

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
ALBA QUINONES FLORES,

Plaintiff,

— against —

UNITED STATES OF AMERICA;
DOES 1-10,

Defendants.
-----X

ANSWER

Civil Action
No. 14-CV-3166
(JBW) (RML)

Defendant UNITED STATES OF AMERICA, by its attorney LORETTA E. LYNCH, United States Attorney for the Eastern District of New York, Margaret M. Kolbe, Assistant United States Attorney, answers the correspondingly numbered paragraphs in plaintiff's Second Amended Complaint (ECF Doc. 12) ("complaint"), upon information and belief, as follows:

1. Statements of jurisdiction do not require a response; to the extent this sentence contains factual allegations, denies.

2. (a) With regard to the first sentence, legal conclusions do not require a response; to the extent this sentence contains factual allegations, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

3. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

(d) With regard to the fourth sentence, denies, except admits that CBP does not provide mattresses to detainees who are in the temporary custody of CBP and that lights

remain illuminated during the period of detention.

(e) With regard to the fifth sentence, denies.

4. Denies.

5. Legal conclusions and plaintiff's characterization of her claims do not require a response; to the extent this paragraph contains factual allegations, denies.

6. Statements of jurisdiction do not require a response; to the extent this paragraph contains factual allegations, denies.

7. Statements of venue do not require a response; to the extent this paragraph contains factual allegations, denies.

8. (a) With regard to the first sentence, lacks sufficient information to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, lacks sufficient information to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(c) With regard to the third sentence, admits.

9. Legal conclusions do not require a response; to the extent this paragraph contains factual allegations, denies except to admit only the Federal Tort Claims Act provides a limited waiver of sovereign immunity for those tortious acts committed by its employees acting within the scope of their employment and that CBP is a component of DHS.

10. (a) With regard to the first sentence, lacks sufficient information to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, legal conclusions do not require a response; to the extent this sentence contains factual allegations, denies.

(c) Statements regarding the capacity in which an unnamed defendant is sued

do not require a response; to the extent this sentence contains factual allegations, denies.

11. (a) With regard to the first sentence, denies except to admit only that one of the primary missions of CBP is to secure the border of the United States.

(b) With regard to the second sentence, denies except to admit that CBP officers have the authority to examine individuals seeking admission into the United States, to make arrests, and to issue charging documents.

(c) With regard to the third sentence, denies, but avers that CBP stations maintain temporary hold facilities.

12. This paragraph references an attachment to the complaint which speaks for itself and is the best evidence of its contents; therefore, the allegations need not be admitted or denied and the Court is referred to the exhibit annexed to the complaint.

13. (a) With regard to the first sentence, admits.

(b) With regard to the second sentence, admits.

(c) With regard to the third sentence, denies, but avers that there are nine Border Patrol stations in the Rio Grande Valley ("RGV") Sector, each of which contains temporary hold facilities.

(d) With regard to the fourth sentence, denies.

14. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, denies.

15. Admits.

16. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

17. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies, but avers that a detainee in a CBP temporary hold facility is not permitted to retain drugs or other contraband on their person.

(b) With regard to the second sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(c) With regard to the third sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(d) With regard to the fourth sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

18. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, denies.

19. Denies.

20. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(c) With regard to the third sentence, denies.

21. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, lacks knowledge or information

sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(c) With regard to the last sentence, denies.

22. Denies.

23. (a) With regard to the first sentence, admits, except deny the characterization of the holding facility as a "cell."

(b) With regard to the second sentence, denies, but avers that each detention cell contains a single toilet, sink, and drinking fountain for the detainees; defendant lacks knowledge or information sufficient to form a belief, and accordingly denies, the allegation that she was placed in a hold room with approximately 20 other female detainees.

(c) With regard to the third sentence, denies.

(d) With regard to the fourth sentence, denies.

(e) With regard to the fifth sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

24. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, denies.

