

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DARNELL GARRETT

Write the full name of each plaintiff.

2018 APR -2 PM 9:20
17 CV 7217
(Include case number if one has been assigned)

-against-

CITY of NEW YORK, POLICE OFFICER

MICHAEL MCGUIRE #25906, POLICE OFFICER

MICHAEL COLLARINI #964

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.

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.

<u>DARHELL</u>		<u>GARRETT</u>
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.

17A0288

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)

MID-STATE CORRECTIONAL FACILITY

Current Place of Detention

P.O. BOX 2500

Institutional Address

<u>MARCY</u>	<u>N.J.</u>	<u>13403</u>
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: _____

V. STATEMENT OF CLAIM

Place(s) of occurrence: 2640 8TH AVENUE NEW YORK, N.Y. 10030

Date(s) of occurrence: SEPTEMBER 16, 2014

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 ATTACH -

THE FACTS OF INCIDENT

I WAS ON THE FIFTH FLOOR OF A RELATIVE COMPLEX BUILDING 2640 8TH AVE STANDING AT THE WINDOW SILL WHEN I SAW MY FRIEND GOING TO THE STORE. WHILE HE WAS WALKING TO THE STORE I TELLER OUT, "HEY BARK GET ME A DUTCH", TWO NRPD OFFICERS STANDING ON 141ST ST AT THE EXIT DOORS OF 123 MARALIA JACKSON SCHOOL CALLING OUT TELLING ME "WHAT THE FUCK ARE YOU TELLING FOR," I CONTINUED TO GET THE ATTENTION OF MY FRIEND AT THE SAME TIME THE OFFICER CONTINUED TO INTERRUPT WITH VERBAL ABUSIVE LANGUAGE TELLING "TO SHUT THE FUCK UP AND COME DOWNSTAIRS". I COULD NOT GET MY FRIEND ATTENTION SO I HEADED DOWNSTAIRS TO GET THE ATTENTION OF MY FRIEND BEFORE HE LEFT THE STORE. AT THE SAME TIME I WAS APPROACH BY THE SAME OFFICERS USING ABUSIVE LANGUAGE. OFFICERS ASKED FOR MY IDENTIFICATION AND I RESPONDED BY ASKING "FOR WHAT" AND STATING TO THEM I AM EXPRESSING MY FIRST AMENDMENT RIGHT OF FREEDOM OF SPEECH." HE STILL IGNORED MY STATEMENT AND ASKED AGAIN FOR MY IDENTIFICATION AND I SAID "NO" AND I TRIED TO WALK THE OPPOSITE DIRECTION WHEN AS SOON I WALK OFF I WAS AGGRESSIVELY TAKEN DOWN, PUNCH IN THE FACE, AND KICK IN MY LOWER BACK WHILE THEY WERE TRYING TO PLACE THE HANDCUFFS ON ME WHILE THEY WERE TUG-OR-WAR WITH MY ARMS

BECAUSE BOTH OFFICERS WAS ON OPPOSITE SIDES,
WITNESSES ON THE SCENE, CAMERAS FROM THE BUILDING
WAS ROLLING AND MY OLDEST SISTER WAS ON HER
WAY DOWNSTAIRS FROM MY BUILDING. MY SISTER
WAS COMING TO THE SCENE I WAS BEING PLACE IN
POLICE CAR. BEING DETAIN A OFFICER POINTED A
TASER GUN. BEING AT WHEN I WAS IN THE CAR
FLASHING THE RED BEAM ON ME.

FALSE ARREST

M-1 1983 CLAIM FOR FALSE ARREST DERIVES FROM M-1 FOURTH AMENDMENT RIGHT TO REMAIN FREE FROM UNREASONABLE SEIZURES, WHICH INCLUDES THE RIGHT TO REMAIN FREE FROM AN ARREST ABSENT OF PROBABLE CAUSE (WATANE V. OKST, 101 F.3d 845 (2d CIR. 1996). AN OFFICER HAS PROBABLE CAUSE TO ARREST WHEN HE OR SHE HAS "KNOWLEDGE OR REASONABLE TRUSTWORTHY INFORMATION OR FACTS AND CIRCUMSTANCES THAT ARE SUFFICIENT TO WARRANT A PERSON OF REASONABLE CAUTION IN BELIEF THAT THE PERSON TO BE ARRESTED HAS COMMITTED OR IS COMMITTING A CRIME" (ID; SEE ALSO DUNAWAY V. NEW YORK, 442 U.S. 200 (1979)). UNDER NEW YORK LAW, A POLICE OFFICER MAY ARREST AN INDIVIDUAL WHEN THE OFFICER HAS PROBABLE CAUSE TO BELIEVE THAT THE INDIVIDUAL HAS COMMITTED A PETIT OFFENSE, INCLUDING A VIOLATION, IN HIS PRESENCE AND IN HIS GEOGRAPHICAL AREA OF EMPLOYMENT (SEE NEW YORK CRIMINAL PROCEDURE LAWS 140.10 (2)(A); § 1.20 (39)).

