

**SUMMARY REPORT OF INVESTIGATION**

**I. EXECUTIVE SUMMARY**

Date of Incident:	April 29, 2018
Time of Incident:	4 pm
Location of Incident:	1038 N. Ridgeway Ave.
Date of COPA Notification:	April 30, 2018
Time of COPA Notification:	3:22 pm

Two officers, Nicu Tohatan (“Officer Tohatan”) and Nestor Ortiz (“Officer Ortiz”), arrested Complainant [REDACTED] ([REDACTED]) while conducting an unrelated traffic stop. While following a car, and before pulling it over, the officers noticed [REDACTED] speaking with the driver. After stopping the car, [REDACTED] approached on the sidewalk and observed the stop. [REDACTED] had his hands in his pockets and took them out when instructed. Officer Tohatan instructed [REDACTED] to leave the area; [REDACTED] refused. Within seconds, Officer Tohatan decided to detain [REDACTED]. [REDACTED] resisted, prompting Officer Ortiz, who was speaking to the driver of the car, to come to Officer Tohatan’s aide. After [REDACTED] had been handcuffed, he threatened to beat Officer Tohatan, who decided to arrest [REDACTED] and charge him with aggravated assault. COPA sustains allegations against Officer Tohatan that he detained [REDACTED] without justification, that he engaged [REDACTED] in an unjustified verbal altercation, and that he used excessive force on [REDACTED]. COPA also sustains an allegation against Officer Tohatan that he failed to accurately complete a Tactical Response Report (“TRR”).

**II. INVOLVED PARTIES**

Involved Officer #1:	Nicu Tohatan Star #18703 / Employee # [REDACTED] Date of Appointment: October 26, 2015 PO / 011 DOB: [REDACTED], 1984 Male / White
Involved Officer #2:	Nestor Ortiz Star #13128 / Employee # [REDACTED] Date of Appointment: February 23, 2015 PO / 011 DOB: [REDACTED], 1986 Male / Hispanic

Involved Individual #1: [REDACTED]  
 DOB: [REDACTED], 1995  
 Male / Black

Involved Individual #2: [REDACTED]  
 Female / Black

**III. ALLEGATIONS**

Officer	Allegation	Finding / Recommendation
Officer Tohatan	<p>It is alleged that, on April 29, 2018, near 1038 N. Ridgeway Ave., at around 5:48 pm, Officer Tohatan:</p> <ol style="list-style-type: none"> <li>1. Unlawfully detained Complainant, in violation of Rules 1 and 2.</li> <li>2. Engaged in an unjustified verbal altercation with Complainant, using profanity, in violation of Rules 8 and 9.</li> <li>3. Used excessive force on Complainant by forcefully grabbing his jaw and/or neck, in violation of Rules 6, 8, and 9.</li> <li>4. It is further alleged that, after the incident above, Officer Tohatan failed to accurately complete a Tactical Response Report, in violation of Rules 10 and 11.</li> </ol>	<p><b>SUSTAINED/ 10-day suspension</b></p> <p><b>SUSTAINED/ 3-day suspension</b></p> <p><b>SUSTAINED/ 5-day suspension</b></p> <p><b>SUSTAINED/ 1-day suspension</b></p>

**IV. APPLICABLE RULES AND LAWS**

**Rules** – The following acts are prohibited:

Rule 1: Violation of any law or ordinance.

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

Rule 6: Disobedience of an order or directive, whether written or oral.

Rule 8: Disrespect to or maltreatment of any person, while on or off duty.

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

Rule 10: Inattention to duty.

Rule 11: Incompetency or inefficiency in the performance of duty.

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**General Orders**

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1. General Order G03-02: Use of Force
  2. General Order G03-02-01: Force Options
  3. General Order G03-02-02: Incidents Requiring the Completion of a Tactical Response Report
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**Special Orders**

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1. Special Order S04-13-09: Investigatory Stop System
  2. Special Order S08-01-02: Special Situations Involving Allegations of Misconduct
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**Federal Laws**

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1. Fourth Amendment to the United States Constitution
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**State Laws**

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1. Constitution of the State of Illinois, Article I, Section 6

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## V. INVESTIGATION<sup>1</sup>

### a. Digital Evidence

COPA reviewed video evidence consisting of in-car and body-worn footage.<sup>2,3</sup> Put together, three recordings (“the videos”) capture the interaction from multiple angles, providing a good picture of what happened between ██████████ and Officers Tohatan and Ortiz.

The videos show the officers driving behind a black two-door car after it passes in front of them. As they follow it, the car makes a right turn and slows down. While it is still moving, ██████████ approaches the car on the driver’s side then turns around and walks back to the sidewalk. The car then pulls into a parking spot on the left side of the one-way street, apparently without using a turn signal. The police car stops behind the black car.

Officer Ortiz approaches the driver’s side of the car while Officer Tohatan stands further back on the passenger side of the car. ██████████ appears to be walking on the sidewalk and he stops approximately 15-20 feet<sup>4</sup> away from Officer Ortiz with his hands in his pockets. Immediately after ██████████ stops, Officer Tohatan states, “Keep on moving, man. Keep on moving. Don’t stay here; go ahead, walk.”<sup>5</sup> ██████████ asks if the officer will “lock [him] up for standing right here.” Officer Tohatan repeats his demand. As ██████████ talks, he alternates between gesturing with his hands and putting them in his pockets. Officer Tohatan takes a few steps towards ██████████ and instructs him to take his hands out of his pockets. ██████████ immediately complies. As ██████████ raises his hands, Officer Tohatan seemingly reaches for his gun and says, “Take your fucking hands out of your pocket.”<sup>6</sup> Officer Ortiz turns his head to observe what is happening then turns his attention back to the driver, who says, “Tell your partner to calm down; we ain’t doing shit, man.”<sup>7</sup>



Figure 1: ██████████ (green) observing Officer Ortiz (blue)

<sup>1</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>2</sup> Att. 22.

<sup>3</sup> COPA also obtained third-party video which did not add anything to the other videos and which captured only a short portion of the interaction.

<sup>4</sup> This distance is based on the estimations of Officers Ortiz and Tohatan. See Sec. V.B.

