

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

_____]	
EMMANUEL ANDRO]	
Plaintiff]	
]	Civil Action No. 15- 13030-NMG
v.]	
]	
TOWN OF BROOKLINE, ET AL.]	
Defendants]	
_____]	

**DEFENDANT STEVEN W. TOMPKINS' ANSWER TO
PLAINTIFF'S COMPLAINT**

The Defendant Steven W. Tompkins by and through his attorney Kathleen M. Cawley, hereby submits his Answer to Plaintiff's *Complaint for Injunctive and Declaratory Relief and Monetary Damages*. The numbered paragraphs of this Answer correspond to the numbered paragraphs of the Plaintiff's Complaint.

Introduction

1. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 1.
2. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 2.
3. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 3.
4. This paragraph is introductory stating a legal proposition to which no response is required.
5. This paragraph is introductory stating a legal proposition to which no response is required.
6. This paragraph is introductory stating a legal proposition to which no response is required.

Jurisdiction and Venue

7. Defendant states that ¶7 contains a conclusion of law to which no response is required.
8. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 8.
9. Defendant states that ¶9 contains a conclusion of law to which no response is required.

Parties

10. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 10.
11. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 11.

Brookline Defendants

Defendant Tompkins lacks knowledge of information sufficient to form a belief about the truth of the allegations contained in paragraphs 12 through 29 related only to the Brookline Defendants.

U.S. Defendants

Defendant Tompkins lacks knowledge of information sufficient to form a belief about the truth of the allegations contained in paragraphs 30 through 39 related only to U.S. Defendants.

Defendant Tompkins lacks knowledge of information sufficient to form a belief about the truth of the allegations contained in paragraphs 40 through 45 related only to the Norfolk County Defendants.

46. Defendant Steven W. Tompkins admits that he is and was the Sheriff of Suffolk County at the relevant time of this complaint. Tompkins admits that he is responsible for the management and policies at the Suffolk County House of Correction. Tompkins denies the remainder of the allegations in ¶ 46.
47. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 47 related to unknown and unidentified Suffolk County defendants.

Facts

48. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 48.
49. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 49.
50. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 50.
51. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 51.
52. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 52.
53. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 53.
54. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 54.
55. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 55.
56. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 56.
57. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 57.
58. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 58.
59. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 59.
60. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 60.
61. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 61.
62. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 62.

63. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 63.
64. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 64.
65. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 65.
66. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 66.
67. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 67.
68. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 68.
69. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 69.
70. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 70.
71. Defendant states that ¶71 contains a conclusion of law to which no response is required.
72. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 72.
73. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 73.
74. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 74.
75. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 75.
76. Defendant Tompkins admits that Plaintiff was transported to the South Bay House of Correction. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in ¶ 76.
77. Denied.
78. Defendant Tompkins denies plaintiff was denied access to basic services. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the remaining allegations contained in ¶ 78.

79. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 79.
80. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 80.
81. Defendant states that ¶81 contains a conclusion of law to which no response is required.
82. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 82.
83. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 83.
84. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 84.
85. Denied.
86. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 86.
87. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 87.
88. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 88.
89. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 89.
90. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 90.
91. Defendant states that ¶91 contains a conclusion of law to which no response is required.
92. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 92.
93. Defendant states that ¶93 contains a conclusion of law to which no response is required.
94. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 94.
95. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 95.
96. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 96.

97. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 97.
98. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 98.
99. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 99.
100. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 100.
101. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 101.
102. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 102.
103. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 103.
104. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 104.
105. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 105.
106. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 106.
107. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 107.
108. Denied.
109. Denied.
110. Denied.
111. Denied.
112. Defendant Tompkins admits he has the authority to change policy and denies the remainder of the allegations contained in ¶ 112.
113. Denied.

- 114. Defendant states that ¶114 contains a conclusion of law to which no response is required. To the extent a response is required, the allegations are denied.
- 115. Denied.
- 116. Denied.
- 117. Denied.
- 118. Denied.
- 119. Denied.
- 120. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the allegations contained in ¶ 120.
- 121. Denied.

COUNT I

**Fourth Amendment and Due Process (*Bivens*)
(Unreasonable Seizure)**

Plaintiff v. Defendants McNeice, Thurlow, S. Gallagher and I.C.E. Does 21-30

- 122. Defendant incorporates by reference the responses to paragraphs 1 through 122.
- 123. Defendant states that ¶123 contains a conclusion of law to which no response is required.
- 124. Paragraph 124 does not require Defendant Tompkins response because it does not assert any claims against him. To the extent that any claims in ¶124 are directed against Tompkins they are expressly denied.
- 125. Paragraph 125 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶125 are directed against Tompkins they are expressly denied.
- 126. Paragraph 126 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶126 are directed against Tompkins they are expressly denied.
- 127. Paragraph 127 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶127 are directed against Tompkins they are expressly denied.
- 128. Paragraph 128 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶128 are directed against Tompkins they are expressly denied.

