



MEMORANDUM

Austin Police Department *Office of the Chief of Police*

TO: Joya Hayes, Director of Civil Service

FROM: Joseph Chacon, Interim Chief of Police

DATE: September 27, 2021

SUBJECT: Agreed Temporary Suspension of Police Officer Eric Perez #8583
Internal Affairs Control Number 2021-0316

Pursuant to the provisions of Chapter 143 of the Texas Local Government Code, Section 143.052, and Rule 10, Rules of Procedure for the Firefighters', Police Officers' and Emergency Medical Service Personnel's Civil Service Commission, I have temporarily suspended Police Officer Eric Perez #8583 from duty as a City of Austin, Texas police officer for a period of ninety (90) days. The agreed temporary suspension is effective beginning on September 28, 2021 and continuing through December 26, 2021.

I took this action because Ofc. Perez violated Civil Service Commission Rule 10.03, which sets forth the grounds for disciplinary suspensions of employees in the classified service, and states:

No employee of the classified service of the City of Austin shall engage in, or be involved in, any of the following acts or conduct, and the same shall constitute cause for suspension of an employee from the classified service of the City:

- L. Violation of any of the rules and regulations of the Fire Department or Police Department or of special orders, as applicable.

The following are the specific acts committed by Ofc. Perez in violation of Rule 10:

On March 12, 2021, at 2:04 AM, Officers Eric Perez, Katherine Alzola, and James DeStaso, responded to an apartment on Townesouth Circle for a "Nature Unknown - Urgent" call for service. While inside the apartment at the invitation of one of the occupants, Ofc. Perez recognized an occupant of the residence as Mr. CJ, who had a warrant for his arrest for Assault with Injury - Family Violence. Officers Perez and DeStaso attempted to detain Mr. CJ to confirm the outstanding warrant. Mr. CJ displayed resistance and a Response to Resistance (R2R) ensued involving Officers Perez, DeStaso, and Alzola.

Within seconds, a fourth officer (hereafter Officer #4) arrived and also engaged in the response to resistance, striking Mr. CJ's back with his baton. As officers were attempting to gain control of Mr. CJ and apply handcuffs to him, Mr. CJ inadvertently handcuffed himself during the struggle. Ofc. Perez then completely secured the handcuffs, without effectively communicating to the other three officers that he had done so. Then, Officer #4 deployed his Taser against Mr. CJ three times after the handcuffs had been applied.

While the officers were still on the scene, and before a supervisor arrived, Ofc. Alzola asked Ofc. Perez if he would turn off his Body Worn Camera (BWC), so they could have an unrecorded conversation. Ofc. Perez turned his camera off accordingly and, as was later admitted to Internal Affairs, the two had a conversation about the incident.

Ofc. Perez reactivated his BWC at some point. When a supervisor arrived on-scene to conduct the routine field investigation of the officers' use force, Ofc. Perez gave the supervisor an incomplete account of his knowledge and observations.¹ He also wrote an incident report that was incomplete as to his knowledge and observations.

Ofc. Alzola also took photographs of the injuries that Mr. CJ had sustained during the R2R. The injuries consisted of linear-shaped swollen contusions upon Mr. CJ's back. Five or more of these injuries were located along or across the area of Mr. CJ's spine. These injuries were consistent with the delivery of expandable baton (ASP) strikes. There were also skin punctures on the upper-right portion of Mr. CJ's back from the deployment of Taser probes.

Thereafter, the Austin Police Department (APD) Force Review Unit (FRU) reviewed the R2R per policy and completed an Incident Review Packet (IRP). During the review of the R2R, the FRU identified possible policy violations regarding Officer #4's use of force. These possible policy violations were addressed separately in IA case number 2021-0305. The FRU also identified possible policy violations, including failure to intercede by Officers Perez, Alzola, and DeStaso.

The officers' Commander generated an internal complaint memorandum requesting that Internal Affairs (IA) initiate an administrative investigation to determine if any violation

¹ All four of the officers were required to give an initial field interview with the on-scene supervisor and to report their involvement and observations to the supervisor. They were each also required to write an incident report of their involvement and their observations.

of Department policy, Civil Service rules, or state law had been committed by Officers Perez, Alzola, and/or DeStaso.

The Austin Police Department's General Order 200.1.3 (*Duty to Intercede*) requires:

Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor.

