

**Complainant/Victim:** [REDACTED]

- [REDACTED] is a 49-year-old black male who stands 6'4" tall, weighs 200 pounds, and has black hair and brown eyes.
- At the time of his CCRB interview, [REDACTED] was unemployed.

**CCRB Testimony**

On January 13, 2015, [REDACTED] was interviewed at the CCRB.

On December 12, 2014, at approximately 2:00 p.m., [REDACTED] his fiancée [REDACTED] and [REDACTED] sister, [REDACTED] went to the West 125<sup>th</sup> Street and 8<sup>th</sup> Avenue A/B/C/D (investigator determined specific lines) subway station in Manhattan. [REDACTED] purchased fares from the MTA card machines for [REDACTED] and [REDACTED]. [REDACTED] went through the turnstiles with [REDACTED] and down a set of stairs to the right to access the uptown subway platform to show her how to get to [REDACTED]. They disappeared from view once going down the stairs. [REDACTED] did not enter the turnstiles, but waited next to a support beam six to seven feet in front of the booth attendant for [REDACTED] so they could return to their residence together. As [REDACTED] knee hurt from injuries that he sustained from a work-related incident (a wall fell on him) for which he wears a knee brace on his left knee, he leaned against the beam with his left hand. [REDACTED] usually uses a cane to walk, but on this day, he used a thick umbrella because it was rainy and drizzly outside.

If facing the booth attendant (individual described as a black female, 6'1" to 6'2" tall, average body build, black hair in an up-do, in her 40s; no booth/badge number noted as officers would upset [REDACTED] there is a staircase to the right and to the left accessing the street. Four metro card machines are to the right, next to the booth attendant. The turnstiles are directly in front of the booth attendant, between which is the support beam. If facing the turnstiles, two staircases (one closer to the turnstiles and one farther) are on each side on the opposite side of the turnstiles. [REDACTED] did not know if a police station was inside the subway station.

[REDACTED] first noticed two uniformed officers, PO Rosado and PO Hui (PO Rosado would later write down the names and badge numbers for him; [REDACTED] did not refer to PO Hui by his name because he could not pronounce it), when they approached the booth attendant with a young man and asked if he paid because he was let in through the emergency exit door and said his metro card did not work for some reason. The attendant told the officers the man did pay. PO Rosado and PO Hui went back to where they were standing, through the turnstiles next to the far stairway to the right, where they were 35 to 40 feet away from [REDACTED]. He observed what the officers were doing as he waited for [REDACTED]. PO Hui was observing the area, but PO Rosado seemed eager to find something to do and in a rush to stop someone. [REDACTED] who was not doing anything wrong, eventually took his eyes off them and, as he was doing every time a train arrived, looked to see if [REDACTED] was coming up the steps. Many people were coming and going, and people from an arriving train began coming out of the station via the turnstiles.

Suddenly, PO Rosado had approached [REDACTED] and pushed him once in the chest with her right hand. She directed [REDACTED] to get up against the wall behind the booth. [REDACTED] asked, "Excuse me, ma'am, do you mind telling me what this is about?" PO Rosado said, "Sir, just get back over there against the wall." [REDACTED] said, "Nah, not until you tell me what this is about. Ma'am, what is this about? I don't mind, but I would like to know me and you having this conversation – what it's about. I'd like to know what's going on." PO Rosado did not respond. [REDACTED] walked backward toward the wall to which PO Rosado directed him and which was about 15 to 25 feet away while continuing to ask, "What is this about?" [REDACTED] said to PO Hui, who was not providing any answers, "Excuse me, sir, would you mind telling me what this is about?" PO Hui looked at [REDACTED] and shrugged his shoulders as if to say (he did not verbalize this), "I don't know what she's doing, but just go along with it please." [REDACTED] did not understand how he broke a law by leaning against a pole and said if he was shown this law by the officers, he would have gotten up against the wall and given all the identification they needed.

[REDACTED] took a couple more steps back with his hands in front of him so the officers would know he was not doing anything wrong. [REDACTED] said, "Ma'am, can you please tell me what this is about? I was waiting for my fiancée to come out of the – from down the stairwell, waiting for her to get off the train." PO Rosado said, "Just shut up and get up against the wall." When [REDACTED] and PO Rosado were about seven feet from the wall, PO Rosado

asked [REDACTED] for his identification. [REDACTED] said to himself (he did not verbalize it), "Listen, this is going to get way out of hand. Just give her some identification and, you know, let's get this over with because she's not – (indecipherable)."

[REDACTED] retrieved his wallet from his right rear pants pocket and pulled out his identification. As he did this, he asked PO Rosado, "Do you mind telling me what this is about now?" PO Rosado said, "Solicitation." [REDACTED] asked, "Solicitation of what, ma'am?" PO Rosado said, "Solicitation. You was trying to break in the phone booth." This was the first time that [REDACTED] was aware of the payphone on the support beam against which he had been leaning. He had never tried to break into the payphone nor did he touch it in any way. [REDACTED] mentioned he had a cellphone in his pocket. [REDACTED] said to PO Hui, "Come on, are you serious? *You* know I never touched that phone booth." PO Hui just looked at him. [REDACTED] said, "Officer, what's the matter? You can't speak now? *You* know I never touched that phone booth." PO Hui just gave a look to communicate that he knew [REDACTED] did not touch the payphone, but he should cooperate. This was the last time [REDACTED] spoke directly to PO Hui, who never verbally said anything to him.

[REDACTED] said, "Excuse me? Hold up, ma'am. Wait a minute. I'm almost fifty years old. I'm standing here, I have on a fur coat. I'm standing here. I stand out a little bit from the crowd, but I'm almost fifty years old. Here's the gold dollars that I just got from the metro card machine for my change paying for my fiancée and them to get on the train. Do I look crazy that I would be standing five to six feet in front of the token booth clerk's face trying to break into a phone booth during five o'clock rush hour while everyone is rushing back and forth?" PO Rosado looked at [REDACTED] as if to say (she did not verbalize this), "Just give me the identification." [REDACTED] said, "Alright, not a problem."

