

Hon. Benjamin H. Settle

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

JOSE SANCHEZ, *et al.*,

Plaintiffs,

v.

UNITED STATES BORDER PATROL, *et al.*,

Defendants.

NO. CV12-5378-BHS

DEFENDANTS' ANSWER

Defendants United States Border Patrol (“Border Patrol”), United States Customs and Border Protection, United States Department of Homeland Security, John C. Bates, Janet Napolitano, David Aguilar, Michael J. Fisher, and Jay Cumbow (collectively “Defendants”), hereby answer Plaintiffs’ Complaint as follows:

INTRODUCTION

1. Paragraph 1 constitutes Plaintiffs’ characterization of the case, to which no response is required. To the extent a response is required, Defendants deny these allegations.

2. Paragraph 2 constitutes Plaintiffs’ characterization of the case and conclusions of law, to which no response is required. To the extent a response is required, Defendants deny these allegations.

3. Paragraph 3 and its subparts constitute Plaintiffs’ characterization of the relief sought, to which no response is required.

1 4. Paragraph 4 and its subparts constitute Plaintiffs’ characterization of the relief
2 sought, to which no response is required. To the extent a response is required, Defendants deny
3 these allegations.

4 5. Paragraph 5 and its subparts constitute Plaintiffs’ characterization of the relief
5 sought, to which no response is required. To the extent a response is required, Defendants deny
6 these allegations.

7 **PARTIES**

8 6. Defendants lack knowledge or information sufficient to form a belief about the
9 truth of the allegations in Paragraph 6, and therefore deny.

10 7. Defendants lack knowledge or information sufficient to form a belief about the
11 truth of the allegations in Paragraph 7, and therefore deny.

12 8. Defendants lack knowledge or information sufficient to form a belief about the
13 truth of the allegations in Paragraph 8, and therefore deny.

14 9. Defendants admit that Border Patrol is a component of CBP, which, in turn, is a
15 component agency of DHS. With respect to the allegations in the second sentence, Defendants
16 admit that the Border Patrol is one of the federal law enforcement agencies responsible for,
17 among other things, enforcement of the laws and regulations governing the presence of non-U.S.
18 Citizens in the United States. With respect to the allegations in the third sentence, Defendants
19 admit that the Border Patrol has responsibility for and oversight over policies, procedures and
20 practices relating to *its employees* stopping and *questioning* individuals on Washington State’s
21 Olympic Peninsula. Defendants further specify that—given the Plaintiffs’ ambiguous use of the
22 term “interrogating” in their allegations, which can have a range of meanings not implicated by
23 the Complaint’s factual allegations—Defendants hereby answer with the understanding that
24 Plaintiffs are using the term “interrogating” synonymously with “questioning.” Except as so
25 admitted, Defendants deny the remaining allegations in Paragraph 9 of the Complaint.

26 10. Defendants admit that CBP is a component agency of DHS, as well as the
27 allegations in the second sentence. With respect to the allegations in the third sentence,
28 Defendants admit that the CBP has authority over policies, procedures and practices relating to

1 *its employees* stopping and *questioning* individuals on Washington State’s Olympic Peninsula.
2 Defendants further specify that—given the Plaintiffs’ ambiguous use of the term “interrogating”
3 in their allegations, which can have a range of meanings not implicated by the Complaint’s
4 factual allegations—Defendants hereby answer with the understanding that Plaintiffs are using
5 the term “interrogating” synonymously with “questioning.” Except as so admitted, Defendants
6 deny the remaining allegations in Paragraph 10 of the Complaint.

7 11. Defendants admit that DHS is a cabinet-level department, which is responsible for
8 the coordination and unification of homeland security efforts. With respect to the second
9 sentence, DHS has authority over policies, procedures and practices relating to *its employees*
10 stopping and *questioning* individuals on Washington State’s Olympic Peninsula. Defendants
11 further specify that—given the Plaintiffs’ ambiguous use of the term “interrogating” in their
12 allegations, which can have a range of meanings not implicated by the Complaint’s factual
13 allegations—Defendants hereby answer with the understanding that Plaintiffs are using the term
14 “interrogating” synonymously with “questioning.” Except as so admitted, Defendants deny the
15 remaining allegations in Paragraph 11 of the Complaint.

