

The Honorable Robert S. Lasnik

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UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REYES LUNA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Case No. C20-1152-RSL

DEFENDANT UNITED STATES'
ANSWER TO PLAINTIFF'S COMPLAINT

COMES NOW the Defendant, United States of America, by and through counsel of record, Tessa M. Gorman, United States Attorney for the Western District of Washington, and Nickolas Bohl and Kristen R. Vogel, Assistant United States Attorneys for said District, and hereby submits this answer to Plaintiff's Complaint.

INTRODUCTION

1. The allegations in Paragraph 1 of the Complaint contain a statement of the case to which no response is required. To the extent a response is required, the United States denies the allegations.

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1 **EXHAUSTION**

2 9. The United States denies the applicability of the statute referred to by Plaintiff as
3 “U.S.C. 28 § 1675(a)” but admits that Plaintiff presented an Administrative Claim based upon
4 the events described in Plaintiff’s Complaint to CBP and U.S. Immigration and Customs
5 Enforcement (ICE) on or around October 20, 2018.

6 10. The allegation in Paragraph 10 of the Complaint is a statement of jurisdiction that
7 contains a legal conclusion to which no answer is required. To the extent an answer is required,
8 the United States admits that CBP issued a final notice denying Mr. Luna’s claim on March 3,
9 2020.

10 **VENUE**

11 11. The allegation in Paragraph 11 of the Complaint is a statement of jurisdiction that
12 contains a legal conclusion to which no answer is required. To the extent an answer is required,
13 the United States denies the allegations.

14 **PARTIES**

15 12. The United States denies knowledge or information sufficient to form a belief as
16 to the allegations in Paragraph 12 of the Complaint, and therefore denies the allegations.

17 13. The United States responds that the allegations in Paragraph 13 of the Complaint
18 refer to a statute, 28 U.S.C. § 1346(b), which speaks for itself.

19 **FACTUAL ALLEGATIONS**

20 14. The United States admits that Plaintiff was removed in 2001, that he was
21 permitted to voluntarily return to Mexico in 2002 in lieu of removal, and that he later reentered
22 the United States. The United States denies knowledge or information sufficient to form a belief
23 as to the remaining allegations in Paragraph 14 of the Complaint.

1 15. The United States admits the allegations in Paragraph 15 of the Complaint.

2 16. The United States admits the allegations in Paragraph 16 of the Complaint.

3 17. The United States admits the allegations in Paragraph 17 of the Complaint.

4 18. The United States denies that an unlawful deportation occurred in Texas, but
5 admits the remaining allegations in Paragraph 18 of the Complaint.

6 19. The United States denies knowledge or information sufficient to form a belief as
7 to the allegations in Paragraph 19 of the Complaint and therefore denies them.

8 20. The United States denies knowledge or information sufficient to form a belief as
9 to the allegations in Paragraph 20 of the Complaint and therefore denies them.

10 21. The United States denies knowledge or information sufficient to form a belief as
11 to the allegations in Paragraph 21 of the Complaint and therefore denies them, except admits that
12 CBP officers stopped Plaintiff.

13 22. The United States denies the allegations in Paragraph 22 of the Complaint.

14 23. The United States admits that CBP agents took Plaintiff to a Border Patrol station,
15 but denies the remaining allegations in Paragraph 23 of the Complaint.

16 24. The United States denies the allegations in Paragraph 24 of the Complaint.

17 25. The United States admits the allegations in Paragraph 25 of the Complaint.

18 26. The United States denies the allegations in Paragraph 26 of the Complaint.

19 27. The United States denies the allegations in Paragraph 27 of the Complaint.

20 28. The United States denies the allegations in Paragraph 28 of the Complaint.

21 29. The United States denies the allegations in Paragraph 29 of the Complaint.

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1 30. The United States admits that Plaintiff was deported to Mexico without seeing a
2 judge based on the reinstatement of his prior removal order, but denies the remaining allegations
3 in Paragraph 30 of the Complaint.

4 31. The United States denies the allegations in Paragraph 31 of the Complaint.

