

MEMO ENDORSED

JAMES E. JOHNSON
Corporation Counsel

THE CITY OF NEW YORK
LAW DEPARTMENT
100 CHURCH STREET
NEW YORK, NY 10007

EVAN J. GOTTSTEIN
Assistant Corporation Counsel
Tel: (212) 356-2262
Fax: (212) 356-3509
egottste@law.nyc.gov

By ECF

January 25, 2021

Honorable Edgardo Ramos
United States District Court
Southern District of New York
40 Foley Square
New York, New York 10007

Re: **Towaki Komatsu v. City of New York, et al.,**
20-CV-7046; 20-CV-8251; 20-CV-8004; 20-CV-7502; 20-CV-8540;
20-CV-8933; 20-CV-9151; 20-CV-9154; 20-CV-9354 (ER) (GWG)

Your Honor:

I am an Assistant Corporation Counsel in the Office of James E. Johnson, Corporation Counsel of the City of New York, and the attorney assigned to the defense of the above-referenced matters. I write to address the affidavits of service for the 11 individual defendants¹ that were recently entered on the docket in these cases and to respectfully request that all deadlines pertaining to these individuals be held in abeyance pending the resolution of defendants' motion to dismiss.² Subject to the schedule endorsed by this Court, defendants' motion is to be filed on January 29, 2021. (See Civil Docket Sheet, Minute Entry dated December 15, 2020)

Procedural Background. On December 15, 2020 a briefing schedule was set for defendants' anticipated motion to dismiss plaintiff's nine complaints – which total 1,713 pages collectively – pursuant to Rules 8 and 12 of the Federal Rules of Civil Procedure.

¹ The 11 individual defendants are: Howard Redmond, Andrew Berkowitz, Officer Cruz, Officer Lance, Juanita Holmes, Christopher Fowler, Karl Pfeffer, Officer Hansen, Officer Baez, Nicholas Mason, and Dustin Ridener.

² As summonses have been issued for 31 individual defendants in total, it appears likely that additional affidavits of service will be filed on the docket in the coming days and possibly weeks. Defendants respectfully also request that all deadlines pertaining to individuals who may be served with process during the pendency of their motion to dismiss likewise be held in abeyance until the motion is decided.

Recently, from January 19 through January 21, 2021, affidavits of service were entered on three of the docket sheets for these cases, indicating that 11 individual defendants (all current or former City employees) have been served within the last month. This Office was unaware that these defendants had been served until the returns of service were entered on the docket last week. Based on the Civil Docket sheet, these defendants' responses were all due on January 13, 2021, except for defendant Dustin Ridener, whose response is due February 16, 2021. (ECF Nos. 71-72, 74-79, 81, Case No. 20-CV-8251; ECF Nos. 32-35, Case No. 20-CV-8004; ECF No. 35) At this time, this Office has not made representation decisions regarding the recently served defendants.

Defendants' Request that All of Pending Deadlines for These 11 Individuals be Held in Abeyance. In the interest of judicial economy, defendants respectfully request to proceed on the current briefing schedule endorsed by this Court, and that the Court hold in abeyance all of the 11 newly served defendants' deadlines, including their responses to the complaints, until after the motion to dismiss is resolved. Likewise, defendants request this relief for any individual defendants who may be served in the future, during the pendency of the motion to dismiss. Defendants' forthcoming motion will seek dismissal of several specific claims under Rule 12, but it will also seek dismissal of all complaints in their entirety under Rule 8. Therefore, it would best serve judicial economy and the spirit of the Federal Rules to hold in abeyance the recently served defendants' deadlines to respond to the complaints until after the Court rules on the motion and decides whether to grant plaintiff leave to amend to correct the deficiencies in his complaints. See Fed. R. Civ. P. 1 (providing that the Rules should be construed and employed to "secure the just, speedy, and inexpensive determination of every action and proceeding").

The proposed course of action would also prevent further unnecessary delay of this litigation. Should the Court deny this request, defendants would require a substantial extension of time to file its motion to allow for the 11 recently served defendants to request representation and for this Office to make representation decisions for each of them.

To avoid prolonging this litigation any further, defendants respectfully request that the Court hold in abeyance the recently served defendants' time to respond to the complaints pending the decision on the upcoming motion to dismiss. In the alternative, should the Court deny this request, defendants respectfully request an additional 60 days, until March 30, 2021, to allow additional defendants to request representation and for this Office to make representation decisions about each defendant before moving for dismissal.

Defendants thank the Court for its consideration herein.

Respectfully submitted,

Evan J. Gottstein /s/

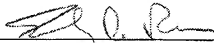
Evan J. Gottstein

Assistant Corporation Counsel

Special Federal Litigation Division

cc: Towaki Komatsu, *Plaintiff Pro Se*
802 Fairmount Pl., Apt. 4B
Bronx, New York 10460 (Via First-Class Mail)

The request is GRANTED. All individual defendants' deadlines to answer are hereby stayed pending the resolution of defendants' motion to dismiss. The Clerk of Court is respectfully directed to mail a copy of this order to Plaintiff. SO ORDERED.


Edgardo Ramos, U.S.D.J.
Dated: 1/26/2021
New York, New York

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY
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DOC #:
DATE FILED: 9/30/2019

----- X
TOWAKI KOMATSU, :
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 Plaintiff, :
 :
 -against- :
 :
 THE CITY OF NEW YORK, et al. :
 Defendants. :
 :
----- X

18 Civ. 3698 (LGS)

OPINION AND ORDER

LORNA G. SCHOFIELD, District Judge:

Pro se Plaintiff Towaki Komatsu brings this action against the City of New York (the “City”), the New York City Police Department (“NYPD”)¹ and numerous officials in their individual and official capacities. The individual Defendants are members of the NYPD and Mayor’s Community Affairs Unit, and Court Officers of the New York State courts.

The Second Amended Complaint alleges violations of the U.S. Constitution pursuant to 42 U.S.C. § 1983 and of state law. Plaintiff requests: (1) compensation for the violation of his constitutional rights and for his pain, suffering and mental anguish, (2) punitive damages, (3) the voiding of the 2017 Mayoral election and the New York City Council election, (4) attorneys’ fees and costs and (5) any further relief deemed just and proper.

The Defendants filed motions to dismiss for failure to state a claim pursuant to Federal Rule of Civil Procedure 12(b)(6) and lack of jurisdiction based on Rule 12(b)(1). For the following reasons, the motions are granted in part and denied in part. A claim for relief is

¹ As a municipal agency, the NYPD is generally prohibited from being sued. *See Golian v. New York City Admin. for Children Servs*, 282 F. Supp. 3d 718, 725 (S.D.N.Y. 2017); *Ximines v. George Wingate High Sch.*, 516 F.3d 156, 160 (2d Cir. 2008) (per curiam) (“New York City departments, as distinct from the City itself, lack the capacity to be sued.”). Instead, the City is generally the proper Defendant. *See id.*

sufficiently stated as to the claims that Plaintiff's First Amendment and Equal Protection rights were violated outside a City-organized Town Hall on April 27, 2017, and that the City has adopted an unconstitutional practice and policy to exclude Plaintiff from public events that the New York City Mayor attends.

I. BACKGROUND

The following facts are taken from the Second Amended Complaint, documents incorporated by reference in it, and other documents Plaintiff has filed (collectively, the "Complaint").² While these additional documents would not be considered on a motion to dismiss if Plaintiff were represented by counsel, they are considered here because he is pro se. *See Coke v. Med., Dep't of Corr. & Cmty. Supervision*, No. 17 Civ. 0866, 2018 WL 2041388, at *1 n.2 (S.D.N.Y. Apr. 30, 2018) ("[W]hen a *pro se* plaintiff's opposition memorand[um] raises new allegations that are 'consistent with the allegations' in the Complaint, these allegations may be read as 'supplements to th[e] pleadings.'" (some alteration in original)).³ As required on a motion to dismiss, these facts are accepted as true and construed in the light most favorable to Plaintiff. *Raymond Loubier Irrevocable Tr. v. Loubier*, 858 F.3d 719, 725 (2d Cir. 2017).

² The Complaint for the purpose of this motion includes the Second Amended Complaint (1:18-cv-3698, ECF Dkt. ("Dkt. No.") 45); Plaintiff's pre-motion letter (Dkt. No. 66); Affidavit of Towaki Komatsu, sworn to May 2, 2019 (Dkt 176); Affidavit of Towaki Komatsu, sworn to May 2, 2019 (Dkt. No. 177); and four letters from Plaintiff to the Court (Dkt. Nos. 124, 195, 210, 221).

³ The Court's Individual Rules limit the parties to twenty-five pages for memoranda of law in support of and in opposition to dispositive motions. Plaintiff's filings total well over a hundred pages. In addition, Plaintiff has made numerous voluminous and irrelevant filings, many of which exceed a hundred pages in length. *See, e.g.*, Dkt. No. 108. Plaintiff was directed to file only materials to aid in the disposition of the Second Amended Complaint. *See* Dkt. No. 118. Only the additional filings relevant to this motion are considered -- not, for example, docket entries 154, 202 and 211.

A. The Parties

Plaintiff is a New York resident and Navy veteran. The “Town Hall Defendants” are Inspector Howard Redmond, Officer Rafael Beato, Officer Yu Liu, Lieutenant Ralph Nieves, Detective Raymond Gerola, all with the NYPD; as well as two members of the New York City Mayor’s Community Affairs Unit, Pinny Ringel and Harold Miller. The “Resource Fair Defendants” are Defendants Nieves and Gerola; another member of the Community Affairs Unit, Rachel Atcheson; NYPD Detective Andrew Berkowitz and Bronx Court Officers Captain Anthony Manzi, Sergeant Matthew Brunner and Sergeant Ramon Dominguez.⁴

B. The Town Hall Incident

On April 27, 2017, Plaintiff sought to attend a public “Town Hall” event where New York City Mayor Bill de Blasio was scheduled to speak. The Town Hall was taking place at a public high school in Long Island City, New York. Plaintiff had reserved a spot at the event and arrived early to wait in line. While in line, Plaintiff was given a ticket to enter the building.

The line started moving, but Defendants Miller and Ringel prohibited Plaintiff from entering the building. Plaintiff rejoined the line, and Miller again prohibited his entry. Plaintiff objected to this treatment to unidentified members of the NYPD, but they did not intervene on his behalf.

⁴ The claims against the Bronx Court Officers -- Defendants Manzi, Brunner and Dominguez -- in their official capacities are dismissed. The Eleventh Amendment bars suit against them under the doctrine of sovereign immunity. *See* U.S. Const. amend. XI; *Gollomp v. Spitzer*, 568 F.3d 355, 365 (2d Cir. 2009). Their employer, the State of New York, has not waived, and Congress has not abrogated, sovereign immunity to allow for § 1983 claims in federal court. *See Estate of M.D. by DeCosmo v. New York*, 241 F. Supp. 3d 413, 421-22 (S.D.N.Y. 2017). The claims against them in their individual capacities are not dismissed for lack of jurisdiction.

Defendant Redmond approached Plaintiff while he was waiting outside and made physical contact with Plaintiff's body, which Plaintiff "immediately considered to be offensive." Redmond told Plaintiff that he was prohibited from entering the event because Plaintiff had previously harassed New York City Human Resources Commissioner Steven Banks. Plaintiff had criticized Commissioner Banks at a public event about six weeks prior to the Town Hall. Others who were standing in line to attend the Town Hall were allowed to enter the building. After speaking with Redmond, Plaintiff retrieved from his backpack papers that were critical of New York City officials, and he spoke with other members of the public about being barred from entering the event.

Plaintiff next stood on the sidewalk roughly forty-five feet from the entry to the school. Defendant Beato shoved Plaintiff three times while he stood there. Beato's colleagues, Defendants Liu, Nieves and Gerola, witnessed this and did not intervene. These four Defendants then stood in front of Plaintiff so that he could not see and call out to the Mayor as he left the event.

C. The Resource Fair Incident

On May 23, 2017, Plaintiff sought to attend a public "Resource Fair" at a courthouse in the Bronx, New York, where Mayor de Blasio and other City officials were scheduled to attend. The purpose of the event was to "[m]eet with top city commissioners and senior staff during scheduled office hours to address your questions and concerns."⁵ Plaintiff had reserved a spot at the event. The online registration form asked what questions Plaintiff planned to bring to the resource fair, and his response was "Proof NYC agencies haven't been doing their jobs."

⁵ The Complaint refers to the webpage for the New York City Resource Fairs. *See* 1:18-cv-3698 ECF Dkt 124 at 2 (reference to the event web page). The quote comes from the web page.

Plaintiff also attended the event to engage in whistleblowing activity and to seek assistance in obtaining employment and legal assistance from New York City government agencies. Plaintiff was permitted to enter the courthouse.

Defendants Atcheson, Manzi and Brunner prohibited Plaintiff from entering the room where the event was taking place and directed him to move away from the entrance. The other Resource Fair Defendants saw or were aware of these actions and did not intervene. At the same time, other members of the public were allowed to enter the event.

Defendants Nieves, Gerola and Berkowitz were present at this time in the courthouse and communicating with one another. While waiting outside the entrance, Nieves observed Plaintiff speak with a reporter about having filed suit against a City agency and his objections to being kept out of the Resource Fair. At around the same time, Dominguez told Plaintiff that there was an intention to keep “undesirable” people out of the event. Defendant Manzi briefly seized Plaintiff’s bag in the presence of Brunner and Dominguez, but Plaintiff took the bag from Manzi moments later. Manzi swore at Plaintiff when he retrieved his bag.⁶

II. STANDARD

To survive a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the

⁶ The Complaint also describes an incident on December 26, 2017. Plaintiff states that he raises these allegations so that “equitable tolling [will] be applied to my claims in this action.” As Defendants do not contend that Plaintiff’s claims are time barred, the tolling issue and December 26 incident are not addressed.

misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556). It is not enough for a plaintiff to allege facts that are consistent with liability; the complaint must “nudge[]” claims “across the line from conceivable to plausible.” *Twombly*, 550 U.S. at 570. “To survive dismissal, the plaintiff must provide the grounds upon which his claim rests through factual allegations sufficient ‘to raise a right to relief above the speculative level.’” *ATSI Commc’ns, Inc. v. Shaar Fund, Ltd.*, 493 F.3d 87, 98 (2d Cir. 2007) (quoting *Twombly*, 550 U.S. at 545). On a Rule 12(b)(6) motion, “all factual allegations in the complaint are accepted as true and all inferences are drawn in the plaintiff’s favor.” *Apotex Inc. v. Acorda Therapeutics, Inc.*, 823 F.3d 51, 59 (2d Cir. 2016) (internal quotation marks omitted).

Courts must “liberally construe pleadings and briefs submitted by pro se litigants, reading such submissions to raise the strongest arguments they suggest.” *McLeod v. Jewish Guild for the Blind*, 864 F.3d 154, 156 (2d Cir. 2017) (internal quotation marks omitted). “We afford a pro se litigant ‘special solicitude’ by interpreting a complaint filed pro se to raise the strongest claims that it suggests.” *Hardaway v. Hartford Pub. Works Dep’t*, 879 F.3d 486, 489 (2d Cir. 2018) (internal quotation marks omitted).

III. DISCUSSION

The Complaint asserts claims against the individual Defendants under 42 U.S.C. § 1983. In order to succeed on a claim under § 1983, “a plaintiff must allege that (1) the defendant was a state actor, i.e., acting under color of state law, when he committed the violation and (2) the defendant deprived the plaintiff of rights, privileges or immunities secured by the Constitution or laws of the United States.” *Milan v. Wertheimer*, 808 F.3d 961, 964 (2d Cir. 2015) (citations omitted). A defendant can be liable under § 1983 “only if that individual is personally involved in the alleged deprivation.” *Littlejohn v. City of New York*, 795 F.3d 297, 314 (2d Cir. 2015);

accord Brandon v Kinter, --- F.3d ---, 2019 WL 4263361, at *10 (2d Cir. Sept. 10, 2019) (internal quotation marks omitted) (“It is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983.”). Only the second element is disputed here, whether Defendants deprived Plaintiff of his constitutional rights under the First, Fourth and Fourteenth Amendments.

A. The First Amendment Claim (Count One)

1. The Town Hall and the Individual Defendants

The Complaint states a First Amendment claim as to the Town Hall Incident against Defendants Redmond, Beato, Liu, Nieves and Gerola, but not Ringel and Miller. The First Amendment, which “guarantees freedom of speech . . . extends not only to the right to speak, but also to the right to listen and receive information.” *Kass v City of New York*, 864 F.3d 200, 207 (2d Cir 2017).

“[T]he level of judicial scrutiny that must be applied to state actions inhibiting speech varies with the nature of the forum in which the speech occurs.” *Johnson v. Perry*, 859 F.3d 156, 171 (2d Cir. 2017) (citing *Peck ex rel. Peck v. Baldwinsville Cent. Sch. Dist.*, 426 F.3d 617, 625 (2d Cir. 2005)). “Traditional public forums include areas such as streets and parks which have immemorially been held in trust for the use of the public . . . [T]he state may not enact content-based restrictions [in traditional public forums] unless they are necessary to serve a compelling state interest.” *Id.* at 172 (quoting *Peck*, 426 F.3d at 625-26) (internal quotations omitted). “A limited public forum is created when the State opens a non-public forum but limits the expressive activity to certain kinds of speakers or to the discussion of certain topics.” *Id.* (quoting *Peck*, 426 F.3d at 626) (internal quotations omitted). For a limited public forum, “regulations governing the content of speech are allowed, so long as they are reasonable and

viewpoint-neutral.” *Id.* (quoting *Peck*, 426 F.3d at 626). These content regulations are “permissible if [they] preserve[] the purposes of that limited forum.” *Bronx Household of Faith v. Board of Educ. of City of New York*, 650 F.3d 30, 36 (2d Cir. 2011) (citing *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 830 (1995)). A reasonable restriction may prohibit disruptive behavior, as the Government has “a significant interest in conducting its meeting[s] in an orderly and effective fashion.” *Madden v. Town of Hempstead*, No. 16 Civ. 6835, 2019 WL 1439935, at *15 (E.D.N.Y. Mar. 29, 2019).

The Government also may not retaliate against a private citizen for engaging in First Amendment activity. *See Kuck v. Danaher*, 600 F.3d 159, 168 (2d Cir. 2010). “To plead a First Amendment retaliation claim a plaintiff must show [that]: (1) he has a right protected by the First Amendment; (2) the defendant’s actions were motivated or substantially caused by plaintiff’s exercise of that right; and (3) the defendant’s actions caused him some injury.” *Smith v. Campbell*, 782 F.3d 93, 100 (2d Cir. 2015) (citing *Dorsett v. Cnty. of Nassau*, 732 F.3d 157, 160 (2d Cir. 2013)) (internal alteration omitted).

The Complaint pleads a sufficient First Amendment Claim against Defendant Redmond for barring Plaintiff from the Town Hall. The Town Hall was a limited public forum. The Government opened this forum to public expression for the limited purpose of allowing attendees to hear the Mayor speak and, potentially, ask the Mayor questions. *See, e.g., Santucci v. Levine*, No. 17 Civ. 10204, 2019 WL 3742286, at *10 (S.D.N.Y. Aug. 8, 2019) (citing *Malta v. Slagle*, No. 5 Civ. 342S, 2007 WL 952045, at *3 (W.D.N.Y. Mar. 29, 2007); *see also Smith v. City of Middletown*, No. 3:09 Civ. 1431, 2011 WL 3859738, at *4 (D. Conn. Sept. 1, 2011) (“Numerous courts have held that city council meetings which have been opened to the public are limited public fora.”). Accordingly, regulations on speech at the Town Hall had to be

reasonable and viewpoint-neutral, and content-restrictions were permitted to the extent that they “preserve[d] the purposes of that limited forum.” *See Bronx Household of Faith*, 650 F.3d at 36. The Complaint alleges that Defendant Redmond barred Plaintiff from the Town Hall because he had criticized Commissioner Banks’ policies. This restriction was not view-point neutral and was unreasonable and retaliatory, and therefore pleads a sufficient First Amendment Claim.

The Complaint also pleads a First Amendment claim against Defendants Beato, Liu, Nieves and Gerola, plausibly alleging that they blocked Plaintiff’s line of sight because they witnessed Plaintiff retrieve from his backpack material critical of City officials and did not want him communicating his criticisms to the Mayor. The sidewalk where Plaintiff was standing was a traditional public forum where content-based restrictions on speech are impermissible unless they are necessary to serve a compelling state interest. *See Johnson v. Perry*, 859 F.3d at 171-72. Liberally construing the Complaint, this restriction did not serve a compelling state interest, was not viewpoint-neutral and is retaliatory.

Drawing all inferences in Plaintiff’s favor, the Complaint alleges no facts to suggest that Plaintiff intended to be disruptive at the event or was disruptive prior to the event. The restrictions placed on Plaintiff at the Town Hall therefore were unreasonable and did not serve a compelling state interest. With the benefit of discovery, a basis for some restrictions on Plaintiff’s access may be shown, but at this stage of the litigation, the First Amendment claim as to the Town Hall against Defendants Redmond, Defendants Beato, Liu, Nieves and Gerola is sufficient.

2. Qualified Immunity and the Town Hall Defendants

Qualified immunity does not bar Plaintiff’s claim for money damages against Defendants Redmond, Beato, Liu, Nieves and Gerola regarding their conduct at the Town Hall event.

