

FEB 23 2012

DAVID W. PETERSON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
FOR KITSAP COUNTY

SAMUEL RAMIREZ-RANGEL, LETICIA  
GONZALES-SANTIAGO, and JOSE SOLIS-  
LEON,

Plaintiff,

-vs-

KITSAP COUNTY, JUSTIN T. CHILDS, in his  
official capacity as a Kitsap County Sheriff's  
Deputy, and SCOTT C. JENSEN, in his official  
capacity as a Kitsap County Sheriff's Deputy,

Defendants.

NO. 12-2-00212-8

ANSWER, AFFIRMATIVE  
DEFENSES AND COUNTERCLAIMS  
OF DEFENDANTS KITSAP  
COUNTY, JUSTIN T. CHILDS AND  
SCOTT C. JENSEN TO PLAINTIFFS'  
COMPLAINT FOR DAMAGES AND  
DECLARATORY RELIEF

I. ANSWER

COME NOW Defendants KITSAP COUNTY, JUSTIN T. CHILDS and SCOTT C. JENSEN ("Defendants"), by and through their attorneys IONE S. GEORGE, Chief Deputy Prosecuting Attorney, and NEIL R. WACHTER, Senior Deputy Prosecuting Attorney, for Kitsap County, and by way of answer to Plaintiffs' Complaint for Damages and Declaratory Relief ("Complaint") filed herein, admit, deny, and allege as follows:

///

ANSWER OF DEFENDANTS KITSAP COUNTY, JUSTIN T. CHILDS  
AND SCOTT C. JENSEN

RUSSELL D. HAUGE  
Kitsap County Prosecuting Attorney  
614 Division Street, MS-35A  
Port Orchard, WA 98366-4676  
(360) 337-4992 Fax (360) 337-7083  
www.kitsapgov.com/pros

1           1.     Answering Paragraph 1 of said Complaint, Defendants deny the same.  
2           2.     Answering Paragraph 2 of said Complaint, Defendants admit the same.  
3           3.     Answering Paragraph 3 of said Complaint, Defendants admit that the Court has  
4 subject matter jurisdiction of the action and that venue is proper in so far as the Complaint alleges  
5 tortious conduct or conduct in violation of the Washington State Constitution by Kitsap County  
6 actors. By way of further answer, the Complaint alleges that the Defendants are liable for detention  
7 which occurred outside Kitsap County and/or outside the control of Kitsap County, which the  
8 Defendants deny and for which the Court does not have subject matter jurisdiction. Defendants  
9 further deny that the Court has subject matter jurisdiction to render a declaratory judgment regarding  
10 actions outside the control of Kitsap County.  
11

12           4.     Answering Paragraph 4 of said Complaint, Defendants are without sufficient  
13 information to form a belief as to the allegations of said paragraph and therefore deny the same.  
14

15           5.     Answering Paragraph 5 of said Complaint, Defendants admit that Kitsap County  
16 (“County”) is a municipal corporation in and political subdivision of the State of Washington and  
17 that the County employs general authority law enforcement officers including Defendants Childs and  
18 Jensen, each of whom are deputized by the Kitsap County Sheriff. Defendants deny the remaining  
19 allegations of said paragraph.  
20

21           6.     Answering Paragraph 6 of said Complaint, Defendants admit that Defendant Childs is  
22 employed as a Deputy Sheriff for the Kitsap County Sheriff’s Office (“KCSO”). Defendants assert  
23 that this paragraph contains statements of law and legal conclusions for which a responsive pleading  
24 is not required and the allegations are neither admitted nor denied (“agents”).  
25

26           7.     Answering Paragraph 7 of said Complaint, Defendants admit that Defendant Jensen is  
27 employed as a Deputy Sheriff for the Kitsap County Sheriff’s Office (“KCSO”). Defendants assert  
28

1 that this paragraph contains statements of law and legal conclusions for which a responsive pleading  
2 is not required and the allegations are neither admitted nor denied (“agents”).

3  
4 8. Answering Paragraph 8 of said Complaint, Defendants admit the same.

5 9. Answering Paragraph 9 of said Complaint, Defendants are without sufficient  
6 information to form a belief as to the allegations of said paragraph and therefore deny the same.

7 10. Answering Paragraph 10 of said Complaint, Defendants are without sufficient  
8 information to form a belief as to the allegations of said paragraph and therefore deny the same.

9  
10 11. Answering Paragraph 11 of said Complaint, Defendants admit that Defendants Childs  
11 and Jensen conducted surveillance on three individuals who appeared to be collecting shellfish.  
12 Defendants deny the remaining allegations of said paragraph.