[REDACTED] showed his wallet to the investigator and it was described as a black, old, canvass wallet which was very torn up inside and contained many cards, papers and documents. As he went through it, items began to move around. PO Rosado saw a Benefit card from which [REDACTED] receives food stamps from New York City and which was behind other cards that included a [REDACTED] driver's license. [REDACTED] learned from other officers and at other places that a Benefit card is not legal state identification. [REDACTED] provided PO Rosado with his [REDACTED] driver's license. PO Rosado said, "No, give me the damn Benefit card, too." [REDACTED] looked at PO Rosado and said, "What—what's the difference? Like, I gave you proper identification. A Benefit card is not valid identification." PO Rosado said, "I ain't ask you all that."

[REDACTED] did not know that PO Rosado radioed for someone else to come but thought she did so because a third uniformed officer, PO1, approached from the right as [REDACTED] faced the turnstiles. [REDACTED] did not see PO1 until he approached and did not know from where he came. [REDACTED] recognized PO1 from the train station, as he attends a methadone program at [REDACTED] every day, and he is usually there. [REDACTED] said to himself (he did not verbalize this), "Good. Here comes somebody with a little bit more experience on the force and I probably could make some sense out of this and talk about what's going on." [REDACTED] said to PO1 when he arrived, "Oh, good, officer. I'm glad you're here. Maybe we can clear up what's going on here. I would like to know what solicitation of a phone booth means."

PO1 said, "Shut the fuck up and just do what she say." [REDACTED] noted he was not trying to be funny, but thought from this that PO1 had "google eyes" for PO Rosado, because he then smiled at her. [REDACTED] asked, "Excuse me? Was that necessary?" PO1 said, "Just be quiet and do what she say." [REDACTED] noted that the first time, PO1 cursed, but the second time, he did not. [REDACTED] said, "Was that really necessary? Because, like, we all adults and like I said, I'm fifty years old. I ain't going to do nothing to make a situation worse or anything like that. I just want to know what's going on and why am I being held." [REDACTED] said to himself (he did not verbalize this), "Alright, Dre. Don't make the situation worse." [REDACTED] turned away from PO1 because he did not appreciate being disrespected and never disrespected PO1.

[REDACTED] gave PO Rosado his Benefit card and driver's license. PO Rosado walked a few feet away and began putting [REDACTED] name over the radio to check for warrants. He did not know if PO Rosado said his identification number over the radio, because the following commotion ensued. [REDACTED] put the loose cards back inside his wallet to reorganize, as everything was going everywhere given the raggedy constitution of the wallet. PO1,

who stood to [REDACTED] immediate right during this time, hollered, "He's fumbling around! He's fumbling around! Give me the handcuffs! Give me your handcuffs!" PO Hui was to [REDACTED] immediate left. [REDACTED] had not turned his body when replacing cards in his wallet. As [REDACTED] has two cousins, one of whom just retired from the NYPD and another who still works [REDACTED]. They always tell [REDACTED] to never make funny movements around the police, keep his hands visible, do not fidget and be cooperative. [REDACTED] had no intention other than replacing his cards into the wallet and putting the wallet back into his pocket. He never reached for anything on his body or reached into his pockets when PO1 reacted as he did.

[REDACTED] looked at PO1 and said, "You kidding. I'm putting my stuff back in my wallet. You see it's tore up." PO1 looked at PO Hui and said, "Give me the handcuffs." PO Hui looked at PO1 as if to say (he did not verbalize this), "Are you kidding? He's not doing nothing." [REDACTED] had no complaint with PO Hui, because he was nonchalant about the situation and was "just doing his job." Initially, [REDACTED] said that PO Hui gave PO1 his handcuffs, [REDACTED] supposed because PO1 was his superior. [REDACTED] later said that he thought PO Hui looked to PO Rosado, who passed her handcuffs, but he was unsure because PO Rosado may have told PO Hui to give PO1 his pair. PO1 pushed [REDACTED] against the metro card machine, turned him around, snatched his arms and handcuffed him.

By this time, [REDACTED] was upset, but was not going to say anything because he could see the situation was getting out of hand. He looked up in disgust and prayed (he did not verbalize this), "Lord, please let this be over with." The dispatcher's voice came over PO Rosado's radio and said, "He's clean. No warrants or anything. So, um, what is this about?" PO Rosado said over the radio, "Oh, never mind," and walked back toward [REDACTED] PO Rosado said, "Have a nice day." [REDACTED] said, "Okay, I'm going to have a nice day, but I would like all of y'all names and badge numbers because I really don't appreciate being disrespected like that. I tried to give y'all the utmost respect, talk to y'all sensibly." PO Rosado said, "Don't worry about it. We'll give it to you."

PO1 removed the handcuffs from [REDACTED] after they had been on for about five minutes. PO Rosado waited for [REDACTED] hands to be free before she handed him his identifications. After [REDACTED] reached and retrieved his identifications from PO Rosado, he turned around to find that PO1 was gone. [REDACTED] mentioned he would like to know the identity of PO1 because he did not provide his name and badge number. The door was closing to a mass transit locker room ten feet away from where the officers and [REDACTED] stood and behind the booth attendant. While [REDACTED] did not see PO1 enter that room, he thought he did so because that was the only place he could go to get away that quickly.

PO Rosado began to walk away toward the turnstiles. [REDACTED] initially said that he stated, "No. I want your names and badges please." He later said that he stated, "Excuse me, I want your name and badge number, ma'am." PO Rosado said, "I'll give it to you." [REDACTED] went to the booth attendant and requested a pen and something to write on. The booth attendant provided a pen and a paper bill fastener marked with "\$100" to him. The booth attendant said, "This is the only paper I have. What's that about?" [REDACTED] said, "Don't worry about it. I just want to get their information." [REDACTED] got PO Rosado to write down the names and badge numbers in her own handwriting because he did not want PO Rosado to be able to say that he wrote the information incorrectly. PO Rosado wrote down, which was cited for the record, "ROSADO 5333 HUI 13328" (a copy of this was made for the case file). [REDACTED] also noticed PO Rosado's name on her badge. PO Rosado and PO Hui walked toward the turnstiles and [REDACTED] went in the other direction. [REDACTED] was given no documentation, was not issued any summons and was not arrested.

