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12
 13 UNITED STATES DISTRICT COURT
 14 FOR THE NORTHERN DISTRICT OF CALIFORNIA
 15
 16 SAN FRANCISCO DIVISION

17 AUDLEY BARRINGTON LYON,)
 JR., *et al.*,) No. 3:13-cv-05878-EMC
 18)
 19 Plaintiffs,) DEFENDANTS' ANSWER
)
 20 vs.)
)
 21 U.S. IMMIGRATION & CUSTOMS)
 22 ENFORCEMENT, *et al.*,)
)
 23 Defendants.)
 24)

1 Defendants U.S. Immigration and Customs Enforcement (“ICE”); John
2 Sandweg (“Sandweg”), Acting Director of ICE¹; U.S. Department of Homeland
3 Security (“DHS”); Jeh Johnson (“Johnson”), Secretary of DHS; and Timothy Aitken
4 (“Aitken”), Field Office Director for the ICE Enforcement and Removal Operations
5 (“ERO”) Field Office in San Francisco (collectively, “Defendants”), without waiving
6 affirmative defenses as follow, hereby answer the Complaint for Injunctive and
7 Declaratory Relief filed by Plaintiffs Audley Barrington Lyon, Jr. (“Lyon”); Edgar
8 Cornelio² (“Cornelio”); José Elizandro Astorga-Cervantes (“Astorga-Cervantes”); and
9 Lourdes Hernandez-Trujillo (“Hernandez-Trujillo”) on behalf of themselves and all
10 others similarly situated (collectively, “Plaintiffs). *See* ECF No. 1 (hereinafter,
11 “Complaint”).
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15 Defendants state as follows in response to each of the numbered paragraphs
16 in Plaintiffs’ Complaint:

17 INTRODUCTION

18
19 1. DENIED in part and ADMITTED in part. The first sentence of
20 Paragraph 1 is a summary of the relief Plaintiffs seek on behalf of the class they
21 propose to certify, to which no response is required. To the extent a response is
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23 ¹ Mr. Sandweg will resign from his position as Acting Director of ICE effective
24 February 21, 2014. His successor will be substituted under Federal Rule Civil
25 Procedure 25(d) on all future filings.

26 ² According to DHS databases, “Edgar Cornelio” is one of the aliases used by Santos
27 Garcia Morales (Axx-xxx-714). For ease of reference, Defendants will refer to this
28 individual as Cornelio, the name under which he filed this litigation, but note that
Garcia Morales is the name that appears on the administrative file and all
immigration documents related to this individual.

1 required, Defendants deny any allegation of “ongoing violations of the constitutional
2 and statutory rights of immigrants held in government custody pending deportation
3 proceedings.” Defendants also deny any and all allegations that “[t]hose rights (and
4 others) are systematically denied by Defendants. Defendants further deny that
5 Plaintiffs have alleged claims sufficient to certify the class they propose.
6

7 Defendants admit that aliens in removal proceedings have certain procedural and
8 substantive rights afforded by the U.S. Constitution and federal statutes.
9

10 2. DENIED. Paragraph 2 is a broad summary of Plaintiffs allegations in
11 this litigation, including Plaintiffs’ reasoning for filing this litigation, to which no
12 response is required. To the extent a response is required, Defendants deny that
13 any DHS or ICE “policies or practices . . . deny and severely restrict [Plaintiffs’]
14 ability to make telephone calls.” Indeed, Plaintiffs’ Complaint does not identify or
15 otherwise challenge as insufficient or otherwise violative of Plaintiffs’ rights any
16 DHS or ICE policy governing immigration detainees who are held in government
17 custody pending deportation proceedings.
18

19 3. DENIED in part and ADMITTED in part. Defendants admit that the
20 two of the four named Plaintiffs – Lyon and Hernandez-Trujillo – are in ICE
21 custody pending resolution of their removal proceedings. Defendants deny Astorga-
22 Cervantes is in ICE custody; Astorga-Cervantes posted bond and was released from
23 detention on February 20, 2104. Defendants deny that Cornelio is detained by ICE
24 and that removal proceedings against Cornelio remain pending; Cornelio was
25 ordered removed to Guatemala by an Immigration Judge at his hearing on January
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1 23, 2014, and waived appeal of that decision, rendering it a final removal order,
2 thus concluding his removal proceedings. Additionally, Cornelio was removed to
3 Guatemala on February 11, 2014, ending his immigration detention. Defendants
4 further deny that the class Plaintiffs seek to represent consists only of aliens
5 detained by ICE “pending” their removal proceedings. Plaintiffs seek to certify a
6 class consisting of “all current and future adult immigration detainees who . . . are
7 or will be held in ICE custody in its northern California immigration detention
8 facilities,” Compl. (ECF No. 1) ¶ 7, but not all those within Plaintiffs’ proposed class
9 definition will have or have had pending removal proceedings. Defendants admit
10 that – with the exception of those mentally incompetent aliens who are within the
11 class certified in *Franco-Gonzalez v. Holder*, Case No. 10-cv-02211-DMG (DTBx) –
12 aliens in removal proceedings are not entitled to appointed counsel. Defendants
13 lack sufficient information to admit or deny the remainder of Plaintiffs’ claims in
14 Paragraph 3, and, therefore, deny them.

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18 4. DENIED.

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20 5. DENIED. Additionally, Defendants note that Plaintiffs’ Complaint
21 does not identify any DHS or ICE policy that allegedly denies or restricts telephone
22 access. *See generally* Compl. (ECF No. 1).

23
24 6. DENIED. Defendants lack sufficient information to admit or deny the
25 numerous causes for continuances sought by Plaintiffs or other aliens in their
26 removal proceedings, and, therefore, deny Plaintiffs’ allegations regarding the
27 causes of such continuances. Additionally, Plaintiffs’ allegation regarding “some
28

1 [aliens] who would accept a removal order much earlier in the process” appears to
2 be pure speculation, to which no response is required. To the extent a response is
3 required, Defendants deny this allegation. Defendants deny the remainder of the
4 allegations in Paragraph 6.
5

6 7. DENIED. Paragraph 7 contains Plaintiffs’ proposed class definition
7 and request to certify a class action, to which no response is required. To the extent
8 a response is required, Defendants deny that Plaintiffs have stated claims sufficient
9 to maintain a class under Federal Rules of Civil Procedure 23(a) and 23(b).
10

11 JURISDICTION

12 8. The allegations in Paragraph 8 contain legal conclusions as to
13 jurisdiction, to which no response is required. To the extent a response is required,
14 Defendants deny any allegation of independent jurisdiction under the Declaratory
15 Judgment Act, 8 U.S.C. §§ 2201 and 2202. *See Skelly Oil Co. v. Phillips Petroleum*
16 *Co.*, 339 U.S. 667, 671 (1950).
17
18

19 VENUE

20 9. The allegations contained in Paragraph 9 contain legal conclusions as
21 to venue, which do not require a response. To the extent a response is required,
22 Defendants admit that venue for claims asserted by Plaintiffs Lyon and Hernandez-
23 Trujillo, who are detained in Contra Costa County and Yuba County, respectively,
24 is proper in the Northern District of California. Defendants deny venue for claims
25 asserted by Plaintiff Astorga-Cervantes, who was previously detained in the Rio
26 Cosumnes Correctional Facility in Sacramento County, California (“Sacramento
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28

1 facility”) is proper in the Northern District of California; the Sacramento facility is
2 located in the Eastern District of California.

