

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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LEONEL RUIZ, on behalf of his  
daughter, E.R., a Minor,

**ANSWER**

Plaintiff,

Civil Action  
No. 13-CV-1241

- against -

UNITED STATES OF AMERICA,

(Matsumoto, J.)  
(Gold, M.J.)

Defendant.

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Defendant UNITED STATES OF AMERICA, by its attorney LORETTA E. LYNCH, United States Attorney for the Eastern District of New York, Margaret M. Kolbe, Assistant United States Attorney, answers the correspondingly numbered paragraphs in plaintiff's complaint, upon information and belief, as follows:

1. Statements of jurisdiction do not require a response; to the extent this sentence contains factual allegations, denies.

2. (a) With regard to the first sentence, admits.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, denies but avers that CBP takes both discretionary and mandatory actions in compliance with statutory and regulatory authority in compliance with the Constitution of the United States of America.

3. (a) With regard to the first sentence, denies except

admits that CBP officers have authority to detain, but not deport, United States citizens.

(b) With regard to the second sentence, denies.

4. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

5. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

6. Characterizations of the cause of action do not require a response; to the extent this paragraph contains factual allegations, denies.

7. Statements of jurisdiction do not require a response; to the extent this paragraph contains factual allegations, denies.

8. (a) With regard to the first sentence, statements of jurisdiction do not require a response; to the extent this paragraph contains factual allegations, denies.

(b) With regard to the second sentence, statements of jurisdiction do not require a response; to the extent this paragraph contains factual allegations, admits that plaintiff filed a Claim for Damage, Injury, or Death (Form SF-95) dated April 20, 2012, and that such claims were denied by letter dated October 19, 2012, but denies the remaining allegations.

(c) With regard to the third sentence, admits.

(d) With regard to the fourth sentence, admits.

9. Statements of venue do not require a response; to the extent this paragraph contains factual allegations, denies.

10. (a) With regard to the first sentence, lacks sufficient information to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(b) With regard to the second sentence, lacks sufficient information to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(c) With regard to the third sentence, lacks sufficient information to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

11. Statements of jurisdiction do not require a response; to the extent this paragraph contains factual allegations, denies.

12. Lacks sufficient information to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

13. Admits.

14. (a) With regard to the first sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is

deemed necessary, accordingly denies, except admits that E.R. and Mr. Dubon were required to clear immigration and customs by, among other things, submitting their documents for inspection by CBP officers.

(b) Denies that Mr. Dubon presented a notarized letter that contained E.R.'s parents' contact information and lacks sufficient information to form a belief as to the truth or falsity of the remaining allegations; to the extent a response is deemed necessary, denies.

15. (a) With regard to the first sentence, admits.

(b) With regard to the second sentence, denies.

16. Denies, except avers that a CBP officer referred Mr. Dubon to a secondary inspection area where Mr. Dubon's application for admission to the United States as a nonimmigrant was considered.

17. Denies.

18. Denies, except admits that E.R. and Mr. Dubon were sent to CBP's secondary inspection area at Dulles where they spent most of approximately the next twenty (20) hours.

19. Denies.

20. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, states that CBP Policy Directive No. 3340-030B speaks for itself and is the best evidence of its contents and import; to the extent a

response is deemed necessary, denies.

(c) With regard to the third sentence, denies.

(d) With regard to the fourth sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

21. (a) With regard to the first sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(b) With regard to the second sentence, denies.

22. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies, but avers that Mr. Dubon was not permitted to enter the United States and that there was no other family member or guardian who was present to monitor E.R.

(c) With regard to the third sentence, admits.

(d) With regard to the fourth sentence, admits.

(e) With regard to the fifth sentence, denies.

23. (a) With regard to the first sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(b) With regard to the second sentence, lacks

information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

24. (a) With regard to the first sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(b) With regard to the second sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegation that "Mr. Ruiz had no information whatsoever regarding his daughter's detention," but denies the remaining allegations.

25. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

26. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

27. (a) With regard to the first sentence, denies except admits that a CBP officer contacted Mr. Ruiz.

(b) With regard to the second sentence, denies.

