CASREF, PAW, REF_TRL

U.S. District Court
Southern District of Florida (Ft. Lauderdale)
CIVIL DOCKET FOR CASE #: 0:09-cv-61624-MGC

Martinez v. Broward County Sheriffs Office
Assigned to: Judge Marcia G. Cooke
Referred to: Magistrate Judge Patrick A. White
Cause: 28:1983 Civil Rights

Date Filed: 10/13/2009
Jury Demand: Plaintiff
Nature of Suit: 550 Prisoner: Civil Rights
Jurisdiction: Federal Question

Plaintiff

Rodolfo Orlando Martinez

represented by **Rodolfo Orlando Martinez**
Reg. No. 73382-004
Federal Correctional Institution
PO Box 725
Inmate Mail/Parcels
Edgefield, SC 29824
PRO SE

V.

Defendant

Broward County Sheriffs Office
TERMINATED: 08/16/2010

Defendant

Najmy Halabi
individually

represented by **Alain E. Boileau**
McIntosh Schwartz, P.L.
888 SE 3rd Avenue
Suite 500
Fort Lauderdale, FL 33316
954-523-5885
Fax: 954-760-9531
Email: aeb@mcintoshschwartz.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Hunt Schwartz
McIntosh Schwartz, P.L.
888 SE 3rd Avenue
Suite 500
Fort Lauderdale, FL 33335-9002
954-523-5885
Fax: 954-760-9531
Email: rhs@mcintoshschwartz.com
ATTORNEY TO BE NOTICED

Defendant

Deputy Najmy Halabi
in his official capacity as Broward Sheriff Deputy

represented by **Robert Hunt Schwartz**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Alain E. Boileau
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Tim Concannon
Sgt. individually

represented by **Robert Hunt Schwartz**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Alain E. Boileau
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sgt Tim Concannon
in his official capacity

represented by **Alain E. Boileau**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Hunt Schwartz
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Christopher Hickox
individually

represented by **Robert Hunt Schwartz**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Alain E. Boileau
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Deputy Christopher Hickox
in his official capacity as Broward Sheriff deputy

represented by **Alain E. Boileau**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Hunt Schwartz
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Andrew Cardarelli
individually

represented by **Robert Hunt Schwartz**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Alain E. Boileau
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sheriff Deputy Andrew Cardarelli
in his official capacity as Broward Sheriff Deputy

represented by **Alain E. Boileau**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Robert Hunt Schwartz
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Sheriff of Broward County
Al Lamberti in his official capacity
TERMINATED: 08/16/2010

Defendant

City of Broward County
TERMINATED: 08/16/2010

Date Filed	#	Docket Text
10/13/2009	1	COMPLAINT against Broward County Sheriffs Office. Filing fee $ 350.00. IFP Filed, filed by Rodolfo Orlando Martinez.(mmo) Modified event on 6/9/2010 (yc). (Entered: 10/13/2009)
10/13/2009	2	MOTION for Leave to Proceed in forma pauperis by Rodolfo Orlando Martinez. (mmo) (Entered: 10/13/2009)
10/13/2009	3	Clerks Notice Referring Case to Magistrate Judge Patrick A White. (mmo) (Entered: 10/13/2009)
11/05/2009	4	MOTION for Disclosure of Evidence in Discovery by Rodolfo Orlando Martinez. (tas) (Entered: 11/05/2009)
11/05/2009	5	MOTION for Leave to Proceed in forma pauperis by Rodolfo Orlando Martinez. (tas) (Entered: 11/05/2009)
11/05/2009	6	MOTION to Furnish all Parties with a Copy of Civil Complaint by Rodolfo Orlando Martinez. Responses due by 11/23/2009 (tas) (Entered: 11/05/2009)

11/09/2009	7	ORDER denying 4 Motion for Disclosure of evidence as premature, there are no parties in this suit who have been served at this time; denying 6 Motion to Appoint Special Process Server without prejudice. The plaintiff will be ordered to file a more detailed in forma pauperis motion to include his six month prison account statement by separate order. This is a paperless order.. Signed by Magistrate Judge Patrick A. White on 11/9/2009. (cz) (Entered: 11/09/2009)
11/10/2009	8	ORDER denying without prejuice 5 Motion for Leave to Proceed in forma pauperis and requiring a more detailed financial affidavit. Signed by Magistrate Judge Patrick A. White on 11/9/2009. (Attachments: # 1 Affidavit IFP) (tw) (Entered: 11/10/2009)
11/10/2009	9	ORDER OF INSTRUCTIONS TO PRO SE CIVIL RIGHTS LITIGANTS. Signed by Magistrate Judge Patrick A. White on 11/9/2009. (tw) (Entered: 11/10/2009)
12/23/2009	10	NOTICE of Change of Address by Rodolfo Orlando Martinez (System Updated) (gme) (Entered: 12/28/2009)
12/28/2009	11	NOTICE of filing application to proceed in forma pauperis by Rodolfo Orlando Martinez (dm) (Entered: 12/29/2009)
12/28/2009	12	Application To Proceed in forma pauperis by Rodolfo Orlando Martinez. (dm) (Entered: 12/29/2009)
01/05/2010	13	ORDER that on or before January 29, 2010, the plaintiff shall file an amended complaint in this case; granting 12 Motion for Leave to Proceed in forma pauperis; granting 2 Motion for Leave to Proceed in forma pauperis. Signed by Magistrate Judge Patrick A. White on 1/5/2010. (br) (Entered: 01/05/2010)
01/07/2010	14	ORDER Permitting Plaintiff to Proceed without Prepayment of Filing Fee but Establishing Debt to Clerk of $350.00. Signed by Magistrate Judge Patrick A. White on 1/7/2010. (br) (Entered: 01/07/2010)
02/10/2010	15	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint filed by Rodolfo Orlando Martinez. Recommending that this complaint be dismissed without prejudice for lack of prosecution. Objections to R&R due by 3/1/2010. Signed by Magistrate Judge Patrick A. White on 2/10/2010. (tw) (Entered: 02/10/2010)
02/16/2010	16	NOTICE of Inquiry by Rodolfo Orlando Martinez (copy of docket sheet mailed on 2/17/10) (ail) (Entered: 02/17/2010)
02/24/2010	17	Clerk's Notice of Undeliverable Mail re 14 Order Requiring Payment of Fee by Installment. US Mail returned for: Return to sender no longer at this address. unable to forward. *The Court has not located an updated address for this party. After two unsuccessful noticing attempts, notices from the Court will no longer be sent to this party in this case until a correct address is provided.* **Rodolfo Orlando Martinez (rb) (Entered: 02/24/2010)**
02/24/2010	18	OBJECTIONS to 15 Report and Recommendations by Rodolfo Orlando Martinez. (tb) (Entered: 02/25/2010)
02/24/2010	19	MOTION for Hearing re 15 REPORT AND RECOMMENDATIONS on 42

		USC 1983 case re 1 Complaint filed by Rodolfo Orlando Martinez Recommending that thiscomplaint be dismissed without prejudice for lack of prosecution.REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint filed by Rodolfo Orlando Martinez Recommending that thiscomplaint be dismissed without prejudice for lack of prosecution.. (tb) (Entered: 02/25/2010)
04/12/2010	21	ORDER extending time for Plaintiff to file amended complaint and denying 19 Motion for Hearing. The Plaintiff must file his amended complaint on or before May 14, 2010. Signed by Judge Marcia G. Cooke on 4/12/2010. (rss) (Entered: 04/12/2010)
05/04/2010	22	AMENDED COMPLAINT against Broward County Sheriffs Office, Najmy Halabi, Najmy Halabi, Tim Concannon, Tim Concannon, Christopher Hickox, Christopher Hickox, Andrew Cardarelli, Andrew Cardarelli, Sheriff of Broward County, City of Broward County, filed by Rodolfo Orlando Martinez. (mg) (Entered: 05/05/2010)
05/07/2010	23	ORDER REFERRING AMENDED COMPLAINT to Magistrate Judge Patrick A. White. Signed by Judge Marcia G. Cooke on 5/6/10. (tm) (Entered: 05/07/2010)
05/10/2010	24	REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint filed by Rodolfo Orlando Martinez. Recommending 1. The claims against Broward Sheriff Al Lamberti, the Broward Sheriffs Office and Broward County be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted. 2. The claim of use of excessive force by Defendants Halabi, Concannon, Hickox and Cardarelli proceed. Service will be ordered upon these defendants by separate order. Objections to R&R due by 5/27/2010. Signed by Magistrate Judge Patrick A. White on 5/10/2010. (tw) (Entered: 05/10/2010)
05/10/2010	25	ORDER RE SERVICE OF PROCESS REQUIRING PERSONAL SERVICE UPON AND INDIVIDUAL.The United States Marshal shallserve a copy of the complaint and appropriate summons upon:Deputy Najmy Halabi, Broward County Sheriffs Off., 2601 West Broward Boulevard, Fort Lauderdale, FL 33311, Sgt. Tim Concannon, Broward County Sheriffs Off., 2601 West Broward Boulevard, Fort Lauderdale, FL 33311, Deputy Christopher Hickox, Broward County Sheriffs Off., 2601 West Broward Boulevard, Fort Lauderdale, FL 33311 and Deputy Andrew Cardarelli, Broward County Sheriffs Off., 2601 West Broward Boulevard, Fort Lauderdale,FL 33311. Signed by Magistrate Judge Patrick A. White on 5/10/2010. (tw) (Entered: 05/10/2010)
05/14/2010	26	Summons Issued as to Andrew Cardarelli. (br) (Entered: 05/14/2010)
05/14/2010	27	Summons Issued as to Tim Concannon. (br) (Entered: 05/14/2010)
05/14/2010	28	Summons Issued as to Najmy Halabi. (br) (Entered: 05/14/2010)
05/14/2010	29	Summons Issued as to Christopher Hickox(in his official capacity as Broward Sheriff deputy). (br) (Entered: 05/14/2010)

05/17/2010	30	NOTICE of Change of Address by Rodolfo Orlando Martinez (mg) (Entered: 05/17/2010)
06/01/2010	31	MOTION for Extension of Time to File Response/Reply as to 24 REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint by Rodolfo Orlando Martinez. (mg) (Entered: 06/01/2010)
06/02/2010	32	Clerk's Notice of mailing a copy of DE#24 pursuant to DE# 31 (dgj) (Entered: 06/02/2010)
06/08/2010	33	ORDER granting 31 Motion for Extension of Time to File Objections re 24 REPORT AND RECOMMENDATIONS on 42 USC 1983 case re 1 Complaint filed by Rodolfo Orlando Martinez Recommending 1. The claims against Broward Sheriff Al Lamberti, the Broward Sheriffs Office and Broward County be dismissed pursuant to 28 U.S.C. §1915(e)(2)(B)(ii) for failure to state a claim upon which relief may be granted, etc. Responses due by 6/22/2010. Signed by Judge Marcia G. Cooke on 6/8/10. (tm) Modified text to remove duplicate text on 6/9/2010 (dgj). (Entered: 06/08/2010)
06/16/2010	34	SUMMONS (Affidavit) Returned Executed Najmy Halabi served on 6/9/2010, answer due 6/30/2010. (mg) (Entered: 06/16/2010)
06/16/2010	35	SUMMONS (Affidavit) Returned Executed Andrew Cardarelli served on 6/9/2010, answer due 6/30/2010. (mg) (Entered: 06/16/2010)
06/16/2010	36	SUMMONS (Affidavit) Returned Executed Christopher Hickox(individually) served on 6/9/2010, answer due 6/30/2010. (mg) (Entered: 06/16/2010)
06/16/2010	37	SUMMONS (Affidavit) Returned Executed Tim Concannon served on 6/9/2010, answer due 6/30/2010. (mg) (Entered: 06/16/2010)
06/16/2010	38	SUMMONS (Affidavit) Returned Executed Tim Concannon served on 6/9/2010, answer due 6/30/2010. (mg) (Entered: 06/16/2010)
06/16/2010	39	ACKNOWLEDGMENT OF SERVICE Executed as to 25 Order Re Service of Process Redquiring Personal Service Upon an Individual (mg) (Entered: 06/16/2010)
06/24/2010	40	MOTION for Extension of Time to File Objections to R & R by Rodolfo Orlando Martinez. (mg) (Entered: 06/24/2010)
06/24/2010	41	NOTICE of Attorney Appearance by Alain E. Boileau on behalf of Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(in his official capacity as Broward Sheriff deputy) (Boileau, Alain) (Entered: 06/24/2010)
06/24/2010	42	NOTICE of Attorney Appearance by Robert Hunt Schwartz on behalf of Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox (individually) (Schwartz, Robert) (Entered: 06/24/2010)
06/24/2010	43	MOTION to Appoint CJA Counsel by Rodolfo Orlando Martinez. Responses due by 7/12/2010 (ls) (Entered: 06/25/2010)
06/28/2010	44	ANSWER and Affirmative Defenses to Amended Complaint 22 by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(individually). (Boileau, Alain) Modified text on 6/29/2010 (asl). (Entered: 06/28/2010)

