

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

MARY CELESTE HOLMES,

Plaintiff,

vs.

Civ. No. 15-13196-DJC

JENNIFER M. GARVEY and ALFRED  
TRINH, in their individual capacities, and  
the MASSACHUSETTS BAY  
TRANSPORTATION AUTHORITY,

Defendants.

**FIRST AMENDED COMPLAINT**

**Introduction**

1. This is a civil rights action against the Massachusetts Bay Transportation Authority (MBTA) and two MBTA police officers who unlawfully used force against and arrested Mary Holmes because she spoke out against abusive police conduct in her community. Defendants' actions violated Ms. Holmes' constitutionally protected rights to express her criticism of the police and to be free from excessive force and arrest without probable cause.

2. Ms. Holmes was waiting for a bus at Dudley Square in Roxbury when she saw MBTA Transit Police Officer Jennifer Garvey (who was then known as Jennifer Amyot) screaming at, swearing at, and shoving Delores Williams. Ms. Holmes was worried that Garvey's behavior was both escalating the situation and unlawful. She therefore tried to calm Ms. Williams and asked Defendant Garvey to stop abusing Ms. Williams. When this did not work, she called 9-1-1 for help.

3. In response to this constitutionally protected behavior, Defendant Garvey and her partner, MBTA Transit Police Officer Alfred Trinh, detained Ms. Holmes, beat her, sprayed her with pepper spray, and placed her under arrest, all without probable cause or any lawful justification.

4. These actions, which were taken in retaliation against Ms. Holmes for objecting to Defendant Garvey's conduct, caused physical injury, property damage, and emotional distress.

5. Defendants Garvey and Trinh violated Ms. Holmes' rights under the First, Fourth, and Fourteenth Amendments to the United States Constitution.

6. The MBTA is sued for allowing a policy or custom to develop within its police department of failing to properly supervise, investigate misconduct, and discipline its police officers. The MBTA allowed supervisors to ignore alerts from its early warning system designed to identify problem officers and allowed a code of silence to exist among its police officers. These policies and customs allowed MBTA police officers to believe they could violate the constitutional rights of civilians like Ms. Holmes with impunity.

#### **Jurisdiction**

7. This action is brought pursuant to 42 U.S.C. § 1983 and § 1988, and the First, Fourth and Fourteenth Amendments to the United States Constitution. Jurisdiction is conferred on this Court by 28 U.S.C. § 1331 and § 1343. Supplemental jurisdiction over claims arising under state law is authorized by 28 U.S.C. § 1367.

#### **Parties**

8. Plaintiff Mary Holmes is a citizen of the United States and a resident of Boston, Massachusetts.

9. Defendant Jennifer M. Garvey was at all times relevant to this complaint a duly appointed police officer of the MBTA Transit Police Department. At the time of this incident, her name was Jennifer Amyot. Her actions alleged in this complaint were taken under the color of law. She is sued in her individual capacity.

10. Defendant Alfred Trinh was at all times relevant to this complaint a duly appointed police officer of the MBTA Transit Police Department. His actions alleged in this complaint were taken under the color of law. He is sued in his individual capacity.

11. The Defendant MBTA is a body politic and corporate created by state statute. It has the capacity to be sued. M.G.L. c. 161A §2.

### **Facts**

#### **False Arrest and Excessive Force Incident**

12. On March 26, 2014, Ms. Holmes went to the Dudley Square MBTA station.

13. When she arrived, she saw a police officer she now knows to be Defendant Garvey screaming and swearing at a woman, later identified as Ms. Williams. Ms. Holmes heard Ms. Williams saying that she just wanted to go home. Ms. Holmes thought Ms. Williams seemed inebriated. She also saw a police officer she now knows to be Defendant Trinh standing approximately 10 feet away.

14. Ms. Holmes saw Defendant Garvey suddenly put her hands on Ms. Williams and slam her down on a bench.

15. Ms. Holmes was worried for Ms. Williams' safety. She asked Ms. Williams to cooperate so that she would not get hurt. Neither Defendant Garvey nor Defendant Trinh voiced any objection Ms. Holmes speaking to Ms. Williams. However, Defendant Garvey continued to swear at Ms. Williams.

