

Eric Sanders

From: EEOC <no-reply@service.eeoc.gov>
Sent: Friday, April 18, 2025 13:46
To: Eric Sanders Esq.; Mr. Frankie F. Palaguachi
Subject: Your Attorney-Submitted Charge of Discrimination Is Signed / El cargo de discriminación presentado por su abogado está firmado



**U.S. Equal Employment Opportunity Commission
New York District Office**

33 Whitehall St 5th Floor New York, NY 10004
(929) 506-5270
Website: www.eeoc.gov

04/18/2025

Mr. Frankie F. Palaguachi
[REDACTED]

Re: Mr. Frankie F. Palaguachi v. The City of New York - Police Department City of New York
EEOC Charge Number: 520-2025-04870

Dear Mr. Frankie F. Palaguachi,

This is to acknowledge receipt of your EEOC charge of discrimination, which has been filed under the following statute(s):

Title VII of the Civil Rights Act of 1964 (Title VII).

We will contact your attorney when we need more information. A notice of the charge will be sent to the organization you filed the charge against within 10 days of today as required by our procedures. Many states, counties, cities, and towns have their own laws prohibiting discrimination and responsible for enforcing those laws. These agencies are referred to as Fair Employment Practices Agencies (FEPAs). Usually, the laws enforced by these agencies are similar to those enforced by the EEOC. If the charge is initially filed with the EEOC and the charge is also covered by state or local law, the EEOC dual files the charge with the state or local FEPA (meaning the FEPA will receive a copy of the charge), but the EEOC typically retains the charge for processing.

Please use the EEOC charge number listed at the top of this email whenever you or your attorney contact us about this charge. Please notify the EEOC's New York District Office of any change to your or your attorney's contact information or if you either of you will ever be unavailable for a long time. Failure to cooperate may lead to dismissal of the charge.

The quickest and most convenient way for your or your attorney to obtain the status of your charge and to submit documents is to use the [EEOC Public Portal](http://www.eeoc.gov/public-portal).

Sincerely,

The Equal Opportunity Employment Commission (EEOC)

Asunto: Mr. Frankie F. Palaguachi v. The City of New York - Police Department City of New York
Número de cargo de la EEOC: 520-2025-04870

Estimado(a) Mr. Frankie F. Palaguachi,

Este documento sirve para confirmar que hemos recibido su cargo de discriminación de la EEOC, que ha sido presentado bajo la(s) siguiente(s) ley(es):

Title VII of the Civil Rights Act of 1964 (Title VII).

Nos pondremos en contacto con su abogado cuando necesitemos más información. Se enviará una notificación del cargo a la organización contra la que presentó el mismo en un plazo de 10 días a partir de hoy, tal como exigen nuestros procedimientos. Muchos estados, condados, ciudades y pueblos tienen sus propias leyes que prohíben la discriminación y son responsables de hacerlas cumplir. Estas agencias se denominan Agencias de Prácticas de Empleo Justas (FEPA, por sus siglas en inglés). Normalmente, las leyes que hacen cumplir estas agencias son similares a las que hace cumplir la EEOC. Si el cargo se presenta inicialmente ante la EEOC y también está cubierto por la legislación estatal o local, la EEOC presenta el cargo ante la FEPA estatal o local (lo que significa que la FEPA recibirá una copia del cargo), pero la EEOC suele conservar el original del cargo para procesarlo.

Utilice el número de cargo de la EEOC que aparece en la parte superior de este correo electrónico siempre que usted o su abogado se pongan en contacto con nosotros en relación con este cargo. Por favor, notifique la New York District Office de la EEOC de cualquier cambio en su información de contacto o en la de su abogado, o si alguno de los dos no va a estar disponible en algún momento durante mucho tiempo. La falta de cooperación puede dar lugar a la desestimación del cargo.

La forma más rápida y cómoda para que usted o su abogado obtengan el estado de su cargo y presenten documentos es utilizar el [Portal público de la EEOC](#).

Sincerely,

The Equal Opportunity Employment Commission (EEOC)

Cc:
Eric Sanders Esq.
The Sanders Firm, P.C.
30 wall street
8th Fl
New York, NY 10005

212-652-2782

<h2 style="margin: 0;">CHARGE OF DISCRIMINATION</h2> <p style="font-size: small; margin: 5px 0;">This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.</p>		Charge Presented To: Agency(ies) Charge No(s): <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div style="text-align: center;"> <input checked="" type="checkbox"/> FEPA <input checked="" type="checkbox"/> EEOC </div> </div>	
New York State Division of Human Rights and EEOC <small>State or local Agency, if any</small>			
Name (indicate Mr., Ms., Mrs.) Mr. Frankie F. Palaguachi		Home Phone (Incl. Area Code) <div style="background-color: black; width: 100px; height: 20px; margin: 5px 0;"></div>	Date of Birth Click here to enter text.
Street Address <div style="background-color: black; width: 300px; height: 30px; margin: 5px 0;"></div>		City, State and ZIP Code	
Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)			
Name The City of New York – Police Department City of New York		No. Employees, Members 500+	Phone No. (Include Area Code) 646-610-5000
Street Address Police Department City of New York Legal Bureau – One Police Plaza New York, N.Y. 10038		City, State and ZIP Code	
Name Psychomedics Corporation		No. Employees, Members 200+	Phone No. (Include Area Code) 800-522-7424
Street Address Corporate Headquarters 5220 Spring Valley Road, Ste 603 Dallas, TX 75254		City, State and ZIP Code	
DISCRIMINATION BASED ON (Check appropriate box(es).) <div style="display: flex; flex-wrap: wrap; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> RACE <input checked="" type="checkbox"/> COLOR <input type="checkbox"/> SEX <input type="checkbox"/> RELIGION <input checked="" type="checkbox"/> NATIONAL ORIGIN <input checked="" type="checkbox"/> RETALIATION <input type="checkbox"/> AGE <input type="checkbox"/> DISABILITY <input type="checkbox"/> GENETIC INFORMATION <input checked="" type="checkbox"/> OTHER (Specify) HOSTILE WORK ENVIRONMENT </div> <div style="width: 45%; text-align: right;"> DATE(S) DISCRIMINATION TOOK PLACE Earliest Latest 02/22/2024 present CONTINUING ACTION </div> </div>			
THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):			
<p>I am a Hispanic male police officer employed with the New York City Police Department (NYPD). On February 22, 2024, following an unscheduled 0555 hours phone call, I was directed by Sgt. Riley to report for a “random” drug screening. I was the only officer present at the Medical Division that morning. Police Officer Tse collected hair from my legs and, after I questioned whether there was sufficient hair in that area, also shaved both arms. The hair fragments were combined and sealed in three vials (Sample A, B, and C), each placed into individual biohazard bags and labeled accordingly. The samples were sent to NYPD’s external drug testing vendor, Psychomedics.</p> <p>Despite no prior warning, no formal notification, and no inclusion on the official Finest Message “random drug test” list, the NYPD proceeded with the test. Days later, I was informed that the results were positive for marijuana. I denied all marijuana use under oath.</p>			
I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures. I declare under penalty of perjury that the above is true and correct.		NOTARY – When necessary for State and Local Agency Requirements <div style="text-align: center; margin-top: 10px;"> I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief. SIGNATURE OF COMPLAINANT WESTCHESTER 028A0013820 SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE (month day year) APRIL 18, 2025 EXP. 09.26.2027 </div>	
4/18/2025 Date		 Charging Party Signature	

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☒ FEPA☒ EEOCNew York State Division of Human Rights

and EEOC

State or local Agency, if any

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

Between March 11 and March 15, 2024, I voluntarily submitted to four independent tests: one body hair analyses, two head hair analysis, and one urine test. All four tests returned negative. I also passed a polygraph examination confirming that I had not used or ingested marijuana, and a toenail test on April 1, 2024, which also came back negative. I requested DNA testing of the original sample to verify whether the hair tested was mine—this request remains unaddressed.

Despite this exculpatory evidence, I was demoted without union representation in violation of my Weingarten rights. My scheduled promotion to sergeant (set for April 2, 2024) was rescinded. I was reassigned to administrative duty while similarly situated officers—including Detective Celestine, who also tested positive—were excused and returned to full duty without formal charges or trial. Det. Celestine explained that his positive result was due to secondhand exposure while sleeping near a partner who smoked marijuana.

I submitted a FOIL request on March 14, 2025 (FOIL 2025-056-08810), requesting the unredacted February 2024 Finest Message list. My name appeared on a different page number than others, suggesting the list had been altered. The department has publicly released similar lists in the past, so privacy is not a valid reason to withhold it. I also requested the original daily list that allegedly generated my test selection, as well as the transfer records for Sample C to determine why it was sent to the same lab rather than an independent one, as required by NYPD policy and SAMHSA protocols.

