

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

ANDREA ADLEMAN,

Petitioner,

v.

NEW YORK STATE DEPARTMENT OF
MOTOR VEHICLES, NEW YORK POLICE
DEPARTMENT

Respondent.

Index No.:

**Verified Petition Pursuant to
NY CPLR Article 78 for an
Order Directing Respondent
DMV to Vacate Conviction
and for Related Injunctive
Relief**

Summary

1. Petitioner Andrea Adleman (“Adleman” or “Petitioner”) seeks an order compelling Respondent New York State Department of Motor Vehicles (“DMV”) to vacate a Notice of Guilty Determination After Hearing arising from a ticket issued to her for lawful passage through an intersection.

2. Petitioner further seeks an order directing Respondent New York Police Department (“NYPD”) to cease detaining or charging with traffic violations cyclists who proceed legally through an intersection with a pedestrian WALK sign, as provided by applicable law.

3. The error below is clear: City law permits cyclists to proceed with a “WALK” signal, even if the vehicular signal is red. NYCAC § 19-195.1. Section 19-195.1, duly enacted pursuant to the City’s expansive powers to regulate traffic under Vehicle & Traffic Law Section 1642, took effect in 2019, but NYPD and DMV have refused, inexplicably, to give it effect.

4. Adleman was issued a traffic summons by officers of the New York City Police Department (“NYPD”) for the lawful act of proceeding by bicycle with a white “WALK” signal, then convicted by a DMV Administrative Law Judge of violating a steady red signal that did not govern her conduct under Section 19-195.1, and the conviction was affirmed by the DMV Appeals Board without any explanation why that Section of New York City law did not govern.

5. Because the NYPD’s ticketing of Adleman for proceeding on a white “WALK” signal and DMV’s conviction for the same conduct were affected by an error of law, vacatur of the conviction is appropriate here.

6. Moreover, Respondents’ practice of issuing tickets to cyclists for the lawful crossing of an intersection with a pedestrian “WALK” signal is unlawful, and it is respectfully requested that Respondents DMV and NYPD be directed to so advise their personnel with responsibility for enforcing the traffic laws.

Proceedings Below

7. The Subject Event. On June 7, 2022, Adleman was operating a bicycle up Sixth Avenue in Manhattan in a marked bike lane as she approached the intersection at 41st Street. (DMV Hearing Transcript, dated Apr. 11, 2023, (“Aff. Ex. A” or “H. Tr.”) 5:12.)

8. At the time that she crossed the stop bar in the bicycle lane preceding the intersection, the WALK signal for her direction of traffic was illuminated. This is not disputed.

9. Adleman testified that she “proceeded north on Sixth Avenue through the light at 41st Street when the walk sign was on for the north/south pedestrian crossing across 41st Street.” (*Id.* at 5:11-14.) The ticketing officer also testified that, at the time Adleman crossed 41st Street, the pedestrian signal for northbound traffic showed a “white stick figure.”¹

10. Adleman was nevertheless issued a summons for violating Vehicle and Traffic Law (“VTL”) § 1111(d), which provides that “[t]raffic, except pedestrians, facing a steady circular red signal, unless to make such other movement as is permitted by other indications shown at the same time, shall stop at a clearly marked stop line” (Adleman Not Guilty Plea, Aff. Ex. B.)

11. Adleman pleaded not guilty to the violation and submitted evidence demonstrating the legality of her conduct on Sixth Avenue. (Aff. Ex. B.) This included photographs of the subject intersection displaying a white “WALK” signal while the vehicular traffic light governing the motor vehicles in the adjacent vehicular lane displayed a steady red signal. (*Id.*)

12. A hearing was conducted before an Administrative Law Judge from the Traffic Violations Bureau (the “ALJ”) on April 11, 2023. (Aff. Ex. A.)

13. Following the hearing, the Traffic Violations Bureau issued a Notice of Guilty Determination After Hearing (the “Conviction”). (Aff. Ex. C.)

¹ The officer could not see the red light that Adleman is alleged to have impermissibly crossed. Instead, he testified that because he could see the “white stick figure” on the pedestrian crossing, he knew that the traffic light, which faced the other way, was red. The officer’s explicit inference that the white pedestrian signal correlated to a red vehicular signal, and decision to ticket Adleman based on her ostensible disobedience to the vehicular signal that did not govern her conduct, proves by clear and convincing evidence that Adleman’s conduct was lawful under Section 19-195.1. (DMV H. Tr. 4:3-6, 4:18-23.)

