

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

**CARLOS RAMOS-MACARIO, individually)
and on behalf of all persons similarly)
situated,)**

Plaintiff,)

v.)

**TRUMAN JONES, in his official capacity)
as Sheriff of Rutherford County and his)
individual capacity; BOB ASBURY, in his)
official capacity as Chief Deputy and)
Administrator of Detention in the)
Rutherford County Sheriff's Office and his)
individual capacity; RUTHERFORD)
COUNTY SHERIFF'S OFFICE -)
RUTHERFORD COUNTY, TENNESSEE;)
JOHN DOE 1, JOHN DOE 2, and JOHN DOE)
3, in their official capacities as employees)
of the Rutherford County Sheriff's Office)
and individually,)**

Defendants.)

Case No. 3:10-cv-0813

**SENIOR JUDGE WILLIAM
HAYNES, JR.**

**MAGISTRATE JUDGE JOHN
S. BRYANT**

**ANSWER TO SECOND AMENDED COMPLAINT
BY DEFENDANT RUTHERFORD COUNTY, TENNESSEE**

Comes Defendant Rutherford County, Tennessee, by and through counsel, in response to the Second Amended Complaint filed against it and others, and states unto this Honorable Court as follows:

FIRST DEFENSE

Pending investigation and in order to avoid waiver, this Defendant avers that some or all of the claims in the Second Amended Complaint fail to state a claim against it upon which relief can be granted.

SECOND DEFENSE

In response to the individually numbered paragraphs contained in the Second Amended Complaint, and with specific reference thereto, this Defendant responds:

1. In response to paragraph 1 of the Second Amended Complaint, this Defendant avers that the cases cited therein must be referenced to confirm the accuracy of the legal principles quoted therefrom but, regardless, that the entire body of applicable law must be referenced to determine applicable legal principles.
2. This Defendant admits the averments contained in the first two sentences of paragraph 2 of the Second Amended Complaint. This Defendant admits the averments contained in the third sentence of paragraph 2 of the Second Amended Complaint without admitting that this Defendant's employees were aware that the remainder of Plaintiff's six month sentence had been suspended by the judge. In response to the fourth sentence contained in paragraph 2 of the Second Amended Complaint, this Defendant admits that its legal authority to detain Plaintiff expired on or about June 23, 2009, but that its employees were not aware of that fact because they were relying upon a mittimus from the Smyrna Municipal Court which erroneously indicated that none of Plaintiff's six month sentence had been suspended. In response to the averments contained in the fifth sentence of paragraph 2 of the Second Amended Complaint, this Defendant admits that its employees detained Plaintiff at the RCADC until October 27, 2009.
3. In response to the averments contained in paragraph 3 of the Second

Amended Complaint, this Defendant admits that Plaintiff seeks compensation on behalf of himself and others for alleged wrongdoings but denies that it or its employees are guilty of any wrongdoing towards Plaintiff or that any of its employees should be liable to Plaintiff or others for any damages sought in this legal action.

4. This Defendant admits the averments contained in first sentence of paragraph 4 of the Second Amended Complaint. This Defendant denies the averments contained in the second sentence of paragraph 4 of the Second Amended Complaint.
5. This Defendant admits the averments contained in paragraph 5 of the Second Amended Complaint without admitting that it or any of its employees are liable to Plaintiff or others in this case.
6. This Defendant admits the averments contained in paragraph 6 of the Second Amended Complaint without admitting that it or any of its employees are liable to Plaintiff or others in this case.
7. This Defendant admits the averments contained in paragraph 7 of the Second Amended Complaint without admitting the accuracy of all factual averments contained in the Second Amended Complaint.
8. This Defendant admits the averments contained in paragraph 8 of the Second Amended Complaint without admitting that it or any of its employees are liable to Plaintiff or others in this case.
9. In response to the averments contained in paragraph 9 of the Second Amended Complaint, this Defendant admits that Plaintiff seeks various types

of relief on behalf of himself and others but denies that this Defendant or its employees can be liable therefore.

