

IN THE UNITED STATES DISTRICT COURT
 FOR THE EASTERN DISTRICT OF NORTH CAROLINA
 EASTERN DIVISION

No. 4:10-CV-142-D

MARK DANIEL LYTTLE,)	
)	
Plaintiffs,)	
)	
v.)	ANSWER OF DEFENDANT
)	MARY HINES
)	
THE UNITED STATES OF AMERICA, et)	
al.,)	
)	
Defendants.)	

NOW COMES Defendant Mary Hines (hereinafter, “Defendant Hines”), by and through counsel, North Carolina Attorney General Roy Cooper and Assistant Attorney General Joseph Finarelli, answering the Amended Complaint and avers:

INTRODUCTION

1. It is admitted that Plaintiff has purported to bring an action pursuant to 28 U.S.C. § 1983 for injunctive relief and 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 on 25 August 2008, during an intake interview upon his incarceration in the NCDOC, Plaintiff informed Defendant Marilyn Stephenson (hereinafter, “Defendant Stephenson”) that he had been born in Mexico. It is further admitted, upon information and belief, that Defendant Stephenson identified Plaintiff as someone to be referred to ICE for investigation into the suitability of deportation. 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 Hines had ample evidence that Plaintiff was a U.S. citizen.

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

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

4. The allegations contained in Paragraph 4 of the Amended Complaint state legal conclusions, are directed at parties other than Defendant Hines, and are allegations to which no response is required. To the extent a response is required, Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 4 of the Amended Complaint and the same are therefore denied.

JURISDICTION AND VENUE

5. Admitted.

6. Admitted, upon information and belief.

PARTIES

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

8. Admitted, upon information and belief.

9. Admitted, upon information and belief.
10. Admitted, upon information and belief.
11. Admitted, upon information and belief.
12. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 12 of the Amended Complaint and the same are therefore denied.
13. Admitted.
14. Admitted, upon information and belief.
15. Admitted.
16. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 16 of the Amended Complaint and the same are therefore denied.
17. Admitted.
18. The allegations contained in Paragraph 18 of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. It is specifically denied that Defendant Hines acted in bad faith and contrary to established law and principles of constitutional and statutory law.
19. The allegations contained in Paragraph 19 of the Amended Complaint state legal conclusions to which no response is required. To the extent a response is required, the allegations are denied. It is specifically denied that Defendant Hines caused or is liable for any unconstitutional and unlawful conduct directed towards Plaintiff or any resulting injuries suffered by him.

FACTUAL ALLEGATIONS

Mark Lyttle's Background

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

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

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

23. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 23 of the Amended Complaint and the same are therefore denied.

24. It is admitted, upon information and belief, that Plaintiff has been diagnosed with bipolar disorder. Except as herein admitted, Defendant Hines lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 24 of the Amended Complaint and the same are therefore denied.

25. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 25 of the Amended Complaint and the same are therefore denied.

26. Admitted, upon information and belief.

Mark Lyttle's Arrest and Detention in North Carolina

27. It is admitted, upon information and belief, 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 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 27 of the Amended Complaint are denied.

28. It is admitted that, on 22 August 2008, Plaintiff was admitted to Neuse CI to begin serving his sentence. Except as herein admitted, Defendant Hines lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 28 of the Amended Complaint and the same are therefore denied.

29. It is admitted, upon information and belief, that, pursuant to an arrangement between NCDOC and ICE, at least once a week, ICE agents visited certain NCDOC facilities, including Neuse CI, to interview inmates that employees of NCDOC had reason to believe were foreign born and, therefore, not United States citizens. It is further admitted that these inmates were subsequently referred to ICE for investigation into the suitability of deportation. It is further admitted, upon information and belief, that Boyd Bennett, previously the Director of the Division of Prisons, a division of NCDOC, circulated a memorandum dated 6 June 2007 discussing this arrangement, a document that speaks for itself and is the best evidence of its contents. Except as herein admitted, the remaining allegations contained in Paragraph 29 of the Amended Complaint are denied.

30. Admitted, upon information and belief.

31. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 31 of the Amended Complaint and the same are therefore denied.

