

JOSEPH P. RUSSONIELLO, CSBN 44332

United States Attorney

JOANN M. SWANSON, CSBN 88143

Chief, Civil Division

EDWARD OLSEN, CSBN 214150

Assistant United States Attorney

450 Golden Gate Avenue, Box 36055

San Francisco, California 94102

Telephone: (415) 436-6915

FAX: (415) 436-6927

Attorneys for Defendants

UNITED STATES DISTRICT COURT

## NORTHERN DISTRICT OF CALIFORNIA

## OAKLAND DIVISION

KEBIN REYES, a minor by and through  
his father and guardian, Noe Reyes,

Plaintiff,

V.

NANCY ALCANTAR, San Francisco Field Office Director for Detention and Removal Services, Immigration and Customs Enforcement, in her individual capacity; JOHN P. MARTINEZ, in his individual capacity; GREGORY J. WILLIAMS, in his individual capacity; UNITED STATES OF AMERICA, and DOES 3 through 50 inclusive

Defendants.

No. C 07-2271 SBA

**ANSWER TO FIRST AMENDED COMPLAINT**

Now come the defendants Nancy Alcantar, John P. Martinez, Gregory Williams, and the United States of America, by and through their undersigned counsel, in response to the Plaintiff's First Amended Complaint for Violations of the Fourth and Fifth Amendments to the United States' Constitution and for False Imprisonment, Intentional Infliction of Emotional Distress, and Negligence, state the following:

## JURISDICTION AND PROCEDURAL PREREQUISITES TO SUIT

1. Paragraph One consists of plaintiff's statement regarding jurisdiction, to which no responsive pleading is required; however, to the extent a response is deemed to be required, the

ANSWER TO FIRST AMENDED COMPLAINT

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1 defendants deny that jurisdiction exists under any of the provisions cited in Paragraph One.

2 2. Defendants admit the allegations in Paragraph Two.

3 **VENUE**

4 3. Paragraph Three consists of plaintiff's statement regarding venue, to which no responsive  
5 pleading is required.

6 **INTRADISTRICT ASSIGNMENT**

7 4. Paragraph Four consists of plaintiff's statement regarding intra-district assignment, to  
8 which no responsive pleading is required.

9 **THE PARTIES**

10 5. Defendants admit that plaintiff is a United States citizen who resides in the Northern  
11 District of California. The remaining allegations in Paragraph Five consist of plaintiff's statement  
12 that he brings his action by and through his father, under Fed. R. Civ. P. 17(c), to which no  
13 responsive pleading is required.

14 6. Defendant admit that Nancy Alcantar is employed as the Field Office Director in the San  
15 Francisco Office of Detention and Removal Operations, United States Immigration and Customs  
16 Enforcement. The second sentence in Paragraph Six consists of plaintiff's statement that Ms.  
17 Alcantar was acting under color of federal law and is sued in her individual capacity, to which no  
18 responsive pleading is required.

19 7. Defendants admit that John P. Martinez is a deportation officer in San Francisco,  
20 California, but deny that he personally participated in any of the events alleged in the first  
21 sentence of Paragraph Seven. The second sentence of Paragraph Seven consists of plaintiff's  
22 statement that Mr. Martinez was acting under color of federal law and that he is sued in his  
23 individual capacity, to which no response is required. The third sentence of Paragraph Seven  
24 consists of plaintiff's statement about substitution of a defendant, to which no response is  
25 required.

26 8. Defendants admit that Gregory J. Williams was a supervisory detention and deportation  
27 officer in San Francisco, California, on March 6, 2007, but deny that he personally participated in  
28 any of the events alleged in the first sentence of Paragraph Eight. The defendants add that Mr.

Williams is currently employed by the Office of Detention and Removal Operations, United States Immigration and Customs Enforcement, in Eugene, Oregon. The second sentence of Paragraph Eight consists of plaintiff's statement that Mr. Williams was acting under color of federal law and that he is sued in his individual capacity, to which no response is required. The third sentence of Paragraph Eight consists of plaintiff's statement about substitution of a defendant, to which no response is required.