3 INTRADISTRICT ASSIGNMENT

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5 10. The allegations in Paragraph 10 contain legal conclusions as to Local
6 Rule 3-2(d) regarding assignment to the San Francisco Division of this Court, to
7 which no response is required.

8 PARTIES

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10 11. DENIED in part and ADMITTED in part. Defendants admit that
11 Lyon is in ICE custody at the West County Detention Center in Contra Costa
12 County, California (“Contra Costa facility”) and that he has pending removal
13 proceedings in the San Francisco Immigration Court. Defendants cannot admit or
14 deny whether Lyon is seeking a U-Visa as disclosure of such information is barred
15 by 8 U.S.C. § 1367(2). Defendants lack sufficient information to admit or deny
16 whether Lyon “may seek cancellation of removal under 8 U.S.C. § 1229b,” and,
17 therefore, deny that allegation. Defendants deny the remainder of the allegations
18 contained in Paragraph 11.
19
20

21 12. DENIED. Defendants deny that Cornelio is in ICE custody at the
22 Contra Costa facility; Cornelio was removed to Guatemala pursuant to a final
23 removal order on February 11, 2014. Defendants deny that Cornelio has removal
24 proceedings pending in the San Francisco Immigration Court; Cornelio was ordered
25 removed to Guatemala at his hearing before an Immigration Judge on January 23,
26 2014, and waived any appeal of that decision, rendering it a final removal order and
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1 concluding this removal proceedings. Defendants cannot admit or deny whether
2 Plaintiff Cornelio has applied for asylum as release of such information is
3 prohibited by 8 C.F.R. § 208.6. Defendants deny the remainder of the allegations
4 contained in Paragraph 12.
5

6 13. DENIED. Defendants deny that Astorga-Cervantes is currently in ICE
7 custody at the Sacramento facility; Astorga-Cervantes posted bond and was
8 released from ICE custody on February 20, 2014. Defendants lack sufficient
9 information to admit or deny the allegations in the second and third sentences of
10 Paragraph 13 regarding Astorga-Cervantes intentions to seek relief from pre-
11 removal order detention and removal, and, therefore, deny those allegations.
12 Defendants deny the remainder of the allegations contained in Paragraph 13.
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14

15 14. Defendants admit that Hernandez-Trujillo is in ICE custody at the
16 Yuba County Jail (“Yuba facility”) and has removal proceedings pending in the San
17 Francisco Immigration Court. Defendants cannot admit or deny that Hernandez-
18 Trujillo has applied for a U-Visa as release of such information is barred by 8 U.S.C.
19 § 1367(2). Defendants lack sufficient information to admit or deny Plaintiffs’
20 allegation that Hernandez-Trujillo plans to seek relief under 8 U.S.C. § 1231(b)(3),
21 and, therefore, deny that allegation. Defendants admit that Hernandez-Trujillo
22 was initially detained at the Sacramento facility before being transferred to the
23 Yuba facility in April 2013. Defendants deny the remainder of the allegations
24 contained in Paragraph 14.
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1 15. Paragraph 15 merely states that Plaintiffs' Complaint will refer to
2 "Lyon, Cornelio, Astorga-Cervantes, and Hernandez-Trujillo" as "the Individual
3 Plaintiffs," to which no response is required.
4

5 16. DENIED in part and ADMITTED in part. Defendants admit that ICE
6 is a federal law enforcement agency within DHS. Defendants admit that ICE is
7 responsible for the criminal and civil enforcement of U.S. immigration laws;
8 Defendants deny any implication that ICE is the sole government agency
9 responsible for the criminal and civil enforcement of U.S. immigration laws.
10 Defendants admit that ICE is responsible for detaining certain aliens placed in
11 removal proceedings, including those detained under 8 U.S.C. § 1226(a) who are
12 denied or fail to post bond and 8 U.S.C. § 1226(c) who are subject to mandatory pre-
13 removal order detention. Defendants further admit that ICE is responsible for
14 detaining those aliens subject to a final removal order and subject to mandatory
15 detention under 8 U.S.C. § 1231 as having a sufficient likelihood of removal in the
16 reasonably foreseeable future. Defendants deny any implication in Paragraph 16
17 that ICE is responsible for the detention of all immigrants, including all immigrants
18 in removal proceedings. Defendants lack sufficient information to admit or deny
19 Plaintiffs' allegation that ICE is responsible for the "incarceration" of aliens, which
20 Plaintiffs appear to distinguish from detention; Defendants therefore deny this
21 allegation. Defendants admit that ICE is responsible for the removal of aliens
22 subject to a final removal order. Defendants admit that Enforcement and Removal
23 Operations ("ERO"), a division of ICE, manages and oversees the immigration
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1 detention system. Defendants admit that ICE promulgates detention standards to
2 be followed in the facilities that detain aliens subject to pre- and post-final removal
3 orders. Defendants further admit that ICE contracts with other government
4 entities and private corporations to detain those aliens subject to immigration
5 detention.
6

7 17. DENIED in part and ADMITTED in part. Defendants admit that ICE
8 pays a fixed rate per night to house detainees in accordance with applicable ICE
9 detention standards. Defendants deny any implication in Paragraph 17 that any of
10 the contracts between ICE and the three detention facilities at issue in this
11 litigation – the Contra Costa facility, the Yuba facility, and the Sacramento facility
12 – is governed by the 2011 National Detention Standards.
13
14

15 18. DENIED in part and ADMITTED in part. Defendants deny any
16 implication in Paragraph 18 that the 2011 Performance-Based National Detention
17 Standards are applicable to any of the facilities in which any of the four named
18 Plaintiffs have been or are detained. Defendants admit that the 2011 Performance-
19 Based National Detention Standards are the most recent detention standards
20 promulgated by ICE.
21

22 19. ADMITTED. Defendants note that Plaintiffs have failed to identify as
23 allegedly responsible for the harm alleged by Plaintiffs any ICE policy for which the
24 Acting Director of ICE is responsible.
25

26 20. DENIED in part and ADMITTED in part. Defendants deny any
27 implication in Paragraph 20 that DHS is the only arm of the federal government
28

1 responsible for the enforcement and administration of the immigration laws.
2 Defendants admit that DHS is one arm of the federal government responsible for
3 the enforcement and administration of the immigration laws. Defendants admit
4 that ICE, U.S. Citizenship and Immigration Services (“CIS”), and U.S. Customs and
5 Border Protection (“CBP”) are component agencies of DHS. Defendants deny any
6 implication in Paragraph 20 that ICE, CIS, and CBP are the only component
7 agencies of DHS. Defendants further note that CIS and CBP are not parties in this
8 action, and therefore deny Plaintiffs characterization of these agencies’
9 responsibilities within the U.S. immigration system as irrelevant to this litigation.
10
11

12 21. ADMITTED.

