

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY

In the Matter of GWEN CARR, ELLISHA FLAGG
GARNER, CONSTANCE MALCOLM, LOYDA
COLON, JOO-HYUN KANG, MONIFA BANDELE,
KESI FOSTER, and MARK WINSTON GRIFFITH,

Petitioners,

Index No. 101332/19

For an Order Convening a Summary
Judicial Inquiry Pursuant to New York
City Charter § 1109

VERIFIED PETITION

-against-

BILL DE BLASIO, Mayor of the City of New York,
JAMES P. O'NEILL, New York City Police
Commissioner, DANIEL A. NIGRO, New York City Fire
Commissioner, KEVIN RICHARDSON, New York City
Police Department Deputy Commissioner, and THE CITY
OF NEW YORK,

Respondents.

MAR 10 2021 10:21 AM

CITY OF NEW YORK
OFFICE OF PETITIONERS
COMMUNICATIONS UNIT

TO THE SUPREME COURT OF THE STATE OF NEW YORK:

The Petitioners, Gwen Carr, Elisha Flagg Garner, Constance Malcolm, Loyda Colon, Joo-Hyun Kang, Monifa Bandele, Kesi Foster, and Mark Winston Griffith file this proceeding against the Respondents Bill De Blasio, Mayor of the City of New York ("Mayor"), James P. O'Neill, New York City Police Commissioner ("Police Commissioner"), Daniel A. Nigro, New York City Fire Commissioner ("Fire Commissioner"), Kevin Richardson, New York City Police Department Deputy Commissioner, and the City of New York ("City") seeking a summary judicial inquiry into the Respondents' violations of duty and neglect of duty relating to the death of Eric Garner. The Petitioners allege as follows:

1. More than five years after Eric Garner was killed by the New York Police Department (“NYPD”) on July 17, 2014, the Petitioners and other City taxpayers have been denied access to fundamental information concerning Mr. Garner’s death.

2. This action is brought pursuant to New York City Charter Section 1109, an essential part of the City Charter providing City taxpayers with a vehicle to require public disclosure of misconduct by the City.¹ Section 1109 permits the Supreme Court to require any City officer or employee to be examined under penalty of perjury upon allegations by five City citizen-taxpayers of official misconduct. The transcript of such examinations shall be filed with the Clerk of New York County. Section 1109 is an essential check on executive power that promotes accountability through public disclosure.

3. There is no area of local government where public accountability is more necessary than policing, especially when police conduct results in the loss of life. Yet, there has been scant information released by the City about Mr. Garner’s death. For example, the City has not even identified all of the NYPD officers present at the scene. Further, the public has been made aware of only one disciplinary proceeding: Daniel Pantaleo, the officer whose chokehold led to Mr.

¹ Section 1109 states in part:

A summary inquiry into any alleged violation or neglect of duty in relation to the property, government or affairs of the city may be conducted under an order to be made by any justice of the supreme court in the first . . . judicial district on application of . . . any five citizens who are taxpayers, supported by affidavit to the effect that one or more officers, employees or other persons therein named have knowledge or information concerning such alleged violation or neglect of duty.

Garner's death, had a semi-public administrative hearing that failed to address several unanswered questions and, indeed, raised even more questions.²

4. As discussed herein in more detail below, the issues that require a summary inquiry include:

- a) Violations and neglect of duties in connection with the stop and arrest of Mr. Garner and the force used by officers on Mr. Garner;
- b) Violations and neglect of duties concerning the failure, subsequent to Mr. Garner's death, to train NYPD officers adequately on appropriate guidelines on the use of force and the prohibition on the use of chokeholds;
- c) Violations and neglect of duties in connection with filing false official NYPD documents concerning Mr. Garner's arrest and making false statements in connection with the NYPD's internal investigation of Mr. Garner's death;
- d) Violations and neglect of duties concerning the unlawful leaking of Mr. Garner's alleged arrest history and the unlawful leaking of Mr. Garner's alleged medical history;
- e) Violations and neglect of duties in connection with incomplete and inaccurate statements to the media by the City concerning the July 17, 2014 stop and arrest of Mr. Garner;
- f) Violations and neglect of duties in connection with the medical care provided to Mr. Garner; and
- g) Violations and neglect of duties concerning the City's investigation and adjudication of, and imposition of discipline for, the aforementioned violations and neglect of duties, including (for example) false statements by NYPD officers concerning Mr. Garner's arrest.

² The purpose of Officer Pantaleo's administrative hearing was to adjudicate issues relating to his use of force. A summary inquiry under Section 1109 is appropriate where there have been significant publicity and other types of hearings, but significant questions remain unanswered. *See Green v. Giuliani*, 187 Misc.2d 138, 152 (2000).

PARTIES AND JURISDICTION

5. Petitioner Gwen Carr, the mother of Eric Garner, is a citizen and taxpayer of New York City. Petitioner Carr has been steadfast in her pursuit of public accountability for her son's death. The City repeatedly has denied her access to fundamental information about her son's death that is sought through this proceeding.

6. Ellisha Flagg Garner, the sister of Eric Garner, is a citizen and taxpayer of New York City. Petitioner Garner has been steadfast in her pursuit of public accountability for her brother's death. The City repeatedly has denied her access to the fundamental information about her brother's death that is sought through this proceeding.

