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9  
10 UNITED STATES DISTRICT COURT  
11 EASTERN DISTRICT OF WASHINGTON

12 MOHANAD ELSHIEKY,  
13  
14 Plaintiff,  
15  
16 v.  
17 UNITED STATES OF AMERICA,  
18  
19 Defendant.

20 Case No. 2:20-CV-00064-SAB  
21 ANSWER TO COMPLAINT

22 Defendant United States of America, through counsel, William D. Hyslop,  
23 United States Attorney, and John T. Drake and Derek T. Taylor, Assistant United  
24 States Attorneys, hereby responds to the allegations in Plaintiff’s Complaint for  
25 Damages (“Complaint”) (ECF No. 1).

26  
27 **INTRODUCTION**

28 1. Defendant admits that Plaintiff received asylum in the United States in  
October 2018. Defendant denies the remaining allegations in this paragraph.



**PARTIES**

1  
2 11. Defendant lacks sufficient information to admit or deny the allegations in  
3 this paragraph, and therefore denies the same.

4  
5 12. Defendant admits that FTCA claims can only be asserted against the  
6 United States of America. Defendant denies the allegations in this paragraph to the  
7 extent they imply that the United States is a proper defendant to Plaintiff's FTCA  
8 claim alleging that Defendant violated the Washington Law Against Discrimination.  
9

10 **FACTS**

11 **Mr. Elshieky's Immigration Status**

12  
13 13. Defendant admits that Plaintiff entered the United States on a J-1 visa.  
14 Defendant lacks sufficient information to admit or deny the remaining allegations in  
15 this paragraph, and therefore denies the same.

16  
17 14. Defendant lacks sufficient information to admit or deny the allegations in  
18 this paragraph, and therefore denies the same.

19 15. Defendant admits that Plaintiff was granted asylum in the United States  
20 in October 2018, and that Plaintiff has applied for long-term permanent residency.  
21 Defendant denies the remaining allegations in this paragraph.  
22

23 **Spokane Intermodal Center**

24  
25 16. Admitted.  
26  
27  
28



1           24. Defendant admits that Plaintiff was asked to exit the bus at some point  
2 during the encounter, and that Plaintiff did in fact exit the bus. Defendant denies the  
3 remaining allegations in this paragraph.

4           25. Defendant admits that another Border Patrol agent asked Plaintiff  
5 additional questions after he exited the bus. Defendant denies the remaining  
6 allegations in this paragraph.

7           26. Defendant admits that Plaintiff made statements to the effect that he had  
8 been granted asylum at some point during the encounter. Defendant denies the  
9 remaining allegations in this paragraph.

10           27. Defendant admits that at some point during the encounter, one or more of  
11 the Border Patrol agents asked Plaintiff if he was carrying his asylum approval  
12 document. Defendant denies the remaining allegations in this paragraph.

13           28. Denied.

14           29. Defendant admits that one of the Border Patrol agents made a phone call.  
15 Defendant denies that the phone call occurred in the temporal sequence alleged.  
16 Defendant denies the remaining allegations in this paragraph.

17           30. Defendant lacks sufficient information to admit or deny the allegations in  
18 this paragraph, and therefore denies the same.

19           31. Denied.

20           32. Denied.

1 33. Denied.

2 34. Denied.

3 35. Denied.

4  
5 36. Defendant admits that Plaintiff re-boarded his bus. Defendant denies the  
6 remaining allegations in this paragraph.

7 **Consequences of Unlawful Arrest**

8  
9 37. Denied.

10 38. Denied.

11 39. Denied.

12 40. Denied.

13  
14 41. Defendant admits that Plaintiff publicized the agents' alleged actions.  
15 Defendant lacks sufficient information to admit or deny the allegation that Plaintiff  
16 became the target of hateful messages by third parties, and therefore denies the same.  
17 Defendant denies the remaining allegations in this paragraph.

18  
19 42. Denied.

20  
21 **FIRST CLAIM FOR RELIEF**

22 **Federal Tort Claims Act – False Arrest**

23 43. Denied.

24  
25 44. This paragraph contains a statement of law to which no response is  
26 required. To the extent a response is required, Defendant denies the allegations.

