

1 JOSEPH H. HUNT
Assistant Attorney General

2 JOHN R. TYLER
3 Assistant Director, Federal Programs Branch
United States Department of Justice, Civil Division

4 RACHAEL L. WESTMORELAND (GA Bar)
5 Trial Attorney, Federal Programs Branch
United States Department of Justice, Civil Division
6 P.O. Box 883
Washington, DC 20044
7 Tel: 202-514-1280
Fax: 202-616-8470
8 Email: Rachael.Westmoreland@usdoj.gov

9
10 **UNITED STATES DISTRICT COURT**
SOUTHERN DISTRICT OF CALIFORNIA

11
12 RAY ASKINS and CHRISTIAN
RAMIREZ,

13 Plaintiffs,

14 v.

15 UNITED STATES DEPARTMENT OF
16 HOMELAND SECURITY; KEVIN K.
McALEENAN, Commissioner of United
17 States Customs and Border Protection;
18 DAVID A. SALAZAR, Director,
Calexico Port of Entry; SIDNEY K. AKI,
19 Director, San Ysidro Port of Entry,¹

20 Defendants.

Case No.: 12-cv-2600 W-BLM

**DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

21
22
23
24
25
26
27 ¹ Pursuant to Fed. R. Civ. Pro. 25(d), Kevin K. McAleenan and David A. Salazar, in
28 their official capacities, have been substituted as defendants in the above-captioned
matter.

1 Defendants, by and through undersigned counsel, hereby answer the numbered
2 paragraphs of Plaintiffs' First Amended Complaint, ECF No. 60, as follows:

3 The introductory paragraph consists of Plaintiffs' characterization of their
4 complaint, to which no response is required.

5 1. Defendants admit that U.S. Customs and Border Protection ("CBP") is an
6 agency within the U.S. Department of Homeland Security ("DHS"). The remainder of this
7 paragraph consists of a legal conclusion to which no response is required.

8 2. This paragraph consists of legal conclusions to which no response is required.

9 3. The first sentence of this paragraph consists of a legal conclusion to which no
10 response is required. The second sentence of this paragraph does not set forth a claim for
11 relief or aver facts in support of a claim to which an answer is required.

12 4. This paragraph consists of a legal conclusion to which no response is required.
13 Defendants respectfully refer the Court to the cited case for a complete and accurate
14 statement of its contents.

15 5. The allegations in this paragraph do not set forth a claim for relief or aver facts
16 in support of a claim to which an answer is required. Defendants respectfully refer the
17 Court to the cited documents for a complete and accurate statement of their contents.

18 6. The allegations in this paragraph do not set forth a claim for relief or aver facts
19 in support of a claim to which an answer is required. Defendants respectfully refer the
20 Court to the cited documents for a complete and accurate statement of their contents.

21 7. Defendants admit that the General Services Administration ("GSA") owns
22 both the San Ysidro and Calexico Ports of Entry. Defendants further admit that U.S.
23 Customs and Border Patrol ("CBP") is the primary occupying tenant of the San Ysidro and
24 Calexico Ports of Entry. The second sentence of this paragraph does not set forth a claim
25 for relief or aver facts in support of a claim to which an answer is required.

26 8. Defendants admit the allegations contained in this paragraph. Defendants
27 respectfully refer the Court to the cited policy for a complete and accurate statement of its
28 contents.

1 9. Defendants admit the allegations contained in the first sentence of this
2 paragraph. Defendants deny the allegations contained in the second sentence of this
3 paragraph. Defendants respectfully refer the Court to the cited policy for a complete and
4 accurate statement of its contents.

5 10. Defendants admit the allegations contained in the first sentence of this
6 paragraph. Defendants deny the allegations contained in the second sentence of this
7 paragraph. Defendants respectfully refer the Court to the cited policy for a complete and
8 accurate statement of its contents.

9 11. Defendants admit the allegations contained in this paragraph.

10 12. This paragraph consists of legal conclusions to which no response is required.

11 13. This paragraph consists of legal conclusions to which no response is required.

12 14. This paragraph consists of legal conclusions to which no response is required.

13 15. This paragraph consists of legal conclusions to which no response is required.

14 16. The allegations contained in this paragraph do not set forth a claim for relief
15 or aver facts in support of a claim to which an answer is required.

16 17. This paragraph consists of legal conclusions to which no response is required.

17 18. The allegations contained in this paragraph do not set forth a claim for relief
18 or aver facts in support of a claim to which an answer is required. Defendants respectfully
19 refer the Court to the cited documents for a true and accurate statement of their contents.

