

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA  
Civ. No. 17-CV-02835 (DWF/DTS)

Abdisalam Wilwal, *et al.*,

Plaintiffs,

v.

Kirstjen Nielsen, *et al.*,

Defendants.

Case No. 0:17-cv-02835

**ANSWER**

Defendants Kirstjen Nielsen, Secretary of the Department of Homeland Security (“DHS”); Kevin K. McAleenan, Commissioner of U.S. Customs and Border Protection (“CBP”); Ronald D. Vitiello, Deputy Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement (“ICE”); Derek N. Brenner, Executive Associate Director of Homeland Security Investigations, U.S. Immigration and Customs Enforcement, (“HSI”); Jefferson B. Sessions, Attorney General of the United States; Christopher A. Wray, Director of the Federal Bureau of Investigation (“FBI”); Charles H. Kable, IV, Director of the Terrorist Screening Center (“TSC”); and the United States of America, (collectively, “Defendants”), hereby respond to each numbered paragraph of the Amended Complaint (ECF No.25) as follows:

1. This paragraph contains Plaintiffs’ characterization of this lawsuit as well as arguments, statements of law, or legal conclusions, to which no response is required.

2. With respect to the first sentence of this paragraph, admitted. With respect to the second sentence of this paragraph, Defendants admit that Plaintiffs are U.S. citizens and they presented themselves for inspection at the Portal, North Dakota Port of Entry on March 30, 2015. With respect to the third sentence of this paragraph, Defendants admit that CBP officers detained Plaintiffs. Defendants further admit that CBP officers withdrew their weapons from their holsters when they initially approached Wilwal's vehicle, and that CBP officers placed Wilwal in handcuffs. Defendants aver that CBP detained Mr. Wilwal for approximately nine hours. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph.

3. Defendants neither confirm nor deny the allegations in this paragraph because they purport to reflect watchlist status of a particular individual—information which is protected by statute and privilege.

4. Deny the first sentence of this paragraph, except to admit that, other than a short time when Mr. Wilwal's handcuffs were repositioned, Mr. Wilwal was handcuffed for the duration of his detention. Defendants admit the allegation in the second sentence of this paragraph that medical attention was provided to Mr. Wilwal. Defendants deny the allegation in the second sentence that CBP officers did not offer Mr. Wilwal food. Defendants lack sufficient knowledge or information to respond to the truth of the allegations in the second sentence that Mr. Wilwal "passed out," or that Mr. Wilwal was "anxious." Finally, the allegation in the second sentence that this episode purportedly occurred some unspecified "hours into his detention," is vague, and accordingly no response is required. To the extent a response is required, denied. Defendants aver that CBP provided medical assistance to Mr. Wilwal at approximately 8:25am. With respect to the third sentence, the allegation that the HSI interview

was “several hours later” is also vague, and accordingly no response is required. To the extent a response is required, Defendants admit that HSI special agents first interviewed Mr. Wilwal at approximately 1:30pm. Further with respect to the third sentence of this paragraph, Defendants admit the remaining allegations in that sentence. With respect to the fourth sentence of this paragraph, Defendants admit that HSI officers interviewed Mr. Wilwal, and that CBP released Mr. Wilwal after his interview. The remaining allegations in this paragraph are denied.

5. Deny the first sentence of this paragraph, except to aver that Mr. Wilwal was detained for additional scrutiny and questioning, and other plaintiffs remained in CBP custody during certain of the time that Mr. Wilwal was detained, approximately nine hours. With respect to the second and third sentences of this paragraph, Defendants admit only that Ms. Abdigani called 911 using her son’s mobile phone, that CBP officers detained the phone, and informed the 911-operator that no assistance was needed. Defendants lack sufficient knowledge or information to respond to the truth of the allegations in the second sentence as to what Ms. Abdigani stated to the 911 dispatcher. Deny the fourth sentence of this paragraph, except to admit that CBP officers performed a pat-down search of Ms. Wilwal-Abdigani’s then 14-year-old son in a separate room. Deny the fifth and sixth sentences of this paragraph. The remaining allegations in this paragraph are denied.

6. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph.

7. This paragraph contains Plaintiffs’ characterization of this lawsuit as well as arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

8. Defendants lack knowledge or information sufficient to form a belief about the truth of the remaining allegations in this paragraph, except to admit that Plaintiff Abdisalam Wilwal is a U.S. citizen.

9. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, except to admit that Plaintiff Sagal Abdigani is a U.S. citizen.

10. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, except to admit that Plaintiff M.O. is a U.S. citizen and was 14 years old at the time of the events described in the Amended Complaint.

11. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, except to admit that Plaintiff N.W. is a U.S. citizen and was eight years old at the time of the events described in the Amended Complaint.

12. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, except to admit that Plaintiff A.W. is a U.S. citizen. And was six years old at the time of the events described in the Amended Complaint.

13. Defendants lack knowledge or information sufficient to form a belief about the truth of the allegations in this paragraph, except to admit that Plaintiff A.M. is a U.S. citizen. And was five years old at the time of the events described in the Amended Complaint.

14. Deny the allegations of this paragraph, and aver that the Secretary of Homeland Security is Kirstjen Nielsen who, as Secretary, has authority over DHS, which includes the DHS components at issue in this lawsuit.

15. Admit, except as to Mr. McAleenan's title, which is "Commissioner of U.S. Customs and Border Protection."

16. Deny that Thomas Homan is the Acting Director of U.S. Immigration and Customs Enforcement. Defendants aver that Ronald D. Vitiello is the Deputy Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement. Defendants admit that Mr. Vitiello, in his official capacity, has responsibility for and oversight over ICE policies, procedures, and practices related to the detention and questioning of American citizens entering the United States at border crossings and ports of entry, including the conduct of Homeland Security Investigations Special Agents. Defendants admit that Plaintiff is suing the Deputy Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement in his official capacity. The remaining allegations in this paragraph are denied.

17. Admitted, except that Mr. Benner's current title is Executive Associate Director of Homeland Security Investigations.

18. Admitted.

19. Admitted.

20. Admitted.

21. This paragraph constitutes a legal conclusion, to which no response is required.

22. This paragraph sets forth Plaintiffs' assertions of jurisdiction, and thus consists of argument, statements of law, or legal conclusions, to which no response is required.

23. This paragraph sets forth Plaintiffs' assertions of jurisdiction, and this Court's equitable power, and thus consists of argument, statements of law, or legal conclusions, to which no response is required.

24. This paragraph sets forth Plaintiffs' assertions of jurisdiction, and thus consists of argument, statements of law, or legal conclusions, to which no response is required.

25. This paragraph sets forth Plaintiffs' assertions of venue, and thus consists of argument, statements of law, or legal conclusions, to which no response is required.

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

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

28. Deny the first sentence of this paragraph regarding the time of Plaintiffs' arrival at the border crossing, and aver that, on March 30, 2015, Plaintiffs presented themselves for inspection at the Portal, North Dakota Port of Entry at approximately 7:14am. Defendants otherwise lack sufficient knowledge or information to form a belief about the truth of the rest of the allegations in the first sentence. Admit the second sentence of this paragraph.

29. Defendants lack sufficient information on which to respond to the first sentence of this paragraph, other than to admit that CBP did not identify any issues with Plaintiffs' documents or any contraband. The second sentence of this paragraph contains arguments, statements of law, or legal conclusions, to which no response is required but to the extent a response is deemed required, denied.

30. Defendants lack sufficient information on which to respond to the allegations in this paragraph, except to admit that CBP uses TECS, *inter alia*, as its primary law enforcement system, and that CBP officers entered Mr. Wilwal's information into TECS. Defendants respectfully refer the Court to the TECS System of Records Notice under the Privacy Act of 1974 for a full and accurate description of TECS: <https://www.gpo.gov/fdsys/pkg/FR-2008-12-19/html/E8-29807.htm>.

