

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Alexander Lai	Team: Team # 1	CCRB Case #: 201211134	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Fri, 08/24/2012 8:51 PM	Location of Incident: [REDACTED]	Precinct: 75	18 Mo. SOL 02/24/2014	EO SOL 2/24/2014	
Date/Time CV Reported Mon, 08/27/2012 3:20 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Mon, 08/27/2012 3:20 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Ricardo Martinez	19264	§ 87(2)(b)	PBBN
2. POM Arsenio Berrios	18896	§ 87(2)(b)	PBBN
3. Officers			
4. POM Javier Munoz	10519	§ 87(2)(b)	075 PCT
5. POM Craig Victorino	22046	§ 87(2)(b)	075 PCT
6. POM Todd Hansen	13329	§ 87(2)(b)	075 PCT
7. An officer			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Luis Diaz	19018	§ 87(2)(b)	PBBN
2. SGT Kenny Chan	00250	§ 87(2)(b)	PBBN
3. POM Daniel Kurot	23100	§ 87(2)(b)	PBBN
4. POM Anthony Lafemina	11439	§ 87(2)(b)	075 PCT
5. POM Kevin Morgan	07698	§ 87(2)(b)	075 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Arsenio Berrios	Force: PO Arsenio Berrios used physical force against § 87(2)(b) .	A . § 87(2)(g)
B . POM Craig Victorino	Force: PO Craig Victorino used physical force against § 87(2)(b) .	B . § 87(2)(g)
C . Officers	Force: Officers used physical force against § 87(2)(b) .	C . § 87(2)(g)
D . An officer	Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.	D . § 87(2)(g)
E . POM Todd Hansen	Abuse of Authority: PO Todd Hansen threatened § 87(2)(b) with the use of force.	E . § 87(2)(g)
F . POM Todd Hansen	Abuse of Authority: PO Todd Hansen improperly seized and searched § 87(2)(b) cell phone.	F . § 87(2)(g)
G . POM Javier Munoz	Off. Language: PO Javier Munoz made remarks to § 87(2)(b) based upon race.	G . § 87(2)(g)
H . POM Arsenio Berrios	Other: PO Arsenio Berrios intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.	H . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
I . POM Ricardo Martinez	Other: PO Ricardo Martinez intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.	I . § 87(2)(g)
J . POM Todd Hansen	Other: PO Todd Hansen intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.	J . § 87(2)(g)
§ 87(4-b), § 87(2)(g)		

### Case Summary

§ 87(2)(b) filed this complaint with the CCRB in-person on August 27, 2012. On August 24, 2012, at approximately 8:51 p.m., on § 87(2)(b) in Brooklyn, § 87(2)(b) was approached by PO Arsenio Berrios, PO Ricardo Diaz, and PO Luis Diaz of Patrol Borough Brooklyn North. Their subsequent interaction resulted in the following allegations:

- **Allegation A – Force: PO Arsenio Berrios used physical force against § 87(2)(b)**  
§ 87(2)(g)
- **Allegation B – Force: PO Craig Victorino used physical force against § 87(2)(b)**  
§ 87(2)(g)
- **Allegation C – Force: Officers used physical force against § 87(2)(b)**- **Allegation D – Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.**  
§ 87(2)(g)
- **Allegation E – Abuse of Authority: PO Todd Hansen threatened § 87(2)(b) with the use of force.**  
§ 87(2)(g)
- **Allegation F – Abuse of Authority: PO Todd Hansen improperly seized and searched § 87(2)(b)'s cell phone.**  
§ 87(2)(g)
- **Allegation G – Offensive Language: PO Javier Munoz made remarks to § 87(2)(b) based upon race.**  
§ 87(2)(g)
- **Allegation H – Other Misconduct: PO Arsenio Berrios intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**
- **Allegation I – Other Misconduct: PO Ricardo Martinez intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**
- **Allegation J – Other Misconduct: PO Todd Hansen intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**
- § 87(4-b), § 87(2)(g)

§ 87(4-b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

An allegation that PO Hansen deleted data from § 87(2)(b)'s cell phone was referred to IAB under CCRB case number § 87(2)(b) and was listed as log number log § 87(2)(b). On February 2, 2013, IAB contacted § 87(2)(b) who did not want to pursue the complaint. The case was subsequently referred to OCD.

### **Results of Investigation**

#### **Civilian Statements**

##### **Complainant/ Victim:** § 87(2)(b)

- § 87(2)(b)
- § 87(2)(b)

##### **Statements to Medical Personnel**

On § 87(2)(b), § 87(2)(b) told medical staff at § 87(2)(b) that he was arrested and in the process, officers threw him to the ground and punched him in the face, neck, back, and legs. § 87(2)(b) complained of back pain, wounds to both knees, redness to his right eye, and bruises to both hands.

##### **Arrest Photograph**

§ 87(2)(b) arrest photograph shows redness in the corner of his right eye. § 87(2)(g)

##### **CCRB Testimony**

§ 87(2)(b) was interviewed at the CCRB on August 27, 2012 (encl. F5-7). On August 24, 2012, at approximately 8:51 p.m., § 87(2)(b) left his home at § 87(2)(b) in Brooklyn to see his wife in Queens. § 87(2)(b) wore a black sleeveless shirt, black shorts, and black and red sneakers. He had his wallet in his back right pocket, and his cellphone and keys in his front left pocket; he did not have any bags or packages. While on the north side of § 87(2)(b) he sat on a mountain bike, traveling westbound towards § 87(2)(b) by pushing off the sidewalk with his feet. The bicycle's handlebars were "messed up," so he was unable to ride it properly. As he traveled on the sidewalk towards the street, he simultaneously attempted to fix the handlebar in order to use it.

Two uniformed officers, later identified by name as PO Arsenio Berrios and PO Ricardo Martinez of Patrol Borough Brooklyn North, approached him from across the street. PO Berrios was described as a medium-to-dark complexioned 27-year-old Hispanic male who stood 5'6", and had a stocky build and short black hair. PO Martinez was described as a light-complexioned Hispanic male in his early 20s who stood 5'8" to 5'9", and had a slim build, short black hair, and a tattoo on his right arm. There may have been a third officer accompanying them, but § 87(2)(b) did not recall any details about this officer's appearance or why he believed there was another officer present.

PO Berrios asked § 87(2)(b) his age. § 87(2)(b) said that he was § 87(2)(b) and asked why and if there was a problem. During this time, § 87(2)(b) hands were at his sides and he was

calm. PO Berrios replied that he was committing a bicycle violation and asked if he was aware that he was not supposed to ride a bicycle on the sidewalk. While dismounting from his bicycle, § 87(2)(b) said that he was not aware, and that his bicycle handlebar was not functioning. PO Berrios asked if he had any identification, and § 87(2)(b) said that he left his identification at home, which was on the same block they were speaking. PO Berrios asked for his first name, and after § 87(2)(b) asked why, PO Berrios replied that he was in violation. § 87(2)(b) said, "I don't have to disclose that information to you because I didn't commit any crime." PO Berrios responded by telling him that if he did not provide his name, he would be under arrest. § 87(2)(b) started to become "mad," raised his voice, and asked, "For what? I haven't done anything wrong." PO Berrios then said that he was under arrest, and § 87(2)(b) replied, "For what? What is going on? I didn't do anything." § 87(2)(b) hands, which were at his sides, were now raised at his sides with his forearms parallel to the ground, his palms open, and fingers spread. Neither PO Martinez nor the other officer who may have been present said anything during this time. At this point, the interaction had lasted approximately two to three minutes.

PO Berrios immediately closed his right fist and swung it towards the left side of § 87(2)(b) head, but § 87(2)(b) backed up, turned his body and head away, and was not struck. From behind, PO Martinez then grabbed his upper arms and placed him against the wall of a school building, identified via investigation as § 87(2)(b). Later in his interview, § 87(2)(b) said that did not recall where on his body PO Martinez had grabbed him. Either PO Berrios or PO Martinez (he did not see which) immediately grabbed his legs and placed him face down onto the ground. § 87(2)(b) was "engulfed in rage," but he did not speak, strike, or attempt to strike any of the officers.

§ 87(2)(b) closed his fists, and placed them close to his chest underneath his body as he lay face down on the ground saying, "I'm not getting arrested. I didn't do anything wrong." At least one of the officers held the back of § 87(2)(b) legs in an apparent attempt to further restrict his movement; § 87(2)(b) denied moving or kicking his legs. The officers told § 87(2)(b) to put his hands behind his back, but he verbally refused. After the officers repeated the command "a couple of times," an officer who he did not see struck the back of his head, neck, and back with a fist or foot. Although § 87(2)(b) did not see who struck him at this time, he assumed that PO Berrios did so because PO Berrios had attempted to strike him at the onset, and because the other officers had been calm. He did not recall how many times he was struck, but noted that it was more than once. He believed that this officer struck him in an attempt to remove his hands from underneath his chest to handcuff him. Other than PO Berrios telling him to put his hands behind his back, he did not hear the officers say anything else.

Less than a minute later, twelve to fifteen uniformed officers arrived from at least three police vehicles – an unmarked black sedan, an unmarked white sedan, and a marked van. § 87(2)(b) did not see an officer request additional units to respond. § 87(2)(b) then felt multiple officers strike the back of his head, neck, and upper back, but he did not see who did this. He still had his hands close to his chest underneath his body, and officers told him to put his hands behind his back. Additionally, a male officer that he did not see told him, "If you don't put your hands behind your back, I'm [going to] kick your teeth in." § 87(2)(b) then heard an officer, identified via investigation as PO Todd Hansen of the 75<sup>th</sup> Precinct, say that if he did not put his hands behind his back, he would be pepper-sprayed. It was at that point that § 87(2)(b) complied and allowed officers to grab his arms and handcuff him. From the time PO Berrios had swung at § 87(2)(b) until he was handcuffed, five to seven minutes had elapsed. § 87(2)(b) affirmed that he had not moved his torso or legs during the officers' attempts to handcuff him.

After he was handcuffed, § 87(2)(b) was brought to his feet. PO Hansen, whose voice § 87(2)(b) recognized from earlier, tried to calm § 87(2)(b) down and asked him what happened. PO Hansen was described as a white male, 5'10 to 5'11", in his 40s, had a heavyset



build, white hair, and a gold shield affixed to his blue uniform. Meanwhile, § 87(2)(b) who was “so mad” because he had been struck, asked PO Hansen to be separated from PO Berrios as he did not feel comfortable being in the same area as him, and began to yell towards PO Berrios, “Fucking bitch. Why you struck me? Asshole. I can’t believe you struck me.” PO Berrios did not respond. PO Hansen walked § 87(2)(b) to the side, where § 87(2)(b) told PO Hansen what had happened. Thereafter, § 87(2)(b) was placed in the marked van and sat with PO Berrios in the rear passenger seat. Two male officers that he did not recall were seated in the driver’s and front passenger seat; the investigation identified them as Sgt. Kenny Chan and PO Daniel Kurot of Patrol Borough Brooklyn North.