<sup>5</sup> Att. 22, Tohatan BWC at 00:55.

<sup>6</sup> *Id.*, Tohatan BWC at 1:10; *Id.*, Ortiz BWC at 1:10; *Id.*, In-Car Camera at 2:18.

<sup>7</sup> *Id.*, Ortiz BWC at 1:10.

Officer Tohatan loudly tells ██████████ that he cannot stand there. ██████████ argues. Thirty-five seconds after Officer Tohatan first communicated with ██████████ ██████████ Officer Tohatan walks rapidly towards him and tells him to put his hands behind his back.

As Officer Tohatan reaches ██████████ Officer Tohatan instructs ██████████ multiple times to put his hands behind his back; ██████████ puts his hands up in the air above his shoulders. Officer Tohatan turns ██████████ around, at which point ██████████ holds the fence with his hands. Officer Ortiz tells the driver to remain in the car and goes to assist Officer Tohatan. Officer Tohatan, with Officer Ortiz’ help, handcuffs ██████████ During this interaction, ██████████ is yelling about Officer Tohatan’s conduct, stating that he knows Officer Ortiz and that he was not doing anything wrong or causing harm.

After the officers handcuff ██████████ and as Officer Tohatan pats him down, ██████████ continues yelling at Officer Tohatan, telling him that he is “doing too much.” As ██████████ is yelling, Officer Tohatan lifts his arm and quickly moves it towards ██████████ face. As he is doing this, he yells, “Don’t scream at me, okay?”<sup>8</sup>

After Officer Tohatan presumably makes contact with ██████████ face—at this point, his hand is not in ██████████ becomes more irate. He yells to Officer Ortiz, “I will beat your partner’s ass.” Officer Tohatan yells back, “You’ll beat my ass? ... You’ll beat my ass?” ██████████ still yelling, states that Officer Tohatan “choked” him. Officer Tohatan responds that ██████████ was spitting at him.<sup>9</sup>

Later, while ██████████ is being held by the two officers but refusing to go into the police car, Officer Tohatan once again attempts to grab his neck.<sup>10</sup> Officer Tohatan’s effort is mitigated by Officer Ortiz holding his arm and seemingly pulling it back, see figure 3 below.<sup>11</sup>



Figure 2 (left): Officer Tohatan grabbing ██████████ by the neck/jaw.

Figure 3 (right): Officer Ortiz holding Officer Tohatan’s arm while Officer Tohatan is grabbing ██████████ by the neck/jaw.

At the same time, the driver of the vehicle exits his car and stands within a short distance of the officers.

<sup>8</sup> Att. 22, Ortiz BWC at 2:00.

<sup>9</sup> *Id.*, Ortiz BWC at 2:09.

<sup>10</sup> It should be noted that this grab was obviously not a control technique intended to, for example, get ██████████ into the police vehicle.

<sup>11</sup> Att. 22, Ortiz BWC at 22:47:17z



When Sergeant Thomas Herrick arrives, Officer Tohatan tells him what happened.

This guy here walked here, with this hands like this in his pocket. And he stood here, like stopped here. I'm like, "Sir, you can't stay here, we're conducting a traffic stop; please walk away." And he started like, screaming, like, "Hey wha wha wha." I'm like, "Sir, take your hand out of your pocket," you know. He still had his hand in his pocket, you know. "Sir, you have to—" I told him three or four times, "you have to go from here," you know, "we're conducting a traffic stop."

Officer Tohatan continues telling the Sergeant on scene the story and explains how [REDACTED] threatened him. He does not tell the Sergeant whether the threat came after or before the officers detained [REDACTED]. He also does not tell the Sergeant about the claims by [REDACTED] that Officer Tohatan "choked" him. Officer Tohatan does, however, mention that [REDACTED] was spitting on him as he was yelling. The Sergeant, after hearing Officer Tohatan's version says, "It is what it is."

**b. Interviews****i. ██████████ – Complainant**

COPA interviewed ██████████ (██████████) on May 1, 2018. ██████████ stated that he had left his car to get car-washed and was walking when he saw his friend being followed by police. ██████████ friend told him that he would pull over to give him blank CDs, which ██████████ uses for his music. As ██████████ was walking towards his friend's car, the police turned on their lights and stopped his friend. ██████████ continued walking towards his friend's car but remained about 50 feet away because he did not want to interfere with the stop.

██████████ had a cigar in his mouth and a phone in one hand. In his pocket he had a lighter. As ██████████ attempted to retrieve the lighter to light his cigar, Officer Tohatan panicked and ordered him to take his hands out of his pocket while reaching for his weapon. After ██████████ showed the officer that he had nothing in his hands, Officer Tohatan still insisted that he move and charged at ██████████

After the officers handcuffed ██████████ Officer Tohatan grabbed the middle front part of his neck and squeezed it. ██████████ yanked his neck back and started yelling at the officer for choking him. Officer Ortiz told Officer Tohatan not to do that, and Officer Tohatan responded that it was because ██████████ was spitting on him. ██████████ said, "Bitch, if you do that shit again, I will beat your ass." Officer Tohatan did it again.

██████████ expressed that he was experiencing pain during the interview and his neck was swollen and internally bruised. However, he had not sought medical treatment at the time. Additionally, ██████████ stated he was also experiencing that pain while he was in lockup for 20 hours.

**ii. Nestor Ortiz – Witness Officer**

COPA interviewed Officer Nestor Ortiz on August 6, 2018.<sup>12</sup> Officer Ortiz was Officer Tohatan's partner for approximately a year, though not at the time of the interview. Officer Ortiz viewed Officer Tohatan as a good officer, though described him as "a bit more aggressive than me, when it comes to, uh, handling a situation...[but] nothing out of proportion."<sup>13</sup> Officer Ortiz could not remember details of the stop and he was given a chance to review the arrest report and the tactical response report. According to Officer Ortiz, it seemed like he would have been the author of the arrest report. The "entire arrest report," however, was based on what Officer Tohatan told Officer Ortiz, not based on Officer Ortiz' own observations, because Officer Ortiz was more concentrated on the driver.<sup>14</sup>

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<sup>12</sup> Att. 19.

