

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Jacqueline Levy(F)	Team: Team # 1	CCRB Case #: 201401749	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sun, 02/23/2014 4:00 PM	Location of Incident: [REDACTED]	Precinct: 49	18 Mo. SOL 08/23/2015	EO SOL 8/23/2015	
Date/Time CV Reported Mon, 02/24/2014 9:48 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/24/2014 9:48 AM		

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

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Vladimir Delgado	01433	§ 87(2)(b)	049 PCT
2. POF Olivia Dengler	29086	§ 87(2)(b)	049 PCT
3. POF Daisy Rivera	28921	§ 87(2)(b)	049 PCT
4. POM Lawrence Wang	26691	§ 87(2)(b)	049 PCT
5. POM Joseph Gartner	17968	§ 87(2)(b)	049 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. SGT Margaret Traceydonato	02612	§ 87(2)(b)	049 PCT
2. POF Marilyn Perez	12748	§ 87(2)(b)	049 PCT
3. POM Edwin Vega	27670	§ 87(2)(b)	047 PCT
4. POM Joseph Helgerson	31441	§ 87(2)(b)	047 PCT
5. SGT Thomas Gross	3547	§ 87(2)(b)	049 PCT

Officer(s)	Allegation	Investigator Recommendation
A . POM Vladimir Delgado	Force: At White Plains Road and Pelham Parkway in the Bronx, PO Vladimir Delgado used physical force against § 87(2)(b).	A . § 87(2)(g)
B . POF Daisy Rivera	Force: At White Plains Road and Pelham Parkway in the Bronx, PO Daisy Rivera used physical force against § 87(2)(b).	B . § 87(2)(g)
C . POM Joseph Gartner	Force: At White Plains Road and Pelham Parkway in the Bronx, PO Joseph Gartner used physical force against § 87(2)(b) and § 87(2)(b).	C . § 87(2)(g)

Officer(s)	Allegation	Investigator Recommendation
D . POF Olivia Dengler	Force: At White Plains Road and Pelham Parkway in the Bronx, PO Olivia Dengler used physical force against § 87(2)(b) and § 87(2)(b) .	D . § 87(2)(g)
E . POM Joseph Gartner	Abuse of Authority: At White Plains Road and Pelham Parkway in the Bronx, PO Joseph Gartner arrested § 87(2)(b) .	E . § 87(2)(g)
F . POM Lawrence Wang	Force: At White Plains Road and Pelham Parkway in the Bronx, PO Lawrence Wang used physical force against § 87(2)(b) .	F . § 87(2)(g)
G . POM Lawrence Wang	Discourtesy: At Pelham Parkway and White Plains Road in the Bronx, PO Lawrence Wang spoke discourteously to § 87(2)(b) .	G . § 87(2)(g)
H . POM Joseph Gartner	Force: At the 49th Precinct stationhouse, PO Joseph Gartner used physical force against § 87(2)(b) .	H . § 87(2)(g)
I . POF Olivia Dengler	Other: PO Olivia Dengler intentionally provided a false official statement in violation of Patrol Guide Section 203-08.	I . § 87(2)(g)

### Case Summary

On February 23, 2014, at White Plains Road and Pelham Parkway in the Bronx, PO Vladimir Delgado, PO Daisy Rivera, PO Joseph Gartner, and PO Olivia Dengler, of the 49<sup>th</sup> Precinct, arrested § 87(2)(b) after he became irate when he was stopped and asked to show his bus ticket. The officers pushed him to the ground and handcuffed him (**Allegations A, B, C, and D**). § 87(2)(b) and other individuals video recorded the arrest of § 87(2)(b). PO Gartner approached § 87(2)(b) and asked him for identification. PO Gartner arrested § 87(2)(b) for video recording the original arrest (**Allegation E**). After § 87(2)(b) was handcuffed, he became combative with the officers. PO Gartner, PO Dengler, and PO Lawrence Wang of the 49<sup>th</sup> Precinct took § 87(2)(b) to the ground (**Allegations C, D, and F**). While on the ground, PO Wang told § 87(2)(b) to “calm the fuck down” and once § 87(2)(b) was in the police car, PO Wang told him to “move the fuck over” (**Allegation G**). There are two videos of the arrest of § 87(2)(b) and one video, taken by § 87(2)(b) of the arrest of § 87(2)(b) (encl. 30A-B; 40; 41). PO Dengler provided a false official statement in regards to § 87(2)(b) action during and after the arrest of § 87(2)(b) and is cited for other misconduct (**Allegation I**).