Numerous bystanders from the block were observing this incident, and § 87(2)(b) had observed numerous young individuals videotape what occurred. § 87(2)(b) did not know their names or contact information but he has seen them around the neighborhood.

While inside the van, § 87(2)(b) screamed at the officers, saying that he was § 87(2)(b) years old and was on his way to see his wife and child. PO Berrios said he was § 87(2)(b) years old with two children. When § 87(2)(b) asked, “Well, how would you feel if this [incident] happened to you?” PO Berrios did not respond. At the 75<sup>th</sup> Precinct stationhouse’s front desk, § 87(2)(b) continued to yell, saying, “I don’t belong in handcuffs, please take me out of handcuffs,” and officers attempted to verbally calm him down. At some point, PO Berrios told § 87(2)(b) his first name was Arsenio, and after § 87(2)(b) asked while in a holding cell, PO Martinez provided his name to him. § 87(2)(b) was charged with riding a bicycle on a sidewalk and resisting arrest.

He suffered scrapes on his knees and hands from being placed on the ground, pain in his right shoulder blade, swelling on his left cheek and the back of his head, and a popped blood vessel in his right eye. Other than the scrapes, § 87(2)(b) could only explain that his other injuries were due to the numerous “beatings” by officers during this incident. He did not request medical attention from officers, but after he was released the following day, he went to § 87(2)(b), where he received pain medication.

**Victim:** § 87(2)(b)

- § 87(2)(b)

**Phone Statement**

§ 87(2)(b) provided a phone statement on September 28, 2012 (encl. G2). On the date of the incident, § 87(2)(b) was sitting on the stoop of § 87(2)(b) with his wife, § 87(2)(b). He heard an individual yelling for help towards § 87(2)(b) and he and a neighbor who lived across the street, § 87(2)(b) walked to § 87(2)(b). On the corner of § 87(2)(b) and § 87(2)(b), § 87(2)(b) saw his neighbor, identified via investigation as § 87(2)(b) standing with his back against the wall of the school, with three uniformed officers, PO1, PO2, and PO3, standing in front of him.

PO1 was described as a slim white or Hispanic male in his 20s who stood 5’6”. PO2 was described as a black male in his 30s who stood 5’8” and appeared more muscular than PO1. PO3 was described as a white or Hispanic male in his 30s who stood 5’8” and appeared more muscular than PO1.

PO1, PO2, and PO3 told § 87(2)(b) to put his hand behind him, but he did not, telling the officers that he did not do anything and asked what he did. The officers then placed him face down on the sidewalk. The officers then kicked and punched § 87(2)(b) on the side of his body and ribs. § 87(2)(b) was unable to see if § 87(2)(b) was handcuffed during this time. At some point, there were two marked vans and an unmarked black Chevrolet sedan at the

location. § 87(2)(b) began yelling for someone to record the officers, and § 87(2)(b) began recording the incident with his cell phone. A uniformed officer, identified via investigation as PO Hansen, approached § 87(2)(b) and took his phone from his hands and began pressing the buttons, which led § 87(2)(b) to believe his video recording was deleted. § 87(2)(b) asked for his cell phone back, but PO Hansen refused, so he approached another uniformed officer, identified via investigation as PO Javier Munoz of the 75<sup>th</sup> Precinct. PO Munoz was described as a muscular Hispanic male in his 30s who stood 5'5" to 5'6". When § 87(2)(b) asked PO Munoz if he could have his cell phone returned from PO Hansen, PO Munoz looked at § 87(2)(b)'s jeans pocket, which had a partially-exposed pen knife (that had a 3 inch blade) inside. PO Munoz said something to the effect of, "Oh, you have a knife," removed it, and handcuffed § 87(2)(b).

§ 87(2)(b) was placed in the unmarked black sedan, which was driven by PO Munoz. Seated in the front passenger seat was a uniformed officer, identified via investigation as PO Craig Victorino of the 75<sup>th</sup> Precinct, who was described as a white male who stood over 6'0". While inside the vehicle, § 87(2)(b) asked for his phone back. PO Munoz told him, "Shut the fuck up, you black motherfucker." Later in his phone statement, § 87(2)(b) said that PO Munoz had told him, "Shut the fuck up, you black nigger." § 87(2)(b) was taken to the 75<sup>th</sup> Precinct stationhouse, where he was ultimately charged with possession of a knife.

Later that evening, § 87(2)(b) retrieved § 87(2)(b)'s cell phone from the stationhouse, and both discovered that all data on his cell phone, including the video recording and his telephone numbers, had been deleted.

Prior to his phone statement, a letter and two voicemails were left for § 87(2)(b) on September 21 and September 24, 2012. On September 27, 2012, he left a voicemail. Upon a call the next day, he provided the above phone statement and scheduled an interview for October 10, 2012. § 87(2)(b) was reminded of his scheduled interview over the telephone the day before. He did not appear, and a missed appointment letter was mailed. From October 10 to October 17, 2012, three voicemails were left for him and a letter was mailed to him. A Department of Correction search indicated that he was not incarcerated during contact attempts. As of the date of this report, he has not contacted the CCRB.

### **Attempts to Contact Civilians**

The undersigned investigator conducted a canvass of § 87(2)(b) and § 87(2)(b) on September 27, 2012 (encl. H1). The investigator visited § 87(2)(b) at § 87(2)(b) where school administrator § 87(2)(b) provided information for the company that stored its camera footage, which was later acquired.

At § 87(2)(b) Inv. Lai spoke with § 87(2)(b)'s wife. § 87(2)(b) did not witness this incident, but stated that her § 87(2)(b) son, § 87(2)(b) and § 87(2)(b) son, § 87(2)(b) saw § 87(2)(b) arrested by officers. She gave the investigator permission to speak to her sons over the telephone. She took a message for them and took a please call letter. A message was left for her on October 4, 2012, and her telephone continually rang without a voicemail prompt during a call on October 9, 2012.

At § 87(2)(b) Inv. Lai spoke with a female, who declined to provide her name and stated that she was unaware of this incident. At § 87(2)(b) resident § 87(2)(b) was unaware of this incident. The undersigned investigator visited the residences of § 87(2)(b) and § 87(2)(b). However, no one answered, and please call letters were left in their mailboxes. As of the date of this report, no one has contacted the CCRB.

### Video Transcription

Video footage was obtained from cameras at § 87(2)(b) at § 87(2)(b) (encl. I1-2). One camera is closest to § 87(2)(b) and faces south towards § 87(2)(b). Another camera is located positioned by the front gate of the school on § 87(2)(b) and faces north towards § 87(2)(b). The third camera faces the school's playground. The camera closest to § 87(2)(b) records the majority of this incident. None of the cameras recorded audio.

At 08:51:23, § 87(2)(b) rode his bicycle on the same sidewalk and towards PO Martinez and PO1, who remains unidentified. At the same time, PO Berrios crossed the street, converging with § 87(2)(b). PO Martinez also walked towards § 87(2)(b). § 87(2)(b) stopped and spoke with PO Berrios and/or PO Martinez. At 08:51:58, PO Diaz crossed the street towards the group. At 08:52:20, § 87(2)(b) dismounted from his bicycle. At 08:52:56, § 87(2)(b) pulled his bicycle towards himself and dropped it to the ground. § 87(2)(b) brought his forearms parallel to the ground and shook them at his sides (it cannot be clearly seen if his hands were fisted) as he walked backwards towards the building on the sidewalk, with PO Berrios, PO Martinez, and PO Diaz following. At 08:52:59, PO Diaz placed his left hand on § 87(2)(b) upper right arm, at which time § 87(2)(b) swung his right hand at PO Diaz's hand and stepped away from him. § 87(2)(b) facing PO Berrios, continued speaking, at times pointing towards the direction from where he travelled. The hand movements are quick and § 87(2)(b) appears somewhat agitated. This continued until 08:53:37, when § 87(2)(b) walked towards PO Berrios, leaned his tilted head towards him, and then walked backwards towards the street and away from the officers. PO Berrios, PO Martinez, and PO Diaz followed and remained surrounding § 87(2)(b) with PO1 standing within five feet of the group. At 08:53:52, § 87(2)(b) PO Berrios, PO Martinez, and PO Diaz walk out of camera view, and walk back into view at 08:54:07.

Starting at 08:54:07, PO Berrios continued to speak with § 87(2)(b) who stood against the wall of the school and has his open hands up to his chest. At 08:54:12, PO Berrios extended his left hand towards the front of § 87(2)(b) torso, and § 87(2)(b) moved it aside with his right forearm in a circular motion. At 08:54:18, § 87(2)(b) with his hands at his side, leaned forward to speak with PO Berrios. At 08:54:22, § 87(2)(b) his hands still at his side, leaned his upper torso back and away from PO Berrios, who then immediately punched the left side of § 87(2)(b) head. § 87(2)(b) turned right and bent down at the waist. At 08:54:23, PO Berrios immediately punched towards § 87(2)(b) head a second time but it appeared to miss. At 08:54:24, PO Berrios then punched the upper back or base of § 87(2)(b) neck and the back of his head in succession. During this time, § 87(2)(b) remained bent at the waist, turned away from PO Berrios. PO Diaz appeared to have his hands against the left rear shoulder blade area of § 87(2)(b) but the view was obscured by PO Martinez's back. PO1, standing behind PO Berrios, was not physically involved but watched.

At 08:54:28, PO Berrios, standing behind and to the left of § 87(2)(b) crouched down with his right hand reaching towards the ground, then quickly stood up, sweeping § 87(2)(b) legs upwards, causing § 87(2)(b) to fall on his buttocks and back. At 08:54:30, PO Berrios crouched down and punched towards § 87(2)(b) at least twice in an unknown area; the view is blocked by PO Diaz's back. At this point, PO1 reached with his right hand towards § 87(2)(b) as he stood behind PO Berrios. PO Diaz knelt down; it cannot be seen if he touched § 87(2)(b). At 08:54:40, PO Martinez walked less than five feet away from the group, with his back turned, and used his radio. At 08:55:02, PO Berrios punched § 87(2)(b) twice in an area that cannot be seen. At 08:55:11, § 87(2)(b) appeared in the frame, stood less than ten feet away and pointed a cell phone towards the officers and § 87(2)(b). Two boys approximately



ten years old stood on the street and watched. The struggle to handcuff § 87(2)(b) during this time is partially out of camera view.