31. Deny the first sentence of this paragraph, except to admit that, following Plaintiffs' arrival at the station, two CBP officers exited the Port of Entry and withdrew their weapons from their holsters when they approached the van. Defendants currently lack sufficient knowledge or information to form a belief about the allegations of the second sentence of this paragraph. Defendants lack sufficient knowledge or information to form a belief about the allegations in the third sentence, except to admit that Mr. Wilwal displayed his hands when the CBP officers approached his vehicle. Defendants currently lack sufficient knowledge or information to form a belief about the allegations in the fourth and fifth sentences of this paragraph, except to admit that a CBP officer in the primary inspection area notified other officers that children were in the vehicle.

32. Deny the first sentence of this paragraph, except to admit that CBP officers ordered Mr. Wilwal out of his vehicle. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the second sentence. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the third sentence, except to admit that Mr. Wilwal exited the van. Admit the fourth sentence and fifth sentences. The remaining allegations in this paragraph are denied

33. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of this paragraph.

34. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of this paragraph.

35. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in this paragraph, except to admit that CBP officers placed Mr. Wilwal in a room inside the Portal, North Dakota Port of Entry while he was handcuffed.

36. Deny the first sentence. Admit the second sentence.

37. Admit only that CBP officers handcuffed and detained Mr. Wilwal. Defendants neither confirm nor deny the remaining allegations in this paragraph, as they purport to reflect watchlist status of a particular individual – information which is protected by statute and privilege.

38. Admit the first sentence. Deny the second sentence, except to admit that the Terrorist Identities Datamart Environment (“TIDE”) is the U.S. Government’s classified central and shared repository for all information pertaining to internationally known or suspected terrorists, and that the Terrorist Screening Database (“TSDB”) is the Government’s consolidated terrorist watchlist. Deny the third sentence, except to admit that TSC develops and maintains the TSDB, which contains both biographic and biometric identifying information. Deny the fourth sentence, except to admit the TSDB does not contain the underlying classified intelligence or other derogatory information that is the basis for an individual’s inclusion in the database.

39. Defendants deny the first sentence, except to admit that subsets of the TSDB are made available to other federal agencies, including CBP and the Transportation Security Administration (“TSA”), for use in screening, vetting, and/or inspection, as appropriate. Defendants admit in the second sentence that TSC shares certain terrorist screening information with select foreign partners. Defendants otherwise can neither confirm nor deny the identities of specific foreign partners—information which is protected by statute and/or privilege. Deny the third and fourth sentences of this paragraph, except to admit that TECS includes information exported from the TSDB. Deny the fifth sentence, except to admit that TSC determines whether a nomination or record meets the substantive criteria for inclusion or continued inclusion in the TSDB.



40. Deny this paragraph, except to admit that a subset of the TSDB is exported to CBP, through DHS, that TECS includes information exported from the TSDB, and that individuals whose identities are included in the TSDB may be referred for additional scrutiny, commonly referred to as secondary inspection, at ports of entry. The remaining allegations in this paragraph are denied.

41. Deny the allegations in this paragraph, except to admit that inclusion in the TSDB as a known or suspected terrorist generally requires a determination that there is a reasonable suspicion that the individual is engaged, has been engaged, or intends to engage in conduct constituting, in preparation for, in aid or in furtherance of, or related to, terrorism and/or terrorist activities.

42. The allegations in this paragraph are vague and contain legal conclusions to which no response is required. To the extent a response is required, Defendants deny these allegations, and aver that determinations regarding the reasonable suspicion standard must be based on articulable intelligence or information, taken together with any rational inferences that can be drawn from that intelligence or information, and that such determinations must consider the totality of the circumstances.

43. The allegations in the first sentence of this paragraph contain legal conclusions to which no response is required, but to the extent a response is deemed necessary, denied. The remaining allegations in this paragraph purport to summarize certain public reports, to which the Court is respectfully referred for full and accurate statements of their contents. Otherwise, denied.