The officers allege that while en route to the stationhouse, § 87(2)(b) threatened PO Gartner and his family. § 87(2)(b) alleged that at the stationhouse, PO Gartner pushed him to the ground and punched him in the face and torso (**Allegation H**).

This case is on the agency’s sensitive case list due to press coverage (encl. 1A-R). Case numbers 201401817, 201401760, 201401805, and 201401962 were closed as duplicates of this complaint. Case number 201411919 was created as a spin-off to IAB regarding PO Dengler’s statements in the criminal court complaint and on the arrest report.

### Mediation, Notice of Claim, and Criminal Histories

§ 87(2)(b)’s case, case number [REDACTED], remains open. The next scheduled court date is February 19, 2015 in Bronx County Criminal Court (encl. 42A-C). As of November 21, 2014, the Office of Court Administration has no record of § 87(2)(b) arrest in regards to this incident (encl. 42D). § 87(2)(b) filed a Notice of Claim on May 2, 2014, claiming that he was illegally stopped, seized, searched, falsely arrested and imprisoned, assaulted, battered, and had his civil and constitutional rights violated, and seeking \$250,000 as redress (encl. 43A-J). A 50H hearing was held on December 9, 2014. § 87(2)(b) filed a Notice of Claim on April 24, 2014, claiming that he was illegally searched and seized, falsely arrested, assaulted, battered, and had his civil rights violated, and negligent hiring, retention, and supervision, and seeking \$1 million as redress (encl. 43K-L). A 50H hearing was held on September 23, 2014. Because of these arrests and civil lawsuits, this complaint is not eligible for mediation.

In 2007 and 2010, § 87(2)(b) pled guilty to public consumption of alcohol and possession of marijuana, respectively. Between 2002 and 2010, § 87(2)(b) pled guilty to disorderly conduct three times and trespassing once (encl. 44A-R).

### Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b) and § 87(2)(b) (encl. 4A-D).
- PO Delgado has been a member of the service for nine years and there are no substantiated CCRB allegations against him (encl. 3A).
- PO Rivera has been a member of the service for three years and there are no substantiated CCRB allegations against her (encl. 3B).
- PO Gartner has been a member of the service for 11 years and there are no substantiated CCRB allegations against him (encl. 3C).
- PO Dengler has been a member of the service for nine years and there are no substantiated CCRB allegations against her (encl. 3D). This is the first complaint against PO Dengler.

- PO Wang has been a member of the service for five years and there are no substantiated CCRB allegations against him (encl. 3E). This is the first complaint against PO Wang.

### Potential Issues

§ 87(2)(b) asked to be contacted via his attorneys, who stated that he would cooperate with the investigation when his criminal case was complete. His criminal case is still pending.

### Findings and Recommendations

#### Explanation of Identification of Subject Officers

Though PO Dengler is the listed arresting officer for § 87(2)(b) the video clearly shows that PO Gartner initiated the arrest. PO Gartner testified that PO Dengler took the arrest because he had to go to the hospital. Therefore, allegation E is pleaded against PO Gartner.

#### Allegations Not Pleaded

**Stop:** § 87(2)(b) was stopped by officers enforcing the MTA Select Bus Service rules requiring passengers to show their receipt upon request (encl. 2CC-FF).

**Allegation A – Force: At White Plains Road and Pelham Parkway in the Bronx, PO Vladimir Delgado used physical force against § 87(2)(b)**

**Allegation B – Force: At White Plains Road and Pelham Parkway in the Bronx, PO Daisy Rivera used physical force against § 87(2)(b)**

**Allegation C – Force: At White Plains Road and Pelham Parkway in the Bronx, PO Joseph Gartner used physical force against § 87(2)(b) and § 87(2)(b)**

**Allegation D – Force: At White Plains Road and Pelham Parkway in the Bronx, PO Olivia Dengler used physical force against § 87(2)(b) and § 87(2)(b)**

**Allegation F – Force: At White Plains Road and Pelham Parkway in the Bronx, PO Lawrence Wang used physical force against § 87(2)(b)**

It is undisputed that § 87(2)(b) struggled with officers after having been stopped, causing them all to slide on the ice. Based on the video taken by § 87(2)(b) (encl. 39A-B), § 87(2)(b) attempted to stand up and get away from the officers and PO Delgado used a hold around his shoulder to prevent him from leaving. PO Delgado noted in the Complaint and Arrest Reports for § 87(2)(b) and his memo book, that when asked for his bus ticket, § 87(2)(b) pushed PO Delgado's arm away as he and PO Rivera attempted to question him in regards to the ticket and that § 87(2)(b) continued to flail his arms and kick his legs while officers attempted to handcuff him, causing a crowd to gather (encl. 32A-C). PO Gartner and PO Dengler arrived and assisted in placing § 87(2)(b) in handcuffs. One or more officers had their knees on § 87(2)(b) while § 87(2)(b) was moving around on the ground. § 87(2)(b), § 87(2)(a)