The camera facing south towards § 87(2)(b) showed two marked patrol cars pull up to the location at 08:55:54. At 08:55:58, an unmarked black sedan stopped in front in the middle of the street. During this time, there are approximately six civilians standing and watching. At 08:56:01, PO Hansen, exited from one of the marked patrol cars, approached § 87(2)(b) from behind, immediately took § 87(2)(b)'s cell phone from § 87(2)(b)'s hand, and continued walking forward. § 87(2)(b) followed PO Hansen but was stopped by another uniformed officer, PO2 (who remains unidentified), who pushed him back. PO Hansen then looked at the cell phone, appears to be pressing buttons and walking towards where § 87(2)(b) lay at 08:56:17. Simultaneously, from the unmarked black sedan, PO Victorino exited from the front passenger side while PO Munoz exited from the driver's side. At 08:56:23, PO Victorino crouched next to § 87(2)(b) and punched him twice in an area that cannot be seen.

At 08:56:29, § 87(2)(b) approached PO Hansen. PO Munoz pushed back § 87(2)(b) and at 08:56:45 he looked down towards § 87(2)(b)'s pants. PO Munoz reached towards the right side of § 87(2)(b)'s front pants pocket, removing an object and placing it in his rear left pants pocket. During this time, there were approximately nine uniformed officers that can be seen in the video; at least six are standing around and looking down where § 87(2)(b) is presumably still lying on the ground. At 08:57:11, PO Munoz handcuffed § 87(2)(b).

At 08:58:51, PO Hansen spoke with § 87(2)(b) who was handcuffed and against the wall. At approximately the same time, Sgt. Chan walked up to the officers and spoke with them. At 09:00:03, PO Munoz placed § 87(2)(b) in the rear passenger seat of their vehicle. During this time, approximately 13 uniformed officers are seen in the recording. At 09:01:45, § 87(2)(b) is brought out of camera view by officers. At 09:07:55, PO Victorino and PO Munoz left in the unmarked sedan.

### **NYPD Statements:**

#### **Subject Officer: PO ARSENIO BERRIOS**

- *PO Berrios is a § 87(2)(b)-old Hispanic male who stands 5'5", weighs 185 pounds, and has short black hair, brown eyes, and a chipped front tooth.*
- *He was on-duty from 7:30 p.m. on August 24, 2012, to 4:05 a.m. on August 25, 2012, assigned to an impact footpost on § 87(2)(b) and § 87(2)(b) by himself and in uniform.*

#### **Memo Book**

At 9:06 p.m., PO Berrios observed § 87(2)(b) on sidewalk riding recklessly on a bike, traveling southbound on § 87(2)(b) towards § 87(2)(b). PO Berrios approached § 87(2)(b) and asked him for identification, and he stated, "I don't have to give you shit. You don't have to know my name." § 87(2)(b) became very angry and acted in a violent, threatening manner. He started screaming in PO Berrios' face and did not want to be compliant with PO Berrios' orders to place his hands behind his back due to his arrest. PO Berrios used physical force to restrain him and he was transported to the 75<sup>th</sup> Precinct stationhouse for arrest processing for § 87(2)(b), § 87(2)(a) CPL 160.50 (encl. J1-3).

#### **CCRB Testimony**

PO Berrios was interviewed at the CCRB on March 1, 2013 (encl. J4-7). On August 24, 2012, at approximately 9:06 p.m., PO Berrios stood on the northeast corner of § 87(2)(b) and § 87(2)(b) across the street from § 87(2)(b). Although PO Berrios stated that the incident occurred at this time, the investigation determined that the time was actually closer to 8:51 p.m. PO Ricardo Martinez was present on another corner of the intersection; there may have been one or two other officers at the location as well. PO Berrios would later testify that one of these officers was PO Luis Diaz and the other, PO1, an officer who he did not know. There were numerous pedestrians and at least two children playing on the sidewalk of § 87(2)(b). PO Berrios observed § 87(2)(b) riding a bicycle on the sidewalk of § 87(2)(b) with an apparent disregard for the people on the sidewalk. Those individuals had to move out of the way as § 87(2)(b) traveled in a straight line on the sidewalk; PO Berrios perceived § 87(2)(b) actions as reckless. PO Berrios crossed over § 87(2)(b) and approached § 87(2)(b) to interview him to see “what was going on.” He did not intend to issue him a summons at the onset. PO Martinez also approached § 87(2)(b) at the same time.

PO Berrios said to § 87(2)(b) “How’re you doing? I’m Officer Berrios. How old are you?” § 87(2)(b) said that he was § 87(2)(b) and PO Berrios said that he was not allowed to ride a bicycle on the sidewalk. § 87(2)(b) said, “Oh, you would’ve stopped me anyways if I was riding on the street. You just wanted to come over here and mess with me and harass me.” PO Berrios denied that that was the case and asked § 87(2)(b) for identification because he did not know who he was speaking to. § 87(2)(b) said, “No, I don’t have to give you nothing. You stopped me for no reason. Fuck you. I don’t know who I’m talking to. I don’t care if you’re a cop. Fuck y’all.” PO Berrios replied, “I’m just telling you what I’m stopping you for – you’re riding your bike on the sidewalk. You’re not supposed to do that – you’re in violation.” § 87(2)(b) said, “No. I don’t care. I’m not giving you nothing.” PO Berrios asked where he lived and § 87(2)(b) said, “You don’t need to know that, either. You don’t have to know nothing about me.” PO Berrios told § 87(2)(b) that he needed to see his identification or know who he was speaking to, otherwise he could arrest and take him to the stationhouse to find out, in addition to his violation of VTL by riding a bicycle on the sidewalk. § 87(2)(b) continued to refuse, and PO Berrios told him that he was now under arrest for refusing to provide his identification and for riding a bicycle on the sidewalk; approximately five minutes had passed since the onset of their interaction. § 87(2)(b) responded, “No, I’m not under arrest.” Neither PO Martinez nor any other officer spoke during this interaction. PO Martinez attempted to grab § 87(2)(b) hands, but § 87(2)(b) pulled away and said, “No, nobody’s touching me.” § 87(2)(b) held his fists up by his chest and then lowered them.

PO Diaz and PO1 approached and asked PO Berrios what was going on. PO Berrios told them that § 87(2)(b) is under arrest but he was “dropping f-bombs in [PO Berrios’] face” and saying that he was not under arrest. During this time, a large crowd of approximately 30 people formed. § 87(2)(b) said, “This is my block. This is my block.” PO Berrios called for additional units to respond to a disorderly male. Initially, PO Berrios said that it was at this point that § 87(2)(b) threw his bike to the ground and paced around the sidewalk, preventing or avoiding the officers from surrounding him. Later in the interview, PO Berrios said that § 87(2)(b) threw the bicycle when he told § 87(2)(b) that he would be arrested if he did not provide identification. PO Berrios told § 87(2)(b) more than five times to put his hands behind his back but § 87(2)(b) refused, saying, “No, nobody’s touching me. I’m a boxer. Don’t fuck with me.” In addition to § 87(2)(b) sticking his chest out, PO Berrios believed that § 87(2)(b) was preparing to fight. PO Berrios grabbed § 87(2)(b) arm to handcuff him, but § 87(2)(b) pulled his arm away and put his arms up, forearms perpendicular to the ground and fists closed towards his chin, in what appeared to be a fighting stance. § 87(2)(b) did not do

anything else at this point, he did not attempt to strike PO Berrios, and he did not say anything threatening towards the officers.

PO Berrios felt threatened and was in fear of his safety because of § 87(2)(b) demeanor and fighting stance. PO Berrios punched § 87(2)(b) face with a closed fist once, which occurred approximately two minutes after being told that he was under arrest. The punch to the face was to stun § 87(2)(b) and to make him lose his balance to place him on the ground. Immediately after the punch, an officer pulled § 87(2)(b) legs towards himself, causing § 87(2)(b) to fall on his buttocks; PO Berrios was uncertain which officer did this. PO Berrios explained, “[The punch] was to stun him. To make him comply with my orders. [There] was nothing else I could [have done,] I wasn’t going to mace him, like, I didn’t want to use excessive force, I wanted to use the minimum amount of force necessary, so [the punch] kind of did get § 87(2)(b) attention, and that was when we were able to sweep his legs. We had to initiate some sort of contact.” PO Berrios added, “When § 87(2)(b) was saying, ‘This is my block,’ and the crowd started coming, I knew I was losing control of the scene like, and like, he said he was a boxer, so I had to do something.” At the time of the punch, PO Berrios did not believe there was any other manner to restrain or make § 87(2)(b) lose his balance. Although PO Berrios mentioned that he was uncertain whether § 87(2)(b) was armed, there were no indications that he was armed other than his refusal to provide identification. He did not see any bulges on § 87(2)(b) person and he was not holding anything in his hands.

After falling, § 87(2)(b) turned facedown and curled up his body with his knees on the ground, his arms straightened and palms on the ground. When PO Berrios attempted to handcuff one of § 87(2)(b) wrists, § 87(2)(b) immediately placed both forearms flush to the ground and closed his fists. During this time, PO Berrios told § 87(2)(b) to put his hands behind his back, but § 87(2)(b) repeatedly said, “Police brutality.” PO Berrios placed his forearm onto § 87(2)(b) back to prevent him from standing up while additional units responded. No further attempts were made to handcuff § 87(2)(b) at this point. PO Berrios did not strike § 87(2)(b) again, and he did not recall if an officer struck § 87(2)(b) in any manner during this time. PO Berrios and the officers did not mention using any other force against § 87(2)(b) including the use of pepper spray or the phrase, “I’m going to kick your teeth in.”

At least one marked van, one marked patrol car, and approximately 20 officers that PO Berrios did not know responded; he did not observe an unmarked vehicle. Upon their arrival, § 87(2)(b) became compliant by standing up and placing his hands behind his back, at which point PO Martinez handcuffed him. PO Berrios did not recall the circumstances preceding § 87(2)(b) standing up; he did not recall if an officer instructed § 87(2)(b) to stand up. There were still numerous civilians standing around; none approached PO Berrios or § 87(2)(b) during the latter’s handcuffing. After § 87(2)(b) was handcuffed, he told officers that PO Berrios was a “bitch ass nigga,” and that he did not want anything to do with him. Numerous officers, including PO Martinez, stood near § 87(2)(b) when those remarks were made. PO Berrios did not respond to § 87(2)(b).

