



POLICE DEPARTMENT

July 3, 2025

Jonathan Darche  
Executive Director  
New York City Civilian Complaint Review Board  
100 Church Street, 10<sup>th</sup> floor  
New York, NY 10007

Re: CCRB Case No. 202007674 (Incident Date: October 17, 2019) involving Lieutenant Jonathan Rivera, Tax No. 949550 (DADS No. 2023-28440)

Dear Mr. Darche:

Please see the attached decision from the Police Commissioner.

Sincerely,

*NSP*  
For Michael Baker  
Assistant Chief  
Commanding Officer  
Police Commissioner's Office

cc: Karasyk & Moschella, Esqs.

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In the Matter of the Disciplinary Proceedings	:	
	:	
-against-	:	Case No. 2023-28440
	:	
Lieutenant Jonathan Rivera	:	Decision of the Police Commissioner
	:	
Tax Registry No. 949550	:	July 3, 2025
Bronx Auto Larceny Unit	:	
	:	
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## I. Introduction

On October 17, 2019, Lieutenant Jonathan Rivera, Respondent in this disciplinary matter, shot and killed Mr. Allan Feliz during a car stop. The death of Mr. Feliz was a tragedy, and I extend my deepest condolences to Mr. Feliz’s family and friends for their loss. As Police Commissioner, I am responsible for making the final disciplinary determination in this matter. The dispositive legal question before me is whether the shooting was justified because Respondent reasonably believed that his use of deadly force against Mr. Feliz was necessary to prevent the imminent use of deadly physical force against another person.

The Office of New York State Attorney General Letitia James conducted an exhaustive review of this incident and declined to prosecute Respondent. A prosecutor’s office must prove its case beyond a reasonable doubt, a far higher standard than the preponderance of the evidence standard in a Department disciplinary proceeding. But the Attorney General did not rest her decision to decline prosecution on the high burden of proof in a criminal case. She went much further, explaining that in her view the evidence “strongly suggests” that Respondent’s decision to shoot Mr. Feliz was justified under New York law. (CCRB Ex. 6, New York State Office of the Attorney General, Report on the Investigation into The Death of Allan Feliz (“AG Report”) at 9). The Attorney General concluded that “[t]here is no obvious reason to doubt” that Respondent discharged his firearm because he believed that doing so was necessary to save the life of his fellow officer and that “the totality of the evidence strongly suggests that [Respondent’s] belief was reasonable.” (AG Report at 9).

By contrast, the CCRB substantiated charges against Respondent in the instant matter and he proceeded to trial before the Department’s Deputy Commissioner of Trials. As a matter of state law, because the CCRB did not preserve the statute of limitations against Respondent he cannot be subject to discipline for a violation of Department rules. Rather, he can only be disciplined for conduct that would have constituted a crime under New York law. Following trial, the Deputy Commissioner—applying the very same New York law as the Attorney General—found that the shooting was not justified. (Opinion of the Deputy Commissioner of Trials, Disciplinary Case No. 2023-28440 (March 5, 2025) (“DCT Op.”)).

I thus have before me diametrically opposing views of Respondent's conduct as measured against New York criminal law. For the reasons set forth below, I agree with the Attorney General's analysis and find that Respondent's shooting of Mr. Feliz was justified.

## **II. Factual Background**

A detailed description of the facts in this matter may be found both in the Opinion of the Deputy Commissioner of Trials and the Report of the New York State Office of the Attorney General. I offer a condensed description of the facts as relevant to the analysis that follows.

On the afternoon of October 17, 2019, Mr. Feliz was driving a car on 211th Street in the Bronx, with another individual in the front passenger seat. Police Officer Edward Barrett, Police Officer Michelle Almanzar, and Respondent were all in uniform in a marked patrol car and conducted a traffic stop of Mr. Feliz's vehicle after Officer Barrett observed that Mr. Feliz was not wearing a seatbelt. All three officers activated their body-worn cameras. Officer Barrett and Officer Almanzar approached the front driver side of the car, while Respondent went to the front passenger door. The officers engaged in respectful conversation with Mr. Feliz and the passenger. (DCT Op. at 7-8; Tr. 75). Unbeknownst to the officers, Mr. Feliz was on federal supervised release and was in possession of cocaine and methamphetamine. (Respondent Ex. R; CCRB Ex. 7 at 17-18). Mr. Feliz identified himself as his brother, Sammy Feliz, and gave the officers a driver's license that in fact belonged to his brother. The officers ran the name on the driver's license and discovered that Sammy Feliz had multiple open warrants. The officers, believing that Mr. Feliz was Sammy Feliz, had probable cause to arrest Mr. Feliz on those warrants. (DCT Op. at 5-8).

