# CCRB INVESTIGATIVE RECOMMENDATION

| Investigator: | Team: | CCRB Case #: | ☑ Force ☑ Discourt. ☐ U.S. |
|---|---|---|---|
| Nicole Stern | Squad #05 | 202304471 | ☑ Abuse ☑ O.L. ☐ Injury |

| Incident Date(s) | Location of Incident: | 18 Mo. SOL | Precinct: |
|---|---|---|---|
| Sunday, 05/21/2023 8:30 AM | Broadway and West 143rd Street | 11/21/2024 | 30 |

| Date/Time CV Reported | CV Reported At: | How CV Reported: | Date/Time Received at CCRB |
|---|---|---|---|
| Mon, 05/22/2023 12:00 PM | CCRB | Phone | Mon, 05/22/2023 12:00 PM |

| Complainant/Victim | Type | Home Address |
|---|---|---|
| [redacted] | [redacted] | [redacted] |

| Subject Officer(s) | Shield | TaxID | Command |
|---|---|---|---|
| 1. PO Ernesto Bautista | 28399 | 953671 | 030 PCT |
| 2. PO Yliana Jerez | 15273 | 970153 | 030 PCT |

| Witness Officer(s) | Shield No | Tax No | Cmd Name |
|---|---|---|---|
| 1. SGT Kihwan Shin | 02217 | 955484 | 030 PCT |
| 2. PO Justin Vella | 10719 | 974629 | 030 PCT |
| 3. PO Martin Sierra | 17120 | 958070 | 030 PCT |
| 4. PO Kyle Aiello | 10816 | 968922 | 030 PCT |
| 5. PO Linnette Martedeleon | 13104 | 974310 | 030 PCT |
| 6. PO Johncarlo Garrovillas | 22383 | 970318 | 030 PCT |
| 7. PO Anthony Lall | 30452 | 965250 | 030 PCT |
| 8. PO Malvin Rodriguez | 26773 | 971204 | 030 PCT |
| 9. SGT Md Islam | 02909 | 962496 | PSA 3 |
| 10. PO Diganta Saha | 23914 | 969346 | 030 PCT |
| 11. PO Randy Almonte | 12010 | 968227 | 030 PCT |
| 12. PO Casey Williams | 26535 | 971275 | 030 PCT |
| 13. PO Brian Leya | 07891 | 956843 | PSA 6 |
| 14. PO Bryant Howell | 26183 | 972009 | PSA 6 |
| 15. PO Rajesh Sharma | 17427 | 959228 | 030 PCT |
| 16. PO Abeda Sultana | 02206 | 970881 | 030 PCT |
| 17. PO Md Bhuiyan | 24182 | 968278 | 030 PCT |

| Officer(s) | Allegation | Inv. Div. Recommendation |
|---|---|---|
| A . PO Ernesto Bautista | Abuse: Police Officer Ernesto Bautista stopped § 87(2)(b) [redacted] | A . Within NYPD Guidelines |
| B . PO Yliana Jerez | Abuse: Police Officer Yliana Jerez stopped § 87(2)(b) [redacted] | B . Within NYPD Guidelines |
| C . PO Ernesto Bautista | Abuse: Police Officer Ernesto Bautista threatened § 87(2)(b) [redacted] with the use of force. | C . Within NYPD Guidelines |
| D . PO Ernesto Bautista | Force: Police Officer Ernesto Bautista used physical force against § 87(2)(b) [redacted] | D . Within NYPD Guidelines |
| E . PO Ernesto Bautista | Discourtesy: Police Officer Ernesto Bautista spoke discourteously to § 87(2)(b) [redacted] | E . Substantiated |
| F . PO Ernesto Bautista | Off. Language: Police Officer Ernesto Bautista made remarks to § 87(2)(b) [redacted] based upon the perceived sexual orientation of § 87(2)(b) [redacted] | F . Substantiated |

## Case Summary

On May 22, 2023, § 87(2)(b) filed this complaint by phone with the CCRB.