PO Berrios did not see a civilian or an officer holding or pointing a cell phone towards the scene as his attention was focused on § 87(2)(b). At some point, PO Berrios saw an male, identified via investigation as § 87(2)(b) being placed into a marked van. In addition to hearing over the radio that two individuals were under arrest at the location, PO Berrios believed that § 87(2)(b) was arrested. However, he did not see the circumstances surrounding § 87(2)(b) arrest or who effected it.

§ 87(2)(b) was placed in another marked van, which PO Berrios entered, and they went to the 75<sup>th</sup> Precinct stationhouse. At the stationhouse, § 87(2)(b) referring to PO Berrios, shouted, “Fuck him. He’s a bitch. I don’t like him. He’s the devil.” PO Berrios did not interact

with § 87(2)(b) and “kept his distance” due to his behavior. § 87(2)(b) did not appear visibly injured and he never complained of any injury to PO Berrios during this incident.

Approximately one week later, PO Berrios was on patrol when § 87(2)(b) approached him in the vicinity of § 87(2)(b) and § 87(2)(b). § 87(2)(b) made statements that included, “I’m going to sue you. I’m going to get a Rolls Royce. Look what you did to me.” § 87(2)(b) displayed his knees, which appeared scraped. PO Berrios denied causing those injuries to § 87(2)(b). When § 87(2)(b) asked PO Berrios, “Why you do that to me?” PO Berrios told him that he did not listen or comply with his orders and spoke to him with disrespect. § 87(2)(b) replied, “I don’t care, I’m getting a Rolls Royce anyway.”

During the interview, PO Berrios was shown a video recording of this incident. At 08:50, PO Berrios affirmed that he and PO Luis Diaz were standing on the northwest corner of § 87(2)(b) while PO Martinez stood across the street with an officer from the 75<sup>th</sup> Precinct that PO Berrios did not know. At 08:51:30, PO Berrios crossed the street to approach § 87(2)(b) while PO Martinez approached and stood to § 87(2)(b) left side. Starting 08:53:05, PO Berrios removed his handcuffs, told § 87(2)(b) that he was under arrest, and § 87(2)(b) dropped his bicycle to the ground and said, “Get away from me. Nobody’s touching me. I’m a boxer.” PO Berrios told him to relax, that he did this to himself, and to put his hands behind his back. At 08:53:51, when § 87(2)(b) and PO Berrios are out of camera view, PO Berrios had attempted to grab § 87(2)(b) wrist to handcuff him and § 87(2)(b) pulled away and raised his fists in a fighting stance. In the seconds before 08:54:22, PO Berrios told § 87(2)(b) that this was the last time he was going to tell him to put his hands behind his back. PO Berrios did not recall § 87(2)(b) exact response at this point.

Starting from 08:54:22, PO Berrios punched § 87(2)(b) across the face several times. When PO Berrios was asked why he had initially said he only punched § 87(2)(b) once as opposed to punching him several times as shown in the video, he responded, “I remember more now because at that point my nerves were racing, I was scared, I didn’t know what was going on.” From 08:54:22 to 08:54:28, PO Berrios punched him several more times because § 87(2)(b) was “trying to get up.” As § 87(2)(b) attempted to stand up, PO Berrios told the other officers to “go over the air” for additional units, as he did not know what § 87(2)(b) was going to do if he successfully stood up. He noted that the crowd of 30 people that formed was standing out of view of the camera, further north on § 87(2)(b).

At 08:54:28, PO Berrios and another officer who he could not discern grabbed § 87(2)(b) legs and pulled them to have § 87(2)(b) fall to the ground. Once § 87(2)(b) fell, PO Berrios denied punching him. However, upon further review of the video, PO Berrios affirmed punching § 87(2)(b) because he did not comply with PO Berrios’ repeated commands to turn over to be handcuffed. When the video was replayed again, PO Berrios said that he punched § 87(2)(b) after falling to the ground because he was trying to get up.

At 08:54:42, PO Martinez stepped away and used his radio to request additional units to respond. During this time, PO Berrios, PO Diaz, and the other officer attempted to place § 87(2)(b) arms behind his back to handcuff him; § 87(2)(b) was facing the ground and had his knees tucked into his chest. Because § 87(2)(b) refused to place his hands behind his back, PO Berrios punched his right forearm in order to gain compliance. By 08:55:19, § 87(2)(b) still did not give up his arms, so PO Berrios stood over him to prevent him from standing up while they waited for additional units to arrive.

Starting from 08:56:02, PO Berrios did not recognize the two uniformed male officers who approached the scene from the right side of the screen. He did not know the officers that arrived in the unmarked black sedan. During this time, PO Berrios was no longer physically involved with restraining of § 87(2)(b) officers that he did not know told § 87(2)(b) to relax and to stand up. § 87(2)(b) refused and continued to keep his knee tucked into his chest and



his forearms flush to the ground. At 08:58:09, § 87(2)(b) finally complied and stood up to be handcuffed. Thereafter, an officer who PO Berrios did not recall spoke to § 87(2)(b) but he did not recall the substance of their conversation. PO Berrios did not recognize any other officers shown in the video.

**Witness Officer: PO LUIS DIAZ**

- PO Diaz is a § 87(2)(b)-old Hispanic male who stands 5'9", weighs 190 pounds, and has brown hair and brown eyes.
- He was on-duty from 7:30 p.m. on August 24, 2012, until 4:05 a.m. the next day, assigned to foot post § 87(2)(b) with PO Martinez and PO Berrios, and in uniform.

**Memo Book**

On August 24, 2012, at 9:00 p.m., physical force was used to gain compliance of a perpetrator, § 87(2)(b) "Only our hand/fists used to gain compliance. Proper takedown tactics learned at gym Academy used." § 87(2)(b) was under arrest. At 9:50 p.m., PO Diaz went to § 87(2)(b) with PO Berrios (encl. L1-3).

**AIDED Report**

PO Diaz completed AIDED report number § 87(2)(b) for PO Berrios, who sustained injuries to his right hand and left shoulder during an altercation while arresting § 87(2)(b). He was treated and released from the hospital (encl. L4-8).

**CCRB Testimony**

PO Diaz was interviewed at the CCRB on March 21, 2013 (encl. L9-11). § 87(2)(g)

On the date of the incident, PO Diaz stood with PO Berrios on § 87(2)(b) across the street from the school, where PO Martinez stood. There were no other officers accompanying or near them. PO Diaz observed § 87(2)(b) riding his bicycle on the sidewalk; there was nothing unusual about his riding the bicycle, and there were no other civilians on the sidewalk. PO Berrios, PO Diaz, and PO Martinez crossed the street to approach § 87(2)(b). PO Diaz did not recall observing any other officer present.

§ 87(2)(b) refused to provide identification, mentioned that he was a boxer, and refused PO Berrios' command to place his hands behind his back. PO Diaz grabbed § 87(2)(b) hand to handcuff and bring him to the stationhouse to identify him, but § 87(2)(b) pulled away without touching PO Diaz. § 87(2)(b) fists were clenched at his side. Initially, PO Diaz said that no other officer attempted to restrain § 87(2)(b). Later, he said that before he had attempted to grab § 87(2)(b) arm, PO Berrios reached for § 87(2)(b) arm, but § 87(2)(b) moved away. PO Diaz did not observe any crowd gather during this time.

As § 87(2)(b) fists were held at his sides, PO Berrios struck § 87(2)(b) once in an area of his body and in a manner that PO Diaz did not recall. PO Diaz did not recall if PO Berrios struck § 87(2)(b) more than once. PO Diaz, standing behind § 87(2)(b) grabbed § 87(2)(b) shins and pulled them towards himself, causing § 87(2)(b) to fall forward and land on his hands. § 87(2)(b) lying face down on the ground, tucked his arms and knees underneath his body. PO Berrios and PO Diaz, standing on § 87(2)(b) right side, attempted to pull § 87(2)(b) arms out to place them behind his back while simultaneously telling him to do so. § 87(2)(b) did not comply and maintained his arms underneath his body. PO Diaz and PO Berrios told § 87(2)(b) to stop resisting. § 87(2)(b) said something to the effect that he was not going to give his arms. At some point, PO Diaz "may have" struck § 87(2)(b) once in the

stomach in a manner that he did not recall to gain § 87(2)(b) compliance to place his hands behind his back. When asked during the interview what led him to believe that he struck him, he stated that it was because he was trained in the Police Academy to do so. PO Diaz did not recall if PO Berrios or another officer struck § 87(2)(b) while he was on the ground.

Before additional units arrived, they still attempted to handcuff § 87(2)(b) who still had his arms and knees tucked underneath his body; he made no attempt to stand up. PO Diaz pulled and outstretched § 87(2)(b) legs and then held his ankles down on the ground while PO Berrios continued trying to pull his arms out. A marked patrol car with two uniformed male officers arrived within five minutes; PO Diaz did not recall who they were or if any other units responded during this time. While PO Diaz held onto § 87(2)(b) ankles, PO Berrios and these two officers successfully pulled out § 87(2)(b) arms and handcuffed him as he lay on the ground. PO Diaz never placed his knee or foot onto § 87(2)(b) person, and he never kicked him. Neither he nor another officer mentioned using pepper spray or force against § 87(2)(b) including saying, "I'm going to kick your teeth in."

PO Diaz did not see any other person handcuffed or arrested. PO Diaz remained at his post until he received a call from PO Berrios thirty minutes later. PO Berrios asked PO Diaz to accompany him to the hospital, and the former was picked up in a police vehicle to do so. PO Berrios' right hand was swollen, but PO Diaz was unaware how it was injured.

During the interview, PO Diaz was shown a video recording of this incident. He did not know the fourth officer initially accompanying him, PO Martinez, and PO Berrios. At 08:54:18, PO Diaz stood to the right side of PO Martinez, who stood to the right of § 87(2)(b). PO Berrios stood in front of § 87(2)(b). Upon further review of the video, PO Diaz said that he had thought he placed § 87(2)(b) on the ground. He also asserted that the recording did not refresh his recollection of this incident pertaining to PO Berrios striking § 87(2)(b). The video did not show the instance when PO Diaz possibly struck § 87(2)(b) and it did not refresh his memory further. PO Diaz did not recognize any other officer shown in the video.

