

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

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,

- v -

BILL DE BLASIO, Mayor of the City of New
York, JAMES P. ONEILL, 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.

Index No. 101332/2019

Assigned to the Hon. Justice
Erika M. Edwards

Part 11

**MEMORANDUM OF LAW IN SUPPORT OF PETITIONERS' REQUEST THAT
RESPONDENTS PRODUCE SENIOR CITY OFFICIALS FOR TESTIMONY**

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Pursuant to the Court's Order, dated June 30, 2021, Petitioners respectfully submit this Memorandum of Law in Support of Petitioners' Request That Respondents Produce Senior City Officials for Testimony.

Preliminary Statement

Petitioners appreciate the opportunity to submit this memorandum to the Court regarding testimony by several key witnesses at the upcoming hearing in this matter pursuant to Section 1109 of the New York City Charter. This memorandum specifically addresses why testimony should be required from current and former senior City officials, including Respondent Mayor Bill de Blasio, Respondent former NYPD Commissioner James O'Neill, former NYPD Commissioner William Bratton, and current NYPD Commissioner Dermot Shea. As noted at the conference before the Court on June 30, 2021, Respondents have yet to agree to produce any witnesses at the hearing, despite Petitioners' long-standing requests.

Regarding the four specific senior officials addressed by this memorandum, each of these individuals played a central role in the events described in the Petition, and their testimony is entirely appropriate in light of the ruling by Justice Madden dated September 24, 2020, denying in large part Respondents' Motion to Dismiss. (Dkt. No. 22, hereinafter the "Order"). Respondents should not be permitted now to remove these key decision-makers from this case, effectively re-litigating issues settled by Justice Madden and upending the law of the case.¹

¹ As this Court has noted, "I stand by, obviously, the Court's law of the case in terms of Judge Madden's rulings." February 23, 2021 Transcript at 12:6-8. Petitioners agree that the law of the case governs issues previously decided by Justice Madden.

Respondents' current position, as stated in their letter dated June 29, 2021, that "Justice Madden's order should be read narrowly" and that the "unique nature of this proceeding" should limit the scope of testimony (Dkt. No. 48), is directly refuted by Justice Madden's decision itself. Two things in particular are clear from her ruling: First, questions about investigations by the City into the killing of Eric Garner, and related misconduct, such as that relating to lack of medical attention and information leaks, and resulting disciplinary decisions, are properly within the scope of the hearing. It is fundamental to fulfilling the mandate of Section 1109 that Respondents' failure to thoroughly investigate the killing and take appropriate disciplinary action be the subject of the judicial hearing.

Second, Justice Madden strongly indicated that given the nature of the issues subject to the inquiry, senior City officials – including the Mayor and the Police Commissioners – were relevant witnesses at the hearing. Given the repeated public statements and promises made by these officials, their testimony is essential to explain what in fact the City did – or did not do – in response to Mr. Garner's killing. In addition to the "what," they can also tell provide the "why" of what the City did or did not do; in other words, the explanations behind the conclusions the City arrived at in responding to Mr. Garner's death.

Part I of this memorandum below includes an analysis of Justice Madden's ruling, including her delineation of the broad scope of issues properly subject to a Section 1109 hearing and the relevance of testimony by senior officials of the City. Part II discusses evidence related to the senior current and former officials whose testimony is appropriate

in this matter, including multiple examples of these officials making statements and promises directly relevant to the scope of issues defined by Justice Madden.

I. Justice Madden's Memorandum Decision

Justice Madden's detailed analysis of Petitioners' claims in this matter effectively answered two questions relevant to the scope of issues and relevance of witnesses at the upcoming hearing in this matter: First, Justice Madden broadly defined the issues appropriate for examination at the hearing, holding that any investigations and disciplinary actions relating to Mr. Garner's killing were proper subjects for inquiry; and second, that in light of the broad scope of inquiry, senior officials of the City would be relevant witnesses at the hearing.

