

RECEIVED
SDNY PRO SE OFFICE
2016 OCT -5 AM 9:39

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Herman Olaizola

16 cv 3777(CM)

Write the full name of each plaintiff.

(Include case number if one has been assigned)

-against-

Robert Foley NYPD Officer

**AMENDED
COMPLAINT**
(Prisoner)

Do you want a jury trial?

Yes No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 10-5-16

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a "Bivens" action (against federal defendants).

Violation of my federal constitutional rights

Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

Herman		Olaizola
First Name	Middle Initial	Last Name

State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

13A3418

Prisoner ID # (if you have previously been in another agency's custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Green Haven Correctional Facility

Current Place of Detention

P.O. Box 4000

Institutional Address

Stormville

N.Y.

12582

County, City

State

Zip Code

III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

Pretrial detainee

Civilly committed detainee

Immigration detainee

Convicted and sentenced prisoner

Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1: Robert Foley 024963
 First Name Last Name Shield #
New York Police Officer
 Current Job Title (or other identifying information)
44th pct 2 East 169st
 Current Work Address
Bronx NY 10452
 County, City State Zip Code

Defendant 2: _____
 First Name Last Name Shield #

 Current Job Title (or other identifying information)

 Current Work Address

 County, City State Zip Code

Defendant 3: _____
 First Name Last Name Shield #

 Current Job Title (or other identifying information)

 Current Work Address

 County, City State Zip Code

Defendant 4: _____
 First Name Last Name Shield #

 Current Job Title (or other identifying information)

 Current Work Address

 County, City State Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: Grand Concourse 167st Bronx, N.Y.

Date(s) of occurrence: May 10th 2012 til June 18, 2013

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

See additional sheet 1A

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

Plaintiff seeks compensatory damages in the amount of 500 thousand dollars for his unreasonable and illegal search and seizure.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

<u>September 28, 2016</u>		<u>Herman Olajzola</u>	
Dated		Plaintiff's Signature	
<u>Herman</u>		<u>Olaizola</u>	
First Name	Middle Initial	Last Name	
	<u>Box 4000</u>		
Prison Address			
<u>Stormville</u>		<u>NY</u>	<u>12582</u>
County, City		State	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: 9/28/16

Amended Complaint

1A

On May 10, 2012 I was given a ride in my sisters car Diana Olaiola from 161st by Madeline Ortiz. On 167st Grand Concourse we were side swiped by another vehicle on the express uptown lane of Grand Concourse. Both cars came to a halt on or about 168st Grand Concourse. With the car that swiped us in front, Madeline Ortiz and myself stepped out the car. I asked Ms. Ortiz to get on the small sidewalk (divider between local and express lane) as I went to assess the damage on the drivers side, being that it was my sister car. Officer Robert Foley (shield number 624963) and his partner arrived. I explained to Officer Foley what happen that there was an accident. His partner went to speak to the occupants in the other cars. Officer Foley asked me if can search the car, I told him no along with Ms. Ortiz, when he was to no he became upset and asked me again and I said no once more. I witness his partner let the people he was questioning in the other car go after a brief conversation with Officer Foley. Even after an elderly couple told them the exact thing I told them and disregarding Ms. Madeline Ortiz testimony of the accounts that happen and telling Officer Foley she was the driver. They didn't acknowledge her whatsoever and told me to turn around I was under arrest for a weapon. As you can see by my rap sheet Officer Foley made up trumped up charges of a weapons charge. All his charges were dismiss 11 month later. I wasn't even arraigned on the weapons possession his initial charge. He also falsified his paper work and search my sisters car illegally. I was arrested May 10, 2012 and he change his story when he wrote another incident report over 3 month later on 8/20/12 with different accounts of his arrest.

I included with this complaint documents which support my accounts. On June 18, 2013 I was not arraigned on the possession of a weapons charge, criminal possession of stolen property and aggravated unlicensed operation of motor vehicle. All other charges was dismiss June 18, 2013. Officer Foley searched my sisters car May 10, 2012 and again on May 11, 2012 and I was never transported to be arraigned at Bronx County Court. I am also waiting on the Bronx District Attorney to unseal my records from said case # 51311C-2012 that I've been waiting for several months.

