

SUMMARY REPORT OF INVESTIGATION¹

I. EXECUTIVE SUMMARY

Date of Incident:	October 6, 2015
Time of Incident:	9:50 a.m.
Location of Incident:	6200 S. Western Ave., Chicago, IL
Date of COPA Notification:	October 6, 2015
Time of COPA Notification:	12:25 p.m.

On October 6, 2015, at approximately 9:50 a.m., CPD officer Jose Barrios curbed [REDACTED] vehicle at or near 6200 S. Western Ave., Chicago, Illinois, purportedly for using a mobile phone while driving. [REDACTED] subsequently filed a complaint and provided a statement to IPRA alleging that officers improperly detained and searched him and his vehicle, pulled him from his car by the neck, as well as used offensive language during the encounter -- including, but not limited to, calling him a nigger. No arrests were made and no injuries were reported. No CPD in-car camera (“ICC”) or body-worn camera (“BWC”) footage depicting the incident was recovered. However, [REDACTED]² [REDACTED] cousin, witnessed the incident and recorded a portion of the encounter using his mobile phone. [REDACTED] also provided a statement to IPRA corroborating the basic underlying factual claims, and alleged he himself was also called a nigger and subjected to other disrespectful statements during the incident.

II. INVOLVED PARTIES

Involved Officer #1:	Officer Jose Barrios, Star #7700, Employee ID [REDACTED], Date of Appointment: June 29, 1992, Police Officer, 8 th District, DOB: [REDACTED], 1968, M, Hispanic.
Involved Officer #2:	Officer Jacqueline Regan, Star #13079, Employee ID [REDACTED], Date of Appointment: August 4, 1997, Police Officer, 9 ^h District, DOB: [REDACTED], 1958, F, Caucasian.
Involved Officer #3:	Officer Dale Jesionowski, Star 15687, Employee ID # [REDACTED], Date of Appointment: November 18, 1991, Police

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

² Due to their same surnames, [REDACTED] and [REDACTED] will at times be addressed by their first names throughout this SRI to avoid confusion.

Involved Officer #4:	Officer, 8th District, DOB: [REDACTED], 1964, M, Caucasian.
Involved Individual #1:	Complainant-Victim [REDACTED] 21, M, Black, [REDACTED].
Involved Individual #2:	Witness-Victim [REDACTED] 22, M, Black, [REDACTED].

III. ALLEGATIONS

Officer	Allegation	Finding
Officer Jose Barrios	<p>1. It is alleged that the accused officer grabbed [REDACTED] by the back of his neck and pulled him out of his vehicle without due justification, in violation of Rule 9.</p> <p>2. It is alleged that the accused officer searched the inside of [REDACTED] vehicle without a warrant or permission, and in violation of Rule 2, and in relation to the Fourth Amendment to the United States Constitution as incorporated by Illinois Constitution, Art. 1 Sec. 6.</p> <p>3. It is alleged that the accused officer searched the trunk of [REDACTED] vehicle without a warrant or permission, and in violation of Rule 2, and in relation to the Fourth Amendment to the United States Constitution as incorporated by Illinois Constitution, Art. 1 Sec. 6.</p> <p>4. It is alleged that the accused officer stated to [REDACTED] words to the effect of, "Your broke-ass don't have a job," in violation of Rule 8.</p>	<p>Sustained / 5 Days</p> <p>Sustained / 15 Days</p> <p>Sustained / 15 Days</p> <p>Sustained / 5 Days</p>

	<p>5. It is alleged that the accused officer stated to [REDACTED] words to the effect of, “You just like the rest of these black niggers on the street, gang-banging and doing all that,” in violation of Rule 8.</p> <p>6. It is alleged that the accused officer stated to [REDACTED] words to the effect of, “You’re not shit, never going to be shit,” in violation of Rule 8.</p> <p>7. It is alleged that the accused officer stated to [REDACTED] words to the effect of, “Now go ahead, go along with your broke down ass Hyundai,” in violation of Rule 8.</p> <p>8. It is alleged that before returning [REDACTED] insurance and registration documents, he “balled them up” and returned them to him as such, in violation of Rule 8.</p> <p>9. It is alleged that during the same incident at issue, the accused officer called bystander [REDACTED] a nigger, in violation of Rule 8 and 9.</p>	<p>Sustained / 15 Days</p> <p>Sustained / 5 Days</p> <p>Sustained / 5 Days</p> <p>Not Sustained.</p> <p>Sustained / 15 Days</p>
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IV. APPLICABLE RULES AND LAWS

Rules

Rule 2: prohibits “Any action or conduct which impedes the Department’s efforts to achieve its policy or goals or brings discredit upon the department.”

Rule 8: prohibits “Disrespect to or maltreatment of any person while on or off duty.”

Rule 9: prohibits “Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.”

 Special Orders

1.

[...]Special Order S04-14-05, Traffic Violators, Name Checks, and Bonding (eff. Sep 3, 2015):

[...]

“IV. Disposition of the Arrestee’s Vehicle

A. A Vehicle under the control of an arrestee is subject to an immediate tow:

1. When the arrestee is found to be in violation of any municipal ordinance or state law under 720 ILCS 5/36.1 requiring the vehicle to be impounded or seized.
2. If the vehicle cannot be legally, safely, and continuously parked at or near the scene of the arrest and:
 1. The arrestee does not authorize another person to take control of the vehicle in a legal manner, or
 2. The vehicle cannot be legally and safely driven to the place of detention by authorized police personnel.

“Special Order S07-03-05, Impoundment of Vehicles for Municipal Code Violations, (eff. Nov 13, 2013):

“[...]

“III. General Impoundment Procedures

“[...]

B. Whenever a Department member has probable cause to believe that a vehicle is subject to impoundment pursuant to a violation of the Municipal Code of Chicago, the member will:

[...]

7. remove and inventory personal property found within the vehicle. If the vehicle keys are available, personal property within a locked glove compartment or trunk will be removed and inventoried[....]”

 Federal Laws

The Fourth Amendment to the Constitution of the United States, as incorporated by Illinois Constitution Art. 1 Sec. 6.

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.”

