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 10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT  
 12 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
 13 EASTERN DIVISION

14 ABDUL R. D. SALEM,  
 15 Plaintiff,  
 16 v.  
 17 UNITED STATES OF AMERICA, *et*  
*al.*,  
 18 Defendants.

No. ED CV 15-02091 JGB (SPx)  
 DEFENDANT UNITED STATES OF  
 AMERICA'S ANSWER TO PLAINTIFF'S  
 THIRD AMENDED COMPLAINT

Honorable Jesus G. Bernal  
 United States District Judge

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1 Defendant United States of America (“Defendant”) by and through its undersigned  
2 attorneys, hereby responds to the Third Amended Complaint (“TAC”) filed by plaintiff  
3 Abdul R. D. Salem (“Plaintiff”) on January 4, 2017, as follows:

4 **INTRODUCTION**

5 1. No response is required as to the allegations containing legal conclusions.  
6 Defendant is without knowledge or information sufficient to form a belief as to the truth  
7 of the allegations regarding Plaintiff’s age and citizenship, and on that basis denies them.  
8 Defendant admits that Plaintiff was restrained, searched and detained by U.S. Customs  
9 and Border Protection (“CBP”) Officers. Defendant denies the remaining allegations in  
10 paragraph 1.

11 2. Defendant admits that Plaintiff was selected by a CBP Officer to answer  
12 routine outbound examination questions; Plaintiff was detained after he became  
13 aggressive; contraband was not found in Plaintiff’s carry-on bags or checked luggage;  
14 Plaintiff was not charged with an offense; and Plaintiff was seen by paramedics.  
15 Defendant denies the remaining allegations in paragraph 2.

16 3. The allegations in paragraph 3 contain legal conclusions, to which no  
17 response is required.

18 **JURISDICTION AND VENUE**

19 4. The allegations in paragraph 4 contain jurisdictional allegations, to which  
20 no response is required.

21 5. The allegations in paragraph 5 contain jurisdictional allegations, to which  
22 no response is required.

23 6. Defendant admits that CBP received Plaintiff’s administrative tort claim  
24 under the Federal Tort Claims Act on December 9, 2014, and CBP denied Plaintiff’s tort  
25 claim on April 15, 2015. Defendant is without knowledge or information sufficient to  
26 form a belief as to the truth of the remaining allegations in paragraph 6, and on that basis  
27 denies them.

28 7. The allegations in paragraph 7 contain legal conclusions, to which no

1 response is required.

2 **PARTIES**

3 8. Defendant is without knowledge or information sufficient to form a belief  
4 as to the truth of the allegations in paragraph 8, and on that basis denies them.

5 9. The allegations in paragraph 9 contain legal conclusions, to which no  
6 response is required.

7 10. Defendant admits that CBP Officers McKenrick, Rector, Flores, Newbold  
8 and Colmenero are, and were at the alleged time in question, CBP employees.

9 Defendant denies that CBP Officer Newbold was present during the events alleged in the  
10 TAC. The remaining allegations in paragraph 10 contain legal conclusions, to which no  
11 response is required. To the extent a response is deemed required Defendants denies  
12 these allegations.

13 11. The allegations in paragraph 11 contain legal conclusions or Plaintiff's  
14 characterization of the action, to which no response is required. To the extent a response  
15 is deemed required Defendants denies these allegations.

16 12. The allegations in paragraph 12 are directed at other defendants, to which  
17 no response is required.

18 13. The allegations in paragraph 13 are directed at other defendants, to which  
19 no response is required.

20 **STATEMENT OF FACTS**

21 14. Defendant is without knowledge or information sufficient to form a belief  
22 as to the truth of the allegations in paragraph 14, and on that basis denies them.

23 15. Defendant is without knowledge or information sufficient to form a belief  
24 as to the truth of the allegations in paragraph 15, and on that basis denies them.

25 16. Defendant is without knowledge or information sufficient to form a belief  
26 as to the truth of the allegations in paragraph 16, and on that basis denies them.

