

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

AARON TOBEY,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:11cv154-HEH
)	
JANET NAPOLITANO, et al.,)	
)	
Defendants.)	
)	

ANSWER OF DEFENDANTS REBECCA SMITH AND TERRI JONES

The Court's August 30, 2011 Memorandum Opinion (docket # 53) dismissed all of the claims in plaintiff's Amended Complaint against the federal defendants, with the exception of the Second Claim (paragraphs 104-09) with respect to defendants Rebecca Smith and Terri Jones in their individual capacities. With the limitation that only the Second Claim is extant, defendants Smith and Jones hereby respond to plaintiff's First Amended Complaint as follows:

FIRST DEFENSE

As to some or all of the remaining claims asserted in this action, plaintiff has failed to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6).

SECOND DEFENSE

The Court lacks subject matter jurisdiction over some or all of the remaining claims asserted in this action. Fed. R. Civ. P. 12(b)(1).

THIRD DEFENSE

Plaintiff lacks standing as to some or all of the remaining claims asserted in this action. Fed. R. Civ. P. 12(b)(6).

FOURTH DEFENSE

Some or all of the remaining claims asserted in this action are premature, non-ripe, or non-justiciable. Fed. R. Civ. P. 12(b)(6).

FIFTH DEFENSE

The defendants, sued in their individual capacities, are immune from plaintiff's claims under the doctrine of qualified immunity.

SIXTH DEFENSE

In response to the allegations of the Amended Complaint, defendants answer as follows:

Preliminary Statement: The unnumbered "Preliminary Statement" consist of plaintiff's characterizations of his claims and legal conclusions, to which no response is required, but to the extent a response is deemed to be necessary, denied.

1-3. The allegations in paragraphs 1, 2, and 3 consist of legal conclusions and jurisdictional averments, to which no response is required.

4. The allegations in this paragraph consist of plaintiff's characterizations of himself, to which no response is required. Even if a response were deemed to be necessary, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained therein.

5-6. The allegations in paragraphs 5-6 relate to individuals who have been dismissed from the lawsuit as a result of the Court's August 30, 2011 Memorandum Opinion (docket # 53) and, thus, no response is required, but to the extent a response is deemed to be necessary, these allegations are denied except to aver that they carry out the functions and duties of their offices.

7-8. Defendants are without knowledge or information sufficient to form a belief as to

the truth of the allegations contained therein.

9. Defendants admit the first and second sentences of paragraph 9. The third sentence consists of plaintiff's characterizations of defendant Jones' job responsibilities to which no response is required, but to the extent a response is deemed to be necessary, denied except to admit that, in December 2010, defendant Jones was a Supervisory Transportation Security Officer stationed at Richmond International Airport and carried out the functions and duties of that position. The fourth sentence consists of plaintiff's characterizations of the nature of his claims against defendants to which no response is required, but to the extent a response is deemed to be necessary, denied to the extent defendants are sued in their official capacities.

10-12. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 10, 11, and 12.

13-14. Admitted.

15. Admitted

16. Denied.

17-19. The allegations in paragraphs 17, 18 and 19 consist of plaintiff's characterizations of TSA Management Directive 100.4, to which no response is required. Defendants respectfully refer the Court to the Management Directive itself, which was filed as Exh. 1 to Federal Defendants' Memorandum in Support of Motion to Dismiss (docket # 33) for a full and complete statement of its contents.

20. Defendants deny except to admit that, under agreement between TSA and the Commission, the police stationed at the Richmond International Airport are available to assist the TSA officials.

21-24. The allegations in paragraphs 21, 22, 23, and 24 consist of plaintiff's characterizations of agreements between TSA and the Capital Region Airport Commission, to which no response is required. Defendants respectfully refer the Court to the documents themselves.

25. Defendants admit the allegations in paragraph 25, except they are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding plaintiff's grandfather's funeral.

26. Defendants deny the allegations in paragraph 26, except to admit that plaintiff had written a message regarding the Fourth Amendment on his chest. Further, defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations regarding what plaintiff anticipated regarding his selection for "enhanced secondary screening."

27. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 27.

28-29. Admitted.

30. Defendants deny the allegations in paragraph 30, except to admit that defendant Smith directed plaintiff to an AIT unit.

31. Defendants deny the allegations in paragraph 31, except to admit that plaintiff removed his t-shirt and sweatpants, placed these articles of clothing on the conveyer belt, and revealed a message on his chest.

32. Denied.

33. Defendants deny the allegations in paragraph 33, except to admit that defendant Smith summoned her supervisor, and that defendant Jones made a call for assistance.

34. Defendants deny the allegations in paragraph 34, except to admit that Richmond police officers arrived at the security checkpoint screening area shortly after defendant Jones called for assistance.

35. Denied.

36. Defendants deny the allegations in paragraph 36, except to admit that a Richmond police officer gather plaintiff's belongings with the assistance of a TSA official.

37-38. Denied.

39-76. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 39 through 76.

77-95. These paragraphs consist of conclusions of law, to which no response is required, but to the extent a response is deemed necessary, denied.

96. Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 96 regarding plaintiff's future air travel plans and the nature or extent of any injury he may have suffered. The remainder of the allegations in this paragraph consist of legal conclusions to which no response is require, but to the extent a response is deemed necessary, denied.

97. The allegations in this paragraph consist of legal conclusions to which no response is require, but to the extent a response is deemed necessary, denied.

98. Defendants hereby incorporate by reference the responses to paragraphs 1 through 97 set forth above.

99-103. The allegations in paragraphs 99-103 relate to a claim that the Court dismissed in the August 30, 2011 Memorandum Opinion and, thus, no response is required, but to the

extent a response is deemed necessary, denied.

104. Defendants hereby incorporate by reference the responses to paragraphs 1 through 103 set forth above.

105. The allegations in paragraphs 105 consist of legal conclusions to which no response is required, but to the extent a response is deemed necessary, denied.

106. The allegations in paragraph 106 relate to a claim that the Court dismissed in the August 30, 2011 Memorandum Opinion and, thus, no response is required, but to the extent a response is deemed necessary, denied.

107 -109. The allegations in paragraphs 107 through 109 consist of legal conclusions to which no response is required, but to the extent a response is deemed necessary, denied.

110. Defendants hereby incorporate by reference the responses to paragraphs 1 through 109 set forth above.

111-116. The allegations in paragraphs 111 through 116 relate to a claim that the Court dismissed in the August 30, 2011 Memorandum Opinion and, thus, no response is required, but to the extent a response is deemed necessary, denied.

117-125. The allegations in paragraphs 117 through 125 do not set forth claims against defendants Smith and Jones and, therefore, no response is required, but to the extent a response is deemed necessary, denied.

126-128. The allegations in paragraphs 126 through 128 consist of legal conclusions and plaintiff's characterizations of his claims to which no response is required, but to the extent a response is deemed necessary, denied.

The remainder of the Amended Complaint consists of plaintiff's prayer for relief and, as

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of September, 2011, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

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