



## Law Department

Martin J. Walsh, Mayor

January 4, 2019

**VIA HAND DELIVERY**  
Office of the Civil Clerk  
Suffolk Superior Court  
3 Pemberton Square, 12<sup>th</sup> Floor  
Boston, MA 02108

Re: ACLUM, et al. v. BPD, et al.  
Docket No.: SUCV2018-03561-E

Dear Clerk:

Enclosed for filing and docketing in the above-referenced case, please find the Defendants' Answer to Plaintiff's Complaint.

Thank you for your patience in this matter. Please feel free to contact me should you have any questions.

Regards,

Erika P. Reis  
Senior Assistant Corporation Counsel

### Enclosure

cc: Austin Anderson, Esq.  
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COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, SS.

SUPERIOR COURT  
CIVIL ACTION NO. 1884CV03561-E

AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS, INC., CHILDREN'S LAW CENTER OF MASSACHUSETTS, GREATER BOSTON LEGAL SERVICES, JUSTICE CENTER OF SOUTHEAST MASSACHUSETTS, MUSLIM JUSTICE LEAGUE, NATIONAL LAWYERS GUILD, MASSACHUSETTS CHAPTER and POLITICAL ASYLUM/IMMIGRATION REPRESENTATION PROJECT,

Plaintiffs,

v.

BOSTON POLICE DEPARTMENT<sup>1</sup>, WILLIAM G. GROSS, in his Official Capacity, Defendants as the COMMISSIONER OF THE BOSTON POLICE DEPARTMENT, BOSTON REGIONAL INTELLIGENCE CENTER, and DEFENDANT CITY OF BOSTON,

Defendants.

**DEFENDANT'S ANSWER TO PLAINTIFF'S COMPLAINT**

1. The Defendants, Boston Police Department, William G. Gross, in his official capacity, as the Commissioner of the Boston Police Department, Boston Regional Intelligence Center, and the Defendant City of Boston (collectively the "Defendants") are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph One of the Complaint.

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<sup>1</sup> The Boston Police Department and the Boston Regional Intelligence Center are not separate and distinct legal entities from the City of Boston. Therefore, the Boston Police Department and the Boston Regional Intelligence Center are not proper parties to this lawsuit and therefore must be dismissed.

2. The Defendants deny that “nothing more” than clothing and/or being seen with a classmate can cause someone to be considered and “active” gang member. The Defendants are without sufficient knowledge or information to admit or deny the remaining allegations set forth in Paragraph Two of the Complaint. To the extent Paragraph Two refers to a document, the document speaks for itself.
3. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Three of the Complaint.
4. The Defendants admit that the Boston Police Department (“BPD”) and the Boston Regional Intelligence Center (“BRIC”) received a public records request from the American Civil Liberties Union Foundation – Massachusetts (“ACLUM”) on May 21, 2018. The Defendants deny the remaining allegations set forth in Paragraph Four of the Complaint. To the extent Paragraph Four of the Complaint alleges conclusions of law, no response is required.

#### **Jurisdiction and Venue**

5. Paragraph Five is a statement of jurisdiction and venue therefore a response is not required from Defendants.

#### **Parties**

6. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Six of the Complaint.
7. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Seven of the Complaint.
8. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Eight of the Complaint.

9. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Nine of the Complaint.
10. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Ten of the Complaint.
11. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Eleven of the Complaint.
12. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Twelve of the Complaint.
13. The Defendants admit the allegations set forth in Paragraph Thirteen of the Complaint.
14. The Defendants admit that William G. Gross is the Commissioner of the Boston Police Department and that he is being sued in his individual capacity. Defendants further admit that his usual place of employment is Boston. The Defendants deny the remaining allegations set forth in Paragraph Fourteen of the Complaint.
15. The Defendants deny that the BRIC is the custodian of the records the Plaintiff's seek. The Defendants admit the remaining allegations set forth in Paragraph Fifteen of the Complaint.
16. The Defendants admit the allegations set forth in Paragraph Sixteen of the Complaint.

#### **Background**

17. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Seventeen of the Complaint.
18. The Defendants admit the allegations set forth in Paragraph Eighteen of the Complaint.
19. The Defendants admit the allegations set forth in Paragraph Nineteen of the Complaint.