16. Ms. Holmes was concerned that Defendant Garvey's behavior was escalating the situation and making Ms. Williams more upset. She asked Defendant Garvey to stop screaming and swearing. In response to this request, Defendant Garvey told Ms. Holmes to "shut the fuck up."

17. At this point, Ms. Williams said she was going home and stood up. Defendant Garvey again shoved Ms. Williams back onto the bench, doing so with such force that the plastic window behind the bench shook violently.

18. Defendant Garvey continued to scream at Ms. Williams, who then started to take a drink from a plastic bottle. Defendant Garvey slapped the bottle in Ms. Williams' face, shoved her up against the plastic window, slammed her down onto the bench in a prone position, and dragged her across the bench.

19. At this point, Defendant Trinh ran over to join Defendant Garvey.

20. Concerned that Defendant Garvey's behavior was unsafe and unlawful, Ms. Holmes once again asked her to stop using excessive and unnecessary force.

21. When Defendant Garvey did not stop, Ms. Holmes asked for the officer's badge number and informed her that she was going to call 9-1-1. Ms. Holmes then made the call.

22. Once Ms. Holmes said that she was going to call 9-1-1, Defendant Garvey began advancing towards Ms. Holmes, while screaming and swearing at her. Ms. Holmes backed up, but Defendant Garvey continued to pursue her.

23. Ms. Holmes looked at Defendant Trinh. She told him that she was backing away but that his partner continued to pursue her. She repeated this statement several times.

24. While backing away, Ms. Holmes was connected to 9-1-1. She informed the responder that her name was Mary Holmes and that she needed officers to come to Dudley Station.

25. As Ms. Holmes was on the phone to 9-1-1, Defendant Garvey sprayed Ms. Holmes' face with pepper spray.

26. Defendant Trinh then came over to join Defendant Garvey. Defendants hit the phone out of Ms. Holmes' hand, which smashed on the ground and disconnected the 9-1-1 call.

27. Defendant Garvey pulled out her metal baton and struck Ms. Holmes' shin three to four times while Defendants Garvey and Trinh grabbed and held both of Ms. Holmes' arms.

28. Defendants Garvey and Trinh kicked Ms. Holmes' legs out from under her.

29. Defendants Garvey and Trinh forced Ms. Holmes onto the ground and slammed her head on the curb.

30. Defendants Garvey and Trinh handcuffed Ms. Holmes' arms behind her back and continued to press her head into the curb until other officers arrived.

31. MBTA police officer Sean Curry was present at the scene during Defendants' encounter with Ms. Holmes. He observed Defendants Garvey and Trinh using unnecessary and excessive force against Mr. Holmes. Despite a duty and opportunity to stop Defendants from using unreasonable force, Officer Curry did not intervene to protect Ms. Holmes.

32. Once other transit police officers arrived, Ms. Holmes was thrown into the back of a police car.

33. Officers pulled Ms. Holmes out of the car several minutes later and pushed her up against the back of the car. At this point, she was placed in a second set of handcuffs and her backpack was cut off of her.

34. Ms. Holmes was then placed in a second police car and transported to the Boston MBTA police station for booking.

35. Throughout the booking process, Ms. Holmes repeatedly stated that she needed to call someone to pick up her children at school. The officers promised her that she would be able to make a phone call. Nevertheless, it took several hours before she was allowed to make a phone call to make arrangements for her children.

36. Ms. Holmes had visible injuries all over her body including bruising on her arms and legs and an open wound on her leg with tissue damage. She was eventually transported to the hospital, where she remained for several hours and ultimately received stitches in her leg.

37. Ms. Holmes was then transported back to the police station. She could not afford the bail commissioner fee and was held overnight.

38. Even though Ms. Holmes was able to make arrangements for her children as soon as she was finally allowed to make a phone call, employees of the Massachusetts Department of Children and Families (DCF) visited her in the hospital and then twice went to her home to interview her children while she was being held at the police station.