On April 2, 2025, I reviewed both the NYPD litigation packet and my independent Psychomedics test results. I discovered that the NYPD uses a different test panel than is used for private clients. According to Psychomedics Worklist SC_2024.02.27_002, a double cutoff was used for both Screen O (opiates) and Screen T (THC). Specifically, for THC: CutOff 1 was 5.0 pg/10mg and CutOff 2 was 2.0 pg/10mg. These low thresholds—combined with lack of chain-of-custody documentation—substantially increase the risk of a false positive, especially for marijuana, which is prone to passive exposure and environmental contamination.

This test occurred after four unsuccessful notification attempts (2/12, 2/19, 2/20, and 2/22), including attempts on my regular day off—contrary to the NYPD Administrative Guide. On March 7, 2024, while preparing to perform a paid detail, I received a call from Inspector Gottesman instructing me to report to 315 Hudson Street immediately. There, Group 12 informed me of the positive result. I was interviewed under AG 318-11 and suspended.

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

4/18/2025

Date

Charging Party Signature

NOTARY – When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

WESTCHESTER 025A0013820
APRIL 18, 2025 EXP. 09.26.2027

Department Advocate Daniel Maurer rejected all four independent lab results, stating they “don’t mean nothing.” He insisted the samples be tested under a “Zero-LOD” standard, which no lab uses for negative samples. When I offered to send the results for retesting, LabCorp confirmed no such standard exists. Mr. Maurer took no further action on my independent evidence

On March 18, 2024, I reported to the Medical Division for the Sample C process. Sgt. Riley retrieved Sample C from a secure location, had me complete a money order, and escorted me outside to deposit the sample into a FedEx drop box. On March 27, 2024, I was informed that Sample C had also tested positive.

I formally requested DNA testing on June 7, 2024. Just two days later, on June 10, I was directed to report to 375 Pearl Street. There, without union representation, I was informed by Deputy Inspector Calabro and Lieutenant Brown that Police Commissioner Edward Caban had demoted me from Detective to Police Officer. One week later, on June 17, 2024, Lt. SaintRobert—who had over a decade of service in the Drug Screening Unit—was abruptly transferred. These events followed directly after my request for DNA testing, raising serious concerns about retaliation and concealment.

I later learned from my ICO that the NYPD’s random drug test list is generated by the Information Technology Bureau (ITB) and sent to the Medical Division in a sealed envelope. My name was not on any of the random lists circulated that day. Officers who test positive under true “random” conditions are typically included in those lists. In my case, Sgt. Riley eventually produced a revised version on October 29, 2024, which included my name on a different page. That list showed signs of tampering: names such as PO Pillai, Lt. Reda, and Det. Piperburgh appear inconsistently, while a PBBS assignment I never held was falsely attributed to me.

On December 26, 2024, I filed IAB log #2024-37668 to investigate these irregularities. On February 3, 2025, IAB Sgt. Vazquez stated he had forwarded materials to attorney James Moschella and would investigate inconsistencies in the use of Social Security numbers and test list versions. A redacted version of the list isolating my name was later provided, and no further action has been taken.

Nine months have passed since my DNA request, and neither the Medical Division nor the Advocate’s Office has taken steps to honor it. Meanwhile, I discovered that records related to PO Nazaire—another officer terminated for marijuana and also excluded from the random list—were removed from the NYPD trial decision library. This erasure prevents similarly situated officers from mounting legal defenses or identifying comparators.

My litigation packet from Psychemedics lacked the Chain of Custody documentation for NYPD’s 384-well plate. My private test results included this report. Further review showed that the certifying scientist, Matthew Coy, signed off on both my NYPD and independent tests as “negative,” yet the NYPD proceeded with a confirmation result of 5.1 pg/mg—well below the 10 pg/mg screening threshold—raising additional doubts about test integrity.

Finally, the NYPD continues to test for marijuana in apparent violation of the Marijuana Regulation and Taxation Act (MRTA), despite guidance from the NYC Law Department advising city agencies to cease such testing. The DEA has requested clarification, but none has been provided. I shared all these concerns with both Mr. Maurer and Chief Surgeon Dr. Kleinman. Both were fully aware of the inconsistencies, yet discipline proceeded based on a scientifically flawed and procedurally improper drug test.

I. The Uniform Guidelines on Employee Selection Procedures and Their Application to Employment Testing

In 1971, the United States Supreme Court decided *Griggs v. Duke Power Co.*, 401 U.S. 424, establishing the principle that under Title VII of the Civil Rights Act of 1964, an employment practice that is facially neutral but disproportionately excludes members of a protected class may violate the law unless the employer can demonstrate that the practice is job-related and consistent with business necessity. This doctrine of disparate impact liability became a central feature of Title VII enforcement.

In response, the federal government promulgated the Uniform Guidelines on Employee Selection Procedures (UGESP) to assist employers in complying with Title VII. These Guidelines were issued jointly by the Equal Employment Opportunity Commission (EEOC), the U.S. Civil Service Commission, the U.S. Department of Labor, and the U.S. Department of Justice, and are codified at 29 C.F.R. Part 1607.

The UGESP apply to any selection procedure used to make employment decisions—including hiring, promotion, assignment, discipline, demotion, retention, and termination—when those procedures may result in an adverse impact on individuals based on race, color, national origin, or other protected characteristics. The Guidelines are also applicable to employment tests and procedures used for current employees, including drug and alcohol screening, when such procedures form the basis for disciplinary action or other employment consequences.

Among the UGESP's core provisions are the following:

- 29 C.F.R. § 1607.3(A) – The Guidelines apply to all selection procedures used to make employment decisions.
- 29 C.F.R. § 1607.3(B) – If a selection procedure causes adverse impact, the employer must demonstrate that the procedure is job-related for the position in question and consistent with business necessity.
- 29 C.F.R. § 1607.4(D) – Employers must maintain records on the impact of selection procedures by race, sex, and ethnic group to allow for an assessment of whether adverse impact exists.
- 29 C.F.R. § 1607.5 – Technical standards for validating selection procedures, including criterion-related, content, and construct validity.
- 29 C.F.R. § 1607.14(B) – Employers are expected to conduct regular self-analyses (referred to as "self-monitoring") of their selection procedures to determine whether they are having an adverse impact. If such impact exists, employers are expected to take steps to eliminate the adverse impact or demonstrate that the procedure is valid and necessary.

The Guidelines further clarify that all parties involved in the use or administration of selection procedures—including outside contractors, testing laboratories, and other third parties—must comply with these obligations. Employers may not delegate responsibility for compliance with Title VII and UGESP to third parties.

In sum, the UGESP set forth a comprehensive regulatory framework for ensuring that employment selection procedures, including drug testing protocols, are developed, applied, and monitored in a manner that complies with federal anti-discrimination law. Employers must validate their testing methods, apply them consistently, maintain records to assess impact, and engage in ongoing self-auditing to detect and correct potentially unlawful adverse impacts.

II. Selection Algorithms and the Uniform Guidelines on Employee Selection Procedures

The Uniform Guidelines on Employee Selection Procedures (UGESP), codified at 29 C.F.R. Part 1607, apply to all selection procedures used by employers to make employment decisions, including those that screen employees for retention, promotion, assignment, discipline, or termination. These procedures include not only written tests, interviews, and performance evaluations, but also automated or algorithmic systems used to determine eligibility or selection for employment-related action.

Under 29 C.F.R. § 1607.2(C), the term "selection procedure" is defined broadly to include "any measure, combination of measures, or procedure used as a basis for any employment decision." This includes procedures that screen individuals in or out, whether applied by an individual supervisor or through automated technology.

The Guidelines do not exempt employers from responsibility when they use third-party technology or algorithmic systems in their selection procedures. In such cases, the employer remains obligated to ensure that any tool used in making employment decisions:

- Does not result in unlawful adverse impact against protected groups;
- Has been properly validated using job-related criteria;
- Is subject to regular self-audit and impact analysis;

- Is applied consistently and uniformly to similarly situated employees.

Under 29 C.F.R. § 1607.5, employers must validate any selection procedure that has an adverse impact, whether that procedure is manual or algorithmic. If a computerized system is used to make or assist in employment decisions, the employer must show that the algorithm is based on data demonstrating that the selection criteria are job-related and consistent with business necessity.

In addition, 29 C.F.R. § 1607.4(D) requires that employers maintain and analyze selection data by race, sex, and ethnic group to monitor for adverse impact. This requirement applies equally to algorithmically generated selections and rankings. The data must be retained and available to enforcement agencies for inspection. If adverse impact is found, and the procedure has not been validated, it must be eliminated or replaced with a less discriminatory alternative, per § 1607.3(B). The Guidelines also require ongoing self-monitoring, as outlined in § 1607.14(B). Employers are expected to evaluate the effects of their selection procedures on protected groups as part of routine compliance and to take prompt corrective action when evidence of adverse impact is discovered. Self-auditing is especially critical where automated or algorithmic tools are used, given their complexity and potential for systemic bias.

In May 2023, the EEOC issued updated technical guidance reaffirming that employers are fully responsible under Title VII for the operation and consequences of algorithmic decision-making tools, even when those tools are developed or operated by outside vendors. The EEOC stated that algorithmic systems must be validated, tested for discriminatory impact, and capable of being audited, and that an employer may be liable for the use of such tools even if they did not develop the algorithm themselves.

