



POLICE DEPARTMENT

August 5, 2024

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2023-28275
Chief Jeffrey Maddrey	:	
Tax Registry No. 899501	:	
Office of the Chief of Department	:	

-----X

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Rosemarie Maldonado
Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Theresa Freitas, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Lambros Lambrou, Esq.
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To:

HONORABLE EDWARD A. CABAN
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

INTRODUCTION

On June 28, 2024, Respondent filed a motion to dismiss the Charges and Specifications in the above-referenced disciplinary case on the grounds that the Civilian Complaint Review Board (CCRB) lacked subject matter jurisdiction to investigate and prosecute the charged misconduct. (*See* Respondent's Motion to Dismiss, attached as Appendix A) Specifically, the sole charge alleges that:

Chief Jeffrey Maddrey, on or about November 24, 2021, at approximately 2300 hours, while assigned to NYPD's Community Affairs Bureau and on duty, in the vicinity of the 73 Precinct stationhouse, Kings County, abused his authority as a member of the New York City Police Department, in that he engaged in conduct prejudicial to good order, efficiency, or discipline of the Department, in that he improperly interfered with an arrest.

CCRB submitted its response in opposition to the motion on July 12, 2024. It counters that the CCRB has broad authority under the New York City Charter to define and investigate Abuses of Authority and that improperly voiding the arrest of a former uniformed member of service is a "misuse of police power" that clearly falls within its current jurisdictional parameters. (*See* CCRB's Response in Opposition to the Motion to Dismiss, attached as Appendix B)

This tribunal acknowledges that it is an unusual procedural posture for it, and ultimately the Police Commissioner, to rule on the subject matter jurisdiction of an independent NYPD oversight agency. The Rules of the City of New York, however, explicitly authorizes the Deputy Commissioner of Trials "to render *any* ruling or order necessary and appropriate for the efficient adjudication of disciplinary proceedings instituted against civilian and uniform members of the Department." (*See* 38 RCNY §15-02 [emphasis added]) This includes rulings on pre-hearing motions. (*See* 38 RCNY §15-03(g)) It is pursuant to this authority that I have reviewed and

considered all submissions filed and find that CCRB lacks jurisdiction to investigate and prosecute the particular allegation of misconduct set forth in this case.¹

FACTUAL BACKGROUND

The purpose of a pre-trial motion to dismiss is to make a tribunal aware of a defect in the charge or the proceeding that would render it invalid or moot, including a jurisdictional defect. Where properly asserted, the tribunal must “liberally construe the complaint” and “accept as true the facts alleged in the complaint and any submissions in opposition to the dismissal motion.” (*Disciplinary Case No. 2021-24349* [Oct. 20, 2022], citing *Dep’t of Education v. Oliver*, OATH Index No. 1889/13 at 6 [June 18, 2013]) Accordingly, the following summary of facts is based primarily on CCRB’s submission.

CCRB asserts that on the evening of November 24, 2021, three boys between the ages of 12 and 14 were walking in the vicinity of [REDACTED] in Brooklyn. As the boys approached a business on [REDACTED] Street, one of them threw a basketball and struck the building security camera. The boys ran away. Retired NYPD Police Officer [REDACTED] emerged from the business and pursued the boys for “a significant period of time.” During this chase, Mr. [REDACTED] is alleged to have menaced the boys by brandishing a firearm. Mr. [REDACTED] denied that he menaced the boys with a weapon, but acknowledged that he was carrying a licensed firearm in his waistband.

¹ CCRB is correct that Respondent’s Motion to Dismiss was filed after the June 7, 2024 deadline for pre-hearing motions. The basis for this motion, however, is akin to a subject matter jurisdiction challenge. Subject matter jurisdiction generally pertains to a court’s authority to adjudicate the subject matter of the dispute. Unlike personal jurisdiction, “subject matter jurisdiction is a concept that is absolute—it either exists in its entirety or it does not exist at all. A defect in subject matter jurisdiction may be raised at any time by any party or by the court itself, and subject matter jurisdiction cannot be created through waiver, estoppel, laches, or consent.” (*Caffrey v. North Arrow Abstract*, 160 A.D.3d 121 [2d Dept. 2018]; See NY CPLR §3211 (a)(2), (c)). Subject matter jurisdiction “is so fundamental to the power of adjudication of a court that [the defense will] survive even a final judgment or order.” (*GMAC Mortgage LLC v. Winsome Coombs*, 191 A.D.3d 37 [2d Dept. 2020], quoting *Lacks v. Lacks*, 41 N.Y.2d 71 [1976])

The tribunal notes that this is not a traditional subject matter challenge – the authority of this court to adjudicate whether a member of service improperly interfered with an arrest is not in question. Instead, the instant matter presents a more procedurally nuanced question: whether an administrative agency, whose purpose is clearly defined by the Charter, has jurisdiction to prosecute the matter. Notwithstanding, the tribunal finds that very similar principles apply and the question of whether jurisdiction is established is so fundamental that it must be allowed to be raised, even at this late date.

During the chase, one of the boys called 911 to report the incident. Multiple police units responded and a preliminary investigation was conducted at the scene. After interviewing Mr. [REDACTED] and the three boys, as well as reviewing surveillance video, Sergeant [REDACTED] placed Mr. [REDACTED] under arrest for menacing. While Mr. [REDACTED] was in custody and awaiting processing at the 73 Precinct stationhouse, he requested that the officers contact Respondent. At the time, Respondent was Chief of the Community Affairs Bureau, but had previously been Mr. [REDACTED]'s commanding officer at the 73 Precinct. CCRB asserts that Mr. [REDACTED]'s brother informed Respondent of Mr. [REDACTED]'s arrest.

Soon thereafter, Respondent arrived at the 73 Precinct and “participated in the investigation” into the alleged criminal menacing charge. Respondent ultimately ordered Sergeant [REDACTED] to void the arrest and Mr. [REDACTED] was released. (*See* Respondent’s Motion at pp. 1-2; CCRB’s Response at p.2)

ANALYSIS

1. Expanding CCRB’s Jurisdiction to Include the Alleged Misconduct is Inconsistent with the Mandate of its Governing Statute

It is uncontested that Respondent did not interact with any member of the public as he spoke to the sergeant, reviewed the evidentiary basis for the arrest and made the decision to void it. Furthermore, there is no allegation that any uniformed members of service who responded to the scene had a problematic interaction with the boys. These facts are dispositive of the motion to dismiss because the authorizing statute determining the scope of CCRB’s jurisdiction requires that the agency investigate allegations of police misconduct *towards* members of the public. Specifically, New York City Charter (hereinafter “Charter”) §440(a) explains the agency’s mandate as follows:

It is in the interest of the people of the city of New York and the New York city police department that the investigation of complaints *concerning misconduct by officers of the department towards members of the public* be complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. [emphasis added]

The plain meaning of the phrase, “*misconduct by officers of the department towards members of the public*,” is that a direct interface between uniformed members of service and members of the public is required to trigger CCRB’s jurisdictional authority to investigate and prosecute a complaint.

It is within the context of this jurisdictional mandate that Charter §440(c)(1)² enumerates the types of direct contact offenses CCRB has the power to investigate and prosecute, including Abuse of Authority. Since 1993, CCRB has promulgated rules defining and expanding what allegations of misconduct fall within the broad category of an Abuse of Authority.³ That definition is set forth in 38-A RCNY §1-01:⁴

[M]isusing police powers. This conduct includes, but is not limited to, bias-based policing and racial profiling, improper use of body worn cameras, improper searches, entries, seizures, property damage, refusals to provide identifying information, intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions, and sexual misconduct.

² NYC Charter §440 (c)(1) provides: “The board shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public or complaints initiated by the board against members of the police department that allege misconduct involving excessive use of force, abuse of authority including bias-based policing and racial profiling, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation and disability. The board shall also have the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received or initiated by the board, if such statement was made during the course of and in relation to the board’s resolution of such complaint...”

