

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11 CIV. 5845

Mark Nunez

PLAINTIFF

(In the space above enter the full name(s) of the plaintiff(s).)

-against-

N.Y.C. Department of Correction,Correction Officer Thomas,Captain Primm,Deputy Johnson

DEFENDANT(S)

(In the space above enter the full name(s) of the defendant(s). If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed in the above caption must be identical to those contained in Part I. Addresses should not be included here.)

COMPLAINT

under the

Civil Rights Act, 42 U.S.C. § 1983
(Prisoner Complaint)Jury Trial: ☒ Yes ☐ No
(check one)

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I. Parties in this complaint:

- A. List your name, identification number, and the name and address of your current place of confinement. Do the same for any additional plaintiffs named. Attach additional sheets of paper as necessary.

Plaintiff

Name Mark Nunez

ID # _____

Current Institution _____

Address 744 Rosedale Avenue, Bronx, New York 10473

- B. List all defendants' names, positions, places of employment, and the address where each defendant may be served. Make sure that the defendant(s) listed below are identical to those contained in the above caption. Attach additional sheets of paper as necessary.

Defendant No. 1 Name N.Y.C. Department of Correction Shield # _____
 Where Currently Employed _____
 Address 75-20 Astoria Blvd., East Elmhurst, N.Y. 11370

Defendant No. 2 Name Correction Officer Thomas Shield # _____
 Where Currently Employed Rikers Island
 Address R.N.D.C., 11-11 Hazen St., East Elmhurst, N.Y. 11370

Defendant No. 3 Name Captain Primm Shield # _____
 Where Currently Employed Rikers Island
 Address R.N.D.C., 11-11 Hazen St., East Elmhurst, N.Y. 11370

Defendant No. 4 Name Deputy Johnson Shield # _____
 Where Currently Employed Rikers Island
 Address R.N.D.C., 11-11 Hazen St., East Elmhurst, N.Y. 11370

Defendant No. 5 Name _____ Shield # _____
 Where Currently Employed _____
 Address _____

II. Statement of Claim:

State as briefly as possible the facts of your case. Describe how each of the defendants named in the caption of this complaint is involved in this action, along with the dates and locations of all relevant events. You may wish to include further details such as the names of other persons involved in the events giving rise to your claims. Do not cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Attach additional sheets of paper as necessary.

A. In what institution did the events giving rise to your claim(s) occur? R.N.D.C., 11-11 Hazen Street, East Elmhurst, New York 11370

B. Where in the institution did the events giving rise to your claim(s) occur? Housing Unit 6 Upper, North side

C. What date and approximate time did the events giving rise to your claim(s) occur? March 4th, 2010, at approximately 8:45 am

D. Facts: On March 4th, 2010, the plaintiff was an inmate housed on Rikers Island, R.N.D.C., 11-11 Hazen Street, E. Elmhurst, N.Y. 11370, Housing Unit 6 Upper, North side. The plaintiff and a few other inmates were locked out of their cells approximately 8:45 am of that day. Correction Officer Thomas, who was working the housing unit that shift was making her rounds. When she entered the food pantry, she noticed there was food left over from the day before and starting throwing the left overs on the floor, then she proceeded to break the inmates phones. From that point on officer Thomas told everyone to lock back in their cells for the rest of the day. The plaintiff informed officer Thomas that everyone shouldn't be penalized for someone elses faults because everyone doesn't have access to the food pantry, just the workers on the payrole, and asked that she call the area captain. Instead of officer Thomas calling an area captain, she pressed the PBA button as if a fight broke out. The plaintiff and the other inmates remained calm. Three minutes later; captain Primm came barging in the housing unit in full riot gear with a long stick in his hand. Captain Primm asked officer Thomas where's the fight. Officer Thomas response was; there's no fight, they just refuse to lock in. Captain Primm then used his stick to push inmate in front of plaintiff and tells him to go to his cell. The inmate who was told to go to his cell was assaulted by several officers after words was exchanged. While this was going on, Deputy Johnson enters the housing unit and sees what's going on, and tells

What happened to you?

Who did what?

Was anyone else involved?

Who else saw what happened?

III. Injuries:

If you sustained injuries related to the events alleged above, describe them and state what medical treatment, if any, you required and received. Plaintiff substained face and head injuries, stiffness of neck and bruised wrist.