14. Adleman appealed the Conviction, and such appeal was denied by the DMV Appeals Board on August 7, 2023. (Aff. Exs. D and E.)

15. This timely Article 78 proceeding was commenced on December 5, 2023, within 120 days after the DMV Appeals Board's denial on August 7, 2023.

Jurisdiction and Venue

16. This proceeding pursuant to Article 78 of the Civil Practice Law and Rules is the proper mechanism for seeking judicial review of a final determination by the Appeals Board of the New York State Department of Motor Vehicles. *Kamarad v. Fiala*, 149 A.D.3d 740, 741, 50 N.Y.S.3d 556, 558 (2nd Dep't 2017) (recognizing that DMV Appeal Board determination is a "final agency action" under review in an Article 78 proceeding).

17. Respondents' hearing and determination concerning Adleman's alleged violation occurred in the Manhattan South location of Respondent DMV, at 11 Greenwich St., New York, NY 10004. Respondent NYPD is headquartered at One Police Plaza, New York, NY 10038. Venue is therefore appropriate in this Court. *See* N.Y. Civ. Prac. L. R. §§ 7804(a), 506(b).

18. Petitioner has exhausted Respondent's internal appeals process by taking an appeal of her Notice of Guilty Determination. Such appeal was denied on August 7, 2023, and this timely proceeding follows.

Basis for Relief

Respondent DMV Applied the Wrong Law to Adleman in Issuing and Upholding the Conviction.

19. Petitioner brings this proceeding to correct a substantial error of law by Respondent DMV and NYPD.

20. The heart of the error can be summed up by the ticketing officer's testimony at the hearing that a "white stick figure" was displayed as Adleman proceeded toward the intersection, leading to the ALJ's concluding remark at the hearing, that "[y]ou have to operate a bike like a car, you can't go through red lights." (H. Tr. 8:17-18.)

21. For cyclists in New York City, this is not the law.

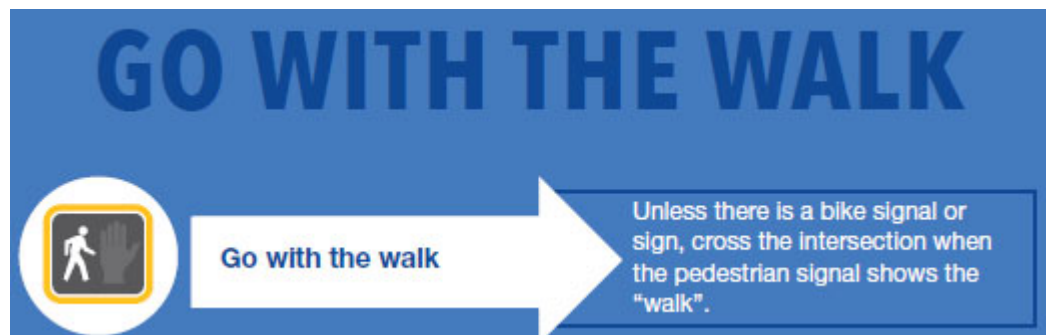
22. Rather, pursuant to its authority granted by the New York legislature, the City of New York has promulgated rules permitting cyclists to follow pedestrian control signals when crossing an intersection. As a city of more than one million people, New York City has the same authority that State government would to "by local law . . . regulation or health code provision prohibit, restrict or regulate traffic on or pedestrian use of any . . . any private road open to public motor vehicle traffic [] in such city" and that such regulations "shall supersede the provisions of this chapter where inconsistent or in conflict with respect to" enumerated areas of traffic regulation, including the regulation of the "[r]ight of way of vehicles and pedestrians." VTL § 1642(a)(10)²

² Bicycles are treated as vehicles under Section 1642 pursuant to Vehicle & Traffic Law Section 1231. *See* N.Y. Veh. & Traf. Law § 1231. ("Every person riding a bicycle or skating or gliding on in-line skates upon a roadway shall be granted all of the rights and shall be subject to all of the duties applicable to the driver of a vehicle by this title.")

