

ANSWER

Further responding to the Complaint, Defendant NCDOC avers:

INTRODUCTION

1. It is admitted that Plaintiff has purported to bring an action pursuant to 28 U.S.C. § 1983 for compensatory and punitive damages arising out of his detention and subsequent deportation by officials and employees of Immigration and Custom Enforcement (hereinafter, "ICE"). It is further admitted, upon information and belief, that Plaintiff suffers from mental illness. It is further admitted that in August 2008, during an intake interview upon his incarceration in the NCDOC, Plaintiff informed NCDOC personnel that he had been born in Mexico. It is further admitted that, based on Plaintiff's statement, NCDOC personnel referred Plaintiff to ICE. Except as herein admitted, the remaining allegations contained in Paragraph 1 of the Complaint are denied for lack of information and belief. It is specifically denied that Defendant NCDOC had no basis for believing that Plaintiff was not a United States citizen.

2. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 2 of the Complaint and the same are therefore denied.

3. The allegations contained in Paragraph 3 of the Complaint state legal conclusions and are directed at parties other than Defendant NCDOC and to which no response is required. To the extent a response is required, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 3 of the Complaint and the same are therefore denied.

4. The allegations contained in Paragraph 4 of the Complaint state legal conclusions and are directed at parties other than Defendant NCDOC and to which no response is required. To the

extent a response is required, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 4 of the Complaint and the same are therefore denied.

JURISDICTION AND VENUE

5. It is admitted that Plaintiff purports to state causes of action arising under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution, 42 U.S.C. § 1983, the Federal Tort Claims Act, 28 U.S.C. § 2671, et seq., and other state and federal laws. It is admitted that this Court has subject matter jurisdiction over the causes of action alleged by Plaintiff arising under the United States Constitution, 42 U.S.C. § 1983, the Federal Tort Claims Act and the federal Declaratory Judgment Act, codified at 28 U.S.C. §§ 2201(a) and 2202. It is specifically denied that this Court has subject matter jurisdiction over Plaintiff's Ninth, Tenth, and Eleventh Claims for Relief raising allegations of false arrest and imprisonment, negligence, and negligent infliction of emotional distress.

6. Admitted.

PARTIES

7. It is admitted, upon information and belief, that Plaintiff suffers from mental illness. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 7 of the Complaint and the same are therefore denied.

8. The allegations contained in Paragraph 8 of the Complaint are not directed at Defendant NCDOC and, therefore, no response is required. To the extent a response is required, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 8 of the Complaint and the same are therefore denied.

9. The allegations contained in Paragraph 9 of the Complaint are not directed at Defendant NCDOC and, therefore, no response is required. To the extent a response is required, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 9 of the Complaint and the same are therefore denied.

10. The allegations contained in Paragraph 10 of the Complaint are not directed at Defendant NCDOC and, therefore, no response is required. To the extent a response is required, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 10 of the Complaint and the same are therefore denied.

11. The allegations contained in Paragraph 11 of the Complaint are not directed at Defendant NCDOC and, therefore, no response is required. To the extent a response is required, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 11 of the Complaint and the same are therefore denied.

12. The allegations contained in Paragraph 12 of the Complaint are not directed at Defendant NCDOC and, therefore, no response is required. To the extent a response is required, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 12 of the Complaint and the same are therefore denied.

13. Admitted.

14. It is admitted that Defendant NCDOC operates Neuse Correctional Institution (hereinafter, "Neuse CI"), Greene Correctional Institution (hereinafter, "Greene CI"), and New Hanover Correctional Center (hereinafter, "New Hanover CC"). It is further admitted that Defendant NCDOC has established practices, policies and procedures relating to the detention, intake, screening, and transferring of inmates, for the determination and processing of an inmate's

immigration status, and for the provision of medical care to inmates incarcerated within the prison facilities operated by Defendant NCDOC. Except as herein admitted, the remaining allegations contained in Paragraph 14 of the Complaint are denied.

15. It is admitted that Plaintiff has names North Carolina Does 1-10 as defendants and purports to state claims for relief against them. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 15 of the Complaint and the same are therefore denied.

