

Olivencia, Mildred

From: [REDACTED]
Sent: Sunday, November 29, 2015 5:22 PM
To: Olivencia, Mildred
Cc: Torres-Rojas, Genara; Van Duyne, Sheree; Ng, Danny; Shalewitz, William
Subject: Freedom of Information Online Request Form

Information:

First Name: John
Last Name: Paff
Company: none
Mailing Address 1: [REDACTED]
Mailing Address 2:
City: [REDACTED]
State: [REDACTED]
Zip Code: [REDACTED]
Email Address: [REDACTED]
Phone: [REDACTED]
Required copies of the records: Yes

List of specific record(s):

Please accept this as my request under the Open Public Records Act OPRA and the common law right of access. Please send all responses and responsive records to me via e-mail to [REDACTED]. I object to having to use your on-line Freedom of Information Request Form and I object to having to agree to your Terms of Usage and Privacy Statement. I request the following documents: 1. The complaint that was filed in Benjamin Perez V. Port Authority of New York and New Jersey et al, Federal Case No. 2:14-cv-02989. 2. The settlement agreement that resolved Benjamin Perez V. Port Authority of New York and New Jersey et al, Federal Case No. 2:14-cv-02989

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

December 18, 2015

Mr. John Paff



Re: Freedom of Information Reference No. 16512

Dear Mr. Paff:

This is in response to your November 29, 2015 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy enclosed) for copies of the following documents: 1. The Complaint that was filed in Benjamin Perez V. Port Authority of New York and New Jersey et al, Federal Case No. 2:14-cv-02989. 2. The settlement agreement that resolved Benjamin Perez V. Port Authority of New York and New Jersey et al, Federal Case No. 2:14-cv-02989.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/16512-O.pdf>. Paper copies of the available records are available upon request.

Pursuant to the Code, certain portions of the material responsive to your request are exempt from disclosure as, among other classifications, personal privacy.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,

A handwritten signature in black ink, appearing to read "Danny Ng".

Danny Ng
FOI Administrator

Enclosure

*4 World Trade Center, 18th Floor
150 Greenwich Street
New York, NY 10007
T: 212 435 3642 F: 212 435 7555*

General Release

This Release dated June 5, 2015, is given as follows:

By: the Releasors, Benjamin Perez, date of birth [REDACTED], residing at [REDACTED]
[REDACTED] and Heather Fogarty, date of birth [REDACTED]
[REDACTED] residing at [REDACTED], referred
to collectively as "I" or "My "

To: the Releasees, The Port Authority of New York and New Jersey, P.O. Anthony Giordano,
and P.O. Mark Driscoll, referred to as "You" or "Your."

If more than one person signs this Release, "I" shall mean each person who signs this Release.

1. Release: I release and give up an and all claims and rights which I may have against You. This releases all claims, including those of which I am not aware and those not mentioned in this Release. This Release applies to claims resulting from any and all claims relating to the action titled Benjamin Perez and Heather Fogarty v. Port Authority of NY & NJ, Port Authority Police Officer Giordano, Shield No.: 2877, Port Authority Police Officer Mark Driscoll, Shield No.: 491, and Police Officer's "John Doe" # 1-10, Individually and in their Official Capacities (the name John Doe being fictitious, as the true names are presently unknown), Case No.: 2:14-CV-02989-KM-MCA. I release and discharge You, including Your heirs, executors, administrators, partners, subsidiaries, successors, parents, limited partners, joint venturers, affiliates, assigns, agents, insurers, consultants, contractors and sub-contractors, known or unknown, involved or with an interest in the claims arising out of or in any way related to an incident which occurred on or about May 19, 2013, and from all actions, causes of action, suits, debts, dues, liens, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, claims for personal injuries,

extents, executions, claims, and demands whatsoever in law, admiralty or equity, Your heirs, executors, administrators, successors and assigns ever had, now have or hereafter can, shall or may, have for, upon, or by reason of any matter, cause or thing whatsoever from the beginning of the world to the day of the date of this General Release including, but not limited to claims that were or could have been asserted in litigation styled Benjamin Perez and Heather Fogarty v. Port Authority of NY & NJ, Port Authority Police Officer Giordano, Shield No.: 2877, Port Authority Police Officer Mark Driscoll, Shield No.: 491, and Police Officer's "John Doe" # 1-10, Individually and in their Official Capacities (the name John Doe being fictitious, as the true names are presently unknown), Case No.: 2:14-CV-02989-KM-MCA.

