

APPENDIX

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MANDATE

1a
Appendix A

S.D.N.Y. – N.Y.C.
20-cv-10942
Caproni, J.
Lehrburger, M.J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of August, two thousand twenty-two.

Towaki Komatsu,

Petitioner,

v.

22-603(L),
22-1546(Con)

City of New York, et al.,

Respondents,

NYPD Officer Rodriguez, et al.,

Defendants.

In November 2021, this Court entered a leave-to-file sanction against Petitioner. *See Komatsu v. The City of New York*, 2d Cir. 21-511, doc. 92. Petitioner, pro se, now moves for leave to file these two appeals. Upon due consideration, it is hereby ORDERED that the motions are DENIED because the appeals do not depart from Petitioner's "prior pattern of vexatious filings." *See In re Martin-Trigona*, 9 F.3d 226, 229 (2d Cir. 1993).

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk of Court

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

Catherine O'Hagan Wolfe



Catherine O'Hagan Wolfe

MANDATE ISSUED ON 08/30/2022

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 29th day of August, two thousand twenty-two.

Before: Richard J. Sullivan,
Circuit Judge.

Towaki Komatsu,

Petitioner,

ORDER

Docket No. 22-1337

v.

City of New York, NYPD Officer Saquoi Harris,
Shield #2350, NYPD Officer Steven Perez, Shield
23485, NYPD Officer Liang Lin, NYPD Officer
Robert Holmes, NYPD Lieutenant Frank Amill, NYPD
Captain Joseph Tompkins, NYPD Officer Michael
Arini, NYPD Officer Avdo Javorovac, NYPD Officer
Andrew Cummings, NYPD Officer Claudia Rodriguez,
NYPD Detective Brian Leo, (Retired), NYPD Officer
Ruben Farrell, Shield #21272, NYPD Officer John
Avellino, Shield #26918,

Respondents.

Petitioner moves to recall the mandate, to reinstate the appeal, and for leave to appeal.

IT IS HEREBY ORDERED that the motions to recall the mandate and reinstate the appeal are DENIED. The motion for leave to file is DENIED as moot.

For the Court:

Catherine O'Hagan Wolfe,
Clerk of Court

The block contains a handwritten signature, "Catherine O'Hagan Wolfe", written in cursive. The signature is positioned over a circular official seal of the United States Court of Appeals for the Second Circuit. The seal features the words "UNITED STATES" at the top, "SECOND CIRCUIT" in the center, and "NEW YORK" at the bottom, separated by small stars.

Appendix C

06/24/2022	<input type="checkbox"/>	<u>10</u>	LETTER, on behalf of Respondent Frank Amill, Michael Arini, John Avellino, City of New York, Andrew Cummings, Ruben Farrell, Saquoi Harris, Robert Holmes, Avdo Javorovac, Brian Leo, Liang Lin, Steven Perez, Claudia Rodriguez and Joseph Tompkins, The New York City Law Department respectfully requests that it no longer be identified as counsel for NYPD Officer John Avellino on the docket for this appeal, as it did not enter an appearance on his behalf below. RECEIVED. Service date 06/23/2022 by US mail.[3337661] [22-1337] [Entered: 06/24/2022 10:42 AM]
		2 pg, 314.12 KB	
07/08/2022	<input type="checkbox"/>	<u>14</u>	NEW CASE MANAGER, Priscilla Maldonado, copy to pro se petitioner, ASSIGNED.[3344751] [22-1337] [Entered: 07/08/2022 02:32 PM]
		1 pg, 88.78 KB	
07/19/2022	<input type="checkbox"/>	<u>18</u>	NEW CASE MANAGER, Khadijah Young, ASSIGNED.[3350399] [22-1337] [Entered: 07/19/2022 03:41 PM]
		1 pg, 88.71 KB	
07/19/2022	<input type="checkbox"/>	<u>19</u>	ORDER, [4] appeal dismissed for Petitioner Towaki Komatsu failure to file a motion for leave to file, EFFECTIVE. [3350410] [22-1337] [Entered: 07/19/2022 03:46 PM]
07/27/2022	<input type="checkbox"/>	<u>21</u>	UNDELIVERABLE MAIL, on behalf of Petitioner Towaki Komatsu (vacant) to USCA from USPS, RECEIVED.[3355999] [22-1337] [Entered: 07/28/2022 01:18 PM]
		11 pg, 436.48 KB	
08/09/2022	<input type="checkbox"/>	<u>22</u>	CERTIFIED COPY OF ORDER, dated 06/23/2022, determining the appeal to SDNY, copy to pro se, ISSUED.[Mandate][3362557] [22-1337] [Entered: 08/09/2022 05:08 PM]
		2 pg, 748.73 KB	
08/17/2022	<input type="checkbox"/>	<u>23</u>	MOTION, to recall mandate, to reinstate appeal, for leave to appeal, on behalf of Petitioner Towaki Komatsu, FILED. Service date 08/16/2022 by email.[3366844] [22-1337] [Entered: 08/17/2022 02:04 PM]
		13 pg, 484.3 KB	
08/29/2022	<input type="checkbox"/>	<u>27</u>	MOTION ORDER, denying motion to recall mandate [23] filed by Petitioner Towaki Komatsu; denying motion to reinstate appeal [23] filed by Petitioner Towaki Komatsu; denying as moot motion for leave to appeal [23] filed by Petitioner Towaki Komatsu, by RJS, copy to pro se, FILED. [3373203][27] [22-1337] [Entered: 08/29/2022 01:50 PM]
		1 pg, 152.13 KB	