32. It is admitted, upon information and belief, that, during the admission process at Neuse CI, Defendant Stephenson asked Plaintiff a series of biographical questions including where

he was born. It is further admitted, upon information and belief, that, when asked where he was born, Plaintiff responded that he had been born in Mexico. Except as herein admitted, the remaining allegations contained in Paragraph 32 of the Amended Complaint are denied.

33. It is admitted, upon information and belief, that Defendant Stephenson listed 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 Hines lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 33 of the Amended Complaint and the same are therefore denied.

34. It is admitted, upon information and belief, that ICE Agents interviewed Plaintiff at Neuse CI on 2 September 2008. It is further admitted that Defendant Hines interviewed Plaintiff on 16 September 2008. Except as herein admitted, the remaining allegations contained in Paragraph 34 of the Amended Complaint are denied. It is specifically denied that Defendant Hines ever treated Plaintiff.

35. It is admitted that Defendant Hines is a Diagnostic Case Analyst for NCDOC at Neuse CI. It is further admitted that, on 16 September 2008, Defendant Hines interviewed Plaintiff and input information into OPUS. Except as herein admitted, the remaining allegations contained in Paragraph 35 of the Amended Complaint are denied.

36. It is admitted, upon information and belief, that Defendant Stephenson referred Plaintiff to ICE for investigation into his suitability for possible deportation and that an investigation into Plaintiff's citizenship was subsequently initiated by ICE. It is further admitted, upon information and belief, that Plaintiff was included on the list because he had reported to Defendant

Stephenson that he had been born in Mexico. Except as herein admitted, the remaining allegations contained in Paragraph 36 of the Amended Complaint are denied.

37. Denied.

***ICE Agents Interrogated Mr. Lyttle and Coerced Him Into Signing Documents
That Waived Important Legal Rights***

38. It is admitted, upon information and belief, 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 38 of the Amended Complaint are denied.

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

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

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

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

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

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

45. Defendant Hines lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 45 of the Amended Complaint and the same are therefore denied.

46. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 46 of the Amended Complaint and the same are therefore denied.

47. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 47 of the Amended Complaint and the same are therefore denied.

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

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

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

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

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

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

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

55. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 55 of the Amended Complaint and the same are therefore denied.

56. Defendant Hines lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 56 of the Amended Complaint and the same are therefore denied.

57. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 57 of the Amended Complaint and the same are therefore denied.

58. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 58 of the Amended Complaint and the same are therefore denied.

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

60. It is admitted that, during her interview of Plaintiff on 16 September 2008, Defendant Hines reviewed with Plaintiff the information entered by Defendant Stephenson into OPUS for accuracy. It is further admitted that, during this interview, Plaintiff reported to Defendant Hines that his father was from Mexico and that Plaintiff himself had been born in Mexico and was adopted. Except as herein admitted, Defendant Hines lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 60 of the Amended Complaint and the same are therefore denied. It is specifically denied that Defendant Hines had any legal obligation to verify Plaintiff's citizenship.

61. It is admitted that Defendant Hines made no attempt to contact Plaintiff's family or to obtain Plaintiff's birth certificate from North Carolina Vital Records. It is further admitted that Defendant Hines made no attempt to refer Plaintiff to a legal representative familiar with deportation proceedings to protect Plaintiff's rights. Except as herein admitted, Defendant Hines lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 61 of the Amended Complaint and the same are therefore denied. It is specifically denied that Defendant Hines had any legal obligation, responsibility, authority, or need to contact Plaintiff's

family, obtain Plaintiff's birth certificate from North Carolina Vital Records, or refer Plaintiff to a legal representative.

Mr. Lyttle's Transfer to Stewart Detention Center to Await Removal

62. Admitted, upon information and belief.

63. It is admitted, upon information and belief, that, upon his admission into NCDOC, Plaintiff had a projected release date of 26 October 2008. It is further admitted, upon information and belief, that, on 28 October 2008, Plaintiff was released into the custody of ICE officials pursuant to the documentation provided to NCDOC by the ICE Defendants in early September 2008. Except as herein admitted, Defendant Hines lacks sufficient knowledge and information to admit or deny the remaining allegations contained in Paragraph 63 of the Amended Complaint and the same are therefore denied.

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

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

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

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

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

69. Defendant Hines lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 69 of the Amended Complaint and the same are therefore denied.

The Hayes Memo

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

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

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

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

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

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

76. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 76 of the Amended 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

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

78. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 78 of the Amended Complaint and the same are therefore denied.

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

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

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

The Removal of Mr. Lyttle From The United States

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

83. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 83 of the Amended Complaint and the same are therefore denied.

84. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 84 of the Amended Complaint and the same are therefore denied.

85. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 85 of the Amended Complaint and the same are therefore denied.

86. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 86 of the Amended Complaint and the same are therefore denied.

87. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 87 of the Amended Complaint and the same are therefore denied.

88. Denied.

89. Denied.

90. Denied.

91. Denied. It is specifically denied that Defendant Hines deliberately discriminated against Plaintiff on the basis of his perceived race and/or ethnicity in violation of his constitutional rights.

92. It is admitted that Defendant Hines has received no training from ICE personnel. Except as herein admitted, Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 92 of the Amended Complaint and the same are therefore denied.

93. It is specifically denied that Defendant Hines exhibited indifference to the rights and well-being of Plaintiff. It is further specifically denied that Defendant Hines intentionally discriminated against Defendant on the basis of his race. Except as herein specifically denied, Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 93 of the Amended Complaint and the same are therefore denied. .

94. It is admitted that Defendant Hines asked Plaintiff where he was born and that Plaintiff responded that he had been born in Mexico. It is further admitted, upon information and belief, that Plaintiff, when asked, also informed Defendant Stephenson that he had been born in Mexico. It is further admitted that Plaintiff reported to Defendant Stephenson a purported Social Security number, which could not be verified. It is further admitted that Defendant Hines made no additional effort to confirm Plaintiff's citizenship status. Except as herein admitted, the remaining allegations contained in Paragraph 94 of the Amended Complaint are denied. It is specifically denied that Defendant Hines had the legal obligation, responsibility, or need to confirm the veracity of Plaintiff's claims of any particular citizenship, as such a task is, upon information and belief, bestowed on the Department of Homeland Security and ICE prior to an individual's deportation from

the United States. It is further specifically denied that Defendant Hines intentionally discriminated against or was deliberately indifferent towards Plaintiff (or any other inmate) on the basis of a Latino, Hispanic, or other race/ethnicity.

95. It is denied that Plaintiff was deported as a direct and foreseeable consequence of any practice or procedure utilized by Defendant Hines. Except as herein denied, Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 95 of the Amended Complaint and the same are therefore denied.

Mr. Lyttle In Central America

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

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

98. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 98 of the Amended Complaint and the same are therefore denied.

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

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

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

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

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

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

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

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

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

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

109. Defendant Hines lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 109 of the Amended Complaint and the same are therefore denied.

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

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

Mr. Lyttle's Return Home To The United States

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

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

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

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

116. Defendant Hines lacks sufficient knowledge and information to admit or deny the

allegations contained in Paragraph 116 of the Amended Complaint and the same are therefore denied.

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

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

119. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 119 of the Amended Complaint and the same are therefore denied.

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

121. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 121 of the Amended Complaint and the same are therefore denied.

122. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 122 of the Amended Complaint and the same are therefore denied.

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

denied.

124. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 124 of the Amended Complaint and the same are therefore denied.

125. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 125 of the Amended 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)

126. Defendant Hines incorporates and realleges her responses to the allegations contained in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

127. The allegations contained in Paragraph 127 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

128. The allegations contained in Paragraph 128 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

129. The allegations contained in Paragraph 129 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 129 of the Amended Complaint are denied.

130. The allegations contained in Paragraph 130 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

131. The allegations contained in Paragraph 131 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

132. The allegations contained in Paragraph 132 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

133. The allegations contained in Paragraph 133 of the Amended Complaint are not directed at Defendant Hines 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 Amended 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)**

134. Defendant Hines incorporates and realleges her responses to the allegations contained in Paragraph 1 through 125 of the Amended Complaint as if fully set forth herein.

135. The allegations contained in Paragraph 135 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 135 of the Amended Complaint are denied.

136. The allegations contained in Paragraph 136 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 136 of the Amended Complaint are denied.

137. The allegations contained in Paragraph 137 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

138. The allegations contained in Paragraph 138 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

139. The allegations contained in Paragraph 139 of the Amended Complaint are not directed at Defendant Hines 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 Amended 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)**

140. Defendant Hines incorporates and realleges her responses to the allegations contained in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

141. It is admitted, upon information and belief, that Plaintiff completed serving his sentence for assault on a female on or about 26 October 2008. Except as herein admitted, the remaining allegations contained in Paragraph 141 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the remaining allegations contained in Paragraph 141 of the Amended Complaint are denied.

142. The allegations contained in Paragraph 142 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 142 of the Amended Complaint are denied.

143. The allegations contained in Paragraph 143 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

144. The allegations contained in Paragraph 144 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

145. The allegations contained in Paragraph 145 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

146. The allegations contained in Paragraph 146 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 146 of the Amended Complaint are denied.

FOURTH CLAIM FOR RELIEF

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

147. Defendant Hines incorporates and realleges her responses to the allegations contained in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

148. The allegations contained in Paragraph 148 of the Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 148 of the Amended Complaint are

denied.

149. The allegations contained in Paragraph 149 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

150. The allegations contained in Paragraph 150 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

151. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 151 of the Amended Complaint and the same are therefore denied.

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

FIFTH CLAIM FOR RELIEF

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

153. Defendant Hines incorporates and realleges her responses to the allegations in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

154. The allegations contained in Paragraph 154 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the

extent a response is required, the allegations contained in Paragraph 154 of the Amended Complaint are denied.

155. The allegations contained in Paragraph 155 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

156. The allegations contained in Paragraph 156 of the Amended Complaint are not directed at Defendant Hines 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 Amended Complaint are denied.

157. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 157 of the Amended Complaint and the same are therefore denied.

158. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 158 of the Amended 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)**

159. Defendant Hines incorporates and realleges her responses to the allegations contained in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

160. The allegations contained in Paragraph 160 of the Amended Complaint are not

directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 160 of the Amended Complaint are denied.

161. The allegations contained in Paragraph 161 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 161 of the Amended Complaint are denied.

162. The allegations contained in Paragraph 162 of the Amended Complaint are not directed at Defendant Hines and state legal conclusions to which no response is required. To the extent a response is required, the allegations contained in Paragraph 162 of the Amended Complaint are denied.

163. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 163 of the Amended Complaint and the same are therefore denied.

164. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 164 of the Amended Complaint and the same are therefore denied.

165. Defendant Hines lacks sufficient knowledge and information to admit or deny the allegations contained in Paragraph 165 of the Amended 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 North Carolina Defendants)

166. Defendant Hines incorporates and realleges its responses to the allegations contained in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

167. Denied. It is specifically denied that Defendant Hines caused or participated in Plaintiff's deportation to Mexico.

168. It is admitted that Defendant Hines acted under color of law and acted in the performance of her official duties under federal and state laws and regulations. Except as herein admitted, the remaining allegations contained in Paragraph 168 of the Amended Complaint are denied.

169. Denied.

170. Denied.

171. Denied.

EIGHTH CLAIM FOR RELIEF

(Fourteenth Amendment to the United States Constitution)

(42 U.S.C. § 1983)

(Against North Carolina Defendants)

172. Defendant Hines incorporates and realleges her responses to the allegations contained in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

173. Denied. It is specifically denied that Defendant Hines discriminated against Plaintiff on the basis of his race and ethnicity.

174. It is admitted that Defendant Hines acted under color of law and acted or purported

to act in the performance of her official duties under federal and state laws and regulations. Except as herein admitted, the remaining allegations contained in Paragraph 174 of the Amended Complaint are denied. It is specifically denied that Defendant Hines acted with the intent or purpose to discriminate against Plaintiff.

175. Denied.

176. Denied.

177. Denied.

NINTH CLAIM FOR RELIEF

**(Fourth Amendment to the United States Constitution)
(42 U.S.C. § 1983)
(Against North Carolina Defendants)**

178. Defendant Hines incorporates and realleges her responses to the allegations contained in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

179. Denied. It is specifically denied that Defendant Hines violated Plaintiff's right to be free from unreasonable seizure by a government official by causing or participating in the deportation of Plaintiff.

180. It is admitted that Defendant Hines acted under color of law and acted or purported to act in the performance of her official duties under federal and state laws and regulations. Except as herein admitted, the remaining allegations contained in Paragraph 180 of the Amended Complaint are denied. It is specifically denied that Defendant Hines acted with the intent or purpose to discriminate against Plaintiff.

181. Denied.

182. Denied.

183. Denied.

TENTH CLAIM FOR RELIEF

**(False Arrest and Imprisonment)
(Against North Carolina Defendants)**

184. Defendant Hines incorporates and realleges her responses to the allegations contained in Paragraphs 1 through 125 of the Amended Complaint as if fully set forth herein.

185. Denied. It is specifically denied that Defendant Stephenson deprived Plaintiff of his liberty by placing him in an Immigration Hold or by physically delivering Plaintiff into the custody of ICE at the expiration of Plaintiff's North Carolina sentence.

186. Denied.

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

FIRST FURTHER DEFENSE

Plaintiff's Seventh Claim for Relief against Defendant Hines for violations of the Fifth and Fourteenth Amendments to the United States Constitution and 42 U.S.C. § 1983 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 Hines pleads this failure in bar of Plaintiff's claims against her for violations of the Fifth and Fourteenth Amendments.

SECOND FURTHER DEFENSE

Plaintiff's Eighth Claim for Relief against Defendant Hines for violations of the Fourteenth Amendment to the United States Constitution and 42 U.S.C. § 1983 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 Hines pleads this failure in bar of Plaintiff's claims against her for violations of the

Fourteenth Amendment.

THIRD FURTHER DEFENSE

Plaintiff's Ninth Claim for Relief against Defendant Hines for violations of the Fourth Amendment to the United States Constitution and 42 U.S.C. § 1983 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 Stephenson pleads this failure in bar of Plaintiff's claims against her for violations of the Fourth Amendment.

FOURTH FURTHER DEFENSE

Plaintiff's Tenth Claim for Relief against Defendant Hines for false imprisonment and arrest in violation of North Carolina law 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 Stephenson pleads this failure in bar of Plaintiff's claims against her for false imprisonment and arrest.

FIFTH FURTHER DEFENSE

Qualified immunity shields Defendant Hines in her individual capacity from Plaintiff's claims against her for monetary damages as Defendant Hines did not violate any clearly established constitutional rights of which a reasonable person would have known

SIXTH FURTHER DEFENSE

The Complaint in its entirety, or, alternatively, in part, fails to satisfy the pleading standards set forth in Rule 8 of the Federal Rules of Civil Procedure and, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Hines pleads this failure in bar of the Plaintiff's claims against her.

SEVENTH FURTHER DEFENSE

To the extent that Plaintiff's claims against Defendant Hines are predicated under a theory of an unconstitutional tort, the proximate cause of Plaintiff's injuries was the intervening and superseding conduct of others, including Defendant United States of America, ICE Defendants Faucette, Kendall, Caputo, and ICE Doe Defendants 1-10, and the actions of those defendants were active and proximately caused the injuries to Plaintiff and Defendant Hines pleads the intervening and superseding conduct of those defendants in bar of Plaintiff's claims against Defendant Hines for constitutional torts.

EIGHTH FURTHER DEFENSE

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

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

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

DEMAND FOR JURY TRIAL

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

Respectfully submitted, this the 14th day of October, 2011.

ROY COOPER
Attorney General

/s/ Joseph Finarelli
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on 14 October 2011, I electronically filed the foregoing Motion to Dismiss and Answer of Defendant Mary Hines 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 14th day of October, 2011.

Respectfully submitted,

/s/ Joseph Finarelli
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Assistant Attorney General