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ARVA RICE  
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March 21, 2023

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

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

**Dear Commissioner Sewell:**

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

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

In the second quarter of 2022, seven (7) CCRB verdicts for trials conducted before an ADCT were finalized. The APU treats each officer against whom an allegation is substantiated as a separate case.<sup>1</sup> Of the seven (7) cases, four (4) resulted in guilty verdicts that were upheld by the Police Commissioner, and one (1) resulted in a guilty verdict reversed by the Police Commissioner. The guilty verdicts are discussed further below:

**Case One, Guilty Verdict 201905010 DT3 Daniel Pelan**

In June 2019 at approximately 7:00 a.m. the Victim, a Black female in her late forties was at home when Detective Daniel Pelan [the Respondent] arrived at her home accompanied by two other detectives. He knocked on the front door and the Victim’s 13-year-old nephew opened the door as she stood behind him. Two of the Victim’s children and a family friend were in the Victim’s home. Det. Pelan told the Victim that he had a parole warrant for one of her older sons.

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

The Victim told Det. Pelan that the son did not live at the home and that the last address she had for him was for a shelter. Det. Pelan responded that her son was no longer at the shelter. The Victim stated that she did not know where her son was. Det. Pelan then demanded to enter the Victim's home and search it. The Victim did not consent and Det. Pelan pushed his way into the home and searched it along with the two other detectives.

On April 27, 2020, the Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against Det. Pelan for entering<sup>2</sup> and searching<sup>3</sup> the Victim's home. The APU filed and served Charges and Specifications with a penalty recommendation of twenty (20) days' vacation forfeiture. On November 15, 2021, a trial was held before ADCT Josh Kleiman. Before the trial commenced, Det. Pelan pled guilty to both counts. On December 17, 2021, ADCT Kleiman issued his decision solely regarding recommending a penalty. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Kleiman stated that "it is uncontested that...Respondent arrived at the home of complainant...to execute an arrest warrant for an absconded parolee...based on insufficient information." ADCT Kleiman found that the "Respondent's testimony to be largely self-serving and lacking in key details...whether Respondent was in the house for five minutes, or 15 to 20 minutes, neither is alone evidence of whether a prolonged search occurred...CCRB has failed to prove by a preponderance of the evidence that a prolonged search occurred warranting an enhanced penalty under the Discipline Guidelines." ADCT Kleiman also found that "while Respondent has exceptional evaluation...he also has relevant prior discipline" and "further finds it to be objectively unreasonable for any member of a warrant squad assigned to warrant enforcement to be unfamiliar with well-established legal principles governing the execution of warrants." ADCT Kleiman found "no compelling reason for the application of either a mitigated or aggravated penalty."

ADCT Kleiman recommended a penalty of ten (10) days' vacation forfeiture for Det. Pelan, which is the mitigated penalty in the Disciplinary Matrix. On April 21, 2022, the Police Commissioner approved ADCT Kleiman's recommendations and imposed the recommended penalty.

### **Case Two, Guilty Verdict** 201909357 LT Thomas Turner

In October 2019 at approximately 10:00 p.m. in Brooklyn, the Victim, a Black male in his late forties was under arrest for punching a male individual who owed him money for sex. The Victim was placed in a holding cell at the precinct stationhouse. Lieutenant Thomas Turner [the Respondent] told the Victim that he would try to have a desk appearance ticket prepared. Around 1:00 a.m. the officers stopped taking people in the holding cells to the bathroom. The Victim needed to use the bathroom and kept waving his hand above his head at the cameras in front of the holding cells. No officers responded to his hand waves. At approximately 3:45 a.m., the Victim urinated in the immediate area surrounding the holding cell. Lt. Turner was called down to the Victim's holding cell. Lt. Turner took the Victim's coat which had been hanging on

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<sup>2</sup> Per Disciplinary matrix – an improper/wrongful search/entry while remaining on the premises has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of 20 vacation days' forfeiture.

<sup>3</sup> Per Disciplinary matrix – an improper/wrongful search/entry while remaining on the premises has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of 20 vacation days' forfeiture.

a clothing hook across from the holding cell and dropped it on the puddle of urine. He then used his foot to move the Victim's coat to mop up the urine. Lt. Turner spoke to the Victim as he was cleaning up the urine and called him a "faggot."

On December 22, 2020, the Board substantiated two (2) total allegations: one (1) Discourtesy allegation against Lt. Turner for acting discourteously towards the Victim<sup>4</sup>, and one (1) Offensive Language allegation for making remarks to the Victim based upon his perceived sexual orientation<sup>5</sup>. The APU filed and served Charges and Specifications with a penalty recommendation of ten (10) days' vacation forfeiture. On December 16, 2021, a trial was held before ADCT Josh Kleiman. On January 24, 2022, ADCT Kleiman issued his decision, finding Lt. Turner guilty of the Discourtesy allegation and not guilty of the Offensive Language allegation. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Kleiman found that the "Respondent does not dispute that he used [The Victim]'s jacket to mop up urine, he disputed that it was discourteous to do so." ADCT Kleiman found that "these actions were *per se* discourteous." ADCT Kleiman found that "there is insufficient evidence that Respondent used the word 'faggot'." ADCT Kleiman found that "the hearsay evidence is the only evidence of the charge and no other witness reliably corroborated that Respondent used the word 'faggot', despite others being present." Finally, ADCT Kleiman found that "Respondent's degrading treatment of [Victim] was unacceptable and violative of one of the core tenets of the NYPD – to treat members of the public with courtesy, professionalism, and respect."

ADCT Kleiman recommended a penalty of fifteen (15) days' vacation forfeiture for Lt. Turner, which is above the aggravated penalty in the Disciplinary Matrix. On May 13, 2022, the Police Commissioner approved ADCT Kleiman's recommendations and imposed the recommended penalty.

