

SUPREME COURT OF THE STATE OF NEW YORK  
BRONX COUNTY

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LINDA DOMINGUEZ,

Plaintiff,

-against-

**ANSWER**

CITY OF NEW YORK,  
OFFICER MEGAN FRANCIS, OFFICER JOHN DOE,  
and OFFICER JAMES ROE,

Index No. 020841/2019E

Defendants.

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Defendants City of New York (“City”) and Police Officer Megan Boyer (née Francis) (“P.O. Boyer”), by their attorney, Zachary W. Carter, Corporation Counsel of the City of New York, for their Answer to the Complaint dated January 22, 2019 (the “Complaint”) (dkt. no. 2), respectfully allege as follows:

1. Deny the allegations set forth in paragraph “1” of the Complaint, except admit that on April 18, 2018, Plaintiff was arrested for criminal trespass in a New York City park after 10:00 p.m., deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding whether Plaintiff is as a Latina transgender woman, and admit that Plaintiff purports to proceed as set forth therein.

2. Deny the allegations set forth in paragraph “2” of the Complaint, and respectfully refer the Court to the NYPD Patrol Guide cited therein for a complete and accurate statement of its contents and to N.Y. Penal Law § 190.23 for a complete and accurate statement of its provisions.

3. Deny the allegations set forth in paragraph “3” of the Complaint, and respectfully refer the Court to the New York City Department of Investigation (“DOI”) report cited therein for a complete and accurate statement of its contents.

4. Deny the allegations set forth in paragraph “4” of the Complaint, except admit that Plaintiff purports to proceed as set forth therein.

5. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “5” of the Complaint.

6. Deny the allegations set forth in paragraph “6” of the Complaint, except admit that on April 18, 2018, P.O. Boyer, Shield # 24530, was employed by the City of New York as a police officer and was assigned to the 44<sup>th</sup> Precinct.

7. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “7” of the Complaint.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the Complaint.

9. Deny the allegations set forth in paragraph “9” of the Complaint, except admit that Defendant City is a municipal corporation organized and existing pursuant to the laws of the State of New York, that the City maintains a police department and that P.O. Boyer is employed by the City as a police officer, and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding the unidentified officer defendants.

10. Deny the allegations set forth in paragraph “10” of the Complaint.

11. Deny the allegations set forth in paragraph “11” of the Complaint, and, without admitting the truth or accuracy of the statements contained therein, respectfully refer the Court to the report cited therein for a complete and accurate statement of its contents.

12. Deny the allegations set forth in paragraph “12” of the Complaint, and, without admitting the truth or accuracy of the statements contained therein, respectfully refer the Court to the report cited therein for a complete and accurate statement of its contents.

13. Deny the allegations set forth in paragraph “13” of the Complaint, and, without admitting the truth or accuracy of the statements contained therein, respectfully refer the Court to the report cited therein for a complete and accurate statement of its contents.

14. Deny the allegations set forth in paragraph “14” of the Complaint, except admit that in 2012 the NYPD revised Patrol Guide protocols governing police officer interactions with transgender and gender nonconforming people, and respectfully refer the Court to the NYPD Patrol Guide cited therein for a complete and accurate statement of its contents.

15. Deny the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint, and, without admitting the truth or accuracy of the statements contained therein, respectfully refer the Court to the report cited therein for a complete and accurate statement of its contents.

17. Deny the allegations set forth in paragraph “17” of the Complaint, and, without admitting the truth or accuracy of the statements contained therein, respectfully refer the Court to the report cited therein for a complete and accurate statement of its contents.

18. Deny the allegations set forth in paragraph “18” of the Complaint, and respectfully refer the Court to New York City Charter §§ 440 and 1043 for a complete and accurate description of the New York City Civilian Complaint Review Board’s (“CCRB”) powers and duties and to the report cited therein for a complete and accurate statement of its contents.

19. Deny the allegations set forth in paragraph “19” of the Complaint, and respectfully refer the Court to the DOI report cited therein for a complete and accurate statement of its contents.

20. Deny the allegations set forth in paragraph “20” of the Complaint, and respectfully refer the Court to the DOI report cited therein for a complete and accurate statement of its contents.

21. Deny the allegations set forth in paragraph “21” of the Complaint, and respectfully refer the Court to the DOI report cited therein for a complete and accurate statement of its contents.

22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the Complaint.