10. This Defendant is without knowledge or information sufficient to form a belief in the truth of the averments contained in paragraph 10 of the Second Amended Complaint.
11. This Defendant denies the averments contained in the first and second sentences of paragraph 11 of the Second Amended Complaint. This Defendant admits the averments contained in the third sentence of paragraph 11 of the Second Amended Complaint without admitting that Defendant Jones is liable to Plaintiff in this case.
12. This Defendant denies the averments contained in the first and second sentences of paragraph 12 of the Second Amended Complaint. This Defendant admits the averments contained in the third sentence of paragraph 12 of the Second Amended Complaint without admitting that Defendant Asbury is liable to Plaintiff in this case.
13. This Defendant admits the averments contained in paragraph 13 of the Second Amended Complaint.
14. This Defendant is without knowledge or information sufficient to form a belief in the truth of the averments contained in the first sentence of paragraph 14 of the Second Amended Complaint because of the lack of identification of the John Doe Defendants. This Defendant admits the averments contained in the second sentence of paragraph 14 of the Second Amended Complaint without admitting that any of its employees are liable in this case.

15. This Defendant admits the averments contained in paragraph 15 of the Second Amended Complaint.
16. This Defendant is without knowledge or information sufficient to form a belief in the truth of the averments contained in paragraph 16 of the Second Amended Complaint because this Defendant did not have any employees present at Plaintiff's hearing on June 18, 2009. In further response to the averments contained in paragraph 16 of the Second Amended Complaint, this Defendant avers that the mittimus that was provided to its employees by the Smyrna Municipal Court and/or the Smyrna Police Department transportation officer indicated that Plaintiff's sentence was six months with credit for time served.
17. This Defendant without knowledge or information sufficient to form a belief in the truth of the averments contained in paragraph 17 of the Second Amended Complaint. In further response to the averments contained in paragraph 17 of the Second Amended Complaint, this Defendant admits that one or more of its officers would have communicated with U.S. Immigration & Customs Enforcement Officers at some point during Plaintiff's incarceration at the RCADC from June 14, 2009, through October 27, 2009, regarding Plaintiff's suspected status as an illegal alien.
18. This Defendant is without knowledge or information sufficient to form a belief in the truth of the averments contained in the first sentence of paragraph 18 of the Second Amended Complaint. In further response to the averments contained in the first sentence of paragraph 18 of the Second Amended

Complaint, this Defendant admits that U.S. Immigration & Customs Enforcement took Plaintiff into custody on October 27, 2009, under the authority of an immigration detainer. This Defendant need not respond to the averments contained in the second sentence of paragraph 18 of the Second Amended Complaint because it does not contain any averments against this Defendant.

19. This Defendant is without knowledge or information sufficient to form a belief in the truth of the averments contained in the first sentence of paragraph 19 of the Second Amended Complaint because of the fact that such a form is not contained in Plaintiff's inmate file. However, in further response to the averments contained in the first sentence of paragraph 19 of the Second Amended Complaint, this Defendant would expect that U.S. Immigration & Customs Enforcement would have sent this Defendant an Immigration Detainer-Notice of Action at some point. This Defendant admits the remaining averments contained in paragraph 19 of the Second Amended Complaint except would defer to 8 C.F.R. § 287.7(a) for the most accurate recitation of the language in that regulation.
20. This Defendant generally admits the averments contained in paragraph 20 of the Second Amended Complaint, but defers to the cited regulation for the most accurate and complete recitation of the law contained therein.
21. This Defendant admits the averments contained in the first sentence of paragraph 21 of the Second Amended Complaint without admitting that its employees were aware that Plaintiff had completed his sentence on June 19,

2009. In response to the averments contained in the second sentence of paragraph 21 of the Second Amended Complaint, this Defendant admits that its legal authority to hold Plaintiff pursuant to a federal immigration detainer would have expired on Tuesday, June 23, 2009, if Plaintiff had completed his sentence on June 19, 2009. In further response to the averments contained in the second sentence of paragraph 21 of the Second Amended Complaint, this Defendant avers that its employees were not aware that Plaintiff's sentence had expired because the mittimus that was provided to them reflected a sentence of six months.