**UNITED STATES COURT OF APPEALS
FOR THE
SECOND CIRCUIT**

At a Stated Term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 23rd day of June, two thousand twenty-two,

Towaki Komatsu,

Petitioner,

v.

City of New York, NYPD Officer Saquai Harris, Shield #2350, NYPD Officer Steven Perez, Shield 23485, NYPD Officer Liang Lin, NYPD Officer Robert Holmes, NYPD Lieutenant Frank Amill, NYPD Captain Joseph Tompkins, NYPD Officer Michael Arini, NYPD Officer Avdo Javorovac, NYPD Officer Andrew Cummings, NYPD Officer Claudia Rodriguez, NYPD Detective Brian Leo, (Retired), NYPD Officer Ruben Farrell, Shield #21272, NYPD Officer John Avellino, Shield #26918,

Respondents,

NYPD Officer Rodriguez, NYPD Steve Ortiz, NYPD Jeffrey Peattie, NYPD Matthew Pereira, NYPD Michael Dano, NYPD Andrew Benjamin, Alexander Opoku-Agyemang, Judith Le, Jonathan Darche, Bill De Blasio, Lawrence Byrne, Jr., James O'Neil, Bronx Criminal Court Judge Jeffrey Zimmerman, Tara Collins, Neelam Chhikara, Alana Brady, Donovan Richards, United States Marshals Service, NYPD Jane Doe 1, NYPD John Doe 1, NYPD John Doe 2, NYPD John Doe 3, NYPD John Doe 4, NYPD John Doe 5, NYPD John Doe 6, NYPD John Doe 7, Darcel Clark,

Defendants.

ORDER

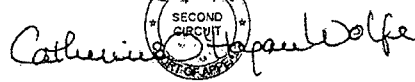

Docket No. 22-1337

On November 03, 2021 this Court entered an order in *Komatsu v. City of New York*, 21-511 (L), 21-1111 (Con), 21-1495 (Con), 21-1661 (Con) requiring appellant to file a motion seeking leave of this Court prior to filing any future appeals.

A notice of appeal in the above referenced case was filed. The Court has no record that appellant sought the Court's permission to appeal prior to filing the notice of appeal. IT IS HEREBY ORDERED that this case is dismissed effective July 14, 2022 unless a motion seeking leave of this Court is filed by that date.

For The Court:

Catherine O'Hagan Wolfe,
Clerk of Court

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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

20-CV-10942 (VEC)

ORDER ADOPTING
REPORT &
RECOMMENDATION

VALERIE CAPRONI, United States District Judge:

WHEREAS on December 25, 2020, Towaki Komatsu, proceeding *pro se*, filed a complaint against the City of New York, New York Police Department ("NYPD") officers, and others arising from an incident that occurred in December 2017, Compl., Dkt. 2;

WHEREAS on April 14, 2021, the Court referred this matter to Magistrate Judge Lehrburger for general pretrial management and for the preparation of reports and recommendations on any dispositive motions, Order, Dkt. 17;

WHEREAS on October 25, 2021, Plaintiff filed a Second Amended Complaint ("SAC"), which is the operative complaint in this matter, SAC, Dkt. 151;

WHEREAS Plaintiff alleges 31 causes of action, including false arrest, excessive force, and malicious prosecution, *id.*;

WHEREAS Plaintiff has repeatedly failed to comply with Court orders, as detailed by the Undersigned and Judge Lehrburger on multiple occasions, *see e.g.*, Orders, Dkts. 79, 101, 115, 120, 214; *see generally* R&R, Dkt. 283 at 3–11;

WHEREAS Defendants asked Plaintiff to provide them with a signed HIPAA medical release so that they could obtain medical records from St. Barnabas Hospital covering the period

following the December 2017 incident that is at the heart of this lawsuit, Request, Dkt. 113; Mot., Dkt. 207;

