

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Doc # 2

Clerance Livingston

N.Y.S. ID 18 R-2570

Write the full name of each plaintiff.

No. _____

(To be filled out by Clerk's Office)

-against-

Detective-John Doe, and

New York County District Attorney

Office, and Manhattan Criminal
Supreme Court; City of New York.

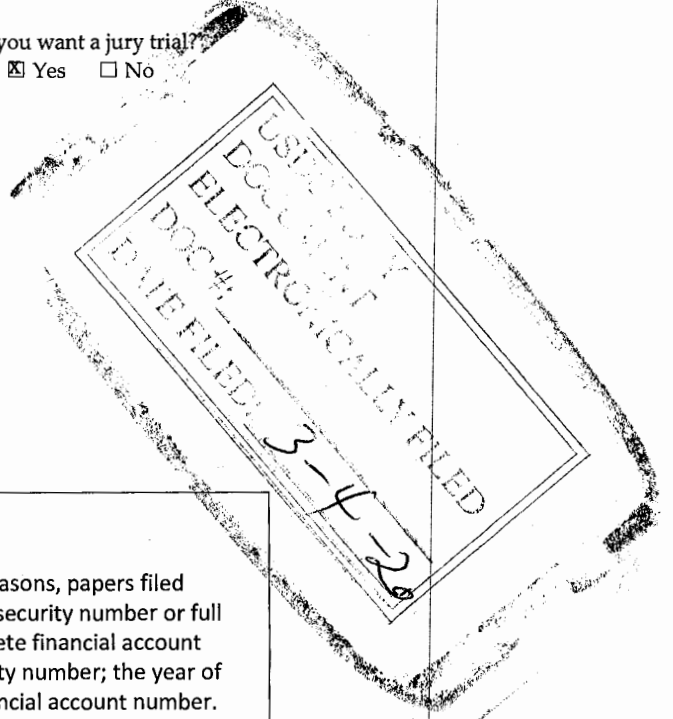
Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section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

COMPLAINT
(Prisoner)

20 CV 2009

Do you want a jury trial?

☒ Yes ☐ No



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.

RECEIVED
SDNY PRO SE OFFICE
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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.

Clarence Eugene Livingston

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.

N.Y.S. ID. 18-R-2570

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)

Groveland Correctional Facility

Current Place of Detention

P.O. Box 50, 7000 Sonyea Road

Institutional Address

Livingston New York 14556

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:	<table border="0"> <tr> <td><u>John</u></td> <td><u>Doe</u></td> <td><u>unknown</u></td> </tr> <tr> <td>First Name</td> <td>Last Name</td> <td>Shield #</td> </tr> <tr> <td colspan="3"><u>Detective - Transit Authority</u></td> </tr> <tr> <td colspan="3">Current Job Title (or other identifying information)</td> </tr> <tr> <td colspan="3"><u>59th street Columbus Circle</u></td> </tr> <tr> <td colspan="3">Current Work Address</td> </tr> <tr> <td><u>New York</u></td> <td><u>New York</u></td> <td><u>10013</u></td> </tr> <tr> <td>County, City</td> <td>State</td> <td>Zip Code</td> </tr> </table>	<u>John</u>	<u>Doe</u>	<u>unknown</u>	First Name	Last Name	Shield #	<u>Detective - Transit Authority</u>			Current Job Title (or other identifying information)			<u>59th street Columbus Circle</u>			Current Work Address			<u>New York</u>	<u>New York</u>	<u>10013</u>	County, City	State	Zip Code
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V. STATEMENT OF CLAIM

Place(s) of occurrence: 14th Street and 8th Avenue Manhattan

Date(s) of occurrence: May 18, 2016 arrest, April 13, 2018 dismissed

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 May 18, 2016 I was approached by a unknown detective while traveling by train and arrested without a warrant at the 14th Street and Union Square departure from the train.

This unknown Detective then took me to the 14th street Precinct and charged me with criminal possession of Stolen property 4th degree.

The Manhattan County District Attorney then put the matter before the Grand Jury which, issued indictment No. 02727-2016. After numerous delays and County Court appearances before the Manhattan Criminal Supreme Court the matter was dismissed for lack of sufficient facts from the arresting Detective and the records sealed pursuant to CPL 160.50 on April 4, 2018.

The twenty-three (23) months of incarceration which, was based upon indictment No. 02727-2016 **see Exhibit A attached hereto**, was refused to be credited towards the present conviction and sentence under indictment No. 02264-2018 **see Exhiibit B attached hereto.**

Manhattan Supreme Court's failure to credit the above mentioned twenty-three (23) months to the present sentence
(continued on next page)

amounts to a violation of the Eight Amendment (cruel and unusual punishment) and the fourteenth Amendment (Due Process Of Law) pursuant to 28 USCA 1331 and Federal Tort Claim Act 28 USCA 1346(b); 2671.

