

## **PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MOTION TO DISMISS**

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, SS. SUPERIOR COURT

C.A. No. 2485CV01389

**BO SHANG,**

Plaintiff,

v.

**DEPARTMENT OF MENTAL HEALTH,**

**WORCESTER RECOVERY CENTER & HOSPITAL,**

**“ISAAC” DOE,**

**DEPARTMENT OF CORRECTIONS,**

Defendants.

## **PLAINTIFF’S OPPOSITION TO DEFENDANTS’ MEMORANDUM OF LAW**

### **IN SUPPORT OF THEIR MOTION TO DISMISS (Mass. R. Civ. P. 12(b)(6))**

Plaintiff **Pro Se** respectfully opposes the Defendants’ Motion to Dismiss. As set forth below, Defendants’ Motion misstates critical facts about Plaintiff’s actual release date, fails to acknowledge Plaintiff’s plausible constitutional and statutory claims (including those under Massachusetts law and 42 U.S.C. § 1983), and disregards binding United States and Massachusetts law—plus relevant international human rights treaties to which the United States is a signatory. Dismissal under Mass. R. Civ. P. 12(b)(6) is inappropriate because Plaintiff has alleged facts that, taken as true, establish multiple violations of his constitutional and statutory rights. The Court should **deny** Defendants’ Motion to Dismiss in its entirety.

### **I. INTRODUCTION & SUMMARY OF THE ARGUMENT**

Defendants argue for dismissal on several grounds, including (1) lack of service; (2) sovereign immunity; (3) an alleged failure to exhaust administrative remedies; and (4) an alleged failure to state a claim. Defendants also challenge Plaintiff’s factual contention that he was detained beyond the fifty-day maximum for a forensic commitment under Mass. Gen. Laws c. 123, § 16A.

#### **1. Factual Dispute About November 20, 2024 Release Date**

Contrary to Defendants' assertion that Plaintiff's release from Worcester Recovery Center & Hospital ("WRCH") occurred on or before November 15, 2024, Plaintiff affirms—and has consistently asserted—that he was physically and involuntarily held until **November 20, 2024**, i.e., one day beyond the statutory 50-day limit. A motion to dismiss cannot resolve or disregard a factual dispute regarding the date of actual release, especially where Plaintiff's Verified Complaint (or affidavit) states otherwise.

## 2. **Plaintiff's Constitutional Claims Survive**

- **Article 11 of the Massachusetts Constitution and the First Amendment** guarantee a right of meaningful access to the courts. Plaintiff plausibly alleges that Defendants unlawfully curtailed that right.

- **Article 26 of the Massachusetts Constitution and the Eighth Amendment** prohibit cruel or unusual punishment, and Plaintiff has alleged an unlawful physical restraint that caused actual injury.

- **Article 1 of the Massachusetts Constitution and the Fourteenth Amendment** protect due process. Plaintiff plausibly alleges he was detained beyond the time authorized by law.

- **Equal Protection Clause (Fourteenth Amendment)** is implicated where "forensic" patients are systematically denied Internet/legal access privileges that civilly committed patients enjoy, absent any rational or compelling justification.

## 3. **International Law Concerns**

The United States is a signatory to treaties such as the **International Covenant on Civil and Political Rights (ICCPR)** and the **Convention Against Torture (CAT)**, both of which prohibit arbitrary detention and cruel, inhuman, or degrading treatment. While not always privately enforceable in domestic courts, these treaties bolster the interpretation that U.S. law disallows prolonged unlawful detention and inhumane treatment by state entities.

## 4. **Sovereign Immunity Does Not Bar All Claims**

Defendants cannot cloak themselves in absolute immunity for (i) ongoing or prospective equitable and declaratory relief; (ii) claims brought under 42 U.S.C. § 1983 against individuals in their personal capacities; and (iii) intentional conduct beyond the scope of the Massachusetts Tort Claims Act's immunity provisions. Plaintiff explicitly seeks injunctive relief and a "blanket review" of DMH and DOC constitutional violations, which is permissible under established sovereign-immunity doctrine.

## 5. **Presentment Is Not Required For Constitutional Claims**

Contrary to Defendants' argument, presentment under the Massachusetts Tort Claims Act (G.L. c. 258) does not apply to claims grounded in constitutional violations or in purposeful

misconduct. Plaintiff has pleaded constitutional violations and intentional wrongdoing that lie outside the Act's scope, rendering Defendants' presentment argument inapplicable.

