

SUPREME COURT OF THE STATE OF NEW YORK,
NEW YORK COUNTY

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In the Matter of the Application of SAMY FELIZ,
MERY VERDEJA, ASHLEY VERDEJA, JULIE
AQUINO, and JUSTICE COMMITTEE INC.,

VERIFIED PETITION

Index No.

Petitioners,

For Judgment and Order pursuant to Article 78
of the Civil Practice Law and Rules

RJI No.

-against-

JESSICA TISCH, in her official capacity as the
Commissioner of the New York City Police
Department, the NEW YORK CITY POLICE
DEPARTMENT, and LIEUTENANT
JONATHAN RIVERA,

Respondents.

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PRELIMINARY STATEMENT

1. In this proceeding, Petitioners seek long-denied justice for the 2019 New York City Police Department (“NYPD”) killing of Allan Feliz at the hands of Respondent Jonathan Rivera.
2. After six years of fighting for accountability for the death of their son, brother, and partner, petitioners thought they had found justice. A public trial proved what they had known all along: then-NYPD Sergeant Jonathan Rivera had shot and killed Allan Feliz because he was tired of struggling with him. The stories that Rivera had made up in the various tribunals along the way—that he thought his partner had fallen under the car, that Allan had said “grab the nine”—had been proven to be lies under cross-examination in open court, the gold standard of American jurisprudence.

3. But Police Commissioner Jessica Tisch was having none of it. Despite the evidence produced at the hearing, and despite credibility findings made by Deputy Commissioner Rosemarie Maldonado, Commissioner Tisch issued two decisions—one in July and another in August—purporting to overrule Maldonado’s findings and find Rivera, who had by then been promoted to Lieutenant, not guilty.
4. Commissioner Tisch relied on a five-year old criminal investigation by the New York State Office of the Attorney General (“OAG”). That investigation found Rivera credible at that time based on a more limited record than the one presented at Deputy Commissioner Maldonado’s hearings. In subsequent interviews, Rivera made contradictory statements, and other new evidence undermined key statements he has made.
5. Past that, Deputy Commissioner Maldonado found Rivera lacked credibility not just based on that new evidence, but also, in part, because of his demeanor and tone at the hearing, when—unlike Commissioner Tisch, who reviewed cold documents—she had the opportunity to see and hear him.
6. Because Commissioner Tisch’s decisions failed to consider the evidence gathered since the completion of the Attorney General’s investigation, they were arbitrary and capricious agency actions and must be held void.
7. Because Commissioner Tisch overruled credibility findings made by a hearing officer who heard live testimony subject to cross-examination, her decisions were an abuse of her discretion to mete out discipline.
8. Petitioners Samy Feliz, Mery Verdeja, Ashley Verdeja, Julie Aquino, and the Justice Committee Inc. therefore bring this proceeding pursuant to New York Civil Practice Law

and Rules (“CPLR”) Article 78 to challenge the New York Police Department (“NYPD”) and Commissioner Jessica Tisch regarding their actions concerning Disciplinary Case Number 2023-28440 against Rivera for using excessive force on Allan Feliz.

9. Specifically, Petitioners challenge the July 3, 2025 “Decision of the Police Commissioner” (the “Preliminary Order”) and the subsequent August 15, 2025 “Decision of the Police Commissioner” (the “Second Order”) as arbitrary and capricious agency action and abuses of the discretion granted the NYPD Commissioner under Section 434(a) of the Charter of the City of New York.
10. On October 17, 2019, after a car stop for a purported seat belt violation, then-Sergeant Jonathan Rivera shot and killed Allan Feliz.
11. In 2020, the OAG declined to bring criminal charges against Rivera because “Sgt. Rivera’s use of deadly physical force could not – as the legal standard the OAG was considering requires – be proven to be unjustified beyond a reasonable doubt.” Part of the OAG’s decision relied on the fact that Rivera had provided consistent and uncontroverted testimony in the single interview he had then given.
12. But further evidence uncovered in two subsequent investigations and the NYPD’s own administrative trial against Rivera obliterated Rivera’s defense. Close analysis by the CCRB investigative staff of the time-stamped body-worn cameras, more detailed interviews than those before the OAG, and cross-examination in open court proved that Rivera’s story was, according to Deputy Commissioner Rosemarie Maldonado, a “carefully constructed departure from the truth” that “could not be reconciled with the totality of circumstances and fell apart under the weight of the credible evidence.”

13. For those, and other, reasons, Deputy Commissioner Maldonado issued a decision finding that Rivera lacked credibility, that the shooting was unjustified, and that Rivera should be fired from the NYPD.
14. While Deputy Commissioner Maldonado has presided over numerous administrative trials brought by the CCRB's Administrative Prosecution Unit in which officers are accused of serious misconduct, Rivera's trial was only the second time that she recommended that an officer be fired. The first was the trial of Daniel Pantaleo for killing Eric Garner.
15. Commissioner Tisch then purported to overturn Deputy Commissioner Maldonado's decision, based primarily on the OAG's findings, which had come much earlier, based on a less-developed record, and without the benefit of the in-person testimony from Rivera that Deputy Commissioner Maldonado had considered. In particular, Commissioner Tisch relied on the fact that, at the time the OAG made its findings (before the CCRB investigation had begun and before Rivera had delivered contradictory testimony) "there [was] no obvious reason to doubt that Sgt. Rivera actually believed what he claimed to believe."
16. Importantly, Deputy Commissioner Maldonado's credibility findings are not mentioned in Commissioner Tisch's Preliminary Order or the Second Order, except in a boilerplate, conclusory sentence.
17. Because Commissioner Tisch acted in an arbitrary and capricious manner when she issued the Preliminary Order and the Second Order, and because her actions were an abuse of the discretion granted to her under the City Charter, Petitioners respectfully

request that this Court issue an order setting aside Commissioner Tisch's Preliminary Order and Second Order, and ordering her to terminate Rivera.