<sup>13</sup> *Id.* at 7:19-21.

<sup>14</sup> *Id.* at 14:18-21.

Officer Ortiz did not recall seeing [REDACTED] before the incident, and he did not hear him threaten Officer Tohatan. He did not recall at what point during the incident [REDACTED] threatened Officer Tohatan. After reviewing the tactical response report, Officer Ortiz concluded that the first page of the TRR did not show that Officer Tohatan “exerted any physical force against” [REDACTED]<sup>15</sup>

While reviewing video footage, Office Ortiz saw that [REDACTED] complied with the order to remove his hands from his pockets. When asked whether Officer Tohatan’s actions in grabbing [REDACTED] by the jaw were appropriate, Officer Ortiz stated that, in his judgement, it was not something that he would have done unless he had to; for example, he would instead have moved out of the way. However, Officer Ortiz maintained that Officer Tohatan’s actions simply constituted a different technique, not an improper one.

Towards the end of the interview, Officer Ortiz conceded that Officer Tohatan “probably escalated [the situation] a little more than he was supposed to.”<sup>16</sup>

### iii. Nicu Tohatan – Accused Officer

COPA interviewed Officer Nicu Tohatan<sup>17</sup> on August 9, 2018.<sup>18</sup> Officer Tohatan stated that his partner and he observed a vehicle that had evaded a traffic stop about two weeks prior.<sup>19</sup> They stopped the vehicle and Officer Tohatan considered it to be a high-risk traffic stop. While conducting the stop, Officer Tohatan observed [REDACTED] who had exchanged words with the driver earlier, walking and stopping approximately 15 to 20 feet away from Officer Ortiz. [REDACTED] had his hands in his pockets. Officer Tohatan considered [REDACTED] to “already be a suspect when he approached the vehicle.”<sup>20</sup> Officer Tohatan told [REDACTED] to take his hands out of his pockets “[b]ecause, we were suspecting, not that we’re suspecting, we want to make sure that he’s not concealing a firearm, or a knife.”<sup>21</sup>

[REDACTED] did not comply with Officer Tohatan’s instructions to walk away and to get his “fucking hands”<sup>22</sup> out of his pockets. [REDACTED] “started screaming and cursing.”<sup>23</sup> Officer Tohatan decided to detain [REDACTED] for obstruction of justice and for interfering with the traffic stop. Officer Tohatan approached [REDACTED] and told him to turn around; when [REDACTED] refused, Officer Tohatan “had to go hands on.”<sup>24</sup> Later in the interview, when shown the narrative of the arrest report that stated that Officer Tohatan

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<sup>15</sup> *Id.* at 24:5-9.

<sup>16</sup> *Id.* at 63:11-14.

<sup>17</sup> Att. 21.

<sup>18</sup> This report will summarize the interview of Officer Tohatan as necessary, for example, where he provides additional or contradictory information. For the sake of concision, where Officer Tohatan’s testimony is substantially similar to other accounts of the incident, it will not be discussed.

<sup>19</sup> Although Officer Tohatan said multiple times that the vehicle had taken off from him and his partner (*see, e.g.* Att. 21 at 7; *id.* at 29), he would later admit that he was not there during that incident (*id.* at 67:19-23).

<sup>20</sup> Att. 21 at 71:3-6.

<sup>21</sup> *Id.* at 71:15-20.

<sup>22</sup> *Id.* at 34:16-18.

<sup>23</sup> *Id.* at 9:1-2.

<sup>24</sup> *Id.* at 9:11.



approached ██████████ for a field interview, Officer Tohatan stated that the first “couple of steps” towards ██████████ were to conduct a field interview, but then conceded that the purpose of the field interview was “to ask him to move away.”<sup>25</sup>

After ██████████ removed his hand out of his pocket, which Officer Tohatan had regarded as a danger, Officer Tohatan still continued to approach and detain him because, although “he took his hand out of his pocket, ...he was still there.”<sup>26</sup> According to Officer Tohatan, “if he had a gun in his pocket, it will take him like a fraction of a second to put his hand back in the pocket, and pull a gun, and shoot my partner in the back.”<sup>27</sup> Apart from ██████████ speaking with the driver of the vehicle, Officer Tohatan did not have any other reason to suspect that he was committing, was about to commit, or had just committed a crime; similarly, he could not articulate any reason for why he thought ██████████ had a gun apart from his presence in a high-crime area.

Officer Tohatan struggled but succeeded to turn ██████████ around, who then became aggressive. Officer Ortiz jumped in and they handcuffed ██████████. ██████████ was screaming and saliva was coming out of his mouth and getting on Officer Tohatan’s face. Officer Tohatan grabbed ██████████ chin and pointed it away from his face.

██████████ responded by becoming “aggressive, verbally and physically, and he pushed his body towards” Officer Tohatan’s face.<sup>28</sup> Officer Tohatan could not classify the force he used on ██████████ only characterizing it as “moving away...of his face,”<sup>29</sup> and as being the kind of force that would require the completion of a TRR.<sup>30</sup> ██████████ also stated that he would beat Officer Tohatan and Officer Ortiz. Due to the proximity between ██████████ and the officers, his physical movement towards Officer Tohatan, and his verbal threats, Officer Tohatan became apprehensive that ██████████ would batter him.

### c. Documentary Evidence

COPA reviewed multiple documents generated by the Chicago Police Department (“CPD”). An **Original Case Incident Report** (RD #JB202224), authored by Reporting Officer Nestor Ortiz, states that on March 27<sup>th</sup>, 2018, a car described as a 2000 Chevrolet Monte Carlo automobile sped off after being curbed for a traffic violation. Once the car sped off, the officers disengaged with the vehicle.<sup>31</sup>

A **Traffic Stop Summary** states that on April 29, 2018, at the time of the incident in question, Officer Ortiz stopped a vehicle described as a 2000 Chevrolet.

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<sup>25</sup> *Id.* at 17:19 – 18:13.

<sup>26</sup> *Id.* at 18:19 – 19:5.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 21:15-17.

<sup>29</sup> *Id.* at 24:2-3.

<sup>30</sup> *Id.* at 24:4-8.