WHEREAS Plaintiff has refused to provide the release, despite being ordered to do so by Judge Lehrburger, Order, Dkt. 222; *see also* Order, Dkt. 224 (overruling Plaintiff's objection to Judge Lehrburger's order); Order, Dkt. 232 (denying reconsideration of the order); Order, Dkt. 234 (denying Plaintiff's request to certify the issue for interlocutory appeal);

WHEREAS Plaintiff has been warned repeatedly that failure to comply with Court orders, including those related to the HIPAA medical release, will result in the dismissal of his case, *see e.g.*, Orders, Dkts. 120, 252 at 27, 214, 222;

WHEREAS on January 18, 2022, Defendants moved to dismiss the SAC, arguing that Plaintiff's failure to provide the HIPAA medical release justified dismissal pursuant to Rules 37(b)(2)(A) and 41(b) of the Federal Rules of Civil Procedure, Mot., Dkt. 236;

WHEREAS Plaintiff filed numerous responses to the motion to dismiss, *see e.g.*, Letters, Dkts. 237, 238, 239, 241, 276;

WHEREAS on April 21, 2022, Judge Lehrburger entered a thorough, well-reasoned R&R, recommending that the Court grant Defendants' motion to dismiss and that the case be dismissed with prejudice, R&R, Dkt. 283;

WHEREAS in the R&R, Judge Lehrburger notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72, they had fourteen days to file written objections to the R&R's findings, *id.* at 25;

WHEREAS after receiving an extension of his time to file objections, *see* Orders, Dkts. 294, 303, on May 10, 2022, Plaintiff filed a 169-page document with an additional 33 pages of exhibits, which Plaintiff represented constituted his objections to the R&R, Objections, Dkt. 310;

WHEREAS on May 20, 2022, Defendants responded to Plaintiff's objections, Resp., Dkt. 311;

WHEREAS in reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1)(C);

WHEREAS when specific objections are made to the R&R, "[t]he district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to," Fed. R. Civ. P. 72(b)(3); *United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997);

WHEREAS "[o]bjections to a Report and Recommendation are to be specific and are to address only those portions of the proposed findings to which the party objects," *Pineda v. Masonry Constr., Inc.*, 831 F. Supp. 2d 666, 671 (S.D.N.Y. 2011) (cleaned up); *see also Andrews v. City of New York*, No. 19-CV-5622, 2022 WL 1711680, at *2 (S.D.N.Y. May 27, 2022) (finding that when "objections are not specific to . . . [the] R&R" or "otherwise irrelevant," they "do not merit *de novo* review");

WHEREAS most of Plaintiff's objections are entirely irrelevant to Judge Lehrburger's findings in his R&R, *see e.g.*, Objections, Dkt. 310 at 4–5, 12–14, 23, 29–32, 36, 57, 63–64, 67, 72–73, 80–81, 101–02, 121, 137, 139–40, 148, 152, 163–69 (discussing his other cases, background information about his life, and unrelated issues pertaining to the background and procedural history of this case); *id.* at 2–3, 8, 15, 34–35, 47, 49, 50–53, 57–59, 62, 72, 74–75, 78–79, 87–88, 95, 108, 134–39, 141, 146, 149, 150–51, 154–56, 159, 161–63 (asserting that Judge Lehrburger and the Undersigned are biased against him and otherwise maligning the judiciary); *id.* at 5–8, 15, 18, 24–25, 30–31, 44, 47, 54, 66–69, 138, 146, 151, 161 (attempting to justify Plaintiff's own sanctionable behavior by contending that he was provoked or retaliated against); *id.* at 70–72 (arguing that Plaintiff has a right to use obscene language in court filings

despite Judge Lehrburger expressly stating, *see* R&R, Dkt. 283 at 5 n.1, that his findings and recommendations were not based on Plaintiff's use of disrespectful and foul language);

WHEREAS where objections are "merely perfunctory responses argued in an attempt to . . . rehash[] . . . the same arguments set forth in the original papers," a "district court need only find that there is no clear error on the face of the record in order to accept the Report and Recommendation," *Phillips v. Reed Grp., Ltd.*, 955 F. Supp. 2d 201, 211 (S.D.N.Y. 2013) (cleaned up);