18. Petitioner therefore seeks an order and judgment pursuant to CPLR Article 78:
 - a. Holding that the July 3, 2025 "Decision of the Police Commissioner" in Case Number 2023-28440 is null and void;
 - b. Holding that the August 15, 2025 "Decision of the Police Commissioner" in Case Number 2023-28440 is null and void;
 - c. Ordering Respondents to terminate Lieutenant Jonathan Rivera, in accordance with the recommendation of Deputy Commissioner Rosemarie Maldonado in Case Number 2023-28440; and
 - d. Granting any and all further relief as this Court deems just and proper.
19. For the reasons stated above, and in all supporting materials, this Court should grant Petitioners the relief they are requesting.

SUPPORTING MATERIALS

20. In support of this Verified Petition, Petitioners have submitted affirmations from each Petitioner and additional exhibits and a memorandum of law, all of which are expressly incorporated hereto.

VENUE AND JURISDICTION

21. This Court has jurisdiction over this Article 78 proceeding because this Petition challenges the actions of a body and/or officer engaged in administrative decision making. CPLR §§ 7802(a), 7803(3) and (4).
22. An Article 78 petition against a body or officer may be filed in "any county within the judicial district where the respondent made the determination complained of." CPLR

§§ 7804(b) and 506(b); *see also International Summit Equities Corp. v. Van Schoor*, 560 N.Y.S.2d 811, 812 (2d Dep’t 1990) (noting that venue is preferable in the specific county “in which the matter sought to be reviewed originated”). The NYPD’s principal offices are at 1 Police Plaza, New York, New York, 10007, in lower Manhattan.

23. Thus, this action is properly commenced in New York County and venue is proper pursuant to CPLR § 506(b).

PARTIES

24. Petitioner Samy Feliz is an individual who resides in Washington Heights in Manhattan, New York. At all times relevant to the Verified Petition, Petitioner Samy Feliz was the brother of Allan Feliz. *See* Affirmation of Samy Feliz (“Feliz Aff.”), **Exhibit 1**.
25. Petitioner Mery Verdeja is an individual who resides in Westchester County, New York. At all times relevant to the Verified Petition, Petitioner Mery Verdeja was the mother of Allan Feliz. *See* Affirmation of Mery Verdeja (“Mery Verdeja Aff.”), **Exhibit 2**.
26. Petitioner Ashley Verdeja is an individual who resides in Bronx County, New York. At all times relevant to the Verified Petition, Petitioner Ashley Verdeja was the sister of Allan Feliz. *See* Affirmation of Ashley Verdeja (“Ashley Verdeja Aff.”), **Exhibit 3**.
27. Petitioner Julie Aquino is an individual who resides in Bronx County, New York. At all times relevant to the Verified Petition, Petitioner Julie Aquino was the partner of Allan Feliz and is the mother of his child. *See* Affirmation of Julie Aquino (“Aquino Aff.”), **Exhibit 4**.
28. Petitioner Justice Committee, Inc., is a grassroots organization that supports, organizes, and develops the leadership abilities of survivors of police violence and families of New

Yorkers who have died at the hands of police. *See* Affirmation of Yul-san Liem (“Liem Aff.”), **Exhibit 5**.

29. Respondent New York Police Department is a Department of the City of New York established by the New York City Charter and is a “body or officer” pursuant to CPLR § 7802(a).
30. Respondent Commissioner Jessica Tisch is the Commissioner of the NYPD and is a “body or officer” pursuant to CPLR § 7802(a).
31. Respondent Lieutenant Jonathan Rivera is a Lieutenant in the NYPD (NYPD Tax Registry No. 949550) and is named as a potentially necessary party because he or the other Respondents may argue that he would be “inequitably affected by judgment in the action” if he is not named. *See* CPRL § 1001(a).

STATEMENT OF FACTS

History of the NYPD Commissioner’s Abuse of Discretion Over Discipline.

32. The NYPD has been under federal monitoring for its stop-and-frisk practices for over a decade, in part because it has not addressed endemic disciplinary failures. *See generally, Floyd v. City of New York*, 959 F. Supp. 2d 540 (S.D.N.Y. 2013).
33. Fourteen years ago, the NYPD and the Civilian Complaint Review Board (“CCRB”) executed a Memorandum of Understanding (“MOU”) between the agencies to promote accountability for officers who violate the law.
34. But, as noted in a comprehensive report on those disciplinary failures issued just last year, although the NYPD continues to racially profile Black and Brown New Yorkers,

“officers rarely, if ever, receive a penalty for unconstitutional stops/frisks/or searches, even when substantiated by CCRB.”¹

35. The NYPD’s widespread disciplinary failures drive the continuing constitutional violations the *Floyd* federal monitor has identified over and over.
36. In recent years, the NYPD has failed to punish officers found guilty by the CCRB at an alarming and increasing rate. By 2023 and 2024, the NYPD was only following the CCRB’s findings and recommendations in about half the cases that were handled by the CCRB’s Administrative Prosecution Unit.²
37. In late 2024, a ProPublica investigation showed that the NYPD had disposed of hundreds of substantiated complaints without discipline—including those with video evidence clearly documenting excessive force.³
38. While Commissioner Tisch has stopped some egregious practices—such as dismissing cases for passing the statute of limitations when they had not, in fact, passed the statute of limitations—the NYPD still fails to implement discipline recommended by the CCRB almost 30% of the time.⁴
39. This is the context in which Commissioner Tisch rejected the credibility determinations made by the NYPD’s own Deputy Commissioner for Trials after hearing live testimony.

