

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

JOSE DANIEL GUERRA-CASTANEDA,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 1:22-CV-10711-NMG

ANSWER

Defendant, the United States of America (“Defendant”), by and through its attorney, Rachael S. Rollins, the United States Attorney for the District of Massachusetts, hereby answers the numbered paragraphs and headings of Plaintiff’s Complaint (“Complaint”), as follows:

COMPLAINT

1. Paragraph 1 contains Plaintiff’s description of the lawsuit, which does not require a response. To the extent a response is required, the United States denies Plaintiff is entitled to relief against the United States and denies any other allegations in Paragraph 1.

2. Paragraph 2 contains Plaintiff’s description of the lawsuit, which does not require a response. To the extent a response is required, the United States denies Plaintiff is entitled to relief against the United States and denies any other allegations in Paragraph 2.

PRELIMINARY STATEMENT

3. Paragraph 3 contains legal conclusions that require no response. To the extent a response is required, the United States admits that Plaintiff was removed while a stay of removal issued by

the First Circuit Court of Appeals was in place. The United States denies the remaining allegations in Paragraph 3.

4. Paragraph 4 contains legal conclusions that require no response. To the extent a response is required, the United States denies the allegations in Paragraph 4.

5. Denied.

PARTIES

6. The United States admits the Plaintiff is a national of El Salvador and was granted special immigrant juvenile status on September 28, 2021. The United States lacks sufficient knowledge to admit or deny the remaining allegations.

7. Paragraph 7 contains legal conclusions that require no response.

JURISDICTION AND VENUE

8. The United States admits federal jurisdiction exists pursuant to 28 U.S.C. § 1346(b)(1) by the nature of Plaintiff's allegations but denies any liability for the allegations in the Complaint.

9. The United States admits the Plaintiff filed administrative claims with ICE regarding allegations in the Complaint on September 7, 2021. The United States denies the remaining allegations in Paragraph 9.

10. The United States denies venue is proper in this district, lacks sufficient knowledge to admit or deny where Plaintiff currently resides, and denies all remaining allegations in this Paragraph.

FACTUAL ALLEGATIONS

A. The United States lacks sufficient knowledge to admit or deny the allegations contained within this heading. To the extent a response is required, the United States denies the allegations.

11. Admit.

12. The United States lacks sufficient information to admit or deny the allegations in Paragraph 12, and therefore denies them.

13. The United States lacks sufficient information to admit or deny the allegations in Paragraph 13, and therefore denies them.

14. The United States admits the Plaintiff was encountered by U.S. Customs and Border Protection on June 9, 2015 at or near Hidalgo, Texas. The United States lacks sufficient information to admit or deny the remaining allegation, and therefore denies them.

15. The United States admits the Plaintiff was encountered by U.S. Customs and Border Protection on June 9, 2015 at or near Hidalgo, Texas. The United States lacks sufficient information to admit or deny the characterization of Plaintiff “promptly” being taken into custody.

16. The United States denies the allegations in the first sentence as to the date removal proceedings were commenced against Plaintiff. The United States admits ICE set his bond at \$12,000, but denies Plaintiff’s characterization of the basis for the bond. The United States admits that Plaintiff was released after the bond amount was paid. The United States denies the remaining allegations in Paragraph 16.

17. The United States admits that Plaintiff’s removal proceedings changed venue from the Houston Immigration Court to the Boston Immigration Court. The United States lacks sufficient information to admit or deny the remaining allegations in Paragraph 17, and therefore denies them.

18. The United States admits that Plaintiff received employment authorization from U.S. Citizenship and Immigration Services (“USCIS”) on August 24, 2017 which was valid through August 23, 2019. The United States lacks sufficient information to admit or deny the remaining allegations in Paragraph 18, and therefore denies them.