25. (a) With regard to the first sentence, denies except to admit that lights in the temporary hold facilities remain illuminated after sunset.

(b) With regard to the second sentence, denies except to admit that mattresses are not provided to detainees in temporary hold facilities.

(c) With regard to the third sentence, denies.

(d) With regard to the fourth sentence, denies.

26. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

27. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

28. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(c) With regard to the third sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(d) With regard to the fourth sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(e) With regard to the fifth sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

29. Lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies; however, defendant avers that detainees in temporary hold facilities are not provided a change of clothing or bathing facilities.

30. (a) With regard to the first sentence, admits only that CBP does not provide combs, toothbrushes, and toothpaste in the temporary hold facilities, but denies the remaining allegations.

(b) With regard to the second sentence, admits, but avers that a person in

CBP's short-term custody has access to a sink.

31. (a) With regard to the first sentence, denies.
- (b) With regard to the second sentence, denies.
32. (a) With regard to the first sentence, denies except to admit that detainees in the temporary hold facility were served meals.
- (b) With regard to the second sentence, denies.
- (c) With regard to the third sentence, denies.
- (d) With regard to the fourth sentence, denies.
- (e) With regard to the fifth sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.
- (f) With regard to the sixth sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.
- (g) With regard to the seventh sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.
- (h) With regard to the eighth sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.
- (i) With regard to the ninth sentence, denies.
33. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.
- (b) With regard to the second sentence, denies.
34. (a) With regard to the first sentence, denies.
- (b) With regard to the second sentence, denies.
- (c) With regard to the third sentence, denies.

35. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(c) With regard to the third sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(d) With regard to the fourth sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

36. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies, except admits that Plaintiff was transported to the Edinburg Regional Medical Center on the morning of February 20, 2013, by CBP Agents.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

37. Denies, except admits that Plaintiff was transported back to the Falfurrias Station after her visit to the Edinburg Regional Medical Center.

38. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies, except admits that on or about February 22, 2013, Plaintiff was transferred from the Falfurrias station to the Harlingen Border Patrol station.

(b) With regard to the second sentence, denies the allegations except admits that the driving distance from Falfurrias station to the Harlingen station is approximately one hour.

(c) With regard to the third sentence, denies except to admit that Plaintiff was placed in one of the hold rooms at the Harlingen station.

(d) With regard to the fourth sentence, denies.

39. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

(d) With regard to the fourth sentence, denies.

(e) With regard to the second sentence, denies.

40. (a) With regard to the first sentence, denies, but avers that Plaintiff was processed at the Falfurrias station shortly after her apprehension on February 19, 2013, and that the processing Border Patrol agent would have been using a computer terminal.

(b) With regard to the second sentence, denies except admits that Plaintiff was processed at the Falfurrias station shortly after her apprehension on February 19, 2013, and that she was fingerprinted and asked questions about her personal identity and country of citizenship at that time.

(c) With regard to the third sentence, denies.

(d) With regard to the fourth sentence, denies.

(e) With regard to the fifth sentence, denies.

(f) With regard to the sixth sentence, denies.

(g) With regard to the seventh sentence, admits.

41. Denies.

42. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

43. Denies.

44. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

45. (a) With regard to the first sentence, denies except admits that lights remain illuminated after sunset at CBP-operated temporary hold facilities.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

46. (a) With regard to the first sentence, lacks knowledge or information sufficient to form a belief as to the truth or falsity of the allegations and, accordingly, denies.

(b) With regard to the second sentence, denies.

47. Defendant incorporates by reference the responses contained in paragraphs 1 through 46 above.

48. This paragraph is comprised of legal argument that does not require a response; to the extent this paragraph contains factual allegations, denies.

49. Denies all the allegations in this paragraph, including subparagraphs (a) through (g).

50. Denies, except admits that there were CBP agents were acting within the scope of their employment at the Falfurrias and Harlingen stations during Plaintiff's detention.

