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

Contents

I. Executive Summary I-2

II. Background Information 2

a. Identity of Respondent 2

At the time of the events at issue, Respondent was employed as a deputy sheriff with the Orange County Sheriff's Department. 2

b. Respondent's Service Record, Relevant Training, and Prior Complaints and Discipline 2

c. Prior Employment History 2

d. Peace Officer Certification 2

e. The Present Allegations of Serious Misconduct 2

III. Investigative Methodology 3

IV. Factual Summary 3

V. Analysis and Findings 18

a. Does the alleged conduct violate Penal Code section 13510.8(b)(3) and California Regulation 1205(a)(3) – Physical Abuse? 18

VI. Supporting Evidence and Documentation 20

VII. Findings 21

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.

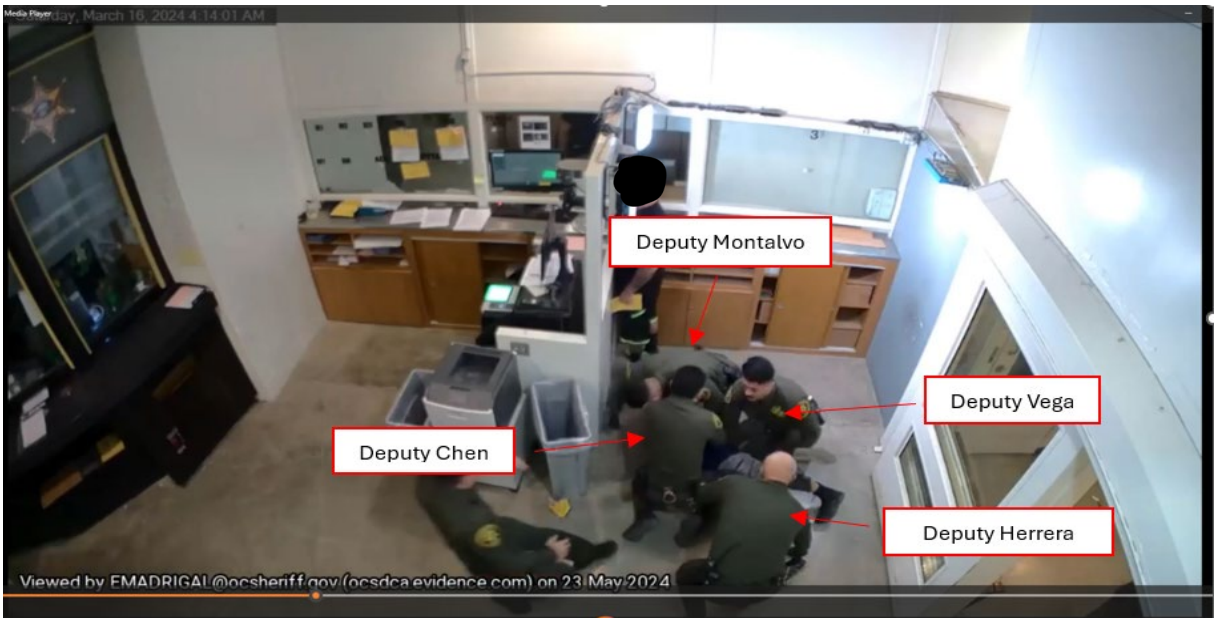
Information obtained was analyzed using the clear and convincing evidence standard. For purposes of this report, clear and convincing evidence means evidence of a charge is clear and convincing so long as there is a high probability that the charge is true. The evidence need not establish a fact beyond 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.