16 12. Defendants admit, further specifying that—given the Plaintiffs’ ambiguous use of
17 the term “interrogating” in their allegations, which can have a range of meanings not implicated
18 by the Complaint’s factual allegations—Defendants hereby answer with the understanding that
19 Plaintiffs are using the term “interrogating” synonymously with “questioning.”

20 13. Defendants admit that Defendant Napolitano is the secretary of DHS and that, in
21 that capacity, she has authority over all DHS officers, employees, and organizational units of
22 DHS. Defendants further admit sentences two and three, further specifying that—given the
23 Plaintiffs’ ambiguous use of the term “interrogating” in their allegations, which can have a range
24 of meanings not implicated by the Complaint’s factual allegations—Defendants hereby answer
25 with the understanding that Plaintiffs are using the term “interrogating” synonymously with
26 “questioning.”

27 14. Defendants admit, further specifying that—given the Plaintiffs’ ambiguous use of
28 the term “interrogating” in their allegations, which can have a range of meanings not implicated

1 by the Complaint’s factual allegations—Defendants hereby answer with the understanding that
2 Plaintiffs are using the term “interrogating” synonymously with “questioning.”

3 15. Defendants admit the first sentence. Defendants further admit that in his capacity
4 as Chief of the Border Patrol, Defendant Fisher has *overall* responsibility for and oversight over
5 Border Patrol policies, procedures and practices relating to *its employees* stopping and
6 *questioning* individuals throughout the Border Patrol’s entire area of operations, including
7 Washington State’s Olympic Peninsula. Defendants admit the third sentence. Defendants further
8 specify that—given the Plaintiffs’ ambiguous use of the term “interrogating” in their allegations,
9 which can have a range of meanings not implicated by the Complaint’s factual allegations—
10 Defendants hereby answer with the understanding that Plaintiffs are using the term
11 “interrogating” synonymously with “questioning.” Except as so admitted, Defendants deny the
12 remaining allegations in Paragraph 15 of the Complaint.

13 16. Defendants admit, further specifying that—given the Plaintiffs’ ambiguous use of
14 the term “interrogating” in their allegations, which can have a range of meanings not implicated
15 by the Complaint’s factual allegations—Defendants hereby answer with the understanding that
16 Plaintiffs are using the term “interrogating” synonymously with “questioning.”

17 **JURISDICTION AND VENUE**

18 17. Paragraph 17 contains legal conclusions to which no response is required. To the
19 extent a response is required, Defendants deny.

20 18. Paragraph 18 contains a legal conclusion to which no response is required. To the
21 extent that a response is required, Defendants admit.

22 19. Paragraph 19 contains a legal conclusion to which no response is required. To the
23 extent that a response is required, Defendants deny.

24 **ALLEGATIONS**

25 20. Defendants lack knowledge or information sufficient to form a belief about the
26 truth of the allegations in Paragraph 20, and therefore deny.

1 21. Paragraph 21 contains legal conclusions to which no response is required.
2 Moreover, Defendants lack knowledge or information sufficient to form a belief about the truth
3 of the allegations in Paragraph 21, and therefore deny.

4 22. Defendants lack knowledge or information sufficient to form a belief about the
5 truth of the allegations in Paragraph 22, and therefore deny.

6 23. Paragraph 23 contains legal conclusions to which no response is required.
7 Moreover, Defendants lack knowledge or information sufficient to form a belief about the truth
8 of the allegations in Paragraph 23, and therefore deny.

9 24. Defendants deny that Jose Sanchez was stopped by Border Patrol, but aver that
10 two Border Patrol agents had a consensual interaction with Sanchez in the fall of 2011 outside of
11 Sanchez's car on the side of a street in Forks, Washington, and that the agents had followed the
12 vehicle before Plaintiff stopped the car. Defendants admit that the agents questioned Sanchez
13 about his immigration status. Defendants deny the remaining allegations in Paragraph 24.

14 25. Paragraph 25 contains a legal conclusion to which no response is required. To the
15 extent that a response is required, Defendants deny.

