
[30] Attachment M at 001, 002 (Michael Kim Archived Background File at 2, 149)(Lieutenant Darrin Martindale noted: "This file was not worked, and the applicant has reapplied so he is being withdrawn so I can send him a new invite to Guardian.")
[31] POST Regulation 1201(2)(b).

employment checks, polygraph, and background questionnaires.[32] Deputy Wan stated to me that he asked internally whether SFSO should be rehiring Respondent based upon Respondent's past and was told to continue working the background investigation.[33] Sergeant Fonthal corroborated Deputy Wan's account, stating that "everybody" raised concerns and had comments about Respondent's application. Ultimately, however, the Background Investigation Unit's responsibility was to ensure that every applicant went through the process and command staff would make the decision about hiring an applicant.[34] According to Sergeant Fonthal, although Sheriff Paul Miyamoto did not pressure anyone to hire Respondent, he wanted to see a "full file."

Deputy Wan conducted and completed Respondent's background investigation. Respondent completed questionnaires in which he stated that he had been convicted of a federal crime. On the questionnaire and during interviews with Deputy Wan, Respondent stated:

- "I was not truthful when interviewed by the F.B.I."[35]
- "I submitted a false statement to the court."[36]
- "I perjured on a written statement to the court. . . ."[37]
- "3.18 Perjury (lying under oath): Yes
    - 3.1 Provide details:
    - Crime: Perjury
    - Individuals involved: myself
    - Date: 08/2014
    - This was the same incident as above 1.1 I was charged with a misdemeanor contempt of court. I submitted a false statement to the court."[38]

The background investigation included a required psychological evaluation of Respondent.[39] According to the Background Investigation File, psychologists conducted evaluations and reached conclusions, as set forth in the table below. The

[32] *See* POST Regulations 1950-1955 (setting forth selection standards for peace officers).
[33] Attachment N (Ronnie Wan Report of Interview at 2 (3/11/2025)).
[34] Attachment O (Mel Fonthal Report of Interview at 1 (4/16/2025)).
[35] Attachment P at 003 (Background Investigation File at 48). Investigator's Note: Rather than include the entire 376-page background investigation report, which includes highly sensitive and confidential information that would need to be redacted before being produced, I am including only the pages that are material to the findings in this Investigative Summary and Finding. Bates numbers referencing the page numbers of the pages in the original file and the pages that are material are located in the lower left and lower right margins, respectively.
[36] Attachment P at 005 (Background Investigation File at 69).
[37] Attachment P at 012 (Background Investigation File at 360)
[38] Attachment P at 004 (Background Investigation File at 51).
[39] POST Regulations 1954 and 1955 contain the requirements for psychological evaluations for peace officers.

evaluations included assessment of screening six Dimensions that overlap Background Investigation Dimensions: Integrity; Impulse Control/Attention to Safety; Substance Abuse and Other Risk-Taking Behavior; Stress Tolerance; Conscientiousness; and Decision-Making/Judgment.[40]

Psychologist Name	Date of Evaluation	Conclusion
Maria Nucci	9/20/2023	Not Suitable
Ryan Dunnigan	11/1/2023	Not Suitable
Ryan Dunnigan	3/13/2024	Suitable
David Corey	4/9/2024	Suitable

After Dr. Nucci assessed Respondent as "not suitable," Respondent exercised his right to obtain a second opinion from a psychologist of his own choosing and obtained an evaluation from Dr. Dunnigan.[41] On November 1, 2023, Dr. Dunnigan also deemed Respondent "not suitable." Dr. Dunnigan stated that he had "concerns" at the time of Respondent's evaluation because Respondent was the subject of "a sexual harassment investigation that was in progress at this security company at that time." Dr. Dunnigan stated:

> That investigation, coupled with a number of different incidents that he had been involved in the past, resulted in this examiner not finding him suitable for the position at that time. Most notably, Mr. Kim . . . had been found guilty and have [sic] been placed on formal probation, following a conviction involving misrepresenting information or facts during a criminal/court investigation.[42]

As a result of Dr. Dunnigan's assessment, on November 30, 2023, SFSO sent Respondent an email stating:

> We are writing to inform you of the outcome of your application for the 9504 Deputy Sheriff at San Francisco County Sheriff's Office. After careful consideration, we regret to inform you that we have elected <u>not to proceed</u> with your application."[43]

[40] Background Investigation Manual, Chapter 2 at 2-1.
[41] POST Regulation 1955(g)(providing right to appeal where a peace officer candidate is found psychologically unsuitable). The appeal process provides Respondent was responsible for paying for the second opinion.
[42] Attachment P at 010 (Background Investigation File at 336).
[43] Attachment P at 017 (Background Investigation File at 376)(emphasis in original).

Neither POST Regulations nor SFSO policy provide for further psychological evaluations after a second opinion's determination of not suitable.[44] Consequently, it is a reasonable conclusion that SFSO's rejection letter should have closed the application process. According to Lieutenant Tiffany Martin, SFSO did not have an appeal process for further review after a rejection like the one Kim received.[45] On the other hand, according to Sergeant Fonthal, there was no SFSO policy prohibiting an appeal. In Respondent's case, Sheriff Miyamoto called either Sergeant Fonthal or Lieutenant Martindale (who share an office) and told them to "pause" Respondent's background investigation after Respondent's own psychologist determined he was "not suitable."[46]

In February 2024, Respondent submitted an appeal of his own psychologist's evaluation that he was not suitable for a position as a peace officer by providing a letter purportedly from Sheriff Miyamoto to Dr. Dunnigan.[47] The letter is unsigned, undated, and is not on SFSO letterhead. According to Deputy Wan, Dr. Dunnigan called him to authenticate the letter. Deputy Wan had not seen the letter and was otherwise unaware of it. Dr. Dunnigan told Deputy Wan that he would call Sheriff Miyamoto to verify the letter. As an investigator, Deputy Wan stated that he was suspicious of the letter's authenticity.[48] Deputy Wan did not know whether Dr. Dunnigan verified the letter's authenticity with Sheriff Miyamoto. Sergeant Fonthal saw the letter when it came in as an attachment to a report Dr. Dunnigan submitted based on the February 2024 appeal.

The letter stated:

> As the elected Sheriff of San Francisco, one of my responsibilities is the hiring of sworn members of the Department. I am familiar with what Mike experienced when he left the Sheriff's Office, as well as his experiences at the War Memorial Veteran's Building. I have no concerns at this time of bringing him back as a member of the Sheriff's Office.[49]

According to Dr. Dunnigan's report:

> Mr. Kim reached out [to Dr. Dunnigan] again in February 2024. He informed this examiner that the investigation at his security company had been completed and that the allegations had not been sustained. Mr. Kim also stated that he had received a letter from Sheriff Miyamoto strongly supporting him and his believed

[44] Attachment O (Mel Fonthal Report of Interview at 3 (4/16/2025)).
[45] Attachment Q (Tiffany Martin Report of Interview at 1 (3/11/2025)).
[46] Although there were no orders to give updates to Sheriff Miyamoto, there was an "understanding" that the Sheriff wanted updates regarding Respondent's background investigation. Attachment O (Mel Fonthal Report of Interview at 1 (4/16/2025)).
[47] Attachment R (Letter from Paul Miyamoto to "To Whom It May Concern" (undated)).
[48] Attachment N (Ronnie Wan Report of Interview at 3 (3/11/2025)).
[49] Attachment R (Letter from Paul Miyamoto to "To Whom It May Concern" (undated)).

appropriateness for the position of a Correctional Deputy at this time. This letter will be included with my Findings Report. The Sheriff stated that he has 'no concerns at this time of bringing him back as a member of the Sheriff's Office.' Mr. Kim stated that the Sheriff's Office is aware of his misdemeanor arrest (related to the false reporting case) and still were interested in having him come back to work for the Department. He said that now that the sexual harassment investigation... has been completed and was not sustained (and another had not been pursued), he and the Department feel that it would be appropriate for him to again apply for a [Deputy] Sheriff position with the Department.

This examiner did explain to Mr. Kim and initially that there were concerns relating to POST Peace Officer Psychological Screening Dimensions for Officers. The standards were called into question in a number of different categories. Specifically, *Social Competence; Decision-Making and Judgment;* and *integrity/Ethics*. Mr. Kim said he understood these concerns and had discussed these matters with the Sheriff and background personnel there at the Department. He stated that they were comfortable with him coming back and working there. He mentioned that he would be brought on in a probationary status (as with all new or returning Correctional Deputies) and that he could be let go at any time (while in that probationary period) if they had any concerns about him, his appropriateness, or his performance. This examiner expressed that he very likely would not have been considered 'suitable' if not for the letter from the Sheriff recommending him for the position and speaking to his abilities and his seemingly good fit and past with the Department.[50]

During my investigation, I was unable to obtain evidence to corroborate the veracity of Respondent's statements to Dr. Dunnigan that "the Sheriff's Office is aware of his misdemeanor arrest (related to the false reporting case) and still were interested in having him come back to work for the Department" and "they [SFSO] were comfortable with him coming back and working there."[51]

On April 9, 2024, Dr. Corey reviewed the results of Dr. Nucci's and Dr. Dunnigan's assessments and concluded that Respondent was "suitable" for the position of Deputy Sheriff.[52]

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[50] Attachment P at 010-011Background Investigation File at 336-37).

[51] Dr. Dunnigan and Respondent declined to be interviewed. I did not seek to interview Sheriff Miyamoto because issues relating to potential hiring irregularities at SFSO were outside the scope of my investigation of serious misconduct. *See* California Penal Code Section 13510.8(c)(2)(authorizing Peace Officer Standards and Accountability Division "to review and investigate allegations for purposes of decertification")

[52] Attachment P at 001 (Background Investigation File at 17). This investigation noted anomalies in the Background Investigation process, including that peace officer candidates who are assessed "not suitable" by their own psychologist on appeal from the department psychologist are not afforded any

Subsequent to the psychological assessments, Deputy Wan completed the background investigation and submitted it to his chain of command for approval. On October 31, 2024, Lieutenant Martindale started the hiring approval process in Guardian.[53] The background investigation unit did not have a "vote" in the hiring decision and the Guardian note "approved" by the unit meant that the file was complete and ready for review.[54]

The Background Investigation File[55] documented each approval level and the vote in favor or against hiring Respondent:

Date	Approver Rank	Vote
11/1/2024	Linda Bui Captain	Reject hiring
11/2/2024	Tanzanika Carter Assistant Sheriff	Reject hiring
11/5/2024	Katherine Johnson Undersheriff	Reject hiring
11/5/2024	Paul Miyamoto Sheriff	Approve hiring

On December 21, 2024, SFSO employed Respondent as a Deputy. In connection with his reemployment background investigation, Respondent submitted documentation. Respondent signed the documents certifying them to be accurate. As explained further in the analysis section below, Respondent made admissions of his Dishonesty in these documents and during pre-employment interviews.

B. Dishonesty Analysis

California Penal Code 13510.8(b)(1) states that the definition of "serious misconduct" shall include:

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additional appeals similar to the appeal that Respondent undertook in February 2024. Among the anomalies were an applicant appealing a finding of not suitable, an applicant's own doctor finding the applicant not suitable, and the Sheriff's letter of recommendation. These anomalies are outside the scope of this investigation.

[53] Attachment P at 015 (Background Investigation File at 374).

[54] Attachment N (Ronnie Wan Report of Interview at 3 (3/11/2025)); Attachment Q (Tiffany Martin Report of Interview at 2 (3/11/2025)); Attachment O (Mel Fonthal Report of Interview at 3 (4/16/2025)). Although the approval levels noted in a different section of the Background Investigation File (page 375) appear slightly different, the ultimate result is the same as the chart shown above.

[55] Attachment P at 013, 016 (Background Investigation File at 373, 375).

(3) Dishonesty relating to the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct.

POST Regulation 1205(a)(1) contains the language quoted above and also includes the following statement:

For purposes of this subsection, in considering whether a suspension or revocation of certification is proper, the Commission will consider the extent to which the dishonesty related to a material or significant fact in the context of the statement or omission alleged to be dishonest and will also consider whether the dishonesty appears to have been done willfully or intentionally, with the intent to deceive.

1. ***Did Respondent sign a Declaration in Support of Defendant Andy Li's Motion to Reopen Detention Hearing and Reconsider Detention on August 6, 2014, under penalty of perjury that his statements were true and correct, when his statements were materially false? If so, were Respondent's materially false statements Dishonesty relating to the reporting, investigation, or prosecution of a crime in violation of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1)?***

    a. ***Finding: The clear and convincing evidence substantiated that Respondent's Declaration contained materially false statements, that he knowingly and willfully lied to a federal court, and that he obstructed justice in a federal criminal case through his lies. The clear and convincing evidence further substantiated that Respondent's false statements violated California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1) because they were made in connection with the prosecution of Li.***

2. ***Did Respondent tell FBI Special Agents during an interview on August 19, 2014, that he did not know that Andy Li had a ballistic vest, that he dropped off a work-issued ballistic vest with his wife, who was at Li's wife's beauty salon, while he went out drinking with friends, and that tried to get the vest back but forgot about the vest over time, when his statements were materially false? If so, were Respondent's false statements Dishonesty relating to the reporting, investigation, or prosecution of a crime in violation of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1)?***

a. ***Finding: The clear and convincing evidence substantiated that Respondent's statements to FBI Special Agents were materially false. The clear and convincing evidence further substantiated that Kim's statements violated California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1) because they were made in connection with a criminal investigation into Kim's criminal activity in submitting a false Declaration to a federal court.***

3. ***Did Respondent tell FBI Special Agents during an interview on August 19, 2014, that he did not know that Andy Li had a ballistic vest, that he dropped of a work-issued ballistic vest with his wife, who was at Li's wife's beauty salon, while he went out drinking with friends, and that tried to get the vest back but forgot about the vest over time, when his statements were materially false? If so, were Respondent's false statements Dishonesty relating to the reporting of, of investigation of misconduct by, a peace officer in violation of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1)?***

    a. ***Finding: The clear and convincing evidence substantiated that Respondent's statements to FBI Special Agents were materially false. The clear and convincing evidence further substantiated that Respondent's statements violated California Penal Code 13510.8(b)(1) and POST Regulation 1205(a)(1) because they were made in connection with Kim's peace officer misconduct.***

I will address the allegations cumulatively in the analysis of the evidence below to avoid repetition of the evidence. In sum, the clear and convincing evidence substantiated that Respondent was Dishonest in connection with the investigation of and prosecution of Li; in connection with the FBI's investigation of Respondent's criminal act of submitting a materially false Declaration to a federal court; and in connection with the FBI's investigation of Respondent's reporting of, Respondent's peace officer misconduct.

The clear and convincing evidence substantiated that:

- Respondent was dishonest in a Declaration filed with a federal court under penalty of perjury in connection with the criminal prosecution of Andy Li.
    - The Declaration contained materially false statements. Specifically, Respondent stated that Andy Li's possession of a ballistic vest was the result of the Respondent's inadvertent failure to retrieve his ballistic vest from Andy Li's wife, Mimi Li, after the Respondent accidentally left the ballistic vest in Mimi Li's hair salon.
    - Andy Li's possession of a ballistic vest was one of the reasons the court cited for denying Andy Li bail in April 2014.

    - Respondent knowingly and willfully lied to a federal court when he signed this Declaration.
    - Respondent obstructed justice in a federal criminal case by signing a Declaration that he knew contained false information.
- Respondent was dishonest in a criminal investigation of Andy Li when he made statements to FBI Special Agents on August 19, 2014, during an interview about Andy Li and his Declaration that were materially false, including that:
    - He did not know that Andy Li had a ballistic vest;
    - He dropped off a work-issued ballistic vest with his wife, who was at Li's wife's (Mimi Li) beauty salon, while he went out drinking with friends; and
    - He tried to get the vest back but forgot about the vest over time.
- Respondent stated that he made materially false statements in a memorandum he submitted to then-Chief Deputy Matthew Freeman, SFSO, which repeated the lies he told FBI Special Agents.[56]

The admissions in Respondent's Plea Agreement stand as evidence beyond a reasonable doubt that he lied to the Court in the Li prosecution and that he lied to FBI Special Agents in connection with their investigation of criminal activity and his own peace officer misconduct. The beyond a reasonable doubt evidentiary standard is far higher than the clear and convincing evidentiary standard required in this investigation.

In support of his guilty plea, Respondent stated to the Court that he knowingly and willfully lied to the Court:

> On August 6, 2014, I signed a Declaration. I knew and intended that the Declaration would be provided to the Court for the purpose of Andy Li's attorneys to seek the release of Andy Li. In connection with that Declaration, I falsely declared that my wife had taken a ballistic vest with her to see the wife of Andy Li. I falsely declared that my wife had forgotten the vest at the workplace of the wife of Andy Li. I falsely declared that the wife of Andy Li had placed the vest in the trunk of her car. I falsely declared that I had not retrieved the vest from the wife of Andy Li. In truth and in fact, I had loaned my ballistic vest — issued to me by the San Francisco Sheriff's Department — to Andy Li for his

[56] Although Respondent stated to the FBI that he submitted a memorandum containing lies to his chain of command and admitted the same in his background investigation file, I was unable to locate a copy of the memorandum. Attachment P at 012 (Background Investigation File at 360 ("35) I falsified a memo I wrote to my supervisor. This was related to the misdemeanor contempt of court charge."); Attachment P at 007 (Background Investigation File at 74 (Personal History Statement – Peace Officer (POST 2-251))(8/1/2021)("I wrote a memo to Chief Deputy Matthew Freeman stating the same fact. The FBI arrived at my work and interviewed me about my statement that was filed in court. I told the FBI the same story."); Attachment S (FBI Interview of Michael Kim, FD-302 at 2 (8/19/2024) ("KIM stated he let his SFSO Chief know about the circumstances involving the ballistic vest approximately two weeks ago."). In my investigation I contacted Mr. Freeman by phone and U.S. mail to interview him about the memorandum from Respondent. Mr. Freeman did not respond to my requests to be interviewed.

use. I knew that my declaration was false . I knew and intended that the attorneys for Andy Li would provide the false declaration to the Court. I knew and intended that the Court would rely on my false declaration in considering the detention of Andy Li.[57]

Respondent's lies were material. Prosecutors sought pre-trial detention of Li because, they argued, he was a danger to the community. Prosecutors argued that Li was Chow's henchman who engaged in violent acts on Chow's orders. The fact that Li had a ballistic vest in his car at the time the FBI arrested him was evidence that Li was a danger to the community. The Court specifically cited the retrieval of a ballistic vest from Mimi Li's car at the time of Andy Li's arrest as a factor in its decision to deny Andy Li bail.[58] Respondent's lies in his Declaration and to the FBI Special Agents interviewing him that he had not lent the vest to Li and had forgotten the vest with his wife were therefore material to the Court's determination whether to reconsider pre-trial detention of Li.

Respondent's lies obstructed justice by offering false evidence. Respondent's statements to the Court in his Declaration interfered with and disrupted the integrity of another branch of government – the judicial system. Respondent's Declaration undermined the judicial process and wasted the time of the Court, prosecutors, and FBI agents investigating Li.

Other evidence that established the evidentiary standard of clear and convincing was met regarding Respondent's Dishonesty includes other admissions he made about his lies to the Court, to FBI agents, and to his own department, including:

- Respondent told FBI Special Agents he lied to them when they interviewed him in August 2014.
    - On December 22, 2014, FBI Special Agents interviewed Respondent again. During this interview, Respondent admitted that he made materially false statements to them during his interview on August 19, 2014.[59]
- Respondent told SFSO that he lied to the FBI when he reapplied for employment with SFSO.
    - In Section 8 (Legal) of the Personal History Questionnaire that Respondent submitted in connection with his 2021 application for reemployment with SFSO, Respondent answered the question, "Have you ever been convicted of . . . any misdemeanor or felony offense in or

[57] Attachment T (Plea Agreement, *United States v. Kim*, 18-CR-124 at 2-3 (U.S. District Court for the Northern District of California)(5/25/2018)).
[58] Attachment E (Order of Detention Pending Trial, United States v. Li, CR-14-196, at 2 (U.S. District Court for the Northern District of California)(5/7/2014)).
[59] Attachment D (FBI Interview of Michael Kim, FD-302 (12/22/2014)).

any other legal jurisdiction . . .?" Respondent stated: "August 6, 2014, I plead [sic] guilty to 1 count of contempt of court. I was placed on federal probation for 3 years, fined $30,000 dollars, 300 hours of community service. **I was not truthful when interviewed by the F.B.I.**[60]

- Respondent admitted that he lied to his supervisor about his own misconduct when he submitted an application to SFSO for reemployment.
    - On May 1, 2021, Respondent explained further his answer "yes" to the question "Have you ever falsified or embellished any police, security, evidence, or other official report?"[61] In an Explanation Form, he stated that he "**falsified a memo [he] wrote to [his] supervisor**. This was related to the misdemeanor contempt of court charge."[62]
- In a Personal History Questionnaire he submitted to SFSO for reemployment, Respondent admitted that he lied.
    - As an update to the Personal History Statement (POST 2-251), Respondent answered the following question:

> 46.3. Have you ever been dishonest in the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct?[63]
> Respondent answered "yes" and explained:
> Over the telephone, an attorney called me to get my statement for a bail hearing for my friend. I told this attorney that I left my department's bullet proof vest at my friend's wife hair salon and forgot to pick it up. That is why my friend had a sheriff's bullet proof vest when he was arrested at his house. This statement was submitted in court.

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[60] Attachment P at 002 (Background Investigation Report at 31 (6/27/2023)(Personal History Questionnaire (4/30/2021) (emphasis supplied)). On April 30, 2021, Respondent digitally signed the Personal History Questionnaire that he "personally completed each page of the PHQ form and all statements are true and correct to the best of [his] knowledge and belief."

[61] Attachment P at 006 (Background Investigation Report at 73 (Explanation Form, Question 35 (5/1/2021)), 142 (Miscellaneous Documents/Questionnaires, Question 35) (5/1/2021)).

[62] Attachment P at 006 (Background Investigation Report at 73 (Explanation Form, Question 35) (5/1/2021))(emphasis supplied).

[63] Note that this is a direct quotation of the language from POST Regulation 1205(a)(1)'s definition of Dishonesty as serious misconduct. On August 1, 2023, Respondent digitally signed a Personal History Questionnaire that he "personally completed each page of the PHQ form and all statements are true and correct to the best of [his] knowledge and belief." He submitted the PHQ in connection with his application for employment with SFSO.

> I wrote a memo to Chief Deputy Matthew Freeman stating the same fact. The FBI arrived at my work and interviewed me about my statement that was filed in court. I told the FBI the same story.
>
> The next day I obtained an attorney and spoke with the FBI and the Assistant United States Attorney. I cooperated with the FBI and was charged with a misdemeanor contempt of court.[64]

- Respondent told a polygraph examiner that he lied to a federal court.
  - On July 22, 2023, during a pre-polygraph examination interview. The interviewer noted:

> Admits he left this job as he was charged with contempt of court as he lied during a federal investigation about giving his friend his department issued vest. Explains his friend was arrested and his attorney asked him to write his friend Andy Li a statement. Admits he wrote a letter/ statement saying he left his department vest at his friend's wife's salon when he actually gave it to his friend. Says this was a big mistake on his part and he did this as he thought Andy was changing his life and becoming a better person. Says Andy told him he was working in security and he wanted to be safe. Says he was questioned about this by the FBI who spoke with him and he told them the same thing. Says he then spoke with his departments [sic] union, got an attorney, and he then told the feds the truth and cooperated with them. Says this was his childhood friend and he thought he could help him . Says his friend was involved in Asian gang activity and was in and out of prison a lot. Says he spoke with the Sheriff about this and she told him she would consider hiring him again at some point and so he resigned from this agency. Says he was eventually charged with a misdemeanor. Says he was on probation, paid a $30,000.00 fine, completed 300 hours of community service, and was on home monitoring. Says he knew his friend Andy committed these crimes over the years but when he got out of prison he thought he was better and no longer committing any crimes. . . .[65]

C. Reasonable Grounds Exist for Regulatory Action

Reasonable grounds exist for revocation of Respondent's peace officer certificates. As cited by POST Regulation 1213, Respondent's actions and conduct

[64] Attachment P at 007 (Background Investigation File at 74 (Personal History Statement – Peace Officer (POST 2-251))(8/1/2021)).
[65] Attachment P at 008 (Background Investigation File at 286 (Polygraph Examination Report at 2)(7/22/2023)).

before, during, and after his conviction demonstrate that he cannot be trusted to be a peace officer and is ineffective as a peace officer.

Respondent's Declaration to a federal court obstructed justice by lying to the court. As a peace officer, Respondent was and is expected to provide truthful information in court. Respondent's interference with the judicial process and criminal justice system stands in direct contravention to the core duties of being a peace officer. Further, Respondent's actions in soliciting others, including his wife, to hold fast to the lies he created show that he is not trustworthy. Respondent's lies negatively impacted the integrity of the criminal justice system. Respondent's Dishonesty undermined the public's trust in law enforcement.

Respondent's Dishonesty in submitting a memorandum to his chain of command harms morale and undercuts departmental discipline.

Respondent's Dishonesty stemmed from a conflict of interest in which Respondent's personal loyalties to his friend overshadowed his professional obligations as a peace officer. The conflict of interest manifested itself in lies to a federal court, to FBI Special Agents, and to his own chain of command. Respondent's actions demonstrate a distinct and innate inability to perform basic law enforcement functions. The People of California reasonably expect that peace officers uphold the law and not permit personal loyalties to compromise their professional obligations. Respondent let his personal loyalty to Li compromise his professional obligations when he lied.

Through his lies, Respondent attempted to help gain the release of a man from prison that a court deemed dangerous to the community based on his own admitted role as enforcer for an organized crime syndicate who dealt drugs, laundered money, and trafficked in weapons. Respondent cannot be effective as a peace officer because he is not honest.

Respondent should be held accountable to his own representations to the court during sentencing that he relinquished his law enforcement career forever. Respondent asked for leniency from the court during his sentencing based upon his relinquishment of his professional aspirations to remain a California peace officer. In his Memorandum in Aid of Sentencing, his lawyers wrote:

> On February 8, 2016, Mr. Kim resigned from his employment in the San Francisco Sheriff's Office with ***no intention of returning to law enforcement***."[66]. . . Mr. Kim has fully accepted responsibility and proactively took the initiative to make amends for his conduct, ***shown in part by his***

[66] Attachment U (Defendant's Memorandum in Aid of Sentencing, *United States v. Kim*, 18-CR-124, at 3 (U.S. District Court for the Northern District of California) (10/5/2018)(emphasis supplied)).

voluntarily retirement [sic] from the Sheriff's Office."[67] . . . ***For the above reasons*** . . . Mr. Kim respectfully requests that this Honorable Court impose probation, a fine and community service.[68]

Respondent's own family also sought leniency based upon the fact that Respondent's gave up a career in law enforcement. They filed statements with the Court stating:

Michelle Lam (Respondent's sister-in-law):

"It was very difficult to watch him walk away from something that I knew he loved because of a mistake he made."[69]

Les Pasamonte (Respondent's brother-in-law):

"He was a career law enforcement officer, excelling to the rank of Sergeant, onto SRT and then to SWAT. It's been heartbreaking to see him **walk away from all of that to make amends**."[70]

Jeff Lam (Respondent's brother-in-law):

"Although he loved working for the sheriff's department and showed much pride in his work, he **independently** made the difficult decision to leave this prestigious job and position."[71]

The Court's sentence included a reduction in the Sentencing Guidelines to include a reduction for "acceptance of responsibility."[72]

Although the anonymous complainant stated that Respondent's sentencing "stipulated" that he relinquish his career in law enforcement as part of the plea deal, this investigation did not reveal evidence to corroborate the allegation. A reasonable conclusion, however, based on the statements of family members and the Court's provision of a reduction for "acceptance of responsibility" is that Respondent intended

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[67] Attachment U (Defendant's Memorandum in Aid of Sentencing, *United States v. Kim*, 18-CR-124, at 6 (U.S. District Court for the Northern District of California)(10/5/2018)(emphasis supplied)).
[68] Attachment U (Defendant's Memorandum in Aid of Sentencing, *United States v. Kim*, 18-CR-124, at 6 (U.S. District Court for the Northern District of California)(10/5/2018)(emphasis supplied)).
[69] Attachment V (Exhibit C to Defendant's Memorandum in Aid of Sentencing, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(7/10/2018)).
[70] Attachment V (Exhibit C to Defendant's Memorandum in Aid of Sentencing, *United States v. Kim*, 18-CR-124 U.S. District Court for the Northern District of California)(7/5/2018) (emphasis supplied)).
[71] Attachment V (Exhibit C to Defendant's Memorandum in Aid of Sentencing, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(7/3/2018) (emphasis supplied)).
[72] Attachment W (Judgment in a Criminal Case, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(10/12/2018)).

to surrender a career in law enforcement based on his conviction for lying and gained the benefit of a reduced sentence based upon this surrender.

The fact that Respondent sought and gained re-employment with SFSO shows that his statements to the court that he fully accepted responsibility and that he did not have any intention of continuing in a law enforcement career ring hollow and themselves appear dishonest. As Respondent stated to the polygraph examiner, he had conversations with then-Sheriff Vicky Hennessy about returning to SFSO. Given that Sheriff Hennessy left office in January 2020, Respondent's conversations would have occurred at some point near the time of his resignation in 2016 or his conviction in 2018. In either event, Respondent's conversations would have occurred *after* he was aware he had lied to a federal court, to the FBI, and even to his own chain of command and *after* his lawyers and family told the court that he had relinquished a career in law enforcement based on his lies.

In addition, that Respondent sought other employment as a peace officer at a department other than SFSO further shows that revocation is warranted to prevent him from gaining employment as a peace officer again.[73] In mid-2022, Respondent applied to be a police officer with City College of San Francisco ("CCSF"). After a background investigator there discovered that Respondent lied under oath, CCSF sent Respondent a rejection letter in October 2022.

The *Background Investigation Manual* sets forth the concept of "dimensions," which relates to the suitability of an individual to become a peace officer. Respondent's background investigation revealed significant issues with dimensions related to Respondent's moral character (integrity) and intellectually-based abilities (decision-making and judgment). The concept of dimensions is designed to provide guidance "what prior conduct constitutes good moral character (or, more importantly, the absence thereof)?"[74] In Respondent's case, his background investigation revealed significant deficiencies in his moral character that necessitate revocation or suspension of his peace officer certificates.

Finally, Respondent's lies were "done willfully or intentionally, with the intent to deceive" – which significantly increases the need for revocation or suspension pursuant to POST Regulation 1205(a)(1). Enlisting the help of others, including his

[73] Attachment P at 012 (Background Investigation File at 360)(Background Investigation Questionnaire Explanation Form at 2) (6/27/2023)).
[74] Background Investigations Manual (2022); *see* California Government Code Section 1031(d) (background investigations are designed to verify good moral character and the absence of past behavior indicative of unsuitability to perform the duties of a peace officer); POST Regulation 1953.

own wife, to collude and conspire to defraud a court is especially egregious behavior that the Commission should not condone in a peace officer.[75]

Supporting Evidence and Documentation

Evidence	Attachment
Executive Review and Division Recommendation	A
EDI Profile of Respondent	B
United States' Opposition to Defendant Li's Motion to Reconsider Detention Order, *United States v. Chow*, CR-14-196 (U.S. District Court for the Northern District of California)(8/22/2014)	C
FBI Interview of Michael Kim, FD-302 at 4 (12/22/2014)	D
Order of Detention Pending Trial, *United States v. Li*, CR-14-196 (U.S. District Court for the Northern District of California (5/7/2014)	E
Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention, *United States v. Li*, CR-14-196 (U.S. District Court for the Northern District of California) (8/6/2014)	F
Declaration of Michael Kim in Support of Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention, *United States v. Li*, CR-14-196 (U.S. District Court for the Northern District of California)(8/6/2014)	G
Declaration of Mimi Li in Support of Notice of Motion and Motion to Reopen Detention Hearing and Reconsider Detention, *United States v. Chow*, *et al.*, CR-14-196 (U.S. District Court for the Northern District of California)(8/6/2014)	H
Minute Entry (denying pre-trial release of Li), *United States v. Chow*, *et al.*, CR-14-196 (U.S. District Court for the Northern District of California)(9/26/2014)	I
Information, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(3/27/2018)	J
Criminal Minute Order, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(10/12/2018)	K

[75] Attachment D (FBI Interview of Michael Kim, FD-302 at 2 (12/22/2014) ("The day before the FBI interviewed Kim, Kim had dinner with Mimi, Caesar Marabuto (aka 'Auggie,' hereafter 'Auggie'), and Auggie's wife. At that time, Kim told Mimi about Kim's story he invented about forgetting the vest at Mimi's salon.") and 3 ("Kim told his wife the story he had told the FBI. Kim's wife was angry, but she also stuck with the story when she was subsequently interviewed.")).

Evidence	Attachment
Request for Early Termination of Supervision, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(11/2/2020)	L
Michael Kim Archived Background File	M
Ronnie Wan Report of Interview (3/11/2025)	N
Mel Fonthal Report of Interview (4/16/2025)	O
Background Investigation File	P
Tiffany Martin Report of Interview (3/11/2025)	Q
Letter from Paul Miyamoto to "To Whom It May Concern" (undated)	R
FBI Interview of Michael Kim, FD-302 (8/19/2024)	S
Plea Agreement, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(5/25/2018)	T
Defendant's Memorandum in Aid of Sentencing, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(10/5/2018)	U
Exhibit C to Defendant's Memorandum in Aid of Sentencing, *United States v. Kim*, 18-CR-124 (U.S. District Court for the Northern District of California)(10/5/2018)	V

IV. Conclusion

As stated above, the clear and convincing evidence substantiated violations of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1). Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation or suspension of Respondent's peace officer certificates pursuant to California Penal Code Section 13510.8.

Commission on Peace Officer Standards and Training
860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1603
(916) 227-3909 • www.post.ca.gov

EXECUTIVE REVIEW & PEACE OFFICER STANDARDS ACCOUNTABILITY DIVISION RECOMMENDATION

DATE: 4/17/2025

CASE #: POST2410050

PEACE OFFICER: Michael Kim

POST ID#: A63-W93

AGENCY: San Francisco Sheriff's Office

POST CONSULTANT / BC: Kevin Sherburne/Brian South

ALLEGATION(S):

Dishonesty. Michael Kim filed a Declaration under penalty of perjury with a federal court to support release on bail of a friend whom the FBI had arrested and a court ordered detained. Kim gave his work-issued ballistic vest to the friend, who was the enforcer for a Chinese organized crime syndicate's Draghonhead. Kim later lied to FBI agents who sought information about the Declaration. Kim resigned from SFSO in 2016 and, in 2018, pled guilty to a federal contempt misdemeanor charge (for lying in the Declaration). In 2024, SFSO rehired Kim.

If Kim had been convicted of the contempt charge today (that is, at any time after 1/1/2023), he would be subject to a Section 1029 revocation.

The Peace Officer Standards Accountability Division, Certification Executive Review Panel has reviewed the above referenced case involving alleged serious misconduct and has determined the following:

☒ There are reasonable grounds for suspension or revocation of a peace officer's certification.

POST determined clear and convincing evidence exists to show Respondent lied to a federal court, obstructing justice. Respondent's conviction -- based on perjury, obstruction of justice, and a conflict of interest placing his personal loyalties to a friend above his oath -- stands to show that he cannot serve effectively as a peace officer.

☐ There is insufficient evidence to support a recommendation of revocation or suspension of certification.

William Darden Chief Legal Counsel	Signature	4/17/25 Date
Annemarie Del Mugnaio Assistant Executive Director	Signature	4/17/25 Date
Manny Alvarez Executive Director	Signature	04/18/2025 Date

cc: Bureau Chief _____

cc: Jason Morlock

cc: Chandler Knapp

cc: _____

POST PROFILE NAME:

KIM, MICHAEL SHERMAN

CALIFORNIA COMMISSION ON **POST**

Certification Status: Active

AKA: N/A

DATE: 04/30/2025

PERSONAL IDENTIFICATION

POST I.D.	Agency	Birth Date	Gender	Race/Ethnicity
A63-W93	SAN FRANCISCO CO SO	[redacted]	[redacted]	[redacted]

CERTIFICATES AWARDED

Cert No.	Type	Awarded	Education	T	T+	Comments
101039	B	02/02/2001		[redacted]		
78181	I	08/08/2003	[redacted]	[redacted]		[redacted]
80385	A	08/07/2008	[redacted]	[redacted]		

Total Number of Certificates: 3

EMPLOYMENT

Hired From	To	R*	Rank	Rank Date	Agency	Agency Name	F/P	P/U	Seas
08/02/1999	02/12/2005	7	DPTY	08/02/1999	38000	SAN FRANCISCO CO SO	F	P	
08/02/1999	02/13/2016	1	SGT	02/12/2005	38000	SAN FRANCISCO CO SO	F	P	
12/21/2024			DPTY	12/21/2024	38000	SAN FRANCISCO CO SO	F	P	

***Reason for Separation: 1 = Resigned, 7 = Promotion/Demotion**

POST CERTIFIED TRAINING

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
12/17/1999	A	2960-00100-99-001	790	R	Y	38000	COR		BASIC COURSE-INTENSIVE
12/07/2000	K	2430-29900-00-017	8		Y	38000	SF SO		S&K- MODULES # 8, 9
02/07/2001	K	2430-29900-00-048	8		Y	38000	SF SO		S&K- MODULES # 10, 11
05/31/2001	K	2430-29900-00-084	8		Y	38000	SF SO		S&K-ART OF VERBAL CONTROL
09/13/2001	K	2430-29900-01-011	6		Y	38000	SF SO		S&K-FIRST AID UPDATE
09/13/2001	K	2430-29900-01-056	2		Y	38000	SF SO		S&K-CAL OSHA & PERSONAL HEALTH
04/26/2002	K	8550-22650-01-009	24	R	Y	38000	BQ&A		PEER COUNSELING
10/25/2002	K	2430-22650-02-001	24	R	Y	38000	SF SO		PEER COUNSELING
11/15/2002	H	8550-10560-02-001	24	R	Y	38000	BQ&A		CRIT. INCDT. STRESS DEBRIEFING
01/23/2003	K	2430-29900-02-039	6		Y	38000	SF SO		S&K-CPR UPDATE MOD #9
01/23/2003	K	2430-29900-02-046	2		Y	38000	SF SO		S&K-CAL OSHA & PERSONAL HEALTH
02/25/2003	K	2420-22289-02-053	20		Y	38000	SF PD		TACTICAL RESP.SCHOOL/COMM.VIOL
05/14/2003	K	2430-29900-02-136	4		Y	38000	SF SO		S&K-CLETS INST MOD #10
10/22/2004	K	2430-20115-04-011	8		Y	38000	SF SO		TERRORISM/L.E. RESPONSE (LERT)
11/18/2004	K	2430-23282-04-015	6		Y	38000	SF SO		RACIAL PROFILING
11/18/2004	K	2430-29504-04-015	2		Y	38000	SF SO	*	TACCOM(PSP)
12/15/2004	K	5590-20005-04-026	8	R	Y	38000	CONTRASO	*	DRIVING/FORCE OPTION SIM.COMBO
03/17/2005	K	2430-31767-04-001	24		Y	38000	SF SO		WMD/L.E. FIELD RESPONSE
06/27/2005	K	2430-20600-04-024	4		Y	38000	SF SO		CRIMINAL JUSTICE INFO SYSTEMS
12/09/2005	D	2540-00400-05-004	80	R	Y	38000	SOBAYRTC		SUPERVISORY COURSE
10/04/2006	K	2430-20600-06-037	4		Y	38000	SF SO		CRIMINAL JUSTICE INFO SYSTEMS
10/04/2006	K	2430-21779-06-036	4		Y	38000	SF SO		CPR REFRESHER
10/06/2006	K	2430-29501-06-001	4	R	Y	38000	SF SO	*	FIREARM(PSP)
01/22/2007	K	2430-21015-06-017	8	R	Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
03/12/2007	K	2430-28222-06-013	8		Y	38000	SF SO		ARREST PROCEDURE/REPORT WRITNG
08/10/2007	K	2310-23000-07-001	80	R	Y	38000	SACTO SD		SPECIAL WEAPONS & TACTICS
12/04/2007	K	2430-21771-07-036	8		Y	38000	SF SO		FIRST AID/CPR REFRESHER
02/08/2008	K	2430-29501-07-020	4		Y	38000	SF SO	*	FIREARM(PSP)
02/14/2008	K	2430-23090-07-009	4		Y	38000	SF SO		ELECTRONIC WEAPONS
03/18/2008	K	2430-21015-07-016	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE

POST CERTIFIED TRAINING *continued*

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
10/07/2008	K	2430-21015-08-002	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
01/13/2009	K	2430-21779-08-018	4		Y	38000	SF SO		CPR REFRESHER
01/13/2009	K	2430-21135-08-020	4		Y	38000	SF SO	*	DRIVER AWARENESS UPDATE
03/26/2009	K	2430-43173-08-008	4	X	Y	38000	SF SO		EMOTIONAL SURVIVAL
03/26/2009	K	2430-23287-08-010	2	X	Y	38000	SF SO		RACIAL PROFILING UPDATE
03/26/2009	K	2430-30854-08-010	2	X	Y	38000	SF SO	*	TACTICAL COMMUNICATIONS UPDATE
06/19/2009	K	2430-29501-08-045	4		Y	38000	SF SO	*	FIREARM(PSP)
09/01/2009	K	2430-21015-09-001	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
11/13/2009	K	2430-29501-09-019	4		Y	38000	SF SO	*	FIREARM(PSP)
01/07/2010	K	2430-21135-09-019	4		Y	38000	SF SO	*	DRIVER AWARENESS UPDATE
01/07/2010	K	2430-21779-09-019	4		Y	38000	SF SO		CPR REFRESHER
03/09/2010	K	2430-20600-09-020	2		Y	38000	SF SO		CRIMINAL JUSTICE INFO SYSTEMS
03/09/2010	K	2430-29223-09-019	6	X	Y	38000	SF SO		ARREST PROCEDURE UPDATE
10/27/2010	K	2430-21779-10-008	4	X	Y	38000	SF SO		CPR REFRESHER
10/27/2010	K	2430-28381-10-007	2	X	Y	38000	SF SO		ETHICS IN LAW ENFORCEMENT
10/27/2010	K	2430-28411-10-008	2	X	Y	38000	SF SO		WORKPLACE HARASSMENT PREVENTION
10/28/2010	K	2430-20129-10-008	2	X	Y	38000	SF SO		INMATE RADICALIZATION AWARENESS
10/28/2010	K	2430-30858-10-012	4	X	Y	38000	SF SO		TACTICAL PLANNING
02/11/2011	K	1025-23030-10-003	48	R	Y	38000	I.T.R.		SPECIAL WEAPONS & TACTICS,CMDR
03/14/2011	K	2430-21015-10-035	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
06/24/2011	K	2430-29501-10-044	4		Y	38000	SF SO	*	FIREARM(PSP)
06/24/2011	K	2430-21822-10-006	4		Y	38000	SF SO	*	FIREARMS/TACTICAL-SIMUNITIONS
07/12/2011	K	2430-30854-11-002	2	X	Y	38000	SF SO	*	TACTICAL COMMUNICATIONS UPDATE
07/12/2011	K	2430-21769-11-016	6	X	Y	38000	SF SO		FIRST AID REFRESHER
07/13/2011	K	2430-21015-11-002	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
07/14/2011	K	2430-29501-11-004	4		Y	38000	SF SO	*	FIREARM(PSP)
07/14/2011	K	2430-21135-11-004	4		Y	38000	SF SO	*	DRIVER AWARENESS UPDATE
12/02/2011	K	2430-23090-11-010	4		Y	38000	SF SO		ELECTRONIC WEAPONS
09/28/2012	K	2430-29501-12-010	4		Y	38000	SF SO	*	FIREARM(PSP)
01/14/2013	K	2430-21779-12-022	4	X	Y	38000	SF SO		CPR REFRESHER
01/14/2013	K	2430-20600-12-023	2		Y	38000	SF SO		CRIMINAL JUSTICE INFO SYSTEMS
01/15/2013	K	2430-21015-12-022	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
01/26/2013	G	9180-12311-12-010	24	R	Y	38000	POST		SHERMAN BLOCK SLI SESSION 1
02/23/2013	G	9180-12312-12-012	24	R	Y	38000	POST		SHERMAN BLOCK SLI SESSION 2
03/23/2013	G	9180-12313-12-014	24	R	Y	38000	POST		SHERMAN BLOCK SLI SESSION 3
04/20/2013	G	9180-12314-12-016	24	R	Y	38000	POST		SHERMAN BLOCK SLI SESSION 4
05/18/2013	G	9180-12315-12-018	24	R	Y	38000	POST		SHERMAN BLOCK SLI SESSION 5
06/14/2013	K	4890-12309-12-022	16	R	Y	38000	M TOLERNCE		SHERMAN BLOCK SLI SESSION 6A (MOT ONLY)
06/15/2013	G	9180-12319-12-019	8	R	Y	38000	POST		SHERMAN BLOCK SLI SESSION 6B
07/13/2013	G	9180-12317-13-001	24	R	Y	38000	POST		SHERMAN BLOCK SLI SESSION 7
08/09/2013	G	9180-12318-13-002	24	R	Y	38000	POST		SHERMAN BLOCK SLI SESSION 8
04/04/2014	K	2430-21135-13-036	4		Y	38000	SF SO	*	DRIVER AWARENESS UPDATE
04/04/2014	K	2430-29501-13-035	4		Y	38000	SF SO	*	FIREARM(PSP)
05/20/2014	K	2430-21769-13-050	6	X	Y	38000	SF SO		FIRST AID REFRESHER
05/20/2014	K	2430-30854-13-044	2	X	Y	38000	SF SO	*	TACTICAL COMMUNICATIONS UPDATE
05/21/2014	K	2430-21015-13-047	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
01/13/2015	K	2430-23287-14-018	2	X	Y	38000	SF SO		RACIAL PROFILING UPDATE
01/14/2015	K	2430-21015-14-020	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
01/16/2015	K	2430-29501-14-021	4		Y	38000	SF SO	*	FIREARM(PSP)

POST PROFILE NAME:

KIM, MICHAEL SHERMAN

CALIFORNIA COMMISSION ON **POST**

Certification Status: Active

AKA: N/A

DATE: 04/30/2025

POST CERTIFIED TRAINING *continued*

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
01/16/2015	K	2430-21779-14-018	4	X	Y	38000	SF SO		CPR REFRESHER
11/18/2015	K	2430-21015-15-012	8		Y	38000	SF SO	*	DEFENSIVE TACTICS UPDATE
12/03/2015	K	2430-21769-15-010	4	X	Y	38000	SF SO		FIRST AID REFRESHER
12/18/2015	K	2430-29501-15-020	4		Y	38000	SF SO	*	FIREARM(PSP)
04/30/2021	K	2540-25000-20-002	144	X	Y	60020	SOBAYRTC		REQUALIFICATION-BASIC COURSE
08/02/2024	K	2540-25000-24-001	160	X	Y	60020	SOBAYRTC		REQUALIFICATION-BASIC COURSE
12/21/2024	K	2430-29501-24-025	4		Y	38000	SF SO	*	FIREARM(PSP)
01/16/2025	K	2460-32068-24-003	16	X	Y	38000	SMCS0		PISTOL RED DOT INSTRUCTOR
03/13/2025	K	2430-29501-24-038	4		Y	38000	SF SO	*	FIREARM(PSP)
03/17/2025	O	2430-80303-24-004	2		Y	38000	SF SO		CHEMICAL AGENTS UPDATE
03/19/2025	K	2430-21797-24-012	8		Y	38000	SF SO		FIRST AID/CPR/AED REFRESHER
03/25/2025	K	2430-21261-24-004	4		Y	38000	SF SO		BATON/IMPACT WEAPONS
03/27/2025	K	2430-23090-24-018	8		Y	38000	SF SO		ELECTRONIC WEAPONS

***Meets Perishable Skills**

FOOTNOTES

NO FOOTNOTE ON FILE.

PLEASE REFER TO THE ENCLOSED EXPLANATION SHEET FOR ADDITIONAL INFORMATION.

COMMISSION ON POST – PROFILE REPORT

The Profile Report contains confidential information.

EXPLANATION SHEET

PERSONAL IDENTIFICATION: Subject's personal information as indicated in POST database (EDI system)	
POST ID:	Unique identification number assigned to subject by POST.
Agency:	Indicates the agency (or one of the agencies) where subject is currently employed. An "*" indicates that the subject is employed in more than one position within the same agency.
Birth Date/Gender:	Self-explanatory.
Race/Ethnicity:	**A** = Asian **B** = African American (Black) **N** = Native American **S** = Spanish/Hispanic **W** = White **O** = Other

CERTIFICATES AWARDED	
Cert:	Certificate serial number.
Type:	**B** = Basic **I** = Intermediate **A** = Advanced **S** = Supervisory **M** = Management **E** = Executive **R** = Reserve **D** = Public Safety Dispatcher **SX**= Specialized X (example: SA = Specialized Advanced)
Awarded:	Date certificate was issued.
Education:	Educational points or degree used for earning a certificate.
T:	Training points used for awarding the certificate.
T+:	Additional training points.
Comments:	Comments regarding training or institute(s) where subject received education.
Total Number of Certificates:	Number of certificates awarded to subject as indicated in POST database.

EMPLOYMENT: Subject's employment history as indicated in POST database	
Hired From:	Date subject was hired or sworn into the agency.
To:	Date subject left agency (if applicable).
R*:	Reason for separation as indicated by number in the Report description.
Rank / Rank Date:	Indicates rank as translated by POST database and date subject made rank.
Agency / Agency Name:	Agency code number and name where subject is currently working or previously worked.
F/P:	Time base: **F** = Full time **P** = Part time
P/U:	Wage status: **P** = Paid **U** = Unpaid
Seas:	Provisional or seasonal employment.

POST TRAINING: Courses attended or completed as indicated in POST database	
Comp Date:	Date course ended.
Cat:	General course category (for POST use only).
CCN:	Course Control Number.
Hrs:	Hours completed in course.
Rmb:	Reimbursement indicator: **R** = Reimbursed *(before FY 83/84 reimbursable agency not necessarily reimbursed)* **J** = Job specific * = Job specific, SALARY NOT PAID **Blank** = None or no data available
Cmp:	Completion indicator: **Blank or Y** = Course completed **N** = Course not completed **?** = Prior to 1979
Agency:	Agency where subject was employed at time of course enrollment.
School:	Training institute offering the course.
Course Name:	Course name as shown in POST database.

NON-CERTIFIED COURSES

This section will only appear if applicable.

FOOTNOTES

This section reserved for additional information.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. KWOK CHEUNG CHOW, et. al. Defendants.	No. CR 14-0196 CRB (JCS) UNITED STATES' OPPOSITION TO DEFENDANT LI'S MOTION TO RECONSIDER DETENTION ORDER Date: September 5, 2014 Time: 9:30 a.m. Court: Hon. Joseph C. Spero

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INTRODUCTION

Defendant Li opposed the government's motion to detain and selected a date for his detention hearing. At the hearing, which took place on April 8, 2014, this Court gave defendant time to be heard – so long was defendant heard, in fact, that the Court eventually made the point that the defendant was repeating his arguments. Transcript at 17. Now, defendant requests that this Court reconsider its prior Order to detain. Defendant claims that the Court should reconsider because there is some new information not previously available to the defendant. Unfortunately for defendant, to the extent there is any new information, it leans heavily in favor of detention, not release. Despite defendant's efforts to contort the facts and procedure of this case in his effort to accuse the government of hiding and misrepresenting facts from the Court, he is flat out wrong. There is no basis for reconsideration here but, should the Court reconsider, it should be even more concerned about defendant's danger to the community and risk of flight than at the prior hearing. In part, that is true because defendant has knowingly submitted false declarations to this Court in his effort to gain release.

ARGUMENT

1. The Shotgun in Defendant's Home

Defendant raises one and only one accurate point in his motion to reconsider this Court's Order of Detention. There is an owner of the residence rented by defendant who has claimed ownership of the shotgun in the defendant's residence. Doug Walker has informed the defendant and the government that he claims ownership of the shotgun found at defendant's residence.[1] Unfortunately for defendant, however, the matter does not end there.

Despite defendant's efforts to claim misrepresentation on the part of the government, the government never misrepresented any facts to the Court. During the detention hearing on April 8, 2014, at the tail end of the government's lengthy proffer, government counsel stated "let me just conclude with when the search was conducted on March 26th of 2014 in Mr. Li's residence, we recovered a 12-gauge shotgun. A ballistic vest was found in a vehicle which I understand to be his wife's vehicle. And – I'm going now back into the residence. Sorry. My apologies – 87 marijuana plants." Tr. at 9. That

[1] Mr. Walker will apparently not provide a declaration, but the government has interviewed Mr. Walker and agrees that he claims ownership of the shotgun found in defendant's residence.

statement remains as true today as it was during the hearing on April 8, 2014.[2]

Of course, if government counsel had known on April 8, 2014 that the owner of the residence had claimed ownership of the shotgun in the residence, that could have mitigated the shotgun and government counsel would have provided that information to the Court. That information, however, was not known to government counsel. The detention hearing took place shortly after the March 26, 2014 search of more than 30 locations by approximately 400 federal agents, interspersed with other detention hearings, initial appearances, and grand jury sessions, and while a massive amount of evidence was still being processed by the agents and being communicated to the case agents and, eventually, to government counsel. That Mr. Walker claimed ownership of the shotgun was actually not known to government counsel until after the defendant filed his current motion to reconsider the Court's detention order. Shortly after the search of the defendant's residence, Mr. Walker did claim to two FBI agents and one FBI employee – not an agent – that he was the owner of the shotgun. Unfortunately, that information was not filtered through to the investigating FBI case agents until weeks after the hearing. The first interview of Mr. Walker by a knowledgeable case agent was conducted on April 25, 2014, and listed in an FBI 302 record of interview not seen by government counsel until after defendant's motion was filed. The government concedes that the government, in the global sense, did have information that Mr. Walker claimed to own the shotgun, but submits that for understandable reasons the information did not reach the core trial team until after the hearing. Upon review of the full matter, however, the information should not cause the Court to reconsider defendant's detention.

The nature of the information regarding Mr. Walker is far less important than defendant would have the Court believe. First, the issue with a felon, narcotics manufacturer, and dealer like defendant Li is not **ownership** of a firearm, it is **possession** of a firearm. See, e.g., 18 U.S.C. § 922(g) and 924(c) (criminalizing possession of firearms, regardless of ownership). The government never described defendant Li to the Court as the owner of the shotgun. What remains absolutely true is that defendant undoubtedly had a shotgun in a residence that was under his dominion and control and, therefore, in his possession regardless of who was the legal owner of the shotgun. Whether defendant knew of the

[2] The only portion that turned out to be factually inaccurate is that there were only 81 marijuana plants, rather than 87 marijuana plants in the Lis' residence.

shotgun is obviously a different question that remains unanswered to this point and is unlikely to be answered credibly for the reasons below.

Second, by defendant's own description, Mr. Walker is of questionable credibility on this or any other point. According to a jail call on April 6, 2014 – two days prior to the detention hearing – between defendant and his wife, Mimi Li, Mr. Walker was well aware of the electricity configuration of the residence. That configuration is significant because the house was wired for defendant's indoor marijuana grow. As the Court is undoubtedly aware from its long experience with search warrants and other cases, wiring electricity in a manner for a marijuana grow is a telltale sign for such activities. Defendant told his wife: "He [Mr. Walker] wants to sit there and point fingers [about the electricity on the house] for something that he knew what was going on." Later in the conversation, defendant stated, in connection with the electricity to the house, that his wife should tell Mr. Walker that "You [Mr. Walker] knew what he [defendant] was doing there, you approved of it." Then defendant described that it would only cost about $200 to fix the electrical problem.

Sure enough, there was a marijuana grow in defendant's residence and the electricity had been rigged for that grow. That Mr. Walker was, by defendant's own words, aware of the grow makes his leaving of a firearm in that residence highly suspect and gives him an understandable reason to claim that the firearm had nothing to do with defendant and his activities in the residence. One also has to question a person leaving a firearm in the home of another person – especially people with children like the Lis – and not notifying the person that they were leaving the firearm. The shotgun was apparently recovered with other items, unsecured, in a crawlspace of the home. Who leaves a shotgun in another's home without commenting that they and their children might want to be cautious about the shotgun? This is especially true if the person leaving the shotgun knows that the occupant of the house has a drug operation ongoing in the house.

That defendant would direct the Court to a source like Mr. Walker as exonerating him should be of substantial concern to the Court. That defendant will say or do anything to try to get out of jail should give the Court great pause about releasing him. If a person cannot be trusted to give the Court straight information, that person cannot be trusted to comply with the Court's conditions and directions. And the information provided – that Mr. Walker claims ownership of the gun – does nothing to cut against the

overwhelming showing made at the hearing that the defendant should be detained. But it gets much worse for defendant.

2. The Sheriff's Ballistic Vest

During the course of the detention hearing, the government pointed out that there was a ballistic vest recovered from a vehicle belonging to defendant's wife. Again, that description is as true today as it was during the detention hearing. Defendant, in his motion, provides an unbelievable tale regarding how the vest landed in the car and how his wife did not bother to mention that fact to defendant's counsel until after the hearing. It turns out that, according to defendant, defense counsel may well have known about the ballistic vest before or during the hearing, as will be discussed further below. Giving defendant and his counsel the benefit of the doubt, however, the story currently being sold to this Court defies all logic.

According to defendant's collective declarations, a member of the San Francisco County Sheriff's Office decided that he wanted to leave a ballistic vest belonging to the Sheriff's Office at the work place of Ms. Li because he didn't want it in his car. Then, when the Officer's wife did not bring the vest home, it somehow made sense for the defendant's wife to put the ballistic vest in her vehicle. They then left the ballistic vest in that vehicle for weeks and the Officer decided he did not need it because he had another vest. This story, on its face, strains credulity even if Ms. Li and the Officer were credible. They are not, however, credible sources on this point according to the defendant and his wife's own versions of events.

During the course of the undercover investigation, defendant frequently described to UCE 4599 that he had a good friend who worked in the Sheriff's Office. Defendant told UCE 4599 that the Officer had been a member of defendant Chow's organization when the Officer was younger. Defendant described the individual as "Mike" – the same first name as the Officer who has now filed a declaration. Defendant described how one night he and the Officer were intoxicated and got into an automobile accident, with the Officer driving drunk, and they were hospitalized. During the covert investigation, the government attempted to learn whether the Officer being described by defendant Li really existed.

During the investigation, defendant tried to convince UCE 4599 to meet with the Officer. The Court will recall that this was during a period of time when defendant believed that UCE 4599 was an

organized crime figure. When UCE 4599 told defendant that he did not want to meet anyone who was law enforcement – primarily out of a concern by the agent that the Officer, as a member of law enforcement, might coincidentally know the UCE or know someone who did know the UCE, thereby compromising the investigation – the defendant stated that the Officer was trustworthy. Trustworthy in that context meant that the Officer would not do anything to stop or arrest defendant and UCE 4599 in connection with their illegal businesses.

True enough, the government has now located records showing that the Officer who filed the declaration for defendant was in a serious traffic accident where he flipped his car, and admitted that he had been drinking that night. *See*, Exhibit 1, attached. Defendant was present in the car with the Officer, although defendant's name was misspelled in the report. Defendant told UCE 4599 that they had covered up the incident so that the Sheriff's Officer did not get into any trouble. Defendant further described the Officer to UCE 4599 as an ex-gang member who had previously assisted defendant with his gang activity.

In a recorded jail telephone conversation between defendant and Mimi Li, after the hearing had taken place on April 8, 2014, defendant and Ms. Li complained about the performance of the attorneys for defendant during the hearing. Defendant told Ms. Li that he had told his defense counsel about the ballistic vest, and that he only used it to bounce. While describing the hearing, defendant stated to Ms. Li: "And then the bullet proof vest, I told them I use that to bounce. Like, I don't know why she didn't say nothing. Like she was just reading off of paperwork, right?"[3] While the government will not ascribe the same ill intentions to defendant's counsel as the defense has ascribed to the government, it would appear without a doubt that at least defendant was well aware of the ballistic vest at the time of

[3] The conversation was on a recorded line of the Alameda County Jail. Thus, there was no spousal privilege, as the recording clearly and loudly announced that it may be monitored and recorded. There was no attorney-client privilege as the defendant was not conversing with his counsel, but with a third party, his wife, over the same announced and recorded line. *United States v. Montgomery*, 384 F.3d 1050, 1056 (9th Cir. 2004)("the [marital communication] privilege … applies only to confidential communications, *i.e.* those not made in the presence of, or likely to be overheard by, third parties."); *United States v. VanPoyck*, 77 F.3d 285, 290-91 (9th Cir. 1996)(where inmate knew of monitoring policy, "no prisoner should reasonably expect privacy" in those circumstances): *United States v. Madoch*, 149 F.3d 596, 602 (7th Cir. 1998)(no marital privilege for recorded jail calls); *United States v. Hatcher*, 323 F.3d 666, 674 (9th Cir 2003)("presence of the prison recording device destroyed the attorney-client privilege."); *Watson v. Albin*, 2008 WL 2079967 *3-4 (N.D.Ca. 2008) (no marital privilege where prisoner knows jail calls were recorded)(unpublished); .

his hearing and that he claimed to have told his lawyers about it. It also seems clear that, at a minimum, the declaration filed by Ms. Li in support of the motion for reconsideration was false, was known by both her and defendant to be false when it was made and filed, and that the declaration by the Sheriff's Department Officer was known by defendant to be false. It should also be noted that Ms. Li was interviewed by FBI agents during the search on March 26, 2014, and she stated that both she and defendant used the car that the vest was found in. This useful information was not known by government counsel at the detention hearing.

After receiving the defendant's motion, the government interviewed the Officer. He has admitted to having an old relationship with defendants Li and Chow that included paying Chow to stop gang members from harassing the Officer during the 1990s. He has admitted to an ongoing relationship with defendant Li. He admitted that defendant asked to borrow a ballistic vest and that he offered it to defendant, but then denied that he ever did provide it. The Officer claimed that he went to Mimi Li's workplace after work in the afternoon; Ms. Li told FBI agents that the Officer came to her workplace in the morning that day. The Officer claimed that he dropped off the vest so that he could go drinking with friends. When pressed, he stated it was to go drinking with one friend. When pressed further, he claimed he could not remember who the friend was. The wife of the Officer claimed that she went to the hair salon on a school day. The date provided by Mimi Li was February 2, 2014, a Sunday.

In short, the declarations provided by the defendant are incredible and inconsistent because they are false. According to the defendant himself, it would appear that the Officer and defendant's wife are highly compromised and should be given minimal credibility by this Court. It also is clear that defendant filed declarations from his wife and the Officer that he knew were false. Again, defendant's efforts to weave illogical stories with compromised witnesses demonstrate that the defendant is not straight with the Court and cannot be trusted on release.

3. "Context"

Defendant next argues that the government accurately reported statements by defendant Li during the hearing, but that "the government took Mr. Li's allegedly 'violent' statements out of context." Defendant falsely goes on to allege that "the government mischaracterized Mr. Li's statements and took them out of context in an attempt to convince the Court that Mr. Li uttered these statements seriously."

The government categorically denies the baseless accusations that it made any efforts to mislead the Court. Should the Court seek to reopen the hearing on this basis, the government would be happy to provide each and every recording and FBI 302 report of each of the defendant's statements for the Court so that the Court can evaluate them for itself. Upon such a review, in fact, the government is confident that the Court would be even more inclined to detain defendant.

Contrary to defendant's suggestion otherwise, most of defendant's statements were not made in a joking manner. Should the Court listen to them, it will hear that defendant was boasting and serious about several of his chilling stories and clearly still angry about some of his described victims or intended victims. And the notion that it was the undercover agents who initiated the discussions about committing violence against others through their own stories of violence is false. At the dinner on March 29, 2012, as the undercover agents posing as organized criminals from New Jersey were discussing the chaotic nature of traffic in San Francisco and a pedestrian inexplicably stepping into traffic, it was defendant who described – not in a joking manner at all – intentionally running over a pedestrian who stepped in front of him in Los Angeles. Defendant Li then discussed several different instances of his road rage leading to violent encounters. That kicked off the discussions of violence that defendant Li engaged in throughout the night and those conversations were consistently led by defendant Li. Notably, there was one portion of the conversation during which the undercover agents emphasized to defendant Li how important it was to them that he **not** become engaged in any violence because that type of conduct could draw unwanted attention to their illegal business, attract law enforcement attention, and be bad business. The undercover agents had this conversation with defendant Li out of concern and fear that Li might actually commit some act of violence before he could be arrested. The conversation was intended as an effort to steer him not to commit any further acts of violence.

Even if defendant had accurately characterized his conversations in his motion – and he did not – he somehow believes that because he occasionally laughed about the horrific violence he described, that makes his a better case for release. In truth, that at times he laughed about the violence that he described having committed and wanted to commit makes his situation worse. He did not describe violence as a necessary part of doing illegal business or as an unfortunate occurrence. Rather, he bragged about what

violence he had done, described more violence that he would like to commit, and laughed about some of it. Defendant even described some of it as almost uncontrollable, as acts that he felt compelled to take because he was messed up in the head. That defendant's counsel thinks this is mitigating is confounding. The fact is that laughing about the commission of violence is a sign of a lack of remorse and empathy and an indicator of dangerousness.

Finally, defendant draws a false equivalency between himself and the undercover agents who were involved in the conversations. Those agents were not sitting down with defendant as federal law enforcement agents. They sat down with the defendant playing a role, or legend, of sophisticated organized criminals from New Jersey. That they did not display horror at the descriptions of violence by defendant is not mitigation for defendant when they were portraying hardened criminals and defendant was being himself. This portion of defendant's argument is simply nonsensical.

4. Inaudible Recordings

To the extent that defendant Li takes issue with statements by defendant Li and by defendant Pau regarding Li's violent role as "inaudible," that cannot be the basis for an argument that the government has mischaracterized anything. During the course of the investigation, UCE 4599 documented his interactions with the defendants through recordings and through FBI 302 reports of interview. That defendant Li considers a few of the statements to be "inaudible" does not mean that the statements did not occur and that UCE 4599 will not testify to those statements at trial.

Because much of defendant's motion consists of nothing more than picking at minor details of defendant's statements, if the Court is inclined to reopen the hearing on the basis of defendant's current arguments, the government respectfully submits that the Court should listen to the recordings and gauge for itself the seriousness of the threat of violence to the community posed by defendant Li. The government would be happy to supply all of the recordings to the Court should the Court believe it necessary.

5. Statements, Actions, and History Left Unaddressed by Defendant Li's Motion to Reopen

It speaks volumes that there remain many statements made by defendant Li and argued by the government at the detention hearing that defendant does not quibble with or contest in his present motion. Importantly, those statements include the two statements that the Court specifically pointed to

in finding that defendant should be detained. The only statements that the Court expressly pointed out in the detention hearing were (1) "He bragged that he was the head of enforcement for the CKT," and (2) "wanted to get rid of the bugs." Tr. at 18. In defendant's lengthy motion, he does not contest either of those two statements, nor does he claim that either statement was taken out of context. Significantly – and this was not raised by the government at the initial hearing – the individual that defendant discussed when he stated he needed to "get rid of the bugs" was subsequently murdered in a still unsolved homicide.

Of course, defendant's motion also does nothing to mitigate any of the other reasons for the Court to detain defendant. Tr. at 17-19. His criminal history has not changed. The evidence showing that he participated in sales of firearms and an additional ballistic vest to the undercover agent has not changed.

Defendant remains a multiple convicted felon after engaging in acts of arson, robbery, and theft of interstate shipments, as the Court noted at the hearing. Tr. at 18. He has committed multiple prior violations of court-imposed conditions. *Id.* Significantly, this remains a case with a presumption in favor of detention. It remains the fact that defendant was previously detained in federal court when facing charges far less significant than those he now faces, and prior to his most recent felony conviction. There remains probable cause to believe that he provided weapons and a ballistic vest to an undercover agent who he believed was a criminal and was utilizing the firearms for illegal purposes. *Id.* There remains probable cause to believe that the defendant participated with fellow members of his gang in laundering of over a million dollars in cash. *Id.* He still bragged on being head of enforcement for the CKT and was heard stating that he wanted to get rid of the bugs. *Id.* The Grand Jury has found probable cause to bring additional charges against defendant since the original hearing, to include the RICO conspiracy.

In addition, the Court now knows that in support of his efforts to gain his release, defendant has furnished information from a landlord the defendant himself knew to be compromised. Defendant has also provided false declarations from an apparently compromised Sheriff's Officer and from defendant's wife. It would make a mockery of the system for the Court now to vest its trust in the defendant by releasing him to comply with conditions after he tried to defraud this Court.

CONCLUSION

The government respectfully submits that the Court should deny defendant's motion without any further hearing. In the alternative, the government respectfully submits that, if the Court intends to rely on any declarations filed by defendant – given their compromised nature – those witnesses should be subpoenaed to testify under oath and subject to cross-examination by the government. Finally, the government respectfully submits that, should the Court order a hearing in reliance on defendant's erroneous allegations of "misrepresentation" by the government, it should listen to the recordings of statements and review the FBI 302s of those statements itself.

