

SUPREME COURT OF THE STATE OF  
NEW YORK, NEW YORK COUNTY

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**VERIFIED PETITION**In the Matter of the Application of WILLIAM  
HARVIN, SR.,

Index No. \_\_\_\_\_

Petitioner,

For Judgment and Order pursuant to Article  
78 of the Civil Practice Law and Rules

RJI No. \_\_\_\_\_

-against-

THE NEW YORK POLICE  
DEPARTMENT,

Respondent.

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**Preliminary Statement**

1. This Article 78 proceeding seeks to end the NYPD's unlawful practice of ignoring the findings of the Civilian Complaint Review Board ("CCRB") regarding serious misconduct by NYPD officers. While the NYPD agreed over a decade ago that it would set such cases for administrative hearings to be prosecuted by CCRB attorneys, it has instead dismissed many of them out of hand and imposed arbitrary, unreasonable, and abusive delays in others.
2. Specifically, among other relief, this petition seeks an order commanding the NYPD to serve the charges the CCRB substantiated against Detective Raul Torres ("Det. Torres"), badge number #5101, over two years ago, and thereby start the process of setting his case for an administrative trial.
3. Petitioner has been seeking justice for being unlawfully tased for four years. He filed a complaint with the CCRB, which opened Case #2020-03690. He provided a sworn statement of the events to an agency investigator. The agency conducted a full investigation and substantiated allegations against Det. Torres on April 21, 2022. Specifically, the CCRB

found that Det. Torres engaged in excessive force when he tased Harvin four times while Harvin was walking away from him on or about May 29, 2020, during the execution of a search warrant within the 81<sup>st</sup> Precinct.

4. The next step in the disciplinary process—without which the process cannot move forward at all—is for the NYPD to make the ministerial step of serving charges on the subject officer. But the NYPD has simply refused to serve the charges on Det. Torres – without any explanation.
5. In some cases, such as this one, justice delayed can amount to justice denied. The NYPD’s arbitrary and capricious delay constitutes an abuse of its authority and discretion, has caused Petitioner substantial harm, and threatens to deny Petitioner altogether the opportunity to see Det. Torres answer the CCRB’s charges at a public hearing.
6. The process through which the NYPD sets a CCRB matter for an administrative trial is straightforward. First, the CCRB’s Administrative Prosecution Unit (“APU”) files the charges with the NYPD’s Department Advocate’s Office (“DAO”). According to the City of New York’s website, “The APU cannot proceed until DAO serves the respondents. DAO typically will not serve the officer charges until it has reviewed the case.”<sup>1</sup>
7. From the fourth quarter of 2019 through the fourth quarter of 2022, the NYPD served charges on respondent officers, on average, less than thirty-seven days after the CCRB forwarded substantiated cases.<sup>2</sup> But here, the CCRB provided the substantiated case to DAO over two years ago, and DAO has failed in its purely ministerial function to review the case and serve the charges on Det. Torres.

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<sup>1</sup> See City of New York, Civilian Complaint Review Board, Administrative Prosecution Unit: <https://www.nyc.gov/site/ccrb/complaints/complaint-process/prosecutionnew.page>.

<sup>2</sup> See Report on the Administrative Prosecution Unit Fourth Quarter of 2022: [https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution\\_pdf/apu\\_quarterly\\_reports/APUReport2022-Q4.pdf](https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/APUReport2022-Q4.pdf).

8. The NYPD's obligations regarding substantiated CCRB cases are set forth in an April 12, 2012 Memorandum of Understanding ("MOU") between the CCRB and the NYPD. A true and accurate copy of the MOU is attached as **Exhibit 1**.
9. The MOU states that when the CCRB substantiates allegations that warrant an administrative trial, the NYPD "shall" forward such cases to trial except in two specified circumstances. (MOU ¶ 1).
10. The two circumstances in which the NYPD need not serve charges and set a case to trial are strictly limited to: (1) "cases in which there are parallel or related criminal investigations" and (2) "in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer's record and disciplinary history the interests of justice would not be served." (MOU ¶ 2.)
11. The NYPD uses the term "retained" to describe those cases in which it does not serve charges or set the case for trial.
12. On information and belief, the NYPD is considering "retaining" the case against Det. Torres and the decision on whether to "retain" the case is one cause of the long delay in serving Det. Torres.
13. In recent years, the NYPD has "retained" large numbers of cases, and the number is growing. While the NYPD retained ten cases in 2022, it retained twenty-one cases in 2023, and in the first quarter of 2024 it has retained nine.<sup>3</sup>

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<sup>3</sup> See Administrative Prosecution Unit Quarterly Reports: <https://www.nyc.gov/site/ccrb/prosecution/apu-quarterly-reports.page>.

14. A recent media report documented the NYPD's failure to serve charges on officers, documenting seven cases, including Mr. Harvin's, that have been pending at the NYPD since last summer.<sup>4</sup>
15. But should the NYPD "retain" Det. Torres's case—that is, decide to dismiss the allegations without an administrative trial—that too would be an arbitrary and capricious agency action and an abuse of discretion. The Police Commissioner abuses his authority when he violates the written terms of the MOU. There is no concurrent criminal investigation and the CCRB substantiated a prior case against Det. Torres, so retaining this case is in direct conflict with the MOU and therefore arbitrary and capricious.
16. Petitioner therefore seeks an order and judgment pursuant to CPLR § 7806:
  - a. Requiring the NYPD to serve the administrative charges in Case Number 2020-03690 on Detective Raul Torres immediately;
  - b. Requiring the NYPD to proceed to administrative trial in Case Number 2020-03690 against Detective Raul Torres immediately;
  - c. Requiring the NYPD to serve immediately the administrative charges in all cases in which the Civilian Complaint Review Board ("CCRB") substantiated an allegation of misconduct and recommended that charges be served against a NYPD member that have been pending at the NYPD for thirty days or longer;
  - d. Requiring the NYPD to proceed promptly to an administrative trial in all cases in which charges have been served and which cannot be retained under the terms of Section 2 of the April 12, 2012, Memorandum of Understanding ("MOU") between

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<sup>4</sup> Eric Umansky, [New Yorkers Were Choked, Beaten, and Tased by NYPD Officers. The Commissioner Buried Their Cases](#), ProPublica, June 27, 2024.

the NYPD and the CCRB setting forth the NYPD's obligations in a case in which the CCRB has substantiated charges against a NYPD member; and

- e. Granting any and all further relief as this Court deems just and proper.
17. For the reasons stated above, the accompanying Attorney Affirmation in Support of the Verified Petition, and all supporting materials, this Court should grant Petitioner's requested relief.

### **Supporting Materials**

18. In support of this petition, Petitioner has submitted an Attorney Affirmation in Support of the Verified Petition, as well as exhibits, all of which are expressly incorporated hereto.

### **Venue and Jurisdiction**

19. This Court has jurisdiction over this Article 78 proceeding because this Petition challenges the actions of a body or officer engaged in administrative decision making. New York Civil Practice Law and Rules ("CPLR") §§ 7802(a), 7803(3) and (4).
20. An Article 78 petition against a body or officer may be filed in "any county within the judicial district where the respondent made the determination complained of." N.Y. C.P.L.R. §§ 7804(b) and 506(b); *see also International Summit Equities Corp. v. Van Schoor*, 560 N.Y.S.2d 811, 812 (2d Dep't 1990) (noting that venue is preferable in the specific county "in which the matter sought to be reviewed originated"). The NYPD's principal offices are at 1 Police Plaza in lower Manhattan.
21. Thus, this action is properly commenced in New York County and venue is proper pursuant to CPLR § 506(b).

### **Parties**

22. Petitioner William Harvin, Sr. is over eighteen years of age and a resident of Brooklyn, NY.

23. Respondent New York Police Department is a Department of the City of New York established by the New York City Charter and is a “body or officer” pursuant to CPLR § 7802(a).

**Statement of Facts**

*On May 29, 2020, Detective Torres Tasered Petitioner Multiple Times as Petitioner Walked Away.*

24. On May 29, 2020, the NYPD was executing a search warrant on Petitioner’s son at Petitioner’s home.
25. The officers who had taken Petitioner’s son into custody began to use excessive force against him by kicking his legs out from underneath him while he was handcuffed.
26. Petitioner asked the officers to stop kicking his handcuffed son.
27. Det. Torres then tased Petitioner in the chest, causing Petitioner to fall. Petitioner was able to disconnect the wires from the prongs that were embedded in his chest but could not remove the prongs themselves.
28. Det. Torres continued to tase Petitioner.
29. Video of the incident shows Petitioner informing officers of injuries to his arm and walking away from officers as others pleaded with Det. Torres not to harm Petitioner.
30. Det. Torres nevertheless repeatedly deployed his taser against Petitioner multiple times.
31. Petitioner was taken to the hospital, where the taser prongs were removed by medical personnel.

*The CCRB Found Det. Torres Had Used Excessive Force and the NYPD Has Failed to Act.*

32. Petitioner filed a complaint with the Civilian Complaint Review Board, which opened Case Number 2020-03690 and conducted a full investigation of the incident.
33. The CCRB concluded that Det. Torres had improperly entered the residential premises, had improperly seized property, and had improperly discharged his taser four times. It found that

Det. Torres had been justified in deploying his taser on two occasions during the incident but that he had improperly deployed it four other times. The CCRB recommended that Det. Torres be charged in an administrative proceeding.

34. The CCRB forwarded the case to the NYPD so that the NYPD could set an administrative trial on April 21, 2022.
35. Although the NYPD received the case over two years ago, it has neither served charges against Detective Torres, nor taken any other action to refer the case for, or move forward to, an administrative trial.
36. Petitioner has done everything he can to try to gain support for a full public and transparent hearing on the facts of his case, including speaking publicly to the media about the NYPD's failure.
37. Petitioner continues to suffer muscle spasms from the injury itself and suffers from fear and anger at the fact that the NYPD has not held a disciplinary trial for Detective Torres.
38. The failure of the NYPD to hold a disciplinary trial for Detective Torres causes Petitioner continued harm.
39. Should the NYPD serve the administrative charges on Detective Torres and allow the CCRB to proceed with the administrative trial, Petitioner's pain will be at least somewhat alleviated, regardless of the outcome of that trial or the eventual disciplinary decision.
40. The act of holding a public hearing is a method of accountability in and of itself, providing needed transparency to the actions of police officers such as Detective Torres.
41. Petitioner likewise is a taxpayer to the City of New York and objects to the systemic waste that the Police Commissioner's unlawful policy imposes on the City, by forcing it to conduct lengthy investigations that the Police Commissioner ultimately ignores.

42. After over two years of stonewalling and delay, Petitioner is compelled to bring this Article 78 proceeding to seek an order compelling the City to follow the law and adhere to its own Memorandum of Understanding.

*The CCRB Gained the Power to Prosecute its Cases in 2011, and the NYPD has Resisted Accountability.*

43. The fight to hold NYPD officers who harm and even kill members of the public is decades old.
44. On July 16, 1964, NYPD Lieutenant Thomas Gilligan, while off-duty, intervened in a dispute between an apartment building superintendent and James Powell, a fifteen-year-old Black boy. According to eyewitnesses, both “the building superintendent and Gilligan shouted racial epithets at Powell” and others before Gilligan shot him.<sup>5</sup>
45. Partly in response to public outcry over the shooting, in 1965, Mayor John Lindsay appointed civilian members to oversee, alongside NYPD officials, investigations conducted by the NYPD’s Civilian Complaint Investigative Bureau (“CCIB”), then in 1966 issued an executive order creating a seven-person board made up of four civilians and three police officers to oversee the investigations.<sup>6</sup>
46. In response, opponents of police oversight fought to get a referendum on the municipal ballot to abolish the hybrid civilian agency. The Patrolman’s Benevolent Association (“PBA”) led the fight for this opposition, joined by its ideological partner the John Birch Society, which held a rally in favor of the referendum joined by five hundred NYPD officers.<sup>7</sup>

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<sup>5</sup> Damarius Johnson, [The Gilligan Case: Police Brutality and Civil Rights in Harlem 1964](#), Picturing Black History: Photographs and Stories that Changed the World.

<sup>6</sup> Michael W. Flam, [“Law and order” at large: The New York civilian review board referendum of 1966 and the crises of liberalism](#), *The Historian*, Vol. 64, issue 3–4 (Spring Summer 2002).