16. It is admitted that Plaintiff collectively refers to Defendant NCDOC and North Carolina Does 1-10 as “North Carolina Defendants.” Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 16 of the Complaint and the same are therefore denied.

17. Denied.

18. The allegations contained in Paragraph 18 of the Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied.

FACTUAL ALLEGATIONS

Mark Lyttle’s Background

19. It is admitted that Exhibit A to the Complaint appears to be a State of North Carolina Certificate of Live Birth which speaks for itself and is the best evidence of its contents. It is further admitted that Exhibit B to the Complaint appears to be a document entitled Final Judgment of Adoption which speaks for itself and is the best evidence of its contents. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 19 of the Complaint and the same are therefore denied.

20. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 20 of the Complaint and the same are therefore denied.

21. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 21 of the Complaint and the same are therefore denied.

22. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 22 of the Complaint and the same are therefore denied.

23. It is admitted, upon information and belief, that Plaintiff has previously been diagnosed with bipolar disorder, takes medication for that condition, and was a patient at Cherry Hospital, a psychiatric facility in Goldsboro, North Carolina in the summer of 2008. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 23 of the Complaint and the same are therefore denied.

24. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in paragraph 24 of the Complaint and the same are therefore denied.

25. Admitted.

Mark Lyttle's Arrest and Detention in North Carolina

26. It is admitted that, while a patient at Cherry Hospital, Plaintiff was charged with a misdemeanor offense of Assault on a Female, a violation of N.C.G.S. § 14-33(c)(2), for inappropriately touching a female staff member. It is further admitted that Plaintiff was arrested for that offense, was convicted, and was sentenced to serve 100 days in the custody of Defendant NCDOC. It is further admitted that Plaintiff was initially interviewed, processed, admitted, and housed at Neuse CI. Except as herein admitted, the remaining allegations contained in Paragraph

26 of the Complaint are denied.

27. It is admitted that, on 22 August 2008, Plaintiff was admitted to Neuse CI to begin serving his sentence. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 27 of the Complaint and the same are therefore denied.

28. It is admitted that, pursuant to an agreement between Defendant NCDOC and ICE, at least once a week, ICE agents visited certain Defendant NCDOC facilities, including Neuse CI, to interview inmates that Defendant NCDOC had reason to believe were foreign born and, therefore, not United States citizens. It is further admitted that Boyd Bennett, previously the Director of the Division of Prisons, a division of Defendant NCDOC, circulated a memorandum dated 6 June 2007, a document that speaks for itself and is the best evidence of its contents. Except as herein admitted, the remaining allegations contained in Paragraph 28 of the Complaint are denied.

29. Admitted.

30. It is admitted that, during the admission process at Neuse CI, Plaintiff was asked a series of biographical questions including where he was born. It is further admitted that, when asked where he was born, Plaintiff responded that he had been born in Mexico. It is further admitted that Plaintiff lacked any identification documenting his status as a United States citizen. It is further admitted that Plaintiff reported having a Social Security Number that employees at Neuse CI attempted to but could not verify. Except as herein admitted, the remaining allegations contained in Paragraph 30 of the Complaint are denied.

31. It is admitted that the records maintained by Defendant NCDOC list Plaintiff's country of birth as "Mexico" and his ethnicity as "Hispanic/Latino" and that such information was

based on Plaintiff's responses to biographical questions during his intake interview at Neuse CI. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 31 of the Complaint and the same are therefore denied.

32. It is admitted that ICE was notified of Plaintiff's response that he had been born in Mexico and that further investigation into Plaintiff's citizenship was initiated by ICE. Except as herein admitted, the remaining allegations contained in Paragraph 32 are denied.

33. It is admitted that Plaintiff was included in a list of inmates provided to ICE whom employees at Neuse CI had reason to believe were not United States citizens. It is further admitted that Plaintiff was included on the list because he had reported that he had been born in Mexico and had no documentation identifying himself as a United States citizen. It is further admitted that Plaintiff provided to employees at Neuse CI a purported Social Security number, which employees at Neuse CI attempted to but were unable to verify. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 33 of the Complaint and the same are therefore denied.