**Subject Officer: PO RICARDO MARTINEZ**

- PO Martinez is a § 87(2)(b)-old Hispanic male who stands 5'11", weighs 150 pounds, and has black hair and brown eyes.
- He was on-duty from 7:30 p.m. on August 24, 2012, to 4:05 a.m. on August 25, 2012, assigned to post § 87(2)(b) and § 87(2)(b) at the 75<sup>th</sup> Precinct by himself in uniform and on foot.

**Memo Book**

On August 24, 2012 at 9:00 p.m., § 87(2)(b) was stopped at § 87(2)(b) for riding a bicycle on the sidewalk. Approach § 87(2)(b) and refuse[d] to give his name. Trying to handcuff § 87(2)(b) but was resisting so physical force was used." At 9:06 p.m., § 87(2)(b) was under arrest, and he was taken to the 75<sup>th</sup> Precinct, where they arrived at 9:19 p.m. (encl. K1-3).

**Arrest Report**

§ 87(2)(b), § 87(2)(a) CPL 160.50

**CCRB Testimony**

PO Martinez was interviewed at the CCRB on March 11, 2013 (encl. K7-9). [REDACTED]

§ 87(2)(g)

PO Diaz stood by himself while PO Berrios and PO Diaz stood across the street. There were no civilians on the sidewalk or in the vicinity, and § 87(2)(b) did not ride his bicycle in any unusual manner. When PO Berrios told § 87(2)(b) that he was under arrest and instructed him to place his hands behind his back, § 87(2)(b) refused and attempted to flee on his bicycle by backing away from the officers. PO Martinez grabbed the yolk of its handlebars to prevent him from leaving. § 87(2)(b) threw the bicycle onto the ground and walked backwards away from the officers, who attempted to surround him to prevent him from leaving. PO Martinez did not attempt to grab § 87(2)(b).

One minute later, PO Berrios grabbed one of § 87(2)(b) arms to handcuff him, but he pulled away and raised his fists towards his chest which PO Martinez interpreted as a fighting stance. Immediately after doing this, PO Berrios swung his fist towards § 87(2)(b) chest, and § 87(2)(b) bent down at the waist and fell to the ground. PO Martinez, who was standing to § 87(2)(b) right side, was unable to see if PO Berrios had actually struck § 87(2)(b) chest. Neither PO Berrios nor another officer struck § 87(2)(b) a second time. None of the officers had attempted to place § 87(2)(b) on the ground. § 87(2)(b) who was face-down on the ground with his legs straightened and stomach on the ground, placed his arms underneath his chest. The officers attempted to pull § 87(2)(b) arms out from underneath him towards his back, but § 87(2)(b) kept them tucked into his chest. PO Martinez walked two to three feet away and requested additional units and a supervisor to verify the arrest. Before additional units arrived, PO Berrios and PO Diaz continued attempting to pull § 87(2)(b) arms out to handcuff him. Neither PO Martinez nor an officer struck § 87(2)(b) while he was on the ground.

Two minutes after PO Martinez requested additional units, approximately seven to twelve uniformed officers from the 75<sup>th</sup> Precinct that he did not recognize, and Sgt. Kenny Chan arrived. PO Martinez did not observe any officers from his command other than Sgt. Chan, who was in a marked van. There were only marked patrol vehicles at the scene. It was also at this point that PO Martinez first noticed a crowd of approximately eight civilians standing and watching. He did not see any civilian holding up a cell phone or recording the incident with a cell phone. He never saw another civilian arrested or in handcuffs. PO Berrios, PO Diaz, and two officers from the 75<sup>th</sup> Precinct who PO Martinez did not recognize assisted each other in handcuffing § 87(2)(b) who was still lying on the ground. None of the officers placed their knee or foot on § 87(2)(b) back or kicked him. Neither PO Martinez nor any officer threatened § 87(2)(b) with the use of force or pepper spray. PO Martinez denied stating or hearing an officer state anything to the effect of, "If you don't put your hands behind your back, I'm going to kick your teeth in." PO Martinez was unable to hear if § 87(2)(b) spoke during this time.

PO Martinez told Sgt. Chan what transpired, and Sgt. Chan instructed him to transport § 87(2)(b) to the 75<sup>th</sup> Precinct stationhouse. Sgt. Chan, his operator, PO Martinez, and PO Berrios accompanied him in the van; PO Diaz was not present. En route to the stationhouse, § 87(2)(b) yelled that he had children, and PO Berrios replied that he also had children. At the stationhouse front desk, PO Martinez observed § 87(2)(b) with cuts on both knuckles, and a cut on the outer corner of his left eye. PO Martinez asked § 87(2)(b) if he wanted medical attention, but he declined.

PO Martinez was shown a video recording of this incident. He stated that the officer who was standing near him on the same sidewalk was an IRT officer from the 75<sup>th</sup> Precinct that he did not know. PO Martinez indicated that before § 87(2)(b) dropped his bicycle to the ground, he had tried to flee by lifting and turning the bicycle away from the officers, and PO Martinez had

unsuccessfully attempted to grab the bicycle before it was dropped (this action cannot be clearly seen as the view is blocked by the officers and § 87(2)(b)). At 08:54:20, PO Martinez identified himself as the officer standing immediately to § 87(2)(b)'s right side, PO Berrios as the officer standing immediately in front of § 87(2)(b) and PO Diaz as the officer standing to PO Martinez's right side. PO Martinez faced § 87(2)(b) and PO Berrios, and he said that § 87(2)(b)'s movement with his arms between 08:54:21 and 08:54:22 constituted what PO Martinez believed was the fighting stance. After affirming that PO Berrios was the officer who struck § 87(2)(b) several times, he clarified that his memory was refreshed after watching the recording. He also asserted that he was standing on § 87(2)(b)'s right side while PO Berrios stood in front of § 87(2)(b) immediately before he was struck. Although he had initially stated that § 87(2)(b) fell to the ground immediately after PO Berrios punched him once, upon watching the recording, he stated that at the time of the incident he did not see PO Berrios pull § 87(2)(b)'s legs from underneath him because his attention was focused on § 87(2)(b)'s hands and because § 87(2)(b)'s torso blocked his field of vision. As a result, PO Martinez had believed that § 87(2)(b) fell without an officer's physical involvement. After reviewing the video, PO Martinez clarified that PO Berrios punched § 87(2)(b)'s upper back and shoulder area. At 08:58:50, PO Martinez identified Sgt. Chan as the uniformed officer wearing short sleeves. He did not recall or hear what officers were saying to § 87(2)(b) during this time. He did not recognize any other officer in the recording.

**Subject Officer: PO TODD HANSEN**

- PO Hansen is a § 87(2)(b)-old white male who stands 5'11", weighs 220 pounds, and has grey hair and blue eyes.
- He was on-duty from 5:30 p.m. on August 23, 2012, to 2:05 a.m. the next day, assigned to conditions in uniform and in vehicle § 87(2)(b), an unmarked silver Chevrolet Impala, with PO Anthony Lafemina and PO Kevin Morgan. He did not perform overtime.

**Memo Book**

PO Hansen only had entries on his fly sheet in regards to this incident; it was denoted as an omitted entry. On August 24, 2012, at 8:55 p.m., PO Hansen responded to a request for additional units at § 87(2)(b) and § 87(2)(b). He saw § 87(2)(b) with a cell phone and he asked him to leave for safety reasons. § 87(2)(b) refused, PO Hansen noticed a knife clipped on his pocket, and PO Hansen proceeded to arrest, remove, and safeguard § 87(2)(b)'s property. PO Hansen saw an officer needed assistance. He came to place § 87(2)(b) under arrest and other officers had him in handcuffs. PO Hansen turned the cell phone over to the officers. At 9:10 p.m., he resumed patrol (encl. Q1-2).

**CCRB Testimony**

PO Hansen was interviewed at the CCRB on December 20, 2013 (encl. Q3-5). On August 24, 2012, at approximately 8:55 p.m., PO Hansen, PO Lafemina, and PO Morgan overheard a radio request for additional units at § 87(2)(b) and § 87(2)(b) in regards to a fight. He did not recall further details of the request or who made the request. He did not recall where or what he was doing at the time of the dispatch, but he responded within a few minutes. PO Lafemina was the operator; PO Hansen did not recall where he or PO Morgan sat in the vehicle.

Upon his arrival, there was an individual, identified via investigation as § 87(2)(b), standing with uniformed officers on the sidewalk. PO Hansen did not recall who those officers were or how many were interacting with § 87(2)(b) except to affirm that there was more than one officer. Initially, PO Hansen said that § 87(2)(b) was fighting with officers who were



attempting to arrest him. Later, he said that it appeared that these officers approached and were proceeding to arrest § 87(2)(b) but he did not see any physical interaction between them. PO Hansen saw officers speaking with § 87(2)(b) and he was uncertain if they were going to arrest him; § 87(2)(b) was combative by cursing, yelling, and walking away with officers following for a short, unspecified amount of time. There were ten to fifteen marked and unmarked vehicles and numerous officers present who he did not recall. PO Hansen denied knowing Sgt. Chan, PO Munoz, or PO Victorino. There was a large crowd of civilians surrounding § 87(2)(b) and the officers in a crescent-shaped semi-circle. It appeared that the crowd was attempting to reach § 87(2)(b) in an apparent attempt to intervene. Numerous officers maintained crowd control and prevented the crowd from interfering. PO Hansen was unable to estimate the number of officers or civilians present other than noting that there were over twenty from each party.

PO Hansen and his partners stood approximately five to seven feet away on the street and maintained crowd control, telling them to stay back. Less than five minutes later, an individual, identified via investigation as § 87(2)(b) walked towards § 87(2)(b). PO Hansen told § 87(2)(b) to step back and he complied. One minute later, § 87(2)(b) approached a second time and pointed a cell phone towards § 87(2)(b). PO Hansen did not see or know what § 87(2)(b) was doing with the cell phone but he believed he was recording § 87(2)(b) interaction with officers. It was also at this point that PO Hansen saw the clip of what appeared to be a pocket knife (based on his experience in making multiple weapons-related arrests) in his front right pocket. At that time, he did not know if the knife was illegal. At some point, PO Hansen told PO Morgan and PO Lafemina about the knife, and they said that they also saw it. PO Hansen told § 87(2)(b) to step back a second time and he complied. PO Hansen did not do or say anything in regards to the knife because he was more concerned with the safety risk posed by the crowd. One minute later, § 87(2)(b) approached a third time and pointed his cell phone towards § 87(2)(b) and the officers at an unspecified distance. PO Hansen did not recall if § 87(2)(b) spoke during each occasion.