<sup>7</sup> *Id.*



47. The ensuing campaign was overtly racist, with advertisements described as “precursors to the Willie Horton ad of 1988” bolstering the PBA’s case. The head of the PBA complained bitterly that he was “sick and tired of giving in to minority groups with their whims and their gripes and shouting.”<sup>8</sup> Eventually the resolution passed, and civilian oversight of law enforcement in New York was shelved for decades.
48. The CCRB in its current form was established in 1993 after two more incidents finally convinced City Council to act. First, in 1988, four thousand police officers brutally attacked squatters in Tompkins Square Park. As even an NYPD report on the incident found, video evidence showed officers “striking demonstrators with night sticks and kicking other apparently defenseless people while they were lying on the ground.”<sup>9</sup> While the report acknowledged that the behavior of individual officers was “appalling,” it recommended only training for individual officers, while the commanding officer (who had left the scene as the officers rampaged) was allowed to quietly retire. This proof that the NYPD was unable or unwilling to discipline officers for obvious misconduct renewed calls for a civilian board.
49. Second, in 1992, when the City Council and Mayor David Dinkins sought to establish a civilian board, hundreds of police officers rioted at city hall, holding posters that included racist caricatures of the mayor, taunting a Black City Councilmember with racial epithets, and damaging vehicles.<sup>10</sup> The crowd, egged on by then-mayoral candidate Rudolph Giuliani, included enough documented instances of uniformed officers using racial slurs that iconic *Newsday* columnist Jimmy Breslin concluded afterwards that it proved “We have a police force that is openly racist.”<sup>11</sup>

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<sup>8</sup> *Id.*; Vincent Cannato, *The Ungovernable City: John Lindsay and His Struggle to Save New York*, Basic Books (2002) at 168.

<sup>9</sup> Robert Johnson, NYPD Chief of Department, [Tompkins Square Riot Report](#), August 23, 1988.

<sup>10</sup> Laura Nahmias, [White Riot](#), New York Magazine, Oct. 4, 2021.

<sup>11</sup> Nat Hentoff, [Rudy’s Racist Rants: An NYPD History Lesson](#), Cato Institute, July 14, 2016.

50. Eric Adams, then a thirty-two-year-old NYPD lieutenant, was quoted at the time that the riot proved that “the police department is comprised of racist Long Islanders who come into the city by day and leave at night with their arrogant attitudes and believing they are above the law.”<sup>12</sup>
51. The riot convinced public officials that oversight was necessary, and the bill establishing the CCRB passed in 1993. But the agency still lacked the power to prosecute the cases it substantiated, which were tried by police department employees.
52. In 2001, the city tried to fix that problem when the CCRB and the NYPD proposed a Memorandum of Understanding that would give the agency the power to prosecute the cases it substantiated. The PBA immediately challenged the provision in court. Eventually, the First Department upheld the CCRB’s ability to bring its own cases in *Lynch v. Giuliani*, 301 A.D. 2d 351 (1st Dept. 2003). But by the time the case was decided, political will for the measure had faded, and the 2001 Memorandum of Understanding was not executed.
53. Finally, in 2012, the CCRB and the NYPD entered into a new MOU—the one at issue in this case—ceding the power to prosecute these cases from the NYPD to the CCRB.
54. Relevant to this action, that MOU provides that “CCRB shall undertake the administrative prosecution of all civilian complaints against NYPD uniformed officers which have been substantiated by CCRB and in which CCRB has recommended that Charges and Specifications be preferred on or after said date,” with only two defined exceptions. (MOU ¶ 1.)
55. Those exceptions are explicitly “limited” to 1) “such cases in which there are parallel or related criminal investigations” or 2) “when, in the case of an officer with no disciplinary

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<sup>12</sup> Nat Hentoff, [Rudy’s Racist Rants: An NYPD History Lesson](#), Cato Institute, July 14, 2016

- history or prior substantiated CCRB complaints, based on such officer's record and disciplinary history the interests of justice would not be served." (MOU ¶ 2).
56. Neither exception is applicable here. There is no parallel or related criminal investigation into Det. Torres's actions, and the CCRB previously substantiated an allegation that Det. Torres had illegally entered property in January 2019 in CCRB Case Number 2019-00826.
57. The MOU does not impact the NYPD Commissioner's final disciplinary authority. The MOU requires that CCRB attorneys be allowed to put on an administrative trial; it does not require any particular outcome to that trial or final decision by the commissioner after trial.
58. In 2014, Police Officer Daniel Pantaleo killed Eric Garner with an unlawful chokehold after stopping Garner for allegedly selling loose cigarettes. The CCRB substantiated allegations of excessive force and successfully prosecuted the case in the NYPD Trial Room, resulting in Pantaleo's dismissal from the NYPD.<sup>13</sup>
59. But since the CCRB's success with the Pantaleo matter, the NYPD has even more vigorously sought to undermine the agency and its efforts to hold officers accountable.
60. The 2020 repeal of New York Civil Rights Law § 50a, which exempted police disciplinary records from the disclosure under the New York Freedom of Information Law ("FOIL"), has resulted in disclosure of previously secret records detailing NYPD officer misconduct and the often-minor discipline imposed by the Department.<sup>14</sup>
61. As a recent example, in April of 2024 the Commissioner declined to punish the officers who shot Kawaski Trawick less than two minutes after entering his apartment.<sup>15</sup>

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<sup>13</sup> [In the Matter of Charges and Specifications Against P.O. Daneil Pantaleo](#), No. 2018-19274.

<sup>14</sup> Eric Umansky, [We're Publishing Thousands of Police Discipline Records that New York Kept Secret for Decades](#), ProPublica, July 26, 2020.

<sup>15</sup> Yoav Gonen, [No Discipline for Officers who Killed Kawaski Trawick](#), The City, April 14, 2024.

62. In 2022, the NYPD rejected more than half of the disciplinary recommendations forwarded by the CCRB.<sup>16</sup>
63. In 2023, the problem became even more acute. That year, the NYPD refused to serve charges in 116 cases substantiated by the CCRB. Of over three hundred cases substantiated by the CCRB, only 4 proceeded to an administrative trial that resulted in discipline as serious or more serious than recommended by the CCRB.
64. This is the context in which the NYPD has delayed serving charges on Det. Torres for over two years and in which it may “retain” the case and deny the CCRB the opportunity to try it at all.
65. The decision to delay serving charges on Det. Torres’s and setting the case for trial constitutes arbitrary and capricious agency action, as well as an abuse of discretion.
66. The decision to delay serving charges by more than thirty days for any case in which the CCRB has substantiated allegations constitutes arbitrary and capricious agency action, as well as an abuse of discretion.
67. Should the NYPD “retain” Det. Torres’s case, that too would constitute arbitrary and capricious agency action, as well as an abuse of discretion.
68. The NYPD’s decision to “retain” any case that does not comply with the circumstances in Section 2 of the MOU would constitute arbitrary and capricious agency action, as well as an abuse of discretion.
69. Nevertheless, the NYPD continues to “retain” cases in violation of the MOU.
70. For example, according to publicly available information, the NYPD retained the case against Sergeant Eric R. Johnson stemming from Complaint Number 2022-08148 in May of 2024. This case was substantiated on or about November 28, 2022. The CCRB had

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<sup>16</sup> Maria Cramer, [N.Y.P.D. Rejected Over Half of Review Board’s Discipline Records](#), New York Times, Mar. 16, 2023.

previously substantiated cases against Sgt. Johnson and there was no parallel investigation, so the act of retaining this case was contrary to the MOU and therefore arbitrary and capricious.

71. The NYPD's practice of delaying serving charges, and then retaining cases improperly, is part of a bad-faith strategy to prevent officers who harm members of the public in an unlawful manner from facing consequences for their actions and to shield these officers from public scrutiny.
72. This strategy is the responsibility of Commissioner Caban, Deputy Mayor Philip Banks III, and ultimately Mayor Eric Adams, who together have presided over a Police Department so utterly lacking in Courtesy, Professionalism, and Respect that they have been forced to remove that once-motto from Department vehicles.

**Count One (Article 78)**

**NYPD's Delay in Serving Det. Torres Constitutes Arbitrary and Capricious Agency Action and An Abuse of Agency Discretion**

73. Petitioner repeats and realleges every allegation contained in the preceding paragraphs as if fully set forth herein.
74. The process of setting a trial for administrative prosecution is straightforward. Over the past few years, it has taken the NYPD, on average, only a few weeks to serve a responding officer after receiving charges from the CCRB.<sup>17</sup>
75. The CCRB substantiated the case against Det. Torres on April 21, 2022, over two years ago.
76. The NYPD has not served Det. Torres with the charges that were substantiated by the CCRB, delaying an administrative trial.

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<sup>17</sup> See Report on the Administrative Prosecution Unit Fourth Quarter of 2022:

[https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution\\_pdf/apu\\_quarterly\\_reports/APUReport2022-Q4.pdf](https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/APUReport2022-Q4.pdf)

77. Petitioner and others have publicly asked for an explanation as to why the NYPD is delaying serving Det. Torres but have been met with silence.
78. Petitioner has been harmed, and continues to be harmed, by the failure of the NYPD to take any action to move forward with discipline. He has suffered mental and emotional anguish over the fact that Respondent has failed to abide by the findings of an official city investigation that showed Det. Torres engaged in misconduct.
79. Petitioner has been advocating for himself in this matter for years: he took the time and effort to file a complaint with the CCRB, provided the agency with an in-depth interview, and otherwise cooperated with the official investigation. Being denied justice by the whim of the police commissioner has left him dejected and frustrated.
80. Petitioner's frustration and emotional anguish can be remedied, at least in part, by compelling the NYPD to serve the charges on Det. Torres and proceed to a public administrative trial.
81. The NYPD's decision not to serve Det. Torres with the charges the CCRB has substantiated against him is unjustified and lacks foundation in fact.
82. The NYPD's decision not to serve Det. Torres with the charges is an arbitrary and capricious agency action and an abuse of discretion.

**Count Two (Article 78)**

**Retaining Cases in Violation of the MOU Constitutes  
Arbitrary and Capricious Agency Action and an Abuse of Discretion**

83. Petitioner repeats and re-allege every allegation above as though fully set forth herein.
84. In 2012, the NYPD and the CCRB entered into an MOU that governs how the NYPD acts when the CCRB forwards cases where a panel of the board has found that an officer committed misconduct.

85. That MOU provides that “CCRB shall undertake the administrative prosecution of all civilian complaints against NYPD uniformed officers which have been substantiated by CCRB and in which CCRB has recommended that Charges and Specifications be preferred on or after said date,” with only two defined exceptions. (MOU ¶ 1.)
86. Those exception are explicitly “limited” to 1) “such cases in which there are parallel or related criminal investigations” or 2) “when, in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer’s record and disciplinary history the interests of justice would not be served.” (MOU ¶ 2).
87. Neither exception is applicable here. All parallel or related criminal investigations have been closed, and the CCRB substantiated an allegation against Det. Torres in CCRB Case Number 201900826 in April 2019.
88. On information and belief, the NYPD regularly retains cases that do not meet the two defined criteria. For example, since the start of 2022, the NYPD has retained forty cases.
89. While the Police Commissioner has the power to decline to discipline an officer after receiving a recommendation from the NYPD Trial Room, the MOU does not allow the Commissioner to dismiss a case prior to that administrative trial.
90. Retaining cases when it has no justification to do so is unjustified and lacks a foundation in fact.
91. Violating the terms of the MOU that it executed with the CCRB constitutes arbitrary and capricious agency action.
92. Petitioner has no adequate remedy at law. No compensation can undo the damage that Petitioner has suffered and will continue to incur absent the relief he now seeks.

**Conclusion**

93. For the reasons stated above, Petitioner respectfully requests that the Court enter an order and judgment pursuant to CPLR § 7806:
- a. Requiring the NYPD to serve the administrative charges in Case Number 2020-03690 on Detective Raul Torres immediately;
  - b. Requiring the NYPD to proceed to administrative trial in Case Number 2020-03690 against Detective Raul Torres immediately;
  - c. Requiring the NYPD to serve immediately the administrative charges in all cases in which the CCRB substantiated an allegation of misconduct and recommended that charges be served against a NYPD member that have been pending at the NYPD for thirty days or longer;
  - d. Requiring the NYPD to proceed promptly to an administrative trial in all cases in which charges have been served and which cannot be retained under the terms of Section 2 of the April 12, 2012 Memorandum of Understanding (“MOU”) between the NYPD and the CCRB setting forth the NYPD’s obligations in a case in which the CCRB has substantiated charges against a NYPD member; and
  - e. Granting any and all further relief as this Court deems just and proper.