9. Defendants admit the allegations in the first two sentences in Paragraph Nine. Defendants deny the remaining allegations set forth in Paragraph Nine.

10. Paragraph Ten consists of plaintiff's allegations regarding Doe defendants, to which no response is required. However, to the extent a response is deemed to be required; the defendants deny the allegation in Paragraph Ten.

11. Defendants deny the allegations set forth in Paragraph Eleven.

#### **FACTS GIVING RISE TO THE CLAIMS**

12. Defendants deny the allegations set forth in Paragraph Twelve.

13. Defendants deny the allegations set forth in Paragraph Thirteen, with the exception of the allegation that plaintiff's father provided the officers involved with plaintiff's U.S. passport.

14. Defendants deny the allegations set forth in Paragraph Fourteen.

15. Defendants deny the allegations in Paragraph Fifteen.

16. Defendants deny the allegations set forth in Paragraph Sixteen.

17. Defendants deny the allegations set forth in Paragraph Seventeen.

18. Defendants deny the allegations set forth in Paragraph Eighteen.

#### **FIRST CLAIM FOR RELIEF**

**(Violation of Fourth Amendment and Title 8 United States Code Section 1327)**

**(Against Defendants Alcantar, Martinez, Williams, and DOES 3-50)**

19. Defendants incorporate paragraphs 1 through 18 above and each response therein as fully set forth herein.

20. Paragraph Twenty consists of plaintiff's statement of the Fourth Amendment, to which no responsive pleading is required.

21. Defendants deny the allegations in Paragraph Twenty-One.

22. Defendants deny the allegations set forth in Paragraph Twenty-Two.

23. Defendants deny the allegations set forth in Paragraph Twenty-Three.

**SECOND CLAIM FOR RELIEF**

**(Violation of Fifth Amendment)**

**(Against Defendants Alcantar, Martinez, Williams, and DOES 3-50)**

24. Defendants incorporate paragraphs 1 through 23 above and each response therein as fully set forth herein.

25. Paragraph Twenty-Five consists of plaintiff's statement of the Fifth Amendment, to which no responsive pleading is required.

26. Defendants deny the allegations in Paragraph Twenty-Six.

27. Defendants deny the allegations in Paragraph Twenty-Seven.

28. Defendants deny the allegations in Paragraph Twenty-Eight.

**THIRD CLAIM FOR RELIEF**

**(False Arrest and Imprisonment)**

**(Against Defendant United States of America)**

29. Defendants incorporate paragraphs 1 through 28 above and each response therein as fully set forth herein.

30. Defendants deny the allegations in Paragraph Thirty.

**FOURTH CLAIM FOR RELIEF**

**(Intentional Infliction of Emotional Distress)**

**(Against Defendant United States of America)**

31. Defendants incorporate paragraphs 1 through 30 above and each response therein as fully set forth herein.

32. Defendants deny the allegations in Paragraph Thirty-Two.

**FIFTH CLAIM FOR RELIEF**

**(Negligence)**

**(Against Defendant United States of America)**

33. Defendants incorporate paragraphs 1 through 32 above and each response therein as fully set forth herein.

34. Defendants deny the allegations in Paragraph Thirty-Four.

**SIXTH CLAIM FOR RELIEF**

**(Violation of California Constitution)**

**(Against Defendant United States of America)**

35. Defendants incorporate paragraphs 1 through 34 above and each response therein as fully set forth herein.

36. Defendants deny the allegations in Paragraph Thirty-Six.

**PRAYER**

The remaining paragraphs consists of plaintiff's prayer for relief, to which no admission or denial is required; to the extent a responsive pleading is deemed to be required, Defendants deny these paragraphs.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

This Court is without subject matter jurisdiction over plaintiff's claims.

