

1 GLENN B. McCORMICK  
 Acting United States Attorney  
 2 District of Arizona  
 DENNIS C. BASTRON  
 3 Assistant U.S. Attorney  
 Arizona State Bar No. 027294  
 4 United States Courthouse  
 405 W. Congress Street, Suite 4800  
 5 Tucson, Arizona 85701  
 Telephone: 520-620-7300  
 6 Dennis.Bastron@usdoj.gov  
*Attorneys for Defendant United States of America*  
 7

8  
 9 **UNITED STATES DISTRICT COURT**  
 10 **DISTRICT OF ARIZONA**  
 11

<p>12 Angel Mendivil Perez,          13 Plaintiff,          14 v.          15 United States of America, et al.,          16 Defendants.</p>	<p>No. CV-21-0051-TUC-EJM  <b>ANSWER TO PLAINTIFF’S          AMENDED COMPLAINT</b></p>
---	--

17  
 18 Defendant United States of America, under Fed. R. Civ. P. 8(b), 12, and 15(a)(3),  
 19 answers Plaintiff Angel Mendivil Perez’s Amended Complaint (Doc. 24) as follows.

- 20 1. Paragraphs 1, 9, and 11 contain legal conclusions to which no response is  
 21 required. To the extent a response is required, Defendant denies.
- 22 2. Defendant denies the allegations in paragraphs 6, 7, and 12.
- 23 3. Defendant lacks sufficient information and knowledge to form a belief as to the  
 24 truth of the allegations in paragraphs 5, 8, and 10.
- 25 4. Answering paragraph 2, Defendant admits only the Customs and Border  
 26 Protection Officer involved in the incident was an employee of the United States.  
 27 Defendant lacks sufficient information and knowledge to form a belief as to the truth of  
 28 the remaining allegations.

1       5. Answering paragraph 3, Defendant admits only that it received a Standard Form  
2 95 from Plaintiff on January 21, 2020, and that it did not respond to the claim. Defendant  
3 lacks sufficient information and knowledge to form a belief as to the truth of the remaining  
4 allegations.

5       6. Answering paragraph 4, Defendant admits only that a Customs and Border  
6 Protection Officer was involved in a shooting near the DeConcini Port of Entry on  
7 February 7, 2019. Defendant lacks sufficient information and knowledge to form a belief  
8 as to the truth of the remaining allegations.

9       7. Defendant affirmatively alleges that

- 10           a. The use of force is presumed to be justified under A.R.S. § 12-716;
- 11           b. The use of force was justified under A.R.S. §§ 13-404, 13-405, and 13-406;
- 12           c. The use of force was justified under A.R.S. §§ 13-409 and 13-410;
- 13           d. One or more of Plaintiff's claims are barred by A.R.S. § 12-712(A);
- 14           e. One or more of Plaintiff's claims are barred by 28 U.S.C. § 2401(b) for  
15           failure to properly exhaust administrative remedies;
- 16           f. Plaintiff, or one or more non-parties, may be comparatively at fault for  
17           Plaintiff's injuries;
- 18           g. Plaintiff failed to mitigate his damages;
- 19           h. Recovery, if any, should be restricted to damages allowed by  
20           Federal/Arizona statutory or common law;
- 21           i. The United States is entitled to an offset against damages for benefits paid  
22           by the federal government; and
- 23           j. The United States is not liable for pre-judgment interest under 28 U.S.C.  
24           § 2674.
- 25           k. Defendant reserves the right to raise any additional affirmative defense that  
26           may become apparent during the course of discovery.
- 27
- 28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

8. Defendant requests that the Court find the following relief:
- a. Find that Plaintiff is entitled to take nothing by his complaint and dismiss the action;
  - b. Award Defendant costs and expenses incurred in defending this action; and
  - c. Other relief as this Court deems appropriate.

August 24, 2021.

GLENN B. McCORMICK  
Acting United States Attorney  
District of Arizona

By s/ Dennis C. Bastron  
DENNIS C. BASTRON  
Assistant U.S. Attorneys  
*Attorneys for Defendant United States*

**CERTIFICATE OF SERVICE**

I hereby certify that on August 24, 2021, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

William J. Risner  
Kenneth K. Graham  
Risner & Graham  
100 N Stone Ave, Suite 901  
Tucson, AZ 85701  
*Attorney for Plaintiff*

By s/ Dennis C. Bastron