### **Cases Three and Four, Guilty Verdict** 201806550 PO Mariano Bulfamante, PO Benito Cruz

In July 2018, in the Bronx, the Victim, a Black male in his late twenties was attending a community day celebration at a housing complex. At approximately 1:00 a.m. the next day, the Victim, and a group of approximately twenty (20) individuals went to a nearby deli to purchase sandwiches. The Victim waited outside the deli with most of the group while the rest went into the deli. As they stood outside, a group of officers approached the group and said that they had received a call that one of them had a gun. The officers searched an individual in the group and did not find a weapon. The officers told the group to disperse, and the Victim told them that they were waiting on their companions who were still inside the deli. One of the officers grabbed the Victim's wrist and the Victim pulled his arm away. The Victim then turned and ran away. The incident was captured on BWC. The Victim was chased by Police Officer Mariano Bulfamante [Respondent 1] who yelled "you fucking pussy" twice at the Victim. Police Officer John Manzo [Respondent 2]<sup>6</sup> then used a Taser on the Victim which caused him to lose consciousness and fall to the ground. Officers began to handcuff the Victim when Police Officer Benito Cruz [Respondent 3] grabbed the Victim's head as he lay groaning on the ground bleeding from his

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<sup>4</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

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

<sup>6</sup> PO Manzo's case outcome is discussed under the "Not Guilty Verdicts" section

head. The Taser prongs were protruding from his back. PO Cruz pushed the Victim's head into the concrete and said, "you talking shit right you pussy ass nigger."

On December 10, 2019, the Board substantiated six (6) total allegations: one (1) Discourtesy allegation against PO Bulfamante for speaking discourteously towards the Victim<sup>7</sup>, and one (1) Offensive Language allegation for making remarks to the Victim based upon his gender<sup>8</sup>; one (1) Use of Force allegation against PO Cruz for using physical force against the Victim<sup>9</sup>, one (1) Discourtesy allegation for speaking discourteously to the Victim<sup>10</sup> and two (2) Offensive Language allegations for making remarks to the Victim based upon gender<sup>11</sup> and race<sup>12</sup>. The APU filed and served Charges and Specifications with penalty recommendations of twenty-five (25) days' vacation forfeiture for PO Bulfamante and termination for PO Cruz. On October 27, 2021, a trial was held before ADCT Josh Kleiman. On December 9, 2021, ADCT Kleiman issued his decision, finding PO Bulfamante guilty on all (2) of his allegations, and finding PO Cruz guilty on all four (4) of his allegations. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Kleiman found that "Respondent Bulfamante admitted to uttering the words 'you fucking pussy'...when spoken in a disparaging tone by an on-duty police officer to a member of the public in the midst of an enforcement action, is discourteous." ADCT Kleiman found that "it is clear he [PO Bulfamante] employed the words in a derogatory manner. Therefore, it is likely he sought to evoke the meaning of the predominant definition set forth in the OED [Oxford English Dictionary] when the word 'pussy' is used to describe a man."

ADCT Kleiman found that "Respondent Cruz wrongfully used force when he placed his hand on [Victim]'s head and applied pressure without police necessity. Respondent Cruz's Body-Worn Camera footage depicts this use of force as coinciding with Respondent Cruz's vitriolic statement 'yeah, yeah, you talking shit right now you pussy ass nigger.'" ADCT Kleiman found that "[Victim]'s statement that he was unconscious (or immobile) at this time is corroborated by the Body-Worn Camera footage", and that "there is no evidence to support his [PO Cruz] narrative that he placed his hand on [Victim]'s head in order to assist his fellow Members of the Service handcuff an arrestee who, as he stated, was resisting arrest." ADCT Kleiman found that "Respondent Cruz's use of the phrase 'yeah, yeah, you talking shit right now you pussy ass nigger, while on-duty and directed in a derogatory manner at the target of an enforcement action, is undoubtedly discourteous. Respondent Cruz does not deny speaking these words." ADCT Kleiman found that "while Respondent testified that he only meant to connote that [Victim] was a coward by using the word 'pussy', the Tribunal cannot ignore that the word 'pussy' is regarded as more offensive than the word 'coward' because of its disparaging gender based underpinnings." Finally, ADCT Kleiman found that "it is undisputed that Respondent Cruz

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<sup>7</sup> Per Disciplinary matrix – discourtesy has a mitigated penalty of 1 vacation day forfeiture, a presumptive penalty of 5 vacation days' forfeiture, and an aggravated penalty of 10 vacation days' forfeiture.

<sup>8</sup> Per Disciplinary matrix – offensive language has a mitigated penalty of 10 days' vacation forfeiture, a presumptive penalty of 20 days' vacation forfeiture, and an aggravated penalty of termination.

<sup>9</sup> Per Disciplinary matrix – non-deadly force against another that results in no injury has a mitigated penalty of 5 vacation days' forfeiture, a presumptive penalty of 10 vacation days' forfeiture, and an aggravated penalty of termination.

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

<sup>11</sup> Per Disciplinary matrix – offensive language has a mitigated penalty of 10 days' vacation forfeiture, a presumptive penalty of 20 days' vacation forfeiture, and an aggravated penalty of termination.

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

used the word ‘nigger’...Respondent Cruz provided no testimony as to his reasons for using the word...Respondent’s use of the word ‘nigger’, spoken in a derogatory manner during an enforcement action involving an individual who is African-American, is, on its face, offensive and based on race...the Tribunal takes judicial notice of the history and etymology of the word and the generally accepted understanding that it is to be strictly avoided in professional contexts because of its overtly racist history and meaning.”

