

For Opinion See [2008 WL 5123009](#) , [2008 WL 2788418](#) , [2008 WL 2795137](#) , [2008 WL 553777](#) , [2007 WL 4391029](#) , [2007 WL 4261930](#) , [2006 WL 5429570](#) , [2006 WL 2682346](#)

United States District Court, D. Idaho.

Abdullah AL-KIDD, Plaintiff,

v.

Alberto GONZALES, Attorney General of the United States; John Ashcroft, Former Attorney General of the United States; Robert Mueller, Director of the Federal Bureau of Investigation; Michael Chertoff, Secretary of the Department of Homeland Security and Former Assistant Attorney General of the Department of Justice; James Dunning, Warden, Alexandria Detention Center; Dennis M. Callahan, Warden, Oklahoma Federal Transfer Center; Vaughn Killeen, Former Warden, Ada County Jail; FBI Agents Michael James Gneckow, Scott Mace; United States Department of Homeland Security; Federal Bureau of Investigation; Terrorist Screening Center; Donna Bucella, Director of the Terrorist Screening Center; John does 1-25, Defendants.

No. 1:05-cv-00093-EJL.

September 26, 2005.

Answer and Demand for Jury Trial Plaintiff,

[Greg H. Bower](#), Ada County Prosecuting Attorney, Julie D. Reading, Deputy Prosecuting Attorney, Civil Division, 200 W. Front Street, Room 3191, Boise, ID 83702, (208) 287-7700, Idaho State Bar No. 6225

COMES NOW, Defendant, Vaughn Killeen, (hereinafter "Defendant"), by and through his attorney of record, Julie D. Reading, Deputy Ada County Prosecuting Attorney, Civil Division, and in answer to Plaintiff's Complaint and Demand for Jury Trial (hereinafter "Complaint"), admit, deny, and allege as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a claim against Defendant upon which relief can be granted and should be dismissed, pursuant to [Rule 12\(b\) of the Federal Rules of Civil Procedure](#).

SECOND DEFENSE

Defendant denies each and every allegation of Plaintiff's Complaint not herein specifically and expressly admitted.

THIRD DEFENSE

I.

Answering paragraphs 1 and 2 of Plaintiff's Complaint, Defendant is without information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies same.

II.

Answering paragraphs 3 and 4 of Plaintiff's Complaint, Jurisdiction and Venue, to the extent an answer is re-

quired, the allegations contained therein constitute legal conclusions which Defendant is not required to admit or deny.

III.

Answering paragraphs 5 through 13 of Plaintiff's Complaint, Defendant is without information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies same.

IV.

Answering paragraph 14 of Plaintiff's Complaint, Defendant admits that Defendant Vaughn Killeen is a resident of the State of Idaho, County of Ada, and was the duly elected Sheriff of Ada County at the time of the alleged incidents, with duties and responsibilities with respect to prisoners held in the Ada County Jail are as set forth in [Idaho Code § 20-601](#), but Defendant denies the remaining allegations contained therein. Further, to the extent the allegations contained therein constitute legal conclusions, Defendant is not required to admit or deny same.

V.

Answering paragraphs 15 through 78 of Plaintiff's Complaint, Defendant is without information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies same.

VI.

Answering paragraph 79 of Plaintiff's Complaint, Defendant admits that Plaintiff was held for five days in the Ada County jail and was kept separately from the general population of the Ada County jail for his own protection as directed by the United States authorities. As to the remaining allegations in Paragraph 79, Defendant denies or is without sufficient information as to answer, and therefore denies the same.

VII.

Answering paragraph 80 of Plaintiff's Complaint, the allegations contained therein constitute legal conclusions which Defendant is not required to admit or deny. To the extent that an answer is required, Defendant admits that Vaughn Killeen was the duly elected Ada County Sheriff and his duties and responsibilities with respect to prisoners held in the Ada County Jail are as set forth in [Idaho Code § 20-601](#), *et seq.*, however, as to the remaining allegations, Defendant denies the same.

VIII.

Answering paragraphs 81 of Plaintiff's Complaint, the allegations contained therein constitute legal conclusions which Defendant is not required to admit or deny, however, to the extent that an answer is required, Defendant denies the allegations set forth.

IX.

Answering paragraph 82 of Plaintiff's Complaint, the allegations contained therein constitute legal conclusions which Defendant is not required to admit or deny, however, to the extent that an answer is required, Defendant denies the allegations set forth.

X.

Answering paragraph 83 through 95, Defendant is without information sufficient to form a belief as to the truth of the allegations, and therefore, denies the same. To the extent an answer is required, Defendant denies that its actions were the proximate cause of Plaintiff's injuries, to the extent that they are proven to exist.

XI.

Answering paragraphs 96 through 101, Defendant is without information sufficient to form a belief as to the truth of the allegations, and therefore, denies the same.

XII.

Answering paragraphs 102, 104, 106, 108, 111 and 117, Defendant reasserts the answers previously provided with respect to the specific paragraphs incorporated.

XIII.

Answering paragraphs 103, 105, 107, 109, 110, 114, 115, 116, and 119-122 of Plaintiff's Complaint, the allegations contained therein constitute legal conclusions which Defendant is not required to admit or deny, however, to the extent that an answer is required, Defendant denies the allegations set forth.

XIV.