At the conclusion of the IA investigation, Ofc. Perez's Chain-of-Command and I concluded that he did not violate the Duty to Intercede General Order when the baton strikes were delivered, but he did violate the Duty to Intercede General Order during the three applications of the Taser device and in the immediate aftermath of the R2R. The Chain-of-Command based its conclusion upon the following factors:

- 1) Ofc. Perez did not have a reasonable opportunity to prevent harm to Mr. CJ during the baton strikes. While Mr. CJ was still resistant, it would have been impractical to expect Ofc. Perez to physically intercede within the few seconds when the baton strikes were applied, without placing himself, his fellow officers, and the other occupants of the household in danger.
- 2) Moreover, even though Mr. CJ inadvertently handcuffed himself during the struggle, Ofc. Perez did not know this fact in that moment, and he was not able to completely secure the handcuffs on Mr. CJ until the conclusion of the baton strikes and prior to the tasing.
- 3) However, once Ofc. Perez secured the handcuffs on Mr. CJ, he was required to intercede to prevent further harm to Mr. CJ. Ofc. Perez failed to do so, as Mr. CJ was tased three times by Officer #4 after Ofc. Perez had secured the handcuffs.
- 4) Moreover, Ofc. Perez witnessed Officer #4 use his baton to attempt to pry Mr. CJ's arms behind his back multiple times, while he was handcuffed.
- 5) While Ofc. Perez repeatedly told Officer #4 (seven times) that Mr. CJ was handcuffed in the front, he did not physically intercede or take any other steps, to prevent further harm to Mr. CJ, nor did he effectively communicate to Officer #4, who continued to deploy his Taser against Mr. CJ three times.
- 6) Ofc. Perez could obviously see that Officer #4 continued to deploy the Taser, and attempted to pry the handcuffs with his baton, indicating that Ofc. Perez's communications had not been effective. Ofc. Perez acknowledged that his reaction and inaction depicted on the BWC footage did not comport with the expectations of his training on how to intercede.

- 7) Moreover, Ofc. Perez also did not promptly report his observations to a supervisor in accordance with the Duty to Intercede General Order.
- 8) Specifically, Ofc. Perez made no mention to the supervisor that the baton was used to strike Mr. CJ multiple times in the back/spine area. He also did not mention that Mr. CJ was tased multiple times and that he was handcuffed at the time of the tasing.

Ofc. Perez's Chain-of-Command and I also concluded that he violated APD General Order 303.3.3 (*When Department Issued BWC System Deactivation is Authorized*) when he deactivated his BWC in the immediate aftermath of the R2R and had a conversation with Ofc. Alzola about the incident. During this investigation, Ofc. Alzola advised IAD that Ofc. Perez told her – during this unrecorded conversation – that Mr. CJ was handcuffed during the application of the baton strikes, and prior to the application of the Taser cycles by Officer #4. Ofc. Perez acknowledged during his Disciplinary Review Hearing (DRH) that he not only violated this General Order by having this discussion, but he should have reported that he and Ofc. Alzola violated the BWC General Order.

Ofc. Perez's Chain-of-Command and I also concluded that he violated APD General Order 211.4.1 (*Employee Reporting Guidelines For All Force Level Incidents*) by failing to provide a detailed description of the force used against Mr. CJ in his incident report, including but not limited to his observation of Officer #4 striking Mr. CJ's back multiple times with his baton, and using his Taser against Mr. CJ while handcuffed.

It was significant to me and the Chain-of-Command that Ofc. Perez took full responsibility for his actions and inactions at his DRH—including by admitting to violating the General Orders for which he was sustained upon included in this suspension memorandum.

By these actions, Ofc. Perez violated Rule 10.03(L) of the Civil Service Rules by violating the following rules and regulations of the Austin Police Department:

- **Austin Police Department Policy 200.1.3: Response to Resistance: Duty to Intercede**

200.1.3 Duty to Intercede

Any officer who observes another officer using force shall intercede to prevent further harm if the officer knows that the force being used is not objectively reasonable and the officer has a reasonable opportunity to prevent the harm. Such officers must also promptly report these observations to a supervisor.

➤ **Austin Police Department Policy 211.4.1: Response to Resistance Inquiry, Reporting, and Review: Employee Reporting Guidelines For All Forced Level Incidents**

211.4.1 Employee Reporting Guidelines For All Forced Level Incidents

The following outlines the reporting guidelines for involved employees, employees that witness an incident and employees designated to assist at the scene of any response to resistance incident.

- (a) An incident report shall be completed by the primary reporting employee and include title code 8400. This report shall be written regardless of whether a report or supplement would normally be written for the initial incident.
- (b) Supplements shall be completed by:
 - 1. All other employees who are involved in a force incident.
 - 2. Employees who witness a force incident.
 - 3. Employees assisting at the scene of a force incident.
 - 4. A supervisor is required to complete a supplement to the response to resistance incident report of Level 1 incidents. They may also be required by SIU to complete a supplement to the SIU inquiry report.
- (c) The following information shall be included in each report and supplement:
 - 1. The original reason for police presence on the scene.
 - 2. The name and employee number of the supervisor notified of the incident.
 - 3. A detailed description of the circumstances and subject actions that resulted in the response to resistance.
 - 4. A detailed description of the force used.
 - (a) Include specific details regarding any weapon used on a subject (e.g., when OC spray is used you document the number of bursts, duration of each burst, the approximate distance from the subject, the location of spray contact).
 - 5. Subject and witness information.
 - 6. Reports shall not contain "boilerplate" or "pat" language (e.g., "furtive movement" or "fighting stance") without descriptive details of the action.
 - 7. Involved employees shall also complete the force section of the "Details" page in their report/supplement.
- (d) All incident reports and supplements shall be completed separately and without discussing the details of the incident with other

personnel. "Group reporting" is prohibited. Debriefing after an incident and/or the necessary discussions to further the training requirements of officers enrolled in the Field Training Program (FTP) are allowed.