State and Local Laws

625 ILCS 5/6-112. License and Permits to be carried and exhibited on demand.

“Every licensee or permittee shall have his driver’s license or permit in his immediate possession at all times when operating a motor vehicle and, for the purpose of indicating compliance with this requirement, shall display such license or permit if it is in his possession upon demand made, when in uniform or displaying a badge or other sign of authority, by a member of the State Police, a sheriff or other police officer or designated agent of the Secretary of State. However, no person charged with violating this Section shall be convicted if he produces in court satisfactory evidence that a driver’s license was theretofore issued to him and was valid at the time of his arrest.

“For the purposes of this Section, "display" means the manual surrender of his license certificate into the hands of the demanding officer for his inspection thereof.”

625 ILCS 5/12-610.2. Electronic Communication Devices.

“(a) As used in this Section:

“Electronic communication device" means an electronic device, including but not limited to a hand-held wireless telephone, hand-held personal digital assistant, or a portable or mobile computer, but does not include a global positioning system or navigation system or a device that is physically or electronically integrated into the motor vehicle.

“(b) A person may not operate a motor vehicle on a roadway while using an electronic communication device.

“(b-5) A person commits aggravated use of an electronic communication device when he or she violates subsection (b) and in committing the violation he or she was involved in a motor vehicle accident that results in great bodily harm, permanent disability, disfigurement, or death to another and the violation was a proximate cause of the injury or death.

“(c) A second or subsequent violation of this Section is an offense against traffic regulations governing the movement of vehicles. A person who violates this Section shall be fined a maximum of \$75 for a first offense, \$100 for a second offense, \$125 for a third offense, and \$150 for a fourth or subsequent offense.[....]”

Municipal Code of Chicago Code of Ordinances, Title 9, “Vehicles Traffic and Rail Transportation.”

§9-92-030. Authority to impound or otherwise relocate vehicle.

“Members of the police department and employees of the department of streets and sanitation, and employees of the department of aviation with respect to violations occurring at O'Hare International Airport, are authorized to issue a notice of parking violation and may authorize the removal of a vehicle from any public way to a city vehicle pound or authorized garage or other legal parking space in the public way under the following circumstances:

“(a) When a vehicle upon any public way is so disabled as to constitute an obstruction to traffic and the person or persons in charge of the vehicle are by reason of physical injury incapacitated to such an extent as to be unable to provide for its custody or removal;

“(b) When an unattended vehicle is unlawfully parked so as to constitute a hazard or obstruction to the normal movement of traffic;

“(c) When an unattended vehicle is parked in violation of Section 9-40-060, 9-64-020; 9-64-050, 9-64-070, 9-64-100, 9-64-110, 9-64-120, 9-64-130(b), 9-64-140(b), 9-64-150(b), 9-64-160(b), 9-64-170, 9-64-210, 9-80-080(a), or 9-80-130;

“(d) When a vehicle has been abandoned or found to be a hazardous dilapidated motor vehicle in violation of Section 9-80-110;

“(e) When a vehicle illegally occupies a parking meter space for more than 24 hours;

“(f) When an unattended vehicle is parked illegally in an officially designated and marked “tow zone;”

“(g) When a vehicle is in violation of any provision of the traffic code authorizing towing and impoundment for that violation;

“(h) When a vehicle is subject to towing or removal under the Illinois Vehicle Code, the Criminal Code of 1961, or any other law;

“(i) When towing or removal is necessary as an incident to an arrest.

“(Added Coun. J. 7-12-90, p. 18634; Amend Coun. J. 9-1-99, p. 10503, § 1; Amend Coun. J. 12-12-01, p. 75777, § 5.7; Amend Coun. J. 12-4-02, p. 99026, § 5.3; Amend Coun. J. 11-5-03, p. 10746, § 1; Amend Coun. J. 12-2-09, p. 78837, Art. 15, § 1). [...]”

V. INVESTIGATION³

a. Interviews

1. Complainant-Victim ██████████

In an **interview with IPRA on October 6, 2015, Complainant-Victim ██████████** related that on October 6, 2015, at approximately 10:00 a.m., he was driving near 6200 S. Western Ave., in Chicago, when he was pulled over by a marked CPD SUV. A male, Hispanic officer -- now known to be Jose Barrios -- approached and requested a license and proof of insurance. ██████████ related telling the officer he left his wallet at home and the officer ordered him to exit the vehicle. The officer then opened the driver’s door, grabbed the scruff of ██████████ neck, and pulled him out. The officer patted him down and put him into the back of his squad vehicle.⁴ He did not handcuff or arrest ██████████ related his cousin, ██████████ walked by and witnessed part of the incident.

³ COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

⁴ Attachment 15, pg. 4, ln. 14.

██████████ related the Hispanic officer uttered something at one point to the effect that: “[Y]our broke ass don’t have a job” and “You just like the rest of these black niggers on the street, gang-banging and doing all that.”⁵

██████████ said the officer shoved him into the back seat of the squad vehicle and ██████████ observed ██████████ approach the officer outside. When ██████████ demanded to know why ██████████ was being detained, the officer told him to back away and the officer called for backup.⁶

After backup officers arrived, ██████████ observed Officer Barrios search the passenger compartment and trunk of his car.⁷ ██████████ was thereafter released from the squad vehicle and allowed to return to his car, without a citation. ██████████ requested his vehicle-related paperwork be returned, and Officer Barrios walked to the vehicle, balled-up the document, and handed it to ██████████ in that condition. ██████████ then drove away from the scene. He did not sustain any physical injuries and did not report seeking any medical treatment following the incident.