³ CCRB’s authority to define Abuse of Authority is derived from NYC Charter §1120: “Any elected or appointed officer of the city or any board or commission or any member thereof shall, in addition to the powers and duties vested in such officer, board or commission by this charter, perform any duties and exercise any powers vested in such officer or in such board or commission by any other provision of law and any power necessary to carry out the powers and duties vested in such officer, board or commission.”

⁴ 38-A RCNY §1-02 (a) reiterates the parameters of CCRB’s jurisdiction: “Pursuant to Chapter 18-A, Section 440(c)(1) of the Charter, the Board has the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public or complaints initiated by the Board against uniformed members of the New York City Police Department that allege misconduct involving excessive use of force, abuse of authority, including bias-based policing and racial profiling, discourtesy, or use of offensive language, including, but not limited to, slurs relating to race, ethnicity, religion, gender, sexual orientation, immigration and housing status, and disability. The Board also has the power to investigate, hear, make findings and recommend action regarding the truthfulness of any material official statement made by a member of the police department who is the subject of a complaint received, or initiated, by the Board, if such statement was made during the course of and in relation to the Board’s resolution of such complaint.”

It is important to note that each example of what constitutes an Abuse of Authority under 38-A RCNY §1-01 fully complies with the Charter's statutory parameter limiting its jurisdiction to police-civilian interactions.

CCRB's public reports also conform to its fundamental Charter mandate. For example, on CCRB's public-facing website, the *Data Transparency Initiative*, states that an Abuse of Authority, "Refers to abuse of police powers to *intimidate or mistreat a civilian*; for example, an officer's refusal to provide a name and badge number, or an improper stop, question and frisk."⁵ In addition, CCRB's *2023 Annual Report* includes a detailed chart listing approximately 75 categories of misconduct that fall within its definition of Abuse of Authority. All the specified examples involve allegations of police action directed "*towards*" civilians, including: searches, refusal to provide civilians with their names, unlawful entries into a home, unlawful threats to arrest or hospitalize a civilian, release of a civilian's medical information, the issuance of an unlawful summons, and retaliatory arrests.⁶ (See *2023 CCRB Annual Report* at p. 15, attached as Appendix C)

In sum, this tribunal notes that there is a common component to all matters that are properly investigated and prosecuted by the CCRB: at their inception, they involve an allegedly problematic encounter between police and a civilian victim. The individual should not have been stopped, and searched, had property seized, been summonsed or arrested, been strip-searched, had his home entered and searched, had his property damaged, or been threatened. Even the most recently added categories falling within Abuse of Authority begin with allegations of a problematic police-citizen encounter: BWC not activated during the encounter; a false

⁵ *Allegations Page*, available at: <https://www.nyc.gov/site/ccrb/policy/data-transparency-initiative-allegations.page>

⁶ The Report states that 1% of complaints filed fall under the category "Other." CCRB did not assert that any of the cases listed as "Other" consisted of misconduct allegations similar to those at issue here.

statement made afterward regarding the encounter. Here, in contrast, the matter did not begin with allegations of a problematic encounter between any uniformed member of service, including Respondent, and the boys. Rather, the allegation of misconduct in this case involves a Respondent who had *no interaction* with the public, but made allegedly questionable orders after the public encounter, back at the precinct. Therefore, Respondent's "participation in the investigation" at the stationhouse, and his subsequent decision to void the arrest, is a matter to be investigated by IAB or another NYPD oversight entity, not CCRB.

This tribunal has considered and rejected CCRB's argument that this case falls within its mandate because the three boys pursued by Mr. [REDACTED] were "absolutely and directly affected" when Respondent prevented their criminal complaint against Mr. [REDACTED] from "moving forward in a just and impartial manner." They assert that civilians who make criminal complaints to the NYPD have the right to expect that their complaints be handled fairly and that no "preferential treatment" be given due to any pre-existing relationship the accused may have with NYPD personnel. (*See CCRB's Response at pp.2-3*)

The tribunal certainly concurs with CCRB's assertion that the public is entitled to a Police Department that provides an unbiased assessment of all criminal complaints. This fundamental expectation of fairness, however, is not the issue currently before the tribunal. What is at issue is whether Charter §440(a) grants CCRB jurisdiction to review and prosecute this type of misconduct. It does not. The plain language of Charter §440(a) clearly states that misconduct must be "*towards*" a member of the public and not merely "*affect*" a member of the public. Accordingly, CCRB's faulty interpretation of Abuse of Authority, as applied here, must fail.

In making this finding, the tribunal acknowledges that administrative agencies have broad powers to interpret laws and enact rules defining relevant statutes. This authority, however, is not limitless. It is well-established law that judicial deference does not relieve an agency from the obligation of acting within its statutory parameters. The Appellate Division, First Department has repeatedly adopted this reasoning when reviewing CCRB rules and has held that:

Given the CCRB's expertise in studying and investigating police disciplinary matters, we defer to its interpretation of the term "abuse of authority," unless that definition is irrational, unreasonable, or *inconsistent with the governing statute*. *Lynch v. NYC Civilian Complaint Review Bd.*, 206 A.D.3d 558 (1st Dept. 2022), lv. appl. denied, 39 N.Y.3d 902 (2022) (emphasis added)

Contrary to CCRB's contention, the Appellate Division's reasoning does not authorize an interpretation of its rules that bypasses its own jurisdictional mandate. In serving these charges, CCRB ignored the requirements set forth in Charter §440 (a) and (c)(1) and erroneously served charges based on an interpretation of Abuse of Authority that is "inconsistent with [CCRB's] governing statute."

In sum, this tribunal rejects CCRB's argument that Respondent's alleged misconduct – improperly interfering with the arrest of Mr. [REDACTED] – "clearly" fits into the definition of Abuse of Authority, because CCRB rules broadly defined this category of misconduct as the "misuse of police powers." (See 38-A RCNY §1-01) This is circular logic that overlooks the clear jurisdictional mandate of Charter §440 (a).

2. CCRB Cannot Unilaterally Expand the Scope of its Jurisdiction

The Motion to Dismiss must also be granted because the wrongdoing alleged clearly falls within a spectrum of misconduct that encompasses both conflicts of interest and corruption.

CCRB's analysis of the alleged misconduct supports the tribunal's assessment:

[T]he three young boys who were menaced with a gun by Mr. [REDACTED] are members of the public. All three boys gave statements to the NYPD alleging they were the victims of

a crime perpetrated by Mr. [REDACTED]. After conducting his investigation, Sergeant [REDACTED] made the decision to arrest Mr. [REDACTED]. *It was only then that Respondent became involved, based solely on his prior personal and professional relationship with Mr. [REDACTED]—a fact that Respondent's attorney completely fails to address in his motion.* Not only did Respondent have a professional relationship with Mr. [REDACTED] but their relationship was also quite personal. Respondent stated during his CCRB interview that he was notified of Mr. [REDACTED]'s arrest by Mr. [REDACTED]'s brother—clear cut evidence of a personal relationship between the two. (See Response in Opposition to the Motion to Dismiss at p.3 [emphasis added])

The crux of this charge, as described by CCRB, is that Respondent wrongfully voided Mr.

[REDACTED]'s arrest, not on the merits, but solely based on his personal relationship with Mr.

[REDACTED]. If proven, this would be a breach of public trust rising to the level of a conflict of interest or corruption. Neither category falls within CCRB's jurisdiction.

CCRB's own website explains that this type of allegation is to be referred to the Internal Affairs Bureau.⁷ As set forth below:

What is the difference between CCRB and the Internal Affairs Bureau?