7. Petitioner Constance Malcolm is a citizen and taxpayer of New York City. Petitioner Malcolm is the mother of Ramarley Graham, who was killed by the NYPD in February 2012. Petitioner Malcolm has worked tirelessly on police accountability issues and has engaged in extensive organizing and advocacy to get public accountability and transparency for Mr. Garner's death.

8. Petitioner Loyda Colon is a citizen and taxpayer of New York City. Petitioner Colon is Co-Director of the Justice Committee, a non-profit group dedicated to ending discriminatory policing practices in New York that has engaged in extensive organizing and advocacy to get public accountability for Mr. Garner's death.

9. Petitioner Joo-Hyun Kang is a citizen and taxpayer of New York City. Petitioner Kang is the Director of Communities United for Police Reform, a non-profit group dedicated to ending discriminatory and abusive policing practices in New York that has engaged in extensive organizing and advocacy to get public accountability and transparency for Mr. Garner's death.

10. Petitioner Monifa Bandele is a citizen and taxpayer of New York City. Petitioner Bandele is the Senior Vice President for MomsRising.org, a non-profit group that addresses the most critical issues facing women, mothers, and families, including criminal justice issues, by educating the public and mobilizing grassroots actions. Petitioner Bandele has engaged in extensive organizing and advocacy to get public accountability for Mr. Garner's death.

11. Kesi Foster is a citizen and taxpayer of New York City. Petitioner Foster is a lead organizer with Make The Road New York, a non-profit group that focuses on addressing, among other issues, discrimination through legal and educational services, community organizing, and policy innovations. Petitioner Foster has engaged in extensive organizing and advocacy to get public accountability for Mr. Garner's death.

12. Mark Winston Griffith is a citizen and taxpayer of New York City. Petitioner Griffith is the Executive Director of the Brooklyn Movement Center, a non-profit organization of primarily low-to-moderate income Central Brooklyn residents that builds power and pursues self-determination in Bedford-Stuyvesant and Crown Heights by, among other issues, waging issue-based police accountability campaigns. Petitioner Griffith has engaged in extensive organizing and advocacy to get public accountability for Mr. Garner's death.

13. Respondent Bill De Blasio is the Mayor of the City of New York. Pursuant to Sections 3 and 8 of the City Charter, the Mayor is "the chief executive officer of the city" and is "responsible for the effectiveness and integrity of city government operations." New York City Charter Section 8 further provides that the Mayor must maintain policies necessary for the effectiveness and integrity of City operations, "including the implementation of effective systems of internal control by each agency and unit under the jurisdiction of the mayor." Pursuant to New York City Charter Sections 6 and 431, the Mayor appoints the Police Commissioner and the

Fire Commissioner and—“whenever in his judgment the public interest shall so require” — the Mayor may remove them from office.

14. Respondent James P. O’Neill is the New York City Police Commissioner. Pursuant to New York City Charter Section 434, Respondent O’Neill is “the chief executive officer of the police force” and is “responsible for the execution of all laws and the rules and regulations of the department.” Among other laws, rules, and regulations, the NYPD is responsible for adhering to federal and state constitutional law and NYPD rules and regulations on stops, seizures, arrests, and the use of force. Pursuant to New York City Charter Section 440, Respondent O’Neill also is charged with oversight of investigations of misconduct by NYPD officers. Such investigations must be “complete, thorough and impartial,” “conducted fairly and independently,” “and in a manner in which the public and the police department have confidence.” *See* New York City Charter § 440. The Civilian Complaint Review Board (“CCRB”) has the power to investigate complaints by members of the public of, among other matters, use of excessive force and abuse of authority, but Respondent O’Neill has the authority, pursuant to New York City Charter Section 440(c)(1), to reject the CCRB’s conclusions.

15. Respondent Daniel A. Nigro is the New York City Fire Commissioner. Pursuant to New York City Charter Section 487, Respondent Nigro has “sole and exclusive power to perform all duties for the government, discipline, management, maintenance and direction of the fire department.” Such power includes the “authority to provide general ambulance services, emergency medical services and other response services necessary to preserve public health, safety and welfare.” New York City Charter § 487(f).

16. Respondent Kevin Richardson is the NYPD Deputy Commissioner who oversees the NYPD’s Department Advocate’s Office (“DAO”), the NYPD’s discipline unit.

17. This Court has jurisdiction over this matter pursuant to New York City Charter Section 1109.

18. Venue is appropriate in New York County, because, among other reasons: (a) the primary City offices of Respondents de Blasio and O'Neill are in New York County; and (b) the administrative hearing concerning discipline for Officer Pantaleo — at which several new unresolved factual issues were raised — was in New York County.

FACTS

Mr. Garner's Death

19. Officers Pantaleo and Justin Damico approached Mr. Garner at approximately 4:45 pm, on July 17, 2014, in front of a store at 202 Bay Street in Staten Island, New York. Cell phone video shows the officers accusing Mr. Garner of selling loose (unpackaged) cigarettes and Mr. Garner making clear that he was not selling cigarettes. The person filming the video unambiguously corroborated Mr. Garner, stating that, contrary to the officers' accusations, Mr. Garner had just finished breaking up a fight.

20. Soon thereafter, Officer Pantaleo placed his arm around Mr. Garner's neck, and Officers Pantaleo and Damico took Mr. Garner to the ground. Other officers piled onto Mr. Garner. Officer Pantaleo's arm remained around Mr. Garner's neck for approximately 15 to 20 seconds. Mr. Garner yelled, "I can't breathe" eleven times, to no avail. After Officer Pantaleo removed his arm from around Mr. Garner's neck, he repeatedly pushed Mr. Garner's head into the concrete sidewalk. He did so, notwithstanding that several officers were on top of Mr. Garner, covering almost completely his entire body. Approximately ten officers were on or in the vicinity of Mr. Garner.