ICE Agents Interrogated Mr. Lyttle and Coerced Him Into Signing Documents

That Waived Important Legal Rights

34. It is admitted that, on 25 August 2008, Plaintiff was given and executed a document entitled "Non-Mandatory Consular Notification", which is the best evidence of its contents and speaks for itself. Except as herein admitted, the remaining allegations contained in Paragraph 34 of the Complaint are denied.

35. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 35 of the Complaint and the same are therefore denied.

36. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 36 of the Complaint and the same are therefore denied.

37. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 37 of the Complaint and the same are therefore denied.

38. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 38 of the Complaint and the same are therefore denied.

39. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 39 of the Complaint and the same are therefore denied.

40. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 40 of the Complaint and the same are therefore denied.

41. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 41 of the Complaint and the same are therefore denied.

42. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 42 of the Complaint and the same are therefore denied.

43. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 43 of the Complaint and the same are therefore denied.

44. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 44 of the Complaint and the same are therefore denied.

45. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 45 of the Complaint and the same are therefore denied.

46. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 46 of the Complaint and the same are therefore denied.

47. It is admitted that Defendant NCDOC received a document entitled Immigration Detainer - Notice of Action, dated 5 September 2008 and signed by "Robert Kendall, IEA." It is further admitted that the Immigration Detainer - Notice of Action advised Defendant NCDOC that an investigation had been initiated to determine whether Plaintiff was subject to removal from the United States and that Federal regulations required Defendant NCDOC to detain an alien for up to forty-eight hours to allow the Department of Homeland Security to assume custody of the suspected alien. It is further admitted that the Immigration Detainer – Notice of Action lists Plaintiff's nationality as "Mexican." Except as herein admitted, the remaining allegations contained in Paragraph 47 of the Complaint are denied.

48. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 48 of the Complaint and the same are therefore denied.

49. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 49 of the Complaint and the same are therefore denied.

50. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 50 of the Complaint and the same are therefore denied.

51. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 51 of the Complaint and the same are therefore denied.

52. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 52 of the Complaint and the same are therefore denied.

53. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 53 of the Complaint and the same are therefore denied.

54. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 54 of the Complaint and the same are therefore denied.

55. It is specifically denied that, during his initial intake interview at Neuse CI, Plaintiff responded that he had been born in North Carolina. It is further denied that Defendant NCDOC had any obligation to verify Plaintiff's citizenship, as Defendant NCDOC's purpose as outlined in N.C.G.S. § 148-261 and -262 does not require or provide for the verification of the authenticity of an incarcerated inmate's claimed country of origin. Except as herein specifically denied, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 55 of the Complaint and the same are therefore denied.

56. It is admitted, upon information and belief, that Defendant NCDOC did not attempt to contact Plaintiff's family members, obtain a copy of his birth certificate from North Carolina Vital Records, or refer Plaintiff to a legal representative familiar with deportation proceedings to protect Plaintiff's rights and it is specifically denied that Defendant NCDOC had any legal obligation, responsibility, authority, or need to do so. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 56 of the Complaint and the same are therefore denied.

57. Admitted.

58. It is admitted that, upon his admission into NCDOC, Plaintiff had a projected release date of 26 October 2008. It is further admitted that, on 28 October 2008, Plaintiff was released into the custody of ICE officials pursuant to the Immigration Detainer – Notice of Action form executed by Robert Kendall on 5 September 2008. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 58 of

the Complaint and the same are therefore denied.

59. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 59 of the Complaint and the same are therefore denied..

60. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 60 of the Complaint and the same are therefore denied.

61. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 61 of the Complaint and the same are therefore denied.

62. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 62 of the Complaint and the same are therefore denied.

63. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 63 of the Complaint and the same are therefore denied.

64. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 64 of the Complaint and the same are therefore denied.

The Hayes Memo

65. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 65 of the Complaint and the same are therefore denied.

66. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 66 of the Complaint and the same are therefore denied.

67. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 67 of the Complaint and the same are therefore denied.

68. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 68 of the Complaint and the same are therefore denied.

69. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 69 of the Complaint and the same are therefore denied.

70. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 70 of the Complaint and the same are therefore denied.

71. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 71 of the Complaint and the same are therefore denied.

Ice Agents Disregarded Mr. Lyttle's Claim of U.S. Citizenship And Violated The Clear Directives Of The Hayes Memo By Coercing and Manipulating Mr. Lyttle Into Signing Additional Conflicting Statements

72. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 72 of the Complaint and the same are therefore denied.

73. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 73 of the Complaint and the same are therefore denied.

74. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 74 of the Complaint and the same are therefore denied.

75. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 75 of the Complaint and the same are therefore denied.

76. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 76 of the Complaint and the same are therefore denied.

The Removal of Mr. Lyttle From The United States

77. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 77 of the Complaint and the same are therefore denied.

78. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 78 of the Complaint and the same are therefore denied.

79. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 79 of the Complaint and the same are therefore denied.

80. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 80 of the Complaint and the same are therefore denied.

81. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 81 of the Complaint and the same are therefore denied.

82. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 82 of the Complaint and the same are therefore denied.

83. Denied.

84. Denied.

85. Denied.

86. Denied.

87. It is admitted that the identification, investigation into the legal status, and deportation of aliens is neither the responsibility nor the purpose of Defendant NCDOC as set forth in N.C.G.S. §§ 148-261 and -262 or a subject for which Defendant NCDOC requires training and supervision by ICE. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 87 of the Complaint and the same are therefore denied.

88. Denied.

89. It is admitted that Plaintiff informed employees at Neuse CI that he had been born in Mexico. It is further admitted that Plaintiff reported to employees at Neuse CI a purported Social

Security number, which the employees at Neuse CI attempted to but were unable to verify. Except as herein admitted, the remaining allegations contained in Paragraph 89 of the Complaint are denied. It is specifically denied that Defendant NCDOC had the legal obligation, responsibility, authority or need to confirm the veracity of Plaintiff's claims of any particular citizenship, as such a task is outside the purpose of Defendant NCDOC as set forth in N.C.G.S. §§ 148-261 and -262. It is further specifically denied that employees of Neuse CI identified Plaintiff's race as "Oriental."

90. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 90 of the Complaint and the same are therefore denied.

Mr. Lyttle In Central America

91. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 91 of the Complaint and the same are therefore denied.

92. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 92 of the Complaint and the same are therefore denied.

93. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 93 of the Complaint and the same are therefore denied.

94. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 94 of the Complaint and the same are therefore denied.

95. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 96 of the Complaint and the same are therefore denied.

97. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 97 of the Complaint and the same are therefore denied.

98. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 98 of the Complaint and the same are therefore denied.

99. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 99 of the Complaint and the same are therefore denied.

100. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 100 of the Complaint and the same are therefore denied.

101. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 101 of the Complaint and the same are therefore denied.

102. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 102 of the Complaint and the same are therefore denied.

103. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 103 of the Complaint and the same are therefore denied.

104. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 104 of the Complaint and the same are therefore denied.

105. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 105 of the Complaint and the same are therefore denied.

106. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 106 of the Complaint and the same are therefore denied.

Mr. Lyttle's Return Home To The United States

107. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 107 of the Complaint and the same are therefore denied.

108. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 108 of the Complaint and the same are therefore denied.

109. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 109 of the Complaint and the same are therefore denied.

110. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 110 of the Complaint and the same are therefore denied.

111. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 111 of the Complaint and the same are therefore denied.

112. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 112 of the Complaint and the same are therefore denied.

113. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 113 of the Complaint and the same are therefore denied.

114. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 114 of the Complaint and the same are therefore denied.

115. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 115 of the Complaint and the same are therefore denied.

116. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 116 of the Complaint and the same are therefore denied.

117. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 117 of the Complaint and the same are therefore denied.

118. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 118 of the Complaint and the same are therefore denied.

119. It is admitted that Defendant NCDOC has not issued an explanation or apology to Plaintiff as it is specifically denied that Defendant NCDOC violated Plaintiff's rights or otherwise

caused any of Plaintiff's alleged injuries stemming from his deportation by ICE. Except as herein admitted, Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 119 of the Complaint and the same are therefore denied.

120. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 120 of the Complaint and the same are therefore denied.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**(Fifth Amendment to the United States Constitution / Due Process)
(*Bivens v. Six Unknown Agents Of Federal Bureau of Narcotics*)
(Against Defendants Robert Kendall, Dashanta Faucette, and Dean Caputo and ICE Doe
Defendants 1-10)**

121. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

122. The allegations contained in Paragraph 122 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 122 of the Complaint are denied.

123. The allegations contained in Paragraph 123 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 123 of the Complaint are denied.

124. The allegations contained in Paragraph 124 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 124 of the Complaint are denied.

125. The allegations contained in Paragraph 125 of the Complaint are not directed at

Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 125 of the Complaint are denied.

126. The allegations contained in Paragraph 126 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 126 of the Complaint are denied.

127. The allegations contained in Paragraph 127 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 127 of the Complaint are denied.

128. The allegations contained in Paragraph 128 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 128 of the Complaint are denied.

SECOND CLAIM FOR RELIEF

(Fifth Amendment to the United States Constitution / Equal Protection)
(Bivens v. Six Unknown Agents Of Federal Bureau of Narcotics)
(Against Defendants Robert Kendall, Dashanta Faucette, and Dean Caputo and ICE Doe Defendants 1-10)

129. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraph 1 through 120 of the Complaint as if fully set forth herein.

130. The allegations contained in Paragraph 130 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 130 of the Complaint are denied.

131. The allegations contained in Paragraph 131 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a

response is required, the allegations contained in Paragraph 131 of the Complaint are denied.

132. The allegations contained in Paragraph 132 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 132 of the Complaint are denied.

133. The allegations contained in Paragraph 133 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 133 of the Complaint are denied.

134. The allegations contained in Paragraph 134 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 134 of the Complaint are denied.

THIRD CLAIM FOR RELIEF

**(Fourth Amendment to the U.S. Constitution)
(*Bivens v. Six Unknown Agents Of Federal Bureau of Narcotics*)
(Against Defendants Robert Kendall, Dashanta Faucette, and Dean Caputo and ICE Doe
Defendants 1-10)**

135. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

136. It is admitted that, upon his admission into the custody of the NCDOC, a projected release date of 26 October 2008 was calculated for Plaintiff. It is further admitted that, in accordance with the Immigrant Detainer – Notice of Action form issued by Robert Kendall directing that Defendant NCDOC not release Plaintiff except into the custody of the Department of Homeland Security, Plaintiff remained in the custody of Defendant NCDOC until 28 October 2008. The remaining allegations contained in Paragraph 136 of the Complaint are not directed at Defendant

NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the remaining allegations contained in Paragraph 136 of the Complaint are denied. same are therefore denied.

137. The allegations contained in Paragraph 137 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 137 of the Complaint are denied.

138. The allegations contained in Paragraph 138 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 138 of the Complaint are denied.

139. The allegations contained in Paragraph 139 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 139 of the Complaint are denied.

140. The allegations contained in Paragraph 140 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 140 of the Complaint are denied.

141. The allegations contained in Paragraph 141 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 141 of the Complaint are denied.

FOURTH CLAIM FOR RELIEF

(False Imprisonment)
(Federal Tort Claims Act)
(Against Defendant United States of America)

142. Defendant NCDOC incorporates and realleges its responses to the allegations

contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

143. The allegations contained in Paragraph 143 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 143 of the Complaint are denied.

144. The allegations contained in Paragraph 144 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 144 of the Complaint are denied.

145. The allegations contained in Paragraph 145 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 145 of the Complaint are denied.

146. Defendant lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 146 of the Complaint and the same are therefore denied.

147. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 147 of the Complaint and the same are therefore denied.

FIFTH CLAIM FOR RELIEF

**(False Imprisonment)
(Federal Tort Claims Act)
(Against Defendant United States of America)**

148. Defendant NCDOC incorporates and realleges its responses to the allegations in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

149. The allegations contained in Paragraph 149 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 149 of the Complaint are denied.

150. The allegations contained in Paragraph 150 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 150 of the Complaint are denied.

151. The allegations contained in Paragraph 151 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 151 of the Complaint are denied.

152. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 152 of the Complaint and the same are therefore denied.

153. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 147 of the Complaint and the same are therefore denied.

SIXTH CLAIM FOR RELIEF

**(Intentional Infliction of Emotional Distress)
(Federal Torts Claim Act)
(Against Defendant United States of America)**

154. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

155. The allegations contained in Paragraph 155 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 155 of the Complaint are denied.

156. The allegations contained in Paragraph 156 of the Complaint are not directed at Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 156 of the Complaint are denied.

157. The allegations contained in Paragraph 157 of the Complaint are not directed at

Defendant NCDOC and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 157 of the Complaint are denied.

158. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 158 of the Complaint and the same are therefore denied.

159. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 159 of the Complaint and the same are therefore denied.

160. Defendant NCDOC lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 160 of the Complaint and the same are therefore denied.

SEVENTH CLAIM FOR RELIEF

**(Fifth and Fourteenth Amendments to the United States Constitution)
(42 U.S.C. § 1983)
(Against the North Carolina Defendants)**

161. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

162. Denied. It is specifically denied that Defendant NCDOC caused or participated in the deportation of Plaintiff to Mexico.

163. It is admitted that Defendant NCDOC acted under color of law and acted in the performance of official duties under federal and state laws and regulations. Except as herein admitted, the remaining allegations contained in Paragraph 163 of the Complaint are denied.

164. Denied.

165. Denied.

166. Denied.

EIGHTH CLAIM FOR RELIEF

(Fourteenth Amendment to the United States Constitution)

(42 U.S.C. § 1983)

(Against the North Carolina Defendants)

167. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

168. Denied.

169. It is admitted that Defendant NCDOC acted under color of law and acted or purported to act in the performance of official duties under federal and state laws and regulations. Except as herein admitted, the remaining allegations contained in Paragraph 169 of the Complaint are denied. It is specifically denied that Defendant NCDOC discriminated against Plaintiff. It is further specifically denied that Defendant NCDOC acted with the intent or purpose to discriminate against Plaintiff.

170. Denied.

171. Denied.

172. Denied.

NINTH CLAIM FOR RELIEF

(False Arrest and Imprisonment)

(North Carolina Tort Claim Act)

(Against the North Carolina Defendants)

173. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

174. It is admitted, upon information and belief, that Plaintiff never consented to the imposition of the immigration hold and his continued detention by ICE thereafter. Except as herein

admitted, the remaining allegations contained in Paragraph 174 of the Complaint are denied. It is specifically denied that Defendant NCDOC lacked a legal basis to hold Plaintiff until he could be relinquished into the custody of ICE agents when the Immigration Detainer – Notice of Action issued by Robert Kendall on 5 September 2008 required Defendant NCDOC to do so.

175. It is admitted that Defendant NCDOC is a State agency and has no scope of employment. Except as herein admitted, the remaining allegations contained in Paragraph 175 of the Complaint are denied.

176. Denied.

TENTH CLAIM FOR RELIEF

(Negligence) (North Carolina Tort Claim Act) (Against the North Carolina Defendants)

177. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

178. Denied. It is specifically denied that: (1) Defendant NCDOC owed Plaintiff a duty of reasonable care to act or not act in such a way so as to confirm his citizenship or prevent his deportation by ICE; (2) Defendant NCDOC breached any alleged duty; (3) Defendant NCDOC knew or should have known that reporting to ICE Plaintiff's response to questions about where he was born would result in Plaintiff's allegedly wrongful deportation; and (4) Defendant NCDOC knew or should have known that such reporting posed a substantial risk of grave harm to Plaintiff.

179. Denied.

180. It is admitted that Defendant NCDOC is a State agency and has no scope of employment. Except as herein admitted, the remaining allegations contained in Paragraph 180 of

the Complaint are denied.

181. Denied.

182. It is admitted that Plaintiff has filed a claim with the North Carolina Industrial Commission pursuant to the North Carolina Tort Claim Act seeking recovery for alleged injuries caused by the alleged negligence of Ennis Oates, Administrator of Neuse CI, as well as other unnamed employees of Defendant NCDOC arising out of the circumstances of his deportation as alleged in the Complaint. Except as herein admitted, the remaining allegations contained in Paragraph 182 of the Complaint are denied.

