

DIF

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Nelson Pintero

18 CV 04698

Write the full name of each plaintiff.

(Include case number if one has been assigned)

-against-

AMENDED
COMPLAINT

(Prisoner)

NYPD officer BURBRAN Pierre

NYPD officer Michael Brenner ~~***REDACTED***~~

NYPD officer Joel ESPINOSA # 947647

NYPD officer Genie Ruda # 954303 + 7th Precinct Broome & Ridge NY. 10002

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.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 8/13/19

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>Nelson</u>		<u>PINERO</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.

NYSID #058780305

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)

O.B.C.C.

Current Place of Detention

1600 HAZEN

Institutional Address

EAST ELMHURST

N.Y.

11370

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: BURBRIAN Pierre
First Name Last Name Shield #
NYPD officer
Current Job Title (or other identifying information)
7th Precinct Broom & Ridge.
Current Work Address
Manhattan NY, NY 10002.
County, City State Zip Code

Defendant 2: Michael BRENNER
First Name Last Name Shield #
7th Precinct. ~~Broom & Ridge~~ NYPD officer
Current Job Title (or other identifying information)
7th Precinct. Broome &
Current Work Address
Manhattan N.Y.-NY 10002.
County, City State Zip Code

Defendant 3: Gene Ruda # 954303
First Name Last Name Shield #
NYPD officer
Current Job Title (or other identifying information)
7th Precinct. Broome & Ridge.
Current Work Address
Manhattan NY, NY 10002.
County, City State Zip Code

Defendant 4: Joel ESPINOSA 947647
First Name Last Name Shield #
NYPD officer
Current Job Title (or other identifying information)
7th Precinct. Broome & Ridge.
Current Work Address
Manhattan NY, NY 10002.
County, City State Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: In front of 131 Broome St.

Date(s) of occurrence: March 18/2018.

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.

On March 18/2018 while in front of 131 Broome St I Nelson. Pimero. along with two people who I knew that live in the same area Observed a police Car pull right up to the front of my truck. I then saw two Officer Step Out the Vehicle and approach my truck on either side. the Officer then ask me for my registration. and license I gave him my registration He then ask me for my license and I had to explain to the Officer that under neath my nylon pants I had a pair of short with a side pocket and that was where my wallet & license was. he then indicated to Step Out of the truck. I then Complied Once I did that. Cops from all Over came from every we're they began to grab my arm & I pleaded with them to let go of me that I have done "Nothing wrong" So me and the Officer began to exchange words and That's when Officer pierre punch me 6 times in my face. while the other Officer Held me.

Also they never read me my ~~rights~~ rights and never got around to explain to me why they approach my vehicle.

INJURIES:

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

I never received medical treatment. he Broke the right side of my upper gum area and damaged a nerve that loosen all my up front row of teeth and inverted the lower part of my teeth also P.T.S.D Anxiety I've been getting sharp migraines head ache's also my vision, as been blurry ever since I need reconstructive Surgery from a Private Doctor.

VI. RELIEF for my mouth. I need all my teeth taken out & place with some new implants.

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

5 million In damages and Have conviction Over turned, due to my innocent.

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.

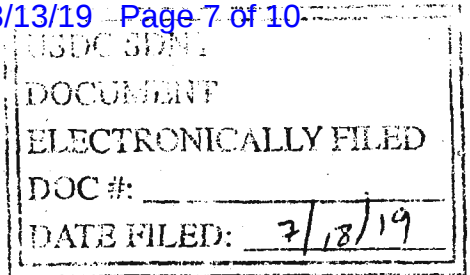
Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

<u>August 8/2/2019</u> Dated		<u>Nelson Pinedo</u> Plaintiff's Signature	
<u>Nelson</u> First Name	 Middle Initial	<u>Pinedo</u> Last Name	
<u>1600 Hazen St</u> Prison Address			
<u>East Elmurst</u> County, City	<u>NY</u> State	<u>11370</u> Zip Code	

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

8/2/19.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



NELSON PINERO,

Plaintiff,

-v.-

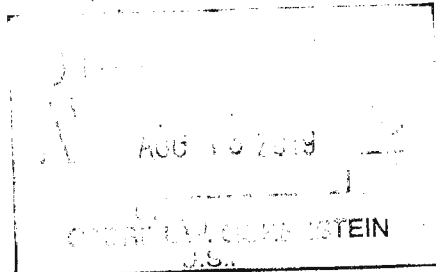
7TH PRECENT POLICE DEPT., et al.,

Defendants.

ORDER PURSUANT TO
RULE 16(b)(1)(A)

18 Civ. 4698 (AJN) (GWG)

GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE



This matter has been referred to the undersigned for general pretrial purposes. The attorney for defendants is directed to contact plaintiff within seven business days by telephone for purposes of creating a discovery plan. See Fed. R. Civ. P. 26(f). The plan should contain the following elements:

1. A deadline by which all documents requests and initial interrogatories must be served.
2. The deadline by which defendants shall respond to the Standard Discovery in Prisoner Pro Se Actions pursuant to Local Civil Rule 33.2, to the extent applicable.
3. The deadline for the disclosures of the identities and reports of experts, if any, as required by Rule 26(a)(2)(A) and (B).
4. The deadline for the disclosure of identities and reports of any expert intended by an opposing party solely to rebut previously-disclosed expert evidence.
5. A date by which all discovery must be completed.