16 26. Defendants lack knowledge or information sufficient to form a belief about the
17 truth or falsity of the allegations in Paragraph 26, and therefore deny.

18 27. Defendants admit that, on July 22, 2011, Border Patrol agents stopped a vehicle
19 on the Olympic Peninsula, containing Ismael Ramos Contreras and four other individuals.
20 Defendants deny that a Border Patrol agent tried to grab the keys and that he retained them for
21 the duration of the stop, but aver that the driver handed the keys to one of the four Border Patrol
22 agents, who placed them on the roof of the vehicle for the duration of the stop. Defendants admit
23 that a Border Patrol agent questioned Contreras about his immigration status. Defendants deny
24 the remaining allegations in Paragraph 27.

25 28. Paragraph 28 contains a legal conclusion to which no response is required. To the
26 extent that a response is required, Defendants deny.

27 29. Defendants admit.

28 30. Defendants deny.

1 31. Defendants admit the allegations in the first two sentences. Defendants deny the
2 allegations in the third and fourth sentences, and also deny the related use of the first word of the
3 fifth sentence, "instead." Defendants admit that they questioned Ernest Grimes regarding his
4 immigration status and admit all of the sixth sentence.

5 32. Paragraph 32 contains a legal conclusion to which no response is required. To the
6 extent that a response is required, Defendants deny.

7 33. Paragraph 33 contains Plaintiffs' characterization of the case and legal
8 conclusions, to which no response is required. To the extent a response is required, Defendants
9 deny.

10 34. Defendants deny.

11 35. Paragraph 35 consists of legal conclusions, references to legal citations, and
12 quotations which speak for themselves and to which no response is required.

13 36. Paragraph 36 consists of references to legal citations and a quotation, which speak
14 for themselves and to which no response is required.

15 37. Paragraph 37 consists of legal conclusions, references to legal citations, and
16 quotations which speak for themselves and to which no response is required.

17 38. Paragraph 38 consists of references to legal citations and a quotation, which speak
18 for themselves and to which no response is required.

19 39. Paragraph 39 consists of legal conclusions, references to legal citations, and
20 quotations which speak for themselves and to which no response is required.

21 40. Paragraph 40 consists of a legal conclusion, to which no response is required. To
22 the extent a response is required, Defendants admit.

23 41. Defendants lack knowledge or information sufficient to form a belief about the
24 truth or falsity of the allegations in Paragraph 41, and therefore deny.

25 42. The allegations in Paragraph 42 consist of references to the alleged FOIA
26 response, which speaks for itself and to which no response is required. The allegations in
27 Paragraph 42 also constitute a legal conclusion to which no response is required. To the extent a
28 response is required, Defendants deny.

1 43. Defendants admit that since 2007, the Border Patrol has conducted immigration
2 checkpoints along roadways on the Olympic Peninsula, in order to try and intercept individuals
3 not legally present in the United States. Defendants deny the remaining allegations in Paragraph
4 43 of the Complaint.

5 44. Defendants admit.

6 45. Defendants admit that some individuals expressed opposition to the checkpoints,
7 but object to Plaintiffs' characterization.

8 46. Defendants admit that some individuals expressed opposition to the checkpoints,
9 but object to Plaintiffs' characterization as "outcry," "interior," and "severe." Defendants lack
10 knowledge or information sufficient to form a belief about the truth of the allegations in the
11 second sentence, and therefore deny.

12 47. Defendants lack knowledge or information sufficient to form a belief about the
13 truth of the allegations in Paragraph 47, and therefore deny.

14 48. Defendants lack knowledge or information sufficient to form a belief about the
15 truth of the allegations in Paragraph 48, and therefore deny.

16 49. Defendants admit that Border Patrol ceased operating checkpoints on the Olympic
17 Peninsula. Defendants deny the remaining allegations in Paragraph 49.

18 50. Defendants deny.

19 51. Defendants admit that, like *Nicacio*, this case concerns the propriety of Border
20 Patrol initiated vehicle stops. Defendants deny the remaining allegations in Paragraph 51.

21 52. Paragraph 52 consists of legal conclusions, references to legal citations, and
22 quotations which speak for themselves and to which no response is required.