<sup>31</sup> General Order G03-03-01 prohibits officers from engaging in a motor vehicle pursuit if “the most serious offense for which the motor vehicle is wanted is a non-hazardous traffic offense.” (Sec. III.A.)

An **Arrest Report**<sup>32</sup> (RD #JB243018) was generated by CPD for [REDACTED] to which Officer Ortiz attested. The report charges [REDACTED] with two misdemeanors, Aggravated Assault and Obstruction. The narrative states that Officer Tohatan “gave multiple verbal commands to the offender to take his hand out of his pockets and to walk away from the vehicle.” [REDACTED] “disobey[ed] all commands.”

Officer Tohatan completed a **Tactical Response Report**<sup>33</sup> (“TRR”) documenting his use of force against [REDACTED]. The TRR includes a portion where officers check some boxes or leave others unchecked, as well as a narrative section filled out by the reporting officer to “describe, with specificity, (1) the use of force incident, (2) the subject’s actions, and (3) the Department Member’s response, including force mitigation efforts and specific types and amount of force used.”

<input type="checkbox"/> Requested <input type="checkbox"/> Subject Alleged Injury <input type="checkbox"/> Non-Fatal - Major Injury <input type="checkbox"/> Fatal		
<b>SUBJECT'S ACTIONS</b> (Check all that apply)	<input checked="" type="checkbox"/> DID NOT FOLLOW VERBAL DIRECTION <input type="checkbox"/> PHYSICAL ATTACK WITHOUT WEAPON (SPECIFY) <input type="checkbox"/> THROWN OBJECT (DESCRIBE)	WAS SUBJECT ARMED WITH WEAPON? <input checked="" type="checkbox"/> NO <input type="checkbox"/> YES, DESCRIBE BELOW
	<input checked="" type="checkbox"/> VERBAL THREATS <input type="checkbox"/> HAND/ARM/ELBOW STRIKE <input type="checkbox"/> KNIFE/CUTTING INSTRUMENT <input type="checkbox"/> EXPLOSIVE DEVICE	<input type="checkbox"/> BLUNT OBJECT <input type="checkbox"/> CHEMICAL WEAPON <input type="checkbox"/> TASER/STUN GUN <input type="checkbox"/> VEHICLE <input type="checkbox"/> SEMI-AUTO PISTOL <input type="checkbox"/> SHOTGUN
	<input type="checkbox"/> STIFFENED (DEAD WEIGHT) <input type="checkbox"/> KNEE/LEG STRIKE <input type="checkbox"/> IMMINENT THREAT OF BATTERY WITH WEAPON	<input type="checkbox"/> OTHER (DESCRIBE) <input type="checkbox"/> OTHER (DESCRIBE) <input type="checkbox"/> USED FORCE LIKELY TO CAUSE DEATH OR GREAT BODILY HARM
	<input type="checkbox"/> PULLED AWAY <input type="checkbox"/> MOUTH/TEETH/SPIT <input type="checkbox"/> ATTEMPT TO OBTAIN MEMBER'S WEAPON	<input type="checkbox"/> WEAPON/OBJECT PERCEIVED AS:
<input type="checkbox"/> FLED <input type="checkbox"/> PUSH/SHOVE/PULL <input type="checkbox"/> GRAB/HOLD/RESTRAIN <input type="checkbox"/> WRESTLE/GRAPPLE	<input type="checkbox"/> OTHER (DESCRIBE) <input type="checkbox"/> OTHER (DESCRIBE)	WEAPON USE: <input type="checkbox"/> Displayed, Not Used <input type="checkbox"/> Member at Gunpoint <input type="checkbox"/> DNA <input type="checkbox"/> Used - Attempt to Attack Member <input type="checkbox"/> Obtained Member's Weapon <input type="checkbox"/> Possessed <input type="checkbox"/> Used - Attacked Member
SUBJECT ACTIVITY:      Drug-Related? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO      Gang-Related? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	DID THE SUBJECT COMMIT AN ASSAULT OR BATTERY AGAINST THE INVOLVED MEMBER PERFORMING A POLICE FUNCTION? <input type="checkbox"/> NO <input checked="" type="checkbox"/> YES	IF YES, IDENTIFY MANNER OF ATTACK?      MANNER OF ATTACK?      Shot/Shot At      Struck/Blunt Force (Including Attempt) Stabbed/Cut (Including Attempt)      Other (Including Verbal Threats)
TYPE OF ACTIVITY?      Ambush - No Warning      Disturbance - Domestic      Disturbance - Riot/Mob Action/Civil Disorder      Pursuing/Arresting Subject      Processing/Transporting/Guarding Arrestee	Man with a Gun      Disturbance - Other      Investigative Stop      Disturbance - Mental Health      Other - Describe in Narrative	Charge: _____      IUCR CODE: _____
REASON FOR RESPONSE? <input checked="" type="checkbox"/> Defense of Self <input type="checkbox"/> Defense of Member of Public <input type="checkbox"/> Stop Self-Inflicted Harm <input type="checkbox"/> Subject Armed with Weapon	<input type="checkbox"/> Defense of Department Member <input type="checkbox"/> Overcome Resistance or Aggression <input type="checkbox"/> Fleeing Subject <input type="checkbox"/> Unintentional	
<b>FORCE MITIGATION EFFORTS</b>		<b>CONTROL TACTICS</b>
<input checked="" type="checkbox"/> MEMBER PRESENCE <input type="checkbox"/> ZONE OF SAFETY <input type="checkbox"/> MOVEMENT TO AVOID ATTACK <input type="checkbox"/> TACTICAL POSITIONING <input type="checkbox"/> NONE	<input checked="" type="checkbox"/> VERBAL DIRECTION/CONTROL TECHNIQUES <input type="checkbox"/> SPECIALIZED UNITS <input type="checkbox"/> ADDITIONAL UNIT MEMBERS <input type="checkbox"/> OTHER	<input type="checkbox"/> ESCORT HOLDS <input type="checkbox"/> CONTROL INSTRUMENT <input checked="" type="checkbox"/> OTHER DNA <input type="checkbox"/> WRISTLOCK <input type="checkbox"/> PRESSURE SENSITIVE AREAS <input type="checkbox"/> ARMBAR <input type="checkbox"/> EMERGENCY HANDCUFFING
<b>RESPONSE WITHOUT WEAPONS</b>		<b>RESPONSE WITH WEAPONS</b>
<input type="checkbox"/> OPEN HAND STRIKE <input type="checkbox"/> KICKS <input type="checkbox"/> OC/CHEMICAL WEAPON <input type="checkbox"/> TASER <input type="checkbox"/> IMPACT MUNITIONS (DESCRIBE BELOW) <input type="checkbox"/> REVOLVER <input type="checkbox"/> SEMI-AUTO PISTOL	<input type="checkbox"/> TAKE DOWN <input checked="" type="checkbox"/> OTHER <input type="checkbox"/> OC/CHEMICAL WEAPON W/ AUTHORIZATION* <input type="checkbox"/> CANINE <input type="checkbox"/> RIFLE <input type="checkbox"/> SHOTGUN	<input type="checkbox"/> ELBOW STRIKE      UTILIZED MEMBERS PRESENCE AND VERBAL COMMANDS. <input type="checkbox"/> LRAD W/ AUTHORIZATION* <input type="checkbox"/> BATON/EXPANDABLE BATON <input type="checkbox"/> OTHER
<input type="checkbox"/> CLOSED HAND STRIKE/PUNCH <input type="checkbox"/> KNEE STRIKE	*AUTHORIZED BY (NAME) _____ RANK _____ STAR NO. _____ UNIT NO. _____	