It was at this time PO Hansen intended to arrest § 87(2)(b) for the knife. As per departmental procedure to take and safeguard a prisoner's property before an arrest, PO Hansen walked up behind § 87(2)(b) and took his cell phone from his hand. PO Hansen did not recall where he put the cell phone on his person at that point. At that moment, PO Hansen heard officers interacting with § 87(2)(b) call for help and saying that § 87(2)(b) was "fighting" and "swinging." Officers that he did not recall approached § 87(2)(b) so PO Hansen walked over to assist the officers standing with § 87(2)(b). PO Hansen never pressed any buttons, searched, or otherwise looked into § 87(2)(b)'s cell phone while it was in his possession. § 87(2)(b) while standing, flailed his arms and yelled statements that PO Hansen did not recall. Officers were attempting to handcuff § 87(2)(b) but PO Hansen did not see how this occurred. Although PO Hansen walked over to assist, he never physically or verbally interacted with § 87(2)(b). PO Hansen never spoke or interacted with § 87(2)(b) or mentioned using pepper spray against him. He never heard an officer say that remark or see an officer punch, kick, or otherwise strike § 87(2)(b). He never saw § 87(2)(b) in handcuffs during this incident.

Before § 87(2)(b) was handcuffed, PO Hansen turned to his left and saw § 87(2)(b) in handcuffs and with officers who he did not recall. PO Hansen did not see how § 87(2)(b) was handcuffed. PO Hansen walked over and asked officers who § 87(2)(b)'s arresting officer was. Thereafter, PO Hansen gave § 87(2)(b)'s cell phone to the arresting officer who he did not recall. PO Hansen resumed patrol shortly thereafter.

PO Hansen was shown § 87(2)(b)'s arrest photograph, but he did not recognize him. PO Hansen was shown a video depicting this incident. He did not recognize any officer shown in the video and he did not recall at what point he was present at the scene. He believed he was the

officer shown removing § 87(2)(b)'s cell phone at 08:56:00. He did not recall what he was doing with the cell phone immediately thereafter. He believed that the officers emanating from the black unmarked sedan, identified via investigation as PO Munoz and PO Victorino, were § 87(2)(b)'s arresting officers. PO Hansen did not recall standing in front of, speaking with, or interacting with § 87(2)(b) during this incident. He did not recall having seen § 87(2)(b) in handcuffs. PO Hansen did not recall what he did while standing by PO Munoz and PO Victorino.

**Subject Officer: PO CRAIG VICTORINO**

- PO Victorino is a § 87(2)(b)-old white Hispanic who stands 6'1", weighs 205 pounds, and has brown hair and brown eyes.
- He was on-duty from 8:05 p.m. on August 24, 2012, to 4:40 a.m. the next day, assigned to impact overtime in uniform and in unmarked black Chevrolet Impala § 87(2)(b) with PO Munoz.

**Memo Book**

At 9:00 p.m., PO Munoz arrested § 87(2)(b) on the corner of § 87(2)(b) for § 87(2)(b), § 87(2)(a) CPL 160.50 (noted as an omitted entry). At 11:30 p.m., he resumed patrol (encl. N1-2).

**CCRB Testimony**

PO Victorino was interviewed at the CCRB on July 18, 2013 (encl. N3-4). § 87(2)(g)

On the date of the incident, at approximately 9:00 p.m., PO Victorino and PO Munoz went to the corner of § 87(2)(b). PO Victorino did not recall the circumstances that led to their responding to that area. Upon arrival, there were at least three or four uniformed IRT officers attempting to handcuff § 87(2)(b) who was lying face down on the sidewalk with his hands tucked into his body. Those officers were yelling but PO Victorino did not recall what was said. He did not know the uniformed officers already present. PO Victorino assisted by pulling out one of § 87(2)(b)'s arms from underneath his body to handcuff him. At least three or four officers simultaneously attempted to do the same. PO Victorino did not recall punching, kicking, or striking § 87(2)(b) and he did not recall seeing an officer do so. He did not speak to § 87(2)(b) while he was handcuffed. He did not recall telling § 87(2)(b) that he would "kick his teeth in" or threatening to use pepper spray, and he did not recall hearing an officer make those remarks. Once PO Victorino assisted those IRT officers, § 87(2)(b) was handcuffed in less than five minutes.

After § 87(2)(b) was handcuffed, PO Victorino saw PO Munoz arresting § 87(2)(b) on the street. He did not recall if PO Munoz was in the process of handcuffing him or had already handcuffed him at that point. PO Victorino approached them but he did not recall what he did; he did not recall if he physically assisted in handcuffing § 87(2)(b). PO Victorino did not recall searching § 87(2)(b) or seeing PO Munoz do so. He did not recall holding onto any of § 87(2)(b)'s belongings, including a cell phone, and he did not recall what items § 87(2)(b) possessed. PO Victorino spoke with § 87(2)(b) but he did not recall the substance of their conversation. At some point when PO Victorino approached PO Munoz and § 87(2)(b) he discovered that § 87(2)(b) was in possession of a knife, but he did not recall seeing the knife or how he learned of that fact. He was unaware of PO Munoz releasing any of § 87(2)(b)'s property to any civilian at the location. He did not recall hearing § 87(2)(b) make any remark about his cell phone. PO Victorino did not recall if he or PO Munoz spoke with any other officer. Throughout this incident, uniformed officers

continued to arrive at the location, but he did not recognize any of them. He observed at least one marked police van present.

He did not recall what he did thereafter, but approximately 20 minutes after their arrival, he and PO Munoz transported § 87(2)(b) to the 75<sup>th</sup> Precinct stationhouse. He did not recall having any conversation with § 87(2)(b) en route, and he did not recall if PO Munoz spoke with § 87(2)(b). PO Victorino denied using any profanity, including the word, “fuck,” “black motherfucker,” or “nigger” to § 87(2)(b). He did not recall hearing PO Munoz make those remarks.

During the interview, PO Victorino was shown a photograph of § 87(2)(b) and § 87(2)(b) but he did not recognize either of them. PO Victorino was also shown video footage of this incident. He affirmed that he was in the black sedan depicted driving and stopping at 08:56:00, and that he was seated in the front passenger seat and was the recorder for the day. The video did not refresh his memory of his physical actions while helping to handcuff § 87(2)(b). He did not recall striking § 87(2)(b) with his fists, and he asserted that the video at 08:56:25 does not clearly show if that was him or another officer striking § 87(2)(b). At 08:56:52, PO Victorino did not recall what he was holding in his hands and whether it belonged to § 87(2)(b) or to an officer. The video refreshed his memory in that he assisted in handcuffing § 87(2)(b) and that PO Munoz searched § 87(2)(b). The video did not refresh his memory of what belongings § 87(2)(b) had in his possession. PO Victorino did not recall who he was gesturing towards at 08:58:48. PO Victorino did not know the three officers who approached him, what they did or what they spoke about at 09:00:23, 09:01:22, and at 09:01:48. After the last-referenced time frame, PO Victorino did not remember what he was doing before leaving, and he did not recognize any officer shown in the video.

**Subject Officer: PO JAVIER MUNOZ**

- PO Munoz is a § 87(2)(b)-old Hispanic male who stands 5’7”, weighs 160 pounds, and has black hair and brown eyes.
- He was on-duty from 8:00 p.m. on August 24, 2012, to 4:35 a.m. the next day, assigned to impact overtime in uniform and in unmarked black Chevrolet Impala 128 with PO Victorino.

**Memo Book**

At 9:00 p.m., PO Munoz stopped and arrested § 87(2)(b) at § 87(2)(b) and § 87(2)(b) for § 87(2)(b), § 87(2)(a) CPL 160.50 (encl. M1-2).

**Arrest Report**

§ 87(2)(b), § 87(2)(a) CPL 160.50

**CCRB Testimony**

PO Munoz was interviewed at the CCRB on June 14, 2013 (encl. M6-7). § 87(2)(g)

PO Munoz was the operator while PO Victorino was the recorder. Upon arrival, there were numerous police officers that he did not recall or recognize standing on the sidewalk of § 87(2)(b) and PO Munoz was unable to see or recall what they were doing. There were numerous civilians standing on the street. He did not recall observing officers speaking with or handcuffing a civilian.

PO Munoz exited his vehicle and walked onto the sidewalk. PO Munoz turned his back towards the officers and looked at the crowd of civilians that were present. Almost immediately thereafter, § 87(2)(b) walked towards the group officers, who were standing behind PO Munoz. PO Munoz, with PO Victorino standing beside him, told § 87(2)(b) to stop and to step away from the officers. PO Victorino also told § 87(2)(b) to step back; PO Munoz did not recall if PO Victorino said anything else. § 87(2)(b) spoke and continued walking forward, but PO Munoz did not recall what he said. § 87(2)(b) appeared to be intoxicated because PO Munoz smelled alcohol on his breath and because he did comply with PO Munoz's orders. PO Munoz did not recall if he pushed § 87(2)(b) back. PO Munoz observed a clip and handle of a folding knife affixed to § 87(2)(b)'s front right pocket. He removed the knife and arrested § 87(2)(b) for possession of a gravity knife. PO Munoz did not recall who handcuffed him or if any civilian approached during this process.

After PO Munoz handcuffed § 87(2)(b) he searched him, retrieving an iPhone from an area on his person that he did not recall. § 87(2)(b) repeatedly requested that the officers call his wife and give his cell phone to her. PO Munoz called § 87(2)(b)'s wife from the iPhone, walked down § 87(2)(b) for a distance that he did not recall, and gave it to her. PO Munoz did not access § 87(2)(b)'s cell phone in any other manner, including pressing other buttons or searching it, and PO Victorino never used it. § 87(2)(b) never said that an officer took his cell phone away from him. Before leaving, he did not recall seeing anyone else in handcuffs or what the other officers were doing as his attention was focused on § 87(2)(b). PO Munoz did not see an officer punch, kick, or otherwise strike a civilian, or hear an officer threaten a civilian with physical force or with pepper spray.

PO Munoz and PO Victorino transported § 87(2)(b) to the 75<sup>th</sup> Precinct stationhouse. En route to the stationhouse, PO Munoz did not recall speaking to § 87(2)(b). He never used any profanity, or offensive language towards § 87(2)(b) including saying, "shut the fuck up," "black motherfucker," or "nigger."