22. This Defendant denies the averments contained in the first sentence of paragraph 22 of the Second Amended Complaint as stated. This Defendant is currently without knowledge or information sufficient to form a belief in the truth of the averments contained in the second sentence of paragraph 22 of the Second Amended Complaint.
23. This Defendant is without knowledge or information sufficient to form a belief in the truth of the averments contained in paragraph 23 of the Second Amended Complaint.
24. This Defendant admits the averments contained in paragraph 24 of the Second Amended Complaint.
25. This Defendant admits the averments contained in the first sentence paragraph 25 of the Second Amended Complaint. This Defendant is without knowledge or information sufficient to form a belief in the truth of the averments contained in the second sentence of paragraph 25 of the Second

Amended Complaint.

26. This Defendant denies the averments contained in paragraph 26 of the Second Amended Complaint as stated.
27. This Defendant denies the averments contained in paragraph 27 of the Second Amended Complaint.
28. This Defendant admits the averments contained in paragraph 28 of the Second Amended Complaint except section (c) contained therein. In response to the averments contained in section (c) of paragraph 28 of the Second Amended Complaint, this Defendant admits that Mr. Jones, Mr. Asbury, and certain officers of the RCSO would have been on notice that the unlawful detention of a prisoner is, generally, not legally appropriate but may not have been aware of the specific legal basis for that fact.
29. In response to the averments contained in the first two sentences of paragraph 29 of the Second Amended Complaint, this Defendant avers that the writ of *habeas corpus* attached to the Second Amended Complaint as Exhibit C speaks for itself. This Defendant is without knowledge or information sufficient to form a belief in the truth of the averments contained in the third sentence of paragraph 29 of the Second Amended Complaint.
30. In response to the averments contained in paragraph 30 of the Second Amended Complaint, this Defendant defers to the exact language of the documents referred to therein.
31. In response to the averments contained in paragraph 31 of the Second Amended Complaint, this Defendant avers that Defendant Jones' testimony

speaks for itself but should be considered in the context of his entire testimony.

32. This Defendant admits the averments contained in paragraph 32 of the Second Amended Complaint but avers that Defendant Jones' testimony speaks for itself but should be considered in the context of his entire testimony.
33. This Defendant denies the averments contained in paragraph 33 of the Second Amended Complaint as stated. In further response to the averments contained in paragraph 33 of the Second Amended Complaint, this Defendant admits that Mr. Jones, Mr. Asbury, and certain officers at the RCSO were aware at least as early as May 30, 2007, that holding an inmate at the RCADC on an immigration detainer for a period of time longer than allowed by applicable law is not appropriate.
34. In response to the averments contained in the first two sentences of paragraph 34 of the Second Amended Complaint, including the quoted language contained therein, this Defendant avers that the documents cited therein speak for themselves. This Defendant denies the averments contained in the third sentence of paragraph 34 of the Second Amended Complaint.
35. This Defendant need not respond to the averments contained in paragraphs 35 through 45 of the Second Amended Complaint because those claims have been dismissed.
36. This Defendant denies the averments contained in paragraph 46 of the

Second Amended Complaint, including subparagraphs (a) through (f).

37. This Defendant denies the averments contained in paragraph 47 of the Second Amended Complaint, including subparagraphs (a) through (c). In further response to the averments contained in the second and third sentences of section (c) of paragraph 47 of the Second Amended Complaint, this Defendant defers to the full language of the case cited therein as well as the entire body of applicable law to set forth a correct statement of the law.
38. In response to the averments contained in paragraph 48 of the Second Amended Complaint, this Defendant incorporates by reference its responses to paragraphs 1 through 47 of the Second Amended Complaint.
39. This Defendant denies the averments contained in paragraph 49 of the Second Amended Complaint.
40. This Defendant denies the averments contained in paragraph 50 of the Second Amended Complaint.
41. In response to the averments contained in paragraph 51 of the Second Amended Complaint, this Defendant incorporates by reference its responses to paragraphs 1 through 50 of the Second Amended Complaint.
42. This Defendant denies the averments contained in paragraph 52 of the Second Amended Complaint.
43. This Defendant denies the averments contained in paragraph 53 of the Second Amended Complaint.
44. This Defendant denies the averments contained in paragraph 54 of the Second Amended Complaint.

