

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
 CARLOS CRUZ, as Father and Next Friend)
 of STEPHEN CRUZ,)
)
 Plaintiff,)
)
 -against-)
)
 THE CITY OF NEW YORK; RAYMOND KELLY,)
 COMMISSIONER OF THE NEW YORK CITY)
 POLICE DEPARTMENT; JOEL KLEIN,)
 COMMISSIONER OF THE NEW YORK CITY)
 DEPARTMENT OF EDUCATION; SCHOOL)
 SAFETY AGENT DANIEL O'CONNELL, Shield)
 No. 2816; SCHOOL SAFETY AGENT)
 SUPERVISOR ANTHONY PELOSI AT THE)
 NYPD 107TH PRECINCT, Shield No. 0049;)
 JOHN DOES; RICHARD ROES,)
)
 Defendants)
 -----X

COMPLAINT

JURY TRIAL DEMANDED

ECF CASE

08 Civ. 10055 (RJH)(MHD)

PRELIMINARY STATEMENT

1. This is a civil rights action in which CARLOS CRUZ seeks relief on behalf of his son STEPHEN CRUZ for the defendants' violation of STEPHEN CRUZ's rights secured by the Civil Rights Act of 1871, 42 U.S.C. Section 1983, by the United States Constitution, including its Fourth and Fourteenth Amendments, and by the laws and Constitution of the State of New York. The plaintiff seeks damages, both compensatory and punitive, affirmative and equitable relief, an award of costs and attorneys' fees, and such other and further relief as this court deems equitable and just.

JURISDICTION

2. This action is brought pursuant to the Constitution of the United States, including its Fourth and Fourteenth Amendments, and pursuant to 42 U.S.C. §1983. Jurisdiction is conferred upon this court by 42 U.S.C. §1983 and 28 U.S.C. §§1331 and 1343(a)(3) and (4), this being an action seeking redress for the violation of STEPHEN CRUZ's constitutional and civil rights.

JURY TRIAL DEMANDED

3. Plaintiff demands a trial by jury on each and every claim as pleaded herein.

VENUE

4. Venue is proper for the United States District Court for the Southern District of New York pursuant to 28 U.S.C. §1391 (a), (b) and (c).

PARTIES

5. Plaintiff CARLOS CRUZ is a citizen of the United States, and at all times relevant herein resided in the state of New York, county of Queens. STEPHEN CRUZ, a minor, is the son of CARLOS CRUZ, and is and was at the time of the events complained of herein fifteen years of age. STEPHEN CRUZ at all times relevant herein resided with his parents and family in the state of New York, county of Queens.

6. Defendant THE CITY OF NEW YORK ("The City") is and was at all times relevant herein a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. It is also authorized by law to maintain a department of education, which acts as its agent in the area of education of the City's youth and for which it is ultimately responsible. Defendant THE CITY OF NEW YORK

assumes the risks incidental to the maintenance of a police force and system of public education and the employment of school safety agents as said risk attaches to the public consumers of the services provided by the New York City Police Department (“NYPD”) and Department of Education (“DOE”).

7. Defendant RAYMOND KELLY is and was at all times relevant herein, the Police Commissioner for the City of New York, and he is responsible, in whole and/or in part, for the creation, implementation, promulgation and enforcement of the policies, practices and /or customs complained of herein. He is sued individually and in his official capacity.

8. Defendant JOEL KLEIN is and was at all times relevant herein, the Commissioner of Education for the City of New York, and he is responsible, in whole and/or in part, for the creation, implementation, promulgation and enforcement of the policies, practices and /or customs complained of herein. He is sued individually and in his official capacity.

9. Defendants SCHOOL SAFETY AGENT DANIEL O’CONNELL, Shield No. 2816, and JOHN DOES, are and were at all times relevant herein duly appointed and acting officers, servants, employees and agents of THE CITY OF NEW YORK and/or the New York City Police Department and/or the New York City Department of Education, municipal agencies of defendant THE CITY OF NEW YORK. Said individual defendants are and were at all times relevant herein acting under color of state law in the course and scope of their duties and functions as officers, agents, servants, and employees of defendant THE CITY OF NEW YORK, were acting for, and on behalf of, and with the power and authority vested in them by THE CITY OF NEW YORK and/or the New York City Police Department and/or the New York City Department of Education, and were otherwise performing and engaging in conduct incidental to

the performance of their lawful functions in the course of their duties. Defendants O'CONNELL and JOHN DOES are sued individually and in their official capacity.