Taken together, these federal guidelines and agency interpretations place clear responsibility on employers to ensure that any selection process—including those involving algorithms, randomization programs, or computer-generated testing lists—comply fully with Title VII and UGESP. Such procedures must be documented, validated, regularly analyzed, and free of adverse impact unless justified under the strict standards of job-relatedness and business necessity.

III. Description of the Respondents

City of New York / New York City Police Department (NYPD):

The primary Respondent in this matter is the City of New York, acting through its agency, the New York City Police Department (NYPD). The NYPD is the largest municipal police force in the United States, employing over 50,000 individuals, including uniformed officers and civilian employees. It is a department of the executive branch of New York City government and is responsible for law enforcement, public safety, and internal personnel management—including all hiring, promotion, discipline, demotion, and termination decisions relating to members of service (MOS).

The NYPD has adopted internal policies and procedures governing the conduct and discipline of its personnel, including rules relating to drug screening. These policies are reflected in various internal resources, such as the NYPD Patrol Guide, the Administrative Guide, and internal Medical Division memoranda. The NYPD's Medical Division manages the scheduling, collection, and processing of biological samples for drug testing, and the Department Advocate's Office is responsible for prosecuting administrative charges stemming from alleged policy violations.

In all disciplinary matters, including those arising from alleged drug use, the NYPD acts as the de facto employer, with the City of New York as the legal employer under Title VII of the Civil Rights Act. All employment decisions, including suspension, demotion, reassignment, denial of promotion, and termination, are made under the authority of the Police Commissioner or her designees.

Psychemedics Corporation:

The second Respondent is Psychemedics Corporation, a Texas-based laboratory that specializes in forensic toxicology and hair drug testing. Psychemedics is a private testing contractor that provides drug screening services to both private sector

employers and public agencies, including law enforcement clients. The company performs laboratory analysis on biological samples submitted by its clients and issues reports identifying the presence or absence of controlled substances.

Psychemedics serves as the exclusive drug testing vendor for the NYPD's hair testing program. In that capacity, it receives samples collected by NYPD personnel, conducts screening and confirmatory testing, and returns laboratory reports that the NYPD uses to initiate adverse employment actions. The City and NYPD rely on Psychemedics to apply scientifically valid methodologies, follow proper forensic protocols, and issue accurate, reliable results that comply with legal standards governing employee selection procedures.

Although Psychemedics is a third-party vendor, it operates under contract with the City of New York and is a central participant in the selection and discipline process. Its actions directly influence whether a member of the NYPD is suspended, demoted, reassigned, or terminated. The laboratory is responsible for selecting test panels, establishing threshold levels, conducting analyses, interpreting results, and maintaining documentation such as chain-of-custody records. The information generated by Psychemedics is routinely relied upon by the City and NYPD in determining whether to take adverse employment action.

Both Respondents—the City of New York acting through the NYPD, and Psychemedics Corporation—jointly participate in and implement the drug testing and selection system that governs uniformed members of service. Their respective roles are not merely sequential but deeply interdependent: the NYPD initiates the testing process and imposes employment consequences, while Psychemedics performs the scientific analyses that serve as the basis for those decisions. Together, they operate a single, integrated system that produces adverse employment outcomes, including suspension, demotion, and termination.

Although Psychemedics is a third-party contractor, it is a central and indispensable participant in the NYPD's selection process. It determines test panels, sets detection thresholds, performs confirmatory analysis, interprets results, and issues laboratory reports that the NYPD relies upon without independent verification. The decisions made by Psychemedics directly trigger adverse actions and form the evidentiary basis for internal disciplinary charges.

Accordingly, Psychemedics is properly named as a Respondent in this Charge. Under EEOC guidance and controlling federal precedent, non-employer entities may be held liable under Title VII where they exercise control over the selection criteria, testing methodology, or other procedures that result in discriminatory or retaliatory employment actions. Psychemedics' conduct falls squarely within this scope, as it materially contributes to the adverse employment decisions challenged herein. The joint operation of this system by both Respondents must therefore comply with Title VII, the Uniform Guidelines on Employee Selection Procedures, and all applicable federal, state, and local anti-discrimination standards.

IV. Overview of Employment-Based Drug Testing and the Use of Hair Testing (RIAH) in the Workplace

Drug testing has long been utilized by employers as a tool to assess compliance with workplace substance use policies, particularly in safety-sensitive or civil service positions. The most common types of employment drug testing include:

- Urinalysis, which detects recent drug use and is regulated by Substance Abuse and Mental Health Services Administration (SAMHSA) for use in federal testing programs;
- Oral fluid (saliva) testing, typically used for short detection windows;
- Blood testing, used in rare, high-precision or post-incident contexts;
- And hair testing, which is the focus of this matter and presents a longer detection window than other forms.

A. History and Original Use of Hair Testing (RIAH)

Hair drug testing—specifically, radioimmunoassay of hair (RIAH)—was first developed in the late 1980s as an alternative to urine testing. It was originally used in clinical settings, substance abuse programs, and child protective services to determine patterns of drug exposure over extended periods. RIAH testing was promoted for its ability to detect drug metabolites embedded in the hair shaft, providing a retrospective window of use ranging from 30 to 90 days, depending on hair length.

RIAH testing expanded into criminal justice settings, including probation, parole, and drug court programs. It was later introduced into private employment contexts, and some law enforcement agencies—including the NYPD—adopted it in addition to or in place of urinalysis. However, despite this adoption, SAMHSA has never approved hair testing as a substitute for urinalysis under its Mandatory Guidelines for Federal Workplace Drug Testing Programs, due to scientific and legal concerns about its reliability, bias, and lack of confirmatory infrastructure.

B. Legal and Scientific Controversies Surrounding RIAH Testing

Unlike urinalysis, hair testing presents unique challenges due to its biological, environmental, and procedural vulnerabilities. Hair samples may test positive for drug metabolites due to passive exposure (e.g., smoke, contact), particularly for marijuana (THC). Furthermore, drug incorporation into hair is influenced by melanin concentration, meaning that Black and Hispanic individuals—who generally have more melanin-rich hair—are more likely to retain and test positive for drug compounds even where actual ingestion did not occur.

These disparities have been well documented in scientific literature and examined in legal proceedings. In *Jones v. City of Boston*, 845 F.3d 28 (1st Cir. 2016), Black officers challenged the Boston Police Department’s use of hair testing on Title VII grounds, alleging that the method had a racially disparate impact and could not be justified as job-related. Expert evidence demonstrated that hair testing had differential outcomes based on hair texture and color and could not reliably distinguish external contamination from voluntary ingestion. The First Circuit allowed the plaintiffs’ claims to proceed, recognizing that RIAH testing, though facially neutral, could result in unlawful disparate impact.

Similarly, in *Landon v. Kroll Laboratory Specialists, Inc.*, 22 N.Y.3d 1 (2013), the New York Court of Appeals ruled that a testing laboratory owed a duty of care to the subject of a drug test—even in the absence of a direct contractual relationship—when the test results led to adverse legal consequences. There, the plaintiff was placed in violation of probation based on an allegedly false-positive oral fluid drug test, and the Court acknowledged the laboratory’s responsibility to maintain accuracy and reliability in forensic testing procedures. While *Landon* involved oral fluid testing, its reasoning has been cited in litigation involving hair testing and third-party lab liability.

Courts and forensic scientists have raised additional concerns about inconsistent washing protocols, chain of custody, and the potential for cross-contamination during collection, especially when multiple samples are collected in shared spaces without strict environmental controls. These procedural risks make hair testing more vulnerable to error when compared to regulated urinalysis standards.

C. Confirmatory Testing in the Context of Hair Analysis

RIAH testing typically involves two steps: an initial immunoassay screen and a follow-up confirmatory test using gas chromatography/mass spectrometry (GC/MS) or liquid chromatography-tandem mass spectrometry (LC-MS/MS). However, the confirmatory process is limited by the destructive nature of the method. Because hair samples are consumed during testing, there is often no remaining material for independent retesting once the original sample has been used—especially where the lab controls all testing stages.

Moreover, chain of custody, DNA authentication, and second-source verification are rarely made available to the employee. The laboratory that performs the initial test often also conducts the confirmation and issues the final report—effectively making the lab the sole gatekeeper of whether an individual is deemed “positive” or “negative.” This raises concerns about due process and the integrity of internal workplace investigations, especially when testing results are used as a basis for demotion, suspension, or termination.

Laboratories may also apply variable cutoff thresholds, as was done in the present matter, where double cutoffs (e.g., 5.0 pg/10mg and 2.0 pg/10mg for THC) are employed. These ultra-sensitive detection limits increase the likelihood of registering trace or passive exposure, particularly in communal living or close-contact environments. The lack of standardization across employers and the absence of federal regulatory guidance compounds these issues.

D. Application in Random Testing Contexts

In workplace settings, random drug testing is generally defined as a process by which employees are selected for testing without advance notice and without bias, using a method intended to prevent targeting or prediction. The purpose of random testing is to deter illicit drug use by ensuring that all employees have an equal and objectively verifiable chance of being selected.