The parties are free to include additional elements in the plan if they wish. Also, the parties are encouraged to discuss settlement during the telephone conference. If both parties wish the Court to conduct a settlement conference or if a telephone conference is needed for any purpose, they may so request in the discovery plan.

Counsel for defendants is responsible for filing the plan with the Court on or before **August 7, 2019**. If the parties disagree over the terms of the plan, the disagreement may be

noted in the plan itself. In the alternative, plaintiff may respond by sending a letter to the Court within 7 days of the filing of the plan. Following receipt of any proposed plan, the Court will issue a scheduling order.

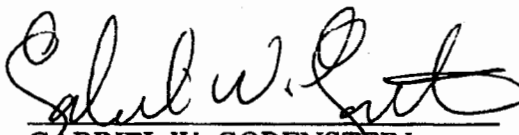
The Court notes that each party must immediately inform the Court of any change in that party's address or telephone number in the future. If a party fails to do so, the case may be dismissed or a default entered.

Finally, the Court notes that if plaintiff wishes to name any of three identified individuals described in the letter of May 30, 2019, from defendants' attorney as defendants in this action, he must file an amended complaint that names them and describe their conduct. The deadline for doing so has expired but the Court will extend the deadline to August 7, 2019. A copy of the Court's Order explaining this process (Docket # 21) is enclosed herewith.

Please be aware that the Pro Se Office at the United States Courthouse, 40 Foley Square, Room 105, New York, New York ((212) 805-0175) may be of assistance in connection with court procedures.

Dated: New York, New York
July 17, 2019

SO ORDERED:


GABRIEL W. GORENSTEIN
United States Magistrate Judge

Copy mailed to:

Nelson Pinero
B&C Number: 3481800089
Otis Bantum Correctional Center (OBCC)
16-00 Hazen Street, East Elmhurst, NY 11370

Nelson Pinero
131 Broome Street
Apt. 3F
New York, NY 10002

MEMO ENDORSED



ZACHARY W. CARTER
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, N.Y. 10007

ZACHARY KALMBACH
Assistant Corporation Counsel
phone: (212) 356-2322
fax: (212) 356-3509
zkalmbac@law.nyc.gov

May 30, 2019

VIA ECF

Honorable Gabriel W. Gorenstein
United States Magistrate Judge
Southern District of New York
500 Pearl Street
New York, New York 10007

Re: Nelson Pinero v. City of New York, et al.
18 Civ. 4698 (AJN) (GWG)

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 5/30/19
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Your Honor:

I am the attorney assigned to represent defendants the City of New York and Officer Burbran Pierre in the above-referenced action. Defendants write in response to the Court's Valentin Order dated March 7, 2019.

Briefly, plaintiff alleges claims of, *inter alia*, excessive force and false arrest against the City of New York, NYPD Officer Burbran Pierre, and three unidentified "John Doe" NYPD officers. Plaintiff alleges that the claims arise out of his arrest on March 18, 2018.

The March 7th Valentin Order directed this Office to "ascertain the identities and shield numbers of the unidentified 'John Doe' defendants whom Plaintiff seeks to sue here and the addresses where they may be served" by May 6, 2019. On May 6, 2019, defendants provided the Court and plaintiff with the identity of one of the "John Doe" officers, Michael Brenner, and requested an extension of time to identify the other two "John Doe" officers (ECF No. 18). On May 6, 2019, the Court extended defendants' time to respond to the Valentin Order to June 5, 2019 (ECF No. 19). In attempting to comply with the Order, defendants have communicated with the NYPD and reviewed records relating to plaintiff's arrest. Without prejudice to any defendant's defenses, or right to supplement or revise the following, defendants were able to ascertain the identity of the other two "John Doe" officers:

- Officer Gene Ruda, Tax No. 954303, is assigned to Police Service Area 4, and may be served at 130 Avenue C, New York, New York 10009; and

- Officer Joel Espinosa, Tax No. 947647, is assigned to Police Service Area 4, and may be served at 130 Avenue C, New York, New York 10009.

Defendants thank the Court for its time and attention to this matter.

Respectfully submitted,

/s/

Zachary Kalmbach
Assistant Corporation Counsel
Special Federal Litigation Division

cc: **VIA Regular Mail**
Nelson Pinero
Plaintiff pro se
131 Broome Street
Apartment 3F
New York, New York 10002

If plaintiff wishes to name any of three identified individuals discussed above as defendants in this action, plaintiff must, on or before July 6, 2019, file an amended complaint naming those individuals as defendants. The amended complaint will replace, not supplement, the original complaint. An Amended Civil Rights Complaint form that plaintiff should complete is attached. Once Plaintiff has filed an amended complaint, the Court will screen the amended complaint and, if necessary, direct the Clerk of Court to complete USM-285 forms for the newly identified defendants and deliver all documents necessary to effect service on them to the U.S. Marshal Service.

On a separate point, the Court notes that the "NYSID" number listed on page 2 of the Complaint matches that of a Nelson Pinero currently listed in the New York City Department of Corrections Inmate Lookup database with the following address:

Nelson Pinero
B&C Number: 3481800089
Otis Bantum Correctional Center(OBCC)
16-00 Hazen Street
East Elmhurst, NY 11370

The Clerk is directed to add this address as a second address on the docket sheet for plaintiff.

SO ORDERED: DATE 8/30/19
GABRIEL W. GORENSTEIN
UNITED STATES MAGISTRATE JUDGE