At the instruction of the officers, Mr. Feliz was standing outside the car. But when it became clear that the officers were going to pat him down, Mr. Feliz quickly stepped back into the driver's seat and began to pull the door closed. Mr. Feliz grabbed the steering wheel and reached for the gearshift in an effort to put the car into drive and escape. (Tr. 158-159; 176-177). Officer Barrett, standing between Mr. Feliz and the open driver-side door, grabbed Mr. Feliz and tried to pull him out of the vehicle, as Officer Almanzar yelled, "What are you doing?" and "Put it in park, put it in park, put it in park." (DCT Op. at 8; CCRB Ex. 3 at 2:46-2:49). Meanwhile, Respondent discharged his Taser at Mr. Feliz from the open passenger-side window, yelling to Officer Barrett and Officer Almanzar, "Pull him out. Pull him out." (DCT Op. at 9). While the Taser prongs struck Mr. Feliz, they failed to incapacitate him, and Mr. Feliz grabbed the steering wheel with his left hand and the gearshift with his right hand. Officer Barrett repeatedly yelled at Mr. Feliz to get out of the car, as he punched and grappled with Mr. Feliz and unsuccessfully tried to pull Mr. Feliz, who weighed approximately 240 pounds, from the vehicle. (DCT Op. at 9). At the same time, Respondent entered the passenger side of the vehicle and climbed onto the passenger. Respondent drew his firearm and pointed it at Mr. Feliz, yelling, "Yo, if I have to fucking end up shooting you, bro . . . Yo, boss, I'm going to fucking shoot you." (CCRB Ex. 1 at 2:58-3:05). Mr. Feliz, undeterred, continued trying to put the car into drive. Respondent put his

firearm back in his holster. Climbing fully across the passenger, Respondent repeatedly hit Mr. Feliz and tried to push him out of the car. He also used his Taser to strike Mr. Feliz. (DCT Op. at 9-10).

Throughout this struggle, which lasted for approximately 90 seconds, Respondent and Mr. Feliz were fighting for control of the gearshift, with Mr. Feliz trying to put the car into drive and Respondent trying to keep the gearshift in park. Officer Barrett was standing between the open driver-side door and the car, grappling with Mr. Feliz. Officer Almanzar was yelling at Mr. Feliz to get out of the car and calling to Respondent to get the gearshift in park. (DCT Op. at 9-10; AG Report at 5; CCRB Ex. 3 at 3:30-3:50; Tr. 230-231).

Suddenly, the car surged forward several feet, as Officer Barrett continued struggling with Mr. Feliz. Then the car abruptly accelerated backward several feet. Officer Almanzar cried out “Oh my god” as Officer Barrett was pushed by the driver-side door to the rear of the car. (CCRB Ex. 3 at 4:08-4:10; CCRB Ex. 4 at 00:14-00:16; Tr. 146-147, 178-180). The car suddenly stopped, and the driver-side door slammed shut. At that moment, Respondent took out his firearm and shot Mr. Feliz once in the chest. Officer Barrett rushed back to the driver-side window as the gunshot went off. (DCT Op. at 10-11; AG Report at 6; CCRB Ex. 3 at 4:10-4:12; CCRB Ex. 4 at 00:17-00:21). The officers removed Mr. Feliz from the car. Respondent immediately called for an ambulance and began performing CPR. Members of EMS arrived on the scene and transported Mr. Feliz to Montefiore Hospital. He was pronounced dead shortly thereafter. (DCT Op. at 10-11).