During the interview, PO Munoz was shown a video recording of this incident. He did not recognize PO Hansen at 08:55:53 taking a cellphone from § 87(2)(b)'s hand or recall if that officer ever gave him a cell phone. He affirmed that the black sedan shown at 08:56:07 was the vehicle he drove and that PO Victorino was seated in the front passenger seat. PO Munoz identified himself as shown at 08:56:16, standing on the sidewalk closest to the street and in front of the unmarked vehicle. At 08:56:37, PO Munoz affirmed that he was the officer standing in front of § 87(2)(b) he did not know the officer standing behind him. At 08:57:08, PO Victorino is the officer standing to PO Munoz's right side. At 08:58:17, PO Munoz stated that he may have removed what may have been a set of keys from § 87(2)(b) during the search and placed it on top of their vehicle. Starting at 08:59:25, PO Munoz is shown removing his and PO Victorino's bags from the rear passenger seating area and placing them in the trunk in order to make room for § 87(2)(b). He did not recognize the officer standing behind PO Victorino at 09:00:28 and he did not recall that officer's interaction. PO Munoz did not recall what he was doing at 09:01:48 as he is not shown in the video, but he surmised that he was returning § 87(2)(b)'s cell phone to his wife or contacting his supervisor regarding his arrest during this time. The recording did not refresh PO Munoz's recollection of any further statements § 87(2)(b) may have made. Other than PO Victorino, he did not recognize any other officer shown in the video recording.

**Witness Officer: SGT. KENNY CHAN**

- *Sgt. Chan is a § 87(2)(b)-old Asian male who stands 5'5", weighs 118 pounds, and has short black hair and brown eyes.*



- *He was on-duty from 7:15 p.m. on August 24, 2012, until 4:12 a.m. the next day, assigned as an IRT patrol supervisor, in uniform, in marked van § 87(2)(b) with PO Daniel Kurot.*

### **Memo Book**

On August 24, 2012, at 9:06 p.m., Sgt. Chan verified § 87(2)(b) arrest by PO Berrios at § 87(2)(b) (encl. O1-3).

### **CCRB Testimony**

Sgt. Chan was interviewed at the CCRB on May 20, 2013 (encl. O4-5). § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

Sgt. Chan and PO Kurot received a dispatch for assistance at the location. Sgt. Chan did not recall the circumstances of the dispatch or who made the request. Upon his arrival, there were numerous civilians and police officers present. Sgt. Chan immediately exited the van and he did not know PO Kurot's whereabouts. PO Berrios and PO Martinez were present, but he did not recall who else was present. The crowd of civilians yelled statements that Sgt. Chan did not recall. § 87(2)(b) stood in handcuffs and Sgt. Chan did not see who or how § 87(2)(b) was handcuffed. § 87(2)(b) yelled and cursed at officers, but Sgt. Chan did not recall what he said. Sgt. Chan asked PO Berrios what happened, and PO Berrios said that § 87(2)(b) was under arrest for riding his bicycle on the sidewalk, refusing or not having identification, and resisting arrest. Sgt. Chan never saw those actions, and he never saw an officer punch, kick, or otherwise strike § 87(2)(b). Another individual, identified via investigation as § 87(2)(b) was handcuffed by plainclothes officers who Sgt. Chan believed to be from an anti-crime unit. Sgt. Chan did not see the circumstances that led to § 87(2)(b)'s handcuffing and he never inquired about it as the anti-crime unit has separate supervisors.

Sgt. Chan and PO Kurot left the location within five minutes. PO Berrios, PO Martinez, and § 87(2)(b) accompanied Sgt. Chan in the van to the 75<sup>th</sup> Precinct stationhouse, where PO Berrios told him that § 87(2)(b) refused to provide identification and slapped his hand away. PO Berrios said that he "got into an altercation with" § 87(2)(b) and injured his right hand, which Sgt. Chan saw was swollen. PO Berrios did not provide further details of the altercation. Sgt. Chan did not see any injury to § 87(2)(b) who never complained of an injury or requested medical attention from Sgt. Chan. Sgt. Chan never verbally or physically interacted with § 87(2)(b) during this incident. He never punched, kicked, or otherwise struck § 87(2)(b). He never threatened § 87(2)(b) with the use of physical force or with the use of pepper spray, and he did not hear an officer make such remarks.

Sgt. Chan was shown a video recording of this incident during the interview. At 8:54:10, PO Berrios stood in front of § 87(2)(b). At 8:55:57, PO Martinez is the officer standing in the recording. Sgt. Chan did not recognize the light-complexioned officer with short light-colored hair and wearing a short-sleeved uniform without a hat shown in the recording at 8:56:04. He did not recognize the officers exiting from the unmarked black sedan and stated that he mistakenly believed that these officers were in plainclothes because they arrived in an unmarked vehicle. Sgt. Chan identified himself as the officer walking into view at 8:58:52, subsequently speaking to PO Martinez. He did not recall what he and PO Martinez spoke about. Sgt. Chan now stated that he was uncertain which officer told him the circumstances of the arrest at the arrest location, but reaffirmed that he spoke to PO Berrios about it at the stationhouse. Also at this time, Sgt. Chan did not recognize the officer who was interacting with § 87(2)(b) or what they spoke about. Sgt. Chan was unable to identify any other officer in the video.

**Witness Officer: PO DANIEL KUROT**

- PO Kurot is a § 87(2)(b)-old white male who stands 5'9", weighs 167 pounds, and has brown hair and green eyes.
- He was on-duty from 7:30 p.m. on August 24, 2012, until 4:05 a.m. the next day, assigned as Sgt. Chan's operator of marked van § 87(2)(b) in uniform.

**Memo Book**

At 9:00 p.m., PO Kurot responded to a request for an additional unit at § 87(2)(b).  
At 9:10 p.m., PO Kurot transported § 87(2)(b) who was under arrest by PO Berrios and PO Martinez (encl. P1-2).

**CCRB Testimony**

PO Kurot was interviewed at the CCRB on June 6, 2013 (encl. P3-4), and provided the following additional information. Upon his and Sgt. Chan's arrival, there were numerous uniformed officers that he did not recall or recognize at the location, and he did not recall what they were doing or what was happening. PO Berrios and PO Martinez were present, but he did not recall when or where he saw them, and he did not recall what they were doing when he observed them. PO Kurot knew that PO Berrios and PO Martinez were there because it was written in his memo book.

PO Kurot remained in the van when Sgt. Chan exited and he did not recall if he exited at any point during this incident. PO Kurot did not recall observing any civilian, including § 87(2)(b) being handcuffed, struck (including punched and kicked), or threatened with pepper spray or physical force. Other than § 87(2)(b) PO Kurot did not see anyone else in handcuffs. PO Kurot never physically or verbally interacted with § 87(2)(b) or any other civilian during this incident.

PO Kurot was shown § 87(2)(b) arrest photo during the interview, but he did not recognize him. He was also shown a video recording of this incident. Starting at 8:58:00, PO Kurot did not remember seeing the interaction depicted, and he did not recognize any officer shown in the video. The video did not refresh PO Kurot's recollection of this incident, and he did not recognize any officer.

**Medical Records**

§ 87(2)(b) diagnosed § 87(2)(b) with abrasions to his knees and hands and contusions to his face, back, and knees. X-rays of his knees were taken and no fractures or dislocations were discovered. There was a decreased range of movement in his knees and tingling in an unspecified area. He was also diagnosed with a subconjunctival hemorrhage, which is "a harmless collection of blood covering a portion of the white of the eye." § 87(2)(b) was given ibuprofen, methocarbamol (used to treat muscle spasm/pain), and a tetanus shot.

**NYPD Documents**

**SPRINT**

Job number § 87(2)(b) shows that PO Martinez requested additional units on § 87(2)(b) between § 87(2)(b) and § 87(2)(b) at 8:56 p.m. Three minutes later, a 75<sup>th</sup> Precinct footpost arrived, and at 9:08 p.m., Sgt. Chan and PO Kurot arrived. Sgt. Chan radioed for units to

resume patrol at 9:47 p.m. An arrest was confirmed at 11:44 p.m.; it is not specified whether this is in regards to § 87(2)(b) or § 87(2)(b)'s arrest (encl. R1).

#### **Command Log**

The 75<sup>th</sup> Precinct command log shows that § 87(2)(b) was brought to the stationhouse at 9:06 p.m. His physical condition was noted as normal. No entry was found for § 87(2)(b) between 8:00 p.m. and 1:25 a.m. (encl. R4-5).

#### **Arrest for Incident and Disposition**

- As of August 25, 2012, all charges in connection with § 87(2)(b) arrest in this incident have been dismissed (encl. T10).

#### **Status of Civil Proceedings**

- § 87(2)(b) and § 87(2)(b) have not filed a Notice of Claim with the City of New York as of March 27, 2013, with regard to the incident (encl. U14).

#### **Civilian Criminal History**

- As of October 15, 2013, Office of Court Administration records reveal the following criminal conviction for § 87(2)(b)
  - § 87(2)(b)

#### **Civilian CCRB History**

- This is the first CCRB complaint filed by § 87(2)(b) (encl. D1).

#### **Subject Officers CCRB History**

- PO Berrios and PO Martinez have been members of the service for two years and there are no substantiated CCRB allegations against them (encl. C1, C6).
- PO Victorino has been a member of the service for five years and there is one substantiated CCRB allegation against him (encl. C2).
  - On November 6, 2013, the CCRB substantiated and recommended charges for an allegation that PO Victorino stopped a civilian in CCRB case number 201302786. The case is currently assigned to the CCRB's Prosecution Unit and there is no final disposition.
- PO Hansen has been a member of the service for three years and there are no substantiated CCRB allegations against him (encl. C7).
- PO Munoz has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. C4-5).

#### **Conclusion**

#### **Identification of Subject Officers**

PO Berrios and PO Victorino acknowledged interacting with § 87(2)(b) while PO Hansen and PO Munoz acknowledged interacting with § 87(2)(b).

The officers who struck § 87(2)(b) while he lay on the ground and who threatened him with physical force remain unidentified. § 87(2)(b) did not see the officers who performed

those actions, and the video recording does not show the actions clearly enough to identify potential subject officers. Furthermore, with the exception of PO Berrios, none of the officers interviewed for this case admitted to striking or threatening § 87(2)(b).

### **Investigative Findings and Recommendations**

- **Allegation Not Pled**

An allegation that officers stopped § 87(2)(b) is not pled because he rode his bicycle on the sidewalk in violation of NYC Administrative Code 19-176.