As seen in the snapshot above, Officer Tohatan indicated that [REDACTED] did not follow verbal directions and made verbal threats. He indicated that [REDACTED] committed an assault or battery by “other (including verbal threats).” Officer Tohatan also indicates that he responded to [REDACTED] actions with verbal direction and/or control techniques; however, under Control Tactics, Officer Tohatan checked “Other.” Below other, the letters DNA—Does Not Apply—appear.

In the narrative section, Officer Tohatan elaborates further. He first discusses the circumstances of the stop, stating that the vehicle they curbed was one that “matched the

<sup>32</sup> Att. 10.

<sup>33</sup> Att. 8.

description of a vehicle that recklessly took off on the officers on a prior traffic stop.” Officer Tohatan stated that the officers elevated the stop to a high-risk traffic stop “considering all the facts including but not limited to the vehicle taking off on officers before, multiple occupants in the vehicle at the time of the stop, tinted windows all-around the vehicle and the high crime area.” After explaining his initial interaction with [REDACTED] Officer Tohatan explained his use of force: while he was detaining [REDACTED] he pushed [REDACTED] “chin with the right hand in the opposite direction to stop the saliva” that was “squirt[ing]” from [REDACTED] mouth while yelling at Officer Tohatan.

## VI. ANALYSIS

The facts underlying the allegations are not disputed: Officer Tohatan detained [REDACTED] engaged in a verbal altercation with [REDACTED] and used force on [REDACTED]. The pertinent inquiry is whether those actions were justified and reasonable under applicable law and Department policy. COPA finds that Officer Tohatan’s actions were not justified.

### a. Officer Tohatan unlawfully detained [REDACTED]

COPA finds that the detention of [REDACTED] was unjustified at its inception, and therefore, was unlawful even though Officer Tohatan eventually developed probable cause to arrest [REDACTED] for assault when [REDACTED] stated that he would “beat [Officer Tohatan’s] ass.”

Officer Tohatan purports that he detained [REDACTED] because he was obstructing and interfering with a traffic stop by watching the traffic stop, arguing, and not leaving when ordered to do so. Officer Tohatan also asserted that he believed [REDACTED] may have had a firearm or a knife because he was standing with his hands in his pockets and refused to remove his hands from his pocket.

The offense of Resisting or Obstructing a Peace Officer, Firefighter, or Correctional Institution Employee, 720 ILCS 5/31-1, is committed when a “person who knowingly resists or obstructs the performance by one known to the person to be a peace officer of any authorized act within his official capacity.” The offense does not encompass mere argument with a police officer, but does not necessarily require a physical act of obstruction.<sup>34</sup> “The legislative focus of section 3101(a) is on the tendency of the conduct to interpose an obstacle that impedes or hinders the officer in the performance of his authorized duties. That inquiry is for the trier of fact, based upon the facts and circumstances of each case.”

There is no evidence that [REDACTED] obstructed Officers Tohatan and/or Ortiz in any way. The video evidence demonstrates that [REDACTED] was walking on the sidewalk (*i.e.* a public place) and he stopped approximately 15-20 feet away from Officer Ortiz with his hands in his pockets. The United States Constitution, Illinois Constitution, and Department directives permit civilians to observe Department members performing their official duties in

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<sup>34</sup> See, *People v. Baskerville*, 2012 IL 111056 at ¶¶22-25.

public.<sup>35</sup> Officer Tohatan's order for [REDACTED] to disperse from a public place when he was not interfering with the traffic stop was unlawful, and even assuming *arguendo* it was lawful, [REDACTED] mere refusal to immediately leave did not constitute obstruction.<sup>36</sup> In the instant case, within approximately thirty-five seconds of Officer Tohatan first ordering [REDACTED] to walk away, Officer Tohatan had already begun to walk toward [REDACTED] to grab him.<sup>37</sup> Additionally, [REDACTED] *immediately complied* with Officer Tohatan's order to take his hands out of his pockets. Therefore, the only non-compliance was failing to obey the order to walk away.

The evidence demonstrates that [REDACTED] was simply standing at a safe distance watching his friend's traffic stop. [REDACTED] interacted with the officers at all only after Officer Tohatan escalated the encounter by improperly ordering [REDACTED] to disperse. Indeed, Officer Ortiz's BWC footage, demonstrates the traffic stop was progressing even as Officer Tohatan and [REDACTED] shouted back and forth. Because [REDACTED] was not violating any law, Officer Tohatan did not have any justification to initiate the detention.