WHEREAS even where Plaintiff's objections are related, albeit tangentially, to Judge Lehrburger's R&R findings, they are simply rehashed arguments that were already considered and rejected by Judge Lehrburger and the Undersigned, *compare* Objections, Dkt. 310 at 8–12, 18, 37, 39–40, 46, 79–80, 83–84, 87, 89–100, 103–23, 137–38, 142–45, 153, 156–58 (restating facts and legal conclusions previously alleged about the case, including that Judge Lehrburger erred in directing Plaintiff to submit medical records) *with* Plaintiff Letters, Dkts. 72, 133, 138, 151, 154, 224–25, 229, 237, 259, 279–80, 297, 298 (articulating the same arguments) *and* Orders, Dkts. 106, 137, 140, 149, 159, 222, 226, 232, 234, 262, 273, 300, 305 (acknowledging and rejecting those arguments); *compare* Objections, Dkt. 310 at 5, 6, 19–22, 26–28, 33–34, 45, 66–67, 68–71, 88, 137, 138–39, 145, 146, 148–49, 156 (arguing that the Court's prior orders imposing filing restrictions violated Plaintiff's rights protected by the First and Fourteenth Amendments) *with* Letters, Dkts. 58, 142, 156, 188, 202, 210, 229, 279–80, 288, 291 (articulating the same arguments) *and* Orders, Dkts. 61, 159, 191, 204, 212, 232, 281, 290, 294 (rejecting those arguments);

WHEREAS given that all of Plaintiff's objections are either irrelevant or repetitive, the Court reviews the R&R for clear error;

WHEREAS an error is clear when the reviewing court is left with a “definite and firm conviction that a mistake has been committed,” *see Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002) (quoting *McAllister v. United States*, 348 U.S. 19, 20 (1954)); and

WHEREAS careful review of the R&R reveals that there is no clear error.

IT IS HEREBY ORDERED that the R&R is adopted in full, Defendants’ motion to dismiss is GRANTED, and this case is DISMISSED with prejudice.

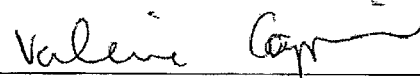
IT IS FURTHER ORDERED that Plaintiff’s letters, at docket entries 315, 316, 317, and 318, were filed in violation of the Court’s filing restrictions and are stricken. *See* Endorsement, Dkt. 281.

IT IS FURTHER ORDERED the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and, therefore, permission to proceed *in forma pauperis* for purposes of appeal is denied.

The Clerk of Court is respectfully directed to strike Plaintiff’s recent letters (Dkts. 315, 316, 317, and 318) from the docket. The Clerk is further directed to terminate all open motions, to close this case, to mail a copy of this Order to the *pro se* Plaintiff, and to note the mailing on the docket.

SO ORDERED.

Date: June 17, 2022
New York, NY



VALERIE CAPRONI
United States District Judge

CONSTITUTIONAL PROVISIONS AND OTHER MATTERS OF LAW INVOLVED

1. The First, Fourth, Fifth, and Fourteenth Amendment of the U.S. Constitution include the following relevant provisions:

- a) **First Amendment:** “Congress shall make no law... abridging the freedom of speech...the right of the people peaceably to assemble, and to petition the government for a redress of grievances”.
- b) **Fourth Amendment:** “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable...seizures, shall not be violated...but upon probable cause”
- c) **Fifth Amendment:** “No person shall be...deprived of life, liberty, or property, without due process of law; nor shall private property be taken...without just compensation.”
- d) **Fourteenth Amendment:** “No State shall make or enforce any law which shall abridge the privileges...of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

2. This petition largely stems from flagrant violations of the following canons that are presented in whole and/or in part that are from the Code of Conduct for U.S. Judges:

- a. **Canon 3(A)(1):**
“A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.”
- b. **Canon 3(A)(2):**
“A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all judicial proceedings.”
- c. **Canon 3(A)(3):**
“A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct by those subject to the judge’s control, including lawyers to the extent consistent with their role in the adversary process.”

d. **Canon 3(A)(4):**

A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law."

e. **Canon 3(B)(1):**

"A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel."

f. **Canon 3(B)(2):**

"A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene the Code if undertaken by the judge."

g. **Canon 3(B)(4):**

"(4) A judge should practice civility, by being patient, dignified, respectful, and courteous, in dealings with court personnel, including chambers staff. A judge should not engage in any form of harassment of court personnel. A judge should not retaliate against those who report misconduct. A judge should hold court personnel under the judge's direction to similar standards."

"Under this Canon, harassment encompasses a range of conduct having no legitimate role in the workplace, including harassment that constitutes discrimination on impermissible grounds and other abusive, oppressive, or inappropriate conduct directed at judicial employees or others. See Rules for Judicial-Conduct and Judicial-Disability Proceedings, Rule 4(a)(2) (providing that "cognizable misconduct includes: (A) engaging in unwanted, offensive, or abusive sexual conduct, including sexual harassment or assault; (B) treating litigants, attorneys, judicial employees, or others in a demonstrably egregious and hostile manner"

h. **Canon 3(B)(6):**

"Public confidence in the integrity and impartiality of the judiciary is promoted when judges take appropriate action based on reliable information of likely misconduct. Appropriate action depends on the circumstances, but the overarching goal of such action should be to prevent harm to those affected by the misconduct and to prevent recurrence."