Qualified immunity should be resolved ““at the earliest possible stage in litigation.”” *Lynch v. Ackley*, 811 F.3d 569, 576 (2d Cir. 2016) (quoting *Pearson v. Callahan*, 555 U.S. 223, 231-32 (2009)). When a defendant presents an immunity defense on a motion to dismiss instead of a motion for summary judgment, a “more stringent standard” applies. *Edrei v. Maguire*, 892 F.3d 525, 532 (2d Cir. 2018) (citing *McKenna v. Wright*, 386 F.3d 432, 436 (2d Cir. 2004)). At this stage of the litigation, the court accepts “the complaint’s factual allegations as true and draw[s] all reasonable inferences in the plaintiffs’ favor, including both those that support the claim and those that defeat the immunity defense.” *Id.* (internal quotation marks omitted).

“Qualified immunity shields government officials from civil damages liability unless the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct.” *Brown v. City of New York*, 862 F.3d 182, 190 (2d Cir. 2017). “A defendant is entitled to qualified immunity if (1) [the defendant’s] conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known, or (2) it was objectively reasonable for [the defendant] to believe that his actions were lawful at the time of the challenged act.” *Kinter*, 2019 WL 4263361, at *12 (internal quotation marks omitted). “To determine whether the relevant law was clearly established, [courts] consider the specificity with which a right is defined, the existence of Supreme Court or Court of Appeals case law on the subject, and the understanding of a reasonable officer in light of preexisting law.” *Terebesi v. Torres*, 764 F.3d 217, 231 (2d Cir. 2014).

Plaintiff has a clearly established right not to be barred from a limited public forum because he previously exercised his First Amendment rights by criticizing a public official. *See New York Times Co. v. Sullivan*, 376 U.S.254, at 269 (1964) (“The maintenance of the opportunity for free political discussion to the end that government may be responsive to the will

of the people and that changes may be obtained by lawful means, an opportunity essential to the security of the Republic, is a fundamental principle of our constitutional system. It is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions.") (internal quotations omitted). He also has a clearly established right not to be barred from communicating with a public official because he had intended to communicate negative views. *See id.* These rights are widely known, deeply held and enshrined in the United States Constitution's First Amendment. *See* U.S. Const. amend. I ("Congress shall make no law . . . abridging the freedom of speech").

The Town Hall Defendants make no argument that a reasonable officer would have believed it was constitutional to bar Plaintiff on account of his past speech from the Town Hall or from seeing the Mayor in order to speak to him. Accordingly, qualified immunity is not a defense to Plaintiff's First Amendment claim for money damages against Defendants Redmond, Beato, Liu, Nieves and Gerola for their conduct at the Town Hall event.

3. The Resource Fair and the Individual Defendants

The Complaint does not state a First Amendment claim against the Resource Fair Defendants as to the Resource Fair. The Resource Fair also was a limited public forum. The Government hosted the Resource Fair for the limited purpose of allowing New York residents to "[m]eet with top city commissioners and senior staff during scheduled office hours to address . . . questions and concerns." 1:18-cv-3698, ECF Dkt. No. 124 at 2; *see Santucci*, 2019 WL 3742286, at *10 (public official meetings are generally considered limited public forums). Plaintiff informed the City officials that he intended to attend the event to "[p]ro[ve that] NYC agencies haven't been doing their jobs." The Complaint plausibly alleges that Plaintiff was barred from the forum for this reason. Plaintiff's stated intention was accordingly consistent

with the purpose of providing this forum. *See Bronx Household of Faith*, 650 F.3d at 36.

Barring his attendance on this basis was therefore unreasonable and not content-neutral, and contrary to the First Amendment.

However, the Complaint does not plausibly allege that the Resource Fair Defendants were personally aware of Plaintiff's purpose in attending the event, nor that they barred his entry for that reason. The Complaint at most suggests that they were communicating with each other and -- at someone's direction -- barred Plaintiff from the event because he was "undesirable." Accordingly, even though the Complaint adequately alleges a constitutional violation as to the Resource Fair, it fails to allege that any Resource Fair Defendant is personally liable for the violation. *See Kinter*, 2019 WL 4263361, at *10. The First Amendment claim against the Resource Fair Defendants as to the Resource Fair is dismissed.

B. The Selective Enforcement Claim (Count One)

Plaintiff asserts that he was discriminated against based on his viewpoint in violation of the Fourteenth Amendment. A plaintiff who does not assert being a member of a protected class may bring a selective enforcement Equal Protection claim. *Smolen v. Wesley*, 16 No. Civ. 2417, 2019 WL 4727311, at *15 (S.D.N.Y. Sept. 25, 2019). A selective enforcement claim requires that Plaintiff received selective treatment when compared to others similarly situated, and that the selective treatment was motivated by an intention to discriminate because of impermissible considerations, such as the exercise of a constitutional right. *See Berg v. Kelly*, 897 F.3d 99, 113 (2d Cir. 2018).

The factual allegations and analysis here are the same as for Plaintiff's First Amendment claims. Liberally construed, the Complaint also alleges that Plaintiff was similarly situated to others standing in line. A claim is sufficiently stated as to the Town Hall against Defendants

Redmond, Beato, Liu, Nieves and Gerola, as Plaintiff was targeted on the basis of his decision to exercise his constitutional right to free speech. For the same reasons discussed above, qualified immunity does not bar a request for money damages. Also as discussed above, a claim is not stated as to the Resource Fair Defendants because the Complaint does not allege facts to show that they knowingly excluded him from the event because of constitutionally protected activity.⁷

C. The Municipal Liability Claim (Count Two)⁸

“To bring a [§] 1983 lawsuit for municipal liability, a plaintiff must prove that action pursuant to official municipal policy caused the alleged constitutional injury.” *Hu v. City of New York*, 927 F.3d 81, 104 (2d Cir. 2019); *see also Monell v. Dep’t of Social Servs.*, 436 U.S. 658, 694-95 (1978). A municipality may be held liable “if the plaintiff’s injury was caused by ‘action pursuant to official municipal policy.’ ‘Official municipal policy includes the decisions of a government’s lawmakers, the acts of its policymaking officials, and practices so persistent and widespread as to practically have the force of law.’” *Hernandez v. United States*, --- F.3d ---, 2019 WL 4419379, at *9 (2d Cir Sept. 17, 2019) (internal citations omitted) (quoting *Connick v.*

⁷ The Complaint suggests that the Fourteenth Amendment claim is based on the decision in *Knight First Amendment Inst. at Columbia Univ., et al. v. Trump*, 302 F. Supp. 3d 541 (S.D.N.Y. 2018), *aff’d*, 928 F.3d 226 (2d Cir. 2019). The issue there was whether, under the First Amendment (not the Fourteenth Amendment), a citizen could be barred from an online forum based on the content of his or her speech. The decision in *Knight* is consistent with the Court’s holding regarding the First Amendment claim, *supra*, but is not relevant to Plaintiff’s Fourteenth Amendment claim.

⁸ The Complaint suggests that the City violated New York State’s Open Meetings Law when Plaintiff was barred from entering the Town Hall or Resource Fair. Section 103 of the Open Meetings Law provides that the law pertains to a “meeting” of a “public body.” N.Y. Pub. Off. Law § 103(a) (McKinney). Neither event here qualifies as a “meeting” or “public body” as defined by the statute. *See id.* §§ 102(1) (“‘Meeting’ means the official convening of a public body for the purpose of conducting public business”); 102(2) (“‘Public body’ means any entity, for which a quorum is required in order to conduct public business . . . performing a governmental function”). The Complaint does not plead a sufficient claim under the Open Meetings Law.

Thompson, 563 U.S. 51, 60-61 (2011)). “Although ‘official policy’ often refers to formal rules or customs that intentionally establish ‘fixed plans of action’ over a period of time, when a municipality ‘chooses a course of action tailored to a particular situation,’ this may also ‘represent[] an act of official government ‘policy’ as that term is commonly understood.”” *Montero v. City of Yonkers, New York*, 890 F.3d 386, 403 (2d Cir. 2018) (considering a narrow policy and practice of retaliation against the plaintiff but affirming dismissal where the complaint did not allege that the retaliatory acts had been initiated by a policymaking official). “[E]ven a single action by a decisionmaker who ‘possesses final authority to establish municipal policy with respect to the action ordered’ may deprive the plaintiff of his or her constitutional rights.” *Id.* (quoting *Amnesty Am. v. Town of W. Hartford*, 361 F.3d 113, 126 (2d Cir. 2004)).

The Complaint adequately pleads a municipal liability claim for the persistent practice and policy of excluding Plaintiff from public events where the Mayor attends. In addition to the Town Hall and Resource Fair, the Complaint alleges that Plaintiff was barred by police officers or other City officials from attending at least ten additional events where Mayor de Blasio was speaking. The Complaint plausibly suggests that these actions were taken at the behest of a policymaking official, based on the consistent actions of many different City officials and police officers at various events, and the allegation that one of the defendants said that Plaintiff had to wait for a decision about whether he and another person would be permitted to enter the Town Hall event. At this stage in the litigation, and construing the pleadings in Plaintiff’s favor, the Complaint alleges a persistent practice and policy to prohibit Plaintiff from such events due to his intention to speak out critically.

The Complaint, liberally construed, also requests permanent injunctive relief against the City so that Plaintiff can access public events. *See Hardaway*, 879 F.3d at 489 (“We afford a pro se litigant ‘special solicitude’ by interpreting a complaint filed pro se to raise the strongest claims that it suggests.” (quotation marks omitted)). This request for relief ultimately would be granted only if Plaintiff succeeds on the merits of the constitutional claims after the facts are more fully developed in discovery, and if the four factors required for permanent injunctions are satisfied:

[A] plaintiff seeking a permanent injunction must satisfy a four-factor test before a court may grant such relief. A plaintiff must demonstrate: (1) that [he] has suffered an irreparable injury; (2) that remedies available at law, such as monetary damages, are inadequate to compensate for that injury; (3) that, considering the balance of hardships between the plaintiff and defendant, a remedy in equity is warranted; and (4) that the public interest would not be disserved by a permanent injunction.

U.S.S.E.C. v Citigroup Glob. Markets, Inc., 752 F.3d 285, 296 (2d Cir. 2014) (quoting *eBay Inc. v MercExchange, L.L.C.*, 547 US 388, 391 (2006)).

The request for permanent injunction relief is not dismissed because the Complaint alleges sufficient facts that if proven would satisfy the four *eBay* factors. “The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *New York Progress and Protection PAC v Walsh*, 733 F.3d 483, 486 (2d Cir. 2013) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)); *see Knight First Amendment Inst. at Columbia Univ. v Trump*, 302 F Supp. 3d 541, 577 (S.D.N.Y. 2018), *aff’d*, 928 F.3d 226 (2d Cir. 2019). The balance of hardships tilts in Plaintiff’s favor; the opportunity to voice objections to political officials is “a fundamental principle of our constitutional system,” *New York Times Co.*, 376 U.S. at 269, whereas Defendants need only provide Plaintiff access as long as he complies with reasonable conditions. Monetary damages cannot adequately compensate Plaintiff for these injuries because of this fundamental interest. *Id.* Finally, “securing First Amendment rights is in

the public interest.” *Walsh*, 733 F.3d at 488; *see also Amarin Pharma, Inc. v. U.S. Food & Drug Admin.*, 119 F. Supp. 3d 196, 237 (S.D.N.Y. 2015). A narrowly tailored injunction that allows Plaintiff access to public events so long as he does not act in a disruptive manner would be in the public interest and respect both Plaintiff’s First Amendment rights and the City’s right to conduct civic meetings in an orderly fashion.

Liberally construed, and construing all facts in Plaintiff’s favor, the Complaint states a constitutional claim against the City, which still must be proved. In the event that Plaintiff sustains his burden of proof, an appropriately tailored injunction that lifts the bar on Plaintiff’s attending City events may be appropriate.

D. The Fourth Amendment Claim (Count Three)

The Fourth Amendment protects against unreasonable searches and seizures by the Government. U.S. Const. amend. IV. The “seizure of property occurs when there is some meaningful interference with an individual’s possessory interest in that property.” *United States v. Iverson*, 897 F.3d 450, 458 (2d Cir. 2018) (citing *United States v. Jacobsen*, 466 U.S. 109, 113 (1984)). The Complaint incorporates by reference security footage of the Bronx courthouse on the day of the Resource Fair Incident.⁹ *See Garcia v. Does*, 779 F.3d 84, 87-88 (2d Cir. 2015) (allowing consideration of videos incorporated by reference into the complaint on a motion to dismiss where the parties did not object, but without reaching the issue). The footage shows that Defendant Captain Manzi took possession of Plaintiff’s bag for less than five seconds and that

⁹ *See e.g.*, Dkt. No. 45 ¶ 6(d) (“Mr. Manzi is shown at 9:47 am on 5/23/17 in video footage that was recorded by the security camera controlled by the New York State Office of Court Administration that was recording from a location near Room 105 in the Bronx Supreme Court, as Mr. Manzi used his left hand to make a hand gesture to illegally direct me away from the entrance. . . . Additionally, at 9:49 am on 5/23/17, the same security camera I just discussed recorded Mr. Manzi using his right hand to illegally seize a bag of mine”); Dkt No. 66 at 19-25 (where Plaintiff took still images of the video footage and described their events).

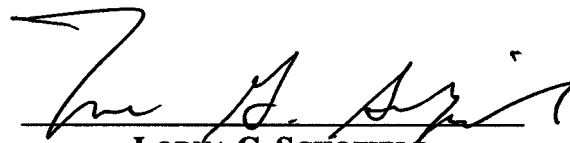
Plaintiff immediately retrieved the bag thereafter. This is not meaningful interference with Plaintiff's possession, and therefore Plaintiff does not state a claim for interference with a property interest.

IV. CONCLUSION

For the foregoing reasons, the State Defendants' motion to dismiss is GRANTED. The City Defendants' motion to dismiss is GRANTED in part and DENIED in part as follows: Defendants Ringel and Miller are dismissed. The claims that Plaintiff's First and Fourteenth Amendment rights were violated at the Town Hall survive against Defendants Redmond, Beato, Liu, Nieves and Gerola. The *Monell* claim survives against the City.

The Clerk of Court is respectfully directed to close the motions at Docket Numbers 80, 85, and to mail a copy of this Opinion and Order to pro se Plaintiff.

Dated: September 30, 2019
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 03/01/2019

-----X
 :
 TOWAKI KOMATSU, :
 :
 Plaintiff, :
 :
 -against- :
 :
 CITY OF NEW YORK, et al., :
 :
 Defendants. :
 :
 -----X

18 Civ. 3698 (LGS)

ORDER

LORNA G. SCHOFIELD, District Judge:

WHEREAS, Plaintiff has made numerous voluminous and irrelevant filings in this case, many of which exceed 100 pages in length (*See, e.g.*, Dkt. 108). In the past three months, Plaintiff has filed 29 letters. In the past week alone, he filed six letters (Dkt. 109-111, 113-15) requesting relief already denied (*See, e.g.*, Dkt. 113), or describing events unrelated to the claims asserted in Plaintiff’s Complaint (*See, e.g.*, Dkt. 110);

WHEREAS, on January 11, 2019, Defendants filed their Motions to Dismiss the Second Amended Complaint (Dkt. 80, 85);

WHEREAS, on February 13, 2019, Plaintiff filed a 118-page letter seeking leave to amend the Complaint (“Motion to Amend”) and requesting that the deadline to file his Opposition to Defendants’ Motions to Dismiss be adjourned until after the Court rules on his Motion to Amend (Dkt. 108). In that letter, Plaintiff also sought reconsideration of the Court’s prior Orders (Dkt. 108). On February 19, 2019, Plaintiff filed a 154-page letter requesting the same (Dkt. 109). On February 20, 2019, Plaintiff filed a letter stating that the removal of a chair from the pro-se intake office violated the Americans with Disabilities Act (Dkt. 110);

WHEREAS, on February 21, 2019, an Order directed Defendants to file a response to

Plaintiff's Motion to Amend (Dkt. 112). Plaintiff filed two letters repeating his request to amend his Complaint and requesting that Judge Gorenstein (to whom this case has been referred for general pretrial supervision) recuse himself from the case (Dkt. 114-115);

WHEREAS, on February 26, 2019, and February 28, 2019, Defendants filed letters opposing Plaintiff's Motion to Amend on the ground that it would be futile to do so. (Dkt. 116-117);

WHEREAS, "Leave to amend should be 'freely give[n] . . . when justice so requires,' Fed. R. Civ. P. 15(a)(2), but should generally be denied in instances of futility . . ." *United States ex rel. Ladas v. Exelis, Inc.*, 824 F.3d 16, 28 (2d Cir. 2016) (some internal quotation marks omitted). "A proposed amendment to a complaint is futile when it could not withstand a motion to dismiss." *F5 Capital v. Pappas*, 856 F.3d 61, 89 (2d Cir. 2017). It is hereby

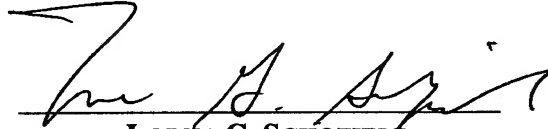
ORDERED that for substantially the same reasons set forth in Defendants' letters at Dkt. 116 and Dkt. 117, Plaintiff's Motion to Amend is DENIED as futile. It is further

ORDERED that Plaintiff's application to adjourn the deadline to file his Opposition is GRANTED nunc pro tunc. Plaintiff shall file his Opposition by March 14, 2019. Plaintiff shall label his Opposition "Opposition to Defendants' Motions to Dismiss." He may file his opposition to both motions in a single document not to exceed 50 pages. Defendants shall file their Replies, each not to exceed 10 pages, by March 28, 2019. The parties shall follow the Court's Individual Rules for Civil Cases concerning motions, including Rule Defense counsel shall provide the Court with a courtesy copy of the motions as provided in the Court's Individual Rule III.B.5. It is further

ORDERED that for substantially the same reasons as set forth in the Court's Orders at Dkt. 106 and Dkt. 76, Plaintiff's remaining applications are DENIED. It is further

ORDERED that Plaintiff shall refrain from making further filings in this case, except with respect to the disposition of the claims in the Second Amended Complaint (Dkt. 45).

Dated: March 1, 2019
New York, New York



LORNA G. SCHOFIELD
UNITED STATES DISTRICT JUDGE

SECTION:	1
TITLE:	GENERAL RESPONSIBILITIES
SUB SECTION:	1.10
TITLE:	POLICY
EFFECTIVE DATE:	APRIL 1, 1989

- A. It is the responsibility of the Unified Court System to provide a professional uniformed force that is sensitive to the needs of the court and the public. Court officers are responsible for ensuring that court proceedings are conducted in a secure and impartial atmosphere.
- B. To meet this challenge, court officers must be aware of their responsibilities, and are required to conduct themselves in a professional manner and present a positive personal appearance.
- C. Court officers must always be mindful that they are the visible representatives of the Unified Court System and that their appearance and conduct has a direct effect on how the court system is perceived.

SUBSECTION:	1.20
TITLE:	RESPONSIBILITIES
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

Court officers shall:

1. Perform all assigned duties in an orderly, responsible and efficient manner in compliance with the rules and procedures set forth herein, as well as any memoranda, directives and training materials.
2. Maintain a current Rules & Procedures Manual and be familiar with all rules and procedures contained therein.
3. Consult with an immediate supervisor if clarification of any rule, regulation, directive, procedure, memorandum or order is required.
4. Be familiar with all court offices and other services or related agencies located within the assigned facility.
5. Be familiar with the physical layout and emergency evacuation procedures of the facility to which they are assigned.
6. Consult an immediate supervisor for direction when dealing with a situation for which no established rule or procedure exists. Where there is no opportunity for such consultation, court officers shall exercise their best judgment.
7. Safeguard and properly use all court-assigned equipment.
8. Surrender their shield, identification card and all other issued items to the appropriate supervisor on the last day of their employment or at any other time as so ordered or required.
9. Refer all media inquiries to the appropriate supervisor.
10. Attend all training sessions, lectures and meetings as scheduled.

SUBSECTION:

1.20 (continued)

TITLE:

RESPONSIBILITIES

11. After informing the appropriate personnel office, notify the Major or Captain of any change of home address or telephone number. Changes in home address or telephone number must be submitted to the appropriate personnel office and the respective Major or Captain within 5 business days.
12. Immediately notify their Major or Captain of any factor which may affect their ability to perform their duties. This includes the use of prescribed medications, psychiatric care, physical impairments or any legal restrictions.
13. Be courteous and respectful when dealing with the public and responsive to the special needs of disabled persons and provide their shield number and name to anyone requesting same.
14. Remain on their assigned post unless properly relieved.
15. In an emergency situation, take immediate and appropriate action and, at the first opportunity, notify their supervisor.

SUBSECTION:	1.30
TITLE:	ORDERS
EFFECTIVE DATE:	APRIL 1, 1989

- A. A court officer shall promptly obey all lawful orders and instructions issued or given by a supervisor.
- B. A court officer shall not obey any order which is inconsistent with the law. If in doubt as to the legality of any order, the court officer shall request clarification of the order and/or confer with the supervisor of the person issuing the order.
- C. A court officer who is given a lawful order, but believes that such order is inconsistent with rules and procedures, or violates a provision of the collective bargaining agreement, shall respectfully inform the supervisor issuing the order of such belief. If, upon consideration, the supervisor does not modify the order, it shall be obeyed. The court officer may seek a remedy at a later date.