¹ Hon. James Yates, Report to the Court on Police Misconduct and Discipline, Sept. 19, 2024, <https://www.nypdmonitor.org/wp-content/uploads/2024/09/Discipline-Report.pdf>, (“Discipline Report”) at 480.

² See Civilian Complaint Review Board Semi-Annual Report, Jan-June 2025, https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2025CCRBsemi-AnnualReport.pdf at 45.

³ See Eric Umansky, “The NYPD Is Tossing Out Hundreds of Misconduct Cases—including Stop-and-Frisks—Without Even Looking at Them,” ProPublica, Sept. 11, 2024. <https://www.propublica.org/article/nypd-tossed-out-police-misconduct-discipline-cases-edward-caban>

⁴ See Civilian Complaint Review Board Semi-Annual Report, Jan-June 2025, https://www.nyc.gov/assets/ccrb/downloads/pdf/policy_pdf/annual_bi-annual/2025CCRBsemi-AnnualReport.pdf at 45.

Overview of the disciplinary process

40. The NYPD's formal complaint investigation process starts when either a civilian or an officer initiates a complaint. Complaints are typically lodged through the Internal Affairs Bureau ("IAB") or the CCRB, though some are lodged elsewhere.
41. Depending on the contents, the complaint is assigned for investigation to the IAB, CCRB, OIG-NYPD, or a local precinct. The CCRB investigates allegations of force, abuse of authority, discourtesy, and offensive language.
42. The CCRB has subpoena power and can compel production of documents from the NYPD. Investigations typically take months, involve careful review of documentary evidence and body-worn camera footage, and interviews of officers and witnesses. After the end of an investigation, the investigative team then makes a recommendation to the CCRB's Board, which typically meets in three-member panels to vote on final dispositions.
43. The Board "substantiates" an allegation if a preponderance of evidence demonstrates the officer engaged in the alleged action in violation of law or the NYPD Patrol Guide. The CCRB forwards substantiated cases to the NYPD's Department Advocate's Office ("DAO").
44. The DAO is composed of civilian attorneys and uniformed and civilian personnel who review substantiated allegations, make disciplinary recommendations, and prosecute cases.
45. For more serious offenses, the DAO files administrative charges known as "Charges and Specifications," which may be resolved through settlement or administrative trial.

46. Cases are tried before the Deputy Commissioner of Trials or one of three Assistant Deputy Commissioners. These trials take place in a NYPD trial room, are open to the public, and resemble bench trials, with witness testimony and the presentation of evidence. Pursuant to a 2012 Memorandum of Understanding, attorneys from the CCRB's Administrative Prosecution Unit typically serve as administrative prosecutors in cases that originated at the CCRB.
47. At the close of trial, the Deputy Commissioner of Trials issues a written decision determining innocence or guilt of the charges based on a preponderance of the evidence and recommending particularized discipline if the officer is found to have committed misconduct.
48. The Deputy Commissioner For Trials' written decisions are reviewed by the Deputy Commissioner's Office and forwarded to the Police Commissioner.
49. The Commissioner's staff then reviews each decision and prepares a case analysis, which is presented to the Commissioner for final review and disposition.
50. Pursuant to the New York City Charter's grant of "cognizance and control of the government, administration, disposition and discipline of the department," the Commissioner then issues a finding agreeing with or departing from the Deputy Commissioner For Trials' findings.
51. If the case originated with the CCRB, the Commissioner must explain any deviations from the finding, including the overturning of a guilty verdict. She must "include a detailed explanation of the reasons for deviating . . . including but not limited to each factor [she] considered in making [her] . . . decision."

52. Both the CCRB and the charged NYPD member then have five business days to respond to the variance memo, after which the Police Commissioner is required to make a final determination on behalf of the NYPD.
53. The Commissioner must then memorialize her final decision in a letter to the First Deputy Commissioner's Office, the Deputy Commissioner of Trials, the CCRB, and the charged NYPD member's attorney.

Then-Sergeant Rivera Killed Allan Feliz on October 17, 2019.

54. On October 17, 2019, Allan Feliz was driving a car with one other passenger on 211th Street in the Bronx when Police Officer ("PO") Edward Barrett, then-Sergeant Jonathan Rivera, and PO Michelle Almanzar pulled him over for allegedly not wearing a seatbelt.
55. Upon stopping his vehicle, Barrett and Almanzar approached the driver's side of the vehicle, where Mr. Feliz was sitting, while Rivera approached the front passenger door of the vehicle, where the other passenger was sitting.
56. Mr. Feliz provided his brother, Petitioner Samy Feliz's, driver's license, which provided hits for warrants when PO Barrett ran it.
57. PO Barrett ordered Mr. Feliz out of the vehicle, and Mr. Feliz exited.
58. Mr. Feliz then re-entered the vehicle and PO Barrett and PO Almanzar attempted to physically pull him out of the car. They struggled for about ninety seconds before Rivera entered the car from the passenger side and tased Mr. Feliz in the chest.
59. Mr. Feliz screamed from the pain he experienced from being tased.
60. After Rivera tased Mr. Feliz, PO Barrett began to hit him with his fists.
61. Rivera then climbed on top of the passenger in the passenger's seat, drew his gun, then holstered it, and began hitting Mr. Feliz, first with his hand and then with the butt of his

taser. At the same time, PO Barrett was grabbing and pulling Mr. Feliz from the driver's side.

