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VIA U.S. MAIL AND ELECTRONIC SUBMISSION TRACKING NUMBER 822846-BQW

Harmeet K. Dhillon
Assistant Attorney General
Civil Rights Division
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Office of the Assistant Attorney General, Main
Washington, D.C. 20530

Re: Complaint and Request for Investigation of Potential Civil Rights Violations Arising from the Prosecution of Former NYPD Officer Omar Habib and Enforcement of New York City Administrative Code § 10-181

Dear Assistant Attorney General Dhillon:

The National Police Association ("NPA") respectfully requests that the Civil Rights Division of the United States Department of Justice open an investigation into potential violations of the federal constitutional rights of former New York City Police Department Officer **Omar Habib**, arising from his prosecution and conviction in Bronx County and the application to him of New York City Administrative Code § 10-181, commonly known as New York City's "Anti-Chokehold Act."

This request is not intended to ask the Department to substitute its judgment for a state jury on disputed questions of fact. Rather, the NPA asks the Department to examine whether New York City and Bronx County officials subjected a police officer performing an arrest to a criminal regime that, as applied, deprived him of fair notice, imposed criminal liability without an adequate culpable mental state, failed to provide constitutionally sufficient protection for justified police use of force, or was enforced arbitrarily or selectively.

The circumstances warrant federal scrutiny.

I. Background

On or about July 29, 2023, Officer Habib responded to an incident involving an intoxicated and disorderly individual who refused to submit to arrest. During the ensuing physical struggle, Habib used force to restrain the individual.

More than a year later, on August 8, 2024, Habib was indicted. On August 13, 2026, a Bronx County jury convicted him of second-degree strangulation, third-degree assault, and violating New York City Administrative Code § 10-181. Habib was thereafter taken into custody and confined at Rikers Island.

The prosecution is particularly significant because Habib was the first NYPD officer prosecuted in Bronx County under § 10-181, an ordinance enacted in 2020 amid the political reaction to the death of George Floyd.

Section 10-181 makes it a crime to restrain an individual in a manner restricting airflow or blood flow through specified forms of compression. Unlike traditional criminal offenses governing strangulation and assault, the local ordinance does not expressly state a culpable mental state with respect to the prohibited physiological effect.

The resulting constitutional problem is substantial when the law is applied to a police officer who is legally authorized and sometimes required to use physical force against a person resisting a lawful arrest.

II. The Absence of a Clearly Defined Culpable Mental State Warrants Federal Review

The Fourteenth Amendment's Due Process Clause protects individuals against criminal punishment without fair notice of what conduct constitutes a crime.

That protection assumes particular importance when a statute criminalizes conduct that may otherwise be lawful.

Police officers routinely must place their hands, arms, knees, and bodies against resisting persons. During rapidly developing encounters, officers must make immediate judgments concerning the degree of force necessary to obtain control. Physical pressure inherent in such struggles can affect an arrestee's breathing without the officer intending that consequence—or even knowing that it is occurring.

Section 10-181 nevertheless contains no express requirement that an officer intend to restrict breathing or blood flow.

Indeed, when the New York Court of Appeals upheld the ordinance against a facial challenge in *Police Benevolent Association of the City of New York, Inc. v. City of New York*, 40 N.Y.3d 417 (2023), the court specifically observed that a § 10-181 violation does not require the specific intent required by certain state strangulation offenses.

The NPA respectfully requests that the Department investigate whether application of such a criminal prohibition to Officer Habib, under the jury instructions and theory of prosecution actually employed at his trial, satisfied federal due-process requirements concerning culpability and fair notice.

The constitutional issue is not whether New York City may regulate police tactics. It plainly may. The issue is whether government may transform a police officer's split-second physical actions

during a forcible arrest into a crime carrying incarceration without requiring proof that the officer possessed a constitutionally adequate culpable mental state concerning the conduct that made the restraint criminal.

III. The Department Should Examine Whether § 10-181 Was Unconstitutionally Vague as Applied to Habib

The NPA recognizes that the New York Court of Appeals rejected a facial vagueness challenge to portions of § 10-181 in *PBA v. City of New York*.

That does not answer the materially different question presented by Habib's criminal prosecution.

A pre-enforcement facial challenge considers the statutory language in the abstract. Habib's case supplies an actual prosecution, an actual trial record, actual jury instructions, and an actual deprivation of liberty.

The relevant federal question is therefore whether the law gave **this defendant**, under **these circumstances**, constitutionally adequate notice of the point at which physical restraint of a resisting arrestee ceased to constitute lawful police force and became a crime.

The Department should examine whether § 10-181, as charged and applied, provided an objectively ascertainable boundary between permissible restraint and criminal restraint sufficient to satisfy the Due Process Clause.

IV. The Availability and Treatment of the Police Justification Defense Require Particular Scrutiny

The New York Court of Appeals' decision upholding § 10-181 contains an important limitation that should be central to the Department's review.

In rejecting the argument that § 10-181 impermissibly conflicted with New York's statewide law governing police use of force, the Court of Appeals emphasized that the justification defenses contained in Article 35 of the New York Penal Law remained available to officers prosecuted under the ordinance.

That premise matters.

New York law recognizes that police officers are sometimes authorized to employ physical force that would constitute a criminal offense if performed by an ordinary citizen without legal justification.