10. Defendants SCHOOL SAFETY AGENT SUPERVISOR ANTHONY PELOSI AT THE NYPD 107TH PRECINCT, Shield No. 0049, and RICHARD ROES are and were at all times relevant herein duly appointed and acting supervisory officers, servants, employees and agents of THE CITY OF NEW YORK and/or the New York City Police Department and/or the New York City Department of Education, responsible for the training, retention, supervision, discipline and control of school safety agents and other employees under their command. Said individual defendants are and were at all times relevant herein acting under color of state law in the course and scope of their duties and functions as supervisory officers, agents, servants, and employees of defendant THE CITY OF NEW YORK, were acting for, and on behalf of, and with the power and authority vested in them by THE CITY OF NEW YORK and/or the New York City Police Department and/or the New York City Department of Education, and were otherwise performing and engaging in conduct incidental to the performance of their lawful functions in the course of their duties. Defendants SCHOOL SAFETY AGENT SUPERVISOR PELOSI AT THE NYPD 107TH PRECINCT, Shield No. 0049 and RICHARD ROES are sued individually and in their official capacity.

STATEMENT OF FACTS

11. STEPHEN CRUZ is a student at Robert F. Kennedy High School in Flushing, Queens.

12. The afternoon of September 19, 2008, Plaintiff STEPHEN CRUZ entered the second floor bathroom, and entered one of the bathroom stalls so that he could use the facilities.

13. As he leaned his head over to unbuckle his pants, defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL, without any warning or justification, violently kicked the door of the stall into STEPHEN CRUZ'S head.

14. When he saw that there was blood coming from the wound that he had inflicted upon STEPHEN CRUZ, Defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL said, "That's life, it will stop bleeding."

15. Defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL then left the bathroom, without any attempt to seek medical attention for STEPHEN CRUZ.

16. Another student who was present in the bathroom assisted STEPHEN CRUZ to clean the blood off of his head, and assisted STEPHEN CRUZ in getting to the school's main office, where the incident could be reported and STEPHEN CRUZ could get medical attention.

17. STEPHEN CRUZ's parents were called to the school.

18. STEPHEN CRUZ's father CARLOS CRUZ made repeated attempts on that occasion and in the days that followed to ascertain what Defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL's explanation was for his conduct. CARLOS CRUZ was unable to obtain that information from the school's officials, and was informed that SCHOOL SAFETY AGENT DANIEL O'CONNELL did not have to submit a report to school officials, since he was governed by the NYPD 107th Precinct.

19. STEPHEN CRUZ's father CARLOS CRUZ was subsequently informed by the school's Principal that SCHOOL SAFETY AGENT SUPERVISOR ANTHONY PELOSI AT THE NYPD 107TH PRECINCT had cancelled a meeting with the Principal at which meeting the Principal had expected to obtain further information as to what Defendant SCHOOL SAFETY

AGENT DANIEL O'CONNELL's explanation was for his conduct.

20. To date, no explanation has been provided to STEPHEN CRUZ or his father CARLOS CRUZ for what transpired in the bathroom stall.

21. Defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL is referred to as "Robocop" by the students at Robert F. Kennedy High School because of his routine aggressive and inappropriate behavior towards the students.

22. In 1998, School Safety Agents were transferred from the Department of Education and placed under the authority of the New York City Police Department. Since that time there has been a widespread lack of transparency and accountability concerning the actions of School Safety Agents in the New York City Public Schools.

FIRST CLAIM

DEPRIVATION OF RIGHTS UNDER THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

23. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

24. By his conduct and actions in assaulting and battering STEPHEN CRUZ with unwarranted and excessive force, by wrongfully invading the privacy of STEPHEN CRUZ, by falsely imprisoning STEPHEN CRUZ in a bathroom stall, by inflicting emotional distress upon STEPHEN CRUZ, by failing to provide proper medical care for STEPHEN CRUZ, and by violating STEPHEN CRUZ's right to substantive due process, defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL, acting under color of law and without lawful justification, intentionally, maliciously, and with a deliberate indifference to or a reckless disregard for the natural and probable consequences of their acts, caused injury and damage in violation of

plaintiff's constitutional rights as guaranteed under 42 U.S.C. §1983 and the United States Constitution, including its Fourth and Fourteenth amendments.