To preserve the legitimacy of a random testing program, employers must use transparent, statistically neutral, and consistently applied selection methods, often involving computer algorithms, numeric draw systems, or rotation schedules. The process should be documented, auditable, and protected from manipulation. If selection is not genuinely random or appears to be influenced by discretion, retaliation, or external factors, it may undermine the fairness and lawfulness of the program.

When hair testing is used in conjunction with a random selection program, the risks of error, bias, and unequal treatment can become compounded. The longer detection window and passive exposure risks inherent in hair testing, combined with the challenges of verifying the neutrality of the selection process, require heightened scrutiny to ensure that such programs comply with scientific, procedural, and legal standards.

E. SAMHSA Standards and the Exclusion of Hair Testing from Federal Guidelines

The Substance Abuse and Mental Health Services Administration (SAMHSA) is the federal agency responsible for setting scientific and procedural standards for workplace drug testing under the Mandatory Guidelines for Federal Workplace Drug Testing Programs, issued pursuant to Executive Order 12564 and the Drug-Free Workplace Act of 1988.

SAMHSA's guidelines establish the only federally recognized procedures for drug testing in safety-sensitive positions within federal employment and apply to numerous private and public sector testing programs by extension. These standards govern all aspects of drug testing, including:

- Approved biological matrices (e.g., urine, oral fluid);
- Cutoff concentrations for initial and confirmatory testing;
- Chain of custody and specimen handling protocols;
- Laboratory accreditation and quality assurance;
- Review and retest opportunities through Medical Review Officers (MROs).

While SAMHSA has published proposed guidelines for hair testing as early as 2004 and again in 2020, it has never adopted final rules authorizing the use of hair testing as a federally approved matrix. In its most recent statements, SAMHSA cited the following ongoing concerns:

- Inability to distinguish ingestion from external contamination;
- Lack of scientific consensus on effective washing procedures;
- Potential racial and ethnic disparities in hair drug deposition and metabolite retention;
- Absence of mechanisms for confirmatory retesting or donor challenge;
- Risks to procedural due process when the testing matrix is irreversible or irreproducible.

Because of these concerns, SAMHSA prohibits the use of hair testing in any federally regulated workplace testing program, including those under the Department of Transportation (DOT), Nuclear Regulatory Commission (NRC), and other federal agencies. The federal government continues to require urinalysis and more recently, in limited circumstances, oral fluid testing—but not hair testing—as the gold standard for workplace drug detection.

This exclusion is significant. Employers who use RIAH testing outside the SAMHSA framework are expected to demonstrate that:

- The methodology is scientifically validated;
- The cutoff thresholds are job-related and consistent with business necessity;
- The test is free from bias or disparate impact;
- And the program includes mechanisms for fair review, retesting, and accountability.

Absent these safeguards, workplace hair testing remains scientifically contested, legally vulnerable, and regulatorily unendorsed. Where public sector employers—such as law enforcement agencies—adopt such methods without alignment to federal testing standards, questions of fairness, discrimination, and due process routinely arise.

V. The NYPD’s “Random” Drug Testing Program Lacks Transparency, Scientific Standards, and Regulatory Safeguards

The NYPD administers a “random” drug testing program that includes both urinalysis and radioimmunoassay of hair (RIAH). However, the processes by which employees are selected, notified, and tested are not transparent. The internal protocols governing this system—including selection algorithms, test panels, cutoff levels, and standards for review—are not disclosed to the affected employees, nor are they codified in publicly available or externally audited guidance.

Members of service are typically notified of selection for testing through direct contact from a supervisor or Medical Division staff. In many cases, employees receive telephone notifications without any contemporaneous written documentation or inclusion on the widely circulated Finest Message drug testing list, which purportedly governs random selection. Members selected are often unaware of the basis for their inclusion, the type of test they will undergo, or the standards being applied to interpret their results. The lack of disclosure makes it impossible for members to determine whether they were selected through a validated random process or for other discretionary or retaliatory reasons.

Once selected, employees may be subject to urinalysis or hair testing, with no clear procedural distinction or explanation for why one method is used over the other. The testing matrix is not selected in consultation with the member, and there is no explanation of how or why a particular sample type is deemed appropriate. The NYPD’s internal rules do not provide a mechanism for members to challenge the testing method or seek clarification on which scientific standards or thresholds will apply.

The NYPD has not published or provided employees with any documentation demonstrating that the drug testing program meets the standards set forth in the Uniform Guidelines on Employee Selection Procedures (UGESP) or the SAMHSA Mandatory Guidelines for Federal Workplace Drug Testing Programs. Specifically, the program does not offer any of the following procedural protections or regulatory assurances:

- There is no validation study or scientific justification demonstrating that the testing methodology—particularly RIAH—is job-related or consistent with business necessity for law enforcement purposes, as required under 29 C.F.R. § 1607.5.
- Employees are not informed of or provided access to the cutoff thresholds used for screening or confirmation. These thresholds may vary between urinalysis and RIAH, and may even vary between NYPD testing and independent lab testing conducted on the same individual.
- The program does not provide any process for independent confirmatory testing or DNA authentication of the collected sample, and the destructive nature of hair testing makes reanalysis impractical once the sample is consumed.
- There is no disclosed mechanism for reviewing, retesting, or appealing a positive test result, beyond a discretionary internal interview under Administrative Guide 318-11. Officers have no statutory or contractual right to contest the scientific basis of the result, submit comparators, or obtain second-opinion analyses from external experts.
- No impact analysis is performed or provided to assess the effect of testing on employees by race, ethnicity, gender, or national origin, despite the requirement under 29 C.F.R. § 1607.4(D) that employers monitor the outcomes of selection procedures for adverse impact.

- The algorithm used to generate random selections has not been validated for neutrality or tested for bias. It is not subject to audit, and in cases where employees question their selection, the NYPD has refused to disclose the version of the list used or the algorithm's inputs.
- No internal or external audit has been made available to confirm that the drug testing program is free from disparate impact or selective enforcement, particularly where adverse actions—including suspension, demotion, denial of promotion, and termination—are based entirely on unverified, undisclosed laboratory results.

The NYPD's testing program also fails to meet the minimum safeguards outlined by SAMHSA, which prohibits hair testing in federal programs due to concerns about contamination, inconsistent washing protocols, differential absorption across racial groups, and the inability to confirm results through independent retesting. Despite the existence of these federal standards, the NYPD continues to employ RIAH testing without comparable regulatory oversight or procedural fairness.

As presently designed and implemented, the NYPD's drug testing program does not adhere to the essential requirements of the UGESP or SAMHSA. It lacks transparency, accountability, and scientific reliability. The absence of safeguards leaves employees—particularly members of protected classes—vulnerable to adverse employment action based on procedures that have not been shown to be valid, necessary, or fair.

VI. Disparate Impact and Adverse Outcomes Resulting from the NYPD's Drug Testing Program

The NYPD's drug testing program, particularly its use of hair analysis (RIAH) in conjunction with undisclosed selection algorithms, has produced disproportionately adverse outcomes for members of protected classes, particularly Black and Hispanic employees. Though presented as a neutral system, the structure, application, and effects of the program have contributed to inequitable employment actions, including suspension, denial of promotion, demotion, and termination, based on results generated through a process that lacks transparency, consistency, or scientific safeguards.

Numerous aspects of the program contribute to this disparate impact:

A. Differential Biological Effects of RIAH Testing on Hair Types

Scientific literature and expert testimony in multiple legal proceedings have confirmed that hair color and texture affect drug retention in the hair shaft. Individuals with coarse, dark, or tightly coiled hair—which includes a large proportion of Black and Hispanic employees—are more likely to bind and retain drug metabolites, including those from environmental exposure.

Unlike urinalysis or saliva testing, RIAH cannot distinguish between ingestion and surface contamination without rigorous washing protocols. The lack of a standardized wash procedure and the influence of melanin on metabolite binding make the test biologically biased, despite its facial neutrality. When NYPD relies on RIAH without accounting for these known racial disparities, the result is an employment practice that disproportionately harms officers of color.

B. Unequal Enforcement and Inconsistent Outcomes

Reports within the NYPD and public case data suggest that officers who test positive through hair analysis experience inconsistent disciplinary consequences. In some cases, officers who test positive are reinstated or excused without charges, while others—often minority officers—are suspended, denied promotions, demoted, or terminated. There is no transparent disciplinary matrix, and no access to a centralized case library from which employees can compare outcomes or establish comparator claims.

In the absence of uniform enforcement, similarly situated officers have faced widely divergent outcomes based on internal discretion. Protected class members appear to be disproportionately subjected to discipline even when they submit polygraphs, secondary lab results, or evidence of exculpatory exposure scenarios.

C. Lack of Review, Retesting, or Appeal Mechanisms

The NYPD's drug testing program does not offer employees a reliable opportunity to challenge, appeal, or validate a positive result. Officers are not permitted to submit their own samples for second-opinion laboratory analysis through a chain-of-custody system. DNA testing of hair samples is not offered. Requests to obtain chain-of-custody documentation or retesting protocols are often denied or ignored.