39. After subjecting her children to this questioning, DCF closed her case as baseless.

40. On March 26, 2014, Defendant Garvey filed an MBTA Transit Police Affidavit against Ms. Holmes listing charges of assault and battery on a public employee (Mass. Gen. Laws. ch. 265 § 13D), resisting arrest (Mass. Gen. Laws. ch. 268, § 32B), and disorderly conduct (Mass. Gen. Laws. ch. 272, § 53).

41. Defendant Garvey's affidavit was not truthful. In the affidavit, Defendant Garvey falsely claimed that, after spraying Ms. Holmes with pepper spray, Ms. Holmes "turned to square off with me [Defendant Garvey] before charging at me, swinging her arms and fist trying to hit me." This did not happen. Defendant Garvey fabricated these facts in order to conceal her and Defendant Trinh's misconduct and to pursue criminal charges against Ms. Holmes in retaliation for Ms. Holmes speaking out against Defendants' actions.

42. Based on Defendant Garvey's affidavit, Detective Ursula Humes filed an application for a criminal complaint against Ms. Holmes on March 27, 2014, for the same three charges listed above.

43. The Roxbury Division of the Boston Municipal Court issued a criminal complaint on March 27, 2014, charging Ms. Holmes with these three offenses.

44. The incident was recorded by cameras at the MBTA station. More than four months later, after the prosecutors viewed these videos (see here: [Video 1](#), [Video 2](#), [Video 3](#), [Video 4](#)), the Commonwealth filed a *nolle prosequi* on all charges against Ms. Holmes, stating that it was "in the best interests of justice."

45. Defendants' actions were taken willfully, maliciously, and with reckless disregard for Ms. Holmes' constitutional rights.

46. Ms. Holmes acted lawfully in verbally protesting and reporting police misconduct.

**Plaintiff Suffered Harm**

47. Ms. Holmes suffered physical and emotional harm as well as financial loss as a result of Defendants' use of excessive force against her and her unlawful arrest.

48. As a result of the blows by the metal baton, Ms. Holmes had an open wound nearly one and one-half inches in diameter on her right shin that required several stitches.

49. Defendants also damaged Ms. Holmes' property, breaking her phone and cutting the straps on her backpack.

50. Ms. Holmes was worried throughout the four months that the baseless charges were pending against her. She knew that she had not violated the law, but she nevertheless was concerned about the outcome of the case.

51. Moreover, the entire incident has caused Ms. Holmes severe anxiety and depression. Because of the incident, Ms. Holmes suffered panic attacks where she had difficulty breathing. She fell into a depression and was afraid to go outside or interact with people. She lost trust in people because she was mistreated and hurt by the very people she thought were meant to protect her and her community. This situation has changed her very way of interacting with the world around her.

**MBTA Policies and Customs Caused Defendants' Misconduct**

52. The MBTA has allowed policies or customs to develop within its police department that have caused MBTA police officers to believe they can violate the Constitution with impunity. These policies or customs were the moving force behind the misconduct that resulted in the violation of Ms. Holmes' constitutional rights.

*The MBTA Hired Defendant Garvey Despite Warnings*

53. Before hiring Defendant Garvey as a police officer, the MBTA knew that at least one other police department had bypassed Defendant Garvey for employment as a police officer. The MBTA knew that the Worcester Police Department had bypassed Defendant Garvey for employment as a police officer. On information and belief, the MBTA knew or should have known that another police department in a different state had also bypassed Defendant Garvey for employment as a police officer.

54. Before hiring Defendant Garvey as a police officer, the MBTA obtained additional information indicating that she was poorly suited to work as a police officer. This included knowledge of Defendant Garvey's history, including an arrest in 2005 for assault and battery. The criminal case was continued without a finding with the comment that "evaluation for counseling and counseling are deemed appropriate."

55. The MBTA nevertheless decided to hire Defendant Garvey as a transit police officer, ignoring these and other serious warning signs that Defendant Garvey was prone to violence and not temperamentally suited to employment as a police officer.