Respondent has stated on multiple occasions that, after the car lurched backward and the door slammed shut, he could no longer see Officer Barrett. Given where Officer Barrett had been standing a moment earlier, Respondent believed that Officer Barrett had been hit by the driver-side door and had fallen to the ground, beneath the wheels of the car. Respondent believed that any further movement of the vehicle would have resulted in Officer Barrett being crushed under the car. Respondent has explained that he shot Mr. Feliz to stop the car from moving and thereby save Officer Barrett’s life. (Tr. 93-94; Tr. 231-232; AG Report at 7; CCRB Ex. 7 at 22).

### **III. Procedural History**

The Department first released segments of body-worn-camera footage to the public on January 24, 2020. The Attorney General completed her investigation and released her report explaining her decision not to prosecute Respondent on September 20, 2020. That investigation included a review of, among other things, body-worn-camera footage from all officers involved in the incident; Department paperwork and radio communications; inspection of the car driven by Mr. Feliz; interviews of the officers involved, including Respondent; an interview of the passenger in the vehicle; and medical records and the autopsy report for Mr. Feliz. (AG Report at 1). The Department’s Force Investigation Division (“FID”) completed its report on June 11, 2021, finding that Respondent’s use of force was consistent with Department policy. (CCRB Ex. 7). That report was delivered to the Department’s Force Review Board, which convened in

July 2021 and found that the discharge was within Department use-of-force guidelines. On August 9, 2021, then-Commissioner Dermot Shea adopted the finding of the Board. (DCT Op. at 3; Respondent Ex. Q).

The statute of limitations for violations of Department policy is typically 18 months; because of the COVID pandemic the statute of limitations was extended an additional seven-and-a-half months. That extended statute of limitations expired on December 2, 2021. The Force Investigation Division provided its file to the CCRB on December 8, 2021, and the Department provided additional body-worn-camera footage to the CCRB on May 10, 2022. The CCRB Board voted to substantiate charges against Respondent on May 10, 2023, and Respondent was served with charges on June 4, 2024, over 30 months after the expiration of the already-extended statute of limitations and almost five years after Mr. Feliz was killed. (DCT Op. at 3).

The Department is far from blameless in this regard. The Department provided the FID file to the CCRB after the statute of limitations had already run. That was wrong. A subsequent memorandum of understanding between the Department and the CCRB, executed in December 2023, provides that in FID cases the Department will provide the relevant materials to the CCRB within 90 days of the CCRB's request. The framework in that memorandum of understanding will prevent a delay of the sort that occurred here and will ensure that FID materials are provided to the CCRB in a timely manner.

That said, the CCRB could easily have brought charges against Respondent within the statute of limitations. The Attorney General's Report was released in September 2020, approximately 15 months before the statute of limitations expired. That report contained extremely detailed information about what had transpired, Respondent's account of his actions, and links to the key footage in this matter. (AG Report at 4 n.3, 6 n.12). Put simply, the main evidence relied upon by the CCRB was available to the CCRB approximately 15 months before the expiration of the statute of limitations. The CCRB could have brought charges to preserve the statute of limitations and then amended the pleadings if additional information became available. (DCT Op. at 3 n.5). The CCRB chose not to do so. And then, even after receiving the FID file, the CCRB took another 17 months to vote to substantiate charges.

Under New York State Civil Service Law § 75, once the statute of limitations had expired Respondent could only face discipline for conduct that would otherwise constitute a crime—what is known as the “criminal exception” to the statute of limitations in disciplinary proceedings. The CCRB substantiated charges against Respondent for Assault in the First Degree, in violation of New York Penal Law § 120.10(1) (Specification 1) and Menacing in the Second Degree, in violation of Penal Law § 120.14(1) (Specification 2).

Respondent appeared for trial before the Deputy Commissioner of Trials on November 12, 2024 and November 13, 2024. The Deputy Commissioner heard testimony from several witnesses, including Respondent. The Deputy Commissioner subsequently issued a written decision finding Respondent guilty of Specification 1 and recommending that he be terminated

from the Department. The Deputy Commissioner dismissed Specification 2 because the CCRB had failed to meet its burden of proving the elements of the crime by a preponderance of the evidence.

I agree with the Deputy Commissioner that the CCRB failed to prove the menacing charge in Specification 2. Respondent is not guilty of that charge, substantially for the reasons stated in the Deputy Commissioner's opinion. (DCT Op. at 29). For the reasons discussed below, I believe that the CCRB also failed to meet its burden as to Specification 1, and therefore Respondent is not guilty of that charge as well.