21. EMTs and paramedics were at the scene as well. EMTs, paramedics, and NYPD officers failed to provide appropriate medical attention to Mr. Garner. EMTs and paramedics also failed to have appropriate medical equipment with them.

22. Upon information and belief, the EMTs and paramedics were affiliated with the Richmond University Medical Center (“RUMC”) and responded to the scene in response to calls via the City’s 911 dispatch system for emergency medical services, which is overseen by Respondent Nigro. Shortly after the incident, the FDNY announced that two EMTs and two paramedics were barred from responding to 911 calls pending an investigation of the incident.³

23. Mr. Garner was transported to RUMC and pronounced dead shortly thereafter. The City’s Office of Chief Medical Examiner (“OCME”) — which is charged by statute with diagnosing the cause of death — concluded that Mr. Garner was killed by choking and compression of his chest and, therefore, ruled Mr. Garner’s death a homicide.⁴ In testimony at the administrative hearing concerning Officer Pantaleo’s use of force, the OCME testified that Officer Pantaleo’s choking of Mr. Garner triggered a “lethal cascade” of events that ended in Mr. Garner’s death.⁵

³ See Georgett Roberts, C.J. Sullivan and Laura Italiano, *4 EMS Workers Barred From Duty After Chokehold Death*, N.Y. Post (July 20, 2014) <https://nypost.com/2014/07/20/4-ems-workers-barred-from-duty-after-chokehold-death/>; John M. Annesse, *EMTs And Paramedics Who Responded To Eric Garner Have Been Suspended Without Pay By Hospital*, (July 21, 2014), https://www.silive.com/news/2014/07/emts_and_paramedics_who_respon.

⁴ See Joseph Goldstein & Marc Santora, *Staten Island Man Died From Chokehold During Arrest, Autopsy Finds*, N.Y. Times (Aug. 1, 2014), <https://www.nytimes.com/2014/08/02/nyregion/staten-island-man-died-from-officers-chokehold-autopsy-finds.html>.

⁵ In re Daniel Pantaleo at 32-33, <https://int.nyt.com/data/documenthelper/1645-read-the-judges-opinion/1ab51bece4671aa10d11/optimized/full.pdf#page=1>; see also Ali Winston, *Medical Examiner Testifies Eric Garner Died of Asthma Caused by Chokehold*, N.Y. Times (May 15, 2019), <https://www.nytimes.com/2019/05/15/nyregion/eric-garner-death-daniel-pantaleo-chokehold.html>.

The NYPD's Leaking of Mr. Garner's Arrest Records

24. New York Criminal Procedure Law Section 160.50 provides that a criminal case that is resolved in favor of the person accused must be sealed absent extraordinary circumstances.

New York Criminal Procedure Law Section 160.55 provides that arrest records for cases resulting in a conviction for a violation must be sealed.

25. A series of news articles reported that Mr. Garner had been previously arrested. At least one article reported that the NYPD was the source for Mr. Garner's arrest history. Upon information and belief, the NYPD's leaking of Mr. Garner's alleged arrest history violated New York Criminal Procedure Law Sections 160.50 and 160.55.

26. A *New York Times* article from the same date as Mr. Garner's death (at which time the video had not been made public and it was not clear to the public why police officers claimed that they had approached Mr. Garner) states: "The police stated he had been arrested numerous times, most recently in May on charges of illegal cigarette sales."⁶

27. The next day, the *New York Times* reported: "[Mr. Garner] had been arrested more than 30 times, often accused of selling loose cigarettes bought outside the state, a common hustle designed to avoid state and city tobacco taxes. In March and again in May, he was arrested on charges of illegally selling cigarettes on the sidewalk."⁷

28. On July 20, 2014, another *New York Times* article stated: "[Mr. Garner] and the police were far from strangers: In a city where the authorities are increasingly focused on

⁶ Joseph Goldstein and Marc Santora, *Staten Island Man Dies After Police Try to Arrest Him*, N.Y. Times (July 17, 2014), <https://www.nytimes.com/2014/07/18/nyregion/staten-island-man-dies-after-police-try-to-arrest-him.html>.

⁷ Joseph Goldstein & Nate Schweber, *Man's Death After Chokehold Raises Old Issue for the Police*, N.Y. Times (July 18, 2014), <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html>.

stamping out petty offenses as a way of heading off larger ones, the local officers had tangled with Mr. Garner time and time again”⁸

29. On August 5, 2014, *The New York Times* reported: “[Mr. Garner] had been arrested 30 times, including nine times on charges of selling loose, untaxed cigarettes . . . according to Patrick J. Lynch, the president of the Patrolmen’s Benevolent Association.”⁹

The NYPD’s Leaking of Mr. Garner’s Medical Information

30. On August 2, 2014, the *New York Times* discussed medical issues Mr. Garner reportedly suffered from that were addressed in the OCME’s autopsy. The article stated: “Mr. Garner was a large man, weighing over 300 pounds, and had other health issues, including diabetes, sleep apnea and asthma.”¹⁰

31. The autopsy report is a document produced and maintained by the OCME, a City agency. Any disclosure of the autopsy or information contained in the autopsy, therefore, is chargeable to the City. The leaking of Mr. Garner’s private medical information served no legitimate law enforcement purpose.