*The MBTA Failed to Properly Supervise Defendant Garvey Before Her Assault on Ms. Holmes*

56. Defendant MBTA failed to properly supervise Defendant Garvey after hiring her as a police officer.

57. At the time Defendant Garvey began working as an MBTA police officer, the MBTA had an early warning system in place to detect overly aggressive and otherwise problem officers so supervisors could help them change their behavior.

58. Early warning systems are common in police departments. These systems, such as the system in use at the MBTA, can trigger alerts for several reasons, including the number of civilian complaints against an officer without regard to the disposition of those complaints.



59. It is unusual for a police officer to trigger early warning system alerts. Most police officers complete their entire career without triggering the early warning system.

60. Before the incident with Ms. Holmes, Defendant Garvey triggered the MBTA's early warning system over a dozen times for at least four different reasons. These included use of force during probationary period, three or more use of force incidents within a 12-month period, three or more civilian complaints during a 12-month period, and five or more incidents during an 18-month period.

61. Twice when Defendant Garvey triggered the early warning system, she had ten or more incidents within the past 18 months.

62. Defendant Garvey began working for the MBTA in March of 2008. On information and belief, she then enrolled in the MBTA police academy.

63. In November of 2008, Defendant Garvey triggered an alert due to her use of force while still on probation as a new hire. Defendant MBTA did not take any corrective action.

64. About ten months after she graduated from the MBTA police academy, Defendant Garvey took a military leave. She was on military leave for approximately 13 months, returning to work on August 16, 2010.

65. After Defendant Garvey returned from her military leave, she worked at the MBTA for about three years and seven months before the incident with Plaintiff occurred. During this time, she was the subject of 11 internal complaints.

66. Six times during this period, civilians filed formal complaints about Defendant Garvey's actions alleging assault and aggression, excessive force, unprofessional conduct, harassment, and rudeness. Ms. Holmes' complaint to the MBTA was the seventh.

67. The six civilian allegations were:

<b>Complaint No.</b>	<b>Received</b>	<b>Occurred</b>	<b>Allegation/s</b>	<b>Finding</b>	<b>Disciplinary Action</b>
CC2010-78	12/21/10	12/17/10	Assault Aggressive Behavior	Exonerated Exonerated	None
CC2011-079	10/25/11		Discourtesy/ Treating with Respect	Open	None
CC2011-080	10/26/11	10/19/11	Excessive Force Unprofessional	Open Open	None
CC2012-031	6/19/12	6/17/12	Harassment	Exonerated	None
CC2012-032	6/25/12	5/1/12	Harassment	Not Sustained	None
CC2013-037	8/24/13	8/24/13	Rudeness	Not Sustained	None

68. During the same time period, Defendant Garvey also had five administrative complaints for her behavior including discourtesy, insubordination, and failing to report for duty. She also had one separate disciplinary action. Additionally, she was involved in two incidents that did not result in formal complaints but counted as events that could trigger the early warning system. These two incidents are referred to as “A&B Police Officer” and “Resisting Arrest Incident.”

69. The five administrative allegations and one disciplinary action were:

<b>Complaint No.</b>	<b>Received</b>	<b>Occurred</b>	<b>Allegation/s</b>	<b>Finding</b>	<b>Disciplinary Action</b>
AI2011-008	3/17/11				None
AI2012-015	9/1/12	9/1/12	AWOL	Open	Written reprimand
AI2012-016	10/3/12	8/1/12	AWOL AWOL Court Failing to Call in Sick D/A Violation	Sustained Sustained Sustained Not Sustained	Suspended 1/10/13
DA2013-005	5/2/13	12/13/12	Discourtesy		Suspended 4/24/13
AI2013-004	9/12/13	9/11/13	Discourtesy	Not Sustained	None
AI2014-003	3/28/14	3/16/14	Insubordination	Withdrawn	None

70. In addition to the internal complaints, in July of 2011, Defendant Garvey was involved in a domestic incident with a Massachusetts State Police trooper. Although she initially

claimed to be the victim, publically available facts question this. The criminal case ended when Defendant Garvey refused to testify, invoking her Fifth Amendment right against self-incrimination.