Dated: New York, New York  
July 29, 2024

LatinoJustice PRLDEF



By: \_\_\_\_\_

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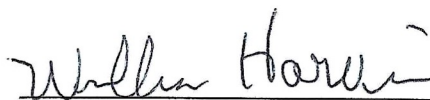
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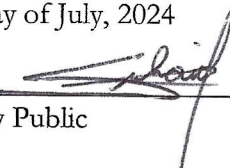
VERIFICATION

STATE OF NEW YORK     )  
                                   )  
 COUNTY OF KINGS        )

William Harvin, Sr., being duly sworn, deposes and says that he has read the Verified Petition, dated July 24, 2024, and that the contents thereof are true to his knowledge, except as to the matters therein stated to be alleged upon information and belief, as to which matters he believes the same to be true; and that the grounds of his belief as to all matters in the instant petition not stated upon his knowledge are based upon investigations which his attorneys have made regarding the subject matter of this proceeding and records provided to him.

  
 William Harvin, Sr.

Sworn to before me this  
25 day of July, 2024

  
 Notary Public

**SUHAIL C. JORGE**  
 Notary Public, State of New York  
 No. 01JO6376817  
 Qualified in Kings County  
 Commission Expires June 18, 2026



SUPREME COURT OF THE STATE OF  
NEW YORK, NEW YORK COUNTY

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**ATTORNEY AFFIRMATION IN  
SUPPORT OF THE VERIFIED  
PETITION**

Index No. \_\_\_\_\_

RJI No. \_\_\_\_\_

THE UNDERSIGNED, attorneys duly admitted to practice law before the Courts of the  
State of New York, affirm, under penalties of perjury, the truth of the following:

1. The undersigned attorneys from LatinoJustice PRLDEF, and Gideon Orion Oliver, are  
counsel for Petitioner in this special proceeding pursuant to Article 78 of the Civil Practice  
Law and Rules ("CPLR"). As such, we are familiar with the facts and circumstances of the  
proceeding.
2. We write this affirmation in support of Petitioner's Order to Show Cause and Petition  
seeking an order and judgment pursuant to CPLR § 7806:
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03690 on Detective Raul Torres immediately;
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- d. Requiring the NYPD to proceed promptly to an administrative trial in all cases in which charges have been served and which cannot be retained under the terms of Section 2 of the April 12, 2012, Memorandum of Understanding (“MOU”) between the NYPD and the CCRB setting forth the NYPD’s obligations in a case in which the CCRB has substantiated charges against a NYPD member; and
- e. Granting any and all further relief as this Court deems just and proper.

### **FACTUAL AND PROCEDURAL HISTORY**

- 3. The full facts of the Verified Petition (“V. Pet.” or “Petition”) are hereby incorporated herein and summarized for the Court’s convenience below.

#### *Mr. Harvin’s Encounter with Det. Torres*

- 4. On or about May 29, 2020, Det. Torres shocked Mr. Harvin with a taser four times while Mr. Harvin was unarmed and backing away from him during the execution of a search warrant within the 81<sup>st</sup> Precinct.
- 5. On May 29, 2020, the NYPD was executing a warrant on Petitioner’s son at Petitioner’s home.
- 6. The officers who had taken Petitioner’s son into custody began to use excessive force against him by kicking his legs out from underneath him while he was handcuffed.
- 7. Petitioner asked the officers to stop kicking his handcuffed son.
- 8. Det. Torres then tased Petitioner in the chest, causing Petitioner to fall. Petitioner was able to disconnect the wires from the prongs that were embedded in his chest but could not remove the prongs themselves.
- 9. Det. Torres continued to tase Petitioner.

10. Video of the incident shows Petitioner informing officers of injuries to his arm and walking away from officers as others pleaded with Det. Torres not to harm Petitioner.
11. Det. Torres nevertheless repeatedly deployed his taser against Petitioner.
12. Petitioner was taken to the hospital, where the taser prongs were removed by medical personnel.

*The CCRB Substantiated the Allegations and Recommended Discipline*

13. Mr. Harvin promptly filed a complaint with the City's CCRB, which opened Case #2020-03690. The CCRB substantiated the allegations against Det. Torres on April 21, 2022.

*The NYPD Has Failed to Serve Charges, a Ministerial Task*

14. For over two years, the case against Det. Torres has languished at the NYPD. At no point has the department completed the ministerial step of serving charges on Det. Torres.
15. The NYPD's Department Advocate's Office ("DAO") has served charged on respondent officers, on average, within less than 37 days of the CCRB's forwarding the substantiated case.<sup>1</sup> Here, the DAO has failed its ministerial function of reviewing and serving charges on Det. Torres for over two years, without justification, excuse, or explanation.

*The Failure is Part of a Growing Practice by Commissioner Caban of Ignoring CCRB Findings*

16. Since taking office in July 2023, Police Commissioner Edward Caban has engaged in a pattern of delaying disciplinary action and "retaining" cases of wrongdoing forward to the NYPD by the CCRB. The NYPD uses the term "retained" to describe those cases in which it does not serve charges or set the case for trial.
17. Commissioner Caban has "retained" a large number of cases, and that number is growing. While the NYPD retained ten cases in 2022, it retained twenty-one cases in 2023, and in the

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<sup>1</sup> See Report on the Administrative Prosecution Unit Fourth Quarter of 2022: [https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution\\_pdf/apu\\_quarterly\\_reports/APUReport2022-Q4.pdf](https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/APUReport2022-Q4.pdf), and attached hereto as **Exhibit 1**.

first quarter of 2024 it has retained nine.<sup>2</sup> In “retaining” so many cases, Commissioner Caban has ignored findings of misconduct by the CCRB and shielded officers from the accountability of a disciplinary trial.

18. In several instances, like in the case at hand, the NYPD has refused to serve charges against the involved police at all, sidestepping the ministerial step necessary to starting the disciplinary process.<sup>3</sup>

*The NYPD’s Actions Violate the MOU with the CCRB*

19. The NYPD’s obligations regarding substantiated CCRB cases are set forth in an April 12, 2012, Memorandum of Understanding (“MOU”) between the CCRB and the NYPD, a true copy of which is attached as Exhibit 1 to the Petition.
20. The MOU states that when the CCRB substantiates allegations that warrant an administrative trial, the NYPD “shall” forward such cases to trial except in two specified circumstances. (MOU ¶ 1).
21. The two circumstances in which the NYPD need not serve charges and set a case to trial are strictly limited to: (1) “cases in which there are parallel or related criminal investigations” and (2) “in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer’s record and disciplinary history the interests of justice would not be served.” (MOU ¶ 2).
22. This case does not fall into either of those limited circumstances: there is no concurrent criminal investigation into Det. Torres’s actions, and the CCRB has previously substantiated charges against Det. Torres – more than two years ago.

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<sup>2</sup> Erick Umansky, [New Yorkers Were Choked, Beaten, and Tased by NYPD Officers. The Commissioner Buried Their Cases](#), ProPublica, June 27, 2024.

<sup>3</sup> *Id.*

23. The NYPD's unexplained, and inexplicable, refusal to serve charges and move forward with an administrative trial against Det. Torres, violate the MOU, are both arbitrary and capricious, and constitute an abuse of the NYPD's discretion. Beyond that, if the NYPD retains the case against Det. Torres, that action would likewise violate the MOU and constitute arbitrary and capricious action that also amounts to an abuse of the NYPD's discretion.

### **JURISDICTIONAL STATEMENT**

24. The Court has jurisdiction over this petition pursuant to CPLR §§ 7802(a), 7803(3) and (4) because this Petition challenges the actions of a body or officer engaged in administrative decision making.
25. An Article 78 petition against a body or officer may be filed in "any county within the judicial district where the respondent made the determination complained of." CPLR §§ 7804(b) and 506(b); *see also International Summit Equities Corp. v. Van Schoor*, 560 N.Y.S.2d 811, 812 (2d Dep't 1990) (noting that venue is preferable in the specific county "in which the matter sought to be reviewed originated"). The NYPD's principal offices are at 1 Police Plaza in lower Manhattan.
26. Thus, this action is properly commenced in New York County and venue is proper pursuant to CPLR § 506(b).

### **STANDING**

27. To establish standing to bring a proceeding under Article 78, a petitioner must demonstrate first that he has suffered "direct harm ... that is in some way different from that of the public at large." *Society of Plastics Indus. v. County of Suffolk*, 77 N.Y.2d 761, 774 (1999).



28. Second, a petitioner must show that his injury “falls within the ‘zone of interests,’ or concerns, sought to be promoted or protected by the statutory provision under which the agency has acted.” *Id.* at 773.
29. Mr. Harvin suffered direct harm at the hands of Det. Torres. He was tasered four times in violation of department policy. To this day he has muscle spasms that he did not have before he was tasered and which he attributes to being tasered.
30. Beyond that, Mr. Harvin has suffered direct harm as a result of the NYPD’s refusal, without explanation, to serve the charges that the CCRB substantiated against Det. Torres.
31. Mr. Harvin wants some measure of justice and accountability to emerge from the complaint and disciplinary process. That’s why he went to the CCRB in the first place. The CCRB interviewed him, reviewed the evidence, and concluded that Det. Torres improperly deployed his taser. That decision was approved by a three-member panel of the board before the CCRB forwarded it to the NYPD.
32. The CCRB and the NYPD have an agreed-upon process as to what happens next. Over a decade ago they signed the MOU requiring the NYPD to let CCRB administrative prosecutors bring cases in the NYPD trial room. Serving charges is a minor ministerial element of that process that the NYPD has manipulated to try to escape its obligations under the MOU. The NYPD’s delays have prevented Mr. Harvin from any measure of the justice the process described in the MOU should afford him.
33. Simply put, the NYPD’s stonewalling tactics have harmed Mr. Harvin, including by causing him further mental anguish and emotional injury, and in denying him the opportunity to see Det. Torres publicly held accountable for his actions. *See Lando v. State*, 39 N.Y.2d 803, 805 (1976).

34. Mr. Harvin's mental anguish and emotional injury would—and will—be in part relieved by seeing Det. Torres brought to trial in accordance with the MOU.
35. Mr. Harvin's unique interest in seeing the disciplinary and accountability processes described in the MOU move forward so that Det. Torres brought to justice for harming Mr. Harvin falls within the zone of interest of Section 434 of the New York City Charter, which provides that the New York Police Commissioner shall have "cognizance and control of the government, administration, disposition, and discipline of the department and the police force of the department." New York City Charter § 434(a).
36. Under this provision, the police commissioner is "accountable to the public for the integrity of the Department" *Lynch v. Giuliani*, 301 A.D.2d 351, 359 (1st Dep't 2003) (*quoting Matter of Berenhaus v. Ward*, 70 N.Y.2d 436, 445 (1987)).
37. The New York Administrative Code likewise codifies Petitioner's interest. The code establishes the Commissioner's power, when an officer engages in "conduct injurious to the public peace or welfare, or immoral conduct, or conduct unbecoming an officer or member, or other breach of discipline, to punish the offending party." N.Y. Admin. Code. § 14-115. Petitioner relied on the NYPD's power to discipline officers when he took the time and effort to file a complaint and sit for an interview—the Commissioner's unilateral action after that investigation showed that Det. Torres's conduct violated the NYPD's own Patrol Guide has caused and exacerbated Petitioner's harm.
38. Disciplining officers for engaging in egregious misconduct such as Det. Torres's in this matter is precisely the reason the Police Commissioner is granted the power to govern and administer discipline over NYPD members.
39. Petitioner's injuries are "real and different from the injury most members of the public face"—the failure to serve charges on Det. Torres causes direct harm to Petitioner, who was

- injured by Det. Torres and who has worked for years to seek accountability. *Sierra Club v. Vill. of Painted Post*, 26 N.Y.3d 301, 311 (2015)
40. Mr. Harvin has been struggling for years to see any accountability for Det. Torres. Even though an administrative trial may not ultimately result in discipline for Det. Torres, the service of charges, the pre-trial proceedings, and the public trial itself would provide transparency and accountability, and thereby some measure of justice and accountability for Mr. Harvin, as well as some relief to Mr. Harvin's emotional injuries.
41. Moreover, as a taxpayer in New York City, Petitioner objects to the misuse of resources represented by the NYPD's failure to act on substantiated allegations of the CCRB. *See Dudley v. Kernick*, 52 N.Y.2d 542, 551 (1981) (permitting taxpayer standing in an Article 78 because no other means to remedy the wrong existed and doing so was in line with "the more recent trend of liberalizing the ability of taxpayers to challenge governmental action." *See also Colella v. Bd. of Assessors of Cnty. of Nassau*, 95 N.Y.2d 401, 409 (2000) (confirming that taxpayer standing in an Article 78 is only proper to challenge actions that, like the Police Commissioner's, are "systemic in nature").
42. Mr. Harvin is representative of others similarly situated whose CCRB substantiated cases have been ignored by the NYPD.