2. Consideration: I have been paid a total of ten thousand U.S. dollars (\$10,000.00) as full payment and consideration for executing this General Release. I have agreed to the dismissal of Case No.: 2:14-CV-02989-KM-MCA with prejudice. This General Release is being made as a full and final settlement of all claims inclusive of any attorney's fees and costs. I agree that I will not seek anything further, including any other payment, from You, including attorney's fees, costs or any other payments, in connection with this action.

3. Who is bound: I am bound by this General Release. Anyone who succeeds to my rights and responsibilities, such as my heirs or the executor of my estate, is also bound. This General Release is made for Your benefit and all who succeed to your rights and responsibilities, such as Your heirs or the executor of your estate.

4. Confidentiality: The Releasors and the Releasees agree that the terms and conditions of this General Release shall be and remain for all time confidential, except that the terms and conditions may be disclosed to legal, financial and tax advisors for the purpose of obtaining advice. Neither the sum paid nor the terms and conditions of this settlement may be disclosed to

any person except to say that the matter in dispute, as set forth in the pleadings, has been resolved. In addition, the Releasors and Releasees agree that they shall not issue any communications to any third parties that in any way disparage the other party. Notwithstanding the foregoing, disclosure may be made, but only under the following circumstances: (a) in an action brought to enforce this General Release; (b) upon original consent being obtained from all parties hereto, or as required by law; and (c) upon an Order being entered by any court of competent jurisdiction, in any state or federal jurisdiction, duly served on the parties.

5. **Signatures:** I understand and agree to all the terms of this General Release. In witness whereof, the Releasors have hereunto set Releasors' hand and seal on the 13 day of JUNE, 2015,


Benjamin Perez


Heather Fogarty

STATE OF New York)
COUNTY OF New York) ss:

I certify that on this 13 day of JUNE, 2015,

BENJAMIN PEREZ & HEATHER FOGARTY personally came before me and stated under oath to my satisfaction that this person (or if more than one, each person) (a) was the maker of the attached instrument; and (b) executed this instrument as his or her own act.

Sworn to before me this

13 day of JUNE, 2015


Notary Public

HENRY B TRATTNER
NOTARY PUBLIC, State of New York
No. TR-01-4683385
Qualified in Nassau County
Certificate Filed in New York County
Commission Expires October 31, 2017

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

-----X
BENJAMIN PEREZ,

Plaintiff,

-against-

PORT AUTHORITY OF NEW YORK AND
NEW JERSEY, PORT AUTHORITY POLICE
OFFICER P.O.GIORDANO Shield No:2877,
And P.O. MARK DRISCOLL Shield No: 491
and P.O.s "JOHN DOE" # 1-10
Individually and in their Official
Capacities (the name John Doe being
fictitious, as the true names are
presently unknown),

Defendants.
-----X

Plaintiff, BENJAMIN PEREZ, by his attorney, Ricardo J.
Rodriguez, Esq., complaining of the defendants, respectfully
alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for compensatory damages,
punitive damages and attorney's fees pursuant to 42 U.S.C. §
1983 and 42 U.S.C. § 1988 for violations of his civil rights, as
said rights are secured by said statutes and the Constitutions
of the State of New York and the United States.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and
42 U.S.C. § 1988, and the First, Fourth, Fifth, Eighth and

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY
CLAIMS ADMINISTRATION &
RISK MANAGEMENT
2014 JUL -7 2 12 13
LAW DEPARTMENT

COMPLAINT
JURY TRIAL DEMANDED

Case No. 2:14-CV-02189-KM-MCA

Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343 and 1367.

VENUE

4. Venue is properly laid in the District of New Jersey under 28 U.S.C. § 1391(b), in that this is the District in which the claim arose.