#### **IV. Discussion**

The relevant New York State statutes and caselaw are cited and described in detail in the Opinion of the Deputy Commissioner of Trials and the Report of the New York State Office of the Attorney General. I rely on those authorities in my analysis here.

There is no dispute that Respondent shot and killed Mr. Feliz. The question is whether, as a matter of New York law, the shooting was justified. Under New York Penal Law § 35.30, a police officer may use deadly physical force if (1) the officer reasonably believes that a person has committed an offense; (2) the officer is attempting to arrest that person; and (3) the officer reasonably believes that the use of deadly force is necessary to defend himself or another person from what the officer reasonably believes to be the use or imminent use of deadly physical force. The burden was on the CCRB, as the prosecuting agency, to disprove the applicability of the justification defense by a preponderance of the evidence.

Respondent reasonably believed that Mr. Feliz had multiple active warrants and was subject to arrest, and Mr. Feliz plainly committed the offense of resisting arrest as the officers tried to take him into custody. Indeed, the CCRB's expert testified that the officers had probable cause to arrest Mr. Feliz and that he resisted arrest (Tr. 74, 79). What is in dispute is the third prong of the test: whether Respondent reasonably believed that the use of deadly force against Mr. Feliz was necessary to save Officer Barrett. This question has a subjective component (did Respondent have this belief) and an objective component (was this belief reasonable). Like the Attorney General and the Deputy Commissioner of Trials, I will consider each of these matters in turn.

##### **a. Subjective Test**

Respondent argues that he shot Mr. Feliz to save Officer Barrett from the imminent danger of being crushed under the car, and the Attorney General concluded that "[t]here is no obvious reason to doubt that [Respondent] actually believed what he claimed to have believed." (AG Report at 9). I agree. Indeed, looking at the totality of what transpired during the car stop and subsequent struggle, I am convinced that Respondent shot Mr. Feliz because he believed that doing so was necessary to save Officer Barrett's life. This is true for several reasons.

To begin, the record of what transpired demonstrates that Respondent did not want to shoot Mr. Feliz. Over the course of the fight inside the car, with the engine on, with Officer Barrett standing between the open car door and the vehicle grappling with Mr. Feliz, as Mr. Feliz refused to yield and struggled with Respondent over the gearshift, there is no question that Officer Barrett's safety, and Respondent's safety, were at risk. The officers' repeated commands to Mr. Feliz were to no avail. Respondent repeatedly sought to mitigate the threat without using lethal force. He deployed his Taser at Mr. Feliz; he pulled out his firearm and threatened to shoot Mr. Feliz; he hit Mr. Feliz; he used his Taser to strike Mr. Feliz. There is nothing about this sequence of events that remotely suggests that Respondent was looking to discharge his firearm.

It is particularly telling that after Respondent drew his firearm and threatened to shoot Mr. Feliz, Respondent *reholstered his firearm*. Respondent seemed determined not to shoot. Even when the car lurched forward—increasing the risk that the car would continue to accelerate and that Respondent, with his body extended into the car, would be dragged with it, putting Respondent in severe jeopardy—he still did not discharge his firearm.

After all this, Respondent only resorted to lethal force when the car lurched backward. What had changed? The answer is obvious: In that moment, Respondent believed that Officer Barrett was under the car and was going to be killed if the car moved again.

To the extent the suggestion is that Respondent was generally impatient or was otherwise quick on the draw, everything that had transpired until that point is to the contrary. And if the suggestion is that Respondent just happened to run out of patience at the exact moment when the car lurched back and Officer Barrett was knocked out of view, that is a completely implausible coincidence. Given the timeline of what transpired, by far the most plausible reason that Respondent discharged his firearm was because he believed that doing so was necessary to save Officer Barrett's life.

That is my view, consistent with the determination by the Attorney General. The Deputy Commissioner of Trials took a different view. There are several reasons why she believed that Respondent did not discharge his firearm in order to save Officer Barrett's life. I do not find those reasons compelling.