06/29/2010	45	ORDER denying 43 Motion to Appoint Counsel. Signed by Magistrate Judge Patrick A. White on 6/29/2010. (cz) (Entered: 06/29/2010)
06/29/2010	46	NOTICE by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(individually) *of Serving Answer & Affirmative Defenses to Plaintiff at his Most Recently Updated Address* (Boileau, Alain) (Entered: 06/29/2010)
06/29/2010	47	SCHEDULING ORDER: Amended Pleadings due by 10/28/2010. Discovery due by 10/14/2010. Joinder of Parties due by 10/28/2010. Motions due by 11/18/2010.. Signed by Magistrate Judge Patrick A. White on 6/29/2010. (tw) (Entered: 06/29/2010)
06/30/2010	48	ORDER granting 40 Motion for Extension of Time to File Objections to Report and Recommendations. Signed by Judge Marcia G. Cooke on 6/30/10. (tm) (Entered: 06/30/2010)
08/16/2010	49	ORDER ADOPTING REPORT AND RECOMMENDATIONS dismissing Count II against Defendants Broward County Sheriff Al Lamberti, Broward Sheriff's Office and Broward County. Signed by Judge Marcia G. Cooke on 8/16/2010. (tm) (Entered: 08/16/2010)
08/26/2010	50	MOTION for Release and Copies of video and audio evidence by Rodolfo Orlando Martinez. (mg) (Entered: 08/26/2010)
08/30/2010	51	ORDER denying 50 Motion for copies of video and audio evidence. Discovery requests must be made directly to parties.. Signed by Magistrate Judge Patrick A. White on 8/30/2010. (cz) (Entered: 08/30/2010)
10/15/2010	52	MOTION to Compel *Plaintiff's Responses to Defendants' First Request for Production* by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(individually). Responses due by 11/1/2010 (Attachments: # 1 Exhibit A)(Boileau, Alain) (Entered: 10/15/2010)
10/18/2010	53	ORDER granting 52 Defendants' Motion to Compel responses to discovery requests, the plaintiff shall respond forthwith or risk sanctions.. Signed by Magistrate Judge Patrick A. White on 10/18/2010. (cz) (Entered: 10/18/2010)
11/01/2010	54	RESPONSE to Defendants' Request for Production by Rodolfo Orlando Martinez. (ral) (Entered: 11/02/2010)
11/05/2010	55	NOTICE by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(in his official capacity as Broward Sheriff deputy) *of Change of Firm Name* (Boileau, Alain) (Entered: 11/05/2010)
12/01/2010	56	Statement of: Pretrial by Rodolfo Orlando Martinez (ral) (Entered: 12/01/2010)
12/02/2010	57	Statement of: Pretrial by Rodolfo Orlando Martinez (ral) (Entered: 12/03/2010)
12/15/2010	58	MOTION for Extension of Time to File *Pretrial Statement* by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(individually). (Attachments: # 1 Text of Proposed Order)(Boileau, Alain) (Entered: 12/15/2010)
12/16/2010	59	ORDER granting 58 Motion for Extension of Time to File pre-trial statement to on or before 1/7/11.. Signed by Magistrate Judge Patrick A. White on

		12/16/2010. (cz) (Entered: 12/16/2010)
01/07/2011	60	Statement of: Pretrial by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(individually) (Boileau, Alain) (Entered: 01/07/2011)
01/20/2011	61	ORDER/REPORT THAT CASE IS READY FOR TRIAL. Signed by Magistrate Judge Patrick A. White on 1/20/2011. (tw) (Entered: 01/20/2011)
01/26/2011	62	MOTION Requesting Hearing and Oral Argument by Rodolfo Orlando Martinez. (ral) (Entered: 01/27/2011)
01/27/2011	63	RESPONSE in Opposition re 62 MOTION for Hearing filed by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(in his official capacity as Broward Sheriff deputy). (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Exhibit D)(Boileau, Alain) (Entered: 01/27/2011)
02/09/2011	64	MOTION to Update Witness List Adding Witness and Evidence by Rodolfo Orlando Martinez. (ral) (Entered: 02/10/2011)
02/11/2011	65	MOTION Requesting Transport Order to (F.D.C. Miami) and Pretrial Conference by Rodolfo Orlando Martinez. (asl) (Entered: 02/14/2011)
03/04/2011	66	MOTION for Leave to File *Motion for Final Summary Judgment, Concise Statement of Undisputed Material Facts and Incorporated Memorandum of Law, Out of Time* by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(in his official capacity as Broward Sheriff deputy). (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Boileau, Alain) (Entered: 03/04/2011)
03/14/2011	67	ORDER GRANTING DEFENDANTS' MOTION FOR LEAVE TO FILE MOTION FOR FINAL SUMMARY JUDGMENT AND REFERRING CASE to Magistrate Judge Patrick A. White for Report and Recommendation on any dispositive matters. Signed by Judge Marcia G. Cooke on 3/14/2011. (tm) (Entered: 03/14/2011)
03/15/2011	68	MOTION for Summary Judgment *and Incorporated Memorandum of Law* by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(in his official capacity as Broward Sheriff deputy). Responses due by 4/1/2011 (Boileau, Alain) (Entered: 03/15/2011)
03/15/2011	69	Statement of: of Undisputed Material Facts in Support of Motion for Final Summary Judgment by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(in his official capacity as Broward Sheriff deputy) re 68 MOTION for Summary Judgment *and Incorporated Memorandum of Law* (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, Part 1, # 4 Exhibit C, Part 2, # 5 Exhibit D, # 6 Exhibit E, # 7 Exhibit F)(Boileau, Alain) (Entered: 03/15/2011)
03/16/2011	70	ORDER Instructing Pro Se Plaintiff Concerning Response to 68 MOTION for Summary Judgment (Responses due by 4/8/2011). Signed by Magistrate Judge Patrick A. White on 3/16/2011. (br) (Entered: 03/17/2011)
03/16/2011	71	NOTICE OF CONVENTIONAL FILING of Audio Recording in Support of Motion for Final Summary Judgment and Incorporated Memorandum of Law

		by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox (ral) (Entered: 03/17/2011)
03/17/2011	72	RESPONSE in Opposition re 68 MOTION for Summary Judgment *and Incorporated Memorandum of Law*; Plaintiff's MOTION in Opposition of Defendants Material Facts in Support of their Motion for Summary Judgment filed by Rodolfo Orlando Martinez. (ral) (Entered: 03/18/2011)
03/24/2011	73	REPLY to Response to Motion re 68 MOTION for Summary Judgment *and Incorporated Memorandum of Law* filed by Andrew Cardarelli, Tim Concannon, Najmy Halabi, Christopher Hickox(individually). (Attachments: # 1 Exhibit A)(Boileau, Alain) (Entered: 03/24/2011)
04/20/2011	74	ORDER denying 62 Motion for Hearing; denying 64 Motion to update witness list; denying 65 Motion to transport plaintiff for conference ; denying 65 Motion for Hearing. This case is at the summary judgement stage. No hearings have been set, and the plaintiff's motions are premature. It is noted that the plaintiff has failed to timely file a response to the motion for summary judgement.. Signed by Magistrate Judge Patrick A. White on 4/20/2011. (cz) (Entered: 04/20/2011)
05/02/2011	75	MOTION Requesting Court to Review Court Records and Docket Sheet by Rodolfo Orlando Martinez. (ral) (Entered: 05/03/2011)
05/04/2011	76	ORDER granting 75 Motion for review, plaintiff's response to motion for summary judgment is duly noted.. Signed by Magistrate Judge Patrick A. White on 5/4/2011. (cz) (Entered: 05/04/2011)

PACER Service Center

Transaction Receipt

06/22/2011 11:58:28

PACER Login:	vl0006	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	0:09-cv-61624-MGC
Billable Pages:	7	**Cost:**	0.56

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.09-61624-CIV-COOKE/WHITE

FILED by PP D.C.
MAY 04 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. - MIAMI

RODOLFO ORLANDO MARTINEZ

V.

NAJMY HALABI individually, NAJMY HALABI in his official capacity as Broward Sheriff deputy, Sgt.Tim Concannon individually, Sgt.Tim concannon in his official capacity as Broward Sheriff deputy, Christopher Hickox individually, Christopher Hickox in his official capacity as Broward Sheriff deputy, Andrew Cardarelli individually, Andrew Cardarelli in his official capacity as Broward Sheriff deputy, Al Lamberti in his official capacity as Sheriff of Broward County, BROWARD SHERIFFS OFFICE, an CITY OF BROWARD COUNTY

defendants

AMENDED COMPLAINT

A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. 1983 ALSO UNDER 42 U.S.C. 1985(3). Plaintiff's claim is. All defendants are in violation of Plaintiff's fourth amendment right to be free from excessive force, Fourteenth Amendment equal protection of the laws. Fifth Amendment due process.

Parties

A. Name of Plaintiff: Rodolfo Orlando Martinez
Inmate# 73382-004
Address: PO.BOX 019120 Miami,Florida,33101(Facility)F.D.C. MIAMI

B. Defendant: Najmy Halabi
is employed as A Broward Sheriffs Deputy
at Broward County Sheriffs office in Broward County

C. Additional Defendants: Sgt.Tim Concannon Broward Sheriffs Deputy for the city of Broward County, Christopher Hickox Broward Sheriffs Deputy for the city of Broward County, Andrew Cardarelli Broward Sheriffs Deputy for the city of Broward County, Al Lambertti Sheriff of Broward county in the city of Broward County,
Broward Sheriffs Office an Broward county

Statement of Claim

This case derived from case no.08-60309-cr-marra involving a reverse sting operation where officers from the Broward Sheriffs office afforded an opertunity to rob a fictionalstash house.

Under supervision of the Broward Sheriffs Office an Sgt.Tim Concannon. Deputy Najmy Halabi from the Broward Sheriffs office knowingly,willfully.combined an conspired to harm,injure an murder (plaintiff, Rodolfo Martinez.) Recorded conversations on 9/15/08 throught 9/17/08 the conspiracy to murder (plaintiff.) Are audio recorded an in possesion of the Broward Sheriffs an Prosecutors in case no. 08-60309-cr-marra.

On October.7,2008 (plaintiff.) was told by deputy Najmy Halabi to meet him at the Broward Sheriffs Undercover warehouse with a firearm. Upon arrival at the U/C warehouse (plaintiff) was offered and given numerous alcoholic beverages. By duputy Halabi an Sgt.Tim concannon. While speaking to Broward Sheriffs deputies in there undercover capacity exited the room where (plaintiff) remaind seated a false wall came down and (plaintiff) was fired upon numerous times by Broward Sheriffs (SWAT) Deputies Christopher Hickox, an Andrew Cardarelli unjust an excessive force by gunfire. All of these actions were recorded on audio an video in the undercover warehouse the night of October.7,2008. Broward Sheriffs an Prosecutors in criminal case no.08-60309-cr-marra refused to grant (plaintiff) a copy of this video of October.7,2008.

Deputies Najmy Halabi an Sgt.Tim Concannon are in the auto theft task force unit. An where allowed to run this operation of the fictional stash house.By Broward Sheriffs an Broward County an ultimatly leading (plaintiff) into serious life threating injury.

COUNTS,

(1) CONSPIRACY Knowingly,conspire to injure,opress,threaten or intimadate,or murder.

(2) Neglegence, failier to train officers on excessive force in sting operation, Failier to train deputies in reverse sting operation, Santioning Unconstitutional conduct, allowing reverse sting operation to go any further aware of conspiracy to murder. Liable for there deputies actions.

(3) EXCESSIVE FORCE

PLAINTIFFS CLAIM ON COUNTS AGAINST DEFENDAENTS

COUNT(1) CONPIRACY , Najmy Halabi conspireing to murder plaintiff recorded on audio recordings by Broward sheriffs

COUNT (1)2)Sgt.Tim Concannon knowingly taking place in conspiracy throught recorded statements .

COUNT (2) NEGLEGENCE, Al Lambirty in his official capacity as sheriff of broward .

COUNT (2) NEGLEGENCE,BROWARD SHERIFFS OFFICE

COUNT (2) NEGLEGENCE, CITY OF BROWARD COUNTY

COUNT (3) EXCESSIVE FORCE, Christopher Hickox shooting plaintiff while seated not posing a threat.

COUNT (3) EXCESSIVE FORCE, Andrew Cardarelli shooting plaintiff while seated not posing a threat.

Relief

Plaintiff request the court to grant him. Damages.. A.Conpensatory damages B. Punitive Damages. C. Other such relife the court deems just an proper an to be afforded the opertunity to proceed to trial in this matter.

JURY TRIAL

Jury trial is Requested by plaintiff.

signed this 2nd day of May, 2010

Rodolfo Martz

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

Executed on: May 2nd 2010

Rodolfo Martz

(Legal Mail)

United States District Court
Southern District of Florida
(Clerks office)
400 North Miami Avenue
Miami, Florida, 33128-7788

Alfo Martinez #73382-004
D.C. Miami
p.o box 019120
Miami Florida
33101

33128+1601

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-61624-CIV-COOKE
MAGISTRATE JUDGE P.A. WHITE

RODOLFO ORLANDO MARTINEZ, :

Plaintiff, :

v. : REPORT THAT CASE IS READY FOR TRIAL

BROWARD COUNTY SHERIFF'S OFFICE,et al., :

Defendants. :

This prisoner civil rights case was referred to the undersigned for preliminary proceedings pursuant to 28 U.S.C. §636(b)(1).

The dates entered in the Pre-Trial Scheduling Order have passed, and the case is now at issue.

It is therefore respectfully recommended that this case be placed upon the trial calendar of the District Judge.

DONE AND ORDERED at Miami, Florida, this 20th day of January, 2011.