25. By their conduct and actions in covering up the conduct and actions of defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL and preventing transparency regarding the September 19, 2008 incident, defendants JOHN DOES, SCHOOL SAFETY AGENT SUPERVISOR ANTHONY PELOSI AT THE NYPD 107TH PRECINCT, RAYMOND KELLY, and JOEL KLEIN, acting under color of law and without lawful justification, intentionally, maliciously, and with a deliberate indifference to or a reckless disregard for the natural and probable consequences of their acts, caused injury and damage in violation of plaintiff's constitutional rights as guaranteed under 42 U.S.C. §1983 and the United States Constitution, including its Fourth and Fourteenth amendments.

26. As a result of the foregoing, STEPHEN CRUZ was deprived of his liberty, suffered bodily injury, pain and suffering, psychological and emotional injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

SECOND CLAIM

SUPERVISORY LIABILITY FOR DEPRIVATION OF RIGHTS UNDER THE UNITED STATES CONSTITUTION AND 42 U.S.C. §1983

27. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

28. By failing to remedy the wrongs committed by their subordinates, including defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL, and in failing to properly train, screen, supervise, or discipline their subordinates, including defendant SCHOOL SAFETY AGENT DANIEL O'CONNELL, supervisory officers RICHARD ROES, SCHOOL SAFETY

AGENT SUPERVISOR ANTHONY PELOSI AT THE NYPD 107TH PRECINCT, RAYMOND KELLY, and JOEL KLEIN caused damage and injury in violation of STEPHEN CRUZ's rights guaranteed under 42 U.S.C. §1983, and the United States Constitution, including its Fourth and Fourteenth amendments.

29. As a result of the foregoing, STEPHEN CRUZ was deprived of his liberty, suffered bodily injury, pain and suffering, psychological and emotional injury, great humiliation, costs and expenses, and was otherwise damaged and injured.

THIRD CLAIM

LIABILITY OF THE CITY OF NEW YORK FOR CONSTITUTIONAL VIOLATIONS

30. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

31. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department and department of education, and through the individual defendants had de facto policies, practices, customs and usages which were a direct and proximate cause of the unconstitutional conduct alleged herein.

32. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department and department of education, and through the individual defendants, had de facto policies, practices, customs, and usages of failing to properly train, screen, supervise, or discipline employees and school safety agents, and of failing to inform the individual defendants' supervisors of their need to train, screen, supervise or discipline said defendants. These policies, practices, customs, and usages were a direct and proximate cause of the unconstitutional conduct alleged herein.

33. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through the individual defendants, had de facto policies, practices, customs, and usages of encouraging and/or tacitly sanctioning the violation of the rights of New York City Public School students by School Safety Agents and by other members of the NYPD. These policies, practices, customs, and usages were a direct and proximate cause of the unconstitutional conduct alleged herein.

34. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through the individual defendants, had de facto policies, practices, customs, and usages of encouraging and/or tacitly sanctioning the covering up of the improper conduct and actions of School Safety Agents and other members of the NYPD in the New York City Public Schools. These policies, practices, customs, and usages were a direct and proximate cause of the unconstitutional conduct alleged herein.

35. At all times material to this complaint, defendant THE CITY OF NEW YORK, acting through its police department, and through the individual defendants, had de facto policies, practices, customs, and usages of encouraging and/or tacitly sanctioning the widespread lack of transparency and accountability concerning the actions of School Safety Agents and other members of the NYPD in the New York City Public Schools. These policies, practices, customs, and usages were a direct and proximate cause of the unconstitutional conduct alleged herein.

36. As a result of the foregoing, STEPHEN CRUZ was deprived of his liberty, suffered bodily injury, pain and suffering, psychological and emotional injury, great humiliation,

costs and expenses, and was otherwise damaged and injured.

WHEREFORE, plaintiff demands the following relief jointly and severally against all of the defendants:

- a. Compensatory damages;
- b. Punitive damages;
- c. The convening and empanelling of a jury to consider the merits of the claims herein;
- d. Costs and interest and attorney's fees;
- e. Such other and further relief as this court may deem appropriate and equitable.

Dated: New York, New York
November 19, 2008

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