2. Witness-Victim ██████████

In an **interview with IPRA on October 6, 2015, Witness-Victim ██████████** related that on October 6, 2015, at approximately 10:00 a.m., he was driving his SUV near 6200 S. Western Ave., in Chicago, when he observed his cousin, ██████████ vehicle, stopped by police near 6200 S. Western Ave. ██████████ stated that he was on the phone with ██████████ when ██████████ was pulled over.⁸ ██████████ related he parked his vehicle at a nearby currency exchange and partially observed the incident from that location. After leaving the currency exchange, he observed an officer appear about to pull ██████████ from his car.⁹ ██████████ approached on foot and asked the officer why he was pulling his cousin from the car. The officer then told ██████████ something to the effect of: “Go to work, homey,” and to leave “before something happens.”¹⁰

██████████ who is black, related he then unzipped his coat to show he was unarmed, and that the officer then called him a nigger.¹¹ The officer also said something to the effect that ██████████ didn’t work, was lazy, should do something with his life, and that the traffic stop was not his concern.¹² ██████████ then observed the officer remove ██████████ from his vehicle, hold him by the back of his neck, and place him into the back of the officer’s police SUV.¹³

██████████ related he then returned to his vehicle, parked westbound on 62nd St., and proceeded to video record the scene with his mobile phone. He observed backup officers arrive and he recorded Officer Barrios search the interior and trunk of ██████████ vehicle. He related, however, he could not hear any conversation(s) from his position, including whether the officer(s) uttered the racially derogatory statements alleged herein by ██████████¹⁴ ██████████ did recall the officer depicted in the mobile phone video searching ██████████ vehicle was the same officer who earlier called *him* [██████████] a nigger.¹⁵

⁵ *Id.*, pg. 11, ln. 8.

⁶ *Id.*, pg. 7, ln. 21.

⁷ *Id.*, pg. 10, ln. 9.

⁸ *Id.* pg. 5, ln. 15.

⁹ Attachment 9, pg. 5, ln. 21. See also, *Id.*, pg. 8, ln. 3 – 19.

¹⁰ *Id.*, pg. 6, ln. 15.

¹¹ Attachment 9, pg. 7, ln. 8., pg. 14, ln. 5.

¹² *Id.*, pg. 9-10.

¹³ *Id.*, pg. 9, ln. 4.

¹⁴ *Id.*, pg. 21, ln. 1., pg. 23, ln. 14.

¹⁵ Attachment 9, pg. 9, ln. 10 - pg. 10.

3. Police Statements

In a statement to IPRA on June 8, 2016, Officer Jose Barrios related that at approximately 10:00 a.m. on October 6, 2015, he was on-duty, driving his squad vehicle, alone and on patrol. He then observed ██████ use a mobile phone while driving, so he curbed the vehicle near 62nd St. and Western Ave.¹⁶

Officer Barrios approached ██████ vehicle and asked him for his license – which he did not have. Officer Barrios then asked him to exit the car, and escorted him into the back of the nearby squad car.¹⁷ Officer Barrios related that ██████ opened the door and exited the vehicle himself,¹⁸ but that he [Officer Barrios] “may have put his hand on [█████] back or something and escorted him out” when asking ██████ to exit his car.¹⁹ He then performed a protective pat-down of ██████²⁰ After placing ██████ in the back of the squad car, Officer Barrios entered the squad car’s front seat and checked ██████ identity and took the requisite information for a contact card.²¹

Officer Barrios thereafter searched ██████ vehicle while ██████ was still seated in the rear of the squad car.²² Officer Barrios related he searched on and under the front seats for contraband or weapons.²³ He stated that doing so was normal for a traffic stop.²⁴ On further questioning, he stated it was normal to search a vehicle when taking [a driver] into custody, and because ██████ didn’t have a license, he anticipated doing so.²⁵

Officer Barrios related he did not recall several facts surrounding the search, including whether he searched any interior, center console area. He did state; however, he “probably” opened the trunk to make sure there were no weapons or contraband.²⁶ Doing so was normal for traffic stops when a subject was anticipated to be taken to the station.²⁷

Officer Barrios related a third-party, male individual approached the scene, but he did not recall having a conversation with the person or whether the man identified himself as ██████ cousin.²⁸ Officer Barrios related several other backup officers later arrived at the scene, but he did not recall specifics of conversations with them. He related the backup officers provided “officer presence” while he searched the vehicle.²⁹ The backup officers were called because ██████ was very aggressive towards Officer Barrios from the start of the stop.^{30 31}

¹⁶ Attachment 34 pg. 6, ln. 4.

¹⁷ Id. at pg. 6, ln. 20.

¹⁸ Id. at pg. 7 and 39.

¹⁹ Id. at pg. 7, ln. 18.

²⁰ Id. at pg. 8, ln.

²¹ Id. at pg. 10, lns. 15-16, 23.

²² Id. at pg. 12, ln. 5.

²³ Id. at pg. 12, ln. 9.

²⁴ Id. at pg. 12, ln. 22.

²⁵ Id. at pg. 13, ln. 14.

²⁶ Id. at pg. 16, ln. 7.

²⁷ Id. at pg. 16, ln. 13.

²⁸ Id. at pg. 17, ln. 9 – pg. 18, ln. 1.

²⁹ Id. at pg. 22, ln. 15 and pg. 23, ln. 6.

³⁰ Id. at pg. 23, ln. 17.

³¹ Officer Barrios, notably, related earlier in his statement that he wanted a backup because he was by himself -- not mentioning any aggressiveness by ██████ (See Attachment 34, pg. 18).

When asked about vehicle trunk searches, Officer Barrios admitted he lacked [REDACTED] consent to search the vehicle, and that it also was *not* customary to search vehicle trunks for minor traffic offenses.³² However, he said, in this case it *was* acceptable to search without consent because [REDACTED] was going to be taken into custody for having no license.³³ He also related he searched the trunk specifically to search for weapons, despite the fact he “had no reason to believe [REDACTED] had weapons[....].”³⁴ After searching the trunk and finding nothing, Officer Barrios related he “cut [REDACTED] a break” and released him.³⁵ No citation was issued, a contact card receipt was provided, and [REDACTED] was allowed to depart in his vehicle.³⁶ Officer Barrios also confirmed [REDACTED] requested Officer Barrios return his insurance paperwork, which Officer Barrios had left in his squad car.³⁷ He expressly denied ever balling up the document, however.³⁸

Regarding making offensive statements, Officer Barrios related he did not recall ever stating words to the effect: “Your broke ass don’t have a job” and he denied stating: “You’re just like the rest of these black niggers on the street, gang banging and doing all that” or “You’re not shit, never going to be shit.”³⁹ He likewise denied telling [REDACTED] “Now go ahead, go along with your broke ass Hyundai,” or ever calling [REDACTED] a nigger.⁴⁰