JURY DEMAND

5. Plaintiff respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

6. Plaintiff is a Hispanic male and was at all relevant times a citizen of the City and State of New York.

7. Defendant, PORT AUTHORITY OF NEW YORK AND NEW JERSEY, was and still is a corporation duly organized and existing under and by virtue of the laws of the State of New York and New Jersey.

8. Defendant, PORT AUTHORITY OF NEW YORK AND NEW JERSEY, maintains the Office of Inspector General of the Port Authority of New York and New Jersey, a duly authorized public authority created and authorized under the laws of the State of New York the State of New Jersey to investigate criminal misconduct,

acting under the direction and supervision of the aforementioned corporation, PORT AUTHORITY OF NEW YORK AND NEW JERSEY.

9. At all times hereinafter mentioned, the individually named defendants, P.O.s "JOHN DOE" #1-10, were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

10. At all times hereinafter mentioned, the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State of New Jersey.

11. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant PORT AUTHORITY OF NEW YORK AND NEW JERSEY.

12. Each and all of the acts of the defendants alleged herein were done by said defendants while acting in furtherance of their employment by defendant PORT AUTHORITY OF NEW YORK AND NEW JERSEY.

FACTS

13. On May 19, 2013, at approximately 7:00pm, plaintiff

BENJAMIN PEREZ was lawfully inside of the arrival area of Terminal C, in Newark Airport in Essex County in the State of New Jersey.

14. At the aforesaid time and place, plaintiff BENJAMIN PEREZ was with his baby's mother, Heather Fogarty and his baby [REDACTED] (DOB [REDACTED]).

15. Plaintiff BENJAMIN PEREZ had pulled over to clean his child's shoe which had fecal matter on the soles when thereafter, defendant police officers approached plaintiff BENJAMIN PEREZ and began banging aggressively on the plaintiff's car asking the plaintiff for his identification.

16. During the questioning, defendant police officer Giordano Shield No: 2877 refused to identify himself despite repeated request by the plaintiff to do so.

17. Plaintiff BENJAMIN PEREZ alleges that he asked for P.O. Giordano to identify himself because P.O. Giordano was wearing a neon green jacket and he had no visible identification on the front of his jacket.

18. Thereafter, plaintiff BENJAMIN PEREZ exited his vehicle and was arrested by the defendant Police Officers, handcuffed, and placed him in a holding cell for over four (4) hours.

19. Notwithstanding the lack of any incriminating evidence against plaintiff BENJAMIN PEREZ, defendant police officers

arrested plaintiff and charged him with Obstructing Administration of Law or other Governmental Function and three (3) Motor Vehicle related offenses.

20. At no time on May 19, 2013, or at any other time, did plaintiff BENJAMIN PEREZ commit a crime or violate any Motor Vehicle offenses.

21. As a result of this unlawful arrest, plaintiff BENJAMIN PEREZ spent five (4) hours in jail, and was required to make multiple court appearances to defend himself against the false charges which defendants had filed against him.

22. In connection with this arrest, defendant police officers filled out false reports and forwarded these reports to the Municipal Prosecutor of Newark.

23. Notwithstanding the defendant police officers' unlawful and perjurious conduct, all charges against plaintiff BENJAMIN PEREZ were dismissed on July 29, 2013 by the Honorable Leon Graver.

24. As a result of the foregoing, plaintiff BENJAMIN PEREZ sustained, *inter alia*, mental anguish, shock, fright, apprehension, embarrassment, humiliation, loss of liberty and deprivation of his constitutional rights.

**FIRST CLAIM FOR RELIEF DEPRIVATION OF FEDERAL
CIVIL RIGHTS UNDER 42 U.S.C. § 1983**

25. Plaintiff repeats, reiterates and re-alleges each and

every allegation contained in paragraphs numbered "1" through "25" with the same force and effect as if fully set forth herein.

26. All of the aforementioned acts of defendants, their agents, servants and employees were carried out under the color of law.

27. All of the aforementioned acts deprived plaintiff BENJAMIN PEREZ of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. §1983.

28. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with all the actual and/or apparent authority attendant thereto.

29. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and rules of the PORT AUTHORITY OF NEW YORK AND NEW JERSEY and the PORT AUTHORITY POLICE DEPARTMENT, all under the supervision of ranking officers of said department.