The IAB functions as the police department's internal watchdog, to prevent, uncover, and investigate corruption, perjury and off-duty criminal conduct. When the IAB receives a complaint that falls within the CCRB's jurisdiction, it refers the case to us. Likewise, when the CCRB gets a complaint that is outside its jurisdiction, it refers that to the IAB. For example, if you file a complaint that an officer punched you and cursed at you during an arrest, and then stole your money, we would investigate the force and discourtesy allegations, but the alleged theft of money would be referred to the IAB.⁸

In 2019, the Supreme Court, New York County, confirmed this jurisdictional distinction, noting that: "... the carve-outs in the legislative history, that are not within the CCRB's jurisdiction, with respect to police misconduct, are for allegations of corruption and criminal acts. The [CCRB] Board follows these carve-outs." (*Lynch v. New York City Civilian Complaint Review Bd.*, 2019 NY Slip Op 29089; 64 Misc.3d 315 [Sup. Ct., NY County, 2019]) It has been over

⁷ Such allegations may also be investigated by other independent entities including the Brooklyn District Attorney's Office, the Office of the New York State Attorney General or the New York City DOI's Office of the Inspector General (OIG-NYPD).

⁸ See *CCRB Frequently Asked Questions*, available at <https://www.nyc.gov/site/ccrb/about/frequently-asked-questions-faq.page>

three decades since CCRB was created. In that time, there has been nothing in the legislative history, or mayoral executive orders, that even hint at an intent to turn corruption-related matters over to CCRB.⁹

To illustrate this jurisdictional limitation, the tribunal has analyzed a series of ticket-fixing cases in which police officers improperly voided traffic tickets as a “favor” for their family and friends or for those of other members of service. As noted in the passage below, the misconduct alleged in a 2014 ticket-fixing case echoes the elements of wrongdoing CCRB alleges here:

Respondent was not “calling upon an officer on the scene to consider the circumstances. Rather, he was calling upon someone to do a ‘favor’ regardless of the circumstances...” The facts did not matter to Respondent; instead, doing a favor was what mattered. Further, Respondent only damaged his case when he testified that he went into the local precinct to have his parking ticket “corrected.” If there was something about the summons that legitimately needed “correction,” the place to do that was in the traffic violations court. The issuance of a summons to a police officer, his relative, friend, friend’s relative, or any other “connected” person is not a “mistake” that needs “correcting.” It is a valid legal process and must be responded to as such by members of this Department. (*See Disciplinary Case No. 2011-5714* at pp.7-8 [July 18, 2014], quoting *Disciplinary Case No. 2011-6397* at p.7 [Dec. 17, 2012])

These cases were appropriately investigated by IAB, and prosecuted by the NYPD Department Advocate, not CCRB.¹⁰

⁹ Charter Chapter 18-B, Sections 450 and 451, as well as the creation of the Commission to Combat Police Corruption by Executive Order, support the conclusion that the legislature never intended for CCRB to investigate and prosecute allegations of conflict of interest or corruption. CCRB was created in 1993 as an independent civilian oversight agency. Pursuant to City Charter Section 440, it has jurisdiction over what became commonly known as FADO (force, abuse of authority, discourtesy and offensive language). In 1998, Section 450 of the City Charter was added, creating a second police oversight entity: the Independent Police Investigation and Audit Board (IPIAB). Under Section 451, this entity was tasked specifically with “detecting, investigating and preventing corruption among uniformed and civilian members of the police department, and making recommendations for the improvement of those systems.” Sections 450 and 451 remain part of the New York City Charter to this day; however, due to years of litigation the IPIAB Board was not appointed at that time. Instead, in 1995, Mayor Giuliani created the Commission to Combat Police Corruption (CCPC) to monitor all aspects of the NYPD’s policies and procedures that relate to corruption control. The Commission is specifically empowered to “perform audits, studies and analyses to assess the quality of the Police Department’s systems for combatting corruption...” (*See* Mayoral Executive Order 18 of 1995) CCRB’s mandate is devoid of language referencing this category of misconduct.

¹⁰ This tribunal takes judicial notice that a number of NYPD ticket-fixing cases were also criminally prosecuted by the Bronx County District Attorney’s Office.

It is well-settled law that CCRB cannot unilaterally expand its own jurisdiction by simply serving charges that allege that the actions of a member of service constitute a conflict of interest or corruption. The recent expansion of CCRB's jurisdiction to investigate "untruthful statements" is instructive on this point. In 2018, CCRB sought to investigate a subset of untruthful statements made by members of service against members of the public if the statement was made during the course of the agency's resolution of a complaint. Inasmuch as CCRB had historically referred these complaints to IAB, this jurisdictional expansion required a City Charter amendment. In 2019, NYC's electorate voted and approved a ballot initiative granting CCRB the authority to "investigate the truthfulness of any material statement that is made within the course of the CCRB's investigation or resolution of a complaint by a police officer who is the subject of that complaint." In accordance with that electoral mandate, the City Charter was amended in March 2020 to reflect CCRB's expanded jurisdiction. Subsequent to the Charter amendment, CCRB released rules amending 38-A RCNY §1-01 and §1-02, to include untruthful statements as an Abuse of Authority. The amended definition of Abuse of Authority was upheld by the Appellate Division, First Department, but only after CCRB had undertaken a ballot initiative, a City Charter amendment and followed proper rulemaking procedures. (*Lynch v. CCRB*, 206 A.D.3d 558 [1st Dept. 2022], lv. appl. denied 39 NY.3d 902 [2022])

CCRB has pursued amendments to its jurisdiction in other areas as well, including the authority to self-initiate complaints and conduct biased policing investigations; always using appropriate procedures.¹¹ In this case, CCRB is attempting to circumvent the statutory and

¹¹ In January 2022, CCRB's jurisdiction was again expanded after an amendment to New York City Charter §440(c)(1), which now provides that the Board "has the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public *or complaints initiated by the board* against members of the police department...." (emphasis added) This Charter change was precipitated by legislation; in December 2021, the City Council passed Int. 2440, a Local Law that amended the Charter to allow CCRB to commence a case and open an investigation without having to wait for a formal complaint from a member of the public, as was previously required. Proposed revisions to CCRB's related rules and a rulemaking process followed thereafter, and CCRB's rules were amended effective October 2022. (See 38-A RCNY §§1-01 & 1-02) Biased policing and racial profiling were also specifically added to CCRB's jurisdiction through legislation. In March 2021, the City Council passed Local Law 47, amending the Charter to "clarify" that CCRB was empowered to investigate bias-based policing and racial

regulatory process required to expand its jurisdiction by simply serving charges concerning a new category of misconduct. This procedural irregularity may not proceed.

3. Rulemaking is Required When a Complaint Falls within CCRB's Jurisdiction But Deviates from a Prior Policy or Practice

Even if the tribunal had accepted CCRB's position that conflict of interest and corruption cases currently fall within its jurisdiction, this type of misconduct has not traditionally been investigated by CCRB. It is well-settled law that when CCRB seeks to investigate and prosecute a new category of misconduct, it must first engage in rulemaking. Accordingly, this tribunal finds that the prosecution of this matter is a nullity because CCRB failed to follow the public vetting process required by the City Administrative Procedure Act ("CAPA"), prior to expanding its definition of Abuse of Authority. (*See* NYC Charter §1043)

In its Response in Opposition to the Motion to Dismiss, CCRB asserts that it is not barred from investigating misconduct that it has historically referred to IAB. In essence, CCRB claims that a long-standing practice of referral does not divest the agency of its jurisdiction. This argument is only partially correct.

In support of its position, CCRB cites *Lynch v. New York City Civilian Complaint Review Bd.*, 206 A.D.3d 558, 560 (1st Dept. 2022), where CCRB prevailed on a challenge to revise rules regarding their authority to investigate and prosecute sexual misconduct - a category of wrongdoing that clearly satisfies the jurisdictional requirement of a direct police-civilian interaction. In that case, CCRB had already engaged in the rulemaking process required by CAPA prior to adding sexual misconduct to the definition of Abuse of Authority set forth in 38-A RCNY §1-01. Based on those specific facts, the Court held that, "while CCRB had a prior

profiling. This Charter amendment took effect in January 2022. Proposed revisions to CCRB's related rules and a rulemaking process followed thereafter, and CCRB's rules were amended effective October 2022, at the same time as the changes related to Board-initiated complaints. (*See* 38-A RCNY §1-01)

practice of referring such matters to the Police Department's Internal Affairs Bureau, that prior practice does not render CCRB's current interpretation arbitrary, especially where CCRB has set forth a rational basis for changing its approach.” In citing this case, however, CCRB ignored a critical distinction: that prior to adding sexual misconduct to its rules, CCRB had engaged in a formal rulemaking process, including notice, a public hearing and the opportunity for public comment. Here, CCRB did not.