20 19. The allegations contained in this paragraph do not set forth a claim for relief
21 or aver facts in support of a claim to which an answer is required. Defendants respectfully
22 refer the Court to the cited documents for a true and accurate statement of their contents.

23 20. This paragraph consists of Plaintiffs' characterization of their complaint, to
24 which no response is required.

25 21. Defendants lack knowledge or information sufficient to form a belief about
26 the allegations in this paragraph.

27 22. Defendants lack knowledge or information sufficient to form a belief about
28 the allegations in this paragraph.

1 23. Defendants admit the allegation contained in this paragraph.

2 24. Defendants admit the allegations contained in this paragraph.

3 25. Defendants deny the allegations contained in this paragraph.

4 26. Defendants deny the allegations contained in this first sentence of this
5 paragraph. The Port Director for the Calexico Port of Entry is David A. Salazar. The
6 allegations in the second sentence of this paragraph consist of Plaintiffs' characterization
7 of their complaint, to which no response is required.

8 27. Defendants admit the allegations contained in this first sentence of this
9 paragraph. The allegations in the second sentence of this paragraph consist of Plaintiffs'
10 characterization of their complaint, to which no response is required.

11 28. This paragraph consists of Plaintiffs' characterization of their complaint, to
12 which no response is required.

13 29. This paragraph consists of legal conclusions to which no response is required.

14 30. This paragraph consists of legal conclusions to which no response is required.

15 31. This paragraph consists of legal conclusions to which no response is required.

16 32. Defendants lack knowledge or information sufficient to form a belief about
17 the allegations contained in this paragraph.

18 33. Defendants lack knowledge or information sufficient to form a belief about
19 the allegations contained in this paragraph.

20 34. Defendants lack knowledge or information sufficient to form a belief about
21 the allegations contained in this paragraph. Defendants respectfully refer the Court to the
22 cited document for a complete and accurate statement of its contents.

23 35. Defendants lack knowledge or information sufficient to form a belief about
24 the allegations contained in this paragraph. Defendants respectfully refer the Court to the
25 cited documents for a complete and accurate statement of their contents.

26 36. Defendants lack knowledge or information sufficient to form a belief about
27 the allegations contained in this paragraph. Defendants respectfully refer the Court to the
28 cited document for a complete and accurate statement of its contents.

1 37. Defendants lack knowledge or information sufficient to form a belief about
2 the allegations contained in this paragraph. Defendants respectfully refer the Court to the
3 cited document for a complete and accurate statement of its contents.

4 38. Defendants lack knowledge or information sufficient to form a belief about
5 the allegations contained in this paragraph. Defendants respectfully refer the Court to the
6 cited documents for a complete and accurate statement of their contents.

7 39. Defendants lack knowledge or information sufficient to form a belief about
8 the allegations contained in this paragraph.

9 40. Defendants lack knowledge or information sufficient to form a belief about
10 the allegations contained in this paragraph.

11 41. Defendants lack knowledge or information sufficient to form a belief about
12 the allegations contained in this paragraph.

13 42. Defendants lack knowledge or information sufficient to form a belief about
14 the allegations contained in this paragraph.

15 43. Defendants lack knowledge or information sufficient to form a belief about
16 the allegations contained in this paragraph.

17 44. Defendants lack knowledge or information sufficient to form a belief about
18 the allegations contained in this paragraph.

19 45. Defendants lack knowledge or information sufficient to form a belief about
20 the allegations contained in this paragraph.

21 46. Defendants lack knowledge or information sufficient to form a belief about
22 the allegations contained in this paragraph. Defendants respectfully refer the Court to the
23 cited document for a complete and accurate statement of its contents.

24 47. Defendants lack knowledge or information sufficient to form a belief about
25 the allegations contained in this paragraph.

26 48. Defendants lack knowledge or information sufficient to form a belief about
27 the allegations contained in this paragraph.

28 49. Defendants admit that Mr. Askins telephoned Officer Campos on April 19,

1 2012. Defendants deny the remainder of allegations in this paragraph.

2 50. Defendants admit that Mr. Askins was standing approximately fifty to one
3 hundred feet from the exit of the secondary inspection area at the Calexico West port of
4 entry. Defendants deny the remainder of the allegations in this paragraph.

5 51. Defendants deny the allegation contained in this paragraph.

6 52. The first sentence of this paragraph consists of a legal conclusion to which no
7 response is required. Defendants deny the allegation that they consider Genaro Teco
8 Monroy Memorial International Border Friendship Park and the shoulder of the
9 intersection of First Street and Paulin Avenue as part of the Calexico West Port of Entry.