23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “23” of the Complaint.

24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the Complaint.

25. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “25” of the Complaint.

26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “26” of the Complaint.

27. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “27” of the Complaint, except admit that on April 18, 2018, at approximately 11:55 p.m., Plaintiff was inside Claremont Park in the Bronx, NY.

28. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “28” of the Complaint, except admit that three NYPD officers, including P.O. Boyer, approached Plaintiff in the park and questioned her.

29. Deny the allegations set forth in paragraph “29” of the Complaint, except admit that the police officers spoke to Plaintiff in English, and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding what Plaintiff understood.

30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the Complaint, except admit that in the park on April 18, 2018, Plaintiff provided officers with a name that was not her legal name.

31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the Complaint.

32. Deny the allegations set forth in paragraph “32” of the Complaint, except admit that police officers arrested Plaintiff for criminal trespass and false personation, that Plaintiff was transported to the 44<sup>th</sup> Precinct, and that a Spanish-speaking officer translated at the 44<sup>th</sup> Precinct, and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding what was translated to Plaintiff.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33” of the Complaint, except admit that Plaintiff stated at the precinct that her name was Linda Dominguez and that she was a transgender woman.

34. Deny the allegations set forth in paragraph “34” of the Complaint, except admit that Plaintiff was handcuffed on a bench outside the cell, like other female detainees, and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding the color of the handcuffs or what Plaintiff saw.

35. Deny the allegations set forth in paragraph “35” of the Complaint.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36” of the Complaint.

37. Deny the allegations set forth in paragraph “37” of the Complaint, except admit that P.O. Boyer learned from Plaintiff at some point that she was a transgender woman whose name was now Linda, and deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding the unidentified defendant officers.

38. Deny the allegations set forth in paragraph “38” of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding what Plaintiff understood.

39. Deny the allegations set forth in paragraph “39” of the Complaint.

40. Deny the allegations set forth in paragraph “40” of the Complaint.

41. Deny the allegations set forth in paragraph “41” of the Complaint, except admit that on or about April 19, 2018, Plaintiff was charged with N.Y. Penal Law § 140.10(a), criminal trespass in the third degree, and N.Y. Penal Law § 190.23, false personation.

42. Admit the allegations set forth in paragraph “42” of the Complaint, and respectfully refer the Court to N.Y. Penal Law § 190.23 for a complete and accurate statement of its provisions.

43. Deny the allegations set forth in paragraph “43” of the Complaint, except admit that P.O. Boyer signed the criminal complaint, and respectfully refer the Court to the criminal complaint cited therein for a complete and accurate statement of its contents.

44. Deny the allegations set forth in paragraph “44” of the Complaint.

45. Deny the allegations set forth in paragraph “45” of the Complaint.

46. Deny the allegations set forth in paragraph “46” of the Complaint.

47. Deny the allegations set forth in paragraph “47” of the Complaint.

48. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “48” of the Complaint.

49. Deny the allegations set forth in paragraph “49” of the Complaint, except deny knowledge or information sufficient to form a belief as to the truth of the allegations regarding the purported criminal court appearance on August 23, 2018 and Plaintiff’s immigration status.

50. Deny the allegations set forth in paragraph “50” of the Complaint.

51. Deny the allegations set forth in paragraph “51” of the Complaint.

52. Deny the allegations set forth in paragraph “52” of the Complaint.

53. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “53” of the Complaint.

54. Deny the allegations set forth in paragraph “54” of the Complaint, and respectfully refer the Court to the New York City Charter and the Administrative Code for a recitation of the duties and functions of the NYPD.

55. Deny the allegations set forth in paragraph “55” of the Complaint, and respectfully refer the Court to the website cited therein for a complete and accurate statement of its contents.

56. Deny the allegations set forth in paragraph “56” of the Complaint.

57. In response to the allegations set forth in the first sentence in paragraph “57” of the Complaint, Defendants repeat and reallege each of their responses to paragraphs “1”

through “56” of the Complaint as if fully set forth herein. Defendants deny the allegations set forth in the second sentence in paragraph “57” of the Complaint.

58. In response to the allegations set forth in the first sentence in paragraph “58” of the Complaint, Defendants repeat and reallege each of their responses to paragraphs “1” through “57” of the Complaint as if fully set forth herein. Defendants deny the allegations set forth in the second sentence in paragraph “58” of the Complaint.