ADCT Kleiman recommended a penalty of twenty-five (25) days’ vacation forfeiture for PO Bulfamante, which is the presumptive penalty in the Disciplinary Matrix. ADCT Kleiman recommended a penalty of termination for PO Cruz which is in the aggravated penalty in the Disciplinary Matrix. On April 7, 2022, the Police Commissioner approved ADCT Kleiman’s recommendations but reduced the penalty for PO Cruz from termination to thirty (30) suspension days, forty-five (45) vacation days forfeiture, and one (1) year dismissal probation stating that “Police Cruz’s statement was made in a moment in time likely without forethought and that he allowed his judgement to fail him as there is no evidence of past racial or gender animus on the part of Police Officer Cruz.”

### **Case Five, Guilty Verdict (Verdict Reversed)** 201807213 DT3 Thomas Napolitano

In August 2018, at approximately 7:20 p.m. in Manhattan, the Victim, a Black female in her mid-fifties was sleeping in her home. Her son had stayed overnight without her knowledge. The Victim received a text message from her neighbor which said that officers were at her front door. The Victim stated that the officers banged on the door for approximately 20 minutes and that when she went to open the door, she noticed that the door’s peephole was missing. Detective Thomas Napolitano [the Respondent], through the door asked the Victim if her son was in the apartment. The Victim opened the door slightly and Det. Napolitano stuck his room in the doorway and another officer held the door open to prevent the Victim from closing it. The Victim asked the officers for identification and for a warrant. They responded that they would show it to her. She asked them to give her a second and the officers entered and searched her home and arrested her son. The Victim asked again for the warrant and Det. Napolitano told her “I should lock you up too for harboring a fugitive.”

On January 23, 2020, the Board substantiated four (4) total allegations: four (4) Abuse of Authority allegations against Det. Napolitano for damaging the Victim’s property<sup>13</sup>, entering the Victim’s home<sup>14</sup>, searching the Victim’s home<sup>15</sup>, and threatening to arrest the Victim<sup>16</sup>. The APU filed and served Charges and Specifications with a penalty recommendation of fifty (50) days’ vacation forfeiture. On February 8, 2022, a trial was held before ADCT Josh Kleiman. On March

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<sup>13</sup> Per Disciplinary matrix – enforcement action involving Abuse of Discretion or Authority has a mitigated penalty of 10 vacation days’ forfeiture, presumptive penalty of 20 vacation days’ forfeiture, and an aggravated penalty of termination.

<sup>14</sup> Per Disciplinary matrix – an improper/wrongful search/entry while remaining on the premises has a mitigated penalty of 5 vacation days’ forfeiture, a presumptive penalty of 10 vacation days’ forfeiture, and an aggravated penalty of 20 vacation days’ forfeiture.

<sup>15</sup> Per Disciplinary matrix – an improper/wrongful search/entry while remaining on the premises has a mitigated penalty of 5 vacation days’ forfeiture, a presumptive penalty of 10 vacation days’ forfeiture, and an aggravated penalty of 20 vacation days’ forfeiture.

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

16, 2022, ADCT Kleiman issued his decision, finding Det. Napolitano guilty of the Abuse of Authority allegations – the entry and search of the Victim’s home and not guilty on the two other Abuse of Authority allegations – damaging the Victim’s property and threatening to arrest the Victim. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Kleiman found that “CCRB submitted a photograph of the constituent parts of the peephole on the floor of [Victim]’s residence, no evidence was submitted that they were damaged... there is no credible evidence that [Victim] suffered any costs associated with the removal and reinstallation of the peephole.” ADCT Kleiman found that “while Respondent may have believed that [Victim]’s son lived with his mother, based on Respondent’s unrefuted testimony that this is what he was told by the [Victim’s son]’s girlfriend, grandmother, and others, Respondent lacked a reasonable basis upon which to form an opinion as to whether [Victim]’s son was present in the home at the time of entry... Respondent’s testimony at trial that he would never obtain a search warrant to search for the subject of an arrest warrant contravenes the law applicable to the enforcement of arrest warrants and Department policy.” Finally, ADCT Kleiman found that “Respondent explained that as he was moving down [Victim]’s hallway to her bedroom, she positioned herself in front of him, put her hand on his chest, and yelled... Respondent warned her that if she continued to block him she could be arrested for obstructing governmental administration. [Victim] did not mention this hallway confrontation during her testimony... accepting Respondent’s unrefuted version of events, the arrest warning was issued by Respondent only after [Victim] attempted to physically stop him... Respondent’s words and actions, which did not include a physical response, were more likely directed toward de-escalation than intimidation.”

ADCT Kleiman recommended a penalty of ten (10) days’ vacation forfeiture for Det. Napolitano which is the mitigated penalty in the Disciplinary Matrix. On June 3, 2022, the Police Commissioner disapproved ADCT Kleiman’s recommendations and stated that “a finding of not guilty is warranted to all four (4) specifications.” The Police Commissioner stated that “the only remaining prong which was required in order to justify Detective Napolitano’s entry into the residence was a reasonable belief that the individual was there at the time that the entry and search was being undertaken... the reasonable belief... was shown to be present by an abundance of evidence testified to by Detective Napolitano at trial.” The Police Commissioner stated that “while these factors do not establish that the individual was in-fact present, they do establish that any similarly situated police officer would reasonably believe that the individual was present... because Detective Napolitano relied on and appropriately followed his training with regard to establishing both prongs of the applicable two-prong test in order to make the entry and search in this matter, his actions in entering and searching the location do not constitute misconduct.”