Dated: August 22, 2014

MELINDA HAAG
United States Attorney

By: _____/s/_____
WILLIAM FRENTZEN
SUSAN BADGER
S. WAQAR HASIB
Assistant United States Attorneys

EXHIBIT 1

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

TRAFFIC COLLISION REPORT

CHP 555 PAGE 1 (REV. 04-11) OPI 060

SPECIAL CONDITIONS	NUMBER INJURED: 1	HIT & RUN FELONY: ☐	CITY: SAN FRANCISCO	JUDICIAL DISTRICT: SAN FRANCISCO SUPER.	LOCAL REPORT NUMBER: 2012110250
	NUMBER KILLED: 0	HIT & RUN MISDEMEANOR: ☐	COUNTY: SAN FRANCISCO	REPORTING DISTRICT / BEAT: 14	DAY OF WEEK: FRIDAY; TOW AWAY: ☒ YES ☐ NO

LOCATION

COLLISION OCCURRED ON: US-101 S/B	MO/DAY/YEAR: 11/30/2012	TIME (2400): 0247	NCIC #: 9335	OFFICER I.D.: 020266
MILEPOST INFORMATION:	GPS COORDINATES: LATITUDE 37.75290° LONGITUDE - 122.40290°		PHOTOGRAPHS BY: ☒ NONE	
☐ AT INTERSECTION WITH: ☒ OR: 210 FEET NORTH OF CESAR CHAVEZ ST	STATE HWY REL: ☒ YES ☐ NO			

PARTY 1

DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP.
[redacted]	CA	C	M	G

DRIVER ☒ — NAME (FIRST, MIDDLE, LAST): MICHAEL SHERMEN KIM

PEDESTRIAN ☐ — STREET ADDRESS: [redacted]

PARKED VEHICLE ☐ — CITY / STATE / ZIP: [redacted] CA [redacted]

BICYCLIST ☐ — SEX: [redacted] HAIR: [redacted] EYES: [redacted] HEIGHT: [redacted] WEIGHT: [redacted] BIRTHDATE MO/DAY/YEAR: [redacted] RACE: [redacted]

OTHER ☐ — HOME PHONE: [redacted] BUSINESS PHONE:

INSURANCE CARRIER: AAA POLICY NUMBER: [redacted]

DIR OF TRAVEL: S ON STREET OR HIGHWAY: US-101 SPEED LIMIT: 50

VEH. YEAR	MAKE / MODEL / COLOR	LICENSE NUMBER	STATE
2008	TOYO TACOMA BLK	[redacted]	CA

OWNER'S NAME: ☒ SAME AS DRIVER

OWNER'S ADDRESS: ☐ SAME AS DRIVER [redacted]

DISPOSITION OF VEHICLE ON ORDERS OF: ☒ OFFICER ☐ DRIVER ☐ OTHER

B&A TOW

PRIOR MECH. DEFECTS: ☒ NONE APP. ☐ REFER TO NARRATIVE

VEHICLE IDENTIFICATION NUMBER:

VEHICLE TYPE: 22 DESCRIBE VEHICLE DAMAGE: ☐ UNK ☐ NONE ☐ MINOR ☐ MOD ☐ MAJOR ☒ ROLL-OVER SHADE IN DAMAGED AREA

CA DOT CAL-T TCP/PSC MC/MX

PARTY 2

DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP.

DRIVER ☐ — NAME (FIRST, MIDDLE, LAST):

PEDESTRIAN ☐ — STREET ADDRESS:

PARKED VEHICLE ☐ — CITY / STATE / ZIP:

BICYCLIST ☐ — SEX: HAIR: EYES: HEIGHT: WEIGHT: BIRTHDATE MO/DAY/YEAR: RACE:

OTHER ☐ — HOME PHONE: BUSINESS PHONE:

INSURANCE CARRIER: POLICY NUMBER:

DIR OF TRAVEL: ON STREET OR HIGHWAY: SPEED LIMIT:

VEH. YEAR	MAKE / MODEL / COLOR	LICENSE NUMBER	STATE

OWNER'S NAME: ☐ SAME AS DRIVER

OWNER'S ADDRESS: ☐ SAME AS DRIVER

DISPOSITION OF VEHICLE ON ORDERS OF: ☐ OFFICER ☐ DRIVER ☐ OTHER

PRIOR MECHANICAL DEFECTS: ☐ NONE APP. ☐ REFER TO NARRATIVE

VEHICLE IDENTIFICATION NUMBER:

VEHICLE TYPE: DESCRIBE VEHICLE DAMAGE: ☐ UNK ☐ NONE ☐ MINOR ☐ MOD ☐ MAJOR ☐ ROLL-OVER SHADE IN DAMAGED AREA

CA DOT CAL-T TCP/PSC MC/MX

PARTY 3

DRIVER'S LICENSE NUMBER	STATE	CLASS	AIR BAG	SAFETY EQUIP.

DRIVER ☐ — NAME (FIRST, MIDDLE, LAST):

PEDESTRIAN ☐ — STREET ADDRESS:

PARKED VEHICLE ☐ — CITY / STATE / ZIP:

BICYCLIST ☐ — SEX: HAIR: EYES: HEIGHT: WEIGHT: BIRTHDATE MO/DAY/YEAR: RACE:

OTHER ☐ — HOME PHONE: BUSINESS PHONE:

INSURANCE CARRIER: POLICY NUMBER:

DIR OF TRAVEL: ON STREET OR HIGHWAY: SPEED LIMIT:

VEH. YEAR	MAKE / MODEL / COLOR	LICENSE NUMBER	STATE

OWNER'S NAME: ☐ SAME AS DRIVER

OWNER'S ADDRESS: ☐ SAME AS DRIVER

DISPOSITION OF VEHICLE ON ORDERS OF: ☐ OFFICER ☐ DRIVER ☐ OTHER

PRIOR MECHANICAL DEFECTS: ☐ NONE APP. ☐ REFER TO NARRATIVE

VEHICLE IDENTIFICATION NUMBER:

VEHICLE TYPE: DESCRIBE VEHICLE DAMAGE: ☐ UNK ☐ NONE ☐ MINOR ☐ MOD ☐ MAJOR ☐ ROLL-OVER SHADE IN DAMAGED AREA

CA DOT CAL-T TCP/PSC MC/MX

PREPARER'S NAME	DISPATCH NOTIFIED	REVIEWER'S NAME	DATE REVIEWED
FARLEY 020266	☒ YES ☐ NO ☐ N/A	[signature]	12-6-12

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

TRAFFIC COLLISION CODING

CHP 555 CARS PAGE2 (REV. 04-11) OPI 060

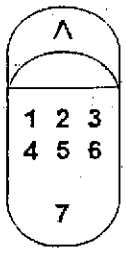
DATE OF COLLISION (MO. DAY YEAR)	TIME(2400)	NCIC #	OFFICER I.D.	NUMBER
11/30/2012	0247	9335	020266	2012110250

PROPERTY DAMAGE

OWNER'S NAME	OWNER ADDRESS	NOTIFIED
		☐ YES ☐ NO

DESCRIPTION OF DAMAGE

SEATING POSITION



1 - DRIVER
2 TO 6 - PASSENGERS
7 - STATION WAGON REAR
8 - REAR OCC TRK. OR VAN
9 - POSITION UNKNOWN
0 - OTHER

SAFETY EQUIPMENT

OCCUPANTS
A - NONE IN VEHICLE
B - UNKNOWN
C - LAP BELT USED
D - LAP BELT NOT USED
E - SHOULDER HARNESS USED
F - SHOULDER HARNESS NOT USED
G - LAP/SHOULDER HARNESS USED
H - LAP/SHOULDER HARNESS NOT USED
J - PASSIVE RESTRAINT USED
K - PASSIVE RESTRAINT NOT USED
P - NOT REQUIRED

CHILD RESTRAINT
Q - IN VEHICLE USED
R - IN VEHICLE NOT USED
S - IN VEHICLE USE UNKNOWN
T - IN VEHICLE IMPROPER USE
U - NONE IN VEHICLE

M / C BICYCLE HELMET
DRIVER: V - NO, W - YES
PASSENGER: X - NO, Y - YES

AIR BAG

B - UNKNOWN
L - AIR BAG DEPLOYED
M - AIR BAG NOT DEPLOYED
N - OTHER
P - NOT REQUIRED

EJECTED FROM VEHICLE

0 - NOT EJECTED
1 - FULLY EJECTED
2 - PARTIALLY EJECTED
3 - UNKNOWN

INATTENTION CODES

A - CELL PHONE HANDHELD
B - CELL PHONE HANDSFREE
C - ELECTRONIC EQUIPMENT
D - RADIO / CD
E - SMOKING
F - EATING
G - CHILDREN
H - ANIMALS
I - PERSONAL HYGIENE
J - READING
K - OTHER

ITEMS MARKED BELOW FOLLOWED BY AN ASTERISK (*) SHOULD BE EXPLAINED IN THE NARRATIVE.

PRIMARY COLLISION FACTOR
LIST NUMBER (#) OF PARTY AT FAULT

1
- A VC SECTION VIOLATED: 22350 — CITED ☐ YES ☒ NO
- B OTHER IMPROPER DRIVING*
- C OTHER THAN DRIVER*
- D UNKNOWN*

WEATHER (MARK 1 TO 2 ITEMS)
- A CLEAR
- B CLOUDY
- X C RAINING
- D SNOWING
- E FOG / VISIBILITY FT.
- F OTHER:*
- G WIND

LIGHTING
- A DAYLIGHT
- B DUSK - DAWN
- C DARK - STREET LIGHTS
- X D DARK - NO STREET LIGHTS
- E DARK - STREET LIGHTS NOT FUNCTIONING*

ROADWAY SURFACE
- A DRY
- X B WET
- C SNOWY - ICY
- D SLIPPERY (MUDDY, OILY, ETC.)

ROADWAY CONDITION(S) (MARK 1 TO 2 ITEMS)
- A HOLES, DEEP RUT*
- B LOOSE MATERIAL ON ROADWAY*
- C OBSTRUCTION ON ROADWAY*
- D CONSTRUCTION - REPAIR ZONE
- E REDUCED ROADWAY WIDTH
- F FLOODED*
- G OTHER*:
- X H NO UNUSUAL CONDITIONS

TRAFFIC CONTROL DEVICES
- A CONTROLS FUNCTIONING
- B CONTROLS NOT FUNCTIONING*
- C CONTROLS OBSCURED
- X D NO CONTROLS PRESENT / FACTOR*

TYPE OF COLLISION
- A HEAD - ON
- B SIDE SWIPE
- C REAR END
- D BROADSIDE
- X E HIT OBJECT
- F OVERTURNED
- G VEHICLE / PEDESTRIAN
- H OTHER*:

MOTOR VEHICLE INVOLVED WITH
- A NON - COLLISION
- B PEDESTRIAN
- C OTHER MOTOR VEHICLE
- D MOTOR VEHICLE ON OTHER ROADWAY
- E PARKED MOTOR VEHICLE
- F TRAIN
- G BICYCLE
- H ANIMAL:
- X I FIXED OBJECT: CONCRETE WALL
- J OTHER OBJECT:

PEDESTRIAN'S ACTIONS
- X A NO PEDESTRIANS INVOLVED
- B CROSSING IN CROSSWALK - AT INTERSECTION
- C CROSSING IN CROSSWALK - NOT AT INTERSECTION
- D CROSSING - NOT IN CROSSWALK
- E IN ROAD - INCLUDES SHOULDER
- F NOT IN ROAD
- G APPROACHING / LEAVING SCHOOL BUS

1	2	3	SPECIAL INFORMATION
			A HAZARDOUS MATERIAL
			B CELL PHONE HANDHELD IN USE
			C CELL PHONE HANDSFREE IN USE
X			D CELL PHONE NOT IN USE
			E SCHOOL BUS RELATED
			F 75 FT MOTORTRUCK COMBO
			G 32 FT TRAILER COMBO
			H
			I
			J
			K
			L
			M
			N
			O

OTHER ASSOCIATED FACTORS (MARK 1 TO 2 ITEMS)

1	2	3	
			A VC SECTION VIOLATED: CITED: ☐ YES ☐ NO
			B VC SECTION VIOLATED: CITED: ☐ YES ☐ NO
			C VC SECTION VIOLATED: CITED: ☐ YES ☐ NO
			D
			E VISION OBSCUREMENT
			F INATTENTION*:
			G STOP & GO TRAFFIC
			H ENTERING / LEAVING RAMP
			I PREVIOUS COLLISION
			J UNFAMILIAR WITH ROAD
			K DEFECTIVE VEH. EQUIP.: CITED ☐ YES ☐ NO
			L UNINVOLVED VEHICLE
			M OTHER*:
X			N NONE APPARENT
			O RUNAWAY VEHICLE

1	2	3	MOVEMENT PRECEDING COLLISION
			A STOPPED
			B PROCEEDING STRAIGHT
X			C RAN OFF ROAD
			D MAKING RIGHT TURN
			E MAKING LEFT TURN
			F MAKING U TURN
			G BACKING
			H SLOWING / STOPPING
			I PASSING OTHER VEHICLE
			J CHANGING LANES
			K PARKING MANEUVER
			L ENTERING TRAFFIC
			M OTHER UNSAFE TURNING
			N XING INTO OPPOSING LANE
			O PARKED
			P MERGING
			Q TRAVELING WRONG WAY
			R OTHER*:

1	2	3	SOBRIETY - DRUG PHYSICAL (MARK 1 TO 2 ITEMS)
			A HAD NOT BEEN DRINKING
			B HBD - UNDER INFLUENCE
X			C HBD - NOT UNDER INFLUENCE*
			D HBD - IMPAIRMENT UNKNOWN*
			E UNDER DRUG INFLUENCE*
			F IMPAIRMENT - PHYSICAL*
			G IMPAIRMENT NOT KNOWN
			H NOT APPLICABLE
			I SLEEPY / FATIGUED*

SKETCH

SEE PAGE 4 FOR SKETCH

INDICATE NORTH

MISCELLANEOUS

- ✓ HDQ
- ✓ DIV. HWY
- ___ POLICE DEPT.
- ___ DIST. ATTY
- ___ CORONER
- ___ D.H.S.P

AN INTERNATIONALLY ACCREDITED AGENCY

STATE OF CALIFORNIA
DEPARTMENT OF CALIFORNIA HIGHWAY PATROL

INJURED / WITNESSES / PASSENGERS

CHP 555 CARS PAGE 3 (REV 04-11) OPI 065

DATE OF COLLISION (MO. DAY YEAR)	TIME(2400)	NCIC #	OFFICER I.D.	NUMBER
11/30/2012	0247	9335	020266	2012110250

WITNESS ONLY	PASSENGER ONLY	AGE	SEX	EXTENT OF INJURY('X' ONE)				INJURED WAS ('X' ONE)					PARTY NUMBER	SEAT POS.	AIR BAG	SAFETY EQUIP.	EJECTED
				FATAL INJURY	SEVERE INJURY	OTHER VISIBLE INJURY	COMPLAINT OF PAIN	DRIVER	PASS.	PED.	BICYCLIST	OTHER					
☐ #	☐	39	M	☐	☐	☐	☒	☐	☒	☐	☐	☐	1	3	M	G	0

NAME / D.O.B. / ADDRESS
ANDI LEE ([redacted]) [redacted]

TELEPHONE [redacted]

(INJURED ONLY) TRANSPORTED BY: SAN FRANCISCO FIRE DEPARTMENT MEDIC# 72

TAKEN TO: SAN FRANCISCO GENERAL HOSPITAL

DESCRIBE INJURIES: COMPLAINT OF PAIN TO THE NECK

☐ VICTIM OF VIOLENT CRIME NOTIFIED

☐ #	☒	39	M	☐	☐	☐	☐	☒	☐	☐	☐	☐	1	1	M	G	0

NAME / D.O.B. / ADDRESS
MICHAEL SHERMAN KIM ([redacted]) [redacted]

TELEPHONE [redacted]

(INJURED ONLY) TRANSPORTED BY: SAN FRANCISCO FIRE DEPARTMENT MEDIC# 72

TAKEN TO: SAN FRANCISCO GENERAL HOSPITAL

DESCRIBE INJURIES: TRANSPORTED AS A PRECAUTION, NO INJURIES, NO COMPLAINT OF PAIN

☐ VICTIM OF VIOLENT CRIME NOTIFIED

☒ # 1	☐	51	M	☐	☐	☐	☐	☐	☐	☐	☐	☐					

NAME / D.O.B. / ADDRESS
[redacted]

TELEPHONE [redacted]

(INJURED ONLY) TRANSPORTED BY:

TAKEN TO:

DESCRIBE INJURIES:

☐ VICTIM OF VIOLENT CRIME NOTIFIED

☐ #	☐			☐	☐	☐	☐	☐	☐	☐	☐	☐					

NAME / D.O.B. / ADDRESS

TELEPHONE

(INJURED ONLY) TRANSPORTED BY:

TAKEN TO:

DESCRIBE INJURIES:

☐ VICTIM OF VIOLENT CRIME NOTIFIED

☐ #	☐			☐	☐	☐	☐	☐	☐	☐	☐	☐					

NAME / D.O.B. / ADDRESS

TELEPHONE

(INJURED ONLY) TRANSPORTED BY:

TAKEN TO:

DESCRIBE INJURIES:

☐ VICTIM OF VIOLENT CRIME NOTIFIED

☐ #	☐			☐	☐	☐	☐	☐	☐	☐	☐	☐					

NAME / D.O.B. / ADDRESS

TELEPHONE

(INJURED ONLY) TRANSPORTED BY:

TAKEN TO:

DESCRIBE INJURIES:

☐ VICTIM OF VIOLENT CRIME NOTIFIED

PREPARER'S NAME	I.D. NUMBER	MO. DAY YEAR	REVIEWER'S NAME	MO. DAY YEAR
FARLEY	020266	11/30/2012		

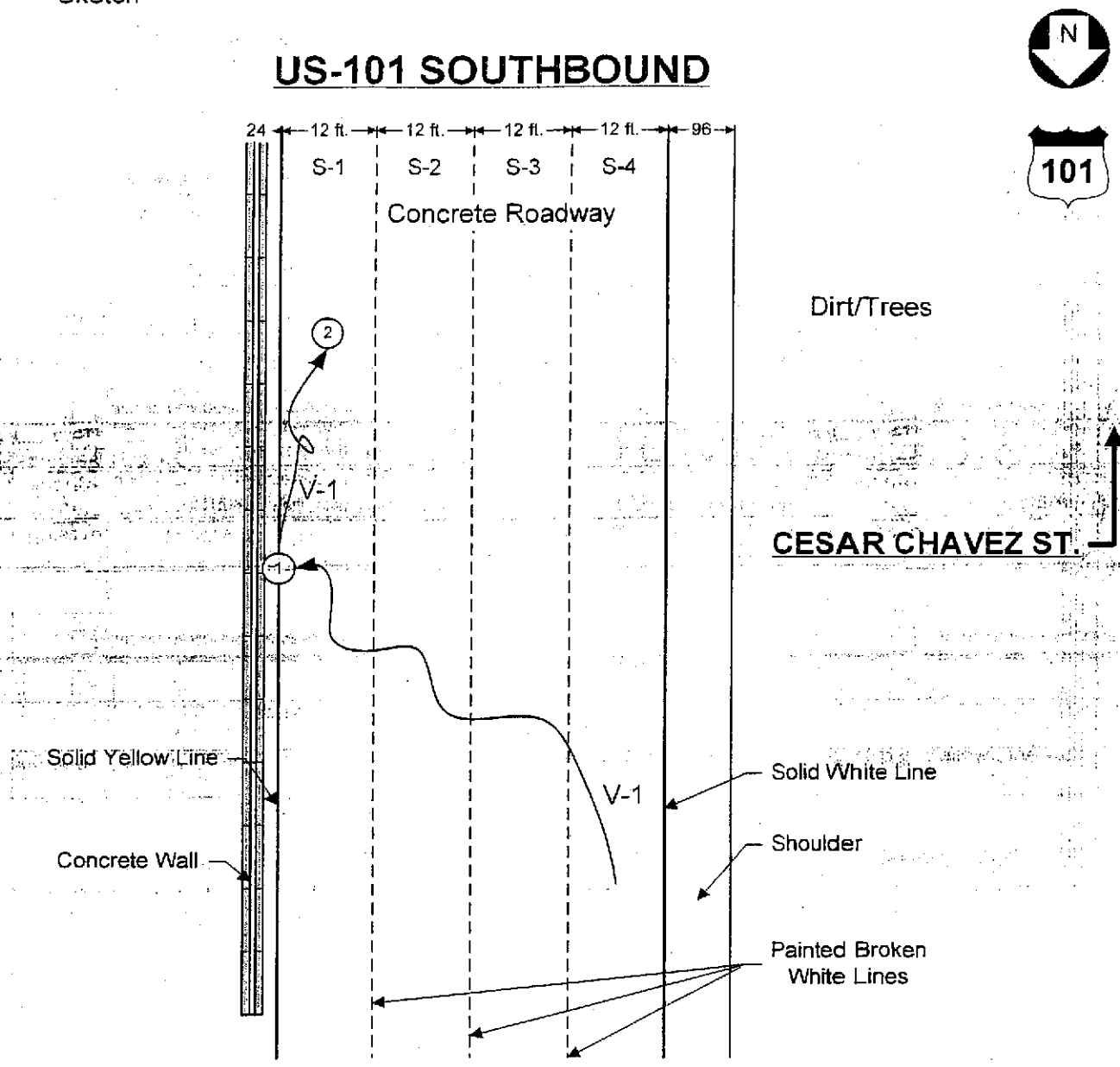
AN INTERNATIONALLY ACCREDITED AGENCY

STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL PAGE 4

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
11/30/2012	0247	9335	020266	2012110250

1

Sketch



2
3
4
5
6
7

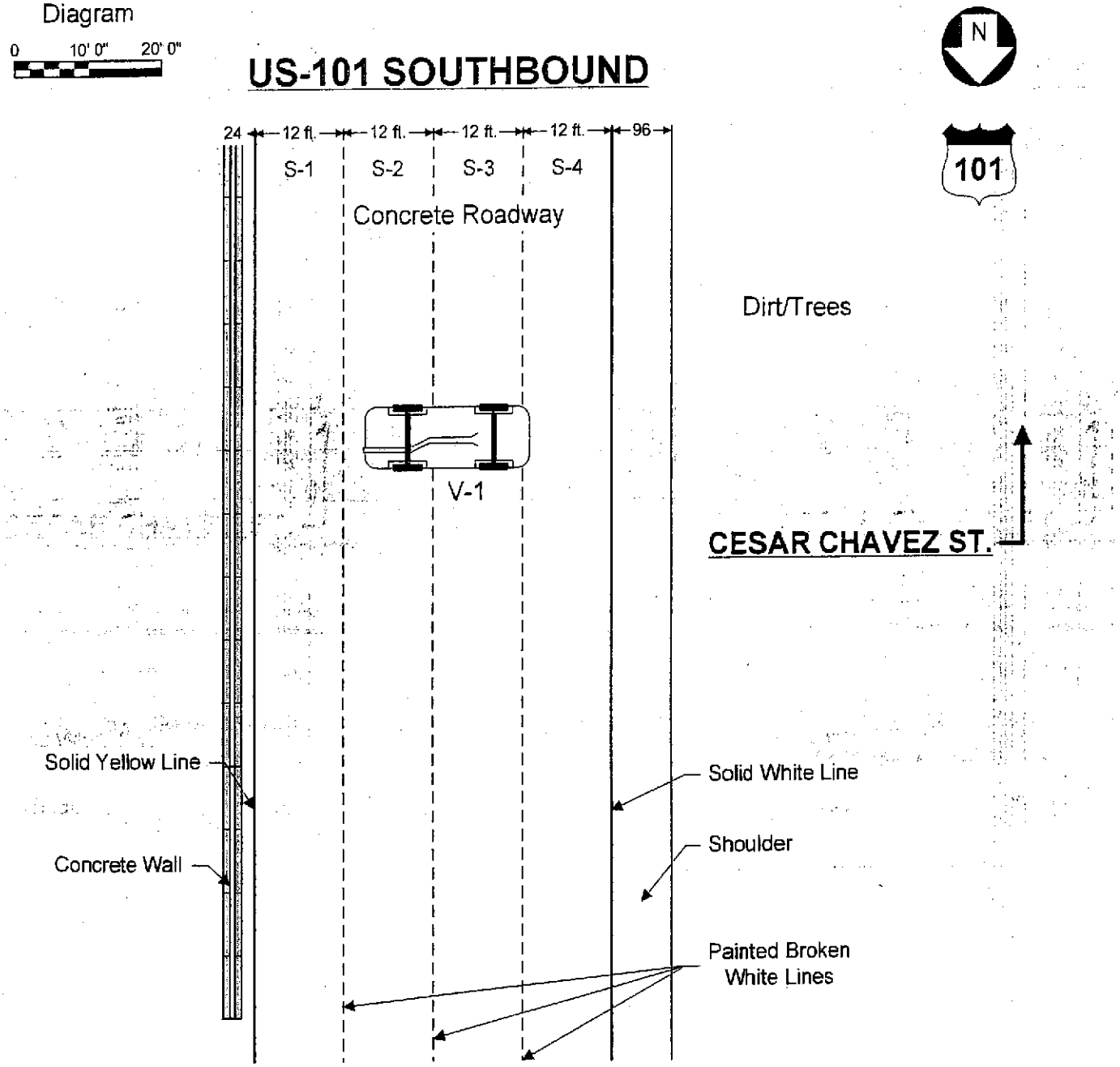
PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
FARLEY	020266	11/30/2012		

STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL PAGE 5

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
11/30/2012	0247	9335	020266	2012110250

Factual Diagram

0 10' 0" 20' 0"



1
2
3
4
5
6
7

PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
FARLEY	020266	11/30/2012		

Legend

Station Line:

A station line was established along the west roadway edge of US-101 S/B. Station 0+00 was located 200 feet north of the north edge of the 25th Street over crossing. The station numbers increase in a southerly direction. All measurements were taken at right angles off the station line. Measurements were obtained by roll meter.

Points of Rest:

DESCRIPTION	DISTANCE RIGHT OR LEFT OF STATION LINE	LOCATION ON STATION
Right Rear Tire	33 ft. left	1+49
Right Front Tire	22 ft. left	1+49

FACTS:

NOTIFICATION:

On November 30, 2012, at 0249 hours, I received a call from CHP dispatch of a solo vehicle traffic collision involving major injury on US-101 S/B, north of Cesar Chavez. I responded from 7th and Bryant Street and arrived on scene at 0302 hours. Once on scene, I determined this to be a sole vehicle traffic collision involving minor injuries. All times, speeds, and measurements are approximate. Measurements were obtained by visual estimation and roll meter.

SCENE DESCRIPTION:

This traffic collision occurred within the city and county of San Francisco. US-101 S/B at this location is comprised of four lanes of traffic. Each lane is 12 foot wide and is divided by painted broken white lines. The roadway is bordered on the east by a solid yellow line, 2 foot wide center divide, and a concrete median wall. The roadway is bordered on the west by a solid white line, 8 foot wide shoulder, and dirt/trees. The roadway is made of asphalt and the roadway was wet due to heavy rain at the time of the traffic collision. The area is controlled by the posted speed limit of 50 mph. All roadway signs and markings were in working order. **(See factual diagram for details.)**

PARTIES:

Party-1 (P-1, Kim) was identified by his valid California DL. P-1 was located sitting upright in the back of an ambulance upon my arrival. P-1 was determined to be the driver of V-1 by the following:

- P-1 is the registered owner of V-1
- P-1, and witness statement
- The seat position matched the stature of P-1

Vehicle-1 (V-1, Toyota) was located on its roof facing in an easterly direction blocking the #2 and #3 lane upon my arrival. V-1 sustained major roll over damage as a result of this traffic collision. The damage consisted of the following: damage to hood, roof, damage to both sides of V-1, bed of truck, shattered windshield and rear window. No previous damage noted or claimed.

STATEMENTS: ***STATEMENTS ARE NOT VERBATIM AND ARE WRITTEN IN SUMMARY FORM. THE STATEMENTS WRE READ BACK TO THE INVOLVED PARTIES FOR VERIFICATION.***

Party-1 (P-1, Kim) was contacted at the scene and related the following in essence: He was driving S/B in the #4 lane at 55 to 60 mph in heavy rain. "Andi" was his passenger. He was taking Andi home to Daly City. They were coming from a nightclub off Broadway St. He hit a couple huge puddles, slowed down and fishtailed to the left. He traveled across the fast lane and hit the center divide and flipped over. After the collision, they were upside down in the vehicle, unbuckled his seatbelt and exited vehicle. He called an SFPD dispatcher to relate he was involved in a traffic

collision, requested an ambulance. He then unbuckled the passenger seatbelt and related the passenger was fine.

Witness-1 (W-1, [redacted]**)** was contacted at the scene and related the following in essence: He was driving S/B in the #3 lane at approximately 50 mph. He observed a truck in the ahead of him traveling at approximately 55 mph in an unknown lane. The truck's rear end rotated counter clockwise, made a quarter turn and rolled over. W-1 stopped on the shoulder to check on the occupants.

INTOXICATION NARRATIVE:

While gathering information from P-1 regarding the traffic collision, I observed his eyes were red and watery. I asked him he consumed alcohol and he related 3 beers earlier in the evening. I asked P-1 a series of field sobriety test questions and had him perform two field sobriety tests (FSTS) while on the stretcher. Horizontal Gaze Nystagmus I observed lack of smooth pursuit in both eyes. The Finger Count test was performed as instructed. I determined P-1 was not under the influence of an alcoholic beverage.

SUMMARY:

P-1, Kim was driving **V-1, Toyota** on US-101 S/B, north of the 25th Street over crossing in the #4 lane at approximately 60 mph in heavy rain. Due to P-1's unsafe speed for the conditions, the rear of V-1 rotated counterclockwise and veered left crossing lanes of traffic and colliding into the concrete wall. This impact caused V-1 to roll onto its roof. V-1 slid across the #1 lane and came to rest on its roof facing in an easterly direction blocking the #2 and #3 lane. After the collision, P-1 exited V-1 and called an SFPD dispatcher for assistance.

The summary was determined by P-1 and W-1's statement, the damage to V-1, and my observations.

AREA OF IMPACT (AOI):

AOI #1 (V-1 vs. concrete wall) occurred approximately 210 feet north of Cesar Chavez St. and 2 feet east of the east roadway edge of US-101 N/B.

AOI #2 (V-1 vs. roadway) occurred approximately 180 feet north of Cesar Chavez St. and 6 feet west of the east roadway edge of US-101 N/B.

The AOI's were determined by P-1 and W-1's statement, the damage to V-1, and my observations.

STATE OF CALIFORNIA
NARRATIVE/SUPPLEMENTAL PAGE 9

DATE OF INCIDENT	TIME	NCIC NUMBER	OFFICER I.D.	NUMBER
11/30/2012	0247	9335	020266	2012110250

CAUSE:

P-1 caused this collision by driving in violation of California Vehicle Code section 22350, which states, no person shall drive a vehicle upon a highway at a speed greater than is reasonable or prudent having due regard for weather, visibility, the traffic on, and the surface and width of, the highway, and in no event at a speed which endangers the safety of persons or property. P-1 caused this collision by traveling at a speed too great for the traffic conditions. The cause was determined by the damage to the involved vehicle, the statements of P-1 and W-1, and my observations.

RECOMMENDATIONS:

None

PREPARED BY	I.D. NUMBER	DATE	REVIEWER'S NAME	DATE
FARLEY	020266	11/30/2012		

OFFICIAL RECORD
Document participants have digitally signed. All signatures have been verified by a certified FBI information system.

FEDERAL BUREAU OF INVESTIGATION

Date of entry 01/27/2015

Michael Kim, date of birth [redacted], was interviewed at the United States' Attorney's Office, located at 450 Golden Gate Avenue, 9th Floor, San Francisco, California 94102. Present at the interview was Kim, Kim's defense attorney Jonathan McDougall, a private investigator with McDougall's firm, Assistant United States' Attorney William Frentzen, and Federal Bureau of Investigation Special Agents Emmanuel V. Pascua, Tseng H. Chow, and Maya N. Clark. Prior to beginning the interview, Frentzen, McDougall, and Kim reviewed the proffer agreement and signed it. After being advised of the identity of the interviewing agents and the nature of the interview, Kim provided the following information:

Kim initially apologized for lying to the agents during the first interview (FD-302 drafted on August 20, 2014). Kim said he should have told the truth from the beginning. Kim said Andy Li (hereafter "Li") had gotten a job as a bouncer for a club. Li asked Kim if Li could borrow a vest. Kim had two vests, so Kim gave one to Li. Kim told Li not to give it to anyone else because it was his department issued vest and to give it back to Kim when Li no longer needed it. Li still had the vest when he was arrested.

When Kim heard Li had been arrested, Kim asked Mimi Li (hereafter "Mimi") about the whereabouts of Kim's vest. Mimi told Kim that Kim's vest was found in her car. Mimi said the FBI took the vest, but since it was found in her car, it had nothing to do with Li's case. Li's attorney called Kim and asked Kim whether it was his vest. Kim said it was. There were no markings on the vest to identify it as either Kim's vest or as property of the San Francisco Sheriff's Department, but Kim admitted it was his vest.

Li's attorney called Kim a second time. This time, Kim was driving when she called. Again, the attorney, whom Kim knew as Vanessa, asked about the vest. Kim made up the story about leaving the vest at Mimi's salon while

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he was driving and while he was on the telephone with Vanessa. Kim said it was not a well-thought out story; for instance, he was not able to tell agents with whom he was drinking that day, because he had not thought out these details. Vanessa told Kim that she would write up Kim's explanation about the vest. However, then Kim did not hear from her for awhile.

Kim believed Li asked to borrow Kim's vest around the beginning of 2014. Li knew a person named Rodrigo RUIZ (hereafter "Rodrigo"), who worked in security at California Pacific Medical Center (CPMC) and also as a bouncer. Rodrigo was unable to get Li a job with CPMC, because Li lied on his job application, so Rodrigo helped Li get a job as a bouncer. Kim was also trying to help Li get a job as a security guard through Danny Gonzalez who is the owner of Execushield. Li was in the process of this application process when he was arrested.

The next time Kim heard from Vanessa, it was right before Li's detention hearing. Kim got a telephone call from Vanessa asking Kim to sign the declaration as soon as possible. Vanessa emailed it to Kim and asked him to look it over. Kim did, but he did not think much about it. Vanessa called Kim again and told Kim she needed the declaration back that day. So Kim signed it and sent it back.

Kim said it was his idea to come up with a story about the vest. It was not Mimi's; it was not Li's. Kim had not spoken to Li since Li's arrest. The day before the FBI interviewed Kim, Kim had dinner with Mimi, Caesar Marabuto (aka "Auggie," herafter "Auggie"), and Auggie's wife. At that time, Kim told Mimi about Kim's story he invented about forgetting the vest at Mimi's salon.

Kim knew Li was growing marijuana and knew Li was having dinner with Raymond Chow (aka "Shrimp Boy," hereafter "Chow").

At this point in the interview, it was pointed out to Kim that his declaration and Mimi's declaration had been filed with the court before the dinner when Kim described telling Mimi about the vest. Kim was told that since his and Mimi's declarations matched, Kim and Mimi must have discussed the circumstances surrounding the vest prior to the dinner.

Kim recalled hearing Li had been arrested and immediately thinking about Kim's vest. Kim believed he heard about Li's arrest from Auggie. Kim spoke about his vest with Auggie, and he told Auggie he needed to get his vest back.

Kim did not have Mimi's telephone number. However, Kim recalled Mimi coming to Kim's house for dinner within a week or two of Li's arrest. Mimi was panicked and was asking for help. Mimi needed money, needed help with

child care, and she wanted to know if Kim would be willing to put up his house for Li's bond. Kim asked Mimi about the vest. Mimi told Kim the vest was found in Mimi's car, so Mimi said it was her vest. Kim told Mimi that Kim would be in "big trouble" if Kim did not get the vest back. Mimi said she would talk with Li's attorney. Kim believed he fabricated story of the vest at this time, and discussed it with Mimi. Kim did not remember discussing the story with his wife at this time. Kim told Mimi the story about forgetting the vest in the hopes that Mimi would speak with Li's attorney. Kim hoped this would get his vest back. He also hoped this would mean Kim's vest would not be used in considering whether Li should be granted bail.

When Vanessa asked Kim about the vest, Kim went with the story he had already told Mimi. Vanessa said she would type it up and go to court. Vanessa also asked Kim if he knew anyone who would write character letters for Li.

After being interviewed by the FBI, Kim spoke with his wife. Kim told his wife the story he had told the FBI. Kim's wife was angry, but she also stuck with the story when she was subsequently interviewed.

Kim had not spoken with Li after his arrest. When it was pointed out that there was a jail recording of a telephone call with Kim speaking to Li during a time when Mimi was with Kim and Mimi handed the phone to Kim. Kim recanted his statement that he has not talked to Li after his arrest. Kim stated he may have spoken to Li briefly, but he did not specifically recall.

Kim next discussed the car accident in which both he and Li were involved. Kim said he, Li, and Auggie had been trying to find time to get together to celebrate Li's birthday. They finally found time in November. They started at a bar on 7th and Bryant called Rumors and then went to a strip club on Broadway. They stayed until about 1:30 a.m. Kim had had a couple of drinks, but Auggie and Li were hammered. Kim drove home and dropped Auggie off at home. Kim said it was raining, and he fishtailed and ended up flipping the car.

Kim called 911. California Highway Patrol arrived and gave Kim the driving-while-intoxicated test a couple of times. So did a second CHP officer. A union representative from the Sheriff's Department also arrived at the accident. The union representative said that there was no report needed, because CHP was classifying the incident as an accident. Kim did not ask any of the CHP officers for any favors, nor did they extend him any favors.

Kim and Li were taken to the hospital in separate ambulances. They were

placed in the same Emergency Room. Police officers spoke with Kim, Li, and a witness to the accident. Kim did not recall if Li had any identification. Kim also did not recall if anyone investigated Li's background. Kim believed Li was just treated as a passenger in the car.

Kim did not know why Li would think that Kim had received favors from CHP. Kim said Li liked to brag.

Kim met Li in 9th grade through sports. They were the same age and both attended Lincoln High School. Li was always in trouble. Li was involved in cutting school, sports betting, breaking into vehicles, and selling stolen goods. During junior year, Li attended a different high school. Li and Kim stayed in touch, hanging out together on weekends. Kim knew that Li continued to be involved with vehicle break-ins. Kim did not participate in these activities, because Kim was working in his parents' restaurant all the time. Kim mentioned his parents sold the restaurant which was previously located on Irving Street between 22nd and 23rd Street in San Francisco, CA. Kim and Li did drink when they were together, and they would get into fights. Li would smoke marijuana and would try to get Kim to do so as well. However, Kim would not do so.

During Kim's senior year of high school, Kim was targeted by kids in Asian gangs in Chinatown and in the Tenderloin. Kim would get involved in numerous fights. The school, coaches, the principal, and the School Resource Officer all got involved. Kim said the people that targeted him were Vietnamese and Chinese. Some eventually became involved with the Jackson Street Boys, Lam Boys and the Washington Street gang but Kim did not know if they belonged to these gangs at the time Kim was targeted.

Even after the involvement of school personnel, Kim and Li continued to get jumped. Kim heard rumors that the people jumping him were long-time gangsters, and Kim began to get scared. Li's father knew a lot of people and he spoke to some unidentified people to try and make the fights stop. Li's father said the guy wanted $5,000. Kim's sister gave Kim $5,000, and Kim gave the money to Li's father. Kim's sister was older than Kim, and Kim did not know where she got the money. Kim assumed it was from a credit card.

Li's father took Kim and Li to Lehore restaurant. They met a number of Chinese people, including Raymond Chow for the first time. Kim assumed Li's father paid someone the money. After that, the harassment stopped. A couple of months later, Kim heard that Li was running with Chow.

Kim continued to hang out with Li quite often. Therefore, Kim would also see Chow. Kim did not do anything with Chow. However, Kim would accompany Li to collect money for debts from individuals at casinos such as

Artichoke Joes or Lucky Chances. On a couple of occasions, Li gave Kim some of the money from these collections. It would typically be about a couple hundred dollars. Kim did not know who Li was collecting for, but Kim assumed it was for Chow. These collections were always cordial. No one ever refused to pay. There was never any violence to force someone to pay. Kim never saw Li with a weapon.

Kim agreed that others would say that Kim was part of Chow's crew. When Chow saw Kim, Chow would give Kim a hug or a handshake. They would engage in small talk. However, Kim and Chow were never alone. They only saw each other at restaurants.

During this time period, Li claimed to be associated with the Hop Sing Tong Association. Kim had been to the Hop Sing Tong Association building located in San Francisco Chinatown with Li approximately 10 times. Kim would hang out for awhile, then would leave with Li. Kim did not participate in any Triad ceremony or oaths. Kim did not see Li participate in any Triad ceremonies either. While Kim and Li were at the Association, Kim would observe Li speaking with Chow. However, Kim did not notice any pattern between Li and Chow speaking and the collections Li and Kim were handling. Kim said Chow would give Li money once in a while.

Kim and Li continued this relationship for approximately five to six years, until Li went to prison. Li was Kim's only connection to Chow, so once Li went to prison, Kim fell out of touch with Chow. At that time, Kim attended the Sheriff's Academy and became a Sheriff's Deputy. When Li was released from prison, he did some community work. However, he was caught with stolen computers, and Li went back to jail. After Li got out the second time, Li continued to hang out with Chow. However, Kim did not know that Li was "running with" Chow again.

At one point, Li went to Los Angeles. Kim encouraged Li to stay there, away from the trouble in San Francisco. However, Li came back to San Francisco. After Li did so, Kim heard that Li and Chow got into a fight.

Kim went to a birthday dinner for Li. Approximately 20-30 people were there, including Joe Chanthavong and Chow. Kim did not know the others. Kim only stayed for dinner. Kim did not go to the clubs afterwards.

Kim did not know what Li did to earn money once Li returned from Los Angeles. Li told Kim that Li had a permit to grow marijuana plants. Li told Kim he had 99 plants growing in his home. Kim did not care about Li's involvement with marijuana. Kim assumed Li also had other side jobs and that Mimi was making money with her salon.

Kim never saw any marijuana grown at Li's house. After Li returned from

Los Angeles, Li lived in Daly City. Kim never saw any marijuana at that house. Li just showed Kim the permit. Li said he would make 80-90 with each batch of marijuana. Kim did not ask Li to whom he sold the marijuana. Li told Kim that Joe was also growing marijuana and that Joe had been arrested.

Li had shown Kim guns while they were in high school, but Kim had not seen Li with any weapons since Kim became a Sheriff's Deputy. Kim did not see Li with a gun while Li was collecting money from casinos.

Kim said that Li and Auggie were closer than Li and Kim were. Kim described Li and Auggie as being "tight." Kim knew Auggie and Li spent a lot of time together and often drank together. Auggie and Kim had discussed Li's arrest. Kim also knew that Li had gone to Auggie for advice when Li got into a fight with Chow.

Kim said the fight happened when Li and Chow were together drinking at a club. Li wanted Chow to admit that Chow had sent Li to burn down a house, but Chow would not admit it. Li became angry and hit Chow. Li then became scared. Kim told Li to be careful, because Chow was a big-time gangster. This fight happened late 2013. Li asked Kim for his vest approximately one month after the fight.

Li never talked to Kim about doing business with anyone related to the mob or the east coast. Li did introduce Kim to a light-skinned man from New Jersey at a club.

Kim had never used his access as a Sheriff's Deputy to run any person that Kim should not be running. Kim did not know if Auggie had. Li did ask Kim to run a license plate for Li. Li said something to the effect of "I'm looking for this guy." Kim refused to run the plate for Li. Kim believed this conversation happened at the end of 2013.

Li had also asked Kim if certain people were in jail. If the information was public, Kim would tell Li. Li asked about a couple of Chinese names. Kim did not recall which names. Kim thought Li asked about these names in 2013. Kim looked up the names for Li either through a computer program or by calling the law enforcement line - 425. Li would only say these names were that of a friend, and Li had not seen them, so Li was wondering if they were in jail. Kim did not ask who these people were.

Kim and Auggie had never discussed Li asking Kim for favors. Auggie went into the Navy after high school. He would come back on the weekends, drink, and hang out, but Auggie would not be around otherwise. Auggie did meet Chow during these weekends. Auggie and Li were tighter in high school than Kim and Li were. Auggie and Li would break into vehicles together.

Auggie never collected any money from casinos with Li and Kim. Kim said Auggie was not a part of the Hop Sing Tong Association.

Li told Kim that Li sold steroids to cops at a gym. Kim and Auggie never bought any steroids from Li. Kim did not know any specifics about items being smuggled into jail, and Auggie had never mentioned anything about smuggling to Kim.

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, v. ANDY LI, Defendant.	No. CR 14-196 CRB (JCS) ~~[PROPOSED]~~ **ORDER OF DETENTION PENDING TRIAL**

This matter came before the Court on April 8, 2014, for a detention hearing. Defendant Li was present and represented by counsel, Winston Chan and Maia Perez. Assistant United States Attorneys William Frentzen and Susan Badger appeared for the government.

Pretrial Services submitted a report to the Court and the parties that recommended detention, and a representative of Pretrial Services was present at the hearing. The government moved for detention, and defendants opposed. Proffers and arguments regarding detention were

submitted by the parties at the hearing.

Upon consideration of the facts, proffers and arguments presented, the Court finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of other persons and the community. Accordingly, the Court concludes that defendant must be detained pending trial in this matter.

The present order supplements the Court's findings at the detention hearing and serves as written findings of fact and a statement of reasons as required by 18 U.S.C. § 3142(i)(1).

With respect to all of the subsequent findings, this case involves a presumption in favor of detention pursuant to 18 U.S.C. § 3142(e) because the defendant has been charged by Grand Jury indictment with violating 21 U.S.C. § 846. While the ultimate burden of persuasion rests upon the government, given the presumption, it is the finding of the Court that defendant did not make proffer of facts or information sufficient to rebut the presumption.

The Court makes the following findings as basis for its conclusion that no condition or combination of conditions will reasonably assure the safety of other persons and the community as to defendant Li. First, while the Court considers the facts of the instant case to be the least important factor in its determination regarding detention, this case involves trafficking narcotics as well as allegations that defendant trafficked in firearms and a ballistic vest while being a convicted felon. Li also is charged with laundering money in excess of $1,000,000 total. According to agents, individuals reported that Li was an "enforcer" for the Chee Kung Tong, an organization with allegedly criminal aspects and he discussed a variety of violent acts with an undercover agent. Second, although somewhat old, defendant's adult criminal record includes convictions related to arson, robbery, and a federal conviction for theft from interstate shipment. Third, agents report that when the defendant's residence was searched, they found a shotgun and a ballistic vest. Fourth, the instant charges allege firearm possession and sales. For these reasons, the Court deems defendant Li to present a risk of danger to other persons and the community that cannot be mitigated adequately by conditions of release.

Pursuant to 18 U.S.C. § 3142(i), IT IS ORDERED THAT:

1. Defendant is committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

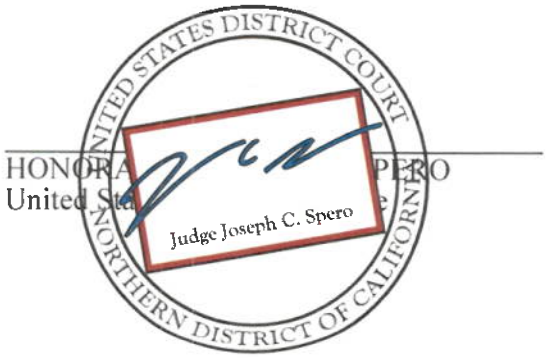
2. Defendant be afforded reasonable opportunity for private consultation with counsel; and

3. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which defendant is confined shall deliver defendants to an authorized deputy United States marshal for the purpose of any appearance in connection with a court proceeding.

SO ORDERED.

Dated: ~~April~~ May 7, 2014

HONORA[illegible] PERO
United St[illegible]



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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America, Plaintiff, v. Andy Li, Defendant.	CASE NO. CR 14-196 CRB (JCS) **NOTICE OF MOTION AND MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION** **Hearing:** Date: August 22, 2014 Time: 10:30 AM Judge: Hon. Joseph C. Spero

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TO THE GOVERNMENT; AND THE CLERK OF THE ABOVE-ENTITLED COURT:

PLEASE TAKE NOTICE that on August 22, 2014 at 10:30 AM in the courtroom of Magistrate Judge Joseph C. Spero, or as soon thereafter as this matter can be heard pursuant to Criminal Local Rule 47-2, defendant Andy Li ("Mr. Li") will move for an order granting the following Motion to Reopen Detention Hearing and Reconsider Detention in the above-captioned case.

This motion is based upon the Bail Reform Act, 18 U.S.C. § 3141 *et seq*. Specifically, Mr. Li asks this Court to reopen his detention hearing and reconsider the order of detention pursuant to 18 U.S.C. § 3142(f), on the grounds that he has discovered new, material information not previously available to him that bears on whether the court can fashion conditions of release that will reasonably assure the safety of the community.

I. INTRODUCTION

On April 8, 2014, this court presided over Mr. Li's detention hearing and ordered him detained pending trial in this matter, finding that the court could not fashion any conditions of release that would reasonably assure the safety of the public. Reporter's Transcript of April 8, 2014 detention hearing, attached hereto as Exhibit A, at 18:23-19:1 ("Tr."). According to the written order of detention, the facts of the instant case – including that Mr. Li "discussed a variety of violent acts with an undercover agent" – and the presence of a shotgun and a ballistic vest at Mr. Li's residence both served as a basis for the order of detention. May 7, 2014 Order of Detention Pending Trial, attached hereto as Exhibit B, at 2 ("Detention Order").

Based on the existence of material information not known to Mr. Li at the time of his detention hearing, he now moves this court pursuant to 18 U.S.C. § 3142(f) to reopen his detention hearing and reconsider the order of detention. First, the shotgun and the ballistic vest did not belong to Mr. Li, nor was he aware of their existence or presence at his residence prior to his detention hearing. After the hearing, Mr. Li ascertained that the shotgun belonged to his landlord, Doug Walker, and that the ballistic vest belonged to his friend, Michael Kim, an employee of the San Francisco Sheriff's Department. The former fact was known to the government during the detention hearing but, inexplicably, never disclosed to the court or Mr. Li. Second, recordings obtained through

discovery after Mr. Li's detention hearing demonstrate that the government cherry-picked inflammatory statements of supposedly "violent acts" to present to the court without providing information about the context or tone of these conversations.

Given that the court cited the shotgun, the ballistic vest, and Mr. Li's discussion of "violent acts" as reasons for detaining Mr. Li, this new information has a material bearing on whether the court can fashion conditions of release that will reasonably assure the safety of the community. Accordingly, Mr. Li respectfully requests that this court reopen his detention hearing and ultimately grant him pretrial release.[1]

II. BACKROUND

Following Mr. Li's initial appearance, the government moved to detain him pending trial as both a flight risk and a danger to the community. Tr. at 2:11-12. On April 8, 2014, the prosecution and Mr. Li submitted arguments in favor and against detention. In arguing for pretrial detention, the government noted Mr. Li's aged prior record, his membership in the Chee Kung Tong organization – even though the government's own affidavit acknowledges that Mr. Li "may no longer be a CKT member" – and the instant charges against Mr. Li, listing multiple examples of Mr. Li merely discussing, but not engaging in, various acts. *See generally* Tr. at 2-9. The government's affidavit in support of the complaint in this matter did not include allegations related to the majority of the discussions cited by the government at Mr. Li's detention hearing, and thus, Mr. Li and defense counsel had no prior knowledge of these supposed discussions. Finally, the government cited their recovery of a 12-gauge shotgun from Mr. Li's residence and a ballistic vest from his wife's vehicle as evidence of Mr. Li's dangerousness. *Id.* at 9:3-6. The government did not make any arguments regarding Mr. Li's supposed flight risk.

The defense argued that Mr. Li had turned his life around since his last conviction 13 years ago, so much so that his former parole officer wrote a letter for him in support of a job application.

[1] Due to the extensive volume of discovery in this case, the defense has not had the opportunity to review all documents and recordings produced by the government. The defense therefore reserves the right to bring additional evidence relevant to Mr. Li's pretrial release to the court's attention at a later date.

Id. at 15:17-16:6. We stated that Mr. Li owns a hair salon with his wife and worked as a bouncer in the Bay Area. *Id*. at 11:9-13. We explained that prior to these pursuits, Mr. Li had worked as a youth counselor for at-risk youth through the Community Youth Center in San Francisco and ran a licensed florist business. *Id*. at 11:14-18. We noted that, according to the Pretrial Services Report, Mr. Li previously had been granted pretrial release at least three times, and had always appeared in court. *Id*. at 11:19-24. We explained that the government has not charged Mr. Li with any crimes of violence, and that the colorful discussions cited by the government amounted to simply "loose talk" that did not culminate in any action. *Id*. at 12:15-17; 14:4-15. Moreover, the defense noted that it was not aware of these conversations prior to the detention hearing, nor did it know anything about the context of these discussions. *Id.* The defense also observed that the government allowed Mr. Li to live freely for years after these supposed discussions took place, contradicting the government's current position that Mr. Li poses a threat to the community. *Id*. at 14:16-18. Finally, we pointed out that even the government acknowledges that Mr. Li is not affiliated with the Chee Kung Tong organization, and that the government or the court had agreed to the release of other similarly situated defendants in this matter. *Id*. at 14:19-15:16.

As to his risk of flight, the defense noted that Pretrial Services found that Mr. Li presented a low risk of flight, and that the court could set conditions to mitigate any risk. *Id*. at 10:5-8. We explained that Mr. Li has lived in California for 36 years, and has significant family ties to the Bay Area, acting as the primary caretaker for his two minor children and his elderly, ailing father. *Id*. at 10:16-11:6. The defense also introduced four individuals that were willing to act as sureties for Mr. Li. *Id*. at 11:25-12:14.

After hearing the arguments, the court ordered detention of Mr. Li, stating that it had found by clear and convincing evidence that no combination of release conditions could reasonably assure the safety of the community. *Id*. at 17:22-18:2. The court noted that Mr. Li's possession of a shotgun and a ballistic vest when arrested was "of particular concern to the court" in making the detention determination. *Id*. at 18:12-14. It also predicated its decision on the instant charges of the case and the testimony of the undercover agents. *Id*. at 18:15-19:1. While the court noted Mr. Li's prior record, it acknowledged that "the last event occurred in 2001[.]" *Id*. at 18:4-5. The court entered the written

order of detention on May 7, 2014. *See* Exhibit B. The written order notes that "the court considers the facts of the instant case to be the least important factor in its determination regarding detention." Detention Order at 2. Similarly, although the written order mentions Mr. Li's prior record, it acknowledges that this history is "somewhat old," and therefore presumably less relevant. *Id.* Thus, the court's detention order rested largely on Mr. Li's supposed possession of a shotgun and a ballistic vest, and his discussions with undercover agents.

III. ARGUMENT

A. This Court Should Reopen Mr. Li's Detention Hearing Based on the Existence of Material Information Not Known to Him at the Time of the Hearing.

The court may reopen a detention hearing if it finds that information exists that was not known to the movant at the time of the hearing, and that such information has a material bearing on the issue of whether there are conditions of release that will reasonably assure the safety of other persons and the community. 18 U.S.C. § 3142(f). Here, information relating to Mr. Li's supposed possession of a shotgun and a ballistic vest and information relating to his discussions with undercover agents was not known to him at the time of his original hearing. This information is material because the court cited Mr. Li's supposed possession of a shotgun and ballistic vest and his discussion of "violent acts" with undercover agents as reasons for detaining him. Furthermore, this information tends to prove that he does not pose a risk of danger to the community, and thus, that the court should release him pending trial in this matter.

At the time of his original hearing, Mr. Li did not know that agents had found a shotgun at his residence or a ballistic vest in his wife's vehicle, as neither of these items belonged to him. He has since learned that the shotgun belonged to his landlord, Doug Walker (Pastora Decl., attached hereto as Exhibit C, ¶ 6; Li Decl., attached hereto as Exhibit D, ¶ 11)—a fact known to the government at the time of hearing but never disclosed—and that the ballistic vest belonged to Officer Michael Kim of the San Francisco Sheriff's Department. Kim Decl., attached hereto as Exhibit E, ¶ 4-8.

Similarly, when his detention hearing took place, Mr. Li lacked knowledge of the specific conversations in which he allegedly discussed "violent acts," as well as the specific comments he or others allegedly made. This information was not available until the government's May 12, 2014

production of discovery, which revealed that the government did not provide context for many of Mr. Li's comments. All of this information is new and material. Accordingly, the court should reopen Mr. Li's detention hearing and find that the government has not presented clear and convincing evidence warranting the pretrial detention of Mr. Li as a danger to the community.

1. The Shotgun Found in Mr. Li's Residence Did Not Belong to Him, Nor Was He Aware That it Existed.

At the time of his arrest, Mr. Li resided at [redacted] in a home that he rented from an individual named Doug Walker. Li Decl. ¶ 1. Mr. Li did not know that there was a shotgun at this residence until the government introduced this information as evidence of Mr. Li's dangerousness at his initial detention hearing. Pastora Decl. ¶ 3. Although the agents who searched Mr. Li's home left a Receipt for Property Seized ("Receipt"), the Receipt was and is illegible, rendering it impossible to discern what the agents seized from the residence and insufficient to notify Mr. Li that they had found a shotgun. Pastora Decl. ¶ 4, Ex. 1. The agents arrested Mr. Li and took him away at the beginning of the search. Li Decl. ¶ 7. His wife, Mimi Li, left the home during the search because the agents did not allow her to move about the premises freely. Li Decl. ¶ 5. The agents left the illegible Receipt on the Li's coffee table. Li Decl. ¶ 8. After the hearing, Mr. Li learned that the shotgun uncovered by the agents belonged to his landlord and owner of the home, Mr. Walker.

The Li's moved into their rented residence in South San Francisco in November 2013. Li Decl. ¶ 1. In January 2014, Mr. Walker informed the Li's that he would be storing some of his personal belongings – previously left in the garage of the residence – in a small crawl space beneath the home. Li Decl. ¶ 3. The Li's did not object, and never entered the crawl space while they resided in the home. Li Decl. ¶ 3-4. Therefore, they did not know that Mr. Walker had stored a shotgun in the crawl space. Li Decl. ¶ 10.

Just prior to Mr. Li's detention hearing, Mr. Walker called Ms. Li to inform her that he had spoken to the FBI to request the return of his shotgun. Li Decl. ¶ 9-11. He said that the FBI had called him to notify him of the search of the property. Li Decl. ¶ 11. Prior to that telephone call, as previously explained, Ms. Li had no knowledge that Mr. Walker had stored a shotgun at the residence

he rented to the Li's. Li Decl. ¶ 10. Ms. Li was not able to relay this information from Mr. Walker to defense counsel or her husband prior to his detention hearing. Li Decl. ¶ 12.

On April 22, 2014, defense counsel called Mr. Walker to procure an affidavit confirming that he owned the shotgun seized from the property he owned and rented to the Li's. Pastora Decl. ¶ 5. Mr. Walker informed defense counsel that the seized shotgun was an antique that belonged to his uncle. Pastora Decl. ¶ 6. He further informed defense counsel that he had notified the FBI twice already that the antique shotgun belonged to his uncle and not to Mr. Li. Pastora Decl. ¶ 7. He then stated that he would not sign an affidavit attesting to his uncle's ownership of the shotgun because he had spoken to the FBI again, and an agent had told him not to sign anything related to the shotgun. Pastora Decl. ¶ 7. Although the government knew prior to Mr. Li's detention hearing that the shotgun seized from his rented home did not belong to him, it nevertheless argued that the court should detain Mr. Li as a danger to the community based on the recovery of the shotgun. Moreover, the court relied on the recovery of the shotgun in finding that clear and convincing evidence existed that no combination of conditions could ensure the safety of the community if it released Mr. Li pending trial. In fact, the court noted that Mr. Li's possession of a shotgun was of "particular concern" in making the detention determination. Tr. at 18:12-14. And although it is troubling that the government relied on the shotgun as a basis for detention despite its knowledge that the shotgun did not belong to Mr. Li, even more concerning is the apparent attempt by the government to prevent Mr. Walker from claiming ownership of the shotgun. Given that Mr. Li did not, in fact, possess a shotgun and had no knowledge prior to his detention hearing that the government had recovered a shotgun that his landlord stored on the premises – unbeknownst to him – the existence of the shotgun cannot support a finding that Mr. Li is a danger to the community. Thus, Mr. Li requests that this court reopen his detention hearing and reconsider the order of detention.

2. The Ballistic Vest Agents Recovered Did Not Belong to Mr. Li, and He Had No Knowledge That the Vest Was in His Wife's Vehicle.

Similarly, Mr. Li did not know that agents had recovered a ballistic vest from his wife's vehicle until the government introduced this information at his detention hearing. He did not learn the circumstances surrounding his wife's possession of the ballistic vest until after his original detention

hearing. Because the court also noted Mr. Li's possession of a ballistic vest as a "particular concern" in deciding to detain him, this new information is material and warrants a reopening of the detention hearing.

As the government noted at the hearing, agents found the ballistic vest in Ms. Li's vehicle. Tr. at 9:5-7. The ballistic vest did not belong to Ms. Li, but rather to Michael Kim, a friend of the Li's who is employed by the San Francisco Sheriff's Department. Kim Decl. ¶ 1, 9. The vest was provided by that agency to Mr. Kim in connection with his employment. Kim Decl. ¶ 2. On February 2, 2014, Mr. Kim's wife had an appointment at Ms. Li's hair salon, and Mr. Kim left his government-issued ballistic vest with his wife, with the intention that she would bring it home for him. Kim Decl. ¶ 3-5. However, Mr. Kim's wife forgot the vest at the salon. Kim Decl. ¶ 6. Rather than leave the vest unattended at the salon, Ms. Li placed it in her car, intending to return it to Mr. Kim. Kim Decl. ¶ 7; Li Decl. ¶ 18. However, she did not have an opportunity to return the vest to Mr. Kim prior to Mr. Li's arrest and the search of their residence. Kim Decl. ¶ 8; Li Decl. ¶ 19. Ms. Li never took the ballistic vest out of her vehicle prior to the search. Li Decl. ¶ 20. Mr. Li did not learn that Mr. Kim had left his validly-issued vest at his wife's salon – and that his wife subsequently placed it in her vehicle – until after his detention hearing. It is also worth noting that in executing the search of Ms. Li's vehicle, the agents left behind one of their gun clips. Li Decl. ¶ 21. Thus, law enforcement has on at least two occasions caused Ms. Li to store law enforcement property in her vehicle until she was able to return it. Li Decl. ¶ 22-23.

Because the government relied on Mr. Li's possession of a ballistic vest in arguing for his detention, this information demonstrating that Mr. Li did not possess a ballistic vest is material to the issue of whether conditions of release exist that will reasonably assure the safety of the community. At the time of his detention hearing, Mr. Li did not know that agents had recovered a ballistic vest from his wife's vehicle, nor did he know who owned the vest. This information supports a finding that Mr. Li does not pose a risk of danger to the community. Thus, the court should reopen Mr. Li's detention hearing and revoke his order of detention.

3. The Government Provided No Context for Mr. Li's Discussion of "Violent Acts."

Putting aside the fact that the government pointed only to *discussions* – and not *acts* of violence – in an attempt to paint Mr. Li as a dangerous person, and that Mr. Li had no knowledge of allegations related to these discussions prior to his detention hearing, a review of recordings from the government's May 12, 2014 production demonstrates that in many instances, the government took Mr. Li's allegedly "violent" statements out of context. The government based the information it presented at Mr. Li's detention hearing mainly on an undercover agent's summary of a lengthy, raucous dinner party attended by undercover agents, Mr. Li, and many others. Powell Decl., attached hereto as Exhibit F, ¶ 3, Ex. 1. After the dinner party, Mr. Li, the undercover agents, and others continued the revelry at a hotel bar. The government further relied on summaries of five shorter conversations between undercover agents, Mr. Li, and others that also took place in social environments, either at nightclubs or restaurants. The recordings of these conversations, not available to Mr. Li until May 16, 2014, demonstrate that most of Mr. Li's comments were merely tough talk or exaggerated tales from his younger days incited by the undercover agents' sharing stories of a similar nature. In general, the tone of these crowded dinners and nights out was festive and dominated by laughter. The recorded participants regaled each other with stories of past ordeals and triumphs, attempting to "one-up" each other with descriptions of their outlandish (and exaggerated) feats. It was in this context and in these environments that Mr. Li made supposedly "violent" comments to the undercover agents and others. In fact, Mr. Li and others explicitly state on various occasions that the supposed "violent" talk amounted to no more than a trading of stories. For example, in the segment of the recordings where Mr. Li is allegedly discussing different ways to "inflict pain," the conversation participants laugh repeatedly, indicating that this was not a serious discussion. Someone mentions that they are "trad[ing] stories," in a lighthearted tone, and other individuals state, "Oh, to be young again," and "[w]e're gonna be doing this all night" while breaking out in laughter, referring to the facetious musings. Someone later acknowledges outright, "No, we're just talking… stories," and later, "we're just trading stories… just stories." *See* 1D233.20130329.1810 (1 of 2) at 03:03:00 to 03:07:00. Similarly, regarding the government's claim that Mr. Li "discussed the best holidays on which . . . you could kill someone," citing Halloween, the 4th of July, or Christmas (Tr. at 8:20-25),

the recordings clearly indicate that Mr. Li made these statements as jokes, with other conversation participants laughing, contributed their own ideas, and repeating Mr. Li's jokes amongst themselves. 1D233.20130329.1810 (2 of 2) at 00:25:40. Thus, the government mischaracterized Mr. Li's statements and took them out of context in an attempt to convince the court that Mr. Li uttered these statements seriously.

Perhaps the most telling indication that Mr. Li made these statements in jest is the fact that they remained merely statements. Although the government recorded conversations with Mr. Li for more than two years, he never followed up these statements with any action. The government has not charged him with any crimes related to these colorful conversations. Indeed, the undercover agent appears never to have solicited Mr. Li in any proposed violent crime, in contrast to some of Mr. Li's codefendants, most likely because the undercover realized that such an attempt was not a fruitful investigatory avenue. While Mr. Li's comments may reflect a vivid imagination and a dark sense of humor, these traits are quite common and do not amount to criminal or dangerous conduct. Mere statements, made in jest, are not chargeable offenses and do not demonstrate that Mr. Li is a danger to the community. In fact, the government effectively conceded that these comments did not warrant detention and that they did not believe Mr. Li intended to act on these statements by allowing Mr. Li to roam free for one to two years after uttering these statements. Thus, when placed in context through the recorded evidence, Mr. Li's discussions of "violent acts" followed by no action do not support a finding that Mr. Li is a danger to the community.

The government also claimed that Mr. Li "discussed doing collections through use of physical harm and intimidation…. indicat[ing] he did that with Mr. Chanthavong, and that they would use a good guy/bad guy routine, and when Li gave a signal, Chanthavong would slap the person." Tr. at 7:10-15. However, the recording that corresponds to this conversation undermines this claim. First, it is barely audible and does not serve to confirm Mr. Li's supposed statements. Second, to the extent that it is audible, Mr. Li offers to help the undercover agent retrieve money owed to him, advising the undercover agent, "You've just gotta be nice." 1D207.20130123.1335 at 01:13:43. The undercover agent asks, "I assume you're the good guy?" Mr. Li replies, "Yeah. I'm good at negotiating." *Id.* There is no audible mention whatsoever of Mr. Li committing physical harm or using intimidation. In

fact, the opposite is true. He talks about being nice and negotiating. And again, Mr. Li did not follow up the offer to collect with any action.

Finally, the government claimed that James Pau "informed the UCEs that Mr. Li's number within the Triad was 426, which identifies him as a fighter," and "Pau advised that he – Pau – would be responsible for making a call when it came to killing someone; and Li would be responsible for physically carrying out the act of violence." Tr. at 6:14-20. However, the audio recording corresponding to this conversation again belies this claim. The recording reflects a conversation between the undercover agent and James Pau, who resides 3,000 miles away from Mr. Li and speaks English poorly. In the section of the recording pertaining to Mr. Li, the undercover agent encourages Pau to discuss Mr. Li and supplies all of the relevant words. Pau says, "Andy is old school," to which the undercover agent replies, "He's old school Hop Sing Tong." 1D726.20130718.1300 at 00:20:02. Pau says, "No matter how good Andy dresses, he still looks like a--" The undercover agent interjects, "A thug." Pau says, "I'm the one that make phone call, he's the one that go --" The undercover agent interjects, "right, do it," and laughs. Pau only describes Andy as a lieutenant after the undercover states, "You need to bring Andy out when you really need some work done, because he's a good soldier, man." Although Pau claims that Mr. Li's number is 426, he does not describe any acts of violence committed by Mr. Li, or state that the number 426 identified him as a fighter.