ELEVENTH CLAIM FOR RELIEF

**(Negligent Infliction of Emotional Distress)
(North Carolina Tort Claim Act)
(Against the North Carolina Defendants)**

183. Defendant NCDOC incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 120 of the Complaint as if fully set forth herein.

184. Denied.

185. Denied.

186. Denied.

187. It is admitted that Plaintiff has filed a claim with the North Carolina Industrial Commission pursuant to the North Carolina Tort Claim Act seeking recovery for alleged injuries caused by the alleged negligence of Ennis Oates, Administrator of Neuse CI, as well as other unnamed employees of Defendant NCDOC arising out of the circumstances of his deportation as alleged in the Complaint. Except as herein admitted, the remaining allegations contained in Paragraph 187 of the Complaint are denied.

**FURTHER ANSWERING THE COMPLAINT AND AS FURTHER DEFENSES
THERE TO, DEFENDANT NCDOC AVERS:**

FIRST FURTHER DEFENSE

Plaintiff's Seventh Claim for Relief against Defendant NCDOC for violations of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 is barred by the doctrine of sovereign immunity, depriving this Court of subject matter jurisdiction over the claim and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

SECOND FURTHER DEFENSE

In the alternative, Plaintiff's Seventh Claim for Relief against Defendant NCDOC for violations of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 is barred by the doctrine of sovereign immunity and, therefore, fails to state a claim upon which relief can be granted and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

THIRD FURTHER DEFENSE

Plaintiff's Seventh Claim for Relief against Defendant NCDOC for violations of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 is barred by the immunity bestowed by the Eleventh Amendment to the United States Constitution, depriving this Court of subject matter jurisdiction over the claim and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

FOURTH FURTHER DEFENSE

In the alternative, Plaintiff's Seventh Claim for Relief against Defendant NCDOC for

violations of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 is barred by the doctrine of sovereign immunity and, therefore, fails to state a claim upon which relief can be granted and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

FIFTH FURTHER DEFENSE

Plaintiff's Eighth Claim for Relief against Defendant NCDOC for violations of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 is barred by the doctrine of sovereign immunity, depriving this Court of subject matter jurisdiction over the claim and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

SIXTH FURTHER DEFENSE

In the alternative, Plaintiff's Eighth Claim for Relief against Defendant NCDOC for violations of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 is barred by the doctrine of sovereign immunity and, therefore, fails to state a claim upon which relief can be granted and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

SEVENTH FURTHER DEFENSE

Plaintiff's Eighth Claim for Relief against Defendant NCDOC for violations of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 is barred by the immunity bestowed by the Eleventh Amendment to the United States Constitution, depriving this Court of subject matter jurisdiction over the claim and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

EIGHTH FURTHER DEFENSE

In the alternative, Plaintiff's Eighth Claim for Relief against Defendant NCDOC for violations of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 is barred by the doctrine of sovereign immunity and, therefore, fails to state a claim upon which relief can be granted and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

NINTH FURTHER DEFENSE

Plaintiff's Ninth Claim for Relief against Defendant NCDOC for false arrest and imprisonment under North Carolina law is barred by the doctrine of sovereign immunity, depriving this Court of subject matter jurisdiction over the claim and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

TENTH FURTHER DEFENSE

Plaintiff's Ninth Claim for Relief against Defendant NCDOC for false arrest and imprisonment under North Carolina law is barred by the doctrine of sovereign immunity and, therefore, fails to state a claim upon which relief can be granted and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

ELEVENTH FURTHER DEFENSE

Plaintiff's Tenth Claim for Relief against Defendant NCDOC for negligence pursuant to the North Carolina Tort Claims Act is barred by the doctrine of sovereign immunity, depriving this Court of subject matter jurisdiction over the claim and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

TWELFTH FURTHER DEFENSE

In the alternative, Plaintiff's Tenth Claim for Relief against Defendant NCDOC for negligence pursuant to the North Carolina Tort Claim Act is barred by the immunity bestowed by the Eleventh Amendment to the United States Constitution, depriving this Court of subject matter jurisdiction and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