As PO Rosado and PO Hui went through the turnstiles, [REDACTED] came out from the turnstiles. She hollered, "Babe! Babe! What's that about?" [REDACTED] continued walking. [REDACTED] asked, "You don't hear me? What's that about?" [REDACTED] said, "I don't feel like talking right now." When [REDACTED] reached the top of the stairs on the street level, he relayed the events to [REDACTED] She said, "Oh no. You gotta talk to someone. They just can't get away with doing that because you wasn't doing anything. I could see if you was doing something, but you wasn't doing anything."

PO Rosado is a light-skinned Hispanic female, 5'5" tall, average body build, dark brown/black hair, between 30 and 40 years old. She wore a hat.

PO Hui is an Asian male, 5'5" tall, average body build, close-cut black hair, in his mid-thirties to early forties.

PO1 is a black male, 6'4" to 6'6" tall, average body build, salt and pepper hair, in his mid-forties to early fifties, with a light moustache. [REDACTED] thought PO1 was higher in rank than the others because he has seen him around for one year or two, longer than the other officers. He also thought PO1 had stripes on his shoulder, but he could not see how many. No name or badge number was noted.

[REDACTED] wanted to add to the record that PO Hui did not do anything, was very respectable, minded his business and kept nodding to [REDACTED] to keep him calm as if to say (he did not verbalize this), "Just go ahead with it. What's the point? Just let this be over." [REDACTED] appreciated this. PO Rosado and PO1, the latter of whom was pushy and "handcuffy," were the ones with whom [REDACTED] had a problem. [REDACTED] felt disrespected by them. [REDACTED] really did not appreciate this, especially being pushed around, given he has torn muscles in his leg. [REDACTED] mentioned the following further contact he has had with PO1. A female in his methadone program solicits every day to get back on the train and return home. PO1 converses with the female almost every day and has said, "No, no, not today. Don't give me the story today." This also made [REDACTED] think PO1 has been around for a while.

[REDACTED] said he would provide the investigator with anything she needed to the best of his ability, including additional information. He was reminded that anything he stated after signing the verification form was considered part of his sworn testimony.

At 35:46 minute mark, mediation was presented to [REDACTED]. He opted for an investigation. It was noted that off the record, he stated his plans to file a notice of claim.

**Witness Officer: PO JONATHAN HUI**

- *PO Hui is a 27-year-old Asian male who stands 5'8" tall, weighs 170 pounds, and has black hair and brown eyes.*
- *On December 12, 2014, PO Hui was on duty from 1:00 p.m. until 9:35 p.m. as the Transit Bureau Train Patrol 6 with PO Rosado and was dressed in uniform.*

**Memo Book**

PO Hui made the following notations in his memo book: At 2:35 p.m., he assisted PO Rosado with one stopped male (██████████) who was observed with left arm on telephone booth, moving hand in an up and down swiping motion. Booth 4-26. Male placed in handcuffs by PO Maldonado of Transit Bureau 3 because male kept placing hands in pocket. Handcuffs were placed on the male for safety reasons. At 2:36, PO Rosado confirmed a negative warrant check as per PO Landin. The job was closed as a non-crime corrected.

**CCRB Testimony**

On February 4, 2015, PO Hui was interviewed at the CCRB.

On December 12, 2014, at approximately 2:32 p.m., PO Rosado and PO Hui were standing near the elevators inside the turnstiles of the New York City Transit station and facing them and the booth. From 25 to 27 feet away, they observed ██████████ next to a pillar with his left arm atop a telephone box, which was five to seven feet from the turnstiles. PO Rosado noticed ██████████ first. Initially, PO Hui said he could not recall what PO Rosado said about ██████████ but when asked if she articulated any suspicion, he stated that she said, "Look at his arm. It's on the telephone box and he's using his hand in a swiping motion as to indicate that he's asking for a ride into the subway system." PO Hui could recall approaching the booth attendant with PO Rosado and an individual who had entered the station via an emergency exit and asking if the individual had paid a fare before releasing him after the booth attendant answered affirmatively. PO Hui was unaware of ██████████ at this time. The booth attendant was located about two to four feet behind ██████████ and nothing was obstructing the attendant's view of ██████████

PO Hui observed ██████████ left hand was quickly moving up and down from his wrist in a motion indicative that he was asking for someone to swipe him into the subway so he could have a ride. From this, PO Hui suspected ██████████ of soliciting, which is a violation for which a summons could be issued. Soliciting for a subway ride is a form of panhandling, which is against law 1050.60 of the NYC Transit System. PO Hui could not recall Mr. ██████████ pointing being injured or disabled in any way. When asked if he was using a cane or umbrella for support, PO Hui said he did have a long object that touched the floor in his right hand.

The officers observed ██████████ for about two minutes, during which time the movement stopped periodically, but then continued. From what PO Hui could tell, ██████████ did not speak to anyone. PO Hui could not recall if anyone responded to him in any way. He could not recall the movement ██████████ was doing becoming any bigger or ██████████ becoming more insistent in gaining someone's attention. He could not recall ██████████ ever approaching the turnstiles. ██████████ never moved from that position. ██████████ never tried to break into the payphone, was never suspected of this and was never told he was being stopped for this. PO Hui could not recall ██████████ making any statements indicative that he thought this was why he was being stopped.

PO Rosado, the contact officer, made the decision with which PO Hui agreed to approach ██████████ PO Hui did not speak to the booth attendant and could not recall the attendant at any point expressing any concern about ██████████ PO Rosado approached and asked ██████████ for identification, which was the first thing PO Hui could recall PO Rosado doing. At this point, ██████████ was detained. PO Hui was next to PO Rosado. He could not recall if she ever made physical contact with ██████████ He was informed that ██████████ said that before anything was said to him, PO Rosado pushed him in the chest, but while he could not say for certain that this did not happen, he could not recall this. PO Hui's legal representative, Mr. Louis Albert, pointed out there was no force alleged and the investigator agreed there was not.

██████████ refused to give identification multiple times. This conversation became loud. While PO Hui could not recall how many times PO Rosado asked ██████████ for identification, it was more than one time. He could not recall exactly what ██████████ said, but he said he would not provide his identification. ██████████ demeanor was a

little angry and his hands were gesturing erratically all over the place. He asked for what he was being stopped and PO Rosado explained the reason to him by saying that he was asking for a metro card swipe. PO Hui could not recall what [REDACTED] generally or exactly said about this and could only recall him not wanting to provide his identification.