A. Scope of Issues for Hearing

Justice Madden's ruling expressly held that the scope of issues to be examined at the hearing should not be limited to the events of the day Mr. Garner was killed but rather should include the City's response to those events, including any investigations and disciplinary actions (or the lack thereof) undertaken by the City. Her 49-page decision is replete with references to this aspect of the summary inquiry, and conversely, there is no support for Respondents' current position that her ruling should be construed "narrowly."

While Respondents would ask this Court to read only the last two pages of Justice Madden's decision (which simply enumerate the issues she approved for the Section 1109 hearing) and ignore the first 47 pages (which contain the substance of her analysis and ruling), even a cursory review of the Order shows Justice Madden's clear intent regarding the scope of the inquiry.

Justice Madden’s ruling is based on an analysis of each of the seven issues (denoted as Issues A-G) raised by Petitioners in their Verified Petition. (Dkt. No. 3, hereinafter the “Petition”). In discussing Issue A,² Justice Madden concluded—in an explicit rejection of Respondents’ position—that:

Given the serious nature of the questions involved here, petitioners, and the public at large, *are entitled to know whether an investigation was conducted concerning the actions of the police officers in stopping and in arresting Mr. Garner, and whether the use of force in restraining him, complied with legal requirements including the federal and state constitutions, case law, and the Patrol Guide or were actions carried out in violation of law.*

Order at 31 (emphasis added). Justice Madden made it clear that “[a] failure to conduct . . . an investigation of the other officers [other than Pantaleo] and their conduct would constitute a neglect of duty.” Order at 34.

Similarly, with respect to Issue C,³ the question of whether there was an investigation or disciplinary action taken was at the heart of Justice Madden’s reasoning behind granting a summary inquiry. She found: “*It is unknown whether any investigation or disciplinary action was taken by the Commissioner or the NYPD in connection with Officer Damico’s filing of police reports after Mr. Garner’s death that apparently contain false statements that no force was used and that the top charge was a felony.*” Order at 37 (emphasis added).

² Issue A is defined in the Petition as “Violation and neglect of duties in connection with the stop and arrest of Mr. Garner and the force used by officers on Mr. Garner.” Petition at 3.

³ Issue C is defined in the Petition as “Violation 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.” Petition at 3.

In discussing Issue D,⁴ Justice Madden could not have been more explicit that her Order contemplated an inquiry into the investigations into potential misconduct—or lack thereof—by high-level officials. She held that:

As a question exists of whether information from the autopsy report was made public, and if so, by whom, *an inquiry is granted into whether any investigation was conducted by the Chief Medical Examiner, or by the Mayor, who appoints the Chief Medical Examiner (see City Charter § 557 [a]), into the allegedly improper release of information from Mr. Garner’s autopsy by the office of the Chief Medical Examiner.*

Order at 41 (emphasis added).

With respect to Issue E,⁵ Justice Madden found that the inquiry into incomplete and inaccurate statements⁶ to the media by the City relating to the “underlying arrest and the force used against [Mr. Garner,] and to the allegations of the lack of medical aid to Mr. Garner at that time” overlapped with Issue A, discussed above, and Issue F, discussed below. Order at 41. Therefore, she found that “rather than being considered separately, to the extent relevant, they may be explored as part of the summary inquiry granted in connections (sic) with the violations and neglect of duty asserted in those sections.” Order at 41.

⁴ Issue D is defined in the Petition as “Violation and neglect of duties concerning the unlawful leaking of Mr. Garner’s alleged arrest record and the unlawful leaking of Mr. Garner’s alleged medical history.” Petition at 3.

⁵ Issue E is defined in the Petition as “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.” Petition at 3.

⁶ Justice Madden noted the following statements that were identified by Petitioners: a) “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 [;]’” Petition 42(d); b) “Sgt. Dhanan Saminath, another supervising officer at the scene, told NYPD investigators that Mr. Garner ‘did not appear to be in great distress [;]’” and c) “The initial police report about Mr. Garner’s arrest made no mention of a chokehold.” Order at 41.