On May 21, 2023, at approximately 8:30 a.m., in front of 3504 Broadway near West 143rd in Manhattan, PO Ernesto Bautista and PO Yliana Jerez of the 30th Precinct stopped § 87(2)(b) for possession of a stolen motorcycle **(Allegation A-B: Abuse of Authority, within NYPD guidelines)**. PO Bautista threatened to use his Taser on § 87(2)(b) **(Allegation C: Abuse of Authority, within NYPD guidelines)**. PO Bautista allegedly kicked § 87(2)(b) to bring him to the ground **(Allegation D: Force, within NYPD guidelines)**. PO Bautista used profanity toward § 87(2)(b) **(Allegation E: Discourtesy, substantiated)**. PO Bautista also used a homophobic slur toward § 87(2)(b) **(Allegation F: Offensive Language, substantiated)**. The incident did not result in any arrests or summonses.

The investigation obtained BWC footage (BR 01-24, summarized at BR 25-35), private CCTV footage (BR 36), and § 87(2)(b) brief cellphone video (BR 37). All references to video evidence below refer to the time stamp in the video player, and not to any on-screen clock embedded in the footage itself.

This case was initially assigned to Inv. Angel Riddle and was transferred to Inv. Nicole Stern on November 2, 2023.

## Findings and Recommendations

**Allegation (A) Abuse of Authority: Police Officer Ernesto Bautista stopped § 87(2)(b)**
**Allegation (B) Abuse of Authority: Police Officer Yliana Jerez stopped § 87(2)(b)**
**Allegation (C) Abuse of Authority: Police Officer Ernesto Bautista threatened § 87(2)(b) with the use of force.**

§ 87(2)(b) testified that on the morning of the incident he went to the 30th Precinct stationhouse and reported his motorcycle stolen (BR 38). He found the stolen motorcycle later that morning and then called 911 to request officers at the scene. The officers filled out a complaint report and told § 87(2)(b) he could leave with his motorcycle. § 87(2)(b) was walking with the motorcycle when PO Bautista and PO Jerez exited a nearby vehicle, grabbed his arms, and attempted to handcuff him. They did not tell him why they were handcuffing him. § 87(2)(b) protested that he owned the motorcycle and had paperwork to prove it. He did not physically resist being put into handcuffs, but he had the paperwork in his hand and was trying to give it to the officers.

PO Bautista's BWC (BR 03, at 00:43) shows him approaching § 87(2)(b) and using one hand to grab § 87(2)(b) left arm. § 87(2)(b) attempts to move his arm out of PO Bautista's grasp, but PO Jerez comes from behind and grabs his bicep. PO Bautista holds § 87(2)(b) left arm with both hands, one on the hand and one on the wrist. PO Jerez begins to place handcuffs on § 87(2)(b) left hand while § 87(2)(b) uses his right hand to gesticulate before moving it to his rear pants pocket to produce the paperwork. The officers repeatedly command § 87(2)(b) to give them his hands. While trying to show the officers the paperwork, § 87(2)(b) tenses his arms and pulls his right arm to his stomach to prevent PO Bautista from pulling it behind his back. As the officers are struggling to get his arms behind his back, PO Bautista twice says, "You wanna get tased?" It takes almost two minutes and at least three officers to get § 87(2)(b) rear-cuffed.

PO Bautista testified that Sgt. Shin told officers about the stolen motorcycle at the start of their tour, and he provided the license plate number (BR 39). PO Bautista called Sgt. Shin and confirmed the

license plate number after seeing § 87(2)(b) pushing the motorcycle. PO Bautista threatened to use his Taser because § 87(2)(b) was resisting. PO Bautista did not touch his Taser or intend to use it; his goal was to get § 87(2)(b) to comply.

Patrol Guide Procedure 212-11 states, "A stop may be conducted only when a police officer has an individualized reasonable suspicion that the person stopped has committed, is committing, or is about to commit a felony or Penal Law misdemeanor." It also states that a police officer may "detain the person while an expeditious investigation is conducted to determine if there is probable cause to arrest the person" (BR 40).