23. Exercising its grant of authority to regulate the right of way of vehicles and pedestrians in a manner inconsistent with other provisions of the Vehicle and Traffic Law (including Section 1111(d)), the City enacted Section 19-195.1

24. Section 19-195.1 provides that, in the City of the New York, “[a] person operating a bicycle while crossing an intersection shall follow pedestrian control signals except where otherwise indicated by traffic control devices, and provided that such person shall yield to pedestrians in the crosswalk.” NYCAC s. 19-195.1(b).

25. Guidance to cyclists issued by the New York State Department of Transportation in connection with these rules further clarify that “[u]nless there is a bike signal or sign,” cyclists should “cross the intersection when the pedestrian signal shows the “walk.”



(Aff. Ex. B.)

26. Adleman was convicted of entering an intersection on a bicycle against a red vehicular signal by an officer who by their own testimony admitted that Adleman was proceeding *with* a white pedestrian signal. *See generally* H. Tr.

27. The applicable standard of review is whether the challenged determination “was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion” *Gorecki v. New York State Dep’t of Motor Vehicles*, 201 A.D.3d 802, 803, 162 N.Y.S.3d 85, 87 (2nd Dep’t 2022).

28. The error of law here is plain: Adleman was convicted of violating a statute (VTL s. 1111(d)) that — by force of the City of New York’s duly-promulgated rules — does not apply to her as a cyclist under the circumstances presented.

29. Rather, in entering the intersection, Adleman was following NYCAC s. 19-195.1(b), which allowed her to enter the intersection on a white “WALK” signal, regardless of whether the vehicular signal was red.

30. Adleman testified at the hearing without contradiction that she was following a white “WALK” signal as she entered the subject intersection. (H. Tr. 5:10-6:14.)

31. The ticketing officer confirmed this, testifying that Adleman entered while a pedestrian signal at the intersection was a “white stick figure.” (H. Tr. 4:1-6.)

32. Adleman also presented at the hearing two photos (A and B) demonstrating that the pedestrian crossing signals at the subject intersection showed a white “WALK” figure simultaneous with the vehicular signal for motor vehicle traffic proceeding in the same direction displaying a red signal, as well as NYC DoT written guidance stating that under NYCAC 195.1(b), “[u]nless there is a bike signal or sign, cross the intersection when the pedestrian signal shows the “walk.” (See Aff. Exs. A-B.)



(Aff. Ex. B reflecting white pedestrian “WALK” signal while vehicular signal shows red at subject intersection)

33. The ALJ received Adleman’s testimony and exhibits without contradiction. *See generally* H. Tr.

34. Both the ticketing officer, in detaining Adleman and issuing her a ticket, and the ALJ, in convicting Adleman, saw a violation where none existed because they were apparently unaware of Section 19-195.1 (*See* H. Tr., 4:12-17; 4:24-25 (police

officer's statement that "when you're on a bike, you must physical stop at all red lights and wait until the light turns green."); 8:17-18 (ALJ's statement "You have to operate a bike like a car, you can't go through red lights.").

35. Accordingly, due to Respondents NYPD and DMV's error of law as it applies to cyclists in the City of New York, the Conviction should be vacated.

Respondents Must Be Ordered to Apply City Law, Rather Than Inapplicable State Law, to Cyclists Legally Crossing Intersections with Pedestrian Walk Signals

36. Throughout this process, personnel employed by Respondents DMV and NYPD to enforce the traffic laws have evinced a material misunderstanding of the law in the City of New York as it pertains to cyclists.

37. As set forth above, cyclists in the City of New York are permitted to cross intersections with the pedestrian WALK signal unless there are specific signs pertaining to cyclist conduct.

38. Nevertheless, the NYPD detained Adleman, issued a violation, and pursued such violation for Adleman's undisputed observance of the laws of the City of New York.

39. As an initial matter, Respondent NYPD's stop of Adleman constituted an unlawful seizure. "An officer's stop of a moving bicyclist constitutes a seizure." *People v. Rodriguez*, No. 78, 2023 WL 8039648, at *6 (N.Y. Nov. 21, 2023).

40. As a seizure, "a bicycle stop is a traffic stop that involves a show of governmental authority, and triggers "anxiety" in the individual in a manner that implicates the same social expectations regarding how reasonable people react to such

authority.” *Id. citing Brendlin v. California*, 551 U.S. 249, 251, 127 S.Ct. 2400, 168 L.Ed.2d 132 (2007).

41. This is precisely the circumstance here, as Adleman experienced significant anxiety in connection with the unlawful stop.