28. Denies.

29. Admits.

30. Lacks information sufficient to form a belief as to

the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

31. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies.

(c) With regard to the third sentence, admits.

(d) With regard to the fourth sentence, admits.

32. Denies.

33. Denies, but avers that that Mr. Dubon and E.R. were present at different locations within the CBP secondary inspection area.

34. Denies, but avers that a TACA Airline employee sat with and communicated with E.R. on March 11.

35. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

36. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

37. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

38. (a) With regard to the first sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is

deemed necessary, accordingly denies.

(b) With regard to the second sentence, admits.

(c) With regard to the third sentence, denies.

39. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, denies except admits that a TACA employee sat with E.R. until Mr. Dubon returned from the hospital to the airport at approximately 9:10 p.m. on March 11.

40. (a) With regard to the first sentence, admits that Mr. Dubon received a second call from a CBP officer, but lacks information sufficient to form a belief as to the truth or falsity of whether such call occurred at approximately 8:00 p.m. on March 11 and, accordingly, denies all remaining allegations.

(b) With regard to the second sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

41. (a) With regard to the first sentence, denies except admits that a CBP officer informed Mr. Ruiz that he could not locate a record of his or his wife's immigration histories.

(b) With regard to the second sentence, denies.

42. (a) Denies.

(b) With regard to the second sentence, lacks information sufficient to form a belief as to the truth or



falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(c) With regard to the third sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, the extent a response is deemed necessary, accordingly denies.

43. Denies.

44. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

45. Denies.

46. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

47. (a) With regard to the first sentence, denies.

(b) With regard to the second sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(c) With regard to the third sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

48. Denies, but avers that E.R. was present with Mr. Dubon

in the CBP secondary inspection area for approximately 20 hours while Mr. Dubon's application for admission to the United States was considered and while Mr. Dubon received medical attention.

49. (a) Denies.

(b) Denies.

50. (a) With regard to the first sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(b) With regard to the second sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(c) With regard to the third sentence, denies except admit that CBP agents did not provide E.R. with a blanket or pillow.

51. Lacks information sufficient to form a belief as to the truth or falsity of the allegation that E.R. asked Mr. Dubon about her parents and, to the extent a response is deemed necessary, accordingly denies this allegation and denies the remaining allegations.

52. This paragraph is comprised of legal argument that does not require a response; to the extent this paragraph contains factual allegations, denies.

53. This paragraph is comprised of legal argument that does not require a response; to the extent this paragraph contains factual allegations, denies.

54. This paragraph is comprised of legal argument that does not require a response; to the extent this paragraph contains factual allegations, denies.

55. Denies, except admits that on March 12, 2011, two CBP officers accompanied E.R. and Mr. Dubon to board a TACA flight.

56. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies and denies that E.R. was given "extremely little" to eat while Mr. Dubon's application for admission to the United States was considered.

57. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

58. (a) With regard to the first sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(b) With regard to the second sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies, except admits that E.R.

arrived at JFK on March 30, 2011.

(c) With regard to the third sentence, admits.

59. Denies.

60. (a) With regard to the first sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(b) With regard to the second sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

(c) With regard to the third sentence, lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

61. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

62. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

63. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

64. Lacks information sufficient to form a belief as to the truth or falsity of the allegations and, to the extent a response is deemed necessary, accordingly denies.

65. Statements of jurisdiction do not require a response; to the extent this paragraph contains factual allegations, admits that plaintiff filed a Claim for Damage, Injury, or Death (Form SF-95) dated April 20, 2012, and that such claim was denied by letter dated October 19, 2012, but denies the remaining allegations.

66. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

67. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

68. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

69. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

70. Defendant repeats, and incorporates by reference, those responses contained in the paragraphs numbered 1 to 69 above.

71. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

72. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

73. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

74. Defendant repeats, and incorporates by reference, those responses contained in the paragraphs numbered 1 to 73 above.

75. This paragraph is comprised of legal conclusions and legal arguments that do not require a response; to the extent this paragraph contains factual allegations, denies.