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

In the second quarter of 2022, seven (7) CCRB verdicts for trials conducted before an ADCT were finalized. The APU treats each officer against whom an allegation is substantiated as a separate case.<sup>17</sup> Of the seven (7) cases, one (1) resulted in a not guilty verdict upheld by the

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<sup>17</sup> The APU treats each officer as a separate “case.” As such, all APU data discussed in this report uses the same terminology. While there may be trials or incidents that involve multiple officers, the word “case” should be interpreted as “case against a single officer.”

Police Commissioner and one (1) resulted in all charges dismissed upheld by the Police Commissioner. The not guilty verdict and dismissed charges are discussed further below:

**Case One, Not Guilty Verdict** 201806550 PO John Manzo

This case is from the same incident described in Cases Three and Four (from the Guilty Verdicts section), for PO John Manzo [Respondent 2]. In July 2018, in the Bronx, the Victim, a Black male in his late twenties was attending a community day celebration at a housing complex. At approximately 1:00 a.m. the next day, the Victim, and a group of approximately twenty (20) individuals went to a nearby deli to purchase sandwiches. The Victim waited outside the deli with most of the group while the rest went into the deli. As they stood outside, a group of officers approached the group and said that they had received a call that one of them had a gun. The officers searched an individual in the group and did not find a weapon. The officers told the group to disperse, and the Victim told them that they were waiting on their companions who were still inside the deli. One of the officers grabbed the Victim's wrist and the Victim pulled his arm away. The Victim then turned and ran away. The Victim was chased by officers. Police Officer John Manzo [Respondent 2] then used a Taser on the Victim which caused him to lose consciousness and fall to the ground. The incident was captured on BWC.

On December 10, 2019, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against PO Manzo for using a Taser on the Victim.<sup>18</sup> The APU filed and served Charges and Specifications with a penalty recommendation of termination for PO Manzo. On October 27, 2021, a trial was held before ADCT Josh Kleiman. On December 9, 2021, ADCT Kleiman issued his decision, finding PO Manzo not guilty on his sole allegation. The decision was rendered after the implementation of the Disciplinary Matrix.

ADCT Kleiman found that "Respondent's Manzo's testimony that he made an observation that, due in part to [Victim]'s behavior, a group of combative civilians had disobeyed orders to disperse and remained at the location. After a decision was made to arrest [Victim], the Tribunal further credits Respondent Manzo's testimony that he observed [Victim] push and slap away the hands of an officer attempting to arrest him, causing the officer to stumble back. [Victim] then ran into an active roadway." ADCT Kleiman found that "the use of a Taser as a use of force more likely to safely resolve the danger posed by [Victim]'s actions than chasing [Victim], on foot, through traffic, and using physical force to break his flight, all while his fellow officers continued to face possible dangers posed by the disorderly group that remained."

ADCT Kleiman found PO Manzo not guilty on his sole allegation. On April 7, 2022, the Police Commissioner approved ADCT Kleiman's recommendation and approved the not guilty verdict.

**Case Two, Dismissal Motion Granted** 201507115 DT3 Corey Gresko

In July 2015, at approximately 6:00 a.m. in Manhattan, the Victim, a Hispanic female in her late twenties was at home when she heard a knock on her apartment's front foot. In her home were her two (2) children, her mother, and her fiancé. The Victim opened the door and saw three

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<sup>18</sup> Per Disciplinary matrix – less lethal force/device against another that results in physical injury has a mitigated penalty of 15 suspension days, a presumptive penalty of 15 suspension days + 15 vacation days' forfeiture, and an aggravated penalty of termination

officers, one of whom was Detective Corey Gresko [the Respondent]. The Victim told the officers that they could not enter her home without a warrant and in response Det. Gresko stuck his foot in the doorway. He entered the apartment along with the two other officers. They searched the apartment and arrested the Victim’s fiancé. After the fiancé was removed from the apartment, Det. Gresko searched the inside of the apartment for another ten (10) minutes before leaving.

On October 4, 2018, the Board substantiated two (2) total allegations: two (2) Abuse of Authority allegations against Det. Gresko for entering<sup>19</sup> and searching<sup>20</sup> the Victim’s home. The APU filed and served Charges and Specifications and Det. Gresko filed a motion to dismiss all the charges. A Motion to Dismiss hearing was held on January 18, 2022, before ADCT Josh Kleiman. On February 11, 2022, ADCT Kleiman granted the motion to dismiss all charges against Det. Gresko. On April 4, 2022, the Police Commissioner upheld dismissal of charges.

### III. Treatment of APU Pleas

In the second quarter of 2022, the Department finalized three (3) pleas. The APU makes penalty recommendations for all cases in which Charges and Specifications are substantiated by the Board. The APU uses several factors to determine these recommendations, including, but not limited to a member of service’s (“MOS”) length of service, MOS rank, MOS disciplinary history, the facts of the instant case, the strength of the instant case, the vulnerability of the victim, the extent – if any – of injury to the number of Complainants, and the precedent cases of analogous charges. The APU penalty recommendations tend to be consistent for MOS who are similarly situated. The APU also uses the NYPD Disciplinary Matrix to take into account the above listed factors and make penalty recommendations based upon the delineated penalty categories in the NYPD Disciplinary Matrix.

<b>Pleas Closed</b>				
Period	Plea Approved	Pleas Closed At Discipline Level Below Agency Recommendations		
		Plea Penalty Reduced	Plea Set Aside, Discipline Imposed	Plea Set Aside, No Discipline Imposed
2 <sup>nd</sup> Quarter 2019	4	0	0	0
3 <sup>rd</sup> Quarter 2019	2	1	0	0
4 <sup>th</sup> Quarter 2019	1	0	0	0
1 <sup>st</sup> Quarter 2020	1	1	0	0
2 <sup>nd</sup> Quarter 2020	2	2	0	0
3 <sup>rd</sup> Quarter 2020	2	2	0	0
4 <sup>th</sup> Quarter 2020	0	0	0	0

<sup>19</sup> Per Disciplinary matrix – an improper/wrongful search/entry while remaining on the premises has a mitigated penalty of 5 vacation days’ forfeiture, a presumptive penalty of 10 vacation days’ forfeiture, and an aggravated penalty of 20 vacation days’ forfeiture.