Finally, as to Issue G, by which Petitioners sought an inquiry into the “[v]iolations and neglect of duties concerning the City’s investigation and adjudication of, and imposition of discipline for, the aforementioned violations and neglect of duties,” Justice Madden recognized what is apparent from the rest of the Order, which is that Issue G “merely incorporates and is duplicative of the above areas,” and so it “need not be considered again.” Order at 45. In other words, Justice Madden was expecting that this line of inquiry would be incorporated into each of the subject matter inquiries she was granting. Because Justice Madden understood Issue G to be subsumed by and included in Issues A, C, D and F, she did not separately reference Issue G in her Conclusion, including in the list of issues into which she expressly denied an inquiry. Order at 47–48.

B. Relevance of Testimony by Senior Officials

In light of the broad subject matter on the inquiry, Justice Madden clearly indicated in her ruling that several of the Respondents, including the Mayor and the Police Commissioner, are subject to the Section 1109 inquiry.

Before asserting their current position that senior City officials should not be required to testify, Respondents fully acknowledged the relevance of senior municipal officers to Section 1109 inquiries. In their brief filed with the First Department appealing the denial of their motion to dismiss, Respondents stated that every “Section 1109 case this century, successful or not, has focused on the actions of higher-level officials in managing municipal affairs—that is, official policies or practices—and not alleged violations by low-level employees of the kind that are regularly dealt with through

employee discipline or tort law.” First Department Brief for Respondents-Appellants at 34.⁷ This argument, which Respondents are currently advancing before the First Department—that Section 1109 properly applies only to “the actions of higher-level officials”—squarely conflicts with their current position that senior City officials should not testify in the pending case. Respondents cannot have it both ways: if their position is that Section 1109 should focus on the conduct of senior officials, then senior officials should testify.

Regardless of Respondents’ vacillations, Justice Madden has already held that: “[a]s the chief executive officer of the City, respondent Mayor DeBlasio is ‘responsible for the effectiveness and integrity of city government operations,’” Order at 31 (citing City Charter § 8(a)), and concluded that “[c]ertainly, the death of an unarmed man during a police arrest raises questions of both the effectiveness and integrity of city government with regard to which the mayor has responsibilities.” Order at 32. Justice Madden further held that there is no indication if the former Police Commissioner or anyone under his command undertook any investigation into whether there was probable cause for the arrest of Mr. Garner or excessive force used by other officers, Order at 29, and that the Police Commissioner had the “duty to determine whether information from sealed records was made available to the press, and if so, by whom, how that information was released, and what if any disciplinary action should be taken with respect to any person

⁷ Respondents cited the following authorities in their brief for the proposition they were arguing: “*See Matter of Green v. Giuliani*, 187 Misc. 2d 138 (Sup. Ct., N.Y. Cnty. 2000) (alleged illegal act by the Mayor and records custodian); *Matter of Riches v. New York City Council*, 2008 NY Slip Op. 32030[U], (Sup. Ct., N.Y. Cnty. 2008) (alleged fraud by City Council member); *Matter of James*, 2016 N.Y. Misc. LEXIS 2935 (Sup. Ct., N.Y. Cnty. 2016) (alleged dereliction of duty by Chancellor of the Department of Education).”

responsible.” Order at 40. Given the involvement of senior personnel in investigations and disciplinary actions across all the issues that are the subject of the summary inquiry, they are all proper witnesses.

Justice Madden also explicitly rejected Respondents’ argument that “respondents [must] have personal knowledge or information regarding the alleged violation or neglect.” Order at 24. Rather, she properly held that Section 1109 only requires “knowledge or information concerning the alleged violation or neglect of duty.” Order at 24. Although Respondents continue to raise this unavailing point to this day, Justice Madden held:

[I]t is not necessary that the respondent was present and/or directly involved in the particular events when they took place. Knowledge can be based, for example, upon access to departmental documents or participation in governmental meetings or discussions and decisions regarding the events in question, or inferred from knowledge necessary in performance of a responsibility or duty imposed by office in connection with such events.