62. In the midst of that struggle, while Mr. Feliz was being hit and or pulled from both sides, the car surged first forward, then backward, and when it stopped, the driver's side door closed.

63. While PO Barrett was standing by the closed door, visible through the window, with his hand on the door handle, Rivera fired one shot into Allan Feliz's chest, killing him.

The Office of the Attorney General declines to criminally prosecute Rivera.

64. The OAG investigated the shooting pursuant to an Executive Order granting the OAG specific power to "investigate, and if warranted, prosecute certain matters involving the death of an unarmed civilian, whether in custody or not, caused by a law enforcement officer." Exec. Order No. 147, 2015 N.Y. Reg. (July 8, 2015).

65. Those powers are limited to those exercised under "subdivision 2 and 8 of 63 of the Executive Law," which permit the OAG to participate in "criminal actions or proceedings as shall be specified in such requirement" and provide that the OAG may conduct business in support of those criminal investigations. N.Y. Exec. L. §§ 63 (2), (8).

66. On September 20, 2020, the OAG released a report explaining its decision declining to criminally prosecute Rivera. *See* Special Investigations and Prosecutions Unit, New York State Office of the Attorney General, *Report on the Investigation into The Death of Allan Feliz* (2020) ("OAG Report"). The OAG Report is attached hereto as **Exhibit 6**.

67. The OAG's investigation was based on a review of NYPD body-worn camera footage, paperwork, radio communication recordings, civilian cell phone and surveillance footage, medical records, an autopsy report, and interviews with NYPD officers and a witness.

OAG Report at 1.

68. In an interview with OAG staff, Rivera claimed he shot Mr. Feliz because he believed PO Barrett was in imminent danger of being “crushed beneath the wheels of the car” since Barrett “was no longer visible” to Rivera at the time Rivera shot Mr. Feliz. *Id.* at 7. Therefore, Rivera claimed he “believed he had to do what he thought was necessary to stop the car from moving.” *Id.*
69. The OAG ultimately declined to criminally prosecute Rivera because it “determined that Rivera’s use of deadly physical force could not—as the legal standard requires—be proven to be unjustified beyond a reasonable doubt.” *Id.* at 2. It noted that, based on the evidence it had reviewed, there was “no obvious reason” to doubt Rivera’s account of the incident. As seen below, by the time Deputy Commissioner Maldonado heard Rivera’s testimony and weighed new evidence during Rivera’s administrative trial, she found there were serious reasons to doubt his self-serving testimony.

The CCRB Substantiated Allegations Against Rivera and Deputy Commissioner Maldonado Found He Lacked Credibility on the Stand.

70. On Nov. 20, 2020, Petitioners Samy Feliz and the Justice Committee filed a complaint with the CCRB related to Rivera’s killing of Samy Feliz’s brother Allan.
71. On May 10, 2023, the Civilian Complaint Review Board (“CCRB”), based on its own years-long investigation, substantiated the allegation that Rivera used excessive force when he shot and killed Allan Feliz. *See* Closing Report of the Civilian Complaint Review Board, Case 202007674, attached hereto as **Exhibit 7** (the “Closing Report”).
72. In his CCRB interview, Rivera had stated that Allan said “Coja el nueve,” which means “grab the nine” in Spanish. Rivera said he took to mean that Mr. Feliz was telling someone to produce a firearm. But review of the body-worn camera footage showed that Mr. Feliz made no such statement. Closing Report at 6.

73. The investigator carefully reviewed body-worn camera footage to see where everyone was positioned when Rivera pulled the trigger. Rivera had climbed over a passenger and was straddled across the seats, facing Mr. Feliz in the driver's seat. PO Barrett was standing by the open driver-side door. When the car went into reverse, PO Barrett stepped away. The investigator credited Rivera's statement that he "lost sight" of PO Barrett at this moment, noting that Barrett had stepped away from the car.
74. When the car stopped moving, the driver-side door closed and PO Barrett stepped back to the vehicle. The investigator recognized that "given Sgt. Rivera's position inside the Volkswagon" (that is, he had turned towards Allan and away from the car window while Barrett stepped away) he would have lost sight of Barrett before he stepped back towards the vehicle.
75. But the investigator also noted that nothing happened that could suggest to someone in Rivera's position that PO Barrett had in fact fallen. Moreover, as was set forth at trial, PO Barrett had returned to the car window before Rivera fired.
76. The CCRB ultimately substantiated the excessive force allegation against Rivera, recommended charges that could have led to Rivera's termination, and forwarded the case to the NYPD for an administrative hearing.
77. On November 12 and 13, 2024, NYPD Deputy Commissioner of Trials Rosemarie Maldonado presided over the resulting administrative disciplinary hearing for Rivera, who had in the meanwhile been promoted to Lieutenant. Deputy Commissioner Maldonado, first appointed to her position over a decade ago by Commissioner William Bratton, has presided over hundreds of departmental trials, either through sitting as a hearing officer or supervising other NYPD officials who do. In her career as Deputy

Commissioner for Trials, she has only once recommended that an officer be fired after a trial brought by the CCRB's Administrative Prosecution Unit: Daniel Pantaleo, who was recorded killing Eric Garner with an illegal chokehold.

78. Attorneys from the CCRB's Administrative Prosecution Unit tried the case, and Rivera was present, was represented by counsel supplied by the Lieutenants Benevolent Association, and testified in his own defense.
79. An NYPD administrative trial is fundamentally different than a criminal investigation like the one conducted by the OAG. Critically, in an administrative proceeding before the Deputy Commissioner of Trials, the CCRB need only prove misconduct by a preponderance of the evidence.
80. The OAG based its credibility findings as to Rivera on a single interview transcript. But the Deputy Commissioner had the advantage of hearing Lieutenant testify live. The lawyers cross-examining Rivera, moreover, were familiar with multiple subsequent interviews and had the opportunity to conduct adversarial cross-examinations, a judicial tenet so core to notions of fairness that it is enshrined in the U.S. Constitution's Sixth Amendment.
81. At trial, in addition to submitting other evidence, the CCRB called Dr. Marc Brown, who was qualified at trial as an expert witness in police use of force, training, tactics, and procedures. Rivera called his fellow officers PO Almanzar and PO Barrett as witnesses and testified on his own behalf.
82. After considering all of the evidence, and in particular Rivera's (and the other) live testimony, Deputy Commissioner Maldonado concluded that "the credible evidence casts serious doubt on, and ultimately disproves, Respondent's assertion that when he fired the

fatal shot directly into Mr. Feliz's chest, he actually believed it was necessary to protect P.O. Barrett from imminent deadly force." *In re Charges and Specifications against Rivera*, Case No. 2023-28440, NYPD Trial Room 18 (February 2025) (the "Maldonado Decision"), a copy of which is attached as **Exhibit 8**, at 18.

83. Among other things, Deputy Commissioner Maldonado found that Rivera's "unabashed obstinacy on cross examination raised serious questions about his credibility." For example, after being shown body-worn camera footage that contradicted his testimony, he delivered a "non-sequitur" of an answer, demonstrating a lack of candor. Maldonado Decision at 20.
84. Beyond that, Deputy Commissioner Maldonado explained, "several key factors convinced this tribunal that [Rivera's] testimony on this point was contrived." *Id.* at 18. First, Deputy Commissioner Maldonado found Rivera's "reaction immediately after the shooting... not consistent with that of a sergeant who had just shot a subject to protect his officer from being 'crushed' under a vehicle." *Id.* For example, she pointed out that Rivera, "upon exiting the Volkswagen... does not inquire about P.O. Barrett, does not express surprise or relief that he was uninjured, nor does he make any assertion relating to that officer's well-being or safety... His failure to do so does not comport with logic, common sense or basic human nature." *Id.*
85. Deputy Commissioner Maldonado also took note of body-worn camera footage of Rivera making a "spontaneous statement... less than four minutes after the shooting" explaining to his colleagues, "The engine was on, man. I was fighting. *My hand was getting tired.*" *Id.* at 19 (emphasis added).

86. At trial, when asked about the statement, Rivera claimed the comment that his “hand was getting tired” referred to his administration of CPR to Feliz. *Id.* at 20. Deputy Commissioner Maldonado was “highly skeptical” of Rivera’s explanation and ultimately determined that it “defies logic” given the contradictory testimony at trial that she found Rivera gave “in an attempt to mislead the finder of fact.” *Id.* at 27.” Among other things, Deputy Commissioner Maldonado found that Rivera’s “insistence at trial that he was referring to the stress of administering CPR when he said his hand was tired, is an after the fact fabrication created to conceal his actual motivation for using deadly force.” *Id.* at 20.
87. Based on her observation of Rivera’s trial testimony—in particular his demeanor and performance on cross-examination—and all of the other evidence before her, Deputy Commissioner Maldonado determined that he was not credible and that his “carefully constructed departure from the truth could not be reconciled with the totality of circumstances and fell apart under the weight of the credible evidence.” *Id.* at 21.
88. After all, Deputy Commissioner Maldonado wrote, “credibility assessments of trial witnesses remain the *exclusive province of the fact finder.*” Maldonado Decision at 18 (emphasis added).
89. Deputy Commissioner Maldonado concluded that all Rivera “articulated was a mere possibility, or an unfounded assumption, as the rationale for firing a fatal shot directly into the subject’s chest,” *id.* at 24, and recommended that he be fired, *id.* at 30.

Commissioner Tisch Rejects Deputy Commissioner Maldonado’s Credibility Determination.

90. On July 3, 2025, Commissioner Tisch’s office sent Johnathan Darche, the Executive Director of the CCRB, a copy of the Preliminary Order, a copy of which is attached as **Exhibit 9.**

91. In the Preliminary Order, Commissioner Tisch wrote that she would not adopt Deputy Commissioner for Trials Maldonado's findings because Tisch "agree[d]" with the OAG's 2020 finding that "there is no obvious reason to doubt that Rivera actually believed what he claimed to have believed." Preliminary Order at 5.
92. On July 11, 2025, Andre Applewhite, Chief Prosecutor for Jonathan Darche, Executive Director of the CCRB, wrote a letter to Commissioner Tisch asking that she reconsider her decision, a copy of which is attached as **Exhibit 10** (the "CCRB Letter").
93. The CCRB Letter explained two key failings in the Preliminary Order's reliance on the five-year old OAG report. First, as noted above, the CCRB Letter emphasized that the OAG had conducted its investigation under the "beyond a reasonable doubt" standard, and had never suggested it would come to the same conclusions had it used the "preponderance of the evidence" standard. (CCRB Letter at 1).
94. Second, even more importantly, the CCRB Letter emphasized that Deputy Commissioner Maldonado had heard live testimony and made credibility determinations based on that testimony. The letter reminded Commissioner Tisch, that under New York law, "evaluating the credibility of respective witnesses and determining which of the proffered items of evidence are most credible are matters committed to the trial court's sound discretion." CCRB Letter at 2.
95. The CCRB Letter also pointed out further inconsistencies in Rivera's testimony. For example, at one point he admitted that the car had already stopped moving when he shot Mr. Feliz, even though elsewhere he testified that the reason he fired was to stop the vehicle. CCRB Letter at 2 ("By his own testimony, the car was not in motion, thereby alleviating any imminent risk posed to Officer Barrett").