13 12. Answering Paragraph 12 of said Complaint, Defendants admit that Defendants Childs  
14 and Jensen heard fluent Spanish being spoken by some of the persons under surveillance.  
15 Defendants deny the remaining allegations of said paragraph.

16 13. Answering Paragraph 13 of said Complaint, Defendants admit that Defendants Childs  
17 and Jensen observed oysters being loaded into five gallon buckets and into large bags, in excess of  
18 any applicable recreational limit.

19  
20 14. Answering Paragraph 14 of said Complaint, Defendants admit that one or both of  
21 Defendants Childs and Jensen “ran” the license plate of a pickup truck parked in proximity to the  
22 persons observed collecting shellfish, and that Donald DeNotta was one of the registered owners.  
23 Defendants deny the remaining allegations of said paragraph.

24  
25 15. Answering Paragraph 15 of said Complaint, Defendants admit that Defendants Childs  
26 and Jensen returned to their respective patrol cars after observing the persons collecting shellfish,  
27 and that the patrol cars were parked on either side of the parked pickup truck. Defendants deny the  
28

1 remaining allegations of said paragraph.

2 16. Answering Paragraph 16 of said Complaint, Defendants admit the same.

3 17. Answering Paragraph 17 of said Complaint, Defendants deny the same.

4 18. Answering Paragraph 18 of said Complaint, Defendants admit that Defendant Jensen  
5 initiated a traffic stop of the pickup truck, and that it was occupied by three males and one female,  
6 each of whom appeared to be Hispanic. Defendants further admit that Defendant Jensen informed  
7 the driver about the headlight and that the driver acknowledged that it was defective. Defendants  
8 deny the remaining allegations of said paragraph.  
9

10 19. Answering Paragraph 19 of said Complaint, Defendants admit that Defendant Jensen  
11 asked the driver's side rear passenger for his identification, that this person stated that he did not  
12 possess his identification and that he identified himself as Jose Solis, dob 12/30/87 ("Solis").  
13 Defendants deny the remaining allegations of said paragraph.  
14

15 20. Answering Paragraph 20 of said Complaint, Defendants admit that the driver  
16 produced an apparent Washington driver's license identifying the driver as Samuel Ramirez-Rangel  
17 and further produced an apparently valid commercial license. Defendants further admit that the  
18 driver showed Defendant Jensen tags within each bag of oysters. Defendants deny the remaining  
19 allegations of said paragraph.  
20

21 21. Answering Paragraph 21 of said Complaint, Defendants admit that Defendant Jensen  
22 observed the driver's apparently valid Washington driver's license and apparently valid commercial  
23 shellfish license. To the degree that the paragraph contains statements of law and legal conclusions,  
24 a responsive pleading is not required and the allegations are neither admitted nor denied.  
25

26 22. Answering Paragraph 22 of said Complaint, Defendants deny the same.

27 23. Answering Paragraph 23 of said Complaint, Defendants admit that Defendant Childs  
28

1 questioned one or more passengers about their identities.

2 24. Answering Paragraph 24 of said Complaint, Defendants admit that Defendant Jensen  
3 provided to dispatch the names provided by the driver and by passenger Solis and learned of no  
4 warrants of arrest for either person.  
5

6 25. Answering Paragraph 25 of said Complaint, Defendants admit that Defendant Childs  
7 provided to dispatch the names provided by the other two occupants of the pickup truck and learned  
8 of no warrants of arrest for either person.  
9

10 26. Answering Paragraph 26 of said Complaint, Defendants deny the same, except that to  
11 the degree that the paragraph contains statements of law and legal conclusions, a responsive pleading  
12 is not required and the allegations are neither admitted nor denied.  
13

14 27. Answering Paragraph 27 of said Complaint, Defendants admit that Defendant Jensen  
15 separated the driver from the three passengers and questioned the driver about all four occupants'  
16 immigration status. Defendants further admit that Defendant Childs questioned the three passengers  
17 about their immigration status. To the degree that the paragraph contains statements of law and legal  
18 conclusions, a responsive pleading is not required and the allegations are neither admitted nor  
19 denied.  
20

21 28. Answering Paragraph 28 of said Complaint, Defendants admit that Defendant Jensen  
22 was placed into contact with officials of the U.S. Border Patrol and then advised the four occupants  
23 of the pickup truck to remain in the truck to await the arrival of U.S. Border Patrol personnel.  
24

25 29. Answering Paragraph 29 of said Complaint, Defendants admit that Defendant Jensen  
26 contacted U.S. Border Patrol personnel to inform that agency of the four occupants' apparent  
27 immigration status. Defendants are without sufficient information to form a belief as to the  
28 remaining allegations of said paragraph and therefore deny the same.

