

### **INDEX TO PETITIONER'S APPENDICES**

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### **INDEX TO PETITIONER'S EXHIBITS UNDER RULE 32**

18 exhibit pictures numbered (3-16 and 21-24 and 8, 15), and (14 exhibit pictures A-R) included in the record below.

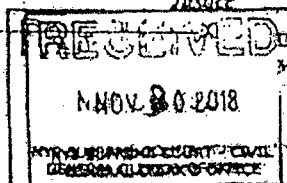
SUPREME COURT OF THE STATE OF NEW YORK  
NEW YORK COUNTYPRESENT: HON. VERA L. SAUNDERS PART IAS MOTION 5

ISIDRO ABASCAL-MONTALVO,

Plaintiff,

THE CITY OF NEW YORK,

Defendant.

INDEX NO. 100112/2016  
MOTION SEQ. NO. 001

DECISION AND ORDER

The following papers, numbered 1 to 3, were read on this application to/for COMPEL

	No(s)	
Notice of Motion/ Petition/ OSC - Affidavits - Exhibits	<u>001</u>	
Answering Affidavits - Exhibits	<u>002</u>	
Replying	<u>003</u>	

FILED

DEC 03 2018

COUNTY CLERK'S OFFICE  
NEW YORK

Plaintiff, *Pro se*, moves the Court pursuant to CPLR 3124 seeking a response to its request for "Production of Documents and Request for Interrogatories" served on March 20, 2017 and pursuant to the subsequent April 27, 2017 stipulation regarding same. Defendant, City of New York ("City") cross-moves seeking dismissal of the complaint and a stay of discovery pending the outcome of the instant motion to dismiss. Specifically, the City asserts that plaintiff's causes of action relating to "organized stalking" and "remote electronic assaults" are incredible and fail to state a cause of action; that causes of action relating to false arrest, assault, and battery arising from the plaintiff's alleged confinement on October 24, 2014 is privileged under Mental Hygiene Law § 9.4; and causes of action pertaining to events prior to October 23, 2014 are time-barred as beyond the statute of limitations.

Pursuant to Mental Hygiene Law § 9.41 an officer "may take into custody any person who appears to be mentally ill and is conducting himself in a manner which is likely to result in serious harm to himself or others." Here, inasmuch as it is undisputed that plaintiff was detained on October 24, 2014 in order to receive a psychiatric evaluation, said detention was privileged under Mental Hygiene Law § 9.41 and thus any causes of action relating thereto are dismissed.

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

-----X  
ISIDRO ABASCAL-MONTALVO,

Plaintiff,

- against -

THE CITY OF NEW YORK,

Defendant.  
-----X

NOTICE OF ENTRY OF  
ORDER

Index No: 100112/2016

File No: 2016-014534

PLEASE TAKE NOTICE that the attached is a true copy of an Order in this matter that  
was entered by the Court on December 3, 2018.

Dated: New York, NY  
December 13, 2018

ZACHARY W. CARTER  
Corporation Counsel of the City of  
New York  
*Attorney for Defendants*  
100 Church Street  
New York, NY 10007  
(212) 356-4362

By: 

AARON WIENER  
Assistant Corporation Counsel

TO: VIA MAIL

ISIDRO ABASCAL-MONTALVO  
P.O. BOX 7977  
NEW YORK, NY 10116

4a  
Appendix B

Richter, J.P., Gische, Mazzarelli, Gesmer, JJ.

10919 Isidro Abascal-Montalvo,  
Plaintiff-Appellant,

Index 100112/16

-against-

The City of New York,  
Defendant-Respondent.

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Isidro Abascal-Montalvo, appellant pro se.

Georgia M. Pestana, Acting Corporation Counsel, New York (Barbara Graves-Poller of counsel), for respondent.

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Order, Supreme Court, New York County (Verna L. Saunders, J.), entered December 3, 2018, which, as limited by the briefs, granted defendant's cross motion to dismiss the complaint, unanimously affirmed, without costs.