UNITED STATES MAGISTRATE JUDGE

cc: Rodolfo Orlando Martinez, Pro Se
Address of record

Alain E. Boileau, Esq.
Robert Schwartz, Esq.
Adorno & Yoss
Attorneys of record

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-CV-61624 MGC

The attached hand-written document has been scanned and is also available in the SUPPLEMENTAL PAPER FILE

United States District Court
Southern District of Florida

FILED by ____ D.C.
JAN 26 2011
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

Rodolfo Orlando Martinez

V. Case No. 09-61624-Civ-Cooke/White

NAJMY. HALABI, et. al

Motion Requesting Hearing and
Oral Argument

PlaintFF, Rodolfo Orlando Martinez., Request For Hearing and Oral Argument based on these said Facts below.

1. Counsel For Defendants, HALABI, CONCANNON, HickoX and Cardarelli, Has stated in his pre-trial Statement that the video surveillance involving, PlaintiFF, Martinez is privileged and not subject to disclosure. in it's "Entirety".

2. However, PlaintiFF is only requesting the portion OF the Shooting incident that is 2 to 4 mineutes Long, And Certainly posses no threat to Law Enforcement and Procedures, Nor Undercover Law Enforcement. Because the portion of the said Shooting Undercovers, are not in sight in the incident of this shooting.

3. The video of October 7, 2008 shooting is Essential to—

PlaintiFFs Case, And at a Minimum in and of this Nature the incident that is two to Four mineutes Long of this said Shooting is subject to be Viewed

4. DeFFense Counsel, For Defendants seeks to claim that this videotape is privileged and not subject to disclosure when in Fact it is subject to disclosure and has already been viewed by many previously in Criminal Case No. 08-60309-CR-Marra

WhereFore PlaintiFF, Rodolfo Orlando Martinez Respectfully request a hearing in this said matter prior to trial and any other Relief the court deems just and proper.

ProSe, Rodolfo Orlando Martinez
Reg No. 73382-004
Federal Correctional Institution
P.O. Box 725
Edgefield, SC 29824

I HEREBY CERTIFY, that a true and correct copy of the Foregoing was served by regular U.S. Mail this day of January 23, 2011 on all parties and Counsel of Record

X Rodolfo Orlando Martinez
Rodolfo Orlando Martinez

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-61624-CIV-COOKE/WHITE

RODOLFO ORLANDO MARTINEZ,

Plaintiff,

vs.

NAJMY HALABI, et al.,

Defendants.
_____/

DEFENDANTS, NAJMY HALABI, TIM CONCANNON, CHRISTOPHER HICKOX AND ANDREW CARDARELLI'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION REQUESTING HEARING AND ORAL ARGUMENT

Defendants NAJMY HALABI ("HALABI"), TIM CONCANNON ("CONCANNON"), CHRISTOPHER HICKOX ("HICKOX") and ANDREW CARDARELLI ("CARDARELLI"), by and through their undersigned counsel, and in accordance with Local Rule 7.1, hereby respond as follows in opposition to Plaintiff, RODOLFO ORLANDO MARTINEZ's ("MARTINEZ") Motion Requesting Hearing and Oral Argument [DE 62]:

1. MARTINEZ has filed a Motion seeking a hearing and oral argument, and therein further requests, the production of portions of the law enforcement surveillance video of the shooting at issue in this matter.

2. However, MARTINEZ's request for the production of any portion of the law enforcement surveillance video in this matter should be denied, in its entirety, for several reasons. ***First***, in accordance with the federal law enforcement privilege, and for purposes of protecting internal law enforcement techniques, and procedures, and from protecting the identity and ensuring the safety of undercover law enforcement officers, including in future operations and investigations, the entirety of the videotape

YOSS LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

surveillance involving MARTINEZ is privileged and not subject to disclosure. Commonwealth of Puerto Rico v. U.S., 490 F.3d 50 (1st Cir. 2007); White v. City of Fort Lauderdale, 2009 WL 1298353 (S.D. Fla. May 8, 2009); Department of Investigation of the City of New York v. Myerson, 856 F.2d 481 (2d Cir. 1988); Aguilar v. U.S. Department of Homeland Security, 259 F.R.D. 51 (S.D. N.Y. 2009).

Second, MARTINEZ, on two separate occasions during his criminal trial (Case No. 08-60309-CR-KAM), attempted to obtain a copy and production of the surveillance video at issue, which, as it pertains to "production" of a copy, was denied by the Hon. Kenneth A. Marra, United States District Judge. Specifically, on June 17, 2009, MARTINEZ filed a Motion to Compel Production of Discovery, therein seeking "an order of the Court compelling production of the video in question." See Motion to Compel Production of Discovery, DE 96 (appended hereto as Exhibit A). On June 19, 2009, the Court granted the Motion to Compel, but MARTINEZ was only allowed to "***review*** the entire video." See Order on Motion for New Counsel and Motion to Compel, DE 100 (appended hereto as Exhibit B) (emphasis added). Thereafter, on February 24, 2010, MARTINEZ once again filed a motion for production of the "unedited" video, as well as audio, of the surveillance. See Motion for Production an (sic) Copies of any/or All Video/Audio to be Furnished to Defendant, DE 216 (appended hereto as Exhibit C). On March 30, 2010, the Court denied MARTINEZ's Motion. See Order Denying Motion for Video, DE 221 (appended hereto as Exhibit D). Although not privy to any of the arguments made in relation to any of the aforementioned motions (seemingly, the issue was not briefed by the United States in writing), it appears that during MARTINEZ's criminal trial, the United States had similar, if not the same, concerns and law enforcement privilege justifications for preventing MARTINEZ obtaining a "copy" of any portion of the law enforcement surveillance video at issue.

3. However, as represented in HALABI, CONCANNON, HICKOX, CARDARELLI's Pretrial Statement, non-privileged and excerpted still photographs and audio of the shooting at issue in this matter have been provided to counsel for HALABI, CONCANNON, HICKOX, CARDARELLI, and

will be produced in this matter once requested.

4. The protection of internal law enforcement techniques, and procedures, and the protection of the identity, as well as the safety of undercover law enforcement officers, including in future operations and investigations, outweighs any purported burden suffered by MARTINEZ if a copy of the video is not produced, in whole or part, in this civil matter, particularly in light of the eventual production of still photographs (and excerpted audio) of the force used on, and complained of by, MARTINEZ.

WHEREFORE, based upon the arguments presented and the authority cited herein, HALABI, CONCANNON, HICKOX, CARDARELLI respectfully request the Court deny MARTINEZ's Motion Requesting Hearing and Oral Argument [DE 62], and deny MARTINEZ's request for a copy of any portion of the law enforcement surveillance video.

Dated: January 27, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Alain E. Boileau
ROBERT H. SCHWARTZ (301167)
rhs@yoss.com
ALAIN E. BOILEAU (0148598)
aeb@yoss.com
YOSS LLP
888 Southeast 3rd Avenue, Suite 500
Fort Lauderdale, FL 33316
Telephone: (954) 523-5885
Facsimile: (954) 760-9531
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing

s/Alain E. Boileau
ALAIN E. BOILEAU

YOSS LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

MARTINEZ v. HALABI, et al.
CASE NO: 09-61624-CIV-COOKE/WHITE

Service List

Rodolfo Orlando Martinez, *Pro Se*
REG No. 73382-004
FCI - Edgefield
Federal Correctional Institution
P.O. Box 725
Edgefield, South Carolina 29824
[via regular U.S. Mail]

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60309-CR-KAM

UNITED STATES OF AMERICA

Plaintiff,

v.

RODOLFO MARTINEZ,

Defendant.
_____/

MOTION TO COMPEL PRODUCTION OF DISCOVERY

Defendant, RODOLFO MARTINEZ, through undersigned counsel, hereby files this Motion to Compel the Production of Discovery and as grounds therefor states:

1. The government is in possession of a video recording of the "take-down" in this case.

2. It is clear that during the "take-down," the Defendant was shot by the officers.

3. The government has indicated that the it will not produce the video to Defendant or allow Defendant or his counsel to view the "take-down" portion of the video.

4. Viewing this portion of the video is essential to the defense's ability to evaluate any plea offer versus proceeding to trial in that the government has already indicated that it will seek an enhancement for victim injury under U.S.S.G. § 2B3.1(b)(3) at sentencing.

5. Thus, Defendant seeks an order of the Court compelling production of the video in question.

Respectfully submitted,

ENTIN & DELLA FERA, P.A.
110 SE 6TH Street
Suite 1970
Fort Lauderdale, FL 33301

(954) 761-7201
rdellafera@aol.com

By:s./ Richard F. Della Fera
RICHARD F. DELLA FERA
Florida Bar No. 066710

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 17, 2009, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties either by transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive Notices of Electronic Filing.

s/ Richard F. Della Fera

EXHIBIT B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60309-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODOLFO MARTINEZ,

Defendant.
_____/

ORDER ON MOTION FOR NEW COUNSEL AND MOTION TO COMPEL

THIS CAUSE is before the Court upon Defendant's pro se Motion for New Counsel [DE 90 and 93] and Motion to Compel [DE 96]. The Court held a hearing on June 19, 2009 and after statements from all parties, it is hereby

ORDERED and ADJUDGED that the Motion for New Counsel DENIED and the Motion to Compel is GRANTED. The government shall allow Defendant and his counsel to review the entire video.

DONE and ORDERED in West Palm Beach, Florida, this 19th day of June, 2009.

KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

Copies provided to:

All counsel

EXHIBIT C

FILED by MP D.C.
FEB 24 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

United States District Court
Southern District of Florida

United States of America
V.
Rodolfo Martinez

Case No. 08-60309-CR-Marra

Motion for production an copies of any/an All video/Audio to be Furnished to Defendant

1. Defendant has proceeded to trial in case No. 08-60309-CR-Marra and was found guilty on all counts of the Indictment.

2. Prior/before Trial defendant never viewed video's of evidence except for one video that was edited by the United States prosecutor's office. Previous Counsel Richard DellFera refused to Furnish copies of any video's in case# 08-60309-CR-Marra

3. Defendant ask the Honorable Court to order Attorney's and Government to produce copies of any an all video's in case No. 08-60309 to Defendant complete an Unedited in it's totality in audio an Video.

4. Pursant to Federal Rules of Court and Regulations Defendant seek an order to obtain all video/Audio in Case No. 08-60309-Cr-Marra an Hearing If needed to obtain all evidence.

Wherefore, Defendant, Rodolfo Martinez respectfully requests this Honorable court grant this relief an any other Relief the court deem Just an proper

Hadolfo Martinez #73382-004
F.D.C. Miami (Gulf-west)
P.O. box 019120
Miami FL. 33101

(Legal Mail)

United States District Court
Southern District of Florida

OFFice of The clerk - Room 8N09

400 North Miami Avenue

Miami, Florida, 33128-7716

33128477716

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 08-60309 CR KAM

The attached hand-written document has been scanned and is also available in the SUPPLEMENTAL PAPER FILE

EXHIBIT D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 08-60309-CR-MARRA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

RODOLFO MARTINEZ,

Defendant.
_____/

ORDER DENYING MOTION FOR VIDEO

THIS CAUSE is before the Court upon Defendant's pro se Motion for Production of Copies of any and all Video/Audio to be furnished to Defendant [DE 216]. This Court having reviewed the pertinent portions of the record and being duly advised in the premises, it is hereby

ORDERED and ADJUDGED that the Motion is DENIED. All relevant evidence was provided to Defendant's counsel during this proceeding.

DONE and ORDERED in West Palm Beach, Florida, this 30th day of March, 2010.

KENNETH A. MARRA
UNITED STATES DISTRICT JUDGE

Copies provided to:

All counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-61624-CIV-COOKE/WHITE

RODOLFO ORLANDO MARTINEZ,

Plaintiff,

vs.

NAJMY HALABI, et al.,

Defendants.
_____/

DEFENDANTS, NAJMY HALABI, TIM CONCANNON, CHRISTOPHER HICKOX AND ANDREW CARDARELLI'S MOTION FOR FINAL SUMMARY JUDGMENT AND INCORPORATED MEMORANDUM OF LAW

Defendants NAJMY HALABI ("HALABI"), TIM CONCANNON ("CONCANNON"), CHRISTOPHER HICKOX ("HICKOX") and ANDREW CARDARELLI ("CARDARELLI"), by and through their undersigned counsel, and pursuant to Rule 56 of the Federal Rules of Civil Procedure and Local Rule 7.5, respectfully request the Court enter an Order granting final summary judgment in their favor and against Plaintiff, RODOLFO ORLANDO MARTINEZ ("MARTINEZ"). In support thereof, HALABI, CONCANNON, HICKOX, and CARDARELLI state as follows:

ARGUMENT AND MEMORANDUM OF LAW

I. Applicable legal standards for granting a motion for summary judgment

Rule 56(b) of the Federal Rules of Civil Procedure provides, in relevant part, that:

> A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

ADORNO & YOSS, LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

Fed.R.Civ.P. 56(b). Summary judgment "is appropriate where 'there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law.'" Shiver v. Chertoff, 549 F.3d 1342, 1343 (11th Cir. 2008) (quoting Fed.R.Civ.P. 56(c)). Appropriately, "[t]he moving party bears the burden of production" and "[i]f the moving party meets this burden, 'the nomoving party must present evidence beyond the pleadings showing that a reasonable jury could find in its favor.'" Id. (citing Fickling v. United States, 507 F.3d 1302, 1304 (11th Cir. 2007)). The District Court must "draw all factual inferences in a light most favorable to the non-moving party." Id. Notably, "[s]peculation does not create a ***genuine*** issue of fact.'" Id. (quoting Cordoba v. Dillard's, Inc., 419 F.3d 1169, 1181 (11th Cir. 2005) (emphasis in original). Consequently:

> As the Supreme Court stated, 'the plain language of Rule 56(c) mandates the entry of summary judgment against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial.'

