

Petitioners' Exhibit 1

October 27, 2021 Affidavit of Maya Wiley

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

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In the Matter of GWEN CARR, et al.,

Petitioners,

- against -

**AFFIDAVIT OF
MAYA WILEY, ESQ.**

BILL DE BLASIO, Mayor of the City of New York, et al.

Respondents.

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STATE OF NEW YORK)

: SS.:

COUNTY OF NEW YORK)

Maya Wiley, Esq., an attorney licensed by the State of New York and retired from practice before the Courts of the State of New York, affirms, pursuant to C.P.L.R. 2106 and under penalty of perjury, that:

1. In February 2014, I was appointed Counsel to the Mayor of the City Of New York. As the chief legal officer in City Hall, I advised the Mayor on a wide range of legal matters concerning the operations of the City and the Mayor’s policy agenda. Among other functions, I served as the City’s Director of Minority and Women-Owned Business Enterprise and the liaison to the Mayor’s Advisory Committee on the Judiciary, and I oversaw the Commission on Human Rights. I regularly interacted with city agencies and helped them navigate the myriad legal and policy issues that arise in connection with City government. In connection with my duties as Counsel to the Mayor, I became familiar with the hiring, termination, and disciplinary processes for City employees, including NYPD officers.

2. I left my position as Counsel in July 2016 and that same month, the Mayor appointed me Chair of the New York City Civilian Complaint Review Board (“CCRB”). I served as the Chair

until August 2017. The CCRB, a City agency independent of the NYPD, was charged with investigating complaints about four types of misconduct by NYPD officers CCRB refers to as “FADO”: (a) force that is excessive or unnecessary; (b) abuse of authority; (c) discourtesy; and (d) offensive language. In addition to investigating individual complaints, the CCRB also is responsible for analyzing complaints to determine the need for change in NYPD policies, procedures or training. The NYPD, through its Internal Affairs Bureau (“IAB”), had jurisdiction over police corruption as well as other types of misconduct, which CCRB did not have at that time, including, but not limited to: false statements,¹ unauthorized leaks of sealed records, failure to supervise, failure to intervene and other acts that are not or were not part of CCRB’s primary jurisdiction when the CCRB reviewed the killing of Eric Garner. As Chair of the Board, I interacted regularly with the NYPD and with Corporation Counsel concerning the process for handling allegations of misconduct against NYPD officers. As the Chair of CCRB, I reported to the First Deputy Mayor about the functioning of the agency, including staffing, budget and substantial matters effecting the agency. While the CCRB reports to the First Deputy Mayor, it is a separate and independent agency that makes decisions based on evidence and data.

Overview of the Investigatory Process

3. Police misconduct incidents are typically reviewed by the IAB and can also be reviewed by the CCRB if a complaint is filed to the CCRB and the alleged misconduct is within the CCRB’s defined areas of jurisdiction or “FADO.” The IAB and CCRB have separate, independent investigative authority. An incident may be investigated by either the IAB or the CCRB, and, in some instances, the IAB and CCRB may each conduct separate, parallel investigations.

¹ CCRB’s authority has expanded to include certain false statements, following a 2019 ballot measure.

4. At the conclusion of an IAB investigation, the IAB classifies allegations as substantiated, partially substantiated, unsubstantiated, unfounded, or exonerated (when the IAB finds the alleged conduct occurred but the IAB deemed the conduct to be lawful). Likewise, where the CCRB conducts an investigation and on allegations that fall within the CCRB's jurisdiction, it classifies its initial investigatory findings on allegations as substantiated, unsubstantiated, unfounded, exonerated, officer unidentified, or truncated.² When particular types of allegations are not within CCRB's jurisdiction, the CCRB does not investigate or issue determinations on those allegations. CCRB's investigations for serious misconduct are often not able to access full NYPD files. I am unaware of a case in which the CCRB received the full NYPD files before specific allegations are substantiated, and I am unaware of any instance in which the CCRB receive full NYPD files after allegations are substantiated. Typically, CCRB would receive some additional files on the narrowly defined area of substantiated allegations.

5. Both the IAB and the CCRB use a preponderance of the evidence standard in reaching their investigative conclusions. If the IAB or CCRB determines that an allegation was substantiated, the IAB or CCRB makes a recommendation for how to address the misconduct. For less serious cases, the IAB or CCRB can recommend that the officer receive additional training or be subject to discipline by a commanding officer (i.e., "Command Discipline"). For more serious cases, the IAB or CCRB can recommend formal administrative charges, which could result in a disciplinary hearing.

6. Disciplinary hearings are initiated by the NYPD serving an officer with formal administrative charges (i.e., "Charges and Specifications"). Charges and Specifications arising

² A truncated investigation is one that cannot be completed because the CCRB is unable to get an in-person statement or other necessary cooperation from an alleged victim and must therefore halt the investigation and close the case. In such cases, no factual finding is made. .

from a CCRB investigation are prosecuted by the CCRB's Administrative Prosecution Unit ("APU"). Charges and Specifications arising from an IAB investigation are prosecuted by the NYPD's Department Advocate's Office ("DAO").

7. CCRB decisions on whether to recommend Charges and Specifications are confined by the areas that CCRB can investigate – and by the scope of the filed complaint or an officer or other evidence gives us jurisdiction to investigate additional officers for violations within CCRB's investigatory scope. In addition, there may be multiple types of misconduct allegations in a single incident, where CCRB is only able to investigate and act on a narrow aspect of a case and the IAB has discretion to investigate outside of that scope.

8. For IAB investigations, while the IAB conducts the investigation and is tasked with deciding whether to recommend Charges and Specifications, the IAB does not make final determinations related to serving Charges and Specifications. The Department Advocate's office (DAO) and Deputy Commissioner in charge of DAO determine whether, when and what Charges and Specifications will be served.