This lack of procedural recourse disproportionately impacts officers who are falsely accused or who fall within biologically disadvantaged categories due to hair type. The inability to contest the outcome leaves affected officers with no meaningful access to exculpatory evidence, amplifying the discriminatory impact of the test.

D. Lack of Monitoring or Self-Audit for Adverse Impact

Under 29 C.F.R. § 1607.4(D), employers are required to retain and analyze selection data by race, sex, and ethnicity to assess adverse impact. However, the NYPD does not maintain or disclose any such analysis. There is no indication that the Department has performed a self-audit of the racial, ethnic, or gender-based consequences of its testing program—despite multiple public and internal concerns about disparate outcomes.

In the absence of this data, employees cannot assess whether the program is being applied equally. The failure to engage in this required monitoring allows disproportionate discipline to persist without correction or redress.

VII. Failure to Validate the NYPD Drug Testing Program Under Title VII and the Uniform Guidelines on Employee Selection Procedures

The NYPD's drug testing program—including its use of hair testing (RIAH), internal notification procedures, and selection algorithms—constitutes an employment selection procedure within the meaning of Title VII of the Civil Rights Act of 1964 and the Uniform Guidelines on Employee Selection Procedures (UGESP), 29 C.F.R. Part 1607. When a selection procedure results in adverse employment outcomes—such as denial of promotion, suspension, demotion, reassignment, or termination—it must be either free of disparate impact or justified by a showing that the procedure is job-related and consistent with business necessity.

Under 29 C.F.R. § 1607.5, the employer bears the burden of validating any selection procedure that causes adverse impact. Validation requires adherence to accepted scientific methods, including criterion-related, content, or construct validation studies. To be compliant, a procedure must demonstrate that it accurately and fairly predicts or measures job performance. Validation must also be relevant to the specific job functions involved—in this case, police service.

The NYPD has not produced or disclosed any validation study establishing that hair testing—particularly through RIAH methods—is predictive of impaired job performance or actual on-duty drug use. Nor has the NYPD demonstrated that its choice of cutoff levels, selection algorithms, or disciplinary responses meet the standard of job-relatedness or necessity. The NYPD's use of unverified double-cutoff thresholds for THC and other substances further underscores the absence of scientific consensus or occupational relevance.

The Guidelines also require employers to monitor the ongoing impact of selection procedures on protected groups, retain selection data by race, sex, and ethnicity, and periodically self-audit for disparate impact or discriminatory outcomes (29 C.F.R. §§ 1607.4(D), 1607.14(B)). The NYPD has not published any such data, and FOIL requests for list generation records and selection data have yielded inconsistent or redacted responses. This failure to conduct impact analysis or retain statistically relevant data prevents affected employees from determining whether the program is being applied in a nondiscriminatory manner, and violates the regulatory framework meant to prevent unlawful bias.

Additionally, the hair testing methodology employed by the NYPD and its contractor Psychemedics is not recognized by the Substance Abuse and Mental Health Services Administration (SAMHSA) as a valid or approved method for federal workplace drug testing. SAMHSA has withheld approval of hair testing due to unresolved concerns regarding contamination, ethnic disparities in drug metabolite retention, lack of standardized washing protocols, and the inability to confirm results through

independent retesting. The NYPD has continued to use RIAH testing despite these unresolved scientific concerns, and without offering safeguards to mitigate the method's known racial and procedural shortcomings.

The NYPD's failure to validate its testing methodology or selection criteria also conflicts with 29 C.F.R. § 1607.3(B), which states that a selection procedure with adverse impact is unlawful unless supported by a formal validation study and consistent with business necessity. The NYPD has not satisfied either requirement. Employees have no opportunity to verify whether the test results are scientifically sound, job-related, or applied in a uniform manner.

As a result, the NYPD's testing program—as currently designed and implemented—fails to meet the validation, monitoring, and procedural fairness standards required by the Uniform Guidelines. Its continued use in making adverse employment decisions, particularly where protected class members are disproportionately impacted, renders it inconsistent with Title VII and subject to liability for systemic discrimination.

VIII. Respondents' Knowledge, Disregard, and Selective Enforcement Practices

The City of New York, acting through the New York City Police Department (NYPD), and its contracted testing vendor, Psychemedics Corporation, have administered a drug testing program for members of service despite having actual and constructive knowledge that the program lacks transparency, scientific uniformity, procedural safeguards, and legal compliance. The Respondents' ongoing reliance on this system—despite repeated warnings, known disparities, and internal inconsistencies—reflects a pattern of deliberate indifference to the rights of employees and a selective enforcement regime that disproportionately burdens protected class members.

A. Knowledge of Scientific and Legal Deficiencies in RIAH Testing

Respondents have long been aware of the scientific limitations and legal controversies surrounding hair testing, including its inability to distinguish between external contamination and ingestion, and its disproportionate effect on individuals with darker or coarser hair textures, including Black and Hispanic employees. This knowledge is not speculative—it is grounded in published litigation, forensic science journals, SAMHSA public comment periods, and binding appellate case law such as *Jones v. City of Boston* and *Landon v. Kroll*.

Despite these known limitations, the NYPD has failed to revise or suspend its RIAH testing program. It continues to rely on Psychemedics to conduct immunoassay screening and confirmatory testing using internal protocols and thresholds that differ from SAMHSA standards. Officers are not informed of the test panels being applied, the cutoff levels in use, or the rationale for the chosen thresholds. There is no indication that the NYPD has ever subjected the RIAH methodology to independent scientific review, despite the severe employment consequences that flow from its application.

B. Disregard for Employee Rights and Due Process

When adverse results are reported, affected officers are offered no meaningful opportunity to challenge, verify, or retest the findings. DNA testing of hair samples is not offered, and chain-of-custody documents are often withheld or redacted. Officers who provide negative results from independently commissioned labs are routinely told that those results are irrelevant or "don't mean anything" because the sample was not tested under the City's internal zero-level-of-detection standard—a standard that no known laboratory applies to negative samples, and which has no scientific or regulatory basis.

Officers are often called in for surprise interviews under A.G. 318-11, without representation, and informed of adverse actions without the ability to review the underlying evidence. Appeals are discretionary and inconsistent. There is no standard mechanism to compare one case to another or to raise concerns about fairness, retaliation, or error. Requests for DNA authentication, access to the trial decision database, or the actual random testing algorithm are routinely denied.

C. Selective Enforcement and Comparator Disparities

Internal patterns suggest that disciplinary outcomes based on positive drug tests vary widely, depending on factors such as political affiliation, racial background, rank, or internal connections. Several employees who tested positive have been quietly returned to duty without charges or formal hearings. Others—particularly officers of color—have been suspended without pay, denied promotional opportunities, demoted, or referred for termination based on similarly contested or even less severe findings.

In some cases, officers who tested positive and offered explanations (e.g., secondhand exposure) were believed without corroborating evidence, while others who submitted multiple exculpatory tests, polygraphs, or affidavits were treated as non-credible. Documentation for terminated officers has been removed from the NYPD's internal trial decision library, making it impossible to conduct comparator analysis or establish patterns of differential treatment. This absence of transparency permits selective discipline and unequal enforcement, especially in politically charged or retaliatory contexts.

D. Disregard for Federal and City Guidance

The New York City Law Department has issued guidance discouraging continued marijuana testing in the wake of the Marijuana Regulation and Taxation Act (MRTA). Nonetheless, the NYPD continues to discipline members based on positive results for marijuana metabolites—despite the fact that these metabolites do not prove impairment and can be triggered by trace contact. This continued testing occurs without revised policy guidance, without MRTA-consistent procedures, and without recognition of the drug's new legal status in New York State.

Both Respondents have failed to adjust their practices in light of this legislative shift. They have also ignored internal requests from the Detectives' Endowment Association and other unions seeking clarity on the legality and enforceability of marijuana-related testing.

IX. Documented Scientific Criticism and Institutional Awareness: Supporting Research on the Risks and Disparities of Hair Testing

The scientific, regulatory, and forensic communities have long raised concerns regarding the fairness, validity, and discriminatory impact of hair drug testing—particularly radioimmunoassay of hair (RIAH)—in employment contexts. These concerns are not novel. They are supported by over two decades of published research, litigation records, and policy analysis that highlight both biological bias and procedural shortcomings in the use of hair as a testing matrix. The widespread use of RIAH without scientifically validated safeguards poses a risk of false positives, racially disparate outcomes, and unconstitutional employment consequences, especially in law enforcement settings.

A. Melanin-Related Racial Bias in Hair Drug Testing

A well-documented body of scientific research establishes that melanin content plays a central role in drug retention within hair fibers, contributing to racially disparate outcomes in hair drug testing. Eumelanin, the pigment that gives hair its dark color, exhibits high binding affinity for basic drug molecules such as cocaine, cannabinoids (THC), and opiates. This biological characteristic disproportionately affects individuals with darker or coarser hair—traits more commonly found in Black, Hispanic, and Asian-Pacific populations—who are more likely to retain drug metabolites in their hair, even at equal or lower exposure levels compared to individuals with lighter hair.

