

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

| | | |
|---------------------------|---|-------------------|
| ENRIQUE BAUTISTA, et al., |) | |
| |) | |
| Plaintiff, |) | |
| |) | NO. 3:08-CV-01125 |
| V. |) | JURY DEMAND |
| |) | |
| TENNESSEE DEPARTMENT |) | |
| OF SAFETY, et al., |) | |
| |) | |
| Defendants. |) | |

ANSWER OF DEFENDANTS

Defendants, Tennessee Department of Safety, David Mitchell, Michael Hogan, Tiffany Taylor, George Dittfurth, Saunda Harris, Kim Draper, Cynthia McCullough, and Rick Blackburn, through the undersigned Senior Counsel, answer plaintiffs'

Complaint as follows:

1. It is denied that the Department of Safety conducts the practice alleged in this paragraph. The Department of Safety will not confiscate documents without a basis for doing so and does not maintain custody of the cards for longer than necessary.

2. It is admitted that the plaintiffs are legal permanent residents. The remaining allegations are denied.

3. This paragraph does not contain any facts which require answer. To the extent answer is required, it is denied that the plaintiffs' documents were wrongly seized or were held for a longer than necessary period of time.

4. Denied. The Farm Labor case is not dispositive of the issues in this matter.

5. It is denied that there is any discriminatory “policy.” It is also denied that the law that plaintiffs cite in this paragraph had any bearing on the confiscation of their documents or in any way affected them. The allegations in this paragraph are immaterial, impertinent and scandalous, and therefore should be stricken.

6. It is denied that the Tennessee Department of Safety or any of its employees engage in any abuse or harassment. The allegations in this paragraph are immaterial, impertinent and scandalous and should be stricken.

7. Denied.

8. There are no factual allegations in this paragraph which require response. To the extent that answer is required, the allegations are denied.

9. There are no factual allegations in this paragraph which require response. To the extent that answer is required, the allegations are denied.

10. There are no factual allegations in this paragraph which require response. To the extent that answer is required, the allegations are denied.

11. It is admitted that this Court has jurisdiction over the Federal claims and may decide to exercise jurisdiction over the State claims. It is denied that the plaintiffs are entitled to any relief.

12. Admitted.

13. Admitted.

14. It is admitted that plaintiffs have standing to sue. The remaining allegations are denied.

15. Defendants do not have knowledge sufficient to admit or deny that plaintiffs travel in and through Tennessee frequently. The remaining allegations are admitted.

16. Admitted.

17. It is denied that Commissioner Mitchell is liable to these plaintiffs for damages or that he is subject to injunction in this case. All other allegations are admitted.

18. It is denied that Director Hogan is liable to these plaintiffs for damages or that he is subject to injunction in this case. All other allegations are admitted.

19. It is denied that Deputy Director Taylor is liable to these plaintiffs for money damages or is subject to injunction in this case. All other allegations are admitted.

20. It is admitted that Mr. Dittfurth had possession of the plaintiffs' documents at one time. All other allegations are denied. Mr. Dittfurth has retired.

21. There are no allegations that require an answer. To the extent that an answer is required, the allegations are denied.

22. There are no allegations that require an answer. To the extent an answer is required, the allegations are denied.

23. There are no allegations that require an answer. To the extent an answer is required, the allegations are denied.

24. There are no allegations that require and answer. To the extent an answer is required, the allegations are denied.

25. It is denied that the procedures outlined in Exhibit A are illegal. All other allegations are denied.

26. It is admitted that at all times the Department of Safety employees acted under the color of state law. It is denied that any Department of Safety employees violated plaintiffs' rights.

27. There are no allegations that require an answer. To the extent an answer is required, the allegations are denied.

28. It is denied that a class action is appropriate. It is denied that the class that plaintiffs seek to certify is a properly defined class.

29. Denied.

30. It is denied that defendants have engaged in any illegal practices or conduct. It is denied that a class is appropriate. It is denied that the class that plaintiffs seek to certify is a properly defined class.

31. It is admitted that the green card of Enrique Bautista (“Plaintiff Bautista”) eventually proved to be valid. However, the card was worn and gave the appearance of being altered.

32. Admitted.

33. Admitted.

34. Admitted.

35. It is denied that Plaintiff Bautista was told that he would not get his green card back. The remaining allegations are admitted.

36. It is admitted that Plaintiff Bautista’s attorney received a letter from the Department of Safety. The remaining allegations are denied.

37. Admitted, however, since Plaintiff Bautista was given the opportunity to retrieve his green card, there was no need for a hearing.

38. It is admitted that the green card of Juan Carlos Angel-Lopez (“Plaintiff Lopez”) eventually proved to be valid. However, the card was worn and gave the appearance of being altered.