3. The following text exists verbatim in the version of NYPD procedure number 212-123 that is effective as of 7/25/22 about the use of NYPD body-cameras:

- a. “Begin recording prior to arrival at incident location or prior to commencing any self-initiated police action.”
- b. “Record any interactions that escalate to become adversarial or may hold evidentiary value.”
- c. “When an individual is under arrest or otherwise in custody, immediately inquire if medical and/or psychological treatment is necessary. Ensure that BWC is activated when asking if medical and/or psychological treatment is necessary.”
- d. “Notify members of the public that an interaction is being recorded, as soon as reasonably practical, unless notification could compromise the safety of any person or impede an investigation.”
- e. “Record other official activities when, in the uniformed member’s judgment, it would be beneficial to record.”
- f. “Record continuously, until investigative, enforcement, or other police action is concluded.”
- g. “Conduct an investigation when notified that a member failed to record all or part of an encounter as mandated in step “4.””
 - i. “Make determination regarding the propriety of the circumstances surrounding the failure to record,”
 - ii. “Ensure that any resulting failure to record is documented in the uniformed member’s digital Activity Log, and”
 - iii. “Prepare and forward report on Typed Letterhead detailing the investigation, findings, and actions taken to the Chief of Risk Management Bureau, through channels.”

4. NYPD procedure number 212-11 is effective as of 5/24/22 and concerns investigative encounters by NYPD personnel in relation to requests for information, a common law right of inquiry, and level 3 stops. It contains the following relevant text verbatim about requests for information by NYPD personnel to members of the public for what the NYPD regards as level 1 encounters:

- a. "The uniformed member of the service must have an objective credible reason to approach the civilian."
- b. "A reason is objectively credible if it is based on more than a hunch or a whim."
- c. "Identify yourself as a police officer verbally and by displaying your shield in a conspicuous manner, if practicable."
- d. "DO NOT detain the person, use or threaten the use of force, or request consent to search."
- e. "The person may refuse to answer questions and/or walk or even run away."
- f. "Refusal to answer questions and/or walking or running away does not escalate the encounter"
- g. "At this level, the officer may not seek consent to search, may not use force, and may not create a situation (either by words or actions) where a reasonable person would not feel free to leave."
- h. "A person may be detained only if a properly conducted Level 1 or Level 2 encounter yields information to support a reasonable suspicion that the person committed, was committing, or was about to commit a felony or Penal Law misdemeanor."
- i. "The STOP REPORT is not prepared for Level 1 and Level 2 encounters, unless the encounter escalates to a Level 3 Terry Stop."

5. NYPD procedure number 221-13 is effective as of 6/1/16 and concerns mentally ill or emotionally disturbed persons. It contains the following relevant text verbatim:

- a. "UNDER NO CIRCUMSTANCES WILL AN EDP BE TRANSPORTED TO A POLICE FACILITY."
- b. "**DEFINITIONS** EMOTIONALLY DISTURBED PERSON (EDP) - A person who appears to be mentally ill or temporarily deranged and is conducting himself in a manner which a police officer reasonably believes is likely to result in serious injury to himself or others."

6. NYPD procedure number 208-03 is effective as of 5/24/22 and contains the following relevant text verbatim about processing by the NYPD for arrests:

"Advise prisoner, 18 years of age or older, of right to make three telephone calls without charge."

7. NYPD procedure number 208-09 is effective as of 5/10/22 and contains the following relevant text verbatim about the legal duty that NYPD personnel have prior to questioning a person taken into custody to advise such people of their constitutional rights:

- a. “Inform such person of the following constitutional rights (Miranda Warnings):”
 - i. “You have the right to remain silent and refuse to answer any questions. Do you understand?”
 - ii. “Anything you say may be used against you in a court of law. Do you understand?”
 - iii. “You have the right to consult an attorney before speaking to the police and to have an attorney present during any questioning now or in the future. Do you understand?”
 - iv. “If you cannot afford an attorney, one will be provided for you without cost. Do you understand?”
 - v. “If you do not have an attorney available, you have the right to remain silent until you have an opportunity to consult one. Do you understand?”
 - vi. “Now that I have advised you of your rights, are you willing to answer questions?”

8. NYPD procedure number 208-09 also states the following:

- a. “Cease interrogation if subject wants an attorney or wishes to remain silent.”
- b. “Contact attorney for person in custody.”