5 32. The United States admits that Plaintiff had an immigration hearing scheduled for
6 June 2017 in Seattle, Washington, but denies the remaining allegations in Paragraph 32 of the
7 Complaint.

8 33. The United States admits that Plaintiff was removed to Mexico, but denies the
9 remaining allegations in Paragraph 33 of the Complaint.

10 34. The United States admits that information about Plaintiff's removal proceedings
11 and previous release on bond was available to CBP agents, but denies the remaining allegations
12 in Paragraph 34 of the Complaint.

13 35. The United States denies that Plaintiff was unlawfully deported to Mexico in
14 October 2016 and denies knowledge or information sufficient to form a belief as to the
15 allegations in Paragraph 35 of the Complaint and therefore denies them.

16 36. The United States denies knowledge or information sufficient to form a belief as
17 to the allegations in Paragraph 36 of the Complaint and therefore denies them.

18 37. The United States denies knowledge or information sufficient to form a belief as
19 to the allegations in Paragraph 37 of the Complaint and therefore denies them.

20 38. The United States denies knowledge or information sufficient to form a belief as
21 to the allegations in Paragraph 38 of the Complaint and therefore denies them.

22 39. The United States denies knowledge or information sufficient to form a belief as
23 to the allegations in Paragraph 39 of the Complaint and therefore denies them.

1 40. The United States denies knowledge or information sufficient to form a belief as
2 to the allegations in Paragraph 40 of the Complaint and therefore denies them, except admits that
3 Plaintiff did return to the United States.

4 41. The United States denies knowledge or information sufficient to form a belief as
5 to the allegations in Paragraph 41 of the Complaint and therefore denies them, except admits that
6 Plaintiff was paroled into the United States at the U.S.-Mexico border in January 2017.

7 42. The United States denies knowledge or information sufficient to form a belief as
8 to the allegations in Paragraph 42 of the Complaint and therefore denies them.

9 43. To the extent the allegations in Paragraph 43 of the Complaint cite to, quote, or
10 summarize legal authority, the United States respectfully refers the Court to review for a full and
11 accurate statement of its contents. The United States admits that Plaintiff previously received a
12 positive reasonable fear determination from an asylum officer. The remaining allegations contain
13 legal conclusions to which no response is required. To the extent a response is required, the
14 United States denies the remaining allegations.

15 44. The United States denies that Plaintiff was unlawfully deported and denies
16 knowledge or information sufficient to form a belief as to the remaining allegations in Paragraph
17 44 of the Complaint and therefore denies them.

18 45. The United States denies that Plaintiff was unlawfully arrested and deported and
19 denies knowledge or information sufficient to form a belief as to the remaining allegations in
20 Paragraph 45 of the Complaint and therefore denies them.

21 46. The United States denies that Plaintiff was deprived of his freedom and put in
22 jeopardy of foreseeable violence and denies knowledge or information sufficient to form a belief
23 as to the remaining allegations in Paragraph 46 of the Complaint and therefore denies them.

CLAIMS FOR RELIEF

Count I

Federal Tort Claims Acts – False Arrest & False Imprisonment

47. The United States repeats and reasserts each and every response provided to the allegations in Paragraph 1 through 46 of Plaintiff’s Complaint as if fully set forth herein.

48. The allegations in Paragraph 48 of the Complaint cite to, quote, or summarize legal authority that the United States respectfully refers the Court to review for a full and accurate statement of its contents.

49. The allegations in Paragraph 49 of the Complaint cite to, quote, or summarize legal authority that the United States respectfully refers the Court to review for a full and accurate statement of its contents.

50. The allegations in Paragraph 50 of the Complaint cite to, quote, or summarize legal authority that the United States respectfully refers the Court to review for a full and accurate statement of its contents.

51. The United States denies the allegations in Paragraph 51 of the Complaint.

52. To the extent the allegations in Paragraph 52 of the Complaint cite to, quote, or summarize legal authority, the United States respectfully refers the Court to review for a full and accurate statement of its contents. The United States denies the remaining allegations.

53. The United States denies the allegations in Paragraph 53 of the Complaint.

54. To the extent the allegations in Paragraph 54 of the Complaint cite to, quote, or summarize legal authority, the United States respectfully refers the Court to review for a full and accurate statement of its contents. The United States denies the remaining allegations.