SECTION:	2
TITLE:	SECURITY PROTOCOLS AND SCREENING PROCEDURES
SUB SECTION:	2.10
TITLE:	SECURITY POSTS
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. Court officers shall, when assigned to a security post where providing information is required, have available the following:
 - 1. A list of sitting justices and/or judges.
 - 2. A list of room numbers of parts, chambers and administrative offices.
 - 3. A list of facility phone numbers, including emergency numbers.

- B. Court officers shall observe the following procedures when assigned to a security post where metal detectors or cabinet x-ray systems are utilized:
 - 1. All persons to be scanned shall be directed to remove all metal objects from their persons and place them in a designated container. All briefcases, handbags, knapsacks, etc., will be opened and searched in view of the owner. If cabinet x-ray systems are utilized, briefcases, handbags, knapsacks, etc. shall be opened only as warranted by circumstances.
 - 2. When using a magnetometer, the court officer shall direct the person being scanned to proceed through the arch.
 - 3. When using hand scanners, proper searching techniques will be utilized for each individual scanned.
 - 4. If a negative reading results, the individual shall collect their property and be permitted to proceed.

**SUB SECTION:
TITLE:**

**2.10 (continued)
SECURITY POSTS**

5. If a positive reading results, the individual shall be so advised and given an opportunity to ascertain whether they may have previously overlooked other metal objects in their possession.
6. Alternatively, prior to the discovery of any illegal contraband the persons being searched may be allowed to terminate the search process, collect their belongings and exit the area.
7. At a magnetometer post, an individual with a positive reading who still desires entry shall be passed through the arch a second time.
8. If a positive reading is again registered, the individual will be searched using a hand scanner.
9. If, as a result of a hand scanner search, a metallic object is located, it will, if possible, be removed. If a magnetometer with visible zoning indicators is used, a hand scan of the area indicating the presence of metal shall be completed; otherwise a complete handscan shall be done.
10. If, as a result of the search, an item of contraband is discovered, appropriate action shall be taken.
11. Items which are considered contraband by the Unified Court System, but are otherwise legally possessed by the individual, shall be vouchered for safekeeping and returned to the individual upon their departure from the court facility.
12. Individuals in possession of medicine and/or medical delivery devices, such as a diabetic's syringe or an Epinephrine Pen needed for emergency medical treatment, shall be allowed to retain such medicine and/or device while within a court facility.
13. Discretion and sensitivity shall be exercised when conducting searches of disabled persons.

**SUB SECTION:
TITLE:**

**2.10 (continued)
SECURITY POSTS**

- C. A court officer must be particularly careful about the language and method used when conducting a hand-scanner search.
 - 1. A court officer shall demonstrate to the individual how the individual should stand for a hand-scanner search, by stating, "Please stand like this" and by standing with arms held out and legs apart.
 - 2. A court officer shall avoid touching the individual with the hand-scanner and should not place the scanner in contact with sensitive areas of the body.
 - 3. If an individual requests to be hand-scanned by an officer of the same gender, a court officer shall consult with a uniformed supervisor and an effort should be made to accommodate the request.

- D. Individuals who advise uniformed personnel of the presence of a medical device (e.g., an implantable defibrillator device that may be affected by electromagnetic interference), shall not be subject to a magnetometer or hand-scanner search.
 - 1. The above individuals shall be escorted to a non-public area and a pat down search shall be conducted by an officer of the same gender.

- E. Laptop computers are permitted in court facilities and courtrooms. The devices may be used unless otherwise directed by a presiding judge.

- F. Cellular telephones, electronic games, personal walkman-style portable radios, tape and compact disc players and pagers (beepers), provided they cannot record audio, video, or still images, are permitted in court facilities and courtrooms unless otherwise instructed by the presiding judge, but must be turned off while in the courtroom.

**SUB SECTION:
TITLE:**

**2.10 (continued)
SECURITY POSTS**

- G. Devices with the ability to record audio, still images or video shall not be permitted in court facilities and courthouses and must be vouchered until the conclusion of the owner's court business. The vouchering of pagers and cellular telephones in the possession of sworn jurors will be left to the discretion of the presiding judge.
- H. Written or printed materials such as leaflets expressing a political or social cause shall not be considered as contraband when possessed by any individual within a court facility. If, however, an individual attempts to distribute such material within the court facility, those materials may be confiscated and the individual may be removed from the court facility.
- I. Displays by individuals within a court facility of photographic, written or printed matter in any form, including matter printed or otherwise displayed on an article of clothing, that relate to a pending or on-going trial, are not permitted. Individuals shall be asked to remove such matter from public view, and upon the failure to do so, may be removed from the court facility,
- J. A court officer assigned to verify Secure Pass Identification Cards shall adhere to the following procedures:
 - 1. The cardholder must present the Secure Pass Identification Card (the "card") to the officer at the security post.
 - 2. The officer will visually examine the card to ensure that the UCS State Seal hologram is present and intact on the face of the card.
 - 3. The officer must verify the cardholder's identity by comparing the photograph on the card with the individual presenting the card.

**SUB SECTION:
TITLE:**

**2.10 (continued)
SECURITY POSTS**

4. If the officer has any concern that the photograph on the card is not of the person presenting the card, the officer must confirm identity by closely inspecting the additional information on the face of the card, i.e. height, eye color, and date of birth. The officer may also request additional photo ID.
5. If the card indicates that the cardholder is licensed to carry a firearm, the officer must ask the cardholder if he/she is in possession of a firearm. If the response is affirmative, the office must ensure that the proper steps are taken to secure the weapon.
6. The officer must then pass the card under an Ultra Violet scanner to ensure that the UV-encoded Scales of Justice symbols are present and intact on the face of the card.
7. When the officer is satisfied that the card was presented by the individual pictured and described on the card and that the UCS State Seal and the UV-encoded Scales of Justice symbols appear on the face of the card, the card will be returned to the cardholder and access permitted.
8. Bags may be subject to inspection and/or x-ray screening, as circumstances require.
9. The Secure Pass card only allows the cardholder to by-pass magnetometer screening when the cardholder is on official business, not when appearing in court on a personal matter.

SUB SECTION:	2.20
TITLE:	SECURITY PROTOCOLS
EFFECTIVE DATE:	12/15/03

- A. Court officers shall ensure that:
1. All public areas of court facilities are searched prior to 0830 hours each day and after the close of business. Perimeter searches of facilities must be conducted twice a day.
 2. All courtrooms and adjacent areas must be searched each day prior to court sessions and after the lunch period prior to re-opening court.
 3. All courtrooms are secured when not in use.
 4. All delivery personnel are screened through the magnetometers.
 5. All food and package deliveries are checked at designated security posts. The deliveries must be verified with staff and staff directed to pick up their food or packages at the designated security posts.
 6. All mail and packages are x-rayed.
 7. All trash receptacles shall be moved as far as practical from court facilities.
 8. All individuals are advised to maintain possession of their bags, briefcases, etc., at all times.
 9. All custodial and contract staff wear their official employee ID card at all times. Contract staff must provide the Operations Office with a list of all employees working or scheduled to work in court facilities.

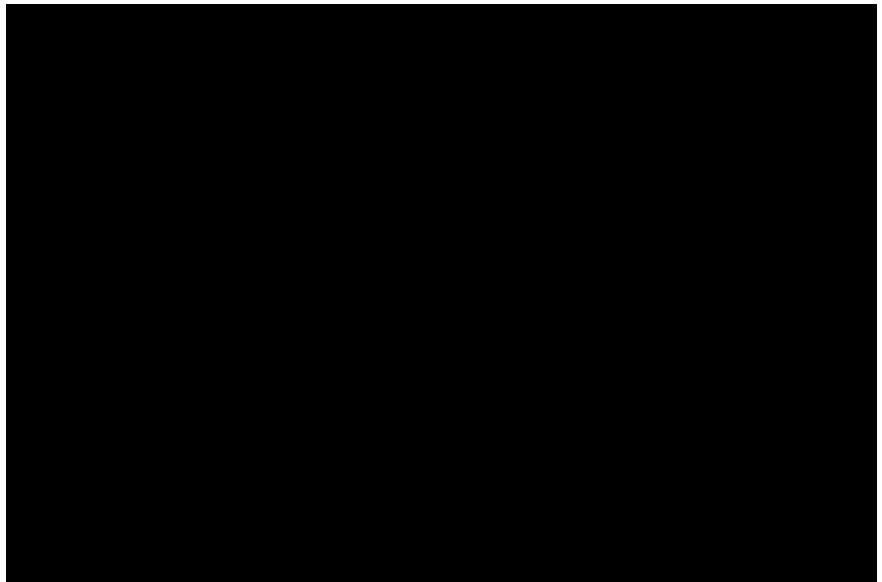
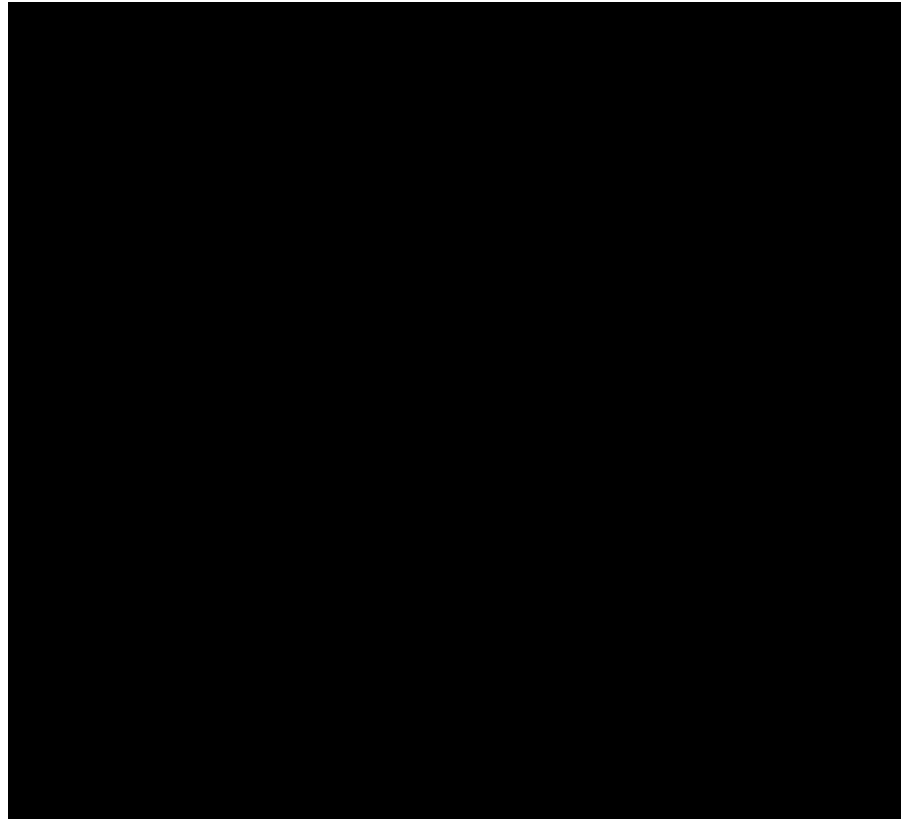
SUB SECTION:	2.45
TITLE:	RADIO COMMUNICATIONS
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. A court officer shall observe the following procedures when issued a hand-held radio:
1. The radio will be signed for in the appropriate supervisor's office.
 2. An operability check shall be done immediately upon arriving at the assigned post.
 3. The radio shall remain on and constantly monitored throughout the entire tour of duty.
 4. Transmissions shall be made only after ongoing transmissions have been completed.
 5. At the end of a tour of duty, the radio will be turned to the off position, replaced in the appropriate charger to assure operability during the next tour of duty, and signed back in.
 6. Report immediately all malfunctioning radios to a uniformed supervisor.
 7. Radios shall only be used for official court business transmissions.
 - a. Make messages short and to the point.
 - b. Don't carry on conversations except when necessary.
 - c. Speak in a normal tone of voice, hold radio about 2 inches from your mouth.
 - d. If calling a [REDACTED] the most important information is your LOCATION!!.

SECTION:
TITLE:

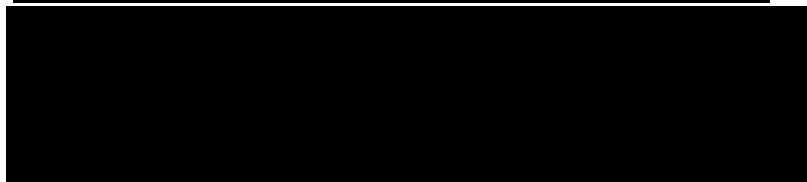
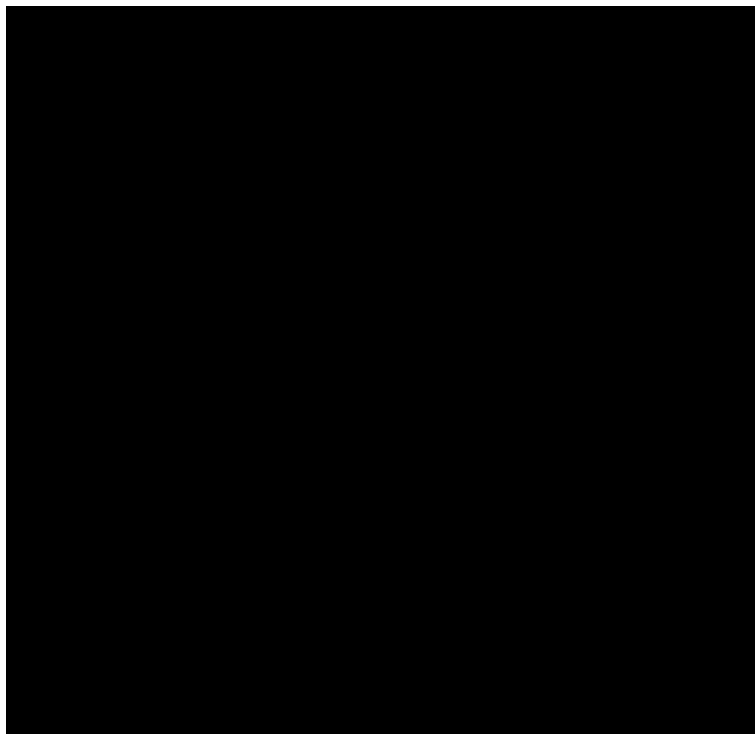
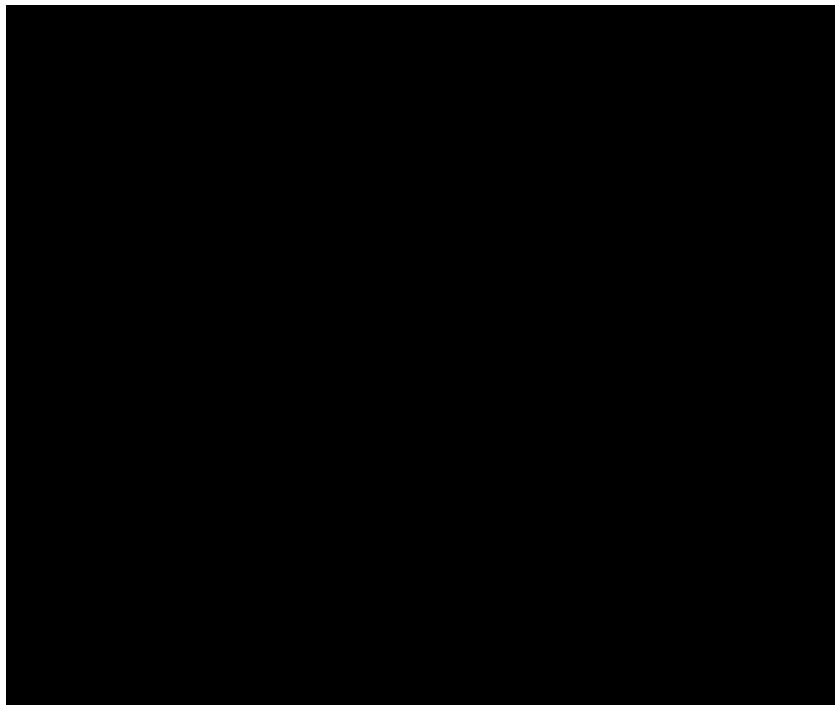
2.45
RADIO COMMUNICATIONS

- B. A court officer shall become familiar with and utilize the following standardized call series:



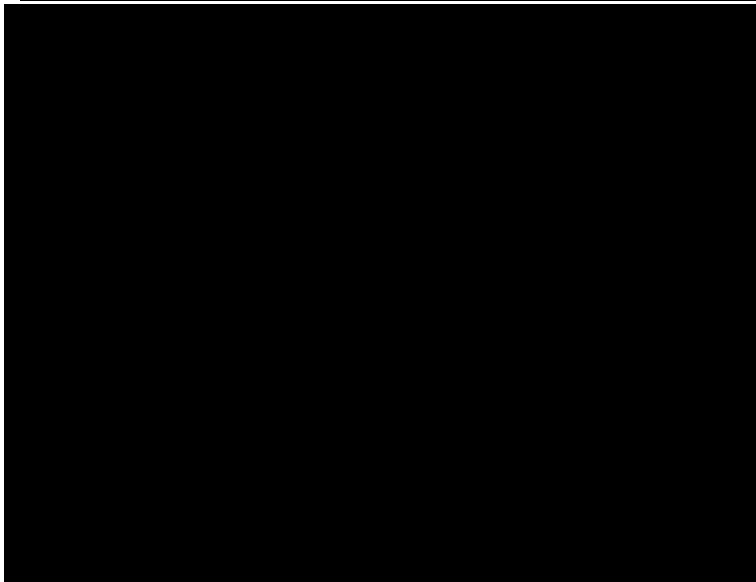
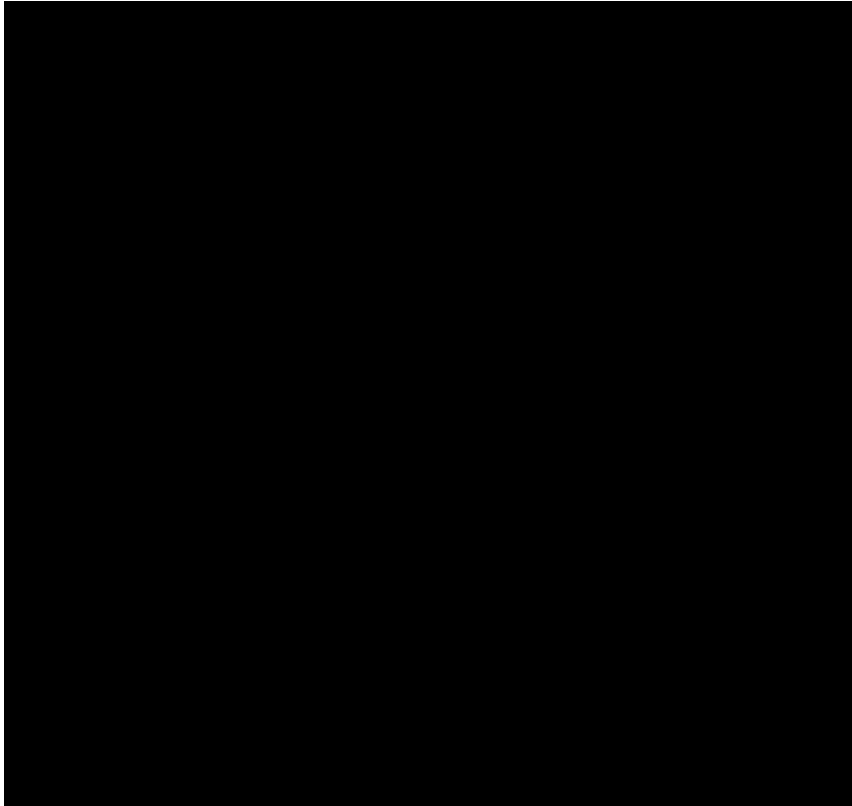
SECTION:
TITLE:

2.45 (continued)
RADIO COMMUNICATIONS



SUB SECTION:
TITLE:

2.45 (continued)
RADIO COMMUNICATIONS



SUBSECTION:	2.60
TITLE:	STATEWIDE POLICY REGULATING SECURITY SCREENING PROGRAMS
EFFECTIVE DATE:	DECEMBER 19, 1994 (Revised 11/19/03)

- C. A court officer shall be familiar with and utilize any standardized call signs for the court to which they are assigned.
- D. A court officer shall not use profane or other inappropriate language during radio transmissions.
- E.

PHONETIC ALPHABET

A=ADAM	N=NORA
B=BOY	O=OCEAN
C=CHARLES	P=PETER
D=DAVID	Q=QUEEN
E=EDWARD	R=ROBERT
F=FRANK	S=SAM
G=GEORGE	T=TOM
H=HENRY	U=UNION
I=IDA	V=VICTOR
J=JOHN	W=WILLIAM
K=KING	X=X-RAY
L=LINCOLN	Y=YOUNG
M=MARY	Z=ZEBRA

SECTION:	4
TITLE:	UNIFORM AND EQUIPMENT REGULATIONS
SUB SECTION:	4.10
TITLE:	POLICY
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. It is one of the objectives of the New York State Unified Court System to ensure that all uniformed personnel maintain a neat and clean appearance, are attired in an authorized uniform, and possess and maintain all required equipment.

- B. As the most visible representatives of the Unified Court System, court officers are required to maintain an alert and professional appearance, manner and bearing.

