

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

LUIS QUEZADA, an individual)
)
 Plaintiff,)
)
 v.)
)
 TED MINK, et al.,)
)
 Defendants.)

Case No. 10-CV-879 REB-KLM

ANSWER TO THIRD AMENDED COMPLAINT

Defendant United States of America (“Defendant”), admits, denies, and otherwise answers Plaintiff’s Third Amended Complaint (“Complaint”) as follows:

1. Paragraph 1 makes no allegations against Defendant and, therefore, requires no response. If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 1 of the Complaint and, on that basis, denies the allegations.
2. Paragraph 2 makes no allegations against Defendant and, therefore, requires no response. If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 2 of the Complaint and, on that basis, denies the allegations.
3. Paragraph 3 makes no allegations against Defendant and, therefore, requires no response. If the paragraph requires a response, Defendant denies the allegations.
4. Denied.
5. Paragraph 5 contains Plaintiff’s legal conclusions, which require no response. To the extent the paragraph requires a response, Defendant denies the allegations.

6. Paragraph 6 of the Complaint contains jurisdictional allegations, which require no response. To the extent the paragraph requires a response, Defendant denies the allegations.

7. Paragraph 7 of the Complaint contains jurisdictional allegations, which require no response. To the extent the paragraph requires a response, Defendant denies the allegations.

8. Admitted.

9. Paragraph 9 of the Complaint contains venue allegations, which require no response. If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 9 of the Complaint and, on that basis, denies the allegations.

10. Paragraph 10 makes no allegations against Defendant and, therefore, requires no response. If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 10 of the Complaint and, on that basis, denies the allegations.

11. Paragraph 11 makes no allegations against Defendant and, therefore, requires no response. If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 11 of the Complaint and, on that basis, denies the allegations.

12. Paragraph 12 makes no allegations against Defendant and, therefore, requires no response. If the paragraph requires a response, Defendant admits that John Longshore is the Field Office Director ("FOD") of the Denver Field Office for the U.S. Immigration and Customs Enforcement ("ICE") Office of Enforcement and Removal Operations ("ERO") in Colorado. Defendant also admits that FOD Longshore's duties include the supervision of ICE ERO operations in Colorado.

Defendant denies the remaining allegations made against FOD Longshore in paragraph 12.

13. Paragraph 13 makes no allegations against Defendant and, therefore, requires no response.

If the paragraph requires a response, Defendant admits that Jason Clemens, Bret R. Talbot, and Kelli Sayers were Immigration Enforcement Agents in ICE's Denver Field Office in 2009.

Defendant denies the remaining allegations made against these defendants in paragraph 13.

14. Paragraph 14 makes no allegations against Defendant and, therefore, requires no response.

If the paragraph requires a response, Defendant admits that Wayne Richardson, Jeff Jenkins, Eddie Sanchez, and Shannon Santos are U.S. Immigration and Customs Enforcement ("ICE") employees working in its Denver Field Office. Defendant denies the remaining allegations made against these defendants in paragraph 14.

15. The allegations in paragraph 15 comprise a legal conclusion, which requires no response.

To the extent the paragraph requires a response, Defendant denies the allegations.

16. Admitted.

17. Defendant admits that in May and June 2009, ICE issued immigration detainers on Form I-247 with the language quoted in paragraph 17.

18. Paragraph 18 makes no allegations against Defendant and, therefore, requires no response.

If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 18 of the Complaint and, on that basis, denies the allegations.

19. Paragraph 19 makes no allegations against Defendant and, therefore, requires no response.

If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 19 of the Complaint and,

on that basis, denies the allegations.

20. Paragraph 20 makes no allegations against Defendant and, therefore, requires no response.

If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 20 of the Complaint and, on that basis, denies the allegations.

21. Paragraph 21 makes no allegations against Defendant and, therefore, requires no response.

If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 21 of the Complaint and, on that basis, denies the allegations.

22. Admitted.

23. Admitted.

24. Admitted.

25. Admitted.

26. Paragraph 26 makes no allegations against Defendant and, therefore, requires no response.

If the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 26 of the Complaint and, on that basis, denies the allegations.

27. The first sentence of Paragraph 27 makes no allegations against Defendant and, therefore, requires no response. If it requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in the first sentence of paragraph 27 of the Complaint and, on that basis, denies the allegations. Defendant admits the remaining allegations in paragraph 27.

28. Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 28 of the Complaint and, on that basis, denies the allegations.