32. The City’s leaking of Mr. Garner’s medical information violates Mr. Garner’s and his family’s right to privacy.

⁸ David Goodman & Vivin Yee, *Death of a Man in Custody Adds Fuel to a Dispute Over a Policing Strategy*, N.Y. Times (July 20, 2014), <https://www.nytimes.com/2014/07/21/nyregion/death-of-a-man-in-custody-adds-fuel-to-a-dispute-over-a-policing-strategy.html>.

⁹ Jim Dwyer, *Two Fatal Police Encounters, but Just One Video*, N.Y. Times (Aug. 5, 2014), <https://www.nytimes.com/2014/08/06/nyregion/two-fatal-police-encounters-but-just-one-video.html>.

¹⁰ Joseph Goldstein & Marc Santora, *Staten Island Man Died From Chokehold During Arrest, Autopsy Finds*, N.Y. Times (Aug. 1, 2014), <https://www.nytimes.com/2014/08/02/nyregion/staten-island-man-died-from-officers-chokehold-autopsy-finds.html>.

The NYPD's Administrative Response to Mr. Garner's Death

33. Referring to Officer Pantaleo's take-down maneuver on Mr. Garner one day after Mr. Garner's death, then-NYPD Commissioner William Bratton commented, "As defined in the department's patrol guide, this would appear to have been a chokehold."¹¹

34. The NYPD's Internal Affairs Bureau ("IAB") commenced an investigation into the role of each officer at the scene.¹²

35. On January 8, 2016, Sergeant Kizzy Adonis, who was one of two supervisors to respond to the scene initially, was charged with failure to supervise.¹³ Sergeant Adonis was placed on modified status until May 2018, when her status was restored to full duty.¹⁴ (Last week, administrative charges against Sergeant Adonis were resolved.¹⁵ The terms of the

¹¹ See Joseph Goldstein & Nate Schweber, *Man's Death After Chokehold Raises Old Issue for the Police*, N.Y. Times (July 18, 2014), <https://www.nytimes.com/2014/07/19/nyregion/staten-island-man-dies-after-he-is-put-in-chokehold-during-arrest.html>.

¹² See David Goodman & Vivin Yee, *Death of a Man in Custody Adds Fuel to a Dispute Over a Policing Strategy*, N.Y. Times (July 20, 2014), <https://www.nytimes.com/2014/07/21/nyregion/death-of-a-man-in-custody-adds-fuel-to-a-dispute-over-a-policing-strategy.html>.

¹³ See Al Baker, *New York Police Sergeant to Face Internal Charges in Eric Garner Confrontation*, N.Y. Times (Jan. 8, 2018), <https://www.nytimes.com/2016/01/09/nyregion/new-york-police-sergeant-to-face-internal-charges-in-eric-garner-confrontation.html>.

¹⁴ See Amanda Woods, *NYPD to immediately launch trial for Eric Garner cops*, N.Y. Post (July 19, 2018), <https://nypost.com/2018/07/19/nypd-to-immediately-launch-internal-trial-for-eric-garner-cops/>.

¹⁵ It now appears clear that there will be no other administrative hearings concerning Mr. Garner's death. See Ashley Southall, *Final Punishment in Eric Garner Case: Sergeant Loses Vacation Time*, N.Y. Times (Aug. 21, 2019), <https://www.nytimes.com/2019/08/21/nyregion/sergeant-kizzy-adonis-eric-garner-pantaleo.html>.

resolution were publicly disputed by the NYPD and the Sergeant's Benevolent Association.¹⁶⁾

36. The IAB and the Civilian Complaint Review Board, an agency independent of the NYPD, have parallel authority to investigate allegations of excessive force. The CCRB investigated Officer Pantaleo and that investigation resulted in an NYPD administrative hearing, which began on May 13, 2019 and concluded on June 6, 2019.

37. According to testimony at the administrative hearing by NYPD Deputy Inspector Charles Barton, in 2015, IAB referred charges against Officer Pantaleo to the NYPD DAO for adjudication.¹⁷ As noted above, Respondent Richardson oversees the DAO. The IAB referral was *over four years* prior to any disciplinary action by the CCRB. It seems that the DAO made a decision to do *nothing* with the charges recommended by IAB. In addition, the CCRB substantiated complaints against Officer Pantaleo and requested that administrative charges be served against him in the fall of 2017, but the NYPD refused to serve Officer Pantaleo until the summer of 2018, in the face of tremendous public pressure.¹⁸ Accordingly, the only reasonable conclusion that can be made, based on the current publicly known facts, is that without the action of the CCRB, an independent agency, and the continued advocacy by Mr. Garner's family and supporters, Officer Pantaleo would have faced *no* disciplinary action for killing Mr. Garner.

¹⁶ See Rocco Parasandola, Thomas Tracy, Graham, Rayman, and Erika Martinez, *NYPD Chief of Department rips union advice on how to handle arrests after firing of Eric Garner cop Daniel Pantaleo*, N.Y. Daily News (Aug. 22, 2019), <https://www.nydailynews.com/new-york/nyc-crime/ny-sergeant-discipline-eric-garner-20190822-u4kcra33rbezdaawd72aq56n7pq-story.html>.

¹⁷ See Ashley Southall, *Police Investigators Determined Officer Choked Eric Garner*, N.Y. Times (May 19, 2019), <https://www.nytimes.com/2019/05/13/nyregion/eric-garner-death-daniel-pantaleo-trial-chokehold.html>.