Leaving aside the fact that this is a third-party discussion of Mr. Li, Mr. Li did not commit any acts in more than two years of monitoring by the undercover agents that would support the statements that the undercover agents encouraged Mr. Pau to make. Similarly, while the government alleges that Mr. Li was an "enforcer" for the Chee Kung Tong, the government has not alleged that Mr. Li engaged in any violence in that supposed role. Unsupported statements about Mr. Li's past reputation or supposed role in an organization he does not belong to cannot form the basis of a finding that Mr. Li poses a risk of danger to the community.

B. <u>This Court Should Release Mr. Li Because He Is Not A Danger To The Community</u>

The new, material information described in Section A *supra*, along with evidence presented at Mr. Li's original detention hearing, demonstrates that Mr. Li does not present a danger to the community. Thus, he should be released from detention pending trial.

In determining whether to detain a defendant before trial, a judicial officer must consider (1) the nature and circumstances of the offenses charged (including whether the offense is a crime of violence or involves sex trafficking, terrorism, a minor victim, a controlled substance, or a firearm); (2) the weight of the evidence against the defendant; (3) the defendant's history and characteristics; and (4) the nature and seriousness of the danger to other persons or the community posed by release. 18 U.S.C. § 3142(g). Although Mr. Li's case involves a presumption in favor of detention, "the ultimate burden of persuasion rests upon the government." Detention Order at 2. In order to rebut the detention presumption, Mr. Li "need only produce some credible evidence forming a basis for his contention that he will appear and not pose a threat to the community[.]" *United States v. Chen*, 820 F. Supp. 1205, 1207 (N.D. Cal. 1992).

A court may not order a defendant detained as a danger to the community unless the prosecution proves by clear and convincing evidence that no combination of conditions will reasonably assure the safety of others and the community. *United States v. Salerno*, 481 U.S. 739, 739 (1987). In assessing a defendant's dangerousness, the offenses with which he is charged and the weight of the evidence against him are less important than the other 18 U.S.C. § 3142(g) factors because the statute "neither requires nor permits a pretrial determination that the person is guilty." *United States v. Motamedi*, 767 F.2d 1403, 1408 (9th Cir. 1985). In determining whether a defendant's criminal history weighs in favor of detention, the Northern District of California considers a recent criminal history more indicative of dangerousness than a dated history. *See, e.g.*, *United States v. Ramos*, 2012 WL 5897415 at *3 (N.D. Cal. Nov. 20, 2012).

In assessing the nature and seriousness of danger to others or the community posed by release, courts consider whether a defendant actually, as opposed to theoretically, poses a danger. *See, e.g.*, *United States v. Patriarca*, 948 F.2d 789, 792 (1st Cir. 1991). Courts inquire into defendant's demonstrated proclivity to commit violent acts, as well as possession of weapons. However, if it is "unclear that [defendant] was aware of [the] presence" of firearms, their presence does not establish a defendant's danger to the community. *See, e.g.*, *United States v. Adams*, 794 F. Supp. 2d 989, 993 (S.D. Iowa 2011).

Here, the proffer made at Mr. Li's detention hearing and the new information that has since come to light credibly rebut the presumption in favor of detention. Faced with this new information, the government cannot prove by clear and convincing evidence that Mr. Li poses a danger to the community, as the Northern District of California and other courts have interpreted that legal standard.

According to this court, "the Court considers the facts of the instant case to be the least important factor in its determination regarding detention." Detention Order at 2. Even if the court were concerned with the facts of the instant case, these facts do not demonstrate Mr. Li's dangerousness. The government has not charged Mr. Li with any crimes of violence. *See* 18 U.S.C. § 16 (defining "crime of violence" as an offense involving physical force or a felony involving substantial risk of physical force); *see also United States v. Scott*, 642 F.3d 791, 801 (9th Cir. 2011) (violation of RICO is only a crime of violence if underlying predicate offense is a crime of violence); *Downey v. Crabtree*, 100 F.3d 662, 668 (9th Cir. 1996) (violation of 21 U.S.C. § 841(a)(1) – an offense with which Mr. Li is charged as well as the offense underlying his conspiracy charge – is not a violent offense); *United States v. Cantu*, 12 F.3d 1506, 1513 (9th Cir. 1993) (felon's possession of a firearm is not a crime of violence).

Although Mr. Li is charged with conspiring to violate 21 USC § 841(a)(1), an offense involving a controlled substance, the nature and circumstances of this alleged violation do not indicate dangerousness warranting pretrial detention. The Northern District of California recently considered the detention of a defendant with charges similar to those of Mr. Li and found that, although the defendant did not qualify for release on his own recognizance, the government could not meet its burden to prove that no conditions existed that would reasonably assure his appearance and the community's safety. *United States v. Bright*, 2009 WL 111687 at *2 (N.D. Cal. Jan. 15, 2009). After finding that defendant did not pose a flight risk, the Court stated, "With regards to [defendant's] danger risk, the government has seized his weapons, his body armor, and his narcotics. While he may have more elsewhere, if he leaves the halfway house, he will forfeit his bond, a condition he appears unlikely to trigger. Further, in the halfway house, he will be unable to sell marijuana, negating the only danger risk his release would otherwise pose to the community." *Id.* Here too, the government

has seized all offending articles from Mr. Li's home, eliminating any risk of danger his release might pose. As in *Bright*, the government has failed to prove that no combination of conditions exist that will ensure the safety of the community. As such, Mr. Li's narcotics charges are insufficient to justify his pretrial detention.

Similarly, although Mr. Li is charged with possessing firearms as a felon and dealing firearms without a license, the nature and circumstances of these alleged offenses do not suggest that Mr. Li is a danger to the community. Mr. Li is charged with possessing and dealing two firearms: a .40 Ruger and a .357 Magnum, which, by an undercover agent's own admission, was in fact sold to the agent by co-defendant Kongphet Chanthavong. Powell Decl. ¶ 4, Ex. 2. Unlike co-defendant Brandon Jackson, who allegedly trafficked "assault weapons, automatic weapons, stolen weapons, weapons with scratched-off serial numbers, large quantities of ammunition, high capacity magazines, and ballistic vests," July 23, 2014 Order Denying Motion to Revoke Detention Order, attached hereto as Exhibit G, at 3, the firearm offenses with which Mr. Li is charged are limited in quantity and scope.

In addition, Mr. Li's criminal history is very dated. He has not been convicted of a crime in over 13 years. Even this court, when it ordered Mr. Li's detention, acknowledged that his criminal history is "somewhat old." Detention Order at 2. Since that time, Mr. Li has turned his life around and matured into a family man who cares for his two children and ailing father. He co-owns a San Francisco hair salon with his wife, and he has worked as a security guard at the same nightclub in the Bay Area for the past two years. Recently, he returned to school to receive a high-school diploma and complete a formal training course to receive his security-guard license. Prior to his current employment, Mr. Li worked as a youth counselor for the Community Youth Center in San Francisco, where he spoke to young people about the dangers of gang activities. In fact, Mr. Li has demonstrated such strength of character over the last decade that his parole officer wrote him a letter in January of this year in support of his search for additional employment. Powell Decl. ¶ 5, Ex. 3. Similarly, many members of Mr. Li's community can attest to his reformation and have written letters in support of his release. Powell Decl. ¶ 6, Ex. 4. Mr. Li's dated criminal history is insufficient to meet the government's burden of proof regarding detention, and Mr. Li's character weighs in favor of his release.

Furthermore, there is no evidence that Mr. Li poses an actual, rather than a theoretical, danger to others or the community. Although this court noted in its detention order that "individuals reported that Li was an 'enforcer' for the Chee Kung Tong," the government itself acknowledges in the affidavit supporting its complaint that Mr. Li has since had a falling out with Mr. Chow and is very likely no longer part of the Chee Kung Tong organization. Thus, any potential danger Mr. Li posed due to an alleged affiliation with that organization has been eliminated. Moreover, Mr. Li's recent history demonstrates that he has gone so far as to relocate his family in an active effort to avoid violence. Mr. Li resided in Los Angeles when this investigation began because he had received a death threat and preferred to escape the situation rather than resort to violence or enlist anyone associated with a tong to engage in violence on his behalf. Further, as described in detail above, Mr. Li's conversations with undercover agents and third-party discussions regarding violent acts were taken out of context, and, more importantly, remained hypothetical. None of these discussions ever moved beyond the realm of the theoretical. Finally, because it is now clear that Mr. Li was not aware of the presence of the shotgun and ballistic vest at his residence, and that those items did not belong to him, the government's discovery of these items does not indicate that Mr. Li is a danger to the community. *See Adams*, 794 F. Supp. 2d at 993. Because – in light of the new information described herein – the government cannot meet its burden of proof to show that Mr. Li is a danger to the community, this court should reopen the detention hearing and order his release pursuant to 18 U.S.C. § 3142(c). If released, Mr. Li is amenable to complying with any combination of conditions this court deems necessary to reasonably ensure the safety of the community. Moreover, as the defense proffered at Mr. Li's detention hearing, his brother, Richard Li, is willing to act as a surety and secure a bond with his home, worth an estimated $600,000. Tr. at 12:5-9.

IV. CONCLUSION

Because newly discovered information demonstrates that defendant does not pose a risk of danger to other persons and the community, defendant respectfully requests that this court reopen his detention hearing and ultimately grant him pretrial release.

Dated: August 6, 2014

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

Before The Honorable Joseph C. Spero, Magistrate Judge

UNITED STATES OF AMERICA, Plaintiff, vs. ANDY M. LI, Defendant.	NO. CR. 14-00196-12 CRB (JCS) San Francisco, California Tuesday, April 8, 2014 10:43 a.m.

TRANSCRIPT OF PROCEEDINGS

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THE COURT: Mr. Li. The Li bail matter.

MR. CHAN: Your Honor, we owe the Court a financial affidavit. I'll have my client sign it now.

THE COURT: Please go ahead.

(Discussion off the record.)

(Whereupon a document was tendered to the Court.)

THE COURT: All right. I'll confirm the appointment.

All right. This is a contested detention hearing. I'll hear from the United States.

MR. FRENTZEN: Thank you, Your Honor.

The Government is moving to detain Mr. Li as both a risk of flight, and a danger to the community. We would note his Criminal History, which includes a misdemeanor related to arson, and a felony conviction for accessory that relates to a robbery, and a federal conviction for theft from interstate shipments.

We would also note that he has at least one bench warrant issued; violations of parole that were listed that, on federal supervision, he violated on a number of occasions, and that he was apparently detained in connection with those offenses, which was the theft from interstate shipment, and thus at that time, at least, was deemed to be someone who should be detained.

THE COURT: So I don't -- do you have any more information on that? The way I read the record, it looked like

while he was on Supervised Release after he was released from a federal prison on the underlying felony theft in interstate shipments, he violated his supervision and was sentenced to 12 months for another charge of felony theft from interstate shipments, or was there some other conduct that gave rise to the 12 months, other than a new felony theft of interstate shipments?

MR. FRENTZEN: Your Honor, I actually don't know.

THE COURT: Okay. Well, maybe I'll ask the defense whether they know.

MS. PEREZ: We have no further information, Your Honor.

THE COURT: Okay. Go ahead.

MR. FRENTZEN: So in this particular case -- excuse me, Your Honor. This is a presumption case, based on the charges against Mr. Li.

I don't know that we have time to get into the nitty-gritty on all of the offenses and how they were committed, but I'm happy to answer any specific questions from the Court; but basically we have a situation where an interaction with the undercover through an introduction through the Chee Kung Tong, which Mr. Li is a member of, and is a somewhat -- considered to be a somewhat high-ranking member of -- and I'll get into a little bit of that in a little bit. He met the undercover, and they together engaged in a number of criminal activities to

include Mr. Li providing a ballistic vest to the undercover; providing firearms to the undercover, despite the fact that he was a convicted felon and unlicensed to deal in firearms. Mr. Li sold marijuana, and discussed having a much, much larger narcotics-trafficking organization, if you will.

And it eventually culminated in Mr. Li employing the undercover to assist in getting cash back from the East Coast; cash generated as a result of narcotics sales -- from the East Coast back to the West Coast. And in that regard they were collectively, as an organization -- Mr. Li's drug-trafficking enterprise, if you will -- they were laundering sums of well over a hundred thousand dollars at least monthly through the undercover. And so that's -- that's the basics of the charges against Mr. Li.

THE COURT: Can you point to me where it says that he provided --

I know there was discussion of a ballistic vest.

-- where he actually provided a ballistic vest?

MR. FRENTZEN: Your Honor, I'd have to -- I'll have to turn back. If the Court's asking about it in the -- in the Complaint --

THE COURT: Yeah, I'll --

MR. FRENTZEN: Perhaps I misspoke, but I don't think so.

THE COURT: I'm looking at your colleagues. I

thought that at page 52 --

MR. FRENTZEN: Yeah.

THE COURT: -- there was a discussion about getting a ballistic vest; but I didn't -- maybe I missed it.

MR. FRENTZEN: And we may have left it out, Your Honor, because it's not an actual affirmative charge in either the Complaint or the Indictment.

THE COURT: You left something out of this? I can't believe. It's 137 pages.

MR. FRENTZEN: Your Honor --

THE COURT: It's hard to believe.

MR. FRENTZEN: Your Honor, I hate to tell you and everyone here, but we left a lot of stuff out.

THE COURT: Well, it's, I'm sure --

MR. FRENTZEN: And so I'll take a look for that --

THE COURT: Yeah.

MR. FRENTZEN: -- in a moment.

THE COURT: Okay.

MR. FRENTZEN: And then if I could, just in terms of Mr. Li's history, character, and his danger to the community, I have some additional items that I wanted to highlight.

THE COURT: Mm-hm.

MR. FRENTZEN: Mr. Li was pointed out as an individual who was high in the Chee Kung Tong, as I had indicated, both by himself and by others within the

organization.

Mr. Chanthavong, who is also charged and has been detained, explained that Mr. Li was higher in the organization than Chanthavong; and even though Chow is Chanthavong and Li's boss, Chow treated them like brothers.

Another individual in the case, James Pau, commented to the undercovers that it was mostly Chanthavong and Nieh -- George Nieh -- who looked out for Chow's safety. Pau surmised that Li was "old school," and couldn't show his face publicly because he was a well-known gangster.

The undercover asked if Li was the person to call if someone needed to be hurt or killed.

And Pau said that Li was a lieutenant; had his own flag within the Triad organization. Pau informed the UCEs that Mr. Li's number within the Triad was 426, which identifies him as a fighter. Pau made a hand gesture shaped like a gun, using his thumb and index finger. Pau advised that he -- Pau -- would be responsible for making a call when it came to killing someone; and Li would be responsible for physically carrying out the act of violence. According to Pau, Li was a soldier.

Li, himself, commented to the undercover that he had come back to the San Francisco Bay Area from southern California to help Chow take care of his problems with a certain individual; that Li was going to pretend that he had a falling out with Chow, and try to get next to Chow's enemy. Li explained he

will get rid of all of the bugs, and said he's looking to fuck some idiot up. Bugs. You have to get rid of the bugs.

Li also had commented -- and I bring this up as an area of concern -- that he was -- had access to human growth hormone; that he was going to try to supply it to Chow, and start working out with Chow.

Li commented on a number of different occasions to the undercover about crimes of violence he either had committed or was considering committing, including considering strangling someone over some money. He discussed doing collections through use of physical harm and intimidation. He offered that service to the undercover for 50 percent of the profits; indicated he did that with Mr. Chanthavong, and that they would use a good guy/bad guy routine, and when Li gave a signal, Chanthavong would slap the person.

Mr. Li --

I'm sorry. One moment, Your Honor.

-- had commented that when it came to the Chee Kung Tong, half of the members were gang members and the other half were politicians, and the only people that Li trusted were Chow and Chanthavong. He had told another member of the CKT that he loved him, but he wouldn't hesitate to beat the fuck out of him.

He discussed a man in Los Angeles who stepped in front of his car; and he claimed he intentionally ran the man over with

his car and drove off, because he thought the individual was challenging him by stepping into the street.

He was apparently made head enforcer for the Chee Kung Tong.

At one point, he discussed with the undercover different ways to inflict pain on people who crossed him. He talked about injecting people with tranquilizers. He talked about Super Gluing his victim's penis shut, and force feeding him water. He talked about taking electrodes from a stun gun, placing them up someone's nose, and pulling the trigger.

He said when he gets crossed by someone, he would come up with several ways to retaliate. He would take his time to seek retribution, and said, "Not today. Not tomorrow. Not this year. Three years from now," and that he wouldn't be swayed by time.

He discussed with the undercover a shooting that took place at an unknown nightclub, and indicated that when the -- that an altercation took place. Li shot someone with a .45 in the buttocks, and thought that that individual had survived.

He discussed the best holidays on which you should -- you could kill someone being Halloween or the 4th of July, because you could wear a mask, or because there would be a lot of noise, and gunshots would be misinterpreted as fireworks on the 4th. And Christmas was opportune because people would likely be home on Christmas, and easy to find.

He also discussed that, before dealing drugs, his primary illegal activity to make money was loan-sharking.

And, Your Honor, let me just conclude with when the search was conducted on March 26th of 2014 in Mr. Li's residence, we recovered a 12-gauge shotgun. A ballistic vest was found in a vehicle which I understand to be his wife's vehicle. And -- I'm going now back into the residence. Sorry. My apologies -- 87 marijuana plants.

And unless the Court has other questions -- and I will try to sort out that last little piece for the Court.

THE COURT: Okay.

MR. FRENTZEN: And it may just be that we omitted it, but I will -- let me let me say that I'll withdraw it if it means anything to the Court and if I find it in the interim, I will let the Court know.

THE COURT: All right. Thank you.

MR. FRENTZEN: Thank you.

THE COURT: Let me hear from the defendant.

MS. PEREZ: Your Honor, the Government has not shown that Mr. Li is a flight risk or a danger to the community. And it's certainly not met any sort of standard to establish a presumption of detention.

A lot of the things that the Government just spoke about are not alleged in the Complaint. We have not had an opportunity to discuss them with our client, but the thing --

there were a lot of allegations about things our client may or may not have said. We're not aware of what context he may have said them in, or whether the agent, in fact, coaxed these sorts of discussions out of our client.

Getting back to the flight risk, our client -- Pretrial Services acknowledges that Mr. Li presents a low risk of flight, and, in fact, believes that his flight risk can be mitigated with certain conditions. Mr. Li is a lifelong resident of California. He has been here for 38 years, since immigrating from Macao at the age of three. He's been in the Bay Area for 36 years, and is a U.S. citizen. He's not a citizen of any other country. And he's surrendered his passport to the Government. He has not traveled outside of the U.S. in 22 years, and has no relationship with family or friends abroad.

Mr. Li also has significant family ties in the Bay Area. He has a wife of seven years, and two minor children: A five-year-old daughter, and a 15-year-old son. He's the primary caretaker for both of those children. He takes care of them, makes sure that they get to school, picks them up and drops them off.

Mr. Li also has an ailing father who's 79 years old. He was just released from four months in the hospital for complications related to pneumonia. Mr. Li has planned on becoming his father's full-time caretaker. Of course, he's not

able to do that while he's in detention. There's no one else available to care for his ailing father, as Mr. Li's brother works full time, and his wife is not able to communicate with the father because he speaks Cantonese, and she does not. The wife is also the primary breadwinner for the family, so she's out at work all day, as well.

And the Government makes much of Mr. Li's legal history. However, Mr. Li has not been convicted of a crime in over 17 years. Since then, he really turned his life around. He's co-owner of a business in San Francisco. He and his wife own a hair salon in San Francisco that employs three independent-contractor stylists. He's also been a bouncer at the same club in the Bay Area for the past two years.

Prior to that, he worked as a youth counselor for the Community Youth Center in San Francisco, speaking to youth about gang activities, and trying to turn their lives around.

Prior to that, he was a licensed -- ran a licensed florist's business for six years.

Mr. Li has actually been released from pretrial release at least three times, according to the P.T.S. report. Most recently, he was released on his own recognizance. Mr. Li has never missed a court date, and voluntarily surrendered to the federal correctional institution in Lompoc to serve a sentence back in 19 -- in the late 1990s.

Mr. Li also has four sureties here to support him. He has

his wife, Mimi Li. She has no criminal history. She's in court today, and she has offered to put up their hair-salon business, valued at approximately $30,000, to ensure his release.

He also has a brother, Richard Li, who has no criminal history, and is a bank manager at the East West Bank. Mr. Li was not able to be in court today; he had a business meeting. He's offered to put up his house as part of the bond. His house is worth an estimated value of $685,000.

Also in court today supporting Mr. Li are Nick Espiritu, who's a financial advisor at Charles Schwab, and has been for about 10 years. He has no criminal history.

And also in court today is Adam Hernandez, who is an electrician.

The Government goes into detail about Mr. Li potentially being some sort of danger to the community; but in fact, the Government has not charged Mr. Li with any crime of violence. They point to his firearms. However, the Ninth Circuit has explicitly stated that felons in possession of firearms is not a crime of violence. Furthermore, other defendants charged with firearms offenses in this matter have been released. Mr. Keith Jackson, whose release was just confirmed by Judge Breyer, is -- he is charged with conspiring to sell -- the Complaint mentions that he conspired to sell some shoulder -- sorry -- shoulder-fired missiles. Certainly, these

are infinitely more dangerous than the revolvers and such that Mr. Li is alleged to have --

THE COURT: Were the missiles actually delivered?

MS. PEREZ: Sorry?

THE COURT: Were the missiles delivered?

MS. PEREZ: No, they were not.

THE COURT: Okay. Thank you.

MS. PEREZ: Furthermore, presumption -- so, if anything, you know, Mr. Li has also been presented -- been charged with a narcotics conspiracy. However, we don't believe that the possession of marijuana plants presents a serious danger to the community, as contemplated under The Bail Reform Act. In fact, marijuana has been -- under certain conditions, is legal in California, as well as many other states.

THE COURT: Oh, don't go there.

MS. PEREZ: Sorry?

THE COURT: Don't go there. It's not legal in California in Federal Court.

MS. PEREZ: Well, it's important to -- agreed.

It's important to recognize that certain, you know, local governments have recognized it's not a danger to the community.

You know, The Bail Reform Act only -- only requires the detention of a defendant if no combination of conditions can address safety concerns. And, in fact, we don't believe that that's the case here. We believe that, given the number of

sureties ensuring Mr. -- vouching for Mr. Li here today, and the fact that he is not charged with any crime of violence, we believe that Mr. Li does not present a danger to the community.

The Government goes through a lot of information in its Complaint. Again, this is the first time we've heard a lot of these allegations which were not in the Complaint. The Government's Complaint contains a number of statements which characterize alleged discussions with Mr. Li. However, these are all attributions. It's a lot of loose talk. It's not directed at any one person. It's nothing -- most importantly, nothing came of a lot of these discussions, which is why Mr. Li is not charged with any sort of conspiracy to commit any sort of crime of violence. Certainly these discussions, as colorful as they were, did not rise to the level of conspiracy sufficient to charge Mr. Li.

Furthermore, if the Government thought that Mr. Li was so dangerous, why did they leave him on the -- let him be out on the streets for years after these discussions took place?

In fact, the Government makes -- the Government acknowledges that Mr. Li has since had a falling out with Mr. Chow, and is very likely no longer part of the Chee Kung Tong gang organization.

In fact, to the extent that the -- that the Court is concerned about ongoing dangerousness to the community, it's important to recognize that Mr. Li, according to the

Government, is no longer associated with the Chee Kung Tong organization, and therefore will probably not have any continuing activities with them should he be released prior to trial.

Furthermore, other defendants in this matter have been charged with crimes of violence, and have been released. Keith Jackson -- again, another defendant in this matter -- has been released, and he has been charged with a murder-for-hire plot. Mr. George Nieh, another defendant in this matter, alleged to -- is alleged to have stabbed a man as part of a gang initiation. And, in fact, Mr. Leland Yee and Mr. Keith Jackson also discussed selling shoulder-fired missiles with -- with the undercover agent.

So, as much as the colorful talk with Mr. Li between Mr. Li and the agent -- also, Mr. Li, you know, none -- none of that actually occurred.

Finally, Mr. Li has had -- you know, the Government has talked a lot about Mr. Li's legal history. He's really turned his life around. He's a married father of two minor children. He has not been convicted of a crime in 17 years. He had no disciplinary record while in prison. He was never written up, and never sent to solitary confinement.

Since then, he has actually worked as a youth counselor at the Community Youth Center in San Francisco, where he went into jails and schools to speak with youth about turning their lives

around and about getting out of the gang life.

He also was such an upstanding parolee that his parole officer wrote him a letter in January of this year supporting his efforts for employment. The parole officer had 24 years of experience on the job, and called Mr. Li a role model and a responsible and reliable person.

Mr. Li has also gone back to school recently to get his high-school diploma, and has completed a formal course of training to receive his security-guard license.

Finally, Mr. Li has no history of drug or gambling addiction; no mental health issues.

Mr. Li's release is crucial to the survival of his family, Your Honor. He -- and again, he's the primary caretaker of two minor children: A Five-year-old daughter and a 15-year-old son. He also plans to become a full-time caretaker for his ailing, 79-year-old father, for whom no one is available to care. His wife is the primary breadwinner, and she works full time in San Francisco. So there is no one at home to take care of the family.

THE COURT: So what are they doing for the past week?

MS. PEREZ: She has had -- Mrs. Li has had to juggle her job. And they've been trying to make ends meet, basically, with caretakers; temporary caretakers --

THE COURT: Okay.

MS. PEREZ: -- but certainly it's not a feasible

situation. In fact, the Government hasn't talked about when this case might finally proceed to trial, but we don't expect that it will be for quite a long time. And, in fact, the family simply isn't able to cope in terms of caretaking responsibilities up until that point.

Finally, we would point out that pretrial release in noncapital cases is the norm, and not the exception; that Mr. Li, as Pretrial Services has recognized, is not a flight risk.

THE COURT: So you're repeating yourself.

MS. PEREZ: Right. I am repeating myself.

THE COURT: Let's not repeat ourselves.

MS. PEREZ: Finally, we point out that Mr. Li is asking for a secured bond commensurate with other defendants. People have put up their houses and their businesses. People with no criminal history have vouched for Mr. Li. He's also -- his wife is willing to act as his custodian, and was willing to report any violations to the Court. Mr. Li is willing to work with the Court on any combination of conditions that will allow him to return to his family, and care for his children and his father.

THE COURT: All right. Thank you. I'm going to order the defendant detained pending trial in this matter. I'll ask the United States to prepare the order. Based on the proffer that the United States made, and especially finding by

clear and convincing evidence that no combination of conditions could reasonably assure the safety of the community.

I would like you to highlight a number of things. While the -- Mr. Li's Criminal History -- the last event occurred in 2001, when he was sentenced to 12 months' custody in the Federal Bureau of Prisons arising out of a violation of Supervised Release for another one. It's still a troubling Criminal History. And it should be accented there is an arson conviction, a robbery conviction, a felony theft of interstate shipments, and then a violation of federal supervision, as well as two other violations of parole.

In addition, when arrested, the defendant had in his possession a shotgun and a ballistic vest, which is of particular concern to the Court.

With respect to the testimony by the undercover agents, as reflected in the Complaint, Mr. Li provided many weapons; not just a weapon or two weapons, but many weapons to the undercover agent, multiple weapons to the undercover agent, including, at page 21, a ballistic vest to the undercover agent, and participated in the laundering of over a million dollars in cash.

He bragged that he was the head of enforcement for the CKT, and wanted to "get rid of the bugs." Under those circumstances, I don't think any conditions could be reasonably assure the safety of the public, and I'll order him detained

until -- pending trial in this matter.

So your next appearance is Friday, at 11:00 a.m.

MR. CHAN: Thank you, Your Honor.

MR. FRENTZEN: Thank you, Your Honor.

(At 11:12 a.m. the proceedings were adjourned.)

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.



June 11, 2014

Signature of Court Reporter/Transcriber Date

Lydia Zinn

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, v. ANDY LI, Defendant.	No. CR 14-196 CRB (JCS) ~~**[PROPOSED]**~~ **ORDER OF DETENTION PENDING TRIAL**

This matter came before the Court on April 8, 2014, for a detention hearing. Defendant Li was present and represented by counsel, Winston Chan and Maia Perez. Assistant United States Attorneys William Frentzen and Susan Badger appeared for the government.

Pretrial Services submitted a report to the Court and the parties that recommended detention, and a representative of Pretrial Services was present at the hearing. The government moved for detention, and defendants opposed. Proffers and arguments regarding detention were

submitted by the parties at the hearing.

Upon consideration of the facts, proffers and arguments presented, the Court finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of other persons and the community. Accordingly, the Court concludes that defendant must be detained pending trial in this matter.

The present order supplements the Court's findings at the detention hearing and serves as written findings of fact and a statement of reasons as required by 18 U.S.C. § 3142(i)(1).

With respect to all of the subsequent findings, this case involves a presumption in favor of detention pursuant to 18 U.S.C. § 3142(e) because the defendant has been charged by Grand Jury indictment with violating 21 U.S.C. § 846. While the ultimate burden of persuasion rests upon the government, given the presumption, it is the finding of the Court that defendant did not make proffer of facts or information sufficient to rebut the presumption.

The Court makes the following findings as basis for its conclusion that no condition or combination of conditions will reasonably assure the safety of other persons and the community as to defendant Li. First, while the Court considers the facts of the instant case to be the least important factor in its determination regarding detention, this case involves trafficking narcotics as well as allegations that defendant trafficked in firearms and a ballistic vest while being a convicted felon. Li also is charged with laundering money in excess of $1,000,000 total. According to agents, individuals reported that Li was an "enforcer" for the Chee Kung Tong, an organization with allegedly criminal aspects and he discussed a variety of violent acts with an undercover agent. Second, although somewhat old, defendant's adult criminal record includes convictions related to arson, robbery, and a federal conviction for theft from interstate shipment. Third, agents report that when the defendant's residence was searched, they found a shotgun and a ballistic vest. Fourth, the instant charges allege firearm possession and sales. For these reasons, the Court deems defendant Li to present a risk of danger to other persons and the community that cannot be mitigated adequately by conditions of release.

Pursuant to 18 U.S.C. § 3142(i), IT IS ORDERED THAT:

1. Defendant is committed to the custody of the Attorney General for confinement in a corrections facility separate, to the extent practicable, from persons awaiting or serving sentences or being held in custody pending appeal;

2. Defendant be afforded reasonable opportunity for private consultation with counsel; and

3. On order of a court of the United States or on request of an attorney for the government, the person in charge of the corrections facility in which defendant is confined shall deliver defendants to an authorized deputy United States marshal for the purpose of any appearance in connection with a court proceeding.

SO ORDERED.

Dated: ~~April~~ May 7, 2014

HONORABLE JOSEPH C. SPERO
United States Magistrate Judge

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF VANESSA A. PASTORA IN SUPPORT OF DEFENDANT'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF VANESSA A. PASTORA

I, Vanessa A. Pastora, declare as follows:

1. I am a member in good standing of the State Bar of California and am one of the attorneys of record for Defendant Andy Li in this matter. I make this declaration in support of Mr. Li's Motion to Reopen Detention Hearing and Reconsider Detention.

2. Shortly after Mr. Li's detention hearing on April 8, 2014, Mimi Li ("Ms. Li"), Mr. Li's wife, informed me that the shotgun referenced by the government at the detention hearing belonged to her landlord, an individual named Doug Walker. Ms. Li further informed me that she was not aware that there was a shotgun at her rented residence until the morning of Mr. Li's detention hearing, and she was not able to inform counsel prior to the hearing.

3. Mr. Li later informed me that he also did not know prior to his detention hearing that there had been a shotgun on the property he rented in South San Francisco or that federal agents had seized that shotgun.

4. Although the FBI agents who searched Mr. Li's home left a Receipt for Property Seized ("Receipt"), the receipt was and is illegible, rendering it impossible to tell what the FBI had seized. A true and correct copy of the Receipt is attached hereto as Exhibit 1.

5. On April 22, 2014, I called Mr. and Ms. Li's landlord, Doug Walker, to procure an affidavit confirming that the shotgun seized from the property he owned at [redacted] belonged to him.

6. Mr. Walker informed me that the shotgun the FBI seized from his property was an antique shotgun that belonged to his uncle.

7. Mr. Walker further informed me that he had informed the FBI twice already that the shotgun belonged to his uncle, and not to Mr. Li. He said that he had spoken with two female FBI agents.

8. Mr. Walker then informed me that he would not sign an affidavit or declaration attesting to these facts because he had spoken to the FBI again, and an agent had told him not to sign anything related to the shotgun.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 5, 2014 in San Francisco, California.

Vanessa A. Pastora

FD-597 (Rev 8-11-94)

Page 1 of 1

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION
Receipt for Property Received/Returned/Released/Seized

File # [illegible]

On (date) [illegible]

item(s) listed below were:
- ☐ Received From
- ☐ Returned To
- ☐ Released To
- ☐ Seized

(Name)

(Street Address) [redacted]

(City) [redacted]

Description of Item(s): [illegible]

Received By: _____ (Signature)

Received From: _____ (Signature)

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF MIMI LI IN SUPPORT OF DEFENDANT ANDY LI'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF MIMI LI

I, Mimi Li, declare as follows:

1. My husband Andy Li and I rented our residence at [redacted] from an individual named Doug Walker and moved there in November 2013.

2. At that time, our landlord, Mr. Walker, stored many of his personal belongings in the garage of the house.

3. In January 2014, Mr. Walker moved out some of his personal belongings from the garage and told us that he was leaving the rest of his belongings previously stored in the garage in a crawl space underneath the house. My husband and I did not object to Mr. Walker storing some of his personal belongings in the crawl space while we rented the house because we were not using that space.

4. From January 2014 when Mr. Walker stored his items in the crawl space to March 26, 2014, when the FBI searched our home, my husband and I never entered the crawl space and did not know what items Mr. Walker kept there.

5. On the day of the search, I was told to stay in the living room while the FBI searched the house. An agent had to come with me even to use the restroom. Because I could not walk around the house freely, I asked the FBI agents if I could leave, and they said yes. A girlfriend came to pick me up from the house, and I left.

6. Because I left the house during the search, I did not see what items they took from my car or from the crawl space.

7. My husband was arrested and taken away shortly after the search began.

8. The FBI agents left a receipt of the items taken on my coffee table, but the print was too light to read.

9. On April 8, 2014, the morning of my husband's detention hearing, Mr. Walker called me and asked me when the FBI was returning his shotgun.

10. At that time, I did not know what Mr. Walker was referring to, as I did not know that he had stored a shotgun in the crawl space beneath the home.

11. Mr. Walker explained to me that he had stored an antique shotgun that belonged to his uncle in the crawl space, and that he had called the FBI to inform them that the shotgun belonged to him and request its return. He said that the FBI had initially contacted him to inform him about the search of the house.

12. I was not able to tell my husband's lawyers about the shotgun before the detention hearing because the marshals in the court room would not let me speak to them when I asked permission.

13. I told them and my husband what my landlord had told me after the detention hearing.

14. On February 2, Ms. Bonnie Lam, who is married to Michael Kim, had an appointment at my salon.

15. Mr. Kim works for the San Francisco Sheriff's Department.

16. On that day, Mr. Kim dropped off a bullet proof vest that he used for his job at my salon for his wife to take home for him.

17. After Ms. Lam left the salon, I realized that she had forgotten to take the bullet proof vest, and had left it in the salon.

18. I did not want to leave the vest unattended at the salon, so I took it with me and placed it in my car, intending to return it to Mr. Kim.

19. I planned on returning the vest to Mr. Kim a few times, but our plans fell through, and I did not see him between February 2, 2014 and March 26, 2014.

20. I never took the vest out of my car between February 2, 2014 and March 26, 2014, when the FBI took it from my vehicle.

21. After FBI agents searched my vehicle, I noticed that they had left behind a gun clip.

22. I did not know what to do with the gun clip, so I put it in a plastic bag and left it in my car until I could meet with my husband's lawyers.

23. When I met my husband's lawyers at the court house, I informed them about the gun clip. They arranged for two of the case agents to accompany me that same day to my car in the parking lot and retrieve the gun clip.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 5, 2014 in San Francisco, California.

Mimi Li

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Attorneys for Defendant ANDY LI

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF MICHAEL KIM IN SUPPORT OF DEFENDANT ANDY LI'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF MICHAEL KIM

I, Michael Kim, declare as follows:

1. My name is Michael Kim, and I am employed by the San Francisco Sherriff's Department.

2. In or around February 2014, I possessed two ballistic vests issued to me by the Sheriff's Department in connection with my employment.

3. On February 2, 2014, my wife, Bonnie, had an appointment at Mimi Li's hair salon located in San Francisco, California.

4. On that day, I stopped by Ms. Li's salon to drop off my work-issued ballistic vest with my wife because I had to run errands and did not want to leave the vest in my car.

5. I asked my wife to bring the vest home for me when she was done at the salon.

6. Unfortunately, my wife forgot the vest at Ms. Li's salon.

7. Because my wife forgot the vest, Ms. Li informed me that she took the vest and put it in her car, intending to return it to me.

8. Due to miscommunication and timing, I never received the vest back from Ms. Li prior to March 26, 2014. We had made plans for her to drop it off at my house and for me to pick it up from her house, but we both got busy and the plans fell through.

9. The vest that federal agents recovered from Ms. Li's vehicle belonged to me.

10. I did not have an immediate need for the vest after my wife left it at Mimi's salon because I had another vest that I could use in connection with my employment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 6, 2014 in San Francisco, California.

Michael Kim

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Attorneys for Andy Li

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF JOANNA L. POWELL IN SUPPORT OF DEFENDANT'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF JOANNA L. POWELL

I, Joanna L. Powell, declare as follows:

1. I am over eighteen years old, have never been convicted of a felony or a crime involving moral turpitude, and am competent to make this declaration.

2. I am a member in good standing of the State Bar of California and am one of the counsel of record for Defendant Andy Li. I make this declaration in support of Defendant's Motion to Reconsider Detention.

3. Attached hereto as Exhibit 1 is a true and correct copy of Federal Bureau of Investigation summary of March 29, 2013 conversation with Defendant and others, Bates numbered US 609062-66.

4. Attached hereto as Exhibit 2 is a true and correct copy of Federal Bureau of Investigation summary of September 26, 2012 purchase of .357 magnum handgun, Bates numbered US 608903.

5. Attached hereto as Exhibit 3 is a true and correct copy of a letter written by Ken Wong, Andy Li's former parole officer, in support of Mr. Li's search for additional employment.

6. Attached hereto as Exhibit 4 are true and correct copies of letters written by Mimi Li, Richard Li, Eddy Zheng, the Lee family, Caesar Marabuto, Ben Fandinola, and Joseph Phong Chu in support of Andy Li's release from detention.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 4, 2014 in Palo Alto, California.

Joanna L. Powell

OFFICIAL RECORD

FEDERAL BUREAU OF INVESTIGATION

Date of entry 06/14/2013

On Friday, March 29, 2013, Federal Bureau of Investigation (FBI) Undercover Employees (UCE) 4599, UCE-4881 and UCE-5199 met with RAYMOND CHOW, a.k.a. Shrimp Boy, ALICIA LO, GEORGE NIEH, ANDY LI,, MIMI LI, KONGPHET CHANTHAVONG, a.k.a. Joe, JAMES PAU, LESLIE YUN, KEITH JACKSON, BRANDON JACKSON, MARLON SULLIVAN, MICHAEL MEI, SULULAGI PALEGA,and others at the New Asia Restaurant, 772 Pacific Avenue, San Francisco, California. The UCE(s) were attending an annual event sponsored by the CHEE KUNG TONG (CKT). The conversation was audio recorded. The following is a general summary of the events and conversation:

Upon arriving at the restaurant, UCE-4599 was greeted by LESLIE YUN. UCE-4599 gave YUN an $888.00 donation to the CKT.

ANDY LI advised ALBERT NHINGSAVATH would meet with the UCE(s) after the event.

UCE-4599 asked NIEH if he gave the samples of stolen cigarettes to YUN. NIEH provided the cigarettes to YUN and cautioned her to use the cigarette samples wisely.

CHANTAVONG told UCE-4599 he wanted him to transport approximately $250,000 cash from the east coast to the San Francisco Bay area. CHANTHAVONG introduced the UCE(s) to RICKY Last Name Unknown (LNU) and TOMMY LNU. CHANTHAVONG advised RICKY LNU and TOMMY LNU would be responsible for delivering the cash to the UCE's associates in New Jersey. CHANTHAVONG anticipated the need to transport approximately $500,000 per month. CHANTHAVONG's was sending approximately 100 pounds of outdoor marijuana to the east coast per week.

CHANTHAVONG talked about ANDY LI's propensity for violence. Specifically, CHANTHAVONG said "Andy is the one you have to worry about;Because when he gets pissed off even the Old Man (CHOW) can't even stop him."

KEITH JACKSON and SULULAGI PALEGA greeted the UCE(s). UCE-4599 told PALEGA he owed him money for the gun PALEGA provided to UCE-4599 on March, 21, 2013. PALEGA was working on setting up a meeting with his source of

Investigation on 03/29/2013 at San Francisco , California, United States (, Other (Undercover Operation))

File # [redacted]-UC, [redacted]-UCE Date drafted 06/24/2013

by UCE-4599

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PROTECTED MATERIAL US 609062

supply for weapons.

The UCE(s) were greeted by ALICIA LO. LO and UCE-4599 talked about STEVEN ABLEMAN (previously identified). LO thought ABLEMAN would be in prison until his birthday. LO's ex-husband owned the warehouse which was raided by Oakland Police Department on October 24, 2012. The warehouse contained a large marijuana cultivation operation which was run by ABLEMAN and CHANTHAVONG.

EMILY SALGADO from SENATOR LELAND YEE's office presented an official proclamation which acknowledged CHOW and other members of the CKT.

UCE-4599 met with SALGADO and KEITH JACKSON. UCE-4599 thanked SALGADO for making the proclamation speech. UCE-4599 told SALGADO to make sure she thanked SENATOR YEE on behalf of UCE-4599.

As a part of the ceremony, different people and groups were being recognized for their attendance. CHANTHAVONG suggested the emcee should introduce LI as the new head enforcer for the CKT.

UCE-4599 gave MIMI LI a sympathy card for the loss of her father. The sympathy card contained $200.00.

UCE-4599 had a brief conversation with MICHAEL MEI. UCE-4599 told MEI he had heard about the recent police raid on MEI's indoor marijuana cultivation operation in Antioch, California. MEI said "it was hectic, it was crazy, it was crazy. Everything is good."

UCE-4599 had a brief conversation with JAMES PAU about the opportunity to sell stolen cigarettes with PAU and YUN. PAU told UCE-4599 he would have his customers lined up for the stolen cigarettes in Los Angeles.

LI was having problems with KEVIN LUU (previously identified). LUU refused LI's request to attend a dinner the previous week to speak with LI. LI told LUU that he directly reported to CHOW and LUU directly reported to LI. LI explained to LUU that if CHOW makes a decision, LUU has to follow that decision regardless if LUU thinks its the wrong decision. With respect to the CKT, LI said half of the members are gang members and the other half are politicians. The only people in the CKT that LI trusted were CHOW, and CHANTHAVONG. LI told LUU that he loves him but he wouldn't hesitate to "beat the fuck" out of LUU.

CHANTHAVONG told the UCE(s) that LI was going to be receiving a promotion to Head Enforcer for the CKT. CHANTHAVONG was working as Head of Security for the CKT.

[redacted]-UC

LI told the UCE(s) a story about when he was living in Los Angles. According to LI, he was driving in the Los Angeles area and encountered a man who was trying to cross the street. LI thought the man was attempting to challenge LI by stepping into the street as LI was approaching. LI intentionally ran over the man with his car and drove off.

LI told the UCE(s) a story of when he was involved in a fight with a group of unknown individuals. LI said when he fought an opponent, he tried to kill that individual. During this particular fight, he was beating his opponent while encouraging him to "tap out."

While in prison, CHOW taught LI the philosophy of keeping your enemies close to you. Specifically, LI wanted to kill someone after he was released from prison. CHOW advised LI to take the unidentified individual out several times to make it appear LI was his friend. Once the unidentified individual felt close to LI, that would be an opportune time to kill that person.

LI said he has issues when it comes to violence. For example, MIMI LI was having problems with a former unknown female employee (UF). ANDY LI located the UF's boyfriend's car and retrieved the vehicle identification number (VIN) and license plate. LI made a spare key to the unknown male's vehicle. ANDY LI's friend advised him not to kill the unidentified man.

LI talked about different ways to inflict pain on individuals who crossed him. LI talked about injecting people with tranquilizers. LI talked about super-gluing his victim's penis shut and force feeding him water. LI also talked about taking electrodes from a stun gun and placing them up someone's nose and pulling the trigger.

UCE-4599 walked SULULAGI PALEGA to his vehicle. During their walk, UCE-4599 told PALEGA the gun he provided UCE-4599 was a little old. PALEGA was working on introducing UCE-4599 to his source of supply for weapons.

When LI is crossed by an individual, he comes up with several ways to retaliate. LI would take his time to seek retribution and said "Not today, not tomorrow, not this year, three years from now." LI's intent to hurt people would not be swayed by time.

The UCE(s) had a conversation with BRANDON JACKSON and MARLON SULLIVAN about the distribution of cocaine. SULLIVAN and JACKSON were looking to obtain a source of supply for cocaine. SULLIVAN indicated he had narcotics customers in Boston, Connecticut, and Delaware. SULLIVAN said he could get kilograms of cocaine from Los Angeles for approximately $28,000 but was worried about the transportation of the narcotics to the northeast.

PROTECTED MATERIAL US 609064

UCE-4599 told the other UCE(s) that BRANDON JACKSON was working on providing weapons to UCE-4599. JACKSON and SULLIVAN's payback would come in the form of a connection to the UCE(s) cocaine supplier.

CHOW introduced the UCE(s) to CLIFTON LEUNG. CHOW told LEUNG that UCE-4599 has been a loyal supporter of CHOW.

The UCE recalled a conversation with CHOW when he told UCE-4599 that "His Dai Lo never had to ask him to do anything." CHOW replied I never asked my brothers to do anything, it's sort of a family, it's not about the work; it's your heart."

CHANTHAVONG told the UCE(s) that his cousin, ALBERT NHINGSAVATH recently had two of his marijuana cultivation operations raided by law enforcement which netted a loss of approximately $300,000-$400,000. Additionally, NHINGSHAVATH and ANDY LI lost approximately $220,000 in Philadelphia, Pennsylvania when one of their associates was arrested.

CHANTHAVONG expressed his extreme loyalty to CHOW. When CHANTHAVONG came out of prison, CHOW made sure CHANTHAVONG was given money every week to get back on his feet financially. Ever since then, CHANTHAVONG has been loyal to CHOW.

CHANTHAVONG told the UCE's if they needed any one killed, they could call CHANTHAVONG. Whatever request CHANTHAVONG could not handle he had a team of people called his "Black Ops." CHANTHAVONG stated these individuals are "niggas that can take you out from 500-1000 yards."

LI and RODRIGO RUIZ (previously identified) talked about a shooting which took place in an unknown nightclub. RUIZ was a bouncer in the unknown nightclub at the time of the shooting. LI and his gang members were in an altercation when gun fire erupted. According to LI and RUIZ, there were several people shot. LI shot someone with a .45 in the buttocks. LI thought the individual survived.

LI told the UCE(s) the best time to kill someone was either on Halloween or July 4th. LI thought these holidays were opportune because you could wear a mask on Halloween and gunshots could be misinterpreted as fireworks on July 4th. LI also thought Christmas was an opportune time to kill someone because the intended targets would always be home on Christmas day.

The UCE(s) and ANDY LI collectively decided to meet NHINGSAVATH at the Four Seasons Hotel in San Francisco.

ANDY LI, MIMI LI, and NHINGSAVATH arrived at the Four Seasons. LI

[redacted]-UC

Continuation of FD-302 of CKT event 03292013, On 03/29/2013, Page 5 of 5

explained that he "works" for CHOW. CHANTHAVONG and NIHINGSAVATH report to LI.

NHINGSAVATH asked UCE-4599 for assistance in transporting approximately $200,000 per month from the east coast to the San Francisco Bay Area. UCE-4599 told NHINGSAVATH his fees would be 4% for anything under $100,000 and 3% for anything over $100,000.

LI told the UCE(s) he had a connection for "Molly" (MDMA) LI was weighing out the risks associated with shipping the "Molly" to the east coast. The UCE(s) and LI agreed to talk about distributing "Molly" at a later time.

The UCE(s) and LI talked about the importance of conducting illegal business in the safest way possible. LI stated he did not want to "eat instant noodles or tuna out of a can." The UCE(s) understood that LI was talking about not going back to prison. LI wanted to focus on setting up a productive safe business arrangement with the UCE(s).

UCE-4599 told NHINGSAVATH he would need at least a week notice in advance when NHINGSAVATH wanted to launder money with the UCE(s).

At the conclusion of the meeting, the UCE(s) deactivated the recorders and relinquished custody of the devices to Special Agent Emmanuel Pascua.

FD-302 (Rev. 5-8-10)

OFFICIAL RECORD
Document participants have digitally signed. All signatures have been verified by a certified FBI information system.

FEDERAL BUREAU OF INVESTIGATION

Date of entry 09/26/2012

On Wednesday, September 26, 2012, Federal Bureau of Investigation (FBI) Undercover Employee [redacted] (hereinafter UCE), purchased a Smith & Wesson .357 magnum handgun from KONGPHET CHANTHAVONG. [redacted] paid CHANTHAVONG $600.00 for the aforementioned handgun.

Investigation on 09/26/2012 at San Francisco, California, United States (, Other (Undercover meeting))

File # [redacted] Date drafted 09/26/2012

by [redacted]

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PROTECTED MATERIAL

DIVISION OF ADULT PAROLE OPERATIONS
SAN FRANCISCO PAROLE UNIT 1
KEN WONG, PAROLE AGENT III
1727 Mission Street
San Francisco, CA 94103
Tel: (415) 703-3164 EXT. 229. Fax# 415-703-3162

01-10-2014

To: Whom It May Concern

Re: MR Andy Li

I have been employed by the state Department of Corrections for over 27 years and as a State Parole Agent for 24 years in San Francisco. I write this letter urging your support to Andy.

During my time here in San Francisco, I have had the opportunity to work with Andy and his CYC Community Response Network Team. I found that Andy has served as a role model for the San Francisco Bay Area youth who were afforded second chances by the court.

Andy was there during a lot of community service events that I was involved with. His action shown that he is a responsible and reliable person. Any consideration in this matter is greatly appreciated.

Sincerely,

Ken Wong
Parole Agent III
Unit Supervisor

To whom it may concern:

My name is Mimi Li, wife to Andy Li. Andy and I have been married for almost 9 years. In these past 9 years I have seen Andy develop and grow.

He has a 16 year old son whom he is developing a father and son relationship with. He missed most of his son's earlier years due to wrong decisions made in his late teens to early/mid 20's. He is now trying to be the father that his son needs.

He now has a beautiful 5 year old girl who has a strong bond with. Andy is a good father to her and she needs her father in her life. She is traumatized from seeing her father taken from her and I am seeking child counseling due to nightmares and not understanding why she is unable too see her father every day.

Andy is also the primary person who cares for his father. His father's health is not very good and he needs to be there for his father to tend to his needs.

Since andy's detainment we were evicted out of our south san francisco home and moved to concord. It has been very hard due to the fact that I need to work and have very little means to find a sitter for my daughter. In addition the renters that were renting a station at my salon have now left. I am now in a position where I have to work more and am need of child care for my daughter. At this time I have family members help but this is also hard. My mother who is helping me is still mourning my father's passing.

I know that Andy has made some poor choices/decisions in his past but I have seen Andy change and grow. I ask for his release on bail as he very much needed in his family. I would not want my daughter to grow up without her father. She has already seen enough, more than any child should see. Andy plays an integral part in our lives and being without him not only will be detrimental but will cause more hardship and trauma to my/his daughter.

Thank you,

Sincerely

Mimi Li

July 9, 2014

RE: Andy Li

Dear Sir/Madam,

My name is Richard Li, and I am the older brother of Andy. Although my brother has not been the model citizen in the past. After serving time for his last offense, he has since remarried and started a new family with a very young daughter and a loving wife.

During that time, he had stayed away from the activities that had gotten him in past trouble, so he can devote his time to the raising of his daughter and the caring of our elderly father. On January 1, 2014, our father was admitted to the emergency room for pneumonia and was not released until the latter part of April. In the meantime, my father is too weak to take care of himself and requires our assistance to care for him. With my crazy workload, Andy is the primary care for him.

With my sister-in-law's salon, she is not able to attend to Aliyah's daily needs. She has since moved from South San Francisco to Walnut Creek, so Aliyah is being taken care of by a family member. She now makes a daily commute to San Francisco for her business.

Since his detention in March, this has place a hardship on our family. We are not able to attend our regular day-to-day functions and this has strained us mentally, physically, and most of all financially.

Please accept this letter as a plead to allow Andy bail. I am willing to use my home as a collateral for his bail and will personally make sure he will attend all court appearances and that he stays on the right track and will not get involve with any activities that would jeopardize his release. By allowing his bail, this will help with our family tremendously.

Sincerely,



Richard Li

July 9, 2014

Re: Letter of support for Mr. Andy Li

Dear your Honor:

My name is Eddy Zheng. I am writing this letter to express my support for the Mr. Andy Li, who is currently in custody pending criminal proceedings.

I work in the Community Youth Center of San Francisco (CYC) as a Project Director. Since 1970, CYC has set the standard for awareness and activism in the Asian community. Originally founded to address the problems of juvenile delinquency and gang violence in Chinatown, CYC has grown to encompass behavioral health, education, intervention, leadership development, special projects and workforce development in all our programs. We offer services directed at responding to the complex set of issues the youth in our community face including acculturation, difficulties in school, economic hardship, substance abuse, and gang involvement. Our educational enrichment, leadership building, and job-readiness programs have earned CYC a unique reputation as a key agency for Asian youth services in San Francisco.

I have known Mr. Li since 1993 and became good friends since then. Throughout our friendship, Mr. Li has always been loyal and supportive in all of my challenges. I am aware that he had gotten in trouble with law when he was a young man. However, since his release from prison, he has been doing his best to change his ways and become a contributing member of society. Mr. Li has held different jobs to provide for the family, especially supporting his elder father for many years. I had hired him to work as an outreach worker to do violence prevention and conflict mediation on the street and in the schools. He was always respectful and responsible. He is married and had two beautiful children. Mr. Li is the breadwinner for the family. He is a great husband to his wife and an awesome father to his children. We all make mistakes in life, some bigger and others smaller. Mr. Li has definitely made significant changes in his life.

I understand that Mr. Li is being held in custody awaiting discovery and criminal proceedings. However, I do not know how long this process is going to take. Each day it goes by, Mr. Li is separated from his family. His wife and children misses and needs him desperately.
I plead with your honor to consider giving bail to Mr. Li so he can be united with his family. I know that he will obey all the rules and regulation that is set forth by the court.

Thank you very much for your consideration in my request. Please contact me if you have any questions.

Sincerely,

Eddy Zheng
Project Director
Community Youth Center of San Francisco
Email and Phone

To Whom It May Concern:

My name is Helen Yoo-Lee and my husband's name is Frank Lee. My husband has known Andy Li for 30 years now. They have known each other since 6th grade, so Frank knows Andy very well. Andy is very close to us like family and Andy is not any danger to the community. He is always caring, he puts others first, and always there if you need him. He is a loving husband and father. His interaction with his daughter is very loving and caring. Andy has cared for my daughter many times when we needed a babysitter. I completely trust him and feel very safe. Even to this day my daughter absolutely adores Andy, and calls him Uncle Andy.

Andy is very dedicated, and commits his time in anything he puts his mind to. He is not a threat to society and has never been. He comes from a family that is broken but he has grown to have honest values. Andy is a good human being. We would have no hesitation in speaking up for Andy.

Thank you!

Yours Sincerely,

Lee Family

To Whom it May Concern,

I have known Andy Li for 27 years. We have been friends since high school. I was there when his mother died from a tragic car accident. He was only 16 years old at the time. I have watched him grow from a reckless self destructing young man to a caring father and a loving husband to his wife Mimi. In the past few years, he has tried hard to be a good role model for his teenage son Ryan. He is also the primary care giver for his 5 year old daughter Aliya. His 79 year old father Peter is in poor health and requires care or assistance most days of the week. It's Andy that they all depend on. He is the one that is always there for them. His past will always be apart of him but I know it does not define him. Its difficult for people to believe someone can truly change, but I know Andy has changed. He has strong ties with his family and friends here in the bay area and is not a flight risk if bail is granted. Andy is a close friend and a great father who has been trying hard for many years to better his life and the lives of his family. Please let him come home to his family and friends during this difficult time in his life.

Sincerely,
Caesar Marabuto

May 6, 2014

RE: Andy Li

To Whom It May Concern:

I have known Andy Li for 9 years. He has been married to my best friend since 2006 and have always known him to be a family man providing all he can to the best of his abilities. He has been nothing but caring and has provided support for his family and friends when in need.

I am currently on a military deployment. While I was on my previous deployment in 2010 and even currently on my 6 month military deployment now, Andy has offered and provided assistance on multiple occasions to help in the care and transportation needs for my mother back home since she has suffered from limited mobility and paralysis since 2002. His willingness, care, and support has helped me from having to worry and has helped assured me of her safety and daily needs. I know he also does the same for his father who is physically declining due to old age, but has maintained a reasonable status of fair health otherwise. He provides for his father just as anyone would for their family member.

I know Andy to be extremely dependable, responsible, honest and courteous. His vast, long-term friendships have exemplified who he is as a person ... extremely trustworthy. I absolutely have no reservations and I strongly feel confident Andy is someone who will always be there for you. His best friends rely on his ability for guidance and moral support. He had actually worked as a guidance counselor for troubled youth for a few years. His mentorship had helped misguided delinquents overcome their unfortunate circumstances to learn from their mistakes and steer them into a more positive path enabling them to gain confidence and hope for a better future.

Andy is an asset to society providing hope and support for his family and friends. I am confident and have complete faith he will achieve moral direction and overcome his circumstances to correct his ways on a more enlightening path to a productive and conducive lifestyle.

Please do not hesitate to call me if you would like to discuss this reference further.

Sincerely.

Ben Fandinola

[redacted]

To Whom It's May Concern

My name is Joseph Phong Chu I am the owner of the Red Lotus Asian cuisine restaurant and La Sensi Nails & Spa in Twentynine Palm Ca.

I've had the opportunity to know Mr.Andy Li since High School. Since then Mr.Li has changed for the better. Mr.Li had run ins with the law in the past, but since then he has become a family man and a hard working individual.He is now a devoted Father to a wonderful daughter and devoted Husband to a lovely wife.Please give Mr.Li an opportunity to show you that he has changed for the good.

Thank you

Joseph Phong Chu

July 29, 2013

Dear your honor,

I am contacting you about Andy Li, my nephew and a defendant in one of your upcoming court cases. I am writing to express about Andy Li's relationship in my life and character. To me, Andy Li has shown great character as a family man; a caring father and a loving husband. Since he has moved back from Los Angeles to San Francisco, I have seen him grown in to a family man. For example, Andy Li has taken on responsibility of taking care of his ill father. I also had a heart attack last year and Andy Li was there at the hospital by my bedside. He is also a caring father. You will always see him holding his daughter where ever you see him as you will see clearly she is daddy's little girl. This was a tough year for the family as we lost my mother; Andi Li's grandmother. He helped out a lot and has been a big part of being there for the family.
I ask for your consideration on Andy Li who has been taking care of his family, a responsible person, and his family truly needs him.

Sincerely,

Evins Li and family

To whom it may concern,

I am writing to you in regards to Andy Li. Somehow he has gotten himself involved in such a horrible situation and I feel that you should know about the person he truly is. I have known Andy for over a decade and although we are not related, I address him as my brother. My name is Jenny and I live in Los Angeles and have a few businesses that I started from scratch and have for the most part been very successful. I am a new mother and have a great family. I am writing you to tell you about the person Andy is. Although as you read the documentation in front of you, it portrays a monster of a person which he is not. He is an amazing father, good husband and amazing friend. Andy has had a difficult time throughout his life because of his younger days, he is the type of man who would go into a burning building to save a friends life, later to suffer from 3rd degree burns and scares but still live his life with no regret of saving someone. I can't begin to explain how loyal of a friend he is, everyone I know cannot say that he is not a loyal friend, to a fault, that is what probably got him into the trouble he is in now. He is not evil nor a bad person. He just wants to help whoever he can regardless of what it is. Andy has a big heart and doesn't think of himself but only his family and friends. I know that there are things in our judicial system that have laws to be followed, and sometimes people

don't pay attention to what they get themselves into. There are criminals out there who hurt people and small children and get a slap on the wrist and probation. Not fair to our society to have to allow those people to be free, and punish the ones who try to do better in life. I know this letter is just to try to explain the type of person that Andy is and to try to help someone understand and allow leniency to give a man a chance to raise his second child and not lose the chance again like he did the first time. He has tried to better himself in society, because he is such a loyal friend, he has a hard time of separating himself from those who will do him no good. He knows he should, but doesn't know how to tell people no or stay away. I'm sure that if you asked the person who has collected the evidence against Andy, what type of person he was, I bet he wouldn't say he was a bad guy at all. That I know for a fact. Please take into consideration each and every letter that you receive and take the time to understand the person you have in front of you.

Thank you for your time and consideration,

Jenny Santos

United States District Court
For the Northern District of California

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KWOK CHEUNG CHOW, a/k/a "Raymond Chow," a/k/a "Hai Jai," a/k/a "Shrimpboy," et al.

Defendants.
/

No. CR 14-00196 CRB

ORDER DENYING MOTION TO REVOKE DETENTION ORDER

Following a detention hearing on April 21, 2014, Magistrate Judge Joseph C. Spero ordered Defendant Brandon Jackson detained pending trial. See Order of Detention (dkt. 277). Defendant now appeals that decision to this Court pursuant to 18 U.S.C. § 3145(b). See Mot. (dkt. 343); see also Reply (dkt. 360). The government opposes that appeal. See Opp'n (dkt. 354). As Defendant's Motion does not raise any new evidence that was not before Judge Spero, this Court VACATES the hearing currently set for July 24, 2014, see United States v. Koenig, 912 F.2d 1190, 1193 (9th Cir. 1990), and DENIES the Motion.

Defendant was charged by complaint filed on March 24, 2014 with violations of federal law. See Compl. (dkt.1); Affidavit of Special Agent Emmanuel V. Pascua (dkt. 1-1). On April 3, 2014, a Grand Jury returned a fifty count indictment, charging Defendant with four counts: (1) conspiracy to distribute narcotics, in violation of 21 U.S.C. § 846; (2) two

counts of trafficking in firearms without a license, in violation of 18 U.S.C. § 922(a)(1); and (3) murder for hire, in violation of 18 U.S.C. § 1958. See Indictment (dkt. 113).

The Bail Reform Act of 1984 permits pretrial detention of a defendant without bail where "no condition or combination of conditions would reasonably assure the defendant's appearance at trial or the safety of the community." United States v. Moore, 607 F. Supp. 489, 497 (N.D. Cal. 1985). A finding that a defendant is a danger to the community must be supported by clear and convincing evidence. 18 U.S.C. § 3142(f). Based on the charge of conspiracy to traffic five kilograms or more of cocaine in this case, pretrial detention is presumed, unless rebutted. See 18 U.S.C. § 3142(e)(3). Nonetheless, "[t]he ultimate burden of persuasion remains on the government . . . and the burden placed on the defendant to rebut the presumption is small." United States v. Chen, 820 F. Supp. 1205, 1207 (N.D. Cal. 1992). Judge Spero found that Defendant "did not make proffer of facts or information sufficient to rebut the presumption." See Order of Detention at 2. This Court reviews Judge Spero's rulings de novo. Koenig, 912 F.2d at 1192.

Like Judge Spero, this Court finds that Defendant is a danger to the community and that no condition or combination of conditions would reasonably assure the community's safety. The Court has considered: (1) the nature and circumstances of the offenses charged; (2) the weight of the evidence against Defendant; (3) Defendant's character, physical and mental condition, family and community ties, past conduct, history relating to drug or alcohol abuse, and criminal history; as well as (4) the nature and seriousness of the danger to any person or the community that would be posed by Defendant's release. See 18 U.S.C. § 3142(g). The Court recognizes that the "weight of the evidence" in support of the charge against the defendant "is the least important of the various factors." See United States v. Motamedi, 767 F.2d 1403, 1407 (9th Cir. 1985).

Defendant's history and characteristics alone would not justify detention. Defendant does not have any work history for the last several years, and he has a recent drug

United States District Court
For the Northern District of California

conviction,[1] but he is a young man, born and raised in San Francisco, with strong family support. See Transcript of Detention Hearing at 15-18. Nevertheless, the nature and circumstances of the offenses charged, the weight of the evidence, and the nature and seriousness of the danger posed in this case all convince the Court that Defendant is a danger to the community.

The government alleges that Defendant was trafficking in firearms without a license, facilitating the provision of assault weapons, automatic weapons, stolen weapons, weapons with scratched-off serial numbers, large quantities of ammunition, high capacity magazines, and ballistic vests, and doing so with the belief that the undercover agent was utilizing such weapons to protect marijuana operations in Mendocino County. Opp'n at 8; Transcript of Detention Hearing at 5-6. The government alleges that Defendant participated in a conspiracy to traffic cocaine. Opp'n at 8; Transcript of Detention Hearing at 4-5. The government alleges that Defendant participated in a proposed murder for hire, telling an undercover agent that defendant Rinn Roeun could do it "or I could do it, too," discussing it in multiple subsequent conversations, telling the undercover agent "I want to keep that [the murder for hire] with us," and "actively trying to get the identity of the individual that the undercover is purporting to want to have killed." Opp'n at 8, Transcript of Detention Hearing at 6-8. The government also alleges that Defendant delivered 25 fraudulent access devices and discussed his ability to obtain fraudulent identification documents. Opp'n at 9, Transcript of Detention Hearing at 9-10 (government also asserts that 39 different credit cards in a variety of names were found at Defendant's residence). Defendant argued at the detention hearing that these charges were "so out of character for who this young man has been throughout his whole life," but this argument falls flat, as Judge Spero observed, because the allegations describe not one aberrant event, but a course of conduct involving dozens of criminal acts over an extended period of time. See Transcript of Detention

[1] The Court finds that Defendant's conviction in Texas in connection with trafficking 5 to 50 pounds of marijuana is relevant (although not dispositive), as it came within months of the time he allegedly began to engage in the currently charged narcotics conspiracy. See Transcript of Detention Hearing (dkt. 343-1) at 3-5, 15-16.

United States District Court
For the Northern District of California

Hearing at 18-20. Moreover, the criminal acts that are alleged suggest that Defendant has access to illegal guns, to drugs, and to money, and a willingness to do great violence, a combination that would pose a serious danger to the community.[2]

Defendant's argument that he should not be detained because his father, who was charged with the same counts, was released, is unpersuasive. See Mot. at 9. Defendant Keith Jackson's detention is not before the Court. The Court is satisfied that the record as to Defendant Brandon Jackson–particularly his role in "actually carrying out the crimes himself"–is clear and convincing. See Opp'n at 7; Transcript of Detention Hearing at 10-12 ("the actual narcotics trafficking . . . was going to be Brandon Jackson"; "In terms of the murder for hire, it was really Brandon Jackson and Marlon Sullivan who knew the guys who were going to do it"; "Brandon Jackson directly had his hands on this stuff.").

For the foregoing reasons, the Court finds that Defendant is a danger to the community, and that such danger cannot be mitigated adequately by conditions of release.[3] Defendant's Motion is therefore DENIED, without prejudice. The Court has ordered extensive discovery in this case. Accordingly, Defendant may, at a later date, bring to the Court's attention any evidence that warrants reconsideration of this Motion.

IT IS SO ORDERED.

Dated: July 23, 2014

CHARLES R. BREYER
UNITED STATES DISTRICT JUDGE

[2] Defendant objects to what he sees as "a pretrial finding of guilt." Mot. at 9; see also Motamedi, 767 F.2d at 1408 ("Although the statute permits the court to consider the nature of the offense and the evidence of guilt, the statute neither requires nor permits a pretrial determination that the person is guilty."). To be clear: the Court does not (nor could it) comment on the Defendant's innocence or guilt in this case. The Court only discusses the allegations in assessing the likelihood that Defendant will pose a danger to the community. See id.

[3] The Court thereby disagrees with the Pretrial Services Report in so far as that Report found that such risk could be mitigated.

United States District Court
For the Northern District of California

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Attorneys for Andy Li

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America, Plaintiff, v. Andy Li, Defendant.	CASE NO. CR 14-196 CRB **[PROPOSED] ORDER GRANTING MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION** **Hearing:** Date: August 22, 2014 Time: 10:30 AM Judge: Hon. Joseph C. Spero

The Court has considered Defendant's Motion to Reopen Hearing and Reconsider Detention and the accompanying declarations of Michael Kim, Mimi Li, Vanessa Pastora, and Joanna Powell. Finding that good cause exists, the Motion is GRANTED.

