

1 SCOTT N. SCHOOLS, SC SBN 9990
United States Attorney
2 JOANN M. SWANSON, CSBN 88143
Assistant United States Attorney
3 Chief, Civil Division
EDWARD OLSEN, CSBN 214150
4 Assistant United States Attorney
5 450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
6 Telephone: (415) 436-6915
7 FAX: (415) 436-6927

8 Attorneys for Defendants

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 OAKLAND DIVISION

12 KEBIN REYES, a minor by and through) No. C 07-2271 SBA
13 his father and guardian, Noe Reyes,)
14 Plaintiff,)
15 v.) **ANSWER**
16 NANCY ALCANTAR, San Francisco Field)
17 Office Director for Detention and Removal, et al.,)
18 Defendants.)

19 Now come the Defendants, by and through their undersigned counsel, in response to the
20 Plaintiff's Complaint for Violations of the Fourth and Fifth Amendments to the United States'
21 Constitution, state the following:

22 1. Paragraph One contains allegations pertaining to jurisdiction to which no admission or
23 denial is required; however to the extent an answer is necessary, the Defendants deny the
24 allegations in Paragraph One.

25 2. Paragraph Two contains allegations pertaining to venue to which no admission or denial is
26 required; however to the extent an answer is necessary, the Defendants deny the allegations in
27 Paragraph Two.

28 3. Paragraph Three contains allegations regarding intra-district assignment to which no

1 admission or denial is required; however to the extent an answer is necessary, the Defendants deny
2 the allegations in Paragraph Three.

3 4. Defendants have insufficient information to admit or deny the facts set forth in Paragraph 4,
4 and demands sufficient proof thereof.

5 5. Defendants admit that Defendant NANCY ALCANTAR is employed as the Field Office
6 Director of the San Francisco Office of Detention and Removal Operations, U. S. Immigration and
7 Customs Enforcement (ICE), and that she, at all times relevant to the complaint, was acting within
8 the scope of her employment.

9 6. Defendants have insufficient information to admit or deny the allegations set forth in
10 Paragraph 6, and demands sufficient proof thereof.

11 7. Defendants have insufficient information to admit or deny the allegations set forth in
12 Paragraph 7. However, to the extent answer is necessary, Defendants deny the allegations in
13 Paragraph 7.

14 8. Defendants deny the allegations set forth in Paragraph 8.

15 9. Defendants admit that ICE Officers arrived at a residence in the early morning hours of
16 March 6, 2007. Defendants admit that the ICE Officers were armed and entered the residence and
17 demanded the immigration papers and passport of the occupants. The Defendants deny the
18 allegations in the third sentence of Paragraph 9. The Defendants admit the allegations in the fourth
19 sentence of Paragraph 9. Defendants deny the last sentence of Paragraph 9.

20 10. Defendants admit the allegations in the first sentence of Paragraph 10. Defendants deny
21 the allegations set forth in the second sentence of Paragraph 10. Defendants deny the allegations
22 set forth in the third sentence of Paragraph 10. Defendants deny the allegations set forth in the
23 second sentence of Paragraph 10. Defendants deny that they ceased Kevin, but admit that they
24 ceased Kevin's father. Defendants deny the allegations set forth in the last sentence in Paragraph
25 10.

26 11. Defendants deny the allegations set forth in the first three sentences in Paragraph 11.
27 Defendants lack sufficient information or knowledge to respond to the fourth sentence of
28 Paragraph 11. Defendants deny the fifth sentence in Paragraph 11. Defendants lack sufficient

1 information or knowledge to respond to the last two sentences of Paragraph 11.

2 12. Defendants deny the allegations set forth in Paragraph 12.

3 13. Defendants deny the allegations set forth in Paragraph 13.

4 14. Defendants deny the allegations set forth in Paragraph 14.

5 15. Defendants incorporate Paragraphs 1 through 14 above and each response therein as fully
6 set forth herein.

7 16. Defendants admit the allegations set forth in Paragraph 16.

8 17. Defendants deny the allegations set forth in Paragraph 17

9 18. Defendants deny the allegations set forth in Paragraph 18.

10 19. Defendants deny the allegations set forth in Paragraph 19, and in further response state that
11 the plaintiff has failed to exhaust administrative remedies available to him.

12 20. Defendants incorporate Paragraphs 1 through 19 above and each response therein as fully
13 set forth herein.