51. (a) With regard to the first sentence, legal conclusions do not require a response and, accordingly denies, except to admit that Plaintiff filed a claim with DHS more than six months prior to the initiation of this lawsuit.

(b) With regard to the second sentence, legal conclusions do not require a response and, accordingly denies, except to admit that Plaintiff filed a claim with DHS more than six months prior to the initiation of this lawsuit.

52. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

53. Defendant incorporates by reference the responses contained in paragraphs 1 through 46 above.

54. Admits.

55. Denies, except admits that responsibility for supervising the Border Patrol agents at the Falfurrias and Harlingen Border Patrol stations lies with the supervisory agents assigned to those stations.

56. (a) With regard to the first sentence, admits.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies except admits that supervisory CBP agents with responsibility for detention at the Falfurrias and Harlingen Border Patrol stations are responsible for adhering to the guidelines as established by CBP.

57. (a) With regard to the first sentence, denies; defendant avers that the CBP Short Term Custody Policy, annexed to the complaint, speaks for itself and is the best evidence of its contents.

(b) With regard to the second sentence, denies; defendant avers that the CBP Short Term Custody Policy, annexed to the complaint, speaks for itself and is the best evidence of its contents.

58. Denies the allegations in each of the four sentences in this paragraph.

59. (a) With regard to the first sentence, admits.
(b) With regard to the second sentence, admits.
60. (a) With regard to the first sentence, denies.
(b) With regard to the second sentence, denies.
61. Defendant incorporates by reference its responses to paragraphs 1 through 46 above.
62. Denies all the allegations in this paragraph, including subparagraphs (a) through (c).
63. Defendant incorporates by reference its responses to paragraphs 1 through 46 above.
64. Legal conclusions do not require a response; to the extent this paragraph contains factual allegations, denies.
65. Denies the allegations in this paragraph including subparagraphs (a) through (c).
66. Denies.
67. Denies.
68. (a) With regard to the first sentence, legal argument does not require a response; to the extent this paragraph contains factual allegations, denies.
(b) With regard to the second sentence, denies.
69. Denies.
70. (a) With regard to the first sentence, denies.
(b) With regard to the second sentence, denies.
71. (a) With regard to the first sentence, denies.
(b) With regard to the second sentence, denies.

72. (a) With regard to the first sentence, denies.
(b) With regard to the second sentence, denies.
(c) With regard to the third sentence, legal conclusions do not require a response; to the extent this paragraph contains factual allegations, denies.

73. Defendant incorporates by reference its responses contained in paragraphs 1 to 46 above.

74. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

75. Denies every allegation contained in this paragraph, including subparagraphs "a." through "f."

76. Denies.

77. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

78. Denies every allegation in this paragraph, including subparagraphs "a." through "j."

79. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

80. Denies.

81. Denies.

82. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

83. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies.

(d) With regard to the fourth sentence, denies.

(e) With regard to the fifth sentence, denies.

(f) With regard to the sixth sentence, this paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

As for paragraphs labeled "A," "B," "C," "D," and "E" following paragraph 83 of the complaint, under the heading "PRAYER FOR RELIEF," these paragraphs constitute plaintiff's demands for relief, which do not require a response; to the extent these paragraphs contain factual allegations, denies.

GENERAL DENIAL

Insofar as responses may be deemed required, defendant denies any and all allegations in the complaint which were not specifically admitted or denied above.

FIRST DEFENSE

The injuries and damages alleged in the complaint were not proximately caused or contributed to by any negligence, or by any wrongful act or omission, or by any want of care, of any agent, servant, or employee of the United States of America.

SECOND DEFENSE

The injuries and damages alleged in the complaint, to the extent that they exist, were caused, in whole or in part, by plaintiff's own actions.

THIRD DEFENSE

The complaint fails to state a tort claim under the law of the place where the alleged

negligent or wrongful acts and omissions occurred.