27 17. Defendant admits that Plaintiff was an outbound passenger on British  
28 Airlines Flight BA268 from Los Angeles International Airport to Cairo, Egypt on

1 February 21, 2014. Defendant is without knowledge or information sufficient to form a  
2 belief as to the truth of the remaining allegations in paragraph 17, and on that basis  
3 denies them.

4 18. Defendant is without knowledge or information sufficient to form a belief  
5 as to the truth of the allegations in paragraph 18, and on that basis denies them.

6 19. Defendant admits that Plaintiff was selected by CBP Officer Flores who  
7 asked to inspect his passport. Defendant is without knowledge or information sufficient  
8 to form a belief as to the truth of the remaining allegations in paragraph 19, and on that  
9 basis denies them.

10 20. Defendant denies the allegations in paragraph 20.

11 21. Defendant is without knowledge or information sufficient to form a belief  
12 as to the truth of the allegations in paragraph 21, and on that basis denies them.

13 22. Defendant admits that several CBP officers believed that Plaintiff intended  
14 to physically assault CBP Officer Flores. Defendant denies the remaining allegations in  
15 paragraph 22.

16 23. Defendant denies the allegations in paragraph 23.

17 24. Defendant admits that CBP officers directed Plaintiff away from the aircraft  
18 to inspect his carry-on bags. Defendant denies the remaining allegations in paragraph  
19 24.

20 25. Defendant denies the allegations in paragraph 25.

21 26. Defendant is without knowledge or information sufficient to form a belief  
22 as to the truth of the allegations regarding the prior TSA searches, and on that basis  
23 denies them. Defendant admits that the search of Plaintiff's carry-on bags did not  
24 uncover contraband or illegal activity. Defendant denies the remaining allegations in  
25 paragraph 26.

26 27. Defendant denies the allegations in paragraph 27.

27 28. Defendant denies the allegations in paragraph 28.

28 29. Defendant denies the allegations in paragraph 29.

1           30. Defendant admits that CBP officers placed Plaintiff in handcuffs.  
2 Defendant is without knowledge and information sufficient to form a belief as to the  
3 truth of the allegations regarding Plaintiff's flexibility and physical and emotional pain,  
4 and on that basis denies them. Defendant denies the remaining allegations in paragraph  
5 30.

6           31. Defendant admits that Plaintiff was placed in double handcuffs. Defendant  
7 denies the remaining allegations in paragraph 31.

8           32. Defendant denies the allegations in paragraph 32.

9           33. Defendant admits that Plaintiff was transported to a separate examination  
10 room for further inspection of his checked luggage. Defendant denies the remaining  
11 allegations in paragraph 33.

12           34. Defendant admits that CBP officers inspected Plaintiff's checked luggage,  
13 and that the search of Plaintiff's checked luggage did not uncover contraband.  
14 Defendant denies the remaining allegations in paragraph 34.

15           35. Defendant admits that Plaintiff's handcuffs were removed, and Plaintiff's  
16 luggage returned. Defendant admits that Plaintiff was released at approximately 10:00  
17 p.m. Defendant denies the remaining allegations in paragraph 35.

18           36. Defendant admits that CBP contacted Emergency Medical Services (EMS).  
19 Defendant denies the remaining allegations in paragraph 36.

20           37. Defendant denies the allegations in paragraph 37.

21           38. Defendant denies the allegations in paragraph 38.

22           39. The allegations in paragraph 39 contain legal conclusions, to which no  
23 response is required.

24           40. The allegations in paragraph 40 contain legal conclusions, to which no  
25 response is required. Defendant is without knowledge and information sufficient to form  
26 a belief as to the truth of the allegations regarding the cited reports. Defendant denies  
27 the remaining allegations in paragraph 40.

28           41. Defendant denies the allegations in paragraph 41.

1 42. Defendant denies the allegations in paragraph 42.

2 43. Defendant is without knowledge and information sufficient to form a belief  
3 as to the truth of the allegations in paragraph 43, and on that basis denies them.