B. The United States denies the allegations contained in this heading.

19. The United States admits the International Criminal Police Organization (“INTERPOL”) issued a “Red Notice” for Plaintiff’s arrest based on allegations that he had committed

aggravated homicide in El Salvador and was a member of the violent criminal organization MS-

13. The United States lacks sufficient information to admit or deny the remaining allegations in Paragraph 19, and therefore denies them.

20. The United States lacks sufficient information to admit or deny the allegations in Paragraph 20, and therefore denies them.

21. The United States lacks sufficient information to admit or deny the allegations in Paragraph 21, and therefore denies them.

22. The United States lacks sufficient information to admit or deny the allegations in Paragraph 22, and therefore denies them.

23. The United States admits that on August 22, 2018, ICE officers arrested Plaintiff and placed him in ICE custody. The United States lacks sufficient information to admit or deny the remaining allegations in Paragraph 23, and therefore denies them.

24. The United States admits Plaintiff was in ICE custody from August 22, 2018, to September 13, 2019.

25. The United States admits the first sentence of Paragraph 25. The remainder of the Paragraph contains characterizations of Plaintiff’s claims made while in immigration court proceedings and such claims speak for themselves. To the extent a response is required, the United States denies the allegations.

26. Admit.

27. Admit.

28. Admit.

29. The United States admits the factual allegations of Paragraph 29 but the accompanying footnote contains legal conclusions to which no response is required. To the extent a response is required, the United States denies the allegations.

30. The United States admits that an email was sent on the date alleged and that the email referenced Plaintiff's transfer and removal, but states that the email speaks for itself as to its contents.

31. Admit.

C. The United States admits the allegations contained in this heading.

32. Admit.

33. The United States avers that Plaintiff's stay motion speaks for itself. To the extent a response is required, the United States denies the allegations.

34. The United States lacks sufficient information to admit or deny the allegations in Paragraph 34. Further, the documents linked in the footnote contained in Paragraph 34 speak for themselves. To the extent a response is required, the United States denies the allegations.

35. Admit.

36. The United States admits that on August 30, 2019, the First Circuit entered an order granting Plaintiff a temporary stay of removal until September 13, 2019. The United States denies that the order was entered at 4:10 p.m. as Paragraph 36 states because the First Circuit docket reflects the order was entered at 5:02 p.m.

37. Admit.

38. Admitted that the First Circuit entered a stay order on September 11, 2019; the order speaks for itself.

39. Admit.

40. The United States avers the First Circuit’s stay order speaks for itself. To the extent a response is required, the United States denies the characterization of the First Circuit’s order as the term “emphasized” is vague and undefined.

41. The United States lacks sufficient information to admit or deny the allegations in Paragraph 41, and therefore denies same.

42. The United States lacks sufficient information to admit or deny the allegations in Paragraph 42, and therefore denies same. To the extent a response is required, the United States denies the allegations.

43. The United States lacks sufficient information to admit or deny the allegations in Paragraph 43, and therefore denies same.

D. The United States denies the allegation contained in this heading.

44. The United States avers the Hagan declaration speaks for itself. To the extent a response is required, the United States denies the allegation.

45. The United States avers the Hagan declaration speaks for itself. To the extent a response is required, the United States denies the allegations.

46. The United States avers the Hagan declaration speaks for itself. To the extent a response is required, the United States denies the allegations.

E. The United States denies the allegations contained in this heading.

47. Admit.

48. Admit.

49. Admit.

50. Admit.

51. The United States avers the Hagan declaration speaks for itself and contests the characterization of the “ICE Louisiana Field Office” receiving an email from the ICE Boston Field Office.

52. The United States avers that the Guarna-Armstrong declaration speaks for itself and admits the allegations contained within Paragraph 52 aside from contesting the characterization that officers were contacted in the “ICE Louisiana Field Office” as Guarna-Armstrong declaration states that officers were contacted in the Oakdale, Louisiana office.

53. The United States avers that the Noblitt declaration and the Hagan declaration speak for themselves. To the extent the paragraph alleges facts not specifically included in the declarations, the United States denies same.

