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2 District of Arizona
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8 **UNITED STATES DISTRICT COURT**
9 **DISTRICT OF ARIZONA**

10 Frank Leyva and Ana Maria Leyva,
husband and wife,

11 Plaintiffs,

12 v.

13 United States of America,

14 Defendant.

CV 04-349-TUC-CKJ (HCE)

**DEFENDANT'S RESPONSE TO
PLAINTIFFS' MOTION TO
APPOINT COUNSEL**

15 COMES NOW Defendant, the United States of America, by and through undersigned
16 counsel, and files its response to Plaintiff Ada Leyva's Motion to Appoint Counsel. (CR 62.)
17 This Response is supported by the accompanying Memorandum of Points of Authorities and
18 all matters of record.

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 On June 8, 2007, undersigned counsel received an Electronic Case Filing (ECF)
21 notification that Plaintiffs had filed a Motion to Appoint Counsel. (CR 62.) The Motion
22 consisted of a letter from Plaintiff Ana Maria Leyva to United States Magistrate Judge Hector
23 Estrada dated May 17, 2007, requesting a meeting to discuss the evidence in this matter.
24 Although pleadings submitted by *pro se* litigants are liberally construed, *Garaux v. Pulley*, 739
25 F.2d 437, 439 (9th Cir. 1984), *pro se* parties are required to follow the same rules of procedure
26 that govern other litigants, *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987). Plaintiffs' letter
27 fails to comply with LR Civ 7.1 and 7.2.
28

1 If in fact, Plaintiffs are requesting appointment of counsel, Plaintiffs' letter provides no
2 legal authority which allows the appointment of counsel in cases governed by the Federal Tort
3 Claims Act (FTCA), 28 U.S.C. §§1346, 2671 et. seq. Plaintiffs were previously given
4 approximately 90 days to retain counsel in this matter, but were unable to find an attorney
5 willing to pursue their case. (CR 52, 53, 55.) The United States respectfully submits that the
6 fact that Plaintiffs have been unable to obtain representation may be a reflection of the merits
7 (or lack thereof) of Plaintiffs' case. Appointing counsel for Plaintiffs will not cure any
8 deficiencies in Plaintiffs' case.

9 Defendant, therefore, requests that Plaintiffs' Motion to Appoint Counsel be denied.

10 Respectfully submitted this 8th day of June, 2007.

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DANIEL G. KNAUSS
United States Attorney
District of Arizona

s/ J. Cole Hernandez
J. COLE HERNANDEZ
Assistant U.S. Attorney

Copy of the foregoing served electronically or by other means this 8th day of June, 2007, to:

Frank Leyva and Ana Maria Leyva
2707 N. Valle Verde Dr.
Nogales, AZ 85621
Plaintiffs Pro Se

s/ Lisa Startup