FOURTH DEFENSE

To the extent plaintiff seeks to recover punitive or exemplary damages against the United States of America, the defendant pleads the defenses of sovereign immunity and lack of subject matter jurisdiction, under 28 U.S.C. § 2674.

FIFTH DEFENSE

Any amount of damages recovered by plaintiff must be diminished in proportion to any culpable conduct attributable to plaintiff in accordance with Texas law.

SIXTH DEFENSE

Plaintiff is limited to the amount of personal injury and property damage specified in her administrative claim. 28 U.S.C. § 2675(b); *O'Rourke v. Eastern Airlines, Inc.*, 730 F.2d 842, 855 (2d Cir. 1984).

SEVENTH DEFENSE

The claims are barred to the extent that 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).

EIGHTH DEFENSE

The claims are barred insofar 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).

NINTH DEFENNSE

Venue is not proper in the Eastern District of New York because the events or omissions giving rise to the claim occurred in Texas, and Plaintiff, who is not lawfully present in the United States, cannot premise venue upon her domicile.

TENTH DEFENSE

This case should pursuant to 28 U.S.C. § 1404(a) be transferred to the United States District Court for the Southern District of Texas because transfer to this forum, where the events giving rise to the complaint took place, will serve the convenience of the parties, convenience of the witnesses, ease of access to proof, and the interests of justice.

ELEVENTH DEFENSE

The alleged injuries were caused solely by the acts or omissions of other parties, persons, or entities, their servants, agents, representatives, or employees, none of whom are agencies or employees of the United States for whom the United States has any liability pursuant to the Federal Tort Claims Act.

TWELFTH DEFENSE

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

THIRTEENTH DEFENSE

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

FOURTEENTH DEFENSE

The complaint sets forth injuries that resulted from a danger whose existence and character were fully appreciated by the plaintiff before she voluntarily exposed herself to it.

FIFTEENTH DEFENSE

In the event the United States is found to have been negligent, which negligence is denied, the superseding and intervening negligence of third parties, for whom the United States cannot be held liable, broke any causal connection between the United States' negligence and the

plaintiff's alleged injury, cutting off the legal effect of the defendant United States' negligence.

SIXTEENTH DEFENSE

In the event that the United States is found to have been negligent, which negligence is denied, the negligence of the plaintiff was the proximate cause of and contributed to any alleged injuries or damages sustained, thereby barring recovery, or alternatively, mandating that any recovery be proportionately reduced.

SEVENTEENTH DEFENSE

To the extent plaintiff seeks to recover punitive or exemplary damages against the United States or its agents, the defendant pleads the defenses of sovereign immunity and lack of subject matter jurisdiction, under 28 U.S.C. § 2674.

EIGHTEENTH DEFENSE

The complaint should be dismissed to the extent it fails to state a claim upon which relief can be granted.

NINETEENTH DEFENSE

The complaint should be dismissed to the extent it advances claims over which the Court lacks subject matter jurisdiction.

TWENTIETH DEFENSE

The complaint should be dismissed to the extent it challenges detention that is required by the Immigration and Nationality Act. 8 U.S.C. § 1225.

TWENTY-FIRST DEFENSE

The complaint should be dismissed to the extent it challenges the Defendant's decision to place the Plaintiff in a removal proceeding or execute a removal order. 8 U.S.C. § 1252(g).

TWENTY-SECOND DEFENSE

The complaint should be dismissed to the extent it challenges the Defendant's decision to detain Plaintiff. 8 U.S.C. § 1226(e).

TWENTY-THIRD DEFENSE

The complaint should be dismissed to the extent it challenges the Defendant's determination of inadmissibility and/or refusal of Plaintiff's admission to the United States.

TWENTY-FOURTH DEFENSE

Plaintiff's recovery, if any, is limited by her failure to mitigate her damages

WHEREFORE, defendant United States of America requests judgment dismissing the complaint in its entirety, together with the costs, fees and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: Brooklyn, New York
November 25, 2014

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