It must be noted that in a prior court proceeding, the same court nullified a unilateral CCRB resolution announcing that it would begin investigating allegations of sexual misconduct by police officers against civilians, because CCRB did not follow CAPA before it adopted this new rule. (*Lynch v. New York City Civilian Complaint Review Bd.*, 183 A.D.3d 512, 518 [1st Dept. 2020]) The Court opined that, “by declaring that the CCRB would assert jurisdiction over an entire category of misconduct that it had historically referred as a matter of policy, the resolution announced a sweeping policy change that materially affected the rights of all alleged victims ... and allegedly offending police officers...” and thus amounted to the adoption of a new “rule.” (*Id.*)

Another example is CCRB’s efforts to include the improper use of body-worn cameras when interacting with members of the public as part of Abuse of Authority. CCRB’s Policy Unit noted in a publicly available “Justification Memo” that the 2020 *Lynch* Court had “determined that CCRB must proceed by rulemaking in order to exercise its jurisdiction over a category of misconduct it had historically referred as a matter of policy.”¹² Accordingly, before taking action on BWC allegations, CCRB complied with CAPA and then subsequently adopted a rule

¹² July 6, 2022 Policy Memorandum available at:
https://www.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/board/2022/memo/07062022_BWC_Justification_Memo.pdf

that included the improper use of BWCs as part of the Abuse of Authority definition. (*See NYC Patrolmen's Benevolent Ass'n v. New York Civilian Complaint Review Bd.*, 2024 N.Y. Slip Op. 30003 [N.Y. Sup. Ct., N.Y. County, 2024])¹³

This tribunal notes that sexual misconduct, as defined by CCRB, clearly comprises an Abuse of Authority “towards” a member of the public and contemplates an officer’s direct involvement with an alleged victim. Likewise, the improper use of a body-worn camera while interacting with a member of the public provides a real-time visual memorialization of an officer’s direct encounter with a civilian. If both of those categories, each with a much closer nexus to the public, were deemed to be subject to the CAPA rulemaking process, there is no question that CCRB must, at the very least, engage in rulemaking to lawfully expand the definition of Abuse of Authority to include the misconduct charged in this matter.

CONCLUSION

The tribunal has considered and rejected all other evidence and arguments presented by CCRB in opposition to this motion. Accordingly, I recommend that Respondent's Motion to Dismiss be granted and that the instant Charges and Specifications be dismissed.

APPROVED

AUG 19 2024
Edward A. Caban
EDWARD A. CABAN
POLICE COMMISSIONER

Respectfully submitted,

Rosemarie Maldonado

Rosemarie Maldonado
Deputy Commissioner Trials

¹³ The New York Supreme Court found CCRB’s justification for the inclusion of BWC-related misconduct compelling. “Put another way, body cameras help to avoid, although not eliminate, a ‘he said, she said’ situation in which CCRB is reliant upon eyewitness testimony rather than an objective video...it is important violations are disciplined appropriately. This is an entirely rational reason to exercise jurisdiction over the improper use of BWC...Because of the ubiquitous nature of body cameras, it is highly likely that issues involving the improper use of BWC will inevitably arise as part of complaints before CCRB. It only makes sense that this be part of the abuse of authority definition as it might evidence an effort to conceal misconduct.”

Appendix A



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June 26, 2024

Deputy Commissioner
Rosemarie Maldonado
1 Police Plaza, 4th Floor
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Re: CCRB v. Chief Jeffrey Maddrey
Disciplinary Case No. 2023-28275

Dear Commissioner Maldonado,

This letter represents, respondent Chief of Department Jeffrey Maddrey's (hereinafter "Maddrey"), motion to dismiss the charges against him for lack of jurisdiction as they are well beyond scope of the authority of the CCRB's power to prosecute. The only agency with power to investigate and prosecute this incident, the NYPD Internal Affairs Bureau, (hereinafter "IAB") cleared Maddrey of all allegations of Abuse of Authority, See **Exhibit "1."**

FACTUAL PREDICATES

This case arises out of the alleged actions of Chief Maddrey in voiding the arrest of Mr. [REDACTED] on November 26, 2021. Ironically enough, the Civilian Complaint Review Board, (hereinafter CCRB) is prosecuting, Chief of Department Jeffrey Maddrey, for keeping an innocent man, Mr. [REDACTED] out of jail while an investigation continued into allegations made by prevaricating teenagers who lied to cover-up their own criminal behavior in willfully destroying property. Those lies were wholly believed by an inexperienced Sergeant, who did a sub-par investigation and rushed to arrest an innocent man, while an experienced supervisor like Maddrey saw right through the lies. The sergeant's shortcomings in conducting the investigation into the incident in question prompted an IAB investigation for an improper and incomplete investigation which was closed although there were findings of violations on the part of that Sergeant. See **Exhibit "2."**

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*Admitted New York, Florida, Pennsylvania, Connecticut, New Jersey & The District of Columbia #Admitted New York & Florida

+Admitted New York & California ^ Admitted in New York & Louisiana

Still, to present, there is not a scintilla of credible proof that Mr. [REDACTED] brandished a gun or menaced children with a gun or that there was any probable cause to arrest Mr. [REDACTED]. The experienced supervisors with Chief Maddrey that evening agreed with his decision to void the arrest after they carefully investigated the facts and circumstances. The Kings County District Attorney's office (hereinafter "KDA") also arrived at the same conclusion some days later. The investigation into the behavior alleged by the lying teens was **NOT** abandoned on the night of the incident, November 26, 2021, despite their lies, instead it was referred to the Law Enforcement Accountability Bureau of the KDA. Upon due deliberation they declined prosecution because there was no video or corroboration for the lying teens' allegations that they were menaced with a gun or that shots were fired by Mr. [REDACTED]. See **Exhibit 3**.

During the entirety of his involvement, Chief Maddrey had no interactions with any members of the public. Additionally, there have been no allegations of "misconduct by" Maddrey against "any member of the public," nor that he supervised any NYPD personnel that engaged in misconduct against any member of the public. Maddrey's actions on the day in question, were decisions on an internal NYPD matter, which resulted from an inexperienced newly minted Sergeant's rash and improper decision to arrest an innocent man.

THE CCRB LACKS JURISDICTION AND IS ACTING BEYOND ITS AUTHORITY

Simply stated, on November 26, 2021, Chief Maddrey undertook his own investigation into the arrest in question and overrode the prior decision and voided the arrest, an internal NYPD matter, wherein he did not interface with any members of the public and dare I say failed to cause any harm to any member of the public. Hence allowing the CCRB to become involved in reviewing the actions of Chief Maddrey in the present case, would be beyond the scope of the CCRB and would open and expand the CCRB's powers beyond what it is empowered to do under the New York City Charter. In fact, despite many hours of research, I have yet to find a CCRB prosecution in which a supervisor's decision on an internal NYPD matter, in which neither he nor any of his subordinates thereafter interfaced with the public, found to be proper grounds upon which to prosecute. Perhaps the CCRB can provide such cases.

The CCRB is authorized pursuant by the City Charter. See NYC Charter, Chapter 18-A, 440(a) which state in pertinent part:

- (a) It is in the interest of the people of the city of New York and the New York city police department that the investigation of complaints concerning misconduct by officers of the department **towards members of the public** be complete, thorough and impartial....

Further, the rules promulgated by the CCRB to achieve of their chartered purpose, defines "Abuse of Authority." The definition, which includes precise examples of abuse of authority, are all situations wherein a Police Officer is interacting with a member of the public. This makes sense, since monitoring interactions with the public, is the only scenario where the NYC Charter allows.