96. The CCRB Letter painted a picture of Rivera’s testimony that was obvious to anyone who saw the trial, including Deputy Commissioner Maldonado: Rivera testified inconsistently, defensively, and lied obstinately. It was the sort of performance that any trial judge would immediately recognize as “self-serving statements fabricated to minimize his credibility.” Maldonado Decision at 21.
97. On August 15, Commissioner Tisch issued the Second Order, a true copy of which is attached as **Exhibit 11**, re-affirming her belief that nothing had changed since the OAG found in 2020 that “there is no obvious reason to doubt” Rivera’s then-stated explanation. Second Order at 2.
98. In the Second Order, Commissioner Tisch purports to go through Deputy Commissioner Maldonado’s findings one point at a time. But Tisch ignores the overarching framework that Maldonado brought to her analysis: *based on her observations of Rivera on the stand, she did not find him credible*.
99. Commissioner Tisch ignores this core finding, without which any analysis of the administrative trial decision is impossible, until the final lines of the Second Order, in which she states: “I make this determination having considered the entire record in this matter, giving due weight to the Commissioner’s findings, including her assessment of witness credibility.” Second Order at 9.
100. But this statement is not true: Commissioner Tisch has not given “due weight” to Deputy Commissioner Maldonado’s credibility findings. Nowhere in the Second Order does Commissioner Tisch address Maldonado’s credibility findings at the trial, including her findings that Rivera’s demeanor and his contradictory statements showed that he was not telling the truth about a critical matter at the trial. Instead, the Commissioner addresses

each factual finding of Maldonado's in isolation, without viewing them through the lens of witness credibility, and Deputy Commissioner Maldonado's considered findings that Rivera was not credible.

101. For example, Rivera was recorded immediately after the shooting explaining to other officers that "my hand was getting tired." Confronted with the obvious fact that he was stating that he shot Mr. Feliz because he was tired of struggling and not because he thought anyone's life was in danger, he concocted an absurd and easily disprovable story that he was referring to his hand getting tired from performing CPR.
102. Commissioner Tisch admitted, as she has to, that Rivera's statement was not true. *See* Second Order at 7 ("I agree with the Deputy Commissioner that . . . Respondent was clearly referring to his struggle in the car.").
103. However, instead of following that reality to a logical conclusion, Tisch suggests that Rivera simply mis-remembered what happened, and that it was "hardly shocking" that he would mix up the struggle in the car with the CPR. *Id.* at 7. But this conclusion is absurd for a number of reasons. First, significant events like this one are more deeply ingrained in one's memory than ordinary encounters. Second, Rivera has been interviewed multiple times about this incident and was prepared for his testimony by an attorney. Third—and most importantly—Rivera never suggested that he remembered incorrectly. When he was confronted on cross-examination, he dug in and stuck to an obviously untrue story. This ***behavior in court***—aside from the content of any particular testimony—is what led to Deputy Commissioner Maldonado's decision, and Commissioner Tisch leaves that behavior totally unaddressed.

104. Commissioner Tisch provides no explanation why a well-prepared witness who has testified under oath about the same event on multiple occasions would suddenly forget what he meant on a recorded video he has likely watched dozens of times.
105. There is an obvious reason that Rivera would not concede that he was talking about struggling with Mr. Feliz when he said his hand was tired. Admitting that fact would demonstrate that he shot Mr. Feliz because he was tired of struggling, and not because he feared for PO Barrett's life. And, after all, he had made the statement when he was interviewed by the CCRB years earlier; if he backtracked now he could be cross-examined over the inconsistency.. *See CCRB Report at 2.*
106. Commissioner Tisch's theory can only be squared with the record if the following facts are true: Rivera testified to the CCRB that he said his hand was getting tired from performing CPR. Despite the fact that his testimony was discussed in the closing report substantiating misconduct, he promptly forgot about it for three years until questioned about it on the stand. At that point, memory failing, he came up with the same answer he gave to the CCRB years ago. When cross-examined, he dug in and grew obstinate in defending his inaccurate memory.
107. Maldonado, on the other hand, recognized the more likely story. Just after shooting Mr. Feliz, PO Rivera mentioned that the engine was running and his hand was getting tired, but not any worry about PO Barrett. When confronted, he said he was referring to CPR rather than the shooting. And once he had his story, he had to stick to it or get cross-examined on why changed it.

Commissioner Tisch's Preliminary Order and Second Order Have Harmed Petitioners.

108. Commissioner Tisch's arbitrary and capricious actions directly led to Petitioners' ongoing harm and suffering. The impact of having Rivera escape any discipline for his

actions has caused extreme emotional and other harm beyond that already suffered by Petitioners from the loss of Mr. Feliz.

109. Commissioner Tisch's arbitrary and capricious actions directly led to Petitioner Justice Committee's loss of financial and other resources.