9. The following are relevant excerpts from NYPL §120.45 that addresses illegal stalking:

“A person is guilty of stalking in the fourth degree when he or she intentionally, and for no legitimate purpose, engages in a course of conduct directed at a specific person, and knows or reasonably should know that such conduct:

- 1. is likely to cause reasonable fear of material harm to the physical health, safety or property of such person, a member of such person's immediate family or a third party with whom such person is acquainted; or
- 2. causes material harm to the mental or emotional health of such person, where such conduct consists of following, telephoning or initiating communication or contact with such person, a member of such person's immediate family or a third party with whom such person is acquainted, and the actor was previously

| clearly informed to cease that conduct”

10. CPL §140.50(1) includes text that states that “a police officer may stop a person in a public place located within the geographical area of such officer's employment when he reasonably suspects 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, and may demand of him his name, address and an explanation of his conduct.” CPL §140.50(2) states the following:

“Any person who is a peace officer and who provides security services for any court of the unified court system may stop a person in or about the courthouse to which he is assigned when he reasonably suspects 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, and may demand of him his name, address and an explanation of his conduct.”

11. 28 U.S.C. §566(a) states the following:

“It is the primary role and mission of the United States Marshals Service to provide for the security and to obey, execute, and enforce all orders of the United States District Courts, the United States Courts of Appeals, the Court of International Trade, and the United States Tax Court, as provided by law.”

12. 28 U.S.C. §1651(a) states the following:

“The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”

13. 18 U.S.C. §401 states the following:

“A court of the United States shall have power to punish by fine or imprisonment, or both, at its discretion, such contempt of its authority, and none other, as—

- (1) Misbehavior of any person in its presence or so near thereto as to obstruct the administration of justice;
- (2) Misbehavior of any of its officers in their official transactions;
- (3) Disobedience or resistance to its lawful writ, process, order, rule, decree, or command.”

14. 41 C.F.R. §102-74.390 includes the following relevant terms:

All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property that -

- (a) Creates loud or unusual noise or a nuisance;
- (b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;
- (c) Otherwise impedes or disrupts the performance of official duties by Government employees; or
- (d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

15. Standing order number M10-468 was issued on 2/2/21 by U.S. District Judge Colleen McMahon while she then was the U.S. Chief District Judge for the Southern District of New York and was about precautions taken against Covid-19 inside of federal courthouses in New York City. That standing order is available at

[https://www.nysd.uscourts.gov/sites/default/files/2021-02/Standing Order on Entry 2.2.21.pdf](https://www.nysd.uscourts.gov/sites/default/files/2021-02/Standing%20Order%20on%20Entry%202.2.21.pdf)

16. 40 U.S.C. §6135 states the following:

“It is unlawful to parade, stand, or move in processions or assemblages in the Supreme Court Building or grounds, or to display in the Building and grounds a flag, banner, or device designed or adapted to bring into public notice a party, organization, or movement.”

17. 5 U.S.C. §552a(e)(7) states the following:

“Each agency that maintains a system of records shall—”... “maintain no record describing how any individual exercises rights guaranteed by the First Amendment unless expressly authorized by statute or by the individual about whom the record is maintained or unless pertinent to and within the scope of an authorized law enforcement activity”.

18. CPL§160.50(1) includes the following relevant provisions:

Order upon termination of criminal action in favor of the accused.

“Upon the termination of a criminal action or proceeding against a person in favor of such person”...the record of such action or proceeding shall be sealed and the clerk of the court wherein such criminal action or proceeding was terminated shall immediately notify the commissioner of the division of criminal justice services

and the heads of all appropriate police departments and other law enforcement agencies that the action has been terminated in favor of the accused”.

“Upon receipt of notification of such termination and sealing:

(a) every photograph of such person and photographic plate or proof, and all palmprints and fingerprints taken or made of such person pursuant to the provisions of this article in regard to the action or proceeding terminated”...“and all duplicates and copies thereof”... “shall forthwith be, at the discretion of the recipient agency, either destroyed or returned to such person, or to the attorney who represented such person at the time of the termination of the action or proceeding, at the address given by such person or attorney during the action or proceeding, by the division of criminal justice services and by any police department or law enforcement agency having any such photograph, photographic plate or proof, palmprint or fingerprints in its possession or under its control”.

19. New York State Civil Rights Law §50¹ states the following:

§ 50. Right of privacy. A person, firm or corporation that uses for advertising purposes, or for the purposes of trade, the name, portrait or picture of any living person without having first obtained the written consent of such person, or if a minor of his or her parent or guardian, is guilty of a misdemeanor.

20. New York State Civil Rights Law §51 includes the following terms:

Action for injunction and for damages. Any person whose name, portrait, picture or voice is used within this state for advertising purposes or for the purposes of trade without the written consent first obtained as above provided may maintain an equitable action in the supreme court of this state against the person, firm or corporation so using his name, portrait, picture or voice, to prevent and restrain the use thereof; and may also sue and recover damages for any injuries sustained by reason of such use and if the defendant shall have knowingly used such person's name, portrait, picture or voice in such manner as is forbidden or declared to be unlawful by section fifty of this article, the jury, in its discretion, may award exemplary damages.