¹⁸ See Erin Durkin, *Eric Garner's mom says NYPD is blocking civilian board from proceeding with charges against cop who killed her son*, N.Y. Daily News (Jan. 18, 2018), <https://www.nydailynews.com/new-york/eric-garner-mom-nypd-blocking-charges-pantaleo-article-1.3764405>.

38. Judge Rosemarie Maldonado, NYPD Deputy Commissioner, presided over the administrative proceeding. Based upon a pretrial ruling by Judge Maldonado concerning the statute of limitations, the CCRB was required to demonstrate at the hearing that Officer Pantaleo's use of force on Mr. Garner met the elements of a crime.

39. After trial, Judge Maldonado found that Officer Pantaleo's use of a chokehold on Mr. Garner recklessly caused physical injury to him.¹⁹ Based on this finding, Judge Maldonado recommended to Respondent O'Neill that Officer Pantaleo be dismissed from the NYPD.²⁰ Respondent O'Neill adopted this recommendation.

Unresolved Factual Issues

40. Many unresolved factual issues remain that are separate and apart from the issue presented to Judge Maldonado (*i.e.*, whether the CCRB proved that Officer Pantaleo's use of force on Mr. Garner met the elements of a crime). Among other issues, the categories of unresolved factual issues include:

- The lawfulness of the stop and arrest of Mr. Garner;
- Other officers' use of force or failure to intervene during the arrest of Mr. Garner (including Officer Damico and Officers Mark Ramos and Craig Furlani), who either further compressed Mr. Garner's chest by piling on top of him or failed to intervene to stop Officer Pantaleo's use of a prohibited chokehold;
- The adequacy of training of NYPD officers, subsequent to Mr. Garner's death, on appropriate guidelines concerning the use of force and the prohibition on the use of chokeholds;

¹⁹ In re Daniel Pantaleo at 2, 39, <https://int.nyt.com/data/documenthelper/1645-read-the-judges-opinion/1ab51bece4671aa10d11/optimized/full.pdf#page=1>.

²⁰ *Id.* at 45; *see also* Catherina Gioino, Thomas Tracy, Rocco Parascandola & Larry McShane, *NYPD Suspends Eric Garner Chokehold Cop Daniel Pantaleo After Department Judge Recommends The Officer Be Fired*, N.Y. Daily News (Aug. 2, 2019), <https://www.nydailynews.com/new-york/nyc-crime/ny-decision-made-on-pantaleo-future-nypd-20190802-tsfv3h5ryrgindzcsaz3mz2i2e-story.html>.

- False statements by police officers concerning Mr. Garner's arrest in NYPD records and to NYPD internal investigators;
- The unlawful leaking of Mr. Garner's alleged arrest history and confidential medical records;
- The failure to provide adequate medical treatment to Mr. Garner;
- Statements by the City to the media containing inaccurate or misleading information concerning the July 17, 2014 stop and arrest of Mr. Garner; and
- The City's failure to investigate, adjudicate, and impose discipline for the issues highlighted in this Petition (e.g., false statements by NYPD officers), the identity of the City decisionmakers who made investigatory, adjudicatory, and disciplinary decisions, and the general processes that guided their decisions.

41. Officer Pantaleo's administrative hearing revealed, but did not resolve, additional issues for two of these categories: (a) false statements by police officers and (b) the lawfulness of the stop and arrest of Mr. Garner.

42. False statements by police officers is the issue most urgently in need of the sunlight that only a judicial inquiry can provide at this point. These false statements collectively suggest a concerted effort to cover up and minimize the officers' conduct:

- a) Judge Maldonado found that Officer Damico falsely stated on Mr. Garner's arrest report that no force was used during the arrest.²¹
- b) Judge Maldonado found "untruthful" Officer Pantaleo's claim to IAB — which Officer Pantaleo did not back off of when shown the video — that he put "no pressure" on Mr. Garner's neck.²²
- c) Judge Maldonado found that Officer Damico falsely stated on an arrest report that Mr. Garner committed a felony requiring possession of over 10,000 cigarettes, notwithstanding that Officer Damico testified that Mr. Garner only had five packs of cigarettes (containing under 100 cigarettes in total). Judge Maldonado noted

²¹ In re Police Officer Daniel Pantaleo at 11, <https://int.nyt.com/data/documenthelper/1645-read-the-judges-opinion/1ab51bece4671aa10d11/optimized/full.pdf#page=1>.

²² *Id.* at 21-22.

that Officer Damico stated in a separate NYPD report that the most serious offense was a tax law misdemeanor.²³

- d) Prior to the hearing, news outlets reported that other false statements and material omissions were made in connection with the NYPD's initial investigation. These false statements and omissions were not addressed at the administrative hearing.
- Sgt. Adonis initially reported that she "believed she heard [Mr. Garner] state that he was having difficulty breathing," but, her view was that his "condition did not seem serious and that he did not appear to get worse."²⁴
 - Sgt. Dhanan Saminath, another supervising officer at the scene, told NYPD investigators that Mr. Garner "did not appear to be in great distress."²⁵
 - The initial police report about Mr. Garner's arrest made no mention of a chokehold.²⁶

²³ *Id.* at 11.