129. Paragraph 129 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶129 are directed against Tompkins they are expressly denied.
130. Paragraph 130 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶130 are directed against Tompkins they are expressly denied.

COUNT II

Fifth Amendment and 8 U.S.C. §1357 (*Bivens*)

(Procedural Due Process)

**Plaintiff v. Defendants Chambers, Milley, Thurlow, S. Gallagher, and I.C.E. Does
21-30**

131. Defendant incorporates by reference the responses to paragraphs 1 through 130.
132. Defendant states that ¶ 132 contains a conclusion of law to which no response is required.
133. Paragraph 133 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶133 are directed against Tompkins they are expressly denied.
134. Paragraph 134 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶134 are directed against Tompkins they are expressly denied.

COUNT III

Fifth Amendment (*Bivens*)

(Equal Protection)

Plaintiff v. Defendants McNeice, Milley, Gilbert, Sapia, Thurlos, S. Gallagher

135. Defendant incorporates by reference the responses to paragraphs 1 through 134.
136. Paragraph 136 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶136 are directed against Tompkins they are expressly denied.
137. Paragraph 137 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶137 are directed against Tompkins they are expressly denied.
138. Paragraph 138 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶138 are directed against Tompkins they are expressly denied.

139. Paragraph 139 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶139 are directed against Tompkins they are expressly denied.
140. Paragraph 140 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶140 are directed against Tompkins they are expressly denied.

COUNT IV

**Fourth and Fourteenth Amendment (42 U.S.C. §1983)
(Unreasonable seizure; Deprivation of Liberty and Due Process)
Plaintiff v. Defendants O'Leary, Lloyd, Gruber, McCarthy, Cappuccio, Brookline
Does 1 -10, Tompkins, Suffolk Does 31-40.**

141. Defendant incorporates by reference the responses to paragraphs 1 through 140.
142. Defendant states that ¶142 contains a conclusion of law to which no response is required.
143. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the factual allegations contained in ¶ 143. Paragraph 143 also contains conclusions of law which require no response.
144. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the factual allegations contained in ¶ 144. Paragraph 144 also contains conclusions of law which require no response.
145. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the factual allegations contained in ¶ 145. Paragraph 145 also contains conclusions of law which require no response.
146. Denied.
147. Defendant states that ¶147 contains a conclusion of law to which no response is required.
148. Defendant states that ¶148 contains a conclusion of law to which no response is required.

COUNT V

**Fourteenth Amendment (42 U.S.C. §1983)
(Due Process)
Plaintiff v. Defendants O'Leary, lloyde, Gruber, McCarthy, Cappuccio, Brookline
Does 1 -10, Tompkins, Suffolk Does 31-40**

149. Defendants incorporate by reference the responses to paragraphs 1 through 148.

- 150. Defendant states that ¶150 contains a conclusion of law to which no response is required.
- 151. Defendant states that ¶ 151 contains a conclusion of law to which no response is required.
- 152. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the factual allegations contained in ¶ 152. Paragraph 152 also contains conclusions of law which require no response.
- 153. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the factual allegations contained in ¶ 153. Paragraph 153 also contains conclusions of law which require no response.
- 154. Denied.
- 155. Denied.

COUNT VI

Fourteenth Amendment (42 U.S.C. §1983)

(Equal Protection)

Plaintiff v. Defendants O’Leary, Lloyd, Gruber, McCarthy, Cappuccio, D. Gallagher, Richards, Campbell, Paster, Dober, Baronas, Chambliss, Brookline Does 1 -10, Morrissey, Friedman, Marathas, Nelson, Norfolk Does 6 -10

- 156. Defendant incorporates by reference the responses to paragraphs 1 through 155.
- 157. Defendant states that ¶157 contains a conclusion of law to which no response is required.
- 158. Paragraph 158 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶158 are directed against Tompkins they are expressly denied.
- 159. Paragraph 159 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶159 are directed against Tompkins they are expressly denied.
- 160. Paragraph 160 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶160 are directed against Tompkins they are expressly denied.
- 161. Paragraph 161 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶161 are directed against Tompkins they are expressly denied.

- 162. Paragraph 162 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶162 are directed against Tompkins they are expressly denied.
- 163. Paragraph 163 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶163 are directed against Tompkins they are expressly denied.
- 164. Paragraph 164 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶164 are directed against Tompkins they are expressly denied.
- 165. Paragraph 165 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶165 are directed against Tompkins they are expressly denied.
- 166. Paragraph 166 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶166 are directed against Tompkins they are expressly denied.
- 167. Paragraph 167 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶167 are directed against Tompkins they are expressly denied.
- 168. Paragraph 168 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶168 are directed against Tompkins they are expressly denied.