30. Defendants, collectively and individually, while acting under color of state law, engaged in conduct which constituted a

custom, usage, practice, procedure or rule of his/her respective municipality/authority, which is forbidden by the Constitution of the United States.

SECOND CLAIM FOR RELIEF FALSE ARREST UNDER 42 U.S.C. § 1983

31. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs numbered "1" through "31" with the same force and effect as if fully set forth herein.

32. As a result of defendants' aforementioned conduct, plaintiff BENJAMIN PEREZ was subjected to an illegal, improper and false arrest by the defendants and taken into custody and caused to be falsely imprisoned, detained, confined, incarcerated and prosecuted by the defendants in criminal proceedings, without any probable cause, privilege or consent.

33. As a result of the foregoing, plaintiff's liberty was restricted for an extended period of time, and he was put in fear for his safety, was humiliated and subjected to handcuffing, and other physical restraints, without probable cause.

THIRD CLAIM FOR RELIEF MALICIOUS PROSECUTION

UNDER 42 U.S.C. § 1983

34. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs numbered "1" through

"34" with the same force and effect as if fully set forth herein.

35. Defendants misrepresented and falsified evidence before the Municipal Prosecutor.

36. Defendants did not make a complete and full statement of facts to the Municipal Prosecutor.

37. Defendants were directly and actively involved in the initiation of criminal proceedings against BENJAMIN PEREZ.

38. Defendants lacked probable cause to initiate criminal proceedings against plaintiff BENJAMIN PEREZ.

39. Defendants acted with malice in initiating criminal proceedings against plaintiff BENJAMIN PEREZ.

40. Defendants were directly and actively involved in the continuation of criminal proceedings against plaintiff BENJAMIN PEREZ.

41. Defendants lacked probable cause to continue criminal proceedings against plaintiff BENJAMIN PEREZ.

42. Defendants acted with malice in continuing criminal proceedings against BENJAMIN PEREZ.

43. Defendants misrepresented and falsified evidence throughout all phases of the criminal proceedings.

44. Notwithstanding the perjurious and fraudulent conduct of defendants, the criminal proceedings were terminated in plaintiff's favor on July 29, 2013, when all charges against him

were dismissed.

45. As a result of the foregoing, plaintiff BENJAMIN PEREZ sustained, *inter alia*, mental anguish, shock, fright, apprehension, embarrassment, humiliation, and deprivation of his constitutional rights.

**FOURTH CLAIM FOR RELIEF MALICIOUS ABUSE
OF PROCESS UNDER 42 U.S.C. § 1983**

46. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs numbered "1" through "46" with the same force and effect as if fully set forth herein.

47. The aforementioned individual defendants issued legal process to place plaintiff BENJAMIN PEREZ under arrest.

48. The aforementioned individual defendants arrest plaintiff BENJAMIN PEREZ in order to obtain a collateral objective outside the legitimate ends of the legal process.

49. The aforementioned individual defendants acted with intent to do harm to plaintiff BENJAMIN PEREZ, without excuse or justification.

50. As a result of the foregoing, plaintiff BENJAMIN PEREZ sustained, *inter alia*, mental anguish, shock, fright, apprehension, embarrassment, humiliation, and deprivation of his constitutional rights.

FIFTH CLAIM FOR RELIEF MUNICIPAL LIABILITY

UNDER 42 U.S.C. § 1983

51. Plaintiff repeats, reiterates and re-alleges each and every allegation contained in paragraphs "1" through "51" as if the same were more fully set forth at length herein.

52. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, policy, usage, practice, procedure or rule of Port Authority of New York and New Jersey, which is forbidden by the Constitution of the United States.

53. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, special investigators, assistant district attorneys and officials pursuant to the customs, policies, usages, practices, procedures, and rules of the Port Authority Police Department, all under the direction of defendant PORT AUTHORITY OF NEW YORK AND NEW JERSEY, who was responsible for establishing and implementing the aforesaid customs and policies.