21. 18 U.S.C. §1507 states the following:

“Whoever, with the intent of interfering with, obstructing, or impeding the administration of justice, or with the intent of influencing any judge, juror, witness, or court officer, in the discharge of his duty, pickets or parades in or near a building housing a court of the United States, or in or near a building or residence occupied or used by such judge, juror, witness, or court officer, or with such intent uses any sound-truck or similar device or

¹ This law includes “advertising” and that is defined by the Merriam Webster dictionary that is available on the Internet at <https://www.merriam-webster.com/dictionary/advertising> as “the action of calling something to the attention of the public”.

resorts to any other demonstration in or near any such building or residence, shall be fined under this title or imprisoned not more than one year, or both.

Nothing in this section shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt.”

22. 18 U.S.C. §1509 states the following:

“Whoever, by threats or force, willfully prevents, obstructs, impedes, or interferes with, or willfully attempts to prevent, obstruct, impede, or interfere with, the due exercise of rights or the performance of duties under any order, judgment, or decree of a court of the United States, shall be fined under this title or imprisoned not more than one year, or both.

No injunctive or other civil relief against the conduct made criminal by this section shall be denied on the ground that such conduct is a crime.”

23. 18 U.S.C. §245(b)(1)(B) includes the following provisions:

“Whoever, whether or not acting under color of law, by force or threat of force willfully injures, intimidates or interferes with, or attempts to injure, intimidate or interfere with—
 ”... “any person because he is or has been, or in order to intimidate such person or any other person or any class of persons from—”... “participating in or enjoying any benefit, service, privilege, program, facility, or activity provided or administered by the United States;”... “shall be fined under this title, or imprisoned not more than one year, or both”

24. 18 U.S.C. §1001(a) includes the following relevant terms:

“Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

- (1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
- (2) makes any materially false, fictitious, or fraudulent statement or representation; or
- (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

shall be fined under this title, imprisoned not more than 5 years”

25. 18 U.S.C. §1512(a) includes the following relevant provisions:

(2) Whoever uses physical force or the threat of physical force against any person, or attempts to do so, with intent to—

- (A) influence, delay, or prevent the testimony of any person in an official

proceeding;

(B) cause or induce any person to—

(i) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(ii) alter, destroy, mutilate, or conceal an object with intent to impair the integrity or availability of the object for use in an official proceeding;

(iii) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(iv) be absent from an official proceeding to which that person has been summoned by legal process; or

(C) hinder, delay, or prevent the communication to a law enforcement officer or judge of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation, supervised release, parole, or release pending judicial proceedings;

shall be punished as provided in paragraph (3).

26. 18 U.S.C. §1512(b) includes the following relevant provisions:

Whoever knowingly uses intimidation, threatens, or corruptly persuades another person, or attempts to do so, or engages in misleading conduct toward another person, with intent to—

(1) influence, delay, or prevent the testimony of any person in an official proceeding;

(2) cause or induce any person to—

(A) withhold testimony, or withhold a record, document, or other object, from an official proceeding;

(B) alter, destroy, mutilate, or conceal an object with intent to impair the object's integrity or availability for use in an official proceeding;

(C) evade legal process summoning that person to appear as a witness, or to produce a record, document, or other object, in an official proceeding; or

(D) be absent from an official proceeding to which such person has been summoned by legal process; or

(3) hinder, delay, or prevent the communication to a law enforcement officer or judge

of the United States of information relating to the commission or possible commission of a Federal offense or a violation of conditions of probation [1] supervised release,,[1] parole, or release pending judicial proceedings;

shall be fined under this title or imprisoned not more than 20 years, or both.

27. 18 U.S.C. §1512(c) states the following:

“Whoever corruptly—

(1) alters, destroys, mutilates, or conceals a record, document, or other object, or attempts to do so, with the intent to impair the object’s integrity or availability for use in an official proceeding; or

(2) otherwise obstructs, influences, or impedes any official proceeding, or attempts to do so,

shall be fined under this title or imprisoned not more than 20 years, or both.”

28. 18 U.S.C. §1512(d) includes the following relevant provisions:

Whoever intentionally harasses another person and thereby hinders, delays, prevents, or dissuades any person from—

(1) attending or testifying in an official proceeding;

or attempts to do so, shall be fined under this title or imprisoned not more than 3 years, or both.

29. 18 U.S.C. §1513(e) and (f) state the following:

“(e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both.

(f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy.”