9. After the NYPD serves Charges and Specifications pursuant to an IAB investigation, if an officer decides to plead guilty pursuant to a settlement offer, the proposed resolution is sent to the First Deputy Commissioner and ultimately to the Commissioner for approval.

10. After the filing of Charges and Specifications pursuant to a CCRB investigation, if an officer decides to plead guilty pursuant to a settlement offer, the proposed resolution is sent to the Deputy Commissioner for Trials, the First Deputy Commissioner, and the Commissioner for approval.

11. Cases that are not settled proceed to an administrative trial, with the exception that the DAO can request that the CCRB reconsider its disciplinary recommendation and, in certain

circumstances, pursuant to paragraph 2 of the 2012 Memorandum of Understanding between the CCRB and NYPD, the NYPD may stop or assume the prosecution of a case “where the Police Commissioner determines that CCRB’s prosecution of Charges and Specifications in a substantiated case would be detrimental to the Police Department’s disciplinary process.”³ Based on the 2012 MOU, the Commissioner is required to inform the CCRB if he intends to stop or assume the prosecution CCRB initiates and, in my experience, City Hall staff may also be engaged in a discussion of whether or not a case is properly stopped or prosecution assumed by NYPD.

12. Cases that proceed to administrative trial are tried before either the NYPD Deputy Commissioner of Trials or one of three NYPD Assistant Deputy Commissioners. At the end of the trial, the presiding commissioner issues a written decision including a determination whether the officer is guilty and any disciplinary recommendation. The trial commissioner’s determinations are reviewed by the First Deputy Commissioner and then the Police Commissioner, who makes the final determination.

13. In my experience, in high profile matters, the Mayor and the First Deputy Mayor, to whom the NYPD and the CCRB both report, Corporation Counsel and/or their respective staffs are briefed throughout the process, from the investigatory phase to the adjudicative phase to the post-adjudicative determination phase.

Investigation of Mr. Garner’s Killing

14. After Mr. Garner was killed in 2014, the IAB commenced an investigation. At the conclusion of the investigation, the IAB recommended that the DAO serve Officer Pantaleo with

³ Memorandum of Understanding Between the Civilian Complaint Review Board (CCRB) and the Police Department (NYPD) of the City of New York Concerning the Processing of Substantiated Complaints, April 12, 2012; https://www1.nyc.gov/assets/ccrb/downloads/pdf/about_pdf/apu_mou.pdf

Charges and Specifications. This recommendation was made in 2015. No administrative trial was commenced in response, and the NYPD did not serve Charges and Specifications at that time on Officer Pantaleo. In a case where the Department of Justice has asked that administrative proceedings be delayed to allow a federal civil rights investigation, the general practice of the NYPD is to hold on the administrative proceeding, although there are exceptions to this. In my view, it became clear, after the inauguration of President Donald Trump in 2016, that it was unlikely that the DOJ would bring a federal civil rights proceeding against Daniel Pantaleo or commence any investigation into the operations of the NYPD related to excessive force policies, procedures, training or discipline.

15. The CCRB also investigated Mr. Garner's killing. The focus and parameters of the CCRB's investigation was the use of force by Officer Pantaleo. The CCRB's investigation necessarily was limited to matters within its jurisdiction: (a) force that is excessive or unnecessary; (b) abuse of authority; (c) discourtesy; and (d) offensive language. For example, whether there were false statements was beyond the scope of the CCRB's investigation. Further, the CCRB conducted its investigation without the benefit of full access to NYPD records.

16. The CCRB's investigation concluded that allegations against Officer Pantaleo were substantiated and, accordingly, in 2017, the CCRB requested that Charges and Specifications be served on Officer Pantaleo. The CCRB reached this conclusion notwithstanding that the United States Department of Justice was still conducting its investigation concerning Mr. Garner's killing because I did not believe there was a risk of interfering with any federal civil rights proceeding. I resigned from my position as Chair of the CCRB with the belief that the administrative trial against Daniel Pantaleo would proceed with the CCRB's APU prosecuting the case. Despite the CCRB's request, the NYPD appeared to slow walk the commencement of

the trial, since CCRB did not have the power to serve Officer Pantaleo at that time. The NYPD has that sole power and did not do so, to the best of my recollection, until the summer of 2018. The CCRB stood ready to prosecute the case before I departed.

17. Given the high-profile nature of the case, it would not have been unusual, in my experience, to have several entities involved in discussions, and possibly impacting the decision-making, with respect to whether to serve and timing for serving Charges and Specifications on Officer Pantaleo after CCRB substantiated charges. Corporation Counsel, NYPD Legal Counsel, the NYPD Commissioner and NYPD Deputy Commission for the Department Advocates Office (DAO) may all have been engaged in some level of discussion around the timing of service. Based upon the City's disciplinary process set forth above, Deputy Commissioner Richardson was a key decision-maker concerning why Charges and Specifications were not served on Officer Pantaleo earlier.

18. Given that Charges and Specifications were not served on Officer Pantaleo until the summer of 2018, and based on my personal knowledge up through August 2017, decision-making concerning discipline arising from the killing of Mr. Garner continued well beyond the IAB's recommendation to serve Charges and Specifications in 2015. Based upon my experience in City government, it would be customary that Deputy Commissioner Richardson would have consulted officials senior to him during this post-2015 decision-making process period. The chain of command for such consultations is from Deputy Commissioner Richardson to First Deputy Commissioner Benjamin Tucker to Police Commissioner William Bratton (prior to September 2016) or Police Commissioner James O'Neill (after September 1, 2016). Further, it would have been customary, for a high-profile matter like this, that the Mayor and the First

