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8 *Attorneys for Defendant*

9 **UNITED STATES DISTRICT COURT**
10 **DISTRICT OF ARIZONA**

11 Bradley Jardis,

CV-12-00884-PHX-LOA

12 Plaintiff,

ANSWER

13 v.

14 United States of America,

15 Defendant.
16

17 Defendant United States of America (hereinafter “Defendant”), hereby answers
18 Plaintiff’s Amended Complaint (Dkt. 9) as follows:

19 Defendant denies any and all allegations in Plaintiff’s Amended Complaint that
20 are not specifically admitted.
21

22 1. Defendant admits that Plaintiff brings this action under the Federal Tort
23 Claims Act, 28 U.S.C. § 2671, *et seq.*, but denies that Plaintiff is entitled to any relief
24 under it. Defendant reserves the right to challenge the jurisdiction of this Court over this
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1 action. Defendant denies the remaining allegations in this paragraph and avers that the
2 events relevant to this cause of action occurred in Nogales, Santa Cruz County, Arizona.

3 2. Defendant denies the allegations in this paragraph because Defendant lacks
4 sufficient knowledge and information to form a belief as to their truth.
5

6 3. Defendant denies the allegations in this paragraph.

7 4. Paragraph 4 of Plaintiff's Amended Complaint constitutes a legal statement
8 and jurisdictional statement to which no answer is required. However, to the extent that a
9 response is required, Defendant reserves the right to challenge the jurisdiction of this
10 Court over this action and therefore, denies.
11

12 5. Defendant admits that at all times relevant to this action, Officer Aldrich
13 was acting in his capacity as an officer of United States Customs and Border Protection.
14 The Defendant denies the remaining allegations in this paragraph.
15

16 6. Defendant denies the allegations in this paragraph.

17 7. A jury trial is not available in actions brought under the FTCA.

18 8. Defendant denies the allegations in Page 2, Paragraph 1¹ because
19 Defendant lacks sufficient knowledge and information to form a belief as to their truth.
20

21 9. As to Page 2, Paragraph 2, Defendant admits that Officer Aldrich asked
22 Plaintiff about the shot glasses he was bringing into the United States and that Plaintiff
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25
26 ¹ Because Plaintiff restarts his paragraph numbering on Page 2 of his Amended
27 Complaint (Dkt. 9), Defendant will refer to the remaining paragraphs by page and
28 paragraph number.

1 refused to answer any further questions. Defendant denies any allegations not
2 specifically admitted.

3 10. As to Page 2, Paragraph 3, Defendant denies the allegations in this
4 paragraph.
5

6 11. As to Page 2, Paragraph 4, Defendant admits that Plaintiff was advised that
7 he was impeding the inspection process and could be arrested for failing to comply with
8 the inspection. Defendant denies the remaining allegations and any allegations not
9 specifically admitted.
10

11 12. As to Page 3, Paragraph 5, Defendant admits Plaintiff refused to answer
12 routine reentry inspection questions. Defendant denies the remaining allegations and any
13 allegations not specifically admitted.
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15 13. As to Page 3, Paragraph 6, Defendant denies the allegations in this
16 paragraph.
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18 14. As to Page 3, Paragraph 7, Defendant denies the allegations in this
19 paragraph.
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21 15. As to Page 3, Paragraph 8, Defendant denies the allegations in this
22 paragraph.
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24 16. As to Page 3, Paragraph 9, Defendant denies the allegations in this
25 paragraph.
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27 17. As to Page 3, Paragraph 10, Defendant denies the allegations in this
28 paragraph.

1 18. As to Page 4, Paragraph 11, Defendant admits that Plaintiff spoke to a
2 Homeland Security Investigations Special Agent. Defendant denies the remaining
3 allegations.

4 19. As to Page 4, Paragraph 12, Defendant denies the allegations in this
5 paragraph.
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7 20. As to Page 4, Paragraph 13, Defendant denies the allegations in this
8 paragraph.
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10 21. As to Page 4, Paragraph 14, Defendant denies the allegations in this
11 paragraph.
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13 22. As to Page 4, Paragraph 15, Defendant denies the allegations in this
14 paragraph.
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16 23. As to Page 4, Paragraph 16, Defendant denies the allegations in this
17 paragraph.
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19 24. As to Page 4, Paragraph 17, Defendant denies the allegations in this
20 paragraph.
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22 25. As to Page 5, Paragraph 18, Defendant denies the allegations in this
23 paragraph.
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25 26. As to Page 5, Paragraph 19, this paragraph constitutes a statement of
26 incorporation to which no answer is required. However, to the extent that an answer is
27 required, Defendant denies the allegations in this paragraph.
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1 27. As to Page 5, Paragraph 20, Defendant denies the allegations in this
2 paragraph.