Concerns about racial disparities in hair drug testing have been voiced by regulatory authorities. Notably, Dr. D. Bruce Burlington, then-Director of the FDA's Center for Devices and Radiological Health, warned that some hair tests appear to yield false positives in individuals who do not actually consume drugs. These concerns have been reinforced by animal model research. In one pivotal study, Dr. Douglas Rollins, Director of the Center for Human Toxicology at the University of Utah, administered equal quantities of illicit drugs to rats with black and white fur. His findings revealed that black-haired rats retained drug compounds at rates up to five times higher than their white-haired counterparts—highlighting the powerful effect of pigmentation on drug binding and retention.

Additionally, a 1998 study published in the *Journal of Analytical Toxicology* examined whether removing melanin from the hair could eliminate the observed racial bias in cocaine concentration results. The researchers concluded that even after melanin was removed, bias persisted, indicating that structural and chemical properties of pigmented hair continue to influence drug test outcomes in ways that are not eliminated by washing or decontamination procedures.

While researcher Richard Mieczkowski has cautioned that the statistical magnitude of melanin's role in drug accumulation may be modest or difficult to quantify, he nonetheless acknowledged that hair color does influence drug deposition. The degree to which this influence manifests in racial disparities remains underexplored, but it is widely accepted that many common assumptions about hair differences between racial groups are based on anecdote rather than empirically supported biology. Nonetheless, even a small physiological variance—when amplified through automated and zero-tolerance disciplinary systems—can lead to significantly disparate impacts on Black and Hispanic employees.

Together, these findings demonstrate that hair drug testing—particularly methods like radioimmunoassay of hair (RIAH)—carries inherent racial biases due to the interaction between drug molecules and the chemical and structural properties of pigmented hair. Without rigorous validation and procedural safeguards, such testing methods risk serving as scientifically flawed proxies for racialized selection and discipline in the workplace.

B. Susceptibility to Environmental Contamination

Hair is uniquely vulnerable to passive environmental exposure, particularly with substances like marijuana that are lipid-soluble and readily adhere to surfaces. For instance, research published by G.H. Pragst and M.A. Balikova in *Forensic Science International* (2006) describes how THC can be externally deposited on hair in measurable quantities, especially in indoor environments where cannabis smoke is present. These deposits are indistinguishable from ingestion using current immunoassay-based screening, and may persist even after standardized washing.

The lack of a universal decontamination protocol for hair samples further undermines the reliability of RIAH results. While commercial laboratories apply proprietary wash procedures, there is no SAMHSA-endorsed method for distinguishing external contamination from actual use. This limitation is exacerbated in densely populated households or shared sleeping arrangements, where law enforcement personnel—like the NYPD officer in the present matter—may be unknowingly exposed to secondhand substances without any direct use.

C. Absence of Federal Endorsement and Scientific Consensus

Despite more than a decade of proposals, SAMHSA has repeatedly declined to authorize hair testing in its Mandatory Guidelines for Federal Workplace Drug Testing Programs. In its June 2022 Drug Testing Advisory Board Program Update, SAMHSA cited the following reasons for withholding final approval:

- Inability to differentiate between drug ingestion and environmental contamination;
- Lack of consensus on effective washing or decontamination procedures;
- No mechanism for donor retesting or meaningful dispute resolution, due to the destructive nature of hair sample testing;
- Significant concerns about the potential for adverse impact based on race and ethnicity, particularly in public employment settings.

These same concerns have been cited in *Jones v. City of Boston*, 845 F.3d 28 (1st Cir. 2016), where Black police officers challenged the use of hair testing under Title VII, alleging racial disparate impact. The First Circuit found that the plaintiffs had presented sufficient statistical and scientific evidence to raise a triable issue as to whether the testing method disproportionately harmed Black officers and could be justified under business necessity. The decision cited expert affidavits and statistical modeling that confirmed systemic disparities in test results linked to hair type and race.

D. Procedural Limitations: Destruction of Sample and Absence of Review Mechanisms

Unlike urinalysis or oral fluid testing—where split samples can be stored, retested, and validated through third-party review—hair testing is destructive, meaning the sample is consumed during analysis. As a result, employees who are accused of drug use based on a RIAH positive result have no opportunity for independent verification, retesting, or DNA confirmation that the sample tested actually originated from them. This creates a procedural due process gap in workplace investigations, particularly when the results are used to justify career-altering disciplinary actions.

This lack of procedural protection is inconsistent with best practices in forensic science and falls well below the evidentiary standards applicable in civil service or criminal contexts. In the absence of oversight, employees are left to defend themselves against a scientific method that is inherently opaque, statistically skewed, and operated exclusively by a third-party vendor acting under contract with the City.

X. Legal Claims Arising from the Design, Application, and Enforcement of the NYPD Drug Testing Program

The Charging Party asserts that the design, implementation, and enforcement of the NYPD's drug testing program—including the use of radioimmunoassay of hair (RIAH), the undisclosed algorithmic selection process, and the selective application of discipline—violates multiple provisions of federal, state, and local anti-discrimination laws. The discriminatory impact, disparate treatment, procedural irregularities, and retaliation experienced by the Charging Party support legal claims under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1983, the New York State Human Rights Law (NYSHRL), the New York City Human Rights Law (NYCHRL), and related statutory and constitutional protections.

A. Title VII of the Civil Rights Act of 1964

1. Race and National Origin Discrimination (Disparate Impact and Disparate Treatment)

The NYPD's drug testing program, including the RIAH methodology, disproportionately and adversely affects Black and Hispanic officers due to melanin-based disparities in drug metabolite binding and passive environmental exposure. This constitutes unlawful disparate impact discrimination under Title VII. The NYPD has failed to validate the methodology or demonstrate job-relatedness and business necessity as required by 42 U.S.C. § 2000e-2(k) and the Uniform Guidelines on Employee Selection Procedures (UGESP).

Additionally, the selective enforcement of discipline, more severe punishment of officers of color, and refusal to consider exculpatory evidence constitute intentional disparate treatment based on race and national origin.

2. Hostile Work Environment

The NYPD subjected the Charging Party to a racially and politically hostile work environment by targeting him for drug testing through opaque and irregular means, denying him equal protection in disciplinary proceedings, disregarding his repeated requests for confirmation testing and due process, and demoting him without union representation. These actions, in their cumulative effect, altered the terms and conditions of his employment in a manner sufficiently severe and pervasive to constitute a hostile work environment under Title VII.

3. Retaliation

The Charging Party engaged in protected activity under Title VII by raising internal objections to the integrity, fairness, and disparate racial impact of the NYPD's drug testing program. In response, the NYPD retaliated by suspending him, denying his promotion, demoting him, and disregarding his exculpatory testing and polygraph results. These materially adverse employment actions violate 42 U.S.C. § 2000e-3(a), which prohibits employer retaliation against individuals who oppose discriminatory practices.

B. 42 U.S.C. § 1983 Constitutional Claims

1. Equal Protection Clause – Race-Based Discrimination and Selective Enforcement

The NYPD's differential treatment of the Charging Party compared to similarly situated white officers who tested positive for marijuana constitutes race-based selective enforcement and denial of equal protection of the laws. The NYPD's failure to apply discipline uniformly and its reliance on a testing methodology known to produce racially skewed results further supports this claim.

2. First Amendment Retaliation

The Charging Party engaged in constitutionally protected speech by raising concerns about systemic flaws, racial disparities, and due process violations in the NYPD's drug testing regime. His whistleblowing constitutes speech on matters of public concern. The NYPD's adverse actions—including demotion, reassignment, and denial of promotion—constitute unlawful retaliation in violation of the First Amendment.

3. Political Affiliation and Perceived Political Activity Discrimination

Upon information and belief, the Charging Party's inclusion in the testing program and subsequent discipline were influenced by internal opposition to the Department's drug testing procedures and his alignment with political factions advocating reform and transparency within the NYPD. Adverse action based on actual or perceived political affiliation or association with dissident views violates the First Amendment's freedom of association protections, enforceable through § 1983.

C. New York State Human Rights Law (NYSHRL), Executive Law § 296 et seq.

1. Race and National Origin Discrimination

The NYPD and the City of New York engaged in unlawful discrimination based on the Charging Party's race and national origin (Hispanic) by targeting him for a flawed testing protocol with known racial disparities, refusing to accommodate his exculpatory evidence, and imposing punitive measures despite inconsistent application to similarly situated white officers. These actions violate Executive Law § 296(1)(a), which prohibits discrimination in the terms, conditions, and privileges of employment.

2. Hostile Work Environment

The pattern of targeting, demotion, exclusion from promotional eligibility, and denial of due process created a discriminatory and retaliatory work environment in violation of NYSHRL standards, which now align more closely with federal hostile work environment doctrine post-2019 amendments.

3. Retaliation

The NYPD retaliated against the Charging Party for raising internal objections and seeking redress, in violation of Executive Law § 296(7), which prohibits retaliation for opposing practices forbidden under the NYSHRL.