10 53. Defendants admit the allegations contained in this paragraph.

11 54. The allegations contained in this paragraph consist of legal conclusions to
12 which no response is required. To the extent a response is required, Defendants lack
13 knowledge or information sufficient to form a belief about the allegations contained in this
14 paragraph.

15 55. Defendants admit the allegations contained in this paragraph.

16 56. Defendants admit the allegations contained in this paragraph.

17 57. Defendants admit that CBP officers approached Mr. Askins, asked Mr. Askins
18 to delete the photographs, and that Mr. Askins declined to do so. The remainder of the
19 allegations in this paragraph are denied.

20 58. Defendants deny the allegations contained in this paragraph.

21 59. Defendants admit the allegations contained in this paragraph.

22 60. Defendants deny the allegations contained in the first sentence of this
23 paragraph. The remainder of this paragraph consists of legal conclusions to which no
24 response is required.

25 61. Defendants admit that Mr. Askins was taken to a room inside the secondary
26 inspection area and asked to sit. Defendants deny the remainder of the allegations
27 contained in this paragraph.

28 62. Defendants admit that Mr. Askins was led to a separate room and patted down.

1 Defendants lack knowledge or information sufficient to form a belief about the remainder
2 of the allegations contained in this paragraph. To the extent a response is required, the
3 remainder of these allegations are denied.

4 63. Defendants admit the allegations contained in this first sentence of this
5 paragraph. Defendants lack knowledge or information sufficient to form a belief about the
6 allegations contained in the second sentence of this paragraph. Defendants admit that they
7 had no warrant for the search and/or seizure of Mr. Askins' person or property. The
8 remainder of the allegations contained in the last sentence of this paragraph consist of legal
9 conclusions to which no response is required.

10 64. Defendants deny that CBP officers deleted photographs from his phone.
11 Defendants lack knowledge or information sufficient to form a belief about the remainder
12 of the allegations contained in this paragraph.

13 65. Defendants admit the allegations contained in this paragraph. Defendants
14 respectfully refer the Court to the cited letter for a complete and accurate statement of its
15 contents.

16 66. Defendants lack knowledge or information sufficient to form a belief about
17 the allegations contained in this paragraph.

18 67. Defendants lack knowledge or information sufficient to form a belief about
19 the allegations contained in this paragraph.

20 68. Defendants admit that they will continue to enforce the Policy and Ground
21 Rules. The remainder of the allegations contained in this paragraph are denied. Defendants
22 respectfully refer the Court to the text of the cited documents for a complete and accurate
23 statement of their contents.

24 69. This paragraph consists of legal conclusions to which no response is required.

25 70. This paragraph consists of legal conclusions to which no response is required.

26 71. This paragraph consists of legal conclusions to which no response is required.

27 72. Defendants lack knowledge or information sufficient to form a belief about
28 the allegations contained in this paragraph.

1 73. Defendants lack knowledge or information sufficient to form a belief about
2 the allegations contained in this paragraph.

3 74. Defendants lack knowledge or information sufficient to form a belief about
4 the allegations contained in this paragraph.

5 75. Defendants lack knowledge or information sufficient to form a belief about
6 the allegations contained in this paragraph.

7 76. Defendants admit the allegations contained in the first sentence of this
8 paragraph. Defendants deny the allegations contained in the second sentence of this
9 paragraph. Defendants respectfully refer the Court to the text of the cited document for a
10 complete and accurate statement of its contents.

11 77. This paragraph consists of legal conclusions to which no response is required.

12 78. Defendants lack knowledge or information sufficient to form a belief about
13 the allegations contained in this paragraph.

14 79. Defendants admit that Mr. Ramirez crossed through the pedestrian entrance
15 at San Ysidro on June 20, 2010. Defendants lack knowledge or information sufficient to
16 form a belief about the remainder of allegations contained in this paragraph.

17 80. Defendants admit that Mr. Ramirez returned to the United States from Mexico
18 on June 20, 2010 through the primary inspection point at the San Ysidro port of entry and
19 crossed the pedestrian bridge that passed over the southbound lanes of Interstate 5.
20 Defendants lack knowledge or information sufficient to form a belief about the remainder
21 of the allegations contained in this paragraph.

22 81. Defendants lack knowledge or information sufficient to form a belief about
23 the allegations contained in this paragraph. To the extent that a response is required,
24 Defendants deny the allegations contained in this paragraph.

25 82. Defendants lack knowledge or information sufficient to form a belief about
26 the allegations contained in this paragraph.