Order at 25.⁸ As described below, each of the senior officials whose testimony is now at issue were on-record as having been closely and personally involved in

⁸ To the extent Respondents argue that the “apex doctrine” applied by the Second Circuit and other federal courts should limit testimony in this case, that doctrine has not been adopted by New York courts. *See Thomson v. Zillow, Inc.*, 32 N.Y.S.3d 455, 459 (Sup. Ct. N.Y. 2016) (declining to adopt the “federal apex witness rule”). Additionally, Section 1109 itself provides the standard to be applied, which Justice Madden appropriately cited. In any event, given the scope of the summary inquiry in this case and the direct role of the respondents in the matters subject to inquiry, relevant senior City officials would be required to testify even under the Second Circuit’s “apex doctrine.” *See Gibson v. Carmody*, No. 89 Civ. 5358, 1991 WL 161087, at *1 (S.D.N.Y. Aug. 14, 1991) (“While the taking of depositions of present or former government officials at the level of Police Commissioner should not lightly be granted, it is clear that [the former police commissioner] personally participated in proceedings relating to or stemming from the investigation of the facts underlying this case (including disciplinary action with respect to defendant Carmody), and fairness to the parties requires that . . . they be permitted to depose him.”).

discussions and decisions regarding any investigations by the City into the killing of Mr. Garner.

Respondents express generalized concern that the Mayor and other senior individuals might be subject to a “free-ranging investigation.” (Dkt. No. 48.) These concerns can and should be appropriately addressed by limiting questions during the proceeding and not by eliminating key witnesses. *See, e.g., Green v. Giuliani*, 721 N.Y.S.2d 461, 472 (Sup. Ct. N.Y. Cnty. 2000) (limiting testimony to areas relevant to the inquiry and not already “conceded” publicly by respondents).

II. Key Facts Relevant to Senior City Officials

The killing of Mr. Garner was one of the most shocking events in the City’s history, involving the use of the most significant government power—the taking of a life by the government. As would be expected under these circumstances, the City’s most senior officials were closely and personally involved in the City’s response from the outset. Indeed, these individuals either were involved in decisions concerning the City’s investigations and disciplinary actions related to the areas of inquiry Justice Madden ordered and therefore have unique personal knowledge, or they abdicated their responsibilities to investigate and/or impose discipline and thereby violated and neglected their duties. Either way, testimony from these officials is necessary and appropriate to shed light on the individual Respondents’ role in this horrible tragedy, as is permitted under Section 1109 and ordered by Justice Madden. Order at 46.

The appropriateness of these witnesses’ testimony is underscored in particular with respect to Respondents de Blasio and O’Neill, former NYPD Commissioner Bill Bratton, and current NYPD Commissioner Dermot Shea, as will be discussed below.

A. Respondent Mayor Bill de Blasio

In the seven years since Mr. Garner was killed, Mayor Bill de Blasio has been very engaged and outspoken in the case, making it clear that he has pertinent information which he has not shared with Petitioners or the public, notwithstanding repeated requests. *See, e.g.*, Affidavit of Gwen Carr, dated July 8, 2021 (“Carr Aff.”), at 2.⁹ The Mayor has centered himself in the case to a point where the relevant events and the City’s responses to those events cannot be properly examined without testimony from the Mayor and inquiries into his personal actions and decisions.

The day after Mr. Garner was killed, on July 18, 2014, the Mayor stated during a press conference that he “assure[d] all New Yorkers, there will be a full and thorough investigation,” and that “[w]e need the facts of a full and detailed investigation.” Lucas Aff., Ex. 1. The following day, the Mayor called Mr. Garner’s wife, Esaw Garner, and reassured her “that the city is doing everything possible to ensure a full and thorough investigation.” *Id.*, Ex. 2. A senior aide to the Mayor said in an interview on July 23, 2014 that the Mayor and his aides had spoken to Reverend Al Sharpton and members of Garner’s family and assured them that the City’s investigation would be “expeditious.” *Id.*, Ex. 3. The aide noted that those conversations “set the tone immediately.” *Id.*