COUNT VII

False Arrest/False Imprisonment

**Plaintiff v. Defendants O'Leary, Lloyd, Gruber, McCarthy, Cappuccio, Brookline
Does 1-10, Tompkins, Suffolk Does 31-40**

- 169. Defendant incorporates by reference the responses to paragraphs 1 through 168.
- 170. Denied.
- 171. Denied.
- 172. Defendant Tompkins lacks knowledge or information sufficient to form a belief about the truth of the factual allegations contained in ¶ 172.
- 173. Denied.

COUNT VIII

Negligence

Plaintiff v. Defendants O’Leary, McCarthy, Campbell, Paster, Gruber, Lloyd, Cappuccio, D.Gallagher, Richards, Brookline Does 1 -10, Morrissey, Friedman, Nelson, Norfolk Does 11-20

174. Defendant incorporates by reference the responses to paragraphs 1 through 173.
175. Paragraph 175 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶175 are directed against Tompkins they are expressly denied.
176. Paragraph 176 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶176 are directed against Tompkins they are expressly denied.

COUNT IX

False Arrest/False Imprisonment

(Federal Tort Claims Act, 28 U.S.C. §§ 2671, 1346)

Plaintiff v. Defendant United States

177. Defendant incorporates by reference the responses to paragraphs 1 through 176.
178. Paragraph 178 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶178 are directed against Tompkins they are expressly denied.
179. Paragraph 179 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶179 are directed against Tompkins they are expressly denied.
180. Paragraph 180 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶180 are directed against Tompkins they are expressly denied.
181. Paragraph 181 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶181 are directed against Tompkins they are expressly denied.
182. Paragraph 182 does not require Defendant Tompkins’ response because it does not assert any claims against him. To the extent that any claims in ¶182 are directed against Tompkins they are expressly denied.

COUNT X

Negligence (Federal Tort Claims Act, 28 U.S.C. §§2671,1346)

Plaintiff v. Defendant Unites States

183. Defendants incorporate by reference the responses to paragraphs 1 through 182.
184. Paragraph 184 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶184 are directed against Tompkins they are expressly denied.
185. Paragraph 185 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶185 are directed against Tompkins they are expressly denied.
186. Paragraph 186 does not require Defendant Tompkins' response because it does not assert any claims against him. To the extent that any claims in ¶186 are directed against Tompkins they are expressly denied.

COUNT XI
Declaratory Relief (5 U.S.C. §706)

187. Defendant states that ¶187 contains a conclusion of law to which no response is required.
188. Defendant states that ¶188 contains a conclusion of law to which no response is required.

COUNT XII
Declaratory Relief (28 U.S.C. §2201)
Plaintiff v. All Defendants

189. Defendant incorporates by reference the responses to paragraphs 1 through 188.
190. Defendant states that ¶190 contains a conclusion of law to which no response is required.
191. Defendant denies Plaintiff is entitled to declaratory relief.

AFFIRMATIVE DEFENSES

1. The Complaint fails to state a claim against the Defendants upon which relief can be granted and therefore the Complaint should be dismissed pursuant to Fed. R. Civ. P. 12 (b) (6).
2. The 11th Amendment of the United States Constitution bars the Plaintiff's claims.
3. Defendant Tompkins is entitled to Qualified Immunity and therefore not liable under §1983.

4. Plaintiff suffered no constitutional deprivation while incarcerated at the Suffolk County House of Correction.
5. Plaintiff was lawfully committed to the Suffolk County House of Correction.
6. The Defendant was at all times relevant to the Plaintiff's Complaint acting with official discretion with an objectively reasonable belief that his actions were lawful and not in violation of any clearly established statutory or constitutional right of which a reasonable person would have known.
7. The Plaintiff is estopped from recovering any judgment against the Defendants by his conduct and action.
8. The Plaintiff's claims for punitive damages are in violation of the provisions of the United States Constitution and the statutes and the Constitution of the Commonwealth of Massachusetts, and therefore the Plaintiff is not entitled to recover punitive damages.
9. The Defendant was not deliberately indifferent to Plaintiff.
10. The practices and policies related to the detention of I.C.E. detainees at the Suffolk County House of correction are lawful and appropriate.
11. The Defendant is not liable insofar as the Plaintiff's damages were caused by the acts of an independent third party.
12. The Suffolk County Defendants hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during discovery proceedings in this action and hereby reserve the right to amend its answer and to assert any such defense by appropriate motion.

JURY DEMAND

The Defendant demands a trial by jury on all issues.

Wherefore, the defendant respectfully requests that the complaint be dismissed with prejudice, and for such other relief as this court deems just and proper.

Respectfully submitted
Suffolk Defendants
By their attorney

MAURA HEALEY
ATTORNEY GENERAL

/s/ Kathleen M. Cawley
Kathleen M. Cawley
Special Assistant Attorney General
Deputy General Counsel
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200 Nashua Street
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May 24, 2016

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2016, this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and a paper copy will be sent the Plaintiff via first class mail at the following address:

Emmanuel Andro, Pro Se,
1764 Dorchester Ave, #2,
Boston, MA 02124

/s/ Kathleen M Cawley
Kathleen M. Cawley