30. 18 U.S.C. §1519 states the following:

“Whoever knowingly alters, destroys, mutilates, conceals, covers up, falsifies, or makes a false entry in any record, document, or tangible object with the intent to impede, obstruct, or influence the investigation or proper administration of any matter within the

jurisdiction of any department or agency of the United States or any case filed under title 11, or in relation to or contemplation of any such matter or case, shall be fined under this title, imprisoned not more than 20 years, or both.”

31. A relevant part of 28 U.S.C. §2201 states that “any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.”

32. 28 U.S.C. §2202 states the following:

“Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.”

33. FRCP Rule 1 states the following about the Federal Rules of Civil Procedure:

“These rules govern the procedure in all civil actions and proceedings in the United States district courts, except as stated in Rule 81. They should be construed, administered, and employed by the court and the parties to secure the just, speedy, and inexpensive determination of every action and proceeding.”

34. FRAP Rule 4 includes the following relevant text about my right to have pursued an appeal to the Second Circuit in response to the dismissal of the DC:

“(a) APPEAL IN A CIVIL CASE.

(1) Time for Filing a Notice of Appeal.

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.”

35. FRAP Rule 34(a)(2) includes the following relevant text:

“Oral argument must be allowed in every case unless a panel of three judges who have examined the briefs and record unanimously agrees that oral argument is unnecessary for any of the following reasons:

(A) the appeal is frivolous;

(B) the dispositive issue or issues have been authoritatively decided; or

(C) the facts and legal arguments are adequately presented in the briefs and record, and the decisional process would not be significantly aided by oral argument.”

36. The following is a relevant part of 28 U.S.C. §1291:

“The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States”

37. 42 U.S.C. §1985(3) includes the following relevant provisions:

“If two or more persons in any State or Territory conspire...or go on the premises of another, for the purpose of depriving, either directly or indirectly, any person...of the equal protection of the laws, or of equal privileges...under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws;...in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.”

38. 42 U.S.C. §1986 includes the following relevant provisions:

“Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action...But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.”

39. New York State Public Officer Law §30 contains the following relevant terms:

“Every office shall be vacant upon the happening of one of the following events before the expiration of the term thereof:”...

“f. The entry of a judgment or order of a court of competent jurisdiction declaring him to be incompetent;

g. The judgment of a court, declaring void his election or appointment, or that his office is forfeited or vacant;”

40. NYC Charter §1116 states the following:

- a. Any council member or other officer or employee of the city who shall wilfully violate or evade any provision of law relating to such officer's office or employment, or commit any fraud upon the city, or convert any of the public property to such officer's own use, or knowingly permit any other person so to convert it or by gross or culpable neglect of duty allow the same to be lost to the city, shall be deemed guilty of a misdemeanor and in addition to the penalties imposed by law and on conviction shall forfeit such office or employment, and be excluded forever after from receiving or holding any office or employment under the city government.
- b. Any officer or employee of the city or of any city agency who shall knowingly make a false or deceptive report or statement in the course of duty shall be guilty of a misdemeanor and, upon conviction, forfeit such office or employment.

41. NYC Charter §435(a) includes the following relevant text:

“The police department and force shall have the power and it shall be their duty to preserve the public peace, prevent crime, detect and arrest offenders, suppress riots, mobs and insurrections, disperse unlawful or dangerous assemblages and assemblages which obstruct the free passage of public streets, sidewalks, parks and places; protect the rights of persons and property, guard the public health,”... “remove all nuisances in the public streets, parks and places;”... “enforce and prevent the violation of all laws and ordinances in force in the city; and for these purposes to arrest all persons guilty of violating any law or ordinance for the suppression or punishment of crimes or offenses.”

42. New York Penal Law §240.20 includes the following relevant text:

“A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof:”

1. “He obstructs vehicular or pedestrian traffic; or”
2. “Without lawful authority, he disturbs any lawful assembly or meeting of persons; or”
3. “He engages in fighting or in violent, tumultuous or threatening behavior; or”
4. “He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose.”

43. New York Penal Law §240.26 includes the following relevant text:
 - a. “A person is guilty of harassment in the second degree when, with intent to harass, annoy or alarm another person:”
 - i. “He or she strikes, shoves, kicks or otherwise subjects such other person to physical contact, or attempts or threatens to do the same; or”
 - ii. “He or she follows a person in or about a public place or places; or”
 - iii. “He or she engages in a course of conduct or repeatedly commits acts which alarm or seriously annoy such other person and which serve no legitimate purpose.”
44. New York Mental Hygiene Law §9.41(a) includes the following relevant text:

“Any peace officer, when acting pursuant to his or her special duties, or police officer who is a member of the state police or of an authorized police department or force or of a sheriff's department may take into custody any person who appears to be mentally ill and is conducting himself or herself in a manner which is likely to result in serious harm to the person or others.”