The only thing about [REDACTED] that could have made PO Hui feel unsafe was the object in his right hand, which could have reached the officers. When asked if the object made PO Hui feel unsafe, he said he only felt [REDACTED] was a bit angry. PO Hui could not recall [REDACTED] ever threatening the officers with the object or ever feeling fearful of him.

PO Rosado asked [REDACTED] to step back to the wall, but still face the officers. This was done for safety reasons so passengers could not cross behind or in front of him. When asked how much time elapsed between the initial approach and when he was asked to go against the wall, PO Hui said he could not recall because he did not look at his watch. [REDACTED] refused to do this after PO Rosado asked him multiple times to do so. PO Hui asked [REDACTED] to step back, which was the only time he spoke to him, but [REDACTED] did not do so. [REDACTED] never said anything to PO Hui that he could recall. When asked how PO Rosado compelled him to go against the wall, PO Hui said that [REDACTED] did step back, but not fully against the wall. He could not recall if [REDACTED] was told to "shut up" and get against the wall.

An officer from Transit Bureau 3, PO Maldonado, appeared from the left side of the booth. Neither PO Rosado nor PO Hui called him over. PO Maldonado said he heard the commotion and stepped over to them. PO Hui presumed that PO Maldonado had been standing on the other side (left side) of the booth. PO Maldonado spoke to [REDACTED] and explained that he needed to provide identification. He asked [REDACTED] to cooperate and hand over identification. It took PO Maldonado a bit more time in talking to [REDACTED] but [REDACTED] eventually provided identification to PO Rosado. PO Hui could not recall PO Maldonado doing anything different from PO Rosado to gain [REDACTED] compliance. He did not know why [REDACTED] complied at the moment he did. PO Hui could not recall PO Maldonado cursing at [REDACTED] or using any discourteous language. He could not recall PO Maldonado telling [REDACTED] to "shut the fuck up." PO Hui did not know what kind of identification [REDACTED] provided, as he gave it to PO Rosado. He could recall no conversation about [REDACTED] Benefit card. He could not recall PO Rosado asking [REDACTED] for his Benefit card or referring to it as a "damn" benefit card.

At some point during the interaction, [REDACTED] requested the names of the officers present from PO Rosado. She explained that after the investigation concluded, she would provide him with the names and shield numbers. Initially, PO Hui said that PO Maldonado was present on his and PO Rosado's right hand side and on [REDACTED] left hand side. He later said that he could not recall if PO Maldonado was present. He could not recall PO Maldonado being preoccupied with anyone other than [REDACTED] during this time. He could not recall if PO Maldonado's attention ever left [REDACTED]. He could not recall anyone in the train station interfering or speaking to [REDACTED].

Throughout the incident, [REDACTED] was waving his hands around emotionally and erratically, and placing his hands in and out of his pockets. PO Hui could not recall if during this time, [REDACTED] was looking for something in his pockets or if he took anything out. He could not recall if this continued after PO Rosado asked for his identification. He could not recall anything of concern about [REDACTED] pockets, such as bulges or anything resembling a weapon. [REDACTED] never swung at or made a motion toward an officer and none of the motions he made caused PO Hui to feel unsafe. PO Hui could not recall any officer issuing [REDACTED] an instruction to stay still or not reach into his pockets. PO Maldonado asked [REDACTED] to cooperate and told him to hand over identification when an officer asks for it. PO Maldonado then asked PO Hui for his handcuffs, and he gave them to him. PO Maldonado placed [REDACTED] in handcuffs. [REDACTED] asked why this was being done. PO Hui could not recall if [REDACTED] resisted in any way. PO Maldonado explained to [REDACTED] "The reason you're being placed in handcuffs is for safety reasons. PO Rosado told [REDACTED] that if his name came back as negative for warrants, the officers would warn and admonish him, so he could consider it a warning.

PO Rosado then relayed [REDACTED] name to the Transit Bureau office for a warrant check, which came back as negative. The officers could have summonsed [REDACTED] if they chose to do so. PO Rosado used her

discretion, and warned and admonished [REDACTED] by explaining that his name came back good and as she said earlier, he would be released if this was the case with a warning and admonishment. As soon as this was completed, the handcuffs were removed from [REDACTED] but PO Hui could not recall by whom. PO Rosado never explained to PO Hui why she did not issue a summons to [REDACTED] PO Hui did not issue [REDACTED] a summons because PO Rosado was the contact officer.

[REDACTED] asked again for the names and shield numbers of the officers, and PO Rosado supplied this information. PO Hui could not recall where PO Maldonado was during this time. He could not be certain that PO Maldonado was or was not there during this time. PO Hui did not know if PO Maldonado ever provided [REDACTED] with his name and shield number. He could not recall if PO Maldonado left before this information was given. He could not recall PO Maldonado refusing to provide his name or shield number in any way. PO Rosado wrote down the information of names and badge numbers on a piece of paper. PO Hui was shown a photocopy of the money wrapper provided by [REDACTED] with the names and badge numbers of PO Hui and PO Rosado. PO Hui could not recall what PO Rosado wrote on, just that she wrote it down. He did not know why PO Maldonado's information was not included. No officer prepared a stop and frisk report for [REDACTED]

**Subject Officer: PO CHRISTINA ROSADO**

*(Please see cover page for pedigree and assignment details)*

**Memo Book**

PO Rosado made the following notations in her memo book: At 2:35 p.m., 1 black male was observed outside the turnstile with his left arm on a telephone both motioning his hand in an up and down swiping motion. At 2:36 p.m., negative results on warrant check as per PO Landin. Non-crime corrected (warned and admonished) for [REDACTED] (Benefit card and MD license). Booth N026. He stated in substance he was waiting for cousin. Wanted badge and last name. Complied. PO Maldonado of TD 3 assisted and cuffed for safety as [REDACTED] continued putting his hands into his pocket. At 2:45 p.m., she resumed patrol.

**CCRB Testimony**

On February 18, 2015, PO Rosado was interviewed at the CCRB.