**SECOND AFFIRMATIVE DEFENSE**

The complaint and each claim asserted therein fails to state a cause of action upon which relief can be granted.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff failed to mitigate his damages, if any, and any recovery or award should be reduced accordingly.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff may recover only those damages allowed under the law.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's recovery, if any, is barred by the doctrine of unclean hands, laches, and estoppel.

**SIXTH AFFIRMATIVE DEFENSE**

Some or all of Plaintiff's claims are barred by the applicable statute of limitations.

**SEVENTH AFFIRMATIVE DEFENSE**

Defendants are entitled to absolute, sovereign, and/or qualified immunity.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged injuries, if any, were proximately caused by plaintiff's own negligent or otherwise wrongful conduct.

**NINTH AFFIRMATIVE DEFENSE**

The United States of America, through its employees, exercised due care and diligence in all matters relevant to the subject matter of plaintiff's complaint.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged injuries, if any, were not proximately caused by any negligent or otherwise wrongful act or omission of any employee of the United States.

**ELEVENTH AFFIRMATIVE DEFENSE**

Any recovery or other award made against the United States herein must be reduced by the percentage of fault of the plaintiff and/or other third party, and any recovery or other award made against the United States herein for non-economic damages must be limited to the percentage of fault, if any, of the United States.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff's alleged injuries were proximately caused by the intervening or superceding acts of someone other than an employee of the United States acting within the scope of his or her employment.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Under the Federal Tort Claims Act, only the United States of America is a proper defendant.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial on any claim under the

1 FTCA.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for  
4 prejudgment interest against the United States of America.

5 **SIXTEENTH AFFIRMATIVE DEFENSE**

6 Under 28 U.S.C. § 2412(d)(1)(A), Plaintiff cannot recover attorney's fees from the United  
7 States of America.

8 **SEVENTEENTH AFFIRMATIVE DEFENSE**

9 Under 28 U.S.C. § 2674, Plaintiff is barred from recovering civil penalties and treble damages.

10 **EIGHTEENTH AFFIRMATIVE DEFENSE**

11 The plaintiff's claims under the Federal Tort Claims Act are barred by the discretionary  
12 function exception.

13 **NINETEENTH AFFIRMATIVE DEFENSE**

14 The plaintiff's claims under the Federal Tort Claims Act are barred by 28 U.S.C. §  
15 2680(h).

16 **TWENTIETH AFFIRMATIVE DEFENSE**

17 The Plaintiff's claims under the Federal Tort Claims Act fail because there is no analogous  
18 private, state, or local activity.

19 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

20 The Plaintiff lacks standing to raise some or all of the claims in the First Amended  
21 Complaint.

22 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

23 The Plaintiff's negligence claims fail as a matter of law because under the Federal Tort  
24 Claims Act, state law must be the source of substantive liability.

25 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

26 The United States is entitled to sovereign immunity as to Plaintiff's state law claims.

27 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

28 Defendants contest the alleged nature and extent of Plaintiff's claimed injuries, whatever

1 they may be, as well as Plaintiff's assertion that said injuries, resulting treatment, alleged  
2 requirement for future treatment and/or residual effects were caused by the accident referenced in  
3 Plaintiff's complaint.

4 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

5 Defendants reserve the right to amend their Answer with additional defenses of which they  
6 may become aware as discovery progresses and to raise any other matter constituting an avoidance  
7 or affirmative defense.

8  
9 WHEREFORE, for the foregoing reasons, the Defendants respectfully request that the First  
10 Amended Complaint be dismissed and that the plaintiff be denied any of the requested relief.

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12  
13 Dated: January 15, 2008

Respectfully submitted,

14 JOSEPH P. RUSSONIELLO  
15 United States Attorney

16 /s/  
17 EDWARD A. OLSEN  
18 Assistant United States Attorney  
19 Attorneys for Defendants  
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