SUB SECTION:	4.20
TITLE:	GENERAL
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 7/23/03)

- A. Court officers shall at all times, while on duty, wear the uniform and articles of equipment as prescribed in the CORP manual. All uniforms and equipment must conform with the standards and specifications issued by the Department of Public Safety on behalf of the First Deputy Chief Administrative Judge.
- B. Court officers shall not wear their uniforms while off-duty except, to and from work, during meal breaks or as authorized by a superior officer and the Department of Public Safety.
- C. Court officers shall maintain their uniforms in a neat, clean and serviceable condition.
- D. No identifiable part of the uniform is to be worn at any time in conjunction with civilian clothing.
- E. Inspection of uniforms and equipment will be conducted by supervisory officers at least twice annually. Officers will be directed to replace equipment or uniforms no longer meeting standards. Failure by an officer to follow such direction may result in disciplinary action.
- F. When in uniform outdoors, a court officer shall wear an approved and appropriate uniform outer garment and cap.
- G. Neck adornments (e.g., necklaces and chains) must be worn under the uniform shirt.
- H. A court officer, while on duty, shall comply with the following safety and performance requirements:
 - 1. Court officers shall not wear any items of jewelry that may constitute a safety hazard (e.g., hoop or hanging earrings, or other jewelry that can be torn from the face).

SUB SECTION:
TITLE:

4.20 (continued)
GENERAL

2. Court officers while on duty shall not wear their hair in a manner that may constitute a safety hazard. When in uniform, regardless of whether or not the cap is worn, hair will not be worn so that it falls over the eyebrows or reaches the collar. The length and bulk of the hair should not interfere with the wearing of any uniform headgear. The hairstyle should allow for the uniform cap to be placed squarely on the head, without visible bulk.
- I. A court officer shall:
 1. Keep uniforms clean, well-pressed, in good repair, and securely buttoned. When the short sleeve shirt is worn, the collar button may be left unbuttoned, but all other buttons must be fastened. Shirt sleeves may not be rolled-up.
 2. Prevent non-uniform articles from showing above the uniform collar.

SUBSECTION;

4.21

TITLE:

SHIELD AND IDENTIFICATION CARD

EFFECTIVE DATE:

JANUARY 1, 1991 (Revised 12/15/03)

A. Court officers shall:

1. Safeguard the official shield and identification card at all times.
2. Promptly report to their supervisor any lost or damaged shield or identification card. Loss of a shield or identification card must also be reported to the police agency where the loss took place.
3. Properly maintain the official shield and identification card.
4. Wear the shield properly when in uniform and have the ID card in the possession while on duty.
5. Display the shield and identification card as conditions require when in civilian clothing.
6. Surrender the shield and identification card to their supervisor upon promotion, resignation, termination, retirement, suspension, leave of absence, or as directed.

B. Court officers shall not:

1. Duplicate or possess a duplicate of the official shield or identification card.
2. Lend, transfer, alter or purposely damage the official shield or identification card.
3. Use the shield or identification card for any purpose inconsistent with law, rule, regulation or the good order of the Unified Court System.

SUB SECTION:	4.50
TITLE:	SERGEANTS
EFFECTIVE DATE:	APRIL 1, 1989

A. Uniforms and Equipment

1. The uniform and equipment regulations described in the above Subsections of Sections 4.30 and 4.40 apply to Sergeants except as follows:
 - a. Appropriate blue Sergeants' chevrons (three stripes) shall be affixed to both sleeves of all shirts, blouses and jackets.
 - b. Cap device shall be gold and unnumbered.
 - c. The band on the dress cap shall be gold.

SUB SECTION:	4.60
TITLE:	UNIFORM SPECIFICATIONS FOR CHIEFS, MAJORS, CAPTAINS, LIEUTENANTS
EFFECTIVE DATE:	12/15/03

A. Uniform and Equipment

1. The uniform and equipment regulations described in the preceding subsections of Section 4.30 and 4.40 of the Court Officers Rules and Procedures Manual apply to Chiefs, Majors, Captains and Lieutenants, except as follows:
 - a. Rank designation insignia shall be properly affixed to uniform shirt, blouse, jacket and/ or coat.
 - b. Cap device is gold and unnumbered. Chin strap is gold. For Chiefs and Majors, cap frame is covered with black velvet. For Captains and Lieutenants, the cap frame is covered with black mohair.
 - c. For Chief and Major ranks, gilt (gold) spray design on cap visor.
 - d. Black mohair braid on outer seam of pants is to be 1 inch in width for Chiefs, Majors, Captains and Lieutenants.
 - e. Black mohair braid 1 inch in width laced with the lower edge 3 ½ inches above the bottom of the sleeve, shall be worn on both sleeves of the blouse.
 - f. Baseball caps and trooper-style fur caps are not permitted.
 - g. An emergency Service Jacket is not permitted.
2. Optional Uniform Items:
 - a. Navy blue, fingertip or waist length nylon jacket with epaulets, optional, detachable fur collar, breast pockets, gold buttons bearing the New York State seal, slash side pockets and detachable liner.

SUB SECTION:
TITLE:

4.60 (continued)
**UNIFORM SPECIFICATIONS FOR CHIEFS,
MAJORS, CAPTAINS, LIEUTENANTS**

- b. Navy blue, double-breasted trench coat (NYPD style), with epaulets, gold buttons bearing the New York State seal and authorized uniform patch worn on both sleeves.
- c. Black, single breasted raincoat (U.S. Army style), epaulets and authorized uniform patch worn on both sleeves.

**SUB SECTION:
TITLE:**

**4.60 (continued)
UNIFORM SPECIFICATIONS FOR CHIEFS,
MAJORS, CAPTAINS, LIEUTENANTS**

**ORDER OF RANK
AND
RANK INSIGNIA**

A. The order of rank and corresponding rank insignia for the uniformed supervisors of the uniformed force is as follows:

1) CHIEF OF PUBLIC SAFETY



2) 1ST DEPUTY CHIEF



3) DEPUTY CHIEF



4) ASSISTANT CHIEF



5) ASSISTANT DEPUTY CHIEF



6) MAJOR



7) CAPTAIN



8) LIEUTENANT



SUB SECTION:
TITLE:

4.60 (continued)
**UNIFORM SPECIFICATIONS FOR CHIEFS,
MAJORS, CAPTAINS and LIEUTENANTS**

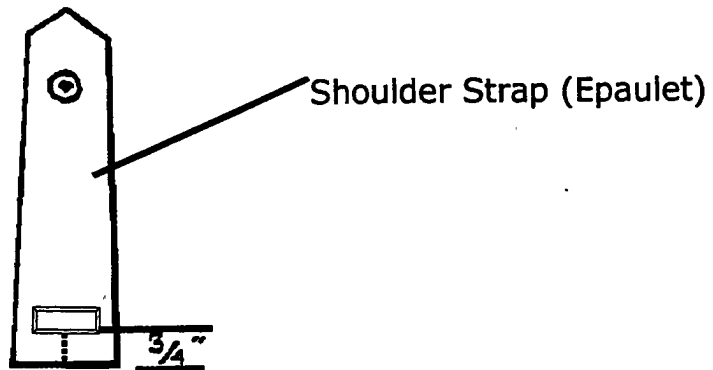
DISPLAY OF INSIGNIA

Insignia of rank, gilt (gold) bar(s), oak leaf, stars shall be worn on:
a. shoulders of duty jacket, blouse, and coat.
b. collar of regulation shirt.

BLOUSE / JACKET / COAT

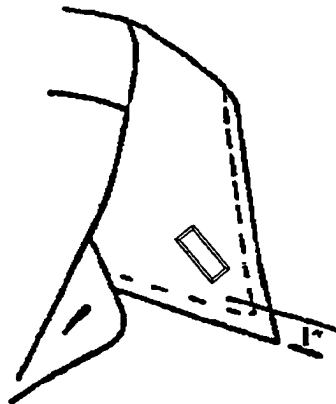
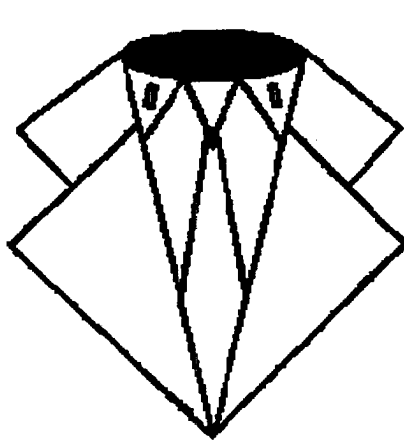
Insignia for all ranks of Lieutenant and above shall be worn on the shoulders of the outer garment (blouse/jacket/coat).

Full-size gold (gilt) bars worn on both shoulder straps (epaulets) of blouse, jacket or coat.



SHIRT

Insignia for the ranks of Lieutenant and above shall be worn as follows:
Lieutenant, Captain and Major.



Center on collar point 1" from forward edge.

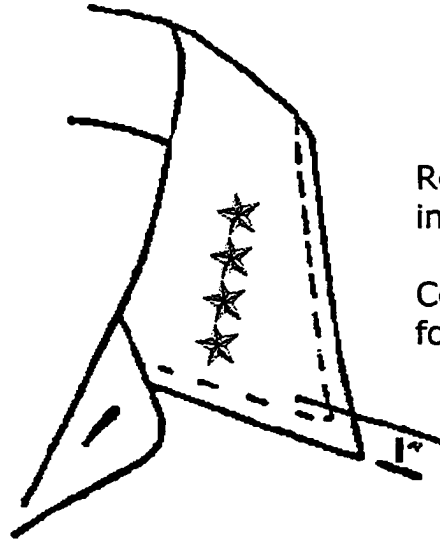
Reduced size gold (gilt) insignia (bars, oak leaf, stars).

Rank of Major insignia is affixed with oak leaf stem parallel to the forward edge.

SUB SECTION:
TITLE:

4.60 (continued)
**UNIFORM SPECIFICATIONS FOR CHIEFS,
MAJORS, CAPTAINS, LIEUTENANTS**

CHIEF RANKS



Reduced size gold (gilt)
insignia.

Center on collar 1" from
forward edge.

SECTION:	7
TITLE:	USE OF FORCE
SUB SECTION:	7.10
TITLE:	POLICY
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. This section is not intended to broaden or modify a peace officer's civil or criminal liability in any way and should not be construed as creating a higher or lesser standard of safety or care than that set forth by law.
- B. A peace officer shall be familiar with the provisions of Article 35 of the New York State Penal Law, "Defense of Justification," as well as any other policies, directives or memoranda regarding the use of force.
- C. Physical Force
 - 1. In the complex environment in which court officers work, they are confronted daily with situations where control must be exercised in order to protect themselves and the public safety.
 - 2. Depending on the circumstances, officers have a variety of options to achieve control. The range of available options is called the "Physical Force Continuum." The initial steps in the continuum, i.e., officer presence and verbal direction (including advice, warnings and persuasion), do not involve physical interaction between the subject(s) and the officer. This should be the first option which an officer considers in order to control the situation, whenever circumstances allow. The following techniques should be utilized:
 - a. Speak in a calm, deliberate manner, listen to the subject and request their cooperation.
 - b. Explain the consequences if the subject does not cooperate.
 - 3. Depending on the actions of the subject, it may be necessary for a court officer to proceed along the physical force continuum into "soft empty hands or hard empty hands techniques." These techniques require physical contact with the subject and may include, incrementally: holding a subject, come-along holds and take-down maneuvers.

**SUBSECTION:
TITLE:**

**7.10 (continued)
POLICY**

4. Throughout all physical force encounters, it is important for court officers to remember that they may enter the continuum at any point, but that their force actions are designed to exercise control and are dictated by the actions of the subject(s) and not the officer's emotions. The Unified Court System recognizes the value of all human life and is committed to respecting the dignity of every individual. Only the minimum force necessary to gain control of the situation shall be used.
5. In rare circumstances, the actions of a subject(s) may require officers to use non-lethal "intermediate weapons" such as batons or pepper spray to exercise control as appropriate. This is a significant progression along the physical force continuum because the use of these weapons may cause pain and/or disability, even if only temporarily, to the subject(s). Additionally, the improper or inappropriate use of these weapons may be construed as an abuse of authority and may lead to criminal and civil sanctions against the officer. Only officers who are trained, currently certified, and authorized to carry a baton and/or pepper spray may use these intermediate weapons.

Court officers who utilize physical force (i.e., soft empty hand techniques, hard empty hand techniques or intermediate weapons) on any individual shall file an Unusual Occurrence Report (UF-101). Additionally, any court officer who unholsters and/or points a firearm at any individual shall file an Unusual Occurrence Report (UF-101). The court officer shall describe the circumstances necessitating the use of physical force in the "Details" section of the UF-101 and check all boxes that apply in the "Physical Force Used" section.

6. Under no circumstances shall force used by court officers exceed that provided for by statute. Excessive force will not be tolerated. Court Officers will NOT use chokeholds.

**SUBSECTION:
TITLE:**

**7.10 (continued)
POLICY**

7. Any uniformed supervisors present shall direct and control the use of force activity.
8. Individuals taken into custody (i.e., arrests, EDP's, etc.) shall be rear cuffed at the earliest opportunity to reduce potential resistance.
9. If a person appears to be having difficulty breathing or is otherwise demonstrating life threatening symptoms, medical assistance will be requested immediately. The uniformed supervisor will direct that alternate means to maintain custody be utilized, if appropriate.
10. The use of restraints to "hog tie" subjects and the transportation of subjects in face down position is prohibited.

D. Deadly Physical Force

1. Deadly physical force may be used when there is reasonable cause to believe the use of such force is necessary to protect oneself or another person from the use or imminent use of deadly physical force.
 - a. Where feasible and consistent with personal safety, the warning "Police Don't Move" should be given.
2. A firearm shall not be discharged:
 - a. Under circumstances where the lives of innocent persons may be endangered unless failure to use deadly force is likely to result in serious physical injury or death, to the officer or another.
 - b. At an unarmed fleeing felon or an escaping prisoner, unless the officer's life or the life of another person is in danger.

SUBSECTION:
TITLE:

7.10 (continued)
POLICY

- c. As a warning shot. However, when feasible and consistent with personal safety, a warning of some type (other than a shot) should be given.
 - d. As a means of summoning assistance.
 - e. From or at a moving vehicle unless the occupants of the vehicle are using deadly physical force against the court officer or another by any means other than the vehicle.
 - f. At dogs or other animals unless an immediate risk of physical injury exists and there are no other means to control the animal or escape injury.
 - g. In defense of property.
3. Court officers with revolvers shall not, under any circumstance, cock the revolver. The revolver must be fired double action at all times.

SECTION:	8
TITLE:	EMERGENCY RESPONSES
SUB SECTION:	8.10
TITLE:	POLICY
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. Court officers are responsible for responding professionally to any court-related emergency incident within or surrounding court facilities, as well as to public emergencies directly affecting court operations or personnel.
- B. The primary objective of any response shall be the safety and well-being of all persons and the good order of the Unified Court System.
- C. The response and assignment of uniformed personnel to any public emergency directly affecting court operations or personnel must first be authorized by the Chief Administrative Judge or the First Deputy Chief Administrative Judge . The deployment and assignment of personnel to public emergency responses will be supervised by the Chief of Public Safety.

SUBSECTION:	8.20
TITLE:	GENERAL
EFFECTIVE DATE:	APRIL 1, 1989

- A. A court officer shall respond promptly to all emergency situations.
- B. A court officer responding to an emergency situation shall be guided by the rules and procedures set forth herein.
- C. A court officer shall be familiar with all fire and emergency evacuation plans and with notification procedures for the facility of assignment.
- D. A court officer shall be familiar with the location and operation of all emergency equipment (e.g, fire extinguishers, alarms, first aid equipment).

SUBSECTION:	8.30
TITLE:	AIDED CASES
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. A court officer responding to an "Aided Case" shall:
1. Immediately ascertain the condition of the aided (e.g, conscious, bleeding, breathing).
 2. If possible, ascertain and note their name and address.
 3. Note time and place of occurrence.
 4. Control crowd and safeguard aided's property.
 5. If aided is unconscious, ascertain if they are wearing a medic alert necklace or bracelet. Officers shall not search handbags or pockets for identification. Pedigree information may be ascertained later by contacting the hospital to which aided was removed.
 6. If aided is not identifiable, record as unidentified for name and unknown for address.
- B. A court officer shall render reasonable aid to a sick or injured person. If the use of an automated external defibrillator is required, only those officers currently certified in the use of an automated external defibrillator device may utilize the device.
- C. A court officer shall call an ambulance unless the aided declines such assistance and the court officer believes that such declination is reasonable under the circumstances. The court officer must complete a Refused Medical Waiver Form (UF131).
- D. A court officer shall, when calling for an ambulance, note the time and be prepared to provide the following information regarding the aided:
1. Gender and age
 2. Symptoms
 3. Medical history, including medications taken
 4. Exact current location

SUBSECTION:**8.30 (continued)****TITLE:****AIDED CASES**

- E. A court officer shall call again for an ambulance if, after 20 minutes, there has been no response.
- F. A court officer shall, if possible, meet the arriving ambulance crew and guide them to the aided.
- G. A court officer shall note the identification (names and/or shield numbers) of all police or ambulance personnel responding.
- H. A court officer shall assist in the orderly removal of the aided and ascertain to what hospital the individual is being taken.

SUB SECTION:	8.70
TITLE:	CROWD CONTROL
EFFECTIVE DATE:	APRIL 1, 1989

- A. A court officer shall notify the appropriate uniformed supervisor in the event that the officer becomes aware of a group demonstration, unusual crowd condition or unlawful assembly.
- B. A court officer shall not engage in debate, negotiation, antagonistic behavior or prolonged conversation when dealing with a demonstrator or during a demonstration.
- C. A court officer shall apply all learned techniques for effectively dealing with the public and shall maintain emotional and physical restraint when dealing with crowds or demonstrators.
- D. A court officer shall, if necessary, protect themselves, others and court property from demonstrators.
- E. A court officer shall be familiar with the location and proper use of any crowd control equipment.

SECTION:	9
TITLE:	ARRESTS
SUB SECTION:	9.10
TITLE:	POLICY
EFFECTIVE DATE:	APRIL 1, 1998 (Revised 12/15/03)

- A. What constitutes appropriate action, or probable cause to arrest, varies with each situation. Always bear in mind that the primary duty of the court officer is to provide a safe and secure environment. Different facts may justify different responses. These responses may include stopping, questioning and frisking (CPL 140.50), admonishing or arresting a person, and investigative detention. They also may include referring a person to another agency or to dispute resolution.
- B. In every case, court officers must act reasonably within the limits of their authority as defined by statute, judicial interpretation and the policies of the Unified Court System.
- C. There are circumstances when an offense may occur and the court officer will not make a physical arrest. Instead, there may be a report written (UF-101) and/or a complaint presented before a court of proper jurisdiction (summons), or in some circumstances, a verbal admonishment or other direction may be given.
- D. The decision to arrest or not to arrest an individual and/or issue a summons in lieu of arrest will be guided by a supervisor's direction, the law and the factual situation involved, not by the personal feelings of the court officer.
- E. Prior to the issuance of a summons, a review of the incident must be conducted by a uniformed supervisor.
- F. In situations wherein an individual is issued a summons for disorderly conduct, the issuance of that summons shall not result in the expulsion of that individual from the courthouse. Individuals should be allowed to remain in the facility and conclude their court business provided that they do not cause further disruption.

SUBSECTION:	9.20
TITLE:	GENERAL
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. A court officer shall act in a lawful, professional, courteous and efficient manner while effecting an arrest or issuing a summons in lieu of arrest.
- B. A court officer may use physical force as is justifiable pursuant to Sec. 35.30 of the Penal Law when effecting an arrest.
- C. A court officer is responsible for the safety, security and well-being of the subject under arrest.
 - 1. Any person who is in the custody of a court officer shall be provided medical attention if required. An Aided Report (UF100) and Medical Treatment of Prisoner form (UF151) must be completed. If an individual refuses medical attention, the individual shall sign the appropriate section of the Medical Treatment of Prisoner form. If the individual refuses to sign, it should be so noted on the form. *(A copy of the report shall be given to the custodial agency if requested. The original report shall be retained permanently at the facility.)*
 - 2. A Medical Treatment of Prisoner form (UF151) shall be maintained at the command level and copies may be provided to police or custodial agencies upon request.
 - 3. A court officer shall be familiar with court policy regarding the needs of disabled persons and respond as required to the special needs of a disabled person who is arrested or who is in the custody of a court officer.
- D. When effecting an arrest, a court officer not in uniform shall present identification and advise the subject of the reason for the arrest, unless the court officer encounters:
 - 1. Physical resistance,
 - 2. Flight or
 - 3. Other factors that render such procedures impractical.
- E. If possible, prior to detention, arrest or questioning, a court officer should request back-up or assistance.

**SUBSECTION:
TITLE:**

**9.20 (continued)
GENERAL**

- F. Upon arresting a person, and after performing all post-arrest procedures, a court officer shall bring or cause the arrested person to be brought before a local criminal court and file therewith an appropriate accusatory instrument charging the person with the offense.
 - 1. The arresting officer is responsible for performing all post arrest functions unless otherwise directed by a uniformed supervisor.
- G. If it is determined that there is no reasonable cause to believe that an offense has been committed, a court officer shall release any detained individual from custody or investigative detention.
- H. Whenever a juvenile is arrested or taken into custody, the court officer shall ensure that notification is made to a parent or other person legally responsible for that juvenile.
- I. An arrested person who is in the custody of a court officer shall never be interrogated out of that court officer's presence.
- J. An arrested person who is in the custody of a court officer shall be provided medical attention if required. If the arrested person is hospitalized prior to arraignment, the court officer must contact their supervisor.
- K. The Major, Captain or higher ranking uniformed supervisor may, after examining the facts and circumstances of a potential on-duty arrest, direct that the arrest not be effectuated.
- L. A court officer shall respond as required to the special needs of a disabled person who is arrested or who is in the custody of a court officer.
- M. A court officer who intends to issue a summons in lieu of arrest shall notify a supervisor.