The Claimant contends he was subjected to false arrest; malicious prosecution; unlawful imprisonment; and infliction of emotional stress due to the District Attorney's Office negligence and recklessness. Had this aforementioned twenty-three (23) month been credited towards the present sentence,

INJURIES: Claimant would not still be incarcerated.

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

I was unlawfully arrested, detained and incarcerated on Rikers Island for twenty-three (23) months of my life. Subjected to pain and suffering, mental anguish, loss of family ties, and employment to support my children.

VI. RELIEF

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

I am requesting an estimated compensation in the amount of three-million (3,000,000.00) dollars.

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>2-25-2020</u>		<u>Clarence Livingston</u>
Dated		Plaintiff's Signature
<u>Clarence Eugene Livingston</u>		
First Name	Middle Initial	Last Name
<u>Groveland Correctional Facility P.O. Box 50</u>		
Prison Address		
<u>Livingston</u>	<u>New York</u>	<u>14556</u>
County, City	State	Zip Code

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

EXHIBIT A

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY
100 CENTRE STREET
NEW YORK, NY 10013

FEE: \$10.00

CERTIFICATE OF DISPOSITION DISMISSAL

DATE: 07/11/2018

CERTIFICATE OF DISPOSITION NUMBER: 62851

PEOPLE OF THE STATE OF NEW YORK
VS.

CASE NUMBER: 02727-2016
LOWER COURT NUMBER(S): 2016NY031463
DATE OF ARREST: 05/18/2016
ARREST #: M16635708
DATE OF BIRTH: 10/17/1961
DATE FILED: 07/01/2016

LINSTON, CLARENCE
LIVINGSTON, CLARENCE (AKA)

DEFENDANT

I HEREBY CERTIFY THAT IT APPEARS FROM AN EXAMINATION OF THE RECORDS ON FILE IN THIS OFFICE THAT ON 04/13/2018 THE ABOVE ACTION WAS DISMISSED AND ALL PENDING CRIMINAL CHARGES RELATED TO THIS ACTION WERE ALSO DISMISSED BY THE HONORABLE SCHERZER, A THEN A JUDGE OF THIS COURT.

THE DEFENDANT WAS DISCHARGED FROM THE JURISDICTION OF THE COURT.

THE ABOVE MENTIONED DISMISSAL IS A TERMINATION OF THE CRIMINAL ACTION IN FAVOR OF THE ACCUSED AND PURSUANT TO SECTION 160.60 OF THE CRIMINAL PROCEDURE LAW "THE ARREST AND PROSECUTION SHALL BE DEEMED A NULLITY AND THE ACCUSED SHALL BE RESTORED, IN CONTEMPLATION OF LAW, TO THE STATUS OCCUPIED BEFORE THE ARREST AND PROSECUTION".

PURSUANT TO SECTION 160.50(1C) OF THE CRIMINAL PROCEDURE LAW, ALL OFFICIAL RECORDS AND PAPERS RELATING TO THIS CASE ARE SEALED.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND AFFIXED MY OFFICIAL SEAL ON THIS DATE 07/11/2018.


COURT CLERK

EXHIBIT B

EXHIBIT B

UNIFORM SENTENCE & COMMITMENT

UCS-854(8/2011)

STATE OF NEW YORK
 SUPREME COURT, COUNTY OF NEW YORK
 PRESENT: HON. WARD, L.

Court Part: 71
 Court Reporter: MAGNICCARI
 Superior Ct. Case #: 02264-2018



The People of the State of New York

-vs- **182570**
2 of 3

CLARENCE LIVINGSTON

Defendant

Male	10/15/1961	04201590M	68640298N
Sex	DOB	NYSID #	Criminal Justice Tracking #

Accusatory Instrument Charge(s)	Count #	Law/Section & Subdivision
1 GLAR4	2	PL 155.30(05)
2 ASLT2	1	PL 120.05(03)
3 GLAR4	5	PL 155.30(04)
4 GLAR4	3	PL 155.30(04)

Date(s) of Offense: 05/25/2018 To: _____

THE ABOVE NAMED DEFENDANT HAVING BEEN CONVICTED BY [☒ PLEA OR ☐ VERDICT], THE MOST SERIOUS OFFENSE BEING A [☒ FELONY OR ☐ MISDEMEANOR OR ☐ VIOLATION], IS HEREBY SENTENCED TO:

Crime	Count #	Law/Section & Subdivision	SMF, Hate or Terror	Minimum Period	Maximum Term	Definite / Determinate **	Post-Release Supervision	CJTN
1 GLAR4	2	PL 155.30(05)		2 Y	4 Y			
2 ASLT2	1	PL 120.05(03)				3 Y (Det)	5 Y	
3								
4								
5								

** NOTE: For each DETERMINATE SENTENCE imposed, a corresponding period of POST-RELEASE SUPERVISION MUST be indicated [PL § 70.45].