On December 12, 2014, at 2:35 p.m., PO Rosado observed [REDACTED] on the outside of the turnstiles (not inside the train station), about five feet away from and directly in front of them, where there was a payphone booth. She could not recall if she observed him before this time, although she probably did. She could not recall if [REDACTED] did anything that drew PO Rosado's attention before he made this motion. PO Rosado said she usually pays attention to people outside the turnstile and whether or not they are entering. Usually, people who are soliciting will stand outside for a significant amount of time. She could not say what specifically drew her attention to [REDACTED]. A booth, which was manned by an attendant (PO Rosado could not describe the gender of this individual), was two to five feet behind him. PO Rosado was uncertain if there was anything obstructing the teller's view of the payphone, but did not think there were any poles. [REDACTED] had his left arm on top of it and was motioning up and down with his left hand, which in PO Rosado's experience, is indicative of soliciting a swipe or entry into the subway system. This is a violation according to 1050.6B sub 2. Before this time, PO Rosado had approached the booth attendant with an individual unrelated to [REDACTED] but she could not recall [REDACTED] being there at this time.

PO Rosado watched [REDACTED] a little longer because he was turning his head, so she was not 100% certain of what he was doing. At this time, she and PO Hui were inside the turnstiles by the elevators, which she thought were about twenty five to thirty feet away from the turnstiles (thirty to thirty-five feet away from [REDACTED] although she was unsure of the distance. She and PO Hui were not directly in front of, but to the right of [REDACTED] from his perspective.

PO Rosado observed [REDACTED] for three to five minutes. She could not recall if he remained facing the turnstiles the entire time or turned at any point. She could see [REDACTED] arm for the entire time. She did not know how many times [REDACTED] made the motion, but he stopped several times (she did not know exactly how many times), looked around and then continued. He never exaggerated the motion or made it bigger. He seemed to time the motion with the traffic in the station as people were leaving and entering. He did not directly approach the turnstiles. PO Rosado could not recall if he spoke to anyone or if anyone approached or reacted to him. She did not know if anyone offered a swipe, as she could not overhear any conversation from where she stood. He never went through the turnstile. PO Rosado noticed him first and it was her decision to approach him. He did not seem to be injured or disabled in any way. From afar, he held what looked like an umbrella in his hand, but she could not recall confirming that this was the object when she came closer. He was not leaning on the umbrella, but the phone booth. PO Rosado said to PO Hui, "Did you see what I saw? Because I know I saw what I saw." She could not recall PO Hui's response or if he said he also observed this motion.

As PO Rosado approached [REDACTED] he continued the swiping motion until he noticed her coming toward him, at which time he stopped. She intended to issue a warning to address the issue of him soliciting a swipe within the subway station. When the investigator asked PO Rosado if [REDACTED] was considered free to go upon her approach, her legal representative, Ms. Florence Friedman, Esq., asked where the question was leading and began to list the allegations. When the investigator said that the question addressed the stop, Ms. Friedman, Esq. expressed confusion. The investigator asked her what a person would be considered if they were not free to go and she answered



“stopped.” Ms. Friedman, Esq. then instructed the investigator to get to the “meat and potatoes” of the question. The investigator said she would ask the question just as she had before and did so. PO Rosado was unsure if [REDACTED] was considered free to go, but she did consider him stopped because she asked him to step back so she could address the issue at hand, being the solicited swipe. Nothing else besides the movement observed which indicated to PO Rosado the solicitation of a swipe factored in her decision to stop [REDACTED].

PO Rosado did not speak to the booth attendant and received no indication that she or he also noticed this. She asked PO Rosado to step back to a wall so she could speak to him. Neither she nor PO Hui told [REDACTED] to “shut up” and get against the wall. She made no physical contact with him at all. [REDACTED] did so and stood in front of her with his back to the wall, but was not placed on the wall. PO Rosado asked him if he had identification. He said that he did. She asked him to give it to her and he said, “No. I don’t feel like giving it to you.” He asked why he was being stopped. She explained, “What you did – moving your hand—is in reference to asking for a swipe, which is a violation against New York City Transit rules and regulations.” She asked [REDACTED] several times for identification and he responded each time, “I’m not giving you my ID.” He said that he had identification, but was not going to give it to her. PO Rosado asked him a couple more times for identification, but he would not comply. She could not say how many times she asked [REDACTED] for identification, but it was multiple times. PO Hui said nothing to him.

PO Rosado was going to place [REDACTED] in handcuffs when she noticed a third officer, PO Maldonado, was on the scene. She did not know from where PO Maldonado appeared and he did so a minute into her interaction with [REDACTED]. She did not request PO Maldonado’s presence and did not know why he decided to approach. PO Rosado did not know PO Maldonado, and only met him that day. When PO Maldonado approached, she obtained his name and command (Transit District (TD) 3) by viewing his tag. She did not collect PO Maldonado’s badge number. She did not know if he was assigned to the train station that day, but the station is within the jurisdiction of TD 3. She never handcuffed [REDACTED] because PO Maldonado approached.

PO Maldonado, as he was much taller than PO Rosado, he was able to take control of the situation given that [REDACTED] was not cooperating with her. PO Maldonado asked [REDACTED] “What’s the problem? What is she asking you for?” [REDACTED] said, “My ID.” PO Maldonado said, “Just give her your ID.” She’s the officer that’s dealing with you, that’s who you should be giving ID.” PO Maldonado did not use any discourteous language with [REDACTED]. He did not say to [REDACTED] “Shut the fuck up,” or anything similar. PO Rosado could not recall if [REDACTED] ever cursed at an officer. [REDACTED] then finally handed his identification to PO Rosado in immediate compliance with PO Maldonado. PO Rosado could not recall from where [REDACTED] retrieved his identification, which was a Benefit card and a [REDACTED]-issued identification. PO Rosado thought these two forms of identification were in the same place, but she was not entirely certain. During the interaction, [REDACTED] moved his hands around frequently, but she never feared that he was going to strike her.