4 44. Defendant denies the allegations in paragraph 44.

5 **FIRST CAUSE OF ACTION**

6 45. Defendant reasserts its responses in the numbered paragraphs 1 through 44  
7 above as if restated in full.

8 46. The allegations in paragraph 46 are directed at other defendants, to which  
9 no response is required.

10 47. Paragraph 47 contains legal conclusions, to which no response is required.

11 **SECOND CAUSE OF ACTION**

12 48. Defendant reasserts its responses in the numbered paragraphs 1 through 47  
13 above as if restated in full.

14 49. The allegations in paragraph 49 are directed at other defendants, to which  
15 no response is required.

16 50. The allegations in paragraph 50 are directed at other defendants, to which  
17 no response is required.

18 51. Paragraph 51 contains legal conclusions, to which no response is required.

19 **THIRD CAUSE OF ACTION**

20 52. Defendant reasserts its responses in the numbered paragraphs 1 through 51  
21 above as if restated in full.

22 53. Paragraph 53 contains legal conclusions, to which no response is required.

23 54. The allegations in paragraph 54 are directed at other defendants, to which  
24 no response is required.

25 55. The allegations in paragraph 55 are directed at other defendants, to which  
26 no response is required.

27 56. The allegations in paragraph 56 are directed at other defendants, to which  
28 no response is required.

1 57. Paragraph 57 contains legal conclusions, to which no response is required.

2 **FOURTH CAUSE OF ACTION**

3 58. Defendant reasserts its responses in the numbered paragraphs 1 through 57  
4 above as if restated in full.

5 59. Defendant denies the allegations in paragraph 59.

6 60. Paragraph 60 contains legal conclusions, to which no response is required.

7 61. Paragraph 61 contains legal conclusions, to which no response is required.

8 **FIFTH CAUSE OF ACTION**

9 62. Defendant reasserts its responses in the numbered paragraphs 1 through 61  
10 above as if restated in full.

11 63. Defendant denies the allegations in paragraph 63.

12 64. Paragraph 64 contains legal conclusions, to which no response is required.

13 65. Paragraph 65 contains legal conclusions, to which no response is required.

14 **SIXTH CAUSE OF ACTION**

15 66. Defendant reasserts its responses in the numbered paragraphs 1 through 65  
16 above as if restated in full.

17 67. Defendant denies the allegations in paragraph 67.

18 68. Paragraph 68 contains legal conclusions, to which no response is required.

19 **SEVENTH CAUSE OF ACTION**

20 69. Defendant reasserts its responses in the numbered paragraphs 1 through 68  
21 above as if restated in full.

22 70. Defendant denies the allegations in paragraph 70.

23 71. Paragraph 71 contains legal conclusions, to which no response is required.

24 72. Paragraph 72 contains legal conclusions, to which no response is required.

25 **EIGHTH CAUSE OF ACTION**

26 73. Defendant reasserts its responses in the numbered paragraphs 1 through 72  
27 above as if restated in full.

28 74. Defendant denies the allegations in paragraph 74.

1 75. Paragraph 75 contains legal conclusions, to which no response is required.

2 76. Paragraph 76 contains legal conclusions, to which no response is required.

3 **NINTH CAUSE OF ACTION**

4 77. Defendant reasserts its responses in the numbered paragraphs 1 through 76  
5 above as if restated in full.

6 78. The allegations in paragraph 78 are directed at other defendants, to which  
7 no response is required.

8 79. Defendant denies the allegations in paragraph 79.

9 80. Defendant denies the allegations in Paragraph 80.

10 81. Paragraph 81 contains legal conclusions, to which no response is required.

11 82. Paragraph 82 contains legal conclusions, to which no response is required.

12 83. The allegations in paragraph 83 are directed at other defendants, to which  
13 no response is required.

14 84. The allegations in paragraph 84 are directed at other defendants, to which  
15 no response is required.