Id. at 1343-44 (quoting Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 2552, 91 L.Ed.2d 265 (1986)); Fanin v. United States Department of Veterans Affairs, 572 F.3d 868, 872 (11th Cir. 2009). Moreover:

> The mere existence of some factual dispute will not defeat summary judgment unless that factual dispute is material to an issue affecting the outcome of the case. The relevant rules of substantive law dictate the materiality of a disputed fact. A genuine issue of material fact does not exist unless there is sufficient evidence favoring the nonmoving party for a reasonable jury to return a verdict in its favor.

Chapman v. AI Transp., 229 F.3d 1012, 1023 (11th Cir. 2000) (en banc) (quoting Haves v. City of Miami, 52 F.3d 918, 921 (11th Cir. 1995)). Therefore, "[a] mere 'scintilla' of evidence supporting [Plaintiff's] position will not suffice, there must be enough of a showing that the jury could reasonably find for the [Plaintiff]. Walker v. Darby, 911 F.2d 1573, 1577 (11th Cir. 1990) (citing Anderson v. Liberty Lobby,

ADORNO & YOSS, LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

Inc., 477 U.S. 242, 106 S.Ct. 2505, 2511 (1986)). The Anderson Court recognized that, "[t]he mere existence of ***some*** alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no ***genuine*** issue of ***material*** fact." Anderson, 477 U.S. at 247-48 (emphasis in original). Therefore, "[i]f the evidence is merely colorable, or is not significantly probative, summary judgment may be granted." Id. at 250-51.

II. HICKOX and CARDARELLI's use of deadly force against MARTINEZ was reasonable, was not excessive as a matter of law, and did not violate the Fourth Amendment

The evidence and undisputed material facts in this matter, including irrefutable photographic and audio evidence, establish that HICKOX and CARDARELLI were faced with a rapidly evolving and fluid situation, wherein MARTINEZ, despite commands and warnings by HICKOX to not move, began reaching for his assault rifle, and which was reasonably perceived posing a serious bodily threat to HICKOX and CARDARELLI, as well as other law enforcement officers, warranting HICKOX and CARDARELLI's decision to introduce the threat, and ultimately the use, of deadly force.

It is well-settled that ***"[t]he Constitution simply does not require the police to gamble with their lives in the face of a serious threat of harm."*** Elliot v. Leavitt, 99 F.3d 640, 641 (4th Cir. 1996) (emphasis added). For this reason, "where a suspect threatens an officer with a weapon such as a gun or a knife, the officer is justified in using deadly force." Smith v. City of Hemet, 394 F.3d 689, 704 (9th Cir. 2005); McCormick v. City of Fort Lauderdale, 333 F.3d 1234, 1246 (11th Cir. 2003) ("the Constitution must also permit the use of deadly force against a suspect who poses not merely an escape risk (because he is not yet in police control), but also an imminent threat of danger to a police officer or others"). ***A police officer "does not have to wait until a gun is pointed at the officer before the officer is entitled to***

take action." Anderson v. Russell, 247 F.3d 125, 131 (4th Cir. 2001) (citing McLenagan v. Karnes, 27 F.3d 1002, 1007 (4th Cir. 1994)) (emphasis added). The Supreme Court of the United States has instructed that "all claims that law enforcement officers have used excessive force - deadly or not- in the course of an arrest ... of a free citizen should be analyzed under the Fourth Amendment and its reasonableness standard." Graham v. Connor, 490 U.S. 386, 395, 104 L.Ed.2d 443, 109 S.Ct. 1865 (1989). The "intent or motivation of the officer is irrelevant; the question is ***whether a reasonable officer in the same circumstances would have concluded that a threat existed justifying the particular use of force***." Graham, 490 U.S. at 396-97 (emphasis added).

As such "[a] police officer may use deadly force when the officer has sound reason to believe that a suspect poses a threat of serious physical harm to the officer or others." Elliot, 99 F.3d at 642 (citing Tennessee v. Garner, 471 U.S. 1, 105 S.Ct. 1694, 85 L.Ed.2d 1 (1985)); see also Austin v. Town of Blacksburg, 66 F.Supp.2d 771, 774 (W.D. Va. 1998) ("[u]se of deadly force is reasonable if the officer has probable cause to believe that the individual poses a threat of serious bodily harm to the officer or others"). The "inquiry is ***not whether deadly force might somehow have been avoided***, but whether the use of deadly force was reasonable under all of the circumstances." Fortunato v. Handler, 969 F.Supp. 963, 973 (W.D. Pa. 1996) (emphasis added); Russell, 247 F.3d at 131 (that "the 'suggestion that the officers might have responded differently is exactly the type of judicial second look that the case law prohibits'"). Because reasonableness under the Fourth Amendment defies precise definition, courts are instructed to look to the facts and circumstances of each case, including: 1) the severity of the crime at issue; 2) whether the suspect poses a threat to the safety of officers or the public; and, 3) whether resistance is being attempted. Graham, 490 U.S. at 396.

These factors are to be viewed through the eyes of the reasonable officer on the scene and not with 20/20 hindsight. Post v. City of Fort Lauderdale, 7 F.3d 1552, 1559 (11th Cir. 1993); McCormick, 333 F.3d at 1244. Moreover, the "reasonableness calculus" recognized ***takes into account the split second nature of officers' decisions in tense and potentially dangerous, even deadly, circumstances.*** Graham, 490 U.S. at 396-397 (emphasis added); McCormick, 333 F.3d at 1246; Greenidge v. Ruffin, 927 F.2d 789, 792 (4th Cir. 1991) ("[t]he calculus of reasonableness must embody allowance for the fact that police officers are often forced to make split-second judgments – in circumstances that are tense, uncertain, and rapidly evolving – about the amount of force that is necessary in a particular situation"). The "court's focus should be on the circumstances at the moment force was used and on the fact that officers on the beat are not often afforded the luxury of armchair reflection." Elliott, 99 F.3d at 642. Indeed, even where an officer's intentions are malevolent (which is certainly not the case here), the force actually used will be considered under the totality of the circumstances and justifiable force will not be cast as unjustified merely because of an officer's bad intentions. See Scott v. United States, 436 U.S. 128, 138, 56 L.Ed.2d 168, 98 S.Ct. 1717 (1978). It is also important to recognize and appreciate the fact that "the Fourth Amendment does not require omniscience." Elliott, 99 F.3d at 644. In other words, ***"[o]fficers need not be absolutely sure . . . of the nature of the threat or the suspect's intent to cause them harm – the Constitution does not require that certitude precede the act of self protection."*** Id. (emphasis added).

The Court's decision in Slattery v. Rizzo, 939 F.2d 213 (4th Cir. 1991), is instructive in analyzing HICKOX and CARDARELLI's use of force. Officer Rizzo was one of several members involved in a drug reversal sting. Id. 214. Mr. Slattery was the passenger in one of the vehicles involved in an illegal drug

ADORNO & YOSS, LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

transaction. Id. at 215. Despite the drivers being arrested outside the vehicle, Mr. Slattery remained in the vehicle. Id. Officer Rizzo approached the vehicle, and identified himself as a police officer and ordered Mr. Slattery, at least twice, to raise his hands. Id. Mr. Slattery did not comply, and Officer Rizzo could not see Mr. Slattery's hands. Id. After kicking the window, Officer Rizzo opened the car door, and again ordered Mr. Slattery to raise his hands. Id. Officer Rizzo had drawn his service revolver, and he could not see Mr. Slattery's left hand, the one away from him, clearly. Id. Officer Rizzo "was, however, able to see that the hand appeared to be partially closed around an object." Id. After again refusing to put up his hands, Mr. Slattery "turned his entire upper body towards the officer, who could still not see Slattery's left hand." Id. Officer Rizzo, "then believing that Slattery was coming at him with a weapon, shot him once in the face with his revolver." Id. The object in Mr. Slattery's hand, which Officer Rizzo did not see or identify prior to shooting, "was later determined to be a beer bottle." Id. On these facts, the Court decided and held that "a reasonable officer could have had probable cause to believe that the [Mr. Slattery] posed a deadly threat and therefore would be authorized to use deadly force." Id. at 216-17; see also Reed v. Cheney, 1998 WL 25032, *2 (4th Cir. Jan. 22, 1998) ("it was reasonable for an officer to perceive, in light of [plaintiff's] erratic behavior, his ***failure to stop and show his hands***, and his ***hand's movement across his body toward his waist,*** that he was reaching for a weapon . . . [t]herefore, [the officer's] reaction with deadly force was not unreasonable, and he is entitled to qualified immunity") (emphasis added); Reese v. Anderson, 926 F.2d 494, 500-01 (5th Cir. 1991) ("[the officer] had repeatedly warned [the suspect] to raise his hands and was now faced with a situation in which another warning could (it appeared at the time) cost the life of [the officer] or another officer . . . [u]nder such circumstances, an officer is justified in using deadly force to defend himself and others around him"); Ontiveros v. City of Rosenberg, Texas, 564 F.3d

ADORNO & YOSS, LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

379, 385 (5th Cir. 2009); Manis v. Lawson, 585 F.3d 839, 845 (5th Cir. 2009).

A review of the Fourth Circuit Court of Appeals' reasoning and decision in Russell, 247 F.3d at 125, is also instructive in analyzing, and demonstrating the reasonableness of HICKOX and CARDARELLI's use of force in this matter. In Russell, Officer Russell was providing security at a local mall. Id. at 127. The Plaintiff, Maurice Anderson arrived at the mall and was intoxicated, wearing a black jacket, which was open, and underneath he wore three shirts and a sweater. Id. "Inside of the shirts, Anderson had tucked a shoe polish container inside an eye-glasses case on his left side by his belt . . . [and] also was carrying a portable Walkman radio in his back pocket and was listening to the radio with earphones, which were covered by a hat." Id. at 127-28. At some point, a mall patron approached Officer Russell and "informed him that a man appeared to have a gun under his sweater" and pointed to Mr. Anderson. Id. at 128. Officer Russell spend twenty minutes observing Anderson and "saw a bulge under Anderson's clothing on his left side near his waist band that [Officer] Russell believed to be consistent with a handgun, corroborating the citizen's report." Id. Officer Russell and another officer "approached Anderson with their guns drawn and instructed him to raise his hands and get down on his knees." Id. Anderson initially complied with the officers' orders, but later lowered his hands, "without explanation to the officers, in an attempt to reach into his back left pocket to turn off his Walkman radio. Id. As a result, and "[b]elieving Anderson was reaching for the reported weapon, Russell shot Anderson three times." Id. Although the jury rendered a verdict in favor of Mr. Anderson, the District Court granted Officer Russell's motion for judgment as a matter of law with respect to Officer Russell's qualified immunity defense, but it denied Officer Russell's motion with respect to the jury's finding of excessive force." Id. at 127. However, on appeal, the Fourth Circuit Court of Appeals held that Officer Russell "acted reasonably in using deadly

ADORNO & YOSS, LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

force to protect himself against a perceived immediate and deadly threat posed by Anderson," and that "as a matter of law, Russell's use of force did not violate the Fourth Amendment and, therefore that the §1983 excessive force claim should not have been submitted to the jury." Id. at 127, 129; see also, Hudspeth v. City of Shreveport, 270 Fed.Appx. 332, 2008 WL 749547 (5th Cir. 2008) (in response to suspect pointing a cell phone at the officers, "[t]he Officers had an articulable basis to believe [the suspect] was armed and could reasonably have perceived him as posing a threat of serious bodily harm").

The Fourth Circuit Court of Appeals' decision in Ruffin further demonstrates the reasonableness of HICKOX and CARDARELLI's use of force in this matter. Officer Ruffin observed a prostitute entering a vehicle with a man, and followed the car with her fellow officers, until it parked. Ruffin, 927 F.2d at 790. The officers approached the vehicle and observed an illegal sex act, which prompted Officer Ruffin to open the vehicle door with her left hand. Id. Officer Ruffin identified herself as a police officer, and ordered the two passengers to place their hands in view. Id. Both passengers did not comply, which resulted in Officer Ruffin pointing her drawn revolver and repeating her order for the passengers to show their hands. Id. The male passenger reached for "a long cylindrical object from behind the seat, which [Officer Ruffin] believed to be a shotgun. Id. As a result, Officer Ruffin fired her weapon, striking the male suspect in the face. Id. It was later determined that the object was not a shotgun, but a "wooden nightstick." Id. In affirming the jury's verdict in favor of all defendants, the Fourth Circuit held that the "events which occurred before Officer Ruffin opened the car door in identified herself to the passengers are not probative of the reasonableness of Ruffin's decision to fire the shot." Id.

ADORNO & YOSS, LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

In the case at bar, the following material and dispositive facts are undisputed, and are substantiated by the photographic and audio evidence in the record: ***One***, MARTINEZ had in his possession an assault rifle (Exhibit A, at 4; Exhibit B, at 2; Exhibit D, at ¶4 and ¶5; Exhibit E, at 2-3, 8-10, 14, 27); ***Two***, MARTINEZ displayed the weapon and openly displayed his expertise in handling it (Exhibit D, at ¶5); ***Three***, upon the pre-arranged signal being given, HICKOX and CARDARELLI entered the room and HICKOX yelled "Sheriff's Office, don't move, don't move" (Exhibit D, at ¶9; Exhibit F, at ¶8; Audio Recording); ***Four***, MARTINEZ did not comply with HICKOX's command not to move (Exhibit B, at 2; Exhibit C; Exhibit D, at ¶12; Exhibit F, at ¶9); ***Five***, MARTINEZ moved his right arm back and his left arm forward, towards his right where his assault rifle was located (Exhibit B, at 2; Exhibit C; Exhibit F, at ¶9); and ***Six***, CARDARELLI and HICKOX feared for their safety and the safety of their fellow law enforcement officers (Exhibit D, at ¶13; Exhibit F, at ¶10).