The CCRB defines Abuse of Authority in §1-01 as follows:

refers to misusing police powers. This conduct includes, but is not limited to- bias-based policing and racial profiling, improper use of body worn cameras, improper searches, entries, seizures, property damage, refusals to provide identifying

information, intentionally untruthful testimony and written statements made against members of the public in the performance of official police functions, and sexual misconduct

The CCRB website further clarifies the definition of abuse of authority as follows:

Abuse of Authority: Misrepresenting power of influence to gain compliance

- Searches of vehicles and residencies
- Refusal to provide name and shield number
- Threatening to call ICE
- Forcible removal to a hospital
- Sexual Misconduct
- Body worn camera misuse
- **Racial Profiling and Bias-Based Policing**

There must be a recognition and surely a concession from CCRB, that the enumerated examples of Abuse of Authority are clearly intended for street level policing and solely those instances where there are police and civilian interactions and **not** what transpired here. Again, it could not be clearer that the CCRB's chartered purpose is incongruent with the current prosecution of Chief Maddrey.

The CCRB has chosen to act beyond its chartered purpose in this matter and allowing this case to continue will set a precedent that any decision by any member of the NYPD at any rank that does not involve a civilian interaction is fair game for a CCRB complaint, investigation and prosecution.

Any argument that the CCRB may have broad authority in defining abuse of authority, only applies to its rule making capacity on judicial review and does not allow it to deviate from its chartered purpose which is to investigate and act "on complaints of **misconduct against members of the public** by police officers." See NYC Charter, Chapter 18-A, 440(a).

CONCLUSION

The CCRB does **not** have jurisdiction in this matter and since the IAB has already cleared Chief Maddrey of any allegation of Abuse of Authority, this matter should be dismissed in its entirety.

Very truly yours,

THE LAMBROU LAW FIRM, P.C.

Lambros Y. Lambrou

Lambros Y. Lambrou, Esq.


LYL/cv

EXHIBIT 1

Violation -								Abuse of Authority
Comments								

Person's Last Name, First M.I. [REDACTED]				Role SUBJECT		Status FORMER / RETIRED MOS	
Nickname/Alias/Middle Name							
Address [REDACTED]						Apt No.	NYSID No.
Alternate Address						Apt No.	
Sex	Race	Date of Birth	Age	Height	Weight		
Age From		Age To		Condition	If Injured or Deceased Location		U.S. Citizen
Home Telephone		Business Telephone		Cell Phone	Beeper #	E-Mail Address	Call Back Phone#

Allegations								
1	Full Allegation Former MOS - Misconduct	Classification Miscellaneous	Allegation Index O-Miscellaneous Other	Allegation Date 12/01/2021	Finding -	Finding Date	Allegation Removed NO	Allegation Disposition
Comments								

Person's Last Name, First M.I. MADDREY, JEFFREY B				Role SUBJECT		Status UNIFORM MEMBER OF SERVICE	
MOS TAXID 899501	Command 523-COMMUNITY AFFAIRS BUREAU		Rank CCA	Shield 00000			
Appointment Date 04/30/1991				Years Employed 30			
Nickname/Alias/Middle Name							

Allegations									
1	Full Allegation Other Dept Rules/Procedures Violation -	Classification Abuse of Dept Regulations	Allegation Index VRP-Violation Rules/Procedures	Allegation Date 12/01/2021	Finding 10 - Unfounded	Finding Date 01/21/2022	Allegation Removed NO	Allegation Disposition NONE	Other Dept Rules/Procedures Violation Details Abuse of Authority
<p>Comments</p> <p>This investigation disclosed that November 30, 2021, [REDACTED] reported that her children were on their way to the park and were walking down [REDACTED] on November 24, 2021, between 2045-2100 hours. Ms. [REDACTED] stated that the kids were bouncing a basketball and they accidentally broke a camera of a store front. Ms. [REDACTED] indicated that retired PO [REDACTED] who attends to a store front came outside and chased after the kids with a firearm in his hands. The kids stated that Mr. [REDACTED] fired his firearm as the kids ran away from the location. Witness [REDACTED] stated that her nephew ran home scared, dripping in sweat, and out of breath, and when he was finally able to talk he told her what happened and she called 911. Ms. [REDACTED] stated that she ran to the location of occurrence with the kids and saw Mr. [REDACTED] enter a real estate store front when he heard the police sirens approaching. Ms. [REDACTED] further stated that when officers responded to the scene they canvass the location and stopped Mr. [REDACTED]. Ms. [REDACTED] stated that the responding officers interviewed the kids, and informed them that a police report will be filed. Ms. [REDACTED] stated that a supervisor at the scene assured her that Mr. [REDACTED] would be placed under arrest and that her family would receive a phone call from a District Attorney. Ms. [REDACTED] stated that her family has not heard from a District Attorney and Mr. [REDACTED] was released the following day and is back on the streets. A thorough investigation was conducted which included a review of Department records, BWC and video from local establishments. A review of Department records disclosed that former PO [REDACTED] was arrest under Arrest Report# [REDACTED] by the 73 Precinct. A review of the 73 Precinct cameras disclosed that Chief Jeffrey Maddrey, Tax# 899591, Community Affairs Bureau and [REDACTED] Patrol Borough Brooklyn North, were present at command in connection with this incident. A review of the Command Log disclosed that the arrest was voided under the authority of Chief Maddrey. The videos obtained from the surrounding area that included [REDACTED] disclosed that there was no evidence to support that retired PO [REDACTED] displayed or discharged his firearm. This investigation disclosed that there is sufficient evidence to prove that Chief Maddrey did not abuse his authority. The allegation Other Dept. Rules/Procedures Violation - (Abuse of Authority) will be closed as Unfounded.</p>									

Person's Last Name, First M.I. [REDACTED]	Role SUBJECT	Status UNIFORM MEMBER OF SERVICE
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000004

EXHIBIT 2

Comments

This investigation disclosed that November 30, 2021, [REDACTED] reported that her children were on their way to the park and were walking down [REDACTED] on November 24, 2021, between 2045-2100 hours. Ms. [REDACTED] stated that the kids were bouncing a basketball and they accidentally broke a camera of a store front. Ms. [REDACTED] indicated that retired PO [REDACTED] who attends to a store front came outside and chased after the kids with a firearm in his hands. The kids stated that Mr. [REDACTED] fired his firearm as the kids ran away from the location. Witness [REDACTED] stated that her nephew ran home scared, dripping in sweat, and out of breath, and when he was finally able to talk he told her what happened and she called 911. Ms. [REDACTED] stated that she ran to the location of occurrence with the kids and saw Mr. [REDACTED] enter a real estate store front when he heard the police sirens approaching. Ms. [REDACTED] further stated that when officers responded to the scene they canvass the location and stopped Mr. [REDACTED]. Ms. [REDACTED] stated that the responding officers interviewed the kids, and informed them that a police report will be filed. Ms. [REDACTED] stated that a supervisor at the scene assured her that Mr. [REDACTED] would be placed under arrest and that her family would receive a phone call from a District Attorney. Ms. [REDACTED] stated that her family has not heard from a District Attorney and Mr. [REDACTED] was released the following day and is back on the streets. A thorough investigation was conducted which included a review of Department records, BWC and video from local establishments. A review of Department records disclosed that former PO [REDACTED] was arrest under Arrest Report# [REDACTED] by the 73 Precinct. A review of the 73 Precinct cameras disclosed that Chief Jeffrey Maddrey, Tax# 899591, Community Affairs Bureau and [REDACTED] Patrol Borough Brooklyn North, were present at command in connection with this incident. A review of the Command Log disclosed that the arrest was voided under the authority of Chief Maddrey. The videos obtained from the surrounding area that included [REDACTED] disclosed that there was no evidence to support that retired PO [REDACTED] displayed or discharged his firearm. This investigation disclosed that there is sufficient evidence to prove that PO [REDACTED] did not discharge his firearm. The allegation Former MOS - Misconduct will be closed as Information and Intelligence.