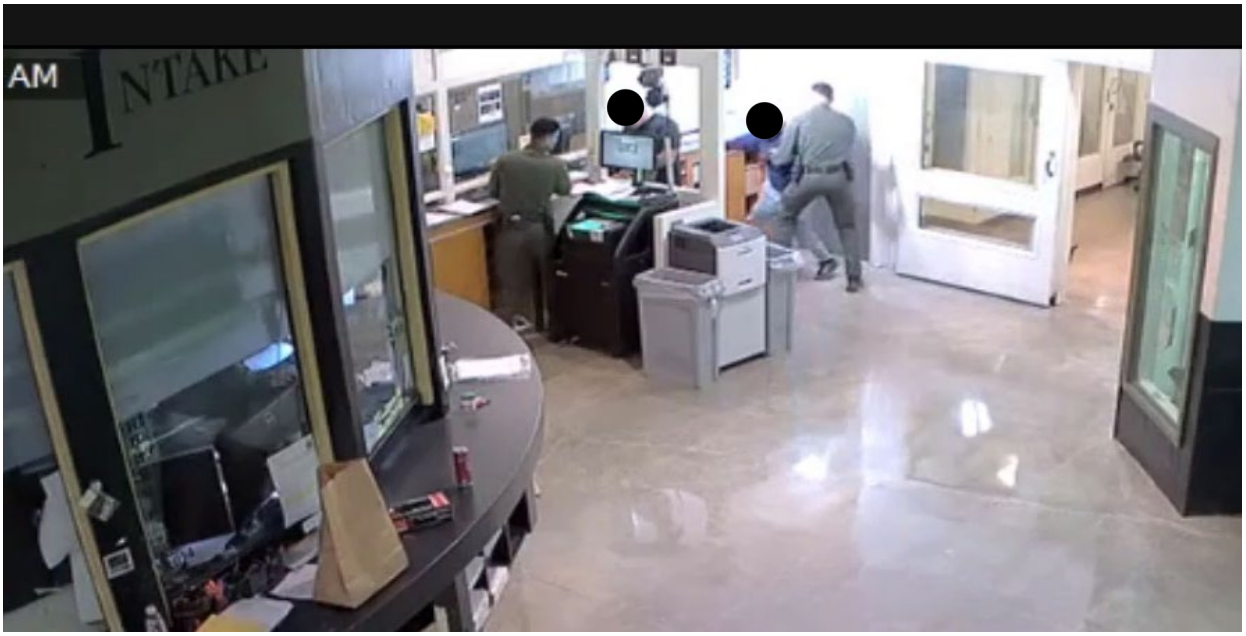
01:05: Respondent directs INMATE to get up off the bench by extending his right arm and motioning his hand in an upwards motion.

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

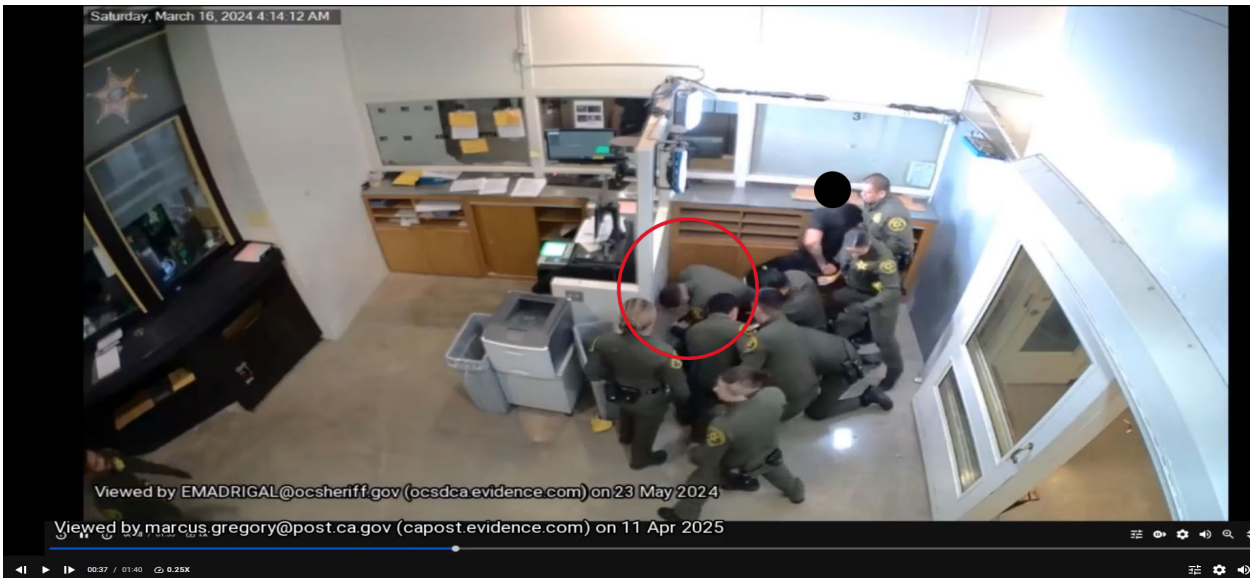
towards INMATE's legs. INMATE continues to squirm on the ground as Respondent continues to deliver punches.

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.