City of Albuquerque

Albuquerque Police Department

Timothy M. Keller
Mayor

Eric J. Garcia
Superintendent of Police Reform

October 13, 2026

Interoffice Memorandum

To: **Diane McDermott, Executive Director, CPOA**

From: **Joseph Viers, Acting Major, Office of the Superintendent**

Subject: **Non-Concurrence of Finding re: CPC-94-2026**

This memorandum articulates APD's points of non-concurrence in the above-captioned administrative investigation conducted by the Civilian Police Oversight Agency.

Policy	CPOA Finding	APD Finding
2-73-5-B-1-a	Sustained/NBOOC	Exonerated

Interim Commander Ortiz conducted the initial review of the investigation and did not concur with the CPOA finding of Sustained/NBOOC for the alleged violation of APD Procedural Order 2-73-5-B-1-a, involving the officer not conducting a search of a backpack prior to tagging it into evidence during the June 2, 2026, incident.

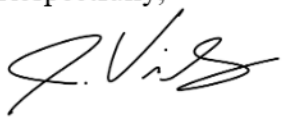
After review, I concur with the Commander's assessment of Exonerated, regarding the alleged violation of APD SOP 2-73-5-B-1-a. The CPOA's finding is based on the officer's failure to search a backpack that was not within the arrestee's immediate control before tagging the backpack into evidence. However, APD amended its policy through Special Order 25-84, adding language that searches must be conducted only "as permitted by law." This amendment is significant because officers are required to conduct searches consistent with constitutional protections and applicable case law, rather than treating an evidence collection or submission procedure as an independent authority to conduct a warrantless search. Following the policy amendment, the District Attorney's Office provided Legal Update training to the entire department, addressing these legal requirements, including the implications of *State v. Ortiz*, 2023-NMCA-026.

In *State v. Ortiz*, the New Mexico Supreme Court addressed the legal limitations of warrantless searches and emphasized that a search incident to arrest is generally limited to the arrestee's person and the area within the arrestee's immediate control. This exception is intended to address concerns such as an arrestee gaining access to a weapon or destroying evidence. An arrest alone, however, does not provide unrestricted authority to search property, and a warrantless search must be justified by the circumstances and a recognized exception to the warrant requirement. These principles are directly relevant to the CPOA finding in this case because the backpack was not within the arrestee's immediate control. Accordingly, the officer's decision not to search the backpack before tagging it into evidence must be evaluated in light of the constitutional restrictions governing warrantless searches and APD's amended policy.

Requiring the officer to search the backpack before tagging it into evidence would have required a search without an established legal justification, potentially violating the arrestee's Fourth Amendment rights. Such an action would also have been inconsistent with APD's amended policy under Special Order 25-84 and the legal guidance provided to department personnel through the District Attorney's Office training. APD should not sustain a policy violation for an officer's failure to conduct a search that was not legally authorized. Doing so would effectively require the officer to disregard the legal limitations that APD specifically incorporated into its policy and department-wide training.

Accordingly, I do not concur with the CPOA finding of Sustained/NBOOC under SOP 2-73-5-B-1-a. Based on the totality of the circumstances and the applicable policy provisions, I find the amended disposition appropriate and recommend that the finding be amended to Exonerated, and no disciplinary action be imposed.

Respectfully,



Acting Major Joseph Viers,
Office of the Superintendent
Albuquerque Police Department

Cc: Ryan Nelson, Acting Superintendent of Police Reform