IT IS SO ORDERED.

Dated: _____

_____

Joseph C. Spero

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Attorneys for Defendant ANDY LI

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF MICHAEL KIM IN SUPPORT OF DEFENDANT ANDY LI'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF MICHAEL KIM

I, Michael Kim, declare as follows:

1. My name is Michael Kim, and I am employed by the San Francisco Sherriff's Department.

2. In or around February 2014, I possessed two ballistic vests issued to me by the Sheriff's Department in connection with my employment.

3. On February 2, 2014, my wife, Bonnie, had an appointment at Mimi Li's hair salon located in San Francisco, California.

4. On that day, I stopped by Ms. Li's salon to drop off my work-issued ballistic vest with my wife because I had to run errands and did not want to leave the vest in my car.

5. I asked my wife to bring the vest home for me when she was done at the salon.

6. Unfortunately, my wife forgot the vest at Ms. Li's salon.

7. Because my wife forgot the vest, Ms. Li informed me that she took the vest and put it in her car, intending to return it to me.

8. Due to miscommunication and timing, I never received the vest back from Ms. Li prior to March 26, 2014. We had made plans for her to drop it off at my house and for me to pick it up from her house, but we both got busy and the plans fell through.

9. The vest that federal agents recovered from Ms. Li's vehicle belonged to me.

10. I did not have an immediate need for the vest after my wife left it at Mimi's salon because I had another vest that I could use in connection with my employment.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 6, 2014 in San Francisco, California.

Michael Kim

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Attorneys for Defendant ANDY LI

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

United States of America,

Plaintiff,

v.

Andy Li,

Defendant.

CASE NO. CR 14-196 CRB (JCS)

DECLARATION OF MIMI LI IN SUPPORT OF DEFENDANT ANDY LI'S MOTION TO REOPEN DETENTION HEARING AND RECONSIDER DETENTION

Hearing:
Date: August 22, 2014
Time: 10:30 AM
Judge: Hon. Joseph C. Spero

DECLARATION OF MIMI LI

I, Mimi Li, declare as follows:

1. My husband Andy Li and I rented our residence at [redacted] from an individual named Doug Walker and moved there in November 2013.

2. At that time, our landlord, Mr. Walker, stored many of his personal belongings in the garage of the house.

3. In January 2014, Mr. Walker moved out some of his personal belongings from the garage and told us that he was leaving the rest of his belongings previously stored in the garage in a crawl space underneath the house. My husband and I did not object to Mr. Walker storing some of his personal belongings in the crawl space while we rented the house because we were not using that space.

4. From January 2014 when Mr. Walker stored his items in the crawl space to March 26, 2014, when the FBI searched our home, my husband and I never entered the crawl space and did not know what items Mr. Walker kept there.

5. On the day of the search, I was told to stay in the living room while the FBI searched the house. An agent had to come with me even to use the restroom. Because I could not walk around the house freely, I asked the FBI agents if I could leave, and they said yes. A girlfriend came to pick me up from the house, and I left.

6. Because I left the house during the search, I did not see what items they took from my car or from the crawl space.

7. My husband was arrested and taken away shortly after the search began.

8. The FBI agents left a receipt of the items taken on my coffee table, but the print was too light to read.

9. On April 8, 2014, the morning of my husband's detention hearing, Mr. Walker called me and asked me when the FBI was returning his shotgun.

10. At that time, I did not know what Mr. Walker was referring to, as I did not know that he had stored a shotgun in the crawl space beneath the home.

11. Mr. Walker explained to me that he had stored an antique shotgun that belonged to his uncle in the crawl space, and that he had called the FBI to inform them that the shotgun belonged to him and request its return. He said that the FBI had initially contacted him to inform him about the search of the house.

12. I was not able to tell my husband's lawyers about the shotgun before the detention hearing because the marshals in the court room would not let me speak to them when I asked permission.

13. I told them and my husband what my landlord had told me after the detention hearing.

14. On February 2, Ms. Bonnie Lam, who is married to Michael Kim, had an appointment at my salon.

15. Mr. Kim works for the San Francisco Sheriff's Department.

16. On that day, Mr. Kim dropped off a bullet proof vest that he used for his job at my salon for his wife to take home for him.

17. After Ms. Lam left the salon, I realized that she had forgotten to take the bullet proof vest, and had left it in the salon.

18. I did not want to leave the vest unattended at the salon, so I took it with me and placed it in my car, intending to return it to Mr. Kim.

19. I planned on returning the vest to Mr. Kim a few times, but our plans fell through, and I did not see him between February 2, 2014 and March 26, 2014.

20. I never took the vest out of my car between February 2, 2014 and March 26, 2014, when the FBI took it from my vehicle.

21. After FBI agents searched my vehicle, I noticed that they had left behind a gun clip.

22. I did not know what to do with the gun clip, so I put it in a plastic bag and left it in my car until I could meet with my husband's lawyers.

23. When I met my husband's lawyers at the court house, I informed them about the gun clip. They arranged for two of the case agents to accompany me that same day to my car in the parking lot and retrieve the gun clip.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on August 5, 2014 in San Francisco, California.

Mimi Li

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
CRIMINAL MINUTE ORDER

Case No.: 14-cr-00196-CRB-12	**Case Name:** USA v. Andy Li (present, custody)	
Magistrate Judge: Joseph C. Spero	**Date**: September 5, 2014	**Time:** 31 M

Attorney for Plaintiff: Will Frentzen, Susan Badger
Attorney for Defendant: Winston Chan, Vanessa Pastora
Interpreter: NA
US Pretrial Officer: Brad Wilson
US Probation Officer: NA
Deputy Clerk: Karen Hom **Court Reporter:** FTR 10:00-10:31

PROCEEDINGS

1. Motion for Reconsideration of Detention [dkt no. 410] - Denied

ORDERED AFTER HEARING

Oral arguments heard. Court ordered that a letter written by Mr. Li be filed. Court made oral findings on the record.

CASE CONTINUED TO: 09/24/14 (already set) at 2:00 PM before Judge Breyer for Motions to Compel

EXCLUSION OF TIME UNDER SPEEDY TRIAL ACT:

PRETRIAL SCHEDULE:
Number of Depos: **Discovery Cutoff:**
Expert Disclosure: **Expert Rebuttal:**
Expert Discovery Cutoff:
Motions Hearing: at 9:30 AM
Pretrial Conference: at 1:30 PM
Trial: at 8:30 AM for days [ ] Jury [ ] Court

Order to be prepared by:
[ ] Plaintiff [ ] Defendant [ ] Court [ ] Probation
cc:

AO 257 (Rev. 6/78)

DEFENDANT INFORMATION RELATIVE TO A CRIMINAL ACTION - IN U.S. DISTRICT COURT

BY: ☐ COMPLAINT ☒ INFORMATION ☐ INDICTMENT ☐ SUPERSEDING

Name of District Court, and/or Judge/Magistrate Location

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

FILED

MAR 27 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

OFFENSE CHARGED

18 U.S.C. § 401(1) - Criminal Contempt

☐ Petty
☐ Minor
☒ Misdemeanor
☐ Felony

PENALTY: Not more than one year imprisonment

DEFENDANT - U.S

▶ Michael Kim

DISTRICT COURT NUMBER

CR 18 0124 MAG

PROCEEDING

Name of Complaintant Agency, or Person (& Title, if any)

FEDERAL BUREAU OF INVESTIGATION

☐ person is awaiting trial in another Federal or State Court, give name of court

☐ this person/proceeding is transferred from another district per (circle one) FRCrp 20, 21, or 40. Show District

☐ this is a reprosecution of charges previously dismissed which were dismissed on motion of: ☐ U.S. ATTORNEY ☐ DEFENSE } SHOW DOCKET NO.

☐ this prosecution relates to a pending case involving this same defendant

☐ prior proceedings or appearance(s) before U.S. Magistrate regarding this defendant were recorded under } MAGISTRATE CASE NO.

Name and Office of Person Furnishing Information on this form: ALEX G. TSE

☒ U.S. Attorney ☐ Other U.S. Agency

Name of Assistant U.S. Attorney (if assigned): WILLIAM FRENTZEN

DEFENDANT

IS *NOT* IN CUSTODY

1) ☒ Has not been arrested, pending outcome this proceeding. If not detained give date any prior summons was served on above charges ▶

2) ☐ Is a Fugitive

3) ☐ Is on Bail or Release from (show District)

IS IN CUSTODY

4) ☐ On this charge

5) ☐ On another conviction } ☐ Federal ☐ State

6) ☐ Awaiting trial on other charges

If answer to (6) is "Yes", show name of institution

Has detainer been filed? ☐ Yes ☐ No } If "Yes" give date filed

DATE OF ARREST ▶ Month/Day/Year

Or... if Arresting Agency & Warrant were not

DATE TRANSFERRED TO U.S. CUSTODY ▶ Month/Day/Year

☐ This report amends AO 257 previously submitted

ADDITIONAL INFORMATION OR COMMENTS

PROCESS:

☐ SUMMONS ☒ NO PROCESS* ☐ WARRANT Bail Amount:

If Summons, complete following:

☐ Arraignment ☐ Initial Appearance

Defendant Address:

** Where defendant previously apprehended on complaint, no new summons or warrant needed, since Magistrate has scheduled arraignment*

Date/Time: Before Judge:

Comments:

ALEX G. TSE (CABN 152348)
Acting United States Attorney

FILED
MAR 27 2018
SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MICHAEL KIM, Defendant.	CASE NO. CR 18 0124 MAG VIOLATION: 18 U.S.C. § 401(1) – Criminal Contempt SAN FRANCISCO VENUE

INFORMATION

The United States Attorney charges:

Background

1. On March 26, 2014, Defendant X, not a defendant herein, was charged by complaint in the Northern District of California with racketeering conspiracy, in violation of Title 18, United States Code, Section 1962(d), and other criminal offenses, in Case Number 3:14-70421-MAG.

2. The Honorable Chief Magistrate Judge Joseph Spero ordered Defendant X detained pending trial. Defendant X, through his counsel, sought a review of the detention order.

3. Defendant MICHAEL KIM was a Deputy with the San Francisco City and County Sheriff's Department and a friend of Defendant X.

4. On August 6, 2014, KIM signed a declaration for the purpose of assisting Defendant X and knowing that the declaration would be provided to the Court in connection with Defendant X's detention proceedings. The declaration contained material false statements and representations regarding a ballistic vest that KIM had loaned to Defendant X.

COUNT ONE: (18 U.S.C. § 401(1) – Criminal Contempt)

5. Paragraphs 1 through 4 are incorporated herein.

6. On or about August 6, 2014, in the Northern District of California, and elsewhere, the defendant,

MICHAEL KIM,

did knowingly and willfully commit misbehavior in the presence of this Court so as to obstruct the administration of justice, specifically, by swearing to a false declaration, knowing and intending that the declaration would be presented to this Court for the purpose of attempting to gain the release of Defendant X.

In violation of Title 18, United States Code, Section 401(1).

DATED: March 13, 2018

ALEX G. TSE
Acting United States Attorney

JOHN H. HEMANN
Deputy Chief, Criminal Division

(Approved as to form: _____)
AUSA WILLIAM FRENTZEN

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CRIMINAL COVER SHEET

Instructions: *Effective November 1, 2016, this Criminal Cover Sheet must be completed and submitted, along with the Defendant Information Form, for each new criminal case.*

CR 18 0124

CASE NAME: **CASE NUMBER:**

USA v. Michael Kim **CR**

MAG

Is This Case Under Seal?	**Yes**	**No** ✓	
Total Number of Defendants:	**1** ✓	**2-7**	**8 or more**
Does this case involve ONLY charges under 8 U.S.C. § 1325 and/or 1326?	**Yes**	**No** ✓	
Venue (Per Crim. L.R. 18-1):	**SF** ✓	**OAK**	**SJ**
Is this a potential high-cost case?	**Yes**	**No** ✓	
Is any defendant charged with a death-penalty-eligible crime?	**Yes**	**No** ✓	
Is this a RICO Act gang case?	**Yes**	**No** ✓	

Assigned AUSA (Lead Attorney): William Frentzen **Date Submitted:** 03/27/18

Comments:

Form CAND-CRIM-COVER (Rev. 11/16)

RESET FORM | SAVE PDF

UNITED STATES DISTRICT COURT
Northern District of California

UNITED STATES OF AMERICA
v.
Michael Kim

) **JUDGMENT IN A CRIMINAL CASE**
)
) USDC Case Number: CR-18-00124-001 JCS
) BOP Case Number: DCAN318CR00124-001
) USM Number: 24924-111
) Defendant's Attorney: Jonathan McDougall (Retained)

THE DEFENDANT:

☑ pleaded guilty to count(s): Count One of the Class A Misdemeanor Information

☐ pleaded nolo contendere to count(s): which was accepted by the court.

☐ was found guilty on count(s): after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

Title & Section	Nature of Offense	Offense Ended	Count
18 U.S.C. § 401(1)	Criminal Contempt	August 6, 2014	1

The defendant is sentenced as provided in pages 2 through 6 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s):

☐ Count(s) dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

10/12/2018
Date of Imposition of Judgment

Signature of Judge
The Honorable Joseph C. Spero
Chief Magistrate Judge
Name & Title of Judge

October 15, 2018
Date

PROBATION

The defendant is hereby sentenced to probation for a term of: three (3) years

The appearance bond is hereby exonerated. Any cash bail plus interest shall be returned to the owner(s) listed on the Affidavit of Owner of Cash Security form on file in the Clerk's Office.

MANDATORY CONDITIONS OF SUPERVISION

1) You must not commit another federal, state or local crime.
2) You must not unlawfully possess a controlled substance.
3) You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
   - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4) ☐ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
5) ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, et seq.) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in which you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
6) ☐ You must participate in an approved program for domestic violence. *(check if applicable)*
7) ☐ You must make restitution in accordance with 18 U.S.C. §§ 2248, 2259, 2264, 2327, 3663, 3663A, and 3664. *(check if applicable)*
8) You must pay the assessment imposed in accordance with 18 U.S.C. § 3013.
9) If this judgment imposes a fine, you must pay in accordance with the Schedule of Payments sheet of this judgment.
10) You must notify the court of any material change in your economic circumstances that might affect your ability to pay restitution, fines, or special assessments.

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

STANDARD CONDITIONS OF SUPERVISION

As part of your probation, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court, and bring about improvements in your conduct and condition.

1) You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of the time you were sentenced, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2) After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3) You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4) You must follow the instructions of the probation officer related to the conditions of supervision.
5) You must answer truthfully the questions asked by your probation officer.
6) You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with, for example), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
7) You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by these and the special conditions of your supervision that he or she observes in plain view.
8) You must work at least part-time (defined as 20 hours per week) at a lawful type of employment unless excused from doing so by the probation officer for schooling, training, community service or other acceptable activities. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
9) You must not communicate or interact with someone you know is engaged in criminal activity. You must not associate, communicate, or interact with any person you know has been convicted of a felony, unless granted permission to do so by the probation officer.
10) If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
11) You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12) You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).

☐ If the probation officer determines that you pose a risk to a third party, the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk. *(check if applicable)*

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. I understand that the court may (1) revoke supervision, (2) extend the term of supervision, and/or (3) modify the conditions of supervision upon a finding of a violation of probation or supervised release.

(Signed) _____ _____
Defendant Date

_____ _____
U.S. Probation Officer/Designated Witness Date

SPECIAL CONDITIONS OF SUPERVISION

1. You must participate in the Location Monitoring Program as directed by the probation officer for a period of 90 days, and be monitored by Location monitoring technology at the discretion of the probation officer. Location monitoring shall be utilized to verify your compliance with home detention while on the program. You are restricted to your residence at all times except for employment, education, religious services, medical appointments, substance abuse or mental health treatment, attorney visits, court appearances, court-ordered obligations, or other activities pre-approved by the probation officer. You shall pay all or part of the costs of the program based upon your ability to pay as determined by the probation officer.

2. You must complete 300 hours of community service as directed by the U.S. Probation Office.

3. You must pay any fine and special assessment that is imposed by this judgment and that remains unpaid at the commencement of the term of supervised release.

4. You must provide the probation officer with access to any financial information, including tax returns, and shall authorize the probation officer to conduct credit checks and obtain copies of income tax returns.

5. You must not have contact with Andy Li, a defendant in a related case.

CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments.

	Assessment	JVTA Assessment*	Fine	Restitution
TOTALS	$ 25	N/A	$ 30,000	None

☐ The determination of restitution is deferred until . An *Amended Judgment in a Criminal Case* (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

Name of Payee	Total Loss**	Restitution Ordered	Priority or Percentage
TOTALS	$ 0.00	$ 0.00	

☐ Restitution amount ordered pursuant to plea agreement $

☐ The defendant must pay interest on restitution and a fine of more than $2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☐ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

- ☐ the interest requirement is waived for the .
- ☐ the interest requirement is waived for the is modified as follows:

* Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.
** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows*:

A ☐ Lump sum payment of _____ due immediately, balance due

☐ not later than , or
☐ in accordance with ☐ C, ☐ D, or ☐ E, and/or ☐ F below); or

B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or

C ☐ Payment in equal (e.g., weekly, monthly, quarterly) installments of _ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after the date of this judgment; or

D ☐ Payment in equal (e.g., weekly, monthly, quarterly) installments of _ over a period of (e.g., months or years), to commence (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or

E ☐ Payment during the term of supervised release will commence within (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or

F ☑ Special instructions regarding the payment of criminal monetary penalties:
Payment of the $25 special assessment is due immediately. Payment of the $30,000 fine is due in full within 6 months of entry of judgment. Criminal monetary payments shall be made to the Clerk of U.S. District Court, 450 Golden Gate Ave., Box 36060, San Francisco, CA 94102.

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number Defendant and Co-Defendant Names (including defendant number)	Total Amount	Joint and Several Amount	Corresponding Payee, if appropriate

☐ The defendant shall pay the cost of prosecution.

☐ The defendant shall pay the following court cost(s):

☐ The defendant shall forfeit the defendant's interest in the following property to the United States:

☐ The Court gives notice that this case involves other defendants who may be held jointly and severally liable for payment of all or part of the restitution ordered herein and may order such payment in the future, **but such future orders do not affect the defendant's responsibility for the full amount of the restitution ordered.**

* Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) fine principal, (5) fine interest, (6) community restitution, (7) penalties, and (8) costs, including cost of prosecution and court costs.

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA
San Francisco Venue

Request for Early Termination of Supervision

Person Under Supervision
Michael Kim

Docket Number
0971 3:18CR00124-001 JCS

Name of Sentencing Judge: The Honorable Joseph C. Spero
Chief United States Magistrate Judge

Date of Original Sentence: October 12, 2018

Original Offense: Count One: Criminal Contempt, 18 U.S.C. § 401(1), a class A misdemeanor.

Original Sentence: Three years probation
Special Conditions: $30,000 fine; $25 special assessment; location monitoring for 90 days; 300 hours community service; financial disclosure; no contact with co-defendant.

Prior Form(s) 12: None.

Type of Supervision
Probation

Date Supervision Commenced
October 12, 2018

Assistant U.S. Attorney
William Frentzen

Defense Counsel
Jonathan McDougall (Retained)

Petitioning the Court to Take Judicial Notice

Petitioning the Court to consider the client for early termination of supervision.

Cause

Mr. Kim has competed two years of his three-year probation term, with completion scheduled for October 11, 2021. During this time, Mr. Kim has been cooperative and compliant. He has paid all criminal monetary penalties in full and completed community service hours and location monitoring.

Upon commencement of supervision, Mr. Kim began working as a supervisor of security for the city and county of San Francisco, earning approximately $4,333 per month. He has lived in [redacted] for two years. Throughout supervision, he has demonstrated stability in his home, employment, and the ability to support himself through his employment.

During the time of the offense conduct, as noted in the presentence report, Mr. Kim left a ballistic vest with a friend and lied to authorities regarding the circumstances of the ballistic vest being left with friends. There is no indication Mr. Kim continues to be involved in similar criminal conduct.

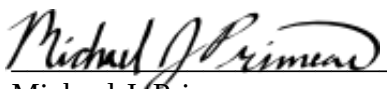
The Probation Office currently utilizes the evidence-based practice of the Risk Needs Responsivity Principle in supervising clients. As part of this principle, the Post-Conviction Risk Assessment Tool (PCRA) is utilized to determine the risk of recidivism posed by an individual. Based on information provided by both the office and the client, a resulting risk score of High, Moderate, Low/Moderate, or Low is determined. In addition to the overall risk level, the assessment tool also identifies specific dynamic risk factors for each client, including cognitions, education/employment, alcohol/drugs, and social networks, as well as considering the static risk factor of criminal history. The tool looks at responsivity factors as well, which may impact supervision goals. The information allows officers to target specific areas where the most positive impact can be made and where resources should be directed for the best outcome.

The Probation Office currently has approximately 450 cases identified as low risk, of which 260 are placed on a "Low Intensity Supervision" caseload requiring minimal supervision. These cases do not require field work unless there is a change in circumstances, and report monthly via a written or electronic form. In an effort to ensure officers have more opportunity to monitor and provide the appropriate resources and interventions to our most high risk cases, the Probation Office has reviewed those low risk cases, in which the client is in the final twelve months of supervision with no history of violence, and per the Risk Needs Responsivity Principle, minimal services are needed or provided by our office.

On January 7, 2020, Mr. Kim was placed on the Low Intensity Supervision caseload. He has continued to do well under this level of supervision and has maintained compliance. The Post-Conviction Risk Assessment was conducted, indicating a low risk of recidivism with no identified dynamic risk factors. Based on the PCRA, low risk clients have only a 3% re-arrest rate during the next assessment period. Evidence shows low intensity supervision is appropriate in these cases, and eventual early termination. As such, it is recommended that Mr. Kim's probation be terminated at this time.

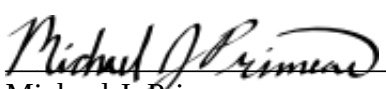
18 U.S.C. § 3564(c) permits the Court to terminate a term of probation in felony cases after the expiration of one year of supervision, if the Court is satisfied that such action is warranted by the conduct of a client and is in the interest of justice. The Assistant United States Attorney for this case was contacted regarding early termination of supervised release for Mr. Kim and no objection was received.

Respectfully submitted,



Michael J. Primeau
Supervisory U.S. Probation Officer
Date Signed: October 5, 2020

Reviewed by:



Michael J. Primeau
Supervisory U.S. Probation Officer

THE COURT ORDERS:

- [X] Early termination of supervision granted
- [ ] Early termination of supervision denied
- [ ] Other:

November 2, 2020
Date

Joseph C. Spero
Chief United States Magistrate Judge

MICHAEL SHERMAN KIM



Position: 8302 Deputy Sheriff I
SSN: [redacted]
DOB: [redacted]
Citizenship: U.S. Citizen
Height: [redacted]
Weight: [redacted]
Hair Color: [redacted]
Eye Color: [redacted]
Phone: [redacted]
Email: [redacted]
(Work)
[redacted]
(Personal)

Investigation Summary

Investigator: Unassigned
Assigned: N/A
Completed: 06/27/2023
Duration: 790 Days
Disposition: Withdrawn

Journal Notes

There is no activity currently recorded for this section.

Status

06/27/2023 12:34 PDT Darrin Martindale archived the investigation (Triage).

06/27/2023 12:34 PDT Investigation status changed to Withdrawn by Darrin Martindale.

06/27/2023 12:34 PDT Investigation status changed to Pending Withdraw by Darrin Martindale.

Assignment

There is no activity currently recorded for this section.

Applicant

05/01/2021 11:53 PDT Applicant form received: Controlled Substance Disclosure Form.

05/01/2021 11:53 PDT Applicant form received: Background Investigation Questionnaire.

05/01/2021 11:52 PDT Applicant file received: Personal History Questionnaire: Completed Background History Questionnaire.

05/01/2021 11:51 PDT Applicant file received: Misc. Documents / Questionnaires: Controlled Substance Disclosure form.

04/30/2021 17:03 PDT Applicant file received: Advisements, Releases, and Waivers: Acknowledgement.

04/30/2021 17:02 PDT Applicant file received: Advisements, Releases, and Waivers: Authorization to release information.

04/30/2021 17:02 PDT Applicant file received: Advisements, Releases, and Waivers: Advisement to Applicant.

04/30/2021 Applicant file received: Misc. Documents / Questionnaires: Requalification

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

On March 11, 2025, California Commission on Peace Officer Standards and Training ("POST") Law Enforcement Consultants Kevin Sherburne and James Saso interviewed Ronnie Wan in a conference room located at 455 Golden Gate Avenue, San Francisco, California. Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Wan. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Wan provided the following information:

Wan started with the San Francisco Sheriff's Office about 25 years ago – 26 this December. He started in the jails, then worked the City Hall security unit, then courthouse, then personnel unit. He is currently assigned to the background unit, which he joined in January 2022. He serves ancillary roles in the Emergency Services Unit and is an instructor for EVOC, force option, and taser.

His supervisor when he first joined was Sergeant Tiffany Martin. There was no lieutenant at the time. Toward the end, before Martin left to become a lieutenant, the background unit got a lieutenant assigned to it. She left the unit about 2022 or 2023. His current sergeant is Mel Fonthal.

The structure of the background unit is one sergeant and six deputies, including Wan. His duties include checking backgrounds for employment purposes of both sworn and non-sworn applicants. A background file is assigned to one person, who starts the investigation and works it from beginning to end, unless they go on extended leave or their time's up in the unit. The normal time for a background investigation to be completed is about four to six months generally for sworn personnel. Currently, Wan is working cases for about six to eight months.

If there is a red flag in a background investigation – both at the time of Michael Kim's background investigation and currently – he sends information up to the Assistant Sheriff for a decision whether to disqualify the applicant or move forward with the investigation. If the decision is made to move the case forward, it is tracked in Guardian software. The Assistant Sheriff only gave a thumbs up or thumbs down, there was no explanation. At some point, it switched from the Assistant Sheriff to the Undersheriff. When Kim went through, it probably got switched to the Undersheiff, who was Kathy Johnson.

Other than SB2 Government Code 1029 disqualifiers, Wan is not aware of absolutes of disqualifying an applicant that his department had. The hiring authority is always the Sheriff. At the time Kim went through the process, Paul Miyamoto was the Sheriff.

Wan did not know the standards for a psychological evaluation assessment of a candidate. After a background investigator is assigned a case, the applicant must complete a written test, undergo physical agility testing, then the applicant is invited to complete a Personal History Questionnaire ("PHQ"). SFSO uses POST's PHQ. They are screened and assigned to an investigator. At one point, he had 25 cases, now it's about

10. Then, the applicant is interviewed, polygraphed, and law enforcement and employment checks are done. After that, there is a psychological test. At this time, some psychologists require that a conditional offer is given to the applicant before they evaluate the applicant. If they pass, home checks and other steps are done to complete the background investigation.

If an applicant fails the psychological assessment, the background investigation stops. There is a different process at that point for the applicant. There is an appeal process.

The applicant is given a form through Guardian, which is almost identical to POST's questionnaire.

If an applicant fails a psychological evaluation, the sergeant sends an email telling the applicant they failed and instructions how to proceed with an appeal. It's very time sensitive. The applicant can hire his or her own doctor and they have a certain window of time to conduct a new evaluation. SFSO operates under POST's law enforcement criteria for whether a person is deemed suitable or not. The city has a third doctor that only the city uses who then reviews the applicant's doctor's determination. Wan did not know if the third doctor saw the applicant in person or only reviewed paperwork. Successful appeals are not that common. Wan has only seen appeals about two times. Kim was one of them.

Wan knows Kim. They worked together when Wan went to the City Hall Security Unit for about two years. Then Kim got promoted and left. Also, as a coordinator in the Emergency Services Unit, Kim also worked with Wan.

Wan has only been to Kim's house during the background check. He has only socialized with Kim in group settings. Wan calls Kim co-workers/friends.

Kim's reputation is that he is funny but is hard on staff. He works hard. Wan gets along with Kim. Kim is hard core sometimes.

Wan was aware of an earlier background investigation dating to 2021. There was no background investigator assigned to conduct an investigation. Wan did not hear anyone talk about why Kim withdrew the application. From the paperwork, it looked like Kim just withdrew the application.

Wan set up an interview of Kim to come in person to talk about his answers on the PHQ. Shown a copy of Wan's background investigation of Kim that concluded June 27, 2023 that says "withdrawn," Wan stated that it was not documented in the file. Wan conducted the background investigation that was concluded on December 12, 2024. When Wan concluded the December 12, 2024 background investigation, he did not review the documents contained in the June 27, 2023 file. Wan does not log the interview in the background file. He takes notes of the interview.

Wan was aware that Kim had applied in 2021. Kim did not tell Wan why the 2023 file was withdrawn. You cannot tell from the digital file why the application was withdrawn and Kim did not hear from anyone the reasons for it being withdrawn. Wan was assigned

the background investigation on July 13, 2023. The older background file was withdrawn the same date as the newer background file that ended up getting assigned to Wan.

Wan does not have the applicant initial at the bottom of each page of the PHQ. He was never taught that when he started in the background unit. If the applicant has any changes, Wan has them write in red ink. Red ink was in the old days of paper files. In Guardian, the background investigator cannot change the answers. The applicant has to sign back into Guardian and make the changes which are tracked by the system.

When Wan first got assigned to work Kim's background investigation, he went to his sergeant and lieutenant asked if they were sure they wanted to do this. They said to continue working it, so he worked it. Wan updates his superiors on what he was finding in the background investigation. The background investigator does not have any say in a disqualification, they just type in all the good and the bad and let the supervisor raise it up the chain. They look at it to make sure he completes all tasks. The supervisor reviews it for completeness and sends it up the chain if it's complete.

Shown the background investigation file for December 12, 2024, Wan explained that his supervisor is noted as approving the file, but that only meant that the file was complete and ready for review. The word "skipped" means the person might be on leave or out of the office.

When his sergeant or lieutenant have a note that they approved it, it means that they reviewed his work are certifying that he completed everything that he said he did and the file is approved for sending up the chain for hiring decision. Wan has never seen the word "declined." Starting Level 2 meant that it was the first time that the chain of command saw his report. When the file reached the level of Assistant Sheriff, Undersheriff, or Sheriff, that's when the "approved" note meant that the person had a vote and voted to approve or reject hiring the applicant. Even if everyone voted to reject an applicant, if the Sheriff said "yes, hire," then the applicant would be hired.

On page 375/376, the file noted that Kim received an email on November 30, 2023. Kim had failed the psychological evaluation. So, he had a chance to appeal. Wan understood that Kim failed the appeal (the second evaluation), so the rejection email went out. Some time later, Wan was told there was a change of mind by the doctor who reversed his earlier "not suitable" assessment and Kim's file went to the third doctor. Kim had failed his own psychologist. Wan did not know the reasons why he failed.

Wan was not sure where rejection reports would be kept. He only kept success letters. This was the very first time that Wan had seen two failures. He has seen 5-7 situations where an applicant failed their own doctor were rejected.

Wan did not hear that there was any pressure from above to pass Kim. They did want to see the file completed in a timely manner.

Kim always applied for a deputy position. Those are the only positions at SFSO, which does not have a corrections deputy position.

Wan has not seen a purported letter from Miyamoto. The third doctor called Wan and asked him about Kim. The third doctor called him one day and asked if Wan knew Kim and what Kim's character was. Wan said he did not know. Wan has never seen Miyamoto write letters in support of applicants. Kim had not told Wan about Miyamoto's letter. Wan thought the letter was suspicious; Wan did not know if the doctor thought the letter was suspicious. Wan told the doctor he did not know anything about it. After talking to Wan, the doctor said he'd call Miyamoto to ask about the letter. Wan did not know if the doctor called Miyamoto.

Wan talked internally at SFSO about the conviction for contempt and whether he was qualified to be a Deputy. He talked with his sergeant and lieutenant. They looked at SB2 and what convictions qualify as a disqualifier. They called POST reps and were told felony convictions. So, Wan continued his investigation because Kim's conviction was not a felony conviction.

They did not talk about POST's Dimensions. They sought guidance from POST. There were concerns about Kim.

Asked if Wan reached out to City College of San Francisco ("CCSF") as part of his background investigation based on Kim's statement that he also applied for a law enforcement position there, Wan stated that he did not believe he reached out to CCSF.

When conducting neighborhood checks, there was an individual named Li. Wan did not know if this Li was related to Andy Li.

Wan did not know about any memorandum that Kim wrote to Matt Freeman.

Wan talked with his team when Wan was first assigned to the background investigation. Wan knew that the underlying charge was dishonesty. Wan talked internally about Kim's conviction and they did not have anything to back it up from the FBI that he lied. Wan only had the court document that he pled to.

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

On April 16, 2025, California Commission on Peace Officer Standards and Training ("POST") Law Enforcement Consultants Kevin Sherburne and James Saso interviewed Mel Fonthal[1] in a conference room located at 120 14th Street, San Francisco, California. Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Fonthal. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Fonthal provided the following information:

Fonthal has been with the San Francisco Sheriff's Office ("SFSO") for about 13 years. In that time, he has served approximately three years each in jails, patrol, criminal investigations, and the past three years in the Background Investigations Unit ("BIU"). He is a sergeant in BIU and was initially assigned to BIU in April 2022.

When he first started in BIU, Fonthal was the watch commander as sergeant. There was no lieutenant. About six to eight months after he arrived, SFSO restructured, adding the CCW program to BIU and added a lieutenant. That lieutenant is still in BIU and he is Darin Martindale.

BIU uses Guardian Alliance to track background investigations the investigators perform. Access to Guardian is limited to Personnel, Command Staff, and Background Investigators/BIU.

Deputy Ronnie Wan was in BIU prior to Fonthal's arrival. Now-Lieutenant Tiffany Martin was the sergeant at the time and she spent about six to eight months working to train Fonthal. Wan's assignment includes both Personnel and Background Investigator. At the time Kim applied, background files were assigned by either Martindale or Fonthal. Their tasks are not "super separated."

Fonthal worked with Kim about 12 years ago. He did not work under him and only saw him in passing. He does not have a relationship with Kim.

"Everybody" raised concerns and had comments about whether Kim should be rehired. Fonthal knew of his past and was concerned whether Kim could legally be a peace officer. Fonthal did not know what POST might say about Kim and did not know the outcome of any charges against Kim.

Although there were voiced concerns, BIU's responsibility was to conduct background investigations. The unit's response to the concerns was that he was legally allowed to apply just like everyone else and Kim was not the first to leave and come back to reapply at SFSO. There was no pressure from command staff to hire Kim. The direction to Wan was "work the file." Paul Miyamoto said, "just work it." Miyamoto just wanted to see a full file.

[1] On May 12, 2025, Kevin Sherburne revised the Report of Interview of Mel Fonthal to correct the identity of the witness being interviewed. The original incorrectly stated that Ronnie Wan was the witness.

Comments between Fonthal and Wan wee conversations, like about the open sexual harassment case.

Kim applied in 2021. Fonthal did not think the application went anywhere. At that time, BIU had more discretion what applications to work. Fonthal was unaware who determined not to work the application as a background investigation file. Now, there was a decision that every single applicant gets worked, no matter what. Fonthal never heard that the 2021 file was not worked because someone said they could not hire Kim. . . .you cannot tell someone that.

Shown an email dated November 30, 2023, from Fonthal to Kim, Fonthal stated it was a non-select letter. He was unaware what the sent emails looked like that Guardian generated based on his input into the system. When someone goes through the chain of command (ladder), at the end, if the Sheriff says "no," that's a non-select. That's the only non-select that they have. Everyone else is a disqualified.

Dr. Nucci did the first psychological evaluation of Kim. If there is a not suitable evaluation, Fonthal sends an official letter which details the conclusion of disqualification and the appeals process. The applicant has a chance to appeal and, if so, Fonthal sends another letter saying the appeal is received and says to the applicant to get an official doctor's evaluation. Fonthal sends a list of POST-approved doctors to the applicant.

Kim selected Dr. Dunnigan. Fonthal then sends Dunnigan's name to LEPS for review of whether Dunnigan is certified. After Dunnigan, it would go to a third – HR – doctor for final say on suitability.

Kim failed his first psychological evaluation because of the sexual harassment case. Kim told BIU that the complainant was a female who was against him and her allegations were not true. That investigation came back as not sustained, so Kim went back to Dunnigan and told him about the investigation's conclusion. Dunnigan did a re-evaluation and said Kim was suitable. Then, it went to a third doctor.

In BIU, there was internal discussion about Kim appealing Dunnigan's initial decision of not suitable. Fonthal was told to "pause" the background investigation and told to wait until after the sexual harassment investigation concluded. Sheriff Paul Miyamoto called Fonthal's office. Fonthal and Martindale share the same office. Usually, they spoke on speakerphone. It could have been over speakerphone. Miyamoto said to please continue the file. Miyamoto did not say anything about Kim possibly reaching out to him. The phone call occurred right after the not suitable finding came back (or in the same time period). Fonthal or Martindale would have told the Sheriff about the not suitable finding. Or, Fonthal told his captain and she forwarded it.

It's not a normal occurrence for Fonthal or Martindale to brief Miyamoto directly but it has happened. There was not an order to give updates to Miyamoto about Kim's background investigation but there was an "understanding" because Kim was one of them before and he's a "special case." When people leave SFSO, BIU gives command staff a

heads up on progress in the background investigations. Miyamoto has called BIU about other applicants.

There were obvious concerns about Kim's conviction.

Asked how often have you seen successful in overturning a "not suitable," Fonthal stated 1 in 10. Asked how often an applicant's own doctor provides a "suitable" finding, Fonthal stated 9 in 10. Fonthal has never seen an appeal of an appeal – or an applicant's own doctor making a finding of "not suitable" and the applicant appealing that decision.

Shown a letter addressed "To Whom It May Concern," Fonthal stated that the letter was attached to a report submitted by Dunnigan. Dunnigan said he received the letter. Fonthal did not talk to Dunnigan about the letter. He is not aware anyone talked to Dunnigan about the letter. Fonthal did not talk to Miyamoto about the letter. Fonthal has not seen Miyamoto write a letter on behalf of anyone else. Fonthal did not consider that Kim wrote the letter. Fonthal agreed the letter was not signed, not on letterhead, and undated.

The talk in BIU about the letter was "that's a first!" BIU did not question a doctor's conclusions. Fonthal has never seen a letter of recommendation attached to a psychologist's evaluation report.

Fonthal did not tell Kim to reach out to Dunnigan to appeal. It's possible Miyamoto or Martindale told Kim to do that. There was no official direction from anyone at SFSO that Fonthal is aware of to provide Kim guidance to appeal Dunnigan's evaluation. There is nothing against a second appeal. It's the third doctor's opinion that counts, so no matter what the second doctor says does not matter.

Asked about language in the letter about people at SFSO were comfortable with Kim returning to work as a deputy, Fonthal said that was not the official BIU position. BIU did not have an opinion. Fonthal is unsure who told Kim SFSO wanted him to return. Kim has lots of friends at SFSO, so maybe someone told him that. Fonthal can only assume that others would not speak officially on behalf of SFSO to say they were comfortable with Kim returning. It's possible that Kim was referring to the letter when he told Dunnigan that SFSO was comfortable. It's possible the Undersheriff or an Assistant Sheriff told Kim that they were comfortable with him returning.

Ladder is a term used in Guardian or SFSO for the approval process. Pages 373-74 and page 375 have a ladder. They look different to Fonthal, although they appear both to show the same result. When the ladder says that Martindale "approved" the file, it meant that the file was ready to be looked at. The ladder process includes emails sent to the chain of command and they sit at their desks and vote. The only person who matters in the ladder is the Sheriff.

Fonthal had not heard about any memorandum Kim wrote and gave to Matt Freeman.

Fonthal did not know a lot about any internal affairs ("IA") case against Kim. Fonthal would not have known procedures for IAs in 2014, if they were tolled pending a criminal investigation.

Fonthal did not read Kim's entire background file – he only got involved heavily at the point of Kim's appeal of Dunnigan's not suitable finding. Fonthal was not aware Kim had applied to CCSF.

reactions to the relevant questions on this examination.

A copy of the polygraph report is retained in the background file under Tab (Polygraph / CVSA / EyeDetect).

Medical Assessment:

[redacted]

Psychological Assessment:

Dr. Nucci, Ph. D., California Licensed Psychologist of LEPS psychologically assessed Kim on September 20, 2023, and determined he was **Not Suitable** for the position of Deputy Sheriff.

Kim appealed his psychological exam. On November 1, 2023, Dr. Ryan Dunnigan, Ph. D., California Licensed Psychologist of Dunnigan Psychological & Threat Assessment, LLC, assessed Kim and determined he was **Not Suitable** for the position of Deputy Sheriff. On March 13, 2024, Dr. Dunnigan sent a revised report that Kim was **Suitable** for the position of Deputy Sheriff.

Dr. David M. Corey, Ph. D., California Licensed Psychologist of Corey & Stewart Psychology, reviewed the results of both prior psychological assessments. On April 9, 2024, Dr. Corey determined Kim was **Suitable** for the position of Deputy Sheriff.

A copy of the assessment summary letter is retained in the background file under Tab (Med / Psych Clearances).

The Applicant meets the requirements of the California Peace Officer's Standards and Training and the San Francisco Sheriff's Office minimum standards for the position of 8302 Deputy Sheriff.

Respectfully Submitted,

☐ **High School Proficiency Exam**

2. High School

List all High Schools (or equivalent) attended

Did you attend any high schools? Yes

2.1

☐ **Currently Enrolled**

Name of High School: [redacted] **Start Date:** [redacted] **End Date:** [redacted] **GPA:** [redacted]

CITY: [redacted] **STATE:** [redacted] **COUNTRY:** United States

Did you graduate from this school? [redacted]

3. Colleges, Universities, Vocational, etc.

List all schools attended including: colleges, universities, online schools, vocational schools, trade schools, etc.

Did you attend any schools after high school? [redacted]

3.1

Are you currently enrolled? [redacted]

Name of School [redacted] **Start Date:** [redacted] **End Date:** [redacted] ☐ **I only attended online**

Type of School [redacted]

STREET: [redacted] **APT/UNIT:** N/A

CITY: [redacted] **STATE:** [redacted] **ZIP:** [redacted] **COUNTRY:** United States

Degree Earned [redacted] **Major/Area of Study:** [redacted] **Units / Hours Completed:** [redacted] **GPA:** [redacted]

3.2

Are you currently enrolled? [redacted]

Name of School [redacted] **Start Date:** [redacted] **End Date:** [redacted] ☐ **I only attended online**

Type of School [redacted]

STREET: [redacted] **APT/UNIT:** N/A

CITY: [redacted] **STATE:** [redacted] **ZIP:** [redacted] **COUNTRY:** United States

Degree Earned None **Major/Area of Study:** [redacted] **Units / Hours Completed:** [redacted] **GPA:** [redacted]

3.3

Are you currently enrolled? [redacted]

Criminal Contempt of Court | Misdemeanor

Arresting or Detaining Agency: FBI/US Marshals

Date: 08/2014

Deposition or Penalty
August 6, 2014 I plead guilty to 1 count of contempt of court. I was placed on federal probation for 3 years, fined $30,000 dollars, 300 hours of community service. I was not truthful when interviewed by the F.B.I.

1.2. Have you ever been placed on court probation? Yes

1.2.1

Court Case or Document Number: CR-18-00124-001

Date: 02/2020

Circumstances:
This was the same case as above. Criminal contempt of court. one and half year on probation.

1.3. Were you ever required to appear before a juvenile court for an act which would have been a crime if committed as an adult? [redacted]

1.4. Have you ever been a party in a civil lawsuit (e.g., small claims actions, dissolutions, child custody, paternity, support, etc.)? [redacted]

1.5. Have the police ever been called to your home for any reason? [redacted]

1.5.1

Court Case or Document Number: [redacted]

Date: [redacted]

Circumstances: [redacted]

1.6. Have you or your spouse/partner ever been referred to Child Protective Services? [redacted]

1.7. Have you ever been the subject of an emergency protective order/restraining order/stay-away order? [redacted]

1.8. Have you settled any civil suit in which you, your insurance company, or anyone else on your behalf was required to make payment to the other party? [redacted]

1.9. Have you ever fraudulently received welfare, unemployment compensation, workers' compensation, or other state or federal assistance? [redacted]

1.10. Have you ever been required to repay any welfare payments, unemployment compensation, or other state or federal assistance? [redacted]

1.11. Have you ever filed a false insurance or workers' compensation claim? [redacted]

1.12. Add any additional incidents/infractions you committed that are not specified above using the "Add Incident" button below:

No items added

2. INVOLVEMENT IN CRIMINAL ACTS - PART 1

At any time in your life, have you ever committed any of the following acts?

NOTE: You may not withhold any information regarding your involvement in any of the following acts, even if federal or state law relieved you from reporting the detention, arrest, or conviction that arose from it.

2.1. Animal abuse and/or neglect: [redacted]

2.2. Annoying, obscene, or harassing contacts by telephone or other electronic communication device: [redacted]

2.3. Battery (use of force or violence upon another): [redacted]

3.12.1. Theft of a firearm:	[redacted]
3.13. Hit & run (with injuries):	[redacted]
3.14. Hate crime:	[redacted]
3.15. Illegal sex acts:	[redacted]
3.16. Insurance fraud:	[redacted]
3.17. Murder, homicide, or attempted murder:	[redacted]
3.18. Perjury (lying under oath):	Yes

3.1

Provide Details:

Crime:	Individuals Involved:	Date:
Perjury	myself	08/2014

This was the same incident as above section 1.1 I was charged with a misdemeanor contempt of court. I submitted a false statement to the court.

3.19. Possession of an explosive/destructive device:	[redacted]
3.20. Robbery (theft from another person using a weapon, force, or fear):	[redacted]
3.21. Stalking:	[redacted]
3.22. Theft of a vehicle and/or vehicle parts:	[redacted]
3.23. Viewing, Production of, and/or possessing child pornography:	[redacted]
3.24. Is there anything posted on the internet that depicts you in an unlawful act, or might discredit the city or agency to which you are applying if hired?	[redacted]
3.25. Have you ever been refused a permit to carry a concealed weapon?	[redacted]
3.26. Are you now, or have you ever been, a member or associate of a criminal enterprise, street gang, or any other group that advocates violence against individuals because of their race, religion, political affiliation, ethnic origin, nationality, gender, sexual preference, or disability? If yes, provide location (city and state) and name of gang.	[redacted]
3.26b. Have you ever engaged in, or are currently engaging in any type of membership in a hate group, participation in any hate group activity, or advocacy of any public expressions of hate?	[redacted]
3.27. Have you ever hit or physically overpowered a spouse, romantic partner, or family member?	[redacted]
3.28. Since the age of 15, Have you ever been involved in an anger-provoked physical fight, confrontation or other violent act?	[redacted]

3.1

Provide details:

Date:

[redacted]

3.29. Do you have, or have you ever had, a tattoo/marking signifying membership in, or affiliation with, a criminal enterprise, street gang, or any other group that advocates violence against individuals because of their race, religion, political affiliation, ethnic origin, nationality, gender, sexual preference, or disability? If yes, provide the approximate date you got it, and a description of its meaning and where it is located on the body.	[redacted]

3.30. Add any additional criminal acts you committed that are not specified above using the "Add Incident" button below.

[redacted]

Section 8. Legal

Theft of a firearm: changed from "" to "0"

Section 8. Legal

Incidents

Please Explain changed from "This was the same incident as above section 1.1 I was charged with a misdemeanor contempt of court." to "This was the same incident as above section 1.1 I was charged with a misdemeanor contempt of court. I submitted a false statement to the court."

Section 8. Legal

[redacted]

Section 8. Legal

Activities

[redacted]

Section 9. Motor Vehicle Information

[redacted]

Section 9. Motor Vehicle Information

[redacted]

Personal History Statement – Peace Officer (POST 2-251)

Updates to the POST PHS address changes in state law and Commission regulations. This form is a continuation of the POST PHS questionnaire.

EMPLOYMENT ELIGIBILITY

Are you legally authorized to work in the United States under federal law?

[redacted]

SECTION 5: EXPERIENCE AND EMPLOYMENT continued- PREVIOUS PEACE OFFICER EXPERIENCE

46. Do you have previous peace officer experience in this state or any other jurisdiction?

✓ Yes __No

During, or after, your employment as a peace officer:

46.1 Have you ever been terminated for cause from employment as a peace officer in any State?

[redacted]

46.2 Have you ever had your peace officer certification suspended or revoked in any State, including California?

[redacted]

46.3 Have you ever been dishonest in the reporting, investigation, or prosecution of a crime, or relating to the reporting of, or investigation of misconduct by, a peace officer or custodial officer, including, but not limited to, false statements, intentionally filing false reports, tampering with, falsifying, destroying, or concealing evidence, perjury, and tampering with data recorded by a body-worn camera or other recording device for purposes of concealing misconduct?

✓ Yes __No

46.4 Have you ever abused your power, including but not limited to, intimidating witnesses, knowingly obtaining a false confession, or knowingly making a false arrest?

[redacted]

46.5 Have you ever committed physical abuse, including, but not limited to, excessive or unreasonable use of force?

[redacted]

46.6 Have you ever committed sexual assault as described in subdivision (b) of Penal Code Section 832.7, but to also include acts committed amongst members of any law enforcement agency?

[redacted]

46.7 Have you ever demonstrated bias on the basis of actual or perceived race, national origin, religion, gender identity or expression, housing status, sexual orientation, mental or physical disability, or other protected status in violation of law or department policy or inconsistent with a peace officer's obligation to carry out their duties in a fair and unbiased manner?

[redacted]

46.8 Have you ever committed acts that violate the law and are sufficiently egregious or repeated as to be inconsistent with a peace officer's obligation to uphold the law or respect the rights of members of the public?

[redacted]

46.9 Have you ever participated in a law enforcement gang, as defined in Penal Code §13510.8(b)(7)?

[redacted]

46.10 Have you ever failed to cooperate with an investigation into potential police misconduct, including an investigation conducted pursuant to Penal Code §13510.8?

[redacted]

46.11 Have you ever failed to intercede when present and observing another officer using force that was clearly beyond that which was necessary?

[redacted]

• If you answered "YES" to ANY of the item(s) in Question 46, fully explain (include dates and circumstances). Reference the corresponding number (e.g., 46.5) for each explanation.

46.3 - OVER THE TELEPHONE, AN ATTORNEY CALLED ME TO GET MY STATEMENT FOR A BAIL HEARING FOR MY FRIEND. I TOLD HIS ATTORNEY THAT I LEFT MY DEPARTMENT'S BULLET PROOF VEST AT MY FRIEND'S WIFE HAIR SALON AND FORGOT TO PICK IT UP. THAT IS WHY MY FRIEND HAD A SHERIFF'S BULLET PROOF VEST WHEN HE WAS ARRESTED AT HIS HOUSE. THIS STATEMENT WAS SUBMITTED IN COURT.
I WROTE A MEMO TO CHIEF DEPUTY MATHEW FREEMAN STATING THE SAME FACT. THE FBI ARRIVED AT MY WORK AND INTERVIEWED ME ABOUT MY STATEMENT THAT WAS FILED IN COURT.
I TOLD THE FBI THE SAME STORY.
THE NEXT DAY I OBTAINED AN ATTORNEY AND SPOKE WITH THE FBI AND THE ASSITANT UNITED STATES ATTORNEY. I COOPERATED WITH THE FBI AND WAS CHARGED WITH A MISDEMEANOR CONTEMPT OF COURT.

CONFIDENTIAL REPORT **Page** 2
Polygraph Examination:KIM, Michael Sherman

degree. Admits he did re certify with POST certificate in 2021.

EMPLOYMENT HISTORY:

San Francisco Sheriffs Office: (Sergeant) Dates: 1999 to 2016
Admits he left this job as he was charged with contempt of court as he lied during a federal investigation about giving his friend his department issued vest. Explains his friend was arrested and his attorney asked him to write his friend Andy Li a statement. Admits he wrote a letter/statement saying he left his department vest at his friends wife's salon when he actually gave it to his friend. Says this was a big mistake on his part and he did this as he thought Andy was changing his life and becoming a better person. Says Andy told him he was working in security and he wanted to be safe. Says he was questioned about this by the FBI who spoke with him and he told them the same thing. Says he then spoke with his departments union, got an attorney, and he then told the feds the truth and cooperated with them. Says this was his childhood friend and he thought he could help him. Says his friend was involved in Asian gang activity and was in and out of prison a lot. Says he spoke with the Sheriff about this and she told him she would consider hiring him again at some point and so he resigned from this agency. Says he was eventually charged with a misdemeanor. Says he was on probation, paid a $30,000.00 fine, completed 300 hours of community service, and was on home monitoring. Says he knew his friend Andy committed these crimes over the years but when he got out of prison he thought he was better and no longer committing any crimes. [redacted]

[redacted]

War Memorial: (Supervisor) Dates: 2016 to the present

[redacted]

Securitas: (Supervisor) Dates: 1/18 to 2/20

[redacted]

DUNNIGAN PSYCHOLOGICAL & THREAT ASSESSMENTS, LLC

Dr. Ryan Dunnigan
License #PSY27458
930 B Street
San Rafael, CA 94901
Office 415-720-2663

November 1st, 2023 *(Page 1 of 3)*
San Francisco Sheriff's Department
Attn: Supervising Investigator – Sergeant Mel Fonthal
Re: (Secondary) Psychological Pre-Employment Evaluation
Applicant: Kim, Michael

The following is supplementary information regarding the applicant and their testing results. This information is based on the results of two psychological instruments, a psycho-social history questionnaire, a limited amount of psychiatric records (provided by the candidate), and an extensive clinical interview. The candidate-suitability determination included the consideration of the established California Peace Officer Standards and Training (P.O.S.T.) Peace Officer Psychological Screening Dimensions. A polygraph report was provided to this examiner by the San Francisco Sheriff's Department. It was reviewed and before the clinical interview portion of this process and was considered while making the psychological suitability declaration and decision. No other background information or applicant-related records (psychological or otherwise) were provided to this examiner by the intended hiring agency, the San Francisco Sheriff's Department.

[redacted]

DUNNIGAN PSYCHOLOGICAL & THREAT ASSESSMENTS, LLC

Dr. Ryan Dunnigan
License #PSY27458
930 B Street
San Rafael, CA 94901
Office 415-720-2663

Re: Secondary Psychological Pre-Employment Evaluation *(Continued, Page 2 of 3)*
Applicant: Kim, Michael

[redacted]

It should be noted that this examiner had previously met with and evaluated Mr. Kim in October 2023, for this process and for this Department. This examiner had concerns at that time, as Mr. Kim had some pending investigations at his work. He was the subject of a sexual harassment investigation that was in progress at his security company at that time. That investigation, coupled with a number of different incidents that he had been involved in the past, resulted in this examiner not finding him suitable for the position at that time. Most notably, Mr. Kim I had been found guilty and have been placed on formal probation, following a conviction involving misrepresenting information or facts during a criminal/court investigation. A Findings Report and Psychological Declaration of Suitability was provided at that time.

Mr. Kim reached out to this examiner again in February 2024. He informed this examiner that the investigation at his security company had been completed and that the allegations had not been sustained. Mr. Kim also stated that he had received a letter from Sheriff Miyamoto strongly supporting him and his believed appropriateness for the position of a Correctional Deputy at this time. This letter will be included with my Findings Report. The Sheriff stated that he has "no concerns at this time of bringing him back as a member of the Sheriff's Office." Mr. Kim stated that the Sheriff's Office is aware of his misdemeanor arrest (related to the false reporting case) and still were interested in having him come back to work for the Department. He said that now that the sexual harassment investigation

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Re: Secondary Psychological Pre-Employment Evaluation (*Continued, Page 3 of 3*)
Applicant: Kim, Michael

From the Clinical Interview (*continued*):

… has been completed and was not sustained (and another had not been pursued), he and the Department feel that it would be appropriate for him to again apply for a ~~Correctional~~ Deputy position within ~~the~~ Department.

This examiner did explain to Mr. Kim and initially that there were concerns relating to POST Peace Officer Psychological Screening Dimensions for Officers. The standards were called into question in a number of different categories. Specifically, *Social Competence; Decision-Making and Judgment;* and, *Integrity/Ethics*. Mr. Kim said he understood these concerns and had discussed these matters with the Sheriff and background personnel there at the Department. He stated that they were comfortable with him coming back and working there. He mentioned that he would be brought on in a probationary status (as with all new or returning Correctional Deputies) and that he could be let go at any time (while in that probationary period) if they had any concerns about him, his appropriateness, or his performance. This examiner expressed that he very likely would not have been considered "suitable" if not for the letter from the Sheriff recommending him for the position and speaking to his abilities and his seemingly good fit and past with the Department.

Based on the results of the psychometric tests, the polygraph results/information, and the limited information provided and made available to this examiner, and the letter of recommendation from the Sheriff, Mr. Kim appears to be acceptable to perform the duties of a ~~Correctional~~ Deputy Sheriff at this point in time.

Psychological Suitability Finding:

I can certify that Michael Kim (based on the records made available to this examiner and the results of the clinical interview and evaluation process) is currently psychologically suitable to perform the San Francisco Sheriff's Department's duties and the responsibilities of a ~~Correctional~~ Deputy. The candidate was found to be free from any emotional, or mental condition, including bias against race or ethnicity, gender, nationality, religion, disability, or sexual orientation, that might adversely affect the exercise of the powers of a ~~Correctional~~ Deputy. A "***Suitable***" or "***Did Pass***" determination was made

Date: March 13th, 2024

Dr. Ryan Dunnigan
Public Safety Psychologist
California License # PSY27458

SHERIFF RD
+ PEACE OFFICER

Fitness-for-Duty Evaluations *Pre-Employment Evaluations* *Promotional Evaluations*

Dunnigan Psychological & Threat Assessments, LLC
Info@DunniganAssessments.com

[redacted]. 8/2014 I was questioned by the FBI 8) I was a witness and testified in a criminal court case involving Andy Li [redacted] 35) I falsified a memo I wrote to my supervisor. This was related to the misdemeanor contempt of court charge 37) I perjured on a written statement to the court, This was the misdemeanor contempt of court charge [redacted] 43) I plead guilty to a misdemeanor contempt of court , fined 30,000 dollars, 3 years probation and 300 hours of community service. This was in federal court [redacted]

LAW ENFORCEMENT JOB APPLICATION STATEMENT

List all law enforcement agencies for which you have every previously applied or tested with, for any position. Begin with the most recent application.

Provide date of application, agency name, position applied for, and results/status of application.

[redacted]

List the agencies where you are currently on an active employment eligibility list:

(Provide # on list, agency name, and position applied for)

[redacted]

Have you ever failed any test (i.e. written, agility, oral, polygraph, psychological, medical, background investigation, etc.) with any agency? If so, list and explain reasons in detail:

[redacted]

[redacted]

If several agencies all called and offered you a job at the same time, which position would you select? Why?

[redacted]

[redacted]

Approval

11/05/2024 15:08 PST	Approval Process completed successfully.
11/05/2024 15:08 PST	Paul Miyamoto cast a resolution for the active Approval (yes).
11/05/2024 12:16 PST	Approval reached level 6.
11/05/2024 12:16 PST	Katherine Johnson cast a resolution for the active Approval (no).
11/02/2024 20:53 PDT	Approval reached level 5.
11/02/2024 20:53 PDT	Tanzanika Carter cast a resolution for the active Approval (no).
11/01/2024 07:20 PDT	Approval reached level 4.
11/01/2024 07:20 PDT	Approval level 2 skipped by Linda Bui.
11/01/2024 07:20 PDT	Approval reached level 3.
11/01/2024 07:20 PDT	Linda Bui cast a resolution for the active Approval (no).
10/31/2024	Approval reached level 2.

11:22 PDT

10/31/2024 11:22 PDT Approval level 0 skipped by Darrin Martindale.

10/31/2024 11:22 PDT Darrin Martindale cast a resolution for the active Approval (yes).

10/31/2024 11:22 PDT Approval reached level 1.

10/31/2024 11:22 PDT Darrin Martindale started Approval Process (Hired).

Sharing History

There is no activity currently recorded for this section.

Approval 10/31/2024

Outcome: Hire

Status: Completed 11/05/2024

Levels Completed: 6 of 6

Final Comments

N/A

Approval Notes

N/A

Comments

N/A

Level 1 : Skipped
Sergeant Sgt. Mel: Pending (10/31/24 @ 06:22)
Lieutenant Darrin: Approved (10/31/24 @ 06:22)

Level 2
Linda: Declined (10/31/24 @ 06:22)

Level 3 : Skipped
John: Pending (10/31/24 @ 06:22)

Level 4
8616 Assistant Sheriff Tanzanika: Declined (10/31/24 @ 06:22)

Level 5
8518 Undersheriff Katherine: Declined (10/31/24 @ 06:22)

Level 6
8350 Sheriff Paul: Approved (10/31/24 @ 06:22)

Rejection email sent to MICHAEL SHERMAN KIM on 11/30/23 @ 11:36 PST

Dear MICHAEL SHERMAN KIM,

We are writing to inform you of the outcome of your application for the 8504 Deputy Sheriff at San Francisco County Sheriff's Office. After careful consideration, we regret to inform you that we have elected not to proceed with your application.

Please note that this decision was made based on a thorough evaluation of your application and the requirements of the position. We appreciate the time and effort you have invested in applying for this role with our agency.

Please use the username and button below to access your Guardian account. You will be asked to create a password when accessing your account for the first time.

This email serves as an official notification of your application status and has been logged with a date and time as follows:

Date: 11/30/2023 11:36:59 America/Los_Angeles

We wish you the best of luck in your future endeavors and thank you for your interest in joining our team at San Francisco County Sheriff's Office

Sincerely,

Sgt. Mel Fonthal
Sergeant
mel.fonthal@sfgov.org
(415) 734 - 2331

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

On March 11, 2025, California Commission on Peace Officer Standards and Training ("POST") Law Enforcement Consultants Kevin Sherburne and James Saso interviewed Tiffany Martin in a conference room located at 455 Golden Gate Avenue, San Francisco, California. Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Martin. After being advised of the identity of the interviewers and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Martin provided the following information:

Martin started with San Francisco Sheriff's Office ("SFSO") in 2009. She started out at the women's jail. She promoted because she kept putting in for transfers and was always denied because of "needs of the facility." In 2015, she promoted to sergeant and worked on the 7th floor and the maximum security jail. She was there for about two years, then worked in San Bruno for about one and one-half to two years. She was then assigned as sergeant in Background Investigations Unit ("BIU"). From BIU, she transferred to Community San Bruno as a Lieutenant, then to Community Programs, where she currently works.

She was not 100% sure when she was BIU commander, likely from 2018-2022. There was only a sergeant in BIU, not a lieutenant. Deputies were only allowed to do backgrounds for deputies. The unit had a Proposition F guy who could work on civilian backgrounds. Ronnie Wan worked for Martin.

Guardian is an online portal that serves to collect applications from candidates.

If BIU had objections, such as when POST Dimensions were violated, they could write up what was found, but it was not BIU's decision. As a sergeant in BIU, she also worked investigations to help balance out the workload. If she found something in a POST Dimension, she put in a request to the next highest ranking person (Captain) and requested termination of the file and she included the reason (*e.g.*, violation of a POST Dimension). If a deputy came to her, she would submit a request. The captain could overturn Martin or agree with her.

Shown a copy of Kim's background investigation file, Martin stated there was a place at the very end for a short paragraph to describe the BIU comments about an applicant. The timing is off and Dr. Dunnigan said he was not suitable and Dr. Dunnigan was his own doctor. Martin has not seen a situation where an applicant fails two assessments and still be hired. You can't do that because there was no appeal process that would allow further appeal if an applicant's own doctor rejected the applicant and the applicant went back to the doctor and said your rejection reason is no longer valid. If the first doctor said no and the applicant's doctor said yes, a third doctor would review the assessments and reach an independent conclusion.

Kim may have failed and reapplied again. Nucci is SFSO's doctor. She said he's not suitable. Dunnigan is his doctor, who rejected him. Then, Dunnigan reversed his

opinion. Usually, it's one no. If it's a no, it's a no. Martin is not sure what's happening and does not understand how Kim was hired. If our no and their no, it's an easy one. If it's a no and a yes, the third doctor is the tie breaker. The final DQ is final. They have 30 days for their appeal if SFSO's doctor says no.

Martin has only seen 2-3 where an applicant hired their own who says yes.

There's a list of candidates. If the list is still open, they can keep going. If closed, they can't pick from that list anymore. If they run out of names, they run another list from the written tests. Martin surmised that they ran another list.

By November 2023, Martin was not in BIU. Martin never had experience where an doctor changed his mind because an applicant asked the doctor to reconsider the rejection based on the fact that the underlying reason for the failure no longer existed.

Nucci failed an applicant. She failed again. The applicant appealed successfully because the applicant argued that it should have been a second doctor. That was the only weird situation Martin could think of.

If Wan objected, his objections would be in the "ladder." It's an area where people in BIU would type. It might be called a "request for DQ." Martin is confused because, once Kim failed psych, the file is done.

Sometimes, the chain of command didn't want that BIU did not do the complete process and wanted the entire background done even when there were clear indicators not to hire an applicant.

Martin reviewed the terms "approved," "skipped," "pending," "declined" on page 375/376. Skipped meant someone was on vacation. They didn't want to hold up the application. Approved meant hire the person.

Martin did not get a vote. Her approval was just that the file was complete and ready to move forward. The first vote was likely at the captain level.

Martin has never seen the purported letter from Paul Miyamoto on behalf of Kim. She did not hear that there was such a letter. Martin wondered how Kim got hired. She was shocked because of the heavy allegations. She knew that the story related to how Kim knew an inmate on the 7th floor who had Kim's vest.

Shown a copy of the background file named "Archived," Martin stated that the investigation was never assigned. In order for Kim to undergo a background investigation, this file first had to be closed out.

Kim used to work with Martin in her department.

Martin did not express concerns to chain of command about Kim. They talked internally in BIU. Martin did not know what Kim was convicted of. A conviction would be

documented as a Dimension. If they didn't want the file to be appealed if the applicant were rejected, they would say to finish it and then document it all.

Martin did not know of any memo that Kim submitted to Matt Freeman.

There are some "musts" that an applicant must pass – medical and psychological. Sometimes, they reapply after a year. The psychologist gets everything – including EEO complaints – to make an assessment.

Martin reviewed the file for inconsistent answers, especially if candidates reapplied. She'd compare the two files' answers.

There is no appeal for the second psychological assessment. The file doesn't sit around for several months. Martin perceived there was a conflict. In accordance with POST guidelines, after two independent psychological assessments that rejected an applicant, the applicant cannot move forward in the hiring process. It's "must," not discretionary.

To Whom It May Concern,

I am writing this letter on behalf of Michael Kim. I have known Mike for over 26 years, seventeen of those as a peer and co-worker in the San Francisco Sheriff's Office. I have supervised Mike in the capacity of basically all levels of our Department's chain of command (as a Sergeant, Lieutenant, Captain, and Assistant Sheriff). In addition to regular duty assignments, we have served together in both the Department's Emergency Services Unit (ESU), and as members of the Special Response Team (tactical unit). When he was no longer employed with the Sheriff's Office, we continued our friendship.

Mike continued employment with the City and County of San Francisco at the War Memorial Veteran's Building as a Building and Grounds Officer. His characteristics of leadership, experience and personality led to his eventual role as a supervisor.

His reputation as a Sheriff's sergeant continued into his role as a supervisor who completed tasks and held staff accountable for their actions (or inactions). He was very proficient at administrative requirements of supervisors as relates to payroll, staffing, personnel, and incident documentation.

Perhaps the closest that I have worked with Mike, and the experience that most exposed me to the content of his character, was our work together on the SRT, the Department's SWAT team. Mike was a team leader and performed exceptionally well during critical incidents and highly stressful situations. He functioned especially well as a lead member, always willing to step into a void regardless of rank.

On a personal level, Mike has always been loyal and committed to his family and friends. He is a great father to [redacted], and coaches her in softball. For many years, he has volunteered with me for the Self Help for the Elderly non-profit, and every Thanksgiving Day we coordinate delivery and serving meals to the elderly and infirm before spending time with our families. His commitment to this transcends an obligation to the job or Department, and is indicative of his good character.

As the elected Sheriff of San Francisco, one of my responsibilities is the hiring of sworn members of the Department. I am familiar with what Mike experienced both when he left the Sheriff's Office, as well as his experiences at the War Memorial Veteran's Building. I have no concerns at this time of bringing him back as a member of the Sheriff's Office.

Thank you for the opportunity to share my experiences with Mike. If you have any further questions, please feel free to contact me.

Regards

Paul Miyamoto

Sheriff of the City and County of San Francisco

Office [redacted]

Cell [redacted]

OFFICIAL RECORD
Document participants have digitally signed. All signatures have been verified by a certified FBI information system.

UNCLASSIFIED//FOUO

FEDERAL BUREAU OF INVESTIGATION

Date of entry 08/20/2014

On August 19, 2014, at approximately 11:00 AM, Michael Sherman KIM, date of birth (DOB) [redacted], was interviewed at his place of employment at the San Francisco Sheriff's Office (SFSO) located at 425 7th Street, San Francisco, California. KIM provided [redacted] as his personal cellular telephone number and (415) 580-9788 as his work cellular telephone. After being advised of the identity of the interviewing Agents and the nature of the interview, KIM provided the following information:

KIM has been employed with the SFSO for approximately 15 years and is a SFSO Deputy Sergeant assigned to administrative matters and reports directly to the Assistant Chief of the SFSO.