- **Allegation A – Force: PO Arsenio Berrios used physical force against § 87(2)(b)**

§ 87(2)(b) acknowledged that he refused to provide his name and became mad when PO Berrios told him that he would be arrested if he did not provide his name. § 87(2)(b) said that after PO Berrios told him that he was under arrest, he replied, “For what? What is going on? I didn’t do anything.” § 87(2)(b) hands, which were at his sides, were now raised at his sides with his forearms parallel to the ground, his palms open, and fingers spread. § 87(2)(b) then said that PO Berrios swung his right fist towards the left side of § 87(2)(b) head, but § 87(2)(b) backed up and turned and was not struck. Thereafter, an officer who he did not see placed him on the ground.

The video recording shows § 87(2)(b) walking backwards away from the officers as if to avoid being surrounded and he makes several quick hand movements, and appears somewhat agitated. Immediately prior to being struck by PO Berrios, § 87(2)(b) hands were at his side and § 87(2)(b) back was against the building while officers surrounded him. PO Berrios, with his right hand, punched the left side of § 87(2)(b) head, then immediately punched his head and rear base of his neck. PO Berrios then pulled § 87(2)(b) legs from underneath him, at which point he punched § 87(2)(b) at least four more times.

PO Berrios said that he repeatedly told § 87(2)(b) to put his hands behind his back but § 87(2)(b) refused and repeatedly referenced that he was a boxer. PO Berrios grabbed § 87(2)(b) arm to handcuff him, but § 87(2)(b) pulled away, stuck out his chest, and raised his fists to his chin, in what appeared to be a fighting stance. PO Berrios felt threatened and was in fear of his safety because of § 87(2)(b) demeanor, statements, fighting stance, and because a crowd formed. PO Berrios punched § 87(2)(b) face once to stun him, to gain compliance, and to make § 87(2)(b) lose his balance to place him on the ground. He added, “[There] was nothing else I could [have done,] I wasn’t going to mace him, like, I didn’t want to use excessive force, I wanted to use the minimum amount of force necessary.” After § 87(2)(b) was placed on the ground, PO Berrios stated that he placed his forearm onto § 87(2)(b) back to prevent him from standing up while additional units responded. PO Berrios maintained that he did not punch or strike § 87(2)(b) again.

After PO Berrios was shown the video, he acknowledged that he punched § 87(2)(b) several more times before he was placed on the ground because § 87(2)(b) was “trying to get up.” PO Berrios then stated that he punched § 87(2)(b) because he did not comply with repeated commands to turn over to be handcuffed after falling to the ground. Because § 87(2)(b) refused to place his hands behind his back, PO Berrios punched his right forearm to gain compliance. PO Berrios stated that § 87(2)(b) took the fighting stance while out of camera view.

Criminal Procedure Law § 35.30 states that an officer “may use physical force when and to the extent he reasonably believes such to be necessary to effect [an] arrest” (encl. A1). New



York City Police Department Patrol Guide § 203-11 specifies that the “minimum necessary force” be used (encl. A3-4).

§ 87(2)(g) refused to provide identification or his name to PO Berrios when it was requested and he gestured quickly with his hands while appearing somewhat agitated. § 87(2)(g)

During a majority of their interaction, § 87(2)(b) kept his hands at his sides and walked away from the officers. § 87(2)(b) never struck or attempted to strike an officer. PO Berrios placed his hand towards the front of § 87(2)(b) torso, at which point § 87(2)(b) moved it aside with his right forearm. Aside from this action, PO Berrios made no other physical attempt to restrain § 87(2)(b). PO Berrios did not request additional units or use lower levels of force (such as OC spray) to try to restrain § 87(2)(b). § 87(2)(g)

- **Allegation B – Force: PO Craig Victorino used physical force against § 87(2)(b)**

§ 87(2)(b) said that after he fell to the ground, he felt, but did not see, multiple officers strike the back of his head, neck, and upper back. Although the video footage of this part of the incident is partially out of view, it showed that PO Victorino punched § 87(2)(b) at least twice in an area that cannot be seen in the recording.

Criminal Procedure Law § 35.30 states that an officer “may use physical force when and to the extent he reasonably believes such to be necessary to effect [an] arrest” (encl. A1). New York City Police Department Patrol Guide § 203-11 specifies that the “minimum necessary force” be used (encl. A3-4).

PO Victorino responded to a request for additional units and was not present for the initial use of force against § 87(2)(b). When PO Victorino arrived, § 87(2)(b) was on the ground with his arms underneath him and was not complying with orders to place his hands behind his back. § 87(2)(g)

- **Allegation C – Force: Officers used physical force against § 87(2)(b)**
- **Allegation D – Abuse of Authority: An officer threatened § 87(2)(b) with the use of force.**

§ 87(2)(g)

- **Allegation E – Abuse of Authority: PO Todd Hansen threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) admitted resisting arrest by refusing to place his hands behind his back to be handcuffed while he was on the ground. § 87(2)(b) said that PO Hansen told him that if he did not put his hands behind his back, he would be pepper-sprayed. Patrol Guide § 212-95 allows an officer to use pepper spray when he reasonably believes it is necessary to effect an arrest of a resisting suspect (encl. A8-11). § 87(2)(g)

- **Allegation F – Abuse of Authority: PO Todd Hansen improperly seized and searched § 87(2)(b)'s cell phone.**

The video recording shows PO Hansen taking § 87(2)(b)'s cell phone from § 87(2)(b)'s hand which § 87(2)(b) was using to record § 87(2)(b) interaction with the police. PO Hansen testified that while maintaining crowd control, he observed § 87(2)(b) in possession of a knife in his pocket. He continued maintaining control until § 87(2)(b) refused three commands to step back, at which point PO Hansen decided to arrest him for possession of the knife. PO Hansen asserted that he took the cell phone as per procedure in safeguarding a person's property when they are arrested, and he denied doing anything with the cell phone other than holding on to it. § 87(2)(b) stated that when he received his phone back after his arrest, the recording and his telephone numbers had been deleted.

§ 87(2)(g)

The recordings show that PO Hansen never conducted crowd control or interacted with § 87(2)(b) before taking his cell phone. The recordings show PO Hansen walking away, looking at the phone as he appears to be pressing buttons on the phone, then walking towards the officers arresting § 87(2)(b). The cell phone screen was lit while PO Hansen possessed it. PO Hansen was unable to explain what he was doing with the phone when he appeared to be pressing the buttons.

The federal prohibition of warrantless searches under the Fourth Amendment extends to individuals' cell phones. People v. McGee, 841 N.Y.S.2d 827 (Crim. Ct. N.Y. Cty. 2007) (encl. A12-18). § 87(2)(g)

- **Allegation G – Offensive Language: PO Javier Munoz made remarks to § 87(2)(b) based upon race.**

§ 87(2)(b) failed to appear for his interview and failed to respond to numerous follow up contact attempts. § 87(2)(g)

- **Allegation H – Other Misconduct: PO Arsenio Berrios intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**
- **Allegation I – Other Misconduct: PO Ricardo Martinez intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**

PO Berrios testified that § 87(2)(b) raised his fists in a fighting stance, which prompted him to punch § 87(2)(b) once, the only time he ever struck him. He denied punching § 87(2)(b) after that. However, the video footage showed that PO Berrios punched § 87(2)(b) several more times. When PO Berrios was confronted with the discrepancy, he responded, "I remember more now because at that point my nerves were racing, I was scared, I didn't know what was going on." Further into the video, he then asserted that he punched § 87(2)(b) after he fell to the ground because § 87(2)(b) refused to comply with commands to turn over and tried to stand up. But the footage shows that PO Berrios punched § 87(2)(b) several times immediately after § 87(2)(b) fell to the ground, leaving § 87(2)(b) no time to comply with PO Berrios' alleged commands.

PO Martinez said that PO Berrios swung his fist towards § 87(2)(b) chest, causing § 87(2)(b) to fall to the ground. He denied that PO Berrios struck § 87(2)(b) a second time or that an officer struck § 87(2)(b) while he was on the ground. When shown the video

footage, PO Martinez said that his memory was refreshed, and clarified that PO Berrios punched § 87(2)(b) upper back and shoulder area while he was on the ground.

Patrol Guide § 203-08 states that the “intentional making of a false statement is prohibited” (encl. A2). § 87(2)(g)

§ 87(2)(b) PO Berrios and PO Martinez had been members of the service for a little over a year when this incident happened, and they did not have any difficulty providing a detailed account of the incident before the video was shown to them. PO Diaz and Sgt. Chan both stated that PO Berrios’ hand was swollen, and PO Diaz completed an AIDED report documenting that PO Berrios went to the hospital because of injuries that he sustained to his hand and shoulder while arresting § 87(2)(b) § 87(2)(g)

- **Allegation J – Other Misconduct: PO Todd Hansen intentionally made a false official statement in violation of Patrol Guide Procedure 203-08.**

PO Hansen testified that while he conducted crowd control of at least twenty civilians, § 87(2)(b) attempted to reach § 87(2)(b) who was being handcuffed, three times. After commanding § 87(2)(b) to step back on each occasion, he proceeded to arrest him for possession of a knife in his front pocket by first taking § 87(2)(b)’s cell phone as per procedure in safeguarding a person’s property during an arrest. PO Hansen then heard officers call for help saying that § 87(2)(b) was “fighting” and “swinging,” prompting PO Hansen to immediately walk over to assist the officers with § 87(2)(b). He denied looking at or pressing any buttons on the cell phone.

Patrol Guide § 203-08 states that the “intentional making of a false statement is prohibited” (encl. A2). § 87(2)(g)

§ 87(2)(b) Prior to being shown the recording, PO Hansen had no difficulty providing a detailed account of this incident. The footage shows § 87(2)(b) standing amongst five to six civilians as PO Berrios, PO Diaz, and PO Martinez handcuff § 87(2)(b) who is on the ground. PO Hansen immediately exits his patrol car upon arrival, approaches § 87(2)(b) from behind and immediately takes § 87(2)(b)’s cell phone without any prior interaction. PO Hansen does not then walk over to assist the officers handcuffing § 87(2)(b). Instead, he walks several feet away from the officers restraining § 87(2)(b) on the ground and turns his back towards them while holding and looking at § 87(2)(b)’s cell phone and appears to be pressing buttons.

§ 87(2)(g)

§ 87(2)(b) The video also shows PO Hansen looking at and using the cell phone, and making no attempt to arrest § 87(2)(b)

§ 87(2)(g)

§ 87(2)(g) [Redacted]  
[Redacted]  
[Redacted]

- § 87(4-b), § 87(2)(g) [Redacted]  
[Redacted]  
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Team: \_\_\_\_\_

Investigator: \_\_\_\_\_  
Signature Print Date

Supervisor: \_\_\_\_\_  
Title/Signature Print Date

Reviewer: \_\_\_\_\_  
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