44. Defendants cannot confirm or deny the allegation in this paragraph because a response requires information protected by privileges.

45. The allegations in this paragraph contain legal conclusions to which no response is required, but to the extent a response is required, denied.

46. With respect to the first sentence, Defendants admit that DHS TRIP is a single point of contact for individuals who have inquiries or seek resolution regarding difficulties they experienced during their travel screening at transportation hubs - like airports - or crossing U.S. borders, including watchlist issues. Defendants aver that DHS TRIP reviews the information submitted by the traveler and evaluates each inquiry to determine which DHS components or other governmental agencies have equities in the issues underlying the claimed travel difficulties. With respect to the second sentence, Defendants admit that the TSC supports DHS TRIP by helping to resolve inquiries which may appear to be related to data in the TSDB. Defendants aver that DHS TRIP transmits redress inquiries to TSC's Redress Unit in the small fraction of cases in which DHS TRIP determines that a traveler is an exact or possible match to an identity in the TSDB. With respect to the third sentence, Defendants admit that the TSC Redress Unit reviews the available derogatory and exculpatory information about the traveler, including any information provided by the traveler as a part of the inquiry, to make a new determination as to the individual's status in the TSDB. Defendants aver that the TSC Redress Unit consults with other agencies, as appropriate. Defendants deny the remaining allegations in this paragraph.

47. Deny the first sentence of this paragraph, except to admit that upon the conclusion of its review concerning an individual's watchlist status, the TSC Redress Unit notifies DHS TRIP of the outcome of the review. Admit the second and third sentences, with the exception of certain circumstances in which such information may be provided concerning the No Fly list, which are not relevant here. Deny the fourth sentence, except to admit that the determination letter provides as much information to the inquiring traveler as possible, without disclosing

whether the traveler is included in the TSDB or revealing other sensitive information in light of national security and law enforcement interests. Deny the fifth sentence, except to admit that the redress process does not provide individuals with an in-person hearing. Defendants further aver that the redress process provides individuals who experience travel difficulties, including those potentially connected to watchlisting, with an opportunity to apply for redress, submit information and obtain a *de novo* review of their records, which may be corrected, receive a response and, depending on the circumstances, avail themselves of additional process, where applicable.

48. With regard to the first sentence of this paragraph, admitted. With regard to the specific, numbered allegations within this paragraph, Defendants respond as follows. Concerning (1) Defendants lack sufficient knowledge or information to respond to the truth of the allegations therein. With regard to (2), Defendants admit only that CBP detained Mr. Wilwal, and as to the remainder of the allegations therein Defendants neither confirm nor deny, as the allegations purport to identify information which would tend to confirm or deny watchlist status or reflect watchlist status of a particular individual – information which is protected by statute and privilege. With regard to (3) Defendants lack sufficient knowledge or information to respond to the truth of the allegations therein. With regard to (4) Defendants lack sufficient knowledge or information to respond to the truth of the allegations therein. With regard to (5), this sets forth Plaintiffs' characterization of certain documents in Exhibit A of the Amended Complaint. The Court is respectfully referred to those documents for a full and accurate statement of their contents. To the extent that the allegations in this paragraph mischaracterize Exhibit A, Defendants deny the allegations. The remaining allegations in this paragraph purport to identify information that would tend to confirm or deny watchlist status or reflect watchlist

status of a particular individual – information which is protected by statute and privilege – and Defendants neither confirm nor deny such allegations.

49. Certain of the allegations in this paragraph, including whether Mr. Wilwal has not been offered a “meaningful opportunity to contest his placement on the watchlist,” constitute legal conclusions to which no response is required. Defendants neither confirm nor deny the remaining allegations in this paragraph as they purport to reflect watchlist status of a particular individual – information which is protected by statute and privilege.

50. Defendants neither confirm nor deny the allegations in this paragraph as they purport to reflect watchlist status of a particular individual or information regarding the manner in which watchlist information is communicated to law enforcement officers – information which is protected by statute and privilege.