### **LEGAL STANDARD**

#### *Arbitrary and Capricious Standard*

43. An administrative decision is "arbitrary and capricious" under Article 78 if it is made "without sound basis in reason...and without regard to the facts." *Pell v. Bd. of Educ.*, 34 N.Y.2d 222, 231 (1974). Agency rules have been found to be arbitrary and capricious when the agency does not identify a rational basis for the rule, does not establish a relationship between the rule and the agency's stated purpose, does not demonstrate that the rule is

based on an empirical determination, does not identify objective standards to implement it, the agency allows for uneven enforcement, and others. *See Lynch v. New York City Civilian Complaint Rev. Bd.*, 64 Misc. 3d 315, 326 (N.Y. Sup. Ct. 2019) (Collecting cases).

44. Crucially, “[a]n agency’s failure to follow its own procedures or rules in rendering a decision is arbitrary and capricious.” *D.F. v. Carrion*, 43 Misc. 3d 746, 756 (Sup. Ct. 2014); *see Gilman v. New York State Div. Of Housing and Community Renewal*, 99 N.Y.2d 144 (2002) (holding that the rules of an administrative agency, duly promulgated, are binding upon the agency as well as upon any other person who might be affected).
45. Refusal to review and process materials that an agency is required to process is arbitrary and capricious. For example, when an application for temporary work release is reviewed and denied by the Temporary Release Committee, even though the applicant’s score required the superintendent to review the application, the denial is arbitrary and capricious regardless of the reasons for the TRC’s denial. *See Nesbitt v. Goord*, 12 Misc. 3d 702, 705-706 (Sup. Ct. Albany County 2006) (“[T]his court is holding and determining that respondent DOCS must follow its own rules, regulations and procedures pertaining to the determination of applications for temporary work release”).
46. Failure to follow disciplinary procedures can also be arbitrary and capricious. *See Kambouris v. New York City Dep’t of Educ. of City of New York*, No. 518863/2022, 2022 WL 18144910, at \*4 (N.Y. Cty. Sup. Ct. Dec. 19, 2022).

*Abuse of Discretion Standard*

47. Whether an agency’s action constitutes an abuse of discretion is a fact-specific inquiry and requires application of the statutory authority granted to the agency to the facts of the matter before it. *See Banker v. Berger*, 86 Misc. 2d 129, 130 (Sup. Ct. Orleans Cty., 1976) (finding that

qualifying a tax refund as a “readily available resource” in determining qualification for public assistance to be an abuse of discretion.

48. An arbitrary and capricious agency action is necessarily an abuse of discretion as well. *See D.S. v. Hogan*, 22 Misc. 3d 527, 537 (Sup. Ct. N.Y. Cty. 2008) (“an arbitrary and capricious agency action will also always be an abuse of discretion”).

### **LEGAL ARGUMENT**

#### *Failing to Serve Charges was Arbitrary and Capricious and an Abuse of Discretion*

#### Serving Charges is a Ministerial Task

49. A ministerial task is “a specific act which the law requires a public officer to do in a specified way on conceded facts without regard to his [or her] own judgment.” *Peterson v. Incorporated Village of Saltaire*, 77 A.D.3d 954, 955 (2d Dep’t 2010) (quoting *Posner v. Levitt*, 37 A.d.2d 331, 332 (3d Dep’t 1971).
50. The MOU states that the NYPD “shall” forward cases substantiated by the CCRB to trial except in two limited circumstances. *See supra* ¶ 13. The decision to serve charges on a case forwarded by the CCRB is a command of the MOU and is not subject to the judgment of a public officer.
51. The MOU, along with other NYPD policy documents, sets the policy of the NYPD. *See In re Luis T.*, 35 Misc. 3d 1202(A), \*53 (Fam. Ct. Qns. Cty. 2012) (MOU entered into between Department of Probation and Department of Administrative Children’s Services set agency policy).
52. Since this case does not fall into either of the two exceptions outlined in the MOU, the NYPD is mandated to take the ministerial step of forwarding the case.

53. Instead, the NYPD has failed to serve charges for over two years. At best, this constitutes arbitrary and capricious action and an abuse of discretion by Commissioner Caban. At worst, it constitutes a bad-faith effort to excuse serious misconduct by Det. Torres.

NYPD Has Not Offered Any Reason Justifying the Delay in Serving Charges

54. The case against Det. Torres has been pending at the NYPD for over two years.
55. The NYPD has not made any showing that the case falls into either of the two categories for retaining a case.
56. The NYPD has also not pointed to any extenuating circumstances that could justify the delay in serving charges against Det. Torres. Rather, the NYPD has allowed the substantiated allegations to languish in administrative limbo without explanation.

The Delay is Arbitrary and Capricious and Constitutes an Abuse of Discretion

57. By failing to serve charges on Det. Torres, the NYPD is in contravention of its own rule as set forth in the MOU. City agencies are bound by the terms of an MOU with another agency if properly presented and within the scope of the law. *See Johnson v. Fischer*, 23 Misc.3d 1108(A), \*2 (Sup. Ct. 2009) (granting an incarcerated individual's article 78 petition, vacating petitioner's administratively imposed post-release supervision, and requiring that DOCS abide by its MOU and bring petitioner before the sentencing court for resentencing within 60 days).
58. Delay in and of itself—and particularly delay for no reason—can constitute arbitrary and capricious agency action. For example, a petitioner recently challenged a number of aspects of the Nassau County process for accepting a pistol application, including the fact that the “wait time to get fingerprinted can be as long as eight months.” *Kamenshchik v. Ryder*, No. 612719/22, 2024 WL 3078271, at \*4 (N.Y. Sup. Ct. Feb. 20, 2024). The court ordered a hearing on, among other things, this wait time, holding that unless the county could provide

- a “valid reason” for the delay, “the court could be constrained to find the wait time unreasonable and unconstitutional.” *Id.*
59. Failing to serve charges—a ministerial act that normally takes only a matter of days—for over **two years** is akin to simply dismissing the case with no hearing and no investigation. Such disregard for accountability “shock[s] the judicial conscience, thus constituting an abuse of discretion as a matter of law.” *In re. Matos v. Hernandez*, 79 A.D.3d 466, 466 (1st Dep’t 2010).
60. Moreover, the *de facto* policy the NYPD has implemented allows it complete and unbound discretion to choose which cases to send to an administrative hearing and which to delay or discard. A policy “allowing for unfettered discretion in agency decision making is arbitrary and capricious.” *Carrion*, 43 Misc. 3d at 757.
61. Here, the NYPD has presented no reason at all that it cannot undertake the ministerial steps of serving charges and setting an administrative trial for over **two years** in this case while routinely processing other cases in mere weeks.
62. The process of setting an administrative prosecution trial is simple. In the past few years, it has taken the NYPD only a few weeks on average to serve a responding officer after receiving charges from the CCRB.<sup>4</sup>
63. There is no justification for the over two-year delay to this straightforward process. Indeed, Petitioner and others have publicly asked why the NYPD has not acted to serve charges on Det. Torres, and the NYPD has made no attempt to provide a reasoned explanation. This constitutes arbitrary and capricious agency action.

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<sup>4</sup> See Report on the Administrative Prosecution Unit Fourth Quarter of 2022:

[https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution\\_pdf/apu\\_quarterly\\_reports/APUReport2022-Q4.pdf](https://www.nyc.gov/assets/ccrb/downloads/pdf/prosecution_pdf/apu_quarterly_reports/APUReport2022-Q4.pdf)

*Retaining the Case Would be Arbitrary and Capricious and Constitute an Abuse of Discretion*

The MOU Limits when the Commissioner Can Retain Cases

64. The MOU provides for only two sets of circumstances in which the Police Commissioner can retain a case forwarded by the CCRB: (1) “cases in which there are parallel or related criminal investigations” and (2) “in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer’s record and disciplinary history the interests of justice would not be served.” (MOU ¶ 2.)

The Facts Here do not Permit Retaining this Case

65. Neither of the two exceptions to the NYPD’s responsibility to serve charges and commence an administrative prosecution trial apply here.
66. There is no parallel or related criminal investigation into Det. Torres’ actions and Det. Torres has a prior substantiated CCRB complaint. In CCRB Case Number 2019-00826, the CCRB sustained an allegation that Det. Torres had illegally entered property in January 2019.

The Commissioner’s Decision to Retain would be Arbitrary and Capricious and would Constitute an Abuse of Discretion

67. The NYPD is bound by its MOU with the CCRB, and there is no factual foundation to retain this case.
68. If Commissioner Caban decides to retain this case, that action would be in violation of the NYPD’s own procedures, as set forth in the MOU, and therefore would be arbitrary and capricious.

The Commissioner Has Been Unlawfully Retaining Cases Since Taking Office

69. In recent years, the practice of the NYPD unlawfully ignoring the findings of the CCRB has grown. The NYPD has retained a large number of cases, and that number has increased significantly under the leadership of Commissioner Caban. In 2022, the NYPD retained ten



cases. In 2023, it retained twenty-one cases, and in the first quarter of 2024, it has already retained nine.<sup>5</sup>

### **CONCLUSION**

70. For the reasons stated above, Petitioner respectfully requests that the Court enter an order and judgment pursuant to CPLR § 7806:
- a. Requiring the NYPD to serve the administrative charges in Case Number 2020-03690 on Detective Raul Torres immediately;
  - b. Requiring the NYPD to proceed to administrative trial in Case Number 2020-03690 against Detective Raul Torres immediately;
  - c. Requiring the NYPD to serve immediately the administrative charges in all cases in which the CCRB substantiated an allegation of misconduct and recommended that charges be served against a NYPD member that have been pending at the NYPD for thirty days or longer;
  - d. Requiring the NYPD to proceed promptly to an administrative trial in all cases in which charges have been served and which cannot be retained under the terms of Section 2 of the April 12, 2012, Memorandum of Understanding (“MOU”) between the NYPD and the CCRB setting forth the NYPD’s obligations in a case in which the CCRB has substantiated charges against a NYPD member; and

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<sup>5</sup> See Administrative Prosecution Unit Quarterly Reports: <https://www.nyc.gov/site/ccrb/prosecution/apu-quarterly-reports.page>.

e. Granting any and all further relief as this Court deems just and proper.

DATED: July 29, 2024  
New York, NY



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# EXHIBIT 1



ERIC L. ADAMS  
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ARVA RICE  
INTERIM CHAIR

March 21, 2023

The Honorable Keechant L. Sewell  
Police Commissioner of the City of New York  
New York City Police Department  
One Police Plaza  
New York, New York 10038

Re: **Report on the Administrative Prosecution Unit (“APU”)  
Fourth Quarter of 2022**

**Dear Commissioner Sewell:**

This report will address the following matters: (i) verdicts issued by an Assistant Deputy Commissioner of Trials (“ADCT”); (ii) the treatment of Administrative Prosecution Unit (“APU”) pleas by the Police Commissioner; (iii) the retention of cases under Provision Two of the April 2, 2012 Memorandum of Understanding (“MOU”); (iv) the dismissal of zero (0) cases by the APU; (v) cases administratively closed by the Police Commissioner; (vi) the size of the APU's docket; and (vii) the length of time to serve Respondents.

**I. Guilty Verdicts Upheld and Guilty Verdicts Reversed by the Police Commissioner**

In the fourth quarter of 2022, seven (7) CCRB verdicts for trials conducted before an ADCT were finalized. The APU treats each officer against whom an allegation is substantiated as a separate case.<sup>1</sup> Of the seven (7) cases, three (3) resulted in guilty verdicts that were upheld by the Police Commissioner. The guilty verdicts are discussed further below:

**Case One, Guilty Verdict** 201903287 LT Eric Dym

In April 2019, at approximately 4:30 p.m. in the Bronx, the Victim, a male in his early thirties, was walking down a street. The Victim was walking at a normal pace when he saw a vehicle reversing down the street towards him. The Victim took note of the vehicle and continued walking. Lieutenant Eric Dym [the Respondent] and another officer exited the vehicle and approached the Victim. Lt. Dym ran up behind the Victim while the other officer ran in front

<sup>1</sup> The APU treats each officer as a separate “case.” As such, all APU data discussed in this report uses the same terminology. While there may be trials or incidents that involve multiple officers, the word “case” should be interpreted as “case against a single officer.”

of him. They each grabbed one of the Victim's arms. The officers approaching and grabbing the Victim was captured on surveillance video. Lt. Dym told the Victim to "stop right there" and the Victim complied. Lt. Dym proceeded to frisk the Victim's pants and jacket pockets. The Victim asked why he was stopped and frisked. Two or three people gathered around and told the officers that they were being recorded on cellphone video. Lt. Dym asked the Victim "you want to fight me?" and the Victim responded "yeah, I will". Lt. Dym handcuffed the Victim and transported him to the precinct where he issued him a summons.