<sup>20</sup> Per Disciplinary matrix – an improper/wrongful search/entry while remaining on the premises has a mitigated penalty of 5 vacation days’ forfeiture, a presumptive penalty of 10 vacation days’ forfeiture, and an aggravated penalty of 20 vacation days’ forfeiture.

1 <sup>st</sup> Quarter 2021	0	0	0	0
2 <sup>nd</sup> Quarter 2021	0	0	0	0
3 <sup>rd</sup> Quarter 2021	1	0	0	0
4 <sup>th</sup> Quarter 2021	0	0	0	0
1 <sup>st</sup> Quarter 2022	1	0	0	0
<b>2<sup>nd</sup> Quarter 2022</b>	<b>4</b>	<b>0</b>	<b>0</b>	<b>0</b>

As seen in the chart above, in the second quarter of 2022 there were four (4) cases in which a guilty plea was agreed to by the CCRB.

**Case One, Penalty Unmodified** 201904944 SGT Ayotunde Adeniyi

In May 2019, at approximately 6:40 p.m. in the Bronx, the Victim, a Black male in his mid-fifties was walking to his daughter’s home when he passed a marked police vehicle. He got to his daughter’s home and discovered that she was not home. He started walking home and passed the same police vehicle. The Victim stated that he muttered to himself “damn, where the fuck is she at.” An officer in the marked police vehicle heard him and asked him “what the fuck did you just say?” and the Victim responded, “I don’t fuck with police” and continued walking. He stated that Sergeant Ayotunde Adeniyi [the Respondent] charged at him from behind and directed him to “get against the wall.” The Victim asked why and put his hands up in front of his face. Sgt. Adeniyi grabbed the Victim by his shirt and pushed him towards a wall, hitting him twice in the left eye with his right fist.

On December 12, 2019, the Board substantiated two (2) total allegations: one (1) Abuse of Authority allegation against Sgt. Adeniyi for stopping the Victim and one (1) Use of Force allegation for using physical force against the Victim. On December 2, 2021, before ADCT Jeff Adler, Sgt. Adeniyi pleaded guilty to both allegations and agreed to accept twenty-five (25) vacation days forfeiture and ten (10) suspension days. On May 13, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

**Case Two, Penalty Unmodified** 201908431 SGT Christopher Crain

In July 2019, at approximately 9:50 p.m. in the Bronx, the Victim, a Black male in his early thirties was arrested after he had been chased by officers. The Victim after his arrest was taken to the precinct house. On BWC, upon his arrival to the stationhouse, officers decided to strip-search the Victim. No movements made by the Victim indicated that he was hiding contraband on his person. Sergeant Christopher Crain [the Respondent] authorized the strip-search of the Victim.

On January 20, 2021, the Board substantiated one (1) total allegation: one (1) Abuse of Authority allegation against Sgt. Crain for authorizing the strip-search of the Victim. On April 21, 2022, in front of ADCT Paul Gamble, Sgt. Crain pleaded guilty to the sole allegation and agreed to accept five (5) vacation days forfeiture. On June 21, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

**Case Three, Penalty Unmodified** 201908495 PO Stephanie Davis

In September 2019, at approximately 12:15 p.m. in the Bronx, the Victim, a Black male in his late twenties was walking down the hallway in his building when he was approached by Police Officer Stephanie Davis [the Respondent] and another officer. The incident was captured on BWC. The officers asked the Victim where he was coming from and told the Victim that they were responding to a domestic incident and asked him for identification so they could determine if he was involved. The Victim refused to provide identification and began to record the officers using his cellphone. He was then placed in handcuffs by PO Davis. PO Davis then took the Victim's phone out of his hand and ended the recording. PO Davis proceeded to frisk and search the Victim and retrieved a wallet from one of his pockets. The Victim remained in handcuffs until PO Davis's supervisor arrived at the scene and ordered the Victim released. The Victim went to the PO Davis to retrieve his wallet and she dropped it on the floor. The Victim was not arrested or issued a summons as a result of the incident.

On June 22, 2021, the Board substantiated seven (7) total allegations: six (6) Abuse of Authority allegations against PO Davis for questioning the Victim, stopping the Victim, threatening to arrest the Victim, interfering with the Victim's use of a recording device, frisking the Victim, and searching the Victim; and (1) Discourteous allegation for acting discourteously towards the Victim. On March 31, 2022, in front of ADCT Paul Gamble, PO Davis pleaded guilty to the seven (7) allegations and agreed to accept eighteen (18) vacation days forfeiture. On June 24, 2022, the Police Commissioner accepted the negotiated plea and did not modify the negotiated penalty.

**IV. Cases Retained by Police Commissioner**

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

Provision Two of the MOU states:

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

**Case One, Retained With Discipline** 202004183 PO Nicholas Rios

In June 2020, at approximately 8:00 p.m. in the Bronx, Witness 1, a Hispanic male in his early thirties, and Witness 2, a female in her early thirties were present at a protest, Witness 1 saw Police Officer Nicholas Rios [the Respondent] along with several other officers standing in front of a group of protestors. The incident was captured on cellphone video. It showed PO Rios swinging his baton at multiple civilians, striking several. None of the civilians struck by PO Rios had thrown objects at the officers. Witness 2 noted that PO Rios had his shield number covered by a black mourning band. This was captured in a photograph of PO Rios.