Respondent de Blasio has acknowledged that he is an essential part of the oversight of the City’s response to Mr. Garner’s arrest and killing, and is responsible for making sure the process runs effectively. On July 28, 2014, the Mayor stated to the press

⁹ The Carr Affidavit is attached as Ex. 22 to the Affirmation of Diane O. Lucas in Support of Petitioners’ Request that Respondents Produce Senior City Officials for Testimony, dated July 8, 2021 (“Lucas Aff.”).

that, “We now have a very robust oversight dynamic vis-à-vis the NYPD. For the first time in many ways, I would say in New York City history, we have a complete and robust oversight dynamic. But there is also a division of labor that has to be maintained. There’s a lot to do and we have to make sure that each part of that oversight team is doing the different pieces necessary.” *Id.*, Ex 4. The Mayor also noted on several occasions that he has met with community groups and leaders to discuss what steps the City will take in response to Mr. Garner’s killing. The Mayor said, “In the specific instance of the Garner case – again I’ve outlined some of the actions that have been taken – we will continue – I’ve had a number of conversations with community leaders, with clergy, and elected officials. I will have additional conversations later this week with a group of concerned clergy and community leaders to talk about additional steps that we will take.” *Id.*

Respondent de Blasio has continued to be outspoken about his role in the case in recent years. On July 31, 2019, he proclaimed at a presidential candidate debate: “I know the Garner family. They’ve gone through extraordinary pain. They are waiting for justice and are going to get justice. There’s finally going to be justice. I have confidence in that, in the next 30 days, in New York. You know why? Because for the first time, we are not waiting on the federal Justice Department, which told the city of New York that we could not proceed because the Justice Department was pursuing their prosecution...” *Id.*, Ex. 5. In the wake of George Floyd’s murder in Minnesota in 2020, the Mayor reflected on the City’s response to Mr. Garner’s killing: “We made a mistake. I made a mistake in believing the Department of Justice would do its job. . . . When the city took

over, there was due process, there was a trial. Our police commissioner made a decision. It was the right decision. The thing I feel very clearly, in retrospect, is we should have ignored the Department of Justice because what he did was unconscionable in not acting, and just moved ahead. And that's what we will do from now on, absolutely." *Id.*, Ex. 6.

But despite his repeated public statements over the last seven years presenting his role as a key-decision maker, Respondent de Blasio has failed to provide the transparency that Petitioners and the public have been seeking. Petitioner Carr and other petitioners have been unwavering in their demand that all officers who engaged in misconduct related to Eric Garner's killing—and the subsequent attempts to conceal it—be thoroughly investigated and disciplined. Mrs. Carr publicly confronted Respondent de Blasio with this request at a Staten Island town hall in July 2018, where the Mayor refused to commit to ensuring accountability for all misconduct. Carr Aff. at 2. Mrs. Carr also demanded the public release of names of officers involved in various acts of misconduct – including those that illegally leaked sealed records regarding Garner's medical history and the Mayor's administration has refused to release that information. Mrs. Carr and other petitioners have also made numerous requests for answers from the Mayor and other high level NYPD and City officials about whether other police officers involved in Eric Garner's death, besides Mr. Pantaleo, would be thoroughly investigated and disciplined. *Id.* at ¶¶ 1-4.

The Mayor has also ignored demands for transparency from the public and civil rights leaders nation-wide. On August 7, 2019, several national civil rights organizations, including Color of Change, Communities United for Police Reform, MomsRising,

CREDO, Working Families Party, and Make the Road New York, published and delivered a petition with over 61,000 signatures demanding that Mayor de Blasio finally hold all police officers involved in the killing of Eric Garner and Delrawn Small (who was killed by the NYPD two years after Mr. Garner) accountable. Lucas Aff., Ex. 7. Despite the magnitude of this demand, Mayor de Blasio still did not respond with information about investigations or disciplinary actions related to all the officers involved in Mr. Garner's death.