PO Rosado phoned the administrative office of the TB, and was told by the Administrative Officer, PO Landin, that he had no pending or outstanding warrants. This took two or three minutes, as the warrant checks are conducted quickly. PO Rosado stood in the same place near [REDACTED] to make this call. During this time, PO Maldonado asked [REDACTED] to keep his hands out of his pockets (PO Rosado was unsure of how many times), but he kept fishing in his jacket front side pockets. PO Rosado could not recall if [REDACTED] complied with PO Maldonado’s instruction. While she saw [REDACTED] place his hands inside his jacket pockets, she could not recall if she ever saw him remove them and then put them back in the pockets. She faced [REDACTED] during this time. She observed no bulges, anything resembling a weapon or anything causing her concern on his person. She did not think he removed anything from these pockets. She received no indication of what [REDACTED] was looking for in his pockets and he never offered this information. As she could not tell if anything was inside the jacket pockets and she did not know [REDACTED] she thought the easiest solution was to place him in handcuffs, as they could always come off, to avoid any potential safety issue. PO Maldonado asked for handcuffs, which were supplied by PO Hui. PO Maldonado turned [REDACTED] around to face the wall and handcuffed him. [REDACTED] was handcuffed for safety precautions. PO Rosado thought he was compliant, but could not recall for certain.

The handcuffs were removed from [REDACTED] after the warrant check was complete, and PO Rosado did not think there was any delay. PO Rosado thought PO Maldonado took the handcuffs off, but was uncertain. After the

handcuffs were removed, PO Maldonado left. PO Rosado did not think [REDACTED] reacted to PO Maldonado leaving. She was uncertain of where [REDACTED] was when PO Maldonado left.

PO Rosado was uncertain if [REDACTED] kept placing his hands in his pockets. She released [REDACTED] with a warning. She told him that he was not being ejected from the station and was more than welcome to continue waiting for his cousin, as he stated he was doing. She said, "What you're doing is a violation. You can't do that. The next time, it can be either a summons or arrest, depending on which officer you end up with."

[REDACTED] said, "I want your shield number. I want your last name." Initially, PO Rosado said that PO Maldonado left after the handcuffs were removed, but later said she was uncertain if PO Maldonado was present or not when [REDACTED] made the request for identifying information. PO Rosado did not witness PO Maldonado refusing to provide his name or shield number in any way. [REDACTED] did not ask PO Maldonado for his name or badge number. PO Rosado showed him where this information was on her badge and said, "Look. This is my shield number. This is my name, but I'll give you everything else you want at the end." [REDACTED] requested the information for names and shield numbers again. PO Rosado said, "Look, I'll give it to you, but I don't have paper. Find me a piece of paper, and I'll write it down for you." [REDACTED] retrieved a bill wrapper from the booth attendant. PO Rosado viewed the copy of the bill wrapper and recognized her handwriting. PO Rosado wrote down her name and that of PO Hui. Initially, PO Rosado said that PO Maldonado had left the scene, so she was unable to provide his information. When it was pointed out that she stated she observed this information on PO Maldonado's badge upon his approach, she said she did not have his badge number. When asked why she did not write his name, she said she did not do this because PO Maldonado was not her partner.

PO Rosado did not prepare a UF 250 for [REDACTED] as this document is only generated when there is suspicion of a misdemeanor or a felony, and is not generated for a violation.

After the investigator stated she had video footage to show PO Rosado, Ms. Friedman, Esq., requested a recess and the recording was paused at 9:02 a.m. At 9:08 a.m., the record was resumed. PO Rosado viewed MTA video footage from outside the turnstiles. She recognized the individual on the outside of the turnstiles as [REDACTED]. The investigator asked PO Rosado to identify the motion that [REDACTED] made with his hand. At the moment when [REDACTED] placed his left arm on the payphone, PO Rosado said this was when [REDACTED] made the motion, but the view of the hand is obstructed. It was noted when [REDACTED] removed his arm and turned away from the turnstile. It was noted that after [REDACTED] removed his arm, he walks to the back wall with the officers. The investigator asked why PO Rosado approached at that moment although [REDACTED] had removed his arm from the payphone and the movement she had observed and was concerned about had stopped. PO Rosado said she was probably conversing with PO Hui as to whether or not he observed the movement as well. Yet, PO Rosado conducted the stop because she knew what she saw and was basing her decision off of this.

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## Interview Details

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### Subject Officer: PO RAMON MALDONADO

*Please see cover page for pedigree and assignment information.*

### Memo Book

PO Maldonado made no entries in his memo book regarding the incident. Off the record, upon supplying a copy of his memo book to the investigator, he said that he had forgotten to write an entry about it so after his tour, he noted the following information on his fly page: At 2:40 p.m., he arrived at 125<sup>th</sup> Street A. At T/P/O, he entered the 125<sup>th</sup> Street A to use the restroom. As he entered the subway, he heard someone yelling and screaming. I noticed two officers stopped one individual (black male in his 40's). The individual was acting in a disorderly manner, putting his hands in his pockets and was asked several times to lower his voice and allow the officers to conclude their investigation. When the individual refused, he placed him in handcuffs, after which time his demeanor changed completely. The individual became very cooperative. Badge numbers were provided to the individual.

### CCRB Testimony

On February 24, 2015, PO Maldonado was interviewed at the CCRB. He mentioned that he remembered the individual involved in the incident, identified as [REDACTED] "like it happened yesterday."

At the time of the incident, PO Maldonado entered the 125<sup>th</sup> Street A/B/C/D subway station from patrolling in his RMP to use the restroom. There are four entrances to the station (2 north and 2 south) and PO Maldonado entered from the north right entrance. Upon entering, his attention was drawn because he heard someone yelling, screaming and cursing. PO Maldonado turned around and saw that two officers had [REDACTED] stopped in the space behind the booth where there are also metro card machines and which is in the middle of the train station. The turnstiles are in front of the booth. [REDACTED] was a foot to a foot and a half away from the officers. [REDACTED] was visibly upset, and raised and moved around his hands while he spoke. He absolutely did not seem to be injured or disabled in any way, held nothing in his hands and had no cane or umbrella. PO Maldonado recognized [REDACTED] from having seen him in the subway system, but never had a previous interaction with him. He has only seen [REDACTED] in the subway station, and could not recall how many times. He has never seen [REDACTED] attempt to solicit swipes from anyone.