First, the Deputy Commissioner focused on Respondent's statements and conduct immediately after the shooting, and was troubled by the fact that Respondent did not inquire concerning Officer Barrett's safety. (DCT Op. at 18). But immediately after discharging his firearm, Respondent saw that Officer Barrett was safe and upright next to the car; there was no need for him to inquire. More fundamentally, in the midst of a terrifying struggle, Respondent had just shot Mr. Feliz, and together with his fellow officers was trying to perform life-saving measures. I do not think anyone can make assumptions about Respondent's state of mind in the aftermath of the shooting, let alone assumptions about what he should have said or done.

Second, as members of EMS were treating Mr. Feliz, Respondent was speaking to Officer Almanzar and said, in relevant part, that “[t]he engine was on, man. I was fighting. My hand was getting tired.” (CCRB Ex. 3 at 7:52-8:03). From this the Deputy Commissioner concludes that Respondent did not shoot Mr. Feliz because he feared for Officer Barrett’s life, but because Respondent’s hand was “tired.” (DCT Op. at 19). I understand Respondent’s statement very differently: This was an incredibly dangerous situation, and yes, what made it so frightening was that with the engine on and Respondent fighting with Mr. Feliz to put the car into park, Respondent’s hand was getting tired—if Mr. Feliz successfully overpowered him for control of the gearshift, both Officer Barrett and Respondent were in grave danger. We *know* that Respondent did not use lethal force simply because his hand was getting tired; he only did so when the car lurched backward, the driver-side door pushed Officer Barrett back and he disappeared from Respondent’s view. It is only then—when the apparent risk to Officer Barrett had gone up exponentially—that Respondent used lethal force.

Third, the Deputy Commissioner was troubled by Respondent’s testimony that when he said that his hand was getting tired, he was referring to his hand being tired from administering CPR. (DCT Op. at 19-20; Tr. 304). I agree with the Deputy Commissioner that, given the context in which the statement was made, Respondent was clearly referring to his struggle in the car, not to administering CPR. But here is the problem: Respondent was testifying about statements that he made *five years earlier*. To the extent that he did not accurately remember what he meant, that is hardly shocking. And in any event, the issue is not what Respondent meant when he referred to his hand being tired. What matters is why he shot Mr. Feliz. In my view, the answer to that question is clear.

Finally, the Deputy Commissioner was concerned that, earlier in the encounter, Respondent had drawn his firearm and threatened to shoot Mr. Feliz. The Deputy Commissioner notes that “it was only when P.O. Barrett was no longer at the door assisting with the extraction, that [Respondent] followed through on his threat.” (DCT Op. at 21). That is correct, but as discussed above, this demonstrates that Respondent was not prepared to fire because he and Officer Barrett were at risk. He only fired once he believed that Officer Barrett’s life was in imminent danger.

## **b. Objective Test**

Even if Respondent believed that lethal force was necessary to save Officer Barrett’s life, his actions are only justified if that belief was reasonable. It was. Given what had just transpired—the car lurching backward, Officer Barrett being pushed away from the vehicle, and then falling out of view—it was reasonable for Respondent to believe that Officer Barrett had been hit by the car door and had fallen under the car. And given Mr. Feliz’s repeated, unyielding efforts to move the gearshift into drive despite all efforts by the officers, it was reasonable for Respondent to believe that Mr. Feliz would continue to do so, putting Officer Barrett’s life in immediate peril. The analysis by the Attorney General is worth quoting at length:

Furthermore, the totality of the evidence strongly suggests that [Respondent's] belief was reasonable. There is, after all, little question that when Mr. Feliz's vehicle surged backwards for the last time, PO Barrett . . . did have to spin abruptly away from the vehicle to avoid being struck by the door, with the door slamming shut immediately thereafter. . . .

Because this evidence indicates that [Respondent's] line of sight would have been at least somewhat compromised by his awkward position and that his attention was necessarily focused on Mr. Feliz, it is entirely plausible that he indeed lost sight of PO Barrett altogether at the moment the vehicle surged backward. And given where PO Barrett had been standing immediately before that backwards surge, it is likewise plausible that his abrupt disappearance from [Respondent's] line of sight would have led [Respondent] to believe that PO Barrett had been struck by the door and was now on the ground beneath the vehicle's wheels. And in light of the considerable evidence that Mr. Feliz had tried repeatedly, from the moment he had jumped back into the vehicle, to put the gearshift into drive and drive away, it would hardly have been unreasonable for [Respondent] to have concluded that, if Mr. Feliz were not instantly prevented from moving the vehicle, the risk of imminent death or serious injury to PO Barrett was substantial.