KIM has known Andy LI, DOB [redacted], since high school and considers LI as a friend. KIM, LI and Ceasar Augustine Marabuto, another SFSO Deputy, all went to high school together. KIM also maintained contact with Marabuto and considered him his friend.

As of the date of this interview, KIM's wife, Bonnie Lam, worked at an insurance company. KIM provided [redacted] and [redacted] as contact telephone numbers for Lam.

Last time KIM saw LI was just prior to LI's arrest sometime before March 26, 2014. KIM and LI went to a strip club located on Broadway Avenue in San Francisco. KIM could not recall the name of the strip club, but said he remembered the club being next to a liquor store east of the corner of Kearny and Broadway Streets.

KIM has frequented LI's home located near the Serramonte Mall in Daly City, California, but claimed he has never been inside LI's new residence located at [redacted], South San Francisco. KIM knew that LI moved to the San Francisco Bay Area from Los Angeles, California approximately two years ago.

On February 2, 2014, KIM got off work at approximately 3:00 PM and decided that he was going to meet some "high school friends" at a bar. After leaving work, KIM realized he had a SFSO issued ballistic vest in his personal vehicle he was driving at the time. His vehicle was described

Investigation on 08/19/2014 at San Francisco, California, United States (In Person)

File # 281E-SF-145007-L10 Date drafted 08/20/2014

by Emmanuel V. Pascua, Maya N. Clark, Tseng H. Chow

This document contains neither recommendations nor conclusions of the FBI. It is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.

as a Toyota Tundra with a bed shell. KIM did not want to leave his vest in his vehicle while at a bar, so he decided to drop off his vest with his wife who was at Mimi LI's (hereafter Mimi) beauty salon, LA Touched, 3903 18th Street in San Francisco. KIM arrived at approximately 3:30 PM, stayed for a few minutes to talk to Mimi and Lam, then left. KIM subsequently met with "a high school friend" at a bar in the city.

On the evening of the same day, KIM found out from Lam that she forgot the ballistic vest at Mimi' salon. KIM then told Lam to contact Mimi to arrange the pick-up or drop-off of the vest. KIM, through Lam, continually attempted to coordinate the return of the ballistic vests but failed due to scheduling conflicts. Since KIM had two issued vests and had no immediate need for the older vest left with Mimi, he simply forgot about it.

When confronted as to the identity of the plural number of friends he initially said he met with after he dropped off the vest at Mimi's salon, KIM said he only met with one high school friend. When asked the name of this friend, KIM stated he could not remember. When asked if it was LI or Marabuto, KIM stated no. When asked what other of his high school friends that he maintains contact with would have been most likely to have met with him, KIM stated he could not remember. When asked where the bar was located, KIM stated he could not recall.

KIM stated he let his SFSO Chief know about the circumstances involving the ballistic vest approximately two weeks ago.

LI stated he would occasionally transport SFSO equipment in his in his personal vehicle to take home. KIM stated he would normally leave his SFSO issued handgun along with other equipment locked in a container at his place of employment.

On multiple occasions, Lam called Mimi to schedule the pick-up of the ballistic vest from her cellular phone, [redacted]. Lam may have also used her other cellular phone [redacted]

When KIM was asked why he did not call Mimi directly in an attempt to retrieve the vest, KIM said he was not sure why.

KIM was asked to estimate the amount of contact he had with LI from February 2 to March 26, 2014. KIM said his phone contact was not so frequent and estimated the number of contacts to range from a handful to several phone contacts. When KIM was asked why he did not talk to LI directly about the vest during these times he had contact with LI, KIM said he did not know why.

No one else at SFSO knew about the circumstances regarding the vest, except for his immediate supervisor whom KIM made aware approximately two weeks ago.

KIM was asked if he knew if LI was ever employed. KIM stated LI was looking for a job prior to his arrest and KIM was attempting to help LI get a job at "Execu Shield" owned by KIM's friend. KIM knew LI to work in a youth services related job but was not clear on LI's responsibilities. He could not recall other jobs LI may have had. When asked if he recalled LI working at a night club, KIM stated he did. KIM then stated LI was a bouncer at a night club and believed he may have gotten the job through Rodrigo last name unknown (LNU) [Agent Note: Agents believed this to be Rodrigo RUIZ]. KIM met Rodrigo through LI.

When KIM would meet LI at a club, he would also be with Joe, described to be short, fat and bald (Agent Note: Agents believed this to be Kongphet Joe CHANTHAVONG). KIM met Joe for the first time approximately 10 years ago. On one occasion at a strip club, KIM met LI, Joe and a light skinned black male, approximately 5'8", who was supposedly from the East coast. KIM claimed to not frequent night clubs anymore.

KIM was not sure why LI came back to San Francisco. KIM told LI to stay in Los Angeles because LI did not know anyone in Los Angeles and it would be a fresh start for LI. KIM visited LI in Los Angeles while KIM was en route to San Diego. KIM and LI had a mutual friend in Los Angeles known to KIM as JC Santos. Santos owns a beauty salon in Los Angeles.

When asked the extent of his contact with LI after LI's relocation from LA to SF leading up to February 2, 2014, KIM stated he was not sure but it can range from once a week to twice a week and that he did not keep track of how often he is in contact with friends. KIM and his family would sometimes have dinner with LI's family at KIM's residence. On at least two occasions, LI's children have spent the night at KIM's residence. KIM believed one of LI's children may have spent the night at KIM's residence sometime between February 2 and March 26, 2014. KIM would never go into LI's residence at [redacted], but rather would wait outside when dropping off or picking up LI's children.

As KIM continued to recall his association with LI, KIM stated two years ago, possibly November of that year, KIM, LI and Marabuto were driving home from a strip club on Freeway 101 in San Francisco, referred to as "hospital curve," where he lost control of his vehicle, causing it to flip over. Just prior to the accident, Marabuto was dropped off at his residence, so only LI and KIM were in the vehicle. Both were immediately

transported to San Francisco General Hospital for assessment. KIM's vehicle was totaled.

KIM was not aware of LI possessing any weapons or other ballistic vests. KIM also stated that he was unaware of LI's illegal activities. KIM knew of LI's prior arrest records and said that each time LI would get arrested, it would be reported in the media and the FBI would come to visit KIM to talk to him. KIM later stated that KIM knew that LI was a convicted felon.

KIM met Raymond CHOW sometime in 1991. KIM was in trouble with a local gang and was constantly threatened by gang members and would often get into fights. LI told KIM that if KIM would provide CHOW with $5,000, CHOW can make the harassment from the gang members stop. KIM's parents, who owned a restaurant at the time, gave KIM $5,000 to pay CHOW through LI. During the same time period, he would often hang out as a group with LI, CHOW, and numerous other individuals in San Francisco Chinatown. KIM was unable to recall the names of some of these individuals and KIM did not consider some of them friends. When KIM did spend time with CHOW it would be over lunch or while at a karaoke bars. When asked why he would hang out and associate with CHOW after supposedly paying him $5,000 for protection, KIM had no explanation.

Last time KIM was in contact with CHOW was a couple of years ago at Rodrigo's club. KIM has had no telephonic contact with CHOW. Sometime during high school, KIM was told by police officers that LI was a member of a gang. KIM was asked which gang LI and CHOW were members of and KIM replied with he did not remember. KIM stated that there were many Asian gangs during this time to include the "WC", which KIM clarified to represent "Wah Ching." KIM was asked if he was a member of a gang at that time and he responded with he would not have been able to get this deputy position if he was.

KIM was asked if LI has ever asked KIM for use of any ballistic vests in the past. KIM responded with "I think he did". When he was asked to be more specific, KIM stated LI asked KIM to borrow his ballistic vest to wear while LI was employed as a bouncer at a night club. KIM agreed and said he had an older vest to give to LI, but claimed LI never came to pick-up the vest. KIM was asked if it was one of the two vests he was issued and he said yes. KIM was asked if it was the vest in question found in Mimi and LI's vehicle during the search warrant. KIM acknowledged that it was.

ALEX G. TSE (CABN 152348)
Acting United States Attorney

BARBARA J. VALLIERE (DCBN 439353)
Chief, Criminal Division

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Attorneys for United States of America

FILED

MAY 25 2018

SUSAN Y. SOONG
CLERK, U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. MICHAEL KIM, Defendant.	NO. 3:18-CR-0124-JCS-1 PLEA AGREEMENT

I, Michael Kim, and the United States Attorney's Office for the Northern District of California (hereafter "the government") enter into this written Plea Agreement (the "Agreement") pursuant to Rule 11(c)(1)(A) and 11(c)(1)(B) of the Federal Rules of Criminal Procedure:

The Defendant's Promises

1. I agree to plead guilty to Count One of the captioned Information charging me with Contempt of Court in violation of 18 U.S.C. § 401(1). I agree that the elements of the offense are as follows:

First, I knowingly and willfully committed misbehavior in the presence of the Court; and

Second, my misbehavior obstructed justice.

I agree that the maximum penalties are as follows:

a.	Maximum prison term	1 year
b.	Maximum fine	$100,000
c.	Maximum supervised release term	1 year
d.	Restitution	N/A
e.	Mandatory special assessment	$100
f.	Potential Deportation	
g.	Forfeiture	Ballistic vest

I acknowledge that pleading guilty may have consequences with respect to my immigration status if I am not a citizen of the United States. Under federal law, a broad range of crimes are removable offenses, including the offense to which I am pleading guilty. Removal and other immigration consequences are the subject of a separate proceeding, however, and I understand that no one, including my attorney or the district court, can predict to a certainty the effect of this conviction on my immigration status. I nevertheless affirm that I want to plead guilty regardless of any immigration consequences that may result from my guilty plea, even if the consequence is my automatic removal from the United States.

2. I agree that I am guilty of the offense to which I am pleading guilty, and I agree that the following facts are true:

In 2014, I was employed as a Deputy Sheriff with the San Francisco City and County Sheriff's Department. Andy Li was a childhood friend of mine. Our families knew each other and were friends. I became aware that Andy Li was arrested on March 26, 2014, in conjunction with many other defendants in the case of *United States v. Kwok Cheung Chow, et. al.*, CR 14-196 CRB.

I became aware that Andy Li was ordered detained by a Judge in the Northern District of California. I now know that the Judge who ordered Andy Li detained was the Honorable Chief Magistrate Judge Joseph C. Spero. I wanted to assist Andy Li in gaining release from the detention order imposed by the Court.

On August 6, 2014, I signed a Declaration. I knew and intended that the Declaration would be

provided to the Court for the purpose of Andy Li's attorneys to seek the release of Andy Li. In connection with that Declaration, I falsely declared that my wife had taken a ballistic vest with her to see the wife of Andy Li. I falsely declared that my wife had forgotten the vest at the workplace of the wife of Andy Li. I falsely declared that the wife of Andy Li had placed the vest in the trunk of her car. I falsely declared that I had not retrieved the vest from the wife of Andy Li. In truth and in fact, I had loaned my ballistic vest – issued to me by the San Francisco Sheriff's Department – to Andy Li for his use. I knew that my declaration was false. I knew and intended that the attorneys for Andy Li would provide the false declaration to the Court. I knew and intended that the Court would rely on my false declaration in considering the detention of Andy Li.

3. I agree to give up all rights that I would have if I chose to proceed to trial, including the rights to a jury trial with the assistance of an attorney; to confront and cross-examine government witnesses; to remain silent or testify; to move to suppress evidence or raise any other Fourth or Fifth Amendment claims; to any further discovery from the government; and to pursue any affirmative defenses and present evidence.

4. I agree to give up my right to appeal my conviction, the judgment, and orders of the Court, as well as any aspect of my sentence, including any orders relating to forfeiture and/or restitution, except that I reserve my right to claim that my counsel was ineffective.

5. I agree not to file any collateral attack on my conviction or sentence, including a petition under 28 U.S.C. § 2255 or 28 U.S.C. § 2241, except that I reserve my right to claim that my counsel was ineffective. I also agree not to seek relief under 18 U.S.C. § 3582.

6. I agree not to ask the Court to withdraw my guilty plea(s) at any time after it is entered. I understand that by entering into this Agreement: (a) I agree that the facts set forth in Paragraph 2 of this Agreement shall be admissible against me under Fed. R. Evid. 801(d)(2)(A) in any subsequent proceeding, including at trial, in the event I violate any of the terms of this Agreement, and (b) I expressly waive any and all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 with regard to the facts set forth in Paragraph 2 of this Agreement in such subsequent proceeding. I understand that the government will not preserve any physical evidence obtained in this case.

7. I understand that the Court must consult the United States Sentencing Guidelines and

take them into account when sentencing, together with the factors set forth in 18 U.S.C. § 3553(a). I also understand that the Court is not bound by the Guidelines calculations below; the Court may conclude that a higher Guidelines range applies to me, and, if it does, I will not be entitled, nor will I ask to withdraw my guilty plea. I further agree that regardless of the sentence that the Court imposes on me, I will not be entitled, nor will I ask, to withdraw my guilty plea. I agree that the Sentencing Guidelines offense level should be calculated as set forth below, and that I will not request a downward departure under the Sentencing Guidelines from that offense level although I reserve the right to seek a downward variance based on the factors set forth in 18 U.S.C. § 3553(a). I understand that the government is free to oppose any such request. The parties have reached no agreement regarding my Criminal History Category.

a.	Base Offense Level, U.S.S.G. §2J1.2:	14
b.	Specific offense characteristics under U.S.S.G. Ch. 2 (e.g. amount of loss, use of firearm)	N/A
c.	Adjustments under U.S.S.G. Ch. 3 (e.g. role in the offense)	
d.	Acceptance of Responsibility: If I meet the requirements of U.S.S.G. § 3E1.1, I may be entitled to a three-level reduction for acceptance of responsibility, provided that I forthrightly admit my guilt, cooperate with the Court and the Probation Office in any presentence investigation ordered by the Court, and continue to manifest an acceptance of responsibility through and including the time of sentencing.	- 3
e.	Adjusted Offense Level:	11

8. I agree that regardless of any other provision of this Agreement, the government may and will provide the Court and the Probation Office with all information relevant to the charged offense and the sentencing decision.

9. I agree that I will make a good-faith effort to pay any fine, forfeiture, or restitution I am ordered to pay. I agree to pay the special assessment at the time of sentencing.

10. I agree not to commit or attempt to commit any crimes before sentence is imposed or before I surrender to serve my sentence. I also agree not to violate the terms of my pretrial release; not to intentionally provide false information to the Court, the Probation Office, Pretrial Services, or the government; and not to fail to comply with any of the other promises I have made in this Agreement. I

agree that if I fail to comply with any promises I have made in this Agreement, then the government will be released from all of its promises in this Agreement, including those set forth in the Government's Promises Section below, but I will not be released from my guilty plea.

11. I agree to forfeit my interest in the following property (hereinafter "subject property"): Ballistic vest issued by the San Francisco County Sheriff's Department.

I admit that the subject property was involved in the offense, and thus is forfeitable to the United States pursuant to the provisions of 18 U.S.C. § 982 and the procedures outlined in Rule 32.2 of the Federal Rules of Criminal Procedure. I relinquish any and all right, title, and interest I may have in the subject property and agree that such right, title, and interest can be forfeited to the United States without further notice to me. I also agree I will not contest any administrative or judicial forfeiture proceeding (whether criminal, civil, state or federal) which may be brought against said property. I further agree to waive all constitutional and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Agreement on any grounds, including that the forfeiture constitutes an excessive fine or punishment or that the forfeiture proceeding was brought in violation of the statute of limitations.

12. I agree that this Agreement contains all of the promises and agreements between the government and me, and I will not claim otherwise in the future. No modification of this Agreement shall be effective unless it is in writing and signed by all parties.

13. I agree that the Agreement binds the U.S. Attorney's Office for the Northern District of California only, and does not bind any other federal, state, or local agency.

The Government's Promises

14. The government agrees not to file any additional charges against the defendant that could be filed as a result of the investigation that led to the captioned Information.

15. The government agrees to recommend a sentence within the range associated with the Guideline calculations set out in paragraph 7 above, unless the defendant violates the terms of the Agreement above or fails to accept responsibility.

The Defendant's Affirmations

16. I agree that my participation in the District Court's Conviction Alternative Program is not

appropriate and that I will not request to be considered for and will not participate in that program as a result of my convictions for these offenses.

17. I confirm that I have had adequate time to discuss this case, the evidence, and the Agreement with my attorney and that my attorney has provided me with all the legal advice that I requested.

18. I confirm that while I considered signing this Agreement, and at the time I signed it, I was not under the influence of any alcohol, drug, or medicine that would impair my ability to understand the Agreement.

19. I confirm that my decision to enter a guilty plea is made knowing the charges that have been brought against me, any possible defense, and the benefits and possible detriments of proceeding to trial. I also confirm that my decision to plead guilty is made voluntarily, and no one coerced or threatened me to enter into this Agreement.

Dated: 5/25/18

MICHAEL KIM
Defendant

ALEX G. TSE
Acting United States Attorney

Dated: 5/25/18

WILLIAM FRENTZEN
Assistant United States Attorney

20. I have fully explained to my client all the rights that a criminal defendant has and all the terms of this Agreement. In my opinion, my client understands all the terms of this Agreement and all the rights my client is giving up by pleading guilty, and, based on the information now known to me, my client's decision to plead guilty is knowing and voluntary.

Dated: 5/25/18

JONATHAN MCDOUGALL, ESQ.
Attorney for Defendant

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Attorney for Defendant
MICHAEL KIM

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA (SAN FRANCISCO DIVISION)

UNITED STATES, Plaintiff, vs. MICHAEL KIM, Defendant.	CASE NO.: 3:18-CR-00124-001 JCS Re: Sentencing Date: October 12, 2018 Time: 10:30 a.m. Judge: Joseph C. Spero **DEFENDANT'S MEMORANDUM IN AID OF SENTENCING**

I. INTRODUCTION

MICHAEL KIM has timely pleaded guilty to one count of criminal contempt (18 U.S.C. §4021(1). This is Mr. Kim's first criminal conviction, and has accepted responsibility well in advance of the filing of any charges in the current case. Mr. Kim stated that "I deeply regret that I have put my family, my livelihood and future success in extreme danger." PSR, page 5. For the reasons that will be addressed at sentencing as well as discussed below, and in light of his extensive history of public service in law enforcement, community service work, stable employment history, family and community support, Mr. Kim respectfully requests that this honorable Court impose probation, a fine and community service.

II. OBJECTION TO INFORMATION IN THE PRESENTENCE INVESTIGATION REPORT

The probation officer in the Presentence Investigation Report recommends that Mr. Kim be "be placed on probation for two years, with (30) days to be served at a halfway house." PSR, Sentencing Recommendation, page 2. Additionally, the officer recommends that Mr. Kim "be ordered to pay a $30,000.00 fine." PSR, Sentencing Recommendation, page 2. The recommendation is based in part on Mr. Kim's abuse of trust, obstruction of the administration of justice, and his compromising of the integrity of the judicial process. PSR, Sentencing Recommendation, page 2.

However, the officer also questions Mr. Kim's veracity when he questions Mr. Kim's response to questions about a "drinking problem." The officer cites a 1996 DUI conviction to call into question Mr. Kim's denial of a "drinking problem." **Mr. Kim has never suffered a DUI conviction or ANY conviction.** In 1996, Mr. Kim's brother was arrested for DUI and used Mr. Kim's identification at the time of his arrest. Mr. Kim had been exonerated and his record cleared by fingerprints[1]. The probation officer never questioned Mr. Kim about the alleged conviction, as he would have supplied the correct information about his brother.

Mr. Kim respectfully asks that the reference to a prior conviction be stricken from the PSR.

III. BACKGROUND

Mr. Kim is a (45) year old father, husband, and former decorated law enforcement officer with the San Francisco County Sheriff's Office for over (17) years. Mr. Kim has a (14) year old daughter that he has coached in softball for over eight years, and now continues to volunteer as a

[1] Attached as Exhibits are the booking sheet and photo for Anthony Kim but using the identification for Mr. Kim, and the Record Clearance showing no record of arrest or conviction.

coach for younger players in his community of [redacted] Mr. Kim has taken his actions in this matter with grave seriousness, and recognizes that he is fortunate that more significant criminal charges were not pursued by the Government against him. Mr. Kim absolutely understands that he jeopardized his freedom and his family's well-being with his actions and his dishonesty with his statement to the Court.

On February 8, 2016, Mr. Kim resigned from his employment in the San Francisco Sheriff's Office with no intention of returning to law enforcement. His wife, Bonnie Lam, during the pendency of this case, has been struggling with a severe medical condition that has forced Mr. Kim to become the majority provider for his wife and daughter. More recently, his wife has returned to work in a limited basis, and still has an extensive medication routine to maintain her health. There are frequent days where his wife is unable to work or help with routine family activities.

The Government and counsel for Mr. Kim will be providing additional information for the Court's consideration at the time of sentencing.

There are also multiple character letters in support of Mr. Kim attached here for the Court's review and consideration.

III. THE POST-BOOKER SENTENCING FRAMEWORK

As this Court is well aware, in *United States v. Booker*, 543 U.S. 220 (2005), the Supreme Court held that the Sentencing Guidelines are effectively advisory, and no longer mandatory. 543 U.S. at 245. In the wake of *Booker*, federal sentencing is now governed by 18 U.S.C. 3553(a). *United States v. Menyweather*, 431 F.3d 692, 695 (9th Cir. 2005).

Federal sentencing courts are now required to calculate and consider the advisory guideline range as a starting point in sentencing. *United States v. Evans-Martinez*, 448 F.3d 1163, 1167 (9th Cir. 2006). However, the district courts are not required to sentence within that guideline range if

the court finds reasons to support an out-of-Guidelines sentence. Courts now have the discretion to impose non-Guidelines sentences. *United States v. Cantrell*, 433 F.3d 1269, 1279 (9th Cir. 2006) *See* 18 U.S.C. 3553(a)(4); *Booker*, 543 U.S. 245-46 (the statute permits the court to tailor the sentence in light of other statutory concerns as well.)

Consistent with *Booker*, the Ninth Circuit follows a two-step procedure for reviewing sentences imposed following the date the Supreme Court issued its opinion in *Booker*. *United States v. Mix*, 457 F3d 906, 911 (9th Cir. 2006); *Cantrell*, 433 F.3d at 1279-81. First, the appellate court determines whether the district court properly considered and applied the applicable Sentencing Guidelines. *Cantrell*, 433 F.3d at 1279-81. Second, the Court of Appeals reviews the sentence for reasonableness in light of the factors set forth in 18 U.S.C. 3553(a). *Cantrell*, 433 F.3d at 1280.

In sentencing defendants' post-*Booker*, this Court must first consult the Guidelines and determine the correct guideline range, and then must consider the 3553(a) factors relating to this particular case and the arguments of counsel, and decide whether the 3553(a) factors call for a sentence within or outside of the Guidelines. Cantrell, 433 F.3d at 1279; *United States v. Kimbrew*, 406 F.3d 1149, 1152 (9th Cir. 2005). If the Court decides that a below-Guidelines sentence is appropriate, then it must set forth enough of its reasoning to satisfy the appellate court that [the district court] has considered the parties' arguments and has a reasoned basis for exercising [its] own legal decision making authority. *Rita v. United States*, __ U.S. __, 168 L. Ed. 2nd 203, 127 S. Ct. 2456 (June 21, 2007). *See United States v. Marial-Santiago*, 447 F.3d 715, 719 (9th Cir. 2006) (affirming a sentence as reasonable where the district court gave thoughtful attention to factors recognized in 3553(a) and exercised sound discretion.

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IV. THE COURT'S AUTHORITY TO DEPART FROM THE GUIDELINE RANGE.

Congress allows district courts to depart from the applicable Guidelines range if "the court finds that there exists an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described." *Koon v. United States*, 518 U.S. 81, 92 (1996) (quoting 18 U.S.C. 3553(b)).

In determining whether the Commission has adequately taken a factor into consideration, "Congress instructed courts to 'consider only the sentencing guidelines, policy statements, and official commentary of the Sentencing Commission.'" *Id.* at 92-93 (quoting 18 U.S.C. 3553(b)). Four types of factors are relevant to departures: forbidden factors; encouraged factors; discouraged factors; and unmentioned factors. *See id.* at 93-96. Forbidden factors include race, sex, national origin, creed, religion, socioeconomic status, lack of guidance as a youth, drug or alcohol dependence, and economic hardship. *Id.* With the exception of the forbidden factors, the Commission "does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines that could constitute grounds for departure in an unusual case." *Id.* at 93. Encouraged factors are ones that "the Commission has not been able to take into account fully in formulating the guidelines." *Id.* at 94. Discouraged factors, on the other hand, are "not ordinarily relevant to the determination of whether a sentence should be outside the applicable guideline range." *Id.* at 95. In *Koon*, *supra*, the Supreme Court outlined the sentencing court's authority to consider each of these types of factors in deciding whether to depart:

> If the special factor is a forbidden factor, the sentencing court cannot use it as a basis for departure. If the special factor is an encouraged factor, the court is authorized to depart if the applicable Guideline does not already take it into account. If the special factor is a discouraged factor, or an encouraged factor already taken into account by the applicable Guideline, the court should depart only if the factor is present to an exceptional degree or in some other way makes the case different from the ordinary case where the factor is present. *Id.* at 95-96.

If the factor does not fall into any of the above categories, it is considered unmentioned by the Guidelines. In *Koon*, the Supreme Court stated that if the factor is unmentioned, "the sentencing court must determine whether the factor, as occurring in the particular circumstances, takes the case outside the heartland of the applicable Guideline." 116 S. Ct. at 2051. To make this determination, the court must consider "the structure and theory of both relevant individual guidelines and the Guidelines taken as a whole," *Id.* at 2045.

V. CONCLUSION

Mr. Kim has fully accepted responsibility and proactively took the initiative to make amends for his conduct, shown in part by his voluntarily retirement from the Sheriff's Office. Mr. Kim has an extensive history of public service in law enforcement, community service work, stable employment history, and family and community support. For the above reasons, those provided in the Government's memorandum provided under seal, and reasons that will be addressed at sentencing, Mr. Kim respectfully requests that this Honorable Court impose probation, a fine and community service.

Date: October 5, 2018

Respectfully submitted,

JONATHAN McDOUGALL, ESQ.
Attorney for Defendant
MICHAEL KIM

EXHIBIT A

POLICE DEPARTMENT
CITY AND COUNTY OF SAN FRANCISCO
THOMAS J. CAHILL HALL OF JUSTICE
850 BRYANT STREET
SAN FRANCISCO, CALIFORNIA 94103-4603

MARK FARRELL
MAYOR

WILLIAM SCOTT
CHIEF OF POLICE

RECORD CLEARANCE

DATE: October 3, 2018

To whom it may concern,

This letter is a result of a search of the San Francisco Police Department records.

NAME: KIM, MICHAEL SHERMAN

DATE OF BIRTH: [redacted]

Did not disclose any criminal record and:

☐ is not verified by fingerprints or actual birth records.

☒ is verified by fingerprints.

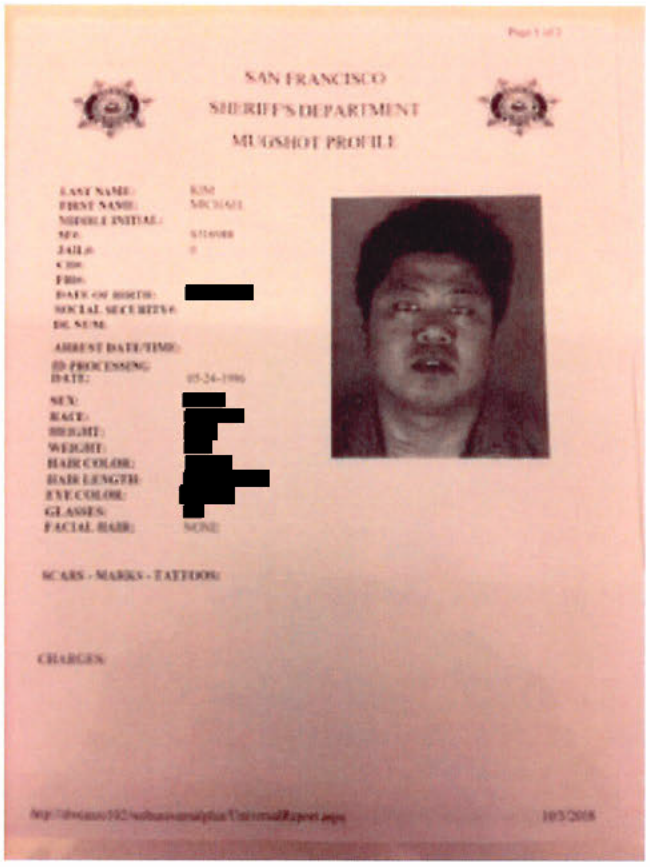
This letter does not preclude the possibility of arrests or warrants outside the jurisdiction of the City of San Francisco.

The San Francisco Police Department cannot give or obtain a statewide police clearance for you. If such clearance is needed, the State of California will charge you a fee for this service. Please call 1-(800) 315-4507 for further information.

Sincerely yours,

MYRA WILLIAMS
Custodian of Records
Identification Section
Forensic Services Division

EXHIBIT B



SAN FRANCISCO
SHERIFF'S DEPARTMENT
MUGSHOT PROFILE

LAST NAME: KIM
FIRST NAME: MICHAEL
MIDDLE INITIAL:
SFG: 5314988
JAIL #: 0
CDC:
FBI#:
DATE OF BIRTH: [redacted]
SOCIAL SECURITY #:
DL NUM:

ARREST DATE/TIME:
ID PROCESSING DATE: 05-24-1986
SEX: [redacted]
RACE:
HEIGHT:
WEIGHT:
HAIR COLOR:
HAIR LENGTH:
EYE COLOR:
GLASSES:
FACIAL HAIR: NONE

SCARS - MARKS - TATTOOS:

CHARGES:

10/5/2018

EXHIBIT C

Matthew Lujan
Address and Phone
[redacted]

July 24, 2018

Chief Magistrate Judge Joseph C. Spero
San Francisco Courthouse, Courtroom 6 – 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

RE: United States of America v. Michael Kim
Case No. 18-CR-0124

Dear Judge Spero,

Thanks for allowing me the opportunity to provide a Character Letter for Michael Kim.

I am a business owner in the security guard industry and a sworn California peace officer. I have known Mike for about 10 years. We met through our local youth softball league, Millbrae Girls Softball Association, where our daughters played for many years together. Mike and I coached almost year-round together for several years. My daughter "retired" from youth softball about two years ago, but Mike and I remain close friends. Our families have vacationed together and continue to hang out, and frequently enjoy family meals together.

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Sincerely,

Matthew Lujan

Michelle G. Lam
Address

July 10, 2018

Chief Magistrate Judge Joseph Spero
San Francisco Courthouse, Courtroom 6 - 15th Fl.
450 Golden Gate Avenue
San Francisco, CA 94102

RE: United States of America v. Michael Kim
Case # 18-CR-0124

Dear Judge Spero,

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I have known Mike for almost 30 years. He has been consistently in my life since I was a child. He has been a big brother to me growing up and is an integral part to our family. When I was 11, we moved to a new city and I had to start in a new school where I didn't have any friends. Mike helped me with this transition, such as teaching me something simple like how to unlock my locker to the more important things like staying away and protecting me from the wrong crowd. Mike would often go out of his way to pick me up from school and attend my basketball and softball games, where he would (loudly) cheer for me from the bleachers. As a teenager, Mike was still cheering for me as I played High School basketball and helping me as I struggled with homework. Whether it was in sports or in life, Mike was always there consoling me after the tough losses and congratulating me when things went my way. I've learned a lot from Mike, such as being independent, a hard worker, focus on getting good grades, and to be kind and caring to others. Now as an adult and a mother, Mike is still there for me and my family. My two young sons look up to Mike as role model and mentor. He is kind, loyal, selfless, funny and supportive. He is a loving husband to my sister, a terrific father to my niece, a fantastic uncle to my sons, a caring coach, and a great friend to all.

As the events of this trial developed, I have been helping and supporting Mike and his family in anyway I can. I hope this letter reveals the positive influence Mike has been in my life. I am hoping for the court's mercy as I believe we should all be granted a second chance when we admit to and are sorry for something we have done.

Thank you for your time and attention.

Sincerely,



Michelle G. Lam

Les Pasamonte
Address and Phone

July 5th, 2018

Chief Magistrate Judge Joseph C. Spero
San Francisco Courthouse, Courtroom 6 – 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

RE: United States of America v. Michael Kim
Case No. 18-CR-0124

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Sheriff's Department, Mike unwaveringly took on whatever work suited him so that he could provide for the family and so that [redacted] could continue to grow up doing the things that she loved most.

In the 18 years that I've known Mike, I've watched him become an active and loving father, husband, uncle, brother and citizen. He continues to do all that he can to make things right and be the best version of himself. Whether it's the school system, athletics or just around town, Mike is known and loved where he lives in [redacted]. He's a cornerstone in our family and second father figure to my sons. He's never stopped being any of these things and I hope with the court's decision, that he be given the chance to continue.

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Jeff Lam
Address and Phone

7/3/2018

Chief Magistrate Judge Joseph C. Spero
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450 Golden Gate Avenue
San Francisco, CA 94102

RE: United States of America v. Michael Kim
Case No. 18-CR-0124

Dear Judge Spero,

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In closing, in the 25+ years I have known Mike, he has been one of the most respectable and hard-working individuals and deserves to continue to serve as a positive leader and member of this community.

Sincerely,



Jeff Lam

Mr. Paul E. Rapicavoli
Address and Phone
[redacted]

Wednesday, July 4th, 2018

Chief Magistrate Judge Joseph C. Spero
San Francisco Federal Building, Courtroom 6-15th Floor
450 Golden Gate Avenue
San Francisco, Ca. 94102

RE: United States of America vs. Michael Kim
Case No. 18-CR-0124

Dear Judge Spero,

Please accept this letter as a character reference for my long-time friend and co-worker, Mr. Michael Kim.

I am a retired supervisor from the San Francisco Sheriff's Department. I helped train Michael when he entered the Department in 1999. We worked in various assignments together until I retired in 2013. By that time, Michael had surpassed me in rank and was well on his way to a career on the fast track.

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Your Honor, I truly believe that Michael, through some misguided sense of loyalty to an old childhood friend, and with good intentions, made a single mistake that blew up in his face and has cost him his career, huge legal fees, a large circle of friends and co-workers, disgrace in the law enforcement community, nearly his marriage and potentially his freedom. I pray that the Court considers the totality of the circumstances when imposing sentence upon Michael Kim.

Respectfully,

Paul E. Rapicavoli

CERTIFICATE OF SERVICE

I hereby certify that on OCTOBER 5, 2018, the foregoing DEFENDANT'S MEMORANDUM IN AID OF SENTENCE VARIANCE was filed electronically and a copy was served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System. I declare under penalty of perjury that the foregoing is true and correct.

JONATHAN McDOUGALL, ESQ.

EXHIBIT C

Matthew Lujan
Personal address and telephone

July 24, 2018

Chief Magistrate Judge Joseph C. Spero
San Francisco Courthouse, Courtroom 6 – 15th Floor
450 Golden Gate Avenue
San Francisco, CA 94102

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Case No. 18-CR-0124

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Sincerely,

Matthew Lujan

Michelle G. Lam
[redacted]
Personal address and telephone number

July 10, 2018

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450 Golden Gate Avenue
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Case # 18-CR-0124

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Les Pasamonte
[redacted]

July 5th, 2018

Chief Magistrate Judge Joseph C. Spero
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[redacted]

7/3/2018

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Jeff Lam

Mr. Paul E. Rapicavoli
Address and telephone number
Address and telephone number
Address and telephone number
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Wednesday, July 4th, 2018

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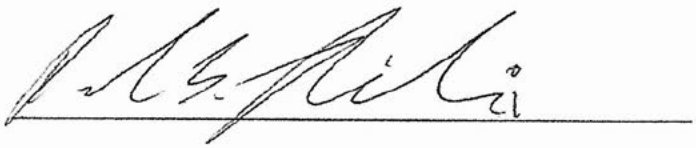
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Respectfully,



Paul E. Rapicavoli

SUPPLEMENT TO INVESTIGATIVE SUMMARY AND FINDINGS

Michael Kim

POST ID A63-W93
San Francisco Sheriff's Office
POST2410050

WRITTEN BY: Kevin P. Sherburne
July 2, 2025

This Supplement to Investigative Summary and Findings provides additional information related to the findings in the Investigative Summary and Findings dated May 2, 2025 ("ISF"). This Supplement does not alter the ISF– rather, it augments the analysis supporting the findings based on the interviews of Michael Kim (Respondent) and Ryan Dunnigan, Ph.D., who performed a secondary background psychological evaluation. The Division was unable to conduct these interviews prior to issuance of the Notice of Intent to Revoke Respondent's Certifications.[1]

Reasonable Grounds that Respondent is Unable to Serve Effectively as a Peace Officer

As stated in pages 22-26 of the ISF, reasonable grounds exist for regulatory action against Respondent. Respondent is unable to serve effectively as a peace officer. He is currently assigned to a patrol unit at Laguna Honda Hospital. In a patrol position, Respondent has the responsibility to maintain public safety, including enforcing laws. His role requires conducting preliminary and follow-up investigations, gathering evidence, interviewing witnesses and victims, making arrests, and testifying. In this role, he poses a risk to public safety as a currently employed peace officer in California and is unable to effectively perform fundamental duties as a peace officer based upon his dishonesty and the underlying reasons for his dishonesty because his lack of credibility precludes his ability to testify in a meaningful way. Specifically, any testimony the Respondent could offer would be subject to impeachment based on his criminal conviction for contempt of court based on his filing of a false declaration under penalty of perjury.

Even if Respondent were reassigned to a corrections position, he would still not be able to perform effectively. As a deputy assigned to corrections work, Respondent would still have to write reports, including reports for use of force. As referenced in Respondent's background information file, the San Francisco Sheriff's Office placed Respondent on unpaid leave in 2000 for 10 days and extended his probationary period by one year as a result of finding that he used excessive force when Respondent placed his hands on an inmate's neck. The public should be able to trust that Respondent's reports of use of force are accurate and truthful. Further, if assigned to corrections work, Respondent would have contact with the inmate population. Given his transgressions where he placed his personal loyalty to a convicted felon, Andy Li,

[1] Respondent initially declined to be interviewed on the basis of his Fifth Amendment rights. He ultimately agreed to be interviewed, although after the Division served the Notice of Intent to Revoke his peace officer certificates. On June 25, 2025, I interviewed Respondent. During my interview, Respondent did not assert any Fifth Amendment protections and answered every question I posed.

Dr. Dunnigan initially declined to be interviewed. After being served with a subpoena, Dr. Dunnigan agreed to be interviewed. On June 25, 2025, I interviewed Dr. Dunnigan.

above his professional obligations, the public should be able to trust that Respondent is above reproach.

Reasonable Grounds that Respondent's Lack of Credibility is Disruptive to San Francisco Sheriff's Office's Ability to Maintain Discipline and Uphold Public Trust

As stated in the ISF on pages 10, 19, and 22-26, Respondent lacks credibility and there are reasonable grounds for regulatory action. During his interview, Respondent stated that he wrote a memorandum to then-Chief Deputy Matt Freeman that repeated the lies he told FBI Special Agents in August 2014. Respondent's lies disrupted the San Francisco Sheriff's Office's ability to maintain discipline, which is necessary to upholding and maintaining public trust and a culture of accountability.

Respondent's statements during his interview demonstrated a lack of candor, lack of accountability, and lack of awareness of the egregious nature of his conduct. Respondent stated during his interview that he spoke with numerous people at the San Francisco Sheriff's Office, including people within the chain of command, who told him the department would "love to have [him] back." As also described in the ISF, Dr. Dunnigan wrote that Respondent told him that "the Sheriff and background personnel . . . were comfortable with him coming back and working there." Yet, when Respondent named individuals in the chain of command or background investigations unit who supported his return to the department, the only person who had any part in the hiring process was Sheriff Paul Miyamoto. Respondent's lack of credibility further illustrates his inability to serve effectively as a peace officer.

Respondent minimized his conduct throughout his interview. For instance, he blamed Andy Li's lawyers who "badgered" him to sign the materially false Declaration. He also stated that the ballistic vest he gave Li was old, thin, and would likely have been available for sale on the open market.

Dr. Dunnigan's Interview

Dr. Dunnigan would not have found Respondent suitable but for the letter from Paul Miyamoto supporting Respondent's candidacy with the San Francisco Sheriff's Office.[2] Dr. Dunnigan stated that letters from police chiefs and sheriffs were very unusual and Respondent's case included an "abnormal" process. Dr. Dunnigan stated that Respondent kept saying during the evaluation that he and Sheriff Miyamoto were very close and he would not have found Respondent suitable in the absence of the letter.

[2] Through counsel, Respondent provided me during his interview with a digital copy of the letter. The digital properties showed the author as Paul Miyamoto and the last date it was modified was 2/15/2024.

Dr. Dunnigan assessed that Respondent did not meet the POST Background Investigations Manual's Dimensions, which address moral character and other qualities essential to being a peace officer. In Dr. Dunnigan's assessment, Respondent displayed a lack of understanding of the gravity of his contempt conviction. Dr. Dunnigan concluded the risk of liability was too high to rehire Respondent but that, if the Sheriff wanted to accept that risk, Dr. Dunnigan relied on his statements in the letter supporting Respondent.

As stated in the ISF and in this Supplement, the clear and convincing evidence substantiated violations of California Penal Code Section 13510.8(b)(1) and POST Regulation 1205(a)(1). Reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation or suspension of Respondent's peace officer certificates pursuant to California Penal Code Section 13510.8.

From: Marie Masters
To: Sherburne, Kevin@POST
Subject: FW: Letters
Date: Wednesday, June 25, 2025 11:19:45 AM
Attachments: image003.png
Mike Kim letter 2024.docx
MKim LOR.docx

CAUTION: This email originated from outside of POST. Please do not click links or open attachments unless you recognize the sender. Report SPAM to the Helpdesk.

Marie S. Masters
Attorney at Law
Rains Lucia Stern
St. Phalle & Silver, PC
925.609.1699 Phone
925.609.1690 Fax
www.RLSlawyers.com

****
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****

Begin forwarded message:

> **From:** "Miyamoto, Paul (SHF)" <paul.miyamoto@sfgov.org>
> **Date:** February 15, 2024 at 4:20:14 PM PST
> **To:** Personal email address
> **Subject: Letters**
>
> First letter is the most recent. Sending the other one in case you don't have it anymore.

PM

Paul Miyamoto
Sheriff of the City and County of San Francisco
City Hall Room 456
1 Carlton B. Goodlett Place
San Francisco, CA 94102
Office: 415-554-7225
www.sfsheriff.com
Follow us on Twitter @sheriffsf https://twitter.com/SheriffSF
Like us on Facebook https://www.facebook.com/SFSheriff



SERVICE ★ PROFESSIONALISM ★ PRIDE

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To Whom It May Concern,

I am writing this recommendation on behalf of Michael Kim. I have known Mike for over seventeen years as a co-worker in the San Francisco Sheriff's Department. I have supervised Mike in the capacity of basically all levels of our Department's chain of command (as a Sergeant, Lieutenant, Captain, and Assistant Sheriff). In addition to regular duty assignments, we have served together in both the Department's Emergency Services Unit (ESU), and as members of the Special Response Team (tactical unit).

As for my direct interactions with Mike as a co-worker, he has always demonstrated loyalty and camaraderie to fellow Deputies. He possesses leadership attributes that come out in group dynamics. He has always been the first one there and the last one to leave. His experience and personality led him to provide valuable guidance to less-experienced Deputies, and contributed to a safer environment regardless of his assignment.

As a Sergeant, Mike further applied his leadership traits as he served in different assignments as a line supervisor. He had a reputation as a sergeant who completed tasks and held staff accountable for their actions (or inactions). He was very proficient at administrative requirements of supervisors as relates to payroll, staffing, personnel, and incident documentation. As the coordinator for the ESU, he was responsible for overseeing training and special duty assignments for four platoons (120 Deputies).

Perhaps the closest that I have worked with Mike, and the experience that most exposed me to the content of his character, was our work together on the SRT, the Department's SWAT team. Mike was a team leader and performed exceptionally well during critical incidents and highly stressful situations. He functioned especially well as a lead member, always willing to step into a void regardless of rank. During the many years that we have worked together on the team, the SRT has grown in its size, responsibilities, and expectations with his help and contributions.

On a personal level, Mike has always been loyal and committed to his family and friends. He is a great father to [redacted], and coaches her in softball. For many years, he has volunteered with me for the Self Help for the Elderly non-profit, and every Thanksgiving Day we coordinate delivery and serving meals to the elderly and infirm before spending time with our families. His commitment to this transcends an obligation to the job or Department, and is indicative of his good character.

Thank you for the opportunity to share my experiences with Mike. If you have any further questions, please feel free to contact me.

Regards

Paul Miyamoto

Captain, San Francisco Sheriff's Department

[redacted]

Cell [redacted]

To Whom It May Concern,

I am writing this letter on behalf of Michael Kim. I have known Mike for over 26 years, seventeen of those as a peer and co-worker in the San Francisco Sheriff's Office. I have supervised Mike in the capacity of basically all levels of our Department's chain of command (as a Sergeant, Lieutenant, Captain, and Assistant Sheriff). In addition to regular duty assignments, we have served together in both the Department's Emergency Services Unit (ESU), and as members of the Special Response Team (tactical unit). When he was no longer employed with the Sheriff's Office, we continued our friendship.

Mike continued employment with the City and County of San Francisco at the War Memorial Veteran's Building as a Building and Grounds Officer. His characteristics of leadership, experience and personality led to his eventual role as a supervisor.

His reputation as a Sheriff's sergeant continued into his role as a supervisor who completed tasks and held staff accountable for their actions (or inactions). He was very proficient at administrative requirements of supervisors as relates to payroll, staffing, personnel, and incident documentation.

Perhaps the closest that I have worked with Mike, and the experience that most exposed me to the content of his character, was our work together on the SRT, the Department's SWAT team. Mike was a team leader and performed exceptionally well during critical incidents and highly stressful situations. He functioned especially well as a lead member, always willing to step into a void regardless of rank.

On a personal level, Mike has always been loyal and committed to his family and friends. He is a great father to [redacted], and coaches her in softball. For many years, he has volunteered with me for the Self Help for the Elderly non-profit, and every Thanksgiving Day we coordinate delivery and serving meals to the elderly and infirm before spending time with our families. His commitment to this transcends an obligation to the job or Department, and is indicative of his good character.

As the elected Sheriff of San Francisco, one of my responsibilities is the hiring of sworn members of the Department. I am familiar with what Mike experienced both when he left the Sheriff's Office, as well as his experiences at the War Memorial Veteran's Building. I have no concerns at this time of bringing him back as a member of the Sheriff's Office.

Thank you for the opportunity to share my experiences with Mike. If you have any further questions, please feel free to contact me.

Regards

Paul Miyamoto

Sheriff of the City and County of San Francisco

Office [redacted]

Cell [redacted]

Commission on Peace Officer Standards and Training
860 Stillwater Road
West Sacramento, CA 95605-1603
www.post.ca.gov

Following is the record of an Administrative Interview conducted by Professional Conduct Central Bureau Law Enforcement Consultant Kevin Sherburne on June 25, 2025, with Michael Kim, who is the subject of this investigation. The interview was recorded and is being maintained by the Professional Conduct Central Bureau. The recording will serve as the true and accurate record of the statements made by Michael Kim. This transcript was AI generated by Axon software and reviewed by accuracy by Division Staff Services Analyst Jessica Seno.

[00:01]

Kevin Sherburne: And we're, we are recording. Um, good morning. My name is Kevin Sherburne. I'm a law enforcement consultant with the California Commission on POST. Today is June 25th and it's 10:32 in the morning. We are recording this interview, and I noticed that, uh, you also have, um, your interview for purposes of the recording and voice recognition. Um, I, I'd like to have everybody in the room state their name and their position. Um, I'm, I'm here with, uh, representative from POST also, and that is Carrie Woolley. Uh, Carrie, could you introduce yourself?

[00:33]

Carrie Woolley: Carrie Woolley, attorney for with Commission on Peace Officer Standards and Training.

[00:37]

Michael Kim: Michael Kim.

[00:39]

Kevin Sherburne: Okay. And?

[00:40]

Marie Masters: Marie Masters with Rains Lucia Stern.

[00:42]

Kevin Sherburne: Okay. Uh, but before we turned on the recording, I briefly described the process, and I'll repeat that process for the purposes of the recording. So I have some introductions, some admonitions to provide to you. I noticed that you're represented by counsel at the end of the admonitions. I'll ask if you have any questions about the process and, and we can answer those questions as – as to the best of our ability. Either you or your

counsel can ask those questions. And then I have questions for you because this is after all an interview. Um, and we're here today to talk about the, uh, investigation of serious misconduct that is being conducted by POST in, in, in me, on, on behalf of POST at the end of the interview process. If you have a, uh, um, statement that you would like to make that would help inform us on the decision that we, uh, may make in terms of, um, your peace officer certificates. It's a hundred percent voluntary on your part. Um, if you want, you can make that statement or if, if, uh, you so choose, your counsel can make that statement a very brief, um, sort of summary of, of your position. Um, so with that, um, I'm gonna give you some admonitions and then we'll start with the, uh, interview.

[01:46]

Kevin Sherburne: Um, so again, my name is Kevin Sherburne. I'm a law enforcement consultant with the Commission on Peace Officer Standards and Training. We refer to that as POST with me today is Carrie Woolley, who introduced herself earlier. The purpose of our meeting today is to interview you about the facts and circumstances involving an allegation or allegations into alleged serious misconduct that may potentially violate California Penal Code section 13510.8. Um, you, uh, you were given notice of this interview and we coordinated that through, um, your counsel, Ms. Masters. We are recording the interview. Any statements you make here will be used by POST in connection with its duties. The recording helps us to ensure that all of your statements are completely and accurately transcribed and is authorized by Commission, uh, Regulation 1206. If you want, um, if, if you're recording, I notice you're recording. Marie. If, if -

[02:34]

Marie Masters: Yes.

[02:34]

Kevin Sherburne: Your recording doesn't work, will you give you a copy of ours and I would ask the return favor if, if you will.

[02:39]

Marie Masters: Yes, of course.

[02:40]

Kevin Sherburne: Thank you. Um, uh, we do notice that you have a representative, Mr. Kim, um, who is here today. Uh, the representative, your legal counsel, is allowed to observe the proceedings is not allowed to ask questions, make comments, or interfere with the conduct of the interview. And we've, we've worked with Ms. Masters before, Ms. Masters do you agree to these terms? And -

[02:59]

Marie Masters: Yes. I mean, I, I understand I'll be able to ask like, follow up questions, but I'm not the one leading the interview.

[03:05]

Kevin Sherburne: Yeah. Yeah.

[03:06]

Marie Masters: Okay.

[03:06]

Kevin Sherburne: Thank you. If you need to take a, a break to use the restroom or attend a personal needs, you know, we, we, um, will allow you to do that. Please ask first and before we allow the break, we would just ask that you answer any pending questions before we take that break. Um, because POST is not your employee agency, the, uh, California Government Code sections, uh, 3303 and forward, also known as POBAR, um, does not apply. Your agency may or may not have policies that mandate your cooperation in the investigation. We at POST act independently from your agency, and we represent the, um, people of the State of California. Um, so any refusal to cooperate with the investigation, including but not limited to the refusal to answer questions, may result in a finding that you engaged in serious misconduct. Um, that is to say a failure to cooperate. That is to say, with the exception of the lawful exercise of rights granted under the U.S. Constitution or California Constitution or any other law is not gonna be considered a, a failure to cooperate. Um, are you prepared to answer questions today, Mr. Kim?

[04:10]

Michael Kim: Yes.

[04:10]

Kevin Sherburne: Is there any reason why you wouldn't be able to give accurate and truthful information to the questions that we ask of you?

[04:16]

Michael Kim: No.

[04:16]

Kevin Sherburne: Okay. Um, um, keep in mind, I'm sorry, go ahead.

[04:19]

Marie Masters: Just before we, um, kind of go a little further.

[04:21]

Kevin Sherburne: Yeah.

[04:21]

Marie Masters: I just wanted to add for the record that we're, um, where you're for what, I guess is effectively a, a compelled interview. And I understand, um, you know, you addressed that in your admonition. Um, but we are here for a compelled interview, essentially under threat of decertification pursuant to the failure, a potential failure to cooperate, uh, charge. So I just wanna make that clear for the record.

[04:44]

Kevin Sherburne: Thank you. Um, please keep in mind that dishonesty in connection with an investigation of police misconduct, including serious misconduct investigations, is itself a violation of Penal Code section 13510.8(b)(1). Um, with that in mind, do you answer or do you agree to answer our questions truthfully today?

[05:04]

Michael Kim: Yes.

[05:04]

Kevin Sherburne: Um, to maintain the integrity of the investigation, we ask that you and your counsel not discuss the, um, questions asked, the facts discussed in the interview with anybody other than your

legal counsel or is, is otherwise required or authorized by law. Do you agree to comply with that?

[05:19]

Michael Kim: Yes.

[05:19]

Kevin Sherburne: Thank you. Do you have any questions about today's process?

[05:22]

Michael Kim: No.

[05:23]

Kevin Sherburne: Okay. So with that, um, if you could briefly tell me just to set the stage, your professional background, the kind of broad strokes, where are you currently assigned?

[05:39]

Michael Kim: Uh, so, uh, currently right now?

[05:41]

Kevin Sherburne: Yeah.

[05:41]

Michael Kim: I'm working for the [inaudible] Sheriff's Department. Uh, uh, I'm, uh, newly hired deputy sheriff on probation, and I'm, uh, assigned to look the, uh, San Francisco Sheriff's Department patrol unit at Laguna Honda Hospital on day shift.

[05:59]

Kevin Sherburne: Okay. And when did you start with the Sheriff's Office?

[06:04]

Michael Kim: Uh, you mean previously or?

[06:07]

Kevin Sherburne: Uh, the current iteration?

[06:09]

Michael Kim: Uh, December 21st with, uh, ‘24 was my hire date.

[06:14]

Kevin Sherburne: Okay. And did you have a break in service before that?

[06:17]

Michael Kim: Yes, I did.

[06:17]

Kevin Sherburne: Okay. What was that? Uh, when, when, what was the reason for that break?

[06:22]

Michael Kim: Uh, I resigned from the Sheriff's Department in 2000 and, uh, ‘16.

[06:28]

Kevin Sherburne: Okay.

[06:28]

Michael Kim: I think it was, I think like, I think Fe - February or something. February 2016.

[06:37]

Kevin Sherburne: Okay. Was there then a, a pending internal affairs investigation against you at that time?

[06:44]

Michael Kim: I do not know what I, I was going through, uh, a federal, uh, case at that time.

[06:50]

Kevin Sherburne: Okay. When you say a federal case, what do you mean?

[06:53]

Michael Kim: It was, I was charged with, uh, uh, actually they didn't charge me yet, but I was interviewed by the, uh, the federal government, uh, the FBI.

[07:02]

Kevin Sherburne: Okay.

[07:03]

Michael Kim: On maybe it was like 2014 or so. And, uh, it was for, uh, my, uh, falsification of declaration that I wrote.

[07:16]

Kevin Sherburne: Okay.

[07:16]

Michael Kim: For it was, uh, for Andy Li.

[07:19]

Kevin Sherburne: Okay.

[07:19]

Michael Kim: And so the, the federal government came, the FBI came to my workplace when I was working for the, the chief, uh, chief, uh, the custody division.

[07:28]

Kevin Sherburne: Okay.

[07:29]

Michael Kim: So I, they did an interview and, uh, after the interview, uh, I talked to, I actually, I attended an attorney through my union representation.

[07:41]

Kevin Sherburne: Okay.

[07:42]

Michael Kim: And talked to my attorney. And one, after that, we called the FBI or the, uh, AUSA.

[07:48]

Kevin Sherburne: Okay.

[07:48]

Michael Kim: To talk to them about, uh, about what I said.

[07:52]

Kevin Sherburne: Okay.

[07:52]

Michael Kim: And so we had, uh, we set an appointment and I think it was a couple of months after that we did talk to them. And I went in with my attorney and we had a sit down and then, and had an interview.

[08:04]

Kevin Sherburne: Okay. So earlier you used the word federal case. Was that civil or criminal?

[08:09]

Michael Kim: It was a criminal case.

[08:10]

Kevin Sherburne: Okay. Were you ultimately charged?

[08:12]

Michael Kim: Yes, I was charged.

[08:13]

Kevin Sherburne: Okay. What was the resolution of that case?

[08:15]

Michael Kim: It was, I was charged with a one count of contempt of court.

[08:19]

Kevin Sherburne: Okay.

[08:19]

Michael Kim: And, uh, I was placed on, uh, probation, uh, uh, had to pay a $30,000 fine and 300 hours of community service.

[08:29]

Kevin Sherburne: Okay. Was that based on a finding by a jury or a guilty plea?

[08:35]

Michael Kim: It was a guilty plea.

[08:36]

Kevin Sherburne: Okay. And what was the dates of your service with the Sheriff's Office, uh, prior to your 2016 re - resignation?

[08:46]

Michael Kim: It was, uh, 1999 till 2000 and ‘16.

[08:51]

Kevin Sherburne: ‘16. Okay. What was your, what were your duties in assigned duties? Kind of like, I spent two years doing this, four years doing that, one year doing this. Can you generally ballpark toward the end of your career what you were doing?

[09:03]

Michael Kim: Well, at the end of my career, I was, uh, let's see. I was the uh, Emergency Service Unit coordinator for the Sheriff's Department. And I basically dealt with mutual aid and pretty much anything that came up within the city and county of San Francisco that the Sheriff deemed that we need to participate.

[09:23]

Kevin Sherburne: Okay.

[09:23]

Michael Kim: So, I was in charge of about 120, uh, deputy sheriffs. And there, it's a collateral duty.

[09:29]

Kevin Sherburne: Okay.

[09:30]

Michael Kim: And so if there's an, any event that comes up, let's say like the occupy -

[09:34]

Kevin Sherburne: Okay.

[09:35]

Michael Kim: Like all the Oakland Mehserle, all those were the ones when they would, uh, other agencies would ask for assistance.

[09:42]

Kevin Sherburne: Sure.

[09:43]

Michael Kim: I would write the operation order, and I would hire all the staff. My partner and I would hire all the staff, and we would, uh, deploy the, the deputies out there.

[09:52]

Kevin Sherburne: What was your rank at that time?

[09:54]

Michael Kim: I was a sergeant at the time.

[09:55]

Kevin Sherburne: Okay. And did you have a direct report to the Chief Deputy or to the Sheriff?

[10:01]

Michael Kim: Ye – Yeah. Some, like, I had a, I had a Captain and then I had a Chief. They were all in the same office, and so anything arises, the Chief would call me, or the Captain would call me, or the Sheriff would call me and tell me whatever, uh, if they wanted answers directly instead of waiting for the chain.

[10:17]

Kevin Sherburne: Okay.

[10:18]

Michael Kim: So, yes. And some, some days I did have access to the Sheriff and they would call me.

[10:22]

Kevin Sherburne: Okay.

[10:22]

Michael Kim: When -

[10:23]

Kevin Sherburne: Who was the sheriff at that time?

[10:31]

Michael Kim: Let's see. It could, it could, let's see, I went to Sheriff Hennessy, Sheriff Mirkarimi, Sheriff Vicki Hennessy. Yeah, those were the three.

[10:41]

Kevin Sherburne: Okay.

[10:41]

Michael Kim: At the time. So I, uh, that was not in the issue. And then the last two years of, I think 2012 to four, maybe ‘13 or ‘14, I was working as the executive assistant to the Chief of Custody, which is, uh, Matthew Freeman and that, and there, uh, there I pretty, I did pretty much anything, everything for the Custody Division.

[11:06]

Kevin Sherburne: Okay.

[11:06]

Michael Kim: So, if anything, with the jail operations, jail staffing, uh, uh, overtime, anything that has to do with the jail division was, I was working under the Chief.

[11:19]

Kevin Sherburne: Between 2016 and the time that you were rehired by the Sheriff's Office, did you have any employment?

[11:25]

Michael Kim: Yes.

[11:26]

Kevin Sherburne: What was your employment?

[11:27]

Michael Kim: I worked for, I think I worked for Executive Shield for about a year who was a security company. And, and concurrently about six months after I left the, the Sheriff's or the city county, I got hired back with the city county as a security, uh, supervisor for the War Memorial. So.

[11:45]

Kevin Sherburne: Okay.

[11:46]

Michael Kim: So I walked across the street from City Hall. So I worked there until, uh, I was hired with the Sheriff's Department.

[11:54]

Kevin Sherburne: Okay.

[11:54]

Michael Kim: So it was almost like nine and nine years or so.

[11:57]

Kevin Sherburne: Okay. Um, did Andy Li ever work for Executive Shield?

[12:06]

Michael Kim: Uh, I, I don't think so. I tried to, uh, uh, he told me that he got a guard card and he wanted to try to, you know, come clean at work. When he came out of, uh, prison, he wanted, I always thought that he was, I was trying to help him out to get - live a clean life. He had a kid, he had two kids, a daughter and a son. It's like, Hey, he can't keep on going in and outta jail 'cause you're not gonna, you, you can't survive. So when he told me he got a guard card, I tried to have my, my, my friend, uh, at the

time was, uh, uh, the exec, CEO. It was Danny, uh, Gonzalez, and tried to ha have him, uh, see if he could hire him there.

[12:44]

Kevin Sherburne: Okay. What year was that?

[12:47]

Michael Kim: Uh. Probably like 2000, like ‘14, ‘13, somewhere around there.

[12:59]

Kevin Sherburne: Okay.

[12:59]

Michael Kim: Before, before. Um.

[13:02]

Kevin Sherburne: Okay.

[13:02]

Michael Kim: The, before they got raided.

[13:07]

Kevin Sherburne: In, um, if we could go to August of 2014, um, earlier you stated that you were interviewed with by the FBI.

[13:14]

Michael Kim: Yes.

[13:15]

Kevin Sherburne: So, I'll represent that. It was in, there was one interview in August 2014, another in December of 2014.

[13:20]

Michael Kim: Yes.

[13:21]

Kevin Sherburne: Um, at that time you told the FBI that you had written a memorandum to your Chief. I'm assuming that's Matt Freeman.

Um, do you recall what I'm talking about when I say you wrote a memorandum?

[13:31]

Michael Kim: Yes.

[13:31]

Kevin Sherburne: Okay. Um, was, was that person that you addressed the memorandum to Matt Freeman?

[13:36]

Michael Kim: Yes, it was.

[13:38]

Kevin Sherburne: And, um, what did you state in that memorandum?

[13:41]

Michael Kim: I stated the same thing I said to the FBI, I said that I, uh, left, uh, I left my vest at, uh, Mimi's place. I was going to a bar. I left at his place. My wife was supposed to pick it up. My wife forgot to pick it up. It's been in her car. And then when the feds, uh, raided, uh, Andy's house, my vest was in there. So I told, uh, Matt the same thing.

[14:04]

Kevin Sherburne: Okay. Did you keep a copy of that memorandum?

[14:07]

Michael Kim: No, I did not.

[14:08]

Kevin Sherburne: Okay. Do you know where that memorandum might be? Uh, a copy of it, whether it's hard copy, like a piece of paper or a digital version of it on a computer?

[14:16]

Michael Kim: Uh, I, I do not know.

[14:17]

Kevin Sherburne: Okay.

[14:18]

Michael Kim: Because, uh, I know, I'm not sure if I gave him an email or I handed it to him.

[14:22]

Kevin Sherburne: Okay.

[14:23]

Michael Kim: And, uh, I mean, I guess you guys can go back to my, uh, work email.

[14:29]

Kevin Sherburne: Mm-hmm [affirmative].

[14:29]

Michael Kim: I'm not sure how that works, if it's in the cloud. I, I, I really don't know.

[14:33]

Kevin Sherburne: Okay. Are you in touch with Matt Freeman?

[14:35]

Michael Kim: No. Ever since he retired, I mean, even before he retired, I haven't, like when I left the Sheriff's Department, I really didn't, uh, keep in touch with him.

[14:43]

Kevin Sherburne: How long ago would you think that would be?

[14:46]

Michael Kim: Probably over, over like 10 years, I think.

[14:49]

Kevin Sherburne: Okay. So, he retired maybe 10 years ago in 2015ish?

[14:52]

Michael Kim: Well, I, I left the department and -

[14:54]

Kevin Sherburne: Okay.

[14:54]

Michael Kim: In 2016.

[14:55]

Kevin Sherburne: Yeah.

[14:56]

Michael Kim: And I didn't, and I, I talk, I still talk to some people like, but I, I didn't talk to Matt.

[15:01]

Kevin Sherburne: Okay.

[15:02]

Michael Kim: And so, yeah. And Matt retired and ever since that, no one's been able to get a hold of him. I think he's out of, I think he might have went to Nevada or something, or outta state.

[15:21]

Kevin Sherburne: During that August of 2014 interview, you told the FBI that you went with Andy Li to engage in debt collections that Andy Li was, um, undertaking at casinos. Um, what part did you play in the debt collection?

[15:35]

Michael Kim: Uh, I didn't even know he was collecting debt. I, he was, hey, let's go over here. I'm, uh, I went with him and every time I, I didn't know he was collecting, 'cause they all, he spoke Chinese. Every time he went with to talk to people, he was all in Chinese. I don't speak Chinese. I speak, I speak a little bit of Korean. And so he would go there and, I mean, I didn't see him with, like I said to the feds. I didn't see him with any weapons or anything. It was just cordial stuff that he would talk to them. And

next thing you know, he'll, when we leave, he'll say, hey, you know, here's, here's a hundred bucks or so. Okay, cool. And then, and then we'll go to, it's like, it wasn't like, hey, let's go collect the debt.

[16:10]

Kevin Sherburne: Okay.

[16:11]

Michael Kim: Because I'm like, hey, I'm going to, you know, we're gonna go out tonight. Okay, cool. We're gonna go to a club, or we're gonna go to a bar or whatever. And he goes, oh, hold up. Let me, I need to go somewhere for a sec. Can you come with me? I'm already in the car.

[16:22]

Kevin Sherburne: Did you wait in the car or did you go inside?

[16:23]

Michael Kim: Sometimes I went in the car. He goes, I'll be right back. And sometimes, you know, we'll go inside, 'cause some of the places had food, like, like Artichoke Joe's, and, uh, Lucky Chance at restaurants in there. Sometimes we'll go in there.

[16:34]

Kevin Sherburne: Okay. When he gave you the money, did you ever ask him, hey, where'd, why are you giving me this money?

[16:39]

Michael Kim: Not, not really.

[16:40]

Kevin Sherburne: Okay.

[16:42]

Michael Kim: I didn't get a chance to ask.

[16:44]

Kevin Sherburne: Do you consider yourself naive?

[16:49]

Michael Kim: Sometimes. Sometimes. Like when, I mean, when he comes with Andy, like, I always try to help him. I know he had a bad, like, like high school when he was growing. His mom, his mom died when he was young. And, uh, his, you know, his dad was always working. And his dad, you know, gambled a lot. And I always try to help him out. Like, you know, like he, I, I would work at my mom's, my parents' restaurant, you know, bring him food and stuff like that. You know, always try to make sure that he's tried to stay like straight and arrow. But I mean, with that, yeah. I think I am with him, 'cause I'm always trying to make him a better person.

[17:29]

Kevin Sherburne: Okay.

[17:29]

Michael Kim: But he always makes bad decisions.

[17:33]

Kevin Sherburne: You said, um, that you speak Korean, some Korean and that he was speaking Chinese?

[17:38]

Michael Kim: Yes.

[17:38]

Kevin Sherburne: Um, do you know, how do you know it was Chinese?

[17:42]

Michael Kim: 'Cause he speaks Chinese and there's, they're not speaking Korean. They're not - he, he speaks Cantonese.

[17:48]

Kevin Sherburne: Okay.

[17:48]

Michael Kim: So….

[17:51]

Kevin Sherburne: Do you know any words in Cantonese?

[17:54]

Michael Kim: Some.

[17:54]

Kevin Sherburne: Yeah. And so, are you familiar with the sound of the Cantonese language? And you could surmise that was Cantonese?

[18:05]

Michael Kim: Yeah.

[18:05]

Kevin Sherburne: Or did Andy Li ever tell you it was Cantonese?

[18:07]

Michael Kim: No, I could like, uh, like, I guess pick it up. I, I guess the sound like being between.

[18:13]

Kevin Sherburne: Okay.

[18:14]

Michael Kim: Uh, Cantonese, Vietnamese, Korean, or Japanese.

[18:16]

Kevin Sherburne: Okay.

[18:17]

Michael Kim: I, I don't know how I can, uh, explain that, but -

[18:19]

Kevin Sherburne: Okay.