1           30.    Answering Paragraph 30 of said Complaint, Defendants admit the same.

2           31.    Answering Paragraph 31 of said Complaint, Defendants deny the same.

3           32.    Answering Paragraph 32 of said Complaint, Defendants admit that Defendants Jensen  
4 and Childs received backup assistance from an officer from each of two local law enforcement  
5 agencies, each of whom was armed. Defendants are without sufficient information to form a belief  
6 as to the remaining allegations of said paragraph and therefore deny the same.

7           33.    Answering Paragraph 33 of said Complaint, the allegations therein are reassertions of  
8 previous allegations, and Defendants admit and deny those allegations as set forth herein.

9           34.    Answering Paragraph 34 of said Complaint, Defendants deny the same.

10          35.    Answering Paragraph 35 of said Complaint, Defendants deny the same.

11          36.    Answering Paragraph 36 of said Complaint, Defendants deny the same.

12          37.    Answering Paragraph 37 of said Complaint, the paragraph consists of statements of  
13 law and legal conclusions, a responsive pleading is not required and the allegations are neither  
14 admitted nor denied.

15          38.    Answering Paragraph 38 of said Complaint, Defendants deny the same.

16          39.    Answering Paragraph 39 of said Complaint, to the extent that the paragraph contains  
17 statements of law and legal conclusions, a responsive pleading is not required and the allegations are  
18 neither admitted nor denied. Defendants deny the remaining allegations of said paragraph.

19          40.    Answering Paragraph 40 of said Complaint, the allegations therein are reassertions of  
20 previous allegations, and Defendants admit and deny those allegations as set forth herein.

21          41.    Answering Paragraph 41 of said Complaint, Defendants deny the same.

22          42.    Answering Paragraph 42 of said Complaint, Defendants deny the same.

23          43.    Answering Paragraph 43 of said Complaint, Defendants deny the same.

1           44.     Answering Paragraph 44 of said Complaint, Defendants deny the same.

2           45.     Answering Paragraph 45 of said Complaint, the allegations therein are reassertions of  
3 previous allegations, and Defendants admit and deny those allegations as set forth herein.  
4

5           46.     Answering Paragraph 46 of said Complaint, Defendants deny the same.

6           47.     Answering Paragraph 47 of said Complaint, Defendants deny the same.  
7

## 8                                   II. AFFIRMATIVE DEFENSES

9           FURTHER ANSWERING the Complaint for Damages and Declaratory Relief, and by way of  
10 affirmative defenses, Defendants state and allege as follows:

11           1.     Some or all of the Plaintiffs lack standing to recover the relief sought.

12           2.     Plaintiffs' Complaint fails to state a claim upon which relief can be granted.

13           3.     The Defendants are immune from liability for some or all of the claims asserted in the  
14 Complaint, and the Defendants named in the Complaint are specifically immune from liability for  
15 claims asserted in the Complaint which are based upon communication of a complaint or information  
16 to any branch or agency of federal, state, or local government regarding any matter reasonably of  
17 concern to that agency.  
18

19           4.     The Defendants are immune from the claims asserted in the Complaint pursuant to the  
20 doctrines of absolute or qualified immunity.  
21

22           5.     Some or all of the Plaintiffs' claims are barred by limitations and failure to exhaust  
23 administrative remedies.  
24

25           6.     Some or all of the Plaintiffs' claims are barred by the absolute defense of probable  
26 cause for arrest and/or continued detention.

27           7.     The action for declaratory judgment is barred as moot and non-justiciable.

28           8.     As to claims premised upon violations of the Washington state Constitution, Plaintiffs

1 have expressly or impliedly premised such claims upon respondeat superior and such claims are  
2 barred under applicable law.

3  
4 9. If Plaintiffs suffered any damages, recovery is barred because Plaintiffs have failed to  
5 mitigate said damages.

6  
7 10. If Plaintiffs suffered any damages, recovery, if any, is limited to the time before  
8 federal authorities directed that the Plaintiffs be detained or before federal authorities took custody of  
9 the Plaintiffs.