SUB SECTION:	9.30
TITLE:	ON-DUTY ARRESTS
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. Except in an emergency situation, prior to effecting an arrest, an officer must notify the designated supervisor.
- B. When effecting an on-duty arrest, a court officer shall:
 - 1. Provide proper identification if the court officer is not in uniform.
 - 2. Advise the individual of the reason for the arrest.
 - 3. Place the individual in handcuffs (rear).
 - 4. Remove the individual to a secure area.
 - 5. Search the arrested individual in accordance with Sections 9.50 and 3.70 of this manual.
 - 6. Inventory and voucher all personal property of the individual.
 - 7. Advise the individual of their rights (Miranda Warnings)
 - 8. Follow local arrest processing procedures as set forth in the Standard Operating Procedure.
 - 9. Prepare Unusual Occurrence Report (UF-101)
- C. A court officer shall exercise discretion and sensitivity in handcuffing, searching and transporting arrested persons with disabilities.

SUB SECTION:	9.50
TITLE:	SEARCH
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. A court officer after effecting an arrest shall conduct a preliminary search for weapons and contraband as soon as practicable.
- B. Prior to transfer of custody, a court officer shall conduct a thorough search of the arrested individual. This search shall include an inventory and vouchering of all personal property.
- C. If possible, searches shall be performed by an officer of the same gender as the individual under arrest.

SUB SECTION:	9.60
TITLE:	MIRANDA WARNINGS
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. A court officer shall advise the arrested person of their rights as soon as possible and always prior to questioning. When there is an imminent danger to public safety, a court officer may question a person in custody, prior to giving the Miranda warnings, for the purpose of eliminating the danger.
- B. Miranda warnings:
1. You have the right to remain silent.
Do you understand?
 2. You do not have to answer questions.
Do you understand?
 3. Anything you say may be used against you in a court of law.
Do you understand?
 4. You have the right to consult with an attorney before speaking with the police or arresting officer.
Do you understand?
 5. You have the right to have an attorney present during any questioning.
Do you understand?
 6. If you cannot afford an attorney, one will be provided for you.
Do you understand?
 7. Now that I have advised you of your rights, are you willing to answer questions without an attorney being present?
- C. A subject should also be asked whether they are represented by counsel in any other pending criminal action or proceeding. If so, they shall not be questioned.

SUB SECTION:	9.70
TITLE:	WARRANTS (REF. CPL 530.70) (2)
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

A. Warrant of Arrest

1. A court officer is not authorized to execute a warrant of arrest.

B. Bench Warrants

1. A bench warrant is a process of a criminal court in which a criminal action is pending directing a police officer or uniformed court officer to take into custody a defendant in such action who has previously been arraigned upon the accusatory instrument by which the action was commenced, and to bring the defendant before such court. The function of a bench warrant is to achieve the court appearance of a defendant in a pending criminal action for some purpose other than their initial arraignment in the action.
2. A bench warrant may be executed by a court officer in the building wherein the court officer is employed or in the immediate vicinity thereof within the jurisdiction of New York City and the counties of Nassau, Suffolk and Westchester.
3. During the execution of the bench warrant, the executing officer must inform the defendant that a warrant for their failure to appear has been issued, unless the officer encounters physical resistance, or the defendant attempts to flee, or other circumstances exist that make such procedure impractical.
4. Upon request of the defendant, the officer must show the defendant the warrant if the officer has it in their possession, and, if the officer has not, they must show it to the defendant upon request as soon after the arrest as possible.
5. In order to effect the arrest, the officer may use such physical force as is justifiable pursuant to Section 35.30 of the Penal Law.

SUB SECTION:

9.70 (continued)

TITLE:

WARRANTS

6. Once arrested, the defendant must be brought without unnecessary delay before the judge who issued the warrant, or the judge's designee.

SUB SECTION:	9.80
TITLE:	STOP, QUESTIONS AND FRISK (REF. CPL 140.50)
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. A court officer may stop a person in or about the courthouse to which they are assigned when they reasonably suspect that such person is committing, has committed or is about to commit either (a) a felony, or (b) a misdemeanor defined in the Penal Law. The court officer may demand of such person their name, address and an explanation of their conduct.
- B. The questioning of such individual may only be for that period of time reasonably related to the facts which justified the stop or are discovered during the stop. All such stopping and questioning must be completed as expeditiously as possible.
- C. When stopping a person under circumstances prescribed in Paragraph (A) above, and if a court officer reasonably suspects that they are in danger of physical injury, the officer may search such person for a deadly weapon or any instrument, article or substance readily capable of causing serious physical injury or of a sort not ordinarily carried in public places by law-abiding persons. If the officer finds such a weapon or instrument, or any other property the possession of which they reasonably believe may constitute the commission of a crime, the officer may take it and keep it until the completion of the questioning, at which time the officer shall either return it, if lawfully possessed, or take appropriate law enforcement action.
- D. A court officer shall file an Unusual Occurrence Report (UF-101) when a person is stopped pursuant to paragraph (A) of this subsection. Court officers shall describe the circumstances of the stop in the "Details" section of the (UF-101) and check all boxes which apply in the "Physical Force Used" section.

SECTION:	10
TITLE:	STANDARD REPORTS/FORMS
SUB SECTION:	10.10
TITLE:	POLICY
EFFECTIVE DATE:	April 1, 1989 (Revised 12/15/03)

- A. The purpose of the preparation and filing of standard forms and reports is to provide statistical data and to record occurrences and services rendered.

SUB SECTION:	10.20
TITLE:	GENERAL
EFFECTIVE DATE:	April 1, 1989 (Revised 12/15/03)

- A. Court officers are required to report, in writing, using the standard report form, all incidents, on or off duty, where there is any involvement by a court officer or where the proper functioning and good order of the Unified Court System dictates that a report be filed.
- B. The first officer responding to an incident, unless otherwise directed by his/her supervisor, shall be responsible for the proper preparation and submission of the appropriate report form.
- C. Reports shall be submitted as directed, but under no circumstances later than before the conclusion of the officer's next tour of duty. Chief Court Officers, Majors and/or Captains must submit the reports to the Division of Court Operations, Court Security Unit no later than one week after the filing of such report.
- D. Additional or subsequent reports or memoranda referring to the same incident shall be filed for reference using the same report number.
- E. Incidents that involve judicial threats or involve court officers such as:
Reports of arrests, discharge or loss of firearms, the use of force, domestic violence-related offenses or other incidents that require immediate attention, must be forwarded to the Division of Court Operations, Court Security Unit immediately and will be reviewed by the Chief of Public Safety.

SUB SECTION:	10.30
TITLE:	AIDED REPORT
EFFECTIVE DATE:	April 1, 1989 (Revised 12/15/03)

- A. A court officer shall complete an Aided Report (UF-100) whenever they respond to any aided case. Aided cases shall include, but not be limited to:
 - 1. A sick or injured person.
 - 2. A mentally ill or emotionally disturbed person.
 - 3. A deceased person.
 - 4. A lost person.
 - 5. A neglected, abandoned, destitute or abused child.
 - 6. A maternity case.

- B. A court officer shall complete an Aided Report (UF-100) form as follows:
 - 1. Complete all boxes with captions pertaining to the situation. Use military time.
 - 2. If more than one card is necessary, mark cards on the upper right front, No. 1 of 3, No. 2 of 3, etc.
 - 3. Under caption "Nature of illness or injury" use your own words to describe the apparent illness or injury, such as "chest pains," "head injury," "maternity," etc.
 - 4. If aided refuses medical attention, check RMA box under the caption "removed to".
 - 5. Provide pertinent details in short narrative form.
 - 6. Submit the completed report to the Major or Captain.

- C. A court officer shall obtain a written waiver (UF-131) from any individual who refuses medical attention. If aided refuses to sign the UF131 it shall be noted in the Aided Report.

SUB SECTION:

10.30 (continued)

TITLE:

AIDED REPORT

- D. The Major or Captain shall check the card for accuracy and completeness, assign a code and aided number and forward the original to the Division of Court Operations, Court Security Unit. The Major or Captain shall provide copies of the aided report to the Chief Clerk or Executive Assistant and the appropriate Chief Court Officers and shall retain a copy in their office.

SUB SECTION:	10.40
TITLE:	UNUSUAL OCCURRENCE REPORT
EFFECTIVE DATE:	April 1, 1989 (Revised 12/15/03)

- A. A court officer shall complete an Unusual Occurrence Report (UF 101) whenever they respond to or are involved in an unusual occurrence. Unusual occurrences shall include, but not be limited to the following:
1. ON -DUTY
 - a. Prisoner escape
 - b. Attempted escape
 - c. Bomb threat
 - d. Disruptive prisoner
 - e. Disruptive spectator
 - f. Report of crime
 - g. Property theft
 - h. Arrest
 - i. Summons
 - j. Use of force
 - k. Stop and Frisk
 2. OFF-DUTY
 - a. Any circumstance that results in a court officer using authority derived as a result of being a peace officer (e.g., arrest, use of force.)
 - b. Being arrested for or charged with a criminal offense.
 - c. Being the subject of an order of protection.
 - d. Injuries that may affect the officer's ability to perform their court officer duties.
 - e. Any situation that may affect the officer's employment with the Unified Court System.
- B. A court officer shall complete the Unusual Occurrence Report (UF-101) as follows:
1. Complete all boxes with captions pertaining to the situation. Use military time.
 2. If more than one card is necessary, mark cards on the upper right front, No. 1 of 3, No. 2 of 3, etc.

SUB SECTION:
TITLE:

10.40 (continued)
UNUSUAL OCCURRENCE REPORT

3. Under caption "Nature of unusual occurrence" check applicable box, or if none apply, check "other" box and specify the nature of the occurrence in the space provided below.
 4. Provide pertinent details on the reverse side in a short narrative form.
 5. Submit the completed report to the Major or Captain.
- C. The Major or Captain shall check the card for accuracy and completeness, assign a code and "unusual" number and forward the original to the Division of Court Operations, Court Security Unit. The Major or Captain shall provide copies of the "unusual" report to the Chief Clerk (and, outside New York City, the appropriate Chief Court Officer) and should retain a copy in their office.

SUB SECTION:	10.41
TITLE:	MAGNETOMETER/ X-RAY POST RECORDS
EFFECTIVE DATE:	12/15/03

- A. A court officer shall complete the Magnetometer Calibration Certification (UF-126) daily.
 - 1. These records are to be maintained for no less than one year.

- B. All officers assigned to the collection and vouchering of contraband are required to maintain a monthly contraband report (UF-113).
 - 1. A copy of this report is to be forwarded to the Division of Court Operations, Court Security Unit by the Chief Court Officer, Major or Captain.
 - 2. Copies will be retained by the Division of Court Operations for five years, then destroyed.

- C. Court officers shall complete a Property Receipt Form (UF-135) for all property received which is not permitted in a court facility.
 - 1. These records are to be retained for two years and then destroyed.

SUB SECTION:	10.50
TITLE:	CODING
EFFECTIVE DATE:	12/15/03

A. LOCATION CODE

1. Aided and Unusual Occurrence Reports shall be numbered as follows:

NYC CRIMINAL COURT	NY _____	A1
	BX _____	A2
	KINGS _____	A3
	Q _____	A4
	S.I. _____	A5
	NY 346 Broadway _____	A6
	NY Midtown _____	A7
	KINGS RedHook _____	A8
NYC FAMILY COURT	NY _____	B1
	BX _____	B2
	KINGS _____	B3
	Q _____	B4
	S.I. _____	B5
NYC CIVIL COURT	NY _____	C1
	BX _____	C2
	KINGS _____	C3
	Q _____	C4
	S.I. _____	C5
	BX Housing _____	C6
	NY Harlem _____	C7
SUPREME COURT	100 CENTRE ST. _____	D
	111 CENTRE ST. _____	E

SUBSECTION:	10.50 (continued)
TITLE:	CODING

SUPREME COURT	60 CENTRE ST.	F
	80 CENTRE ST.	F1
	71 THOMAS ST.	F2
SUPREME COURT	BRONX	G
	KINGS	H
	(360 Adams Street)	
	(111 Livingston Street)	
	(15 Willoughby Street)	
	(210 Joralemon)	
	KINGS	I
	(120 Schermerhorn Street)	
SUPREME COURT QUEENS	JAMAICA	J
	KEW GARDENS	
	BORO HALL	K
	KEW ANNEX	K1
	L.I.C.	L
SUPREME COURT STATEN ISLAND		M
NASSAU COUNTY DISTRICT COURT		N
	CITY COURT	N1
	SUPREME COURT	O
	COUNTY COURT	P
	FAMILY COURT	Q

SUBSECTION:
TITLE:

10.50 (continued)
CODING

SUFFOLK COUNTY DISTRICT COURT	_____	R
SUPREME COURT	_____	S
COUNTY COURT	_____	T
FAMILY COURT	_____	U
SURROGATES COURT	_____	
	N.Y. _____	W1
	BX. _____	W2
	KINGS _____	W3
	Q _____	W4
	S.I. _____	W5
COUNTY CLERK	_____	
	N.Y. _____	X1
	BX. _____	X2
	KINGS _____	X3
	Q _____	X4
	S.I. _____	X5
COURT OF APPEALS	_____	Y
APPELLATE DIVISION	_____	
	1ST DEPT. _____	Y1
	2ND DEPT. _____	Y2
	3RD DEPT. _____	Y3
	4th DEPT. _____	Y4
OCA	_____	Z

SUBSECTION:	10.50 (continued)
TITLE:	CODING

3RD Judicial District	Albany County	3A
	Albany City Court	3A1
	Cohoes City Court	3A2
	Watervleit City Court	3A2
	Columbia County	3B
	Hudson City Court	3B1
	Greene	3C
	Rensselaer	3D
	Rensselaer City Court	3D1
	Troy City Court	3D2
	Schoharie	3E
	Sullivan	3F
	Ulster County	3G
	Kingston City Court	3G1
4th Judicial District	Clinton	4A
	Plattsburgh City Court	4A1
	Essex	4B
	Franklin	4C
	Fulton	4D
	Gloversville City Court	4D1
	Johnstown City Court	4D2
	Hamilton	4E
	Montgomery	4F
	Amsterdam City Court	4F1
	St. Lawrence	4G
	Ogdensburg City Court	4G1
	Saratoga	4H

4th Judicial District	Mechanicville City Court	4H1
	Saratoga Springs City Court	4H2
	Schenectady County	4I
	Schenectady City Court	4I1
	Warren	4J
	Glen Falls City Court	4J1
	Washington	4K
5th Judicial District	Herkimer	5A
	Little Falls City Court	5A1
	Jefferson	5B
	Watertown City Court	5B1
	Lewis	5C
	Onandaga	5D
	Syracuse City Court	5D1
	Oneida	5E
	Rome City Court	5E1
	Sherrill City Court	5E2
	Utica City Court	5E3
	Oswego	5F
	Fulton City Court	5F1
	Oswego City Court	5F2

SUBSECTION:	10.50 (continued)
TITLE:	CODING

6th Judicial District	Broome	6A
	Binghamton City Court	6A1
	Chemung	6B
	Elmira City Court	6B1
	Chenango	6C
	Norwich City Court	6C1
	Cortland	6D
	Cortland City Court	6D1
	Delaware	6E
	Madison	6F
	Oneida City Court	6F1
	Otsego	6G
	Oneonta City Court	6G1
	Schuyler	6H
	Tioga	6I
	Tompkins County	6J
	Ithaca City Court	6J1
7th Judicial District	Cayuga	7A
	Auburn City Court	7A1
	Livingston	7B
	Monroe	7C
	Rochester City Court	7C1
	Ontario	7D
	Canandaigua City Court	7D1
	Geneva City Court	7D2
	Seneca	7E
	Steuben	7F

SUBSECTION:	10.50 (continued)
TITLE:	CODING

7th Judicial District	Corning City Court	7F1
	Hornell City Court	7F2
	Wayne	7G
	Yates	7H
8th Judicial District	Allegany	8A
	Cattaraugus	8B
	Olean City Court	8B1
	Salamanca City Court	8B2
	Chautauqua	8C
	Dunkirk City Court	8C1
	Jamestown City Court	8C2
8th Judicial District	Erie	8D
	Buffalo City Court	8D1
	Lackawanna City Court	8D2
	Tonawanda City Court	8D3
	Genessee	8E
	Batavia City Court	8E1
	Niagara	8F
	Lockport City Court	8F1
	Niagara Falls City Court	8F2
	N. Tonawanda City Court	8F3
	Orleans	8G
	Wyoming	8H
9th Judicial District	Dutchess	9A
	Beacon City Court	9A1

SUBSECTION:	10.50 (continued)
TITLE:	CODING

9th Judicial District	Dutchess	9A
	Beacon City Court	9A1
	Poughkeepsie City Court	9A2
	Orange	9B
	Middletown City Court	9B1
	Newburgh City Court	9B2
	Port Jervis City Court	9B3
	Putnam	9C
	Rockland	9D
	Westchester	9E
	Mount Vernon City Court	9E1
	New Rochelle City Court	9E2
	Peekskill City Court	9E3
	Rye City Court	9E4
	White Plains City Court	9E5
	Yonkers City Court	9E6

MSP UNIT	NY	MSP 1
	BX	MSP 2
	KINGS	MSP 3
	QUEENS	MSP 4
	STATEN ISLAND	MSP 5

- B. REPORT NUMBER**
1. Reports shall be numbered sequentially, each year beginning January 1st and ending December 31st.
 2. Indicate year using last two digits.

SUBSECTION:	10.50 (continued)
TITLE:	CODING

EXAMPLES:

...(KINGS CRIMINAL COURT, REPORT NUMBER 27 OF THE YEAR 2004)

LOC. CODE	REP. NO.	YEAR
-----	-----	-----
A3	027	04

...(NASSAU COUNTY COURT, REPORT NUMBER 4 OF THE YEAR 2004)

LOC. CODE	REP. NO.	YEAR
-----	-----	-----
P	004	04

...(SUPREME COURT, 111 CENTRE ST., REPORT NUMBER 101 OF THE YEAR 2004)

LOC. CODE	REP. NO.	YEAR
-----	-----	-----
E	101	04

C. Following the letter which identified the county, the appropriate court will be identified as follows:

- Supreme..... 1
- County..... 2
- Family..... 3
- Surrogate..... 4
- Commissioner of Jurors..... 5
- City Courts..... 6
- Law Library..... 7

SUBSECTION:	10.60
TITLE:	APPROVED ABBREVIATIONS
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

A. The following abbreviations may be used when completing aided and unusual occurrence reports

Administrative Code.....	A.C.
Administrative Judge.....	A. J.
Automated External Defibrillators.....	AED
Aided Report.....	A.R.
Ambulance.....	Amb.
Arrest.....	Arr.
Arresting Officer.....	A/O.
Attendant.....	Att.
Avenue.....	Ave.
Bronx.....	Bx.
Brooklyn.....	Bklyn.
Building.....	Bldg.
Captain.....	Capt.
Chief Clerk.....	C. C.
Civil Court.....	Civ. Ct.
Court Clerk.....	Ct. Clk.
County Court.....	Co. Ct.
Correction Officer.....	Corr.Off.
Court.....	Ct.
Court Officer.....	C. O.
Court Security Unit.....	C.S.U.
Criminal Court.....	Crim. Ct.
Criminal Procedure Law.....	C.P.L.
Dead on Arrival.....	D.O.A
Defendant.....	Def.
Department.....	Dept.
Deputy Chief Clerk.....	D.C.C.
Detective.....	Det.
Disorderly conduct.....	Dis. con.
District Attorney.....	D.A.
District Court.....	Dist. Ct.
East.....	E.
Emergency Services Division.....	E.S.D.

SUBSECTION:	10.60 (continued)
TITLE:	APPROVED ABBREVIATIONS

Emergency Medical Technician.....	E.M.T.
Emotionally Disturbed Person.....	E.D.P.
Executive Assistant.....	E.A.
Family Court.....	Fam. Ct.
Female.....	F
Hospital.....	Hosp.
Hours.....	Hrs.
Legal Aid.....	L.A.
Lieutenant.....	Lt.
Major.....	Maj.
Male.....	M.
Manhattan.....	Man.
Mezzanine.....	Mez.
Medical Examiner.....	M.E.
Mobile Security Patrol.....	MSP
New York State.....	N.Y.S.
New York City.....	N.Y.C.
North.....	N.
Notified.....	Ntfd.
Overtime.....	O.T.
Part.....	Pt.
Penal Law.....	P.L.
Petitioner.....	Pet.
Police Department.....	P.D.
Police Officer.....	P.O.
Precinct.....	Pct.
Property Clerk.....	Pr. Clk.
Presiding Judge.....	P.J.
Queens.....	Qns.
Respondent.....	Resp.
Radio motor patrol.....	R.M.P.

SUBSECTION:	10.60 (continued)
TITLE:	APPROVED ABBREVIATIONS

Senior Court Officer.....	S.C.O.
Sergeant.....	Sgt.
Sick or Injured person.....	Aided
South.....	S.
Squad.....	Sqd.
Stairway.....	Stway.
Street.....	St.
Subdivision.....	Subd.
Supervising Judge.....	S.J.
Supreme Court.....	Sup. Ct.
Telephone.....	Tel.
Time and place of occurrence.....	T/P/O
United States.....	U.S.
Unusual Occurrence Report.....	U.O.R.
Vehicle.....	Veh.
Vehicle and Traffic Law.....	V.T.L.
Warrant Squad.....	Warr. Sqd.
West.....	W.