D. New York City Human Rights Law (NYCHRL), N.Y.C. Admin. Code § 8-101 et seq.

1. Discrimination Based on Race, National Origin, and Perceived Political Views

The NYPD's drug testing practices violated NYCHRL's broad anti-discrimination protections by imposing disparate discipline and procedural burdens on officers of color, and by targeting the Charging Party based on his perceived affiliation with political or internal factions critical of Departmental leadership. NYCHRL prohibits both actual and perceived political belief discrimination and requires the employer to show that adverse actions were motivated by legitimate, non-discriminatory reasons, under a more liberal standard than federal or state law.

2. Hostile Work Environment and Unequal Terms and Conditions of Employment

Under NYCHRL’s “impact-based” standard, the cumulative effects of discriminatory targeting, isolation, and differential treatment constitute a hostile work environment. The employer failed to provide equal terms and conditions of employment, as required by § 8-107(1)(a), including fair application of disciplinary standards and access to legal protections and internal grievance processes.

3. Retaliation

The NYPD retaliated against the Charging Party for asserting his rights, opposing discrimination, and requesting procedural safeguards. NYCHRL § 8-107(7) prohibits retaliation in the broadest possible terms, including any conduct that might deter an employee from engaging in protected activity.

E. Additional State Law Violations and Public Policy Concerns

1. Breach of Public Policy

The Respondents’ continued reliance on a scientifically and legally flawed testing methodology contravenes New York State public policy favoring fair, accurate, and nondiscriminatory employment practices—particularly in civil service contexts where employees are entitled to heightened procedural protections.

2. Negligent Misrepresentation and Laboratory Liability

Psychemedics, as the third-party laboratory, issued results that were later contradicted by independent testing. Its actions support a claim under *Landon v. Kroll Laboratory Specialists, Inc.*, 22 N.Y.3d 1 (2013), which held that a laboratory owes a duty of care to the subject of a drug test where the results carry legal or disciplinary consequences.

3. Violation of the Marijuana Regulation and Taxation Act (MRTA)

By continuing to discipline employees for marijuana metabolite presence without showing impairment or current use, the NYPD violates the MRTA and related New York State Labor Law amendments prohibiting discrimination based on legal recreational use of cannabis outside the workplace.

F. Whistleblower Protections Under New York Labor Law § 740 and Civil Service Law § 75-b

1. New York Labor Law § 740 – Unlawful Retaliation Against Whistleblowers

The NYPD’s adverse actions against the Charging Party violate New York Labor Law § 740, New York’s statutory whistleblower protection law, which prohibits employers from retaliating against an employee who discloses or threatens to disclose policies, practices, or activities that the employee reasonably believes constitute a violation of law, rule, or regulation, or present a substantial and specific danger to public health or safety.

The Charging Party engaged in protected activity under § 740 by objecting to the scientific, procedural, and discriminatory deficiencies of the NYPD’s drug testing program—specifically its reliance on radioimmunoassay of hair (RIAH), its racially disparate effects, and its violation of Title VII, SAMHSA, and UGESP standards. The Charging Party communicated these objections internally and sought intervention to prevent the continued use of a methodology that he reasonably believed was unlawful and posed a systemic risk to the integrity and safety of the NYPD’s personnel system.

In response to these disclosures, the Charging Party was subjected to a series of retaliatory actions—including being targeted for drug testing through undisclosed methods, denied promotion, stripped of assignment responsibilities,

and ultimately demoted—all of which constitute adverse employment actions prohibited under Labor Law § 740(2). These actions were taken in bad faith and intended to chill further whistleblowing activity, contrary to public policy and the protections guaranteed by § 740.

2. New York Civil Service Law § 75-b – Retaliation Against Public Employees Who Report Misconduct

The NYPD and the City of New York also violated New York Civil Service Law § 75-b, which protects public employees who disclose information regarding violations of laws, rules, or regulations that they reasonably believe present threats to public interest. The statute specifically prohibits retaliatory personnel actions against civil service employees who report such misconduct to a governmental body or internally to their employer.

As a public employee, the Charging Party repeatedly raised concerns about the NYPD’s failure to comply with federal drug testing standards, the scientific unreliability of RIAH, and the racial and procedural disparities embedded in the Department’s selection and disciplinary systems. These disclosures were made in good faith and in furtherance of law enforcement integrity and public accountability.

Instead of investigating or remedying the concerns raised, the NYPD initiated adverse personnel actions in retaliation, including demotion, removal from career-enhancing assignments, and denial of promotion—acts which fall squarely within the definition of prohibited retaliation under Civil Service Law § 75-b(2). The Department failed to establish that these adverse actions were based on legitimate performance grounds or unrelated to the protected disclosures, and instead engaged in a pattern of reprisal that violates the statute and undermines whistleblower protections for all public employees.

XI. Pattern or Practice of Discrimination, Retaliation, and Procedural Misconduct

The facts alleged in this Charge are not isolated. Rather, they reflect a broader, recurring pattern within the New York City Police Department (NYPD) and its drug testing program—a system that consistently operates without transparency, safeguards, or adherence to equal employment protections under federal, state, and local law. The Respondents’ design and administration of the drug testing program has produced a disproportionate and adverse impact on members of protected classes, especially Black and Hispanic employees, and has been used as a retaliatory mechanism against officers who challenge internal practices or expose misconduct.

Specifically, the Respondents have engaged in:

- Systemic use of a facially neutral testing methodology (RIAH) with well-documented racial disparities in metabolite retention and false positive rates;
- A consistent failure to monitor or audit testing outcomes by race, ethnicity, gender, or national origin, in violation of 29 C.F.R. § 1607.4(D);
- A pattern of denying review, retesting, and DNA authentication to employees who question positive findings, while excusing or reinstating others under materially similar circumstances;
- Inconsistent enforcement of disciplinary outcomes, with minority officers more likely to face career-altering penalties despite exculpatory evidence, independent testing, and lack of impairment;
- Use of undisclosed selection algorithms and tampered drug test lists that are not subject to audit, correction, or independent review, enabling targeted or retaliatory selection;
- Suppression or removal of disciplinary decisions involving terminated officers of color from the NYPD trial decision database, preventing comparator analysis and legal challenges;
- Ongoing retaliation against employees who raise procedural, scientific, or legal objections to the testing program—including demotions, denials of promotion, and modified assignments—despite their protected activity under Title VII, § 1983, and whistleblower laws.
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These recurring practices constitute a pattern or practice of systemic discrimination and retaliation under Title VII of the Civil Rights Act of 1964 and related statutes. The NYPD’s selection and discipline procedures—implemented in partnership with its

third-party vendor, Psychomedics Corporation—operate as an institutional framework of exclusion and retaliation, disproportionately harming officers of color and suppressing dissent within the Department.

This Charge therefore not only alleges individual harm but seeks to expose a structurally discriminatory system that violates the Uniform Guidelines on Employee Selection Procedures (UGESP), federal anti-discrimination laws, and constitutional protections. The Respondents' continued use of this program, in the face of documented disparities and legal challenges, reflects deliberate indifference to the civil rights of NYPD personnel.

These facts, taken together, support a compelling inference that the NYPD has engaged in a pattern or practice of using facially neutral drug testing protocols as a vehicle for racially discriminatory targeting, suppression of internal political dissent, and retaliation against protected activity. As the United States Supreme Court recognized in *International Brotherhood of Teamsters v. United States*, 431 U.S. 324, 336 (1977), a pattern or practice of discrimination may be established through a combination of statistically significant disparities, evidence of systemic noncompliance with legal standards, and proof of the employer's knowing disregard of policies or procedures that yield discriminatory outcomes.

XII. Requested Relief and Remedies

The Charging Party respectfully requests that the U.S. Equal Employment Opportunity Commission (EEOC), in coordination with the New York State Division of Human Rights and the New York City Commission on Human Rights, take appropriate action to investigate, remedy, and enjoin the unlawful employment practices described herein. These practices have caused significant harm to the Charging Party and similarly situated employees and warrant both individual and systemic corrective measures under Title VII, 42 U.S.C. § 1983, the NYSHRL, and the NYCHRL.

A. Individual Relief for the Charging Party

The Charging Party seeks the following individual remedies to redress the discriminatory, retaliatory, and procedurally improper actions taken against him:

1. Immediate Reinstatement and Restoration of Rank

- Reinstatement to the Charging Party's former title, duties, and command assignment with restoration of seniority, compensation, and accrued benefits.
- Removal of all adverse disciplinary actions or testing results from his personnel file and other official records.

2. Back Pay and Lost Benefits

- Full back pay, including lost salary, overtime, shift differential, and promotional increases, from the date of the adverse action to the date of reinstatement or resolution.
- Restoration of lost pension credits, leave accruals, medical benefits, and other employment-related entitlements.

3. Compensatory Damages

- Compensation for emotional distress, reputational harm, and loss of professional opportunities arising from the unlawful suspension, demotion, and public stigmatization associated with the flawed drug testing process.