The complaint fails to state a cause of action for false arrest or imprisonment because plaintiff's own allegations establish that his arrest and detention for a mental health evaluation were privileged (Mental Hygiene Law § 9.41; see *Kwasnik v City of New York*, 298 AD2d 502, 503, [2d Dept 2002]).

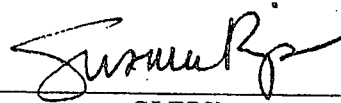
The remaining allegations in the complaint fail to state any

5a

other cause of action (see *JFK Holding Co., LLC v City of New York*, 68 AD3d 477, 477 [1st Dept 2009]).

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

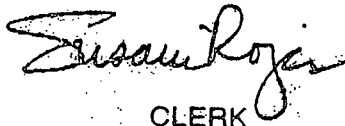
ENTERED: JANUARY 30, 2020



CLERK

APPELLATE DIVISION SUPREME COURT FIRST DEPARTMENT  
STATE OF NEW YORK

I, SUSANNA ROJAS, Clerk of the Appellate Division of the Supreme Court First Judicial Department, do hereby certify that I have compared this copy with the original thereof filed in said office on January 30, 2020 and that the same is a correct transcript thereof, and of the whole of said original.  
IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of this Court on February 3, 2020



CLERK

6a  
Appendix C

***State of New York***  
***Court of Appeals***

*Decided and Entered on the  
ninth day of June, 2020*

**Present**, Hon. Janet DiFiore, *Chief Judge, presiding.*

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Mo. No. 2020-179

Isidro Abascal-Montalvo,  
Appellant,

v.

City of New York,  
Respondent.

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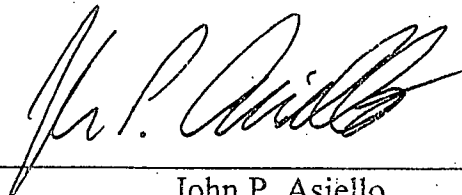
Appellant having appealed and moved for leave to appeal and for poor person relief in the above cause;

Upon the papers filed and due deliberation, it is

ORDERED, on the Court's own motion, that the appeal is dismissed, without costs, upon the ground that no appeal lies as of right from the unanimous order of the Appellate Division absent the direct involvement of a substantial constitutional question (see CPLR 5601); and it is further

ORDERED, that the motion for leave to appeal is denied; and it is further

ORDERED, that the motion for poor person relief is dismissed as academic.



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John P. Asiello  
Clerk of the Court

**CERTIFICATE OF COMPLIANCE**

NYCA No. 2020-179

ISIDRO ABASCAL-MONTALVO,

*Petitioner,*

V.

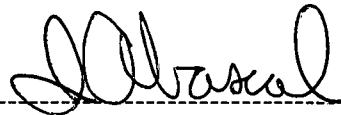
THE CITY OF NEW YORK,

*Respondent.*

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 7,978 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

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

Executed on August 3, 2020

A handwritten signature in black ink, appearing to read "Isidro Abascal", is written over a horizontal dashed line.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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ISIDRO ABASCAL-MONTALVO,

*Petitioner,*

V.

THE CITY OF NEW YORK,

*Respondent.*

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**PROOF OF SERVICE**

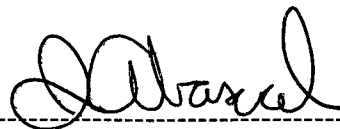
I Isidro Abascal-Montalvo, do declare that on this date, August 3, 2020, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI with Appendix on each party to the above proceeding, and on every person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follow:

Barbara Graves-Poller  
Assistant Corporation Counsel  
100 Church Street  
New York, NY 10007  
(212) 356-2275  
[bgraves@law.nyc.gov](mailto:bgraves@law.nyc.gov)

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct.

Executed on August 3, 2020.

  
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