29. Admitted.

30. Admitted.

31. Defendant admits that JCDF employee Betty Hampleman sent an email to Eddie Sanchez, Jeff Jenkins, Shannon Santos, and Wayne Richardson stating that Plaintiff was “no longer ready for pick-up” because a cash surety had revoked a bond for Plaintiff’s release from JCDF custody.

32. Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in the first sentence of paragraph 32 of the Complaint and, on that basis, denies the allegations. Defendant admits the second sentence of paragraph 32, but lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations in paragraph 32.

33. Paragraph 33 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 33 of the Complaint and, on that basis, denies the allegations.

34. Paragraph 34 contains a legal conclusion and makes no allegations against Defendant and, therefore, requires no response. To the extent that the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 34 of the Complaint and, on that basis, denies the allegations.

35. Paragraph 35 makes no allegations against Defendant and, therefore, requires no response.

To the extent the paragraph requires a response, Defendant admits that Monday, May 25, 2009, was the Memorial Day holiday, but Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 35 of the Complaint and, on that basis, denies the allegations.

36. Paragraph 36 contains a legal conclusion and makes no allegations against Defendant and, therefore, requires no response. To the extent that the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 36 of the Complaint and, on that basis, denies the allegations.

37. Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 37 of the Complaint and, on that basis, denies the allegations.

38. Defendant admits that ICE did not take custody of Plaintiff from May 26 to May 28, 2009. The remaining allegations in paragraph 38 of the Complaint contain a legal conclusion and are not made against Defendant and, therefore, require no response. To the extent they require a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 38 of the Complaint and, on that basis, denies the allegations.

39. Paragraph 39 contains legal conclusions and makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 39 of the Complaint and, on that basis, denies the allegations.

40. Paragraph 40 makes no allegations against Defendant and, therefore, requires no response.

To the extent they require a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 40 of the Complaint and, on that basis, denies the allegations.

41. Defendant admits the first two sentences of paragraph 41, but the last sentence of paragraph 41 contains allegations not directed at the Defendant and, therefore, requires no response. To the extent they require a response, the Defendant denies the remaining allegations in paragraph 41.

42. Defendant admits that ICE did not take custody of Plaintiff between June 23, 2009, and June 25, 2009. Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the remaining allegations contained in paragraph 42 of the Complaint and, on that basis, denies the allegations.

43. Defendant admits that Kelli Sayers faxed an I-203 to JCDF on or about July 13, 2009. The I-203 form speaks for itself, and this paragraph requires no further response.

44. Defendant admits that on July 14, 2009, ICE took custody of Plaintiff and served Plaintiff with an arrest warrant and a notice to appear before an immigration judge. Defendant also admits that ICE released Plaintiff on a \$5,000 bond.

45. Paragraph 45 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 45 of the Complaint and, on that basis, denies the allegations.

46. Paragraph 46 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant lacks sufficient knowledge or information to form

a belief as to the truth or falsity of the allegations contained in paragraph 46 of the Complaint and, on that basis, denies the allegations.

Paragraphs 47 through 57 make no allegations against Defendant. The allegations in these paragraphs only concern Sheriff Mink, and therefore require no response from Defendant. To the extent paragraphs 47 through 57 require a response, Defendant denies these allegations.

58. Defendant admits that the Immigration and Nationality Act, 8 U.S.C. § 1101, et seq., and Title 8 of the Code of Federal Regulations apply to Defendant's enforcement of immigration law to those persons suspected or accused of being removable from the United States. Defendant denies that it failed to follow these statutes and regulations. Defendant further denies that it caused Plaintiff's detention for 47 days at the Jefferson County Detention Center.

59. Denied.

60. Denied.

61. Paragraph 61 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

62. Paragraph 62 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

63. Paragraph 63 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

64. Paragraph 64 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

65. Paragraph 65 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

66. Paragraph 66 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

67. Paragraph 67 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

68. Paragraph 68 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

69. Paragraph 69 makes no allegations against Defendant and, therefore, requires no response. To the extent they require a response, Defendant denies the allegations.

Paragraphs 70 through 92 make no allegations against Defendant. The allegations in these paragraphs only concern Sheriff Mink and the former *Bivens* Defendants. To the extent paragraphs 70 through 92 require a response from Defendant, Defendant denies these allegations.

93. Defendant incorporates its responses contained in the preceding paragraphs.

94. Denied.

95. Denied.

96. Paragraph 96 makes no allegations against Defendant and, therefore, requires no response. To the extent the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 96 of the Complaint and, on that basis, denies the allegations.

97. Paragraph 97 makes no allegations against Defendant and, therefore, requires no response. To the extent the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 97 of the Complaint and, on that basis, denies the allegations.