13 22. DENIED in part and ADMITTED in part. Defendants deny that
14 Aitken is the Field Office Director for the San Francisco Field Office; Aitken is the
15 Field Office Director for the ICE ERO Field Office in San Francisco. Defendants
16 also deny any implication in Paragraph 22 that the San Francisco ERO Field Office
17 promulgates its own detention standards. Defendants admit the remaining
18 allegations contained in Paragraph 22.
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21 23. Paragraph 23 contains Plaintiffs’ assertion that Defendants Sandweg,
22 Johnson and Aitken are sued in their official capacities only, to which no response is
23 required.
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1 ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

2 **Background on Removal Proceedings**

3 24. Paragraph 24 contains Plaintiffs' characterization of removal
4 proceedings before the U.S. immigration courts and the Board of Immigration
5 Appeals ("BIA"), including the way in which removal proceedings are initiated, to
6 which no response is required. Defendants further note that four named Plaintiffs
7 do not challenge the decision to place them into removal proceedings or place them
8 in immigration detention pending their removal proceedings.
9

10
11 25. DENIED in part and ADMITTED in part. To the extent that
12 Paragraph 25 is a recitation of the Executive Office for Immigration Review,
13 Immigration Judge Benchbook, that document speaks for itself and no response is
14 required. Furthermore, Defendants admit that an initial appearance occurs at a
15 master calendar hearing, but Defendants deny any implication in Paragraph 25
16 that a master calendar hearing is only held for purposes of entering an initial
17 appearance. The remaining allegations in Paragraph 25 include Plaintiffs'
18 characterization of removal proceedings and how such proceedings typically
19 proceed, to which no response is required. To the extent a response is required,
20 Defendants deny that all removal proceedings proceed as summarized by Plaintiffs;
21 each removal proceeding requires an individual and independent review of all
22 charges as to removability and any defenses to those charges or requests for relief
23 from removal put forth by the alien. Defendants deny that removal proceedings can
24 be summarized *in toto* as Plaintiffs attempt to do in Paragraph 25.
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1 26. Paragraph 26 contains Plaintiffs' characterization of the ways in which
2 an alien may contest any charges of removability in his or her removal proceedings,
3 to which no response is required.
4

5 27. DENIED. Paragraph 27 contains Plaintiffs' characterization of relief
6 from removal that aliens may seek under 8 U.S.C. §§ 1158 & 1229b, each of which
7 speaks for itself and to which no response is required. Defendants deny any
8 implication in Paragraph 27 that 8 U.S.C. § 1231(b)(3) provides any relief from
9 removal that would result in the termination of removal proceedings without the
10 issuance of a removal order.
11

12 28. DENIED in part and ADMITTED in part. Defendants deny any
13 implication in Paragraph 28 that all "forms of statutory relief from removal" not
14 previously mentioned in Plaintiffs' Complaint "are granted by CIS." Defendants
15 admit that CIS is the component of DHS that determines whether an alien in
16 removal proceedings is eligible to receive a visa under 8 U.S.C. § 1101(a)(15)(U),
17 and that the grant of such a visa results in the termination of removal proceedings
18 without the issuance of a removal order.
19
20

21 29. Paragraph 29 is Plaintiffs' characterization of bond redetermination
22 hearings, which Plaintiffs concede are not available to all immigrants held in ICE
23 custody, to which no response is required.
24

25 30. DENIED. Defendants lack sufficient information to admit or deny the
26 allegations in Paragraph 30, and, therefore, deny them.
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28

1 31. DENIED. Defendants lack sufficient information to admit or deny the
2 allegations in Paragraph 31, and, therefore, deny them.

3 **Immigration Detention in Northern California**
4

5 32. DENIED. Defendants lack sufficient information to admit or deny the
6 allegations in Paragraph 32, and, therefore, deny them.

7 33. ADMITTED.

8 34. DENIED in part and ADMITTED in part. Defendants admit the
9 following: the Contra Costa facility is approximately 21 miles from San Francisco;
10 the Sacramento facility is approximately 83 miles from San Francisco; and the Yuba
11 facility is approximately 123 miles from San Francisco. Defendants lack sufficient
12 information to admit or deny the remainder of the allegations on Paragraph 34,
13 and, therefore, deny them.
14

15 35. DENIED. Defendants lack sufficient information to admit or deny the
16 allegations in Paragraph 35, and, therefore, deny them.
17

18 36. DENIED. Defendants lack sufficient information to admit or deny the
19 allegations in Paragraph 36, and, therefore, deny them. Furthermore, Defendants
20 note that the detention histories of three of the four named Plaintiffs do not support
21 Plaintiffs' assertion that "ICE frequently transfers detainees among detention
22 facilities": (1) Lyon was transferred to the Contra Costa facility, where he remains
23 detained, on the first day of his immigration detention in October 2013; (2) Cornelio
24 spent the entirety of his time in immigration detention at the Contra Costa facility;
25 and (3) Astorga-Cervantes spent one day of his immigration detention in a facility
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1 not at issue in this litigation before being transferred to the Sacramento facility
2 where he was previously detained prior to posting bond and being released from
3 ICE custody on February 20, 2014.
4

5 37. DENIED. Defendants lack sufficient information to admit or deny the
6 allegations in Paragraph 37, and, therefore, deny them. Defendants especially lack
7 sufficient information to admit or deny the allegation in Paragraph 37 that “*all* of
8 the immigration detainees” at the Contra Costa, Yuba, and Sacramento facilities
9 “have, have had, or may have proceedings in the San Francisco Immigration Court,”
10 and, therefore, deny that allegation. (Emphasis added).
11

12 **DENIED. Defendants deny Plaintiffs assertion on page 9 of their**
13 **Complaint between Paragraphs 37 and 38 that “Defendants’ [Alleged]**
14 **Denial and Restriction of Telephone Access Results in a Dramatic**
15 **Disparity of Outcomes.**

16 38. DENIED.