Accordingly, the NPA asks the Department to obtain and examine the complete trial record, including the charge conference, proposed instructions, final jury instructions, verdict sheet, defense motions, prosecution arguments, and rulings concerning justification, to determine whether Habib actually received the meaningful protection that the New York Court of Appeals understood to remain available when it sustained the ordinance.

If § 10-181 was upheld on the premise that ordinary police justification principles remain available, but Habib was effectively convicted without the jury being permitted to give those principles their full legal effect, serious due-process concerns would arise.

V. The Enforcement History of § 10-181 Should Be Investigated for Arbitrary or Selective Application

The Department should also examine how New York City has actually enforced § 10-181 since its enactment in 2020.

Vagueness doctrine protects not only against inadequate notice but also against criminal laws that permit arbitrary or discriminatory enforcement.

Habib's prosecution presents an opportunity unavailable when the ordinance was challenged shortly after enactment: approximately six years of actual enforcement history now exists.

The NPA therefore respectfully requests that DOJ obtain and analyze records concerning:

1. NYPD incidents since July 2020 involving allegations of chokeholds, neck restraints, carotid restraints, airway restriction, loss of consciousness, or similar restraints;
2. referrals of such incidents for prosecution under § 10-181;
3. prosecutorial declinations involving comparable conduct;
4. prosecutions brought under § 10-181;
5. CCRB findings involving prohibited chokeholds or similar restraints;
6. NYPD disciplinary proceedings involving substantially similar conduct;
7. communications between the NYPD, New York City officials, the Bronx District Attorney's Office, and other prosecutorial offices concerning enforcement of § 10-181; and
8. policies, standards, guidance, or charging criteria used to determine when an alleged prohibited restraint warrants administrative discipline and when it warrants criminal prosecution.

If similarly situated officers were treated administratively while Habib was singled out for criminal prosecution, the Department should determine why.

VI. Broader Federal Interest

This matter extends beyond one defendant.

Police officers throughout the United States operate under state and local use-of-force restrictions. Governments unquestionably possess authority to regulate police conduct and prosecute officers who intentionally or recklessly employ unlawful force.

But constitutional protections do not disappear when the criminal defendant wears a badge.

Police officers are entitled to the same Due Process and Equal Protection guarantees as every other person. A municipality cannot enact an indeterminate criminal prohibition and leave individual prosecutors to decide after a violent encounter whether an officer's momentary physical restraint crossed an undefined line into criminal conduct.

Such uncertainty has consequences beyond the individual officer. If police officers reasonably fear that attempting to physically control a combative suspect can result years later in prosecution under an offense lacking a clearly understood culpable mental state, officers may hesitate when decisive action is necessary to protect the public, fellow officers, or themselves.

The Constitution permits vigorous accountability for genuine police misconduct. It does not permit criminal punishment untethered from fair notice, meaningful culpability requirements, neutral enforcement standards, and applicable defenses recognized by law.

VII. Requested Department of Justice Action

For these reasons, the National Police Association respectfully requests that the Civil Rights Division:

First, open a preliminary inquiry into whether the investigation, prosecution, trial, conviction, and continuing detention of Omar Habib implicate rights secured by the United States Constitution or federal law.

Second, obtain and review the complete Habib prosecution record, including grand-jury materials to the extent lawfully obtainable, pretrial motions, trial transcripts, evidentiary rulings, charge conference, jury instructions, verdict sheet, post-verdict motions, and sentencing proceedings.

Third, determine whether the culpable mental state required by the prosecution and jury instructions was constitutionally sufficient when § 10-181 was applied to an officer engaged in a forcible arrest.

Fourth, determine whether Habib received the full benefit of New York's justification law and whether the application of § 10-181 to his conduct comported with the limiting principles identified by the New York Court of Appeals when it upheld the ordinance.

Fifth, investigate the enforcement history of § 10-181 to determine whether materially comparable cases were handled differently and whether the ordinance has produced arbitrary, discriminatory, or selective enforcement.

Sixth, review relevant communications, policies, charging memoranda, referral practices, and enforcement criteria of New York City, the NYPD, and appropriate prosecutorial authorities concerning § 10-181.

Seventh, if the Department determines that federal constitutional rights are implicated, take whatever action falls within its lawful authority, including appropriate investigation, litigation, intervention, statement of interest, participation in subsequent appellate proceedings, or other measures necessary to protect those rights.

The NPA further requests that the Department consider the matter promptly. Habib was remanded following the August 13 verdict and is presently facing the immediate consequences of a criminal conviction while post-verdict proceedings remain ongoing.

VIII. Conclusion

This request presents a straightforward principle: **constitutional protections apply to police officers too.**

The fact that an individual is accused of using excessive force does not diminish his entitlement to due process. Nor does the political controversy surrounding police tactics permit a municipality to impose criminal punishment without sufficiently clear standards, constitutionally adequate culpability, meaningful justification protections, and evenhanded enforcement.

Officer Habib's prosecution provides the first opportunity in Bronx County to observe how New York City's Anti-Chokehold Act operates not as an abstract municipal regulation, but as an instrument capable of taking an officer's liberty.

The National Police Association respectfully asks the Civil Rights Division to determine whether that instrument was constitutionally applied.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Ed Hutchison', followed by a horizontal line.

Ed Hutchison, President
National Police Association