Person's Last Name, First M.I. [REDACTED]			Role SUBJECT	Status UNIFORM MEMBER OF SERVICE
MOS TAXID [REDACTED]	Command 073-073 PRECINCT	Rank SGT	Shield [REDACTED]	[REDACTED]
Appointment Date [REDACTED]			Years Employed [REDACTED]	
Nickname/Alias/Middle Name [REDACTED]				

Allegations

1	Full Allegation	Classification	Allegation Index	Allegation Date	Finding	Finding Date	Allegation Removed	Allegation Disposition
	Investigate Incomplete/Improper - Crime Invest (not Domestic)	Abuse of Dept Regulations	Fail to Take Action/Investigate/Complete Report	01/21/2022	24 - Minor Procedural Violation	01/21/2022	NO	LETTER OF INSTRUCTION


Comments

This investigation disclosed that November 30, 2021, [REDACTED] reported that her children were on their way to the park and were walking down [REDACTED] on November 24, 2021, between 2045-2100 hours. Ms. [REDACTED] stated that the kids were bouncing a basketball and they accidentally broke a camera of a store front. Ms. [REDACTED] indicated that retired PO [REDACTED] who attends to a store front came outside and chased after the kids with a firearm in his hands. The kids stated that Mr. [REDACTED] fired his firearm as the kids ran away from the location. Witness [REDACTED] stated that her nephew ran home scared, dripping in sweat, and out of breath, and when he was finally able to talk he told her what happened and she called 911. Ms. [REDACTED] stated that she ran to the location of occurrence with the kids and saw Mr. [REDACTED] enter a real estate store front when he heard the police sirens approaching. Ms. [REDACTED] further stated that when officers responded to the scene they canvass the location and stopped Mr. [REDACTED]. Ms. [REDACTED] stated that the responding officers interviewed the kids, and informed them that a police report will be filed. Ms. [REDACTED] stated that a supervisor at the scene assured her that Mr. [REDACTED] would be placed under arrest and that her family would receive a phone call from a District Attorney. Ms. [REDACTED] stated that her family has not heard from a District Attorney and Mr. [REDACTED] was released the following day and is back on the streets. A thorough investigation was conducted which included a review of Department records, BWC and video from local establishments. A review of Department records disclosed that former PO [REDACTED] was arrest under Arrest Report# [REDACTED] by the 73 Precinct. A review of the 73 Precinct cameras disclosed that Chief Jeffrey Maddrey, Tax# 899591, Community Affairs Bureau and [REDACTED] Patrol Borough Brooklyn North, were present at command in connection with this incident. A review of the Command Log disclosed that the arrest was voided under the authority of Chief Maddrey. The videos obtained from the surrounding area that included [REDACTED] disclosed that there was no evidence to support that retired PO [REDACTED] displayed or discharged his firearm. Furthermore, this investigation determined that Sgt. [REDACTED] while assigned to the 73 Precinct, on or about November 24, 2021, failed to conduct a thorough and proper investigation in connection with an incident that involved retired Member of the Service known to the Department. A Letter of Instruction was issued to Sgt. [REDACTED]. The allegation of Investigate Incomplete/Improper - Crime Invest (not Domestic) will be closed as Minor Procedural Violation.

Person's Last Name, First M.I.	Role	Status
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000006

EXHIBIT 3

 Internal Case Management System Worksheet - General Investigation Worksheet					Top Allegation INVESTIGATE INCOMPLETE/IMPROPER - CRIME INVEST (NOT DOMESTIC)	Group SIU-SPECIAL INVESTIGATIONS UNIT Date of This Report 12/16/2021	
Date Reported 11/30/2021	Date Assigned 11/30/2021	IAB Log No. 2021-26949	Case No. (SIU) OG- 2021-13520	Folder Type OUTSIDE GUIDELINES	Preliminary Case Type FILE	Follow-Up No. 77	Worksheet Tracking No. 5378437

Topic/Subject (General Investigation Worksheet) CONFERRAL WITH ADA [REDACTED]	Activity Date 12/16/2021	Activity Time 13:49
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Details Follow-Up Information On Thursday, December 16, 2021, at approximately 1349 hours, while present at IAB SIU, I am documenting that I have conferred with ADA [REDACTED] of the Brooklyn DA's Office, Law Enforcement Accountability Bureau [REDACTED] ADA [REDACTED] stated that at this point of their investigation they do not see any impropriety. ADA [REDACTED] stated that he has conferred with CCRB who stated that an anonymous UMOS has called approximately nine (9) times stating that there was wrong doing involved in this case and that CCRB should bring this case to the attention of the media. ADA [REDACTED] stated that unless there is video evidence of PO [REDACTED] running with a gun, there is no evidence to substantiate the claims the teenagers made. ADA [REDACTED] stated that the teens account of the story is contradictory.
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Activity Location List

ATTACHMENT

Property	Property Status
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Evidence			
Evidence Collected	Evidence Collection Team	Crime Scene Requested	Who Responded
			ECT/CSU Run No.

Reporting Officer:	Rank SGT	Name [REDACTED]	Tax Reg. No. [REDACTED]	Command SIU SPECIAL INVESTIGATIONS UNIT	
Reviewing Supervisor:	Manner of Closing -	Date Reviewed 12/16/2021	Date of Next Review	Name [REDACTED]	Supv. Tax No. [REDACTED]
Endorser:	Rank INS	Name [REDACTED]	Tax Reg. No. [REDACTED]	Command SIU-SPECIAL INVESTIGATIONS UNIT	DateTime Reviewed 12/16/2021 17:50
					Status Approved
Comments APPROVED					

 Internal Case Management System Worksheet - General Investigation Worksheet					Top Allegation INVESTIGATE INCOMPLETE/IMPROPER - CRIME INVEST (NOT DOMESTIC)	Group SIU-SPECIAL INVESTIGATIONS UNIT Date of This Report 12/16/2021	
Date Reported 11/30/2021	Date Assigned 11/30/2021	IAB Log No. 2021-26949	Case No. (SIU) OG- 2021-13520	Folder Type OUTSIDE GUIDELINES	Preliminary Case Type FILE	Follow-Up No. 78	Worksheet Tracking No. 5378585

Topic/Subject (General Investigation Worksheet) CCRB CASE STATUS LOOK UP	Activity Date 12/16/2021	Activity Time 14:34
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Details Follow-Up Information
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000106

Appendix B



ERIC L. ADAMS
MAYOR

CIVILIAN COMPLAINT REVIEW BOARD
100 CHURCH STREET 10th FLOOR
NEW YORK, NEW YORK 10007 ♦ TELEPHONE (212) 912-7235
www.nyc.gov/ccrb



ARVA RICE
INTERIM CHAIR

July 12, 2024

VIA ELECTRONIC MAIL

Honorable Rosemarie Maldonado
Deputy Commissioner of Trials
New York City Police Department
One Police Plaza
New York, New York 10038

Re: Chief Jeffrey Maddrey
Tax Registry No. 899501
Disciplinary Case No. 2023-28275
Response to Defense Motion to Dismiss

Commissioner Maldonado:

Respondent, Chief Jeffrey Maddrey, was charged with the following:

1. Chief Jeffrey Maddrey, on or about November 24, 2021, at approximately 2300, while assigned to NYPD's Community Affairs Bureau and on duty, in the vicinity of the 73rd Precinct stationhouse, Kings County, abused his authority as a member of the New York City Police Department, in that he engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department, in that he improperly interfered with an arrest.

AG 304-06, page 1, paragraph 1—PROHIBITED CONDUCT; PG 200.02—MISSION, VISION, AND VALUES OF THE NEW YORK CITY POLICE DEPARTMENT

STATEMENT OF FACTS

On November 24, 2021, at approximately 9:30 p.m., three (3) juvenile boys—[REDACTED]—were walking in the vicinity of [REDACTED] in Brooklyn. As the boys approached [REDACTED], [REDACTED] threw a basketball he was carrying, and it struck the surveillance camera of a local business. The boys ran away. A man, later identified via investigation as former NYPD Police Officer [REDACTED] (hereinafter “Mr. [REDACTED]”), emerged from the business and chased the boys for a significant period of time. During the chase, Mr. [REDACTED] is alleged to have menaced the boys by pulling out a firearm.¹

¹ While Mr. [REDACTED] denies brandishing his firearm, he acknowledges it was in his waistband while pursuing the children.