## **6. Exhaustion of Prison Grievance Procedures Is Not Required in This Context**

Plaintiff brings claims for (i) excessive force, (ii) unlawful detention beyond statutory authority, and (iii) denial of meaningful court access. These are constitutional claims not aimed solely at routine "prison discipline." Moreover, Plaintiff was housed in a **DMH** facility (WRCH), not strictly a DOC prison, and his civil rights claims implicate systemic constitutional challenges beyond the typical "conditions of confinement" grievance procedures. Massachusetts law does not require exhaustion if a plaintiff seeks injunctive relief from an ongoing unconstitutional policy, and the allegations plainly fall within that exception.

For these reasons, as further detailed below, Defendants' motion should be denied.

## **II. RELEVANT BACKGROUND & FACTUAL DISPUTE**

Plaintiff's **Initial Complaint**, filed November 15, 2024 (and attached to this Opposition), sets forth, among others, the following allegations (all of which must be taken as true at this stage):

### **1. Extra Day of Unlawful Detention (November 20, 2024 Release)**

- Plaintiff arrived at WRCH on or around October 1, 2024, under a 20-day observation period (G.L. c. 123, § 15(b)), later extended by a G.L. c. 123, § 16A order on October 18 or 20, 2024—triggering the statutory maximum of **fifty (50) days** combined (20 + 30).

- The fifty-day clock mandated that Plaintiff **must** be released by November 19, 2024 (i.e., day 50).

- However, Plaintiff was **physically held until November 20, 2024**, in direct violation of Massachusetts law.

- Defendants' contention that the Docket "shows Plaintiff was released earlier" is squarely at odds with the **actual facts**. Even if the Docket suggests an earlier release date on paper, a motion to dismiss cannot resolve a factual conflict. **Plaintiff pleads—and attests—that he was held until November 20, 2024.**

### **2. Denial of Court Access**

- Plaintiff is actively litigating multiple civil cases in state and federal courts. During his confinement, he repeatedly sought meaningful computer and/or Internet access to meet court deadlines, respond to motions, and file required pleadings.

- Both the DOC (while Plaintiff was temporarily in Middlesex Jail) and DMH/WRCH severely limited or outright denied the requested access, telling Plaintiff to rely on minimal phone calls to attorneys (many of whom do not provide direct representation in Plaintiff's types of cases) or to wait for extremely limited "computer hours" outside typical business times.

### 3. **Unlawful and Injurious Restraint**

- On November 12, 2024, Plaintiff was forcibly restrained for roughly one hour, suffering bruising and cuts, despite posing no actual risk of harm to himself or others.

- This was in retaliation for Plaintiff's lawful (and peaceful) protest and self-defense.

### 4. **Differential Treatment: "Forensic" vs. "Civil" Patients**

- "Committed" civil patients at WRCH or other DMH facilities can more freely access computers, devices, and the Internet, while "forensic" patients—like Plaintiff—are often categorically denied such access, even for legitimate legal tasks.

- No rational or compelling basis exists for this blanket disparity, violating the Equal Protection Clause and Massachusetts constitutional provisions ensuring equal access to justice.

These allegations suffice to raise plausible constitutional claims under Massachusetts law (Articles 1, 11, 26) and federal law (First, Eighth, and Fourteenth Amendments) for relief under 42 U.S.C. § 1983, and thereby overcome a motion to dismiss.

## **III. ARGUMENT**

### **A. Standard of Review**

On a motion to dismiss under **Mass. R. Civ. P. 12(b)(6)**, the Court must accept all well-pleaded allegations as true and make all reasonable inferences in the Plaintiff's favor. *Iannacchino v. Ford Motor Co.*, 451 Mass. 623, 635–36 (2008). Dismissal is improper "if the factual allegations in the complaint are enough to raise a right to relief above the speculative level." *Id.* at 636 (internal quotations omitted).

Here, Plaintiff's allegations of being (1) detained beyond statutory authority; (2) unlawfully restrained; (3) denied meaningful access to the courts and legal materials; and (4) subjected to unequal treatment based on "forensic" status all meet the plausibility standard. At this stage, the Court cannot weigh contradictory docket entries against Plaintiff's sworn statement that he remained confined to November 20, 2024, i.e., day 51—beyond the statutory maximum.

### **B. There Is a Genuine Factual Dispute Regarding the Alleged Release Date**

Defendants' memorandum relies on the assumption that Plaintiff was "released on November 15, 2024" (or was at Middlesex Jail from November 15 through November 20). In either

scenario, Defendants claim Plaintiff was not beyond 50 days. **But Plaintiff alleges the opposite**—that he was physically confined to WRCH *through* November 20, 2024.