20. The Defendants admit that the Boston Police Department uses a point system to determine whether to include someone in the Gang Assessment Database. The Defendants deny the remaining allegations set forth in Paragraph Twenty.
21. The Defendants admit the allegations set forth in Paragraph Twenty-One of the Complaint.
22. The Defendants admit the allegations set forth in Paragraph Twenty-Two of the Complaint.
23. The Defendants admit that in some instances a victim of gang-related violence may be assessed eight points.
24. The Defendants deny the allegations set forth in Paragraph Twenty-Four of the Complaint.<sup>2</sup>
25. The Defendants admit the allegations set forth in Paragraph Twenty-Five of the Complaint.
26. The Defendants admit that an individual may be assigned eight points if a law enforcement agency makes a determination that he or she is a gang member. The Defendants further admit that an individual may be assigned nine points if they are in possession of court or other “investigative documents”. The Defendants deny the remaining allegations set forth in Paragraph Twenty-Six of the Complaint.
27. The Defendants deny the allegations set forth in Paragraph Twenty-Seven of the Complaint.<sup>3</sup>

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<sup>2</sup> An individual may be assessed two points for each instance in which he is seen with a verified gang member or associate, even in a photograph, and even if that verified gang member or associate is a classmate, neighbor, or family member. Despite the rule, it is the practice of the BRIC not to assess points to known family members.

<sup>3</sup> The language of Paragraphs 27 and 28 calls for speculation to which the Defendants cannot adequately respond.

28. The Defendants deny the allegations set forth in Paragraph Twenty-Eight of the Complaint.
29. The Defendants admit the allegations set forth in Paragraph Twenty-Nine of the Complaint.
30. The Defendants deny the allegations set forth in Paragraph Thirty of the Complaint.
31. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Thirty-One of the Complaint.
32. The Defendants deny the allegations set forth in Paragraph Thirty-Two of the Complaint.
33. The Defendants admit that Central American youth in Boston have been assigned points for wearing or having pictures of Air Jordan sneakers. The Defendants deny the remaining allegations set forth in Paragraph Thirty-Three of the Complaint.
34. The Defendants deny the allegations set forth in Paragraph Thirty-Four of the Complaint.
35. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Thirty-Five of the Complaint.
36. The Defendants admit to the extent that they are public profiles.
37. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Thirty-Seven of the Complaint.
38. The Defendants are without sufficient knowledge or information to admit or deny that “simply because school police have surveilled them talking to or walking with classmates who are alleged to have gang ties.” The Defendants admit the remaining allegations set forth in Paragraph Thirty-Eight of the Complaint.
39. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Thirty-Nine of the Complaint.

40. The Defendants admit that FIO's are used to document police officers observations and interactions with individuals. The Defendants deny the remaining allegations set forth in Paragraph Forty of the Complaint.
41. Paragraph Forty-One refers to a document, which speaks for itself. To the extent a response is required the Defendants deny any wrongdoing.
42. The Defendants admit the allegations set forth in Paragraph Forty-Two of the Complaint.
43. The Defendants admit the allegations set forth in Paragraph Forty-Three of the Complaint.
44. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Forty-Four of the Complaint. To the extent Paragraph Forty-Four refers to a document, the document speaks for itself.
45. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Forty-Five of the Complaint. To the extent a response is required the Defendants deny any wrongdoing.
46. The Defendants deny that Immigration and Customs Enforcement ("ICE") has access to the Gang Assessment Database. The Defendants admit that law enforcement agencies, including ICE may receive information from the BRIC on a need to know/right to know basis.
47. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Forty-Seven of the Complaint.
48. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Forty-Eight of the Complaint.
49. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Forty-Nine of the Complaint.

50. The Defendants admit the allegations set forth in Paragraph Fifty of the Complaint.
51. The Defendants deny that BPD does not have a procedure by which old and irrelevant information can be purged. The Defendants admit that it does not have a procedure through which listed individuals can contest their status or challenge the assessment of points in the Gang Assessment Database. The Defendants are without sufficient knowledge or information to admit or deny the remaining allegations set forth in Paragraph Fifty-One of the Complaint.
52. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Fifty-Two of the Complaint.
53. The Defendants are without sufficient knowledge or information to admit or deny the allegations set forth in Paragraph Fifty-Three of the Complaint.
54. The Defendants admit the allegations set forth in Paragraph Fifty-Four of the Complaint.
55. Paragraph Fifty-Five of the Complaint refers to a document, which speaks for itself.
56. The Defendants admit the allegations set forth in Paragraph Fifty-Six of the Complaint.
57. On information and belief, the Defendants admit the allegations set forth in Paragraph Fifty-Seven of the Complaint.
58. Paragraph Fifty-Eight of the Complaint refers to a document, which speaks for itself.
59. Paragraph Fifty-Nine of the Complaint refers to a document, which speaks for itself.
60. Paragraph Sixty of the Complaint refers to a document, which speaks for itself.
61. Paragraph Sixty-One of the Complaint refers to a document, which speaks for itself.
62. Paragraph Sixty-Two of the Complaint refers to a document, which speaks for itself.
63. Paragraph Sixty-Three of the Complaint refers to a document, which speaks for itself.
64. Paragraph Sixty-Four to of the Complaint refers to a document, which speaks for itself.
65. Paragraph Sixty-Five of the Complaint refers to a document, which speaks for itself.