Norman Blaizola

My complaint was submitted May 25, 2016. said case was dismiss on July 18, 2013 within the 3 year limitation for a '1983. I hope the courts toll the time from that date. I was aware of the charges being dismiss when I received the sealed and dismiss documents.

CRIMINAL COURT OF THE CITY OF NEW YORK
COUNTY OF BRONX

CERTIFICATE OF DISPOSITION
NUMBER: 109415

THE PEOPLE OF THE STATE OF NEW YORK
VS

OLIAZOLA, HERMAN
Defendant

06/24/1964
Date of Birth

2463 MARION AVENUE
Address

4656145J
NYSID Number

BRONX NY
City State Zip

05/10/2012
Date of Arrest/Issue

Docket Number: 2012BX051311

Summons No:

120.20 220.03 VTL 5112AIV VTL 511 VTL 509 VTL 1212
Arraignment Charges

Case Disposition Information:

06/18/2013 DISMISSED AND SEALED
Date Court Action

MOGULESCU, W
Judge

77-C
Part

DISMISSED

SEALED

pursuant to Section 800.50 of the CPL

NO FEE CERTIFICATION

GOVERNMENT AGENCY COUNSEL ASSIGNED
 NO RECORD OF ATTORNEY READILY AVAILABLE. DEFENDANT STATES COUNSEL WAS ASSIGNED
 SOURCE ACCUSATORY INSTRUMENT DOCKET BOOK/CRIMS CRC3030 [CRS963]

I HEREBY CERTIFY THAT THIS IS A TRUE EXCERPT OF THE RECORD ON FILE IN THIS COURT.

GORDON, B
COURT OFFICIAL SIGNATURE AND SEAL

07/17/2013
DATE

FEE: NONE

(CAUTION: THIS DOCUMENT IS NOT OFFICIAL UNLESS EMBOSSED WITH THE COURT SEAL OVER THE SIGNATURE OF THE COURT OFFICIAL.)

THE CITY OF NEW YORK OFFICE OF THE COMPTROLLER
1 CENTRE STREET, NEW YORK, N.Y. 10007-2341



Scott M. Stringer
COMPTROLLER

015 - 165

Date: 03/28/2014

HERMAN OLAIZOLA 13A3418
DOWNSTATE CORRECTIONAL BX F, RED SCHLHSE RD
FISHKILL, NY 12524 - 0445

Claim no: 2013PI021531

Dear Sir or Madam:

Please be advised that the above referenced claim has been investigated and evaluated. We are prepared to offer the amount of \$ [REDACTED] as full settlement of this claim.

If this offer is acceptable, please complete the enclosed release and return it to this office. This offer is made without prejudice to either party.

If you don't respond to this offer within 30 days, it will be assumed that the offer is rejected.

If you wish to discuss this matter further, please contact me at the telephone number indicated below.

Very truly yours,


ANASTASIA PEREZ

Division: PERSONAL INJURY DIV.

Phone: (212) 669-2251

Fax No: _____

JAIL



BRONX SUPREME COURT
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF NEW YORK

v.

STATE OF NEW YORK

COUNTY OF THE BRONX

1. HERMAN OLIAZOLA M/47
Arrest# B12637334

Defendant

APR 75,000 / 75,000 / 140,25

PO ROBERT FOLEY of 44 PCT, Shield# 024963, states that on or about May 10, 2012 at approximately 11:15 AM at Northeast corner Grand Concourse and East 167 Street, County of the Bronx, State of New York,

THE DEFENDANT COMMITTED THE OFFENSES OF:

- 1 (M) P.L. 120.20 Reckless Endangerment 2^ DQO
- 2 (M) P.L. 220.03 *no/* Criminal possession of a controlled substance in the seventh degree DQO *+10 dep*
- 3 (M) V.T.L. 511(1)(a) Aggravated Unlicensed Operation of a Motor Vehicle *+20 dep*
- 4 (M) V.T.L. 511(2)(a)(iv) Aggravated Unlicensed Operation of a Motor Vehicle
- 5 (M) V.T.L. 1212 Reckless Driving
- 6 (V) V.T.L. 509(1) Violations of the Vehicle and Traffic Law