98. Defendant incorporates its responses contained in the preceding paragraphs.

99. Denied.

100. Denied.

101. Denied.

102. Paragraph 102 makes no allegations against Defendant and, therefore, requires no response. To the extent the paragraph requires a response, Defendant lacks sufficient knowledge or information to form a belief as to the truth or falsity of the allegations contained in paragraph 102 of the Complaint and, on that basis, denies the allegations. The remainder of the Complaint constitutes a prayer for relief, which requires no response. To the extent the remainder of the Complaint requires a response, Defendant denies that Plaintiff is entitled to any relief whatsoever. Defendant denies any allegation to which Defendant has made no direct response.

NOW THEREFORE having responded to the specific allegations of the Complaint, Defendant United States asserts the following affirmative defenses.

FIRST AFFIRMATIVE DEFENSE

This Court lacks jurisdiction over the subject matter of the action.

SECOND AFFIRMATIVE DEFENSE

The Complaint fails to state claims upon which the Court can grant relief.

THIRD AFFIRMATIVE DEFENSE

To the extent Plaintiff seeks pre-judgment interest, punitive damages, or any other relief not provided for by law, Plaintiff fails to state a claim for which the Court can grant relief, and the Court lacks subject matter jurisdiction over the Complaint. 28 U.S.C. § 2674.

FOURTH AFFIRMATIVE DEFENSE

Congress has prohibited Plaintiff from claiming or recovering an amount against the United States in excess of that set forth in his administrative claim pursuant to 28 U.S.C. § 2675(b).

FIFTH AFFIRMATIVE DEFENSE

Congress has limited any attorney's fees awarded against the United States. 28 U.S.C. § 2678.

SIXTH AFFIRMATIVE DEFENSE

Plaintiff's action against the United States shall be tried by the Court pursuant to 28 U.S.C. § 2402.

SEVENTH AFFIRMATIVE DEFENSE

Individual employees cannot be sued personally under the Federal Tort Claims Act.

EIGHTH AFFIRMATIVE DEFENSE

The United States, through its employees and agents, acted lawfully with due care and diligence at all relevant times.

NINTH AFFIRMATIVE DEFENSE

No acts or omissions by the United States were the proximate cause of any injury to Plaintiff.

TENTH AFFIRMATIVE DEFENSE

In the event the Court finds Defendant United States to have been negligent, which negligence Defendant denies, the superseding and intervening negligence of third parties, for whom the United States cannot be held liable, broke any causal connection between Defendant's

negligence and Plaintiff's alleged injuries, cutting off the legal effect of Defendant's negligence.

ELEVENTH AFFIRMATIVE DEFENSE

In the event the Court finds Defendant United States to have been negligent, which negligence Defendant denies, the negligence of Plaintiff and/or third parties was the proximate cause of and contributed to any alleged injuries or damages sustained, thereby barring recovery, or alternatively, mandating that the Court proportionately reduce any recovery.

TWELFTH AFFIRMATIVE DEFENSE

To the extent Plaintiff has failed to mitigate his damages, the Court must proportionately reduce any damages to which he may be entitled.

THIRTEENTH AFFIRMATIVE DEFENSE

Subject matter jurisdiction over Plaintiff's tort claims is lacking under the independent contractor exception to the Federal Tort Claims Act. *Logue v. United States*, 412 U.S. 521, 528 (1973).

FOURTEENTH AFFIRMATIVE DEFENSE

Subject matter jurisdiction over Plaintiff's tort claims is lacking as they challenge an act or omission of a Government employee exercising due care in the execution of a statute or regulation. 28 U.S.C. § 2680(a).

FIFTEENTH AFFIRMATIVE DEFENSE

Subject matter jurisdiction over Plaintiff's tort claims is lacking as they are based on the exercise or performance or the failure to exercise or perform a discretionary function or duty. 28 U.S.C. § 2680(a).

The United States respectfully reserves the right to amend its affirmative defenses as additional information is acquired during discovery.

The United States hereby specifically preserves any and all other defenses, not currently known, which it has or through discovery it learns may be applicable.

WHEREFORE, the United States prays for judgment as follows:

- (1) That Plaintiff's Complaint and each cause of action contained therein be dismissed with prejudice;
- (2) That Plaintiff takes nothing by his Complaint;
- (3) That the United States be awarded costs incurred herein; and
- (4) That the Court order such other and further relief for the United States as the Court may deem just and proper.

DATED: February 20, 2011

Respectfully Submitted,

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s/ J. Max Weintraub

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