When asked what curses [REDACTED] used, PO Maldonado said he could not hear it completely clearly. When then asked if PO Maldonado knew for certain that [REDACTED] cursed, he said he was pretty certain that [REDACTED] said, "Why the fuck are you stopping me. Leave me the hell alone. I'm not doing anything. Leave me the fuck alone." [REDACTED] was making many different statements that included, "Stop harassing me." while raising and moving around his hands. The cursing did not concern PO Maldonado as everyone does this and he will allow people to curse as much as they want. He was concerned with how [REDACTED] was using his hands in a flailing motion as he spoke, which creates a safety issue, which is his main concern. PO Maldonado felt [REDACTED] behavior could have become violent. [REDACTED] never swung at the officers, but in PO Maldonado's experience, hands are what put him in danger, so waving them around a lot represents a safety issue. He mentioned that if officers stop someone with the intent to simply talk to them without putting their hands on them, yelling or being disrespectful, there is no reason to become upset. If someone who is stopped has a disagreement, it can be discussed, but [REDACTED] was not behaving properly in the situation. As a result of his behavior, a crowd could have gathered, thereby putting PO Maldonado and the other officers in danger. A crowd had not gathered at that point or at any time during the incident. PO Maldonado said he was sure the investigators had seen instances on the news where a crowd forms because someone begins yelling and saying they are being harassed. He noted that he wanted for him and the other officers to be able to go home to their families. For these reasons, he wanted [REDACTED] to lower his voice.

When asked who took the lead with [REDACTED] PO Maldonado said he was not concerned about this. When it was explained that it was the investigator's concern, he responded that the female officer, identified as PO Rosado was asking all the questions. PO Rosado asked him about what he was doing when he was observed trying to obtain a swipe. [REDACTED] said, "What am I doing? I'm not doing anything wrong."

Within fifteen seconds, PO Maldonado approached and intervened because he did not want anyone to get hurt, wanted to diffuse the situation and end it as quickly as possible. He also could clearly tell that the two officers

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## Interview Details

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did not have the tenure that he did on the job. Upon PO Maldonado's approach, [REDACTED] said to him, "Oh, come on, brother. They're harassing me. These cops are stopping me for no reason." PO Maldonado said, "Sir, I don't know why these cops are stopping you. But what I do know is that you're being extremely loud. What I am here for is to make sure this goes smoothly. You're not allowing these officers to conduct the investigation. Sir, just allow these two officers to conduct their investigation. If you disagree with what they're doing, you have a course that you can take." The officers said, "Sir, you cannot stand there and ask people to swipe you in." PO Maldonado absolutely never used discourteous language with [REDACTED] and absolutely never cursed at him. He absolutely did not say, "Shut the fuck up," to [REDACTED] or anything similar. He absolutely never heard the other officers say this or anything similar and mentioned he was doing most of the talking. At this time, PO Maldonado said nothing to the other officers.

At this time, PO Rosado stepped away to an entrance of the subway station, where she could receive a signal, to call and conduct a warrant check of [REDACTED] and to confirm no one was looking for him. The second officer stayed with PO Maldonado. PO Maldonado was unsure of how far away PO Rosado was, but said they could see each other, but not hear each other. PO Maldonado never saw [REDACTED] hand his identification to the officers and thought PO Rosado was already in possession of it upon his approach. PO Maldonado did not know what kind of identification PO Rosado obtained. During this time, PO Maldonado tried to diffuse the situation, which took about ten minutes. [REDACTED] continued to be disorderly by yelling and flailing his arms. [REDACTED] said he wanted badge numbers. PO Maldonado said, "Sir, as long as you're complying, you lower your voice and you allow these two officers to finish their investigation, I'll be more than happy to provide you with all the information that you asked for."

Nothing "at all" on [REDACTED] person was creating concern for PO Maldonado. Nothing on his person created a bulge or resembled a weapon. [REDACTED] put his hands in his pockets several times and PO Maldonado had no idea for what, if anything, he was looking. PO Maldonado could not recall which pockets, whether the pants or the jacket pockets. He could not tell what, if anything, was inside the pockets and one can never tell. [REDACTED] never swung at or made a movement to strike PO Maldonado. He said, "Sir, this is a safety issue. I don't know if you are armed. I don't know if you have a weapon. All we're asking you is to please put your hands where we can see them." [REDACTED] would initially comply with the instruction, but then refused by placing them back inside, even after several instructions. PO Maldonado said, "I'm going to handcuff you for your safety and mine because if I see that you're going back and forth, apparently you're not understanding my instructions." PO Maldonado resolved the situation by handcuffing [REDACTED] given that he kept placing his hands in his pockets. [REDACTED] did not resist being handcuffed and became extremely cooperative. PO Maldonado placed [REDACTED] in handcuffs for his and all the officers' safety, as he did not want anyone to get hurt, and nothing else factored into the decision to handcuff [REDACTED]. PO Maldonado also mentioned that there was a large height disparity between [REDACTED] and the two officers, so he supposed that when he arrived, given he is [REDACTED] height, this compelled [REDACTED] to calm down.

PO Maldonado "kind of" spoke to him to explain why the officers were doing what they were doing. He then asked the two officers, "Why did you stop him?" The officers explained that [REDACTED] was asking patrons to swipe him into the subway system. This is a big problem in the subway system because usually, although he could not say if this was true for [REDACTED] people who ask to be swiped in commit robberies, burglaries and assaults. Supervision instructs the transit officers to investigate this when it occurs. Many times, transit officers respond to complaints where individuals ask to be swiped into the subway and what these individuals do is wait for people to open their wallets before they snatch it and run away. It was clarified that PO Maldonado was not present when [REDACTED] was stopped for soliciting a subway swipe.

After [REDACTED] was placed in handcuffs, he became very cooperative and polite. [REDACTED] continued to say, "But they shouldn't have stopped me. They're harassing me." Initially, PO Maldonado explained, "Sir, I don't know why they stopped you. I'm here to make sure that the situation goes smoothly. You're not hurt. The officers are not hurt. And we asked you several times to do not put your hands in your pockets. We are trained that if someone is going to kill you, they are going to use their hands and if I don't see your hands, that puts my life at risk. So if I ask

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## Interview Details

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you, 'Please let me see your hands,' and you are not cooperating, I have no other choice but to place them in handcuffs." Then, PO Maldonado said that he stated this before [REDACTED] was placed in handcuffs. PO Maldonado said that the only way a person can kill an officer is with their hands, so if they are not seen, it represents a safety issue for him, the other officers and the public.

After [REDACTED] demeanor changed, PO Maldonado said, "This is all we asked from the beginning. Be polite and allow the two officers to conduct their investigation." From PO Maldonado's understanding, the warrant check for [REDACTED] came back with negative results. PO Maldonado asked the officers, "Is there anything else you want to do with this particular individual?" The officers said they were going to warn and admonish [REDACTED] and asked him to please not commit the violation again. PO Maldonado said, "The investigation has been conducted," and removed the handcuffs from [REDACTED]. PO Maldonado said, "You're free to go, sir."