██████████ called 911 to report the incident and numerous officers responded to the vicinity of ██████████. After conducting a thorough investigation, which included interviewing all three boys and Mr. ██████████ and reviewing surveillance video, Sergeant ██████████ (hereinafter “Sergeant ██████████”) made the decision to place Mr. ██████████ under arrest for menacing. Mr. ██████████ was then transported to the 73rd Precinct stationhouse. While Mr. ██████████ was in custody, he requested that the officers contact Chief Jeffrey Maddrey (hereinafter “Respondent”), who was his former colleague and supervisor while with the Department and the Chief of the Community Affairs Bureau at the time of this incident. Respondent eventually arrived at the 73rd Precinct stationhouse and participated in the investigation of the menacing allegations. Respondent then ordered Sergeant ██████████ to release Mr. ██████████ and void his arrest.

The Board substantiated abuse of authority allegations against Respondent and recommended Charges and Specifications. On May 23, 2023, Respondent was served with the Charges and Specifications. The initial conference for this matter was held on February 20, 2024. This trial was set to be conducted on June 24, June 25, and June 26, 2024, but was adjourned per Respondent’s request for a settlement conference. A settlement conference was held on June 24, 2024, which did not result in a settlement. The trial was adjourned and is set to be conducted on August 6, August 7, and August 8, 2024.

I. RESPONDENT’S MOTION TO DISMISS SHOULD BE DENIED AS THE CCRB HAS JURISDICTION OVER THE ALLEGED MISCONDUCT AND IS ACTING WITHIN ITS AUTHORITY TO INVESTIGATE.

Respondent states that “the only agency with power to investigate and prosecute this incident is the NYPD Internal Affairs Bureau” (Respondent’s Motion Page 1). This is plainly incorrect. The New York City Charter, Chapter 18-A, § 440(a), specifically states:

It is in the interest of the people of the city of New York and the New York City police department that the investigation of complaints concerning misconduct by officers of the department towards members of the public be complete, thorough and impartial. These inquiries must be conducted fairly and independently, and in a manner in which the public and the police department have confidence. An independent civilian complaint review board is hereby established as a body comprised solely of members of the public with the authority to investigate allegations of police misconduct as provided in this section.

It is clear from the plain language of the City Charter that the CCRB has the authority to investigate complaints involving misconduct committed by members of service against members of the public and that is to be done independently of the New York City Police Department, which includes Internal Affairs Bureau (hereinafter “IAB”). In many circumstances, the CCRB has concurrent or parallel jurisdiction with IAB and with local district attorneys’ offices. Just because the CCRB has concurrent or parallel jurisdiction with IAB, that does not divest the CCRB of jurisdiction or our ability to investigate misconduct committed by members of service against members of the public. In addition, even if the CCRB had a prior practice of referring such matters to IAB to investigate, that does not mean that the CCRB does not have the authority to investigate those matters. *Matter of Lynch v. New York City Civilian Complaint Review Board*, 206 A.D.3d 558, 561.

It is abundantly clear that the CCRB has the authority to investigate Respondent for abusing his authority by improperly interfering with the arrest of Mr. ██████████. The CCRB “shall have the power to receive, investigate, hear, make findings and recommend action upon complaints by members of the public

or complaints initiated by the board against members of the police department that allege misconduct involving excessive use of force, *abuse of authority* including bias-based policing and racial profiling, discourtesy, or use of offensive language...” (Emphasis added.) The New York City Charter, Chapter 18-A, § 440(c)(1). The CCRB’s website does provide examples of what misconduct could constitute abuse of authority. However, Respondent incorrectly asserts that this list is exhaustive when it is in fact not. (Respondent’s Motion Page 3). The First Department in *Matter of Lynch v. New York City Civilian Complaint Review Board*, 206 A.D.3d 558, 560, stated that:

Given the CCRB’s expertise in studying and investigating police disciplinary matters, we defer to its interpretation of the term “abuse of authority,” unless that definition is irrational, unreasonable, or inconsistent with the governing statute. The CCRB’s interpretation of that term—defining “abuse of authority” as “misusing police power”...is consistent with the plain language of the governing statute.

Respondent’s misconduct in this matter—improperly interfering with the arrest of Mr. [REDACTED]—clearly fits into the CCRB’s definition of “abuse of authority” as Respondent did in fact misuse police power in order to effectuate this misconduct and therefore, the CCRB does in fact have the authority to investigate this misconduct committed by Respondent.

Respondent makes the grossly inaccurate claim that the misconduct in this case as conduct that did not directly affect nor involve any members of the public and was just “an internal NYPD matter.” Nothing could be further from the truth. First, the three young boys who were menaced with a gun by Mr. [REDACTED] are members of the public. All three boys gave statements to the NYPD alleging they were the victims of a crime perpetrated by Mr. [REDACTED]. After conducting his investigation, Sergeant [REDACTED] made the decision to arrest Mr. [REDACTED]. It was only then that Respondent became involved, based solely on his prior personal and professional relationship with Mr. [REDACTED]—a fact that Respondent’s attorney completely fails to address in his motion. Not only did Respondent have a professional relationship with Mr. [REDACTED], but their relationship was also quite personal. Respondent stated during his CCRB interview that he was notified of Mr. [REDACTED]’s arrest by Mr. [REDACTED]’s brother—clear cut evidence of a personal relationship between the two. Despite Respondent’s false claims, Respondent’s misconduct absolutely and directly affected those three young boys and members of the public.

Second, CCRB received a complaint via e-mail on November 25, 2021, from an anonymous reporting non-witness on behalf of the three young boys, alleging that Respondent interfered in the arrest of Mr. [REDACTED] for menacing the three young boys. In addition, the mother of one of those boys, [REDACTED], filed a complaint via the CCRB’s call processing system on November 30, 2021, after being notified by her sister that she received a call from an anonymous male caller who stated that he was from the 73rd Precinct and that the man who had menaced the boys had been arrested but that he was released from the stationhouse. While Respondent claims that since he did not directly interface with members of the public, this is solely an “internal NYPD matter” (Respondent’s Motion Page 2), Respondent is wrong. Civilians who make complaints to the NYPD are entitled to expect that those complaints will be handled fairly, and that the accused will not receive preferential treatment due to their prior relationship with NYPD personnel. The CCRB’s jurisdiction is not limited to face-to-face interactions as Respondent claims. The City Charter makes no such limitation on the CCRB’s power and Respondent’s arguments flies in the face of the broad authority granted to the CCRB under its abuse of authority jurisdiction. As stated in the CCRB’s Rules, “The term “Abuse of Authority” refers to misusing police powers,” 38-A R.C.N.Y. § 1-01, and that is precisely what Respondent did here by using his position and authority to

prevent the boys' complaints from moving forward in a just and impartial manner, something that every civilian has a right to expect. To argue that the three boys were not harmed by Respondent's improper intervention is simply untrue.

II. RESPONDENT'S MOTION TO DISMISS SHOULD BE DENIED AS THE MOTION IS UNTIMELY.

Respondent's motion to dismiss for lack of jurisdiction should be denied as the motion is untimely. During the initial conference on February 20, 2024, this case was set for trial and a motion schedule was set. The trial was scheduled for June 24 to June 26, 2024. Per that motion schedule, all pre-trial motions were to be filed by June 7, 2024. On May 7, 2024, Respondent emailed the Deputy Commissioner of Trials (hereinafter "DCT") to request an extension of the deadline for pre-trial motions. This request was granted, and pre-trial motions were due by June 10, 2024. Respondent, however, did not file the instant motion to dismiss for lack of jurisdiction until June 26, 2024.