§ 87(2)(b) alleged that he was taken to the ground after he refused to sit down as instructed by PO Gartner (encl. 9A-E). He stated that he was not handcuffed at the time and that he was compliant. He attributed the struggling in the video to him trying to stand still but the officers pushing him. He stated that PO Gartner then took him to the ground in a manner he could not recall, but then stated that PO Gartner, PO Dengler, and PO Wang wrestled him to the ground. When asked about the allegation in the arrest report that he had spit at an officer, he denied doing so intentionally but stated that while yelling, his spit may have hit PO Gartner. He denied moving around while on the ground, but acknowledged yelling.

PO Gartner denied kicking § 87(2)(b) and explained that the point in the video at which he swings his leg in the general direction of § 87(2)(b) is when he was wiping ice and debris off his pants. PO Gartner, PO Dengler, and PO Wang stated that § 87(2)(b) was handcuffed when he

ended up on the ground (encl. 13A-C; 18A-D; 21A-C). PO Gartner stated that he did not know how they ended up on the ground. PO Dengler and PO Wang stated that § 87(2)(b) was taken to the ground after he spit on PO Gartner. PO Wang stated that he initiated the take down. PO Dengler and PO Wang stated that § 87(2)(b) was resisting being walked to the police vehicle. Sgt. Tracey-Donato saw § 87(2)(b) struggling with the officers while being walked to the vehicle but did not know how they ended up on the ground (encl. 24A-C). Sgt. Tracey-Donato stated that she tried to calm him down after he was on the ground.

§ 87(2)(g)

There was also no reaction to the alleged kick from the crowd. § 87(2)(g)

Additionally, PO Gartner brushed his leg again a few moments later with his leg not near § 87(2)(b) § 87(2)(g) § 87(2)(g)

§ 87(2)(g)

The video also shows § 87(2)(b) attempting to turn around toward the officers and supports PO Wang's testimony about taking him to the ground. § 87(2)(b) can be heard screaming and officers were holding him such that his ability to move would have been severely restricted, though at one point, he was able to flail his legs. § 87(2)(g)

Patrol Guide Section 203-11 requires that officers use the minimal force necessary to effect arrests and overcome resistance to lawful police action. (encl. 2A-B).

§ 87(2)(g)

#### **Allegation E – Abuse of Authority: At White Plains Road and Pelham Parkway in the Bronx, PO Joseph Gartner arrested § 87(2)(b)**

It is undisputed that PO Gartner approached § 87(2)(b) as § 87(2)(b) video recorded the arrest of § 87(2)(b) and arrested him. PO Gartner stated that his initial intention upon approaching § 87(2)(b) was to issue him a summons for disorderly conduct (encl. 13A-C). PO Dengler and PO Gartner stated that, of the individuals recording the incident, § 87(2)(b) was closest to the officers (encl. 18A-D). PO Gartner stated that § 87(2)(b) caught his attention by being in his peripheral vision while the officers attempted to handcuff § 87(2)(b) which caused PO Gartner to believe that he was going to interfere in the arrest, though he never got any closer to the officers. In the criminal court complaint, PO Dengler stated that § 87(2)(b) was in close proximity to the officers and in response to being told to get back, said, in sum and substance, "I'm not moving. Fuck you. I can do what I want" (encl. 17A-B). The criminal court complaint also states that § 87(2)(b) repeatedly said, "Fuck you cops." The officers never stated that § 87(2)(b) engaged in any violent behavior until he was already under arrest.

PO Helgerson and PO Vega stated that they never noticed § 87(2)(b) and did not recognize his arrest photo (encl. 26A-B; 28A-B). It can be seen in § 87(2)(b) video and in § 87(2)(b) own

video that the closest he got to the officers was about 15 feet away (encl. 39A-B; 40). § 87(2)(g)

§ 87(2)(b) The videos also show that § 87(2)(b) never cursed at the officers while § 87(2)(b) was being arrested and that after § 87(2)(b) was handcuffed, PO Gartner specifically glared at § 87(2)(b) § 87(2)(g)

Obstruction of governmental administration under N.Y.S. Penal Law Section 195.05 requires the intentional attempt to impair or obstruct an officer from an official function by means of intimidation or physical force or interference. (encl. 2C). Disorderly conduct under N.Y.S. Penal Law Section 240.20(1) is when an individual, with intent to cause “public alarm or annoyance,” engages in fighting or tumultuous behavior. (encl. 2D). A civilian recording officers is not grounds for arrest or detention unless that conduct causes officers to reasonably believe they are in danger as a result or unless another law is violated. Patrol Guide, Section 208-03 Additional Data (b)(3) (encl. 2Q-R).