A Conducted Electrical Weapon (CEW) should only be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present. Active resisting includes physically evasive movements to defeat a member of the service's attempt at control, including bracing, tensing, pushing, or verbally signaling an intention to avoid or prevent being taken into or retained in custody. NYPD Patrol Guide Procedure 221-08 (BR 41).

§ 87(2)(g) it is recommended that **Allegations A-B** be closed **as within NYPD guidelines**.

The BWC showed that § 87(2)(b) exhibited active resistance, to the extent that that it took multiple officers almost two minutes to handcuff him. § 87(2)(g) It is therefore recommended that **Allegation C** be closed as **within NYPD guidelines.**

**Allegation (D) Force: Police Officer Ernesto Bautista used physical force against** § 87(2)(b)

testified that PO Bautista brought him to the ground, once he was already cuffed, by kicking his foot out from beneath him.

The BWC footage shows that § 87(2)(b) remained agitated after officers handcuffed him. PO Garrovillas' BWC footage (BR 08, at 00:55) shows § 87(2)(b) surrounded by at least six officers, with two officers holding him against a storefront. § 87(2)(b) is stepping side to side and straining against the two officers while yelling at PO Bautista. PO Islam's BWC footage (BR 10, at 01:01) shows PO Bautista using his foot to move § 87(2)(b) right foot forward. § 87(2)(b) steps back with his right foot, and then PO Bautista grabs § 87(2)(b) leg and pulls it forward. Another officer supports § 87(2)(b) as PO Bautista presses on his thigh until § 87(2)(b) is sitting on the ground.

PO Bautista testified that he wanted to immobilize § 87(2)(b) by having him take a seat, because § 87(2)(b) was still being aggressive by taking steps toward the officers. PO Bautista used one of his legs to guide § 87(2)(b) down the wall and onto the ground.

Force may be used when it is reasonable to ensure the safety of a member of the service or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or to prevent escape from custody. NYPD Patrol Guide Procedure 221-01 (BR 42).

§ 87(2)(g)

§ 87(2)(g) [redacted] it is recommended that **Allegation D** be closed as **within NYPD Guidelines.**

**Allegation (E) Discourtesy: Police Officer Ernesto Bautista spoke discourteously to** § 87(2)(b) [redacted]

**Allegation (F) Offensive Language: Police Officer Ernesto Bautista made remarks to** § 87(2)(b) [redacted] **based upon the perceived sexual orientation of** § 87(2)(b) [redacted]

PO Bautista's BWC footage (BR 03, at 02:39) shows § 87(2)(b) [redacted] handcuffed and explaining the situation to the additional officers that have arrived. He tells the officers that PO Bautista started being aggressive with him for no reason and PO Bautista says, "So why the fuck are you resisting?" At 04:31, once § 87(2)(b) [redacted] is sitting on the ground, § 87(2)(b) [redacted] repeats his statement that officers were aggressive with him. PO Bautista tells § 87(2)(b) [redacted] "Shut up with that shit," and proceeds to tell § 87(2)(b) [redacted] to "shut up" about ten times. At 06:22, § 87(2)(b) [redacted] says he is going to report PO Bautista, and PO Bautista responds, "I don't give a fuck." At 06:38, in the presence of civilian bystanders, PO Bautista states, "Get the fuck out of here with that bullshit. Fuck out of here with that shit."

PO Sierra's BWC footage (BR 19, at 04:24) shows § 87(2)(b) [redacted] sitting on the ground handcuffed, surrounded by officers, and arguing with PO Bautista. § 87(2)(b) [redacted] calls PO Bautista a "maricón," an offensive Spanish term for gay men. PO Bautista responds, "No, el maricón eres tú," which translates to "No, you're a maricón."