IN THAT THE DEFENDANT DID: recklessly engage in conduct which created substantial risk of serious physical injury to another person; knowingly and unlawfully possesses a controlled substance; operate a motor vehicle upon a public highway while knowing or having reason to know that his license or privilege of operating a motor vehicle in this state or privilege of obtaining a license to operate such motor vehicle issued by the commissioner of motor vehicles was suspended, revoked or withdrawn by the commissioner; operate a motor vehicle upon a public highway while knowing or having reason to know that his license or privilege of operating a motor vehicle in this state or privilege of obtaining a license issued to operate such motor vehicle by the commissioner of motor vehicles was suspended, revoked or withdrawn and defendant has in effect three or more suspensions on at least three different dates for failure to answer, appear or pay a fine pursuant to VTL 226(3) or VTL 510(4)(a); drive or use a vehicle propelled by a power other than muscular power in a manner which unreasonably interfered with the free and proper use of the public highway, or unreasonably endangered users of the public highway and operate or drive a motor vehicle upon a public highway of this state or upon any sidewalk or to or from any lot adjacent to a public garage, supermarket, shopping center or car washing establishment or to or from or into a public garage or car washing establishment unless he is duly licensed pursuant to the provisions of this chapter..

THE GROUNDS FOR THE DEPONENT'S BELIEF ARE AS FOLLOWS:



*Officer Foley kept
copy of arrest D
Search - a refusal*

Deponent states, that based upon his training and experience, which includes training in the recognition of controlled substance, and its packaging, the aforementioned substance is alleged and believed to be HEROIN.

FALSE STATEMENTS MADE HEREIN ARE PUNISHABLE
AS A CLASS A MISDEMEANOR PURSUANT TO P.L. 210.45

(08/20/2012 (10:01))
DATE and TIME



SIGNATURE



002103574



NYPD PETS PROPERTY and EVIDENCE TRACKING SYSTEM
Property Clerk Invoice
 PD 521-141 (Rev. 11/08)



Invoice No **2000098827**

Invoicing Command
44TH PCT.

Invoice Status
OPEN

Invoice Date
05/10/2012

Property Type
GENERAL PROPERTY

Property Category
ARREST EVIDENCE

Officers	Rank	Name	Tax No.	Command	OCME EU No.	OCME FB No.	Police Lab Evid. Ctr. No.	Det. Sqd. Case No.	CSU/ECT Run No.
Invoicing	POM	FOLEY, ROBERT	934873	44TH PRECINCT				N/A	
Assisting	POM	FOLEY, ROBERT	934873	44TH PRECINCT					
Investigating	N/A								
Det. Squad Supervisor	N/A								
CSU/ECT Processing	N/A								

Item	Total QTY	Article(s)	PETS No.	Pkg. QTY	Disposition
1	1	CELL PHONE COLOR: BLACK MAKE: BLACKBERRY MODEL: 8530 IMEI #: N/A	1200976089	1	
2	1	CELL PHONE - ACCESSORIES COLOR: OTHER CELLPHONE COVER	1200976089	1	
3	1	BATTERY COLOR: BLUE CELLPHONE BATTERY	1200976089	1	

REMARKS:
 934873 06/10/2012 20:22 : AT TPO THE ABOVE ITEMS WERE VOUCHERED AS ARREST EVIDENCE

Date Of Incident	Penal Code/Description	Crime Classification	Related To	Receipt
05/10/2012	26502/CRIM POSS WEAPON	FELONY	N/A	ACCEPTED

Prisoner(s) Name	D.O.B	Age	Address	Arrest No./Summons No.	NYSID No.
1 OLIAZOLA, HERMAN	06/24/1964	47	2463 MARION AVENUE, 21, BRONX, NY	B12637334	04656146J

Finder(s)	Owner(s)	Complainant(s)	Complainant(s)	Complainant(s)
	OLIAZOLA, HERMAN	PSNY	[REDACTED]	[REDACTED]