SECTION:	11
TITLE:	TRAINING
SUB SECTION:	11.10
TITLE:	POLICY
EFFECTIVE DATE:	April 1, 1989 (Revised 12/15/03)

A court officer shall participate in training that is required by statute or rule or otherwise necessary in order to properly perform their duties.

- A. It shall be the responsibility of court officers to attend training when scheduled and to actively participate in all required training activities in order to carry out their duties in a professional and efficient manner.

SUB SECTION:	11.20
TITLE:	RECRUIT TRAINING
EFFECTIVE DATE:	April 1, 1989 (Revised 12/15/03)

- A. Newly appointed court officers shall be required to attend the Court Officers Academy and successfully complete the prescribed recruit training program. The recruit training program shall be as approved by the New York State Division of Criminal Justice Services.
- B. Court officer recruits shall participate fully in all phases of the training program and shall adhere to the rules, regulations and procedures of the Court Officers Academy.
- C. Failure by a court officer recruit to successfully complete all phases of the recruit training program may necessitate **recycling through** those portions of the program deemed **appropriate** , or disciplinary action.

SUB SECTION:	11.30
TITLE:	IN-SERVICE TRAINING
EFFECTIVE DATE:	April 1, 1989 (Revised 12/15/03)

- A. Members of the uniformed force must:
 - 1. Attend all training for which they are scheduled.
 - 2. Be on time for scheduled training.
 - 3. Bring with them any equipment required for the training.
 - 4. Be attentive and cooperative during training sessions.
 - 5. Follow the directions of all training supervisors and instructors.

- B. In-service training shall include, but not be limited to, the following categories of instructions:
 - 1. Emergency First Aid/CPR-AED
 - 2. Firearms/ FATS Training
 - 3. Courtroom and Operational Responsibilities
 - 4. Quality Service /Community Relations
 - 5. Defensive Tactics/Crowd Control
 - 6. Law
 - 7. Metal Detector/X-Ray Programs
 - 8. Baton and/or pepper spray for approved posts and assignments

SUB SECTION:	11.40
TITLE:	UNIT TRAINING PROGRAM
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. The appropriate number of Unit Training Officers shall be designated in each court.
- B. Unit Training Officers shall conduct the prescribed Unit Training Program, as set forth in the Court Officers Academy Syllabus, for all newly assigned court officers.
- C. Unit Training Officers will act as role models for all members of the uniformed force assigned to the command.
- D. Unit Training Officers shall, upon completion of the Unit Training Program, complete and submit form UF-117 to their supervisor.
- E. Unit Training Officers shall schedule other in-service training programs as required by the Chief of Public Safety or designee.

SUBSECTION:	11.50
TITLE:	COMMAND RESPONSIBILITIES
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 09/1/03)

A. It is the responsibility of the Major or Captain to:

1. Ensure that all members of their command are properly trained in their duties and responsibilities as court officers.
2. Ensure that all members of their command attend all required training including unit training programs, firearms training and in-service training.
3. Certify that newly-assigned officers have completed the Unit Training Program and forward that certification to the Deputy Chief of Security Training.
4. In consultation with the Chief Court Officer (outside New York City) and the Deputy Chief of Security Training, recommend qualified officers to serve as Unit Training Officers.

SECTION:	12
TITLE:	CHIEF OF PUBLIC SAFETY
SUB SECTION	12.10
TITLE:	POLICY
EFFECTIVE DATE:	12/15/03

- A. The Chief of Public Safety oversees and is responsible for the implementation of all security and emergency preparedness policies and procedures within the Unified Court System. The Chief of Public Safety establishes uniform guidelines, policies and procedures on security and public safety issues. The Chief of Public Safety oversees the management of judicial threats; coordinates high priority cases; develops standards and curricula for the Court Officers Academy; reviews and assists in the development of security planning for new and existing facilities; reviews disciplinary matters and security-related budget submissions. The Chief of Public Safety also establishes policies, procedures and standards for the Court Officers Rules and Procedures Manual; issues directives, bulletins and memoranda on safety and security issues; reviews all security contracts and advises judicial and nonjudicial personnel on court security, safety and emergency preparedness issues.

SUB SECTION:	12.20
TITLE:	DIVISION OF COURT OPERATIONS
EFFECTIVE DATE:	12/15/03

- A. The Division of Court Operations, Court Security Unit assists with the processing of judicial threats and receives and maintains incident reports, calibration reports, MSP (Mobile Security Patrol) logs and contraband reports. The Court Security Unit conducts x-ray and magnetometer survey updates, maintains manuals, processes court officer hiring, secures firearms surrendered for disciplinary reasons and issues ID cards and shields.

SUB SECTION:	12.30
TITLE:	SUPERVISION
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

- A. This section is intended to provide a chain of command for the uniformed force in the performance of their duties. Where reference is made to a court officer's interaction with a supervisor, the court officer should be aware of the following:
1. Administrative Judges are responsible for the management and supervision of the operations of the courts under their jurisdiction, including all uniformed personnel.
 2. The overall supervision of court officers is the responsibility of the Major, Captain, Lieutenant and Sergeant, who function under the general direction of the Chief Clerk and Deputy Chief Clerk in New York City, and the Executive Assistant and Chief Court Officer outside New York City.
 3. Supervision of nonjudicial personnel in the courtroom is the responsibility of the judge presiding. Under the authority of the judge presiding, the most senior court clerk ordinarily is responsible for the management and supervision of the nonjudicial employees in the courtroom.

SECTION:	13
TITLE:	MAJORS AND CAPTAINS
SUB SECTION:	13.10
TITLE:	POLICY
EFFECTIVE DATE:	12/15/03

Majors and Captains shall:

1. Be responsible for the supervision of all uniformed personnel within their court or facility.
2. Be responsible for security operations within their court or facility.
3. Comply with all provisions of the Court Officers Rules and Procedures Manual and ensure compliance by all subordinate personnel.
4. Comply with and ensure compliance by subordinate personnel to all directives, memoranda and training guidelines.
5. Lead by setting an example and by exercising those qualities of leadership expected of a uniformed supervisor within the Unified Court System.
6. Fulfill all duties and responsibilities required by the DCAJ, the Administrative Judge, the Chief of Public Safety, Chief Clerk, Executive Assistant, the Division of Court Operations, Court Security Unit and/or the Chief Court Officer.

SUBSECTION:	13.20
TITLE:	RESPONSIBILITIES
EFFECTIVE DATE:	12/15/03

- B. A Major shall:
1. Assign and redeploy uniformed personnel within their court.
 2. Regularly conduct unannounced on-site inspections of all facilities within their area of responsibility to assess security operations and personnel.
 3. Train subordinate supervisory personnel.
 4. Ensure that all uniformed personnel assigned to their court successfully complete all required training (e.g., Firearms Re-qualification, In-Service Training).
 5. Ensure that all necessary documentation related to training is completed and forwarded to the Court Officers Academy.
 6. Review and forward Unit Training Officer selections to the Court Officers Academy.
 7. Complete Probationary Reviews for all uniformed supervisory personnel in their courts.
 8. Review Probationary Reviews of all other uniformed personnel assigned to their court.
 9. Ensure that Probationary Reviews for all subordinate uniformed personnel are completed and forwarded in a timely fashion.
 10. Ensure that Captains are fulfilling responsibilities relative to uniform, equipment, and facility inspections. Oversee uniform inspections as directed and submit uniform inspection reports to the Chief of Public Safety as required.

**SUBSECTION:
TITLE:**

**13.20 (continued)
RESPONSIBILITIES**

11. Approve leave requests.
12. Review attendance sheets for accuracy and completeness.
13. Monitor leave use relative to potential abuse.
14. Ensure accuracy and completeness of all overtime submissions and monitor overtime expenditures.
15. Ensure timely completion and submission of all reports required by the Chief of Public Safety and the Division of Court Operations, Court Security Unit, the Chief Court Officer, Chief Clerk and/or Executive Assistant.
16. Review all reports for accuracy and completeness.
17. Be responsible for ensuring the maintenance of the following files:
 - a. Unusual Occurrence Reports;
 - b. Aided Reports;
 - c. Shield Cards;
 - d. Training Records;
 - e. Receipts for supplements or amendments to R&P's;
 - f. Receipts for Directives;
 - g. Reports required by the Chief of Public Safety and/or the Division of Court Operations, Court Security Unit.
18. Ensure that all equipment is properly maintained and that accurate inventories are kept.

**SUBSECTION:
TITLE:**

**13.20 (continued)
RESPONSIBILITIES**

19. Annually submit a budget proposal relative to their Court Security Operations to the appropriate fiscal authority.
 20. Attend all meetings and in-service training as directed.
 21. Handle grievances and complaints brought by subordinates.
 22. When necessary, counsel subordinates as prescribed in the Supervisor's Handbook.
 23. Respond to and process complaints by members of the public as directed.
 24. Wear the prescribed uniform while on duty. A Major who is required to travel or attend a meeting outside of their court location may wear appropriate business attire, unless otherwise directed.
 25. Review all incident reports involving arrests and/or the use of force to ensure compliance with relevant policies and procedures.
 26. Review and monitor, on a regular basis, all arrest and summons activity in their respective court/assignment.
 27. Direct and supervise uniformed personnel in an emergency situation.
 28. Ensure that all provisions of the Emergency Preparedness Plans including Evacuation Drills are enforced.
- B. A Captain shall:
1. Assign and redeploy uniformed personnel to specific posts and assignments.

SUBSECTION:
TITLE:

13.20 (continued)
RESPONSIBILITIES

2. On a daily basis, observe security operations and personnel throughout the facility.
3. Train all subordinate uniformed supervisory personnel.
4. Schedule all subordinate personnel to attend required training.
5. Select Unit Training Officers.
6. Complete Probationary Reviews for all subordinate personnel throughout the facility.
7. Conduct uniform inspections as directed, but at least twice a year, during the third week of April and the first week of December. Make frequent personal inspections of the uniforms, equipment and general appearance of the officers in their command, and take appropriate measures to address any deficiencies.
8. Review attendance sheets for accuracy and completeness.
9. Approve leave requests and monitor leave use relative to potential abuse.
10. Review for accuracy and completeness all overtime submissions.
11. Ensure timely completion and submission of all reports required by the Chief of Public Safety and Division of Court Operations Court Security Unit.
12. Review all reports for accuracy and completeness.
13. Periodically inspect equipment to insure operability.
14. Maintain accurate inventory of all equipment.

SUBSECTION:
TITLE:

13.20 (continued)
RESPONSIBILITIES

15. Attend all meetings and in-service training as directed.
16. Handle grievances and complaints brought by subordinates.
17. When necessary, counsel subordinates as prescribed in the Supervisor's Handbook.
18. Respond to, log in and process complaints from members of the public as directed.
19. Wear the prescribed uniform while on duty. A Captain who is required to travel or attend a meeting outside of their court location may wear appropriate business attire, unless otherwise directed. Captains assigned to facilities other than a courthouse shall comply with the policy of their unit, as appropriate.
20. Review and monitor all arrest and summons activity in their court/assignment.

SUB SECTION:	13.30
TITLE:	COURT SECURITY OPERATIONS
EFFECTIVE DATE:	NOVEMBER 1, 2002

A. A Major shall:

1. Approve and promulgate plans to deal with all aspects of court security operations.
2. Ensure that all members of the command are familiar with these plans.
3. Periodically review and update plans.

B. A Captain shall:

1. Implement court security operations plans that are approved by the Major or other supervisory officers.
2. Ensure that all subordinates are capable of and do properly implement plans.
3. Make recommendations as to updating and improving plans.

SUB SECTION:	13.40
TITLE:	EMERGENCY RESPONSES
EFFECTIVE DATE:	12/15/03

A. A Major shall:

1. Promulgate procedures relative to emergency situations within the command.
2. If the situation warrants, assume direct command during an emergency situation.
3. Ensure that the Emergency Preparedness Plans are adhered to including the development and maintenance of records regarding notification lists, the building evacuation procedures and the assignment of fire and deputy fire wardens and perimeter control teams.

B. A Captain shall:

1. Ensure that all officers are familiar with all policies and procedures relative to emergency situations and the Emergency Preparedness Plans.
2. Take direct command in emergency situations.
3. Periodically conduct drills and training for emergency situations.

SUBSECTION:	13.70
TITLE:	RADIOS AND RADIO COMMUNICATIONS
EFFECTIVE DATE:	12/15/03

- A. A Major shall:
 - 1. Determine communication equipment needs for the command.
 - 2. Periodically inspect equipment to insure operability and accountability.
 - 3. Periodically monitor radio communications to insure utilization of proper procedures.

- B. A Captain shall:
 - 1. Make recommendations as to equipment needs.
 - 2. On a regular basis, inspect equipment and monitor sign-out/sign-in procedures.
 - 3. On a regular basis, monitor radio communications to insure utilization of proper procedures.

SUBSECTION:	13.80
TITLE:	ARRESTS
EFFECTIVE DATE:	12/15/03

- A. A Major shall:
 - 1. Establish procedures for the handling of arrests within the command.
 - 2. Review all arrests for sufficiency and compliance.
- B. A Captain shall:
 - 1. Ensure compliance with command procedures and the CORP for the handling of arrests.
 - 2. Review all arrests for sufficiency.
- C. All Majors and Captains shall maintain or have access to a current copy of the NYS Criminal Procedure Law and Penal Law.

SECTION:	14
TITLE:	SERGEANTS
SUB SECTION:	14.10
TITLE:	POLICY
EFFECTIVE DATE:	APRIL 1, 1990 (Revised 12/15/03)

- A. In addition to the duties of a Court officer, a Sergeant shall:
1. Maintain order and provide security in court buildings and courtrooms and supervise the activities of uniformed personnel.
 2. When assigned to a courtroom, be responsible for security- related aspects of the overall courtroom operation, and assure that uniformed personnel perform security and clerical duties as assigned.
 3. Be assigned, according to the needs of the court, to non-courtroom related duties. Additionally, a Sergeant may be assigned to assist supervisory uniformed personnel with routine administrative tasks.

SUB SECTION:	14.20
TITLE:	RESPONSIBILITIES
EFFECTIVE DATE:	APRIL 1, 1990 (Revised 12/15/03)

A Sergeant shall:

- A. Promptly obey all lawful orders and instructions issued or given by a supervisor.
- B. Assign posts within area of responsibility.
- C. Advise supervisors of changes in status of area of responsibility.
- D. Train officers as required.
- E. Provide information for completion of probationary evaluation reports.
- F. Monitor work performance and correct improper performance.
- G. Ensure compliance with instructions, rules, procedures, directives and orders as they relate to court officers, responsibilities and conduct.
- H. Ensure that officers within their area of responsibility are properly uniformed and equipped.
- I. Give lawful orders or instructions to court officers in their area of responsibility.
- J. Clarify for subordinates rules, regulations, directives, procedures, memoranda and orders.
- K. Report to their supervisor any and all violations of rules, regulations, directives, procedures, memoranda or orders by the officers assigned to their area of responsibility.
- L. Complete or ensure proper completion of all paperwork, as required by a supervisor.
- M. Direct security operations in the absence of a superior officer.
- N. Inform replacement as to the status of security operations.

SUB SECTION:	14.40
TITLE:	EMERGENCY RESPONSE
EFFECTIVE DATE:	APRIL 1, 1990 (Revised 12/15/03)

- A. The first Sergeant responding to the scene of an emergency shall:
 - 1. Take charge until relieved by a supervising officer.
 - 2. Ensure that court officers present are in compliance with Section 8 of this manual.

SUB SECTION:	14.70
TITLE:	RADIO COMMUNICATIONS
EFFECTIVE DATE:	APRIL 1, 1990 (Revised 12/15/03)

- A. When radios are assigned to court officers working in a Sergeant's area of responsibility, the Sergeant shall be responsible for the court officers' compliance with Section 2.45 of this manual.

SUB SECTION:	14.80
TITLE:	ARRESTS
EFFECTIVE DATE:	APRIL 1, 1990 (Revised 12/15/03)

- A. When an arrest is made or summons in lieu of arrest issued by a court officer, the Sergeant shall:
1. Review the incident and if practical supervise such activity.
 2. Be responsible for ensuring that arresting officer(s) comply with Sections 9.20, 9.30, 9.50, 9.60, and 9.70 of this manual.
 3. Notify the uniformed supervisor as soon as practical.
 4. Ensure that all required and necessary paperwork is properly completed.

SUBSECTION:	14.90
TITLE:	SECURITY POSTS
EFFECTIVE DATE:	APRIL 1, 1990 (Revised 12/15/03)

- A. When assigned to supervise the activities of court officers on security post duties, a Sergeant shall:
1. Be responsible for the court officers assigned complying with Section 2.10 of this manual.
 2. Keep their uniformed supervisor apprised of post conditions.
 3. If overseeing more than one post location during a tour, periodically inspect each post.
 4. Supervise all unusual and aided situations within the Sergeant's area of responsibility and ensure an adequate response to all unusual and aided situations.

APPENDIX:	A
TITLE:	ENFORCEMENT OF SMOKING LAWS IN NEW YORK CITY COURTS
EFFECTIVE DATE:	August 8, 1990 (Revised 12/15/03)

- A. In the New York City Courts, The Office of Court Administration has designated uniformed personnel as agents who shall be responsible for informing individuals smoking in any area in which smoking is not permitted that they are in violation of the law and therefore must extinguish what they are smoking and refrain from smoking. If the person does not comply with this lawful order:
1. The court officers should give the offender a "Notice of Violation (UF129)" that the offender is in violation of the Public Health Law and subject to receipt of a summons from the New York City Department of Health (NYC form AT 69C).
 2. The officer should complete a NYC Department of Health Notice of Violation form, which they will verify as a "Witness/Complainant" (NYC form AT 69C).
 3. The Notice form should then be forwarded to the officer's supervisor, who will forward the form to the Department of Health at 65 Worth Street in Manhattan.
 4. The Department of Health will review the Notice of Violation form, and if it finds that the Notice form has met with the requirements of the Public Health Law, it will issue the Notice and mail it to the offender with a direction to appear before the Department. Violators of the "No Smoking Law" are subject to a civil penalty of up to \$500.00.

TITLE:	GLOSSARY
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

Chief Administrative Judge

The Chief Administrative Judge of the courts or designee.

Contraband

Any item(s) which, although legally possessed, is considered inappropriate for the public to possess in a court facility.

Correctional Agency

Any governmental agency that has custody of prisoners and delivers them to or maintains them for a court.

Custody

Restraint by a public servant pursuant to an authorized arrest or an order of a court.

Deadly Physical Force - Sec. 10:00 (11)

Physical force which, under the circumstances in which it is used, is readily capable of causing death or other serious physical injury. (Does not have to inflict injury - i.e., you shoot at someone and miss - you used deadly physical force.)

Directive

Any interim or permanent policy statement or order issued by the Chief of Public Safety.

Firearm

Any handgun owned or possessed by a peace officer, including a handgun carried while on duty (service firearm) and a handgun carried while off duty (off-duty firearm).

TITLE:

GLOSSARY (continued)

EFFECTIVE DATE:

APRIL 1, 1989 (Revised 12/15/03)

Foreperson

The individual designated by the judge to record a jury's verdict.

Illegal Contraband

Any item(s) that is illegal as a matter of statute or ordinance.

Investigative Detention

Detaining a person or persons for the limited purpose of determining whether or not they have committed, or are about to commit an offense.

Jurors

Includes prospective jurors, sworn jurors and alternate jurors, unless specifically otherwise stated.

Peace Officer

Any employee of the Unified Court System holding peace officer status pursuant to Section 2.10(21) of the Criminal Procedure Law.

Physical Force

That force which does not amount to deadly physical force.

Physical Injury

Impairment of physical condition or substantial pain.

Policy

Principles and values which guide the performance of duty. Policy is not a statement of what must be done; rather it is a statement of guiding principles that should be followed toward the attainment of objectives.

TITLE:	GLOSSARY (continued)
EFFECTIVE DATE:	APRIL 1, 1989 (Revised 12/15/03)

Probable Cause

A set of circumstances that would lead the average reasonable person with the particular training and experience to reasonably believe that a crime has or is about to take place.

Procedure

A method of performing an operation or a particular way of accomplishing something. It differs from policy in that it directs action in a particular situation to perform a task within the guidelines of policy. Both policies and procedures are objective in nature; however, policy establishes limits of action while procedure directs response within those limits.

Rule

A specific prohibition or requirement that is formulated to prevent deviations from policy or procedure. Rules allow little deviation other than for stated exceptions.

Serious Physical Injury

Sec. 10.00 (10) P.L. Physical injury that creates a substantial risk of death, or that causes death or serious protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

Standard Operating Procedure

A codified local procedure.

Sworn Juror

A juror who has been selected and administered the oath in a particular case.

TITLE:

GLOSSARY (continued)

EFFECTIVE DATE:

APRIL 1, 1989 (Revised 12/15/03)

Uniformed Force

Includes Court Officer Trainees, Court Officers, Senior Court Officers, Security Training Officers, Sergeants, Lieutenants, Captains, Majors and Chief Ranks.

Uniformed Supervisor

A Sergeant, Captain, Major or Chief.

Vendors

Any person or business which provides a service to the courts, including restaurants, delicatessens, hotels, transportation and security equipment companies.