4. Attorney's Fees and Costs

- Full reimbursement of legal fees, expert costs, and related litigation or administrative expenses incurred in asserting the Charging Party's rights.

B. Systemic and Equitable Relief

In light of the evidence demonstrating a pattern or practice of systemic discrimination, retaliation, and procedural misconduct within the NYPD's drug testing program, the Charging Party respectfully requests that the EEOC pursue broader relief to ensure compliance with Title VII and related laws, including but not limited to:

1. Immediate Suspension of the NYPD's Use of RIAH Testing

- A moratorium on the use of radioimmunoassay of hair (RIAH) testing until such time as the Department can demonstrate scientific validity, racial neutrality, and procedural safeguards consistent with the Uniform Guidelines on Employee Selection Procedures and SAMHSA standards.

2. Independent Audit and Public Reporting

- Appointment of an independent forensic, civil rights, or labor auditing body to:
- Review all drug testing selections over the past five (5) years;
- Assess racial, gender, and ethnic impact data;
- Evaluate the algorithmic testing selection process for neutrality and compliance;
- Audit disciplinary outcomes and identify disparities.
- Public release of redacted findings, methodologies, and accountability measures to ensure institutional transparency and deterrence of future misconduct.

3. Validation of Selection Procedures and Testing Protocols

- Mandated validation studies of all NYPD drug testing procedures, including randomization algorithms, cutoff thresholds, and confirmatory protocols, with documentation submitted to oversight agencies for review.

4. Institutional Reform Measures

- Development and enforcement of written procedures ensuring:
- Uniform disciplinary standards;
- The right to request DNA authentication and second-opinion testing at the City's expense;
- Timely access to testing lists, comparator decisions, and chain-of-custody documentation;
- Internal appeal mechanisms for officers contesting test results or selection irregularities.

5. Training and Monitoring

- Mandatory anti-discrimination and anti-retaliation training for NYPD supervisory and administrative personnel overseeing the drug testing program.
- Ongoing monitoring and semi-annual reporting to the EEOC, NYSDHR, and NYCCHR on disciplinary demographics, selection criteria, and adverse testing outcomes.

6. Policy Alignment with State Cannabis Law

- Full revision of NYPD disciplinary policies to conform with the Marijuana Regulation and Taxation Act (MRTA), prohibiting discipline based on the presence of marijuana metabolites in the absence of on-duty impairment or prohibited conduct.

C. Systemic Referral

Pursuant to the EEOC's authority to address systemic employment discrimination, the Charging Party respectfully requests that this matter be referred to the EEOC's Systemic Investigations Unit or the U.S. Department of Justice for further investigation as a pattern or practice case under 42 U.S.C. § 2000e-6. The Respondents' conduct implicates not only

individual harms but also a widespread institutional framework that violates the rights of multiple classes of employees across the Department.

XIII. Conclusion and Verification

The facts, legal claims, and scientific and procedural concerns outlined in this Charge reflect not merely an isolated dispute, but a structural failure in the design, oversight, and enforcement of the NYPD's drug testing and disciplinary systems. Through its continued reliance on unvalidated methodologies, racially disparate outcomes, algorithmically opaque selection processes, and inconsistent disciplinary enforcement, the City of New York—acting through the NYPD and in conjunction with its contracted laboratory, Psychomedics Corporation—has subjected the Charging Party and similarly situated officers to unlawful discrimination, retaliation, and deprivation of due process under federal, state, and local law.

The Charging Party submits this Charge with the intent not only to vindicate his own rights but to expose and remedy the broader institutional violations that continue to harm officers of color, whistleblowers, and those who challenge unlawful practices within the Department.

Accordingly, the Charging Party respectfully requests full investigation, individual and systemic relief, and appropriate enforcement action as permitted under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1983, the New York State Human Rights Law, the New York City Human Rights Law, the Marijuana Regulation and Taxation Act, and all other applicable federal, state, and local laws.

VERIFICATION

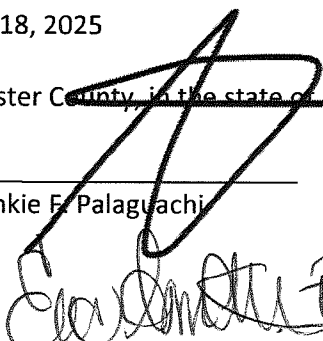
I, Frankie F. Palaguachi, Charging Party, declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Executed on: April 18, 2025

Location: Westchester County, in the state of New York

Signature: _____

Printed Name: Frankie F. Palaguachi


WESTCHESTER 02SA0013820
APRIL 18, 2025 EXP. 09.26.2027

Appendix A – Scientific Authority Addendum: Supporting Literature on RIAH Testing Limitations, Disparate Impact, and Regulatory Non-Compliance

This addendum contains excerpts and summaries of peer-reviewed studies, expert consensus documents, and government guidance demonstrating that:

- Hair drug testing disproportionately affects individuals with darker hair due to melanin binding;
- The method is unable to distinguish ingestion from environmental exposure;
- It lacks a scientifically accepted decontamination protocol;
- It is not approved by SAMHSA for use in federal employment contexts;
- It has been the subject of judicial scrutiny in *Jones v. City of Boston*, *Landon v. Kroll*, and other litigation;
- The NYPD’s continued reliance on this method, absent transparency and validation, fails to meet minimum Title VII or UGESP requirements.

SCIENTIFIC AUTHORITY ADDENDUM

Documented Research Undermining the Reliability and Fairness of Hair Drug Testing

As part of this Charge, Complainant submits scientific evidence demonstrating that **hair drug testing—especially when used for employment-related discipline—is neither uniformly reliable nor free from racial bias**, and that its usage raises serious concerns under Title VII of the Civil Rights Act of 1964 and the Uniform Guidelines on Employee Selection Procedures (UGESP).

One of the most comprehensive peer-reviewed studies on the subject is:

*Ledgerwood, D.M., Goldberger, B.A., Risk, N.K., Lewis, C.E., & Price, R.K. (2008). “Comparison Between Self-Report and Hair Analysis of Illicit Drug Use in a Community Sample of Middle-Age Men,” Addictive Behaviors, PMID: PMC2495080.*** The study, funded by the National Institutes of Health (NIH), involved longitudinal analysis of over 600 men in a general community cohort, comparing self-reported drug use to biological results from hair samples tested using the RIAH method and GC-MS confirmation. The key findings include:

1. Systemic Racial Disparities in Hair Testing Results

The study found African American participants were significantly more likely to test positive for cocaine via hair testing, even when self-reports denied use. The adjusted odds ratio was 27.74, indicating a deeply troubling racial disparity. The researchers acknowledged that melanin content in hair can increase drug binding, thus causing false positives in darker-haired individuals, a concern widely raised in forensic toxicology (Cone & Joseph, 1996; Kidwell et al., 2000).

This supports Complainant’s contention that NYPD’s hair testing program, administered by Psychemedics, has a disparate impact on officers of color, and lacks safeguards to correct for known racial bias in testing methodology.

2. Hair Testing Is Not a “Gold Standard” for Drug Use Detection

Contrary to NYPD and vendor assertions, the researchers concluded that hair testing should not be treated as a superior or definitive tool, especially in disciplinary contexts. In many instances, hair testing failed to outperform self-report, particularly for marijuana detection. This echoes Complainant’s concern that NYPD pursued confirmation despite screening levels being below threshold (e.g., 5.1 pg/mg when the cutoff was 10 pg/mg), while ignoring multiple negative independent tests and a polygraph.

3. Sensitivity Varies by Substance, Hair Length, and Treatment

The study further demonstrated that short hair samples, use of body hair, and chemically treated hair significantly altered test results. These factors were particularly relevant to Complainant, whose leg and arm hair were shaved—raising chain-of-custody and testing reliability concerns.

In fact, “apparent underreporting” or “overreporting” of drug use based on hair test results was strongly associated with hair texture, race, and prior cosmetic treatment, none of which NYPD disclosed or controlled for. This renders the process arbitrary, unscientific, and procedurally deficient, violating UGESP standards for job-relatedness and business necessity.

4. Scientific Uncertainty and Need for Safeguards

The researchers stressed that no singular method (including hair analysis) should be determinative in employment decisions unless accompanied by robust, fair, and scientifically validated procedures. They also noted that SAMHSA has not approved RIAH hair testing for federal workplace drug testing programs, precisely because of these reliability issues.

Conclusion

This authoritative study substantiates Charging Party’s legal argument that NYPD’s reliance on RIAH hair testing—especially as implemented without transparency, independent review, or appeal—constitutes a flawed, racially biased practice that imposes unjust consequences on officers of color.

The NYPD’s program fails to comply with Title VII, UGESP, or SAMHSA-recommended standards and results in unlawful disparate treatment and disparate impact. Further, the role of third-party vendor Psychomedics in knowingly applying dual cutoff thresholds and unequal test panels reinforces the claim of third-party discrimination liability.

Charging Party respectfully submits that this evidence be considered as part of the broader discriminatory scheme, algorithmic opacity, and unequal application of workplace discipline based on unreliable testing science.