Complaint No: 2012-044-5907
 Related Comp No (s): N/A
 Aided/Accident No (s): N/A



Invoice No. **2000098827**

Property Clerk Copy
 printed 05/10/2012 22:07

PCD Storage No. -

Page No 1 of 2

Received: May 11 2012 11:31am
 May 11 2012 11:29am P006/007
 Fax: 718-590-5557



NYPD PETS PROPERTY and EVIDENCE
TRACKING SYSTEM
Property Clerk Invoice
PD 521-141 (Rev. 11/09)



Invoice No. 2000098827

Related Invoice(s) N/A						
Approvals	Rank	Name	Tax No.	Command	Date	Time
Entered By	POM	FOLEY, ROBERT	934873	44TH PRECINCT	05/10/2012	20:14
Invoicing Officer	POM	FOLEY, ROBERT	934873	44TH PRECINCT	05/10/2012	20:24
		<i>R. Foley</i>				
Approved By	SGT	BOPP, MICHAEL	928749	44TH PRECINCT	05/10/2012	21:40
		<i>M. Bopp</i>				



Invoice No. 2000098827

Property Clerk Copy

Printed: 05/10/2012 22:07

PCO Storage No. --

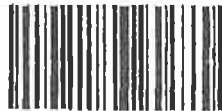
Page No. 2 of 2

May 11 2012 11:31am
Fax: 718-590-5557
May 11 2012 11:30am P007/007

Received:



NYPD PETS PROPERTY and EVIDENCE TRACKING SYSTEM
 Property Clerk Invoice
 PD 521-141 (Rev. 11/09)



Invoice No. **2000099049**

Invoicing Command
44TH PCT.

Invoice Status
UNAPPROVED

Invoice Date: **05/11/2012** Property Type: **GENERAL PROPERTY** Property Category: **ARREST EVIDENCE**

Officers	Rank	Name	Tax No	Command	OCME, EU No.
Invoicing	POM	FOLEY, ROBERT	934873	44TH PRECINCT	OCME, FB No.
Arresting	POM	FOLEY, ROBERT	934873	44TH PRECINCT	Police Lab Evid. Cont. No.
Investigating	N/A				Det. Sqd. Case No. N/A
Det. Squad Supervisor	N/A				CSU/ECT Run No. N/A
CSU/ECT Processing	N/A				

Item	Total QTY	Article(s)	PETS No.	Pkg. QTY	Disposition
1	2	INSTRUMENT COLOR: CHROME/STAINLESS STEEL LOCK PICKS	1200976124	2	

REMARKS:
 934873 05/11/2012 13:28 : AT TPO THE ABOVE ITEMS WERE VOUCHERED AS ARREST EVIDENCE

Date Of Incident	Penal Code/Description	Crime Classification	Replied To	Receipt
05/10/2012	28502/CRIM POSS WEAPON	FELONY	N/A	REFUSED

Prisoner(s) Name	D.O.B	Age	Address	Arrest No./Summons No.	NYSD No.
1 OLIAZOLA, HERMAN	06/24/1964	47	2483 MARION AVENUE, 21, BRONX, NY	B12637334	04656145J

Name	Tax No	Address	Phone No
Finder(s)			
Owner(s)		2483 MARION AVENUE, 21, BRONX, NY	
Complainant(s)		PSNY	
Complainant(s)		BANANOV, SVETOSLAV 4761 40TH STREET, 3A, QUEENS, NY	
Complainant(s)		LESUEUR, ERIC 4761 40 STREET, 5A, QUEENS, NY	

Complain. No. 2012-044-5907
 Related Comp No. (s) N/A
 Aided/Accident No. (s) N/A
 Related Invoice(s) N/A



Invoice No. **2000099049**

Property Clerk Copy
 printed: 05/11/2012 15:20

PCD Storage No. --
 Page No. 1 of 2

Received: May 11 2012 03:32pm
 Fax: May 11 2012 03:31pm P001/002



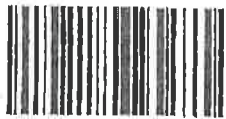
NYPD PETS PROPERTY and EVIDENCE
TRACKING SYSTEM
Property Clerk Invoice
PD 621-141 (Rev. 11/09)