STATE OF NEW YORK
UNIFIED COURT SYSTEM
UNUSUAL OCCURRENCE REPORT

DATE OF OCCUR.	TIME	COURT/FACILITY	PLACE OF OCCURRENCE	UNUSUAL NUMBER			
				LOC. CODE	REP. NO	YEAR	
05/23/2017	0950	BRONX SUPREME COURT - GRAND CONCOURSE	MAGNETOMETER POST D	G	75089	2017	
NATURE OF UNUSUAL OCCURRENCE <input type="checkbox"/> ARREST <input type="checkbox"/> DISRUPTIVE PRISONER <input type="checkbox"/> PRISONER ESCAPE <input type="checkbox"/> REPORT OF CRIME <input type="checkbox"/> ATTEMPTED ESCAPE <input type="checkbox"/> DISRUPTIVE SPECTATOR <input type="checkbox"/> PROPERTY DAMAGE <input type="checkbox"/> SUMMONS <input type="checkbox"/> BOMB THREAT <input type="checkbox"/> JUDICIAL THREAT <input type="checkbox"/> PROPERTY THEFT <input checked="" type="checkbox"/> OTHER (SPECIFY BELOW) DENIED ENTRY							
LASTNAME UNK.		FIRSTNAME		M.I.	EMPLOYEE NO	SEX M	AGE
ADDRESS							
LASTNAME		FIRSTNAME		M.I.	EMPLOYEE	SEX	AGE
ADDRESS							
DETAILS: (Include pertinent information regarding nature of unusual occurrence. If arrest, include Arrest No., Pct., Charges, Complainant's Name and Address, Court, Judge, Disposition) AT ABOVE T/P/O, THE ABOVE UNKNOWN SUBJECT WAS DENIED ENTRY INTO A CITY HALL EVENT BEING HELD IN THE ROTUNDA BY CITY HALL STAFF AND MAYOR DEBLASIO'S NYPD DETAIL. SUBJECT WAS ASKED TO VACATE THE AREA HE WAS STANDING IN BECAUSE HE WAS BLOCKING PEDESTRIAN TRAFFIC TO BOTH THE EVENT IN THE ROTUNDA AND ACCESS TO THE PUBLIC ELEVATORS. AFTER SOME RESISTANCE TO THIS REQUEST, SUBJECT DID COMPLY BUT MOVED INTO A MAGNETOMETER PROCESSING AREA. SUBJECT WAS ASKED TO MOVE FROM THIS AREA, AND ONCE AGAIN COMPLIED AFTER SOME INITIAL RESISTANCE.							
NAME AND ADDRESS OF WITNESS RAMON DOMINGUEZ SGT. SH. #508 <i>....Continue to next page</i>							
SUBMITTED BY ANTHONY MANZI		TITLE CAPTAIN		SHIELD NO. 182		DATE 05/24/2017	
REPORTED TO OSTACIO NEGRON		TITLE MAJOR		SHIELD NO. 31		DATE 05/24/2017	
APPROVED BY FRANK ZALOGA		TITLE		SHIELD NO.		DATE 06/28/2017	
LINKED REPORTS 75377							



STATE OF NEW YORK
UNIFIED COURT SYSTEM
UNUSUAL OCCURRENCE REPORT

REPORT ID: 75089

ContinuationNAME AND ADDRESS OF WITNESS

MATHEW BRUNNER
SGT. SH. #478

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

TOWAKI KOMATSU,	:	
	:	
Plaintiff,	:	
	:	
-against-	:	18-cv-3698 (LGS) (GWG)
	:	
THE CITY OF NEW YORK, et al.,	:	
	:	
Defendants.	:	

-----X

**MEMORANDUM OF LAW IN SUPPORT OF STATE DEFENDANTS
ANTHONY MANZI, MATTHEW BRUNNER, AND RAMON DOMINGUEZ’S
MOTION TO DISMISS THE SECOND AMENDED COMPLAINT**

LETITIA JAMES
Attorney General
State Of New York

Attorney for State Defendants

28 Liberty Street
New York, New York 10005
Tel.: (212) 416-8227

MONICA HANNA
Assistant Attorney General
of Counsel

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Defendants Court Officer Captain Anthony Manzi (“Captain Manzi”) and Sergeants Matthew Brunner and Ramon Dominguez (collectively, the “State Defendants”), by their attorney, Letitia James, Attorney General for the State of New York, respectfully submit this memorandum of law in support of their motion to dismiss Plaintiff Towaki Komatsu’s (“Plaintiff”) Second Amended Complaint, ECF No. 45 (“Complaint” or “SAC”), in its entirety with prejudice, pursuant to Rules 12(b)(1) and 12(b)(6) of the Federal Rules of Civil Procedure.

PRELIMINARY STATEMENT

Plaintiff brings this action against the State Defendants, and others, pursuant to 42 U.S.C. § 1983, claiming the alleged deprivation of his First and Fourteenth Amendments rights to attend a New York City government related event, referred to as a “public resource fair,” that took place inside the Bronx Supreme Court, located at 851 Grand Concourse, Bronx, NY (the “Courthouse”), *see* SAC at ¶¶ 29(e), 30, 31, and the alleged unlawful seizure of his bag by Captain Manzi, *see id.* at ¶¶ 46-47. Plaintiff vaguely alleges that defendants, which include New York City and several City officials, engaged in “coordinated efforts” to commit “voter fraud[] and suppression” and deprived Plaintiff of his constitutional rights in furtherance of Defendant New York City’s alleged “customs and practices.” *Id.* at ¶¶ 1, 31, 33-35. Yet, Plaintiff’s claims against the State Defendants fail as a matter of law.

As discussed below, in addition to being immune from suit in their official capacities, Plaintiff’s complaint is devoid of factual allegations sufficient to state a claim against the State Defendants in their individual capacities. Plaintiff clearly attributes the alleged deprivation of his rights to New York City and certain of its officials—not the State Defendants. Plaintiff’s few allegations concerning the State Defendants are conclusory and insufficient to show their personal involvement with respect to any claim.

Moreover, Plaintiff misconstrues the clear precedent precluding his constitutional claims.

Specifically, Plaintiff had no constitutionally protected right to engage in certain speech in the Courthouse or to attend the public resource fair. In addition, Plaintiff's claim against State Defendant Captain Manzi cannot survive, because Captain Manzi could not have meaningfully interfered with Plaintiff's possessory interest in any property by simply picking up Plaintiff's white plastic bag from a table. Indeed, Plaintiff regained control of the bag within two seconds, as clearly shown on security footage exhaustively referenced and thereby incorporated into the Complaint. Accordingly, this Court should dismiss the claims against the State Defendants with prejudice. *See* Fed. R. Civ. P. 12(b)(1), 12(b)(6).

STATEMENT OF FACTS

A. Facts Asserted Against the State Defendants in the Complaint

Plaintiff alleges that he was denied entry to a "public town hall meeting" and a "public resource fair," occurring on April 27, 2017, and May 23, 2017, respectively, at which New York City Mayor Bill de Blasio (the "Mayor") and other New York City elected and appointed officials were allegedly in attendance.¹ SAC at ¶¶ 4, 6, 29, 30.

Plaintiff does not allege that the State Defendants participated in the alleged April 27, 2017 incident. *See id.* On that date, Plaintiff alleges that Defendants NYPD Deputy Inspector Howard Redmond, NYPD Officers Rafael Beato, Yu Lie, Detective Gerola, and alleged members of the Mayor's Community Affairs Unit Harold Miller and Pinny Ringel (the "Town Hall City Defendants") obstructed his attendance at the alleged public town hall meeting, and engaged in other alleged misconduct, at the Queens Vocational and Technical High School. *Id.* at ¶¶ 4, 29. Plaintiff further alleges that Defendant Redmond denied Plaintiff's entry based on Plaintiff's alleged harassment of the New York City Human Resources Administration Commissioner Steven

¹ For purposes of this motion, Defendants assume, without conceding, the truth of Plaintiff's factual allegations, but not the legal conclusions asserted. *See DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 110-11 (2d Cir. 2010).

Banks at a previous meeting, which Defendant Redmond is alleged to have witnessed. *Id.* at ¶¶ 4(c), 28. Plaintiff alleges that Defendant Redmond’s decision to bar his entrance to the April 27, 2017 public town hall meeting was “likely motivated by observations Mr. Redmond may have made on March 15, 2017,” when Plaintiff allegedly engaged in “whistleblower activity against...Commissioner Steven Banks during the public town hall meeting...that Mr. Redmond attended.” *Id.* at ¶ 28. Plaintiff further alleges to have confronted the Mayor with certain allegations against Commissioner Steven Banks, during a public town hall meeting occurring on March 15, 2017. SAC at ¶ 29(d)(iv).

In the same vein, Plaintiff alleges that, on May 23, 2017, Defendants Rachel Atcheson (also an alleged member of the Mayor’s Community Affairs Unit), NYPD Lt. Ralph Nieves, and NYPD Detectives Gerola and Berkowitz (the “Resource Fair City Defendants”) and the State Defendants similarly “engage[d] in...illegal acts in flagrant and willful violation of [Plaintiff’s] constitutional First Amendment and Fourteenth Amendment rights that caused [Plaintiff] irreparable harm... from being able to attend a public resource fair meeting that the Mayor held... while also subjecting another member of the public to comparable illegal acts on that date ...” *Id.* at ¶ 6(a). Plaintiff expressly alleges that “Rachel Atcheson illegally prevented [Plaintiff] from entering the Veterans Memorial Hall chamber” within the Courthouse. *Id.* at ¶ 6(b). Plaintiff alleges “[u]pon information and belief” that the Resource Fair City Defendants and the State Defendants “coordinated efforts” to his detriment, but the only alleged facts in support of such alleged coordination is Plaintiff’s reference to video footage taken at the Courthouse showing some of the Resource Fair City Defendants and the State Defendants conversing. *Id.* at ¶ 6(c).

Further with respect to the State Defendants, Plaintiff alleges that, on May 23, 2017, at 9:49 a.m., State Defendant Captain Manzi “illegally seized a bag” from Plaintiff, illegally

depriving Plaintiff “of personal property in flagrant violation of [his] Fourth Amendment constitutional rights.” *Id.* at ¶ 47.

Plaintiff alleges that, by depriving him of the ability to attend the public resource fair, the Public Resource City Defendants and State Defendants acted “in furtherance of a fraudulent scheme to willfully and flagrantly engage in voter fraud and voter suppression ...” SAC at ¶ 31. Plaintiff further alleges that he brought with him a copy of his lawsuit against the New York City Human Resources Administration, “to try to engage in protected whistleblower activity while trying to discuss it with the commissioner of that agency while in the presence and earshot of members of the general public and journalists.” *Id.*

Plaintiff expressly alleges that the Town Hall and Resource Fair City Defendants’ conduct on April 27, 2017, and May 23, 2017, were in furtherance of Defendant New York City’s customs and practices. *Id.* at ¶¶ 33-35. Plaintiff further alleges that New York City’s alleged policies, practices, and/or customs resulted in the alleged violations of his constitutional rights on both April 27 and May 23, 2017. *See id.* at ¶ 43; *see also id.* at ¶¶ 44-45.

B. The Security Footage Incorporated by Reference Into the Complaint

“[T]he complaint is deemed to include any ... documents incorporated in it by reference. Even where a document is not incorporated by reference, the court may nevertheless consider it where the complaint relies heavily upon its terms and effect, which renders the document integral to the complaint.” *Mangiafico v. Blumenthal*, 471 F.3d 391, 398 (2d Cir. 2006) (internal quotations omitted). Indeed, in ruling on a motion to dismiss a separate § 1983 action, this Court recognized that “a plaintiff’s reliance on the material is a necessary prerequisite to the court’s consideration of the document,” and accordingly considered certain videos incorporated by reference in the complaint, but declined to consider others which the plaintiff had not seen prior to drafting the complaint. *Gonzalez v. City of New York*, No. 14 Civ. 7721 (LGS), 2015 WL 6873451, at *4

(S.D.N.Y. Nov. 9, 2015) (internal quotations omitted); *see also Garcia v. Does*, 779 F.3d 84, 87-88 (2d Cir. 2015) (considering videos incorporated by reference into the complaint to dismiss § 1983 action on qualified immunity grounds).

Here, in drafting the Complaint, Plaintiff heavily relied on, and incorporated by reference, security footage taken inside the Courthouse on May 23, 2017.² Specifically, Plaintiff relies on the security footage as follows: (i) to allege Resource Fair City Defendant Atcheson's interactions with Plaintiff, SAC at ¶ 6(b); (ii) to allege Resource Fair City Defendants Nieves, Gerola, and Berkowitz and the State Defendants' interactions between themselves and with Plaintiff, *id.* at ¶ 6(c); and (iii) to allege that State Defendant Captain Manzi deprived him of personal property at 9:49 a.m., *id.* at ¶ 6(d).

Accordingly, this Court may properly consider the security footage in deciding the State Defendants' instant motion to dismiss, pursuant to Rule 12(b)(6). *See, e.g., Chamberlain v. City of White Plains*, 986 F. Supp. 2d 363, 374, n.1 (S.D.N.Y. 2013) (considering "audio and video recordings of the incident, as they are integral to the Complaint and were relied on heavily in drafting it ... in Support of Motion for Partial Dismissal of Plaintiff's First Amended Complaint"); *Stepanian v. City of New York*, No. 15-CV-1943 JG SMG, 2015 WL 5350801, at *3 (E.D.N.Y. Sept. 14, 2015) (same); *Hershey v. Goldstein*, 938 F. Supp. 2d 491, 498 (S.D.N.Y. 2013) (same); *Gonzalez*, 2015 WL 6873451 at *4, n.3.

In relevant part, in the security footage, Plaintiff can be seen coming into view at 9:29:27, wearing a green shirt, jeans, and a backpack while carrying a white plastic bag. At 9:46:46, Plaintiff can be seen speaking with State Defendant Captain Manzi in the congested central hall of

² Pursuant to this Court's order, dated January 10, 2019, ECF No. 77, a DVD containing the security footage is contemporaneously filed with the Clerk's Office as Exhibit B to the Declaration of Monica Hanna in Support of the State Defendants' Motion to Dismiss the Second Amended Complaint, dated January 11, 2019 (the "Video"). A courtesy copy of the DVD will also be submitted to Chambers, and served on all parties.

the Courthouse. At 9:47:56, Plaintiff can be seen conversing with all three of the State Defendants in that same trafficked corridor. At 9:49:01, Plaintiff places his white plastic bag on a table near the magnetometers of that central hall, which is then picked up off of the table by State Defendant Captain Manzi at 9:49:09. Within two seconds, the video clearly shows Plaintiff taking back the plastic bag, followed by further discussion between Plaintiff and the State Defendants. Video at 9:49:11. By 9:49:28, Captain Manzi leaves the viewable premises, and Plaintiff remains in conversation with State Defendants Sergeants Brunner and/or Dominguez through 9:58:25. After that time, Plaintiff can be seen standing in view of the security camera with all of his possessions in his control, walking around, speaking to various people, and leaving the Courthouse of his own initiative at 10:34:05 with his backpack and plastic bag.

C. Procedural History

Plaintiff commenced this action by filing his original complaint on April 26, 2018, against the City of New York, the New York City Police Department, and seven individually named city-related officials, including “John Doe 1.” ECF No. 2. On May 24, 2018, Plaintiff filed an amended pleading, which added two more individually named city-related officials, the State Defendants, and the New York State Office of Court Administration (“OCA”) as defendants. ECF No. 4. By Order of this Court, dated June 5, 2018, OCA was dismissed because “Plaintiff’s § 1983 claims against the State of New York are...barred by the Eleventh Amendment[.]” ECF No. 8 at 2. By that same order, this Court ordered: (i) service on the remaining defendants; (ii) the New York City Law Department to ascertain the identity of the John Doe Defendant, and; (iii) Plaintiff to file an amended pleading naming the John Doe Defendant within 30 days of receiving the information. *Id.* at 3-4.

In the meantime, Plaintiff filed a series of letters³ repeatedly requesting extraneous relief that included: (i) leave to amend his pleading in order to add unrelated claims pertaining to potentially 60 new defendants, (ii) an “immediate restraining order” that prohibited security personnel in two federal courthouses from speaking to Plaintiff, (iii) authorization to keep his cell phone and laptop with him inside federal courthouses, (iv) the recusal of Magistrate Judge Gabriel W. Gorenstein, (v) the resignation of this Court, as well as that of Chief Judge Colleen McMahon and Magistrate Judge Gorenstein, (vi) “personal protection by armed members of the Federal Protective Service Police ... with standing orders issued by this Court to members from that agency providing me with such protection to enjoin them to shoot any court security officer in one of their legs to disable them in the event that they come within 30 feet of me in those [federal] courthouses ...,” and (vii) video recordings and radio transmissions from the U.S. Department of Justice. *See* ECF Nos. 20, 29, 36, 37, 38, 39, 41, 42, 44, 47, 48.

Plaintiff filed the Second Amended Complaint on August 30, 2018, and the Court denied Plaintiff leave to further amend and other relief by Order, dated September 14, 2018. ECF No. 51.⁴

STANDARD OF REVIEW

A case is properly dismissed under Rule 12(b)(1) “when the district court lacks the statutory or constitutional power to adjudicate it.” *Barone v. United States*, No. 12 Civ. 4103, 2014 WL 4467780, at *4 (S.D.N.Y. Sept. 10, 2014) (quoting *Makarova v. United States*, 201 F.3d 110, 113 (2d Cir. 2000)); *accord Barroso v. Office of Gen. Counsel*, No. 12 Civ. 625, 2013 WL 4048496, at *3 (E.D.N.Y. Aug. 9, 2013). It is Plaintiff’s burden, as the party asserting federal

³ One of these filings spanned over 540 pages. *See* ECF No. 38.

⁴ Notwithstanding the Court’s order, Plaintiff continued to seek leave to amend to add unrelated claims and new defendants and other extraneous relief through a series of letters to the Court, dated December 6 through January 3, 2018. *See* ECF Nos. 62, 63, 66, 68, 71.

subject matter jurisdiction, “to prove by a preponderance of the evidence that such jurisdiction exists.” *Barone*, 2014 WL 4467780 at *4; *accord Barroso*, 2013 WL 4048496, at *3; *Brooks v. Cty. of Nassau*, 54 F. Supp. 3d 254, 257 (E.D.N.Y. 2014).

A claim is properly dismissed under Rule 12(b)(6) when it does not include “sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotations omitted). In other words, a plaintiff must show “more than a sheer possibility that a defendant has acted unlawfully.” *Jackson v. Peekskill City Sch. Dist.*, 106 F. Supp. 3d 420, 425 (S.D.N.Y. 2015) (quoting *Ashcroft*, 556 U.S. at 678); *White v. Westchester Cty.*, No. 18 Civ. 990, 2018 WL 6493113, at *3 (S.D.N.Y. Dec. 10, 2018). “A complaint that merely tenders naked assertions devoid of further factual enhancement fails to meet this standard.” *Gallop v. Cheney*, 642 F.3d 364, 368 (2d Cir. 2011) (internal quotations omitted).

Pro se litigants are not exempt from compliance with relevant procedural and substantive law, and cannot survive a motion to dismiss if their pleadings do not contain sufficient factual allegations to raise a right to relief above the speculative level. *See Roy v. Law Offices of B. Alan Seidler, P.C.*, 284 F. Supp. 3d 454, 457 (S.D.N.Y. 2018); *Murray v. Lakeland Cent. Sch. Dist. Bd. of Educ.*, No. 16 Civ. 6795, 2017 WL 4286658, at *5 (S.D.N.Y. Sept. 26, 2017); *White*, 2018 WL 6493113, at *3; *Barroso*, 2013 WL 4048496 at *3. “Nor may the Court invent factual allegations [a *pro se*] plaintiff has not pleaded.” *Vann v. Griffin*, No. 16 Civ 9903, 2018 WL 6199860, at *3 (S.D.N.Y. Nov. 28, 2018); *accord White*, 2018 WL 6493113, at *3; *Forte v. City of New York*, No. 16 Civ. 560, 2018 WL 4681610, at *4 (S.D.N.Y. Sept. 28, 2018) (“[T]he duty to liberally construe a [*pro se*] plaintiff’s complaint is not the equivalent of a duty to re-write it.” (internal quotations omitted)).

ARGUMENT

I. PLAINTIFF’S CLAIMS AGAINST THE STATE DEFENDANTS IN THEIR OFFICIAL CAPACITIES ARE BARRED BY THE ELEVENTH AMENDMENT.

Plaintiff’s claims against the State Defendants in their official capacities fail because they are barred by the Eleventh Amendment and are therefore subject to dismissal for lack of subject matter jurisdiction. *See* Fed. R. Civ. P. 12(b)(1). Under the Eleventh Amendment, states and state agencies are immune from suit by private citizens in federal court absent Congressional abrogation or waiver. *See* U.S. Const. amend. XI; *Edelman v. Jordan*, 415 U.S. 651, 662-63 (1974); *Gollomp v. Spitzer*, 568 F.3d 355, 365-66 (2d Cir. 2009). Individuals sued in their official capacities may also assert Eleventh Amendment immunity because an official capacity suit “is not a suit against the official but rather is a suit against the official’s office. As such, it is no different from a suit against the State itself.” *Will v. Michigan Dep’t of State Police*, 491 U.S. 58, 71 (1989) (internal citation omitted); *see also Ying Jing Gan v. City of New York*, 996 F.2d 522, 529 (2d Cir. 1993).