54. Admit.

55. Admit.

56. The United States denies the allegations in Paragraph 56.

57. Admit.

58. Admit.

59. Admit.

60. Admit.

61. The United States avers that the Guarna-Armstrong declaration speaks for itself in that the paragraph referenced in such declaration indicates that OIL sent an email to BOS-STAYs at 4:54 p.m.

62. The United States avers that the Guarna-Armstrong declaration speaks for itself in that the paragraph referenced in such declaration indicates that an ICE officer received the referenced email at 4:57 P.M.

63. Admit.

F. The United States denies the allegations contained within this heading.

64. Admit.

65. The United States lacks sufficient information to admit or deny the allegations in Paragraph 65, and therefore denies same.

66. The United States lacks sufficient information to admit or deny the allegations in Paragraph 66, and therefore denies same.

67. Admit.

68. The United States avers the notice of removal speaks for itself. To the extent a response is required, the United States denies the characterization.

69. The United States avers the First Circuit's order speaks for itself. To the extent a response is required, the United States denies the characterization.

G. The United States lacks sufficient information to admit or deny the allegations in this heading. To the extent a response is required, the United States denies the allegations.

70. The United States lacks sufficient information to admit or deny the allegations in Paragraph 70, and therefore denies same.

71. The United States lacks sufficient information to admit or deny the allegations in Paragraph 71, and therefore denies same.

72. The United States lacks sufficient information to admit or deny the allegations in Paragraph 72, and therefore denies same.

73. The United States lacks sufficient information to admit or deny the allegations in Paragraph 73, and therefore denies same.

74. The United States lacks sufficient information to admit or deny the allegations in Paragraph 74, and therefore denies same.

75. The United States lacks sufficient information to admit or deny the allegations in Paragraph 75, and therefore denies same.

76. The United States lacks sufficient information to admit or deny the allegations in Paragraph 76, and therefore denies same.

77. The United States lacks sufficient information to admit or deny the allegations in Paragraph 77, and therefore denies same.

78. The United States lacks sufficient information to admit or deny the allegations in Paragraph 78, and therefore denies same.

79. The United States lacks sufficient information to admit or deny the allegations in Paragraph 79, and therefore denies same.

80. The United States lacks sufficient information to admit or deny the allegations in Paragraph 80, and therefore denies same.

81. The United States lacks sufficient information to admit or deny the allegations in Paragraph 81, and therefore denies same.

82. The United States lacks sufficient information to admit or deny the allegations in Paragraph 82, and therefore denies same.

83. The United States lacks sufficient information to admit or deny the allegations in Paragraph 83, and therefore denies same.

84. Paragraph 84 contains legal conclusions which require no response. To the extent a response is required, the United States denies the allegations. The United States lacks sufficient information to admit or deny the allegations regarding torture and intimidation in Paragraph 84, and therefore denies same.

H. The United States lacks sufficient information to admit or deny the allegations in this heading, and therefore denies same.

85. The United States lacks sufficient information to admit or deny the allegations in Paragraph 85, and therefore denies same.

86. The United States lacks sufficient information to admit or deny the allegation in Paragraph 86, and therefore denies same.

87. The United States lacks sufficient information to admit or deny the allegation in Paragraph 87, and therefore denies same.

88. The United States lacks sufficient information to admit or deny the allegations in Paragraph 88, and therefore denies same.

CLAIMS FOR RELIEF

COUNT 1 – NEGLIGENCE

89. The United States realleges and incorporates by references its responses to the allegations in Plaintiff's Complaint as if fully set forth herein.

90. Paragraph 90 contains conclusions of law that require no response.

91. Paragraph 91 contains conclusions of law that require no response. To the extent the allegations are deemed factual by the Court, the United States denies any remaining allegations in Paragraph 91.