55. The United States denies the allegations in Paragraph 55 of the Complaint.

1 56. The United States denies the allegations in Paragraph 56 of the Complaint.

2 57. The United States denies the allegations in Paragraph 57 of the Complaint.

3 **Count II**

4 **Federal Tort Claims Acts – Abuse of Process**

5 58. The United States repeats and reasserts each and every response provided to the
6 allegations in Paragraph 1 through 57 of Plaintiff’s Complaint as if fully set forth herein.

7 59. The allegations in Paragraph 59 of the Complaint relate to a claim that was
8 previously dismissed by the Court and no response is required.

9 60. The allegations in Paragraph 60 of the Complaint relate to a claim that was
10 previously dismissed by the Court and no response is required. To the extent a response is
11 required, the United States denies the allegations.

12 61. The allegations in Paragraph 61 of the Complaint relate to a claim that was
13 previously dismissed by the Court and no response is required. To the extent a response is
14 required, the United States denies the allegations.

15 62. The allegations in Paragraph 62 of the Complaint relate to a claim that was
16 previously dismissed by the Court and no response is required. To the extent a response is
17 required, the United States denies the allegations.

18 63. The allegations in Paragraph 63 of the Complaint relate to a claim that was
19 previously dismissed by the Court and no response is required. To the extent a response is
20 required, the United States denies the allegations.

21 64. The allegations in Paragraph 64 of the Complaint relate to a claim that was
22 previously dismissed by the Court and no response is required. To the extent a response is
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1 required, the United States denies knowledge or information sufficient to form a belief as to the
2 allegations and therefore denies them.

3 65. The allegations in Paragraph 65 of the Complaint relate to a claim that was
4 previously dismissed by the Court and no response is required. To the extent a response is
5 required, the United States denies the allegations.

6 **Count III**

7 **Federal Tort Claims Acts – Intentional Infliction of Emotional Distress**

8 66. The United States repeats and reasserts each and every response provided to the
9 allegations in Paragraph 1 through 65 of Plaintiff’s Complaint as if fully set forth herein.

10 67. The allegations in Paragraph 67 of the Complaint cite to, quote, or summarize
11 legal authority that the United States respectfully refers the Court to review for a full and
12 accurate statement of its contents.

13 68. The United States denies the allegations in Paragraph 68 of the Complaint.

14 69. The United States denies the allegations in Paragraph 69 of the Complaint.

15 70. The United States denies the allegations in Paragraph 70 of the Complaint.

16 71. The United States denies knowledge or information sufficient to form a belief as
17 to the allegations in Paragraph 71 of the Complaint and therefore denies them.

18 72. The United States denies knowledge or information sufficient to form a belief as
19 to the allegations in Paragraph 72 of the Complaint and therefore denies them.

20 73. The United States denies the allegations in Paragraph 73 of the Complaint.

21 74. The United States denies the allegations in Paragraph 74 of the Complaint.

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1 **Count IV**

2 **Federal Tort Claims Acts – Negligence**

3 75. The United States repeats and reasserts each and every response provided to the
4 allegations in Paragraph 1 through 74 of Plaintiff’s Complaint as if fully set forth herein.

5 76. The allegations in Paragraph 76 of the Complaint relate to a claim that was
6 previously dismissed by the Court and no response is required.

7 77. The allegations in Paragraph 77 of the Complaint relate to a claim that was
8 previously dismissed by the Court and no response is required. To the extent a response is
9 required, the United States denies the allegations.

10 78. The allegations in Paragraph 78 of the Complaint relate to a claim that was
11 previously dismissed by the Court and no response is required. To the extent a response is
12 required, the United States denies the allegations.

13 79. The allegations in Paragraph 79 of the Complaint relate to a claim that was
14 previously dismissed by the Court and no response is required. To the extent a response is
15 required, the United States denies the allegations.

16 **PRAYER FOR RELIEF**

17 The remainder of Plaintiff’s Complaint contains Plaintiff’s prayer for relief, to which no
18 answer is required. The United States, however, denies that Plaintiff is entitled to any of the relief
19 he seeks.