### 10 III. COUNTERCLAIMS

11 WHEREFORE, having fully answered Plaintiffs' Complaint, Defendant alleges as follows:

12 1. **Malicious Prosecution.** Plaintiffs' action against Defendants JUSTIN T. CHILDS  
13 and SCOTT C. JENSEN was instituted with knowledge that the same was false, and unfounded,  
14 malicious and without probable cause in the filing of such action, in violation of RCW 4.24.350.

15  
16 2. **Strategic Lawsuit Against Public Participation.** Plaintiffs' action against  
17 Defendants JUSTIN T. CHILDS and SCOTT C. JENSEN is based upon the individual defendants'  
18 good faith communication of complaint or information to one or more branches or agencies of  
19 federal, state or local government regarding any matter reasonably of concern to that agency, in  
20 violation of RCW 4.24.510, RCW 4.24.525.

### 21 IV. PRAYER FOR RELIEF

22  
23 WHEREFORE, having answered the Complaint for Damages and Declaratory Relief,  
24 Defendants pray for relief as follows:

25  
26 1. That the Complaint, and all claims asserted therein against Defendants, be dismissed  
27 with prejudice.

28 2. That the individual Defendants be awarded liquidated and statutory damages pursuant



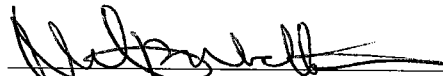
1 to RCW 4.24.350(2) and RCW 4.25.525(6).

2 3. That Defendants be awarded their costs and attorneys' fees incurred in this matter  
3 pursuant to RCW 4.24.350(2), RCW 4.24.510, RCW 4.24.525, RCW 4.84.185 and other applicable  
4 law.  
5

6 4. That the Court award such other and further relief as the Court deems just and  
7 proper.  
8

9 DATED this 23<sup>rd</sup> day of February, 2012.

10  
11 RUSSELL D. HAUGE  
12 Kitsap County Prosecuting Attorney

13 

14 IONE S. GEORGE, WSBA No. 18236  
15 Chief Deputy Prosecuting Attorney  
16 NEIL R. WACHTER, WSBA No. 23278  
17 Senior Deputy Prosecuting Attorney  
18 Attorneys for Defendants KITSAP COUNTY,  
19 JUSTIN T. CHILDS and SCOTT C. JENSEN  
20  
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CERTIFICATE OF SERVICE

I, Carrie Bruce, declare, under penalty of perjury under the laws of the State of Washington, that I am now and at all times herein mentioned, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the above document in the manner noted upon the following:

Sarah A. Dunne [X] Via U.S. Mail  
Nancy Talner [ ] Via Fax:  
LaRond Baker [ ] Via Email:  
ACLU of Washington Foundation [ ] Via Hand Delivery  
901 5<sup>th</sup> Avenue, Ste. 630  
Seattle, WA 98164-2008  
(206) 624-2184  
[dunne@aclu-wa.org](mailto:dunne@aclu-wa.org)  
[tainer@aclu-wa.org](mailto:tainer@aclu-wa.org)  
[lbaker@aclu-wa.org](mailto:lbaker@aclu-wa.org)

Maren R. Norton [X] Via U.S. Mail  
Karin D. Jones [ ] Via Fax:  
Skylee Robinson [ ] Via Email:  
STOEL RIVES, LLP [ ] Via Hand Delivery  
600 University Ave., Ste. 3600  
Seattle, WA 98101  
[mmorton@stoel.com](mailto:mmorton@stoel.com)  
[kdjones@stoel.com](mailto:kdjones@stoel.com)  
[sjrobinson@stoel.com](mailto:sjrobinson@stoel.com)

Matt Adams [X] Via U.S. Mail  
NORTHWEST IMMIGRANT RIGHTS [ ] Via Fax:  
PROJECT [ ] Via Email:  
615 Second Ave., Ste. 400 [ ] Via Hand Delivery  
Seattle, WA 98104  
[matt@nwirp.org](mailto:matt@nwirp.org)

SIGNED in Port Orchard, Washington this 23<sup>rd</sup> day of February 2012.

*Carrie Bruce*

CARRIE BRUCE  
Kitsap County Prosecutor's Office  
614 Division Street, MS-35A  
Port Orchard WA 98366  
Phone: 360-337-4992

ANSWER OF DEFENDANTS KITSAP COUNTY, JUSTIN T. CHILDS  
AND SCOTT C. JENSEN

RUSSELL D. HAUGE  
Kitsap County Prosecuting Attorney  
614 Division Street, MS-35A  
Port Orchard, WA 98366-4676  
(360) 337-4992 Fax (360) 337-7083  
[www.kitsapgov.com/pros](http://www.kitsapgov.com/pros)