[18:19]

Michael Kim: If I hear it, like I can, you know, that's, that's Vietnamese or that's Cantonese.

[18:24]

Kevin Sherburne: Okay.

[18:25]

Michael Kim: But do I know the meaning of it? I have no idea.

[18:27]

Kevin Sherburne: Okay. Until the time that you first became a deputy with the Sheriff's Office in 1999, did you engage in other activity with Li or anyone else including Shrimp Boy? Like debt collections?

[18:45]

Michael Kim: No.

[18:45]

Kevin Sherburne: Okay.

[18:46]

Michael Kim: Because I, once I be, uh, gotten the Sheriff's Depart, I really, I, I don't think I saw him that much. 'cause he, I think he was in and out of prison. But I, I I, I was working on my career. I was, you know, I had, I, I had a daughter. I was caught coaching softball, so I didn't have a lot of time. It was always work and, uh, and, uh, home with, with my kids.

[19:10]

Kevin Sherburne: When was the last time you had any contact with, um, Andy Li?

[19:18]

Michael Kim: I think, I'm think, uh. The last time I had contact with him was when I was at home and we're talking with his after he got arrested. So I was talking with, we're, I was talking with his wife, and then she hands me the phone and tells me, talk to this person. I'm like, who the heck are you talking about? I talked, it was Andy.

[19:45]

Kevin Sherburne: Okay.

[19:46]

Michael Kim: And I was like, I can't talk to you. I think they probably have that on the recording, the feds. And that's one of the things that I totally forgot about.

[19:52]

Kevin Sherburne: Okay.

[19:53]

Michael Kim: When the feds asked me about it.

[19:54]

Kevin Sherburne: Okay. So if I have this correct, you're at your house and Andy Li is also at your house in person?

[20:00]

Michael Kim: No.

[20:00]

Kevin Sherburne: Did she?

[20:01]

Michael Kim: He was, Mimi was.

[20:03]

Kevin Sherburne: Oh, Mimi's your wife?

[20:04]

Michael Kim: No.

[20:05]

Kevin Sherburne: I'm sorry.

[20:05]

Michael Kim: Mimi. Mimi is Andy's wife.

[20:07]

Kevin Sherburne: Okay.

[20:08]

Michael Kim: So, she was at, at our house, and she was worried about, uh, Andy being in jail.

[20:14]

Kevin Sherburne: Okay.

[20:15]

Michael Kim: And. I was trying to like, trying to help her, like, hey, with her childcare?

[20:19]

Kevin Sherburne: Yeah.

[20:20]

Michael Kim: And she was stressed out.

[20:21]

Kevin Sherburne: Yeah.

[20:21]

Michael Kim: And she was crying and she was like, at the house, you know, I told her, come on over to the house.

[20:25]

Kevin Sherburne: Okay.

[20:25]

Michael Kim: And I was like, okay.

[20:27]

Kevin Sherburne: Yeah.

[20:27]

Michael Kim: What can I do? And they wanted, she was asking if I could put my house up for his bail.

[20:32]

Kevin Sherburne: Okay.

[20:32]

Michael Kim: And I, and I said, uh, I said, no, I can't do that.

[20:35]

Kevin Sherburne: Yeah.

[20:36]

Michael Kim: And then, so, she was talking to him and she gave me the phone.

[20:39]

Kevin Sherburne: I see.

[20:39]

Michael Kim: And I next, like, I didn't want to talk to him. I -

[20:41]

Kevin Sherburne: Yeah.

[20:42]

Michael Kim: Didn't want anything to do with him.

[20:43]

Kevin Sherburne: Do you know where he was at that time?

[20:44]

Michael Kim: Uh, I think he was in somewhere in j - uh, whatever the -

[20:47]

Kevin Sherburne: So, in jail himself.

[20:48]

Michael Kim: He was in jail somewhere. I don't know where he was, but -

[20:50]

Kevin Sherburne: Okay.

[20:51]

Michael Kim: There was a jail phone call.

[20:53]

Kevin Sherburne: Okay.

[20:53]

Carrie Woolley: I'm sorry. What year was that?

[20:56]

Michael Kim: It was 2 – 2000 and I think it was ‘14.

[20:58]

Carrie Woolley: Okay.

[20:59]

Michael Kim: ‘14.

[21:00]

Kevin Sherburne: Okay.

[21:00]

Michael Kim: I think so.

[21:01]

Marie Masters: Thank you.

[21:04]

Kevin Sherburne: After you became a deputy, did Andy Li request any sensitive law enforcement information? And, and so by that, what I mean is it's anything that's not public, anything that could potentially compromise law enforcement operations, investigations,

sources, operations, safety of individuals, or was subject to a non-disclosure agreement such as CLETS.

[21:23]

Michael Kim: Yeah. He, he tried asking me to run a plate for him.

[21:27]

Kevin Sherburne: Okay.

[21:28]

Michael Kim: And I said, I can't run a plate. That's illegal.

[21:30]

Kevin Sherburne: Okay.

[21:31]

Michael Kim: You run a CLETS plate and it's not during, within your scope of the investigation, you're gonna, that's a misdemeanor. You're gonna get in trouble before you can get -

[21:37]

Kevin Sherburne: Okay.

[21:37]

Michael Kim: I've – I've seen some of the people – officer get fired for that. So.

[21:40]

Kevin Sherburne: Okay.

[21:41]

Michael Kim: I'm not, I never, I've never gave Andy any information, sensitive information or anything that jeopardizes any investigation, any of that stuff.

[21:49]

Kevin Sherburne: Okay.

[21:49]

Michael Kim: What he did ask me was, he asked me for if he could, uh, he's, a couple of these people are, you know, he, he thinks they're in jail. What, what? You know, can you help me? Can you, can you find out? And the things I can do is I'm like, yeah, I could help you with that. Because it's public information. Anything that was public that you can call 'cause before we had our computer system, basically you call the jail and ask him, hey, so-and-so in jail, and you can give him he's yes or no, uh, the bail information and the charge that's open to any – anybody. So, he was trying to ask me, hey, can you, can you ask, can you find out these two people? I'm like, yeah. Okay. Did you call the number? You can call the public number. He didn't know. So, I called the – I called the number, which is, uh, for us, it's, we have the, he, we have the, the CJ nine intake officer. We have law enforcement number. So, I called the number. I asked, hey, so, and can you look, uh, I forgot who I spoke with. Can you look up at these people in jail and what information they have? I – I'm not sure if they were in jail or not, but that's the only information I gave them, which is public record that anybody can get. I don't, I've never given anybody any information. I never jeopardized my career by giving people information or that sensitive information. A lot of the things I do, when I was in the SSU and the SWAT team, we had a lot of sensitive information working with other agencies, which I, it's always like, it's a need to know. If you don't need to know, I won't give to even within law enforcement.

[23:20]

Kevin Sherburne: Thank you. When did you decide that you were gonna reapply for the San Francisco Sheriff's Office deputy position?

[23:37]

Michael Kim: I, well, when I got my, when I was finished with my, uh, probation, I got my probation done early 'cause I, I, uh, they, uh, guess the feds told me, the probation officer said, hey, you, you are within your rights. You did everything you're supposed to do. You were not in, never got in trouble again. So, I went and, uh, I talked to some of the, uh, deputy sheriffs. I still keep in touch with a lot of the staff, a lot of the, uh, the chiefs that I worked with. Uh, so, you know, they're, some of them were asking, hey, are you gonna come back to work? I'm like, okay, yeah. If you guys want me to, I'll be I'll, I'll come back. I would love to, but I have to go through the whole process. It's not, they're not gonna gimme any special treatment for what I was doing. Like, hey, I applied and, uh, and I went through the process and I got hired.

And then I know I read in your, uh, notes that I applied the first time and you wanted to know why I was not hired.

[24:28]

Kevin Sherburne: Mm-hmm [affirmative].

[24:29]

Michael Kim: Why was it, I forgot what you, what you said [unintelligible] something days that I wasn't hired. I, uh, I was, I was, um, my friends in the department asked me, hey, do you wanna come back? If you, you know, we'd love to have you back. I'm like, I would love to come back. You know, I talked to some of the, uh, other deputies that was there, other, uh, people in the, in the chain of command. And they say, yeah, if, you know, I would love to have you back. So I did apply. And within that first, uh, the go around, I would say that I didn't get hired if, I don't know why I wasn't hired. The way that the department does is that it's a list. The city does a list. I was on the list, and they can pick anybody from the list. So the first, the first time I didn't get hired, I wasn't picked from the list. So now how come I applied again? Well, I, the list expired. Once the list expires, it's you, they can't hire from that list. So the second time I applied and I was on, I was, I still took the test like everybody else got on the list. And then they hired me and they went through the process.

[25:31]

Kevin Sherburne: Okay.

[25:31]

Michael Kim: So.

[25:32]

Kevin Sherburne: The first time that you applied reapplied was April of 2021. How long before that, at that point, you knew that you had to undergo a Requal course.

[25:42]

Michael Kim: Yes.

[25:42]

Kevin Sherburne: To be recertified because your certificate had lapsed become inactive. Um, when did you apply for that Requal course?

[25:51]

Michael Kim: So, with that, I, I don't, I was, I wasn't very clear how the POST Requal was 'cause I had, 'cause no one could tell me exactly like what the Requal was, how you go about it, if it's three years after you leave appointment or you get like a one time thing. I didn't know how that worked. So, I did some research on it and then I, uh, called POST and, and applied. And they told me, yeah, I, I fit the, I, um, within the, within the guidelines. And, uh, you, uh, I guess they told me I qualified for it and I applied and I got, and I requalf.

[26:28]

Kevin Sherburne: Okay.

[26:29]

Michael Kim: With the -

[26:30]

Kevin Sherburne: Uh, what school did you go to?

[26:32]

Michael Kim: Uh, I went to, uh, uh, uh, was it San Jose? I think it's.

[26:37]

Kevin Sherburne: Is it South Bay Regional Training Consortium?

[26:39]

Michael Kim: Yeah.

[26:39]

Kevin Sherburne: Does that sound familiar?

[26:39]

Michael Kim: Yeah. I think so.

[26:41]

Kevin Sherburne: Um, so if the class starts hypothetically on June one, how much in advance of June one would you have to apply? Two months, three months, five months?

[26:52]

Michael Kim: I, I don't know.

[26:53]

Kevin Sherburne: Okay.

[26:53]

Michael Kim: It all depends on when, I guess, I guess it was when they, uh, the class closes if they have enough, enough people.

[27:01]

Kevin Sherburne: People, okay.

[27:02]

Michael Kim: And they close. So they have, if you go on the website, they'll have I guess whatever day semesters they.

[27:09]

Kevin Sherburne: Okay.

[27:09]

Michael Kim: They, uh, have open enrollment.

[27:12]

Kevin Sherburne: Yep.

[27:12]

Michael Kim: And so if you're, if they fill it, it gets closed. And if it's not filled, you can still apply for it.

[27:17]

Kevin Sherburne: Okay.

[27:17]

Michael Kim: So, I don't, I don't remember when it may, a couple of months.

[27:21]

Kevin Sherburne: Okay. Earlier you had mentioned that you talked to people, other deputies with whom you were in touch with.

[27:26]

Michael Kim: Yes.

[27:26]

Kevin Sherburne: But you also used the words chain of command. What, what people in the chain of command at the sheriff's office did you talk to who encouraged you to reapply?

[27:35]

Michael Kim: Uh, like, uh, uh, uh, McConnell, Kevin McConnell. Uh, he's one of the guys, you know, one of, he said he's Chief Deputy. I, I spoke with him.

[27:47]

Kevin Sherburne: Okay.

[27:48]

Michael Kim: I have, uh, uh, who was the other, uh, let's see. Talked like, uh, Lieutenant, uh, Luquin. Okay. Uh, he, he's, he used to be in the SWAT team with me.

[28:02]

Kevin Sherburne: Okay.

[28:02]

Michael Kim: So him and like, uh, Ron Chu, who's a deputy. And there's, there's, I, I still keep in touch with a lot of my friends, uh, uh, Jin Choi, all those guys are people that I work with. And, uh, and was in my SWAT team with me and worked in the department.

[28:18]

Kevin Sherburne: Okay.

[28:18]

Michael Kim: So they, you know, they, they're, hey, you should come back. When are you gonna come back? How are you gonna, you know, work? I'm like, I'm not sure.

[28:24]

Kevin Sherburne: Okay.

[28:24]

Michael Kim: I wasn't sure.

[28:26]

Kevin Sherburne: Um, uh, Kevin McConnell, was he then the Chief Deputy, or is he currently, or what was his status at that time?

[28:32]

Michael Kim: He – yeah, he, he was, I, he was a captain and then I think he became a chief.

[28:38]

Kevin Sherburne: Okay.

[28:39]

Kevin Sherburne: So -

[28:39]

Kevin Sherburne: Do you know what his role was? Was he in charge of patrol? What was he in charge of?

[28:43]

Michael Kim: He was in charge of the field services, uh, division.

[28:52]

Kevin Sherburne: Did you ever talk to, um, any, uh, then Sheriff about coming back?

[28:58]

Michael Kim: I did. I did talk to Sheriff. Sheriff also, uh, uh, wrote me a recommendation letter too.

[29:04]

Kevin Sherburne: Okay.

[29:05]

Michael Kim: I know I – you guys saw that letter too?

[29:08]

Kevin Sherburne: When did he write you that letter?

[29:15]

Michael Kim: I think he wrote it like, like 2024 some, somewhere around 2024 or so.

[29:25]

Kevin Sherburne: Okay.

[29:25]

Michael Kim: Because, uh, this is when I was going through the whole process and I was talking with, uh, Dr. Dunnigan, my psych, um, during my psychological test. And, uh, I, I asked, uh, talked to, uh, talked to the Sheriff and asked him, would you write me a recommendation letter? And he wrote me a letter, recommendation letter.

[29:45]

Kevin Sherburne: Was the letter specifically for Dr. Dunnigan or was it in general, like if you went to apply for General Electric, IBM or Target or some other employer?

[29:54]

Michael Kim: It was, it was for, uh, uh, Dr. Dunnigan, for specific for that.

[30:00]

Kevin Sherburne: Okay. I have a copy of that letter here that I'd like to show you. And I think you've seen it before.

[30:08]

Michael Kim: Yes.

[30:12]

Kevin Sherburne: I do have a copy of it, I promise. I may have stapled it to something else. Forgive me. Sorry. Hold on. Too many papers. Sorry.

[30:45]

Marie Masters: It's okay.

[30:46]

Kevin Sherburne: Wrong file folder.

[30:50]

Carrie Woolley: Somewhere in here?

[30:57]

Kevin Sherburne: Okay. So, I'm, I'm showing you now a letter for purposes of the recording. Um, uh, what, what is that letter? Can you take a moment and read it and kind of familiarize yourself with it, please? What, what is that document that I've just given you?

[32:02]

Michael Kim: This is a letter that, uh, uh, Sheriff Miyamoto wrote, uh, for me to give to Dr. Dunnigan.

[32:09]

Kevin Sherburne: Okay. Um, who actually put ink to paper on that, or fingers to a keyboard. Did you write that for Paul Miyamoto or did he sit down on a keyboard?

[32:21]

Michael Kim: I, I did not write this.

[32:22]

Kevin Sherburne: You did not write that?

[32:23]

Michael Kim: Yeah.

[32:23]

Kevin Sherburne: Um, so did you ask him specifically for a letter of recommendation to give to Dr. Dunnigan or?

[32:32]

Michael Kim: You know what? I, I don't, I don't, I don't, I don't know.

[32:36]

Kevin Sherburne: Okay.

[32:36]

Michael Kim: I don't know if I, I might have asked him, can you gimme a recommendation letter or, I'm not sure. But, uh, this is, uh, what he, uh, uh, sent me. And I know, uh, I, uh, I think it was 'cause I was talking to Dr. Dunnigan, 'cause when I talked to him, and as you already know, I did not pass my, my, uh, the Department's, uh, psych test.

[33:01]

Kevin Sherburne: Okay.

[33:02]

Michael Kim: And then, so they gave me, uh, I appealed it and got my second evaluation when I got my second evaluation with Dr. Dunnigan. And he was telling me that everything looks good. Your, your numbers looked all within, you know, it's good 'cause you already work or law enforcement. But the only thing that he couldn't, uh, pass me was because I have a pending investigation. And I told, and at the time, I told him, my investigation will be, hopefully it'll be concluded and I'll be exonerated from the false claim. And I asked him, would you be able to, would I be able to, you know, no. Would he be able to once I, uh, pass, but once I was the investigation complete, will he able to change his evaluation of me? And he says, if you, if you get that done, if it gets, uh, completed, uh, within the next, was it week or so, he has no problem doing it. So this thing took longer than several weeks. It was, I think in January, maybe late December or early January that I was exonerated from the charges from this, uh, frivolous, uh, uh, employee. So I called him back and I said, hey, Dr. Dunnigan, uh, I've completed, uh,

the thing I was exonerated from all of this, will you be able to gimme a, an, uh, a revised, uh, recomme - , uh, what do you call it? The, the, the evaluation? And he said was, no, he can't, because it's been so long, it's been several months. So what I have to do is I have to pay him again and take another test, which I did. And then he said that these letters were, uh, the DHR letter, uh, which is Department of Human Resource in San Francisco. Uh, they exonerated me from all the false claims. So he said, these are, this is perfect, and this is what he needed. So that's why when I, when I, I took the test over again, and that's why he recommended me, that I was suitable.

[35:00]

Kevin Sherburne: Suitable.

[35:00]

Michael Kim: For that because I guess he said that it was within the, the POST guide perimeters.

[35:06]

Kevin Sherburne: Okay.

[35:06]

Michael Kim: That, that the, the pending investigations, he couldn't, he couldn't approve it.

[35:11]

Kevin Sherburne: Okay.

[35:11]

Michael Kim: So.

[35:12]

Kevin Sherburne: How did you select Dr. Dunnigan in the first place?

[35:15]

Michael Kim: They, the, the, the city, not the city, but the, uh, the sergeant from backgrounds, they gave me whole, I guess gave me a list, or this is the website. This is, uh, POST approved, uh, uh, people.

[35:30]

Kevin Sherburne: Okay.

[35:30]

Michael Kim: So, I clicked on the POST approved, looked at it and was, I think it was one, was the closest one to my, to me.

[35:36]

Kevin Sherburne: Yeah.

[35:37]

Michael Kim: Or one, what was, that was able to take me as soon as possible instead of waiting four months. So -

[35:43]

Kevin Sherburne: Okay.

[35:43]

Michael Kim: I picked him.

[35:44]

Kevin Sherburne: Okay.

[35:44]

Michael Kim: It's closest. And it was, I think all, everything was online.

[35:48]

Kevin Sherburne: Okay.

[35:48]

Michael Kim: Taking the test while with, I guess it's a video monitor.

[35:51]

Kevin Sherburne: Okay.

[35:52]

Michael Kim: So, they had a proctor and watching us while we're taking the test with the live camera.

[35:57]

Kevin Sherburne: Okay.

[35:57]

Michael Kim: So.

[35:58]

Kevin Sherburne: Did you have any relationship doctor patient relationship prior to the S – San – San Francisco Sheriff's psych eval?

[36:05]

Michael Kim: Um, I, no. I don't even know who, I never even seen the person.

[36:09]

Kevin Sherburne: You never met him in person or?

[36:11]

Michael Kim: It was always over email or on the phone.

[36:13]

Kevin Sherburne: Okay.

[36:13]

Michael Kim: Or, or, uh, the evaluation part was over the, uh, it was FaceTime or Teams.

[36:21]

Kevin Sherburne: Okay. Okay. Virtual.

[36:22]

Michael Kim: Yeah.

[36:22]

Kevin Sherburne: Um, or computerized.

[36:24]

Michael Kim: Yeah.

[36:24]

Kevin Sherburne: Did you ever have any relationship with him as a doctor patient after the San Francisco Sheriff's Office? Uh, psych eval?

[36:31]

Michael Kim: No.

[36:32]

Kevin Sherburne: Okay. Was the only relationship then, would it be fair to say the only relationship you had with him was because you were undergoing the psych eval through San Francisco Sheriff's Office?

[36:42]

Michael Kim: Yes.

[36:42]

Kevin Sherburne: Okay.

[36:46]

Michael Kim: And then after that, when he approved me, uh, the city, I, guess the DHR called me and says, hey, we we're going to get you, I guess the city doctor, which is the, uh, arbitrator.

[36:57]

Kevin Sherburne: The third.

[36:57]

Michael Kim: The third, yeah.

[36:58]

Kevin Sherburne: Right. Okay.

[36:59]

Michael Kim: So, I took the test. I get, I think that person was somewhere in Washington or something, Washington State. And, uh, that's what the, that's what the DHR, uh, gave me. Tell him to call him. So I made the call, uh, they gave me the set appointment up, and it was pretty much like the same format. Took the test over the computer and had an interview with, with, uh, uh, the doctor.

[37:22]

Kevin Sherburne: Okay.

[37:22]

Michael Kim: Yeah.

[37:23]

Kevin Sherburne: So, in November of 2023, Dr. Dunnigan does his first evaluation of you, that evaluation. Was deems not suitable?

[37:33]

Michael Kim: Yes.

[37:33]

Kevin Sherburne: In February or March of 2024, he does a second evaluation. That evaluation was suitable. In between that time I heard you say that you had conversations with Dr. Dunnigan. Did you also have conversations with Paul Miyamoto?

[37:51]

Michael Kim: I, I, I, I, I think I did. I could have.

[37:54]

Kevin Sherburne: Okay.

[37:55]

Michael Kim: Because my, uh, my, my current boss I was working at, at, uh, uh, War Memorial, she knew that I was going to the Sheriff's Department, and she knew that, uh, she, she just got into that position. Okay. So, and she was, uh, uh, she didn't know me very well, but, uh, she knew of me because I was one of the

supervisors there. And so, uh, she knew I was going through the process of going to the Sheriff's Department, and she was, I was giving her feedback, you know, what my status was 'cause as a, as a super, as a -

[38:29]

Kevin Sherburne: Mm-hmm [affirmative].

[38:29]

Michael Kim: Managing director, you want to know who's, who's staying, who's leaving.

[38:31]

Kevin Sherburne: Mm-hmm [affirmative].

[38:32]

Michael Kim: So I gave her an update and I told her about the, uh, I think I told her about, uh, the, the, uh, uh, the evaluation because she was, she knew because of the, of the harassment claim that I was being charged with 'cause they sent me, uh, basically for almost a year, a year or so, about a year, less than a year that I was working from home because, uh, they, this female come in out sexually harassing her. And then they found out that there were all the investigation that all these other, uh, department, uh, like that wasn't our department. But, uh, tenants and, uh, course coming up and asking where I was 'cause no one knew where I was. I went to work and they escorted me out. That's never, that has never happened to me in my life. But because it was a sexual harassment claim. So, after the whole process, I had, I had people coming in my defense saying that Mike has never done any of this stuff. And Mike, and, and I've always, we've always seen Mike being professional at his work. He's never looked at people sideways, never tried to sexually harass anybody. So, she was well informed of that. And, uh, I, she was the first one, I guess as a department head, the investigation comes in, they let them know.

[39:55]

Kevin Sherburne: Mm-hmm [affirmative].

[39:56]

Michael Kim: So, she, you know, she came and, you know, I think, I think she called me 'cause and 'cause I would check in with her once a week. So, she called me and says, hey, you've been all exonerated.

[40:04]

Kevin Sherburne: Mm-hmm [affirmative].

[40:04]

Michael Kim: I'm like, great, thank you. 'Cause this is, and then she was like, I know how hard this was for you, but I'm like, yeah, 'cause I didn't do anything. I know things that I do and harassment and sexual harassment. I don't do any, I know the policy of the city. And that's, and I, and the thing is, I told, I, I teach kids and most of the girls that I, uh, I coach softball are from 10 to 17 year olds all the way from high school. And I coach girls softball. And I always try to empower them, you know, don't let any of these don't be a bully. Da da da da. All the stuff that I try to touch my kid.

[40:35]

Kevin Sherburne: Mm-hmm [affirmative].

[40:36]

Michael Kim: So that's what I had been doing. And my boss at the time, Kate, uh, Kate, so knew all of the stuff that I was going through. And I was going to the Sheriff's Department and she was helping me. And she was encouraging me. And I'm, I'm, and I think, uh, she was talking to Paul too 'cause they're two department heads.

[40:52]

Kevin Sherburne: Okay.

[40:52]

Michael Kim: They go to meetings all the time.

[40:53]

Kevin Sherburne: Yeah.

[40:53]

Michael Kim: So, she wanted to know what my status was. If I'm, what if, what, where am I at and how long do I have, does she have until they lose me to the Sheriff's Department.

[41:03]

Kevin Sherburne: Okay. Did you talk to Paul Miyamoto between November of 2023 and February 2024, about Dr. Dunnigan's evaluation of not suitable?

[41:14]

Michael Kim: Yes, I think I did.

[41:15]

Kevin Sherburne: Okay.

[41:16]

Michael Kim: And then I asked him, hey, can you write me a recommendation letter?

[41:18]

Kevin Sherburne: Okay.

[41:18]

Michael Kim: And, and he, and he wrote me a letter.

[41:20]

Kevin Sherburne: Would that have been in person, by phone, over email?

[41:23]

Michael Kim: Uh. Could, it could have been over by phone.

[41:26]

Kevin Sherburne: Okay.

[41:26]

Michael Kim: Yeah, because I, I, I don't, I didn't see him personally for like, I guess a while. The only time I saw him, him was, the last time I

saw him was, uh, probably when I got hired, when he, when we were, when he pinned the badge on me.

[41:41]

Kevin Sherburne: Okay.

[41:42]

Michael Kim: Where the, the, what they call the ceremony at City Hall.

[41:44]

Kevin Sherburne: Yeah. Um, how long after you asked him for a letter of recommendation, did you get this letter?

[41:50]

Michael Kim: Uh, I'm not sure what, uh, it could have been like a couple days or could be a week. I'm not sure.

[41:56]

Kevin Sherburne: Okay. I, I, I noticed that this letter is addressed to, to, to whom it may concern. And earlier you stated that it was written specifically for Dr. Dunnigan.

[42:06]

Michael Kim: Yeah.

[42:06]

Kevin Sherburne: Um, did you tell him this was for Dr. Dunnigan? I need a letter of recommendation for Dr. Dunnigan.

[42:13]

Michael Kim: Uh, I'm, I, I'm not sure if I, I'm not sure.

[42:17]

Kevin Sherburne: Okay.

[42:18]

Michael Kim: I could, it could, I could have, I'm not sure.

[42:19]

Kevin Sherburne: Okay. I also noticed that there's no signature on this letter. Did you, um, did you talk to him about, hey, I need a signature on this letter?

[42:27]

Michael Kim: You know what, I did not.

[42:29]

Kevin Sherburne: Okay.

[42:29]

Michael Kim: I, I asked him, he sent it to me in an email.

[42:31]

Kevin Sherburne: Okay.

[42:31]

Michael Kim: In a word, uh, Word document.

[42:33]

Kevin Sherburne: Okay.

[42:34]

Michael Kim: And then I printed that out and I actually, uh, I, I think I've, yeah. With, with Dr. Dunnigan, I just, uh, took a copy of it and forwarded it to him.

[42:43]

Kevin Sherburne: Okay. So, you didn't forward Paul Miyamoto's email to you, to Dr. Dunnigan. You drafted a new email, started a new thread, and sent that to Dr. Dunnigan attaching this letter?

[42:55]

Michael Kim: I, yeah, I think so.

[42:56]

Kevin Sherburne: Okay.

[42:56]

Kevin Sherburne: Yeah.

[42:57]

Kevin Sherburne: Okay. Did you talk to, uh, talk to, uh, Paul Miyamoto about the fact this was not on Sheriff's letterhead?

[43:04]

Michael Kim: You know what I, at, I think at the time I did not, I did not, uh, ask him about all that stuff.

[43:09]

Kevin Sherburne: Okay.

[43:10]

Michael Kim: Uh, you know, I, I asked him for a letter. He gave me a letter. I sent it over to Dr. Dunnigan.

[43:15]

Kevin Sherburne: Okay.

[43:16]

Michael Kim: And, and then the Dr. Dunnigan, I, uh, uh, that's, that's question. I think he raised that question too with me.

[43:24]

Kevin Sherburne: Okay.

[43:24]

Michael Kim: About, hey, this is, you know, not a letterhead it's not signed. And he said, did you write it? I'm like, I'm going through the whole process and this whole, and why would I write my own letter?

[43:34]

Kevin Sherburne: Okay.

[43:34]

Michael Kim: So, he says, I'll call, I'll call the Sheriff.

[43:37]

Kevin Sherburne: Do you know if he called him?

[43:38]

Michael Kim: Uh, I'm not sure. I'm not sure if he did or not.

[43:41]

Kevin Sherburne: Okay.

[43:42]

Michael Kim: But he told me he was gonna call the Sheriff to authenticate the -

[43:45]

Kevin Sherburne: Okay.

[43:46]

Michael Kim: The, uh, letter. And I'm like, yeah, please do. He's got his numbers there. Please give him a call.

[43:51]

Kevin Sherburne: Okay.

[43:51]

Michael Kim: Because I'm like, why would I write a, if I'm going through the process, and if I write something with the, with the Sheriff's name on it or, you know, recommendation letter, why would I do that? If I did, I would, I, I wouldn't even be working here.

[44:04]

Kevin Sherburne: Yeah.

[44:04]

Michael Kim: Because they'll, they'll investigate. They'll find out that if he did or didn't, it was a very simple question. He did, he wrote the letter, or he didn't write the letter. And so, uh, he told me that he was gonna call them.

[44:15]

Kevin Sherburne: Okay. Do you recognize that cell number as his work cell or his personal cell?

[44:21]

Michael Kim: Uh, you know what? I don't know. I, if I, you know, I could check my phone. I don't remember phone numbers anymore.

[44:27]

Kevin Sherburne: Uh.

[44:27]

Michael Kim: So.

[44:27]

Kevin Sherburne: Yeah, would you please take a minute?

[44:29]

Marie Masters: Yeah.

[44:29]

Michael Kim: Because usually an eight five zero is a department phone.

[44:32]

Kevin Sherburne: Okay.

[44:33]

Michael Kim: But.

[44:43]

Marie Masters: Do you have the email showing from, um, showing that Sheriff Miyamoto sent you this?

[44:49]

Michael Kim: Yes, I do. I do.

[44:51]

Marie Masters: Is it contained an electronic attachment of the Word document?

[44:54]

Michael Kim: Yes. It's, this is the Word document that came out. Five eight two four. Yes. This is his cell phone number. Uh, work cell number.

[45:13]

Kevin Sherburne: Work cell. So I, I understood you to answer Ms. Masters's questions, which were gonna be my questions. Do, do you still have that email? Um, would you be able to provide that to us either through counsel or directly?

[45:25]

Michael Kim: Yes. I think my counsel has a copy of that email.

[45:28]

Kevin Sherburne: Okay. Okay.

[45:29]

Michael Kim: Or the email thread.

[45:30]

Kevin Sherburne: Okay.

[45:31]

Marie Masters: And then I can forward you the actual electronic copy. So you can see that the metadata shows.

[45:34]

Kevin Sherburne: Okay.

[45:34]

Marie Masters: That it was all author [inaudible].

[45:47]

Kevin Sherburne: Do you have an, the email that you sent to Dr. Dunnigan with the letter?

[45:52]

Michael Kim: Yeah, I, I, I, I, I think so. She should.

[45:55]

Kevin Sherburne: Okay. Uh, if, if you don't already have that, um.

[45:58]

Marie Masters: No.

[45:58]

Kevin Sherburne: Marie, could we get a copy? Could, could, could I ask for your client to give that to you and send it to us?

[46:03]

Marie Masters: Yes.

[46:03]

Kevin Sherburne: Please. Thanks. Um, did Paul Miyamoto tell you what he was gonna do with respect to the status of your background application in between that timeframe of November 2023 and February of 2024?

[46:21]

Marie Masters: No.

[46:21]

Kevin Sherburne: Okay. The reason I'm asking that is because you got a rejection letter on November 30, 2023. So technically the application is done, like there's no, no more to do with it from the sheriff's office perspective, or were you aware of anything that they were working on in between that rejection based upon Dr. Dunnigan's non suitability finding and then your second evaluation with him?

[46:47]

Michael Kim: I have.

[46:48]

Kevin Sherburne: Not aware.

[46:49]

Michael Kim: I have no idea. I don't know how that's like their background and their process over there. I don't know.

[46:54]

Kevin Sherburne: Okay. In Dr. Dunnigan's report, which I'll, I'll give you a copy of, and I think your counsel had already has a copy of this. Oh, and I, I found my original letter that I was looking for, and it was -

[47:08]

Michael Kim: Uh, should have brought my reading glasses.

[47:10]

Kevin Sherburne: Attached to that. Um, you can borrow mine if you want.

[47:13]

Michael Kim: [laugh] Um, thanks.

[47:14]

Kevin Sherburne: He says in his report, um, he had, quote, no concerns at this time of bringing him back as a member of the sheriff's office. The, SO, and that the Sheriff's Office was aware of the conviction for contempt, quote, and still were interested in having him come back to work for the department. And then, uh, further, quote, he and the department feel it would be appropriate for him to again, apply. They were comfortable with him coming back and working there. So, other than your conversations with Paul Miyamoto, who within the chain of command at Sheriff's Office, did you have conversations with who had a say in the hiring process?

[47:56]

Michael Kim: I think the person has a say, and it usually everything goes with, with the, with the Sheriff.

[48:00]

Kevin Sherburne: Okay.

[48:01]

Michael Kim: Whatever he says, it goes.

[48:02]

Kevin Sherburne: Okay.

[48:03]

Michael Kim: I'm sorry. Here you go.

[48:04]

Kevin Sherburne: Uh, thank you.

[48:05]

Michael Kim: Yeah.

[48:08]

Kevin Sherburne: So, when Dr. Dunnigan says, you said that you had conversations with chain of command, would it, uh, was the only person in the chain of command that you had conversations with? Um, uh, Paul Miyamoto?

[48:22]

Michael Kim: I talked, yeah, I talked to Paul.

[48:23]

Kevin Sherburne: Okay.

[48:24]

Michael Kim: I talked, I talked to, uh, Kevin. I talked to, uh, uh, Luke Quinn, and all those guys were, you know, I talked to them.

[48:32]

Kevin Sherburne: Okay.

[48:32]

Michael Kim: And, and usually the person that has the most say in it, I mean, it's, it's the, the Sheriff. The Sheriff will say he, who he hire who doesn't hire. Right. So when I, uh, uh, I think I, I talked to Ron

too. Ron was usually the person I always talk to as a friend of mine.

[48:49]

Kevin Sherburne: Okay.

[48:49]

Michael Kim: So, I always talk to him. And so they're like, you know, Ron doesn't have a say who hires who gets hired or not. He just says, hey, you know what, if you want to come, you can get hired, Mike. You know?

[48:58]

Kevin Sherburne: Okay.

[48:59]

Michael Kim: You know, as long as you go through the process. Uh, I talked to Paul about it. I said, and he says, yeah, I don't have problem. As the letter says here, he doesn't have a problem with me coming back. He knows my, he knows my history. He knows, uh, uh, uh, I guess we worked together for almost like 20 something years together. He knows my family, he knows me well. He knows my character.

[49:21]

Kevin Sherburne: Okay.

[49:21]

Michael Kim: So, he was like, hey, if you know, if, if you, uh, you know, if you go through the whole process, we're, if you we're not gonna expedite anything for you, you gotta go through like everybody else that comes to the hiring process. So.

[49:35]

Kevin Sherburne: Okay. Earlier you said that Dr. Dunnigan had told you that you would've passed except for the fact that there was a pending investigation that was outside of the POST requirements. But in Dr. Dunnigan's report, he says he very likely would not have considered you suitable except for the fact of this letter from

Paul Miyamoto. Those two things don't seem to square. How would you reconcile those two things?

[50:06]

Michael Kim: He never said that to me on that part. He, this is what he said to me. This what he said to me.

[50:11]

Kevin Sherburne: Okay.

[50:11]

Michael Kim: He told me, hey, you know, you, uh, passed all the, uh, the testing requirements.

[50:18]

Kevin Sherburne: Okay.

[50:19]

Michael Kim: And the only thing I can't pass you with is because you have a pending investigation. That's what he told me. I'm not sure what he, maybe he would've, whatever. He was different than what he told me.

[50:31]

Kevin Sherburne: Okay.

[50:32]

Michael Kim: And if I knew that, I would've said, then, why would you then, don't recommend me. Don't, hi – don't hire me.

[50:36]

Kevin Sherburne: Right.

[50:37]

Michael Kim: And I could be still working at the War Memorial.

[50:40]

Kevin Sherburne: Okay.

[50:40]

Michael Kim: It's a city job, but that's not what he told me.

[10:31 AM / 50:43]

Kevin Sherburne: Okay. H – how do you spell your daughter's name? Your first first name?

[50:49]

Michael Kim: Name. Name .

[50:51]

Kevin Sherburne: Okay. How's it spelled in this letter?

[50:53]

Michael Kim: Uh.

[50:56]

Kevin Sherburne: Do you need my glasses, then?

[50:58]

Michael Kim: No, ICIC. Uh, Name . My, my daugh -

[51:02]

Kevin Sherburne: That, is the letter spelled correctly? The, the, the, is the spelling of the name in the letter correct?

[51:09]

Michael Kim: The, it's, that's, that's a common spelling for Name .

[51:12]

Kevin Sherburne: Okay.

[51:12]

Michael Kim: But my, my daughter has a different name.

[51:15]

Kevin Sherburne: A different spell -

[51:15]

Michael Kim: A it's Partial Name, my wife thought that was unique.

[51:17]

Kevin Sherburne: Okay.

[51:18]

Michael Kim: So.

[51:18]

Marie Masters: And I'd just like to ask if, um, this interview is released anywhere that her name would be redacted?

[51:26]

Kevin Sherburne: Absolutely. We do that as a matter of routine and pursuant to law. So, yes. How did you hear that Dr. Dunnigan gave you a suitable finding? The second, the, the, when he finally did the suitable?

[51:41]

Michael Kim: He told me.

[51:42]

Kevin Sherburne: He told you? Okay.

[51:43]

Michael Kim: Yeah. When, when the interview was over, he told me.

[51:46]

Kevin Sherburne: Oh, right then and there.

[51:47]

Michael Kim: Yeah.

[51:47]

Kevin Sherburne: Okay.

[51:50]

Michael Kim: And he says, I think he told me that he would send that over to, uh, uh, the backgrounds investigator once we're done with the interview.

[51:58]

Kevin Sherburne: Okay.

[52:00]

Kevin Sherburne: After you talked to Dr. Dunnigan and heard the, the suitability finding, did you have any conversations with Paul Miyamoto? Did you call him? Did he call you?

[52:13]

Michael Kim: Uh. You know what, I'm not, I'm not sure.

[52:15]

Kevin Sherburne: Okay.

[52:15]

Michael Kim: I, I, I could have said, hey, I passed. But I know, I, I think I also let, uh, my, uh, my supervisor or my, the direct, uh, managing director.

[52:27]

Kevin Sherburne: Yeah.

[52:27]

Michael Kim: Of, uh, of my job, Kate's office. I might have texted. I'm not sure.

[52:31]

Kevin Sherburne: Okay.

[52:32]

Michael Kim: There's a lot of things I'm not sure about on that. I -

[52:37]

Kevin Sherburne: What conversations have you had with Paul Miyamoto about the serious misconduct investigation?

[52:45]

Michael Kim: Well, uh, I don't think I had like a, like a sit down. Like, like, hey Paul, this is what happened. Uh, like a full in depth. I think he, uh, knew from, uh, uh, he probably got more information from the feds or people, or other law enforcement agents that talked to him. I and from, uh, uh, probably was who would hear on the news and stuff like that.

[53:09]

Kevin Sherburne: Okay.

[53:10]

Michael Kim: But I, I don't think I ever sat down with him and said, hey, you know, this is exactly what happened. You know, I said, I, I made, I made a mistake. I, I messed up.

[53:20]

Kevin Sherburne: Okay.

[53:20]

Michael Kim: You know.

[53:21]

Kevin Sherburne: So, um, I, I guess I'm not talking about the FBI investigation. I'm talking about POST's investigation. So, at some point POST sent you a letter saying, oh, hey, you, you're under investigation for serious misconduct, the licensing aspect of it.

[53:33]

Michael Kim: Oh, okay. [Sneeze from Marie Masters]

[53:34]

Kevin Sherburne: God bless you.

[53:34]

Marie Masters: Thank you.

[53:35]

Kevin Sherburne: The licensing aspect of it, did you talk to him at any point at about that?

[53:41]

Michael Kim: It was, uh, it was a, I think it was very brief 'cause they, they, I guess the undersheriff called me. Because I guess they were notified that I was, that, that you guys are going to decert me or trying to.

[53:58]

Kevin Sherburne: Okay.

[53:59]

Michael Kim: So, uh, I, I, I did, uh, had, let's see, I did have a, a conversation with him in his office with, uh, with, with, uh, Sergeant Perez was in there too. He was, uh, uh, personnel manager.

[54:17]

Kevin Sherburne: Okay.

[54:18]

Michael Kim: So, we did have a conversation, uh, of, uh, not, not, not about the POST stuff. Uh, I think the conversation was that, what, I mean, what can I do? Like if, if you guys, you know, decide to take my POST away.

[54:34]

Kevin Sherburne: Okay.

[54:34]

Michael Kim: It's like, uh, am I gonna retire? Am I, am I gonna, like, I could surrender my, surrender my POST. And so we, we, I think there was a discussion on that, uh, what's gonna, what would happen.

[54:46]

Kevin Sherburne: Okay.

[54:47]

Michael Kim: And the other thing was that, uh, the publicity of it, if it goes in public record publicity, and I, and I told Paul, and I told the, the Sergeant that everything's out in the open. I mean, everything that's there that I've, that I've done, it's most people reading from the newspaper, they never, you know, people, people don't know, really know what happened, just what the newspaper says. And that was it.

[55:10]

Kevin Sherburne: Okay. When was this conversation approximately?

[55:14]

Michael Kim: Uh, it was within the last, uh, I think last couple of months, I think. But I, I, I could, yeah. I'm not really sure. I can check my calendar.

[55:26]

Kevin Sherburne: Would – would you please?

[55:27]

Michael Kim: Yeah.

[55:27]

Kevin Sherburne: March.

[55:27]

Michael Kim: In May? [inaudible].

[56:40]

Michael Kim: Should be May. Should be May.

[56:48]

Michael Kim: Oh, it was, uh, May 13th.

[57:01]

Kevin Sherburne: Okay. Did you give them a copy of the POST investigative summary and findings?

[57:15]

Michael Kim: No, I think you guys sent, you guys sent him a copy, whatever that you guys sent to him. I did not.

[57:22]

Kevin Sherburne: Okay.

[57:22]

Michael Kim: I didn't give him a copy.

[57:23]

Kevin Sherburne: Okay.

[57:23]

Michael Kim: I asked, I think I asked him, do you have a copy? They should have sent you one. And I think it might have been just, uh, uh, whatever, I, I don't know, a letter.

[57:30]

Kevin Sherburne: Okay. Okay. Um, when you talked about your friend Ron, um, I think you had mentioned his last name was Chu. I just want to confirm that I heard that correct?

[57:42]

Michael Kim: Yes.

[57:42]

Kevin Sherburne: How do you spell that?

[57:43]

Michael Kim: C-H-U.

[57:45]

Kevin Sherburne: C. Okay.

[57:45]

Michael Kim: C-H-U.

[57:46]

Kevin Sherburne: Okay. And, um, you know, I think, I don't, I don't have any other questions for you now, Mr. Kim, at this point, it's 11:29. If, um, if you have a statement, if you want to take a brief break and confer with counsel to make an, an informed decision about whether to make a statement on your own, or Marie, if you want to, you can continue. Or if you want to take a five minute break, we can take a break.

[58:12]

Marie Masters: Um, if it's okay, I'll just ask my follow up questions and maybe take a break.

[58:16]

Kevin Sherburne: That's fine.

[58:17]

Marie Masters: Okay. Uh, let's see. Um, so I think earlier we discussed that there were two FBI interviews, and I think you said 2020, uh, 2014. Is that correct?

[58:38]

Michael Kim: Yes.

[58:38]

Marie Masters: Okay. Um, what was the purpose of the second one, at least on, on your part?

[58:46]

Michael Kim: The second invest? The second interview was, we initiated the, uh, the interview and, um, for me, uh, after the, after I spoke with, uh, the feds the first time, and then when I got home, it, I felt like really, uh, I felt bad. It was like, you know, I shouldn't have, you know, it, uh, lied to them of the investigation. So, uh, I got, uh, talked, called my union, got the attorneys, and then we tried to go in there and correct my mistakes. I made a mistake and we're gonna correct it and go in there and, and let them know that, you know, what I did was wrong and we're gonna, you know, go and correct everything that I did and go and tell the truth of what happened. And that's why, uh, I guess, uh, we're trying to, uh, schedule a, a meeting with them and it took a while and, uh, 'cause they were, I think, busy with other cases

that went on. So, we went in there and I went and talked to them.

[59:48]

Marie Masters: Um, was that decision to come forward part of a plea deal?

[59:52]

Michael Kim: No. And the feds never gave me a plea deal. And, uh, uh, I mean, the feds would've went and gave me pretty much, uh, well, a felony for everything. They don't use, they don't make deals. And I didn't go there and make a deal. They, I went there early and admitted what I did and cooperated with, with the feds, and they, and they gave me a, a, a misdemeanor contempt of court.

[01:00:25]

Marie Masters: Let's see. Earlier, um, I think there was mention of an investigation at the job that you worked between resigning, um, from the Sheriff's Office and being re-employed at the Sheriff's Office. Now, um, there, do you know what the outcome was or the findings were of that investigation?

[01:00:43]

Michael Kim: Uh, when I worked at War Memorial?

[01:00:45]

Marie Masters: Mm-hmm [affirmative].

[01:00:46]

Michael Kim: Yeah, it was, uh, the finding was that I was not, uh, uh, I was exonerated. I didn't do make, I didn't make all those claims that she's doing. Uh, the person, the female that made the claim, I think she was terminated. And then her, the boss, which is my security boss, his name's Omar Castillo, he was the boss, and he did not like me from the get go. And he's been trying to get rid of me for a long time. And so he, he fabricated all these, uh, uh, you know, misinformation, lies about me. And, uh, he tried to get other people to be involved in those, uh, lies that he made statements about. So, when the, when the new management director came in, which is his boss, they, he, they found out that this guy actually, he wasn't telling the truth. He was lying. So he was, I think he was also, uh, let go. And to find out that later

when the fe -, when the female was released, she went and told another supervisor that I, she was only here for one reason, and one reason was to come after me. And that, that she was, she also told, uh, the other supervisor that she was Omar's cousin, which nobody knew. So, uh, after she was let go, I guess the other information came out, but I was not in the office. So, I think the managing director knew all that information coming through.

[01:02:15]

Marie Masters: Um, the charge that we discussed earlier for contempt of court, was that a felony or misdemeanor?

[01:02:21]

Michael Kim: It was a misdemeanor contempt of court.

[01:02:30]

Marie Masters: Um, earlier you talked about, um, how you, there were occasions when you went to a, like a casino with, with Andy Li or, you know, similar places. Um, can you give us kind of an estimate of how old you were at the time, or like what years this was taking place? Just kind of a little, little context there.

[01:02:50]

Michael Kim: It's, it's, it's going to be like, like, like end of my end of high school or like, like within the first one or two years of our [inaudible], 19 and 20, 18, 19 or 20?

[01:03:04]

Marie Masters: Um, would it be fair to say that someone in their late teens is a bit more naive than someone who sits as you are now?

[01:03:13]

Michael Kim: Yes. I did. Like, most of the time I worked at my parents' restaurant. I played sports, played football, baseball, uh, swam. And 90% of the time I was at my parents' restaurant working. And then some days I would get out, be able to go out.

[01:03:27]

Marie Masters: Okay. Um, that's all I have.

[01:03:30]

Kevin Sherburne: Can, can I follow up on, so we, we heard the word exonerated at the mem - War Memorial, and I know that under, um, uh, police or sheriff's office rules for internal affairs, there is also the term exonerated as a finding, a possible finding from an IA, internal affairs investigation. Was that finding of exonerated at the War Memorial the same definition as what, what we would commonly understand in the police world?

[01:03:55]

Michael Kim: I think so.

[01:03:56]

Kevin Sherburne: Okay.

[01:03:56]

Michael Kim: I think that this, 'cause this didn't come from the War Memorial, it came from Department of Human Resources. They're like the big, the big HR over, over, overall.

[01:04:04]

Kevin Sherburne: Okay.

[01:04:04]

Michael Kim: Overall, the whole city.

[01:04:05]

Kevin Sherburne: The whole city.

[01:04:06]

Michael Kim: So, they have an investigator, they do their investigation.

[01:04:08]

Kevin Sherburne: Okay.

[01:04:09]

Michael Kim: And they found six months for them to do investigation. And they said that there was, you know, the claims were, it was false claims.

[01:04:17]

Kevin Sherburne: Right.

[01:04:18]

Michael Kim: And so.

[01:04:19]

Kevin Sherburne: Okay.

[01:04:19]

Michael Kim: When they interviewed, I think pretty much most of the security people and also all other people that came forward, uh, that went talked to the, uh, my boss or managing director.

[01:04:30]

Kevin Sherburne: Okay.

[01:04:30]

Marie Masters: We can try and get a copy of that to ensure we're not confusing exonerated with unfounded.

[01:04:38]

Kevin Sherburne: That's what I, that's what I'm -

[01:04:40]

Marie Masters: Yeah.

[01:04:40]

Kevin Sherburne: That's what I was -

[01:04:40]

Marie Masters: So let me. Um.

[01:04:41]

Kevin Sherburne: Um, interested in. Thank you.

[01:04:42]

Marie Masters: Yeah, I'll see about getting a copy of that.

[01:04:44]

Kevin Sherburne: Okay. Thank you. Um, and, and your counsel had asked you about the second interview, the December 20, 20, 2014 interview with the FBI. And I heard you say that it was on your, on your, um, initiation, um, that the FBI's FD 302 states that it was part of a proffer. Um, uh, is that your understanding of the context of purpose of that interview?

[01:05:08]

Michael Kim: I don't know what a proffer is.

[01:05:09]

Kevin Sherburne: Okay. So let me, if you just bear with me a minute. So I'm looking at the FD 302, which is the FBI, and I think we provided this to you as part of the attachments. In, in, in the first paragraph, it says, prior to beginning the interview, Franson, who's the US? AUSA, the prosecutor. McDougall, who was your private investigator and -

[01:05:48]

Michael Kim: It was attorney. It was attorney.

[01:05:50]

Kevin Sherburne: Uh, attorney. I'm sorry. I'm sorry. So, there was Franson, Jim McDougall and Michael Kim reviewed the proffer agreement and signed it after being advised of the identity of the FBI agents. Then, then it contains that. So this, this is what I'm talking about Marie. Um, in terms of the, the purpose of that interview, um, I'm formulating a question, so, um, bear with me. Uh, so, um, the wa - was the purpose of that interview to engage in negotiations about whether or not you would plead guilty to a misdemeanor?

[01:06:32]

Michael Kim: I still don't know what a proffer is.

[01:06:34]

Kevin Sherburne: Okay.

[01:06:34]

Michael Kim: But, so I -

[01:06:35]

Kevin Sherburne: Right. But aside from that.

[01:06:36]

Michael Kim: But I, I went, I talked to the, my attorney and told me to sign it. I signed it.

[01:06:42]

Kevin Sherburne: Okay.

[01:06:42]

Michael Kim: And, um, uh, when we went in, I'm not sure, uh, I'm not sure if we went in what he, what he, when my attorney talked to the, the AUSA about.

[01:06:51]

Kevin Sherburne: Yeah.

[01:06:51]

Michael Kim: But when I talked to my attorney, he was like, hey, we're gonna go in and I'm gonna, hey, you know, this is what, what I did. I, I feel, I, I don't feel right.

[01:07:00]

Kevin Sherburne: Okay.

[01:07:00]

Michael Kim: So, got the attorney and then we went in and I said, hey, let's, let's go talk to them. And well, I don't know what was on the table.

[01:07:06]

Kevin Sherburne: Okay.

[01:07:07]

Michael Kim: I, I don't know. But I went, I took the advice of my attorney and went in, and then this is what happened.

[01:07:14]

Kevin Sherburne: And at some point after this, this is December 2014, at some point you stood up in court with your lawyer there and you said, I plead guilty.

[01:07:22]

Michael Kim: Yes. That was, I think 2018 or so. That's -

[01:07:28]

Kevin Sherburne: So, four years later?

[01:07:30]

Michael Kim: Yeah, I think.

[01:07:30]

Kevin Sherburne: Okay.

[01:07:31]

Michael Kim: Whatever, whatever it was 'cause they wanted me, uh, I was, uh, uh, they, they, the, the FBI wanted to, wanted me to, uh, uh, what was it? Uh, uh, more information? Uh, I think so they were still going through the cases. So, uh, I think what, I'm not sure what my attorney told me this, or they were trying to get the Andy and Chow and all those guys, they were, they wanted to get them first before they got me.

[01:07:54]

Kevin Sherburne: Okay.

[01:07:55]

Michael Kim: So, I think that's why it took so long. And if you look at, I, I'm not sure if you got the FBI paperwork 'cause my court, my, uh, documents were sealed or under sealed.

[10:48 AM / 01:08:05]

Kevin Sherburne: Mm-hmm [affirmative].

[01:08:06]

Michael Kim: Okay. And, uh, so with, with, uh, with my doc, with my paper, I never asked my documents or court things to be sealed. I guess the AUSA sealed it 'cause they're trying, and they said from what, what they were telling me was 'cause because I helped the feds out or cooperated with them, that, uh, Andy was, uh, uh, testified in court, uh, in open court and I guess testified against him. And they did, uh, uh, I guess, uh, they helped the case out. I, I'm not sure 'cause I, all the stuff that I got the paper from, I didn't even know, like he did half the stuff, what he was saying. I, that's the first time me reading all that. I didn't read the newspapers. Uh, well, I, I'm sorry. I read some of the newspapers.

[01:08:51]

Kevin Sherburne: Mm-hmm [affirmative].

[01:08:52]

Michael Kim: That came out. But I did not know that he was doing all that stuff in the court. What the court document says, I was like shocked my, when I read it, when you, when you guys gave me the paperwork or when my attorney gave me the paperwork.

[01:09:02]

Kevin Sherburne: Okay.

[01:09:02]

Michael Kim: I didn't know he was doing half the stuff he was doing.

[01:09:06]

Kevin Sherburne: I don't have any other questions. Carrie, do you have any?

[01:09:09]

Carrie Woolley: Um, so when you were sentenced back in 2018, your attorney filed a sentencing memorandum. Do you remember him filing a sentencing memorandum?

[01:09:19]

Michael Kim: Yes. I, I think he gave me, I, I got copies of it too.

[01:09:22]

Carrie Woolley: So, part of that sentencing memorandum, he made a statement in there that said that you had resigned from the Sheriff's Office and that you had no intention of returning to law enforcement. Do you remember him making that statement in the sentencing memorandum?

[01:09:35]

Michael Kim: I read it, yes.

[01:09:36]

Carrie Woolley: Okay. Um, did he make that, that statement in the sentencing memorandum with your knowledge and consent?

[01:09:42]

Michael Kim: I'm not sure what I, what what, what we agreed on was that I was gonna resign from the Sheriff's Department. I was gonna resign 'cause I didn't want – the Sheriff's Department's always been good to me.

[01:09:51]

Carrie Woolley: Mm-hmm [affirmative].

[01:09:52]

Michael Kim: When I was, when I was working there, I, I didn't have, I, I wasn't, didn't have the issues. I was one of the, I was one of the rising stars in the Sheriff's Department. I did what I was supposed to do. I did my job.

[01:10:01]

Carrie Woolley: Right.

[01:10:01]

Michael Kim: And everyone there, like Michael Hennessy was great. He hired me, you know, I, and he promoted me. I had nothing bad for the Sheriff's Department. And I, and when my incident came out, I

didn't want that publicity to go for the Sheriff's Department. I mean, that's just, that's just me.

[01:10:19]

Carrie Woolley: Yeah.

[01:10:19]

Michael Kim: You know, some people stay and they'll fight all the way through all the bad publicity. I did not want that. I, uh, at that time I talked to, uh, uh, I, I think it was Vicki Hennessy. I, I spoke with her and more like an exit interview.

[01:10:32]

Carrie Woolley: Mm-hmm [affirmative].

[01:10:33]

Michael Kim: When I resigned. So, I talked, this is -

[01:10:35]

Carrie Woolley: Sure.

[01:10:35]

Michael Kim: The process. I talked with, uh, my attorney and I'm, I told him I don't want bad publicity 'cause I know what publicity does to the department. And I said, I, you know, it's like, hey, 'cause this, this is one of the biggest cases this, the, in, uh, federal court. Because when, when the, even when the feds spoke with me, they told me that this, the reason that we're coming after you is because this is an Asian senator.

[01:10:59]

Carrie Woolley: Mm-hmm [affirmative].

[01:10:59]

Michael Kim: It was, uh -

[01:11:00]

Carrie Woolley: Yeah, I remember Leland Yee. Mm-hmm [affirmative].

[01:11:02]

Michael Kim: Yeah. It was the Asian senator, was Asian gangsters and an Asian cop. Because of that, this is the big news. So, we're going to come after you.

[01:11:12]

Carrie Woolley: Yeah.

[01:11:12]

Michael Kim: And we're gonna give you the, uh, uh, you know, throw the book at you and we're gonna make an example outta you. And when I, when the feds were talking to me, and they, before the recordings went on, they, you know, they told me that this would, if you, uh, were just, just a regular person or regular, uh, police officer doing regular stuff without this big case, you, it would usually have been a slap on the ritual, a couple of suspension days, and you would've been done. But this is a big case. And because it's a big case, it's, it's, it's newsworthy. We, they're, they come after you and I'm like, I, you know, I made a mistake. I will take all the consequence that comes with it. And, and I left the department.

[01:11:53]

Carrie Woolley: Do you recall during your - were you present during your sentencing hearing?

[01:11:56]

Michael Kim: Yes.

[01:11:57]

Carrie Woolley: Do you recall if the judge asked you about that statement about not returning to law enforcement?

[01:12:02]

Michael Kim: I, I'm not sure.

[01:12:03]

Carrie Woolley: Okay. It's been, it's been a while. So, I -

[01:12:05]

Michael Kim: It's, it's been, yeah. I, I tried to like, put that behind me. [laugh]

[01:12:08]

Carrie Woolley: Right. Yeah.

[01:12:09]

Michael Kim: But, you know.

[01:12:10]

Carrie Woolley: That makes sense.

[01:12:10]

Michael Kim: Trying to move forward. But yeah, I, like I said, I know I, I made a mistake and, and I take full responsibility of everything I've done. And the people that know me in my department, the people that knows outside of me, I take responsibility. Things that I do. And I, and I, and I take full responsibility. Even when I went to the next job interview, they weren't gonna, hi, I, I don't think they were gonna hire me. 'cause they were like, hey, you know, we want to know if you're really gonna tell the truth about what happened to you. And I did. I told 'em, hey, I made a mistake, uh, uh, and now I'm paying the consequence for it. And I lost the, the best job I had in my life.

[01:12:45]

Carrie Woolley: Mm-hmm [affirmative].

[01:12:46]

Michael Kim: Okay. And that's why the previous, my other job is, uh, at War Memorial , they hired me. They're like, we knew, we knew, we read about all your, uh, we read, everyone read about it. So be with that. They want to know if I was gonna be honest with them and truthful about why I left the Sheriff's Department. Not just because I resigned and why, what, what was behind you resigning. So, I let them know, and I was charged with, you know, contempt of court. And so, they're like, okay. And after they hired me, my boss told me that he's no longer, he, he passed away. He had stage four cancer, died within six months.

[01:13:19]

Carrie Woolley: That's sad.

[01:13:20]

Michael Kim: Yeah. And he told me, yeah, I was waiting for you to say that. If you didn't say it, we weren't gonna hire you.

[01:13:26]

Carrie Woolley: Mm-hmm [affirmative].

[01:13:27]

Michael Kim: And so I was, I was, I was always being honest with that.

[01:13:30]

Carrie Woolley: It - so were you already working back with the city in your security position at that point? In December of 2018?

[01:13:37]

Michael Kim: Yes. I, I -

[01:13:37]

Carrie Woolley: Think it's December or October 2018 [inaudible].

[01:13:40]

Michael Kim: I got hired in 2016.

[01:13:42]

Carrie Woolley: Okay.

[01:13:43]

Michael Kim: So.

[01:13:43]

Carrie Woolley: And is in the - 'cause San Francisco's a charter city and county, is that a public safety position? Like, are you within the same retirement benefits or is it still in your retirement? I'm not sure if you guys are a 1937 Act county or PERS?

[01:13:59]

Michael Kim: So -

[01:13:59]

Carrie Woolley: So, you still have public safety retirement? Or is it a different type of retirement?

[01:14:03]

Michael Kim: It was, it was, it was, uh, SF first. It's a San Francisco.

[01:14:06]

Carrie Woolley: Okay.

[01:14:06]

Michael Kim: It's so not, not, not PERS.

[01:14:09]

Carrie Woolley: Okay. So you have your own retirement system. Okay.

[01:14:11]

Michael Kim: Yes.

[01:14:12]

Carrie Woolley: But are you still public safety when you're security or are you not?

[01:14:14]

Michael Kim: No, it's, it's under miscellaneous.

[01:14:16]

Carrie Woolley: Okay. That makes sense.

[01:14:18]

Michael Kim: So yeah, I, I was working with, I was working there.

[01:14:22]

Carrie Woolley: Okay. I think that's all the questions I had for you.

[01:14:24]

Kevin Sherburne: Did you still want to, Thank you. Did you still want to take a little brief break?

[01:14:28]

Marie Masters: Yeah, I'll take a quick break.

[01:14:29]

Kevin Sherburne: Okay. I'm gonna turn off the recorder.

[01:14:31]

Marie Masters: Okay.

[01:14:31]

Kevin Sherburne: Uh, we're, I'm, I'm recording. So, we, we, uh, broke at 11:46, uh, and now it's 11:54. Um, uh, at, at your request, Marie, I wanted to give you a chance to confer with your client. And, and so we just, uh, now's the opportunity for either of you or one of you to give us, uh, any information that you think might, uh, be helpful to the case.

[01:14:55]

Michael Kim: Okay. Well, uh, I just, I just wanna say that I know I made a mistake.

[01:15:01]

Kevin Sherburne: Mm-hmm [affirmative].

[01:15:01]

Michael Kim: Uh, I, you know, I worked in the Sheriff's Department. I was a good employee. You know, I've never, I mean, the thing mistakes, I, I, I made a mistake. I'm living with the mistake I did. And I know, like, I read what you wrote, you know, think that, you know, you think that I was lying through the investigation or lying through, uh, this whole process of, uh, uh, getting hired here. But I just wanna let you know, I, I, besides the fact that I made that mistake, I haven't lied to anybody. I haven't lied to the department. Uh, my, my record has been clean. Uh, the depart, the, the background investigators, I told 'em everything that, uh,

I was truthful with them. 'cause you not gonna lie to a background investigator.

[01:15:48]

Michael Kim: They, uh, they know of me. Some of them know me. And, uh, I, I try to live my life the best I can. And, and, you know, and, and again, I never, uh, besides that one incident that happened in my whole career, I've never lied to anybody else. I never lied to the staff, never lied to my chief, uh, Matt Freeman. Uh, my character has always been, you know, people know me. Department is, I've, I'm always been straightforward. I tell the people what I need, I tell the truth. And, and this one mistake is, you know, uh, like I said, I love my job. You know, I hope, uh, through this, uh, process that, you know, I, I get a fair shot. And, uh, it's not what the newspaper says. And, and I appreciate you doing the investigation and talking to people. And some of, I mean, some of the people that you talked to, I, I read, I read your, uh, report and with, uh, with the lieutenant that works, Lieutenant, uh, Tiffany Martin, I, I'm not even sure if she knows what half the stuff that that happened between me.

[01:16:52]

Michael Kim: But, um, and the process of how the department works, I'm not sure if she knows that, 'cause as, as she starts saying that she had, they, they all had inputs in it. Most of the time. What I know how the department works is that there, there's no input. You just do a file and you send it to the, uh, chain of command. And I'm not sure if she, uh, know anything about she knows me at all. Okay. And the other thing is that, um, I ha - I guess we're going to, I'm gonna give you the sealed document, uh, of the, the sealed document on my court minutes. And I went, you know, I I'm not, I don't think you had this document. And I'm all, and I talked to my counsel and I'm like, I don't have anything to hide. And throughout, you know, like everyone knows what happens in the papers and there's some people that knows exactly what happened and some people don't.

[01:17:47]

Michael Kim: Do I feel bad? Yes. I feel horrible. If I knew the things that Andy was doing, I would've never even talked to him. I'll probably put, I would probably put him in jail, you know? And he likes to boast about everything that he knew with me. Like, I don't see him that often, but only like, like birthdays and so on. And even when he said that, that I got a free pass from the car accident. Okay. We

all know CHP doesn't give you any, any passes for, uh, being, uh, a DUI. Okay. And he's out there telling everybody, I got a free passes 'cause I'm a cop. No, we get, we don't even get free passes. So, things that he says is, most of the time he's always bragging about people. And I didn't know that he did all of that stuff. And I was, I was in shock when I, when I read, not the newspaper, but what the, what the court says.

[01:18:42]

Michael Kim: So, and I, I don't associate with him. I haven't spoken with him since the incident. And I, I just, just wanna let you let you know that, uh, you know, I don't, I don't talk to that guy. He ruined my career. And now, you know, after 10 years away from him, I'm going back in and now he might ruin. And that, that incident might ruin my career again. And I might not be having a job for the future or anywhere else. So this, this is a, I mean, it's life changing for me. This is another event that's happening from, uh, from 10 years. Was it 10 years ago when I was convicted, when I plead guilty in front of a judge. And I thought that was, uh, behind me now. So I, you know, I mean, everything that I have now is, I'm just, you know, it's, it's up to you guys to decide if you're gonna go take my license away.

[01:19:37]

Michael Kim: And I, I would, I would like to keep my license, uh, uh, if what, if you can, I would, I would like to work in the department. You have recommendations from the Sheriff to say he knows my character and you can always call him and verify did if you wrote the letter or not. There's, I mean, it was about, it wouldn't, if I wrote that letter and it was false, I, I would be in jail for falsifying records. Again, on the background investigation, when these guys are, they're supposed to do a thorough investigation. So, I think that's all I have to say. Not -

[01:20:14]

Carrie Woolley: Thank you.

[01:20:14]

Michael Kim: You know.

[01:20:17]

Marie Masters: Um, just one quick follow up question. I realize I, I had left out earlier. And then, um, this is the, the, um, record mentions just the, the AUSA sentencing memo.

[01:20:28]

Michael Kim: Oh, okay.

[01:20:29]

Marie Masters: Um, when you, um, initially provided the, the declaration, that's kind of the, the subject matter of, of this whole thing, um, can you describe what the contact was like with Andy Li's attorney who was requesting it?

[01:20:50]

Michael Kim: They would not stop calling me. They were asking me, uh, calling me, hey, can you do this? Can you do this? Can you write this? Can you read this? Can you, I need this right now. And this is me coming, working 16 hours and coming home from, from work and driving. So, they're like in the house in the, and the other, I guess the last time they called, I need it right now. We're gonna court. I need you to sign it. So it's seemed like I didn't have a chance to think about it. It was just, they're just badgering me and they're saying, hey, they're, you know, if, if you don't sign this, he's not, he's gonna be in jail.

[01:21:23]

Marie Masters: Um, do you remember one way or another if you typed the declaration, his attorney reviewed it and you signed it? Or if they typed it out and you signed it?

[01:21:34]

Michael Kim: They typed it. They asked me, you know, they, they, I was driving home and they called me and I said, you know, is this your vest was yours? I was like, yes, it's my vest. Well, they're, the feds are saying, you know, it's, it's, uh, Andy's vest and he, and so we want to know if it's your vest, do you want it back? I'm like, yeah, of course I want my vest back. So, the reason I gave him the vest was because he told me that he was, uh, going to get a security job as a bouncer. His friend was giving, give him a job as a bouncer to some of the clubs down here. Anyone, if I get a vest, I would've never gave him a vest if I, uh,

didn't know that, if I knew what he was doing, I would've never gave him a vest.

[01:22:21]

Michael Kim: If he, if he told me he was doing security and, uh, without any guard card. So, he ended up getting a guard card that he told me he had a guard card 'cause he's trying to change his life around. And, and now he's going to do security. And he was, uh, he was working at, at a security guard. So, he, he asked if I could have a vest. I said, I have, I have two vests at home, that's department vest. So, I let him use it. I said, hey, don't give it to anybody. Don't use this for you while you are working as security guard. Once you're done, I want the vest back. And, uh, I didn't do a follow up on that. And next thing I know, uh, uh, he was, uh, uh, the house got raided and, and the attorney kept on calling me to make sure I signed the paperwork.