59. In response to the allegations set forth in the first sentence in paragraph “59” of the Complaint, Defendants repeat and reallege each of their responses to paragraphs “1” through “58” of the Complaint as if fully set forth herein. Defendants deny the allegations set forth in the second sentence in paragraph “59” of the Complaint.

60. In response to the allegations set forth in the first sentence in paragraph “60” of the Complaint, Defendants repeat and reallege each of their responses to paragraphs “1” through “59” of the Complaint as if fully set forth herein. Defendants deny the allegations set forth in the second sentence in paragraph “60” of the Complaint.

61. In response to the allegations set forth in the first sentence in paragraph “61” of the Complaint, Defendants repeat and reallege each of their responses to paragraphs “1” through “60” of the Complaint as if fully set forth herein. Defendants deny the allegations set forth in the second sentence in paragraph “61” of the Complaint.

62. In response to the allegations set forth in the first sentence in paragraph “62” of the Complaint, Defendants repeat and reallege each of their responses to paragraphs “1” through “61” of the Complaint as if fully set forth herein. Defendants deny the allegations set forth in the second sentence in paragraph “62” of the Complaint.

63. In response to the allegations set forth in the first sentence in paragraph “63” of the Complaint, Defendants repeat and reallege each of their responses to paragraphs “1” through “62” of the Complaint as if fully set forth herein. Defendants deny the allegations set forth in the second sentence in paragraph “63” of the Complaint.

64. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “64” of the Complaint.

65. Deny the allegations set forth in paragraph “65” of the Complaint, except admit that a document purporting to be a notice of claim on behalf of Plaintiff was received by the Office of the New York City Comptroller on July 13, 2018 and that no adjustment of payment has been made by the City on Plaintiff’s purported Notice of Claim.

**FOR A FIRST DEFENSE:**

66. The Complaint, in whole or in part, fails to state a claim upon which relief can be granted.

**FOR A SECOND DEFENSE:**

67. Defendants have not violated any rights, privileges or immunities under the Constitution or laws of the United States, the State of New York, or any political subdivision thereof.

**FOR A THIRD DEFENSE:**

68. At all times relevant to the acts alleged in the Complaint, Defendants acted reasonably, properly, lawfully and in good faith.

**FOR A FOURTH DEFENSE:**

69. Any injury alleged to have been sustained resulted from Plaintiff’s own conduct, or the intervening conduct of individuals who are not parties to this lawsuit, and was not the proximate result of any act of Defendants.

**FOR A FIFTH DEFENSE:**

70. Plaintiff's claims may be barred in whole or in part by reason of Plaintiff's failure to comply with the mandatory conditions precedent to bring suit.

**FOR A SIXTH DEFENSE:**

71. The Complaint may be barred, in whole or in part, by the applicable statute of limitations.

**FOR A SEVENTH DEFENSE:**

72. At all times relevant to the acts alleged in the Complaint, the duties and functions of the municipal defendants' officials entailed the reasonable exercise of proper and lawful discretion. Therefore, Defendants have governmental immunity from liability.

**FOR AN EIGHTH DEFENSE:**

73. The individual Defendants are entitled to qualified immunity.

**FOR A NINTH DEFENSE:**

74. Plaintiff's claims may be barred, in whole or in part, by the doctrines of *res judicata* and/or collateral estoppel.

**FOR A TENTH DEFENSE:**

75. Nominal, compensatory and punitive damages are not available under N.Y. Admin. Code § 14-151.

**FOR AN ELEVENTH DEFENSE:**

76. Plaintiff is not entitled to an award of attorney's fees and costs.

**WHEREFORE**, Defendants request judgment dismissing the Complaint and denying all relief requested therein, together with such other and further relief as the Court deems just and proper.

Dated: New York, New York  
April 22, 2019

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City of New York  
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By: \_\_\_\_\_ /s/  
Philip S. Frank  
Senior Counsel

Index No. 020841/2019E

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Plaintiff,

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OFFICER JAMES ROE,

Defendants.

**ANSWER**

**ZACHARY W. CARTER**

*Corporation Counsel of the City of New York  
Attorney for Defendants City of New York and P.O. Megan  
Boyer*

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*Of Counsel: Philip S. Frank  
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*Due and timely service is hereby admitted.*

*New York, N.Y. ...., 2019*

*..... Esq.*

*Attorney for.....*