On September 30<sup>th</sup>, 2020, the Board substantiated three (3) total allegations<sup>2</sup>: three (3) Abuse of Authority allegations against Lt. Dym for stopping the Victim, frisking the Victim, and issuing a summons to the Victim. APU filed and served Charges and Specifications with a penalty recommendation of twenty-six (26) days' vacation forfeiture. On January 6<sup>th</sup>, 2022, January 11<sup>th</sup>, 2022, January 24<sup>th</sup>, 2022, and May 5<sup>th</sup>, 2022, a trial was held before ADCT Paul Gamble. On June 9<sup>th</sup>, 2022, ADCT Gamble issued his decision finding Lt. Dym guilty on all three counts. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Gamble stated that he "while [Victim]'s demeanor during his interaction with Respondent, as captured on the video recording, could be objectively described as annoyed, his reaction to the encounter did not appear to me to be disproportionate to the involuntary interruption of his freedom of movement and bodily integrity." ADCT Gamble stated that the "credible, relevant evidence establishes that the encounter began when Respondent began chasing after [Victim] and reached a critical phase when he grabbed [Victim]'s shoulder and wrist, along with Sergeant Bautista. I find that at that point, [Victim] was not free to leave."

ADCT Gamble found that "it is undisputed that neither Respondent nor Sergeant Bautista was in uniform; similarly, they were riding in an unmarked police vehicle." ADCT Gamble found that "Respondent's judgment that [Victim] was dressed inappropriately for the weather was subjective and not supported by the independent, credible evidence...it still would not have formed a basis for initiating a request for information without additional suspicious behavior on [Victim]'s part." ADCT Gamble found that there "was no evidence that [Victim] had engaged in any suspicious behavior, despite Respondent's belief that he had done so...Because I have found that Respondent lacked reasonable suspicion to stop [Victim], the frisk he conducted after initiating the stop also lacked reasonable suspicion."

ADCT Gamble stated that "despite the factual allegations of the summons, [Victim] displayed no behavior that could be construed as menacing or threatening...it is illogical for Respondent to assert that [Victim] threatened him when Respondent was the one who asked [Victim] if he wanted to fight. While [Victim] answered that he did, his response was equally as absurd as Respondent offering an invitation to mutual combat to someone he was in the process of detaining." ADCT Gamble found that "the absence of any evidence that [Victim] had the intent to cause public harm and the absence of facts supporting the allegation on the summons leads to the conclusion that Respondent lacked a sufficient legal basis for directing the issuance of a summons for disorderly conduct."

ADCT Gamble recommended a penalty of eighteen (18) days' vacation forfeiture for Lt. Dym. On September 7<sup>th</sup>, 2022, the Police Commissioner approved ADCT Gamble's recommendations and imposed the recommended penalty.

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<sup>2</sup> The case was voted on before the implementation of the Disciplinary Matrix – as such, allegations will not have a recommended matrix penalty.

**Case Two, Guilty Verdict** 201907671 PO Rafael Tatis

In August 2019, at approximately 9:00 a.m. in Brooklyn, the Victim, a Black male in his early thirties, was in police custody in a holding cell. The Victim asked for water and Police Officer Rafael Tatis [the Respondent] told him that he would give him an empty cup to get water from the sink that was in the holding cell. PO Tatis had the Victim place his hands in the cell door slot so that he could remove the Victim's handcuffs. He removed them and handed the Victim a cup. The Victim threatened to splash PO Tatis with water. PO Tatis kicked the cell door slot closed on the Victim's arms causing them to become caught in the slot. The incident was captured on the holding cell cameras.

On January 7<sup>th</sup>, 2021, the Board substantiated one (1) total allegation<sup>3</sup>: one (1) Use of Force allegation against PO Tatis for using physical force against the Victim. APU filed and served Charges and Specifications with a penalty recommendation of ten (10) days' vacation forfeiture. On August 16<sup>th</sup>, 2022, a trial was held before ADCT Paul Gamble. On September 21<sup>st</sup>, 2022, ADCT Gamble issued his decision finding PO Tatis guilty on the sole count. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Gamble stated that it "is uncontroverted that Respondent twice kicked a cell slot door in a cell area while he was on duty: Respondent admitted doing do in his trial testimony and the video evidence clearly depicts him kicking the door...the video evidence shows that Respondent's first kick caused the door to swing upward and strike [Victim]'s right hand." ADCT Gamble found that any "threat posed by [Victim] at that time was mitigated by his position behind a locked cell door. Even if I credit Respondent's assertion that [Victim] threatened to throw water on him, that would not constitute a threat warranting immediate pre-emptive force."

ADCT Gamble recommended a penalty of twenty (20) days' vacation forfeiture for PO Tatis. On November 23<sup>rd</sup>, 2022, the Police Commissioner approved ADCT Gamble's recommendations and imposed the recommended penalty.

**Case Three, Guilty Verdict** 201802481 LT Kurtis Rose

In March 2018, at approximately 8:30 p.m. in the Bronx, Victim 1 – a fourteen-year-old Black male and Victim 2 – an eight-year-old Black male were walking home when they met up with two friends [Individual 1 and Individual 2] and Victim 3 – a brother of Victim 2. The Victims and their friends picked up some sticks and chased each other on the sidewalk. They were dropping their sticks as Victim 1 saw multiple police vehicles approach their group. One of the vehicles over a loudspeaker told the group to drop the sticks and get against a wall. Police Officer Justin Hoff [Respondent 1] exited one of the vehicles with his gun drawn as the group complied with the police directive. Police Officer Michael Soto [Respondent 2] and PO Hoff then frisked Individual 1 and Individual 2. Lieutenant Kurtis Rose [Respondent 3] arrived at the incident location and authorized the handcuffing and transportation to a precinct of Victim 1 and Victim 2. The incident was captured on BWC.

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<sup>3</sup> The case was voted on before the implementation of the Disciplinary Matrix – as such, allegations will not have a recommended matrix penalty.

On January 16<sup>th</sup>, 2019, the Board substantiated two (2) total allegations<sup>4</sup>: two (2) Abuse of Authority allegations against LT Rose for detaining Victim 1 and Victim 2. APU filed and served Charges and Specifications with a penalty recommendation of thirty (30) days' vacation forfeiture. On January 24<sup>th</sup>, 2022, and March 3<sup>rd</sup>, 2022, a trial was held before ADCT Jeff Adler. On April 7<sup>th</sup>, 2022, ADCT Adler issued his decision finding LT Rose guilty on both counts. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Adler found that Lt. Rose "did not witness any of the conduct leading to the stop of the individuals.... officers informed him that they had observed the youths running in the street, and that a couple of them possessed sticks and were fighting with them. The youths denied that they attacked anyone...officers pointed out to Rose the two individuals who had been in possession of the sticks, [Victim 1] and [Victim 2]." ADCT Adler found that "there was no reliable evidence that the youths had been doing anything more than playing with sticks...there was no corroboration that the youths had, in fact, been chasing another individual, as opposed to just playing amongst themselves...Rose's decision to have two youths, ages 8 and 14, handcuffed and brought to the precinct, constituted an improper use of his authority."

ADCT Adler recommended a penalty of twenty (20) days' vacation forfeiture for LT Rose. On September 7<sup>th</sup>, 2022, the Police Commissioner approved ADCT Adler's recommendations and imposed the recommended penalty.

## **II. Not Guilty Verdicts Upheld by the Police Commissioner**

In the fourth quarter of 2022, seven (7) CCRB verdicts for trials conducted before an ADCT were finalized. The APU treats each officer against whom an allegation is substantiated as a separate case.<sup>5</sup> Of the seven (7) cases, four (4) resulted in not guilty verdicts that were upheld by the Police Commissioner. The guilty verdicts are discussed further below:

### **Case One, Not Guilty Verdict 201802481 PO Justin Hoff**

This case is from the same incident described in Case Three (3) (from the Guilty Verdicts section), for Police Officer Justin Hoff [Respondent 1]. In March 2018, at approximately 8:30 p.m. in the Bronx, Victim 1 – a fourteen-year-old Black male and Victim 2 – an eight-year-old Black male were walking home when they met up with two friends [Individual 1 and Individual 2] and Victim 3 – a brother of Victim 2. The Victims and their friends picked up some sticks and chased each other on the sidewalk. They were dropping their sticks as Victim 1 saw multiple police vehicles approach their group. One of the vehicles over a loudspeaker told the group to drop the sticks and get against a wall. Police Officer Justin Hoff [Respondent 1] exited one of the vehicles with his gun drawn as the group complied with the police directive. Police Officer Michael Soto [Respondent 2] and PO Hoff then frisked Individual 1 and Individual 2. The incident was captured on BWC.

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<sup>4</sup> The case was voted on before the implementation of the Disciplinary Matrix – as such, allegations will not have a recommended matrix penalty.

<sup>5</sup> The APU treats each officer as a separate "case." As such, all APU data discussed in this report uses the same terminology. While there may be trials or incidents that involve multiple officers, the word "case" should be interpreted as "case against a single officer."

On January 16<sup>th</sup>, 2019, the Board substantiated five (5) total allegations<sup>6</sup>: five (5) Abuse of Authority allegations against PO Hoff for stopping Victim 1, Victim 2, Victim 3, Victim 1's friends [Individual 1 and Individual 2], drawing his gun, and frisking Victim 1's friends [Individual 1 and Individual 2]. APU filed and served Charges and Specifications with a penalty recommendation of thirty (30) days' vacation forfeiture. On January 24<sup>th</sup>, 2022, and March 3<sup>rd</sup>, 2022, a trial was held before ADCT Jeff Adler. On April 7<sup>th</sup>, 2022, ADCT Adler issued his decision finding PO Hoff not guilty on all five counts. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Adler found that it was "undisputed that Hoff did stop the individuals in question. He responded to the location within seconds of receiving a radio call that there was a group of individuals with weapons, including a machete, chasing a male...he saw individuals 'frantically' running back and forth on the street and in between cars. Hoff exited his RMP, identified himself as a police officer, and ordered the individuals to stop." ADCT Adler found that "Hoff ultimately did not discover any corroboration that a third person was, in fact, being chased or menaced...two sticks were recovered, the officers did not find a machete at the scene. Nevertheless, at the time he initiated the stop, Hoff had a reasonable expectation, based on the 911 call...from a caller who...provided a callback phone number...coupled with Hoff's observations at the location, provided reasonable suspicion that these were the individuals who were the subject of the 911 call." ADCT Adler found that "It was dark, and Hoff could not see if the individuals were, in fact, holding any of the weapons identified in the 911 call...He ordered the youths to show their hands, but they did not comply...Hoff, who was standing within 10 feet of these individuals, drew his firearm, and pointed it down...This action produced immediate results, as the youths stopped running and placed their hands in the air." ADCT Adler found that "Hoff acknowledged that he did frisk one of the stopped individuals...because he had observed him holding a stick, and was concerned that there might be additional weapons." ADCT Adler found that "at the time of the frisk events were still rapidly unfolding, and Hoff was in a precarious position with a reasonable concern for his safety."

ADCT Adler found PO Hoff not guilty on all counts. On September 7<sup>th</sup>, 2022, the Police Commissioner upheld the not guilty verdict.

**Cases Two and Three, Not Guilty Verdicts** 201902457 PO Lorvin Fernandez and LT Eric Dym

In March 2019, at approximately 1:40 a.m. in the Bronx, the Victim, a Black male in his early twenties was in a police custody at a precinct stationhouse. Lieutenant Eric Dym [Respondent 1] asked the Victim if he had anything in his crotch. The Victim denied having anything in his crotch and Lt. Dym told officers to perform a strip-search of the Victim. The Victim while in handcuffs was taken to a holding cell where Lt. Dym held the Victim against a cell wall and bent the Victim over, pulled down his underwear and performed a cavity search of the Victim's buttocks. The Victim was then carried out of his holding cell by a group of officers towards a bathroom. Police Officer Lorvin Fernandez [Respondent 2] was carrying the Victim's legs and lost his grasp on them. PO Fernandez then punched the Victim on the left side of his body. The officers continued to carry the Victim to the bathroom and the Victim dropped his weight to the floor. PO Fernandez, Lt. Dym, and other officers pinned the Victim down to the

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<sup>6</sup> The case was voted on before the implementation of the Disciplinary Matrix – as such, allegations will not have a recommended matrix penalty.



ground. Lt. Dym placed his knee on the left side of the Victim's head as the other officers held the Victim down on the ground. Lt. Dym removed his knee from the Victim's head and punched the Victim in his chest. The incident was captured on a precinct camera.