3 28. As to Page 5, Paragraph 21, Defendant denies the allegations in this
4 paragraph.
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6 29. As to Page 5, Paragraph 22, Defendant denies the allegations in this
7 paragraph.
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9 30. As to Page 5, Paragraph 23, Defendant denies the allegations in this
10 paragraph.
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12 31. As to Page 5, Paragraph 24, this paragraph constitutes a statement of
13 incorporation to which no response is required. However, to the extent that an answer is
14 required, Defendant denies the allegations in this paragraph.

15 32. As to Page 5, Paragraph 25, Defendant denies the allegations in this
16 paragraph.
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18 33. As to Page 6, Paragraph 26, Defendant denies the allegations in this
19 paragraph.
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21 34. As to Page 6, Paragraph 27, Defendant denies the allegations in this
22 paragraph.
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24 35. As to Page 6, Paragraph 28, Defendant denies the allegations in this
25 paragraph.
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1 36. As to Page 6, Paragraph 29, this paragraph constitutes a statement of
2 incorporation to which no response is required. However, to the extent that an answer is
3 required, Defendant denies the allegations in this paragraph.

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5 37. As to Page 6, Paragraph 30, Defendant denies the allegations in this
6 paragraph.

7 38. As to Page 6, Paragraph 31, Defendant denies the allegations in this
8 paragraph.

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10 39. As to Page 6, Paragraph 32, this paragraph constitutes a statement of
11 incorporation to which no response is required. However, to the extent that an answer is
12 required, Defendant denies the allegations in this paragraph.

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14 40. As to Page 7, Paragraph 33, Defendant denies the allegations in this
15 paragraph.

16 41. As to Page 7, Paragraph 34, Defendant denies the allegations in this
17 paragraph.

18 42. As to Page 7, Paragraph 35, Defendant denies the allegations in this
19 paragraph.
20

21 43. Paragraphs A through F of Plaintiff's Amended Complaint represent a
22 prayer for relief to which no answer is required. To the extent an answer is required,
23 Defendant denies the allegations therein.
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AFFIRMATIVE ALLEGATIONS

Defendant hereby sets forth the following Affirmative Allegations as to Plaintiff's Amended Complaint:

1. This court lacks subject matter jurisdiction over Plaintiff's claim.

2. Plaintiff fails to state a claim for which relief may be granted.

3. Defendant acted with due care and diligence at all times.

4. No negligent or wrongful act of Defendant, or any of its employees or agents while acting in the scope of their employment, was the actual or proximate cause of or in any way contributed to the injuries, damages, or losses alleged in the complaint.

5. The injuries or damages, or both, alleged in the Amended Complaint were not proximately caused by a negligent acts or omissions of any employee of the United States acting within the scope and course of employment.

6. To the extent that Defendant has any liability, which is denied, Plaintiff may recover damages only for injuries alleged in their administrative claims and may not recover damages from Defendant in excess of the sums certain stated in their administrative claims. *See* 28 U.S.C. §§ 2674, 2678.

7. Plaintiff is not entitled to an award of pre-judgment interest, costs or disbursements as to Defendant, pursuant to 28 U.S.C. §§ 2674, 2678.

8. Constitutional violations are not recoverable under the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.*

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9. Defendant may have further and additional defenses which are not yet known but which may become known through future discovery, including those required by Federal Rules of Civil Procedure 8 and 12.

Respectfully submitted this 23rd day of October, 2012.

JOHN S. LEONARDO
United States Attorney
District of Arizona

s/ Emory T. Hurley

EMORY T. HURLEY
Assistant U.S. Attorney

CERTIFICATE OF SERVICE

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I hereby certify that on October 23, 2012, I electronically transmitted the attached document to the Clerk’s Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Keith M. Knowlton, L.L.C.
9920 S. Rural Road, Suite 108, PMB# 132
Tempe, Arizona 85284-4100

s/ J. Hershey
United States Attorney’s Office