51. The allegations in this paragraph contain legal conclusions to which no response is required. To the extent a response is deemed necessary, Defendants neither confirm nor deny the allegations in this paragraph as they purport to reflect watchlist status of a particular individual – information which is protected by statute and privilege.

52. Deny the first sentence of this paragraph and aver that, at approximately 8:25am, CBP officers provided Mr. Wilwal with medical attention. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of the second sentence of this paragraph. Admit the third sentence of this paragraph, except that Defendants lack sufficient knowledge or information to form a belief about the allegation that Mr. Wilwal tried to stand up and passed out on the floor. The remaining allegations in this paragraph are denied.

53. With respect to the first two sentences of this paragraph, Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations that Mr.

Wilwal lost and then “regained consciousness.” Defendants aver that at approximately 8:25am CBP officers with emergency medical technician training responded to Mr. Wilwal’s complaints about chest pain, and that the handcuffs placed on Mr. Wilwal were moved to the front of his body. Defendants further aver that CBP officers contacted emergency services and an ambulance was dispatched to the Port of Entry. The ambulance arrived at the Port of Entry at approximately 8:36am. Defendants admit in the second sentence of this paragraph that Mr. Wilwal refused to go to the hospital. Defendants otherwise lack sufficient knowledge or information to form a belief about the truth of the allegation that Mr. Wilwal declined a trip to the hospital because “he did not want to leave his family at the border facility.” Admit the third and fourth sentences and aver that Mr. Wilwal was offered food at approximately 10:10 a.m., which he declined. The remaining allegations in this paragraph are denied.

54. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in this paragraph.

55. Admit that paramedics departed, but deny that immediately subsequent to the paramedics’ departure Mr. Wilwal was again left alone in the room.

56. Deny the first sentence. Defendants aver that at 12:45pm HSI agents arrived at the Port of Entry and at approximately 1:18pm CBP officers escorted the HSI Special Agents and Mr. Wilwal to an interview room for an interview. Deny the second sentence, except to admit that CBP officers had notified HSI that Mr. Wilwal had been detained. Admit the third sentence and aver that the HSI Special Agents traveled from Minot, North Dakota to the Portal, North Dakota Port of Entry for the interview. Defendants deny the remaining allegations in this paragraph.

57. Admit the first sentence, except to deny that the HSI interview began “[s]hortly before 4:00 p.m.” Defendants aver that the interview was conducted in two sessions; the first beginning at approximately 1:30pm and ending at approximately 2:30pm. And the second session beginning at approximately 4:10pm and ending at approximately 4:15pm. Admit the second sentence. Defendants lack sufficient knowledge or information to respond to the truth of the allegations in the third sentence. Defendants deny the remaining allegations in this paragraph

58. Admit.

59. Deny.

60. Admit first sentence, except to deny that HSI asked Mr. Wilwal who owned the family van. Defendants lack sufficient knowledge or information to admit or deny the second sentence.

61. Deny.

62. Defendants lack sufficient information or knowledge to admit or deny the allegations in the first sentence of this paragraph regarding statements made to CBP officials. Defendants otherwise deny the remaining allegations in this paragraph and aver that, at approximately 4:25 p.m., CBP admitted Mr. Wilwal and his family into the United States.

63. The first sentence of this paragraph contains Plaintiffs’ characterization of this lawsuit as well as arguments, statements of law, or legal conclusions, to which no response is required, but to the extent a response is deemed required, deny. With regard to the second sentence, this sentence purports to quote Plaintiffs’ Exhibit A, to which the Court is respectfully referred for a full and accurate statement of its contents.

64. The first sentence of this paragraph contains Plaintiffs’ characterization of this lawsuit as well as arguments, statements of law, or legal conclusions, to which no response is

required, but to the extent a response is deemed required, deny. Deny the second sentence, except to admit that CBP officers ensured Mr. Wilwal was provided with medical attention.