On April 21<sup>st</sup>, 2021, the Board substantiated six (6) total allegations: two (2) Abuse of Authority allegations against Lt. Dym for strip searching the Victim<sup>7</sup> and for performing a cavity search on the Victim<sup>8</sup>, two (2) Use of Force allegations for using physical force against the Victim<sup>9</sup> and for restricting the Victim's breathing<sup>10</sup> and two (2) Use of Force allegations against PO Fernandez for using physical force against the Victim twice<sup>11</sup>. APU filed and served Charges and Specifications with a penalty recommendation of termination for both Lt. Dym and PO Fernandez. On January 6<sup>th</sup>, 2022, January 11<sup>th</sup>, 2022, January 24<sup>th</sup>, 2022, and May 5<sup>th</sup>, 2022, a trial was held before ADCT Paul Gamble. On June 9<sup>th</sup>, 2022, ADCT Gamble issued his decision finding Lt. Dym and PO Fernandez not guilty on all counts. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Gamble stated that based "upon a comparison of the hearsay statement [Victim] provided, the video evidence of the interactions he had with police in the holding area, and the medical records of his visits...I find [Victim] to be an unreliable narrator. His statement is factually inaccurate in material aspects and vague in others." ADCT Gamble found that "Respondent Fernandez admitted in his testimony that he used 'hand strikes' and 'knee strikes' in his attempts to subdue [Victim]...he admitted...that he punched [Victim] twice in the back of his shoulders after [Victim] kicked him between his legs. He further admitted that he placed his leg, and eventually his foot, on the back of [Victim]'s shoulders to restrain him while he struggled on the floor of the holding cell area." ADCT Gamble found that "[Victim]'s response to the question of whether he was sure he had nothing hidden in his crotch...constituted sufficient grounds for Respondent Dym to reasonably suspect that a weapon may have been concealed on [Victim]'s person in such a manner that it had not been discovered during previous searches." ADCT Gamble found that "[Victim]'s actions of head-butting police officers, kicking, squirming, and turning his body, while Respondents and other police officers attempted to search him, constituted active resistance." ADCT Gamble found that "the force used by Respondents was proportional to the resistance offered by [Victim] and never escalated to the point where it became punitive."

ADCT Gamble found Lt. Dym and PO Fernandez not guilty on all counts. On November 23<sup>rd</sup>, 2022, the Police Commissioner upheld the not guilty verdicts.

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<sup>7</sup> Per Disciplinary matrix – a procedural violation strip search of a person has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of 20 vacation days' forfeiture.

<sup>8</sup> Per Disciplinary matrix – non-deadly force against another that results in physical injury has a mitigated penalty of 10 suspension days, a presumptive penalty of 10 suspension days + 10 vacation days' forfeiture, and an aggravated penalty of termination.

<sup>9</sup> Per Disciplinary matrix – application of a chokehold has a mitigated penalty of forced separation and a presumptive penalty of termination.

<sup>10</sup> Per Disciplinary matrix – a procedural violation strip search of a person has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of 20 vacation days' forfeiture.

<sup>11</sup> Per Disciplinary matrix – non-deadly force against another that results in physical injury has a mitigated penalty of 10 suspension days, a presumptive penalty of 10 suspension days + 10 vacation days' forfeiture, and an aggravated penalty of termination.

**Case Four, Not Guilty Verdict** 201910484 PO Gregory Acerra

In November 2019, at approximately 6:30 p.m. in Manhattan, the Victim, a White trans male in his early twenties was at attending an Anti-Police brutality protest. He was arrested and while being processed at the site of his arrest told Police Office Gregory Acerra [the Respondent] his preferred pronouns. The Victim was transported to an arrest processing site where PO Acerra misgendered the Victim by saying “it’s a she, it’s a girl, put it with the females”.

On December 21<sup>st</sup>, 2021, the Board substantiated one (1) total allegation: one (1) Offensive Language allegation for making remarks based on the Victim’s gender identity<sup>12</sup>. APU filed and served Charges and Specifications with a penalty recommendation of ten (10) days’ vacation forfeiture. On October 3<sup>rd</sup>, 2022, a trial was held before ADCT Jeff Adler. On November 23<sup>rd</sup>, 2022, ADCT Adler issued his decision finding PO Acerra not guilty of the sole count. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Adler found that “the majority of the interaction between Respondent and the arrestee, as captured in the BWC, appeared to be amicable...the arrestee acknowledged he felt dazed and confused following his arrest, yet did not have to answer questions about how that may have impacted his perception of what occurred afterward.” ADCT Adler found that “there is no indication from Respondent’s interactions with the arrestee at the arrest scene that he would later make the offensive statement” and that “I credit Respondent’s explanation that any such statements were inadvertent mistakes.” ADCT Adler found that “the BWC footage from the scene of the arrest shows Respondent treating arrestee with respect and professionalism, as he clarifies with him his preferred gender.”

ADCT Adler found PO Acerra not guilty on the sole count. On December 20<sup>th</sup>, 2022, the Police Commissioner upheld the not guilty verdict.

**III. Treatment of APU Pleas**

In the fourth quarter of 2022, the Department finalized five (5) pleas. The APU makes penalty recommendations for all cases in which Charges and Specifications are substantiated by the Board. The APU uses several factors to determine these recommendations, including, but not limited to a member of service’s (“MOS”) length of service, MOS rank, MOS disciplinary history, the facts of the instant case, the strength of the instant case, the vulnerability of the victim, the extent – if any – of injury to the number of Complainants, and the precedent cases of analogous charges. The APU penalty recommendations tend to be consistent for MOS who are similarly situated. The APU also uses the NYPD Disciplinary Matrix to account for the above listed factors and make penalty recommendations based upon the delineated penalty categories in the NYPD Disciplinary Matrix.

Pleas Closed		
		Pleas Closed At Discipline Level Below Agency Recommendations

<sup>12</sup> Per Disciplinary matrix – offensive language has a mitigated penalty of 10 days’ vacation forfeiture, a presumptive penalty of 20 days’ vacation forfeiture, and an aggravated penalty of termination.

Period	Plea Approved	Plea Penalty Reduced	Plea Set Aside, Discipline Imposed	Plea Set Aside, No Discipline Imposed
4 <sup>th</sup> Quarter 2019	1	0	0	0
1 <sup>st</sup> Quarter 2020	1	1	0	0
2 <sup>nd</sup> Quarter 2020	2	2	0	0
3 <sup>rd</sup> Quarter 2020	2	2	0	0
4 <sup>th</sup> Quarter 2020	0	0	0	0
1 <sup>st</sup> Quarter 2021	0	0	0	0
2 <sup>nd</sup> Quarter 2021	0	0	0	0
3 <sup>rd</sup> Quarter 2021	1	0	0	0
4 <sup>th</sup> Quarter 2021	0	0	0	0
1 <sup>st</sup> Quarter 2022	1	0	0	0
2 <sup>nd</sup> Quarter 2022	4	0	0	0
3 <sup>rd</sup> Quarter 2022	6	0	0	0
4 <sup>th</sup> Quarter 2022	2	1	1	1

As seen in the chart above, in the fourth quarter of 2022 there were five (5) cases in which a guilty plea was agreed to by the CCRB.

**Case One, Penalty Modified** 201809651 SGT Dionicio Brito

In November 2018, at approximately 7:00 p.m. in Brooklyn, the Victim, a Black male in his late twenties was in police custody at a precinct. At the precinct Sergeant Dionicio Brito [the Respondent] authorized that the Victim be strip-searched. The Victim was taken to a cell by an officer where he was told to remove his shoes, shoelaces, and sweatpants. He was told to face a wall and put his hands over his head. The officer then proceeded to reach into the Victim's boxers and searched around his genitals and rectum.

On October 7<sup>th</sup>, 2019, the Board substantiated one (1) total allegation<sup>13</sup>: one (1) Abuse of Authority allegation against Sgt. Brito for strip-searching the Victim. On March 24<sup>th</sup>, 2022, before ADCT Jeff Adler, Sgt. Brito pleaded guilty to the sole allegation and agreed to accept twenty (20) vacation days forfeiture. On November 23<sup>rd</sup>, 2022, the Police Commissioner accepted the guilty plea but modified the penalty, lowering it to ten (10) vacation days forfeiture.

**Case Two, Penalty Modified** 201907401 PO Toniann Groth

In August 2019, at approximately 5:20 p.m. in Brooklyn, Victim 1 a Hispanic female in her twenties, Victim 2, a person in their mid-twenties, and Victim 3, a female in her mid-fifties were in their home when they heard a knock at the door. Victim 1 and Victim 3 answered the door, and an officer asked them if they had seen an individual. They stated that the individual was sleeping inside their apartment and the officer asked to enter the apartment. Victim 3 asked to see a warrant. The officer asked again to enter the apartment and Victim 3 once again asked to see a warrant. Police Officer Toniann Groth [the Respondent] then told Victim 3 and Victim 1

<sup>13</sup> The case was voted on before the implementation of the Disciplinary Matrix – as such, allegations will not have a recommended matrix penalty.

that if they did not let them inside, everyone would be arrested stating “so he can step out now and deal with it, or we’re gonna come back and take the door with a warrant and you’re all gonna go for whatever you guys have in the apartment”, “you’re gonna go”, and “everybody’s gonna go.” The incident was captured on BWC.

On August 30<sup>th</sup>, 2021, the Board substantiated three (3) total allegations: three (3) Abuse of Authority allegations against PO Groth for threatening to arrest Victim 1<sup>14</sup>, Victim 2<sup>15</sup>, and Victim 3<sup>16</sup>. On March 24<sup>th</sup>, 2022, before ADCT Jeff Adler, PO Groth pleaded guilty to the three allegations and agreed to accept five (5) vacation days forfeiture. On September 2<sup>nd</sup>, 2022, the Police Commissioner accepted the guilty plea but modified the penalty, lowering it to a Command Discipline A with a penalty of five (5) vacation days forfeiture.

### **Case Three, Penalty Modified** 201910130 PO Anthony Lamicella

In November 2019, at approximately 7:25 a.m. in Queens, the Victim, a White male in his mid-thirties was walking to his parked car. When he got to his vehicle Police Officer Anthony Lamicella [the Respondent] was standing in front of his vehicle talking to a cyclist. The Victim asked PO Lamicella if he could get to his car and PO Lamicella turned and yelled at the Victim to stay away from him and to take his hands out of his pocket. The Victim asked again if he could get his car and PO Lamicella told him to get on the sidewalk. The Victim complied and moved to the sidewalk and with his hands out of his pocket. The Victim stated that it was cold outside and put his hands back in his pockets. PO Lamicella continued talking to the cyclist and told the Victim to take his hands out of his pocket. The Victim told PO Lamicella that he had to get his car so that he could drive his son to school. PO Lamicella told the Victim that if he came close to him, he would write him a ticket for failing to comply with a lawful order.

On October 20<sup>th</sup>, 2021, the Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against PO Lamicella for stopping<sup>17</sup> the Victim and threatening to issue the Victim a summons<sup>18</sup>. On April 21<sup>st</sup>, 2022, before ADCT Paul Gamble, PO Lamicella pleaded guilty to the two allegations and agreed to accept five (5) vacation days forfeiture and training. On December 15<sup>th</sup>, 2022, the Police Commissioner dismissed the guilty plea and did not impose any discipline on PO Lamicella.

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<sup>14</sup> Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days’ forfeiture, a presumptive penalty of 20 vacation days’ forfeiture, and an aggravated penalty of termination

<sup>15</sup> Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days’ forfeiture, a presumptive penalty of 20 vacation days’ forfeiture, and an aggravated penalty of termination

<sup>16</sup> Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days’ forfeiture, a presumptive penalty of 20 vacation days’ forfeiture, and an aggravated penalty of termination

<sup>17</sup> Per Disciplinary matrix – an improper/wrongful stop and question of a person has a mitigated penalty of training, a presumptive penalty of 3 vacation days’ forfeiture, and an aggravated penalty of 15 vacation days’ forfeiture

<sup>18</sup> Per Disciplinary matrix - enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days’ forfeiture, a presumptive penalty of 20 vacation days’ forfeiture, and an aggravated penalty of termination.

**Case Four, Penalty Unmodified** 201901679 PO Ernesto Bautista

In November 2018, at approximately 10:15 a.m. in the Bronx, the Victim, a Hispanic male in his mid-forties, stated that he was intoxicated when he entered and exited a deli. The Victim was met by officers as he walked towards a housing complex. He was handcuffed after a brief struggle with the officers. Police Officer Ernesto Bautista [the Respondent] removed a clear plastic wrap containing an apple from one of the Victim's pockets. PO Bautista dropped the apple on the ground. The Victim asked him why he dropped the apple on the ground and PO Bautista told him to "shut the fuck up". The Victim replied, "fuck you" and PO Bautista showed the Victim his middle finger and responded, "fuck you too". The Victim was seated on the curb while officers stood around him waiting for an ambulance. The Victim began to speak in Spanish and threatened to fight PO Bautista. PO Bautista responded in English "fuck you bitch" and "suck my dick". The Victim called PO Bautista a "fucking spick" and PO Bautista responded "you a spick too nigga. You are a spick, fuck you too." PO Bautista was told multiple times to stay away from the Victim. The ambulance arrived and the Victim was escorted to the ambulance by two officers. PO Bautista lifted the Victim from underneath his legs and thighs and slammed him onto the ambulance gurney. The incident was captured on BWC.