☒ Counts 1 & 2 shall run CONCURRENTLY with each other ☐ Count(s) shall run CONSECUTIVELY to count(s)

☒ Sentence imposed herein shall run CONCURRENTLY with 03549-2017 and/or CONSECUTIVELY to _____

☐ Sentence imposed herein shall include a CONSECUTIVE _____ term of [☐ PROBATION OR ☐ CONDITIONAL DISCHARGE], with an Ignition Interlock Device condition, that shall commence upon the defendant's release from imprisonment [PL § 60.21]

☐ Conviction includes: WEAPON TYPE: _____ and/or DRUG TYPE: _____

☐ Charged as a JUVENILE OFFENDER - age at time crime committed: _____ years ☐ Court certified the Defendant a SEX OFFENDER [Cor. L § 168-d]

☐ Adjudicated a YOUTHFUL OFFENDER [CPL § 720.20] ☐ CASAT ordered [PL § 60.04(6)]

☐ Execute as a sentence of PAROLE SUPERVISION [CPL § 410.91] ☐ SHOCK INCARCERATION ordered [PL § 60.04(7)]

☐ Re-sentenced as a PROBATION VIOLATOR [CPL § 410.70]

☒ As a: ☒ Second ☐ Second Violent ☐ Second Drug ☐ Second Drug w/prior VFO ☐ Predicate Sex Offender **FELONY OFFENDER**

☐ Predicate Sex Offender w/prior VFO ☐ Second Child Sexual Assault ☐ Persistent ☐ Persistent Violent

Paid Not Paid Deferred (If deferred, court must file written order [CPL § 420.40(5)]) **Paid Not Paid Deferred** (If deferred, court must file written order [CPL § 420.40(5)])

<input type="checkbox"/> <input checked="" type="checkbox"/> Mandatory Surcharge \$300.00	<input type="checkbox"/> <input checked="" type="checkbox"/> Crime Victim Assistance Fee \$25.00
<input type="checkbox"/> <input type="checkbox"/> Fine \$ _____	<input type="checkbox"/> <input type="checkbox"/> Restitution \$ _____
<input type="checkbox"/> <input checked="" type="checkbox"/> DNA Fee \$50.00	<input type="checkbox"/> <input type="checkbox"/> Sex Offender Registration Fee \$ _____
<input type="checkbox"/> <input type="checkbox"/> DWI/Other \$ _____	<input type="checkbox"/> <input type="checkbox"/> Supplemental Sex Off. Victim Fee \$ _____

THE SAID DEFENDANT BE AND HEREBY IS COMMITTED TO THE CUSTODY OF THE:

- ☒ NYS Department of Correctional Services (NYDOCS) until released in accordance with the law, and being a person sixteen (16) years or older not presently in the custody of the NYDOCS, (New York City Department of Corrections) is directed to deliver the defendant to the custody of NYDOCS as provided in 7 NYCRR Part 103.
- ☐ NYS Department of Correctional Services (NYDOCS) until released in accordance with the law, and being a person sixteen (16) years or older presently in the custody of NYDOCS, defendant shall remain in the custody of the NYDOCS.
- ☐ NYS Office of Children and Family Services in accordance with the law, being a person less than sixteen (16) years of age at the time the crime was committed.
- ☐ _____ County Jail/Correctional Facility

TO BE HELD UNTIL THE JUDGMENT OF THIS COURT IS SATISFIED.

REMARKS:

EXECUTION OF SENTENCE STAYED UNTIL OCTOBER 1, 2018. JUDGMENT ENTERED FOR FEES

Commitment, Order of Protection & Pre-Sentence Report received by Correctional Authority as indicated:

Official Name

Shield No.

Pre-Sentence Investigation Report Attached: ☒ Yes ☐ No

Order of Protection Issued: ☐ Yes ☒ No

Order of Protection Attached: ☐ Yes ☒ No

☐ Amended Commitment: Original Sentence Date: _____

09/04/2018 MILTON TINGLING
 Date Clerk of the Court

by:

Signature

ASSOCIATE COURT CLERK

Title



GROVELAND CORRECTIONAL FACILITY
P.O. BOX 50
SONYEA, NEW YORK 14556-0050

NAME: Clarence J Livingston DIN: 18-R-2570

DORM: K-3-15

GROVELAND



CORRECTIONAL FACILITY
GROVELAND CORRECTIONAL FACILITY
BOX 50
SONYEA, NY 14556-0050

RECEIVED
02/26/2020

POST-CLASS MAIL
\$000.650

VIP 14556
041L11253830

"Legal Mail"
USMP3
SDNY
RECEIVED
SDNY PRO SE
MAR 4 - 2020

Office of Pro-se Litigation
United States District Court
Southern District of New York
500 Pearl Street
New York, N.Y. 10007

LEGAL MAIL

1000731330 0014