[01:23:04]

Marie Masters: Okay.

[01:23:05]

Carrie Woolley: Can I ask a question?

[01:23:06]

Michael Kim: Yes.

[01:23:07]

Carrie Woolley: Why didn't he buy his own vest? Was there something special about the vest you had?

[01:23:13]

Michael Kim: No, it's my, my vest was a, it's a, it's a vest. It's not an outside. Now everyone use an outside carrier. It's not that, it's just a regular, like 15-year-old vest that's outdated.

[01:23:26]

Carrie Woolley: Okay.

[01:23:26]

Michael Kim: That we have that I, I had two of them. I -

[01:23:29]

Carrie Woolley: So, did it stop like a higher caliber bullet or anything? Okay.

[01:23:34]

Marie Masters: But it was a, it was a vest, not like a plate carrier?

[01:23:36]

Michael Kim: No, it was just a regular vest that you wear underneath your uniform. It's the level was three A or something like that. It, it, it doesn't stop high caliber. It only probably nines and 45s or something like that. It's a regular department issued vest with no logos. It doesn't, it's a, it's, I think it was either blue or black carrier. It's about that thin.

[01:23:57]

Carrie Woolley: So, would he have been able to buy that vest on the, on the market?

[01:24:01]

Michael Kim: I, I, I, I'm, I'm assuming that you can buy it.

[01:24:04]

Carrie Woolley: Okay.

[01:24:05]

Michael Kim: But I, I'm not if, if he had to buy it, I don't think he wanted to. I'm not sure. But Mike, I'm thinking that he didn't wanna spend like a thousand dollars on a vest.

[01:24:13]

Carrie Woolley: Oh, they're expensive. Okay.

[01:24:15]

Michael Kim: Yeah. I'm, I'm, I'm not sure. I think there are a thousand dollars or, uh, they might be lower now. This was like 10 years ago, so I don't know. It didn't have any special markings or didn't have play care like the, the, the law enforcement wears now. It was just.

[01:24:27]

Carrie Woolley: Right.

[01:24:27]

Michael Kim: It was just regular that when you wear it, you can't, to who's wearing it's, it, it's like, it's just a lot thicker. You can see it in the back.

[01:24:33]

Carrie Woolley: Mm-hmm [affirmative].

[01:24:34]

Michael Kim: If you're wearing a shirt and stuff.

[01:24:36]

Carrie Woolley: Mm-hmm [affirmative].

[01:24:36]

Michael Kim: Or, or a jacket. You can actually see the outline of it.

[01:24:38]

Carrie Woolley: Right.

[01:24:39]

Michael Kim: If you're doing security. Yes.

[01:24:41]

Carrie Woolley: Okay.

[01:24:42]

Michael Kim: So.

[01:24:44]

Carrie Woolley: Okay.

[01:24:45]

Kevin Sherburne: Do you have anything else for me?

[01:24:47]

Marie Masters: No, I don't.

[01:24:47]

Kevin Sherburne: Okay. Thank you for your time today. Uh, it's 12:04 PM and that concludes the interview.

[01:24:52]

Michael Kim: Okay.

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Following is the record of an Administrative Interview conducted by Professional Conduct Central Bureau Law Enforcement Consultant Kevin Sherburne on June 25, 2025, with Dr. Ryan Dunnigan, who is a witness in this investigation. The interview was recorded and is being maintained by the Professional Conduct Central Bureau. The recording will serve as the true and accurate record of the statements made by Dr. Dunnigan. This transcript was AI generated by Axon software and reviewed by accuracy by Division Staff Services Analyst Jessica Seno.

[00:00]

Kevin Sherburne: All right, we are being recorded now. It is Wednesday, June 25th, uh, 2025, and the time is 2:54 PM. My name is Kevin Sherburne. I'm a law enforcement consultant with the California Commission on Peace Officer Standards and Training. Um, with me today is Carrie Woolley. She is a lawyer with our Legal Affairs Bureau. And today we're here interviewing. If you could please state your name.

[00:22]

Dr. Ryan Dunnigan: Dr. Ryan Dunnigan.

[00:24]

Kevin Sherburne: Okay. And, um, we are gonna ask you some questions. Uh, we are conducting an investigation of serious misconduct, uh, under California Penal Code 13510.8. You are not the subject of the allegation, sir, but we asked for your interview and we issued a, a subpoena. And, uh, we appreciate the time that you're spending with us today.

[00:46]

Dr. Ryan Dunnigan: Absolutely.

[00:46]

Kevin Sherburne: We are recording the interview, as, as we've discussed before the recording came on, any statements that you make may be used by POST in connection with its duties. The recording helps us ensure that all of your statements are completely accurately transcribed and authorized by our regulation 1206. You'll have a copy of the recording if further proceedings are contemplated or any further interview, uh, occurs. If you want, you can also record the interview. Um, would you like to record it or?

[01:11]

Dr. Ryan Dunnigan: No, thank you.

[01:12]

Kevin Sherburne: You're fine. Okay. Um, if you need to use the restroom or take a break, just let us know. We would just simply ask if you could, um, a, answer any pending questions before we do take that break.

[01:23]

Dr. Ryan Dunnigan: Sure.

[01:23]

Kevin Sherburne: Um, so these don't apply because, uh, is there any reason today why you wouldn't be able to give us truthful and accurate answers to the questions that we ask of you?

[01:35]

Dr. Ryan Dunnigan: No.

[01:35]

Kevin Sherburne: Okay. Um, we ask that we, we, we wanna maintain the integrity of the investigation, and so we ask that you, unless you have a, a legal reason not to discuss with anybody else other than your legal counselors, otherwise required by law. Do you agree to comply with the request for, um, uh, comply, uh, for privacy?

[01:56]

Dr. Ryan Dunnigan: Yes.

[01:57]

Kevin Sherburne: Okay. Do you have any questions, sir?

[01:58]

Dr. Ryan Dunnigan: No, I do not.

[01:59]

Kevin Sherburne: Okay. You're ready to proceed?

[02:01]

Dr. Ryan Dunnigan: I am.

[02:01]

Kevin Sherburne: Thank you.

[02:02]

Dr. Ryan Dunnigan: Yes.

[02:02]

Kevin Sherburne: Sorry, I stumbled over my words.

[02:04]

Dr. Ryan Dunnigan: No, no. [laugh].

[02:05]

Kevin Sherburne: Um, so the, the background of this is we're, um, we're here today because in your role, uh, as, uh, uh, psychologist, you performed two psychological evaluations for a background investigation of Michael Kim, who ended up being hired at the San Francisco Sheriff's Office. Do you understand that?

[02:27]

Dr. Ryan Dunnigan: I do.

[02:28]

Kevin Sherburne: Okay. And, um.

[02:30]

Dr. Ryan Dunnigan: Re, rehired.

[02:31]

Kevin Sherburne: Uh, he was rehired.

[02:32]

Dr. Ryan Dunnigan: Right.

[02:32]

Kevin Sherburne: So he had been from 1999 to 2016.

[02:37]

Dr. Ryan Dunnigan: Right.

[02:37]

Kevin Sherburne: Uh, a sheriff sergeant, ultimately, and then he got rehired in 2024?

[02:42]

Dr. Ryan Dunnigan: Correct. Okay. Yes.

[02:43]

Kevin Sherburne: So, um, as a background, November one, 2023, you conducted the assessment in connection. How did, how did that assessment come to be?

[02:54]

Dr. Ryan Dunnigan: Apparently, I, or, or I believe that he, within the secondary psychological evaluation, uh, a candidate will go and apply and, uh, to, uh, department, he was applying for San Francisco Sheriff's Office, and he apparently didn't pass the initial, I believe he didn't pass the initial, uh, psychological evaluation. And then it was forwarded, or he contacted me, um, per either on his own or per the direction of the department. And they, he sought out my services to provide that a secondary evaluation. Um, and the San Francisco Sheriff's Office doesn't provide the initial, uh, any secondary evaluation. They don't provide the initial, uh, psychological evaluation. So we, I do believe they both provide us with a polygraph, and that, I believe that's it, that that's all that they, they provide us. So Mr. Kim reached out to me and asked me to perform that for him so that he could go re be, re potentially be rehired by the de department.

[04:07]

Kevin Sherburne: Okay. Um, had you had any preexisting, uh, relationship with Mr. Kim prior to him reaching out to you?

[04:13]

Dr. Ryan Dunnigan: No.

[04:13]

Kevin Sherburne: For the evaluation?

[04:14]

Dr. Ryan Dunnigan: No.

[04:14]

Kevin Sherburne: Uh, in a professional way, is what I'm asking.

[04:16]

Dr. Ryan Dunnigan: No, no.

[04:17]

Kevin Sherburne: Did he have any professional relationship with you subsequent to your evaluation on behalf of the sheriff's office?

[04:24]

Dr. Ryan Dunnigan: Uh, no. I mean, other than.

[04:26]

Kevin Sherburne: But did he come for you for treatment is my question.

[04:27]

Dr. Ryan Dunnigan: Oh, no, no, no, no.

[04:28]

Kevin Sherburne: Okay. Okay.

[04:28]

Dr. Ryan Dunnigan: No, no. Other than when he came back, um, and wanted to have the, another, uh, a subsequent secondary evaluation performed.

[04:37]

Kevin Sherburne: Okay.

[04:37]

Dr. Ryan Dunnigan: Yeah.

[04:38]

Kevin Sherburne: And so was the, to sum it up then, was the only relationship that you had with Michael Kim in relation to his background investigation at the sheriff's office?

[04:47]

Dr. Ryan Dunnigan: Yes, it was.

[04:47]

Kevin Sherburne: Understood. Okay. Um, did you meet him in person for either assessment?

[04:53]

Dr. Ryan Dunnigan: I did not. And they were virtual.

[04:55]

Kevin Sherburne: And so, like, uh, Zoom or a.

[04:56]

Dr. Ryan Dunnigan: Zoom.

[04:57]

Kevin Sherburne: Okay.

[04:57]

Dr. Ryan Dunnigan: Both Zoom.

[04:58]

Kevin Sherburne: Um, did you have any conversations with San Francisco Sheriff's Office personnel prior to your assessment with Kim? The first time?

[05:06]

Dr. Ryan Dunnigan: Uh, that's when I was, I was trying to check, uh, most of the time, not, not verbally. Uh, we communicate, uh, almost entirely through their internal email system.

[05:17]

Kevin Sherburne: Okay.

[05:18]

Dr. Ryan Dunnigan: So sometimes I will request, I, I always request the records and, uh, but I don't believe we, we spoke anymore than just the [cough], I, I reached out to most likely Sergeant Mel Fonthal.

[05:31]

Kevin Sherburne: Mm-hmm [affirmative].

[05:31]

Dr. Ryan Dunnigan: And, and so Sergeant Fonthal is usually the point person, and he provides me with the records. So I don't believe that there was anything more than that.

[05:40]

Kevin Sherburne: Okay. And approximately how long prior to the conduct, conduct of the assessment, do you have access to those records? Is it like two weeks they give you?

[05:51]

Dr. Ryan Dunnigan: It's usually, if I make the request, Sergeant Fonthal usually pretty quick around it, like three to five days I'll get the records, and then I will typically make the appointment with the candidate within, uh, one to two weeks. Uh, no, or about no more than, like, usually no more than seven business days.

[06:14]

Kevin Sherburne: Okay.

[06:15]

Dr. Ryan Dunnigan: Yeah.

[06:16]

Kevin Sherburne: Um.

[06:16]

Dr. Ryan Dunnigan: And then I tried to look in their, their internal system just to see if there were any records. And they purge it every 30 days, I think.

[06:25]

Kevin Sherburne: Uh, okay. Do, do links expire?

[06:27]

Dr. Ryan Dunnigan: All every, everything goes away.

[06:29]

Kevin Sherburne: It's in the cloud, you have access.

[06:30]

Dr. Ryan Dunnigan: No email. Yeah. All of their system. And then I think they didn't, uh, which is the downside of that using their, their system.

[06:38]

Kevin Sherburne: Right.

[06:38]

Dr. Ryan Dunnigan: Right. So, because I don't have it independently in mind, uh, because I would normally cc myself or have copies.

[06:45]

Kevin Sherburne: Yeah.

[06:45]

Dr. Ryan Dunnigan: Yeah.

[06:45]

Kevin Sherburne: Understood. Um, after you made the finding of not suitable on November one 2023?

[06:53]

Dr. Ryan Dunnigan: Yes.

[06:53]

Kevin Sherburne: How did you communicate that finding to the Sheriff's Office?

[06:57]

Dr. Ryan Dunnigan: I, uh, completed the paperwork, the psychological suitability declaration and the findings report, and then I submitted to the, probably Sergeant Fonthal or their, the Lieutenant, if they happen to be covering for him at that time. So I submitted internally in their system.

[07:18]

Kevin Sherburne: Okay.

[07:18]

Dr. Ryan Dunnigan: [cough]

[07:21]

Kevin Sherburne: And did they ever respond to you?

[07:23]

Dr. Ryan Dunnigan: Uh.

[07:23]

Kevin Sherburne: Not respect to Michael Kim? That is.

[07:26]

Dr. Ryan Dunnigan: They do not, they never, they do not respond. Uh, the only time that I did respond, uh, later, later on, I'm not sure of the timing exactly, but they reached out and they asked that, <cough>, I changed one of the words, uh, I, I'd, actually, specifically with Mr. Kim, I had used the phrase correctional deputy.

[07:50]

Kevin Sherburne: Yeah.

[07:50]

Dr. Ryan Dunnigan: Because he and his paperwork had said that he was applying for a correctional deputy position, which is different than a deputy sheriff.

[07:59]

Kevin Sherburne: Yeah.

[07:59]

Dr. Ryan Dunnigan: Right. So, um, one's out in patrol, one is specifically in correction setting. So, Sergeant Fonthal wanted me to change it subsequently and to that, and then I, I think in probably some of my paperwork, I changed it and initial did.

[08:14]

Kevin Sherburne: Understood.

[08:15]

Dr. Ryan Dunnigan: So that was the only communication I had around that.

[08:19]

Kevin Sherburne: After that communication, what other communications did you have regarding Michael Kim?

[08:25]

Dr. Ryan Dunnigan: I didn't have, I don't remember any other until, because I, I didn't find him suitable at that time. Hits. He, he asked that if I could wait and postpone, uh, ah, a finding, and that's, that's clinically not very acceptable for a number of different reasons. Some of the information can be at stale. Other thing, uh, events could happen that could impact his, you know, uh, whether, you know, something traumatic or dramatic could take place. So if it were a couple days, okay, that would probably be reasonable before doing it. But he was talking months, so that's wasn't going to happen. And so I did find, submit my finding tan or the not suitable, and he said, well, I've got all these things pending and they're all gonna clean up and everything's gonna be fine. It's great. The Sheriff really wants me to come work here. I've worked there a long time, I'm very, very highly thought of. And I said, I still can't wait. So I'm gonna submit this later on. If for some reason the, all this stuff, the dust settles, and you, the sheriff, they want to open it back up to you and allow that, then I can potentially perform a, a secondary evaluation at that time,

kind of with this new information. And he said, okay. And then that was what, and then I didn't hear from him until March or around March of 2024. Excuse me.

[10:04]

Kevin Sherburne: Okay.

[10:04]

Dr. Ryan Dunnigan: Yeah.

[10:05]

Kevin Sherburne: And when, so did anybody else reach out to you regarding that not suitability between that November non suitable finding and that March recontact by Michael Kim?

[10:18]

Dr. Ryan Dunnigan: I don't believe so, no.

[10:20]

Kevin Sherburne: Okay.

[10:21]

Dr. Ryan Dunnigan: The only other person, nobody from their department.

[10:23]

Kevin Sherburne: Yeah.

[10:24]

Dr. Ryan Dunnigan: Yes.

[10:24]

Kevin Sherburne: Okay.

[10:25]

Dr. Ryan Dunnigan: And the only other time is sometimes they would have a third psychologist reach out if they're gonna do a third time to like a tiebreaker person. But I found them not suitable as well, so they're not gonna -

[10:36]

Kevin Sherburne: Yeah.

[10:36]

Dr. Ryan Dunnigan: Refer to a third clinician.

[10:38]

Kevin Sherburne: Have you ever had any applicant reach back to you after a finding of not suitable and say, hey, I want another bite at the apple?

[10:47]

Dr. Ryan Dunnigan: Only if the department allows that to happen after a certain amount of time. So, uh, it's very, very unusual. This case was very unusual. Uh, and just in the sense of, uh, he made it clear that all this stuff was pending and that the, that they, the Department, really wanted him to do that. Normally when they're found not suitable, a lot of departments have that you can't even reapply for another minimum of a year. And that apparently was not the case for San Francisco. And so, when, and particularly when he submitted the letter from the Sheriff saying that he wanted him to be considered, uh, or reportedly wanted him considered for the position, that's when we opened it back up. So if their policy is that they wanted to reopen it and allow that and do another one, then that's, I, I didn't see a ethical or a clinical issue at that time.

[11:43]

Kevin Sherburne: Okay. So you referred to a letter, I'm, I'm gonna show you a document. Its top, top of it says, to whom it may concern, the bottom has a signature block, there's no, um, handwritten ink signature, um, uh, but it's signed apparently, Paul Miyamoto. Is that the letter, the one that I'm showing you, is the one that you have?

[12:01]

Dr. Ryan Dunnigan: It is.

[12:01]

Kevin Sherburne: Okay. Um, what was your reaction when you first got that letter?

[12:06]

Dr. Ryan Dunnigan: I thought it, I, I, uh, I think I've only received maybe two letters from a sheriff or a chief, uh, in, as part of this process. And so that was significant and it was just, you know, memorable. Uh, it was very rare that, um, particularly that as chief would step in or a chief or a sheriff would step in. But so that, you know, on certain levels is interesting. Uh, and it, and it carries considerable weight since they would, a lot of times when we're doing psychological evaluations, if the person's psychiatrically unstable or they have personality traits or archeological attributes straight outta the gates that are gonna preclude them from being safe or effective in the role, then it makes it pretty clear. Then it's in my lane. And I just say, okay, you're not going, you're not moving along, with Mr. Kim, he actually was psychiatrically fairly, I mean, he did really well on both psychometric tests, his personality traits, you know, according to those tests, were actually pretty well-rounded and, and, and good, and nothing in there would preclude him from moving forward. It was mostly the things that were in his background that were concerning to me. So, when he came back and the different things, you know, they said the dust had settled everything that his current work had resolved itself with no sustained, nothing sustained. And then coupled with the Sheriff's letter saying, hey, I really want him to come back, then that carried quite a bit of weight for me on that, of simply saying, okay, well if you want, if he's psychiatrically stable and you want to take him on, and then also bring him back in on probationary terms and work with that, then that's, that's it. That's your department. You can do that.

[14:00]

Kevin Sherburne: Okay.

[14:01]

Dr. Ryan Dunnigan: Yeah.

[14:04]

Kevin Sherburne: Did you notice that this letter didn't have a date on it?

[14:06]

Dr. Ryan Dunnigan: I -

[14:07]

Kevin Sherburne: When you first received it?

[14:09]

Dr. Ryan Dunnigan: Not the date, actually. I noticed that it didn't have a, a, the signature.

[14:12]

Kevin Sherburne: Okay.

[14:12]

Dr. Ryan Dunnigan: But it was also sent electronically. So….

[14:15]

Kevin Sherburne: Yeah.

[14:16]

Dr. Ryan Dunnigan: I'm not, you know, I, I wasn't sure if that's something that, and it wasn't on letterhead either. So, which normally they, you know, captains. I would've, I, I mean, I, unless the Sheriff were, were write, was writing this because it was his buddy and not a coworker, you know.

[14:37]

Kevin Sherburne: Okay. Did you, um, ask anybody at the Sheriff's Office about that letter?

[14:42]

Dr. Ryan Dunnigan: Don't, I don't know if I asked, and that was why I was checking. I don't believe so because they are very, they don't really communicate with us at all.

[14:52]

Kevin Sherburne: Okay.

[14:52]

Dr. Ryan Dunnigan: We're clinicians.

[14:53]

Kevin Sherburne: Yep.

[14:54]

Dr. Ryan Dunnigan: They have kind of a policy of this is what we give you and which is fair 'cause then they don't want to give, you know, one clinician more than the other. So I don't believe that, and I don't think Sergeant Fonthal would be that helpful anyway. I mean, not, he's very, he's very helpful. I just don't think he would, would know unless he were to go, you know, talk to the Sheriff directly.

[15:16]

Kevin Sherburne: Uh, did you call the Sheriff and ask him if?

[15:19]

Dr. Ryan Dunnigan: I did not, and I did not. No.

[15:21]

Kevin Sherburne: Okay.

[15:21]

Dr. Ryan Dunnigan: I didn't, no, I didn't.

[15:23]

Kevin Sherburne: Okay.

[15:23]

Dr. Ryan Dunnigan: So this, because, because I was submitting my report, that was another reason why I quoted it in my report.

[15:32]

Kevin Sherburne: Okay.

[15:33]

Dr. Ryan Dunnigan: Because, uh, if Sergeant Fonthal, the Lieutenant or the Sheriff or anyone had any issue with it, then it was going to be naming that specifically the Sheriff had written a letter, and if it was, you know, in question or if he didn't, which could be problematic, then they would know that that was fraudulent or if you know,

they were submitted by Mr. Kim or somebody else. Uh, that, you know, and that would be, you know, I just wanted to make sure that was very clear that that was -

[16:03]

Kevin Sherburne: Sure.

[16:04]

Dr. Ryan Dunnigan: I wasn't just going rogue and, and turning over my original statement without some forethought.

[16:10]

Kevin Sherburne: Okay. Did you solicit that letter?

[16:12]

Dr. Ryan Dunnigan: What's that?

[16:13]

Kevin Sherburne: Did you solicit that letter? Did you ask Mr. Kim?

[16:15]

Dr. Ryan Dunnigan: I did not.

[16:16]

Kevin Sherburne: Okay.

[16:16]

Dr. Ryan Dunnigan: No.

[16:17]

Kevin Sherburne: Um, ha uh, uh, you answered that one. You, you received two others. Um, did you tell anybody at the Sheriff's Office or Mr. Kim that you could change your mind based on a finding of not suitable? Like, did you make a suggestion that, hey, I'm going to, I could find you not suitable, but if circumstances changed, then I could change my mind?

[16:42]

Dr. Ryan Dunnigan: Um.

[16:42]

Carrie Woolley: Do you mean with regard to the other investigation that was pending against him in the, in his current workplace?

[16:49]

Kevin Sherburne: Yeah.

[16:49]

Carrie Woolley: At War Memorial?

[16:51]

Kevin Sherburne: So in other words, yeah, let's start over again with the question.

[16:54]

Dr. Ryan Dunnigan: Yeah.

[16:54]

Carrie Woolley: Yes.

[16:54]

Kevin Sherburne: So Mr. Kim told you he had a, a, a pending harassment case at the War Memorial?

[16:59]

Dr. Ryan Dunnigan: Yes.

[16:59]

Kevin Sherburne: His then current employer.

[17:01]

Dr. Ryan Dunnigan: Right.

[17:01]

Kevin Sherburne: So did he, did you ever suggest to him, well, look, if that ever goes away, then I'll mark you as suitable.

[17:08]

Dr. Ryan Dunnigan: No.

[17:09]

Kevin Sherburne: Okay. Um.

[17:11]

Dr. Ryan Dunnigan: No. I said we can, because at that point it was already, it would've been after I had already submitted not suitable. So then it's not up to me, it would be up to the Department with whether or not they would want to open up the process, his hiring process to him again.

[17:28]

Kevin Sherburne: Okay.

[17:28]

Dr. Ryan Dunnigan: Or not. Yeah. That's.

[17:30]

Kevin Sherburne: Ronnie Wan is a deputy at the Sheriff's Office, and he works in the background investigation. Do you recall talking to Deputy Wan about the letter when you received it initially?

[17:42]

Dr. Ryan Dunnigan: I don't think so, did I? I, no, I don't remember that. Did I, did I speak with him?

[17:47]

Kevin Sherburne: Well, I, uh.

[17:48]

Dr. Ryan Dunnigan: Oh, you, I'm sorry.

[17:48]

Kevin Sherburne: Deputy Wan says that you called him and said, hey, what's this letter about? And that you said that, oh, I'll call Paul Miyamoto.

[17:56]

Dr. Ryan Dunnigan: I said that?

[17:57]

Kevin Sherburne: Yeah.

[17:58]

Dr. Ryan Dunnigan: I never said, no, I'm not gonna call the Sheriff.

[18:00]

Kevin Sherburne: Okay.

[18:01]

Dr. Ryan Dunnigan: I don't have time to do that.

[18:03]

Kevin Sherburne: Okay.

[18:03]

Dr. Ryan Dunnigan: So no [laugh] I'm not gonna call the, no.

[18:07]

Kevin Sherburne: Um, the second assessment that you performed for Mr. Kim was March 13, 2024.

[18:12]

Dr. Ryan Dunnigan: Yes.

[18:12]

Kevin Sherburne: Um, do you have an any understanding of the appeals process, the psychological evaluations or assessments of peace officer candidates?

[18:21]

Dr. Ryan Dunnigan: The appeal process? Oh.

[18:22]

Kevin Sherburne: Yeah. Like if there's a finding of not suitability.

[18:26]

Dr. Ryan Dunnigan: Yes.

[18:26]

Kevin Sherburne: Do you have an understanding or you just take what you get? Do you have an understanding of like, would you tell a candidate no, you can't do that, there's no appeal, like you can't appeal, stop coming to me, I deemed you not suitable?

[18:38]

Dr. Ryan Dunnigan: Uh, no. I mean, that's, that's, you know, a lot of that's really department dependent. So.

[18:47]

Kevin Sherburne: Okay.

[18:47]

Dr. Ryan Dunnigan: Uh, they, again, if they wanted to send 'em to a third party, you know, because it's a little vague. So that's the problem with our, some of the codes don't, specifically is my understanding, don't specifically, you know, per- preclude or exclude us from, preclude us from, from doing another one. It just needs to be within, there needs to be, you know, obviously a reason for it. And then they, the, but the departments are the ones who are going to allow on or per permit it. So now I, um, I'm sorry, can you rephrase, can you just tell me that remind me of?

[19:23]

Kevin Sherburne: I was just, I was trying to explore your understanding of the appeals process.

[19:27]

Dr. Ryan Dunnigan: Yeah.

[19:28]

Kevin Sherburne: After, uh, you make a finding of not suitable.

[19:30]

Dr. Ryan Dunnigan: So just with their department, my understanding is that the, like, that was the strange part is that normally if they're not found suitable, then they're, they're out for a certain amount of time,

whatever that is. And I can't remember what San Francisco Sheriff's Office is, because they're all different. Uh, usually, but usually it's a year. And he came back and, uh, said that everything had taken place. So now that they're reopened, they're, they're welcome to reopen it again. And which was again, very strange. Uh, I don't think I've done that really before. Maybe once or twice there was something similar. Um, but there was, there were other reasons for that. I believe nothing's as specific as this, but, uh, no, I normally, their, their process is the first person f finds 'em not suitable. If I found 'em suitable, then it would go to the third person. But if it's, if I, they the first person found not suitable, and I found them not suitable, then it's not going anywhere.

[20:36]

Kevin Sherburne: Yeah.

[20:37]

Dr. Ryan Dunnigan: Yeah.

[20:37]

Kevin Sherburne: Okay.

[20:37]

Dr. Ryan Dunnigan: So it was very strange that they opened it back up. But the Sheriff, and then with the letter, I thought that the Sheriff really wanted them to be back in the mix, and maybe they were buddies, I think.

[20:51]

Kevin Sherburne: Okay. So, so that's a couple -

[20:53]

Dr. Ryan Dunnigan: Or, or c-colleagues.

[20:54]

Kevin Sherburne: Yeah. That's a couple of times though that I, I heard you earlier say friends and just now I heard the word buddies.

[21:00]

Dr. Ryan Dunnigan: Yeah.

[21:00]

Kevin Sherburne: But then you kind of, um, corrected that to that they were colleagues.

[21:04]

Dr. Ryan Dunnigan: Yeah. Yeah.

[21:04]

Kevin Sherburne: Um, was, were there statements that Mr. Kim made to you when he talked to you after he sent the letter that you would infer that they were buddies, that the Sheriff really wanted him into this role?

[21:16]

Dr. Ryan Dunnigan: No, it was more during the interviews where they've known each other for a really long time and that there's, and because he was saying a lot of the similar things, uh, that, you know, during it, if, you know, I'm really close with the Sheriff's Office, we've been, we went up in the ranks together, or he's great. He really wants me to be here. That was in the first one and the second one.

[21:34]

Kevin Sherburne: Okay.

[21:35]

Dr. Ryan Dunnigan: It's just of describing why he should be back and that's his home, and he really is looking forward to going back there. So I, whether they're buddies or not, I, he was, he was saying that they were very close. They were close.

[21:48]

Kevin Sherburne: Okay. Okay. Um, in, in the document -

[21:52]

Dr. Ryan Dunnigan: Mm-hmm [affirmative].

[21:53]

Kevin Sherburne: That you, the assessment, um, you said that, uh, he understood your concerns and had discussed them with the Sheriff and background personnel at the department, and that they were comfortable with him coming back and working there. Did he name, names as to who was comfortable with him coming back?

[22:14]

Dr. Ryan Dunnigan: No, I, no, and no. I mean, I knew there was the, uh, the Sheriff obviously, because he said, I mean, he, he said this Sheriff specifically, but they being whoever I, I am not sure, I can't remember if he mentioned who this specific background was.

[22:30]

Kevin Sherburne: Okay.

[22:31]

Dr. Ryan Dunnigan: Background guy was, or person, excuse me.

[22:33]

Kevin Sherburne: Okay.

[22:33]

Dr. Ryan Dunnigan: Uh, yeah, I don't remember.

[22:35]

Kevin Sherburne: About how long did these assessments take? Are they half hour? Are they a set amount of time or?

[22:40]

Dr. Ryan Dunnigan: No.

[22:40]

Kevin Sherburne: Or as much time as it takes?

[22:42]

Dr. Ryan Dunnigan: They're not set, but usually secondary evaluations take about an hour to, I mean, two an hour to two.

[22:51]

Kevin Sherburne: Oh, okay.

[22:52]

Carrie Woolley: They're long.

[22:53]

Dr. Ryan Dunnigan: They're long, yeah.

[22:53]

Carrie Woolley: Yeah.

[22:54]

Dr. Ryan Dunnigan: Because there's a lot more to go over typically.

[22:58]

Kevin Sherburne: Yeah.

[22:58]

Dr. Ryan Dunnigan: And also he had a lot to go over.

[23:01]

Kevin Sherburne: Yeah.

[23:01]

Dr. Ryan Dunnigan: Because he had a lot of stuff in his jacket that was, I thought he had a lot of stuff in there that, in, that was concerning to me for sure. Particularly at the beginning. The first time I met with him, it was enough for me to find him not suitable, even though he was psychologically stable. And then the second time I was still, I mean, I think you could probably read in my report, I was still a little hesitant to, um, some, but if the, the Sheriff wanted to sign off on him and take that liability and they were comfortable enough with that, then that's, that's, I believe that they should have the right to do that then.

[23:43]

Kevin Sherburne: Okay.

[23:43]

Dr. Ryan Dunnigan: Mm-hmm [affirmative].

[23:44]

Kevin Sherburne: When you said the first time that there was a lot in the file, what do you, what, um, sort of information?

[23:51]

Dr. Ryan Dunnigan: Well, he mentioned that he had gotten in trouble where, and he was in contempt, found contempt of court. And then he was saying that it was, now I remember. I, I asked him, is that a felony or is that a misdemeanor? So, and he said, I think it's a mis, it's a misdemeanor. I'm still fighting certain aspects of it, but the Sheriff, and everyone's comfortable with that, that's not a big deal. I, I said, that's a big deal to me, I, I, I, an, anything else? And he said, well, that's when I have the, I've got these other things going on in my work, um, these allegations. But that's really, it is more, um, it's blown outta proportion. Um, and these people are really, they just kind of are leaning towards that they are. And it'll all be kind of taken care of soon. I'm fighting it. And it's very common that that takes place at that, uh, organization that happens all over, uh, all the time. And he's just kind of falling victim to it.

[24:58]

Kevin Sherburne: Did you find that he accepted, uh, or had accountability for his own actions?

[25:04]

Dr. Ryan Dunnigan: I think he, if I remember correctly, he tended to gloss over things and minimize things and, you know, put it really rosy colored glasses. And it took me more diving into it and asking more pointed questions around that. Um, and he, uh, it was usually, you know, well, I'm working on this, I'm going to, I've got counsel, I'm going to, it's hopefully all of this gonna be taken care of. He was very, very pleasant, very kind of, I don't just well spoken. Um, and then just, you know, very comfortable too, which was interesting. So, uh, and very comfortable, like so much of where I, I thought that that was a little bit incongruent, just simply the sense, the gravity of what I was reading and then his presentation. But a lot of people present in a certain way because they want to kind of blow smoke on my skirt and then

be very charming to me so that I can, would be, you know, fall for the charms and then, you know, uh, sign off on them and put them, get 'em back in there. But, uh, he, he just was saying that he had, I can't remember if he had anything else. I think he got written up for some kind of use of force and like to that early in his career. And then I think the Captain said something like, or supervisor, I can't remember which one said something like, that's not a big deal. That's your, you're a new cop or something then, and it's fine. Something. And uh, and that's, I, I just, and maybe that was the culture. I don't know. I, I've never worked there, but, uh, I thought that was, it kind of stuck with me.

[26:42]

Kevin Sherburne: Yeah. During the second evaluation that you performed.

[26:46]

Dr. Ryan Dunnigan: Yeah.

[26:46]

Kevin Sherburne: You, you, you, in your report, and today when you're talking to me, I hear a lot that the Sheriff's Office, the Sheriff's letter -

[26:53]

Dr. Ryan Dunnigan: Mm-hmm [affirmative].

[26:54]

Kevin Sherburne: That to, to whom it may concern a letter weighed a lot. Is that, was that letter, the sine qua non the without, which not you would, would've, if you had not had that letter, you would've failed him again?

[27:04]

Dr. Ryan Dunnigan: I probably would've.

[27:05]

Kevin Sherburne: Okay.

[27:06]

Dr. Ryan Dunnigan: Yeah.

[27:08]

Kevin Sherburne: And, and the reason for that failure would've been?

[27:11]

Dr. Ryan Dunnigan: I just still didn't feel comfortable enough putting him, like working unless the Sheriff signed off on that and, and had and felt him that he was comfortable with all that. I didn't have enough. I don't have enough information or records, you know, I have little bullet points that I'm providing. A lot of the information I'm being provided is, are self reports from the candidates, and I have to take that with a grain of salt. So a lot of times, like I said, very rosy, not a big deal. And so I have to kind of tease that out. And especially since the, that organization doesn't provide me with the background reports, so I don't have that kind of solid information. Most departments do do that. So I can do, um, again, usually just compare and contrast the different statements. So that makes it a richer, much more solid. And, and, but they, they don't do that. And then it makes me, I get a little more uncomfortable around that because I don't have as much, you know, I can't, um, corroborate different information or the stories. And if the Sheriff's letter, if I didn't have that kind of recommending it, I would've erred on the side of caution because I, I don't think I would've felt comfortable with all of that stuff in his jacket, whether the dust had settled or not to move him forward. And that wasn't necessarily because of a psych, not psychiatric, just characterological. And also the history. There was a lot in there. And I, I think if I were a chief or sheriff, I would, I, I wouldn't, I wouldn't have hired him.

[28:46]

Kevin Sherburne: So are you familiar with the, um, dimensions?

[28:48]

Dr. Ryan Dunnigan: Yes.

[28:48]

Kevin Sherburne: In the POST background? So I heard you use the word in, integrity and, and some of the other language that you just used, um, the, the contempt conviction.

[28:59]

Dr. Ryan Dunnigan: Yes.

[28:59]

Kevin Sherburne: Did Mr. Kim explain to you the underlying facts of what led to that conviction?

[29:05]

Dr. Ryan Dunnigan: He, not somewhat. I mean, he, in his own words, had, he was saying that he was trying to protect the house or, you know, the, the Department, uh, and tried to downplay certain things. And some, I think he said that he didn't disclose or something about evidence, and it came up and it kind of blew up in his face. So he, rather than pointing fingers, he took it upon himself to resign. And, and so, and then they, because of that, they adjudicated it, or, or I think they dropped the charge from like a felony to a misdemeanor at that time per, per his statement. Um, and, but then he couldn't work in that capacity, uh, because he had already retired, uh, or, uh, whatever.

[29:52]

Kevin Sherburne: Okay. Contempt of court can, can encompass a variety of different behavior or actions -

[29:57]

Dr. Ryan Dunnigan: Yes.

[29:57]

Kevin Sherburne: Before a court.

[29:58]

Dr. Ryan Dunnigan: Yeah.

[29:58]

Kevin Sherburne: In Mr. Kim's case, he filed a false declaration.

[30:02]

Dr. Ryan Dunnigan: Yes.

[30:02]

Kevin Sherburne: Under penalty of perjury with the court. Did he explain that to you, or were you aware of that?

[30:07]

Dr. Ryan Dunnigan: He, he said that he had, he didn't bring that up initially, but that was some of those, some of the questions that I had to pull, kind of pull out of him of like what that looked like. And he said he, I think he just, he missed, he said that he didn't, he, he lied, essentially.

[30:27]

Kevin Sherburne: Okay.

[30:27]

Dr. Ryan Dunnigan: I think he lied during, uh, testimony and I can't remember about what, but I thought it, for some reason, I'm thinking it was about evidence or some kind of process. I can't remember what it was, but that was what I was wondering because in law enforcement that expression, you lie, you die.

[30:45]

Kevin Sherburne: Yeah.

[30:45]

Dr. Ryan Dunnigan: How are you going back if you can't, if you can't. And he said it was a big, especially if it's a felony, you can't, so I, I can't sign off on that. So he said it was a misdemeanor and then they would allow him to go back. And so, because it was that, uh, it, the Sheriff's Office was okay with that.

[31:04]

Kevin Sherburne: Okay. Um, did he or did you ever learn the circumstances for his motivation in, in submitting the false declaration to the court?

[31:16]

Dr. Ryan Dunnigan: N-No. I can't remember. He said I'm not, I think, may I ask you if you could refresh my memory, did it have another, was there another guy involved? He was protecting his buddy or something?

[31:27]

Kevin Sherburne: Yes.

[31:28]

Dr. Ryan Dunnigan: Was it, did it involve a gun? Not a gun, right?

[31:30]

Kevin Sherburne: Ballistic vest.

[31:31]

Dr. Ryan Dunnigan: Yeah. Or ballistic vest.

[31:32]

Kevin Sherburne: That he lent to his -

[31:33]

Dr. Ryan Dunnigan: That's what it was.

[31:34]

Kevin Sherburne: Friend from high school?

[31:35]

Dr. Ryan Dunnigan: Yes. That, oh, I didn't know it was a friend from high school.

[31:37]

Kevin Sherburne: Okay.

[31:37]

Dr. Ryan Dunnigan: But I thought it was a coworker. Oh. Or he, I guess it was, um, he lent it and that's what it was. He did, he said he lent it and he wanted to protect his buddy or the Department. I can't remember. But I remember, I think I noted that he was presenting himself as very selfless and uh -

[31:59]

Kevin Sherburne: Yeah.

[31:59]

Dr. Ryan Dunnigan: That he, he, he took it on. He knew it was wrong at that time, but he was going to do it for the greater good for the, the, for the Department and his buddy.

[32:09]

Kevin Sherburne: Okay.

[32:09]

Dr. Ryan Dunnigan: Yeah.

[32:10]

Kevin Sherburne: Thank you.

[32:11]

Dr. Ryan Dunnigan: Sorry about that. My, it's been awhile, [laugh].

[32:13]

Kevin Sherburne: Yeah, it's been quite awhile.

[32:14]

Dr. Ryan Dunnigan: Yeah.

[32:14]

Kevin Sherburne: Um. And uh, just the final question, and I think we covered this, but had you not received that letter, what would your conclusion have been?

[32:34]

Dr. Ryan Dunnigan: Well, I mean, that's tough to say. I, the – He's, some of the issues that were going on, I probably would've found him not sus – not suitable. Uh, the, it did mean something that, because he said that the other issues, um, that were going on the different complaints at that, at his place of employment, were going away. And that's good. I mean, that's fantastic. I mean, there are a lot of different issues and complaints, and I work with a lot of folks like over in Oakland, and sometimes they have 17 different complaints going on, and none of them are sustained. And so I don't always hang my hat on that, but it really didn't change the fact that there was all these, uh, different issues and the contempt.

[33:22]

Kevin Sherburne: Mm-hmm [affirmative].

[33:23]

Dr. Ryan Dunnigan: And the issues there that I'm not going to, if I, I mean if I, I, I wouldn't put someone in a department with that kind of liability in there, just even from a business perspective, even though it's not psychological, but it is characterological because I, for the POST dimensions, you know, whether or not his judgment is good or the ethics, I would've really questioned that. Or even his emotional regulation or stress tolerance, if they, you know, there was a lot of different behavioral issues in there. Uh, if the, if he hadn't, if I hadn't seen the, the letter, I would've probably found him not suitable. Yeah. There's not enough change. Not enough change.

[34:07]

Kevin Sherburne: Do you have questions?

[34:08]

Carrie Woolley: No.

[34:09]

Kevin Sherburne: Doctor, thank you for your time today.

[34:11]

Dr. Ryan Dunnigan: Of course.

[34:11]

Kevin Sherburne: It's 3:28 and I'm gonna turn off the recorder now.

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On June 25, 2025, California Commission on Peace Officer Standards and Training ("POST") Law Enforcement Consultant Kevin Sherburne interviewed Michael Kim in a conference room located at Rains, Lucia, Stern, St. Phalle & Silver, PC, 220 Montgomery Street, San Francisco, California. Also present during the interview was Carrie Woolley, counsel for POST. Marie Masters, Rains, Lucia, Stern, St. Phalle & Silver, represented Kim during the interview. Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Kim. After being advised of the identity of the interviewer and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Kim provided the following information:

Prior to the start of the interview, Masters stated her position for the record that the interview was effectively a compelled interview under threat of decertification for a potential failure to cooperate.

Kim is a newly-hired deputy for the San Francisco Sheriff's Office and is currently assigned to patrol at Laguna Honda Hospital on day shift. His start date for his latest iteration with the Sheriff's Office is December 21, 2024. He had a break in service based on his resignation in February 2016. He is not aware whether there was a pending internal affairs investigation against him at the time of his resignation.

In approximately 2014, the FBI came to his work (he was then working for the chief of the custody division) and interviewed him about Andy Li. After he spoke with his union representative and attorney, they set up an appointment and talked to the FBI. He was ultimately charged with a crime – one count of contempt of court and he was placed on probation and fined $30,000 and performed 300 hours of community service. The sentence was based on a guilty plea. His previous iteration working for the Sheriff's Office was 1999 through 2016.

Toward the latter part of the time he worked for the Sheriff's Office through 2016, Kim worked in the emergency service unit, dealing with mutual aid. He was in charge of things like the Occupy movement. He oversaw about 120 deputies as a sergeant. He was a direct report to a captain and then the deputy chief. They all sat in the same office. He sometimes had direct contact with the Sheriff. At the time, the Sheriff was Vicki Hennessy and the last couple of years he worked as executive assistant to Chief Deputy Matt Freeman in the custody division.

After he left the Sheriff's Office in 2016, Kiim worked for Executive Shield, a security company, for about a year. He started working as a security guard for the War Memorial, which was back with the City and County of San Francisco. He worked for the War Memorial until his rehire by the Sheriff's Office. Kim did not know if Li ever worked for Executive Shield. Li told Kim that he had gotten a guard card and wanted to come clean. After prison, Li was trying to live a clean life. He had two children and believed he could not keep going in and out of prison. Kim tried to connect Li through the CEO of Executive Shield for employment in approximately 2013-14.

The FBI interviewed Kim in August 2014 and December 2014. Kim wrote a memorandum to Freeman in which he repeated the story that he told the FBI in August 2014. That story was that he left his vest at Mimi's place, he was going to a bar and his wife was supposed to retrieve the vest and forgot to. When the FBI raided Li's house, Kim's vest was in the car. Kim did not keep a copy of the memorandum. He does not know where a copy of the memorandum might be. Kim did not keep in touch with Freeman after Freeman retired. That was over 10 years ago. Since Freeman retired, no one has really been able to get in touch with him.

In August 2014, Kim told the FBI that he went with Li to casinos. Kim did not know that Li was doing debt collection. They all spoke Chinese and Kim does not speak Chinese. He would just go into the casinos. Kim did not see any weapons on Li. It was all cordial. When they left, Li would give Kim $100 or so. Kim never asked why Li gave him money. Li never said, "let's go collect debt." It was more like, "I need to go somewhere, let's go."

Kim always tried to help Li. Kim knew Li had a bad time in high school and his mother died when he was young. His father was always working. Kim tried to keep Li on the "straight and narrow" and always trying to "make him a better person." "But he always makes bad decisions."

After Kim joined the Sheriff's Office, he was focused on his career and he had kids, so he did not see Li that much. The last time Kim had contact with Li was after he got arrested. Kim was talking to Li's wife and she handed Kim the phone and it was Li. It's likely on a recording with the feds. Mimi (Li's wife) asked Kim to put up his house for bail. Kim declined.

Kim never gave Li sensitive law enforcement information. He asked to run plates but that's a misdemeanor. Kim did not provide anything that jeopardized investigations. He did ask if people were in jail and that's public information. Prior to computerization of the information, anyone could call in and ask if someone was in jail. That's the only information Kim gave Li. Kim did not even give information to other agencies if they did not have a need to know.

When Kim finished his probation, he decided to reapply to the Sheriff's Office. The probation officer told him he did not get in trouble again, so he went and talked to other deputies with whom he had kept in touch. He applied, went through the process, and was hired. His friends asked if he wanted to come back and they told him they'd love to have him back. People in the chain of command said that. So, he applied. He went through two rounds to get rehired. He does not know why he was not hired during the first round. The list expired and he reapplied. He researched the POST requalification course and got requalified. He went to the requal in San Jose.

The people in the chain of command who told him to reapply were Kevin McConnell, who was a captain and Lieutenant Quinn, who was on the SWAT team with Kim. Ron Chu, a deputy, and Jane Choi, too. They all asked when he was going to come back. McConnell was in charge of field services division.

Kim also talked to the Sheriff by phone, who wrote him a letter of recommendation. Kim was going through the process with Dr. Dunnigan and he asked the Sheriff to write a letter of recommendation because Dr. Dunnigan did not pass him. The letter was specifically for Dr. Dunnigan, not a general letter of recommendation. Kim did not write the letter for the Sheriff's signature. Kim appealed Dr. Dunnigan's decision and passed the second evaluation. Dr. Dunnigan said he failed Kim the first time only because there was a pending investigation against him. Kim told Dr. Dunnigan that he was going to be exonerated. It took longer than several weeks but ultimately Kim called Dr. Dunnigan and told him the investigation cleared him.

Dr. Dunnigan said the time lapsed was so long that he had to conduct another full evaluation, so Kim paid for another evaluation.

Kim selected Dr. Dunnigan from a list of POST-approved psychologists. He did not have a doctor-patient relationship with Dr. Dunnigan and never even met him in person. The evaluation was done over the computer.

During the investigation at the War Memorial, Kim was working from home for nearly a year. A woman accused him of sexual harassment. He kept his supervisor up to date on the investigation. She was in touch with Paul [Miyamoto, the Sheriff].

Kim did not tell the Sheriff that the letter of recommendation did not have a signature or that it was not on letterhead of the department. Dr. Dunnigan was suspicious of the letter. Dr. Dunnigan told Kim that he was going to call the Sheriff to authenticate the letter. The phone number on the letter is Miyamoto's cell phone number. [Masters stated that she would forward the email thread in which Miyamoto sent Kim the letter of recommendation to Sherburne.]

Kim did not know if the Sheriff's Office was doing anything after Dr. Dunnigan did not pass him the first time and sent him a rejection letter dated November 30, 2023.

Whatever the Sheriff says in hiring is the direction the office goes. Other than Miyamoto, Kim talked to Luke Quinn and Ron. Ron did not have a say in hiring.

The letter contains a misspelling of Kim's daughter's name.

After the second evaluation by Dr. Dunnigan, Dr. Dunnigan told Kim on the spot that he passed. Kim was not sure if he called Miyamoto after that. He called his supervisor.

Kim did not think he and Miyamoto had a sit down about POST's serious misconduct investigation. The Undersheriff called Kim based on a notice the office got from POST. Kim had a conversation with Sergeant Perez, who was the personnel manager. The talk was what could happen if his license were taken away. Could he retire? What happened if he surrendered his license? They talked about the publicity of it and Kim told Miyamoto and the sergeant that everything's already been in the open. The conversation took place in the last couple of months. After checking his calendar, Kim stated the conversation

occurred on May 13, 2025. Kim did not give Miyamoto a copy of the investigative report and believed that POST had given him a copy.

After the conclusion of POST's interview, Sherburne provided Masters a chance to ask questions she had of Kim. The following summarizes the interview.

After the first interview with the FBI, Kim felt bad that he had lied to the FBI. His attorneys said he should go back and try to correct his mistakes. So, they went back to the FBI to correct the record.

There was never a plea deal. The feds don't make plea deals. He went in and admitted what he did and cooperated with the feds and they gave him a misdemeanor contempt of court charge.

When he worked at the War Memorial, the investigation against him was based on claims by a woman who was the cousin of his boss, who did not like Kim. The whole thing was a fix. The boss fabricated everything against Kim and tried to get others to make statements about him.

When Kim went with Li to the casinos, he was about 19 or 20 years old. He was more naïve then than he is now.

After Masters concluded her questions, Sherburne asked follow up questions and Carrie Woolley asked questions. The following summarizes the interview.

Kim thought the definition of exonerated in the War Memorial investigation was the same definition that the Sheriff's Office used in internal affairs investigations.

Kim did not know what a proffer was. He went with his lawyer and told his lawyer to sign the agreement with the prosecutor. He never asked the court to seal documents but the AUSA sealed it because he cooperated with the feds. Kim did not know half the stuff that Li was doing until his attorney gave him the paperwork.

In the sentencing memorandum, it said that his lawyer said that Kim had no intention of returning to law enforcement. Kim is not sure what was agreed upon. . . just that he was going to resign from the Sheriff's Office. Kim was one of the rising stars of the department. Kim did not want bad publicity for the Sheriff. When the feds talked to him, they said it was all about this Asian senator, Asian gangsters, and an Asian cop. That made it big news, so "we're going to come after you." Kim made a mistake and will take the consequences that come with that.

Kim is not sure if the judge asked him about returning to law enforcement during his sentencing hearing.

While working at the War Memorial, the retirement system is San Francisco's retirement system just as the Sheriff's Office but the job was not a public safety job, so that's a difference.

Kim knew he made a mistake. He did not lie to regain his job with the Sheriff's Office and told the background investigators everything. People know he tells the truth. There was one mistake.

Lieutenant Tiffany Martin does not even know Kim.

Kim feels horrible and would never have talked to Li if he knew what he was doing. He only sees him on birthdays. Li doesn't even know about the car crash. He said Kim got a pass from CHP, but CHP does not give passes to anyone, even cops. Kim does not associate with Kim. He wants to keep his license and work in the department. The Sheriff knows his character.

Li's lawyers kept hounding him for a declaration. They typed it up and sent it to him. They called him while he was driving home.

The vest was a 15 year old, outdated vest. It was not a plate, just a regular, under the uniform vest. It was like a level 3A vest. He assumes that Li would have been able to buy a vest like that on the open market but he likely did not want to spend $1,000 for a vest or some amount of money for the vest.

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On June 25, 2025, California Commission on Peace Officer Standards and Training ("POST") Law Enforcement Consultant Kevin Sherburne interviewed Ryan Dunnigan at his office in San Rafael, California. Also present during the interview was Carrie Woolley, counsel for POST. Communications by the parties during the interview were electronically recorded. The recording will serve as the true and accurate record of the statements made by Dunnigan. After being advised of the identity of the interviewer and the purpose of the interview, that being to obtain information related to allegations of serious misconduct, Dunnigan provided the following information:

In November 2023, Dunnigan performed a secondary psychological evaluation of Michael Kim. Kim was a candidate for a position with the San Francisco Sheriff's Office and did not pass the initial evaluation. He contacted Dunnigan for a secondary evaluation. San Francisco Sheriff's Office provides the polygraph but not the initial evaluation to the secondary evaluator. Dunnigan did not have a pre-existing relationship with Kim prior to Kim asking for a secondary evaluation in connection with employment. Neither did Kim continue in any professional way with Dunnigan after the evaluation. The only relationship Dunnigan had with Kim was with respect to the secondary evaluation for employment purposes.

Dunnigan did not meet Kim in person. He conducted the evaluation by Zoom. Dunnigan's communications with San Francisco Sheriff's Office were through their internal email system. He likely reached out to Sergeant Mel Fonthal who was the usual point person. After requesting records, it usually is about 3-5 days for Sergeant Fonthal to get him records. After that, Dunnigan schedules the appointment with the candidate for 1-2 weeks after that. After making a finding of not suitable in November 2023, Dunnigan completed the paperwork and submitted it to Sergeant Fonthal or the lieutenant through their internal system. They responded asking that he change one of the words. Dunnigan used the words "correctional deputy," and that is different than a deputy sheriff, so Sergeant Fonthal wanted the wording to reflect the position of deputy sheriff.

Later, Kim asked if he could wait and postpone the finding of not suitable but that was not acceptable clinically. Some of the information can become stale or other events could occur in the interim. A couple of days is one thing but a couple of months is too long. Kim wanted Dunnigan to wait a couple of months. So, Dunnigan submitted his finding of not suitable. Kim's position was that the Sheriff really wanted him to work there. Dunnigan said that if the dust settles on this other investigation, then maybe I can re-evaluate you. Then, in approximately March 2024, Kim reached out for a re-evaluation. No one else reached out to Dunnigan in the meantime.

This case was very unusual. Normally, a candidate has to wait a year before reapplying. That was not the case for the San Francisco Sheriff's Office. If they want to do it, then it is not an ethical or clinical problem for Dunnigan.

Shown a letter stating it was from Paul Miyamoto and addressed to To Whom It May Concern, Dunnigan stated he recognized it. Dunnigan has only received maybe one or two

letters from a sheriff or chief in his role as an evaluator. That made the letter memorable and very rare that a sheriff or chief would step into the process.

The letter carried "considerable weight" because it leans into Dunnigan's lane in the road. Kim performed fairly well on both psychometric tests, his personality traits were pretty well-rounded, and there was nothing there that would preclude him from moving forward on those bases. What concerned Dunnigan was information in Kim's background investigation. After he came back and said the investigation at the War Memorial had concluded and was not sustained, coupled with the sheriff's letter, Dunnigan's position was that, if you want him, and he's psychiatrically stable, that's your department and you can do that.

Dunnigan noted the letter from Miyamoto was not on letterhead, which could have been because he wrote it as his buddy, not coworker. Dunnigan did not recall if he asked anyone at the Sheriff's Office about the letter. He did not call the Sheriff. Dunnigan did not solicit the letter. Dunnigan did not tell Kim that, if the War Memorial investigation went away, he could mark Kim as suitable. That would have been up to the Sheriff's Office. Dunnigan did not recall speaking with Deputy Ronnie Wan about the letter.

If there is an appeals process after a finding by a secondary evaluator, that's up to the hiring department. Normally, the candidate is out for a certain amount of time. Here, it was very strange that they reopened the case after Dunnigan's finding of not suitable.

Maybe the Sheriff and Kim were buddies or colleagues. During interviews with Kim, Kim made it known to Dunnigan that he and the Sheriff knew each other for a long time and that he was "really close" and "very close," and went up the ranks together, or statements that the Sheriff was great and really wanted Kim there.

Kim told Dunnigan that he had spoken with people in the Sheriff's Office, but other than the Sheriff, Dunnigan was not sure with whom Kim had spoken.

The evaluations take an hour or two. Some go longer. There was a lot of stuff in Kim's file that concerned Dunnigan. Even during the second evaluation, Dunnigan was hesitant to sign off on Kim but if the Sheriff wanted to "take that liability" and they were comfortable with Kim, they have that right. Dunnigan found the contempt charge disturbing. That's a big deal to Dunnigan.

Kim tended to gloss over things and minimize his role. He did not take accountability for his own actions. It was a little incongruent compared to the gravity of the situation. The To Whom It May Concern weighed a lot. Dunnigan just did not feel comfortable with him without that letter. Dunnigan likely would have failed Kim were it not for the letter. If he were a chief or sheriff, he would not have hired Kim.

Dunnigan is familiar with the POST Dimensions in background investigations. Kim's statement to Dunnigan about the contempt conviction was framed in terms of downplaying certain things and highlighting that Kim was protecting the Sheriff's Office by resigning and that they dropped the charge from a felony to a misdemeanor. The contempt charge was a

perjury charge. Kim did not initially raise that but Dunnigan kind of had to pull that out of him and what that looked like.

In law enforcement, there's a saying, "you lie, you die." Kim said the misdemeanor would allow him to return to the Sheriff's Office and they were OK with it.

Kim was protecting his buddy and lent him a ballistic vest. Initially, Dunnigan thought it was a coworker but it was a friend from high school. Kim presented himself as very selfless. Kim knew it was wrong at the time.

Dunnigan would likely found him not suitable. Dunnigan has dealt with applicants who have numerous investigations or complaints against them. Dunnigan would not put someone in the department "with that kind of liability" and would have really questioned the POST Dimensions of ethics and judgement. If he had not seen the letter, he would have probably found him not suitable.

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AGENDA ITEM REPORT

Title: POST2402562 - ARMANDO R. MONTALVO (POST ID: C89-U13)
LAST EMPLOYING AGENCY: ORANGE COUNTY SHERRIFF'S DEPARTMENT (CURRENT)

REPORT PROFILE

MEETING DATE 10/09/2025	**BUREAU SUBMITTING THE REPORT** Professional Conduct Southern Bureau	
RESEARCHED BY Marcus Gregory		**REVIEWED BY** Christine Ford
REPORT DATE	**APPROVED BY**	**DATE APPROVED**
PURPOSE		**FINANCIAL IMPACT** No

ISSUE, BACKGROUND, ANALYSIS, & RECOMMENDATION

ISSUE:

The matter is before the Peace Officer Standards Accountability Advisory Board (POSAAB) for review and recommendation regarding the subject peace officer's certification status.

BACKGROUND:

Respondent began his employment with the Orange County Sheriff's Department on February 25, 2022, as a deputy sheriff in training. Respondent completed his training program on September 9, 2022. At the time of the events at issue, Respondent was employed as a Deputy Sheriff with the Orange County Sheriff's Department.

This position is a peace officer position as defined under California Penal Code §830.1(a) and is required to be certified pursuant to California Penal Code §13510.1(a).

On March 16, 2024, Respondent was involved in a use of force incident with an inmate, hereafter "INMATE", while working at the Intake Release Center. During the use of force incident, Respondent visibly punched INMATE approximately twenty-eight (28) times in the face, head, and upper body while three other deputies assisted and threw numerous punches at INMATE. INMATE at the time was not assaultive towards the deputies and was only showing passive resistance by not

giving up his hands while lying prone on the ground. At one point after delivering the punches, Respondent lifted INMATE's head and slammed INMATE's face against the concrete floor while INMATE was pinned down by deputies. Respondent was cooperative with the investigation and acknowledged the force used was unreasonable. As a result of the administrative investigation the Orange County Sheriff's Department sustained a finding that the force used by Respondent was not within policy. As a result of the sustained finding Respondent received a 40-hour suspension.

Audio/Video Evidence Links:

- **BR06 POST2402562 Attachment C Video 1 24 009233 Redacted**
- **BR07 POST2402562 Attachment D Video 2 24 009233 Redacted**
- **BR08 POST2402562 AttachmentE Handheld video 24 009233 Redacted**
- **BR09 POST2402562 Attachment F INMATE Use of Force Interview Redacted**
- **BR10 POST2402562 Attachment G Respondent Interview Redacted**
- **BR11 POST2402562 Attachment H Respondent Interview II Redacted**
- **BR12 POST2402562 Attachment I Deputy Vega Interview**
- **BR13 POST2402562 Attachment J Deputy Chen Interview**
- **BR14 POST2402562 Attachment K Deputy Herrera Interview**

ANALYSIS:

Clear and convincing evidence substantiated that Respondent violated California Penal Code §13510.8(b)(3) and Commission Regulation 1205(a)(3) regarding physical abuse; in that the force used by Respondent was excessive wherein Respondent punched INMATE twenty-eight (28) times and slammed INMATE's head onto the concrete floor. Respondent's use of force was unreasonable and excessive based on the level of resistance offered by INMATE.

RECOMMENDATION:

The Peace Officer Standards Accountability Advisory Board (POSAAB) shall review the findings of investigations presented by the Peace Officer Standards Accountability Division (POSAD) and make a recommendation regarding what action should be taken, suspension or revocation, on the certification

of the subject peace officer.

ATTACHMENT(S):
BR01_POST2402562_Montalvo_Armando_ISF_Final (1).pdf
BR02_POST2402562_Executive_Review_Division_Recomendation.pdf
BR03_POST2402562_EDI_Profile_Montalvo_Armando_Redacted.pdf
BR05_POST2402562_Attachment_B_OCSD_Use_of_Force_Report_24-009233_Redacted.pdf
BR04_POST2402562_Attachment_A_OCSD_Report_24-009233_FINAL_Redacted.pdf



INVESTIGATIVE SUMMARY AND FINDINGS

PEACE OFFICER NAME: ARMANDO MONTALVO

POST ID NUMBER: C89-U13

EMPLOYING AGENCY: ORANGE COUNTY SHERIFF'S DEPARTMENT

POST CASE NUMBER: POST2402562

WRITTEN BY: LAW ENFORCEMENT CONSULTANT MARCUS GREGORY

DATE: 8/11/2025

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I. Executive Summary

On March 16, 2024, Orange County Sheriff's Deputy Armando Montalvo, hereafter "Respondent", was involved in a use of force incident with an inmate, hereafter "INMATE". During the use of force incident, Respondent visibly punched INMATE approximately twenty-eight (28) times in the face, head, and upper body while three other deputies assisted and threw numerous punches at INMATE. INMATE at the time was not assaultive towards the deputies and was only showing passive resistance by not giving up his hands while lying prone on the ground. At one point after delivering the punches, Respondent lifted INMATE's head and slammed his face against the concrete floor while INMATE was pinned down by deputies. Respondent was cooperative with the investigation and acknowledged the force used was unreasonable. As a result of the administrative investigation the Orange County Sheriff's Department sustained a finding that the force used by Respondent was not within policy. As a result of the sustained finding Respondent received a 40-hour suspension.

II. Background Information

a. Identity of Respondent

At the time of the events at issue, Respondent was employed as a deputy sheriff with the Orange County Sheriff's Department.

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline

Respondent began his employment with the Orange County Sheriff's Department on February 25, 2022, as a deputy sheriff in training. Respondent completed his training program on September 9, 2022.

Respondent has the following additional reports of serious misconduct of record with POST:

POST2311645: Physical Abuse/Excessive or Unreasonable Use of Force. Agency-Unfounded/ Closed w/POST.
(Occurred 05/09/2023)

POST2314227: 1205(a)(3) Physical Abuse/Excessive or Unreasonable Use of Force. Agency-Unfounded/ Closed w/POST.
(Occurred 06/24/2023)

POST2322603: 1205(a)(3) Physical Abuse/Excessive or Unreasonable Use of Force. Agency-Unfounded/ Closed w/POST.
(Occurred 08/12/2023)

POST2403224: Physical Abuse/Excessive or Unreasonable Use of Force. Agency-Unfounded/ Closed w/POST.
(Occurred 09/20/2024)

POST2408352: 1205(a)(3) Physical Abuse/Excessive or Unreasonable Use of Force. Open w/Agency.
(Occurred 10/07/2024)

When evaluating whether suspension or revocation is appropriate, Penal code section 13510.8(c)(5) and California Code of Regulations, Title 11, Division 2 section 1213(a)(5) provide that the Commission must consider Respondent's prior conduct, discipline and service record. The relevance and weight the Commission may choose to assign to a peace officer's prior conduct and service record will depend on the facts in each case.

c. Prior Employment History

Respondent does not have any additional law enforcement appointments in California.

d. Peace Officer Certification

Respondent is assigned POST ID C89-U13. He received the following peace officer certificates from the Peace Officer Standards and Training (POST):

- Basic (November 1, 2023)
- Intermediate (March 6, 2025)

e. The Present Allegations of Serious Misconduct

1. On March 16, 2024, an administrative investigation was initiated after Respondent's sergeant submitted the use of force incident to be reviewed by Internal Affairs.

2. On December 23, 2024, the Orange County Sheriff's Department concluded the investigation, and allegations were sustained related to the force used by Respondent. Based on the sustained findings Respondent received a 40-hour suspension.

3. On March 27, 2024, the Orange County Sheriff's Department reported the allegation of serious misconduct to POST pursuant to California Penal Code Section 13510.9.

III. Investigative Methodology

This report summarizes the findings related to allegations of serious misconduct. This investigation was conducted in accordance with the regulations and policies of POST. The investigation included a review of Orange County Sheriff's Department administrative investigation which included interviews of witnesses, the subject officer and review of jail video footage.

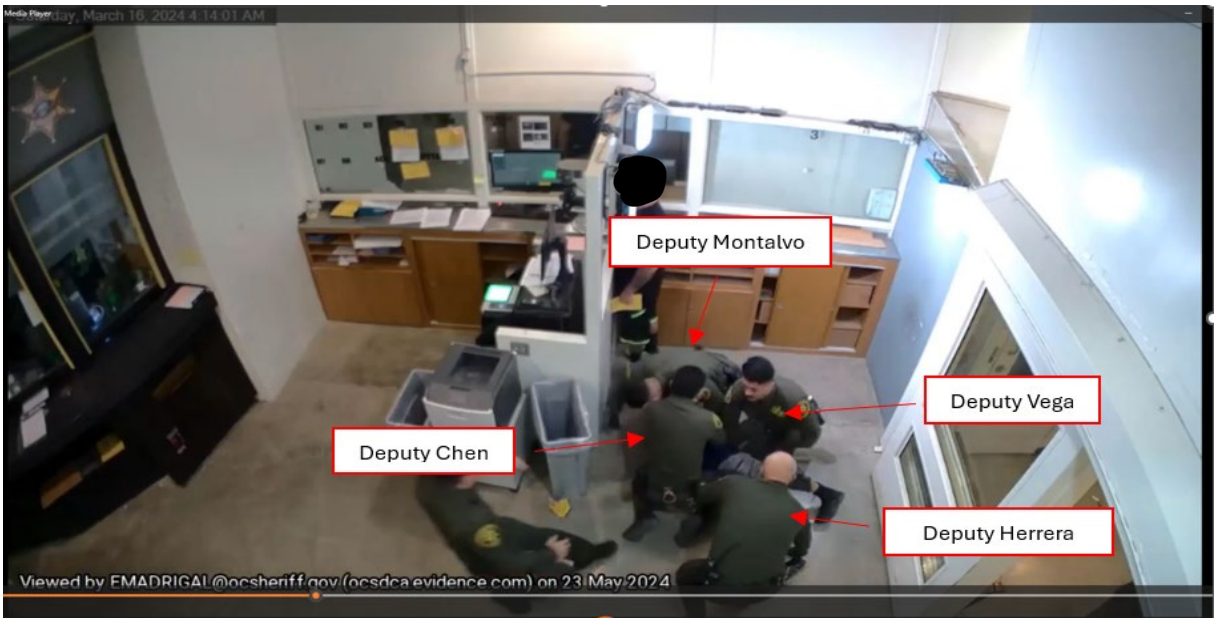
Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means evidence of a charge is clear and convincing so long as there is a high probability that the charge is true. The evidence need not establish a fact beyond a reasonable doubt.

This report is necessarily summary in nature and does not include every fact or issue that might be found in the underlying investigation and attachments. It does, however, contain reference to that evidence that I believe establishes the requisite facts, and proves the serious misconduct charged, by clear and convincing evidence.

IV. Factual Summary

On March 16, 2024, Respondent was involved in a use of force incident while working at the Orange County Intake Release Center, a maximum-security jail. While Respondent was escorting INMATE to the photo booth, INMATE became resistive with Respondent, by turning towards and pulling away from Respondent. Deputy Vega responded and Respondent and Deputy Vega took INMATE to the ground. After taking INMATE to the ground Respondent and Deputy Vega struck INMATE multiple times with punches to the face, head and upper body. Deputy Chen and Deputy Hererra responded and also delivered punches to INMATE. While multiple deputies had INMATE pinned to the ground, lying prone, Respondent lifted INMATE's head with two hands and slammed INMATE's face on the concrete floor. The use of force was captured by two cameras located in the booking area, which showed Respondent punching INMATE approximately twenty-eight (28) times. Each deputy prepared a use of force report.