Further, the Mayor has widely boasted about his personal efforts to reform the police as a result of Eric Garner's killing to the Garner family and the general public. He said he is "absolutely committed to ensuring that the proper reforms are enacted to ensure that this won't happen again." *Id.*, Exs. 4, 8–14.¹⁰ On August 21, 2019 at a news conference after the disciplinary trial of former Officer Daniel Pantaleo, the Mayor said, "I know the NYPD has changed profoundly. "I know that members of the NYPD learned the lessons of this tragedy. They acted on it, they did something about it. It is a

¹⁰ See Lucas Aff., Ex. 8 (Mayor de Blasio: "that's a responsibility that Commissioner Bratton and I take very seriously. I've said that we would make change, and we will. As Mayor, I remain absolutely committed to ensuring that the proper reforms are enacted to ensure that this won't happen again."); *id.*, Ex. 9 ("And in the meantime, what I'm working on is making sure—and I have for five years—there will never be another tragedy, there will never be another Eric Garner, because we're changing fundamentally how we police"); *id.*, Ex. 10 ("For the last five years, our mission has been to fundamentally change the nature of policing in New York City. After the death of Eric Garner, everything was reevaluated. The entire police force was retrained – 36,000 officers retrained to deescalate conflict, to understand the implicit bias that we all carry with us, to ensure it would not interfere with their duty."); *id.*, Ex. 11 ("We've changed the entire nature of policing in the nation's biggest city. . . . Literally teaching de-escalation training to every single police officer. Now if you say, 'Well, OK what about what happened here? Why was there a delay?' There was a delay because the United States Department of Justice told us not to act on our own disciplinary hearing. They told us they would take the lead. They failed to do so. But look in the end, the biggest thing here is justice was served and where was it served? Within the NYPD. And that shows progress and reform unto itself. This case now, there was one case in addition to Pantaleo, and that is the end of this whole process because all other statute of limitation issues have run and this is the end of it."); *id.*, Exs. 12, 13 (discussing the Mayor's plan to initiate a "systemic" retraining of police in New York in order to "fix the relationship between police and the community"); *id.*, Ex. 14 ("[T]he mayor said . . . that the 'No. 1 way to honor Eric Garner is to make sure there isn't another instance like this.'").

beginning, but we have a lot more to do and the change has to get deeper and deeper.”

Id., Ex. 15. Yet, the public does not know what investigations and/or disciplinary actions were taken, related to the four areas of inquiry, to ensure that this type of misconduct truly never happens again.

It is critical to fulfilling the transparency objectives of Section 1109 that Petitioners be permitted to inquire about some of the key decisions the Mayor has made, including, but way of example, (1) why he waited for the Department of Justice investigation to conclude before the City could take investigative actions, including after the change in administration; (2) did he ever inquire about whether NYPD officers who participated in the arrest of Mr. Garner were reassigned, investigated, or faced disciplinary charges pending the conclusion of the Department of Justice’s investigation; (3) if, at the time he spoke with members of Garner family and promised an “expeditious” investigation, he had contemplated waiting for the Staten Island District Attorney or Department of Justice decisions; (4) what effect, if any, did demands from Mrs. Carr, other petitioners, or others for an investigation and termination of officers involved in Mr. Garner’s death have on him or other senior officials, including whether they took any responsive steps; and (5) what steps, if any, did he take to address the spoliation of evidence. These illustrative questions would shed a bright light on whether and how Respondent de Blasio and other City officials carried out their duties in leading the City’s response to the killing of Mr. Garner.