45. This Defendant denies the averments contained in paragraph 55 of the Second Amended Complaint
46. In response to the averments contained in paragraph 56 of the Second Amended Complaint, this Defendant incorporates by reference its responses to paragraphs 1 through 55 of the Second Amended Complaint.
47. This Defendant denies the averments contained in paragraph 57 of the Second Amended Complaint.
48. This Defendant denies the averments contained in paragraph 58 of the Second Amended Complaint.
49. This Defendant denies the averments contained in paragraph 59 of the Second Amended Complaint.
50. This Defendant denies the averments contained in paragraph 60 of the Second Amended Complaint.
51. In response to the averments contained in paragraph 61 of the Second Amended Complaint, this Defendant incorporates by reference its responses to paragraphs 1 through 60 of the Second Amended Complaint.
52. This Defendant admits the averments contained in paragraph 62 of the Second Amended Complaint to the extent that the averments are directed at this Defendant but without admitting that this Defendant or any of its employees breached the applicable duty of care.
53. This Defendant denies the averments contained in paragraph 63 of the Second Amended Complaint.
54. In response to the averments contained in paragraph 64 of the Second

Amended Complaint, this Defendant incorporates by reference its responses to paragraphs 1 through 63 of the Second Amended Complaint.

55. This Defendant denies the averments contained in paragraph 65 of the Second Amended Complaint.
56. This Defendant denies the averments contained in paragraph 66 of the Second Amended Complaint.
57. This Defendant denies the averments contained in paragraph 67 of the Second Amended Complaint.
58. This Defendant denies the averments contained in paragraph 68 of the Second Amended Complaint.
59. This Defendant denies the averments contained in paragraph 69 of the Second Amended Complaint.
60. This Defendant denies the averments contained in paragraph 70 of the Second Amended Complaint.
61. This Defendant denies the averments contained in paragraph 71 of the Second Amended Complaint.
62. In response to the averments contained in paragraph 72 of the Second Amended Complaint, this Defendant incorporates by reference its responses to paragraphs 1 through 71 of the Second Amended Complaint.
63. This Defendant admits the averments contained in paragraph 73 of the Second Amended Complaint to the extent that averment is directed at this Defendant.
64. This Defendant denies the averments contained in paragraph 74 of the

Second Amended Complaint.

65. This Defendant denies the averments contained in paragraph 75 of the Second Amended Complaint.

66. The remaining paragraphs contained in the Second Amended Complaint appear to be mere prayers for relief to which no reply is necessary except in general denial so as to avoid any prejudice thereby.

THIRD DEFENSE

This Defendant avers that it is entitled to recover attorney's fees from Plaintiff pursuant to 42 U.S.C. § 1988.

FOURTH DEFENSE

This Defendant denies that it or its employees are responsible for any action or omission which was in violation of Plaintiff's constitutional rights or was otherwise improper under federal or state law.

FIFTH DEFENSE

This Defendant avers that it cannot be liable to Plaintiff pursuant to 42 U.S.C. § 1983 because of the lack of any violation of that statute and/or because of the absence of any custom or policy which was the moving force behind a violation of that statute.

SIXTH DEFENSE

This Defendant avers that it is immune from suit on Plaintiff's state law claims pursuant to the Tennessee Governmental Tort Liability Act.

SEVENTH DEFENSE

This Defendant avers that Plaintiff cannot prove a cause of action against it because Plaintiff cannot prove that this Defendant and/or its agents or employees

breached any duty to Plaintiff or that the alleged actions or omissions of this Defendant and/or its agents or employees constituted the legal and/or proximate cause of Plaintiff's alleged damages.

EIGHTH DEFENSE

Pending investigation and in order to avoid waiver, this Defendant avers that Plaintiff's state law claims are barred by the comparative fault doctrine because Plaintiff was more than 49% at fault for Plaintiff's damages. In the event that Plaintiff is found to be 49% or less at fault for Plaintiff's damages, this Defendant avers that Plaintiff's damages should be reduced in direct proportion to the percentage of Plaintiff's fault, if any.

NINTH DEFENSE

To the extent that Plaintiff's fault does not account for all of the fault to be apportioned with regard to Plaintiff's state law claims, all remaining fault should be directed to the Town of Smyrna and/or officers or employees of the Town of Smyrna that were responsible for preparation of the erroneous mittimus which indicated that Plaintiff's six month sentence had not been suspended.