UNDER THE FOURTH AMENDMENT, A WARRANTLESS ARREST IS CONSTITUTIONALLY VALID IF THE ARRESTING OFFICERS HAD PROBABLE CAUSE TO MAKE THE ARREST AT THE TIME OF THE ARREST (SEE BECK V. OHIO, 379 U.S. 89, 91 (1964); SEE ALSO GERSTEIN V. PUGH, 420 U.S. 103, 111-12 (1974); BRINEGOR V. UNITED STATES, 338 U.S. 160, 165 (1949)). THE EXISTENCE OF PROBABLE

CAUSE SERVES AS A LEGAL JUSTIFICATION FOR AN ARREST
AND AN AFFIRMATIVE DEFENSE TO A FALSE ARREST
CLAIM (SEE MARTINEZ V. CITY OF SCHENECTADY, 97 N.Y.
2d 78 (2001)).

LACK OF PROBABLE CAUSE TO ARREST OR PROSECUTE
IS AN ESSENTIAL ELEMENT OF FALSE ARREST (SEE
RIVERA V. CITY OF NEW YORK, A.D. 3d 334 (2007)).

ON SEPTEMBER 16, 2014 I DARRHILL GARRETT WAS ARRESTED WITHOUT PROBABLE CAUSE FOR THE CHARGES OF RESISTING ARREST, DISORDERLY CONDUCT, AND OBSTRUCT GOVERNMENTAL ADMIN. I WAS NOT GUILTY OF ANY OF THESE CHARGES. THE ARRESTING OFFICERS ASKED ME FOR MY IDENTIFICATION AND I EXERCISED MY RIGHT TO WALK AWAY FROM A LEVEL 1 DETOUR STOP. OFFICERS DID NOT HAVE REASONABLE SUSPICION TO DETAIN ME FROM ANY CRIME FOR THE PURPOSE OF INVESTIGATING MY PARTICIPATION IN CRIMINAL ACT NOR DID THEY HAVE PROBABLE CAUSE TO ARREST FOR ANY OFFENSE. I WAS UNLAWFULLY SEIZED AND ARRESTED FOR THESE CRIMES.

RELIEF

I AM SUING FOR 5 MILLION DOLLARS IN COMPENSATORY DAMAGES AGAINST THE CITY OF NEW YORK AND THE OFFICERS. I AM SUING FOR 2 MILLION DOLLARS IN PUNITIVE DAMAGES AGAINST THE INDIVIDUAL OFFICERS

EXCESSIVE FORCE

"THE FOURTH AMENDMENT PROTECTS INDIVIDUALS FROM THE GOVERNMENT'S USE OF EXCESSIVE FORCE WHEN DETAINING OR ARRESTING INDIVIDUALS" (JONES V. PARMLEY, 165 F.3d 46, 61 (2d CIR. 2006)).

WHEN DETERMINING WHETHER POLICE OFFICERS HAVE EMPLOYED EXCESSIVE FORCE IN THE ARREST CONTEXT, THE SUPREME COURT HAS INSTRUCTED THAT COURTS SHOULD EXAMINE WHETHER THE USE OF FORCE IS OBJECTIVELY UNREASONABLE IN THE LIGHT OF THE FACTS AND CIRCUMSTANCES CONFRONTING THEM, WITHOUT REGARD TO THE OFFICERS UNDERLYING INTENT OF MOTIVATION "Id. (INTERNAL QUOTATION MARKS AND BRACKETS OMITTED).