Title 38, Chapter 15 of the Rules of the City of New York, § 15-03(g), states "Pre-Hearing motions and other preliminary matters shall be consolidated and addressed to the Deputy Commissioner of Trials as promptly as possible and sufficiently in advance of the Hearing to permit the rendering of a timely decision." Not only did Respondent fail to comply with the motion schedule that was extended by DCT per Respondent's request, but Respondent has also failed to comply with 38 R.C.N.Y. § 15-03(g). A motion to dismiss for lack of jurisdiction, such as the one filed by Respondent, is a pre-trial motion and must be made "as promptly as possible and sufficiently in advance of the Hearing." Respondent filed this motion to dismiss on what would have been the third day of trial, June 26, 2024, had Respondent not requested a settlement conference in lieu of trial and an adjournment of the trial to August 2024. As this motion to dismiss for lack of jurisdiction was not filed during the prescribed motion schedule nor was it promptly filed sufficiently in advance of trial as required by 38 R.C.N.Y. § 15-03(g), Respondent's motion to dismiss for lack of jurisdiction should be denied as untimely.

CONCLUSION

Respondent's motion to dismiss should be denied as untimely. In the alternative, Respondent's motion to dismiss should be denied as CCRB has jurisdiction over the misconduct in this case and is acting well within our authority to investigate said misconduct. For all the reasons stated above, we respectfully request that Respondent's motion to dismiss be denied.

Respectfully submitted,

Theresa Freitas

Theresa Freitas, Esq.
Administrative Prosecution Unit
New York City Civilian Complaint Review Board

CC: Lambros Lambrou, Esq.
The Lambrou Law Firm
45 Broadway, Suite 3150
New York, New York 10006

Appendix C

Figure 12: FADO&U Allegations in Complaints Received by Type

Force (F) Allegations	2022		2023	
	Count	% of Total	Count	% of Total
Physical force	3,097	75%	4,840	74%
Gun Pointed	186	5%	269	4%
Chokehold	136	3%	236	4%
Nonlethal restraining device	137	3%	194	3%
Hit against inanimate object	233	6%	323	5%
Restricted Breathing	156	4%	233	4%
Nightstick as club	19	0%	31	0%
Pepper spray	10	0%	42	1%
Handcuffs too tight	52	1%	89	1%
Other	39	1%	106	2%
Other blunt instrument as a club	8	0%	12	0%
Vehicle	40	1%	94	1%
Radio as club	1	0%	4	0%
Gun fired	10	0%	23	0%
Police shield	5	0%	1	0%
Gun as club	1	0%	9	0%
Flashlight as club	2	0%	1	0%
Animal	0	0%	1	0%
Less Than Lethal Force/Device	0	0%	1	0%

Discourtesy (D) Allegations	2022		2023	
	Count	% of Total	Count	% of Total
Action	328	20%	498	21%
Demeanor/tone	9	1%	8	0%
Gesture	16	1%	28	1%
Other	21	1%	32	1%
Word	1,228	77%	1,804	76%

Offensive Language (O) Allegations	2022		2023	
	Count	% of Total	Count	% of Total
Race	69	19%	107	20%
Gender	87	25%	165	31%
Ethnicity	21	6%	29	6%
Other	85	24%	81	15%
Religion	10	3%	17	3%
Sexual orientation	27	8%	44	8%
Gender Identity	17	5%	0	0%
Disability	38	11%	83	16%

Untruthful Statement (U) Allegations	2022		2023	
	Count	% of Total	Count	% of Total
False official statement	22	56%	30	73%
Impeding an investigation	0	0%	0	0%
Inaccurate official statement	0	0%	0	0%
Misleading official statement	17	44%	11	27%

Abuse of Authority (A) Allegations	2022		2023	
	Count	% of Total	Count	% of Total
Bias-Based Policing (Age)	11	0%	32	0%
Bias-Based Policing (Color)	1	0%	15	0%
Bias-Based Policing (Disability)	11	0%	36	0%
Bias-Based Policing (Gender)	4	0%	51	0%
Bias-Based Policing (Housing Status)	10	0%	25	0%
Bias-Based Policing (Immigration Status)	8	0%	3	0%
Bias-Based Policing (National Origin)	22	0%	53	0%
Bias-Based Policing (Race)	88	1%	541	3%
Bias-Based Policing (Religion)	3	0%	23	0%
Bias-Based Policing (Sexual Orientation)	0	0%	14	0%
Body Cavity Searches	11	0%	20	0%
Electronic device information deletion	8	0%	21	0%
Enforcement Action	0	0%	2	0%
Entry of Premises	899	10%	961	6%
Failed to Obtain Language Interpretation	65	1%	73	0%
Failure to Explain	28	0%	113	1%
Failure to provide RTKA card	588	7%	1,309	8%
False Official Statements	17	0%	17	0%
Forcible Removal to Hospital	566	6%	657	4%
Frisk	266	3%	619	4%
Gun Drawn	56	1%	121	1%
Improper dissemination of medical info	8	0%	3	0%
Improper use of body-worn camera	130	1%	1,027	6%
Inaccurate Statements	2	0%	2	0%
Interference with recording	134	2%	240	1%
Misleading Statements	1	0%	0	0%
Obstructed Rank Designation	1	0%	3	0%
Obstructed Shield Number	37	0%	60	0%
Other	114	1%	159	1%
Photography/Videography	28	0%	49	0%
Property damaged	306	3%	487	3%
Question	141	2%	390	2%
Questioned immigration status	4	0%	9	0%
Refusal to obtain medical treatment	196	2%	353	2%
Refusal to process civilian complaint	208	2%	372	2%
Refusal to provide name	497	6%	851	5%
Refusal to provide shield number	519	6%	910	6%
Refusal to show arrest warrant	17	0%	20	0%
Refusal to show search warrant	28	0%	37	0%
Retaliatory arrest	5	0%	7	0%
Retaliatory summons	15	0%	43	0%
Search (of person)	301	3%	634	4%
Search of Premises	341	4%	394	2%
Search of recording device	33	0%	59	0%
Seizure of property	245	3%	385	2%
Sex Miscon (Humiliation: fail to cover)	33	0%	85	1%
Sex Miscon (Sexual Harassment, Gesture)	16	0%	19	0%
Sex Miscon (Sexual Harassment, Verbal)	40	0%	64	0%
Sex Miscon (Sexual/Romantic Proposition)	27	0%	31	0%
Sex Miscon (Sexually Motiv Photo/Video)	3	0%	0	0%
Sex Miscon (Sexually Motiv Strip-Search)	0	0%	0	0%
Sex Miscon (Sexually Motivated Frisk)	3	0%	6	0%
Sex Miscon (Sexually Motivated Question)	3	0%	0	0%
Sex Miscon (Sexually Motivated Search)	2	0%	2	0%
Sexual Miscon (Forcible Touching)	47	1%	50	0%
Sexual Miscon (Inappropriate Touching)	54	1%	87	1%
Sexual Miscon (On-duty Sexual Activity)	3	0%	0	0%
Sexual Miscon (Penetrative Sex, Contact)	7	0%	8	0%
Sexual Miscon (Rape)	21	0%	16	0%
Sexual Miscon (Sexual Assault)	18	0%	12	0%
Sexual Misconduct (Sexual Humiliation)	12	0%	11	0%
Stop	559	6%	1,126	7%
Strip-searched	64	1%	71	0%
Threat of arrest	732	8%	1,092	7%
Threat of force (verbal or physical)	369	4%	624	4%
Threat of summons	69	1%	117	1%
Threat re: immigration status	3	0%	1	0%
Threat re: removal to hospital	90	1%	129	1%
Threat to damage/seize property	119	1%	172	1%
Threat to notify ACS	25	0%	26	0%
Unlawful Arrest	34	0%	60	0%
Unlawful Summons	23	0%	90	1%
Untruthful Statement	1	0%	0	0%
Vehicle search	262	3%	537	3%
Vehicle stop	267	3%	708	4%