27 83. This paragraph consists of legal conclusions to which no response is required.

28 84. Defendants admit the allegations contained in this paragraph.

1 85. Defendants lack knowledge or information sufficient to form a belief about
2 the allegations contained in this paragraph.

3 86. Defendants lack knowledge or information sufficient to form a belief about
4 the allegations contained in this paragraph.

5 87. Defendants lack knowledge or information sufficient to form a belief about
6 the allegations contained in this paragraph.

7 88. Defendants lack knowledge or information sufficient to form a belief about
8 the allegations contained in this paragraph.

9 89. Defendants lack knowledge or information sufficient to form a belief about
10 the allegations contained in this paragraph.

11 90. Defendants lack knowledge or information sufficient to form a belief about
12 the allegations contained in this paragraph.

13 91. Defendants lack knowledge or information sufficient to form a belief about
14 the allegations contained in this paragraph.

15 92. Defendants lack knowledge or information sufficient to form a belief about
16 the allegations contained in this paragraph.

17 93. Defendants lack knowledge or information sufficient to form a belief about
18 the allegations contained in this paragraph.

19 94. Defendants lack knowledge or information sufficient to form a belief about
20 the allegations contained in this paragraph.

21 95. Defendants lack knowledge or information sufficient to form a belief about
22 the allegations contained in this paragraph.

23 96. Defendants lack knowledge or information sufficient to form a belief about
24 the allegations contained in this paragraph.

25 97. Defendants lack knowledge or information sufficient to form a belief about
26 the allegations contained in this paragraph.

27 98. Defendants deny that CBP officers spoke to Mr. Ramirez in an aggressive and
28 threatening manner. The remainder of this paragraph consists of legal conclusions to which

1 no response is required.

2 99. Defendants lack knowledge or information sufficient to form a belief about
3 the allegations contained in this paragraph.

4 100. Defendants lack knowledge or information sufficient to form a belief about
5 the allegations contained in this first sentence of this paragraph. The second sentence of
6 this paragraph consists of legal conclusions to which no response is required.

7 101. Defendants admit the allegations contained in this paragraph. Defendants
8 respectfully refer the Court to the cited documents for a complete and accurate statement
9 of their contents.

10 102. Defendants admit the allegations contained in this paragraph.

11 103. Defendants admit the allegations contained in this paragraph.

12 104. Defendants admit the allegations contained in this paragraph. Defendants
13 respectfully refer the Court to the cited document for a complete and accurate statement of
14 its contents.

15 105. Defendants admit the allegations contained in this paragraph.

16 106. Defendants admit the allegations contained in this paragraph.

17 107. Defendants lack knowledge or information sufficient to form a belief about
18 the allegations contained in this paragraph.

19 a. Defendants lack knowledge or information sufficient to form a belief as to
20 whether Mr. Ramirez wishes to photograph or otherwise record from the
21 location described in this paragraph. The last sentence of this paragraph is
22 a legal conclusion to which no response is required. Defendants admit the
23 remainder of the allegations contained in this sub-paragraph.

24 b. Defendants lack knowledge or information sufficient to form a belief as to
25 whether Mr. Ramirez wishes to photograph or otherwise record from the
26 location described in this paragraph. Defendants otherwise admit the
27 allegations contained in this sub-paragraph.

28 c. Defendants lack knowledge or information sufficient to form a belief as to

whether Mr. Ramirez wishes to photograph or otherwise record from the location described in this paragraph. Defendants admit the remainder of the allegations contained in this sub-paragraph.

108. Defendants admit the allegations contained in this paragraph.

109. Defendants lack knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

110. Defendants lack knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

111. Defendants lack knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

112. This paragraph consists of legal conclusions to which no response is required.

113. Defendants lack knowledge or information sufficient to form a belief about the allegations contained in this paragraph.

114. Defendants admit that the CBP will continue to enforce the Policy and Ground Rules. Defendants deny the remainder of the allegations contained in this paragraph.

115. This paragraph consists of legal conclusions to which no response is required.

116. This paragraph consists of legal conclusions to which no response is required.

117. This paragraph consists of legal conclusions to which no response is required.

118. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

119. This paragraph consists of legal conclusions to which no response is required.

120. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth herein.

121. This paragraph consists of legal conclusions to which no response is required.

122. This paragraph consists of legal conclusions to which no response is required.

123. Defendants incorporate by reference their responses to the foregoing paragraphs as if fully set forth therein.

124. This paragraph consists of legal conclusions to which no response is required.