Additionally, even though Officer Tohatan claims he detained [REDACTED] for safety reasons, the situation did not rise to a level of danger which justified such a seizure for safety reasons. In the instant case, Officers Ortiz and Tohatan were conducting a routine traffic stop. Officer Tohatan's assertion that it was a "high risk stop" is contradicted by the officers' actual conduct during the traffic stop. Officer Ortiz did not order the driver to get out of the car, or in any other way indicate the driver was a threat to his safety or of fleeing. Instead both officers allowed the driver to sit and then stand by his car unattended for an extended amount of time once Officer Tohatan charged after [REDACTED]. Additionally, even though they allegedly suspected the car of being the same one that previously fled, they did not even run the car's plates to see if it was the same vehicle, until well into the stop and after arresting [REDACTED]. Thus, there was no evidence that the officers believed the vehicle, or the driver was in any way dangerous and regardless any such belief would be unreasonable under the circumstances. Moreover, [REDACTED] had only shown a minimal connection to the vehicle subject to the traffic stop. Even if the officers suspected the driver of being dangerous, there was no reasonable basis to believe that [REDACTED] would likewise be violent.<sup>38</sup>

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<sup>35</sup> See Special Order S03-14 ("According to law, no officer may hinder or prevent any non-officer from recording a law enforcement officer who is performing his or her duties in a public place or when the officer has no reasonable expectation of privacy.")

<sup>36</sup> Indeed, conduct far more invasive than [REDACTED] conduct does not rise to the level of obstruction. See, e.g., *Kies v. City of Aurora*, 156 F.Supp.2d 970, 982 (N.D. Ill. 2001)). To be clear, officers can order civilians to disperse from a scene when their presence legitimately impedes or hinders officers' ability to perform their official duties. See, e.g., *People v. Gordon*, 408 Ill. App. 3d 1009, 1017 (officer lawfully arrested defendant for obstruction when she walked in the street and began yelling and threatening the officers performing a traffic stop and refused to leave despite being ordered to do so 5 to 15 times while another person tried to escape police custody). However, *Gordon* is clearly distinguishable from this case.

<sup>37</sup> See *People v. Kotlinski*, 2011 IL App (2d) 101251 ¶¶48-49 (finding that ignoring an officer's orders for 47 seconds was insufficient to show obstruction)

<sup>38</sup> Officers can seize bystanders in some circumstances. See, e.g., *United States v. Howard*, 729 F.3d 655 (7th Cir. 2013). *Howard* is clearly distinguishable. In that case, an officer was acting alone to arrest a man that the man had recently pistol-whipped someone and was also a suspect in a shooting. The officer observed the man exit a car and went to apprehend him, but subsequently observed another man exit the car and ordered the man to the ground at gunpoint.

For these reasons, COPA finds that Officer Tohatan had no justification to seize or detain [REDACTED] and Allegation #1 is **Sustained**.

**b. Officer Tohatan engaged in an unjustified verbal altercation with [REDACTED]**

The second allegation against Officer Tohatan is that he engaged in an unjustified verbal altercation with [REDACTED]. Officer Tohatan's BWC footage shows that he aggressively yelled at [REDACTED] from the outset of the encounter. Additionally, Officer Tohatan escalated to profanity even while [REDACTED] was complying.

The use of profanity by Officer Tohatan is in addition to the generally insolent tone he took with [REDACTED]. [REDACTED] was a bystander watching a traffic stop. Officer Tohatan seemingly readily assumed [REDACTED] was a threat and proceeded to talk to him as such. While Officer Tohatan claimed to the responding sergeant that he was speaking calmly and using words like "sir" and "please," the video directly contradicts those assertions. Even after [REDACTED] took his hands out of his pockets after being told once to do so, Officer Tohatan made profane remarks to [REDACTED].

Officer Tohatan continued engaging in an argument with [REDACTED] yelling out questions and explanations even after deciding to arrest him for assault. When Officer Ortiz stepped in to attempt to deescalate the situation, Officer Tohatan kept interrupting to continue to engage in unnecessary arguments with [REDACTED].

Officer Tohatan did not act professionally in his interaction with [REDACTED]. In fact, his own partner, Officer Ortiz, acknowledged that Officer Tohatan had escalated the incident too far. Officer Tohatan engaged in an unjustified verbal altercation with [REDACTED] including yelling, arguing, and using profanity. Therefore, Allegation #2 against Officer Tohatan is **Sustained**.<sup>39</sup>

**c. Officer Tohatan used excessive force against [REDACTED]**

The third allegation against Officer Tohatan is that he used excessive force against [REDACTED] by forcefully grabbing his jaw and/or neck. Officer Tohatan asserts that he "grabbed [REDACTED] chin" in an effort to avoid coming into contact with [REDACTED] saliva.

CPD directives delineate when and how officers may use force.<sup>40</sup> According to Department directives, a subject may be classified as a cooperative subject, a passive resister, an active resister,

<sup>39</sup> Even during the interview, Officer Tohatan referred to [REDACTED] as having been non-stop "screaming and bitching." Att. 21.

<sup>40</sup> See G03-02 (Use of Force); see also G-03-02-01 (Force Options).

or an assailant. At all times the use of force must be “objectively reasonable, necessary, and proportional.”<sup>41</sup>

██████████ asserted that Officer Tohatan grabbed him by the neck twice as they were standing along the fence. COPA finds ██████████ credible and his allegations are supported by available video footage. The BWC footage demonstrates that ██████████ contemporaneously asserted multiple times that Officer Tohatan put his hands on his neck and “choked” him.<sup>42</sup>

The BWC footage also supports ██████████ assertions. It appears that the first grab occurred at 2:09 of Officer Ortiz’s body-worn camera footage,<sup>43</sup> when Officer Tohatan moves his hand aggressively towards ██████████ neck in a manner consistent with grabbing it. While the video does not conclusively show the grab, COPA finds by a preponderance of the evidence that Officer Tohatan in fact grabbed ██████████ by the neck at this point of the encounter. Then about six seconds later, right after ██████████ says he’s going to beat Officer Tohatan’s ass, there is a brief scuffle during which ██████████ asserts he was grabbed the second time. Neither officers’ body-worn camera videos capture what Officer Tohatan is doing with his hands during this part of the scuffle, but when they can next be seen, he is grabbing ██████████ by the collar suggesting his hands were in ██████████ neck area. COPA finds by a preponderance of the evidence that Officer Tohatan also grabbed ██████████ by the neck and/or jaw at this point of the encounter. Furthermore, Officer Tohatan then clearly grabbed ██████████ a third time after leading ██████████ towards the police vehicle. This was captured on Officer Ortiz’s body-worn camera footage and screenshots appear as Figure 2 above.

