

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

TAMEIKA LOVELL,

Plaintiff,

- against -

STEPHEN T. TWAROWSKI, as Supervisory Officer, United States Customs and Border Protection; HELEN QUANASIA PARKER Shield No.: 24750, as Officer, United States Customs and Border Protection, and BARBARA 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  
SECOND AMENDED COMPLAINT

Defendants U.S. CUSTOMS AND BORDER PROTECTION OFFICERS STEPHEN T. TWAROWSKI, HELEN PARKER and BARBARA MUNOZ, in their personal and official capacities (“defendants”), by and through their attorneys, RICHARD P. DONOGHUE, United States Attorney, Eastern District of New York, and SHANA C. PRIORE, Assistant United States Attorney, of counsel, answer the correspondingly numbered paragraphs of the Second Amended 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.

**IN RESPONSE TO THE SECTION TITLED  
“PROCEDURAL REQUIREMENTS”**

3. Defendants lack knowledge or information sufficient to form a belief as to the truth or falsity of the allegations in this paragraph of the Second Amended 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 this paragraph of the Second Amended 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.

**IN RESPONSE TO THE SECTION TITLED “PLAINTIFF”**

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

**IN RESPONSE TO THE SECTION TITLED “DEFENDANTS”**

7. Defendants deny except to admit that Twarowski is a Supervisory Officer of United States Customs and Border Protection (“CBP”).
8. Defendants deny except to admit that Parker is a CBP Officer.
9. Defendants deny except to admit that Munoz is a CBP Officer.

**IN RESPONSE TO THE SECTION TITLED “BACKGROUND”**

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

11. 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.
12. 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.
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.
15. 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.
16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

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.
27. 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.

28. 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.

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. Admit.

32. Deny.

33. Deny.

34. 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.

35. 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.

36. Deny.

37. Deny.

38. Deny.

39. Deny.

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

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

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

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

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

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

47. Deny, except to admit that plaintiff accompanied Parker and Munoz into a private search room at Terminal 4 on November 27, 2016.

48. Deny.

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

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

51. Deny.

52. Deny.

53. Deny, except to admit that Parker conducted a patdown search of plaintiff.

54. Deny.

55. Deny.

56. Deny.

57. Deny.

58. Deny.

59. Deny.

60. Deny.

61. Deny.

62. Deny.

63. Deny.



64. Deny, except to admit that Twarowski entered the private search room at some point after the patdown search.

65. Deny.

66. Deny.

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

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

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

76. Deny.

77. Deny.

78. Deny.

**IN RESPONSE TO THE SECTION TITLED  
“VIOLATION AND CLAIMS ALLEGED – COUNT I  
VIOLATION OF THE FOURTH AMENDMENT  
ILLEGAL SEIZURE OF THE PERSON  
IN VIOLATION OF BIVENS”**

79. Defendants repeat and incorporate herein each of their answers to the allegations contained in paragraphs 1-78.

80. Deny.

81. 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.

**IN RESPONSE TO THE SECTION TITLED  
“COUNT II  
VIOLATION OF THE FOURTH AMENDMENT  
ILLEGAL SEARCH OF THE PERSON  
IN VIOLATION OF BIVENS”**

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

83. Deny.

84. 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.

**IN RESPONSE TO THE SECTION TITLED  
“COUNT III  
VIOLATION OF THE FIFTH AMENDMENT  
PROCEDURAL DUE PROCESS  
IN VIOLATION OF BIVENS”**

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

86. Deny.

87. 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.

**IN RESPONSE TO THE SECTION TITLED  
“COUNT IV  
VIOLATION OF THE FIFTH AMENDMENT  
SUBSTANTIVE DUE PROCESS  
IN VIOLATION OF BIVENS”**

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

89. Deny.

90. 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.

91. 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 Second Amended 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 Second Amended Complaint should be dismissed to the extent the Court lacks subject matter jurisdiction.

#### **SECOND DEFENSE**

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

#### **THIRD DEFENSE**

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

#### **FOURTH DEFENSE**

The Second Amended 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 plaintiff.

**FIFTH DEFENSE**

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

**SIXTH DEFENSE**

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

**SEVENTH DEFENSE**

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

**EIGHTH DEFENSE**

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

**NINTH DEFENSE**

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

**TENTH DEFENSE**

The Second Amended 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 that 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.

**THIRTEENTH DEFENSE**

Plaintiff's claims against Twarowski should be dismissed because they were not filed within the applicable statute of limitations.

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

Dated: Brooklyn, New York  
May 15, 2020

RICHARD P. DONOGHUE  
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Eastern District of New York  
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Brooklyn, New York 11201

By: /s/ Shana C. Priore  
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