In a **statement to IPRA on February 15, 2017, Officer Jacqueline Regan related** she had no independent recollection of the incident or any conversations with those present.⁴¹ She did relate in her statement, however, that at approximately 10:00 a.m. on October 6, 2015, she was on-duty on beat #24, driving a marked squad vehicle, alone and on patrol. She responded to a call for assistance by Beat 883, Officer Barrios. She recalled two other squad vehicles responded besides herself.⁴² Officer Barrios was present as was Officer Chris Kane.⁴³ She identified both officers in the video of the incident, and related that it was Officer Barrios who was depicted searching the subject vehicle’s trunk.⁴⁴ She identified another officer on scene as Officer Jesionowski.⁴⁵

She opined that she herself would, as a matter of practice, search the trunk of a car [without a warrant or consent] in cases where she was towing or had arranged to tow a vehicle to a pound or had requested an officer drive a subject’s vehicle to a station.⁴⁷ Such a vehicle would be searched to inventory property before it was towed or driven by an officer to a station.⁴⁸ She said that officers had discretion to cite drivers without licenses, in which case the individual would go

³² Id. at pg. 27, ln. 9.

³³ Id. at pg. 27, ln. 12.

³⁴ Id. at pg. 48, ln. 7.

³⁵ Id. at pg. 34, ln. 6.

³⁶ Id. at pg. 34, ln. 19.

³⁷ Id. at pg. 37, ln. 7.

³⁸ Id. at pg. 50, ln. 5.

³⁹ Id. at pg. 49, ln. 13.

⁴⁰ Id. at pg. 50, ln. 1.

⁴¹ Attachment 39, pg. 10, ln. 18.

⁴² Id., at pg. 6, ln. 1.

⁴³ Id., at pg. 8, ln. 18.

⁴⁴ Id., at pg. 9, ln. 5.

⁴⁵ Id., at pg. 9, ln. 12.

⁴⁷ Id., at pg. 12, ln. 22.

⁴⁸ Id., at pg. 13, ln. 1.

to the station to post an I-Bond. Alternatively, she opined, an officer could issue a warning and allow the driver to depart without issuing a citation.⁴⁹

In a **statement to IPRA on February 15, 2017, Officer Dale Jesionowski related** he did not recall Officer Barrios uttering the offensive language as was alleged by [REDACTED] or [REDACTED] nor did he recall Officer Barrios “ball-up” any insurance or registration documents.⁵⁰ He related that on October 6, 2015, he was on-duty on beat #859, driving a marked squad vehicle, alone and on patrol. He responded to an assist call at 62nd St. and Western Ave., by Officer Barrios (Beat 883). He related Officer Barrios radioed the driver he stopped had become “very hostile.”⁵¹ Upon his arrival, Officers Regan and Kane were also present, with Officer Barrios.⁵² Officer Jesionowski related he took a “guard position” 5-6 ft. from the subject’s vehicle, and he observed [REDACTED] walking on the sidewalk.⁵³ He did not know whether Officer Barrios searched the passenger area or trunk of the vehicle without a warrant or consent, because he arrived after Officer Barrios made the initial stop.⁵⁴

Officer Jesionowski related he worked with Officer Barrios for approximately eight or nine years, and that Officer Barrios did not use profanity, or derogatory language towards African Americans.⁵⁶

In a **statement to IPRA on February 16, 2017, Officer Christopher Kane related** that on October 6, 2015, he was on-duty, alone on patrol (Beat 882), and responded to an assist call by Officer Barrios at 62nd St. and Western Ave.⁵⁷ He positively identified Officers Barrios, Dale [Jesionowski] and Jackie [Regan] on the mobile phone video taken by [REDACTED].⁵⁸ He did, however, deny recalling other significant details of the encounter, including any conversations with other officers at the scene, including whether Officer Barrios uttered derogatory statements, or had balled-up any paperwork.⁵⁹

Officer Kane opined he believed [REDACTED] gave permission to search his vehicle but that “[h]e didn’t have to give him permission to do it.”⁶⁰ He further opined that it would be proper to search the vehicle if: 1.) the officer had permission to search; or 2.) if he was going to impound the vehicle.⁶¹ This included searching the interior area or within the trunk.⁶² He related he worked with Officer Barrios at the same district for 12-years, and that he did not recall him ever using racially derogatory language during that time.⁶⁴

⁴⁹ *Id.*, at pg. 13, ln. 15.

⁵⁰ Attachment 41, at pg. 17-18. (Notably, however, Officer Jesinowski arrived on-scene *after* the alleged offensive language was uttered by Officer Barrios.)

⁵¹ *Id.*, at pg. 6, ln. 6.

⁵² *Id.*, at ln. 13.

⁵³ *Id.*, at pg. 7, ln. 4.

⁵⁴ *Id.*, at pg. 16, ln. 15.

⁵⁶ *Id.*, at pg. 18, ln. 17.

⁵⁷ Attachment 43, pg. 6, ln. 3.

⁵⁸ *Id.*, at pg. 7, ln. 6.

⁵⁹ See *Id.*, pg. 21-22.

⁶⁰ *Id.*, at pg. 12, ln. 18.

⁶¹ *Id.*, at pg. 14, ln. 6.

⁶² *Id.*, at pg. 14, ln. 8.

⁶⁴ *Id.*, at pg. 22, ln. 1.

b. Digital Evidence

IPRA's request for ICC video was returned with no video having been found.⁶⁵

██████████ provided IPRA with mobile phone **digital video**,⁶⁶ partially depicting the incident, including the moments when Officer Barrios searched ██████████ automobile.⁶⁷ He recorded three short segments of 0:47, 1:35, and 0:11. The video (segment #2) clearly depicted Officer Barrios open the rear passenger door of ██████████ red Hyundai Sonata sedan, search the interior, and then open and search the vehicle trunk.

██████████ can be heard speaking with a woman on the phone during the video. Due to distance and ambient noise, the video did not capture the words of the officers. He narrated the incident, including reporting about the officers searching the vehicle and being told to leave when he inquired about the stop. ██████████ also mentioned that an officer told him, "Go to work, homie -you ain't got no motherfucking job, homie."

c. Documentary Evidence**Department Reports and Records**

OEMC Event Query Report #1527904508⁷⁰ documented on the date and time of the incident, Beat 883 performed a traffic stop of driver ██████████ license ██████████. Assist vehicles were requested, and a review of ██████████ information showed he had a valid license. The matter was closed at 10:03:59 a.m.⁷¹ No arrests were noted.