On all three occasions, ██████████ was already handcuffed and being held from behind by Officer Tohatan and from the front by Officer Ortiz, who had one hand on ██████████ arm as Officer Ortiz attempted to talk with him.

At the time of the first grab, COPA finds that ██████████ was at most a passive resister. To be considered a resister, the person must be uncooperative, in that they fail to be compliant without the need for physical force. If the resisting party is merely failing to comply (through non-movement) with verbal or other direction they are considered to be passive resisters. If they attempt to create distance between themselves and the officer’s reach, then they are considered to be active resisters. Moreover, officers are required to use principles of force mitigation, such as continual communication with the subject, in order to avoid using force and they are instructed to consider use of verbal force mitigation when encountering subjects who are not complying with verbal directions.<sup>44</sup>

Earlier in the encounter, ██████████ refused to follow verbal directions from Officer Tohatan and may have physically struggled as Officer Tohatan attempted to subdue him.

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<sup>41</sup> G03-02 (Use of Force).

<sup>42</sup> Available BWC footage shows that spittle came out of ██████████ mouth during parts of the encounter as he yelled.

<sup>43</sup> Att. 22, Ortiz video at 22:43:15z.

<sup>44</sup> G03-02-01 III.A.

But officers' use of force is evaluated at the time they use it and they are required to continually assess the situation and de-escalate force so that when the person offers less resistance, the officer will lower the amount or type of force used. In this case, once Officer Ortiz intervened, [REDACTED] stopped any physical resistance. Furthermore, [REDACTED] could not have been ignoring verbal commands at this point of the encounter because the officers were not giving any.

However, even assuming *arguendo* that [REDACTED] conduct (*i.e.* arguing with officers) rendered him to be uncooperative, and thus a passive resister, the amount of force used was excessive. Officers may only use holding techniques (*i.e.* firm grips or arm grabs); compliance techniques; control instruments used on pressure points; or, with supervisor approval, OC Spray on passive resisters. All of these options must only be used when proportional to the threat posed. At the time of the first throat grab, all [REDACTED] was doing was arguing. Officer Tohatan's aggressive grab to [REDACTED] face and/or neck went well beyond the force permitted against passive resisters and therefore was excessive.

For the second grab by Officer Tohatan, Officer Tohatan described [REDACTED] as an assailant. A subject is characterized as an assailant if they are using or threatening the use of force against another person which is likely to cause physical injury. Just prior to the grab, [REDACTED] said something to the effect of "I will beat your partner's ass," in an apparent reference to Officer Tohatan. [REDACTED] then turned toward Officer Tohatan and a to possibly took a small step towards Officer Tohatan. Officer Tohatan stated he used force to stop saliva squiring from [REDACTED] mouth.

[REDACTED] threatened the use of force against Officer Tohatan. However, the threat of force is not enough, the officer must reasonably believe that the person the subject is likely to cause physical injury. Here, despite the fact that [REDACTED] possibly took a step towards Officer Tohatan, [REDACTED] was already in handcuffs and Officer Ortiz had him firmly in his grasp. Therefore, any belief that [REDACTED] posed a risk of physical injury when he took a step was unreasonable.

Officer Tohatan also stated that as [REDACTED] was screaming, saliva was coming out of his mouth and getting on Officer Tohatan.<sup>45</sup> It is unclear whether unintentional spittle from a person yelling would constitute a battery likely to cause physical injury thereby making a subject an assailant. It is unclear how the spittle in this case was *likely* to cause physical injury to Officer Tohatan.<sup>46</sup> However, even assuming *arguendo* that [REDACTED] was an assailant because of his spittle, the amount of force used by Officer Tohatan was excessive. An officer's use of force must be proportional to the threat and officers are required to use force mitigation techniques when reasonable under the totality of the circumstances.<sup>47</sup> In the instant case, [REDACTED] was

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<sup>45</sup> See, e.g. Att. 8 (TRR) ("In the process of being detained[, [REDACTED] screamed and yelled at [Officer Tohatan] causing saliva out of his mouth to squirt toward [Officer Tohatan]."); see also Att. 19 at 43:16-22 (Officer Ortiz Interview) ("[S]aliva was coming out of his mouth. Whether it was intentional or not, I don't know.")

<sup>46</sup> A subject who *knowingly and/or intentionally* spits on an officer is likely committing a battery (*i.e.* intentionally or knowingly without legal justification making physical contact of an insulting or provoking nature). See *People v. Peck*, 260 Ill. App. 3d 812, 815 (4th Dist. 1994). However, physical contact of an insulting or provoking nature is not always likely to cause physical injury.

<sup>47</sup> See G03-02-01.III.B.

cuffed and being held by Officer Ortiz. Officer Tohatan did not need to strike/grab [REDACTED] [REDACTED] Officer Tohatan could have used time and distance as a tactic by simply backing away from [REDACTED] to ensure he was not hit by any spittle and allow his partner who was not at risk from the alleged spittle to control the situation.<sup>48</sup> Therefore, the second time Officer Tohatan grabbed [REDACTED] was unreasonable.

For the third grab by Officer Tohatan, COPA finds that [REDACTED] was a passive resister. About four minutes had elapsed since [REDACTED] said he would beat Officer Tohatan's ass. In that time, [REDACTED] made no additional threats and did not make any attempts to injure either officer or to create separation. Therefore, he was no longer an assailant nor was he an active resister. However, Officer [REDACTED] was refusing (through non-movement) to get into the car, and therefore was a passive-resister.

Once again, Officer Tohatan was limited to control holding techniques, pressure points, or control instruments. Grabbing [REDACTED] by the face/neck for the third time was excessive and unreasonable. On Officer Ortiz's BWC, Officer Tohatan is seen moving his hand quickly towards [REDACTED] jaw or neck area. Officer Ortiz's reaction to hold Officer Tohatan's arm after Officer Tohatan once again reached for [REDACTED] jaw/neck area is evidence that Officer Tohatan's actions were not reasonable or justified. Therefore, the third grab to the neck was also excessive.