TENTH DEFENSE

This Defendant pleads and relies upon the provisions of the Tennessee Governmental Tort Liability Act to govern the nature and extent of its liability on Plaintiff's state law claims, if any, in this case.

ELEVENTH DEFENSE

This Defendant avers that Plaintiff's state law claims are barred by the public duty doctrine.

TWELFTH DEFENSE

This Defendant avers that it is immune from suit on Plaintiff's state law claims pursuant to the Tennessee Governmental Tort Liability Act because all of the alleged actions or omissions of its employees were discretionary in nature.

THIRTEENTH DEFENSE

This Defendant avers that this Court should decline to exercise supplemental jurisdiction over Plaintiff's state law claims pursuant to the principles enunciated in Bettingfield vs. City of Pulaski, 666 F.Supp.1064 (M.D. Tenn. 1987).

FOURTEENTH DEFENSE

This Defendant avers that it cannot be liable to Plaintiff because of the intervening and/or superseding actions of others, including Plaintiff himself and/or certain officials or employees of the Town of Smyrna.

FIFTEENTH DEFENSE

This Defendant avers that it cannot be liable to Plaintiff for his alleged unlawful detention because this Defendant's employees were acting pursuant to an order from a court regarding the period of time that Plaintiff was to be incarcerated at the RCADC

SIXTEENTH DEFENSE

Pending investigation and in order to avoid waiver, this Defendant avers that Plaintiff's claim for damages should be reduced by his failure to mitigate.

SEVENTEENTH DEFENSE

This Defendant avers that Plaintiff cannot demonstrate the legal elements necessary to prove that a preliminary or permanent injunction is necessary as prayed for in the Second Amended Complaint.

EIGHTEENTH DEFENSE

This Defendant avers that punitive damages are not recoverable against it as a matter of law.

NINETEENTH DEFENSE

This Defendant avers that Plaintiff fails to state a claim upon which relief can be granted with regard to his prayer for punitive damages.

TWENTIETH DEFENSE

This Defendant avers that an award of punitive damages is violative of the due process of law protections of the United States Constitution and the Constitution of the State of Tennessee.

TWENTY-FIRST DEFENSE

This Defendant avers that Plaintiff's claim for punitive damages cannot be sustained, because an award of punitive damages without proof of every element of such claim beyond a reasonable doubt would violate this Defendant's due process rights under the Fourteenth Amendment to the United States Constitution and under the due process provisions of the Tennessee Constitution.

TWENTY-SECOND DEFENSE

Alternatively, unless this Defendant's liability for punitive damages and the appropriate amount of punitive damages to be assessed are required to be established by clear and convincing evidence, any award of punitive damages would violate this Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process provisions of the Tennessee Constitution.

TWENTY-THIRD DEFENSE

This Defendant avers that Plaintiff's claim for punitive damages cannot be sustained, because any award of punitive damages without requiring a bifurcated trial as to all punitive damages issues would violate this Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and the due process provisions of the Tennessee Constitution.

TWENTY-FOURTH DEFENSE

This Defendant avers that Plaintiff's claim for punitive damages cannot be sustained, because an award of punitive damages subject to no predetermined upper limit, either as a maximum multiple of compensatory damages or an absolute maximum amount, would violate this Defendant's due process rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process of law provisions of the Tennessee Constitution and may result in a violation of this Defendant's rights not to be subjected to an excessive award in violation of the excessive fines provisions of the Tennessee Constitution.