**B. Respondent Police Commissioner James O’Neill,
Former Police Commissioner Bill Bratton, and
Current Police Commissioner Dermot Shea**

Respondent Former Police Commissioners James O’Neill, Former Police Commissioner Bill Bratton and Police Commissioner Shea have all played significant roles in determining whether and how the NYPD exercised its investigative and disciplinary powers in the wake of Mr. Garner’s killing. For example, Respondent Commissioner O’Neill was the ultimate decision-maker in deciding to accept the Deputy Commissioner of Trials’ legal findings and recommendation to terminate former officer Daniel Pantaleo. Lucas Aff., Ex. 16. In doing so, he noted that, in this case, “the unintended consequence of Mr. Garner’s death must have a consequence of its own.” *Id.* Prior to making that decision, Commissioner O’Neil was engaged in negotiations over “a deal” that would have permitted Pantaleo to leave his position but retain a partial pension. *Id.*, Ex. 23. Commissioner O’Neil discussed the process with Mayor de Blasio before deciding to ultimately terminate Pantaleo. *Id.*

Respondent O’Neill, however, has ignored numerous requests from Mrs. Carr and other Petitioners for answers about investigations, disciplinary actions and full accountability related to all police misconduct surrounding the killing of Eric Garner. On August 14, 2019, Mrs. Carr and over sixty national and local organizations and seventeen family members of New Yorkers killed by police signed a letter representing tens of thousands of New Yorkers to “demand full transparency, immediate disciplinary action and full accountability related to all police misconduct surrounding the killing of Eric Garner.” *Id.*, Ex. 17. This request for answers was also ignored.

Former Police Commissioner Bratton also publicly acknowledged his critical decision-making role in investigating the stop, arrest and death of Mr. Garner. During a television interview in December 2014, Commissioner Bratton said that the NYPD would “conduct its own internal inquiry to establish whether the officers involved in the arrest which led to the death of Eric Garner had violated department policies and procedures.” *Id.*, Ex. 12; *see id.*, Ex. 18. He noted that he “will make the final decision in the NYPD,” and is the ultimate decision maker. *Id.*, Ex. 19. Commissioner Bratton said he would review the results of the internal investigation to decide whether officers involved in Mr. Garner’s arrest had violated NYPD policies. *Id.*, Ex. 20.

Further, Commissioner Bratton joined the Mayor’s public statements about the need to reform the NYPD after the killing of Mr. Garner. He spoke of the need to implement extensive retraining and re-equipment plans for the NYPD, including a pilot programs to test the wearing of body cameras. *Id.*, Ex. 12. But similar to the Mayor, Commissioner Bratton has still failed to inform the public and the Garner family about what, if any, investigations were done to determine the scope of the misconduct of NYPD officers and what went wrong, beyond the actions of Mr. Pantaleo.

Since Commissioner Shea took office in December 2019, he has had the power and duty to investigate and discipline police misconduct surrounding the arrest and killing of Eric Garner. On February 21, 2020, Mrs. Carr, Petitioner Elisha Flagg-Garner, as well as Petitioners from Communities United for Police Reform and Justice Committee, met with Commissioner Shea and First Deputy Police Commissioner Benjamin Tucker to seek answers about investigations related to other officers who were

at the scene, in addition to Mr. Pantaleo, and to urge them to discipline those officers. Despite that and other requests for transparency and accountability, Commissioner Shea has still not provided information about investigations into other officers.

As Justice Madden noted, it is unknown what if any investigations were undertaken regarding the conduct of other officers at the scene other than Mr. Pantaleo and their supervising officers, regarding the stop, arrest and use of force; the filing of false police reports and into leaks of sensitive information about Mr. Garner. Order at 34, 37 and 40. It is therefore necessary for these officials to testify at the Section 1109 hearing about their unique knowledge related to these key subject areas of the inquiry.

Finally, it is important not only for the Petitioners but also for the broader community that senior officials who have been the face of the City's response and key decision-makers, be among the witnesses to provide the answers to important questions that have been looming for the past seven years. It has been widely reported by media correctly interpreting Justice Madden's order that senior city officials, including Respondents de Blasio and O'Neill, would be required to testify. Lucas Aff., Ex. 21. To bring about the expected transparency and a modicum of closure, these witnesses should be compelled to appear at the hearing.

Conclusion

Petitioners respectfully request that this Court grant their request to obtain the testimony of senior officials at the upcoming Section 1109 hearing.

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