- At the motion-to-dismiss stage, courts “must assume the truth of the facts alleged.” *Edwards v. Commonwealth*, 477 Mass. 254, 260 (2017).

- Even if certain docket entries suggest an earlier release, a motion to dismiss is not the forum to resolve factual contradictions. The Court must credit Plaintiff’s factual assertion that he was held an extra day beyond the statutory maximum. See *Doe v. Am. Guar. & Liab. Co.*, 91 Mass. App. Ct. 99, 101 (2017) (judicial notice of other records does not override well-pleaded factual allegations).

Hence, there is at least a factual dispute that forecloses dismissal at this early stage.

### **C. Sovereign Immunity Does Not Warrant Dismissal of All Claims**

#### **1. Claims for Injunctive and Declaratory Relief Are Not Barred**

Under settled principles, sovereign immunity does not bar suits seeking *prospective* injunctive relief against state officials in their official capacity. *Ex parte Young*, 209 U.S. 123 (1908). Although the Eleventh Amendment typically bars certain damage claims in federal court, the Massachusetts Supreme Judicial Court likewise recognizes that prospective relief to end ongoing constitutional violations is permissible in state court. *Cf. Lopes v. Commonwealth*, 442 Mass. 170, 177–78 (2004).

Here, Plaintiff specifically requests “a blanket review across the DMH and DOC” to address ongoing constitutional violations. Such prospective relief is not foreclosed by sovereign immunity.

#### **2. Personal-Capacity Claims Against State Actors**

Plaintiff also names “Isaac” Doe and other unidentified or partially identified individuals responsible for alleged misconduct (e.g., forced restraint causing bruising). A state employee “acting under color of state law” can be held personally liable for constitutional violations under **42 U.S.C. § 1983**, *Will v. Mich. Dep’t of State Police*, 491 U.S. 58, 71 (1989), provided the plaintiff seeks damages from the employee’s personal assets rather than the state treasury. Defendants’ blanket invocation of sovereign immunity ignores that Plaintiff has sued the nurse manager and other staff for personal misconduct and unnecessary physical restraint, thus falling outside the immunity bar for claims of individual wrongdoing.

#### **3. Massachusetts Tort Claims Act (MTCA)**

- **Intentional tort exception:** Under G.L. c. 258, § 10(c), the Commonwealth retains immunity for an employee’s “intentional tort[s].” But that does not shield the *employee* from liability in his personal capacity. *Parker v. Chief Justice*, 67 Mass. App. Ct. 174, 180 (2006).

Plaintiff pleads that the forced restraint was an unjustified, intentional assault—actionable under both common-law tort theories and civil-rights statutes.

- **Presentment:** Constitutional and intentional tort claims do *not* require statutory presentment under G.L. c. 258, § 4, because the MTCA's "exclusive remedy" provision applies only to negligence claims. See *Rodriguez v. City of Somerville*, 472 Mass. 1008, 1010 n.3 (2015). Plaintiff's core claims—unlawful detention, denial of access to courts, cruel treatment, and equal-protection violations—are not plain-negligence claims requiring presentment.

Consequently, Defendants' immunity arguments fail for at least the following categories of relief: (a) prospective injunctive and declaratory relief; (b) individual-capacity claims under 42 U.S.C. § 1983; and (c) any tort actions sounding in intentional wrongdoing or constitutional tort, which remain outside the MTCA's limited waiver or remain properly directed at the individuals.

#### **D. The Complaint Plausibly Alleges Constitutional Violations**

Defendants mistakenly dismiss Plaintiff's claims as "labels and conclusions." In fact, the Complaint sets forth plausible factual allegations, satisfying *Iannacchino* and *Twombly*:

##### **1. Unlawful Detention Beyond Statutory Limit**

- *Mass. Gen. Laws c. 123, § 16A* sets a maximum of 50 days for combined observation and continuing confinement. Being held *one day* past that statutory deadline states a cause of action under:

- **Article 1 of the Massachusetts Declaration of Rights** (freedom from unlawful detention);

- **Fourteenth Amendment** (deprivation of liberty without due process).

- That the Docket or an extension order might contradict Plaintiff's factual assertion is not a basis for dismissal at the pleadings stage.

##### **2. Denial of Access to Courts**

- *Article 11 of the Massachusetts Declaration of Rights* and the *First Amendment* guarantee meaningful access to judicial proceedings. *Bounds v. Smith*, 430 U.S. 817, 821 (1977).