As for paragraphs labeled "A.", "B.", and "C." on page four of the complaint, under the heading "PRAYER FOR RELIEF," demands for relief do not require a response; to the extent these paragraphs contain factual allegations, deny.

**GENERAL DENIAL**

Insofar as responses may be deemed required, defendant denies any and all allegations in the complaint which were not specifically admitted or denied above.

**FIRST DEFENSE**

The injuries and damages alleged in the complaint were not proximately caused or contributed to by any negligence, or by any wrongful act or omission, or by any want of care, of any agent, servant, or employee of the United States of America.

**SECOND DEFENSE**

The injuries and damages alleged in the complaint, to the extent that they exist, were caused, in whole or in part, by plaintiff's own actions.

**THIRD DEFENSE**

The complaint fails to state a tort claim under the law of the place where the alleged negligent or wrongful acts and omissions occurred.

**FOURTH DEFENSE**

To the extent plaintiff seeks to recover punitive or exemplary damages against the United States of America, the defendant pleads the defenses of sovereign immunity and lack of subject matter jurisdiction, under 28 U.S.C. § 2674.

**FIFTH DEFENSE**

Any amount of damages recovered by plaintiff must be diminished in proportion to any culpable conduct attributable to plaintiff in accordance with Virginia law.

**SIXTH DEFENSE**

Plaintiff is limited to the amount of personal injury and

property damage specified in his administrative claim. 28 U.S.C. § 2675(b); *O'Rourke v. Eastern Airlines, Inc.*, 730 F.2d 842, 855 (2nd Cir. 1984).

**SEVENTH DEFENSE**

The allegedly negligent or wrongful acts and omissions were beyond the scope of employment.

**EIGHTH DEFENSE**

The claims are barred insofar as they challenge an act or omission of a Government employee exercising due care in the execution of a statute or regulation. 28 U.S.C. § 2680(a).

**NINTH DEFENNSE**

Venue is not proper in the Eastern District of New York because the events or omissions giving rise to the claim occurred in Virginia, and Plaintiff, who is not lawfully present in the United States, cannot premise venue upon his domicile.

**TENTH DEFENSE**

This case should pursuant to 28 U.S.C. § 1404(a) be transferred to the United States District Court for the Eastern District of Virginia because transfer to this forum, where the events giving rise to the complaint took place, will serve the convenience of the parties, convenience of the witnesses, ease of access to proof, and the interests of justice.

**ELEVENTH DEFENSE**

The alleged injuries were caused solely by the acts or



omissions of other parties, persons, or entities, their servants, agents, representatives, or employees, none of whom are agencies or employees of the United States for whom the United States has any liability pursuant to the Federal Tort Claims Act.

**TWELFTH DEFENSE**

Defendant United States, through its employees and agents, acted with due care and diligence at all relevant times.

**THIRTEENTH DEFENSE**

No acts or omissions by the United States were the proximate cause of any injury to the plaintiffs.

**FOURTEENTH DEFENSE**

The Complaint sets forth injuries that resulted from a danger whose existence and character were fully appreciated by the plaintiff before he voluntarily exposed himself to it.

**FIFTEENTH DEFENSE**

This Court lacks jurisdiction over the subject matter of the action because the Complaint does not allege that, prior to instituting this action, the plaintiff presented an administrative tort claim that specified a certain amount of damages.

**SIXTEENTH DEFENSE**

In the event the United States is found to have been negligent, which negligence is denied, the superseding and

intervening negligence of third parties, for whom the United States cannot be held liable, broke any causal connection between the United States' negligence and the plaintiff's alleged injury, cutting off the legal effect of the defendant United States' negligence.

**SEVENTEENTH DEFENSE**

In the event that the United States is found to have been negligent, which negligence is denied, the negligence of the plaintiff was the proximate cause of and contributed to any alleged injuries or damages sustained, thereby barring recovery, or alternatively, mandating that any recovery be proportionately reduced.

WHEREFORE, defendant United States of America requests judgment dismissing the complaint in its entirety, together with the costs, fees and disbursements of this action, and such other and further relief as the Court may deem just and proper.

Dated: Brooklyn, New York  
May 29, 2013

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