92. Paragraph 92 contains conclusions of law that require no response. To the extent the allegations are deemed factual by the Court, the United States denies those allegations.

93. Paragraph 93 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

94. Paragraph 94 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

95. Paragraph 95 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

96. Paragraph 96 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

97. Paragraph 97 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

98. Paragraph 98 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

COUNT II – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

99. The United States realleges and incorporates by references its responses to the allegations in Plaintiff's Complaint as if fully set forth herein.

100. Paragraph 100 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

101. Paragraph 101 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

102. Paragraph 102 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

103. Paragraph 103 contains conclusions of law that require no response. To the extent that the allegations are deemed factual by the Court, the United States denies them.

COUNT III – WRONGFUL DEPORTATION

104-109. No answer is required of the United States to these paragraphs because the cause of action has been dismissed. To the extent an answer is required, the United States denies the allegations.

PRAYER FOR RELIEF

This paragraph constitutes Plaintiff's prayer for relief and requires no response. To the extent a response is required, the United States denies Plaintiff is entitled to any relief in this action.

GENERAL DENIAL

The United States expressly denies all the allegations in the Complaint that are not specifically admitted or otherwise qualified in this Answer.

AFFIRMATIVE DEFENSES

1. Plaintiff's alleged damages resulted from independent, superseding, and/or intervening causes unrelated to the conduct of the United States. In the event that Defendant United States is found negligent, which negligence it denies, such negligence is not the cause in fact or proximate cause of alleged damages suffered by Plaintiff.
2. The United States has not waived its sovereign immunity as to any allegations that fall within 28 U.S.C. § 2680.
3. Plaintiff fails to show that a private individual would be liable under analogous circumstances, thus depriving the Court of subject matter jurisdiction.
4. Section 1252(g) of the Immigration and Nationality Act strips the Court of jurisdiction.
5. Plaintiff is not entitled to any prejudgment interest or punitive damages against the United States in accordance with 28 U.S.C. § 2674.
6. Plaintiff is not entitled to any sum in excess of the amount of the claims presented to the federal agency per 28 U.S.C. § 2675.
7. Plaintiff is not entitled to recover attorneys' fees beyond those set forth in 28 U.S.C. § 2678.
8. Plaintiff is not entitled any equitable relief under the FTCA.

9. The United States is entitled to the same damage caps available under applicable state law.
10. Plaintiff's Complaint fails to state a claim upon which relief may be granted.
11. Plaintiff's Complaint must be dismissed as Defendant United States, through its employees, agents, and servants, acted at all relevant times with due care and diligence and therefore the United States could not have breached any actionable duty owed to Plaintiff.
12. Plaintiff's Complaint must be dismissed because there is no "private person" analogue to the actions undertaken by the United States and therefore there is no waiver of the federal sovereign's immunity for these claims.
13. The Defendant states that Plaintiff's alleged damages are speculative and cannot be established with reasonable certainty.
14. Any recovery by Plaintiff is subject to the availability of appropriated funds. 42 U.S.C. § 233(k).
15. To the extent that the substantive law of Massachusetts has limitations (statutory or common law) on Plaintiff's cause of action or damages, Plaintiff's claims are subject thereto.
16. Plaintiff is not entitled to a jury trial under the FTCA.
17. There is no right to punitive damages under the FTCA.
18. Defendant has, or may have, further or additional defenses which are not yet known, but which may become known through future discovery. Defendant asserts herein each and every affirmative defense as may be ascertained through future discovery including those required by Rule 8 and 12 of the Federal Rules of Civil Procedure.

Respectfully submitted,

RACHAEL S. ROLLINS
United States Attorney

Dated: March 2, 2023

By: /s/ Thomas E. Kanwit
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CERTIFICATE OF SERVICE

I, Thomas E. Kanwit, Assistant United States Attorney, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

Dated: March 2, 2023

By: /s/ Thomas E. Kanwit
Thomas E. Kanwit
Assistant United States Attorney