OEMC 911-call transcript⁷² documented that at 10:04:10 a.m. backup units were requested to 62nd St. at Western Avenue, and a license plate number was called in to check. Dispatch radioed back that the vehicle was registered to ██████████ who had a clear driving record and a valid license from Champaign, Illinois].

An Investigatory Stop **Contact Card**⁷³ # ██████████ documented that on October 6, 2015, at or about 9:50 a.m., ██████████ 2014 red Hyundai Sonata sedan was stopped by police near 6211 S. Western Ave., Chicago, IL 60629, following a traffic violation. A field interview was conducted by Officer Jose Barrios and after ██████████ identity was cleared, he was allowed to depart.

⁶⁵ Attachment 21.

⁶⁶ Attachment 21, Comprised of three, short video segments.

⁶⁷ Attachment 25.

⁷⁰ Attachment 19.

⁷¹ Id.

⁷² Attachment 28.

⁷³ Attachment 17.

VI. LEGAL STANDARD

For each Allegation COPA must make one of the following findings:

1. Sustained - where it is determined the allegation is supported by a preponderance of the evidence;
2. Not Sustained - where it is determined there is insufficient evidence to prove the allegations by a preponderance of the evidence;
3. Unfounded - where it is determined by clear and convincing evidence that an allegation is false or not factual; or
4. Exonerated - where it is determined by clear and convincing evidence that the conduct described in the allegation occurred, but it is lawful and proper.

A **preponderance of evidence** can be described as evidence indicating that it is **more likely than not** that the conduct occurred and violated Department policy. *See Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005), (a proposition is proved by a preponderance of the evidence when it has found to be more probably true than not). If the evidence gathered in an investigation establishes that it is more likely that the misconduct occurred, even if by a narrow margin, then the preponderance of the evidence standard is met.

Clear and convincing evidence is a higher standard than a preponderance of the evidence but lower than the "beyond-a-reasonable doubt" standard required to convict a person of a criminal offense. See *e.g., People v. Coan*, 2016 IL App (2d) 151036 (2016). Clear and Convincing can be defined as a "degree of proof, which, considering all the evidence in the case, produces the firm and abiding belief that it is highly probable that the proposition . . . is true." *Id.* at ¶ 28.

VII. ANALYSIS

Accused Officer Jose Barrios

1. COPA recommends a finding that **Allegation #1**, that **Officer Jose Barrios** grabbed ██████ by the back of his neck and pulled him out of his vehicle without due justification, in violation of Rule 9, be SUSTAINED.

The relevant, underlying facts of this case are straightforward – ██████ was stopped and detained and his vehicle searched after Officer Barrios purportedly observed him speaking on a mobile phone while driving.

Witnesses ██████ and ██████ COPA statements were notably consistent with each other and with most of the objective evidence obtained in this case, bolstering their credibility for COPA's purposes of review. ██████ mobile phone video, for example, partially recorded his contemporaneous recitation of his observation of officers' actions, adding further to the credibility of his subsequent sworn statement.

██████████ alleged Officer Barrios pulled him out of his vehicle by the back of his neck, which Officer Barrios denied. Officer Barrios initially did not mention anything in his sworn statement about ██████ being aggressive, and stated he requested a CPD assist car because: "I

was by myself and just didn't, I just wanted a backup.”⁷⁴ He subsequently amended his account, however, relating that he called backup officers because [REDACTED] was aggressive from the start of the encounter.⁷⁵ The foregoing diminishes the credibility of Officer Barrios' justification for physical contact with or forceful removal of [REDACTED]. Additionally, Officer Barrios' admission he *may* have placed his hand on [REDACTED] back, plus [REDACTED] claim he saw Officer Barrios grab [REDACTED] further shows it was more likely than not that Officer Barrios did so, and without due justification. The foregoing satisfies the requisite preponderance of evidence justifying a SUSTAINED finding.

For the foregoing reasons, a finding of SUSTAINED is warranted.

2. COPA recommends a finding that for **Allegation #2**, that **Officer Jose Barrios** searched the inside of [REDACTED] vehicle without a warrant or permission and without due justification, in violation of Rule 2, be SUSTAINED.

A. [REDACTED] was Properly Seized, and Officer Barrios had Justification to Arrest [REDACTED]

[REDACTED] was pulled over for using a cellphone while driving. [REDACTED] disputed that Officer Barrios could have *seen him* speaking on the phone, but he did not deny doing so. Additionally, [REDACTED] testified that he was speaking on the phone with [REDACTED] at the exact time that [REDACTED] was pulled over. His testimony corroborates Officer Barrios' statement, and COPA finds that Officer Barrios was justified in pulling [REDACTED] over for driving while on the phone, a violation of Illinois Vehicle Code, 625 ILCS 5/12-610.2. Moreover, it is undisputed that [REDACTED] did not have his identification in his possession, a violation of 625 ILCS 5/6-112.

Additionally, Officer Barrios was justified to conduct a custodial arrest of [REDACTED] based upon these violations, even though they are characterized as petty offenses. *See Atwater v. City of Lago Vista*, 532 U.S. 318 354-55 (2001); *People v. Fitzpatrick*, 2013 IL 113449 ¶ 24. For this reason, Officer Barrios was justified in conducting the pat-down search of [REDACTED] and also in placing him in the squad car.

B. The search of [REDACTED] car was not justified as a Search Incident to Arrest or under the “Automobile Exception.”

“Searches conducted outside the judicial process, without prior approval by judge or magistrate, are per se unreasonable under the Fourth Amendment -- subject only to a few specifically established and well-delineated exceptions.” *Arizona v. Gant*, 556 U.S. 332, 338 (2009) (quoting *Katz v. United States*, 389 U.S. 347, 357 (1967)). One such exception is the search incident to a lawful arrest exception which “derives from interests in officer safety and evidence preservation that are typically implicated in arrest situations.” *Id.* Based on these two justifications, “Police may search a vehicle incident to a recent occupant's arrest only if the arrestee is within reaching distance of the passenger compartment at the time of the search or it is reasonable to believe the vehicle contains evidence of the offense of arrest.” *Id.* at 351.

⁷⁴ Attachment 34, at pg. 18.

⁷⁵ See Attachment 34, at pg. 23, ln. 17.

Here, like the citizen in *Gant*, [REDACTED] was in the back of the locked squad car at the time of the search, and the officer safety rationale could not justify the search pursuant to the search incident to arrest exemption. Moreover, there was no reasonable basis to believe that evidence of the offenses for which [REDACTED] was arrested — using a phone while driving and not having his driver’s license in his possession — would be found in the vehicle. *See, Knowles v. Iowa*, 525 U.S. 113, 118 (1998) (discussing the fact that evidence of a petty traffic violation, speeding, would not be found and thus there was no justification to search incident to arrest).

Moreover, the search of the vehicle was not justified under the so-called “automobile exception.” Under the automobile exception, police officers may search a vehicle without a warrant where probable cause exists to believe the automobile contains evidence of criminal activity subject to seizure. *People v. Contreras*, 2014 IL App (1st) 131889, P28. Minor traffic violations, however, do not justify a search of the vehicle under this exception. *See, e.g., People v. Jones*, 215 Ill. 2d 261, 271 (2005) (finding that an officer who had stopped a car for driving with a broken taillight was not justified at that time to search the vehicle under the automobile exception). This case is typical of the minor traffic offense for which the automobile exception does not apply. [REDACTED] conduct — using a phone while driving and not having a license in his possession — does not present probable cause to believe that contraband would be found in the car. Officer Barrios even conceded that he had no basis for believing that weapons would be in the vehicle.

C. The search of [REDACTED] car was not justified as an Inventory Stop.

A final exception to the warrant requirement, relevant to this case, is the “inventory search” exception, which allows officers to search a vehicle which they intend to tow and/or impound.⁷⁶ To be a proper search under this exception, “[b]oth the decision to take the car into custody and the concomitant inventory search must meet the strictures of the Fourth Amendment.” *United States v. Duguay*, 93 F.3d 346, 351 (7th Cir. 1996). The Supreme Court treats impoundments and inventory searches as distinct, but frequently overlapping processes, both of which must be conducted reasonably. *Id.* at 352 (citing *South Dakota v. Opperman*, 428 U.S. 364 (1976)). First, an impoundment must either be supported by probable cause, or made by police in furtherance of “public safety” or “community caretaking functions,” and completely unrelated to an ongoing criminal investigation. *Id.* Second, the search must be conducted as a routine to inventory of the contents of an impounded vehicle for the purposes of “protect[ing] an owner’s property while it is in the custody of the police, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger.” *Id.*

The search was improper because it did not comply with established department policy on impounding vehicles.

The first basis for finding that the search of [REDACTED] vehicle was improper is that Officer Barrios failed to follow Department policy requiring officers to find alternatives to towing an arrestee’s vehicle. This was not only against policy, but was facially unreasonable under Seventh Circuit caselaw.

⁷⁶ While the car was in fact never towed, that does not end this inquiry. Instead the case should be evaluated whether Officer Barrios reasonably believed at the time of the search that the car was to be towed. *United States v. Henderson*, 1995 U.S. App. Lexis 18937 at * 8 (7th Cir., July 20, 1995).

Special Order S04-14-05, Section IV.A provides for the following Disposition of the Arrestee's Vehicle when "a vehicle under the control of an arrestee is subject to an immediate tow":

1. when the arrestee is found to be in violation of any municipal ordinance or state law under 720 ILCS 5/36-1⁷⁷ requiring the vehicle to be impounded or seized.
2. if the vehicle cannot be legally, safely, and continuously parked at or near the scene of the arrest and:
 - a. the arrestee does not authorize another person to take control of the vehicle in a legal manner, or
 - b. the vehicle cannot be legally and safely driven to the place of detention by authorized police personnel.

Applying the foregoing, ██████████ did not violate any municipal or state laws mandating his car be forfeited. Neither driving while using a mobile phone nor driving while not in possession of a license are part of the offences enumerated in 720 ILCS 5/36-1. Likewise, the alleged offense(s) did not violate provisions of MCC 9-64-250 justifying towing. None were met in this instance. Second, Officer Barrios did not conduct any procedures under subpart 2 of S04-14-05 to evaluate whether there were alternatives to towing and impounding ██████████ car. Subpart 2 of the policy echoes Seventh Circuit caselaw, that towing a vehicle without allowing an arrestee to provide for its removal is an unreasonable seizure:

"[...]The policy of impounding the car without regard to whether the defendant can provide for its removal is patently unreasonable if the ostensible purpose for impoundment is for the 'caretaking' of the streets. While it is eminently sensible not to release an automobile to the compatriots of a suspected criminal in the course of a criminal investigation, if the purpose of impoundment is not investigative, and in the absence of probable cause, we do not see what purpose denying possession of the car to a passenger, a girlfriend, or a family member could possibly serve." *Duguay*, 93 F.3d at 353.

Additionally, Officer Barrios followed none of the policy's steps in making his putative determination that the vehicle was to be towed. Initially, the car was legally parked and towing should not have even been contemplated. ██████████ video clearly shows that the vehicle was parked directly next to the curb, and a sign is visible showing that parking was permitted in that location. The sign appears to show that it was a pay-to-park zone, but there is no evidence that Officer Barrios inquired as to whether payment was required at the time.⁷⁸ At the very least, the car should have been backed up only a few feet to be outside the pay to park zone as the policy only permits towing a car if the car may not be parked *near* the place of arrest.

⁷⁷ 720 ILCS 5/36-1 provides rules for towing vehicles which are "used with the knowledge and consent of the owner in the commission" of a list of enumerated offenses. Neither driving while using a mobile phone nor driving while not in possession of a license are part of this list. Likewise, municipal code 9-64-250 enumerates provisions of the Municipal Code which justify towing. None were met in this instance.

⁷⁸ Moreover, the Municipal Code only allows cars improperly parked in pay-to-park zones to be towed if they remain there for more than 24 hours. M.C. 9-92-030 (e).

Moreover, even if the car were not legally parked, ██████ should have been given the opportunity to authorize someone else to take possession of the vehicle. ██████ was on the scene and could have removed the car.⁷⁹ Officer Barrios spoke with ██████ and knew or should have known that he was present. However, Officer Barrios did not inquire of ██████ whether ██████ or anyone else, could have taken control of the car, despite the policy's mandate he do so.