17 39. DENIED. Defendants lack sufficient information to admit or deny the
18 allegations in Paragraph 39, and, therefore, deny them. Furthermore, Defendants
19 deny any implication in Paragraph 39 that an alien’s detention pending his or her
20 removal proceedings is the sole determinative factor as to whether that alien is able
21 to retain counsel. Defendants further deny any implication in Paragraph 39 that an
22 alien’s detention pending his or her removal proceedings is the sole determinative
23 factor as to whether that alien can successfully challenge his or her charges of
24 removability or successfully secure relief from removal.
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1 **DENIED. Defendants deny Plaintiffs assertion on page 10 of their**
2 **Complaint between Paragraphs 39 and 40 that “Defendants’ [Allegedly]**
3 **Den[y] and Restrict [] Telephone Access**

4 40. DENIED. Defendants deny the entirety of Plaintiffs’ allegations in
5 Paragraph 40. Defendants further note that Plaintiffs’ Complaint fails to identify
6 any specific or particular ICE detention standard as allegedly “deficient.”

7 41. DENIED in part and ADMITTED in part. Defendants admit that the
8 2000 National Detention Standards, which govern the contracts between ICE and
9 the three facilities at issue in this litigation, provide that the facility shall permit an
10 ICE detainee to make direct calls to (1) the local immigration court and the BIA; (2)
11 to Federal and State courts where the detainee is or may become involved in a legal
12 proceeding; (3) to consular officials; (4) to legal service providers; (5) to a
13 government office, to obtain documents relevant to his or her immigration case; and
14 (6) in a personal or family emergency, or when the ICE detainee can otherwise
15 demonstrate a compelling need. Defendants further admit that the 2000 National
16 Detention Standards provide that indigent detainees shall be not be required to pay
17 for these six (6) types of calls if they are local or if there is a compelling need. *See*
18 2000 National Detention Standards, § Section III(E). Defendants lack sufficient
19 information to admit or deny the remainder of the allegations in Paragraph 41, and,
20 therefore, deny them.³

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26 ³ Defendants lack sufficient information to admit or deny Plaintiffs’ allegations in
27 Footnote 1 of their Complaint that “the majority of immigration attorneys [and] all
28 local, state and federal government offices outside of DHS” are not pre-programmed
into the telephone system at any of the three facilities at issue in this litigation, and
therefore deny those allegations. Defendants deny any implication in Footnote 1 of

1 42. DENIED in part and ADMITTED in part. Defendants deny any
2 implication in Paragraph 42 that the methods for placing telephone calls described
3 in Paragraph 42 are the only methods by which an immigration detainee could
4 place a call at the Contra Costa facility, Yuba facility, or Sacramento facility.
5 Defendants admit the remainder of the allegations in Paragraph 42.
6

7 43. ADMITTED. Defendants admit that the telephone systems generally
8 available to detainees at the Yuba, Sacramento and Contra Costa facilities require a
9 live person to answer and accept any call; this feature is deemed necessary to
10 prevent detainees, including criminal inmates not in ICE custody but housed at the
11 same facilities, from calling any crime victims or leaving threatening messages.
12

13 44. DENIED in part and ADMITTED in part. Defendants admit that the
14 2000 National Detention Standards, which govern the three facilities at issue in
15 this litigation, require that ICE detainees have reasonable access to telephones
16 during established facility waking hours. Defendants deny any implication in
17 Paragraph 44 that the Sacramento facility is located in the Northern District of
18 California; the Sacramento facility is located in the Eastern District of California.
19 Defendants deny the remainder of the allegations in Paragraph 44.
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22 45. DENIED in part and ADMITTED in part. Defendants admit that 2000
23 National Detention Standards, which govern the three facilities at issue in this
24 litigation, require that ICE detainees are ensured a reasonable degree of privacy for
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27
28 Plaintiffs' Complaint that ICE has any obligation to provide its detainees with free
telephone calls to "private parties."

1 telephone calls regarding legal matters. Defendants deny the remainder of the
2 allegations in Paragraph 45.

3 46. DENIED in part and ADMITTED in part. Defendants deny any
4 implication in Paragraph 46 that the Sacramento facility is located in the Northern
5 District of California; the Sacramento facility is located in the Eastern District of
6 California. Defendants deny the allegation in Paragraph 46 that the cost of
7 telephone calls from each of the three facilities at issue in this litigation is
8 “unreasonably” expensive. Defendants admit that the 2011 National Detention
9 Standards cited by Plaintiffs in Paragraph 46 require that facilities provide access
10 to reasonably priced telephone services; Defendants deny that the 2011 National
11 Detention Standards govern any of the three facilities in this litigation. Defendants
12 admit that the 2000 National Detention Standards, which govern the three facilities
13 at issue in this litigation, require each facility housing ICE detainees to “provide
14 detainees with reasonable and equitable access to telephone during established
15 facility waking hours, limited only by the restrictions” specified by those 2000
16 National Detention Standards. Defendants admit that the cost of an intrastate,
17 long distance call from the Contra Costa facility is \$3.00 to connect the call plus
18 \$0.25 per minute. Defendants deny that a phone call placed from the Contra Costa
19 facility will disconnect after fifteen minutes; calls placed from the Contra Costa
20 facility do not automatically disconnect. Defendants admit that a call placed from
21 the Yuba facility or the Sacramento facility will be cut off after fifteen minutes in
22 order to prevent ICE detainees and criminal inmates housed at the facility from
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1 monopolizing the phones. Defendants lack sufficient information to admit or deny
2 the remainder of the allegations in Paragraph 46, and, therefore, deny them.

3 47. DENIED.⁴

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5 48. DENIED in part and ADMITTED in part. Defendants admit that the
6 telephone systems generally available to detainees at the Yuba, Sacramento and
7 Contra Costa facilities require a live person to answer and accept any call; this
8 feature is deemed necessary to prevent detainees, including criminal inmates not in
9 ICE custody but housed at the same facilities, from calling any crime victims or
10 leaving threatening messages. Defendants deny that a phone call placed from the
11 Contra Costa facility will disconnect after fifteen minutes; calls placed from the
12 Contra Costa facility do not automatically disconnect. Defendants admit that a call
13 placed from the Yuba facility or the Sacramento will automatically disconnect after
14 fifteen minutes; this feature is deemed necessary to prevent detainees from
15 monopolizing the phones. Because Plaintiffs have failed to provide an exhaustive
16 list of the “basic technical features of the telephone system” that are allegedly
17 “common across all housing units and detention facilities,” Defendants lack
18 sufficient information to admit or deny the remainder of Paragraph 48, and
19 therefore further deny any additional allegations or implications regarding the
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25 ⁴ Defendants admit the allegation in footnote 2 of the Complaint that the
26 Sacramento facility, which is located in the Eastern District of California, permits
27 incoming messages via an online system. Defendants deny any implication in
28 footnote 2 of the Complaint that this online system can never be used to relay
messages which are not of a confidential nature, such as requesting that a detainee
return a telephone call between certain hours.