As a result of the force used on INMATE an administrative investigation was initiated.



Respondent's Report (24-009233)

Respondent wrote INMATE had repeatedly refused to follow directions, to include, standing up from the uncuff bench after being told to stay seated and refusing to stand where directed. Respondent wrote he grabbed INMATE's left arm with a firm grip to escort him to the photo location at which point INMATE stated, *"Don't grab me."* Respondent wrote INMATE pulled away from him by yanking his left arm away from Respondent's grip.

Respondent wrote he used both hands in an attempt to push INMATE against the wall to place his hands behind his back and overcome INMATE's resistance. Respondent wrote he gave INMATE commands to turn around and place his hands behind his back but INMATE refused to do so. Respondent wrote INMATE turned towards him and kicked off the wall striking Respondent in the face with his left shoulder. Respondent wrote he tried to place INMATE in control holds that were unsuccessful. Respondent wrote INMATE continued to resist at which point he took INMATE to the ground.

Respondent wrote, *"In order to overcome INMATE's active resistance and prevent my partner's or myself from getting injured and further, I punched INMATE in the face with both my hands."* Respondent wrote INMATE actively resisted by pulling away from him and grabbed onto his right leg and would not let go. Respondent wrote, *"In order to free my leg from his grip, I struck INMATE several times."* Respondent wrote the strikes were effective as he was able to free his leg from INMATE's grip. Respondent wrote he attempted to grab INMATE's right arm but was unable as INMATE continued to pull away causing INMATE to briefly trap Respondent's arm underneath INMATE. Respondent wrote he placed his hands on INMATE's shoulder and used his bodyweight to control INMATE until INMATE was handcuffed.

Respondent wrote he viewed the overhead camera footage of the incident prior to writing his report.
(Attachment A- Report 24-009233)

Deputy Vega's Report

Deputy Vega wrote he heard Respondent give INMATE multiple commands and observed INMATE not complying. Deputy Vega wrote he observed INMATE turn towards Respondent and yell something he could not understand. Deputy Vega wrote Respondent pushed INMATE into the counter and Deputy Vega grabbed INMATE's left hand. Deputy Vega wrote he attempted to place INMATE's hand behind his back but was unable to because INMATE was tensing his arm and pulling away. Deputy Vega wrote he gave multiple commands, but INMATE continued to pull his left arm away and drop his body weight to the ground. Deputy Vega wrote he and Respondent pulled INMATE to the ground, and he lost control of INMATE's left arm. Deputy Vega wrote INMATE continued to actively pull his arms away and placed his hands on his face. Deputy Vega wrote, in an attempt to gain compliance, he punched INMATE four times on the left side of his head and shoulder area with his left hand. Deputy Vega wrote he again commanded INMATE to place his hands behind his back, but INMATE did not comply. Deputy Vega wrote he repositioned himself on INMATE's right side to gain control over INMATE's right leg and arm. Deputy Vega wrote he punched INMATE four times with his right hand and four times with his left hand in order to gain compliance. Deputy Vega wrote he again gave INMATE commands to place his right arm behind his back at which point he complied and was handcuffed and placed in leg restraints.
(Attachment A- Report 24-009233)

Deputy Chen's Report

Deputy Chen wrote he observed Respondent and Deputy Vega fighting on the booking room floor with INMATE. Deputy Chen wrote, upon arriving to assist, INMATE was on his stomach and covering his hands with his body. Deputy Chen wrote he used his right knee and body weight on INMATE's right hip to keep him from *"moving away and turning towards deputies, avoiding further assault…"* Deputy Chen wrote he directed INMATE multiple times to place his hands behind his back while trying to gain control of INMATE's left hand. Deputy Chen wrote he struck INMATE's left torso with his right closed fist approximately six times and was able to gain control of INMATE's left hand. Deputy Chen wrote he maintained control of INMATE by using body weight and utilizing a wristlock on INMATE's left hand until handcuffs and leg restraints were applied.
(Attachment A- Report 24-009233)

Deputy Herrera's Report

Deputy Herrera wrote he responded to the incident after hearing shouting. Respondent stated he observed Respondent, Deputy Vega and Deputy Chen on the ground on top of INMATE. Deputy Herrera wrote he crossed INMATE's legs on top of each other and pinned them to the ground using his body weight. Deputy Herrera wrote Deputy Vega

was giving INMATE commands to put his hands behind his back, but INMATE refused to comply and pinned his arms against his chest. Deputy Herrera wrote, “In order to gain compliance I struck INMATE approximately 13 times with a closed right fist to the side of his stomach while giving commands to remove his hands from his chest.” Deputy Herrera wrote INMATE complied and he was handcuffed.
(Attachment A- Report 24-009233)

Deputy Romo’s Report
Deputy Romo wrote he observed two deputies on the floor trying to place INMATE in handcuffs, but INMATE was kicking his legs and refusing to place his hands behind his back. Deputy Romo wrote he gave INMATE multiple commands to place his hands behind his back and stop fighting. Deputy Romo wrote INMATE continued to actively resist deputies. Deputy Romo wrote he used his right knee on INMATE’s left lower back to pin INMATE to the floor and used both arms to pull INMATE’s right arm from underneath him until handcuffs were applied.
(Attachment A- Report 24-009233)

Sergeant Raphael’s Report
Sergeant Raphael wrote that she spoke to INMATE who informed her that he was not injured. INMATE was seen by medical staff, where he only wanted a Gatorade and to be released from custody.
(Attachment A- Report 24-009233)

Video #1 Jail Security Video (Uncuff Bench)
The jail video is approximately two minutes and thirteen seconds in length. The start of the video is time and date stamped Saturday March 16, 2024, at 04:12:20 hours. The start of the video depicts Deputy Montalvo standing closest to the Uncuff bench, processing another inmate at the photo booth. The times noted below relate to the video clip via media player rather than the time stamp on the video.

00:03: Respondent can be observed directing inmates to move and sit on the Uncuff Bench. INMATE can be observed walking out wearing a blue jacket with a grey hoodie and grey sweatpants. Respondent appears to be directing traffic to both inmates going to get their photos taken and returning.

00:27: Respondent directs an inmate, at the end of the bench to stand up and points in the direction of the photo booth. INMATE initially stands up and walks towards Respondent.

00:30: As INMATE approaches Respondent, Respondent extends his right arm and gently pushes INMATE back, at which point INMATE sits back on the bench.

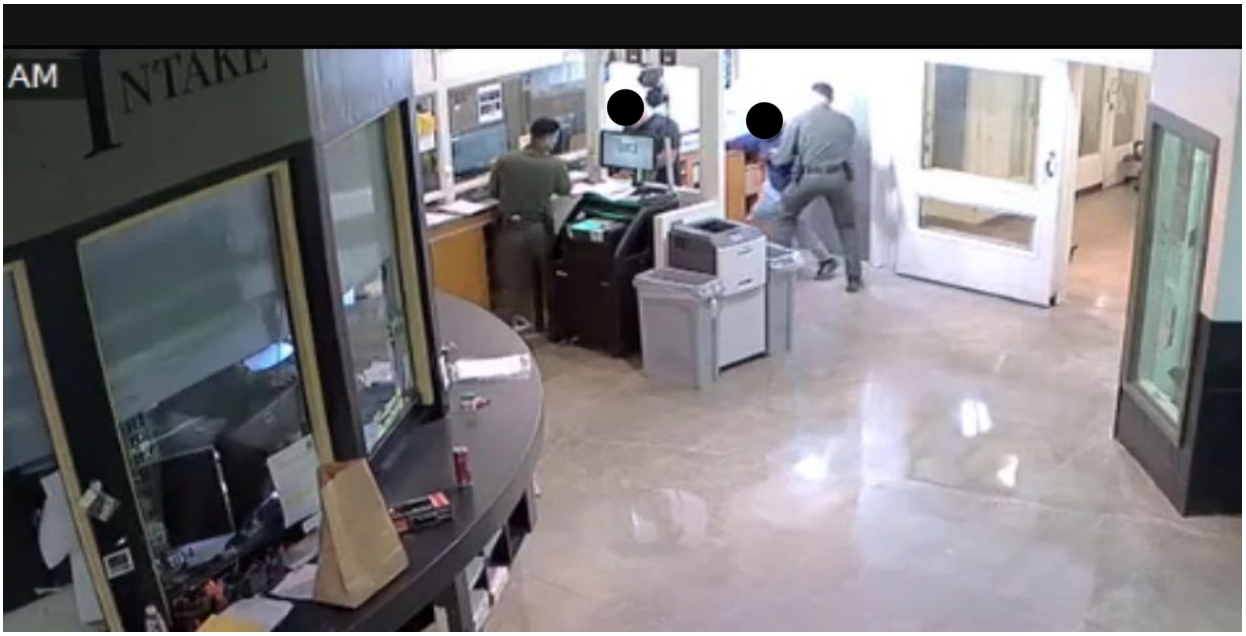
01:05: Respondent directs INMATE to get up off the bench by extending his right arm and motioning his hand in an upwards motion.

01:09: INMATE stands up and Respondent directs INMATE to move towards the photo booth by pointing towards the photo booth with his left arm extended.

01:14: INMATE appears possibly confused as to where INMATE is supposed to go and points towards the photo booth. Respondent walks toward INMATE.

01:16: Respondent grabs INMATE's left shoulder with his right arm and points toward the photo booth with his left arm. Respondent begins to pull INMATE towards the photo booth.

01:18: INMATE can be observed turning towards Respondent. Respondent uses his body weight to shove INMATE towards the corner of the photo booth. INMATE appears to extend his right arm to push off the cabinet.



01:20: As Respondent shoved INMATE into the cabinet, INMATE picks his left leg off the ground and uses it to push off the wall.

01:22: Deputy Vega arrives to assist. As Respondent pins INMATE up against the cabinet and Deputy Vega approaches, INMATE is observed lifting his left leg off the ground knee up while watching Deputy Vega approach. (It is unclear if INMATE's lifting of the left leg was defensive or offensive in nature.)

01:26: Respondent and Deputy Vega struggle to control INMATE. Respondent takes INMATE to the ground.

01:28: INMATE is observed placing both hands over his head as Respondent can be observed punching INMATE with his right arm. Deputy Chen arrives to assist.

01:32: Deputy Vega is observed punching the left side of INMATE with his left arm.

01:35: Deputy Vega transitions to INMATE's right side where he is observed punching INMATE's right side with his right arm. Deputy Chen is observed using his right arm to deliver short punches to INMATE's left side. INMATE's legs appear to flail as he is being struck.

01:39: Deputy Herrera and multiple other deputies arrive.

02:13: The video ends with INMATE still pinned to the floor with multiple deputies on scene.
(Attachment C-Video #1)

Video #2 Jail Security Video (Female Photo)
The jail video is approximately one minute and forty seconds in length. The start of the video is time and date stamped Saturday, March 16, 2024, at 04:13:36 hours. The start of the video depicts Deputy Vega processing another inmate at the photo booth. The times noted below relate to the video clip via media player rather than the time stamp on the video.

00:03: Respondent enters the camera view and can be observed pointing with his left hand while using his right hand to grab INMATE's right shoulder and pull INMATE to the area he is directing INMATE.

00:04: INMATE walked past Respondent and began to turn and face Respondent while Respondent continued to grip INMATE's left arm.

00:05: Respondent shoved INMATE towards the desk. While being shoved up against the desk, INMATE placed his left foot against the wall and appeared to push back towards Respondent.

00:06: INMATE and Respondent are head-to-head as Respondent grabbed INMATE with both arms. Respondent continued to struggle to control INMATE.

00:08: Deputy Vega arrived to assist and both deputies struggle with INMATE before taking INMATE to the ground.

0012: INMATE landed on his right side before turning/or being rolled onto his stomach. Upon rolling onto his stomach, both of INMATE's hands can be observed covering up his head. Respondent and Deputy Vega begin to deliver punches to INMATE's head and face area.

00:16: Respondent, who is located on INMATE's right side, continues to deliver punches to INMATE's head area as Deputy Chen arrives and Deputy Vega transitions

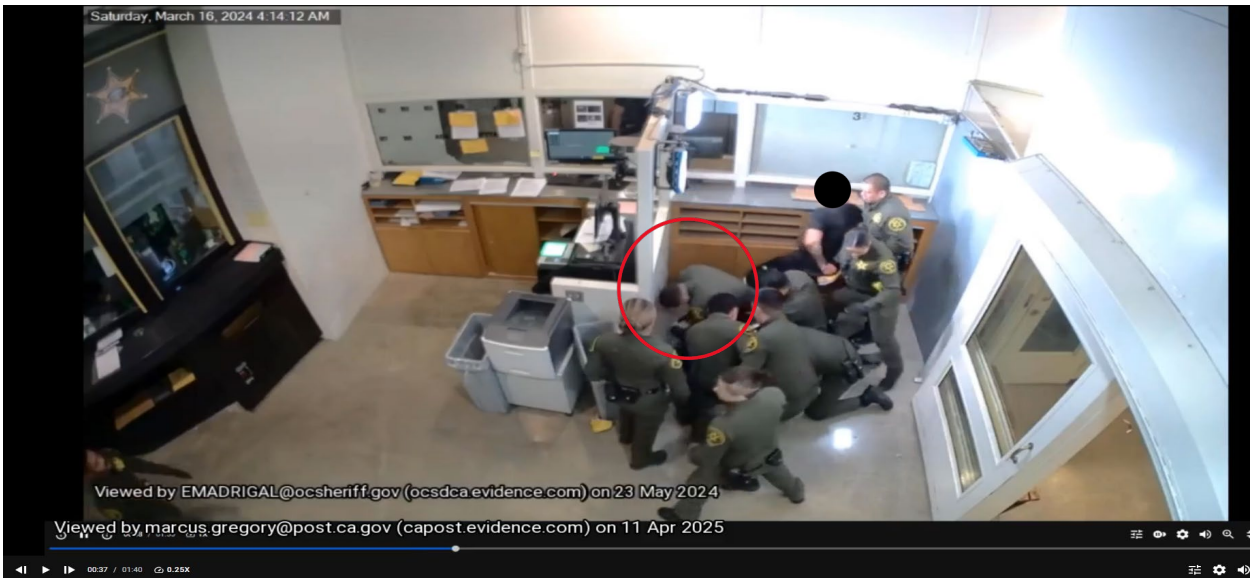
towards INMATE's legs. INMATE continues to squirm on the ground as Respondent continues to deliver punches.

00:20: Deputy Chen placed his right knee on INMATE's back as Deputy Vega transitioned to INMATE's right side. Respondent, Deputy Vega and Deputy Chen again begin punching INMATE.

00:26: Deputy Herrera and Deputy Romo arrive to assist as Respondent continued to punch INMATE.

00:29: There are now a total of eight deputies on scene.

00:37: Respondent is observed lifting the back of INMATE's head before slamming it on the concrete floor. Deputy Herrera can be observed punching INMATE on INMATE's right side multiple times.



01:40: The video ends with multiple deputies on scene. Blood can be observed on the concrete floor in the immediate area where Respondent slammed INMATE's head on the ground.
(Attachment D- Video #2)



Handheld Video

The video begins by showing multiple deputies on top of INMATE, including Respondent Deputy Vega, Deputy Herrera and Deputy Chen. INMATE is assisted up and placed in a wheelchair. INMATE is taken to see medical staff. A female is heard asking if INMATE is hurt at which time INMATE responds, “No” and shakes his head side to side. When asked if INMATE feels any pain anywhere, he stated, “No.” INMATE reaffirms that he does not hurt anywhere as blood is wiped from his right nostril. INMATE’s injuries appear to consist of a bloodied nose and a bump, on his forehead over his left eye. When asked if INMATE has a headache he states, “No.” When INMATE is again asked if he is injured and has any pain INMATE state’s, “No.”

Female: Hello sir. How are you?

INMATE: Good. Yourself?

Female: Can you tell me what happened?
INMATE: No. Nah.

Female: I’m from mental health.

INMATE: I just slipped and fell. I was trying to drink some water and I had…

Female: You slipped and fell?

INMATE: (Nods his head in affirmative) I was using the toilet. I was going to (inaudible) and I had a seizure.

Female: You do know we caught whatever you did on camera right?

INMATE: (Shakes head in the negative).

Female: Ok. Was your intention to hurt someone?

INMATE: No.
(Attachment E- Handheld Video 03:39-04:06)

INMATE went on to state that he was not homicidal, suicidal, or hearing any voices and that he did not resist deputies.

Respondent's Interview

During Respondent's administrative interview he stated he had been employed approximately two years and was working as an uncuff deputy in custody and operations on the date of the incident. Respondent advised when he wrote his report regarding the incident he had a chance to review the jail video footage and believed his report was an accurate synopsis of his account at the time. Respondent stated prior to the incident occurring with INMATE, he had given INMATE directives when he had come out of his cell and INMATE was not following simple directives as to where to walk and sit down. Respondent stated he did not know if there was a language barrier between the two of them but knew INMATE spoke English. Respondent stated he had given INMATE directions in both English and Spanish. Respondent described INMATE's demeanor as slouchy, not following instructions, wandering off and doing whatever he wanted to do. Respondent stated he had to tell INMATE at least three times to sit on the bench prior to the use of force incident occurring. Respondent stated he had not been made aware of any other deputies having an issue with INMATE prior to the incident.

Respondent stated while reviewing the video with investigators that INMATE never said anything to him until he had grabbed onto INMATE – at which point INMATE stated something to the effect of, *"Don't grab me" or "Don't grab my arm,"* before INMATE pulled away.

Respondent stated prior to the incident he had to push INMATE down on the bench after he had asked another prisoner to stand up and INMATE also stood up. Respondent acknowledged that pushing INMATE back on the bench amounted to a use of force and that he had failed to document that part of the incident.

Investigator I: Is this how you normally interact with inmates who, who don't like, does not walk where you want them to?

Respondent: No sir.

Investigator I: So why in this instance?

Respondent: I'm not sure sir.
(Attachment G- Respondent Interview 12:14-12:30)

Respondent acknowledged that he had received prior training in de-escalation. Respondent described the de-escalation training as using verbal commands prior to having to use of force.

Investigator I: So, on the onset of this incident. What de-escalation tactic did you use?

Respondent: Um, I tried talking to him prior. Um, I mean when he came to the bench, I told him to sit down. And then I'm telling him to like stand-up and walk to the direction which I told him to do so a few times. And then that's when I'm like ok I don't know if he's not hearing me or if he doesn't speak English or Spanish, I'm not sure. I'm telling him right there in English and Spanish both to stand up and go over there before I even go hands on.
(Attachment G- Respondent Interview 13:04-13:38)

Respondent explained that in his report when he wrote he grabbed INMATE's left arm with a firm grip, after reviewing video with investigators, he believed it was more of a pull rather than having a firm grip. Respondent stated INMATE pulled away from him, but he was still able to maintain control of INMATE's arm by pushing INMATE against the counter.

Investigator I: In your report you said INMATE kicked off the wall, struck you with a left shoulder and hit you in the face. Ok, do you believe that was intentional?

Respondent: Um, at this, at that point sir in that certain situation I don't even know what to think. I just, my whole intention was to put him in control holds or handcuffs at that point and when I guess I went from pulling him and actually going hands on, to putting him in control holds, I was telling him to put his hands behind his back, like he started not paying attention to me, not following directives so um maybe my, me struggling with him and him kicking off I don't know if he did it intentionally or not.

Attorney: But in that moment how did you feel it was?

Respondent: I feel like he did do it.

Investigator I: So how hard did he strike you? If you…

Respondent: Uh, at the time, it didn't seem so hard but um and I'm not even at this point I don't even know if it was his shoulder or the whiplash of him like put, um pushing off like moving towards me.
(Attachment G- Respondent Interview 20:01-21:11)

Respondent stated he got tunnel vision after he was struck in the face and INMATE refused to follow commands and put his hands behind his back. Respondent stated he felt INMATE was trying to fight him at that point. Respondent stated he was not injured by being struck in the face. Respondent stated at the time he felt like INMATE had struck him with his shoulder. Respondent described his height as 6'01" while the investigator informed Respondent INMATE was 5'6". When Respondent was questioned about

when he was struck in the face, Respondent acknowledged that it could have been accidental as he dropped his head and moved in towards INMATE but Respondent took that as being assaulted by INMATE at the time.

Investigator II: Was INMATE punching at all?

Respondent: No sir.

Investigator II: Was he kicking?

Respondent: Uh, no sir.

(Respondent Interview 25:25-25:32)

Respondent went onto to explain to investigators why he first punched INMATE.

Investigator I: What were INMATE's actions that justified the first punch?

Respondent: I guess pulling away. Uh I tried to put him in control holds, then he kept resisting and not following my directions so, I took him to the ground and punched him.

(Attachment G- Respondent Interview 25:56-26:15)

Respondent explained that he used injuring force because while they were still standing up he couldn't get INMATE in control holds and didn't know what other force options to use. Respondent stated during the heat of the moment he believed injuring force was the best option. Respondent stated that looking back at the incident now he, *"probably should have used different tactics."*

Investigator I: So, I guess um walk me through your mindset at this point while you're standing you feel something that you interpret as him striking you in the face and now he's on the ground, hands covering his head, why are we using injuring force?

Respondent: I think at that moment I was like oh I can't get his hands behind his back, can't control him, um even though he's only 5'6" I couldn't control him even with my size. I didn't know what else to do at the time.

(Attachment G- Respondent Interview 29:19-26:53)

Respondent was questioned about how many times he punched INMATE.

Investigator II: How many times did you punch INMATE during the entire incident?

Respondent: Um, I'm not sure sir. Alot.

Investigator II: I counted approximately thirty (30), punches. What were INMATE's actions that justified the next approximately twenty-nine punches (29) after that first punch?

Respondent: Um kind of like, turning over I guess and he was tucking his arms and based on what I took it like on the, I couldn't control him standing up, on the ground it was even harder to control him. So, I continued to strike him.

Investigator I: Is tucking the arms active resistance or passive?

Respondent: Passive.

Investigator I: Does injuring force seem appropriate, in this incident?

Respondent: No.

Investigator I: Does injuring force seem appropriate for a passively resisting…

Respondent: No sir.

Investigator I: Ok.

Investigator II: Does a subject striking you one time in your face justify repeated punches and the subject goes down and covers his head?

Respondent: No sir.

Investigator II: Did you see INMATE hit, kick a deputy during the incident?

Respondent: Uh, no sir. At that moment I was just focused on myself and him.

Investigator II: Did you give INMATE commands while you were punching him?

Respondent: Yes sir.

Investigator II: What were you saying?

Respondent: Put your hands behind your back like give me your hands, give me your hands.

Investigator II: Did you give INMATE time to comply?

Respondent: Uh, at that time sir I can't even recall. I think at the moment every-thing was escalating in a few seconds.

Investigator II: When you give somebody commands, right you want to wait for them to listen to you. Correct?

Respondent: Yes sir.

Investigator II: Do you think during this incident with you punching him about thirty (30) times, you gave him time to put his hands behind his back.

Investigator II: No sir.
(Attachment G- Respondent Interview 30:37-32:32)

Respondent acknowledged that INMATE did not have any time to comply with Respondent's commands in between the punches. Respondent acknowledged that he would have acted the same way as INMATE, covering himself up if he was being punched the same way. Respondent stated that in the video INMATE had his hands underneath him, pulling away and was tensing up. Respondent stated at one point he tried to gain control of INMATE'S hands after he stopped punching INMATE and was unable to. Respondent acknowledged his punches were not effective. Respondent stated, at one point after he stopped punching INMATE, he tried another technique to pry his arm out from underneath INMATE but he tensed up. Respondent acknowledged that excessively punching INMATE was not necessary to overcome INMATE's resistance after watching the video and that he should have used other tactics. Respondent stated at one point INMATE grabbed onto his right leg and at one point his arm was trapped underneath INMATE.

Investigator II: So, if someone refuses to give up their hands. Does punching them approximately thirty (30) times in the face seem reasonable to you?

Respondent: No sir.

Investigator II: Does thirty (30) punches to the subject who was face down on the ground, seem reasonable to you?

Respondent: No sir.

Investigator II: Would you consider that to be excessive?

Respondent: At the time sir, in that heat of the moment, I thought that I was using the right thing. But obviously now, after watching the video and going over this. I should have used other tactics. So, I don't think I used the right tactics at the time.

Investigator II: So, would you consider it to be excessive?

Respondent: Yes sir.
(Attachment G- Respondent Interview 36:37-37:16)

Respondent was asked about his report where Respondent wrote, “I put my hand on INMATE’s shoulder area and held him down with my bodyweight to maintain control of him.” Respondent stated that he may have held down INMATE’s head but thought it was his shoulder at the time he was controlling INMATE. Respondent acknowledged it was probably INMATE’s head he was holding down.

Investigator I: Did you use any other force against INMATE at that time?

Respondent: I can’t recall sir.

Investigator I: Did you grab his head, raise it off the ground and force it back down and strike it against the floor?

Respondent: Uh, I think so sir.

Investigator I: And at least one is extremely clear. To me it appears potentially two. So, we have one time right here, where it looks like you grab both sides of his head and smack his head into the ground. Do you recall doing that?

Respondent: Yes sir.

Investigator I: How come that’s not documented in your report?

Respondent: I don’t even know sir. I think I just oversaw that.

Investigator I: Is that an approved use of force tactic?

Respondent: No sir.

Investigator I: Have you ever been training (SIC) to grab somebody by both sides of their head and strike their head into the floor?

Respondent: No sir.

Investigator I: What was your goal by doing that?

Respondent: I’m not sure sir.

(Attachment G- Respondent Interview 38:24-39:32)

When Respondent was questioned about possibly striking INMATE’s head a second time against the ground, Respondent stated he couldn’t recall if that occurred.

Respondent stated following the incident he has started to attend arrest control training and is taking Ju Jitsu training. Respondent clarified with investigators at the time the incident occurred he believed his strikes were appropriate but now looking back realizes that they were not. Respondent stated he did not see any of his partners punching INMATE because he was “fixated” on what he was doing. Respondent stated he could

recall another deputy giving commands to INMATE in addition to himself but does not know which deputy it was. Respondent acknowledged that after viewing the video the strikes of his partners did not look good but stated he did not know what threat they perceived at the time.

Respondent was asked to describe his mindset during the use of force.

Respondent: Uh, at the time when I put him against the wall, I was just like why can't I control this guy, he's way smaller than me obviously and I couldn't control him. I don't know why. Um, I don't know if it was my lack of training and then I tried to go hands-on and then I took him down. My whole goal was to control him and put him in handcuffs. I had no malicious intent to injure him or anything like that. My whole intent was to put him in handcuffs and put him away. Um at the time obviously the tactics that I used probably weren't appropriate and I should have used other tactics, as I've taken it upon myself to start training more on arrest control.
(Attachment G- Respondent Interview 50:53-51:36)

Respondent acknowledged that, looking back on the incident, Respondent believed he lost his composure.

Investigator II: Does this use of force seem acceptable to you?

Respondent: No sir.

Investigator II: How do you think this incident would look if it's on the news?

Respondent: Not good sir.

Investigator II: Why?

Respondent: I was punching too much, should have used other tactics, gave him more time to put his hands behind his back.
(Attachment G- Respondent Interview 54:09-54:35)

Respondent stated that he believed he failed to document smashing INMATE's head into the ground because while watching the video he believed he threw too many punches, was focused on documenting that and forgot to do it. Respondent concluded the interview by stating, *"I just want to apologize for my actions and the tactics I used were not appropriate."*

Based on the administrative investigation the Orange County Sheriff's Department sustained policy violations for failing to use de-escalation techniques, use of reasonable force, standards of conduct, performance of duty, obedience to laws and regulations and incurring liability. As a result of the sustained findings Respondent received discipline in the form of a 40-hour suspension.

POST attempted to contact INMATE during the course of the investigation which met with negative results.

V. Analysis and Findings

a. Does the alleged conduct violate Penal Code section 13510.8(b)(3) and California Regulation 1205(a)(3) – Physical Abuse?

Physical Abuse, including, but not limited to, the excessive or unreasonable use of force.

There is clear and convincing evidence that Respondent engaged in both excessive and unreasonable force as defined in Penal Code 13510.8(b)(3) and California Regulation 1205(a)(3). The evidence of the charge is based on the Orange County Sheriff's Department administrative investigation and summarized further below.

The Orange County Sheriff's Department Use of Force Policy (Policy 300) states:

> *"Members shall use only that amount of force that appears objectively reasonable, given the facts and circumstances perceived by the Member at the time of the event, to effectively bring an incident under control."*

(Policy 300.3) states:

> *"Any member who has reasonable cause to believe that the person to be arrested has committed a public offense may use objectively reasonable force to effect the arrest, to prevent escape, or to overcome resistance. A member who makes or attempts to make an arrest need not retreat or desist from his/her efforts by reason of resistance or threatened resistance of the person being arrested nor shall such officer be deemed the aggressor or lose his/her right to self-defense by the use of reasonable force to effect the arrest or to prevent escape or to overcome resistance. Retreat does not mean tactical repositioning or other de-escalation techniques (Penal Code 835a, 836.5(b)). A Member may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance (Government Code 7286(b)(2))."*

This investigation confirmed the following facts that establish Respondent engaged in physical abuse that was excessive and unreasonable:

- Respondent (6'1") significantly outsized INMATE (5'6").

- Respondent was working in a controlled environment (jail) where INMATE would have already been searched for weapons and multiple deputies were working within close proximity of each other (cover/backup).
- Throughout the incident, captured on video, INMATE only appeared physically resistive by not immediately giving up his hands, while lying face down. No footage showed INMATE attempt to physically assault deputies, and no deputies were able to articulate that INMATE attempted to assault them.
- While pinned face down to the ground by multiple deputies, Respondent punched INMATE in the head face and upper body, no less than 28 times, while other deputies were punching INMATE. Respondent continually punched INMATE without giving INMATE time to comply with verbal instructions.
- While pinned to the ground by no less than four deputies, Respondent lifted INMATE's head up, with two hands, and slammed it onto the concrete floor.
- By Respondent's own admission during his administrative interview, slamming INMATE's head onto the concrete was an unapproved/untrained tactic. Respondent also admitted that the force he used was unreasonable and excessive.
- Sergeant Raphael noted that the force options were ineffective writing, *"Four Deputies punched INMATE numerous times even though the inmate did not appear to be actively resisting."*[1]
- Sergeant Raphael noted that the force options utilized in this incident were not reasonable under Policy 300 writing, "*"The force used was not objectively reasonable or proportionate to the threat presented by the Inmate. The application of force did not stop even though the Inmate did not appear to be actively/physically resisting."* [2]
- Sergeant Raphael noted training issues were identified writing, *"Deputies did not employ tactical communication and/or de-escalation techniques prior to the use of force. Additionally, Deputies did not comply with Policy 300."*[3]
- Lieutenant Buffong noted training areas needed to be addressed and wrote, "*Instead of using controlling force against the inmate, injuring force was used. Upon review, the force appeared ineffective and inappropriate for this incident."*[4]
- Sergeant Raphael recommended the incident be forwarded for internal investigation. [5]

[1] Attachment B- OCSD Use of Force Report 24-009233 Page 5 Question 2
[2] Attachment B- OCSD Use of Force Report 24-009233 Page 5 Question 3
[3] Attachment B- OCSD Use of Force Report 24-009233 Page 6 Question 7
[4] Attachment B- OCSD Use of Force Report 24-009233 Page 7 Question 3
[5] Attachment B- OCSD Use of Force Report 24-009233 Page 8 Sgt. Recommendation

- Lieutenant Buffong noted he agreed with Sergeant Raphael's assessment and noted, *"…the force used during the incident does not appear reasonable or within the framework of our current use of force department policy."* [6]
- Commander Wilson noted in his recommendations and conclusions in review of the Use of Force Report, *"Based on the video footage and written reports included in this analysis, I concur with the findings of Lt. Buffong and Sgt. Raphael and deem this use of force to be unreasonable and outside of department policy."*[7]
- The Orange County Sheriff's Department sustained the allegation that the force used by Respondent was unreasonable and Respondent received discipline in the form of a 40-hour suspension.

Based on the abovementioned facts, the force used by Respondent was not proportionate to INMATE's resistive behavior and not objectively reasonable. Respondent could have engaged in less intrusive and reasonable alternatives to punching INMATE over 28 times without pause and slamming INMATE's head into the concrete. Respondent admitted that he continued to utilize punches, an injury level use of force that was not effective. Respondent could not identify a goal he had when he slammed INMATE's head into the ground. Respondent also admitted he used a technique that was not taught when he slammed INMATE's head into the floor while lying prone. Respondent admitted during his administrative interview that he got tunnel vision and used unreasonable force for the level of resistance INMATE displayed. Respondent also admitted that he failed to allow INMATE to comply with any instructions, instead repeatedly punching INMATE and then slamming INMATE's head into the ground.

Therefore, clear and convincing evidence exists that the force used by Respondent was excessive in that Respondent punched INMATE twenty-eight (28) times and slammed INMATE's head onto the concrete and was unreasonable and excessive based on the level of resistance offered by INMATE.

VI. Supporting Evidence and Documentation

- Attachment A – OCSD Report 24-009233
- Attachment B – OCSD Use of Force Report 24-009233
- Attachment C –Video #1 24-009233
- Attachment D- Video #2 24-009233
- Attachment E- Handheld Video 24-009233
- Attachment F – INMATE Use of Force Interview
- Attachment G – Respondent Interview

[6] Attachment B- OCSD Use of Force Report 24-009233 Page 8 Lt. Conclusions/ Recommendations
[7] Attachment B- OCSD Use of Force Report 24-009233 Page 8 Commander Recommendations and Conclusions

- Attachment H- Respondent Interview II
- Attachment I – Deputy Vega Interview
- Attachment J - Deputy Chen Interview
- Attachment K - Deputy Herrera Interview

VII. Findings

Based on POST's investigation reasonable grounds exist to submit this case to the Peace Officer Standards Accountability Advisory Board and the POST Commission for consideration of revocation or suspension pursuant to Penal Code 13510.8.

Commission on Peace Officer Standards and Training
860 Stillwater Road, Suite 100, West Sacramento, CA 95605-1603
(916) 227-3909 • www.post.ca.gov

EXECUTIVE REVIEW & PEACE OFFICER STANDARDS ACCOUNTABILITY DIVISION RECOMMENDATION

DATE: 07/24/2025

CASE #: POST2402562

PEACE OFFICER: Armando Montalvo

POST ID#: C89-U13

AGENCY: Orange County Sheriff's Department

POST CONSULTANT / BC: Gregory / Ford

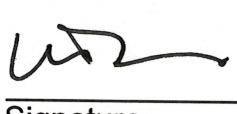
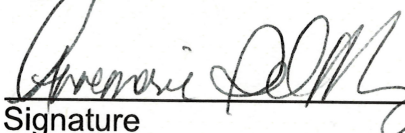
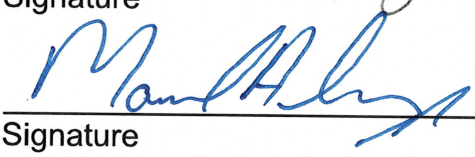
ALLEGATION(S):

Physical Abuse - On March 16, 2024, Orange County Sheriff's Deputy Armando Montalvo, hereafter "Respondent", was involved in a use of force incident with an inmate, hereafter "Inmate". During the use of force incident, Respondent visibly punched Inmate approximately twenty-eight (28) times in the face, head, and upper body while three other deputies assisted and threw numerous punches at Inmate. Inmate, at the time of the incident, was not assaultive towards the deputies and was showing passive resistance by not giving up his hands while lying prone on the ground. At one point after delivering the punches, Respondent lifted Inmate's head and slammed his face against the concrete floor while Inmate was pinned down by other deputies. Following the administrative investigation, the Orange County Sheriff's Department sustained a finding that the force used by Respondent was not within policy which resulted in the Respondent receiving a 40-hour suspension.

The Peace Officer Standards Accountability Division, Certification Executive Review Panel has reviewed the above referenced case involving alleged serious misconduct and has determined the following:

☒ There are reasonable grounds for suspension or revocation of a peace officer's certification.

The evidence in the case, Body Warn Camera footage as well as interview statements, supports that Deputy Montalvo used excessive force when responding to what appears to be passive resistence by an Inmate during a routine escort.

William Darden Chief Legal Counsel	 Signature	7/29/25 Date
Annemarie Del Mugnaio Assistant Executive Director	 Signature	7/29/25 Date
Manny Alvarez Executive Director	 Signature	07/29/2025 Date

cc: Bureau Chief Ford

cc: Jason Morlock

cc: Chandler Knapp

cc:

POST PROFILE NAME:

MONTALVO, ARMANDO RODRIGO

CALIFORNIA COMMISSION ON **POST**

Certification Status: Active

AKA: N/A

DATE: 08/20/2025

PERSONAL IDENTIFICATION

POST I.D.	Agency	Birth Date	Gender	Race/Ethnicity
C89-U13	ORANGE CO SD/CORONER	[redacted]	[redacted]	[redacted]

CERTIFICATES AWARDED

Cert No.	Type	Awarded	Education	T	T+	Comments
211421	B	[redacted]		[redacted]	[redacted]	
160033	I	[redacted]	[redacted]	0.00	0.00	[redacted]

Total Number of Certificates: 2

PROOF OF ELIGIBILITY

POE	Agency Name	Agency	Issued	Status
P0007591	ORANGE CO SD/CORONER	30000	09/09/2022	Expired

Total Number of Proof of Eligibility: 1

EMPLOYMENT

Hired From	To	R*	Rank	Rank Date	Agency	Agency Name	F/P	P/U	Seas
02/25/2022	09/09/2022	6	TRN	02/25/2022	30000	ORANGE CO SD/CORONER	F	P	
09/09/2022			DPTY	09/09/2022	30000	ORANGE CO SD/CORONER	F	P	

***Reason for Separation: 6 = Other**

POST CERTIFIED TRAINING

Comp Date	Cat	CCN	Hrs	Rmb	Cmp	Agency	School	*	Course Name
09/12/2022	A	2060-00100-21-004	984		Y	30000	ORANGE SD		BASIC COURSE-INTENSIVE
09/27/2022	K	9180-25587-22-089	2	X	Y	30000	POST		VEHICLE PURSUIT POLICY (WEB)
09/29/2022	K	2060-20911-22-020	8		Y	30000	ORANGE SD		MENTAL HEALTH INTERVENTION TRAINING
02/08/2023	K	9180-25587-22-223	2	X	Y	30000	POST		VEHICLE PURSUIT POLICY (WEB)
10/23/2023	K	2060-23761-23-002	8		Y	30000	ORANGE SD		MOBILE FIELD FORCE TRAINING
07/10/2024	K	2060-30996-24-003	4		Y	30000	ORANGE SD		LESS LETHAL UPDATE
03/16/2025	K	9181-25587-24-259	2	X	Y	30000	CAPLP		VEHICLE PURSUIT POLICY (WEB)
07/24/2025	K	2060-23090-25-002	4		Y	30000	ORANGE SD		ELECTRONIC WEAPONS

***Meets Perishable Skills**

FOOTNOTES

NO FOOTNOTE ON FILE.

PLEASE REFER TO THE ENCLOSED EXPLANATION SHEET FOR ADDITIONAL INFORMATION.

COMMISSION ON POST – PROFILE REPORT

The Profile Report contains confidential information.

EXPLANATION SHEET

PERSONAL IDENTIFICATION: Subject's personal information as indicated in POST database (EDI system)	
POST ID:	Unique identification number assigned to subject by POST.
Agency:	Indicates the agency (or one of the agencies) where subject is currently employed. An "*" indicates that the subject is employed in more than one position within the same agency.
Birth Date/Gender:	Self-explanatory.
Race/Ethnicity:	**A** = Asian **B** = African American (Black) **N** = Native American **S** = Spanish/Hispanic **W** = White **O** = Other

CERTIFICATES AWARDED	
Cert:	Certificate serial number.
Type:	**B** = Basic **I** = Intermediate **A** = Advanced **S** = Supervisory **M** = Management **E** = Executive **R** = Reserve **D** = Public Safety Dispatcher **SX**= Specialized X (example: SA = Specialized Advanced)
Awarded:	Date certificate was issued.
Education:	Educational points or degree used for earning a certificate.
T:	Training points used for awarding the certificate.
T+:	Additional training points.
Comments:	Comments regarding training or institute(s) where subject received education.
Total Number of Certificates:	Number of certificates awarded to subject as indicated in POST database.

EMPLOYMENT: Subject's employment history as indicated in POST database	
Hired From:	Date subject was hired or sworn into the agency.
To:	Date subject left agency (if applicable).
R*:	Reason for separation as indicated by number in the Report description.
Rank / Rank Date:	Indicates rank as translated by POST database and date subject made rank.
Agency / Agency Name:	Agency code number and name where subject is currently working or previously worked.
F/P:	Time base: **F** = Full time **P** = Part time
P/U:	Wage status: **P** = Paid **U** = Unpaid
Seas:	Provisional or seasonal employment.

POST TRAINING: Courses attended or completed as indicated in POST database	
Comp Date:	Date course ended.
Cat:	General course category (for POST use only).
CCN:	Course Control Number.
Hrs:	Hours completed in course.
Rmb:	Reimbursement indicator: **R** = Reimbursed *(before FY 83/84 reimbursable agency not necessarily reimbursed)* **J** = Job specific * = Job specific, SALARY NOT PAID **Blank** = None or no data available
Cmp:	Completion indicator: **Blank or Y** = Course completed **N** = Course not completed **?** = Prior to 1979
Agency:	Agency where subject was employed at time of course enrollment.
School:	Training institute offering the course.
Course Name:	Course name as shown in POST database.

NON-CERTIFIED COURSES

This section will only appear if applicable.

FOOTNOTES

This section reserved for additional information.

Use of Force

24-009233

Report Stage	Finalize
Report Status	Finalized

General Information

Incident Information			
Facility/Unit/City	Intake Release Center	Sergeant Present	No
Location within Facility	male uncuff	OIS	No
Type of Force	General	Off Duty Incident	No
ERT Call-out	No	SWAT UOF	No
Involuntary Med	No	K9 UOF	No
		Pursuit	No
		AB 481 Military Equip	No

Getting Help

Report Stage	Finalize

S.A.F.E. has a provided a Link to Full UOF Policy If you have any policy question contact SAFE at [redacted]

First time completing an Use of Force Report or has it been a while? Watch our introductory video here. **Click Here for the Video**

Use of Force Help - [redacted]
Technical Help [redacted]

Event Description

General Information		Involved Parties		Review Flow	
DR	24-009233	# Employees using Force	# of Witnesses	Sgt. Notified	3/16/2024
Date	3/16/2024	# of Subjects		Sgt. Notified Time	04:13
Time (24hr)	04:13			Sergeant	Amy Raphael
		*For initial call indicate original purpose that employees encountered the subject, NOT the reason for the force. Reason for Force is covered under the employee section.		Captain/Lieutenant	Jeremy Buffong
Location of Incident				Commander	Nathan Wilson
Address / Cross Streets	550 N. Flower St.				
City	Santa Ana				
		Initial Call / Event.	148 - RESISTING ARREST		
		Request Method			

SB2

Status	
SB2	Yes

Notification Summary - Incomplete (click to view)

Injury Occurred			
Deputies Injured	No	Subjects Injured	Yes

Notification

[redacted] 1/8

Enter a brief description of the event, please inclu... overview of injuries to subjects or Deputies, summary of force used. Example: Deps responded to a DV that occurred. Dep Alpha #9999 contacted the suspect (Smith) who provided a false name, but was recognized from past contacts. Alpha grabbed his right arm and Smith stated he was not going to be handcuffed. He broke free Alpha pepper sprayed him as he ran away to a public bathroom. He attempted to shut the door, but Deps Beta #9998 and Gamma #9997 responded and used their body weight against his force to keep the door from closing. He then gave up peacefully.

NOTE: THIS IS LIMITED TO 500 CHARACTERS.

Notification
On 3-16-24, at about 0414 hours, Inmate INMATE Bkg# [redacted] became uncooperative by pulling away and turning on the Deputy. Control holds were used to bring Inmate INMATE to the ground and strikes were used to overcome resistance. Inmate INMATE was seen by medical and cleared for regular housing. No injuries to Deputies. Inmate had a minor abrasion above upper lip and a lump on the left side of his forehead.

Employees Using Force - Incomplete (Click to view)

Employees Using Force

Only list employees that applied force to a subject involved in this Use of Force.

Employee Name	Title	Employee Attire	Type of Injury	Description of Injury	Inj
Armando Montalvo	Deputy Sheriff I	Uniform	None		No
Daniel Herrera	Deputy Sheriff I	Uniform	None		No
Elvis Chen	Deputy Sheriff I	Uniform	None		No
Justin Romo	Deputy Sheriff I	Uniform	None		No
Nicholes Vega	Deputy Sheriff I	Uniform	None		No

1 - 5 of 5 (0 selected) Page 1

Subject and Witness

Additional Information for the Follow Up Report

The follow up report has been moved from CRM to the Field Based Reporting (FBR system). Sergeants are required to document Witness Statements, Subject Statements, and any ad information on a Supervisory UOF Supplemental and route that report for approval. This report should be considered a PRIORITY REPORT.

UOF Subject(s)

List all known subjects involved in the Use of Force, if the subjects are unknown please contact the Use of Force Sergeant in SAFE to enable unknown subjects.

Subject Name	Subject DOB	Race	Gender	ID Type	ID/Bkg#	Alcohol	Drugs	Behav	S
INMATE	[redacted]	[redacted]	[redacted]	Booking Number	[redacted]				N

1 - 1 of 1 (0 selected) Page 1

Non-Employees Witnesses

[redacted] 2/8

List all witnesses that can be identified that are nc ...nbers of the department, examples include, inmates, bystanders, members of other agencies, fire personnel.

Witness Name	DOB	Contact Information	Address	City
WITNESS INMATE	[redacted]			

1 - 1 of 1 (0 selected) Page 1

Notes & Attachments (Deputy reports should not be attached - No Attachments

Deputy reports should only be entered in FBR, only use this section to attach documents that do not exist in FBR.

FBRReportLink	Report Author	PID	Report Name	Report State
https://filipendula.ad.ocsd.local/InformRMS/rep...	Romo, Justin Ryan	[redacted]	Supplement Incident 24-0092...	Complete
https://filipendula.ad.ocsd.local/InformRMS/rep...	Johnson, Stephen B		Supplement Incident 24-0092...	Complete
https://filipendula.ad.ocsd.local/InformRMS/rep...	Raphael, Amy N		Supplement Incident 24-0092...	In Progress
https://filipendula.ad.ocsd.local/InformRMS/rep...	Hedger, Allen		Supplement Incident 24-0092...	Supervisor Review
https://filipendula.ad.ocsd.local/InformRMS/rep...	Vega, Nicholes Gilbert		Supplement Incident 24-0092...	Supervisor Review
https://filipendula.ad.ocsd.local/InformRMS/rep...	Herrera, Daniel		Supplement Incident 24-0092...	Supervisor Review
https://filipendula.ad.ocsd.local/InformRMS/rep...	Chen, Elvis		Supplement Incident 24-0092...	Supervisor Review

1 - 7 of 8 (0 selected) Page 1

Attachments and Notes

Title: Summary Report
UOF Summary - 24-009233.pdf
CRM Admin 3/29/2024 10:01 AM

Drop UOF document here.

Force Used Summary - INCOMPLETE (No Force Used - 3 Employees)

Force Used

Employee Name	Subject Name	Use of Force	Force Used	Reason for Force	Head / Face / Nec	Chest / Torso	Groin
Armando Montalvo	INMATE	24-009233	Punch	Defense of Self	Yes	-	-

[redacted] 3/8

Armando Montalvo	INMATE	24-009233	Push / Pull	Defense of Self	-	Yes	-
Armando Montalvo	INMATE	24-009233	Takedown	Defense of Self	-	-	-
Armando Montalvo	INMATE	24-009233	Body Weight	Overcome Resistance	-	-	-
Daniel Herrera	INMATE	24-009233	Punch	Overcome Resistance	-	Yes	-
Daniel Herrera	INMATE	24-009233	Body Weight	Overcome Resistance	-	-	-
Elvis Chen	INMATE	24-009233	Control Hold	Overcome Resistance	-	-	-
Elvis Chen	INMATE	24-009233	Body Weight	Overcome Resistance	-	-	-

1 - 8 of 15 (0 selected)

Event Narratives - INCOMPLETE (3 Fields Missing)

Materials Collected

List the materials gathered and reviewed. Example: One DVD containing hand held footage of the incident and hand held footage of Subject's interview.

I requested video from the overhead and handheld cameras which were related to this use of force incident. I also requested hand held footage of the subject's interview. Video was uploaded and viewed via Evidence.com.

Scene Documentation

This incident occurred in the male photograph/fingerprint booth located on the IRC Booking Loop adjacent to Cell H5. The ID booth is a three- sided booth, approximately 4' by 7' open to the booking loop hallway. Inmates are escorted to an ID booth during the booking process to get fingerprinted and photographed.

Was this incident capture on Audio/Video?

Was the incident captured on audio or video.

Body Worn	No	**PVS/L3/Puma Media**	No	**Overhead Camera**	Yes	**Handheld**	Yes
A/V Other	No						

Was the UOF captured on any other video, for example, citizen cell phone, security cameras, Ring, etc.

Audio/Video Review

A/V Booked as Evidence Yes

Audio/Video Review During my review of the incident, I reviewed the footage from the overhead cameras. My review also included reviewing the video interview with the Inmate.

[redacted] 4/8

Link to Video https://ocsdca.evider /axon/evidence?evidence_id=2b1407ddd3b44d31a5028439b70940a3&p. d=6c9fa7c272794e2f8ac66e8395b77249

Supervisor's Questions - INCOMPLETE (7 Questions Missing)

Question 1

What were the actions that led to this Use of Force?

At approximately 0415 hours, Inmate INMATE (BKG:) was being processed, and moved out of cell H-4 to have his initial booking photo taken. While moving from Cell H-4, INMATE began to disregard direct orders from Deputies. Deputy A. Montalvo grabbed INMATE by the jacket to direct INMATE to where he was ordered to stand for the booking photo. INMATE pulled away and turned towards Dep. Montalvo.

Question 2

Were the force options or weapons in this incident effective?

Answer No

Please Explain Four Deputies punched Inmate INMATE numerous times even though the inmate did not appear to be actively resisting.

Question 3

Were the force options or weapons utilized in this incident reasonable under Policy 300?

Answer No

Please Explain Policy 300 states, "Members shall use only that amount of force that appears objectively reasonable, given the facts and circumstances perceived by the Member at the time of the event, to effectively bring an incident under control."

The force used was not objectively reasonable or proportionate to the threat presented by the Inmate. The application of force did not stop even though the Inmate did not appear to be actively/physically resisting.

Question 4

Was relevant/necessary medical attention provided to department member(s) and the use of force subject(s) ?

Answer Yes

Please Explain

Question 5

Was a supervisor notified of the use of force as re[illegible]d by department policy?

Answer Yes

Please Explain

Question 6

Was proper use of video and/or audio recording technology used in this force incident?

Answer Yes

Please Explain

Question 7

Were any training issues identified? (Examples include: officer safety, tactical communication, or de-escalation techniques) ?

Answer Yes

Please Explain Deputies did not employ tactical communication and/or de-escalation techniques prior to the use of force. Additionally, Deputies did not comply with Policy 300.

Question 8

Were any other policy violations identified (examples: professionalism, violation of pursuit policy, standards of contact, use of profanity, PVS)?

Answer No

Please Explain

Managerial Review Questions

Manager Question 1

Were all witness statements memorialized in the S visory Analysis of this use of force incident?

Answer
Yes

Manager Question 2

Was the use of force subject interviewed and the statements memorialized in the Supervisory Supplement Report in FBR of this use of force incident?

Answer
Yes

Manager Question 3

Are there any areas of training to be addressed? If yes, what are they? Corrected Actions taken?

Answer
Yes

Instead of using controlling force against the inmate, injuring force was used. Upon review, the force appeared ineffective and inappropriate for this incident.

Manager Question 4

Are there any areas of liability or risk management concerns associated with this use of force event? If yes, what are they?

Answer
Yes

The inmate, along with the deputies using force were exposed to possible injury, in addition to possible policy violations by the deputies associated to this event.

Managerial Secondary Review

Use of Force on subjects released at the scene (includes cite and releases)
No

Arrests for PC 148, with no additional charges
Yes

Use of Force required admission to a hospital for medical treatment
No

Ineffective use of ECD where additional force required
No

Multiple deployments (drive stun, multiple cycles, more than one cartridge used) of the ECD
No

Use of carotid restraint
No

Use of Force on subjects not involved in the original investigation (witnesses, passengers, etc.)
No

Use of less lethal munitions (40mm, 12 gauge super sock "bean bag") with no response from Homicide
No

Sergeant involved in Use of Force
No

Secondary Review Required? Yes

Recommendations and Conclusions

Employee Name	Sgt. Recommendation	Cpt./Lt. Recommendation	Cmdr. Determination
Armando Montalvo	Refer incident to Command St...	Refer incident to Command St...	Refer incident to Command Staff with a recom...
Daniel Herrera	Refer incident to Command St...	Refer incident to Command St...	Refer incident to Command Staff with a recom...
Elvis Chen	Refer incident to Command St...	Refer incident to Command St...	Refer incident to Command Staff with a recom...
Justin Romo	Refer incident to Command St...	Refer incident to Command St...	Refer incident to Command Staff with a recom...

[redacted] 7/8

Nicholes Vega	Refer in...	to Command St...	Refer incident to Command St...	Refer in...nt to Command Staff with a recom...

1 - 5 of 5 (0 selected) Page 1

Supervisor's Conclusions & Recommendations

Sgt Conclusions
The force used was not objectively reasonable or proportionate to the threat presented by the inmate. The application of force did not stop even though the inmate did not appear to be actively/physically resisting.

Sgt. Recommendation
I recommend this incident be forwarded for internal investigation.

Captain/Lieutenant's Recommendations and Conclusions

Cpt./Lt. Conclusions / Recommendations
I agree with Sergeant Raphael in her assessment, the force used during this incident does not appear reasonable or within the framework of our current use of force department policy.

Corrections requested from Commander

Commander's Recommendations and Conclusions

Based on the video footage and written reports included in this analysis, I concur with the findings of Lt. Buffong and Sgt. Raphael and deem this use of force to be unreasonable and outside of department policy. It will be referred to Internal Affairs for further investigation.

Training - Not Required

UOF Employee	Training Statu...	Assigned Division	Corrective Action / Training	Use of Force	Supervisor Overseeing Trainin...	Trainin

There are no UOF Employ

0 - 0 of 0 (0 selected) Page 1

Cmdr. Concur with Training

Record Submission

NOTE: All submission / correction / finalize buttons have been moved to the tool bar at the top of the form.

[redacted] 8/8

INCIDENT REPORT

COPY

EVENT SUMMARY

OFFENSES

Statute Code	Degree	Statute Description
148(A)(1) PC	Misdemeanor	Obstruct/Resist/Etc Public/Peace Officer/Emergency Med Tech

Date Occurred: Saturday, 3/16/2024 04:30

Date Reported: Saturday, 3/16/2024 04:30

Incident Address: 550 N Flower St , Santa Ana CA 92703

Evidence Collected? ☐ **Suspect Arrested?** ☑

Naloxone Deployed? ☐ **Number of doses deployed:** 0 **Use of Force?** ☑

Brief Description: CODE A OUTISDE H-5 [redacted] INMATE

Property Loss: $0.00

SUSPECT(S)

[redacted] INMATE **DOB:** [redacted]

OTHER PERSON(S) INVOLVED

,

STATE OF CALIFORNIA,

CRIMES AGAINST PEOPLE/PROPERTY

Offense: 148(A)(1) **Attempted/Completed:** Completed

Offense Location: Jail / Prison

Offender Suspected of Using: Not Applicable

SUSPECT(S)

Name [redacted] INMATE **DOB:** [redacted] **AGE:** [redacted] **Cite #:**

Related To:

Sex: [redacted] **Race:** [redacted] **Ethnicity** [redacted]

Cell Phone: **Home Phone:** **Other Phone:** **Booking Number:** [redacted]

Naloxone Deployed? ☐ **Number of doses:**

Name: **Age:**

Naloxone Deployed? ☐ **Number of doses:**

VICTIM (BUSINESS/SOCIETY)

Business/Organization Name: State Of California

Related To: 148(A)(1)

NARRATIVE

INCIDENT REPORT

COPY

On Saturday, March 16, 2024, I was working my assigned position as a Male Uncuff Deputy at the Intake Release Center (IRC) located in the City of Santa Ana, County of Orange. The IRC is a maximum-security jail facility.

At about 0414 hours, I was assisting Deputies N. Vega [redacted] and D. Herrera [redacted] process new inmates through the booking procedures. My job duties include giving directives to inmates when to move and where to stand during the process. Inmate INMATE (BKG: [redacted] repeatedly refused to follow directions. While being processed INMATE stood up from the uncuff bench even after I had told him to stay seated. When it was INMATE turn to stand walk to the wall, INMATE continued to walk towards the females side of the booking loop. Inmate INMATE then stood still and refused to stand where I had told him, even after I pointed to where I needed him to stand. I grabbed INMATE left arm with a firm grip to escort him to the photo location to which he said, "Don't grab me". INMATE pulled away from me, yanking his left arm away from my grip.

I used both my hands to attempt to push INMATE against the wall in order to place his hands behind his back and overcome his resistance. I gave INMATE commands to turn around and place his hands behind his back, but INMATE refused to do so. INMATE turned towards me kicked off the wall and struck me with his left shoulder in the face. I tried to place INMATE in control holds but was unsuccessful. INMATE continued to actively resist. Due to INMATE active resistance, and refusal to follow my commands and give me his hands, I took INMATE to the ground.

In order to overcome INMATE active resistance and prevent my partners or myself from getting injured any further, I punched INMATE in the face with both my hands. INMATE continued to actively resist by pulling away from me. INMATE grabbed onto my right leg and would not let go of it. In order to free my leg from his grip, I struck INMATE several times. The strikes proved effective, I was able free my leg from his grip. I tried to grab control of INMATE right arm but failed to do so since INMATE continued to pull away causing him to briefly trap my arm underneath him. I put my hands on INMATE shoulder area and held him down with my body weight to maintain control of him. INMATE was handcuffed by Deputy J. Romo [redacted] and leg chained by Deputy Herrera.

INMATE was taken to the medical triage area where he was medically cleared by S. Garica RN with a left contusion on his head. Mental health S. Dompas RN cleared INMATE for regular housing. INMATE was placed in PM-11 without further incident.

I reviewed overhead camera footage of this incident prior to writing this report.

INCIDENT REPORT

COPY

Sergeant A. Raphael [redacted] was notified. DR#24-009233. JI#240316-0082

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Reporting Officer	A . Montalvo [redacted]	☐	3/16/2024

SUPPLEMENT

COPY

NARRATIVE

On Saturday, March 16, 2024, I was working my assigned position as an Uncuff Deputy at the Intake Release Center (IRC) located at 550 North Flower Street in the City of Santa Ana, County of Orange, 92703. The IRC houses medium and maximum security, pretrial and sentenced male and female inmates. My Duties as an Uncuff Deputy include assisting in processing new arrestees in the booking process.

At approximately 0414 hours, I was assisting Deputies N. Vega [redacted] and A. Montalvo [redacted] process new inmates in the booking procedure. I was calling the names of inmates to sit on the uncuff bench to await their turn when I heard shouting in front of holding cell 5 (H-5). I saw Deputies Montalvo, Vega, and E. Chen [redacted] on the ground on top of an inmate who was later identified as INMATE (DOB: [redacted], BK[redacted]. I saw additional deputies approaching and instructed them to watch the inmates on the uncuff bench while I assisted in subduing INMATE

I approached INMATE legs and crossed them on top of each other pinning them down with my bodyweight. Deputy Vega was giving commands to INMATE to put his hands behind his back but INMATE continued to pin his arms against his chest refusing to give his arms. In order to gain compliance I struck INMATE approximately 13 times with a closed right fist to the side of his stomach while giving him commands to remove his hands from his chest. INMATE complied and his hands were handcuffed behind his back. I unfolded INMATE legs and pinned them down and instructed Deputy C. Griffin [redacted] to assist me in placing leg restraints. INMATE was then assisted off the ground and placed in a wheelchair to be seen by medical and mental health.

For additional information regarding the incident, see Deputy Montalvo's primary report under the same DR.

Sergeant A. Raphael [redacted] was notified of the incident.

I reviewed video surveillance footage prior to writing this report.

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supplementing Officer	D . Herrera [redacted]	☐	3/16/2024

COPY

NARRATIVE

On Saturday, March 16, 2024, I was working my assigned position as a Psychiatric Observation (Psych Obs) Deputy Sheriff at the Intake Release Center (IRC) located, at 550 N. Flower Street in the City of Santa Ana, County of Orange, 92703. The IRC houses medium and maximum security, pretrial and sentenced male and female inmates. Provides mental health treatment to male and female inmates in modules specifically designed for [redacted] patients and associated conservator hearings.

At approximately 0414 hours, I exited the Psych Obs area of the booking loop to assist with Male Uncuff. The Male Uncuff area of the booking loop receives inmates into the IRC, uncuffs and searches arrestees, and processes the booking of inmates including a booking photo. When arriving in Male Uncuff, I saw Deputy A. Montalvo [redacted] and Deputy N. Vega [redacted] fighting on the booking photo area floor with an inmate, later identified as INMATE (BKG [redacted] DOB [redacted]). I broadcasted a "Code Alpha" on the radio and responded to assist with controlling and restraining INMATE A "Code Alpha" announces to all available Deputies within the facility to respond to a location where there is a threat to employee safety. When I arrived, INMATE was on his stomach and covering his hands with his body. I used my body weight with my right knee on INMATE hip to keep INMATE from moving away and turning towards Deputies, avoiding further assault from INMATE I directed INMATE multiple times to place his hands behind his back while trying to gain control of his left hand with my hands. INMATE did not follow my directives and continued to cover his hands with his body. I struck INMATE left torso with my closed right fist approximately six times and I was able to gain control of INMATE left hand. I placed INMATE left hand behind his back in a rear wristlock and maintained control until handcuffs were placed on INMATE I continued to use my body weight and the rear wristlock on INMATE left hand to maintain control of INMATE until he was placed in leg restraints and placed in a wheelchair to be taken to be medically evaluated. I had no further contact with INMATE

I reviewed video surveillance footage prior to writing this report.

For additional information regarding the incident, refer to Deputy Montalvo's primary report DR #24-009233.

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supplementing Officer	E . Chen [redacted]	☐	3/16/2024

SUPPLEMENT

COPY

NARRATIVE

On Saturday, March 16, 2024, I was working my assigned position as a First Floor Prowler Deputy at the Intake Release Center located at 550 North Flower Street in the City of Santa Ana, 92703, County of Orange. The Intake Release Center (IRC) is a maximum-security jail facility.

At approximately 0414 hours, I was processing inmates at the initial Male Uncuff booking photo booth. While I was processing inmate WITNESS INMATE (BKG [redacted] / DOB [redacted], I heard Deputy A. Montalvo [redacted] give multiple commands to INMATE (BKG [redacted] /DOB [redacted], I saw that INMATE was not complying. I observed INMATE turns towards Deputy Montalvo and yell something that I could not understand. Deputy Montalvo grabbed INMATE and pushed him into the counter. I ran to them and grabbed INMATE' left hand. I attempted to place INMATE left hand behind his back, but was unable to do so due to INMATE tensing his arm and pulling away. I gave him multiple commands for him to place his hands behind his back, but INMATE continued to pull his left arm away and drop his body weight to the ground.

Deputy Montalvo and I pulled INMATE to the ground, losing control of his left arm. INMATE continued to actively pull his arms away from me, and placed his hands on his face. In an attempt to gain compliance, I punched INMATE approximately 4 times on the left side of his head and shoulder area with my left hand. I commanded INMATE again to place his hands behind back, and he would not comply. I then repositioned myself over INMATE right side to gain control over his right leg and right arm. I then threw 4 punches with my closed right hand and 4 with my closed left hand, in order to gain compliance.

While INMATE was lying face down in the prone position, his right arm was under his chest. I told INMATE again to put his right hand behind his back, he complied. Handcuffs and leg restraints were placed on INMATE. Deputies and I assisted INMATE to stand up and placed him into a wheelchair to be medically evaluated.

For additional information regarding the incident, see Deputy Montalvo's primary report under the same DR.

Sergeant A. Raphael [redacted] was notified of the incident.

I reviewed video surveillance footage prior to writing this report.

SUPPLEMENT

COPY

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supplementing Officer	N . Vega [redacted]	☐	3/16/2024

SUPPLEMENT

COPY

OTHER PERSON(S) INVOLVED

WITNESS INMATE **DOB:** [redacted]

WITNESS

Name: WITNESS INMATE **DOB:** [redacted] **Age:** [redacted]

Position/Title:

Address: [redacted]

Cell Phone: **Home Phone:** **Other Phone:** [redacted] **Booking Number:** [redacted]

Sex: [redacted] **Race:** Hispanic **Ethnicity:**

Email Address:

NARRATIVE

On Saturday, March 16, 2024, I was working my assigned position as a Male Uncuff Deputy at the Intake Release Center (IRC) located at 550 North Flower Street, City of Santa Ana, County of Orange, 92703. The IRC is a maximum-security jail facility.

At approximately 0520 hours, I removed Inmate WITNESS INMATE (BKG [redacted] DOB [redacted], from cell PM1 and escorted him individually to cell H6. I asked WITNESS INMATE if he had seen what led up to the incident involving Inmate INMATE (BKG [redacted] DOB [redacted]. WITNESS INMATE stated, "All I saw was the scuffle". I asked WITNESS INMATE if he had heard anything that was said before or during the incident, and he stated, "No, it was just really loud." I asked WITNESS INMATE if he had anything else he wanted to tell me about the incident, and he said, "No."

Refer to Deputy A. Montalvo [redacted] primary report DR#24-009233 JI#240316-0082 for further information.

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supplementing Officer	A . Hedger [redacted]	☐	3/16/2024

SUPERVISORY USE OF FORCE SUPPLEMENTAL

COPY

Reporting Area: Intake/Release Center

SUBJECT(S) INTERVIEW SUMMARY

On 3-16-24 at about 0652 hours, I conducted a post use of force of interview with Inmate INMATE The interview was digitally recorded by Deputy Chung [redacted]. The following is a summary of the interview.

I asked Inmate INMATE the following questions:

I asked INMATE if he was injured and he said, "No."

I asked INMATE if he had any pre-existing injuries or medical conditions and he said, "No."

I asked INMATE if he was seen by medical staff and he said, "Yes."

I asked INMATE if he needed medical attention and he said he wanted Gatorade.

I asked INMATE if there was anything he wanted to tell me and he said he wanted to be released.

I concluded the interview at about 0653 hours.

WITNESS(ES) STATEMENT & SUMMARY

There was 1 witness present for this incident. See Deputy Hedger's report for further details.

ADDITIONAL INFO

All captured media related to this incident was requested and uploaded to Evidence.com by the Intake Release Center Video Unit.

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supervising Officer	Raphael, A. [redacted]	☐	3/18/2024

COPY

PROPERTY/EVIDENCE

Related To: [redacted] INMATE

Property Type: Seized (to Impound Property That Was Not Previously Stolen)

Property Description: IRC overhead video, handheld video, photographs and UOF interview.

Miscellaneous Description: Uploaded to evidence.com.

NARRATIVE

On 03/18/24, I was working my assigned position as the Administrative Video Unit Deputy Sheriff at the Intake/Release Center (IRC). At approximately 0500 hours, I received a request to download videos, photographs and interviews related to DR#24-009233 for evidence.

On 03/18/24, I uploaded the videos, photographs, and interviews to evidence.com.

For further information, see initial report under DR#24-009233.

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supplementing Officer	S . Johnson [redacted]	☐	3/18/2024
Approving Officer	E . Tilove [redacted]	☐	3/19/2024

SUPPLEMENT

COPY

NARRATIVE

On Saturday, March 16, 2024, I was working my assigned position as a uniformed Deputy Sheriff at the Intake Release Center (IRC) located at 550 North Flower Street, 92703, in the City of Santa Ana, County of Orange. The IRC is a maximum-security jail.

At about 0414 hours, I responded to the area in front of holding cell H-5 reference an inmate, later identified as INMATE (DOB: [redacted], BK: [redacted], actively assaulting a deputy. Upon arrival to the location, I saw two deputies on the floor trying to place INMATE into handcuffs, however INMATE was kicking his legs, and refusing to put his hands behind his back.

I gave INMATE multiple verbal commands to put his hands behind his back and stop fighting. INMATE ignored me and continued actively resisting deputies attempts to place him into handcuffs. Due to INMATE actively resisting, and his inability to follow commands, I placed my right knee on INMATE left lower back to pin him to the floor. I used both of my arms to pull his right arm from underneath his stomach to behind his back, until handcuffs were put onto him. I had no further contact with INMATE

INVOLVEMENT TYPE	OFFICER NAME	BODY WORN CAMERA	DATE
Supplementing Officer	J . Romo [redacted]	☐	3/16/2024
Approving Officer	A . Raphael [redacted]	☐	3/26/2024