THE SUPREME COURT HAS HELD: ALL CLAIMS THAT LAW ENFORCEMENT OFFICERS HAVE USED EXCESSIVE FORCE- DEADLY- OR NOT- IN THE COURSE OF AN ARREST, INVESTIGATORY STOP, OR OTHER "SEIZURE" OF A FREE CITIZEN SHOULD BE ANALYZED UNDER THE FOURTH AMENDMENT AND ITS "REASONABLENESS" STANDARD... OUR FOURTH AMENDMENT JURISPRUDENCE HAS LONG RECOGNIZED THAT THE RIGHT TO MAKE AN ARREST OR INVESTIGATORY STOP NECESSARILY CARRIES WITH IT THE RIGHT TO USE SOME DEGREE OF PHYSICAL COERCION OR THREAT THEREOF TO EFFECT IT (GRAHAM V. CONNOR, 490

U.S. 386, 395-96 (1989) (citing *TERRELL V. OHIO*, 392 U.S. 1. 22-27 (1968)).

THUS, IN EVALUATING THE REASONABLENESS OF AN OFFICER'S USE OF FORCE, A COURT SHOULD CONSIDER THE SPECIFIC CIRCUMSTANCES OF THE CASE, SUCH AS "THE SEVERITY OF THE CRIME AT ISSUE, WHETHER THE SUSPECT POSES AN IMMEDIATE THREAT TO THE SAFETY OF THE OFFICERS OR OTHERS, AND WHETHER HE/SHE IS ACTIVELY RESISTING ARREST..." *Id.* at 396; ACCORD *SULLIVAN V. GAGNER*, 225 F.3d 161, 165 (2d Cir. 2000).

THE COURT NOTED THAT "THE CALCULUS OF REASONABLENESS MUST EMBODY ALLOWANCE FOR THE FACT THAT POLICE OFFICERS ARE OFTEN FORCED TO MAKE SPLIT-SECOND JUDGEMENTS - IN CIRCUMSTANCES THAT ARE TENSE, UNCERTAIN, AND RAPIDLY EVOLVING - ABOUT THE AMOUNT OF FORCE THAT IS NECESSARY IN A PARTICULAR SITUATION" (*Id.* at 396-97).

THE CONDUCT OF THE ARRESTING OFFICERS WAS NOT REASONABLE FOR THE FOLLOWING REASONS: 1) INSTEAD OF INSTRUCTING ME TO PLACE MY HANDS BEHIND MY BACK, THESE OFFICERS CHOSE TO SLAM ME TO THE CONCRETE WITHOUT INSTRUCTING ME TO DO SO, 2) INSTEAD OF PLACING ME ARREST WHILE I WAS SUBDUED, THESE OFFICERS CHOSE TO ASSAULT ME WHILE I WAS DEFENSELESS ON GROUND, 3) ONCE I WAS HANDCUFFED AND PLACED IN THE SQUAD CAR, INSTEAD OF TRANSPORTING TO THE PRECINCT WITHOUT FURTHER INCIDENT, THESE OFFICERS CHOSE TO THREATEN ME WITH A TASER GUN.

THESE OFFICERS CONDUCT WAS UNREASONABLE AND FORCE THAT WAS USED WAS UNNECESSARY DUE TO THE FACT THAT PLAINTIFF WAS COOPERATIVE AND DID NOT RESIST NOR DID PLAINTIFF FAIL TO FOLLOW INSTRUCTIONS GIVEN BY ANY OFFICERS ATTEMPTING TO ARREST THE PLAINTIFF.

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

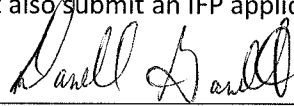
By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous 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>3/26/18</u>		<u></u>	
Dated		Plaintiff's Signature	
<u>DARNELL</u>		<u>GARRETT</u>	
First Name	Middle Initial	Last Name	
<u>P.O. BOX 2500</u>			
Prison Address			
<u>MARCY</u>	<u>N.Y.</u>	<u>13403</u>	
County, City	State	Zip Code	

Date on which I am delivering this complaint to prison authorities for mailing:

3/27/18

STATE CORRECTIONAL FACILITY
BOX 2500
NEW YORK 13403

DARNELL GARRETT DIN: 17A0288

USM_{P3}
SDNY

Pro Se
MG

Mid - State



Correctional Facility

neopost

03/28/2018

US POSTAGE

\$001.42

FIRST-CLASS MAIL



ZIP 13403
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CLERK

UNITED STATES DISTRICT COURT
SOUTH DISTRICT OF NEW YORK

U.S. COURTHOUSE - 500 PEARL STREET
NEW YORK, N.Y. 10007

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