

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

TAMEIKA LOVELL,

Plaintiff,

against-

JOHN DOE 1, as Director, Field Operations, United States Customs and Border Protection; JOHN DOE 2, as Chief Officer, United States Customs and Border Protection; JOHN DOE 3, as Supervisory Officer, United States Customs and Border Protection; PARKER Shield No.: 24750, as Officer, United States Customs and Border Protection and MUNOZ Shield No.: 21455, as Officer, United States Customs and Border Protection each sued individually and in their official capacities as employees of the United States of America,

Defendants.

Civil Action No.18-CV-1867
(KAM) (SMG)

**ANSWER TO
AMENDED COMPLAINT**

Defendants U.S. CUSTOMS AND BORDER PROTECTION OFFICERS HELEN PARKER and BARBARA MUNOZ, in their personal and official capacities (“defendants”), by and through her attorney, RICHARD P. DONOGHUE, Acting United States Attorney, Eastern District of New York, and GAIL A. MATTHEWS, Assistant United States Attorney, of counsel, answers the correspondingly numbered paragraphs of the Complaint, upon information and belief, as follows:

The first paragraph of the Amended Complaint, under the caption “INTRODUCTION,” is a characterization of this action, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

1. This paragraph is a statement of jurisdiction, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

2. This paragraph is a statement of venue, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

3. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 3 of the Complaint and, accordingly, deny.

4. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 4 of the Complaint and, accordingly, deny.

5. This paragraph is a conclusion of law, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

6. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 6 of the Complaint and, accordingly, deny.

7. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 7 of the Complaint and, accordingly, deny.

8. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 8 of the Complaint and, accordingly, deny.

9. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 9 of the Complaint and, accordingly, deny.

10. Defendants deny except to admit Parker is an Officer, United States Customs and Border Protection (“CBP”).

11. Defendants deny except to admit Munoz is an Officer, United States Customs and Border Protection.

12. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 12 of the Complaint and, accordingly, denies.

13. Defendants deny and state that the allegations in this paragraph purport to

describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

14. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

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21. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

22. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

23. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

24. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best

evidence of its contents.

25. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

26. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

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29. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

30. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on

Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

31. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

32. Defendants deny and state that the allegations in this paragraph purport to describe a document entitled “U.S. Customs and Border Protection - National Standards on Transport, Escort, Detention, and Search (TEDS),” which speaks for itself and is the best evidence of its contents.

33. Admit.

34. Deny.

35. Deny.

36. This paragraph sets forth a conclusion of law, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

37. Deny except to admit that on or about November 27, 2016, plaintiff arrived at John F. Kennedy International Airport on a flight from Montego Bay, Jamaica and presented herself to CBP for inspection.

38. Deny.

39. Deny.

40. Deny.

41. Deny.

42. Defendants lack knowledge or information sufficient to form a belief as to the

truth or falsity of the allegations in paragraph 42 of the Complaint and, accordingly, deny.

43. Deny except to admit that plaintiff accompanied defendants to a private search room at Terminal 4 on November 27, 2016.

44. Deny except to admit that plaintiff interacted with a Supervisory CBP Officer on November 27, 2016.

45. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 45 of the Complaint and, accordingly, deny.

46. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 46 of the Complaint and, accordingly, deny.

47. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 47 of the Complaint and, accordingly, deny.

48. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 48 of the Complaint and, accordingly, deny.

49. Deny except to admit that plaintiff accompanied defendants into a private search room at Terminal 4 on November 27, 2016.

50. Deny.

51. Deny.

52. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 52 of the Complaint and, accordingly, deny.

53. Deny.

54. Admit.

55. Deny except to admit that Parker conducted a pat down of plaintiff.

56. Deny.

57. Deny.

58. Deny.

59. Deny.

60. Deny.

61. Deny.

62. Deny.

63. Deny.

64. Deny.

65. Deny.

66. Deny except to admit that a CBP Team Leader entered the private search room after the pat-down search.

67. Deny.

68. Deny.

69. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 69 of the Complaint and, accordingly, deny.

70. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 70 of the Complaint and, accordingly, deny.

71. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 71 of the Complaint and, accordingly, deny.

72. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 72 of the Complaint and, accordingly, deny.

73. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 73 of the Complaint and, accordingly, deny.

74. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 74 of the Complaint and, accordingly, deny.

75. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 75 of the Complaint and, accordingly, deny.

76. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 76 of the Complaint and, accordingly, deny.

77. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 77 of the Complaint and, accordingly, deny except to admit that no criminal charges have been filed against the defendants.

78. Deny.

80. Deny.

81. Defendants repeat and incorporate herein each of their answers to the allegations contained in paragraphs 1-80.

82. Deny.

83. This paragraph is a characterization of the sovereign immunity waiver for this cause of action, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

84. Defendants repeat and incorporate herein each of their answers to the allegations contained in paragraphs 1-83.

85. Deny.

86. This paragraph is a characterization of the sovereign immunity waiver for this cause of action, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

87. Defendants repeat and incorporate herein each of their answers to the allegations contained in paragraphs 1-86.

88. Deny.

89. This paragraph is a characterization of the sovereign immunity waiver for this cause of action, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

90. Defendants repeat and incorporate herein each of their answers to the allegations contained in paragraphs 1-89.

91. Deny.

92. This paragraph is a characterization of the sovereign immunity waiver for this cause of action, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

93. This paragraph is a request for a trial by jury, to which no response is required; to the extent a response is deemed required, this paragraph is denied.

The unnumbered, final paragraph of the Complaint constitutes a prayer for relief to which no response is required; to the extent a response is deemed to be required, defendants deny.

FIRST DEFENSE

The Complaint should be dismissed to the extent the Court lacks subject matter jurisdiction.

SECOND DEFENSE

The Complaint should be dismissed to the extent it fails to state a claim upon which relief can be granted.

THIRD DEFENSE

The Complaint should be dismissed to the extent plaintiff has failed to allege a constitutional violation.

FOURTH DEFENSE

The Complaint should be dismissed because the acts and/or omissions of defendants were not the proximate cause of any injury to, or deprivation of constitutional rights of, the plaintiff.

FIFTH DEFENSE

Defendants possessed probable cause for the conduct challenged in this action.

SIXTH DEFENSE

The Complaint should be dismissed because defendant's actions were at all times lawful and reasonable.

SEVENTH DEFENSE

The claims against defendants should be dismissed because they are immune from liability under the doctrine of qualified immunity.

EIGHTH DEFENSE

Complaint should be dismissed to the extent the defendants are sued in their respective official capacities and, thus, are protected by sovereign immunity.

NINTH DEFENSE

The Complaint should be dismissed to the extent plaintiff seeks recovery for mental or emotional injury but fails to allege a physical injury.

TENTH DEFENSE

The Complaint should be dismissed to the extent plaintiff's claims properly sound in common law tort and plaintiff failed to bring such claims pursuant to the Federal Tort Claims Act. *See* 28 U.S.C. § 2401(b)).

ELEVENTH DEFENSE

Plaintiff's claims are barred pursuant to 28 U.S.C. § 2680(a) to the extent any such claim falls within the gamut of discretionary function exception to the Federal Tort Claims Act, 28 U.S.C. § § 1346(b), 2671 et seq.

TWELFTH DEFENSE

To the extent plaintiff seeks to recover punitive or exemplary damages, defendants plead the defenses of sovereign immunity and lack of subject matter jurisdiction, pursuant to 28 U.S.C. § 2674.

WHEREFORE, defendants demand judgment dismissing the Complaint in its entirety, and for such other and further relief as this Court may deem just and proper.

Dated: Brooklyn, New York
December 7, 2018

RICHARD P. DONOGHUE
United States Attorney
Eastern District of New York
271 Cadman Plaza East
Brooklyn, New York 11201

By: s/ Gail A. Matthews (e-signature)
Gail A. Matthews
Assistant U.S. Attorney
Eastern District of New York
(718) 254-6025
Gail.matthews@usdoj.gov