71. MBTA police supervisors repeatedly showed a lack of understanding of the purpose of the early warning system. Rather than taking action to change Defendant Garvey's behavior, her supervisors failed to act despite repeated alerts.

72. For example, in August of 2013, when a civilian filed a complaint against Defendant Garvey for rudeness, her supervisor showed that he understood Defendant Garvey's aggressive conduct caused her problems with civilians. The supervisor reported, "My evaluation of these situations is that Officer Amyot [Garvey] seems to always employ the strongest action allowable and demands tactical submission in all encounters. This strategy causes many people to take umbrage, which in turn leads to the higher-than-average complaints/instances that get flagged by Blue Team alerts." Despite understanding Defendant Garvey's aggressiveness in demanding that civilians show "tactical submission in all encounters," nothing was done to change her conduct.

73. When Defendant Garvey triggered the early warning system in November of 2012 and again in May of 2013, her supervisor demonstrated that he did not understand the purpose of the alerts, claiming that he could not address any incidents that occurred before he took over command. This supervisor also claimed that he needed the dispositions of the investigations in order to make a decision.

74. In September of 2013, the MBTA filed an administrative complaint of discourtesy against Defendant Garvey. This triggered another alert because she had seven incidents in the past 18 months. Once again a supervisor reviewing the alert showed a lack of understanding of the purpose of the alert, saying that "there have been no incidents of wrong doing documented." Also, this statement was not true since Defendant Garvey had received a short suspension or reprimand in three of the seven incidents that triggered this alert.

75. When Defendant Garvey was disciplined, it was only for her failure to conform to the police department's administrative rules. On December 7, 2012, Defendant Garvey was given a written reprimand for being AWOL. About a week later, Defendant Garvey was charged with an act of discourtesy. On January 10, 2013, Defendant Garvey was suspended for one day for being AWOL a second time. Then she was suspended in April of 2013 for the December discourtesy charge.

76. Despite the brief suspensions, Defendant Garvey was not ordered to undergo counseling or retraining. Nothing was done to change her pattern of misconduct towards civilians.

*After the Holmes Incident, the MBTA Tolerated Defendant Garvey's Behavior for Nearly Two More Years*

77. On March 26, 2014, Defendant Garvey was involved in the incident with Plaintiff Mary Holmes. The incident resulted in two internal investigations; one filed administratively and one filed by Ms. Holmes. The administrative complaint triggered another alert for Defendant Garvey in the early warning system.

78. When Defendant Garvey was interviewed about this alert she said she felt "the alerts are not excessive considering the geographic area we work in." Her supervisor agreed, stating, "there is a lot of truth to that statement. ... this Alert should be cleared at this time."

79. On March 28, 2014, the MBTA filed an administrative complaint for insubordination against Defendant Garvey. The complaint was later withdrawn.

80. In July of 2014, the MBTA exonerated Defendant Garvey on the internal complaint filed by Ms. Holmes. The video of the incident was available to be viewed by members of the MBTA police department when they made this determination.

81. The MBTA did not interview Ms. Holmes or the impartial civilian witness to the incident before deciding to exonerate Defendant Garvey.

82. In December of 2015, after viewing the video of the incident and hearing Ms. Holmes' testimony, a Suffolk County grand jury indicted Defendant Garvey for assault and civil rights violations.

83. After the incident with Ms. Holmes, Defendant Garvey continued her pattern of violent behavior. In January of 2015, Defendant Garvey was arrested and charged with assaulting her wife with a firearm. She was placed on administrative leave. In August of 2015, Defendant Garvey was arrested at Gillette Stadium for assault.

84. On December 28, 2015, nearly two years after the incident with Ms. Holmes, the MBTA terminated Defendant Garvey.

*The Effect of the MBTA's Policies and Customs*

85. For years before Defendant Garvey's termination, the policies and customs of the MBTA allowed police supervisors to ignore the repeated warning signs about Defendant Garvey's violent conduct. Even after video evidence in this incident showed Defendant Garvey using improper force, police supervisors approved the decision to exonerate her.