110. Reversing Commissioner Tisch's final decision and having Rivera finally fired and held accountable for shooting and killing Mr. Feliz would to some extent ease that harm suffered by Petitioners.

Samy Feliz

111. As explained more fully in his Affirmation, attached as **Exhibit 1**, Petitioner Samy Feliz has been harmed by Commissioner Tisch's decision not to fire Rivera for killing his brother.

112. Since Allan's death, Samy has been consistently agitating for justice for Allan, organizing and attending many protests, rallies, marches, speeches, court appearances, food drives, and other events. Ex. 1 ¶¶ 14-15, 26, 35.

113. Samy also initiated the CCRB complaint around Allan's death along with the Justice Committee, testified before the CCRB, spoke at a CCRB Board meeting, and was otherwise heavily involved in the CCRB process. Ex. 1 ¶ 20.

114. When Samy first began attending Rivera's administrative trial, in the NYPD's headquarters and in front of a NYPD judge, he did not have high expectations of the process. However, when the CCRB prosecutors dismantled and disproved Rivera's lies, he hoped against hope Deputy Commissioner Maldonado would see through them and understand Rivera had killed Allan in cold blood and without justification. And, when

she did just that, it was validation and gave him some hope for accountability. Ex. 1 ¶¶ 26-32.

115. Commissioner Tisch's decision crushed Samy. The glimpse of validation and hope he felt after Deputy Commissioner Maldonado's decision vanished. Every day, Samy thinks about how Rivera is still on the police force even though a NYPD Deputy Commissioner found he lied about killing his brother. Ex. 1 ¶¶ 36-37, 40.

116. Also because of Commissioner Tisch's decision, Samy lives with the fear that he, or other members of his family, will run into Rivera on the street, and that Rivera will hurt them—or someone else. He is afraid to call 911 because it could be Rivera—or one of the police who gave him cover—who answers. Because Rivera is still on the force, instead of trusting police, he feels anxious and afraid when I'm around them. He worries something as simple as a traffic stop could lead to his getting shot, just like it did for Allan. And he agonizes daily knowing the message other police will take away from Commissioner Tisch's decision allowing Rivera to evade accountability for killing his brother—that they can kill someone in cold blood and get away with it. Ex. 1 ¶¶ 41-45.

117. Although nothing that happens now will bring Samy's brother back, if the Court grants the Petition and Rivera is fired, he would feel some relief knowing Rivera was off the streets. Rivera's firing would mean an end to the constant, uphill battle Samy and his family have been waging over the years since Allan's killing, and give them some measure of closure. And, past that, Samy would be able to look Allan's son in the eye and tell him that the person who was responsible for taking his father away from him—the reason his father is no longer in his life forever—can't hurt anyone else again. Ex. 1 ¶¶ 46-50.

Mery Verdeja

118. As is explained more fully in her Affirmation, attached as **Exhibit 2**, Petitioner Mery Verdeja has been harmed by Commissioner Tisch's decision not to fire Rivera for killing her son.
119. Commissioner Tisch's decision left her broken-hearted and fearful for what Rivera is capable of doing to another member of her community, including Allan's surviving family members and, in particular, his young son whom he only knew for six months. Commissioner Tisch failed to bring closure and justice for Mery, who cared deeply about her son. Ex. 2 ¶¶ 3-5.
120. Because of Commissioner Tisch's decision, Petitioner Mery Verdeja feels deceived by the idea she once believed that U.S. citizens, like her son, are protected by law enforcement. She is scared that she will see what happened to Allan happen again. Ex. 2 ¶¶ 14-37.
121. Petitioner Mery Verdeja's utter devastation, distrust of law enforcement, and anxiety for her family would be relieved, at least in part, by the annulment of Commissioner Tisch's decision not to fire Rivera. Ex. 3 ¶¶ 32-37.

Ashley Verdeja

122. As is explained more fully in her Affirmation, attached as **Exhibit 3**, Petitioner Ashley Verdeja has been harmed by Commissioner Tisch's decision not to fire Rivera for killing her brother.
123. Commissioner Tisch's decision has caused her further mental anguish and emotional injury, has eliminated her confidence in the police department, and instilled in her a palpable fear of all police officers that affects her daily life. Commissioner Tisch denied

Ms. Verdeja the opportunity to see any form of justice for the loss of her brother, with whom she was extremely close. Ex. 3 ¶¶ 45-58.

124. Because of Commissioner Tisch’s decision, Petitioner Ashley Verdeja lives in fear that the officers around her do not have regard for life, and that they are not held accountable for their misconduct. As a result, she lives in fear of the police and has physical and emotional reactions when she encounters police officers. Ex. 3 ¶¶ 52-56.
125. Petitioner Ashley Verdeja’s mental anguish, emotional injury, fear of uniformed officers, and lack of trust in the police department would—and will—be in part relieved by annulling Commissioner Tisch’s final determination. Ex. 3 ¶¶ 59–60.

Julie Aquino

126. As set forth more fully in her Affirmation, attached hereto as **Exhibit 4**, Ms. Aquino has suffered particularized harm as a result of Commissioner Tisch’s decision that would be redressed by an order from this Court that Commissioner Tisch follow the law and terminate Rivera.
127. Ms. Aquino was Allan’s partner and is the mother of his child. She learned of Allan’s death over a harrowing day that began when she heard from her daughter’s school that he had not picked her up as planned. Ex. 4 ¶¶ 8–14.
128. When she first heard of Maldonado’s decision, Ms. Aquino felt tremendous relief. While she knew she would always live with the pain of losing Allan, she felt “relief in my heart” that she would be able to tell her son, as he grew up, that her father’s killer faced justice. Ex. 4 ¶¶ 2-23.
129. When Ms. Aquino heard that Commissioner Tisch was reversing Maldonado’s decision, her relief vanished and was replaced by fear. Fear that Lieutenant River would target her;

fear that she would never be able to tell her son that his father's killer had even been punished. These fears have caused Ms. Aquino to lose her appetite and to have difficulty sleeping. Ex. 4 ¶¶ 24–28.