20 All allegations contained in Plaintiff’s Complaint not specifically admitted above are
21 hereby denied.

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1 **AFFIRMATIVE AND OTHER DEFENSES**

2 Further answering Plaintiff's Complaint, and as defenses thereto, the United States alleges
3 as follows:

4 **FIRST DEFENSE**

5 Plaintiff's recovery, if any, is limited to the amount of the administrative claims which
6 were properly presented to the appropriate Agency. 28 U.S.C. § 2675(b).

7 **SECOND DEFENSE**

8 To the extent Plaintiff's Complaint raises allegations and theories of negligence or relief
9 not raised in a properly presented administrative claim, those allegations are barred by 28 U.S.C.
10 § 2675(a).

11 **THIRD DEFENSE**

12 Plaintiff's claims are subject to the limitations of the Federal Tort Claims Act contained in
13 28 U.S.C. § 2680 and 28 U.S.C. § 2671.

14 **FOURTH DEFENSE**

15 A portion of Plaintiff's allegations and/or claims are barred by the discretionary function
16 exception to the Federal Torts Claims Act. 28 U.S.C. § 2680(a).

17 **FIFTH DEFENSE**

18 To the extent Plaintiff's Complaint seeks damages from harm he incurred in Mexico, those
19 damages are barred by 28 U.S.C. § 2680(k).

20 **SIXTH DEFENSE**

21 To the extent Plaintiff's Complaint asserts claims arising from the United States'
22 discretionary authority to execute removal orders, those claims are barred by 8 U.S.C. § 1252(g).

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SEVENTH DEFENSE

Plaintiff's Complaint fails to state a claim upon which relief can be granted.

EIGHTH DEFENSE

The injuries and damages alleged in the Complaint were not actually or proximately caused or contributed to by any negligent or wrongful act or omission of any agent, employee, or representative of the United States, acting within the scope of their federal employment.

NINTH DEFENSE

No agent or representative of the United States violated clearly established law or the law of the State of Texas.

TENTH DEFENSE

To the extent that the substantive law of Texas has limitations (statutory or common law) on Plaintiff's cause of action or damages, Plaintiff's Complaint is subject thereto.

Plaintiff's claims are barred or diminished as a result of his negligent acts or omissions, wrongdoing, and failure to exercise reasonable care in mitigating his damages.

ELEVENTH DEFENSE

If the Plaintiff sustained any damages as alleged in the Complaint, the damages were caused by the acts or omissions of parties other than the United States, and any alleged liability on the part of the United States should be reduced by the negligence of Plaintiff and others whose negligence was of such a nature and character and existed to such a comparative degree so as to bar and/or reduce the recovery against the United States.

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TWELFTH DEFENSE

In the event Plaintiff is awarded a judgment against the United States, he is not entitled to prejudgment interest, punitive damages, or to a jury trial under the Federal Tort Claims Act. 28 U.S.C. § 2674.

THIRTEENTH DEFENSE

In the event Plaintiff is awarded attorney’s fees against the United States for services rendered in connection with this action, they shall not exceed 25 per centum of the amount of any judgment. 28 U.S.C. § 2678.

FOURTEENTH DEFENSE

Plaintiff’s damages, if any, must be reduced by the percentage of fault this Court determines to be attributable to persons other than the United States, including but not limited to any and all rights to credit, offset, and/or contributions that the United States may have against Plaintiff.

FIFTEENTH DEFENSE

The United States reserves the right to plead all other affirmative defenses or any applicable state and federal statutes which through discovery become applicable.

WHEREFORE, having fully answered Plaintiff’s Complaint and having alleged certain affirmative defenses, the United States prays that Plaintiff’s Complaint be dismissed with prejudice, that Plaintiff take nothing by his Complaint, and that the United States be allowed costs and such other and further relief as the Court deems just and equitable.

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DATED this 8th day of March, 2021.

Respectfully submitted,

TESSA M. GORMAN
Acting United States Attorney

s/ Nickolas Bohl

NICKOLAS BOHL, WSBA # 48978

s/ Kristen R. Vogel

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