[REDACTED] said, "I want badge numbers." PO Maldonado said, "Sir, feel free. We will give you all the information you need." When the situation wrapped up and [REDACTED] wanted badge numbers, [REDACTED] did not even have a pen, so one of the officers provided him with one. [REDACTED] had all the information he needed. PO Maldonado noted that the allegation sheet said that he did not provide [REDACTED] with his identifying information, but he did by pointing to his badge and the pins that show his command. All the officers stood by as [REDACTED] was allowed to take down this information. PO Maldonado said that had the officers just turned and walked away, which they did not, [REDACTED] would not have had the information. As [REDACTED] wrote down the badge numbers, he said he was going to make a complaint. PO Maldonado said, "Sir, you have the right to do that." After [REDACTED] had all the information, PO Maldonado said, "Sir, is there anything else you need from us?" [REDACTED] said, "No, I'm going to make a complaint." PO Maldonado said, "Sir, you have the right to make that complaint." PO Maldonado did not pay attention to what [REDACTED] was writing, and was more focused on his person for safety reasons. He did not know on what [REDACTED] was writing. He could not recall [REDACTED] approaching the booth attendant and did not know why he would have to do that. PO Maldonado asked the other officers, "Are you guys good? You do what you have to do?" The officers responded, "Yes." PO Maldonado turned around and left.

PO Maldonado was provided with the following details as relayed by [REDACTED]. He was asking for names and badge numbers from the officers. After the handcuffs were removed, he had to go retrieve paper from the booth attendant, as he had none. When he returned, PO Maldonado had left and only PO Rosado and her partner, PO Hui, remained. In this way, PO Maldonado refused to provide him with his name and badge number, and never verbally stated it. In response to these details, PO Maldonado said he was uncertain if he left before [REDACTED] could acquire his identifying information. He only knows that when [REDACTED] asked him for this information earlier in the incident, he pointed it out on his person. He believed [REDACTED] had enough time to note the information before he left. He never refused in any way to provide his name and badge number to [REDACTED] and is well aware from his training that he is required to provide it upon request. He never saw another officer refuse in any way to provide this information.

PO Maldonado then clarified the earlier statement he provided by saying at this time, [REDACTED] walked toward the booth, but PO Maldonado did not know what his intentions were when he did this. So, when [REDACTED] walked away, PO Maldonado walked away. By this time, he had already ensured that the officers were okay and no longer needed his assistance. He returned to patrol and did not use the restroom, because he forgot.

Throughout the incident, the officers, or at least PO Maldonado, remained extremely professional, polite and courteous. PO Maldonado treated [REDACTED] as he would want his own family member to be treated.

PO Maldonado noted that he has stopped "plenty" of people in his career. He has been on the force for a long time and has stopped "thousands" of people. He has over ten years of tenure and he has only been to the CCRB twice. He takes his job very seriously and when he interacts with the public, he does so in a professional manner. He treats people as he would like one of his family members to be treated upon being stopped. He is very good at what he does and he takes pride in what he does.

**Witness:** [REDACTED]

*See the cover sheet for pedigree and employment information.*

**CCRB Testimony**

On March 9, 2015, [REDACTED] was interviewed at the CCRB.

On December 12, 2014, at approximately 2:32 p.m., [REDACTED] did not have an independent recollection of working at the West 125<sup>th</sup> Street and St. Nicholas Avenue A/B/C/D subway station in Manhattan. She occasionally works at this subway station, but not often. The time would have been one where the shifts change, and the shift would be a 2:30 p.m. to 10:00 p.m.

While [REDACTED] is familiar with the layout of the subway station, she had no independent recollection of the payphone attached to a pillar located directly in front of the booth. She viewed a photograph of Mr. [REDACTED] but did not recognize him.

[REDACTED] was informed of the following details: [REDACTED] (tall in stature, carrying an umbrella and was perhaps leaning on it for an injury he incurred) was waiting on the unpaid side of the turnstiles waiting for his fiancée for quite some time. The fiancée had brought her sister inside the subway station and was waiting for her to catch the train before she would rejoin [REDACTED]. While [REDACTED] waited, his arm rested atop a payphone attached to a pillar in front of the booth. During this time, he observed two officers (an Asian male officer and a light-skinned Hispanic or white female) approach the booth attendant with an individual and asked the booth attendant if the individual, who had entered the paid side through the emergency exit, if he had paid his fair. The booth attendant answered affirmatively and the individual was released ([REDACTED] could vaguely recall this individual). Some time passed and these officers approach [REDACTED] and immediately ask for identification. They have him go to the wall directly to the right of the (if facing) booth, where the MTA card vending machines are located. The officers ask [REDACTED] who is upset and confused for being stopped), for identification when a third officer approaches. The interaction was escalated in that officers alleged that [REDACTED] cursed and [REDACTED] alleged that the officers cursed. Ms. Adam could not recall these details and said that station is very busy, so her attention was most probably on the turnstiles and not what occurred to the right or left of her.

In the booth, there are windows looking out onto the MTA card vending machines. The subway station is loud, so if the group was close to the microphone, [REDACTED] would be able to hear some details of nearby conversation but not otherwise.

[REDACTED] was provided with the following additional details: [REDACTED] was handcuffed while the female officer stepped away to use her phone to conduct a warrant check on [REDACTED]. After this was completed, he was released. [REDACTED] wanted the names and badge numbers of the officers so he approached the booth attendant and requested paper on which to write. [REDACTED] had a brief interaction with the booth attendant, who asked what the situation was about and [REDACTED] said, "Never mind." [REDACTED] was shown a photocopy of the bill wrapper that was provided to [REDACTED] and had the officers' names and badge numbers written on it. [REDACTED] could not recall this. She mentioned that at this time, some people come inside the booth to take lunch, pick up paperwork for another station, or signing in or out, so it was possible that it was a different MTA employee. As [REDACTED] is an extra, meaning she goes to a different station every day, she would not know anyone who had come inside the booth. [REDACTED] said at this time, there was most likely more than one person inside the booth.