TWENTY-FIFTH DEFENSE

This Defendant avers that Plaintiff's claim for punitive damages cannot be sustained, because an award of punitive damages by a jury that (1) is not provided standards of sufficient clarity and uniformity for determining the appropriateness, or the appropriate size, of a punitive damages award, (2) is not instructed on the limits of punitive damages imposed by the applicable principles of deterrence and punishment and is not instructed to award only that amount of punitive damages as reflects a necessary relationship between the amount of punitive damages and the actual harm in question,

(3) is not expressly prohibited from awarding punitive damages, or determining the amount of an award of punitive damages, or determining the amount of an award of punitive damages, in whole or in part, on the basis of invidiously discriminatory characteristics, (4) is permitted to award punitive damages under standards for determining liability for, and the amount of, punitive damages that are vague and arbitrary and do not define, with sufficient clarity to give advance notice to a potential defendant of (a) the prohibited conduct or mental state that permits an award of punitive damages, and (b) the amount of punitive damages permissible, and (5) is not subject to trial and appellate court review on the basis of uniform and objective standards, would violate this Defendant's due process and equal protection rights guaranteed by the Fourteenth Amendment to the United States Constitution and by the due process and equal protection provisions of the Tennessee Constitution and may result in an excessive punitive damages award in violation of the excessive fines provisions of the Tennessee Constitution.

TWENTY-SIXTH DEFENSE

This Defendant avers that Plaintiff's claim for punitive damages cannot be sustained, because an award of punitive damages without affording to this Defendant protections similar to those that are accorded to criminal defendants, including protection against unreasonable searches and seizures, double jeopardy or impermissible multiple punishments, and compelled self-incrimination, and the rights to confront adverse witnesses, to compulsory process for favorable witnesses, and to the effective assistance of counsel on every element of an award of punitive damages would violate this Defendant's rights under the Fourteenth Amendment to the United States Constitution and the Fourth, Fifth and Sixth Amendments as incorporated into the Fourteenth Amendment to

the United States Constitution and the provisions providing for due process, the rights to confront witnesses, to compulsory process for favorable witnesses, and to effective assistance of counsel, and protection against unreasonable searches and seizures, double jeopardy, and compelled self-incrimination of the Tennessee Constitution.

TWENTY-SEVENTH DEFENSE

This Defendant invokes and, alternatively, moves the Court to grant it, any and all procedural relief afforded litigants against whom a claim for punitive damages is made in accordance with Tennessee law, including but not limited to (1) imposition on plaintiff of the burden of proving the entitlement to punitive damages by clear and convincing evidence, (2) a bifurcated trial to first determine liability for punitive damages in accordance with the specific standards enunciated in Hodges v. S. C. Toof & Co., 833 S.W.2d 896, 900-02, and (3) a limitation on the amount of punitive damages that may be awarded in proportion to the amount of compensatory damages.

TWENTY-EIGHTH DEFENSE

This Defendant avers that Plaintiff's claims for punitive damages are governed by all standards of limitations regarding the determination and/or enforceability of punitive damages awards as established in the decisions of BMW of North America v. Gore, 517 U.S. 559 (1996), Cooper Industries v. Leatherman Tool Group, Inc., 532 U.S. 424, 121 S. Ct. 1678 (2001), and State Farm Automobile Insurance Company v. Campbell, 123 S. Ct. 1513 (2003), as well as any other relevant or applicable statutory or case law.

TWENTY-NINTH DEFENSE

This Defendant avers that Plaintiff's claim for punitive damages must be adjudicated by the court rather than the jury pursuant to Cooper Industries v. Leatherman Tool Group, Inc., 532 U.S. 424, 121 S.Ct. 1678 (2001).

THIRTIETH DEFENSE

All averments not heretofore admitted, denied, or otherwise explained are here and now denied as though set forth specifically and denied.

WHEREFORE, having fully responded to the averments contained in the Second Amended Complaint, this Defendant prays that it be hence dismissed from this action with all costs taxed to Plaintiff. Failing dismissal, this Defendant prays for a jury trial on all jury issues joined by the pleadings and for such further, general relief to which it might be entitled in these premises.

Respectfully submitted,

**LEITNER, WILLIAMS, DOOLEY
& NAPOLITAN, PLLC**

By: s/ D. Randall Mantooth

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Attorneys for Defendants Truman L.
Jones Jr., Bob Asbury, and the
Rutherford County Sheriff's Office.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been forwarded via electronic means via the Court's electronic filing system to:

Elliott Ozment
Immigration Law Offices of Elliott Ozment
1214 Murfreesboro Pike
Nashville, Tennessee 37212

this the 17th day of March, 2011.

By: s/ D. Randall Mantooth
D. Randall Mantooth