On December 6, 2021, the Board substantiated two (2) total allegations: one (1) Use of Force allegation against PO Rios for striking individuals with a baton, and one (1) Abuse of Authority allegation for refusing to provide his shield number to Witness 2.

On April 27, 2022, the Police Commissioner retained the case stating that the Respondent's conduct "does not rise to the level where issuance of Charges and Specifications is appropriate." She stated that "the officer's Body-Worn Cameras captured the protesters pelting uniformed members of service with various projectiles, including water bottles. In the face of this aggression, Police Officer Rios exercised force that the Police Commissioner has determined to be above the minimum amount of force necessary to create a zone of safety for himself and his fellow uniformed member of service. Such force warrants an imposition of departmental discipline."

The Police Commissioner also stated that "obscuring a shield number under any circumstance is inappropriate and such conduct similarly warrants an imposition of appropriate discipline." The Police Commissioner issued a Command Discipline B with a penalty of ten (10) vacation days forfeiture for PO Rios for the striking civilians and for obstructing his shield number.

**Case Two, Retained With Discipline** 202003797 PO Christian Chiqui

In May 2020, at approximately 5:00 p.m. in Brooklyn, the Victim, a Hispanic female in her early thirties along with two other individuals attended a protest that was marching through the borough. The Victim stated that they were chanting and moving peacefully through the street. Officers told protestors to move out of the street and onto the sidewalk. Police Officer Christian Chiqui [the Respondent] told the Victim to move back or get on the sidewalk. The sidewalk was blocked by a construction barrier. PO Chiqui used his baton to push the Victim in her chest and shoulders causing her to fall backwards over the barricade. The Victim noted that PO Chiqui's shield number was covered by a black mourning band. She asked him why it was covered, and he did not answer her.

On September 19, 2021, the Board substantiated two (2) total allegations: one (1) Use of Force allegation against PO Chiqui for using physical force against the Victim, and one (1) Abuse of Authority allegation for refusing to provide his shield number to the Victim.

On April 26, 2022, the Police Commissioner retained the case stating that she "does not agree that Police Officer Chiqui utilized his baton to purposefully push the complainant over the barricade. Based on video evidence, it appeared that the complainant was crossing over the barriers while Police Officer Chiqui continued to move towards the complainant. The result of these two actions appears to have caused the complainant, who had to step over the barrier, lose her balance and ultimately to fall over the barricade."

The Police Commissioner also stated that she “agrees with the CCRB that Police Officer Chiqui’s shield number was obscured by the mourning band...[he] was made aware that his shield was obscured. Thereafter, Police Officer Chiqui should have taken steps to ensure that his shield number was visible once a safe opportunity to do so presented itself.” The Police Commissioner issued a Command Discipline A with a penalty of three (3) vacation days forfeiture for PO Chiqui’s obstructed shield.

**Case Three, Retained With Discipline** 201907669 PO Latrice McFarland

In August 2019, at approximately 11:50 a.m. in Queens, the Victim, a Hispanic male in his late thirties was identified by officers as an emotionally disturbed person when he was arrested. The Victim was rear cuffed and seated on the floor while the responding officers maintained a zone of safety around him as they waited for an ambulance to take him to the hospital. BWC captured Police Officer Latrice McFarland [the Respondent] move closer to the Victim who kicked out his foot towards her. PO McFarland kicked him in the area around his hip. When interviewed by the CCRB a few months after the incident, PO McFarland stated that she had kicked the Victim to prevent him from kicking her again and that she had kicked him near his foot. She had told IAB a few months earlier that she had kicked the Victim in retaliation. The difference for the reasons for the kick was material because it could have impacted the disposition of the allegation.

On August 12, 2021, the Board substantiated two (2) total allegations: one (1) Use of Force allegation against PO McFarland for using physical force against the Victim, and one (1) Untruthful Statement allegation for providing a false official statement to the CCRB. On February 28, 2020, PO McFarland was issued a Command Discipline B with a penalty of two (2) vacation days forfeiture by her Borough level commanders for the Use of Force allegation.

On April 26, 2022, the Police Commissioner retained the case and decided not to pursue any disciplinary action against PO McFarland for the Untruthful Statement allegation stating “that the two statements made by Police Officer McFarland, months apart, do not reflect mutually exclusive version of events. The second statement appear to be an effort to explain why she may have ‘reacted’ by kicking the individual after she was kicked by him, which she had acknowledged doing in her earlier interview with Department investigators, neither statement amounts to misconduct.”

**Case Four, Retained Without Discipline** 202004222 SGT Daniel Nicoletti

In June 2020, at approximately 8:20 p.m. in Manhattan, the Witness, a White female in her mid-twenties observed protestors outside her apartment building. She saw the Victim, a Black male in his mid-twenties being held face down by officers. She watched Sergeant Daniel Nicoletti [the Respondent] walk up to the group of officers, raise his baton, and use it to strike the Victim on his calves. The Witness recorded the incident on her cellphone and the incident was also captured on BWC. At his interview with the CCRB, Sgt. Nicoletti stated that he did not recall striking anyone with his baton. He was shown the Witness’s cellphone video and he stated that he could not identify himself in the video and that it did not refresh his recollection. The investigation determined that Sgt. Nicoletti’s statement that he did not recall using his baton to strike the Victim was intentionally misleading.

On August 19, 2021, the Board substantiated two (2) total allegations: one (1) Use of Force allegation against Sgt. Nicoletti for striking the Victim with a baton, and one (1) Untruthful Statement allegation for providing a misleading official statement to the CCRB.