➤ **Austin Police Department Policy 303.3.3: Body Worn Camera Systems: When Department Issued BWC System Deactivation is Authorized**

303.3.3 When Department Issued BWC System Deactivation is Authorized

Once the BWC system is activated it shall remain on until the incident has concluded or until deactivation is permissible in accordance with this order.

- (a) For purposes of this section, conclusion of an incident has occurred when:
 - 1. All arrests have been made and arrestees have been transported; and
 - 2. No further law enforcement action is likely to occur (e.g., waiting for a tow truck or a family member to arrive.)
- (b) Employees may choose to discontinue a recording currently in progress for any non-confrontational encounter with a person, including an interview of a witness or victim.
- (c) Employees shall adhere to posted policies of any Law Enforcement, Court, or Corrections entity that prohibit the use of BWC systems therein (i.e. TCSO, Courts, Juvenile Detention Centers).
- (d) Employees may deactivate the audio portion by engaging the mute button on the body worn camera, for administrative reasons only, as follows:
 - 1. The reason for audio deactivation must be recorded verbally prior to audio deactivation; and
 - 2. After the purpose of audio deactivation has concluded, employees will reactivate the audio track.
- (e) For purposes of this section, an "administrative reason" refers to:
 - 1. Personal conversations unrelated to the incident being recorded;
 - 2. Employee to employee training (e.g., when a Field Training Employee or Field Training Supervisor wishes to speak to an employee enrolled in the Field Training Program about a training issue);
 - 3. Any reason authorized by a supervisor. The identity of the supervisor granting the authorization shall be stated prior to the audio deactivation.

In addition to this agreed temporary suspension, Ofc. Perez agrees to the following terms and conditions:

1. Ofc. Perez shall attend any training specified by his Chain-of-Command.
2. Ofc. Perez agrees to a probationary period of one (1) year, with the additional requirement that if, during the probationary period, he commits the same or a similar act of misconduct for which he is being suspended (the determination whether an act is the same or similar is solely within the purview of the Chief of Police and is not subject to review by the Civil Service Commission, an Independent Third Party Hearing Examiner, or District Court), he will be indefinitely suspended without the right to appeal that suspension to the Civil Service Commission, an Independent Third Party Hearing Examiner, and to District Court. The one-year period begins on the day Ofc. Perez returns to duty after completing his agreed suspension. Should Ofc. Perez commit the same or similar violation outside the one-year period, he will be indefinitely suspended but retains the right to appeal that suspension.
3. Ofc. Perez understands that this temporary suspension may be taken into consideration in the Chief's determination whether a valid reason exists to bypass him for a future promotion in accordance with APD Policy 919.11.
4. Ofc. Perez agrees that he, and all others claiming under him named herein or not, fully discharge, release and waive any and all known or unknown claims or demands of any kind or nature whatsoever that he now has, or may have in the future, including without limitations, claims arising under any federal, state or other governmental statute, regulation, or ordinance relating to employment discrimination, termination of employment, payment of wages or provision of benefits, Title VII of the Civil Rights Act of 1964, as amended, the Civil Rights Act of 1991, the Americans with Disabilities Act of 1990, as amended, the Family and Medical Leave Act, the Fair Labor Standards Act, and the Texas Commission on Human Rights Act, against the City of Austin, the Austin Police Department, or their respective agents, servants and employees, arising from the above-referenced incident, and any actions taken as a result of that incident, including but not limited to, the negotiation and execution of this agreed temporary suspension.
5. Ofc. Perez acknowledges that he had the opportunity to discuss this agreed suspension and additional terms and conditions set forth herein with a representative of his choosing prior to signing his acceptance where indicated.

By signing this Agreed Discipline, Ofc. Perez understands and agrees that I am forgoing my right to indefinitely suspend him for the conduct described above and that by agreeing to the suspension, Ofc. Perez waives all right to appeal this agreed suspension and the additional terms and conditions to the Civil Service Commission, to an Independent Third-Party Hearing Examiner, and to District Court.



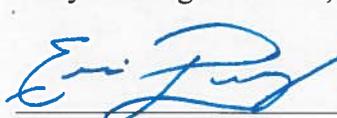
JOSEPH CHACON, Chief of Police

9/27/2021

Date

TO WHOM IT MAY CONCERN:

I acknowledge receipt of the above and foregoing memorandum of agreed temporary suspension and I understand that by entering into this disciplinary agreement the Chief forgoes his right to indefinitely suspend me for the conduct described above and that by agreeing to the suspension, I have no right to appeal this disciplinary action, as well as the additional terms and conditions, to the Civil Service Commission, to an Independent Third-Party Hearing Examiner, and to District Court.

 #8583

Police Officer Eric Perez #8583

9/27/2021

Date