Pursuant to the unique circumstances and undisputed material facts of this case, CARDARELLI and HICKOX had "sound reason to believe that [MARTINEZ] pose[d] a threat of serious physical harm to the officer or others." Elliot, 99 F.3d at 642. Specifically, it is undisputable that MARTINEZ, and the other armed suspects, posed a viable and substantial threat to the safety of CARDARELLI and HICKOX, as well as other law enforcement officers, including CONCANNON and HALABI, because they were armed and reached for those weapons when instructed not to move. More specifically, it is undisputable that MARTINEZ did not comply with HICKOX's lawful commands not to move, and instead moved his arms and body in a fashion making it reasonable for a for a law enforcement officer to believe that MARTINEZ was reaching for his assault rifle and resisting efforts to arrest him.

As demonstrated by the undisputed material facts, after issuing verbal commands, but to no avail,

and upon MARTINEZ refusing to comply with HICKOX lawful orders not to move, and more importantly, reasonably appearing to reach for his assault rifle, HICKOX and CARDARELLI had no choice but to protect their lives, and the lives of others, and introduce the use of deadly force. See Elliott, 99 F.3d at 643 ("[t]he court's comment that the officers could have moved away from the car is, unfortunately, a suggestion more reflective of the "peace of a judge's chambers" than of a dangerous and threatening situation on the street"). The undisputable evidence demonstrates that HICKOX and CARDARELLI used deadly force because they reasonably believed such use to be necessary to defend themselves and possibly others from bodily harm or death.

MARTINEZ has failed to bring forth any credible material evidence that contradicts or disputes the material facts of this case. Instead, MARTINEZ has set forth conclusory allegations, which have no application in the field, and which fail to appreciate the necessary perspective of the officers at the time of the incident, and not in 20/20 hindsight. See Elliott, 99 F.3d at 643 (the "suggestion that the officers might have responded differently is exactly the type of judicial second look that the case law prohibits"). The totality of the circumstances in this case, as viewed and analyzed from the perspective of reasonable officers on the scene, demonstrates that HICKOX and CARDARELLI acted reasonably and appropriately when introducing the threat of, and ultimately using, deadly force. Consequently, since there remains no genuine issue of material fact as to the reasonableness and lawfulness of HICKOX and CARDARELLI's use of force, HICKOX and CARDARELLI are entitled to final summary judgment, as a matter of law.

ADORNO & YOSS, LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

III. It is undisputed, and there is no record evidence to suggest, that HALABI and CONCANNON, used any force whatsoever upon MARTINEZ

The sole claim being prosecuted by MARTINEZ in this matter is a Fourth Amendment claim for the alleged use of excessive force during his arrest. The record evidence is undisputed that CONCANNON and HALABI were undercover law enforcement officers, who were, at no point in time when force was employed against MARTINEZ and the other suspects, and/or when arrests were being made, present in the room. Exhibit C; Exhibit D, at ¶14; Exhibit F, at ¶12. In fact, once the take-down signal was given, CONCANNON and HALABI left the room and were taken into an inner-officer at the warehouse and stayed therein until all was cleared by the SWAT Team and MARTINEZ, Duhart, and Cruz were taken into custody and transported. Exhibit A, at 5. MARTINEZ cannot dispute that CONCANNON and HALABI were not involved in any aspect whatsoever of the actual take-down and arrest of MARTINEZ and the other suspects, including the use of any force. Exhibit D, at ¶15; Exhibit F, at ¶13. Consequently, having failed to state any excessive force claim against CONCANNON and HALABI pursuant to the Fourth Amendment, CONCANNON and HALABI are entitled to final summary judgment.

IV. HICKOX, CARDARELLI, HALABI, and CONCANNON are entitled to qualified immunity

It is well-settled that qualified immunity "protects government officials sued in their individual capacities as long as their conduct does not violate 'clearly established statutory or constitutional rights of which a reasonable person would have known.'" Lumley v. City of Dade City, Florida, 327 F.3d 1186 (11th Cir. 2003) (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818, 102 S.Ct. 2727, 2738, 73 L.Ed.2d 396 (1982)); Hope v. Pelzer, 536 U.S. 730, 122 S.Ct. 2508, 2515, 153 L.Ed.2d 666 (2002). In order to receive qualified immunity, "the public official must first prove that he was acting within the scope of his

discretionary authority when the allegedly wrongful acts occurred." Id. (quoting Vinyard v. Wilson, 311 F.3d 1340, 1346 (11th Cir. 2002)). "Once the defendants establish that they were acting within their discretionary authority, the burden shifts to the plaintiff to demonstrate that qualified immunity is not appropriate." Id. (citing Vinyard, 311 F.3d at 1346).

In Hope, the Supreme Court set forth a two-step inquiry when analyzing whether qualified immunity should be granted. Hope, 536 U.S. at 730. The first inquiry is "whether plaintiff's allegations, if true, establish a constitutional violation. Lumley, 327 F.3d at 1186 (citing Hope, 122 S.Ct. at 2513). If so, the second inquiry is "whether the right was clearly established." Id. (quoting Saucier v. Katz, 533 U.S. 194, 201, 121 S.Ct. 2151, 2156, 150 L.Ed.2d 272 (2001)). "For a constitutional right to be clearly established, its contours 'must be sufficiently clear that a reasonable official would understand that what he is doing violates that right.'" Willingham v. Loughnan, 321 F.3d 1299, 1301 (11th Cir. 2003) (quoting Anderson v. Creighton, 483 U.S. 635, 107 S.Ct. 3034, 3039, 97 L.Ed.2d 523 (1987)). As reiterated by the Eleventh Circuit, "[t]he Supreme Court has said that an official is entitled to 'notice [his] conduct is unlawful.'" Id. (quoting Hope, 122 S.Ct. at 2515). Therefore:

> The unlawfulness must have been apparent. In many – if not most – instances, the apparency of an unlawful action will be established by (if it can be established at all) preexisting caselaw which is sufficiently similar in facts to the facts confronting an officer, such that we can say every objectively reasonable officer would have been on 'fair notice' that the behavior violated a constitutional right.

Id. at 1301 (internal citation omitted). It is also well-settled that "[c]onsolidating the doctrines of qualified immunity and excessive force, the officers are not liable if a reasonable police officer, under the circumstances of this case, could believe that probable cause existed to justify the particular use of deadly force at issue."Austin, 66 F.Supp.2d at 774; Slattery, 939 F.2d at 216 ("[a] police officer should prevail on

an assertion of qualified immunity if a reasonable officer possessing the same information ***could*** have believed that his conduct was lawful") (emphasis in original).

At the time of MARTINEZ was reaching for his assault rifle, HICKOX and CARDARELLI were exercising their discretionary authority under color of state law and within the course and scope of their employment as law enforcement officers for Sheriff Alfred T. Lamberti. As such, it is therefore MARTINEZ's burden "to demonstrate that qualified immunity is not appropriate." Lumley, 327 F.3d at 1186. However, as delineated and demonstrated herein, under the totality of the circumstances, and pursuant to the undisputed material facts of this case, HICKOX and CARDARELLI reasonably could have believed that probable cause existed to justify using deadly force against MARTINEZ, and are thereby entitled to qualified immunity. Moreover, since HALABI and CONCANNON were not even present when force was used against MARTINEZ, they did not and could not in any manner violate MARTINEZ's constitutional right against the excessive use of force during an arrest. Consequently, HALABI and CONCANNON are also entitled to qualified immunity.

CONCLUSION

Based on the authority cited and the arguments presented herein, HALABI, CONCANNON, HICKOX, and CARDARELLI respectfully request the Court grant final summary judgment in their favor, and against MARTINEZ.

Dated: March 4, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Alain E. Boileau
ALAIN E. BOILEAU (0148598)
aeb@yoss.com
YOSS LLP
888 Southeast 3rd Avenue, Suite 500
Fort Lauderdale, FL 33316
Telephone: (954) 523-5885
Facsimile: (954) 760-9531
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 4, 2011 and March 15, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing

s/Alain E. Boileau
ALAIN E. BOILEAU

MARTINEZ v. HALABI, et al.
CASE NO: 09-61624-CIV-COOKE/WHITE

Service List

Rodolfo Orlando Martinez, *Pro Se*
REG No. 73382-004
FCI - Edgefield
Federal Correctional Institution
P.O. Box 725
Edgefield, South Carolina 29824
[via regular U.S. Mail]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 09-CV-61624-MGC

The attached hand-written document has been scanned and is also available in the SUPPLEMENTAL PAPER FILE

United States District Court
Southern District of Florida

FILED by ____ D.C.
MAR 17 2011
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. OF FLA.

Rodolfo Orlando Martinez

V. Case No. 09-61624-Civ-Cooke/White

NAJMY HALABI et al

PlaintFFs, Motion in Opposition OF Defendants Concise Statement of Undisputed Material Facts in Support of their Motion For Summary Judgement.

PlaintiFF, Asserts that Defendants Motion excludes material Facts and misstatements of Facts Cocerning meetings. Also Totaly Ignoring Facts and Evidence provided here in this motion.

1. PlaintiFFs, Civil Complaint, Is Under The Civil Rights Act, 42 U.S.C. 1983. Also Under 42. U.S.C. 1985(3) In Violation of PlaintiFFs Constitutional Rights See. (Hereto Attached to as exibit.A.)

2. PlaintiFF Martinez, Never claimed excessive Force against, Defendants NAJMY HALABI or Tim Concannon In complaint. Defendants are Seeking Immunity From Excessive Force Claim.

3. PlaintiFFs, Claim Against DeFendants NAJMY HALABI and Tim Carcannon, Is Count (1) of PlaintiFFs Complaint Conspiray to injure, Opress, threaten, intimidate or murder. See. (Hereto Attached as Exibit. A.). Under 42. USC. 1985(3) In violation of PlaintiFFs Constitutional Right of Equal protection of the Laws.

4. DeFendants, Motion provides a time gap from September 11, 2008 throught On September 26, 2008. Between those date are more Meetings Invdving Lazaro Cruz, Donald Duhart, Najmy HALabi, Tim Concannon, Conspiring to Murder PlaintiFF Conversations of 9/15/08 throught 9/17/08 see (Hereto attached to as Exibit. B.)

5. By the Manner DeFendants procured PlaintiFF to become active in this Ficticous Schem and Actual Arrival of PlaintiFF Martinez at the Undercover Wearthause the act of the Conspiracy was Overted. And Ultimatly Lead to PlaintiFFs LiFe Threatening Injuries. By DeFendants Hickox. and Carderelli

6. DeFendants Halabi and Concannon actions and Factual evidence against them. Should bar any relief sought on there behalf For the actions they have Comitted against PlaintiFF. violating Martinez Constitutional rights.

7. Defendants attempt to provide still photographs in there motion For Final Summary Judgment Attached to their "Motion as Exibit:C.". Also Provicling audio recorded Conversation of Oct. 7. 2008 to Judges Chamber to Pursuade Courts to grant Reliefs Saught.

8. Defendants, Have Stated Numerous times throught Consel that the video of October 7, 2008 Shooting incident is priviledge and not subject to disclosure see. (Hereto as Exibit .C), Also Filing motion Irrapposition to Plaintiffs Motion Requesting Hearing and Oral Argument)

9. Plaintiff. Martinez, Asserts the Fact that this said video of the October 7, 2008 shooting Incident, Has never posed any threat to Law Enforcement in any manner

10. Broward Sheriffs and Plaintiff have been in recent Correspondence of this matter and has Granted Plaintiff a Copy of this Said video of Oct. 7. 2008 Shooting see. (Hereto attached to as exibit: D.) (Plaintiff asserts that defendants Counsel has attempted to obscure this Civil Litigation in many forms.

11. Plaintiff, Asserts the Video at Question of October 7, 2008 will prove the Use of excessive Force with Use of the actual D.V.D. and not still Photo Graphs and Supposed Audio by Hickox and Carderelli at trial.

12. In defendants Motion Deputies Hickox and Carderelli made sworn AFFidavits in there motion(reffered to exibit D. and F) Both officers have stated There verbal Commands to Plaintiff were "Sheriffs Office dont move" in stead of "Let me see your hands" was intentionally selected.

13. PlaintiFF, has attached to this motion appended (Hereto as Exibits (E)(F).) OF OFFicer Tim Corcannon's Sworn Statement as Exibit(E). Also Deputy Eddie Grants Statement (F) the Night of October 7, 2008., Both State OFFicers Hickox and Carderelli Verbal Commands were "Let me see your hands" Sworn statements of Corcannon and Grant.

14. PlaintiFF, Martinez has made notice that "Defendants motion And Exibit A.) OF Sworn Statement of Det. Corcannon is Not a Full and Correct Copy. Page 5. of Corcannon has been intentionally been disregarded and Excluded From defendants Motion with the intent to Obscure this Civil Litigation and Conceal Defendants Guilt.