§ 87(2)(g)

**Allegation G – Discourtesy: At White Plains Road and Pelham Parkway in the Bronx, PO Lawrence Wang spoke discourteously to § 87(2)(b)**

It is undisputed that PO Wang told § 87(2)(b) to “calm the fuck down,” and then, once he was in the police vehicle, told him to “move the fuck over” (video encl. 41). PO Wang stated that he made these statements because he was upset that § 87(2)(b) had spit at PO Gartner (encl. 21A-C). No other officers were heard using profanity during any point of the incident.

Patrol Guide Section 203-09 requires that officers be courteous and respectful towards the public. (encl. 2V).

§ 87(2)(g)

**Allegation H – Force: At the 49<sup>th</sup> Precinct stationhouse, PO Joseph Gartner used physical force against § 87(2)(b)**

§ 87(2)(b) alleged that at the stationhouse, PO Gartner pushed him to the ground punched him in the face and torso while bringing him up the stairs to the front desk (encl. 9A-E). He stated that the swelling to his head visible in his arrest photo was a result of this (encl. 10). He stated that he was then brought directly to the holding cells without being brought to the desk. § 87(2)(b) called 911 from his cell phone while in the holding cell and reported that he had been assaulted by officers at the stationhouse (encl. 36L). However, there is no mention of being assaulted while in the stationhouse in his medical records (see medical records).

PO Gartner denied this and PO Wang and PO Dengler, who were in the vehicle that brought § 87(2)(b) to the stationhouse, denied seeing this (encl. 13A-C; 18A-D; 21A-C). The desk sergeant, Sgt. Gross, recalled three officers bringing § 87(2)(b) in front of the desk (encl. 31A-B) and PO Wang stated that he brought § 87(2)(b) to the desk before he was placed in the holding cells (encl. 21A-C), though PO Dengler stated that she and PO Wang brought § 87(2)(b) directly to the holding cells without bringing him in front of the desk (encl. 18A-E). The officers all stated that § 87(2)(b) was not compliant when being brought into the stationhouse, but only PO Wang stated that § 87(2)(b) was on the ground at any point; PO Wang stated that § 87(2)(b) tripped himself. The officers all also stated that § 87(2)(b) threatened to kill PO Gartner and his family. The line-of-duty

records show that PO Gartner sustained an injury to his right hand and wrist while arresting § 87(2)(b) who was resisting arrest (encl. 12A).

§ 87(2)(g)

**Allegation I – Other Misconduct: PO Olivia Dengler intentionally provided a false official statement in violation of Patrol Guide Section 203-08.**

PO Dengler testified that during the incident, as she noted in the criminal court complaint (encl. 17A-B), she asked § 87(2)(b) to step back and he said, “Fuck you cops” (encl. 18A-D). She also testified that § 87(2)(b) approached officers and that PO Gartner told him to get back. When asked when this happened, she said that it was after the video taken by § 87(2)(b) ended, which is why it was not audible in that video. She then stated that § 87(2)(b) said, “Fuck you cops,” when PO Gartner approached him. The video taken by § 87(2)(b) which PO Dengler also reviewed, showed that § 87(2)(b) did not say, “Fuck you cops,” at any point during the course of § 87(2)(b)'s arrest and that PO Gartner never told § 87(2)(b) to step back (encl. 40). After she reviewed this video, she stated that she did not recall anything additional about that portion of the incident with § 87(2)(b). After viewing the videos, PO Dengler also stated that, despite her statement in the criminal court complaint, she was not certain whether she told § 87(2)(b) to step back.

Patrol Guide Section 203-08 prohibits an officer from providing a false statement to the CCRB and such an action is subject to disciplinary action. (encl. 2W). Such false testimony must be intentionally provided, fact-specific, and material to the investigation. Dep’t of Correction v. Centeno, OATH Index No. 2031/04 (Mar. 16, 2005) (encl. 2X-BB).

§ 87(2)(g)

Team: 1

Investigator:	<u>Jacqueline Levy</u>	
Signature	Print	Date

Supervisor:		
Title/Signature	Print	Date

Reviewer:		
Title/Signature	Print	Date

Reviewer:		
Title/Signature	Print	Date