(AG Report at 9-10).

Again, the Deputy Commissioner has a different view. She emphasizes that Respondent did not hear a bump or scream suggesting that Officer Barrett had fallen to the ground, and that Respondent did not call out or look up to try to determine where Officer Barrett was. She therefore concludes that the risk to Officer Barrett was too speculative. (DCT Op. at 23-25). But this does not account for the circumstances at hand. Respondent and Mr. Feliz were engaged in an intense physical struggle. Respondent was not in a position to call a time-out and scour the driver side of the car to figure out where Officer Barrett was positioned. When Respondent testified that "I'm not going to yell and scream—and wait for a response when I had to move quickly and act quickly," the Deputy Commissioner took that as "flippant and dismissive." (Tr. 283-284; DCT Op. at 25). I do not view it as flippant or dismissive at all. I see that as a fair and realistic assessment of an incredibly fast-moving, dangerous situation, in which Respondent was required to make a split-second decision when he believed that his fellow officer's life was at immediate risk. Reasonableness must be assessed in context, and the context speaks to the reasonableness of Respondent's belief.

According to the Deputy Commissioner, Respondent's testimony on cross-examination regarding whether Officer Barrett was visible in the driver-side window when Respondent discharged his firearm undercuts Respondent's reasonableness. (DCT Op. at 25-26). The Deputy Commissioner understood Respondent to have suggested that as he fired and Officer Barrett reemerged at the front of the car, Respondent's view of Officer Barrett was blocked by the pillar

between the car doors. But that was not Respondent's testimony. While there was a back-and-forth on cross-examination as to whether Officer Barrett was at the pillar or at the driver-side window when the shot went off, Respondent did not testify that the pillar was somehow obstructing his view. Respondent has been consistent: Officer Barrett was by the driver-side door fighting with Mr. Feliz in view of Respondent; when the car surged backward and the car door slammed shut, Respondent looked and saw that Officer Barrett was no longer at the driver-side window, leading Respondent to believe that Officer Barrett had been knocked under the car by the door; Respondent shot Mr. Feliz because he believed this was necessary to save Officer Barrett; and immediately after he fired he saw Officer Barrett reappear at the driver-side door, once again in Respondent's line of sight. (Tr. 231-232). Respondent's testimony on cross-examination that after the car accelerated backwards he "did look" and was not able to see Officer Barrett "at the time" seems once again consistent with that account. (Tr. 285-286). To the extent there was confusion in the record on cross-examination because no one clarified at what precise moment Respondent looked and could not see Officer Barrett, this is no more and no less than the sometimes messiness of testimony at trial. It does not call into question the reasonableness of Respondent's actions.

The Deputy Commissioner also argues that Respondent was unreasonable because he disregarded the Patrol Guide prohibition against discharging firearms at or from a moving vehicle. (DCT Op. at 27-28). As the Deputy Commissioner acknowledges, the facts here are far from the scenario that comes to mind when considering that Department rule. More fundamentally, I do not see how the Deputy Commissioner would apply that rule in this situation. Yes, when a car is careening towards an officer, the officer is to jump out of the way rather than fire at the car. Here, Respondent believed that Officer Barrett was under the car. Jumping out of the way was not an option. And Respondent did not shoot at a moving vehicle. Respondent was in the vehicle, struggling with Mr. Feliz. The policy raised by the Deputy Commissioner has no application here. Indeed, CCRB's own expert acknowledged as much. (Tr. 124-125).

Last, the Deputy Commissioner suggests that Respondent "bears some responsibility" for placing himself inside the car, thereby obscuring his view of what was happening to the other officers. (DCT Op. at 28). I agree that Respondent put himself at a tactical disadvantage by placing his body inside the car. But that cannot preclude him from acting to save another officer's life. Put another way, it would be perverse to suggest that Respondent could not act to save Officer Barrett from Mr. Feliz because Respondent had previously made a tactical mistake.

## **V. Conclusion**

For the foregoing reasons, Respondent prevails on his justification defense and is not guilty of Specification 1. For the reasons set forth by the Deputy Commissioner, he is not guilty of Specification 2.