15. PlaintiFF, has provided the Copy of this missing Page that Contradict's Sworn Statements By Defendants and Other Law-Enforcement OFFicers see, (Hereto as Exibit E.) The audio sent to Judges Chamber should be examined for it's accuracy and Vadility because of these Said Facts.

16 PlaintiFF, Martinez Housing Facility/Institution is on a lockdown statues and cannot make copies of (Exibits in this motion, Because of this Current situation and ask the Courts to provide Copies of Exibits to Counsel of Records and also provide PlaintiFF with these said Copies Because PlaintiFF has Used 'Original documents In this Motion.

WHEREFORE, PlaintiFF Martinez Respectfully submits this Motion and request that The relieF Sought by All DeFendants be denied, And this Case to be set For Trial. and any other relieF the Court deems Just and proper towards PlaintiFFs motion.

Pro.Se, Rodolfo Orlando Martinez.
Reg No. 73382-004
Federal Correctional Institution
P.O. Box 725
Edge field, SC. 29824

I HEREBY CERTIFY, that a true and correct copy has been mailed to The OFFice of the ClerK and All parties and Counsel of Record. This Day of March 14, 2011.

X Rodolfo Orlando Martinez

EXHIBIT A

Exibit A.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.09-61624-CIV-COOKE/WHITE

FILED by AP D.C.
MAY 04 2010
STEVEN M. LARIMORE
CLERK U. S. DIST. CT.
S. D. of FLA. – MIAMI

RODOLFO ORLANDO MARTINEZ

V.

NAJMY HALABI individually, NAJMY HALABI in his official capacity as Broward Sheriff deputy, Sgt.Tim Concannon individually, Sgt.Tim concannon in his official capacity as Broward Sheriff deputy, Christopher Hickox individually, Christopher Hickox in his official capacity as Broward Sheriff deputy, Andrew Cardarelli individually, Andrew Cardarelli in his official capacity as Broward Sheriff deputy, Al Lamberti in his official capacity as Sheriff of Broward County, BROWARD SHERIFFS OFFICE, an CITY OF BROWARD COUNTY

defendants

AMENDED COMPLAINT

A COMPLAINT UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. 1983 ALSO UNDER 42 U.S.C. 1985(3). Plaintiff's claim is. All defendants are in violation of Plaintiff's fourth amendment right to be free from excessive force, Fourteenth Amendment equal protection of the laws. Fifth Amendment due process.

Parties

A. Name of Plaintiff: Rodolfo Orlando Martinez
Inmate# 73382-004
Address: PO.BOX 019120 Miami,Florida,33101(Facility)F.D.C. MIAMI

B. Defendant: Najmy Halabi
is employed as A Broward Sheriffs Deputy
at Broward County Sheriffs office in Broward County

C. Additional Defendants: Sgt.Tim Concannon Broward Sheriffs Deputy for the city of Broward County, Christopher Hickox Broward Sheriffs Deputy for the city of Broward County, Andrew Cardarelli Broward Sheriffs Deputy for the city of Broward County, Al Lambertti Sheriff of Broward county in the city of Broward County,
Broward Sheriffs Office an Broward county

Statement of Claim

This case derived from case no.08-60309-cr-marra involving a reverse sting operation where officers from the Broward Sheriffs office afforded an opertunity to rob a fictionalstash house.

Under supervision of the Broward Sheriffs Office an Sgt.Tim Concannon. Deputy Najmy Halabi from the Broward Sheriffs office knowingly,willfully.combined an conspired to harm,injure an murder (plaintiff, Rodolfo Martinez.) Recorded conversations on 9/15/08 throught 9/17/08 the conspiracy to murder (plaintiff.) Are audio recorded an in possesion of the Broward Sheriffs an Prosecutors in case no. 08-60309-cr-marra.

On October.7,2008 (plaintiff.) was told by deputy Najmy Halabi to meet him at the Broward Sheriffs Undercover warehouse with a firearm. Upon arrival at the U/C warehouse (plaintiff) was offered and given numerous alcoholic beverages. By duputy Halabi an Sgt.Tim concannon. While speaking to Broward Sheriffs deputies in there undercover capacity exited the room where (plaintiff) remaind seated a false wall came down and (plaintiff) was fired upon numerous times by Broward Sheriffs (SWAT) Deputies Christopher Hickox, an Andrew Cardarelli unjust an excessive force by gunfire. All of these actions were recorded on audio an video in the undercover warehouse the night of October.7,2008. Broward Sheriffs an Prosecutors in criminal case no.08-60309-cr-marra refused to grant (plaintiff) a copy of this video of October.7,2008.

Deputies Najmy Halabi an Sgt.Tim Concannon are in the auto theft task force unit. An where allowed to run this operation of the fictional stash house.By Broward Sheriffs an Broward County an ultimatly leading (plaintiff) into serious life threating injury.

COUNTS,

(1) CONSPIRACY Knowingly,conspire to injure,opress,threaten or intimadate,or murder.

(2) Neglegence, failier to train officers on excessive force in sting operation, Failier to train deputies in reverse sting operation, Santioning Unconstitutional conduct, allowing reverse sting operation to go any further aware of conspiracy to murder. Liable for there deputies actions.

(3) EXCESSIVE FORCE

PLAINTIFFS CLAIM ON COUNTS AGAINST DEFENDAENTS

COUNT(1) CONPIRACY , Najmy Halabi conspireing to murder plaintiff recorded on audio recordings by Broward sheriffs

COUNT (1)2)Sgt.Tim Concannon knowingly taking place in conspiracy throught recorded statements .

COUNT (2) NEGLEGENCE, Al Lambirty in his official capacity as sheriff of broward .

COUNT (2) NEGLEGENCE,BROWARD SHERIFFS OFFICE

COUNT (2) NEGLEGENCE, CITY OF BROWARD COUNTY

COUNT (3) EXCESSIVE FORCE, Christopher Hickox shooting plaintiff while seated not posing a threat.

COUNT (3) EXCESSIVE FORCE, Andrew Cardarelli shooting plaintiff while seated not posing a threat.

Relief

Plaintiff request the court to grant him. Damages.. A.Conpensatory damages B. Punitive Damages. C. Other such relife the court deems just an proper an to be afforded the opertunity to proceed to trial in this matter.

JURY TRIAL

Jury trial is requested by plaintiff.

signed this 2nd day of May ,2010
Rodolfo Martin

I declare under penalty of perjury that the foregoing is true and correct.
Executed on: May 2nd 2010
Rodolfo Martin

EXHIBIT B

(Conspiracy)

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

Exibit B.

(Detective Halabi Receives an Incoming Call from Target Donald Duhart)

P.9.4

Det. Halabi:	What's up Donald?
Mr. Duhart:	What's up Al?
Det. Halabi:	What's going on man?
Mr. Duhart:	Not much.
Det. Halabi:	What's this cat…
Mr. Duhart:	On my way…
Det. Halabi:	This cat's trying to call me huh?
Mr. Duhart:	Yeah.
Det. Halabi:	What hap, what's going on you talk to him or what?
Mr. Duhart:	No, I talked to him but like I told him um, I never said nothing to him and then I talked to him today, cause he came by the house yesterday…
Det. Halabi:	Oh okay.
Mr. Duhart:	And he, you know, been there for two (2) days and kinda like seein what I'm doing…
Det. Halabi:	Oh okay.
Mr. Duhart:	What I'm trying to do so, I didn't know, cause a couple days before that when me and Laz came back that day from you?
Det. Halabi:	Yeah.
Mr. Duhart:	Yeah, we all had it out in the house.
Det. Halabi:	Oh you did?
Mr. Duhart:	Yeah, we had this, naw just an argu, argument to straighten something out between everybody to let them know you know, about everybody havin my mouth, my name in their mouth.
Det. Halabi:	Okay…

MEM

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

Mr. Duhart: You know personal shit going on.

Det. Halabi: You have, you talked, you talked to Rudy about that?

Mr. Duhart: Yeah, I talked to Rudy about that, you know, Laz was there, Laz saw it you know, we's gonna be fight and all that cause you know, I just blew up cause I got tired of it.

Det. Halabi: Oh okay, you straightened everything out or, or is everything on better terms or what?

Mr. Duhart: Well, it's on, it's on better terms a little bit, you know because I know it's still, cause he ain't gonna admit in my face, you know what I'm saying?

Det. Halabi: Right.

Mr. Duhart: He's not gonna never admit you know, if he said anything about me or whatever and you know, to my face so. Cause it's like I told him when I was arguing with him, like I told him you know, choose you words careful.

Det. Halabi: Right, right, right.

Mr. Duhart: You know, and him and David so, then he tried to blame it on David and it kinda like you know, after that it kinda like I stayed at the house and then I just had to leave. I'm gonna go down to Miami for a couple of days.

Det. Halabi Oh, you're going to Miami?

Mr. Duhart: Yeah, I'm going to Miami.

Det. Halabi: Oh, did he ah, did he ask you about our thing or what?

Mr. Duhart: No, he ain't asked about it, he called up cause he came over yesterday and he actually stayed over at the house for like two (2) days. And then he, I seen him looking through my phone…

Det. Halabi: Oh.

Mr. Duhart: And then he called back today and he was like, "What's Al's number?" And I like I don't know, I erased out my phone, you know? He was like oh (inaudible), and I said no, I erased it yesterday cause right now I don't know what's going on and nobody's not picking up their phones so I'm not doing nothing, you know? I'm doing my own thing right now.

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

Det. Halabi: Right, right, right.

Mr. Duhart: So, I just left it at that. Laz is down in Kendall, I just talked to him. I'm gonna meet up with him in Miami, cause he lives in Miami.

Det. Halabi: Who's that?

Mr. Duhart: Laz.

Det. Halabi: Oh, oh he's down in Kendall?

Mr. Duhart: Yeah, he's down in Kendall. I'm waiting for him to come back up this way.

Det. Halabi: Oh.

Mr. Duhart: Up to Miami

Det. Halabi: Oh um, so you think he's calling me trying to get back in on this thing or what?

Mr. Duhart: Yeah, I think, he called me to find out what's going on. But like I told him, I was like I'm not, I'm not going to do anything. I'm not doing nothing, you know, I'm out.

Det. Halabi: (Right, right. Hey, let me ask you, um, I, I was throwing around some ideas and I, and I you know, remember something you said back then…)

Mr. Duhart: (Um hum.)

Det. Halabi: (And um, what'd you think if and this is just an idea, bring him in and then once, once he's there you know, whatever happens you know what I mean?)

Mr. Duhart: (Yeah.)

Det. Halabi: (Whatever happens you know what I mean?)

Mr. Duhart: (Ah huh, yeah I know whatcha mean.)

Det. Halabi: Um, I mean that's you know, I'm just throwing it out there. I don't know if that's you even want to have him around, or you know?

Mr. Duhart: Um hum.

Det. Halabi: To help us out with this or not, you know what I mean?

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

Mr. Duhart: Yeah.

Det. Halabi: But, cause he's gonna, he's definitely gonna, if I call him back he's gonna, he's gonna ask me about it you know what I mean, and you know I don't want…

Mr. Duhart: Yeah.

Det. Halabi: You know I don't want him to, to know to much and…

Mr. Duhart: Um hum.

Det. Halabi: You know what I mean?

Mr. Duhart: Yeah.

Det. Halabi: So…

Mr. Duhart: ★ I'd, I'd, basically I'd just want to tell him you know, that you all got somebody else to do, to do whatever you all want him to do, ya all hired somebody else, you know?

Det. Halabi: Oh okay. Alright, let me, let me ah, let me see what he says then, and then I'll, I'll let you know.

Mr. Duhart: Okay.

Det. Halabi: Alright?

Mr. Duhart: Okay.

Det. Halabi: And Laz is ah, everything's good with him?

Mr. Duhart: Yeah, everything's good with him, I, I called him earlier to meet up with him cause I'm trying to get him something today.

Det. Halabi: Okay.

Mr. Duhart: So I'm trying to get in contact with a lot of people that I know in Miami right now.

Det. Halabi: Okay. Alright man, I'll ah, I'll holler at you then.

Mr. Duhart: Okay.

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

Det. Halabi: Alright man, later.

(End of Telephone Call)

And that was a ah incoming call from target Donald Duhart, and that came in at approximately 4:25 p.m. by my watch, September 15th, 2008.

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

(Detective Halabi Receives an Incoming Call from Target Donald Duhart)

Det. Halabi: Yo Donald?

Mr. Duhart: Yeah?

Det. Halabi: What's up man? Hey ah, I talked to him.

Mr. Duhart: Ah huh.

Det. Halabi: He was at, he was trying to find out a little bit more, I almost slipped up and, and mentioned that we met, but then, then I told him, oh look I talked to ah, he, he, he say's that you told me, you told him that you haven't talked to me in like two (2) weeks. And I said well what happened was, I, I called him the other day but we couldn't talk to much because it was on the phone.

Mr. Duhart: Yeah.

Det. Halabi: So um, just leave it like that, don't say nothing else to him…

Mr. Duhart: Yeah.

Det. Halabi: And um me, me and you and Laz meet tomorrow alright?

Mr. Duhart: Oh okay.

Det. Halabi: Okay, tomorrow's good?

Mr. Duhart: Yeah, yeah, I got, I got to call and make sure, make sure he's free.

Det. Halabi: Alright, call…

Mr. Duhart: He's, he's coming down this way, so I'm gonna, what I'll do is I'll call him today and let him know you know, ahead of time to vent. That's what I had to do the last.

Det. Halabi: Yeah, well…

Mr. Duhart: (Inaudible – both parties speaking at the same time) running around.