COPA finds that Officer Barrios's conduct did not comply with established Department policy and was thus improper. COPA further finds that the failure to allow ██████ to provide for the removal of the car, by ██████ an officer or someone else, was unreasonable based upon Seventh Circuit precedent. For each of the foregoing reasons, the search of ██████ vehicle under the inventory exception was improper and Allegation #2 should be SUSTAINED.

1. The search was improper because it was not reasonably conducted as an inventory search.

The second reason, which can stand alone as an independent basis for finding the search to be improper, is that Officer Barrios did not reasonably conduct the search as an inventory search. Inventory searches are only reasonable where they serve legitimate purposes: i.e., protect an owner's property in police custody, to insure against claims of lost, stolen, or vandalized property, and to guard the police from danger. *Duguay*, 93 F.3d at 351. Inventory searches must not be used as a “ruse” to engage in “purposeful and general means of discovering evidence of crime.” *Florida v. Wells*, 495 U.S. 1, 4 (1990); *United States v. Cherry*, 436 F.3d 769, 777 (7th Cir. 2006) (Posner, J., dissenting).

By his own admission, Officer Barrios conducted a general search to discover evidence—he stated he looked in the vehicle for weapons or contraband. Moreover, his actions support the fact that he did not conduct the search as an inventory search. He took no sort of notes of his search⁸⁰ and he had utterly no recollection of what was inside the vehicle. He did not recall if he looked inside consoles or the glove box, areas where personal property needing to inventory may be kept. Nor did he remove any personal property from within the vehicle to prepare for it to be inventoried.

Additionally, S04-14-05 Section II.A.1 requires arresting officers to notify OEMC that they are conducting a traffic arrest. S04-14-05, Section V.3 requires that officers inform supervisors that they are making a tow request. Officer Barrios did neither. His failure to conduct even the most basic actions required to make a traffic arrest, tow a vehicle, or conduct an inventory search demonstrates he did not actually plan to tow the vehicle and his “inventory search” was merely a pretext for a general search.

Further supporting the fact that this search was mere pretext is that Officer Barrios did not articulate why he ultimately decided to not arrest ██████ (or even write him a citation for the two clear violations he'd committed). The only intervening act between his decision to put ██████ into the squad car, putatively to arrest him, and the decision to release him with merely a warning, was that he searched the

⁷⁹ Each officer on scene was working solo in their vehicles, so no officer could have driven the vehicle to wherever ██████ would have been detained.

⁸⁰ CPD Impoundment policy requires officers to remove and inventory personal property found within the vehicle. S07-03-05 III.B.7. Even presuming that Officer Barrios may have done this required paperwork following the actual arrest and tow, if he were actually conducting an inventory of the vehicle he would have at least taken notes and begun removing personal property.

car and found no weapons on contraband. The only logical explanation is that the entire purpose of the search was not inventory, but to find weapons or contraband.

Therefore, in addition to the search being unjustified due to Officer Barrios' failure to adhere to department policy on impoundment, the search was unjustified because Officer Barrios did not reasonably conduct an inventory search. For each of these reasons, independent of one another, Allegation #2 should be SUSTAINED.

3. COPA recommends a finding that for **Allegation #3**, that **Officer Jose Barrios** searched the trunk of [REDACTED] vehicle without a warrant or permission and without due justification, in violation of Rule 2, be SUSTAINED for the same reasons articulated in relation to Allegation #2.

4. COPA finds that **Allegation #4** against **Officer Jose Barrios**, that he stated to [REDACTED] words to the effect of: "Your broke-ass don't have a job," in violation of Rule 8, is SUSTAINED. Officer Barrios said he did not recall uttering such words, and also reported that he did not have any independent recollections of statements during the arrest. The witness officers arrived on-scene as backup after the initial encounter occurred. [REDACTED] likewise recalled he did not hear Officer Barrios utter such a statement to [REDACTED] first-hand, because he was out of earshot at the time of alleged statements. [REDACTED] himself alleged that Officer Barrios made race-based derogatory statements during their own interaction, including Officer Barrios calling him a nigger. The [REDACTED] cousins came to IPRA to file a complaint against Officer Barrios on the same day of the incident. Given the general consistency of allegations of verbal abuse between the statements of [REDACTED] and [REDACTED] and *contra* the less-clear, and less-consistent recollections proffered during Officer Barrios' sworn statement, Messrs' [REDACTED] accounts appear more credible and thus, COPA finds the claims satisfy the Complainants' evidentiary burden by the minimal, requisite preponderance.

For the reasons set forth above, a finding of SUSTAINED is warranted.

5. COPA finds that **Allegation #5** against **Officer Barrios**, that he stated to [REDACTED] words to the effect of: "You just like the rest of these black niggers on the street, gang-banging and doing all that," in violation of Rule 8, is SUSTAINED. Officer Barrios denied that he made this comment. For the reasons as set forth in Allegation #4, there is sufficient objective evidence beyond the preponderance necessary to sustain such an allegation.

For the reasons set forth above, a finding of SUSTAINED is warranted.

6. COPA finds that **Allegation #6** against **Officer Barrios**, that he stated to [REDACTED] words to the effect of, "You're not shit, never going to be shit," in violation of Rule 8 is SUSTAINED. Officer Barrios denied that he made this comment. For the reasons as set forth in Allegation #4, there is sufficient objective evidence beyond the preponderance necessary to sustain such an allegation.

For the reasons set forth above, a finding of SUSTAINED is warranted.

7. COPA finds that **Allegation #7** against **Officer Barrios**, that he stated to [REDACTED] words to the effect of: "Now go ahead, go along with your broke down ass Hyundai," in violation of Rule 8, is SUSTAINED. Officer Barrios denied that he made this comment. For the reasons as set forth in Allegation #4, there is sufficient objective evidence beyond the preponderance necessary to sustain such an allegation.

For the reasons set forth above, a finding of SUSTAINED is warranted.

8. COPA finds that **Allegation #8** against **Officer Barrios**, that he “balled up” [REDACTED] insurance document(s), in violation of Rule 8, is NOT SUSTAINED. Officer Barrios expressly denied balling up the paperwork, and [REDACTED] did not corroborate the claim. As such, and for the reasons as set forth in Allegation #4, there is insufficient objective evidence beyond the preponderance necessary to sustain such an allegation.