1 telephone systems in place at the Contra Costa, Yuba and Sacramento facilities in
2 this paragraph.

3 49. DENIED. Defendants deny that “it is common” for ICE to move
4 detainees within a facility or between facilities; while it is not “common,” reasons
5 for moving a detainee within a facility or between facilities include – but are not
6 limited to – disciplinary issues, medical issues, and problems with staff or other
7 detainees.
8

9
10 **DENIED. Defendants deny Plaintiffs assertion on page 12 of their**
11 **Complaint between Paragraphs 49 and 50 regarding any “Denial of Rights**
12 **to Legal Representation”**

13 50. DENIED. Defendants lack sufficient information to admit or deny the
14 allegation in Paragraph 50, and, therefore, deny that allegation.

15 51. DENIED. Defendants lack sufficient information to admit or deny the
16 allegation in Paragraph 51, and, therefore, deny that allegation.

17 52. DENIED in part and ADMITTED in part. Defendants deny the
18 allegation in Paragraph 52 that “it is impossible for the attorneys to call or arrange
19 calls” with ICE detainees housed at the Yuba facility; Defendants assert that the
20 Yuba facility could make arrangements to allow an attorney to call a detainee or
21 arrange a time for that detainee to call his or her attorney. Defendants admit that
22 attorneys cannot call or arrange calls with ICE detainees at the Contra Costa
23 facility. Defendants admit that there is no formal mechanism in place to allow
24 attorneys to call or arrange calls with ICE detainees at the Sacramento facility, but
25 Defendants note that an attorney may be allowed to call or schedule a call with a
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1 detainee at the discretion of the Sacramento facility. Defendants admit that the
2 telephone systems generally available to detainees at the Yuba, Sacramento and
3 Contra Costa facilities require a live person to answer and accept any call; this
4 feature is deemed necessary to prevent detainees, including criminal inmates not in
5 ICE custody but housed at the same facilities, from calling any crime victims or
6 leaving threatening messages. Defendants further assert the following: (1) the
7 Yuba facility will on occasion allow an ICE detainee to use the Sheriff's Department
8 phone to make a call when there is a compelling reason. Defendants lack sufficient
9 information to admit or deny the remainder of the allegations in Paragraph 52, and,
10 therefore, deny them.
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14 53. DENIED. Defendants lack sufficient information to admit or deny the
15 allegations in Paragraph 53, and, therefore, deny them.

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17 54. DENIED. Defendants lack sufficient information to admit or deny the
18 allegations in Paragraph 54, and, therefore, deny them.

19
20 55. DENIED in part and ADMITTED in part. Defendants deny any
21 implication in Paragraph 55 that ICE detainees in removal proceedings and housed
22 at any of the three facilities at issue in this litigation are unreasonably and
23 unnecessarily restricted or denied access to a telephone in any way that violates
24 their statutory or constitutional rights. Defendants deny any implication in
25 Paragraph 55 that ICE detainees at any of the three facilities at issue in this
26 litigation may only receive written correspondence related to legal matters.
27 Defendants admit that any letters sent to ICE detainees housed at any of the three
28

1 facilities at issue in this litigation must be inspected to ensure that those letters do
2 not contain contraband. With respect to the Yuba facility, Defendants admit that
3 any incoming mail from an attorney, judicial officer, elected representative, or
4 government entity to an ICE detainee is opened in the presence of that detainee for
5 inspection of contraband only. With respect to the Sacramento facility, Defendants
6 admit that all mail is inspected for contraband except for legal mail; legal mail is
7 given to the ICE detainee to be opened in the presence of a deputy. With respect to
8 the Contra Costa facility, Defendants admit that, with the exception of legal mail,
9 all mail is opened and inspected before being brought into the facility, and that
10 legal mail is opened in front of the detainee for security purposes. Defendants lack
11 sufficient information to admit or deny the allegation in Paragraph 55 that “legal
12 correspondence to and from ICE custody can take a week in each direction,” and
13 therefore deny that allegation. With respect to the Yuba facility, Defendants note
14 that incoming mail is distributed to detainees the same day it is picked up from the
15 Post Office. With respect to the Sacramento facility, Defendants note that all mail
16 is delivered the day it arrives with the exception of Sunday, holidays, and any mail
17 that is forwarded to investigations following inspection. With respect to the Contra
18 Costa facility, Defendants note that received mail will be inspected and given to the
19 detainee within a day or less. Defendants deny the allegation in Paragraph 55 that
20 attorneys representing ICE detainees in removal proceedings and housed in any of
21 the three facilities at issue in this litigation have no ability to arrange calls with
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1 their detained client(s). Defendants lack sufficient information to admit or deny the
2 remainder of the allegations in Paragraph 55, and, therefore, deny them.

3 56. DENIED. Defendants deny any implication in Paragraph 56 that ICE
4 detainees in removal proceedings who are housed at any of the three facilities at
5 issue in this litigation are unreasonably and unnecessarily restricted or denied
6 access to a telephone in any way that violates their statutory or constitutional
7 rights. Defendants lack sufficient information to admit or deny the remainder of
8 the allegations in Paragraph 56, and, therefore, deny them.
9
10

11 **DENIED. Defendants deny Plaintiffs assertion on page 14 of their**
12 **Complaint between Paragraphs 56 and 57 regarding any “Denial of Right**
13 **to Gather and Present Evidence”**

14 57. DENIED. Defendants deny any and all allegations in Paragraph 57
15 that ICE detainees in removal proceedings who are housed at any of the three
16 facilities at issue in this litigation are unreasonably and unnecessarily denied
17 access to a telephone in any way that violates their statutory or constitutional
18 rights. Defendants lack sufficient information to admit or deny the remainder of
19 the allegations in Paragraph 57, and, therefore, deny them.
20

21 58. DENIED. Defendants deny any and all allegations in Paragraph 58
22 that ICE detainees in removal proceedings who are housed at any of the three
23 facilities at issue in this litigation are unreasonably and unnecessarily restricted or
24 denied access to a telephone in any way that violates their statutory or
25 constitutional rights. Defendants deny that it is “rare” for an ICE detainee housed
26 at any of the three facilities at issue in this litigation to have access to a telephone
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1 during “business hours.” Defendants further deny the allegation that costs of
2 making a telephone call from any of the three facilities at issue in this litigation are
3 “prohibitive,” and deny any implication in Paragraph 58 that the costs of placing a
4 telephone call at each facility are unreasonable. Additionally, Plaintiffs’ allegation
5 that “the prohibitive telephone rates render most Plaintiffs unable to actually
6 complete the call,” appears to be pure speculation, to which no response is required.
7 To the extent a response is required, Defendants deny this allegation. Defendants
8 lack sufficient information to admit or deny the remainder of the allegations in
9 Paragraph 58.
10
11