On November 25<sup>th</sup>, 2019, the Board substantiated eight (8) total allegations<sup>19</sup>: three (3) Discourtesy allegations against PO Bautista for acting discourteously toward the Victim, speaking discourteously to the Victim, gesturing discourteously to the Victim, four (4) Offensive Language allegations for making remarks to the Victim based upon his gender, making remarks to the Victim based upon his ethnicity, making remarks to the Victim based upon his race, one (1) Abuse of Authority allegation for making sexually suggestive remarks to the Victim, and one (1) Use of Force allegation for using physical force against the Victim. On March 23<sup>rd</sup>, 2022, before ADCT Jeff Adler, PO Bautista pleaded guilty to the eight allegations and agreed to accept eleven (11) vacation days forfeiture. On November 1<sup>st</sup>, 2022, the Police Commissioner upheld the guilty plea without modification.

**Case Five, Penalty Unmodified** 202003834 PO Michael Palmese

In June 2020, at approximately 9:00 p.m. in Manhattan, the Victim, a White male in his early thirties was working as a reporter. He was filming protest activities in the city. The Victim filmed officers arresting individuals who had looted a clothing store. Police Officer Michael Palmese [Respondent 1] approached an unidentified woman who was standing away from the protestors and told her "get the fuck out of here you piece of shit" and called some of the assemble civilians "fucking losers". The protestors were complying with police directives to move down the block when Police Officer Thomas Forojny [Respondent 2] approached the Victim and told him to "go the fuck home...I don't give a shit, go home." The Victim told PO Forojny that he was an essential worker and continued to move down the block per police directives. PO Palmese then approached the Victim and told him to "get the fuck out of here now...get the fuck out of here, you piece of shit".

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<sup>19</sup> The case was voted on before the implementation of the Disciplinary Matrix – as such, allegations will not have a recommended matrix penalty.

On June 10<sup>th</sup>, 2021, the Board substantiated four (4) total allegations: three (3) Discourtesy allegations against PO Palmese for speaking discourteously to an individual<sup>20</sup>, speaking discourteously to individuals<sup>21</sup>, speaking discourteously to the Victim<sup>22</sup>, and one (1) Abuse of Authority allegation for interfering with the Victim's use of a recording device<sup>23</sup>. On September 27<sup>th</sup>, 2022, before DCT Rosemarie Maldonado, PO Palmese pleaded guilty to the four allegations and agreed to accept eleven (11) vacation days forfeiture. On November 23<sup>rd</sup>, 2022, the Police Commissioner upheld the guilty plea without modification.

#### IV. Cases Retained by Police Commissioner

In the fourth quarter of 2022, the New York City Police Department ("NYPD" or the "Department") retained five (5) cases pursuant to Provision Two of the MOU between the CCRB and NYPD.

Provision Two of the MOU states:

in those limited circumstances where the Police Commissioner determines that CCRB's prosecution of Charges and Specifications in a substantiated case would be detrimental to the Police Department's disciplinary process, the Police Commissioner shall so notify CCRB. Such instances shall be limited to such cases in which there are parallel or related criminal investigations, or when, in the case of an officer with no disciplinary history or prior substantiated CCRB complaints, based on such officer's record and disciplinary history the interests of justice would not be served.

#### Case One, Retained With Discipline 202003879 PO Andre Gaddy

In May 2020, at approximately 8:20 p.m. in Brooklyn, the Victim, a White female in her mid-twenties was marching in a protest. Multiple officers were present as the protestors marched through Brooklyn. The Victim saw a plastic bottle thrown towards officers and heard officers say "go, go, go." Multiple officers ran into the crowd and the Victim saw three officers body slam an unidentified female protestor to the ground. The Victim and one of her friends yelled at the officers to get off the unidentified protestor. Officers came towards them, one of them striking

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<sup>20</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

<sup>21</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

<sup>22</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

<sup>23</sup> Per Disciplinary matrix – interfering with a recording/recording device has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of 30 vacation days' forfeiture.

the Victim's friend in the head with a baton and Police Officer Andre Gaddy [the Respondent] striking the Victim on her back with his baton. The incident was captured on BWC.

On April 14<sup>th</sup>, 2022, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against PO Gaddy for striking the Victim with his baton<sup>24</sup>. On April 26<sup>th</sup>, 2022, the Police Commissioner retained the case and in lieu of Charges issued a Command Discipline A with a penalty of five (5) vacation days forfeiture against PO Gaddy stating that while "wrong, the actions of Police Officer Gaddy do not rise to the level of misconduct where the issuance of Charges and Specifics is warranted...the relative inexperience of Police Officer Gaddy, as well as his unblemished record with the Department, must also be considered when determining a commensurate penalty."

**Case Two, Retained With Discipline** 202004301 CPT Isaac Soberal

In June 2020, at approximately 7:50 p.m. in the Bronx, the Witness, a Black male in his mid-thirties was marching in an Anti-Police brutality protest. The Witness saw Captain Isaac Soberal [the Respondent] stand between two cars and use his baton to push an unidentified woman wearing a green hat. The Witness saw the woman say something to Cpt. Soberal and saw Cpt. Soberal put his baton sideways with both hands parallel to his chest and push the woman, causing her to fall to the ground. The incident was captured on cellphone video.

On February 7<sup>th</sup>, 2022, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against Cpt. Soberal for striking an individual with his baton<sup>25</sup>. On May 2<sup>nd</sup>, 2022, the Police Commissioner retained the case and in lieu of Charges issued a Command Discipline B with a penalty of ten (10) vacation days forfeiture against Cpt. Soberal stating that "to pursue Charges and Specifications against Captain Soberal would be detrimental to the Police Department's disciplinary process."

**Case Three, Retained Without Discipline** 202005664 PO Justin Pichon

In August 2020, at approximately 6:00 p.m. in Manhattan, the Witness, a White female in her early twenties was engaged in a protest along with at least twenty individuals with at least a line of officers present. The Witness saw Police Officer Justin Pichon [the Respondent] leave the line of officers and run up to an unidentified Black male protestor who was standing still with his hands up and his back to the line of officers. PO Pichon pushed the unidentified protestor and approached a second unidentified protestor who was standing with his arms crossed and his back to the crowd. PO Pichon grabbed the second unidentified protestor by his wrists and pushed him as well. PO Pichon pushed other protestors before returning to the line of officers. The incident was captured on BWC.

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<sup>24</sup> Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

<sup>25</sup> Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

On April 21<sup>st</sup>, 2022, the Board substantiated two (2) total allegations: two (2) Use of Force allegations against PO Pichon for using physical force against the first<sup>26</sup> and second<sup>27</sup> unidentified protestors. On May 2<sup>nd</sup>, 2022, the Police Commissioner retained the case and chose not to impose any discipline on PO Pichon stating that “it would be detrimental to the Police Department’s disciplinary process.”

**Case Four, Retained Without Discipline** 202103954 PO Joseph Zerella

In June 2021, at approximately 11:30 p.m. in Brooklyn, the Victim, a Black male in his early twenties, was with a friend when they went into a deli to buy food. As they exited the deli and began walking, they saw an unmarked vehicle begin to follow them. From the passenger window of the vehicle, Police Officer Joseph Zerella [the Respondent] asked the Victim why he was using a cane. The Victim reached into one of his pockets to take out his cellphone to record PO Zerella, and some receipts fell out of his pockets as he pulled out the cellphone. The Victim picked up his fallen receipts and began recording PO Zerella. PO Zerella then exited his vehicle and approached the Victim and asked him “why are you picking up a gun?” The Victim denied having a gun. PO Zerella then asked him “do you know where the guns are?” When PO Zerella was interviewed by the CCRB about his questioning of the Victim specifically about guns, he denied that the gun question was in fact a question, even after he reviewed the cellphone video of him questioning the Victim.

On October 17<sup>th</sup>, 2022, the Board substantiated two (2) total allegations: one (1) Abuse of Authority allegation against PO Zerella for questioning the Victim<sup>28</sup> and one (1) Untruthful Statement allegation for providing a false official statement to the CCRB<sup>29</sup>. On December 28<sup>th</sup>, 2022, the Police Commissioner retained the case and chose not to impose any discipline on PO Zerella stating that PO Zerella’s “overall statement was not an accusatory question under the relevant legal doctrine” and that “Police Officer Zerella’s subjective interpretation of his own statement cannot be characterized as a false statement.”

**Case Five, Retained Without Discipline** 201910774 SGT Nicholas Guzman

In December 2019, at approximately 1:00 p.m., in Manhattan, the Victim, a male in his mid-forties went to a precinct to obtain a copy of a police report relating to a dispute he had with another individual. The officer he spoke to acted discourteously towards the Victim. Sergeant Nicholas Guzman [the Respondent] was present when the interaction occurred. When interviewed by the CCRB about the incident, he testified that the officer had acted professionally towards the Victim which was in direct contrast with both how the Victim and the officer

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<sup>26</sup> Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days’ forfeiture, a presumptive penalty of 10 vacation days’ forfeiture, and an aggravated penalty of termination.

<sup>27</sup> Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days’ forfeiture, a presumptive penalty of 10 vacation days’ forfeiture, and an aggravated penalty of termination.

<sup>28</sup> Per Disciplinary matrix – an improper/wrongful stop and question of a person has a mitigated penalty of training, a presumptive penalty of 3 vacation days’ forfeiture, and an aggravated penalty of 15 vacation days’ forfeiture.

<sup>29</sup> Per Disciplinary matrix – intentionally making a false official statement has a mitigated penalty of forced separation and a presumptive penalty of termination.



described the interaction. Sgt. Guzman's description of the officer's behavior was misleading to the investigation.

On October 16<sup>th</sup>, 2021, the Board substantiated one (1) total allegation: one (1) Untruthful Statement allegation against Sgt Guzman for providing a false official statement to the CCRB<sup>30</sup>. On September 16<sup>th</sup>, 2022, the Police Commissioner retained the case and chose not to impose any discipline on Sgt Guzman stating that "Sergeant Guzman's description of the officer...cannot be characterized as a false statement, where it is merely a statement of opinion about another officer's general nature."

## **V. Dismissal of Cases by the APU**

When while investigating a case, the APU discovers new evidence that makes it improper to continue to prosecute misconduct against a MOS, the APU dismisses the Charges against that Respondent. The APU did not dismiss any cases against an officer in the fourth quarter of 2022.

## **VI. Cases Administratively Closed by the Police Commissioner**

In the fourth quarter of 2022, the Police Commissioner administratively closed eight (8) cases.

### **Case One, Administratively Closed 201802481 PO Michael Soto**

This case is from the same incident described in Case Three (3) (from the Guilty Verdicts section), for Police Officer Michael Soto [Respondent 2]. In March 2018, at approximately 8:30 p.m. in the Bronx, Victim 1 – a fourteen-year-old Black male and Victim 2 – an eight-year-old Black male were walking home when they met up with two friends [Individual 1 and Individual 2] and Victim 3 – a brother of Victim 2. The Victims and their friends picked up some sticks and chased each other on the sidewalk. They were dropping the sticks as Victim 1 saw multiple police vehicles approach their group. One of the vehicles over a loudspeaker told the group to drop the sticks and get against a wall. Police Officer Justin Hoff [Respondent 1] exited one of the vehicles with his gun drawn as the group complied with the police directive. Police Officer Michael Soto [Respondent 2] and PO Hoff then frisked Individual 1 and Individual 2. The incident was captured on BWC.

On January 16<sup>th</sup>, 2019, the Board substantiated five (5) total allegations<sup>31</sup>: five (5) Abuse of Authority allegations against PO Soto for stopping Victim 1, Victim 2, Victim 3, Victim 1's friends [Individual 1 and Individual 2] and for frisking an individual. The APU filed charges and was informed by the Department that PO Soto resigned from the Department before further action could be taken.

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<sup>30</sup> Per Disciplinary matrix – intentionally making a false official statement has a mitigated penalty of forced separation and a presumptive penalty of termination.

<sup>31</sup> The case was voted on before the implementation of the Disciplinary Matrix – as such, allegations will not have a recommended matrix penalty.

**Case Two, Administratively Closed** 201806618 PO Joseph Gonong

In July 2019, at approximately 7:50 p.m. in Brooklyn, the Victim, a Black female in her early teens and another teenager were engaged in a verbal dispute on a playground while surrounded by their sisters. One of the teenager's sisters started flicking a lighter and the Victim's sister told her to call the police. Police Office Joseph Gonong [the Respondent] and another officer responded to the playground. PO Gonong stood between the Victim and the teenager that she had been arguing with. The teenager reached around him and slapped the Victim. The Victim attempted to hit the teenager back when PO Gonong put the Victim in a chokehold.