It is well settled that sovereign immunity bars § 1983 claims for damages against state officials in their official capacity because New York State has not waived, and Congress has not abrogated, sovereign immunity to allow such claims in federal court. *See Ying Jing Gan*, 996 F.2d at 529; *see also Posr v. Court Officer Shield No. 207*, 180 F.3d 409, 414 (2d Cir. 1999) (affirming dismissal of *pro se* plaintiff’s claims against court officers in their official capacities pursuant to the Eleventh Amendment); *see also, e.g., Martinez v. Santamaria*, No. 14 Civ. 7634, 2015 WL 4241398, at *4 (S.D.N.Y. July 13, 2015); *Murray*, 2017 WL 4286658 at *11; *Morales v. New York*, 22 F. Supp. 3d 256, 272 (S.D.N.Y. 2014) (listing cases). Accordingly, Plaintiff’s claims against the State Defendants in their official capacities should be dismissed.

II. PLAINTIFF FAILS TO STATE A CLAIM ON WHICH RELIEF CAN BE GRANTED.

Although Plaintiff asserts two causes of action pursuant to § 1983, he makes three distinct claims against the State Defendants. *See* SAC at ¶¶ 27-31, 46-47. First, Plaintiff claims that the State Defendants violated his First Amendment rights by retaliating against him and preventing him from, among other things, confronting the commissioner of the New York City Human Resources Administration and/or the Mayor at the public resource fair. *See id.* at ¶ 31. Second, Plaintiff claims that the State Defendants violated his Fourteenth Amendment rights by allegedly denying him entry into a City public resource fair taking place in the Courthouse. *See id.* at ¶¶ 6(a), (b). Third, Plaintiff claims that Captain Manzi allegedly “illegally seized” Plaintiff’s personal property. *See id.* at ¶¶ 1, 6, 30-31.

None of Plaintiff’s claims against the State Defendants is viable because: (i) Plaintiff fails to allege that the State Defendants took any action to prohibit his entry into the alleged public resource fair, (ii) Plaintiff had no right to engage in certain speech in the Courthouse, (iii) Plaintiff had no constitutionally protected property or liberty interest in attending the public resource fair, and (iv) Captain Manzi did not meaningfully interfere with any of Plaintiff’s property.

A. Plaintiff Does Not Adequately Allege the State Defendants’ Participation In the Deprivation of Any Constitutional Right

A defendant can be liable under § 1983 “only if that individual is personally involved in the alleged deprivation.” *Littlejohn v. City of New York*, 795 F.3d 297, 314 (2d Cir. 2015); *accord Back v. Hastings on Hudson Union Free Sch. Dist.*, 365 F.3d 107, 127 (2d Cir. 2004); *Farid v. Ellen*, 593 F.3d 233, 249 (2d Cir. 2010) (“It is well settled in this Circuit that personal involvement of defendants in alleged constitutional deprivations is a prerequisite to an award of damages under § 1983.”); *Cater v. New York*, 316 F. Supp. 3d 660, 671 (S.D.N.Y. 2018); *Thomas-Ateba v. SAMHSA of U.S. Gov’t*, No. 13 Civ. 4662, 2014 WL 1414577, at *3 (E.D.N.Y. Apr. 10, 2014)

(dismissing constitutional tort claim against entity who had no oversight role over alleged decision-maker because of lack of personal involvement). “Conclusory accusations regarding a defendant’s personal involvement in the alleged violation, standing alone, are not sufficient.” *Vasquez v. Reilly*, No. 15 Civ. 9528, 2017 WL 946306, at *11 (S.D.N.Y. Mar. 9, 2017).

Here, the vast majority of Plaintiff’s allegations challenge the actions and decisions of the Town Hall and Resource Fair City Defendants, which resulted in Plaintiff’s inability to attend two New York City government related events. *See, e.g.*, SAC at ¶¶ 6(b)-(c) (alleging that Resource Fair City Defendants Richard Atchenson and Lt. Ralph Nieves “illegally prevented [Plaintiff] from entering the Veterans Memorial Hall chamber within the” Courthouse), 28, 31 (alleging that Town Hall City Defendant Inspector Howard Redmond “illegally prevented [Plaintiff] from attending” certain meetings). Indeed, by Plaintiff’s own allegations, he was denied admittance at the public resource fair at the Courthouse in allegedly continuing acts against Plaintiff by members of the NYPD and the Mayor’s Community Affairs Unit. *See, e.g., id.* at ¶¶ 4(c), 6(a)-(c), 8, 23 (“[The Individual Defendants] were acting for and on behalf of the NYPD and Mayor at all times relevant herein.”). Specifically, Plaintiff’s claims are heavily premised on the allegation that he was denied entry into a similar event approximately one month prior to the incident at the Courthouse by New York City officials, without any involvement by the State Defendants. *See id.* at ¶ 42.

Critically, Plaintiff does not allege facts showing that the State Defendants had any role in denying his entry to either of the challenged meetings. Instead, Plaintiff merely asserts the conclusory allegations that “Mr. Nieves coordinated efforts with Mr. Gerola, Mr. Berkowitz, Mr. Brunner, Mr. Dominguez, and Mr. Manzi to illegally prevent [him] from entering the Veterans Memorial Hall chamber” and that Sergeants Brunner and Dominguez conversed with Defendant Nieves at approximately 9:40 a.m. in the Courthouse “ostensibly for the purpose of coordinating

their efforts to illegally prevent me from attending the public resource fair meeting” *Id.* at ¶ 6(c). The only other allegations concerning the State Defendants’ purported involvement in the alleged denial of entry are that “Mr. Manzi used his left hand to make a hand gesture to illegally direct me away from the entrance to the Veterans Memorial Hall chamber” and that “[w]hile doing so, both Mr. Brunner and Mr. Dominguez stood to Mr. Manzi’s left and illegally failed to intervene on my behalf to direct Mr. Manzi to back down and stop interfering with my constitutional rights” *Id.* at ¶ 6(d). Such allegations are insufficient to demonstrate any of the State Defendants’ personal involvement.⁵ *See Young-Flynn v. Wright*, 05 Civ. 1488, 2007 WL 241332, at *21 (S.D.N.Y. Jan. 26, 2007) (dismissing claims against individual defendants as conclusory where the complaint did not allege each individual’s role in the challenged conduct apart from alleging that one defendant was “the ring leader”); *Barnes v. Henderson*, 490 F. Supp. 2d 313, 319 (W.D.N.Y.2007) (“[P]laintiff’s complaint also contains nothing more than his conclusory, barely coherent assertion that Selsky ‘act[ed] in cohort [sic] with his co-working.’ ... That is simply not enough to show personal involvement”).

Moreover, by Plaintiff’s allegations, the NYPD and the Mayor’s Community Affairs Unit allegedly controlled the public resource fair and, thereby, had the exclusive authority to deny Plaintiff and others entry. *See* SAC at ¶¶ 23, 28, 30, 42; *see also, e.g.,* New York City, N.Y., Rules, Tit. 55, § 10-08 (acknowledging “the power and authority of the [NYPD] to preserve the public peace and safety in the vicinity of City Hall, including but not limited to using magnetometers or other security devices, submitting all persons, bags and packages to mechanical

⁵ To the extent Plaintiff attempts to assert a failure to intervene claim, that claim fails because there was no underlying constitutional violation, and because there is no plausible allegation that the State Defendants had an obligation or opportunity to prevent such a violation. *See, e.g., Brooks*, 54 F. Supp. 3d at 260; *Mangum v. City of New York*, No. 15 Civ. 8810, 2016 WL 4619104, at *9 (S.D.N.Y. Sept. 2, 2016); *Henry-Lee v. City of New York*, 746 F. Supp. 2d 546, 566 (S.D.N.Y. 2010); *see also infra* Part II.B., II.C. II.D.

inspection or search”); New York City, N.Y., Charter § 435 (vesting the NYPD with the authority to “preserve order ... at all public meetings and assemblages”). Indeed, Plaintiff does not allege that the State Defendants had any decision-making authority to either grant or deny his entrance in the New York City government related public resource fair taking place within the Courthouse.⁶ *See SAC generally.*

Therefore, Plaintiff fails to allege that the State Defendants personally participated in the deprivation of any of Plaintiff’s rights, as they took no action to deny Plaintiff entry into the meeting, nor did they have any decision-making authority to either grant or deny Plaintiff admittance to the public resource fair taking place within the Courthouse. For this reason, dismissal of Plaintiff’s claims against the State Defendants is warranted. *See Littlejohn*, 795 F.3d at 314; *Back*, 365 F.3d at 127; *Farid*, 593 F.3d at 249; *Cater*, 316 F. Supp. 3d at 671; *Thomas-Ateba*, 2014 WL 1414577 at *3.

B. The State Defendants Did Not Illegally Prevent Plaintiff From Engaging in Protected Speech Inside the Courthouse

“Generally, a private citizen bringing a First Amendment retaliation claim must allege that (1) [she] has an interest protected by the First Amendment; (2) defendants’ actions were motivated or substantially caused by [her] exercise of that right; and (3) defendants’ action effectively chilled the exercise of [her] First Amendment right.” *Murray*, 2017 WL 4286658 at *10 (internal quotations omitted and alterations in original); *accord Curley v. Vill. of Suffern*, 268 F.3d 65, 73

⁶ To the extent a claim of conspiracy to violate § 1983 may be read into the Complaint, “[A] plaintiff must show: “(1) an agreement between two or more state actors...; (2) to act in concert to inflict an unconstitutional injury; and (3) an overt act done in furtherance of that goal causing damages.” *Forte*, 2018 WL 4681610 at *11. Here, Plaintiff does not allege sufficient facts in support of any required element. *See generally SAC; compare Gallop*, 642 F.3d at 369 (“It is well settled that claims of conspiracy containing only conclusory, vague, or general allegations of conspiracy to deprive a person of constitutional rights cannot withstand a motion to dismiss.” (internal quotations omitted)); *Murray*, 2017 WL 4286658 at *9 (dismissing *pro se* conspiracy claim because claims were conclusory); *Barone*, 2014 WL 4467780 at *23 (same), *with Forte*, 2018 WL 4681610 at *11 (holding that conspiracy to falsely arrest the plaintiff was adequately alleged when the defendants took overt steps, including taking a sworn statement, taking Plaintiff’s phone, and commencing and processing his arrest, following several phone calls between one another).

(2d Cir. 2001); *see also Washpon v. Parr*, 561 F. Supp. 2d 394, 408 (S.D.N.Y. 2008).

Here, Plaintiff claims that the Resource Fair City Defendants deprived him of his First Amendment right to attend the alleged public resource fair and “engage in protected whistleblowing activity in it, and attempt to use that meeting to try to get assistance with obtaining employment and legal assistance from New York City government agencies,” based on “whistleblower activity” that Plaintiff engaged in during a similar event in March 2017. SAC at ¶¶ 6(b), 28. While Plaintiff fails to assert that the State Defendants personally participated in that alleged deprivation, which is itself grounds for dismissal, *see supra* Part I.A., Plaintiff’s claim fails as a matter of law for three additional and independent reasons.

First, “Supreme Court and Second Circuit precedent are clear that a courthouse is a non-public forum,” in which “governmental restrictions on expressive conduct or speech are constitutional so long as they are reasonable in light of the use to which the forum is dedicated[.]” *Washpon*, 561 F. Supp. 2d at 408–09 (citing *Huminski v. Corsones*, 396 F.3d 53, 90–91 (2d Cir.2005)); *accord United States v. Grace*, 461 U.S. 171, 178 (1983)); *Concerned Jewish Youth v. McGuire*, 621 F.2d 471, 474 (2d Cir. 1980) (recognizing that “the government may properly restrict First Amendment rights associated with...courthouses”). “The function of a courthouse and its courtrooms is principally to facilitate the smooth operation of a government’s judicial functions . . . These purposes are likely to be incompatible with expressive activities inside a courthouse.” *Huminski*, 396 F.3d 53, 91 (2d Cir. 2005). Consequently, Plaintiff’s attempts to confront certain New York City officials, engage in “whistleblower activity,” and “try to get assistance with obtaining employment and legal assistance from New York City government agencies,” were not protected speech within the Courthouse. *See id.*

Second, Plaintiff does not allege that the State Defendants had any knowledge of Plaintiff’s

alleged prior protected speech, let alone engaged in any actions motivated or substantially caused by Plaintiff's exercise of that right. Indeed, Plaintiff's specific allegations concerning the State Defendants are limited and conclusory. *See* SAC at ¶ 6. This is insufficient to state a claim as a matter of law. *See Murray*, 2017 WL 4286658 at *10; *see e.g., Burgin v. Brown*, No. 15 Civ. 201S, 2018 WL 1932598, at *9 (W.D.N.Y. Apr. 24, 2018). Much like the case at bar, in *Burgin*, the *pro se* plaintiff asserted a similar First Amendment claim based on the alleged denial of an opportunity to be heard at a Board of Education meeting. The court dismissed the claim, because the plaintiff alleged only that he was attempting "to 'speak out' against the board members and superintendent to expose their" conduct relating to a particular program, which was not protected speech. *Burgin*, 2018 WL 1932598 at *9. Here, Plaintiff likewise fails to adequately allege that the State Defendants prevented him from speaking on a particular topic because of the content of his remarks. Plaintiff does not allege any facts stating what his specific viewpoint was on any particular matter, nor the State Defendants' opposition to it. Therefore, like that in *Burgin*, Plaintiff's claim must be dismissed. *Id.*

Third, Plaintiff also fails to allege the chilling of his First Amendment rights. *See generally* SAC. Indeed, on January 3, 2019, Plaintiff informed the court that he continues to attend public events featuring the Mayor. *See* ECF No. 71. This is additional grounds for dismissal. *See, e.g., Murray*, 2017 WL 4286658 at *10.

C. Plaintiff Had No Constitutionally Protected Right to Attend the Public Resource Fair In the Courthouse

"To state a due process violation—procedural or substantive—Plaintiff must first show a deprivation of a constitutionally protected property or liberty interest." *Perez v. Metro. Transp. Auth.*, No. 11 Civ. 8655, 2012 WL 1943943, at *8 (S.D.N.Y. May 29, 2012) (internal quotations omitted). "A property interest does not exist solely because of the importance of the benefit to the

recipient.” *Kelly Kare, Ltd. v. O’Rourke*, 930 F.2d 170, 175 (2d Cir. 1991). Instead, a plaintiff must show “a legitimate claim of entitlement,” pursuant to “existing rules or understandings that stem from an independent source such as state law.” *City Line Auto Mall, Inc. v. Mintz*, No. 05 Civ. 5524, 2006 WL 8439742, at *2 (E.D.N.Y. Oct. 25, 2006) (quoting *Cleveland Board of Educ. v. Loudermill*, 470 U.S. 532, 538 (1985)); accord *Thomas-Ateba*, 2014 WL 1414577 at *6. Here, Plaintiff cannot make the requisite showing because he had no legitimate claim of entitlement to attend the public resource fair.

Plaintiff’s only alleged protected interest in this case is access to the Veterans Memorial Hall chamber within the Courthouse during the public resource fair.⁷ See SAC at ¶ 6(b). Plaintiff does not cite to any state law or authority granting him unfettered admission, other than the “New York State’s Open Meetings Law.” *Id.* at ¶¶ 1, 6(b), 6(d). Plaintiff ostensibly claims that the Open Meetings Law is the independent state law basis for his alleged right to “lawfully attend that meeting [in the Courthouse], engage in protected whistleblowing activity in it, and attempt to use that meeting to try to get assistance with obtaining employment and legal assistance from New York City government agencies.” *Id.* at ¶ 6 (b); see also *id.* at ¶¶ 1, 4(a)(iii), (v), 6(d). However, the Open Meetings Law cannot provide the basis for Plaintiff’s claim.

As a threshold matter, Plaintiff cannot assert a claim for money damages against the State Defendants under the Open Meetings Law, see *id.* at ¶ 19, because only injunctive relief is available pursuant to such a claim. See N.Y. Pub. Off. Law § 107 (“Any aggrieved person shall have standing to enforce the provisions of this article against a public body by the commencement of . . . an action for declaratory judgment and injunctive relief.”); see also *Jones v. Bay Shore Union*

⁷ Notably, Plaintiff makes no claim that he was denied access to the Courthouse in general. In fact, as demonstrated in the Video, Plaintiff otherwise walked around the Courthouse freely, spoke to various people, and left the Courthouse of his own initiative. See Video at 9:58:25 – 10:34:05.

Free Sch. Dist., 947 F. Supp. 2d 270, 283 (E.D.N.Y. 2013) (“Nowhere in the enforcement provisions of the Public Officers Law does it provide for monetary relief, except insofar as it allows for reasonable costs and attorney’s fees.”). To that end, Plaintiff does not seek appropriate injunctive relief.⁸

Moreover, the Open Meetings Law does not necessarily guarantee access to a meeting, nor access to a meeting for purposes of “whistleblower activity,” as Plaintiff contemplates. SAC at ¶¶ 6 (b); 31; *see* N.Y. PUB. OFF. LAW § 100 (stating that the intent of the Open Meetings Law is to allow “the citizens of this state [to] be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy”); *see also, e.g., Jones v. Bay Shore Union Free Sch. Dist.*, 170 F. Supp. 3d 420, 425 (E.D.N.Y. 2016) (recognizing that a public body may properly exclude an individual from a meeting “for safety reasons” under the Open Meetings Law), *aff’d*, 666 F. App’x 92 (2d Cir. 2016); *Wilson v. Bd. of Educ. Harborfields Cent. Sch. Dist.*, 65 A.D.3d 1158, 1158 (2d Dep’t 2009) (recognizing a technical violation of the Open Meetings Law, but declining to annul the public body’s action or grant attorney’s fees); *Smith v. City Univ. of New York*, 708 N.E.2d 983, 985 (N.Y. 1999) (“The Open Meetings Law is designed to ensure that public business is conducted in an observable manner[.]”).

Thus, Plaintiff does not state a “legitimate claim of entitlement” to attend the public

⁸ Plaintiff seeks injunctive relief in the form of “voiding the results of the 2017 New York City government elections for the jobs of New York City Mayor and New York City Council.” SAC ¶ 49(c). However, this injunctive relief is far beyond the scope of the relief a court may grant under the Open Meetings Law. *See* N.Y. Pub. Off. Law § 107 (allowing a court to exercise its discretion “to declare that the public body violated this article and/or declare the action taken in relation to such violation void, in whole or in part, without prejudice to reconsideration in compliance with this article[, and] may require the members of the public body to participate in a training session concerning the obligations imposed by this article conducted by the staff of the committee on open government”); *see also, e.g., Goetschius v. Bd. of Educ. of the Greenburgh Eleven Union Free Sch. Dist.*, 281 A.D.2d 416, 417 (2d Dep’t 2001) (affirming order that granted attorneys’ fees and annulled certain determinations of the Board of Education which were made when improperly convened in an manner inaudible to the public).

resource fair in the Courthouse and the claim against the State Defendants should be dismissed. *See Perez*, 2012 WL 1943943 at *8; *Kelly Kare, Ltd.*, 930 F.2d at 175; *City Line Auto Mall, Inc.*, 2006 WL 8439742 at *2; *Thomas-Ateba*, 2014 WL 1414577 at *6; *see also Burgin*, 2018 WL 1932598 at *8 (dismissing *pro se* due process claim because no protected property or liberty interest was pleaded).

D. State Defendant Captain Manzi Did Not Interfere with Plaintiff's Possessory Interests In Any Property⁹

The “seizure of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” *United States v. Karo*, 468 U.S. 705, 712 (1984) *accord Maryland v. Macon*, 472 U.S. 463, 469 (1985) (same); *United States v. Jacobsen*, 466 U.S. 109, 113 (1984) (same); *Collins v. Saratoga Cty. Support Collection Unit*, 528 F. App’x 15, 17 (2d Cir. 2013) (dismissing *pro se* claim under the Fourth Amendment because alleged state action did not involve meaningful interference with liberty or possessory interests in property).

Here, the Court need only review two seconds of the Video to dismiss Plaintiff’s claim. *See SAC at ¶¶ 6(d), 47; Video at 9:49:09-11.* The Video conclusively shows that Captain Manzi merely lifted Plaintiff’s bag off of a table, which Plaintiff immediately retrieved from Captain Manzi’s hands. Plaintiff then maintained possession of the bag for the remainder of the “incident” and ultimately left the Courthouse with all of his possessions. *Video at 9:49:11-10:34:05.* Accordingly, Captain Manzi is not plausibly alleged to have meaningfully interfered with Plaintiff’s possessory interest in any property and dismissal is warranted. *See Collins*, 528 F. App’x at 17.

⁹ Plaintiff does not allege that any other defendant, including State Defendants Sergeants Brunner and Dominguez, took any allegedly unconstitutional action with respect to his personal property. *See SAC at ¶¶ 6(d), 46-47.*

CONCLUSION

For the foregoing reasons, State Defendants Court Officer Captain Manzi and Sergeants Matthew Brunner and Ramon Dominguez respectfully request that this Court dismiss Plaintiff's Second Amended Complaint with prejudice, together with such other and further relief as it deems just and proper.

Dated: New York, New York
January 11, 2019

Respectfully submitted,

LETITIA JAMES
Attorney General of the State of New York

By:

/s/ Monica Hanna

MONICA HANNA
Assistant Attorney General
28 Liberty Street
New York, New York 10005

Tel: (212) 416-8227
monica.hanna@ag.ny.gov

Attorneys for State Defendants