²⁴ Edgar Sandoval, Rocco Parascandola, and Tina Moore, *Internal NYPD report on incident with Staten Island dad Eric Garner does not mention chokehold, states he was not "in great distress,"* N.Y. Daily News (July 21, 2014), <https://www.nydailynews.com/new-york/exclusive-internal-nypd-report-staten-island-dad-not-mention-chokehold-article-1.1875221>; John Del Signore, *First Police Report on Eric Garner's Death Doesn't Mention Chokehold*, gothamist (July 22, 2014), <https://gothamist.com/sections/news>.

²⁵ Edgar Sandoval, Rocco Parascandola, and Tina Moore, *Internal NYPD report on incident with Staten Island dad Eric Garner does not mention chokehold, states he was not "in great distress,"* N.Y. Daily News (July 21, 2014), <https://www.nydailynews.com/new-york/exclusive-internal-nypd-report-staten-island-dad-not-mention-chokehold-article-1.1875221>; John Del Signore, *First Police Report on Eric Garner's Death Doesn't Mention Chokehold*, gothamist (July 22, 2014), <https://gothamist.com/sections/news>.

²⁶ Edgar Sandoval, Rocco Parascandola, and Tina Moore, *Internal NYPD report on incident with Staten Island dad Eric Garner does not mention chokehold, states he was not "in great distress,"* N.Y. Daily News (July 21, 2014), <https://www.nydailynews.com/new-york/exclusive-internal-nypd-report-staten-island-dad-not-mention-chokehold-article-1.1875221>; John Del Signore, *First Police Report on Eric Garner's Death Doesn't Mention Chokehold*, gothamist (July 22, 2014), <https://gothamist.com/sections/news>.

43. Testimony at Officer Pantaleo's administrative hearing also revealed, but did not resolve, issues concerning the basis for the stop and arrest of Mr. Garner:

- a) Lieutenant Christopher Bannon testified at trial that he observed approximately six to ten individuals involved in what he believed was suspicious activity. But, he did not see the exchange of cigarettes or money (or any other crime being committed) and provided no further explanation of what activity he deemed suspicious. Despite the evident lack of probable cause for an arrest based on these observations, Lieutenant Bannon stated that he initiated the entire encounter by instructing Damico to "collar the cigarette guy [Mr. Garner]."²⁷
- b) Officer Damico's basis for his stop and arrest of Mr. Garner was that he had seen Mr. Garner allegedly sell cigarettes immediately prior to the arrest. This allegation is directly contrary to multiple witnesses who said that Mr. Garner had just broken up a fight. The credibility of Officer Damico's claim was challenged by the CCRB at the hearing; the CCRB elicited that the distance between Officer Damico and Mr. Garner at the time of the alleged sale was almost the size of a football field, thereby suggesting that Officer Damico could not have been certain that he observed any cigarette sale.
- c) Lieutenant Bannon testified that, after receiving word that Mr. Garner was unresponsive, he texted an officer at the scene: "Not a big deal, you were effecting a lawful arrest."²⁸ The callousness of this statement is compounded by the fact that Lieutenant Bannon's trial testimony fails to support his conclusion that the arrest was lawful.

²⁷ See Oliver Laughland, *'It All Takes a Toll': Eric Garner's Family Suffers Indignities of Trial Process*, The Guardian (June 5, 2019), <https://www.theguardian.com/us-news/2019/jun/05/eric-garner-trial-nypd-daniel-pantaleo>. Judge Maldonado's decision discusses surveillance that took place prior to the arrest, but as discussed below, the surveillance allegedly revealed one very questionable observation by one officer of one cigarette sale from 200 to 300 feet away. In re Police Officer Daniel Pantaleo at 4, <https://int.nyt.com/data/documenthelper/1645-read-the-judges-opinion/1ab51bece4671aa10d11/optimized/full.pdf#page=1>.

²⁸ See Ali Winston, *Eric Garner Death Was 'Not a Big Deal,' Police Commander Said*, N.Y. Times (May 16, 2019), <https://www.nytimes.com/2019/05/16/nyregion/eric-garner-pantaleo-trial.html>.

Causes of Action: Violations and Neglect of Duty

44. Respondents violated and neglect duties in relation to the property, government and affairs of the City.

45. Respondents De Blasio, O'Neill, Richardson, and the City have the duty under the City Charter, the state and federal constitutions, and state law to have and enforce policies and procedures to ensure that NYPD officers effect lawful stops and arrests and do not use excessive police force. They further have the duty to oversee investigations of police conduct that are "complete, thorough and impartial," "conducted fairly and independently," "and in a manner in which the public and the police department have confidence." New York City Charter § 440. A basic tenet of any sound investigation is that reports about the underlying conduct must be accurate and truthful. A failure to have a system that ensures accurate and truthful factfinding — and holds accountable those who submit inaccurate and untruthful information as part of an investigation — is a violation of the duty to have complete, thorough, impartial, fair and independent investigations.

46. The video of Mr. Garner's arrest and the testimony at the Pantaleo administrative trial establish that NYPD officers did not make a lawful stop and arrest of Mr. Garner and that excessive force was used. Such officers both violated duties (*i.e.*, the stop, the arrest, and the use of excessive force) and neglected to perform duties (*i.e.*, intervene to prevent the unlawful stop, arrest, and use of excessive force). Respondents de Blasio, O'Neill, Richardson, and the City violated their duties under the City Charter by failing to oversee an investigation, in a manner in which the public has confidence, of the stop and arrest of Eric Garner and the use of excessive force against him.