PO Bautista offered different explanations for each of his uses of profanity. He heard § 87(2)(b) [redacted] complain that the officers had treated him aggressively because he was Black, and he told § 87(2)(b) [redacted] to "shut up with that shit" specifically in reference to that claim. PO Bautista said, "Why the fuck are you resisting?" because § 87(2)(b) [redacted] was claiming he was the motorcycle's owner, but he was not acting like an innocent bystander because he was resisting the officers. As PO Bautista explained in his interview, "99% of the time, the only people that resist are the perpetrators." PO Bautista used the word "fuck" in that question because he was trying to give an order, attempting to get § 87(2)(b) [redacted] to stop resisting, and was caught up in the heat of the moment. PO Bautista replied, "I don't give a fuck," to § 87(2)(b) [redacted] threat to report him because he knew that he did his job properly and would be okay. PO Bautista explained that he called § 87(2)(b) [redacted] a "maricón" because he was upset in the heat of the moment and that he "felt betrayed" because he was doing his job and trying to help § 87(2)(b) [redacted] get the bike back.

Overall, PO Bautista maintained that this language was not language that he typically uses with civilians, but that it slipped out in frustration and the heat of the moment. However, he also added that he sometimes repeats the language civilians use with him in order to bring himself down "to their level."

NYPD officers are prohibited from "using discourteous or disrespectful remarks regarding another person's age, ethnicity, race, religion, gender, gender identity/expression, sexual orientation, or disability." NYPD Administrative Guide Procedure 304-06 (BR 43). Additionally, the NYPD's mission statement details that officers pledge to maintain a higher standard of integrity than is generally expected of others, and to render services with courtesy and civility. NYPD Patrol Guide (BR 44).

§ 87(2)(g) [redacted]

§ 87(2)(g) [redacted] It is therefore recommended that **Allegations E-F** be closed as **substantiated**.

## Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [redacted] has been a party (BR 45).
- PO Yliana has been a member of the NYPD for three years and has been a subject in one CCRB complaint and two allegations, neither of which was substantiated. § 87(2)(g) [redacted]
- PO Bautista has been a member of the NYPD for ten years and has been a subject in ten CCRB complaints and 30 allegations, of which 14 were substantiated:
  - 201506161 involved substantiated allegations of chokehold and physical force against PO Bautista. The Board recommended Charges. PO Bautista was found not guilty at trial and thus the NYPD did not impose discipline.
  - 201701649 involved substantiated allegations of stop, risk, and search (of person, against PO Bautista. The Board recommended Command Level Instructions and the NYPD imposed Formalized Training.
  - 201809463 involved substantiated allegations of discourtesy against PO Bautista. The Board recommended Command Discipline A and the NYPD imposed Command Discipline A. The discourtesy allegation involved PO Bautista saying, "Fucking ass pussy playing games."
  - 201901679 involved substantiated allegations of physical force, verbal sexual harassment, discourteous remarks, actions, and gestures, and offensive language involving ethnicity, race, and gender against PO Bautista. The Board recommended Charges, PO Bautista was found guilty, and the NYPD imposed a penalty of 11 vacation days. The discourtesy and offensive language allegations involved PO Bautista using various iterations of the word "fuck," calling a civilian a "bitch", telling a civilian, "Suck my dick," and, "Suck my balls, dirty" (in Spanish), and saying, "You a spick too nigga. You are a spick."
  - PO Bautista has two cases pending investigation (202309529 and 202303212).

## Mediation, Civil, and Criminal Histories

- This complaint was not suitable for mediation.
- As of October 30, 2023, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this incident (BR 46).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)] [redacted]

## RPBP History

- This complaint did not contain any allegations of Racial Profiling/Bias-Based Policing.

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Squad No.: 5

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|---|---|---|---|
| Investigator: | *Nicole Stern* | Inv. Nicole Stern | November 28, 2023 |
| | Signature | Print Title & Name | Date |
| Squad Leader: | *Daniel Giansante* | IM Daniel Giansante | November 28, 2023 |

Squad No.: 5

| Signature | Print Title & Name | Date |
|---|---|---|

Reviewer:

| Signature | Print Title & Name | Date |
|---|---|---|