- *104 CMR 27.13(1)* likewise confirms that "[n]o right protected by the Constitutions or laws of the United States and Commonwealth of Massachusetts shall be abridged solely on the basis of a patient's admission or commitment to a facility."

- Plaintiff alleges repeated denials and delays in obtaining computer/Internet access needed to meet urgent court deadlines, including for time-sensitive filings. This is precisely the sort of factual claim that courts find actionable at the pleading stage.

### 3. **Cruel or Unusual Punishment / Unlawful Physical Restraint**

- *Article 26 of the Massachusetts Declaration of Rights* and the *Eighth Amendment* prohibit cruel or unusual punishments. *Wilkinson v. Austin*, 545 U.S. 209 (2005).
- Plaintiff's allegations of an hour-long forced restraint, resulting in bruising, while he was peacefully protesting or engaged in minimal physical contact for self-defense, plausibly state a claim for excessive force.

### 4. **Equal Protection**

- *Fourteenth Amendment* to the U.S. Constitution and *Article 1* of the Massachusetts Declaration of Rights ensure that similarly situated persons are treated alike. *Goodridge v. Dep't of Pub. Health*, 440 Mass. 309, 328 (2003).
- Plaintiff alleges that "forensic" patients are categorically denied the computer/Internet privileges afforded to "civilly committed" patients, though both groups are hospitalized at the same DMH facility and both have legitimate needs to access the courts. No rational or compelling state interest is shown for this stark disparity.

## **E. Exhaustion of Administrative Remedies Is Not Required for These Constitutional Claims**

Defendants erroneously invoke G.L. c. 127, § 38E–F regarding prison grievances. Plaintiff's fundamental claims concern (1) **excessive force**, (2) **unlawful detention under G.L. c. 123**, and (3) a **systemic denial of constitutional rights** (access to courts, equal protection, etc.). Even if some internal grievance procedure existed, Massachusetts courts recognize an **exception** to the exhaustion requirement where a plaintiff (i) raises ongoing constitutional deprivations or (ii) seeks equitable relief from a repeated, unlawful policy or practice. *Grady v. Commissioner of Corr.*, 83 Mass. App. Ct. 126, 136–37 & n.9 (2013).

Moreover, Plaintiff's confinement was in a DMH mental-health facility (WRCH), not purely a DOC prison environment—making reliance on the DOC's inmate grievance regulations (103 CMR § 491.00 et seq.) inapposite. This suit is not about a routine disciplinary matter but about an overextended forensic commitment, denial of court access, and cruel or unusual restraints. Defendants have cited no controlling authority requiring "administrative exhaustion" for these constitutional claims.

## **F. International Human Rights Considerations Support Plaintiff's Claims**

Although U.S. courts do not always apply international treaties as private causes of action, the United States is a signatory to binding international agreements that strongly condemn arbitrary detention and cruel or degrading treatment, including:

- **International Covenant on Civil and Political Rights (ICCPR)**, Articles 7 & 9 (prohibiting arbitrary detention, cruelty, and ensuring fair treatment).

- **Convention Against Torture (CAT)**, Articles 1 & 16 (barring torture or cruel, inhuman, or degrading treatment by state officials).

These treaties and principles, while not necessarily self-executing, guide constitutional interpretation in U.S. courts and underscore the seriousness of the alleged wrongful prolonged detention and the inhumane or humiliating nature of forced physical restraint without necessity. They reinforce Plaintiff's claims that the Defendants violated both domestic law and internationally recognized human rights standards.

#### **IV. CONCLUSION**

For the foregoing reasons, the Plaintiff respectfully requests that this Honorable Court **DENY** Defendants' Motion to Dismiss. Plaintiff has adequately stated claims under the Massachusetts Declaration of Rights and the U.S. Constitution—enforced through 42 U.S.C. § 1983 and Massachusetts law. Plaintiff also seeks prospective injunctive relief, which is not barred by sovereign immunity. Finally, Defendants' reliance on the docket entry contradicting Plaintiff's allegation of detention through November 20, 2024, raises a factual dispute that cannot be resolved on the pleadings.

Plaintiff therefore prays that this Court deny Defendants' request for dismissal, allow discovery to proceed, and/or grant any other relief deemed just and proper.

**Respectfully submitted,**

**PLAINTIFF, PRO SE**

Date: January 24, 2025

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#### **CERTIFICATE OF SERVICE**

I, **Plaintiff Pro Se**, hereby certify that on this 24th day of January 2025, I served a copy of the foregoing **Opposition to Motion to Dismiss** upon counsel of record for Defendants by first class mail and/or electronic mail:

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