47. In light of the conduct of officers during the arrest of Mr. Garner, Respondents de Blasio, O'Neill, Richardson, and the City further have a duty to train NYPD officers on appropriate guidelines on the use of force and the prohibition on the use of chokeholds.

48. Officer Pantaleo, Officer Damico, Sgt. Saminath, and Sgt. Adonis each provided false accounts to the NYPD of what happened during Mr. Garner's arrest. The video belies Officer Pantaleo's statement to the IAB that he applied "no pressure" to Mr. Garner's neck; Officer Damico's account that no force was used; Sgt. Saminath's claim that Mr. Garner "did not appear to be in great distress"; and Sgt. Adonis' "belief" that Mr. Garner's "condition did not seem serious." (We are aware of these false statements not because of investigatory efforts by the NYPD, but because of news reports and the CCRB's decision to pursue charges against Officer Pantaleo.)

49. Providing these false accounts to the NYPD violates their duties as police officers, and Respondents De Blasio, O'Neill, Richardson, and the City have a duty — which they neglected — to address this misconduct; allowing such unchecked false statements to be part of an investigation of Mr. Garner's death is wholly inconsistent with overseeing an investigation in a manner in which the public has confidence. Further, Respondents De Blasio, O'Neill, Richardson, and the City have a duty to determine if other false statements were made by these or other officers concerning Mr. Garner's arrest.

50. The law, as set forth in New York Criminal Procedure Law Section Article 160, (and the most basic sense of justice) require that the NYPD not disclose sealed and otherwise confidential arrest records. The NYPD's disclosures of such records is a violation of duties by the officers who made the disclosures, and the failure to determine who breached such duties and hold them accountable constitute a neglect of duties by Respondents De Blasio, O'Neill,

Richardson, and the City. *See Green v. Giuliani*, 187 Misc.2d 138, 150 (N.Y. Sup. Ct. 2000) (City Charter Section 1109 “*easily* encompasses the unauthorized release of the contents of sealed court records.”) (emphasis added).

51. The right to privacy prevents leaking of private medical information. Mr. Garner’s private medical information was reported by the media. Respondents De Blasio, O’Neill and the City have a duty to have systems and procedures in place at OCME and the NYPD to ensure that such information is not leaked. It is a violation of their duties not to have done so, and it is a neglect of their and Respondent Richardson’s duties not to have performed an investigation of the leaking of Mr. Garner’s medical information in a manner in which the public has confidence.

52. News media reported information attributable expressly or impliedly to the NYPD concerning the July 17, 2014 stop and arrest of Mr. Garner that is incomplete and inaccurate. It is inconsistent with the other duties set forth herein for the City and its officials and employees to convey misleading information to the public via the media. Therefore, it is the duty of Respondents De Blasio, O’Neill, and the City to have accurate information conveyed to the media, and this duty was violated here. It is also a neglect of their and Respondent Richardson’s duty not to have investigated, in a manner in which the public has confidence, communications to the media of inaccurate information.

53. Respondent Nigro’s duties include overseeing the City’s medical emergency dispatch service. *See* New York City Charter § 487(f). Upon information and belief, the City entered into an agreement with RUMC for RUMC to respond to emergency medical service dispatch calls. It is a violation of Respondent Nigro’s duties to fail to ensure that RUMC provides adequate emergency medical services pursuant to such agreement. It also is a neglect of such duties not to perform a thorough investigation of RUMC’s failure to provide adequate emergency medical

services to Mr. Garner. As the chief executive of the City and the person to whom Respondent Nigro reports, Respondent De Blasio is also accountable for Respondent Nigro's violations and neglect of these duties.

54. Respondents De Blasio, O'Neill, Nigro, Richardson, and the City have wholly neglected their duties to investigate, adjudicate, and impose discipline for the violations and neglect of duties set forth in this Petition, including: the unlawful stop and arrest of Mr. Garner, the use of force or failure to intervene by officers other than Officer Pantaleo, the training of officers on appropriate guidelines on use of force and prohibitions on the use of chokeholds; false statements in connection with official NYPD business, the leaking of sealed arrest and confidential medical information; incomplete and inaccurate statements to the media; and inadequate oversight of the medical care dispatch system.

55. To address these violations and neglect of duties, the Court should hold a summary inquiry to address, among others, the following questions.

The Stop, Arrest, and Use of Force

- a) What are the identities of all of the officers who were at the scene?
- b) What conduct did each officer take at the scene, including giving directions to stop or arrest Mr. Garner or use force on Mr. Garner?
- c) What investigative steps did the NYPD take to assess the legality of the stop, the arrest, and use of force, up to and including any review by Respondent O'Neill and former Police Commissioner William Bratton?
- d) What, if any, oversight role did Respondent De Blasio have in investigating the legality of the stop, the arrest, use of force, and failures to intervene?
- e) What steps, if any, did the NYPD take to train officers, subsequent to Mr. Garner's death, on appropriate guidelines on the use of force and the prohibition on the use of chokeholds?