12 **DENIED Defendants deny Plaintiffs assertion on page 15 of their**
13 **Complaint between Paragraphs 58 and 59 regarding any “Prolonged**
14 **Incarceration.” Defendants further note that Plaintiffs are not**
15 **challenging the legality of their immigration detention, but rather**
16 **challenging conditions of their lawful detention in this litigation.**

17 59. DENIED. Defendants deny any and all allegations in Paragraph 59
18 that ICE detainees in removal proceedings who are housed at any of the three
19 facilities at issue in this litigation are unreasonably and unnecessarily restricted or
20 denied access to a telephone in any way that violates their statutory or
21 constitutional rights, including the right to not be subject to unreasonably or
22 unconstitutionally prolonged detention. Defendants lack sufficient information to
23 admit or deny the remainder of the allegations in Paragraph 59, and, therefore,
24 deny them.
25

26 60. DENIED. Defendants deny any and all allegations in Paragraph 60
27 that ICE detainees in removal proceedings who are housed at any of the three
28

1 facilities at issue in this litigation are unreasonably and unnecessarily restricted or
2 denied access to a telephone in any way that violates their statutory or
3 constitutional rights, including the right to not be subject to unreasonably or
4 unconstitutionally prolonged detention. Defendants lack sufficient information to
5 admit or deny the remainder of the allegations in Paragraph 60, and, therefore,
6 deny them.
7

8 ADDITIONAL ALLEGATIONS RE: INDIVIDUAL PLAINTIFFS
9

10 **Audley Barrington Lyon, Jr.**

11 61. ADMITTED.

12 62. DENIED in part. Defendants cannot admit or deny whether Lyon is
13 seeking a U-Visa as disclosure of such information is barred by 8 U.S.C. §1367(2).
14 Defendants lack sufficient information to admit or deny the remainder of the
15 allegations in Paragraph 62 and, therefore, deny them.
16

17 63. DENIED. Defendants lack sufficient information to admit or deny
18 the allegations in Paragraph 63, and, therefore, deny them. Defendants note that
19 Lyon is currently represented in his removal proceedings.
20

21 64. DENIED in part and ADMITTED in part. Defendants cannot admit or
22 deny whether Lyon is seeking a U-Visa as disclosure of such information is barred
23 by 8 U.S.C. §1367(2). Defendants admit that the Contra Costa facility does not
24 permit detainees to purchase calling cards or phone credit. Defendants deny any
25 implication in Paragraph 64 that the family of an ICE detainee at the Contra Costa
26 facility could not contact the facility's phone provider and put money into an
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28

1 account for the detainee to make calls. Defendants lack sufficient information to
2 admit or deny the remainder of the allegations in Paragraph 64, and, therefore,
3 deny them.
4

5 65. DENIED in part. Defendants cannot admit or deny whether Lyon is
6 seeking a U-Visa as disclosure of such information is barred by 8 U.S.C. §1367(2).
7 Defendants lack sufficient information to admit or deny the remainder of the
8 allegations in Paragraph 65, and, therefore, deny them.
9

10 66. DENIED. Defendants lack sufficient information to admit or deny the
11 allegation in Paragraph 66, and, therefore, deny this allegation.
12

13 67. DENIED. Defendants cannot admit or deny whether Lyon is seeking a
14 U-Visa as disclosure of such information is barred by 8 U.S.C. §1367(2). Defendants
15 otherwise deny the allegation in Paragraph 67.
16

Edgar Cornelio

17 68. DENIED. Defendants deny that Cornelio is “a 36-year old man”; ICE
18 records reflect that Cornelio is approximately thirty-one (31) years of age.
19 Defendants deny that Cornelio is currently in ICE custody; Cornelio was removed to
20 Guatemala on February 11, 2014. Defendants lack sufficient information to admit
21 or deny the remaining allegation in Paragraph 68, and therefore deny it. DHS
22 records reflect that Cornelio entered the United States without inspection – thus
23 without being admitted or paroled – and cannot confirm Cornelio’s date of illegal
24 entry.
25
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1 69. DENIED in part. Defendants cannot admit or deny whether Cornelio
2 previously applied for asylum as release of such information is prohibited by 8
3 C.F.R. § 208.6. Defendants deny that Cornelio currently seeks any form of relief
4 from removal; Cornelio was ordered removed to Guatemala by an Immigration
5 Judge at his removal hearing on January 23, 2014, and waived appeal of that
6 decision, rendering it a final removal order, thus concluding his removal
7 proceedings.
8

9
10 70. DENIED in part and ADMITTED in part. Defendants deny any and
11 all allegations or implications in Paragraph 70 that Cornelio, while he was in
12 immigration detention at the Contra Costa facility prior to his removal on February
13 11, 2014, was unreasonably or unnecessarily restricted or denied access to a
14 telephone in any way that violated his statutory or constitutional rights.
15 Defendants admit that the Contra Costa facility does not allow detainees to
16 purchase calling cards. Defendants lack sufficient information to admit or deny the
17 remainder of the allegations in Paragraph 70, and, therefore, deny them.
18

19
20 71. DENIED in part and ADMITTED in part. Defendants deny any
21 allegation or implication in Paragraph 71 that Cornelio's immigration detention was
22 unreasonably or unconstitutionally prolonged. Defendants note that Cornelio was
23 previously released from immigration detention on a bond of \$1,500 in August 2010,
24 but that bond was revoked as a result of a July 2013 arrest and incarceration.
25 Defendants further note that Cornelio's removal proceedings are no longer
26 proceeding; Cornelio was ordered removed to Guatemala by an Immigration Judge
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1 at his removal hearing on January 23, 2014, and waived appeal of that decision,
2 rendering it a final removal order, thus concluding his removal proceedings.