Det. Halabi: Tell him it's kinda important because of that other issue that you know, that I just talked about.

Mr. Duhart: Yeah, okay.

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

Det. Halabi:	So if we all come together, at least we can do it right…
Mr. Duhart:	Um hum.
Det. Halabi:	Come up with whatever plan we do because…
Mr. Duhart:	Yeah.
Det. Halabi:	You know what I mean we need to, we need to deal with it one way or another so…
Mr. Duhart:	Um hum.
Det. Halabi:	Alright, so if we can meet tomorrow, talk to him and call me back. Let me know if we're gonna meet tomorrow, alright?
Mr. Duhart:	Okay.
Det. Halabi:	Alright, and I'll let you know around what time. Maybe after, sometime later on, okay?
Mr. Duhart:	Okay.
Det. Halabi:	Alright man, later.
Mr. Duhart:	Alright.
	(Telephone Call Ended)
Det. Halabi:	That was an incoming call from target Donald Duhart, September 15, 2008, it's approximately 4:53 p.m. by my watch.

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

After 16th

Det. Halabi:	This is Detective Halabi of the Broward County Sheriff's Office, today's date is September 17th, 2008, it's Wednesday, it's approximately 1:17 p.m. by my watch. And I received a incoming call target Donald Duhart at 12:47 p.m. on this date. And I'm gonna return the call at this time, at 9-5-4-3-4-7-9-2-5-8
Mr. Duhart's Phone Recording:	Please enjoy this call tone while we connect you. (Hear music playing)
Mr. Duhart:	Hello?
Det. Halabi:	Yeah, what's up Donald?
Mr. Duhart:	Hey Al?
Det. Halabi:	What's going on man?
Mr. Duhart:	Not much, I just left from Laz right now.
Det. Halabi:	Okay.
Mr. Duhart:	I was, I was, I was talking to him and um I was letting him know that I was gonna talk to Rudy today.
Det. Halabi:	Oh okay.
Mr. Duhart:	So he just wanted to make sure that everybody was on the same page, that, that we never had no (inaudible) that John never meet Laz here.
Det. Halabi:	That what?
Mr. Duhart:	That John never met Laz here.
Det. Halabi:	Right, right, right, cause remember I told you I almost slipped up and then I said naw, we didn't meet. So what we'll do is um, we'll act like we never met that day, that day you and Laz came?
Mr. Duhart:	Yeah.
Det. Halabi:	And we'll just act whatever so when you, when you want to bring him, work him back in, we'll just act like it's the first meet and...
Mr. Duhart:	Okay.

17th Conversation Set up (Conspiracy)

MEM

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

Det. Halabi:	And I'll just say, you know, if he ask you anything just say yeah he called me one time but we really didn't talk much cause it was on the phone, so…
Mr. Duhart:	Yeah, cause I'm, I'm, I'm, I'm tell him, I'm gonna talk to him today and tell him that you called me today, I spoke with you today.
Det. Halabi:	Okay.
Mr. Duhart:	So…
Det. Halabi:	Hey um, what's what with Laz, was he able to get those things or no?
Mr. Duhart:	Um, I don't know, "Kinzo" dropped something off for me cause I need, I needed one of his tools for something for today.
Det. Halabi:	Oh okay.
Mr. Duhart:	Cause I (inaudible – voice was breaking up) to set something up.
Det. Halabi:	Say again, I couldn't, I couldn't hear you?
Mr. Duhart:	I said my (inaudible – sounded like Auntie) setting something up for me.
Det. Halabi:	Oh okay.
Mr. Duhart:	So that's why I wanted to talk to Laz for "Kinzo" drop something for me.
Det. Halabi:	Is Laz home now?
Mr. Duhart:	Yeah, he's home now.
Det. Halabi:	Oh okay, he'd probably would have called me if he came through with that though right?
Mr. Duhart:	Ah, naw, ah no, Laz don't have your number.
Det. Halabi:	He got it last night.
Mr. Duhart:	Oh he got it last night.
Det. Halabi:	Yeah.
Mr. Duhart:	Uh…

UC Controlled Phone Calls with Targets
Donald Duhart, Rudy Martinez and Lazaro Cruz
BSO Case #BS08-07-2148
09/15/08 through 09/17/08

Det. Halabi: He gave me his number last night.

Mr. Duhart: I don't know, unless, unless, unless he still trying to get "Kinzo" to give him, to give him more than one (1) out.

Det. Halabi: Hum, okay. Alright man, I'll ah, yeah go ahead and ah, what, what we talked about yesterday?

Mr. Duhart: Ah huh.

Det. Halabi: (That's fine, I mean if he asked me we'll just, you know, we won't mention that other meeting or nothing like that so don't worry about that.)

Mr. Duhart: (Yeah, cause I told Laz that you know, should I just set him straight up, I talked to Al this what you know, Al said that they, they got the plan and if you want to abide by it then you're in, if not then you're out you know?)

Det. Halabi: Yeah, I mean, you, you can talk to, you can talk to him about that and say I called you and whatever, and you know?

Mr. Duhart: Ah huh.

Det. Halabi: You can tell him we talked or whatever, and whatever you tell him just let me know so then if he wants to come in you know, I'll just say, I'll vouch for whatever you say you know what I mean?

Mr. Duhart: Okay.

Det. Halabi: (Based on what we talked about yesterday.)

Mr. Duhart: Okay.

Det. Halabi: Alright?

Mr. Duhart: Alright.

Det. Halabi: Alright man, later.

Mr. Duhart: Okay.

(End Of Telephone Conversation)

Det. Halabi: Okay, that call will now conclude, it's approximately 1:21 p.m. by my watch.

EXHIBIT C

Exhibit C.

15. Transcript of Sworn Statement of EMT Scott Pollard dated 10/07/2008 relating to Case No. BS08-07-2148;

16. Transcript of Sworn Statement of Christopher Mazzola dated 10/07/2008 relating to Case No. BS08-07-2148;

17. Transcript of Sworn Statement of Detective Juan Barros dated 10/07/2008 relating to Case No. BS08-07-2148;

18. Transcript of Sworn Statement of Michael Brady relating to Case No. BS08-07-2148;

19. Broward Sheriff's Office Division of Internal Affairs Investigative Report dated 05/06/2009 authored by Sgt. Mary Guess relating to Case No. PC 10-08-0319 – Officer Involved Shooting;

20. Broward Sheriff's Office Investigative Action Report dated 05/07/2009 authored by Det. John Barrena relating to Case No. BS08-07-2148 – Officer Involved Shooting;

21. Broward Sheriff's Office Shooting Review Board Memorandum dated 06/19/2009 Guess relating to Case No. PC 10-08-0319 – Officer Involved Shooting;

22. Broward Sheriff's Office Firearms Qualifications Record – CARDARELLI dated 02/17/2008;

23. Broward Sheriff's Office Firearms Qualifications Record – HICKOX dated 07/10/2008;

24. Composite Exhibit: Still color laser photographs from (redacted and privileged) videotape of subject incident prepared by Broward Sheriff's Office;[1]

---

1 In accordance with the federal law enforcement privilege, and for purposes of protecting internal law enforcement techniques, and procedures, and from protecting the identity and ensuring the safety of undercover law enforcement officers, including in future operations and investigations, the entirety of the videotape surveillance involving MARTINEZ is privileged and not subject to disclosure. Commonwealth of Puerto Rico v. U.S., 490 F.3d 50 (1st Cir. 2007); White v. City of Fort Lauderdale, 2009 WL 1298353 (S.D. Fla. May 8, 2009); Department of Investigation of the City of New York v. Myerson, 856 F.2d 481 (2d Cir. 1988); Aguilar v. U.S. Department of Homeland Security, 259 F.R.D. 51 (S.D. N.Y. 2009). However, non-privileged and excerpted still photographs and audio of the alleged conduct at issue have been provided to counsel for HALABI, CONCANNON, HICKOX,

YOSS LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

Exhibit. C.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-61624-CIV-COOKE/WHITE

RODOLFO ORLANDO MARTINEZ,

Plaintiff,

vs.

NAJMY HALABI, et al.,

Defendants.
_____/

DEFENDANTS, NAJMY HALABI, TIM CONCANNON, CHRISTOPHER HICKOX AND ANDREW CARDARELLI'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION REQUESTING HEARING AND ORAL ARGUMENT

Defendants NAJMY HALABI ("HALABI"), TIM CONCANNON ("CONCANNON"), CHRISTOPHER HICKOX ("HICKOX") and ANDREW CARDARELLI ("CARDARELLI"), by and through their undersigned counsel, and in accordance with Local Rule 7.1, hereby respond as follows in opposition to Plaintiff, RODOLFO ORLANDO MARTINEZ's ("MARTINEZ") Motion Requesting Hearing and Oral Argument [DE 62]:

1. MARTINEZ has filed a Motion seeking a hearing and oral argument, and therein further requests, the production of portions of the law enforcement surveillance video of the shooting at issue in this matter.

2. However, MARTINEZ's request for the production of any portion of the law enforcement surveillance video in this matter should be denied, in its entirety, for several reasons. ***First***, in accordance with the federal law enforcement privilege, and for purposes of protecting internal law enforcement techniques, and procedures, and from protecting the identity and ensuring the safety of undercover law enforcement officers, including in future operations and investigations, the entirety of the videotape

YOSS LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

surveillance involving MARTINEZ is privileged and not subject to disclosure. Commonwealth of Puerto Rico v. U.S., 490 F.3d 50 (1st Cir. 2007); White v. City of Fort Lauderdale, 2009 WL 1298353 (S.D. Fla. May 8, 2009); Department of Investigation of the City of New York v. Myerson, 856 F.2d 481 (2d Cir. 1988); Aguilar v. U.S. Department of Homeland Security, 259 F.R.D. 51 (S.D. N.Y. 2009).

Second, MARTINEZ, on two separate occasions during his criminal trial (Case No. 08-60309-CR-KAM), attempted to obtain a copy and production of the surveillance video at issue, which, as it pertains to "production" of a copy, was denied by the Hon. Kenneth A. Marra, United States District Judge. Specifically, on June 17, 2009, MARTINEZ filed a Motion to Compel Production of Discovery, therein seeking "an order of the Court compelling production of the video in question." See Motion to Compel Production of Discovery, DE 96 (appended hereto as Exhibit A). On June 19, 2009, the Court granted the Motion to Compel, but MARTINEZ was only allowed to "***review*** the entire video." See Order on Motion for New Counsel and Motion to Compel, DE 100 (appended hereto as Exhibit B) (emphasis added). Thereafter, on February 24, 2010, MARTINEZ once again filed a motion for production of the "unedited" video, as well as audio, of the surveillance. See Motion for Production an (sic) Copies of any/or All Video/Audio to be Furnished to Defendant, DE 216 (appended hereto as Exhibit C). On March 30, 2010, the Court denied MARTINEZ's Motion. See Order Denying Motion for Video, DE 221 (appended hereto as Exhibit D). Although not privy to any of the arguments made in relation to any of the aforementioned motions (seemingly, the issue was not briefed by the United States in writing), it appears that during MARTINEZ's criminal trial, the United States had similar, if not the same, concerns and law enforcement privilege justifications for preventing MARTINEZ obtaining a "copy" of any portion of the law enforcement surveillance video at issue.

3. However, as represented in HALABI, CONCANNON, HICKOX, CARDARELLI's Pretrial Statement, non-privileged and excerpted still photographs and audio of the shooting at issue in this matter have been provided to counsel for HALABI, CONCANNON, HICKOX, CARDARELLI, and

will be produced in this matter once requested.

4. The protection of internal law enforcement techniques, and procedures, and the protection of the identity, as well as the safety of undercover law enforcement officers, including in future operations and investigations, outweighs any purported burden suffered by MARTINEZ if a copy of the video is not produced, in whole or part, in this civil matter, particularly in light of the eventual production of still photographs (and excerpted audio) of the force used on, and complained of by, MARTINEZ.

WHEREFORE, based upon the arguments presented and the authority cited herein, HALABI, CONCANNON, HICKOX, CARDARELLI respectfully request the Court deny MARTINEZ's Motion Requesting Hearing and Oral Argument [DE 62], and deny MARTINEZ's request for a copy of any portion of the law enforcement surveillance video.

Dated: January 27, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Alain E. Boileau
ROBERT H. SCHWARTZ (301167)
rhs@yoss.com
ALAIN E. BOILEAU (0148598)
aeb@yoss.com
YOSS LLP
888 Southeast 3rd Avenue, Suite 500
Fort Lauderdale, FL 33316
Telephone: (954) 523-5885
Facsimile: (954) 760-9531
Attorneys for Defendants

EXHIBIT D

Exibit. D.

Office of the General Counsel
2601 West Broward Boulevard
Fort Lauderdale, Florida 33312
(954) 831-8920 (Telephone)
(954) 321-5040 (Fax - Legal)
(954) 797-0937 (Fax - Confiscations Unit)
www.sheriff.org

Pride in Service with Integrity℠

February 15, 2011

VIA U.S. MAIL

Inmate Rodolfo Orlando Martinez
Reg. No. 73382-004
Federal Correctional Institution
P. O. Box 725
Edgefield, SC 29824

RE: Public Records Request
Edited version of audio/video of October 7, 2008 shooting.
BSO Claim No. 251008002170-LW

Dear Inmate Martinez:

Please be advised that the cost to edit, review and duplicate DVD of October 7th, 2008 shooting is **$180.00** ($45.00/hour x the time to edit and review. Estimated time is 4 hours per every hour of raw footage.) Editing the video is necessary to obscure images of law enforcement on the video as such are exempt under Florida Law. See FS §119.071 (4)(d).