**Deliberate Indifference to the Training and
Supervision of Port Authority Police Officers.**

54. The aforementioned customs, policies, usages, practices, procedures and rules of the Port Authority of New York and New Jersey and the Port Authority Police Department

included, but were not limited to:

a) Negligently, recklessly and/or deliberately failing to properly instruct, train and/or supervise Port Authority police officers in the investigation and prosecution of domestic violence assault cases;

b) Negligently, recklessly and/or deliberately failing to properly instruct, train and/or supervise Port Authority police officers with regard to charging individuals based upon misleading and/or incomplete evidence;

c) Negligently, recklessly and/or deliberately failing to properly instruct, train and/or supervise Port Authority police officers with regard to the proper constitutional and statutory requirements in the exercise of their authority;

d) Continuing criminal proceedings against individuals despite misleading and/or incomplete evidence, thereby allowing innocent persons to be baselessly apprehended and prosecuted;

e) Failing to terminate the investigation and/or prosecution of a criminal defendant upon discovery and possession of evidence negating probable or reasonable cause to believe him guilty of the alleged crime;

f) Failing to conduct fair and unbiased criminal investigations, particularly with regard to domestic violence assault allegations, thereby allowing unjust prosecutions to

continue.

54. The aforesaid *de facto* policies, procedures, regulations, practices and/or customs were implemented by policymaking officials for the defendant PORT AUTHORITY OF NEW YORK AND NEW JERSEY, who knew that:

a) to a moral certainty such policies, procedures, regulations, practices and/or customs concern issues that regularly arise in the investigation and prosecution of criminal cases,

b) that such issues present Port Authority police officers with difficult choices of the sort that instruction, training and/or supervision would make less difficult, or that the need for further instruction, training and/or supervision was demonstrated by a history of police officers mishandling such situations; and

c) Despite their knowledge of said policies, procedures, regulations, practices and/or customs, the supervisory and policymaking officers and officials of the defendant PORT AUTHORITY OF NEW YORK AND NEW JERSEY, including defendant Port Authority Police Department, as a matter of policy, perpetuated, or failed to take steps to terminate, said policies, procedures, regulations, practices and/or customs, did not discipline or otherwise properly supervise the employees engaged in them, did not effectively instruct, train and/or supervise such personnel

with regard to the proper constitutional and statutory requirements in the exercise of their authority, but instead sanctioned the policies, procedures, regulations, practices and/or customs described above, with a deliberate indifference to the effect of said policies, procedures, regulations, practices and/or customs upon the constitutional rights of residents and citizens of the State of New York.

55. The foregoing customs, policies, usages, practices, procedures and rules of the Port Authority Police Department, as implemented by the PORT AUTHORITY OF NEW YORK AND NEW JERSEY, constituted a deliberate indifference to the safety, well-being and constitutional rights of all defendants, including but not limited to, plaintiff BENJAMIN PEREZ.

56. The foregoing customs, policies, usages, practices, procedures and rules of the PORT AUTHORITY OF NEW YORK AND NEW JERSEY, as implemented by the Port Authority Police Department, were the direct and proximate cause of the constitutional violations suffered by plaintiff BENJAMIN PEREZ as alleged herein.

57. The foregoing customs, policies, usages, practices, procedures and rules of the PORT AUTHORITY OF NEW YORK AND NEW JERSEY, as implemented by the Port Authority Police Department, were the moving force behind the constitutional violations suffered by plaintiff BENJAMIN PEREZ as alleged herein.

58. As a proximate result of the foregoing practices and policies of the PORT AUTHORITY OF NEW YORK AND NEW JERSEY, as implemented by the Port Authority Police Department, plaintiff BENJAMIN PEREZ , sustained, *inter alia*, mental anguish, shock, fright, apprehension, embarrassment, humiliation, loss of liberty and deprivation of his constitutional rights.

WHEREFORE, plaintiff BENJAMIN PEREZ demands judgment against the Defendants for damages, punitive damages, interest plus attorney's fees, costs of suit, and such other relief as the Court may deem equitable and just.

Morristown, Jersey
May 5, 2014
BY: /S/ Ricardo J. Rodriguez, Esq. for
Prosper & Rodriguez, LLC
Attorneys for the Plaintiff
124 Washington Street
Morristown, N.J. 07960
(973) 998-7973