Answering paragraphs 112, 113 and 118, Defendant is without information sufficient to form a belief as to the truth of the allegations, and therefore, denies the same.

FOURTH DEFENSE

As and for an affirmative defense, Defendant alleges that, insofar as Plaintiff's Complaint seeks to set forth claims based upon state law, Plaintiff has failed to comply with the requirements of posting a bond pursuant to [Idaho Code § 6-610](#), and said claims should be dismissed.

FIFTH DEFENSE

As and for an affirmative defense, Defendant alleges that, insofar as Plaintiff's Complaint sets forth claims based upon state law, said state law claims are either barred or limited by the Idaho Tort Claims Act.

SIXTH DEFENSE

As and for an affirmative defense, Defendant alleges that his acts or omissions, if any, were undertaken in good faith, without malice, with probable cause, and were justified and responsible under the circumstances.

SEVENTH DEFENSE

As and for an affirmative defense, Defendant alleges that his acts or omissions, if any, were privileged.

EIGHTH DEFENSE

As and for an affirmative defense, Defendant alleges that he is absolutely immune from suit for his acts or omissions, if any.

NINTH DEFENSE

As and for an affirmative defense, Defendant alleges that his acts or omissions, if any, which are not entitled to absolute immunity, are entitled to qualified good faith immunity from suit.

TENTH DEFENSE

As and for an affirmative defense, Defendant alleges that, to the extent Plaintiff's Complaint alleges violations of the Idaho Constitution, Idaho statutes, or other Idaho law, such claims cannot form the basis of a cause of action under [42 U.S.C. § 1983](#).

ELEVENTH DEFENSE

As and for an affirmative defense, Defendant alleges that he is not liable under the theory of *respondeat superior*.

TWELFTH DEFENSE

As and for an affirmative defense, Defendant alleges that he is not liable since there was no policy or custom that led to the deprivation of a constitutional right.

THIRTEENTH DEFENSE

As and for an affirmative defense, Defendant alleges that the acts or omissions of said Defendant, if any, do not rise to a level of deprivation of constitutionally protected rights.

FOURTEENTH DEFENSE

As and for an affirmative defense, Defendant alleges that injuries or damages alleged by Plaintiff, if any, were proximately caused by Plaintiff's comparative negligence and/or fault which negligence or fault was equal to or greater than the negligence or fault of said Defendant, if any, and bars or reduces Plaintiff's recovery.

FIFTEENTH DEFENSE

As and for an affirmative defense, Defendant alleges that the damages alleged by Plaintiff were proximately caused, if at all, by acts or omissions of persons or entities other than said Defendant.

SIXTEENTH DEFENSE

As and for an affirmative defense, Defendant alleges that Plaintiff failed to comply with requirements of [Idaho Code §§ 6-906 and 6-908](#) and therefore Plaintiff's claims are barred.

SEVENTEENTH DEFENSE

As and for an affirmative defense, Defendant alleges that acts or omissions of said Defendant, if any, were not the proximate cause nor the cause in fact of the alleged injuries or damages claimed by Plaintiff, if any.

EIGHTEENTH DEFENSE

As and for an affirmative defense, Defendant alleges that he is immune from an award of punitive damages for

Plaintiff's federal and state law claims.

NINETEENTH DEFENSE

As and for an affirmative defense, Defendant asserts that the acts or omissions of said Defendant, if any, were not performed under color of state law.

TWENTIETH DEFENSE

As and for an affirmative defense, Defendant asserts that he was not a moving force behind the constitutional violation, if any are proven to have occurred as against the other defendants.

TWENTY-FIRST DEFENSE

As and for an affirmative defense, Defendant asserts that that the acts or omissions of said Defendant, if any, did not violate clearly established statutory or constitutional rights of which a reasonable person would have known.

TWENTY-SECOND DEFENSE

As and for an affirmative defense, Defendant asserts that the acts or omissions of said Defendant, if any, were not unlawful.

TWENTY-THIRD DEFENSE

As and for an affirmative defense, Defendant asserts that the acts or omissions of said Defendant, if any, were performed at the direction of the United States Marshals Service and/or other federal agents of the United States Department of Justice, who by contract, control the receiving, discharge, placement, medical services and mandatory minimum conditions of confinement of federal prisoners.

TWENTY-FOURTH DEFENSE

As and for an affirmative defense, Defendant asserts that the acts or omissions of said Defendant, if any, were performed pursuant to contractual duties executed under the intergovernmental Service Agreement - Housing of Federal Prisoners.

ATTORNEY FEES

As a direct result of the filing of this action, Defendant has been forced to retain the services of the Ada County Prosecuting Attorney, Civil Division, and has and will continue to incur fees and costs in defense thereof and request that he be granted reasonable attorney fees pursuant to [Idaho Code § 12-121](#), [42 U.S.C. 1988](#), and/or [28 U.S.C. 1927](#), and all applicable Idaho or Federal law, or rules of civil procedure.

WHEREFORE, said Defendant prays for judgment as follows:

- A. That the Complaint be dismissed as to claims against the Defendant;
- B. That judgment be entered in favor of Defendant on all claims;
- C. That the Court award Defendant his attorney fees and cost incurred in defense of this action; and

D. That the Court grant such other and further relief as it deems just in the premises.

END OF DOCUMENT