39. Admitted.

40. Admitted.

41. Admitted.

42. It is denied that Plaintiff Lopez was told that he would not get his green card or his driver's license back. It is denied that Plaintiff Lopez waited 2 hours. The remaining allegations are admitted.

43. The first sentence is denied. Defendants do not have information sufficient to admit or deny the second sentence. The third sentence is admitted. The remaining allegations are denied.

44. Defendants do not have information sufficient to admit or deny the allegations in this paragraph.

45. Denied.

46. Denied.

47. Denied. It is specifically denied that any state employees engaged in unconstitutional actions.

48. It is denied that General Order Number 544 provides plaintiffs with due process rights. It is denied that plaintiffs were denied due process. The remaining allegations are denied.

49. Denied.

50. Denied.

51. Denied.

52. Defendants are without information sufficient to admit or deny the allegations in this paragraph.

53. Denied. It is denied that there have been any confiscations without cause.

54. Denied. It is denied that any defendant has engaged in unlawful practices.

55. Denied.

56. There are no allegations which require an answer. To the extent that an answer is required, the allegations are denied.

57. There are no allegations which require an answer. To the extent that an answer is required, the allegations are denied.

58. There are no allegations which require an answer. To the extent that an answer is required, the allegations are denied.

59. Denied.

60. Denied.

61. Denied. It is denied that the actions of defendants were arbitrary.

62. Denied. It is denied that the actions of defendants were arbitrary.

63. Denied. It is denied that the actions of defendants were arbitrary.

64. Denied. It is denied that the actions of defendants were arbitrary.

65. It is admitted that the Commercial Driver License program receives a federal grant. It is denied that plaintiffs attempted to obtain commercial driver's licenses. It is denied that plaintiffs are intended beneficiaries of the commercial driver's license program. The remainder of the allegations are denied.

66. Denied. It is denied that the Department of Safety has confiscated any documents based on race or national origin or that documents have been confiscated without cause.

67. Denied. It is denied that the Department of Safety or its employees have engaged in any unlawful activities.

68. Denied. It is denied that the Department of Safety or any of its employees have engaged in any unlawful activities.

69. There are no allegations which require an answer. To the extent an answer is required, the allegations are denied.

70. It is denied that the defendants have engaged in any unlawful activity.

71. Denied.

72. The first sentence is admitted. As to subsection (a), it is denied that there is an appropriately defined class. It is admitted that the confiscation placed the plaintiffs at risk. As to subsection (b), denied. As to subsection (c), admitted. As to subsection (d), denied.

73. There are no allegations which require an answer. To the extent an answer is required, the allegations are denied.

74. Denied.

75. Denied. It is denied that Exhibit A to the Complaint provides plaintiffs with the right to a hearing.

76. Denied. It is denied that the seizure of the documents was illegal.

77. Denied.

78. Denied. It is denied that Plaintiff Lopez' green card was not returned.

79. Defendants deny that plaintiffs are entitled to injunctive relief. It is further denied that injunctive relief in this case is appropriate.

80. All allegations not specifically addressed are hereby denied.

By way of affirmative defense, all defendants plead as follows:

1. The complaint fails to state a claim upon which relief can be granted.
2. No act or omission by the defendants deprived the plaintiffs of their constitutional or statutory rights.

3. Defendant State of Tennessee and individual defendants in their official capacities are not "persons" under § 1983, and the Eleventh Amendment to the United States Constitution bars all claims for money damages as to the State and any individual defendant in his or her official capacity. The doctrine of sovereign immunity bars all claims for money damages.

4. Plaintiffs were offered the opportunity to retrieve their green cards,

therefore they were not denied due process.

5. The class that plaintiffs seek to certify is not appropriate and is not properly defined.

6. All defendants sued in their individual capacities are entitled to qualified immunity.

7. Plaintiffs have failed to exhaust their administrative remedies.

8. All defendants had cause to act as they did in this matter.

9 As employees of the State of Tennessee, defendants are absolutely immune from state law claims as provided under Tenn. Code Ann. § 9-8-307(h).

10. Defendants reserve the right to seek attorneys' fees and costs at the conclusion of this action.

11. Defendants demand a trial by jury in this matter.

Respectfully submitted,

ROBERT E. COOPER, JR. 10934
Attorney General and Reporter

S/Dawn Jordan
DAWN JORDAN, BPR 20383
Senior Counsel
Civil Rights & Claims Division
Cordell Hull Building, Second Floor
P.O. Box 20207
Nashville, TN 37202-0207

CERTIFICATE OF SERVICE

I hereby certify that, on December 16, 2008, the foregoing Answer of Defendants was filed electronically and notice of filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's electronic filing system.

Elliott Ozment
1214 Murfreesboro Pike
Nashville, TN 37217

S/Dawn Jordan
Dawn Jordan
Senior Counsel