3 Defendants admit that following Cornelio's most recent immigration detention
4 commencing in September 2013, he had hearings before an Immigration Judge on
5 the following dates: October 29, 2013; November 12, 2013; December 3, 2013;
6 January 8, 2014; and January 24, 2014.
7

8 72. DENIED. Defendants deny any and all allegations or implications in
9 Paragraph 70 that Cornelio, while he was in immigration detention at the Contra
10 Costa facility prior to his removal on February 11, 2014, was unreasonably or
11 unnecessarily restricted or denied access to a telephone in any way that violated his
12 statutory or constitutional rights. Defendants deny the allegation in Paragraph 72
13 that it is impossible for ICE detainees housed at the Contra Costa facility to make
14 international calls; ICE detainees at the Contra Costa facility can make
15 international-collect calls or the detainees family can contact the phone provider
16 and set up an account for the detainee, allowing him to make international calls.
17

18 Defendants cannot admit or deny whether Cornelio previously applied for asylum as
19 release of such information is prohibited by 8 C.F.R. § 208.6. Defendants lack
20 sufficient information to admit or deny the remainder of the allegations in
21 Paragraph 72, and, therefore, deny them.
22

23 **Jose Elizandro Astorga-Cervantes**
24

25 73. DENIED in part and ADMITTED in part. Defendants admit that
26 Astorga-Cervantes is a 52-year-old man previously held in ICE custody at the
27
28

1 Sacramento facility. Defendants deny that Astorga-Cervantes is currently in ICE
2 custody; Astorga-Cervantes posted bond and was released from immigration
3 detention on February 20, 2014. Defendants note that the Sacramento facility is
4 located in the Eastern District of California. Defendants further admit that
5 Astorga-Cervantes was admitted to the United States in January 1977, when
6 Astorga-Cervantes was approximately fifteen-years old, as an IR-2 Immigrant.
7 Defendants admit Astorga-Cervantes has been a Lawful Permanent Resident
8 (“LPR”) since 1977, when he was admitted as an Immigrant IR-2. Defendants lack
9 sufficient information to admit or deny the allegation that Astorga-Cervantes “has
10 lived in the United States since he was a child,” and, therefore, deny that allegation.
11 Defendants note that DHS records do not support any allegation that Astorga-
12 Cervantes lived in the United States prior to his admission in January 1977 when
13 he was approximately fifteen-years old.
14
15
16

17 74. DENIED. Defendants note that Astorga-Cervantes was granted bond
18 in the amount of \$6,000 by an Immigration Judge on January 23, 2014. DHS
19 records reflect that Astorga-Cervantes posted bond and was released from ICE
20 custody on February 20, 2014. Defendants deny any implication in Paragraph 74
21 that release for any ICE detainee from discretionary pre-removal order custody
22 under 8 U.S.C. § 1226(a), the custody detention statute under which Astorga-
23 Cervantes was previously detained, necessarily requires both “letters and testimony
24 from family and community members.” Defendants lack sufficient information to
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1 admit or deny the remainder of the allegations in Paragraph 74, and, therefore,
2 deny them.

3 75. DENIED. Defendants deny any and all allegations and/or implications
4 in Paragraph 75 that Astorga-Cervantes, while previously in immigration detention
5 at the Sacramento facility, was unreasonably or unnecessarily restricted or denied
6 access to a telephone in any way that violated his statutory or constitutional rights.
7 Defendants lack sufficient information to admit or deny the remainder of the
8 allegations in Paragraph 75, and, therefore, deny them. Defendants note that
9 Astorga-Cervantes was granted bond in the amount of \$6,000 by an Immigration
10 Judge on January 23, 2014; he posted bond and was released from ICE custody on
11 February 20, 2014.
12
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14

15 76. DENIED. Defendants lack sufficient information to admit or deny the
16 allegations in Paragraph 76, and, therefore, deny them.

17 **Lourdes Hernandez-Trujillo**

18 77. DENIED in part and ADMITTED in part. Defendants admit that
19 Hernandez-Trujillo is “a 29-year-old woman currently in ICE custody in the Yuba
20 facility.” Defendants lack sufficient information to admit to deny the remaining
21 allegation in Paragraph 77, and, therefore, deny this allegation.
22
23

24 78. DENIED in part. Defendants cannot admit or deny whether
25 Hernandez-Trujillo has applied for relief from removal under the Convention
26 Against Torture (CAT) as release of such information is prohibited by 8 C.F.R. §
27 208.6. Additionally, Defendants cannot admit or deny whether Hernandez-Trujillo
28

1 is seeking a U-Visa as disclosure of such information is barred by 8 U.S.C. §1367(2).
2 Defendants lack sufficient information to admit or deny the remainder of the
3 allegations in Paragraph 78, and, therefore, deny them.
4

5 79. DENIED in part and ADMITTED in part. Defendants admit that that
6 Hernandez-Trujillo was initially detained in the Sacramento facility, in the Eastern
7 District of California, for the first 160 days of her immigration detention following
8 the commencement of her removal proceedings in November 2012. Defendants
9 deny any and all allegations and/or implications in Paragraph 79 that Hernandez-
10 Trujillo while in immigration detention at the Sacramento facility was
11 unreasonably or unnecessarily restricted or denied access to a telephone in any way
12 that violated her statutory or constitutional rights. Defendants deny that
13 Hernandez-Trujillo was housed in segregation while she was detained in the
14 Sacramento facility, and as such was confined to her cell for approximately 22 hours
15 each day. Defendants deny that Hernandez-Trujillo had “no access to a telephone”
16 while detained at the Sacramento facility. Defendants further note that ICE
17 detainees in segregation at the Sacramento facility can make legal phone calls
18 outside the two-hour time frame outside their cells by submitting a written or oral
19 request to facility staff. Defendants lack sufficient information to admit or deny the
20 remainder of the allegations in Paragraph 79, and, therefore, deny them.
21
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25 80. DENIED in part and ADMITTED in part. Defendants deny any and
26 all allegations and/or implications in Paragraph 80 that Hernandez-Trujillo, while
27 in immigration detention at the Sacramento facility or Yuba facility, has been
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1 unreasonably or unnecessarily restricted or denied access to a telephone in any way
2 that violated her statutory or constitutional rights. Defendants cannot admit or
3 deny whether Hernandez-Trujillo is seeking a U-Visa as disclosure of such
4 information is barred by 8 U.S.C. §1367(2). Defendants admit that Hernandez-
5 Trujillo is represented by counsel in her removal proceedings. Defendants lack
6 sufficient information to admit or deny the remainder of the allegations in
7 Paragraph 80, and, therefore, deny them.
8

9
10 81. DENIED. Defendants deny any and all allegations in Paragraph 81
11 that Hernandez-Trujillo has been unreasonably and unnecessarily restricted or
12 denied access to a telephone in any way that violates her statutory or constitutional
13 rights, including the right to not be subject to unreasonably or unconstitutionally
14 prolonged detention. Defendants note that Hernandez-Trujillo is subject to
15 mandatory pre-removal order detention under 8 U.S.C. § 1226(c). Defendants
16 further note that Hernandez-Trujillo, through counsel, has declined her right to a
17 custody hearing before an Immigration Judge under *Rodriguez v. Robbins*, 715 F.3d
18 1127 (9th Cir. 2013). Defendants lack sufficient information to admit or deny the
19 remainder of the allegations in Paragraph 81, and, therefore, deny them.
20
21