Therefore, each time Officer Tohatan grabbed [REDACTED] by the face/neck was excessive and against policy. Therefore, Allegation #3 is **Sustained**.

**d. Officer Tohatan failed to accurately complete a Tactical Response Report ("TRR")**

The last allegation against Officer Tohatan is that he failed to complete the TRR accurately. Officer Tohatan claimed that he completed the TRR and that he did so accurately. Officer Tohatan insists that the first page of it, which has certain boxes checked for certain actions taken by the officer or the civilian, is accurate, and that it is properly supplemented by the narrative and the BWC footage. But the BWC footage does not obviate the need to complete all parts of the TRR accurately. And the narrative section does not substitute the requirement that the first page of the TRR be filled out accurately.

CPD directives dictate that CPD members "truthfully and completely" describe the "facts and circumstances concerning any incident involving the use of force."<sup>49</sup> It further instructs members to "report and thoroughly document *each reportable use of force incident*" (emphasis added).<sup>50</sup>

The TRR was not completed accurately.

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<sup>48</sup> See G03-02-01.III.B.

<sup>49</sup> G03-02-02, II.A.

<sup>50</sup> *Id.*



First, the first page of the TRR does not indicate that Officer Tohatan grabbed [REDACTED] neck, he merely selected “other” and stated that he used “DNA” control tactic and “utilized members presence and verbal commands” as a response without weapons.

Second, the narrative section states that Officer Tohatan “pushed” [REDACTED] “chin...in the opposite direction to stop the saliva out of his mouth.” As mentioned above, COPA finds that the grab to the face which is clearly depicted once and was more likely than not done two other times which are not referenced in the TRR at all.

Thus, Officer Tohatan’s TRR does not completely and accurately describe the incident and fails to document each reportable use of force. Therefore, Allegation #4 against Officer Tohatan is **Sustained**.<sup>51</sup>

## **VII. RECOMMENDED DISCIPLINE FOR SUSTAINED ALLEGATIONS**

### **a. Officer Tohatan**

#### **i. Complimentary and Disciplinary History**

Officer Tohatan’s complimentary history consists of 31 honorable mentions, one traffic-stop-of-the-month award, and one emblem of recognition for physical fitness. Officer Tohatan has one reprimand for a court appearance violation.

#### **ii. Recommended Penalty, by Allegation**

##### **1. Allegation No. 1**

Officer Tohatan unreasonably and unnecessarily escalated the encounter and interfered with [REDACTED] constitutionally protected right to observe the police performing their police duties in a public place. Accordingly, COPA recommends a 10-day suspension for Allegation No. 1.

##### **2. Allegation No. 2**

Officer Tohatan engaged in a verbal altercation with the Complainant. First, this entire situation would have been avoided if Officer Tohatan had allowed the Complainant to simply stand on the sidewalk. Second, the use of profanity is simply not acceptable, even in stressful situations. Third, even after Officer Tohatan had detained and handcuffed the Complainant, he continued arguing with him in a loud voice, thereby hurting the image of the Department and hindering Officer Ortiz’s attempts to de-escalate the encounter. Accordingly, COPA recommends a 3-day suspension for Allegation No. 2.

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<sup>51</sup> To be clear, while the evidence supports that Officer Tohatan did not complete the TRR completely and accurately based on his incorrect belief that this BWC footage could be used to supplement the TRR, there is no evidence that Officer Tohatan made any intentional false statements.

**3. Allegation No. 3**

Officer Tohatan used excessive force on the Complainant by grabbing his jaw and/or neck three times. The use of force was not such that it caused much pain or injury, but it was unwarranted and excessive nonetheless. Officers should strictly follow the Use of Force model when using force and should never, under any circumstances, use force to punish behavior they deem inappropriate. In addition, using force in the same way more than once within minutes of each other compounds the gravity of the sustained allegation. Accordingly, COPA recommends a 5-day suspension for Allegation No. 3.

**4. Allegation No. 4**

Officer Tohatan did not accurately complete the Tactical Response Report. Officer Tohatan’s refusal to admit to this allegation and his insistence that the BWC sufficiently supplements the TRR shows a lack of willingness to accept responsibility for his actions. It further demonstrates a lack of understanding of the purpose of a TRR and the importance of making sure it is complete and accurate, even if it documents an incident that was captured on camera. Accordingly, COPA recommends a 1-day suspension for Allegation No. 4.

**VIII. CONCLUSION**

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

Officer	Allegation	Finding / Recommendation
Officer Tohatan	<p>It is alleged that, on April 29, 2018, near 1038 N. Ridgeway Ave., at around 5:48 pm, Officer Tohatan:</p> <ol style="list-style-type: none"> <li data-bbox="581 1213 1105 1276">1. Unlawfully detained Complainant, in violation of Rules 1 and 2.</li> <li data-bbox="581 1310 1127 1415">2. Engaged in an unjustified verbal altercation with Complainant, using profanity, in violation of Rules 8 and 9.</li> <li data-bbox="581 1444 1105 1549">3. Used excessive force on Complainant by forcefully grabbing his jaw and/or neck, in violation of Rules 6, 8, and 9.</li> <li data-bbox="581 1579 1127 1751">4. It is further alleged that, after the incident above, Officer Tohatan failed to accurately complete a Tactical Response Report, in violation of Rules 10 and 11.</li> </ol>	<p><b>SUSTAINED/ 10-day suspension</b></p> <p><b>SUSTAINED/ 3-day suspension</b></p> <p><b>SUSTAINED/ 5-day suspension</b></p> <p><b>SUSTAINED/ 1-day suspension</b></p>

Approved:



\_\_\_\_\_  
Andrea Kersten  
*Deputy Chief Administrator – Chief Investigator*

November 22, 2019

\_\_\_\_\_  
Date

Appendix A

Assigned Investigative Staff

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<b>Squad#:</b>	4
<b>Investigator:</b>	Tamer Abouzeid
<b>Supervising Investigator:</b>	James Murphy-Aguilu
<b>Deputy Chief Administrator:</b>	Andrea Kersten