On April 15, 2022, the Police Commissioner retained the case and decided not to pursue any disciplinary action against Sgt. Nicoletti stating that “the entirety of this matter hinges on CCRB’s identification of Sergeant Nicoletti as the sergeant who struck the individual with a baton.” The Police Commissioner stated that “the video itself does not clearly identify Sergeant Nicoletti as the sergeant who struck the individual...there is nothing distinctive to clearly distinguish Sergeant Nicoletti...there is nothing to provide a conclusive identification of Sergeant Nicoletti as the sergeant striking the individual.” The Police Commissioner stated that “the issues with the identification directly impact the conclusion that Sergeant Nicoletti provided misleading statements by failing to identify himself in the video or recall the single baton strike...” The Police Commissioner stated that she did not find that “the available video sufficiently establishes that Sergeant Nicoletti was the sergeant utilizing his baton on the arrested individual.”

#### **Case Five, Retained Without Discipline** 202101848 DT2 Robert Klein

In November 2020, at approximately 8:00 p.m. in Manhattan, the Victim, a White individual in their early twenties was participating in a protest against police brutality. Detective Robert Klein [the Respondent] handcuffed the Victim and walked them to a prisoner transport vehicle. Det. Klein told the Victim to “fucking relax”. As the Victim was being loaded into the prisoner van, they were asked by an officer about their gender identity. The Victim responded that the question should not be asked, and Det. Klein stated “gonna say female”. The incident was captured on BWC.

On April 14, 2022, the Board substantiated two (2) total allegations: one (1) Discourtesy allegation against Det. Klein for speaking discourteously to the Victim and one (1) Offensive Language allegation for making remarks based on the Victim’s gender identity.

On April 28, 2022, the Police Commissioner retained the case and decided not to pursue any disciplinary action against Det. Klein stating the “arrestee exhibited a continued effort to pull away...This single statement was made for emphasis in order to gain compliance.” The Police Commissioner further stated that there “was no offensive behavior exhibited by the Detective...rather there was merely an effort to comply with required safety protocols during an unusual large-scale arrest incident.”

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

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

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

In the second quarter of 2022, the Police Commissioner administratively closed six (6) cases.

**Case One, Administratively Closed** 202003797 PO Christopher Pierre

In May 2020, at approximately 5:00 p.m. in Brooklyn, the Victim, a Hispanic female in her early thirties along with two other individuals attended a protest that was marching through the borough. The Victim stated that they were chanting and moving peacefully through the street. Police Officer Christopher Pierre [the Respondent] was one of several officers who were present at the protest. The incident was captured on BWC. It showed PO Pierre holding his baton horizontally as he pushed the Victim repeatedly. He pushed the Victim's hands to her shoulders and the Victim grasped onto the baton to push it away from her. PO Pierre grasped the baton and kept pushing the Victim in quick succession with enough force to cause her to fall backward onto the ground.

On September 19, 2021, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against PO Pierre for striking the Victim with a baton. The APU filed charges and was informed by the Department that PO Pierre retired from the Department before further action could be taken.

**Case Two, Administratively Closed** 202008044 PO David Meytin

In November 2020, at approximately 6:30 p.m. in Brooklyn, the Victim, a Black female in her early forties, had a standing order of protection against her 19-year-old daughter who turned up at her apartment to collect her wallet. The daughter called 911 and officers including Police Officer David Meytin [the Respondent] responded to the Victim's home. The incident was captured on BWC. The Victim's daughter tossed clothes at the partially open apartment door and officers insisted to the Victim that the daughter gave them permission to enter the apartment. The Victim tried to close her door as PO Meytin stood between the Victim and her daughter. An officer grabbed onto the Victim's upper body and pushed her into her apartment while PO Meytin held onto one of her arms. The Victim yelled at them to get off her. PO Meytin and the other officer maintained their hold on the Victim as they held her against a wall in the apartment. The Victim's daughter entered the apartment. The Victim told the officers to call their sergeant and PO Meytin told the Victim in response that "he is going to make us arrest you if we call our sergeant."

On May 4, 2022, the Board substantiated three (3) total allegations: two (2) Abuse of Authority allegations against PO Meytin for entering the Victim's home and threatening to arrest the Victim, and one (1) Use of Force allegation for using physical force against the Victim. The APU filed charges and was informed by the Department that PO Meytin retired from the Department before further action could be taken.

**Case Three, Administratively Closed** 202100288 PO Artem Prusayev

In January 2021, at approximately 8:30 p.m. in Brooklyn, the Victim, a Black female in her early twenties was participating in a peaceful protest in honor of Andre Hill that began to march towards the Manhattan Bridge. Marked police vehicles and officers followed the protestors. Police Officer Artem Prusayev [the Respondent] and another officer blocked part of an intersection along the march route. The crowd yelled at him and asked why he wasn't wearing a face mask and he drew his firearm from his holster, held it with both hands and aimed it towards the ground. The crowd yelled at him, and he put the firearm back in its holster. PO

Prusayev's ballistic vest was exposed and showed two patches affixed to it. One read "Caution. Does not play well with others." And the other was a picture of a Plague doctor in profile wearing an NYPD helmet carrying a baton on its left shoulder. The patch read "POLICE City of New York 2020 Riots." The incident was captured on cellphone video and BWC footage.

On May 4, 2022, the Board substantiated two (2) total allegations: one (1) Abuse of Authority allegations against PO Prusayev for drawing his gun and one (1) Discourtesy allegation for acting discourteously towards individuals. On June 3, 2021, PO Prusayev received training for drawing his gun and five (5) vacation days for wearing the patches from his Borough level commanders.