14 21. Defendants admit the allegation set forth in Paragraph 21.

15 22. Defendants deny the allegations set forth in Paragraph 22.

16 23. Defendants deny the allegations set forth in Paragraph 23.

17 24. Defendants deny the allegations set forth in Paragraph 24 and in further response state that
18 the plaintiff has failed to exhaust administrative remedies available to him.

19 25. Defendant has insufficient information from which to admit or deny the allegations set
20 forth in Paragraph 25.

21 **AFFIRMATIVE DEFENSES**

22 **FIRST AFFIRMATIVE DEFENSE**

23 This Court is without subject matter jurisdiction over Plaintiff's claims.

24 **SECOND AFFIRMATIVE DEFENSE**

25 Plaintiff failed to exhaust his administrative remedies as to each and every claim.

26 **THIRD AFFIRMATIVE DEFENSE**

27 The complaint and each claim asserted therein fail to state a cause of action upon which relief
28 can be granted.

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiff failed to mitigate his damages, if any, and any recovery or award should be reduced
3 accordingly.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiff may recover only those damages allowed under the law.

6 **SIXTH AFFIRMATIVE DEFENSE**

7 Plaintiff's recovery, if any, is barred by the doctrine of unclean hands, laches, and estoppel.

8 **SEVENTH AFFIRMATIVE DEFENSE**

9 Some or all of Plaintiff's claims are barred by the applicable statute of limitations.

10 **EIGHTH AFFIRMATIVE DEFENSE**

11 Any and all Defendant are entitled to absolute, sovereign, and/or qualified immunity.

12 **NINTH AFFIRMATIVE DEFENSE**

13 Plaintiff's alleged injuries, if any, were proximately caused by plaintiff's own negligent or
14 otherwise wrongful conduct.

15 **TENTH AFFIRMATIVE DEFENSE**

16 The United States of America, through its employees, exercised due care and diligence in all
17 matters relevant to the subject matter of plaintiff's complaint.

18 **ELEVENTH AFFIRMATIVE DEFENSE**

19 Plaintiff's alleged injuries, if any, were not proximately caused by any negligent or otherwise
20 wrongful act or omission of any employee of the United States.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 Any recovery or other award made against the United States herein must be reduced by the
23 percentage of fault of the plaintiff and/or other third party, and any recovery or other award made
24 against the United States herein for non-economic damages must be limited to the percentage of
25 fault, if any, of the United States.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 Pursuant to 28 U.S.C. § 2675, Plaintiff is prohibited from claiming or recovering an amount
28 against the United States in excess of that which is set forth in a claim to the ICE.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial on any claim under the
3 FTCA.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for
6 prejudgment interest against the United States of America.

7 **SIXTEENTH AFFIRMATIVE DEFENSE**

8 Under 28 U.S.C. §2412(d)(1)(A), Plaintiff cannot recover attorney’s fees from the United
9 States of America.

10 **SEVENTEENTH AFFIRMATIVE DEFENSE**

11 Under 28 U.S.C. § 2674, Plaintiff is barred from recovering civil penalties and treble damages.

12 **EIGHTEENTH AFFIRMATIVE DEFENSE**

13 Under 28 U.S.C. § 2401, the Plaintiff failed to submit an administrative claim to the agency
14 within two years after the claim accrued.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 The Plaintiff’s claims under the Federal Tort Claims Act failed because there is no
17 analogous private, state, or local activity.

18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 The Plaintiff’s claims under the Federal Tort Claims Act are barred by the discretionary
20 function exception.

21 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

22 The Plaintiff’s negligence claims fail as a matter of law because under the Federal Tort
23 Claims Act, state law must be the source of substantive liability.

24 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

25 The United States is entitled to sovereign immunity as to any possible state law claims.

26 //

27 //

28 //

1 WHEREFORE, Defendants respectfully request that the Court enter judgment in their
2 favor; that the complaint be dismissed and that the Defendants be granted such other and further
3 relief as the Court may deem just and proper, including recovery of all costs and appropriate fees.
4

5 Dated: July 6, 2007

Respectfully submitted,

6 SCOTT N. SCHOOLS
7 United States Attorney

8 /s/
9 _____
10 EDWARD A. OLSEN
11 Assistant United States Attorney
12 Attorneys for Defendants
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28