Please forward a check or money order made payable to the **Broward Sheriff's Office** and have it directed to the attention of the **Public Records Coordinator, Office of the General Counsel.** Once the payment is received the specified DVD will be duplicated and forwarded to you.

Should the actual hours worked be less than the estimate the difference will be refunded. In the event the actual work takes longer than the estimate the requesting party will be billed for the difference.

Should you have any questions or concerns, please do not hesitate to contact me at the above address.

Sincerely,

Terrence O. Lynch, Esq.
Assistant Legal Counsel

TOL/ac

cc: Larry Williams, Sr. Claims Adjuster, Risk Management Division (via e-mail)

H:\PUBLIC RECORDS REQUESTS (ac)\2010\TERRENCE\Martinez, Rodolfo Orlando Inmate\Martinez,Rodolfo O Inmate.3.doc

EXHIBIT E

Exibit. E.

Q. And uh once the take down word was said and you guys you and the other under cover left the room, uh what did you hear and what did you see?
A. Uh when I was about 3 or 4 feet out of the room where these individuals were at I heard a loud bang, which would be a, a concealed compartment that would open up and uh several times yelling Sheriff's Office, Sheriff's Office, let me see your hands, let me see your hands.

Q. So it was a loud screaming voice?
A. Extremely loud, uh multiple times by at least two individuals uh yelling it. Uh shortly after hearing multiple the Sheriff's Office, let me see your hands, let me hear, see your hands, uh there was gunshots.

Q. Do you know how many shots, do you know?
A. I'm gonna estimate two to three but exact numbers no I don't.

Q. And then what happened where'd you go?
A. Uh it was pre arranged that myself and the other under cover would come into an office and basically that's where we stayed until it was all clear by the SWAT team and the individuals were transported and one individual was taken into custody and taken some place.

lb

EXHIBIT F

Exibit F.

Q. Right.
A. But we did, I then shouldn't we, I can only speak for myself, I heard, I wanna say probably four shots.

Q. Okay. And when you heard the contact Deputies announced themselves, I mean was it loud? Were you able to hear it where you were?
A. Absolute, absolutely. I could hear it.

Q. Okay what were they saying specifically?
A. Sheriff's Office, show us your hand...it wasn't clear to me what they were saying.....

Q. Right.
A. Cause I'm down the hall, but I was able to hear the instructions and I know that they were saying.....

Q. Were they, were they wearing anything that discr, that would, that would indicate that they were police officers, that they were you know in, in there, in there regular duties, some type of clothing you know showing that they were part of the Sheriff's Office or?
A. Yeah they have on their tactical vest on the front, a placquered that said Sheriff and on both sleeves that say Sheriff and there's a white.....

Q. So there's no mistaking them if somebody sees them, it's a very apparent that they are they were, they're in the Sheriff's Office?
A. Absolutely.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-61624-CIV-COOKE/WHITE

RODOLFO ORLANDO MARTINEZ,

Plaintiff,

vs.

NAJMY HALABI, et al.,

Defendants.
_____/

DEFENDANTS, NAJMY HALABI, TIM CONCANNON, CHRISTOPHER HICKOX AND ANDREW CARDARELLI'S REPLY TO PLAINTIFF'S MOTION IN OPPOSITION OF DEFENDANTS CONCISE STATEMENT OF UNDISPUTED MATERIAL FACTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

Defendants NAJMY HALABI ("HALABI"), TIM CONCANNON ("CONCANNON"), CHRISTOPHER HICKOX ("HICKOX") and ANDREW CARDARELLI ("CARDARELLI"), by and through their undersigned counsel, hereby reply as follows to Plaintiff, RODOLFO ORLANDO MARTINEZ's ("MARTINEZ") Motion in Opposition of Defendants Concise Statement of Undisputed Material Facts in Support of Their Motion for Summary Judgment [DE 72]:

I. MARTINEZ's purported conspiracy to murder claim is not at issue as an independent claim and is subsumed by his Fourth Amendment excessive force claim

In the Report of Magistrate Judge [DE 24], issued on May 10, 2010, the Hon. Patrick A. White, United States Magistrate Judge, evaluated and analyzed MARTINEZ's Amended Complaint, and recognized therein that MARTINEZ "claims that Broward Deputies Najmy Halabi, Tim Concannon, Christopher Hickox and Andrew Cardarelli, along with Broward Sheriff Al Lamberti, the Broward Sheriff's Office and Broward County were involved in a conspiracy to murder him," and "lured him into a

YOSS LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

warehouse, and fired upon him while he remained seated, resulting in life threatening injuries." See DE 24, at 4. Appropriately, the Report of Magistrate Judge further recognized that "[a] claim that a law enforcement officer used excessive force in the course of an arrest, an investigatory stop, or any other seizure of a free citizen is to be analyzed under the Fourth Amendment and its "reasonableness" standard." Id. at 6. Based upon the aforementioned, the Report finds that MARTINEZ "has stated a claim of unlawful force against [the] defendants," and issued the following recommendation as it pertains to HALABI, CONCANNON, HICKOX and CARDARELLI:

> The claim of use of excessive force by Defendants Halabi, Concannon, Hickox and Cardarelli proceed. Service will be ordered upon these defendants by separate order.

Id. at 6. As demonstrated by the Report, the conspiracy claim was not treated or recommended to continue as an independent claim, but was considered and appropriately treated, as all alleged uses of excessive force, as a Fourth Amendment claim. Stated differently, the only recommendation proffered as to HALABI, CONCANNON, HICKOX and CARDARELLI was that the excessive force claim, and only the excessive force claim, proceed against them. In essence, MARTINEZ's claim is one of conspiracy to commit excessive force during an arrest; to wit, an alleged excessive force Fourth Amendment violation, and comprise of the same alleged injury. See e.g. Garcia v. City of Chicago, 2003 WL 1715621, *9 (N. D. Ill. 2003) ("the count V conspiracy to use excessive force and conspiracy to retaliate against [the plaintiff] for exercising First Amendment rights claims against the City are redundant since they appear to be the same as the excessive force and First Amendment claims against City . . . ***[plaintiff's] constitutional injury in the conspiracy versus the non-conspiracy claims are identical"***) (emphasis added). Furthermore, the Eleventh Circuit has recognized that:

> The purpose of §1985 was to stifle the serious class-based deprivation of constitutional rights by private parties, not to serve as a general federal tort law, and, as such, a claim under §1985(3)

> requires the proof of invidious discriminatory intent as well as the violation of a serious constitutional right protected not just from official, but also from private encroachment.

Trawinski v. United Technologies, 313 F.3d 1295, 1299 (11th Cir. 2002).

On August 16, 2010, the Court issued its Order Adopting Magistrate's Report and Recommendations [DE 49], wherein the Court held that "I find Judge White's Report and Recommendation clear, cogent, and compelling . . . [i]t is ORDERED and ADJUDGED that Judge White's Report and Recommendation [ECF No. 24] is AFFIRMED and ADOPTED." DE 49, at 1. However, the Order also proceeds to state that "[c]ounts I and III, against Defendants Halabi, Concannon, Hickox, and Cardarelli, remain." Id. at 2. Nevertheless, the inclusion of Count I, alleging a conspiracy to commit murder, in the Court's Order does not detract from Magistrate Judge White's analysis and recommendation, which was fully adopted and agreed upon by the Court, that MARTINEZ's sole claim is for the alleged use of excessive force pursuant to the Fourth Amendment. Hence, this is the sole claim at issue in this matter, and in HALABI, CONCANNON, HICKOX and CARDARELLI's Motion for Final Summary Judgment.[1]

II. Even if MARTINEZ's purported conspiracy to murder claim was at issue as a claim independent of his excessive force claim, the conspiracy claim fails as a matter of law

Even if MARTINEZ had a viable conspiracy claim independent of his excessive force claim, such conspiracy claim would fail because, as argued and demonstrated in HALABI, CONCANNON, HICKOX, and CARDARELLI Motion for Final Summary Judgment, MARTINEZ was not subjected to any constitutional violation, as a matter of law. It is well-settled that "to sustain a conspiracy action under §1983 . . . a plaintiff must show an underlying actual denial of [his] constitutional rights." Hadley v.

---

1 If the Court determines that there exists a colorable conspiracy claim independent of the Fourth Amendment excessive force claim, then HALABI, CONCANNON, HICKOX and CARDARELLI would respectfully request leave to supplement their Motion for Final Summary Judgment, to brief the issue more fully.

YOSS LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

Gutierrez, 526 F.3d 1324, 1332 (11th Cir. 2008); Slusarchuck v. Hoff, 346 F.3d 1178, 1183 (8th Cir. 2003) ("[a]bsent a constitutional violation, 'there is no actionable conspiracy claim'"); Curley v. Village of Suffern, 268 F.3d 65, 72 (2d Cir. 2001) ("[s]ince plaintiff cannot establish a claim for false arrest or the use of excessive force, he may not maintain a §1983 cause of action for conspiracy")' Wiley v. Oberlin Police Department, 2009 WL 1391532, *5 (6th Cir. 2009) (Plaintiff "cannot succeed on a conspiracy claim because there was no underlying constitutional violation that injured her"). Moreover, in order to prove a claim for conspiracy under §1985(3), MARTINEZ is required to prove: "(1) a conspiracy, (2) for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; and (3) an act in furtherance of the conspiracy, (4) whereby a person is either injured in his person or property or deprived of any right or privilege of a citizen of the United States." Trawinski, 313 F.3d at 1299. MARTINEZ has failed to prove any of the aforementioned elements, warranting final summary judgment disposition.

III. The Broward Sheriff's Office is not providing a copy of the surveillance video to MARTINEZ

MARTINEZ's Response states that he has been in recent correspondence with the Broward Sheriff's Office ("BSO"), and that despite the privileges asserted in this matter, BSO "has granted Plaintiff a copy of this said video of October 7, 2008 shooting." See Response, at 4. However, contrary to MARTINEZ's representation, and unbeknownst to MARTINEZ at the time of his Response, correspondence from BSO, dated March 23, 2001 (appended hereto as Exhibit A), has informed him that the surveillance video, upon review by BSO, is exempt from disclosure under Florida law, and further

recognizes that the Court has not yet ruled upon this pending issue. Therefore, as of the date of this Reply, MARTINEZ is not being provided a copy of the surveillance video for which he seeks full disclosure.

CONCLUSION

Based on the authority cited and the arguments presented in their Motion for Final Summary Judgment, and herein, HALABI, CONCANNON, HICKOX, and CARDARELLI respectfully request the Court grant final summary judgment in their favor, and against MARTINEZ.

Dated: March 24, 2011
Fort Lauderdale, Florida

Respectfully submitted,

s/Alain E. Boileau
ALAIN E. BOILEAU (0148598)
aeb@yoss.com
YOSS LLP
888 Southeast 3rd Avenue, Suite 500
Fort Lauderdale, FL 33316
Telephone: (954) 523-5885
Facsimile: (954) 760-9531
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on March 24, 2011, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all counsel of record or pro se parties identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing

s/Alain E. Boileau
ALAIN E. BOILEAU

MARTINEZ v. HALABI, et al.
CASE NO: 09-61624-CIV-COOKE/WHITE

Service List

Rodolfo Orlando Martinez, *Pro Se*
REG No. 73382-004
FCI - Edgefield
Federal Correctional Institution
P.O. Box 725
Edgefield, South Carolina 29824
[via regular U.S. Mail]

YOSS LLP
888 SOUTHEAST 3RD AVENUE • SUITE 500 • FORT LAUDERDALE, FL 33316 • TELEPHONE (954) 523-5885 FAX (954) 760-9531

Office of the General Counsel
2601 West Broward Boulevard
Fort Lauderdale, Florida 33312
(954) 831-8920 (Telephone)
(954) 321-5040 (Fax - Legal)
(954) 797-0937 (Fax - Confiscations Unit)
www.sheriff.org

Pride in Service with Integrity.

March 23, 2011

VIA U.S. MAIL

Inmate Rodolfo Orlando Martinez
Reg. No. 73382-004
Federal Correctional Institution
P. O. Box 725
Edgefield, SC 29824

RE: Public Records Request
Edited version of audio/video of October 7, 2008 shooting.
BSO Claim No. 251008002170-LW

Dear Inmate Martinez:

Upon receiving a copy of your check in the amount of $195.00 for the above referenced video recording, I obtained a copy of the video in order to review it for exempt material. After having reviewed the videotape, I have found that it would not be possible to produce the video in a redacted form without revealing agency surveillance techniques, procedures and/or personnel. Because this information is exempt from disclosure under Florida law, it can not be produced pursuant to the Public Records Act. See Florida Statutes section 119.071 (2) (d) (2010).

Additionally, it is my understanding that the defendants in your Federal lawsuit have asserted the Federal law enforcement investigatory privilege with regard to this particular videotape, and that there has been no order at this time to produce a copy of the video in that case.

Accordingly, I am returning your check for the cost of producing these records.

Should you have any questions or concerns, please do not hesitate to contact me at the above address.

Sincerely,

Terrence O. Lynch, Esq.
Assistant Legal Counsel

TOL/ac
Enclosure: check

cc: Larry Williams, Sr. Claims Adjuster, Risk Management Division (via e-mail)

H:\PUBLIC RECORDS REQUESTS (ac)\2010\TERRENCE\Martinez, Rodolfo Orlando Inmate\Martinez,Rodolfo O Inmate.S.doc