1 45. Denied.

2 46. Denied.

3 47. Denied.

4 48. Denied.

5 49. Denied.

6  
7  
8 **SECOND CLAIM FOR RELIEF**

9  
10 **Federal Tort Claims Act – False Imprisonment**

11 50. Denied.

12  
13 51. This paragraph contains a statement of law to which no response is  
14 required. To the extent a response is required, Defendant denies the allegations.

15 52. Denied.

16 53. Denied.

17 54. Denied.

18 55. Denied.

19 56. Denied.

20  
21 **THIRD CLAIM FOR RELIEF**

22  
23 **Federal Tort Claims Act – State Civil Rights Tort**

24  
25 57. Denied.





**DEFENDANT’S AFFIRMATIVE DEFENSES**

1  
2 1. The Complaint fails to state a claim on which relief may be granted.

3 2. The District Court lacks jurisdiction over one or more of Plaintiff’s  
4 claims.

5  
6 3. Plaintiff failed to properly administratively exhaust one or more of his  
7 claims. 28 U.S.C. § 2675(a).

8  
9 4. One or more of Plaintiff’s claims is barred by the FTCA’s law  
10 enforcement proviso, 28 U.S.C. § 2680(h).

11 5. One or more of Plaintiff’s claims is barred by the FTCA’s discretionary  
12 function exception, 28 U.S.C. § 2680(a).

13  
14 6. Defendant is absolutely immune and/or qualifiedly immune on one or  
15 more of Plaintiff’s claims.

16  
17 7. One or more of Plaintiff’s claims is preempted under the Supremacy  
18 Clause of the U.S. Constitution.

19 8. If Plaintiff was injured as alleged, his injuries were proximately caused  
20 by his own acts and/or omissions.

21  
22 9. If Plaintiff was injured as alleged, his injuries were proximately caused  
23 by the acts and/or omissions of independent third parties.

24  
25 10. If Plaintiff was injured as alleged, Plaintiff failed to exercise reasonable  
26 care in mitigating his alleged damages.

1 11. Plaintiff's request for compensatory damages is restricted to damages  
2 allowed under the FTCA.

3 12. Plaintiff's request for an award of attorneys' fees is precluded by the  
4 FTCA. *See, e.g.*, 28 U.S.C. § 2675(b) and 2678.  
5

6 13. To the extent Plaintiff's Complaint seeks equitable relief, equitable relief  
7 is not an available remedy under the FTCA.  
8

9 14. Defendant reserves the right to amend this Answer and to assert and  
10 additional defenses as this action proceeds.

11 WHEREFORE, having fully answered the Complaint, Defendant respectfully  
12 requests that the Court:  
13

- 14 A. Dismiss Plaintiff's Complaint with prejudice;  
15 B. Enter judgment against Plaintiff and for Defendant.  
16 C. Award Defendant its costs, and  
17 D. Award Defendant such other relief as this Court deems just and equitable.  
18

19 DATED this 6th day of July, 2020.  
20

21 *William D. Hyslop*  
22 United States Attorney (EDWA)

23 */s/John T. Drake*  
24 John T. Drake  
25 Derek T. Taylor  
26 Assistant United States Attorneys  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on July 6, 2020, I caused to be delivered via the method listed below the document to which this Certificate of Service is attached (plus any exhibits and/or attachments) to the following:

Name & Address	Method of Delivery
Kenneth E. Payson Benjamin J. Robbins Jordan C. Harris Davis Wright Tremaine, LLP 920 Fifth Avenue, Suite 3300 Seattle, WA 98104	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____
Lisa Nowlin American Civil Liberties Union of Washington Foundation 901 5 <sup>th</sup> Ave., Suite 630 Seattle, WA 98164	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____
Matt Adams Aaron Korthuis Northwest Immigrant Rights Project 615 2 <sup>nd</sup> Ave., Suite 400 Seattle, WA 98104	<input checked="" type="checkbox"/> CM/ECF System <input type="checkbox"/> Electronic Mail <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Other: _____

/s/John T. Drake  
 John T. Drake