On April 24<sup>th</sup>, 2019, the Board substantiated<sup>32</sup> two (2) total allegations: two (1) Use of Force allegations against PO Gonong for using a chokehold against the Victim and for restricting the Victim's breathing. The APU filed charges and was informed by the Department that PO Gonong resigned from the Department before further action could be taken.

**Case Three, Administratively Closed** 201909867 DTS Trent Narra

In October 2019, at approximately 5:30 a.m. in Manhattan, the Victim, a Hispanic male in his early twenties was inside his home with his girlfriend, his mother, his brother, and his cousin. The Victim was in his bedroom with his girlfriend when he heard people shout, "don't move" and "get down" from outside his bedroom door. His bedroom door was then forcibly opened by Detective Trent Narra [the Respondent] and another officer. The Victim asked the officers not to hurt him and his girlfriend. DTS Narra struck the Victim on the right side of his head with a ballistic shield which caused the Victim to collapse onto his bed. The Victim was tossed to the ground and handcuffed.

On November 18<sup>th</sup>, 2021, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against DTS Narra for striking the Victim with a police shield<sup>33</sup>. The APU filed charges and On September 19<sup>th</sup>, 2022, DCT Rosemarie Maldonado dismissed the sole allegation.

**Case Four, Administratively Closed** 202000634 PO Andrew Alvarado

In January 2020, at approximately 11:00 p.m. in the Bronx, the Victim, a Black male in his early forties was in his parked car with his daughter. They were waiting for his wife to return from a store. Police Officer Andrew Alvarado [the Respondent] and two other officers dressed in plain clothes approached their parked vehicle. The officers ordered the Victim out of his vehicle, and he complied. One of the officers searched his vehicle. The Victim asked why his vehicle was being searched. PO Alvarado told the Victim to calm down and patted his stomach. PO Alvarado also pushed the Victim's daughter. The incident was captured on BWC. When PO Alvarado was interviewed by the CCRB about pushing the Victim's daughter, PO Alvarado denied it. He was then shown cellphone footage that showed him pushing the Victim's daughter and he insisted that he did not have any physical interaction with the Victim's daughter.

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<sup>32</sup> The case was voted on before the implementation of the Disciplinary Matrix – as such, allegations will not have a recommended matrix penalty.

<sup>33</sup> Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

On January 21<sup>st</sup>, 2022, the Board substantiated two (2) total allegations: one (1) Discourtesy allegation against PO Alvarado for acting discourteously toward the Victim<sup>34</sup> and one (1) Untruthful Statement allegation for provided a false official statement to the CCRB<sup>35</sup>. The APU filed charges and was informed by the Department that PO Alvarado resigned from the Department before further action could be taken.

**Case Five, Administratively Closed** 202003092 SGT Phillip Wong

In April 2020, at approximately 6:30 a.m. in Manhattan, the Victim, a Black male in his mid-thirties was on a train got into a fight with an unidentified man. As the train pulled into a station the Victim was escorted off the train by officers. Sergeant Phillip Wong [the Respondent] rear cuffed the Victim and walked him up to a flight of stairs. The Victim shouted that the handcuffs were hurting him and kicked his right leg backwards towards Sgt. Wong. Sgt. Wong took the Victim to the ground and placed both of his knees on the Victim's back and buttocks. The Victim said that he could not breathe, and Sgt. Wong said in response "I don't give a fuck! I don't give a fuck if you can breathe or not! Shut the fuck up!". The Victim tried to adjust his body and Sgt. Wong used his full weight to bounce up and down on the Victim's back. The Victim was then brought to his feet and was escorted by multiple officers out of the station. The incident was captured on surveillance video and BWC.

On February 22<sup>nd</sup>, 2022, the Board substantiated three (3) total allegations: one (1) Discourtesy allegation against Sgt. Wong for speaking discourteously toward the Victim<sup>36</sup> and two (2) Use of Force allegations for using physical force against the Victim<sup>37</sup> and for restricting the Victim's breathing<sup>38</sup>. The APU filed charges and was informed by the Department that Sgt. Wong retired from the Department before further action could be taken.

**Case Six, Administratively Closed** 202003834 PO Thomas Foronjy

This case is from the same incident described in Case Five (5) (from the Plea section), for Police Officer Thomas Foronjy [Respondent 2]. In June 2020, at approximately 9:00 p.m. in Manhattan, the Victim, a White male in his early thirties was working as a reporter. He was filming protest activities in the city. The Victim filmed officers arresting individuals who had looted a clothing store. The protestors were complying with police directives to move down the block when Police Officer Thomas Foronjy [Respondent 2] approached the Victim and told him to "go the fuck home...I don't give a shit, go home." The Victim told PO Foronjy that he was an essential worker and continued to move down the block per police directives.

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<sup>34</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

<sup>35</sup> Per Disciplinary matrix – intentionally making a false official statement has a mitigated penalty of forced separation and a presumptive penalty of termination.

<sup>36</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

<sup>37</sup> Per Disciplinary matrix – non-deadly force against another that results in physical injury has a mitigated penalty of 10 suspension days, a presumptive penalty of 10 suspension days + 10 vacation days' forfeiture, and an aggravated penalty of termination.

<sup>38</sup> Per Disciplinary matrix – application of a chokehold has a mitigated penalty of forced separation and a presumptive penalty of termination.

On June 10<sup>th</sup>, 2021, the Board substantiated two (2) total allegations: one (1) Discourtesy allegations against PO Foronjy for speaking discourteously to the Victim<sup>39</sup> and one (1) Abuse of Authority allegation for interfering with the Victim's use of a recording device<sup>40</sup>. The APU filed charges and was informed by the Department that PO Foronjy resigned from the Department before further action could be taken.

**Case Seven, Administratively Closed** 202102845 PO Tarik Hunter

In May 2021, at approximately 2:15 p.m. in Manhattan, the Victim, a White male in early fifties walked past a precinct when he saw Police Officer Tarik Hunter [the Respondent] standing outside. The Victim asked PO Hunter how he felt about being a Black police officer. The conversation quickly became confrontational. PO Hunter tried to disengage from the conversation, but the Victim continued to talk to him. PO Hunter asked the Victim "do you need an ambulance sir? You need to go to the hospital?". The Victim replied that he was fine, and PO Hunter replied "I'm gonna call you an ambulance right now", "the way you're talking right now, you don't sound sane", "you sound emotionally disturbed". PO Hunter then called for an ambulance and told the Victim that he was being "racist and disorderly, and you're trying to incite something right now." An officer from the precinct came outside and approached the Victim. The Victim spoke with that officer for another fifteen minutes and then left on his own. The incident was captured on BWC.

On August 3<sup>rd</sup>, 2021, the Board substantiated four (4) total allegations: two (2) Abuse of Authority allegations against PO Hunter for threatening to remove the Victim to the hospital<sup>41</sup> and for threatening to arrest the Victim<sup>42</sup>, one (1) Offensive Language allegation for making offensive remarks to the Victim based on his perceived mental state<sup>43</sup>, and one (1) Discourtesy allegation for speaking discourteously to the Victim<sup>44</sup>. The APU filed charges and was informed by the Department that PO Hunter retired from the Department before further action could be taken.

**Case Eight, Administratively Closed** 202104024 PO Patrick Lacruz

In June 2021, at approximately 10:00 p.m. in Queens, the Victim, a woman in her late twenties had called 911 to report that an ex-boyfriend had violated an order of protection. Multiple officers responded, including Police Officer Patrick Lacruz [the Respondent]. PO

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<sup>39</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

<sup>40</sup> Per Disciplinary matrix – interfering with a recording/recording device has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of 30 vacation days' forfeiture.

<sup>41</sup> Per Disciplinary matrix – an improper/wrongful (threat of police/hospital removal) has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of 20 vacation days' forfeiture

<sup>42</sup> Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days' forfeiture, a presumptive penalty of 20 vacation days' forfeiture, and an aggravated penalty of termination

<sup>43</sup> Per Disciplinary matrix – offensive language has a mitigated penalty of 10 days' vacation forfeiture, a presumptive penalty of 20 days' vacation forfeiture, and an aggravated penalty of termination.

<sup>44</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

Lacruz prepared a report in response to the Victim's call. The officers left. PO Lacruz used the report to retrieve the Victim's personal phone number and messaged her on WhatsApp with his private phone number. PO Lacruz asked her if she was okay, and the Victim asked him to identify himself. He did so by exchanging Instagram profile names so that the Victim could see his photo. PO Lacruz then told the Victim that he wanted to get to know her better and the Victim responded that she was not interested in doing so.

On September 7<sup>th</sup>, 2021, the Board substantiated one (1) total allegation: one (1) Abuse of Authority allegation against PO Lacruz for propositioning the Victim<sup>45</sup>. The APU filed charges and was informed by the Department that PO Lacruz resigned from the Department before further action could be taken.

## VII. The APU's Docket

As seen in the following table, the APU's docket had significant growth in the fourth of 2022 compared to the fourth quarter of 2021. This can be attributed to the substantiation of Charges and Specifications of allegations arising from complaints filed during the summer protests of 2020, use of the Disciplinary matrix, and staffing shortages.

Cases in Open Docket <sup>46</sup>					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
4 <sup>th</sup> Quarter 2019	123	23	20	126	2.4%
1 <sup>st</sup> Quarter 2020	122	5	8	119	-2.5%
2 <sup>nd</sup> Quarter 2020	119	21	23	117	-1.7%
3 <sup>rd</sup> Quarter 2020	115	3	6	114	-0.9%
4 <sup>th</sup> Quarter 2020	114	6	3	117	2.6%
1 <sup>st</sup> Quarter 2021	115	4	7	112	-2.6%
2 <sup>nd</sup> Quarter 2021	113	50	3	159	40.7%
3 <sup>rd</sup> Quarter 2021	151	65	14	198	31.1%
4 <sup>th</sup> Quarter 2021	193	51	19	223	15.5%
1 <sup>st</sup> Quarter 2022	223	133	4	352	57.8%
2 <sup>nd</sup> Quarter 2022	348	215	22	541	55.5%
3 <sup>rd</sup> Quarter 2022	540	102	15	628	16.8%
<b>4<sup>th</sup> Quarter 2022</b>	<b>623</b>	<b>87</b>	<b>29</b>	<b>681</b>	<b>9.3%</b>

<sup>45</sup>Per Disciplinary matrix – sexual proposition/unwanted verbal sexual advances have a presumptive penalty of 30 suspension days + 1 year dismissal probation and an aggravated penalty of termination

<sup>46</sup> The number of cases in the open docket were updated to reflect additional data received from the Department with regards to the closure of long-standing cases.

**VIII. Time to Serve Respondents**

As can be seen in the following chart, the length of time the Department took to serve Respondents after the APU filed charges with the Charges Unit remained unchanged the third and fourth quarters of 2022. As of December 31, 2022, there were one hundred sixty-one (161) Respondents who had not been served with Charges. The average wait time for Respondents to be served charges between the third and fourth quarters in 2022 remained unchanged.

<b>Time to Serve Respondents</b>			
<b>Period</b>	<b>Number of Respondents Served</b>	<b>Average Length to Serve Respondents</b>	<b>Average Length to Serve Respondents (Business Days)</b>
4 <sup>th</sup> Quarter 2019	7	68	48
1 <sup>st</sup> Quarter 2020	10	129	92
2 <sup>nd</sup> Quarter 2020	18	62	44
3 <sup>rd</sup> Quarter 2020	16	88	63
4 <sup>th</sup> Quarter 2020	6	71	51
1 <sup>st</sup> Quarter 2021	2	66	47
2 <sup>nd</sup> Quarter 2021	13	20	14
3 <sup>rd</sup> Quarter 2021	46	22	15
4 <sup>th</sup> Quarter 2021	40	40	28
1 <sup>st</sup> Quarter 2022	39	27	19
2 <sup>nd</sup> Quarter 2022	134	38	27
3 <sup>rd</sup> Quarter 2022	67	24	17
<b>4<sup>th</sup> Quarter 2022</b>	<b>68</b>	<b>24</b>	<b>17</b>

We hope that the Commissioner will continue to uphold negotiated plea agreements without modification and reduce the amount of retained cases so that they have a full opportunity to be put before the tribunal.

Thank you for your consideration.

Sincerely,

Jonathan Darche  
Executive Director

Cc: CCRB Acting Chair Arva Rice  
Deputy Commissioner Rosemarie Maldonado  
Department Advocate Chief Amy Litwin