#### **Case Four, Administratively Closed** 202007667 PO Sandra Gonzalez

In November 2020, at approximately 12:00 a.m. in Manhattan, the Victim, a Black male in his early twenties was riding a Citi bike when he merged into a group of SRG officers riding bicycles. The Victim rang his bell so that asked if he could pass in front of them. The officers moved to box the Victim in as he tried to ride past a barricade. The Victim fell from his bike and Police Officer Sandra Gonzalez called the Victim a "fucking pussy." The incident was captured on BWC.

On April 22, 2022, the Board substantiated two (2) total allegations: one (1) Discourteous allegation against PO Gonzalez for speaking discourteously to the Victim, and one (1) Offensive Language allegation for making remarks to the Victim based upon his gender. The APU filed charges and was informed by the Department that PO Gonzalez retired from the Department before further action could be taken.

#### **Case Five, Administratively Closed** 202004301 PO Malik McCloud

In June 2022, at approximately 7:55 p.m. in the Bronx, an Anti-Police brutality protest was taking place. Multiple individuals witnessed Police Officer Malik McCloud [the Respondent] climb on top of a parked civilian vehicle and strike multiple individuals with his baton. The incident was captured on cellphone video.

On May 4, 2022, the Board substantiated two (2) total allegations: two (2) Abuse of Authority allegation against PO McCloud for damaging an individual's property, and one (1) Use of Force allegation for striking individuals with a baton. The APU filed charges and was informed by the Department that PO McCloud retired from the Department before further action could be taken.

#### **Case Six, Administratively Closed** 202003973 PO Joseph Nicoletti

In June 2020, at approximately 10:00 p.m. Brooklyn, the Victim, a Black male in his early twenties, was riding a Citi Bike home from his food delivery job when he inadvertently merged with a protest that was marching down a street. The Victim saw officers block part of the street and he asked one of them if he could pass by. The officer told him no and ordered him to the sidewalk. The Victim told the officers that there were too many people for him to ride safely on the sidewalk. Officers shouted for people to get on the sidewalk. Before the Victim could make any moves, Police Officer Joseph Nicoletti approached the Victim from behind and

pushed him on his back with baton, causing the Victim to fall to the ground, hitting his head and elbow on the pavement. The incident was captured on cellphone video.

On December 6, 2021, the Board substantiated one (1) total allegation: one (1) Use of Force allegation against PO Nicoletti for striking the Victim with a baton. The Internal Affairs Bureau (IAB) filed their own charges against PO Nicoletti and imposed a penalty of a written warning and admonishment.

## VII. The APU's Docket

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

<b>Cases in Open Docket<sup>21</sup></b>					
Period	Start of Quarter	Received During Quarter	Closed During Quarter	End of Quarter	Growth
2 <sup>nd</sup> Quarter 2019	120	22	20	122	1.7%
3 <sup>rd</sup> Quarter 2019	122	11	10	123	0.8%
4 <sup>th</sup> Quarter 2019	123	23	20	126	2.4%
1 <sup>st</sup> Quarter 2020	122	5	8	119	-2.5%
2 <sup>nd</sup> Quarter 2020	119	21	23	117	-1.7%
3 <sup>rd</sup> Quarter 2020	115	3	6	114	-0.9%
4 <sup>th</sup> Quarter 2020	114	6	3	117	2.6%
1 <sup>st</sup> Quarter 2021	115	4	7	112	-2.6%
2 <sup>nd</sup> Quarter 2021	113	50	3	159	40.7%
3 <sup>rd</sup> Quarter 2021	151	65	14	198	31.1%
4 <sup>th</sup> Quarter 2021	193	51	19	223	15.5%
1 <sup>st</sup> Quarter 2022	223	133	4	352	57.8%
<b>2<sup>nd</sup> Quarter 2022</b>	<b>348</b>	<b>215</b>	<b>22</b>	<b>541</b>	<b>55.5%</b>

## VIII. Time to Serve Respondents

As can be seen in the following chart, the length of time the Department took to serve Respondents after the APU filed charges with the Charges Unit increased between the first and second quarters of 2022. As of June 30, 2022, there were one hundred seventy-seven (177) Respondents who had not been served with Charges. The average wait time for Respondents to

<sup>21</sup> The number of cases in the open docket were updated to reflect additional data received from the Department with regards to the closure of long-standing cases.

be served charges between the first and second quarters in 2022 has increased by eleven (11) days.

<b>Time to Serve Respondents</b>			
<b>Period</b>	<b>Number of Respondents Served</b>	<b>Average Length to Serve Respondents</b>	<b>Average Length to Serve Respondents (Business Days)</b>
2 <sup>nd</sup> Quarter 2019	11	76	54
3 <sup>rd</sup> Quarter 2019	17	67	48
4 <sup>th</sup> Quarter 2019	7	68	48
1 <sup>st</sup> Quarter 2020	10	129	92
2 <sup>nd</sup> Quarter 2020	18	62	44
3 <sup>rd</sup> Quarter 2020	16	88	63
4 <sup>th</sup> Quarter 2020	6	71	51
1 <sup>st</sup> Quarter 2021	2	66	47
2 <sup>nd</sup> Quarter 2021	13	20	14
3 <sup>rd</sup> Quarter 2021	46	22	15
4 <sup>th</sup> Quarter 2021	40	40	28
1 <sup>st</sup> Quarter 2022	39	27	19
<b>2<sup>nd</sup> Quarter 2022</b>	<b>134</b>	<b>38</b>	<b>27</b>

We hope that the Commissioner will continue to uphold negotiate plea agreements without modification and reduce the reversal of guilty verdicts to increase concurrence rates.

Thank you for your consideration.

Sincerely,

Jonathan Darche  
Executive Director

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