23 53. Paragraph 53 consists of legal conclusions, references to legal citations, and
24 quotations which speak for themselves and to which no response is required.

25 54. Paragraph 54 consists of legal conclusions, references to legal citations, and
26 quotations which speak for themselves and to which no response is required.

27 55. Paragraph 55 consists of legal conclusions, references to legal citations, and
28 quotations which speak for themselves and to which no response is required.

1 56. Paragraph 56 consists of legal conclusions, references to legal citations, and
2 quotations which speak for themselves and to which no response is required.

3 57. Paragraph 57 consists of legal conclusions to which no response is required. To
4 the extent a response is required, Defendants deny.

5 58. Paragraph 58 consists of legal conclusions to which no response is required. To
6 the extent a response is required, Defendants deny.

7 59. Paragraph 59 consists of legal conclusions to which no response is required. To
8 the extent a response is required, Defendants deny.

9 60. Defendants deny the allegations in the first sentence. The remaining allegations
10 in Paragraph 60 consist of references to a report which speaks for itself and to which no response
11 is required.

12 61. Paragraph 61 consists of legal conclusions to which no response is required. To
13 the extent a response is required, Defendants deny.

14 62. Defendants deny the allegations in the first sentence. The second sentence
15 contains a reference to a document which speaks for itself and to which no response is required.

16 63. Defendants deny.

17 64. Defendants deny.

18 65. Defendants admit that, over the last ten years, the number of Border Patrol agents
19 in Port Angeles, Washington has grown from approximately five agents to over forty agents.
20 Defendants deny the remaining allegations in Paragraph 65.

21 66. Defendants deny.

22 67. Defendants admit the allegations in the first sentence. The allegations in the
23 second and third sentences consist of references to and quotations from the transcript of Christian
24 Sanchez's testimony which speaks for itself and to which no response is required. Defendants
25 admit a new Border Patrol office has been constructed in Port Angeles, but deny Plaintiffs'
26 characterization and the remaining allegations in Paragraph 67.

27 68. Paragraph 68 consists of references to and quotations from the transcript of
28 Christian Sanchez's testimony which speaks for itself and to which no response is required.

FIRST CLAIM FOR RELIEF

Violation of the Fourth Amendment to the United States Constitution

80. Paragraph 80 consists of an incorporation by reference. Defendants likewise incorporate by reference their responses to the foregoing allegations.

81. Paragraph 81 consists of legal conclusions, to which no response is required. To the extent a response is required, Defendants deny.

82. Paragraph 82 consists of legal conclusions, to which no response is required. To the extent a response is required, Defendants deny.

SECOND CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1357

83. Paragraph 83 consists of an incorporation by reference. Defendants likewise incorporate by reference their responses to the foregoing allegations.

84. Paragraph 84 consists of legal conclusions, references to legal citations, and quotations which speak for themselves and to which no response is required.

85. Paragraph 85 consists of legal conclusions, references to legal citations, and quotations which speak for themselves and to which no response is required.

86. Paragraph 86 consists of legal conclusions, to which no response is required. To the extent a response is required, Defendants deny.

87. Paragraph 87 consists of legal conclusions, to which no response is required. To the extent a response is required, Defendants deny.

REQUEST FOR RELIEF

The remainder of the Complaint consists of Plaintiffs' request for relief, which requires no response. To the extent that a response is required, Defendants deny that Plaintiffs are entitled to the relief sought, or any relief whatsoever.

GENERAL DENIAL

To the extent that an allegation is not specifically admitted herein, any and all allegations in the Complaint are denied and strict proof is demanded.

AFFIRMATIVE DEFENSES

1
2 Defendants assert that Plaintiffs lack standing to pursue the equitable relief they seek.
3 Although Defendants do not have specific facts in support of additional affirmative defenses,
4 they wish to reserve the right to raise any of the affirmative defenses set forth in Federal Rule of
5 Civil Procedure 8, should subsequent discovery disclose facts that support those defenses.
6 Defendants further reserve the right to prepare and plead any and all defenses which may
7 become applicable during the course of this litigation.
8

9 Respectfully submitted on September 10, 2012.

10
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this September 10, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following CM/ECF participants:

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