16 **TENTH CAUSE OF ACTION**

17 85. Defendant reasserts its responses in the numbered paragraphs 1 through 84  
18 above as if restated in full.

19 86. The allegations in paragraph 86 are directed at other defendants, to which  
20 no response is required.

21 87. The allegations in paragraph 87 are directed at other defendants, to which  
22 no response is required.

23 88. The allegations in paragraph 88 are directed at other defendants, to which  
24 no response is required.

25 89. The allegations in paragraph 89 are directed at other defendants, to which  
26 no response is required.

27 90. Paragraph 90 contains legal conclusions, to which no response is required.

28 91. Any allegations to which a response is deemed necessary and which have



1 not been admitted, denied, or otherwise responded to herein, are hereby denied.

2 **PRAYER FOR RELIEF**

3 The remainder of Plaintiff's TAC consists of Plaintiff's prayer for relief, to which  
4 no response is required. To the extent any response is deemed required, Defendant  
5 denies each and every allegation contained therein.

6 **AFFIRMATIVE DEFENSES**

7 1. Plaintiff is barred from bringing any claim over which the Court lacks  
8 subject matter jurisdiction.

9 2. To the extent that the TAC fails to state a claim upon which relief can be  
10 granted, Plaintiff cannot prevail.

11 3. To the extent that Plaintiff's claims are barred by 28 U.S.C. § 2680(a),  
12 Plaintiff cannot prevail.

13 4. In the event that the superseding and intervening negligence of Plaintiff or  
14 third parties broke any causal connection between Defendant's alleged negligence and  
15 Plaintiff's alleged injury, Defendant cannot be held liable.

16 5. In the event that the negligence of Plaintiff or third parties was the cause of  
17 or contributed to the injuries or damages sustained, any recovery by Plaintiff must be  
18 proportionately reduced.

19 6. To the extent that Plaintiff's alleged damages were caused in whole or in  
20 part by the negligence of parties other than Defendant, and should Defendant be found in  
21 any way liable in this matter, Defendant's liability for Plaintiff's non-economic damages  
22 should be allocated to Defendant in proportion to Defendant's percentage of fault, if any.

23 7. Any recovery or other award against Defendant must be reduced to the  
24 extent Plaintiff failed to mitigate damages.

25 8. Plaintiff's damages, if any, must be reduced by any collateral source as  
26 permitted by law.

27 9. Pursuant to 28 U.S.C. § 2675(b), Plaintiff's damages, if any, are limited to  
28 the amount of the sum certain demanded in the administrative claim.

1           10. Pursuant to 28 U.S.C. § 2674, Plaintiff is not entitled to punitive damages or  
2 prejudgment interest.

3           11. Pursuant to 28 U.S.C. § 2674, Plaintiff's damages, if any, are restricted to  
4 damages allowable under state law.

5           12. Plaintiff's damages, if any, are limited by California Civil Code § 3333.4.

6           13. Defendant is entitled to an offset for all benefits paid to Plaintiff by any  
7 agency of the United States or through funds which are provided by the United States.

8           14. Pursuant to 28 U.S.C. § 2412(d)(1)(A), Plaintiff cannot recover attorneys'  
9 fees from Defendant in this action.

10           15. Pursuant to 28 U.S.C. § 2678, attorneys' fees are to be taken out of any  
11 judgment or settlement and shall not exceed 25 per centum of that amount.

12           16. Plaintiff is not entitled to a jury trial against Defendant. 28 U.S.C. § 2402.

13           WHEREFORE, Defendant United States of America prays for:

14           1. dismissal of Plaintiff's complaint and a judgment entered in favor of  
15 Defendant;

16           2. an award of costs to Defendant; and

17           3. such other and further relief as this Court may deem just and proper.

18  
19 Dated: January 18, 2017

Respectfully submitted,

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22 DOROTHY A. SCHOUTEN  
23 Assistant United States Attorney  
24 Chief, Civil Division  
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28  
/s/ Justin A. Okun  
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