Truthfulness of NYPD Records and Statements Concerning Mr. Garner

- f) What was the review process for the NYPD records completed in connection with the stop, arrest, and use of force on Mr. Garner? What, if any, steps were taken to test the accuracy of representations on such forms or oral statements made in connection with any internal investigation?
- g) What, if any, steps have been taken to review records completed by or statements made by Officer Damico concerning Mr. Garner's arrest (prior to, during, and after Officer Damico's testimony at Officer Pantaleo's hearing)?
- h) What, if any, steps have been taken to review records completed by or statements made by Sgt. Saminath concerning Mr. Garner's arrest (prior to, during and after Officer Saminath's testimony at Officer Pantaleo's hearing)?
- i) What, if any, steps have been taken to review records completed by or statements made by Sgt. Adonis concerning Mr. Garner's arrest (prior to, during and after Officer Saminath's testimony at Officer Pantaleo's hearing)?
- j) What, if any, steps have been taken to review records completed by or statements made by other officers who were present at Mr. Garner's arrest and when such review took place (*i.e.*, before, during, or after Officer Pantaleo's administrative trial)?

Leaking of Arrest Records and Medical Information

- k) What are the NYPD's policies and practices for maintaining sealed and otherwise confidential arrest records, including who has access to such records?
- l) What, if any, investigation was conducted to determine who leaked Mr. Garner's arrest records to the press?
- m) What, if any, oversight roles did Respondents De Blasio and O'Neill and former Police Commissioner Bratton have in connection with any such investigation?
- n) What are OCME's and NYPD's policies and practices for maintaining confidential medical information, including who has access to such information?
- o) What, if any, investigation was conducted to determine who leaked Mr. Garner's medical information to the press?
- p) What, if any, oversight roles did Respondents De Blasio and O'Neill and former Police Commissioner Bratton have in connection with any such investigation?

Inaccurate and Misleading Information to the Media

- q) What are the NYPD's policies and practices for providing information to the media in connection with a death caused by NYPD officers, including who is authorized to speak on behalf of the NYPD (on the record, on background, and off the record)?
- r) Which NYPD officers provided incomplete and/or inaccurate information to the media? When was such information provided to the media? What was the substance of these communications to the media?

Medical Treatment

- s) What, if any, medical treatment did NYPD officers provide? At what point was medical assistance called for? Who called for medical assistance?
- t) What are the identities of the medical personnel, including EMTs and paramedics, who responded to the scene? What, if any, medical equipment did they take to the scene?
- u) What investigative steps did FDNY take concerning the conduct of medical personnel who responded to the scene? What, if any, oversight role did Respondent De Blasio have in any such investigation?

Diligence in Investigating Misconduct

- v) Who are the City decisionmakers who made investigatory, adjudicatory, and disciplinary decisions concerning matters relating to Mr. Garner's stop, arrest, death?
- w) What was the universe of issues investigated (*e.g.*, use of force, false statements, unlawful stop, leaking of medical and arrest records, disrespectful language about the significance of Mr. Garner's life)?
- x) What were the general processes and procedures that guided decisions to conduct interviews, collect evidence, bring administrative charges, and resolve charges without a hearing?

56. The current and former City employees and officers from whom testimony is

necessary in order to answer the questions listed above include:

- a) All of the approximately ten police officers at the scene, including Sergeant Kizzy Adonis, Officer Justin Damico, Officer Craig Furani, Officer Mark Ramos, and Sergeant Dhanan Saminath;
- b) All of the approximately five EMTs and paramedics at the scene;

- c) Supervisors who reviewed or approved records relating to the stop and arrest of and use of force on Mr. Garner on July 17, 2014;
- d) All City employees who leaked confidential medical or arrest information to the press or who provided false or misleading information to the press;
- e) All City decisionmakers who made investigatory, adjudicatory, and disciplinary decisions concerning any matter relating to Mr. Garner's stop, arrest or death;
- f) All City decisionmakers who made decisions about NYPD training or guidelines on use of force or chokeholds subsequent to Mr. Garner's death;
- g) NYPD Deputy Inspector Charles Barton;
- h) NYPD Lieutenant Christopher Bannon;
- i) NYPD Deputy Commissioner of Internal Affairs Joseph Reznick and any predecessors in this position from July 17, 2014 to the present;
- j) NYPD Deputy Commissioner for Public Information Phillip Walzac and any predecessors in this position from July 17, 2014 to the present;
- k) Responder Kevin Richardson;
- l) Respondent Daniel Nigro;
- m) Former NYPD Police Commissioner William Bratton;
- n) Respondent James O'Neill; and
- o) Respondent Bill De Blasio.

RELIEF REQUESTED

Wherefore, this court should grant Petitioners' application by:

- a. Convening a summary judicial inquiry on the questions listed above;
- b. Ordering the listed witnesses to appear (and any other witnesses that are necessary to address the questions listed above);
- c. Hearing testimony in response to questions from attorneys from both Petitioners and Respondents;

- d. Causing testimony to be reduced to a writing and recorded and filed with the New York County Clerk;
- e. Awarding Petitioners their costs of this proceeding, including reasonable attorney's fees; and
- f. Granting to Petitioners such other and further relief as this Court deems just and proper.

Dated: August 27, 2019
New York, New York

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VERIFICATION

STATE OF NEW YORK)
) ss:
COUNTY OF NEW YORK)

I, Gwen Carr, Petitioner and the mother of Eric Garner, being duly sworn, deposes and says:

I have read the foregoing Verified Petition and am familiar with the contents of the foregoing Verified Petition. The statements contained therein are true and correct to the best of my knowledge, except as to matter therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

[Handwritten signature of Gwen Carr]
Gwen Carr

Sworn before me this
27th day of August 2019

[Handwritten signature of Notary Public]
NOTARY PUBLIC

STEVEN B. WASSERMAN
Notary Public, State of New York
No. 02WAD033569
Qualified in Kings County
Commission Expires Nov. 22, 2022