130. If Commissioner Tisch were ordered to fire Rivera, Ms. Aquino's relief would return and she would feel as she did after reading Deputy Commissioner Maldonado's decision. She believes that she would sleep better, and her appetite would return if Rivera were fired. Ex. 4 ¶¶ 29–37.

Justice Committee Inc.

131. Justice Committee, Inc. ("JC") has invested significant staff and volunteer time and resources into the campaign for accountability for the killing of Allan Feliz, supporting family members through the investigations, trial, and beyond. Ex. 5 ¶¶ 7–12.
132. Because Commissioner Tisch rejected Deputy Commissioner Maldonado's findings, JC diverted significant resources to campaigning for the Feliz family that would have been spent on other matters. Over the course of five years, JC spent nearly \$150,000 on the Allan Feliz campaign. From July 3, 2025, the date of Commissioner Tisch's preliminary decision, to the present, it spent approximately \$17,720. This does not include any resources devoted to the filing of this petition. Ex. 5 ¶¶ 13–14.
133. In addition, JC diverted time and energy away from planning for its fall fundraising plans and towards this campaign after Commissioner Tisch announced her decision. JC intensified the campaign by organizing a week of actions, implementing an internal communications plan to share the difficult news with JC members, reviving a communications and media strategy, and reaching out to elected officials. Commissioner

Tisch's decision dealt a profound blow to the morale of the Feliz family, JC staff, and JC's broader membership. Ex.5 ¶¶ 15–16.

134. After six years of pain, loss, grief, and frustration, Petitioners are now compelled to bring this Article 78 proceeding to seek an order annulling Commissioner Tisch's Preliminary Order and Second Order and directing that Respondents terminate Rivera.

COUNT ONE (ARTICLE 78)

The Court Should Annul Commissioner Tisch's Preliminary Order and Second Determination, and Order Respondents to Terminate Respondent Rivera

135. Petitioners repeat and re-allege every allegation above as though fully set forth herein.
136. Petitioners also incorporate by reference the facts and arguments set forth in their accompanying memorandum of law.
137. Issuing the Preliminary Order constituted arbitrary and capricious agency action by Commissioner Tisch and constituted an abuse of the discretion granted to her as Police Commissioner under the New York City Charter.
138. Issuing the Second Order constituted arbitrary and capricious agency action by Commissioner Tisch and constituted an abuse of the discretion granted to her as Police Commissioner under the New York City Charter.
139. Commissioner Tisch's dismissal of Specification 1 against Rivera constituted arbitrary and capricious agency action.
140. Commissioner Tisch's dismissal of Specification 1 against Rivera constituted an abuse of the discretion granted to her under the City Charter as the Police Commissioner.
141. Rejecting the credibility findings of the hearing officer who heard live testimony subject to cross-examination without addressing those credibility findings with particularity constituted arbitrary and capricious agency action.

142. The Court should order Respondents to terminate Lieutenant Rivera's employment with the NYPD consistent with the findings of the Maldonado Decision.
143. Petitioners have no adequate remedy at law.
144. No compensation can undo the damage that Petitioners have suffered and will continue to incur absent the relief they now seek.

CONCLUSION

WHEREFORE, Petitioners respectfully request that this Court enter an order and judgment pursuant to CPLR § 7806:

- a. Holding that the July 3, 2025 "Decision of the Police Commissioner" in Case Number 2023-28440 is null and void;
- b. Holding that the August 15, 2025 "Decision of the Police Commissioner" in Case Number 2023-28440 is null and void;
- c. Ordering Respondents to terminate Lieutenant Jonathan Rivera, in accordance with the recommendation of Deputy Commissioner Rosemarie Maldonado in Case Number 2023-28440; and
- d. Granting any and all further relief as this Court deems just and proper.

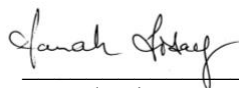
DATED: October 15, 2025
New York, NY

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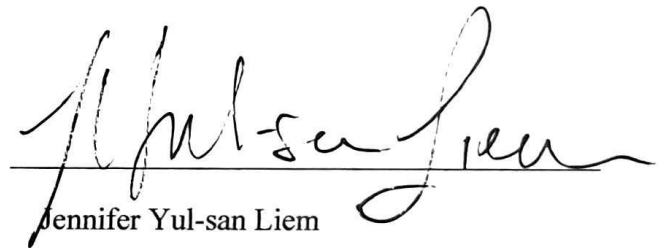


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VERIFICATION

Jennifer Yul-san Liem, being duly sworn, deposes and says that she has read the foregoing Verified Petition, dated October 15, 2025, and that the contents thereof are true to her knowledge, except as to the matters therein stated to be alleged upon information and belief, as to which matters she believes the same to be true; and that the grounds of her belief as to all matters in the instant petition not stated upon her knowledge are based upon investigations which she and/or her attorneys have made regarding the subject matter of this proceeding, and related records.

I affirm this 15th day of October, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.



Jennifer Yul-san Liem