86. The manner in which supervisory employees in the MBTA treated Defendant Garvey was consistent with its treatment of other problem police officers.

87. The MBTA allowed a policy or custom to develop within its police department of failing to properly use the early warning system. As a result of this failure, MBTA police supervisors ignored repeated alerts from the system and failed to take steps to intervene to prevent MBTA policer officers from committing more serious violations of civilians' rights.

88. The MBTA allowed a policy or custom to develop within its police department of failing to properly investigate allegations of misconduct by its police officers. This is exemplified by the cursory investigation of Ms. Holmes' complaint followed by its exoneration of Defendant Garvey, a determination that means the event happened but was handled appropriately.

89. The MBTA allowed a code of silence to exist within its police department, through which MBTA police officers understood they would not report misconduct committed by a fellow police officer.

90. Defendant Trinh and MBTA police officer Sean Curry were present while Defendant Garvey was first verbally and then physically abused Ms. Holmes. Defendant Trinh actively assisted Defendant Garvey. Officer Curry stood by observed the misconduct and did nothing. Officer Curry failed to intervene to prevent the physical abuse and afterwards he failed to report misconduct of Defendant Garvey. Officer Curry instead followed the unwritten custom of a code of silence in the MBTA Transit Police Department.

**Count I: 42 U.S.C. Section 1983 – Fourth Amendment Claim**

91. The above paragraphs are incorporated by reference.

92. Defendants Garvey and Trinh, acting in concert, arrested Ms. Holmes without probable cause and used unreasonable force on Ms. Holmes during the arrest.

93. Defendants Garvey and Trinh deprived Ms. Holmes of her clearly established rights to freedom from the use of unreasonable and excessive force, and freedom from arrest without probable cause, under the Fourth Amendment to the United States Constitution as applied under the Fourteenth Amendment.

94. As a direct and proximate result of Defendants' actions, Ms. Holmes suffered the injuries described above.

**Count II: 42 U.S.C. Section 1983 – First Amendment Claim**

95. The above paragraphs are incorporated by reference.

96. Defendants Garvey and Trinh, acting in concert, retaliated against Ms. Holmes for expressing verbal opposition to police conduct by arresting Ms. Holmes without probable cause and by using unreasonable force during the arrest.

97. Defendants' actions were taken willfully, maliciously, and with reckless disregard for Ms. Holmes' constitutional rights.

98. Defendants Garvey and Trinh deprived Ms. Holmes of her clearly established right to freedom of speech under the First Amendment to the United States Constitution as applied under the Fourteenth Amendment.

99. As a direct and proximate result of Defendants' actions, Ms. Holmes suffered the injuries described above.

**Count III: State Claim – False Arrest**

100. The above paragraphs are incorporated by reference.

101. Defendants Garvey and Trinh arrested Ms. Holmes without probable cause.

102. Defendants' arrest of Ms. Holmes was unwarranted, malicious, and was in retaliation for, and to punish Ms. Holmes for, exercising her right to freedom of speech.

103. As a direct and proximate result of Defendants' actions, Ms. Holmes suffered the emotional distress and financial expense described above.

**Count IV: 42 U.S.C. Section 1983 – MBTA**

104. The above paragraphs are incorporated by reference.

105. Defendant MBTA allowed the policies and customs described above to exist within its police department.

106. These policies and customs of the MBTA allowed Defendants Garvey and Trinh to believe that they could commit misconduct against Plaintiff with impunity.

107. The policies and customs of Defendant MBTA were the moving force behind the actions that resulted in the violations of Plaintiff's civil rights.

108. As a direct and proximate result of Defendants' actions, Ms. Holmes suffered the injuries described above.

**Relief Requested**

WHEREFORE, the plaintiff requests that this Court:

1. Award compensatory damages;
2. Award the costs of this action, including reasonable attorney's fees; and
3. Award such other and further relief as this Court deems just and appropriate.

**Jury Trial Demand**

The Plaintiff demands a jury trial on all counts so triable.

Respectfully submitted,  
Plaintiff, MARY HOLMES

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Dated: