

BRIAN M. BOYNTON
Acting Assistant Attorney General

JUDITH A. PHILIPS
Acting United States Attorney
District of Hawaii

ANTHONY J. COPPOLINO
Deputy Director
Federal Programs Branch

STEPHEN M. PEZZI
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Phone: (202) 305-8576
Fax: (202) 616-8470
Email: stephen.pezzi@usdoj.gov

DANA A. BARBATA #9112
Assistant U.S. Attorney
Room 6-100, PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Phone: (808) 541-2850
Fax: (808) 541-3752
Email: Dana.Barbata@usdoj.gov

Attorneys for Federal Defendants UNITED STATES OF AMERICA; LLOYD J. AUSTIN III, in his official capacity as Secretary of Defense; FEDERAL VOTING ASSISTANCE PROGRAM; and DAVID BEIRNE, in his official capacity as Director of the Federal Voting Assistance Program

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII**

VICENTE TOPASNA BORJA, *et al.*,

Plaintiffs,

v.

SCOTT NAGO, in his official capacity
as Chief Election Officer for the
Hawaii Office of Elections, *et al.*,

Defendants.

CIVIL NO. 20-00433 JAO-RT

FEDERAL DEFENDANTS' ANSWER
TO THIRD AMENDED COMPLAINT

Judge: Honorable Jill A. Otake

**FEDERAL DEFENDANTS' ANSWER TO
THIRD AMENDED COMPLAINT**

The United States of America, Lloyd J. Austin, III (in his official capacity as Secretary of Defense), the Federal Voting Assistance Program, and David Beirne (in his official capacity as Director of the Federal Voting Assistance Program) (collectively the "Federal Defendants") answer the allegations in Plaintiffs' Third Amended Complaint, ECF No. 105, as follows:

The unnumbered introductory paragraph contains Plaintiffs' characterization of the Third Amended Complaint and conclusions of law, rather than allegations of fact, to which no response is required.

NATURE OF THE ACTION

1. This paragraph contains Plaintiffs' characterization of the Third Amended Complaint and conclusions of law, rather than allegations of fact, to which no response is required.

2. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

3. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

4. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

5. This paragraph contains characterizations of and quotations from various documents, which speak for themselves, as well as conclusions of law to which no response is required.

6. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

7. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

8. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

9. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

10. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

11. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

12. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied. With respect to the allegations in this paragraph about Plaintiffs, Federal Defendants lack knowledge or information sufficient to form a belief about the truth of those allegations.

13. This paragraph contains Plaintiffs' characterization of the Third Amended Complaint and conclusions of law, rather than allegations of fact, to which no response is required.

14. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

15. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

16. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

17. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

18. This paragraph contains Plaintiffs' characterization of the Third Amended Complaint and conclusions of law, rather than allegations of fact, to which no response is required.

PARTIES

15. Federal Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph (or in the accompanying sub-paragraphs).¹

16. Federal Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph (or in the accompanying sub-paragraphs).

17. Federal Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph (or in the accompanying sub-paragraphs).

18. Federal Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph (or in the accompanying sub-paragraphs).

19. Federal Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph (or in the accompanying sub-paragraphs).

¹ Plaintiffs' Third Amended Complaint has two different paragraphs that are both numbered 15, 16, 17, and 18. For simplicity's sake, this Answer uses the same numbering as Plaintiffs' Third Amended Complaint, and thus also has two paragraphs numbered 15, 16, 17, and 18.

20. Federal Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph (or in the accompanying sub-paragraphs).

21. The allegations in this paragraph are directed to defendants other than the Federal Defendants, to which no response is required.

22. The allegations in this paragraph are directed to defendants other than the Federal Defendants, to which no response is required.

23. The allegations in this paragraph are directed to defendants other than the Federal Defendants, to which no response is required.

24. Admitted that Defendant United States of America enacted UOCAVA and exercises authority over the territories in which the Individual Plaintiffs allege that they reside.

25. Admitted that Defendant Lloyd J. Austin III is being sued in his official capacity as the Secretary of Defense. The remaining allegations in this paragraph contain conclusions of law, rather than allegations of fact, to which no response is required.

26. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

27. Admitted that Defendant David Beirne is being sued in his official capacity as Director of the Federal Voting Assistance Program. The remaining

allegations in this paragraph contain conclusions of law, rather than allegations of fact, to which no response is required.

28. Admitted that each of the Federal Defendants has been sued in its or his official capacity. The remaining allegations of this paragraph contain conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

JURISDICTION AND VENUE

29. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

30. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

31. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

32. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

FACTUAL ALLEGATIONS

33. Admitted that the United States has several territories, including the territories listed in this paragraph. The remaining allegations of this paragraph contain census statistics that speak for themselves.

34. Admitted that the listed territories became territories of the United States on or around the dates alleged in this paragraph. The remaining factual allegations of this paragraph are denied.

35. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

36. The allegations in this paragraph are directed to defendants other than the Federal Defendants, to which no response is required.

37. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

38. Admitted that residents of the territories have served in the United States military. The remaining allegations of this paragraph contain legal conclusions to which no response is required, and census statistics that speak for themselves.

39. This paragraph contains legal conclusions to which no response is required, and census and Internal Revenue Service statistics that speak for themselves.

40. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

41. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, Federal Defendants lack knowledge or information sufficient to form a belief about the truth of any factual allegations in this paragraph.

42. Federal Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.

43. Federal Defendants lack knowledge or information sufficient to form a belief about the truth of the factual allegations in this paragraph.

44. This paragraph purports to characterize and quote from various documents, which speak for themselves. The remaining allegations of this paragraph contain legal conclusions to which no response is required.

45. This paragraph purports to characterize various documents, which speak for themselves. The remaining allegations of this paragraph contain legal conclusions to which no response is required.

46. This paragraph purports to characterize various documents, which speak for themselves. The remaining allegations of this paragraph contain legal conclusions to which no response is required.

47. This paragraph purports to characterize and quote from various documents, which speak for themselves. The remaining allegations of this paragraph contain legal conclusions to which no response is required.

48. This paragraph purports to characterize and quote from provisions of federal law, which speak for themselves. The remaining allegations of this paragraph contain legal conclusions to which no response is required.

49. This paragraph purports to characterize and quote from various provisions of federal law, which speak for themselves. The remaining allegations of this paragraph contain legal conclusions to which no response is required.

50. This paragraph purports to characterize and quote from various documents and provisions of federal law, which speak for themselves. The remaining allegations of this paragraph contain legal conclusions to which no response is required.

51. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

52. The allegations in this paragraph are directed to defendants other than the Federal Defendants, to which no response is required.

53. The allegations in this paragraph are directed to defendants other than the Federal Defendants, to which no response is required.

54. The allegations in this paragraph are directed to defendants other than the Federal Defendants, to which no response is required.

55. The allegations in this paragraph are directed to defendants other than the Federal Defendants, to which no response is required.

56. This paragraph quotes from the United States Constitution, which speaks for itself.

57. This paragraph contains conclusions of law, rather than allegations of fact, so no response is required.

58. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

59. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

60. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

61. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required.

62. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

CLAIM FOR RELIEF

Federal Defendants incorporate by reference the answers to paragraph 1 through 62 as if set forth here in full.

63. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

64. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

65. This paragraph contains conclusions of law, rather than allegations of fact, to which no response is required. To the extent a response is deemed required, denied.

PRAYER FOR RELIEF

The remaining paragraphs contain Plaintiffs' prayer for relief, to which no response is required. To the extent a response is deemed required, Federal Defendants deny that Plaintiffs are entitled to any relief.

* * *

Federal Defendants deny any and all allegations not expressly admitted herein to which a response is deemed required.

Having fully answered the Third Amended Complaint, Federal Defendants respectfully request that the Court enter judgment dismissing this action with prejudice and awarding Federal Defendants costs and such other relief as the Court may deem appropriate.

Dated: September 24, 2021

Respectfully submitted,

BRIAN M. BOYNTON
Acting Assistant Attorney General

JUDITH A. PHILIPS
Acting United States Attorney
District of Hawaii

ANTHONY J. COPPOLINO
Deputy Director
Federal Programs Branch

/s/ Stephen M. Pezzi

STEPHEN M. PEZZI
Trial Attorney
United States Department of Justice
Civil Division, Federal Programs Branch
1100 L Street NW
Washington, DC 20005
Phone: (202) 305-8576
Email: stephen.pezzi@usdoj.gov

DANA A. BARBATA #9112
Assistant U.S. Attorney
Room 6-100, PJKK Federal Bldg.
300 Ala Moana Boulevard
Honolulu, Hawaii 96850
Phone: (808) 541-2850
Fax: (808) 541-3752
Email: Dana.Barbata@usdoj.gov

Attorneys for the Federal Defendants