IV. Exhaustion of Administrative Remedies:

The Prison Litigation Reform Act ("PLRA"), 42 U.S.C. § 1997e(a), requires that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." Administrative remedies are also known as grievance procedures.

officer Thomas, let them do what they got to do. When the plaintiff asked deputy Johnson to defuse the situation, that they did nothing wrong, that the use of force was unjust, captain Primm mased plaintiff, then punched the plaintiff in the face. When the plaintiff tried to block his face; captain Primm started hitting the plaintiff in the face and head with his radio until the plaintiff was on the ground. At that time; captain Primm placed his knee on the plaintiff's neck until he was cuffed. The plaintiff was then dragged from the housing to six main intake by captain Primm and Deputy Johnson.

A. Did your claim(s) arise while you were confined in a jail, prison, or other correctional facility?

Yes ☒ No ☐

If YES, name the jail, prison, or other correctional facility where you were confined at the time of the events giving rise to your claim(s).

R.N.D.C., 11-11 Hazen Street, East Elmhurst, New York 11370

B. Does the jail, prison or other correctional facility where your claim(s) arose have a grievance procedure?

Yes ☒ No ☐ Do Not Know ☐

C. Does the grievance procedure at the jail, prison or other correctional facility where your claim(s) arose cover some or all of your claim(s)?

Yes ☐ No ☐ Do Not Know ☒

If YES, which claim(s)? _____

D. Did you file a grievance in the jail, prison, or other correctional facility where your claim(s) arose?

Yes ☐ No ☒

If NO, did you file a grievance about the events described in this complaint at any other jail, prison, or other correctional facility?

Yes ☐ No ☒

E. If you did file a grievance, about the events described in this complaint, where did you file the grievance?

1. Which claim(s) in this complaint did you grieve? _____

2. What was the result, if any? _____

3. What steps, if any, did you take to appeal that decision? Describe all efforts to appeal to the highest level of the grievance process. _____

F. If you did not file a grievance:

1. If there are any reasons why you did not file a grievance, state them here: _____

I didn't have the opportunity to file a grievance because the
following day after the incident, I was transferred to the New
York State Department of Corrections.

2. If you did not file a grievance but informed any officials of your claim, state who you informed, when and how, and their response, if any: I informed state officials of me
wanting to file a grievance and at that time I was informed that it's
out of their jurisdiction.

- G. Please set forth any additional information that is relevant to the exhaustion of your administrative remedies.

Note: You may attach as exhibits to this complaint any documents related to the exhaustion of your administrative remedies.

V. Relief:

State what you want the Court to do for you (including the amount of monetary compensation, if any, that you are seeking and the basis for such amount). To order the defendants to award the plaintiff
two million dollars in monetary damages; for subjecting the plaintiff to cruel
and unusual punishment; in violation of the 8th amendment to the United States
Constitution; when the defendants unjustifiably used excessive force against the
plaintiff.

VI. Previous lawsuits:On
these
claims

- A. Have you filed other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes ____ No x

- B. If your answer to A is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another sheet of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

On
other
claims

- C. Have you filed other lawsuits in state or federal court otherwise relating to your imprisonment?

Yes ____ No x

- D. If your answer to C is YES, describe each lawsuit by answering questions 1 through 7 below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same format.)

1. Parties to the previous lawsuit:

Plaintiff _____

Defendants _____

2. Court (if federal court, name the district; if state court, name the county) _____

3. Docket or Index number _____

4. Name of Judge assigned to your case _____

5. Approximate date of filing lawsuit _____

6. Is the case still pending? Yes ____ No ____

If NO, give the approximate date of disposition _____

7. What was the result of the case? (For example: Was the case dismissed? Was there judgment in your favor? Was the case appealed?) _____

I declare under penalty of perjury that the foregoing is true and correct.

Signed this 10 day of August, 2011.

Signature of Plaintiff Muel Mij
Inmate Number _____
Institution Address 744 Rosedale Avenue
Bronx, N.Y. 10473

Note: All plaintiffs named in the caption of the complaint must date and sign the complaint and provide their inmate numbers and addresses.

I declare under penalty of perjury that on this 10 day of August, 2011, I am delivering this complaint to prison authorities to be mailed to the *Pro Se* Office of the United States District Court for the Southern District of New York.

Signature of Plaintiff: Muel Mij