THIRTEENTH FURTHER DEFENSE

Plaintiff's Eleventh Claim for Relief against Defendant NCDOC for negligent infliction of emotional distress pursuant to the North Carolina Tort Claims Act is barred by the doctrine of sovereign immunity, depriving this Court of subject matter jurisdiction over the claim and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

FOURTEENTH FURTHER DEFENSE

In the alternative, Plaintiff's Eleventh Claim for Relief against Defendant NCDOC for negligent infliction of emotional distress pursuant to the North Carolina Tort Claims Act is barred by the immunity bestowed by the Eleventh Amendment to the United States Constitution, depriving this Court of subject matter jurisdiction and, pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, Defendant NCDOC moves to dismiss that claim.

FIFTEENTH FURTHER DEFENSE

Plaintiff's Tenth and Eleventh Claims for Relief against Defendant NCDOC for negligence and negligent infliction of emotional distress fail to state a claim upon which relief can be granted as Plaintiff fails to identify the existence of a legal duty owed to him by Defendant NCDOC to

prevent his deportation by federal officials or any injuries that might have resulted therefrom and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant NCDOC moves that those claims be dismissed.

SIXTEENTH FURTHER DEFENSE

Even if Defendant NCDOC was negligent, which is again denied, that negligence was not the proximate cause of Plaintiff's alleged damages and, as a result, Plaintiff's Tenth and Eleventh Claims for Relief fail to state a claim upon which relief can be granted and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant NCDOC moves that those claims be dismissed. The sole and proximate cause of Plaintiff's deportation and any injuries resulting therefrom was a result of the acts and omissions of Defendants Faucette, Kendall, Caputo, ICE Does 1-10 and the United States of America, by virtue of their individual and/or collective misidentification of Plaintiff as a citizen of Mexico, their individual and/or collective failure to verify Plaintiff's status as a United States citizen, and their individual and/or collective efforts to detain and deport Plaintiff.

SEVENTEENTH FURTHER DEFENSE

Even if Defendant NCDOC was negligent, which is again denied, that negligence was not the proximate cause of Plaintiff's alleged damages arising out of his deportation. If it is determined that the alleged, but denied, acts of Defendant NCDOC were not in compliance with applicable standards and laws, Defendant NCDOC is still not responsible for Plaintiff's damages by virtue of the intervening and superseding and/or intentional acts of Defendants Faucette, Caputo, Kendall, ICE Does 1-10 and the United States of America and their individual or collective misidentification of Plaintiff as a non-U.S. citizen and Plaintiff's subsequent deportation and alleged injuries.

EIGHTEENTH FURTHER DEFENSE

Even if Defendant NCDOC was negligent, which is denied, Plaintiff Tenth and Eleventh Claims for Relief and any damages arising therefrom are barred by virtue of Plaintiff's own contributory negligence in that Defendant NCDOC's notification to ICE of Plaintiff's immigration status was proximately caused by Plaintiff's own statements to personnel at Neuse CI that he was born in Mexico and Defendant NCDOC pleads Plaintiff's contributory negligence in bar of Plaintiff's Tenth and Eleventh Claims for Relief.

NINETEENTH FURTHER DEFENSE

Plaintiff fails to allege or otherwise describe any facts to support a claim for punitive damages against Defendant NCDOC which therefore respectfully requests that Plaintiff's request for punitive damages in the Prayer for Relief be denied.

WHEREFORE, Defendant NCDOC, having answered the Complaint of the Plaintiff, prays that:

1. The Plaintiff have and recover nothing of it in this action;
2. The costs of this action be taxed against the Plaintiff; and
3. The Court grant to Defendant NCDOC such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Defendant NCDOC hereby demands a trial by jury on all of the issues raised by the pleadings in this action.

Respectfully submitted, this the 23rd day of December, 2010.

ROY COOPER
Attorney General

/s/ Joseph Finarelli
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 23 December 2010, I electronically filed the foregoing Motion to Dismiss and Answer of Defendant North Carolina Department of Correction with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following counsel of record:

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This the 23rd day of December, 2010.

Respectfully submitted,

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