42. Upon information and belief, Respondent NYPD by custom and practice detains and issues traffic summonses to cyclists generally for the same lawful conduct at issue here, because Respondent NYPD has done nothing to inform enforcement personnel of the existence and effect of Section 19-195.1.

43. Upon information and belief, Respondent DMV by custom and practice convicts cyclists issued summonses for lawfully proceeding through steady red circular signals when there is a white WALK pedestrian signal facing the cyclists allowing them to lawfully do so.

44. Press reports abound regarding the custom and practice of NYPD and DMV of refusing to give effect to Section 195.1. *See, e.g.* David Colon, “The NYPD and DMV Are Punishing Cyclists For Legally Crossing With The Pedestrian Signal,” Streetsblog (Sept. 6, 2022), available at <https://nyc.streetsblog.org/2022/09/06/the-nypd-and-dmv-are-punishing-cyclists-for-legally-crossing-with-the-pedestrian-signal> (last accessed Dec. 5, 2023); Julianne Cuba, “NYPD Tickets E-Bike Riders For Legally Following Pedestrian Signal,” Streetsblog, (Nov. 6, 2021), available at <https://nyc.streetsblog.org/2021/11/15/courtesy-professional-and-disrespect-nypd-tickets-e-bike-riders-for-legally-following-pedestrian-signal> (last accessed Dec. 5, 2023).

45. The custom and practice of Respondents of failing to apply the law, exemplified in Adleman’s case, merits broader corrective relief from this Court.

46. There is “ample authority that relief in the nature of *mandamus* may be granted to compel a public body or officer to refrain from taking particular administrative action in contravention of a clear mandate of law, even though the immediate relief sought is of a preventative rather than affirmative nature.” *Matter of New York Post Corp. v. Leibowitz*, 2. N.Y.2d 677, 684 (N.Y. 1957).

47. “An article 78 proceeding in the nature of *mandamus* is an appropriate remedy to compel performance of a statutory duty that is ministerial in nature but not one in respect to which an officer may exercise judgment or discretion’ unless such judgment or discretion has been abused by arbitrary or illegal action.” *Board of Educ. of N. Colonie Schools v. Levitt*, 42 A.D.2d 372, 374, 348 N.Y.S.2d 387 (3rd Dep’t 1973), quoting *Matter of Posner v. Levitt*, 37 A.D.2d 331, 332, 325 N.Y.S.2d 519 (3rd Dep’t 1971).

48. Here, Petitioner requests that Respondents DMV and NYPD “refrain from taking particular administrative action in contravention of a clear mandate of law,” *Matter of New York Post Corp.*, 2. N.Y.2d at 684, namely refrain from the enforcement of VTL § 1111(d) against cyclists lawfully proceeding through an intersection with the pedestrian WALK signal.

49. NYPD’s failure to abide by the law results in the unlawful detentions of cyclists, *see Rodriguez*, No. 78, 2023 WL 8039648, at *6.

50. Accordingly, Petitioner requests that Respondents DMV and NYPD be ordered to comply with the laws and regulations of the City of New York in the issuance

of tickets to cyclists proceeding lawfully through intersections with the pedestrian “WALK” signal.

Request for Relief

WHEREFORE, Petitioner Andrea Adleman respectfully requests this Court to enter an order *(a)* directing Respondents DMV and NYPD to vacate the Conviction; *(b)* directing Respondents NYPD and DMV to apply the law including the Vehicle and Traffic Law as well as the provisions of the New York City Administrative Code that lawfully supersede the Vehicle and Traffic Law, as written; *(c)* awarding Petitioner reasonable legal fees and expenses incurred in making the instant petition for relief; and *(d)* granting such other and further relief as the Court may deem just and proper.

Dated: New York, NY
December 5, 2023



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Counsel for Petitioner Andrea Adleman

PLAINTIFF'S VERIFICATION

State of New York)

ss:

County of New York)

I, Andrea Adleman, being duly sworn, depose and say:

I am the petitioner in this proceeding, I have read the foregoing verified petition and know the contents thereof; that the same is true to my own knowledge, except as to matters therein state to be alleged on information and belief and that as to those matters I believe them to be true.

a. adleman

Andrea Adleman

Subscribed and Sworn to Before Me on this 5th day of December, 2023.



VANESSA WALLACE
NOTARY PUBLIC-STATE OF NEW YORK
No. 01WA0016133
Qualified in Richmond County
My Commission Expires 11-11-2027