Invoice No. **2000099049**

Approvals	Rank	Name	Tax No	Command	Date	Time
Entered By	POM	FOLEY, ROBERT	934873	44TH PRECINCT	05/11/2012	13:23
Invoking Officer	POM	FOLEY, ROBERT	934873	44TH PRECINCT	05/11/2012	13:27

R. Foley
↑
NO SUPERVISOR SIGN



Invoice No. **2000099049**

Property Clerk Copy

Printed: 06/11/2012 15:26

PCD Storage No. —

Page No 2 of 2

Received: May 11 2012 03:32pm
Fax: May 11 2012 03:31pm P002/002

October 02, 2012
Returned On Warrant

October 02, 2012
Transferred

June 18, 2013
Dismissed CPL160.50

- Reckless Endangerment-2nd Degree
PL 120.20 Class A Misdemeanor NCIC 7099
- Criminal Possession Controlled Substance- 7th Degree
PL 220.03 Class A Misdemeanor NCIC 3599
- Aggravated Unlicensed Operation Motor Vehicle-2nd Degree
VTL 0511 Counts: 2 Class U Misdemeanor NCIC 5499
- Reckless Driving
VTL 1212 Class U Misdemeanor NCIC 5499
- General Violation Vehicle Traffic Law
VTL Violation NCIC 5499

June 19, 2013
Sealed Upon Termination Of Criminal Action In Favor Of The Accused CPL160.50

-- Court: Bronx County Supreme Court Case Number: 51311C-2012

October 05, 2012
Initial Report Of Docket Number

- Reckless Endangerment-2nd Degree
PL 120.20 Class A Misdemeanor NCIC 7099
- Criminal Possession Controlled Substance- 7th Degree
PL 220.03 Class A Misdemeanor NCIC 3599
- Reckless Driving
VTL 1212 Class U Misdemeanor NCIC 5499
- Aggravated Unlicensed Operation Motor Vehicle-2nd Degree
VTL 0511 Counts: 2 Class U Misdemeanor NCIC 5499
- General Violation Vehicle Traffic Law
VTL Violation NCIC 5499

June 18, 2013
Returned To Lower Court

- Reckless Endangerment-2nd Degree
PL 120.20 Class A Misdemeanor NCIC 7099
- Criminal Possession Controlled Substance- 7th Degree
PL 220.03 Class A Misdemeanor NCIC 3599
- Aggravated Unlicensed Operation Motor Vehicle-2nd Degree
VTL 0511 Counts: 2 Class U Misdemeanor NCIC 5499
- Reckless Driving
VTL 1212 Class U Misdemeanor NCIC 5499
- General Violation Vehicle Traffic Law
VTL Violation NCIC 5499

June 18, 2013
Not Arraigned

- Crim Possession Weapon-3rd Degree: Possess Firearm-Previous Conviction
PL 265.02 Sub 05II Class D Felony NCIC 5299
- Criminal Possession Stolen Property-5th Degree
PL 165.40 Class A Misdemeanor NCIC 2804
- Aggravated Unlicensed Operation Motor Vehicle-3rd Degree
VTL 0511 Sub 01 Class U Misdemeanor NCIC 5499

GREEN HAVEN CORRECTIONAL FACILITY
P.O. BOX 4000
STORMVILLE, NEW YORK 12582-4000

GREEN HAVEN
CORRECTIONAL
FACILITY

NEOPOST

09/30/2016

US POSTAGE \$000.8



2016 OCT -5 AM 9:39
SDNY PPD SE OFFICE

NAME: Herman Olazola DIN: 13A3418



Pro - Se
United States District Court
Southern District of New York
United States Courthouse
500 Pearl Street
New York, N.Y. 10007-1312
1000713300014

Legal
Mail

Recycled Paper

NEW YORK STATE
DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION
OFFENDER CORRESPONDENCE PROGRAM
NAME: Herman Olazola DIN: 13A3418