66. Paragraph Sixty-Six of the Complaint refers to a document, which speaks for itself.

67. The Defendants admit the allegations set forth in Paragraph Sixty-Seven of the Complaint.<sup>4</sup>

### **Claims for Relief**

#### ***Count I: Violation of G.L. c. 66 sec. 10***

68. The Defendants repeat and incorporate each response contained in paragraphs 1 through 67 as though specifically set forth herein.

69. Paragraph Sixty-Nine alleges conclusions of law and therefore no response is required.

70. Paragraph Seventy alleges conclusions of law and therefore no response is required.

71. The Defendants admit the allegations set forth in Paragraph Seventy-One of the Complaint.

72. The Defendants deny the allegations set forth in Paragraph Seventy-Two of the Complaint.

73. The Defendants deny the allegations set forth in Paragraph Seventy-Three of the Complaint.

74. Paragraph Seventy-Four alleges conclusions of law and therefore no response is required. To the extent a response is required the Defendants deny the allegations set forth in Paragraph Seventy-Four of the Complaint.

75. Paragraph Seventy-Five alleges conclusions of law and therefore no response is required.

76. Paragraph Seventy-Six alleges conclusions of law and therefore no response is required. To the extent a response is required the Defendants deny the allegations set forth in Paragraph Seventy-Six of the Complaint.

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<sup>4</sup> The Defendants intend on supplementing their production on or before January 9, 2019.

77. Paragraph Seventy-Seven alleges conclusions of law and therefore no response is required.

78. Paragraph Seventy-Eight alleges conclusions of law and therefore no response is required. To the extent a response is required the Defendants deny the allegations set forth in Paragraph Seventy-Eight of the Complaint.

79. Paragraph Seventy-Nine alleges conclusions of law and therefore no response is required.

80. Paragraph Eighty alleges conclusions of law and therefore no response is required. To the extent a response is required the Defendants deny the allegations set forth in Paragraph Eighty of the Complaint.

81. Paragraph Eighty-One alleges conclusions of law and therefore no response is required. To the extent a response is required the Defendants deny the allegations set forth in Paragraph Eighty-One of the Complaint.

***Count II: Declaratory Judgment***

82. The Defendants repeat and incorporate each response contained in paragraphs 1 through 81 as though specifically set forth herein.

83. The Defendants admit the allegations set forth in Paragraph Eighty-Three of the Complaint.

84. Paragraph Eighty-Four alleges conclusions of law and therefore no response is required. To the extent a response is required the Defendants deny the allegations set forth in Paragraph Eighty-Four of the Complaint.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiffs have failed to state a claim upon which relief may be granted.

**SECOND AFFIRMATIVE DEFENSE**

By way of affirmative defense, the Defendants state that their acts and conduct do not exceed their authority.

**THIRD AFFIRMATIVE DEFENSE**

The Defendants state that at all times relevant they acted reasonably within the scope of their official discretion and with an objectively reasonable belief that their actions were lawful and not in violation of any clearly established statutory or constitutional right of which a reasonable person would have known with regard to all matters which bear on a question of state or federal law.

**FOURTH AFFIRMATIVE DEFENSE**

The Defendants state that at all times they acted in good faith and upon reasonable belief that their actions were required and in compliance with all relevant laws and circumstances.

**FIFTH AFFIRMATIVE DEFENSE**

The Defendants state that they were justified in their acts or conduct and therefore the Plaintiffs cannot recover.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiffs lack standing to assert the claims alleged in the Complaint.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendant Gross is immune from suit because his actions are protected by the doctrine of qualified immunity.

**EIGHTH AFFIRMATIVE DEFENSE**

The Defendants hereby give notice that they intend to rely upon such other and further defenses as may become available or apparent during discovery proceedings in this case and hereby reserve the right to amend this Answer and assert such defenses.

**WHEREFORE**, the Defendants pray that the Plaintiff's Complaint be dismissed with prejudice.

Respectfully submitted,

DEFENDANTS,  
BOSTON POLICE DEPARTMENT,  
WILLIAM G. GROSS, in his Official  
Capacity as the COMMISSIONER OF THE  
BOSTON POLICE DEPARTMENT,  
BOSTON REGIONAL INTELLIGENCE  
CENTER, and DEFENDANTS OF  
BOSTON,

Eugene L. O'Flaherty  
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Date: 1/4/2019

**CERTIFICATE OF SERVICE**

I hereby certify that on this day a true copy of the above document was served, by mail, upon:

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Date: January 4, 2019

  
Erika P. Reis