For the reasons set forth above, a finding of NOT SUSTAINED is warranted.

9. COPA finds that **Allegation #9** against **Officer Barrios**, that he called bystander [REDACTED] a nigger, in violation of Rule 8, is SUSTAINED. Officer Barrios denied that he made this comment. For the reasons as set forth in Allegation #4, there is sufficient objective evidence beyond the preponderance necessary to sustain such an allegation.

For the reasons set forth above, a finding of SUSTAINED is warranted.

I. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS

a. Officer Jose Barrios

i. Complimentary and Disciplinary History

1. Complimentary History

1	Problem Solving Award
1	Democratic National Convention Award
1	Attendance Recognition Award
1	Presidential Election Deployment Award 2008
16	Emblem of Recognition – Physical Fitness
1	2004 Crime Reduction Ribbon
10	Department Commendation
105	Honorable Mention
1	Police Officer of the Month Award
1	Complimentary Letter
1	NATO Summit Service Award
1	2009 Crime Reduction Award

2. Disciplinary History

No CRs

No SPARs

ii. Recommended Penalty, by Allegation

- 1. Allegation No. 1:** Grabbed [REDACTED] by the back of his neck and pulled him out of his vehicle without due justification.

Officer Barrios grabbed [REDACTED] by the back of his neck and pulled him out of his vehicle. COPA finds a five (5) day penalty appropriate.

2. **Allegation No. 2:** Searched the inside of [REDACTED] vehicle without a warrant or permission.

Officer Barrios searched the inside of [REDACTED] vehicle without a warrant, permission or other lawful justification. COPA finds a fifteen (15) day penalty appropriate.

3. **Allegation No. 3:** Searched the trunk of [REDACTED] vehicle without a warrant or permission.

Officer Barrios searched the trunk of [REDACTED] vehicle without a warrant, permission or other lawful justification. COPA finds a fifteen (15) day penalty appropriate.

4. **Allegation No. 4:** Stated to [REDACTED] words to the effect of, "Your broke ass don't have a job."

Officer Barrios stated to [REDACTED] words to the effect of, "Your broke ass don't have a job." COPA finds a five (5) day penalty appropriate.

5. **Allegation No. 5:** Stated to [REDACTED] words to the effect of, "You just like the rest of these black niggers on the street, gang banging and doing all that."

Officer Barrios stated to [REDACTED] words to the effect of, "You just like the rest of these black niggers on the street, gang banging and doing all that." COPA finds a fifteen (15) day penalty appropriate.

6. **Allegation No. 6:** Stated to [REDACTED] words to the effect of, "You're not shit, never going to be shit."

Officer Barrios stated to [REDACTED] words to the effect of, "You're not shit, never going to be shit." COPA finds a five (5) day penalty appropriate.

7. **Allegation No. 7:** Stated to [REDACTED] words to the effect of, "Now go ahead, go along with your broke down ass Hyundai."

Officer Barrios stated to [REDACTED] words to the effect of, "Now go ahead, go along with your broke down ass Hyundai." COPA finds a five (5) day penalty appropriate.

8. **Allegation No. 9:** While talking with [REDACTED] [REDACTED] you called him a "Nigger."

Officer Barrios called [REDACTED] Antwan [REDACTED] a, "Nigger." COPA finds a fifteen (15) day penalty appropriate.

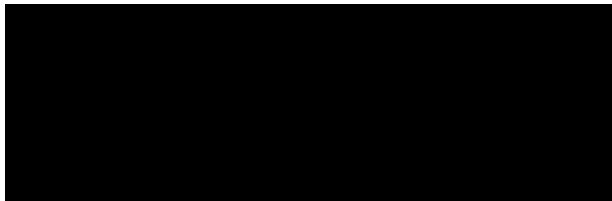
II. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer Jose Barrios	<p>1. It is alleged that the accused officer grabbed [REDACTED] by the back of his neck and pulled him out of his vehicle without due justification, in violation of Rule 9.</p> <p>2. It is alleged that the accused officer searched the inside of [REDACTED] vehicle without a warrant or permission, and in violation of Rule 2, and in relation to the Fourth Amendment to the United States Constitution as incorporated by Illinois Constitution, Art. 1 Sec. 6.</p> <p>3. It is alleged that the accused officer searched the trunk of [REDACTED] vehicle without a warrant or permission, and in violation of Rule 2, and in relation to the Fourth Amendment to the United States Constitution as incorporated by Illinois Constitution, Art. 1 Sec. 6.</p> <p>4. It is alleged that the accused officer stated to [REDACTED] words to the effect of, "Your broke-ass don't have a job," in violation of Rule 8.</p> <p>5. It is alleged that the accused officer stated to [REDACTED] words to the effect of, "You just like the rest of these black niggers on the street, gang-banging and doing all that," in violation of Rule 8.</p> <p>6. It is alleged that the accused officer stated to [REDACTED] words to the effect of, "You're not shit, never going to be shit," in violation of Rule 8.</p> <p>7. It is alleged that the accused officer stated to [REDACTED] words to the effect of,</p>	<p>Sustained / 5 Days</p> <p>Sustained / 15 Days</p> <p>Sustained / 15 Days</p> <p>Sustained / 5 Days</p> <p>Sustained / 15 Days</p> <p>Sustained / 5 Days</p> <p>Sustained / 5 Days</p>

	<p>“Now go ahead, go along with your broke down ass Hyundai,” in violation of Rule 8.</p> <p>8. It is alleged that before returning [REDACTED] insurance and registration documents, he “balled them up” and returned them to him as such, in violation of Rule 8.</p> <p>9. It is alleged that during the same incident at issue, the accused officer called bystander [REDACTED] a nigger, in violation of Rule 8.</p>	<p>Not Sustained</p> <p>Sustained / 15 Days</p>
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Approved:



Angela Hearts-Glass
 Deputy Chief Administrator – Chief Investigator

12-20-19

Date

Appendix A

Assigned Investigative Staff

Squad#:	2
Investigator:	Paul Fine
Supervising Investigator:	Sherry Daun
Deputy Chief Administrator:	Angela Hearts-Glass