65. Deny, except to admit that Ms. Abdigani and the Wilwal children were initially detained.

66. Deny the first sentence, except to admit that after Mr. Wilwal was detained and handcuffed, CBP officers asked Ms. Abdigani if she had a driver's license, and that CBP officers directed Ms. Abdigani to park the family's vehicle near the border station at approximately 7:20am. Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations of this paragraph, except Defendants admit that two officers talking to Ms. Abdigani had drawn handguns and pointed them at the ground.

67. Admit.

68. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations regarding Ms. Abdigani's children. Defendants otherwise deny the allegations in this paragraph, except to admit that CBP officers placed Ms. Abdigani and the Wilwal children in a waiting room.

69. Defendants lack sufficient knowledge or information to respond to the truth of the allegations of this paragraph.

70. Deny the first sentence. Admit the second sentence.

71. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of this paragraph, except to admit that Ms. Abdigani was not permitted to use her mobile phone.

72. Defendants lack knowledge or information to form a belief about the truth of the allegations in this paragraph, except to admit that Ms. Abdigani was not permitted to use her phone and that CBP officers would not make any calls on her behalf.

73. With respect to the first sentence of this paragraph, deny that food was not offered for “several hours.” Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations as to whether Plaintiffs were hungry. Defendants admit that Ms. Abdigani requested food for herself and the children. Admit the second sentence. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the third and fourth sentences. Deny the fifth sentence and aver that CBP officers provided Ms. Abdigani and the children with hamburgers at 10:34am. The remaining allegations in this paragraph are denied.

74. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations in the first sentence. Admit the second sentence.

75. Admit the first sentence. Defendants lack sufficient knowledge or information to form a belief about the allegations in the second through fourth sentences of this paragraph. Deny the fifth and sixth sentences of this paragraph, except to admit that a CBP officer took the phone Ms. Abdigani was using and informed a dispatcher that there was no assistance needed at the Port of Entry.

76. Admit.

77. Admit the first sentence of this paragraph. Deny the second sentence.

78. Admit.



79. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of this paragraph, except to deny that CBP officers told M.O. to remove his clothes.

80. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required, but to the extent a response is deemed required, deny.

81. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required, but to the extent a response is deemed required, deny.

82. Deny the first sentence of this paragraph, except to aver that Mr. Wilwal was detained for additional scrutiny and questioning, and other plaintiffs remained in CBP custody during certain of the time that Mr. Wilwal was detained. The second sentence of this paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required, but to the extent a response is deemed required, deny.

83. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent that a response is required, deny, except that Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of this paragraph regarding how the plaintiffs felt, what they said to one another, and what they were thinking.

84. Deny the first sentence of this paragraph, denied and aver that Ms. Abdigani and the children were admitted into the United States at approximately 4:25 p.m. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of the second sentence.

85. Defendants admit that on March 31, 2015, Mr. Wilwal and Ms. Abdigani appeared at the FBI field office in Minneapolis. Deny the remaining allegations in this paragraph.

86. Admit the first and second sentences. With respect to the third and fourth sentences Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations therein. Deny the fifth sentence.

87. Admit the first sentence. Deny the second sentence.

88. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required, but to the extent a response is deemed required, denied.

89. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of this paragraph.

90. With respect to the first sentence of this paragraph, Defendants aver that CBP and HSI created and maintained records regarding Plaintiffs' border crossing on March 30, 2015, and otherwise Defendants lack sufficient knowledge or information to form a belief about the truth of the remaining allegations of this sentence. The remainder of this paragraph consists of Plaintiffs' characterization of certain documents in Exhibit A of the Amended Complaint. The Court is respectfully referred to those documents for a full and accurate statement of their contents. To the extent that the allegations in this paragraph mischaracterize Exhibit A, Defendants deny the allegations.

91. Defendants lack sufficient knowledge or information to form a belief about the truth of the allegations of this paragraph.

92. Defendants admit that Plaintiffs submitted administrative tort claims to CBP and that CBP acknowledged receipt of the claims on March 9, 2017. Defendants admit that Plaintiffs submitted amended administrative claims on July 11, 2017. The remaining allegations contain Plaintiffs' characterization of the lawsuit and legal conclusions to which no response is required. To the extent a response is required, denied.

93. Admit.

94. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

95. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

96. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

97. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

98. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

99. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

100. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

101. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

Defendants further aver that the Court has dismissed this claim.

102. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied. Defendants further aver that the Court has dismissed this claim.

103. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

104. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

105. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

106. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

107. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

108. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

109. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

110. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

111. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

112. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

113. This paragraph contains Plaintiffs' arguments, statements of law, or legal conclusions, to which no response is required. To the extent a response is required, denied.

The next paragraphs numbered (a) through (e) constitute a prayer for relief to which no response is required, but insofar as an answer is deemed necessary, Defendants deny that Plaintiffs are entitled to the relief requested or to any relief whatsoever.

Defendants hereby deny all allegations in Plaintiffs' Amended Complaint not expressly admitted or denied.

### **DEFENSES**

1. This Court lacks subject matter jurisdiction.
2. Plaintiffs have failed to state a claim upon which relief can be granted.
3. Defendant United States, through its employees and agents, acted with due care and diligence, in conformance with the applicable statutes and regulations, at all relevant times.
4. No acts or omissions by the United States were the cause of any injuries to the Plaintiffs.
5. Defendant United States did not violate a mandatory statute or regulation in the manner in which CBP officers detained Plaintiffs.
6. Decisions regarding the manner in which to detain Plaintiffs were susceptible to policy analysis.
7. To the extent that the law (common or statutory) of the State of North Dakota, where the alleged acts or omissions occurred, limits damages, reduces damages, or limits a defendant's liability or a plaintiff's cause of action, that law applies to this action against the United States to the extent that it is not inconsistent with the Federal Tort Claims Act (FTCA). 28 U.S.C. § 2674.

8. To the extent the Complaint requests punitive damages and injunctive relief, such relief is not recoverable under the FTCA. 28 U.S.C. § 2674.

9. Plaintiffs have failed to exhaust their administrative remedies before filing an amended complaint that asserts FTCA claims. 28 U.S.C. § 2675(a).

10. Plaintiffs' damages under the FTCA, if any, are limited to the amount stated in the administrative claims. 28 U.S.C. § 2675(b).

11. The Complaint is barred by the statute of limitations, in whole or in part. 28 U.S.C. § 2401(b).

12. The Complaint is barred by the discretionary function exception of the FTCA. 28 U.S.C. § 2680(a).

THEREFORE, having fully answered, Defendants assert that Plaintiffs are not entitled to the relief requested, or to any relief whatsoever, and request that this action be dismissed with prejudice and that Defendants be given such other relief as the Court deems just and proper.

Respectfully submitted this 25th day of October, 2018.

**GREGORY G. BROOKER**  
Acting United States Attorney

**ERIN M. SECORD**  
Assistant United States Attorney  
Attorney ID Number 0391789  
600 U.S. Courthouse  
300 South Fourth Street  
Minneapolis, MN 55415  
(612) 664-5600  
Erin.Secord@usdoj.gov

JOSEPH A. HUNT  
Acting Assistant Attorney General  
Civil Division

JOHN R. TYLER  
Assistant Branch Director

/s/ Michael Drezner  
MICHAEL L. DREZNER  
U.S. Department of Justice  
Civil Division,  
Federal Programs Branch  
Tel: (202) 514-4505  
michael.l.drezner@usdoj.gov

Counsel for Defendants

JAMES G. TOUHEY, JR.  
Director, Torts Branch

RUPERT MITSCH  
Assistant Director, Torts Branch

/s/ Paul David Stern  
PAUL DAVID STERN  
JOCELYN KRIEGER  
U.S. Department of Justice  
Civil Division, Torts Branch  
NY Bar No.: 4613592  
Tel: (202) 616-2197  
paul.david.stern@usdoj.gov

Counsel for United States of America