22 82. DENIED in part and ADMITTED in part. Defendants deny any and all
23 allegations in Paragraph 81 that Hernandez-Trujillo has been unreasonably and
24 unnecessarily restricted or denied access to a telephone in any way that violates her
25 statutory or constitutional rights, including the right to not be subject to
26 unreasonably or unconstitutionally prolonged detention and her right to counsel.
27
28

1 Defendants note that Hernandez-Trujillo is subject to mandatory pre-removal order
2 detention under 8 U.S.C. § 1226(c). Defendants further note that Hernandez-
3 Trujillo, through counsel, has declined her right to a custody hearing before an
4 Immigration Judge under *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013).
5 Defendants admit that Hernandez-Trujillo was transferred to the Yuba facility in
6 April 2013. Defendants deny that “under Defendants’ policies and practices
7 [Hernandez-Trujillo’s] attorney cannot call or schedule a call” with Hernandez-
8 Trujillo; on a case-by-case basis, the Yuba facility will accommodate requests to
9 permit a scheduled call between a detainee and their counsel. Defendants note that
10 Plaintiffs have failed to identify a single DHS or ICE policy that would allegedly
11 prohibit an attorney from calling or scheduling a call with their client in
12 immigration detention. Defendants further admit that the telephone system
13 provided to ICE detainees at the Yuba facility cannot navigate a phone tree.
14 Defendants lack sufficient information to admit or deny the remainder of the
15 allegations in Paragraph 82, and, therefore, deny them.

20 CLASS ALLEGATIONS

21 83. Paragraph 83 contains Plaintiffs proposed class definition, to which no
22 response is required. To the extent a response is required, Defendants deny that
23 Plaintiffs’ proposed class satisfies the requirements of Rule 23 of the Federal Rules
24 of Civil Procedure. Defendants further deny any implication that the proposed class
25 of “all current and future adult immigration detainees who are or will be held by
26 ICE in Contra Costa County, Sacramento County, or Yuba County” is reasonable;
27
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1 this proposed class definition is overly broad and fails to limit the class to those
2 “immigrants held in government custody *pending* deportation proceedings,” on
3 whose behalf Plaintiffs allegedly bring this action. See Compl. (ECF No. 1) ¶ 1.
4
5 (emphasis added). Furthermore, Defendants deny any implication in Paragraph 83
6 that the Sacramento facility in Sacramento County is located within the Northern
7 District of California; Sacramento County is located within the Eastern District of
8 California.

9
10 84. DENIED.

11 85. Paragraph 85 contains Plaintiffs statement as to the relief they seek in
12 this litigation, to which no response is required. To the extent a response is
13 required, Defendants deny any implication in Paragraph 85 that Plaintiffs are
14 entitled to the relief they seek.
15

16 86. Paragraph 86 contains Plaintiffs’ legal conclusion that joinder is
17 impracticable, to which no response is required. To the extent a response is
18 required, Defendants do not contest at this time that Plaintiffs’ proposed class can
19 meet the numerosity requirement of Fed. R. Civ. P. 23(a)(1), but deny that Plaintiffs
20 can otherwise meet the requirements of Rule 23(a) to certify their purported class.
21 Defendants admit that the Contra Costa, Sacramento, and Yuba facilities can “hold
22 a combined total of between 500 and 600 immigration detainees on an average day”;
23 Defendants deny any implication in Paragraph 86 that this average is not subject to
24 change as it could fluctuate up or down on any given day. Defendants deny any
25 implication in Paragraph 86 that the Sacramento facility is located within the
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1 Northern District of California; Sacramento County is located within the Eastern
2 District of California.

3 87. Paragraph 87 contains Plaintiffs' legal conclusion that joinder is
4 impracticable, to which no response is required. To the extent a response is
5 required, Defendants do not contest that Plaintiffs' proposed class can meet the
6 numerosity requirement of Fed. R. Civ. P. 23(a)(1), but deny that Plaintiffs can
7 otherwise meet the requirements of Rule 23(a) to certify their purported class.
8

9
10 88. Paragraph 88 contains Plaintiffs' legal conclusion that there are
11 questions of law and fact common to their purported class, to which no response is
12 required. To the extent a response is required, Defendants deny that Plaintiffs can
13 meet the requirements of Rule 23(a) to certify their purported class.
14

15 (a) DENIED

16 (b) DENIED

17 (c) DENIED

18 (d) DENIED

19 (e) DENIED

20
21 89. DENIED.

22 90. Paragraph 90 contains Plaintiffs' legal conclusion that the four named
23 Plaintiffs "will fairly and adequately represent the interests of the [purported]
24 class," to which no response is required. To the extent a response is required,
25 Defendants deny this conclusion. Defendants note that Cornelio was removed to
26 Guatemala on February 11, 2014, rendering him unable to fairly and adequately
27
28

1 represent the interests of the [purported] class. Defendants do not challenge that
2 the proposed class counsel can serve as adequate representatives for the class.

3 91. Paragraph 91 contains Plaintiffs' legal conclusion that certification of
4 their proposed class would be appropriate in this litigation, to which no response is
5 required. To the extent a response is required, Defendants deny that Plaintiffs
6 have met the requirements of Fed. R. Civ. P. 23(a) and (b)(2) to certify the class they
7 propose.
8

9
10 (a) DENIED;

11 (b) DENIED. Defendants lack sufficient information to admit or
12 deny the allegations in Paragraph 91(b), and, therefore, deny them. Defendants
13 deny any implication in Paragraph 91(b) that any conduct by DHS or ICE has
14 violated any legal rights of immigration detainees at the Contra Costa facility, Yuba
15 facility, and Sacramento facility;
16

17 (c) DENIED. Paragraph 91(c) includes Plaintiffs' legal conclusion
18 that "prosecution of individual actions would be impossible," to which no response is
19 required. To the extent a response is required, Defendants lack sufficient
20 information to admit or deny the allegations in Paragraph 91(c), and, therefore,
21 deny them;
22

23 (d) DENIED. Paragraph 91(d) includes Plaintiffs' legal conclusion
24 that "prosecution of separate actions . . . would be inefficient," to which no response
25 is required. To the extent a response is required, Defendants lack sufficient
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27
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1 information to admit or deny the allegations in Paragraph 91(d), and, therefore,
2 deny them;

3 (e) DENIED in part and ADMITTED in part. Defendants admit
4 that ICE contracts with the Contra Costa facility, the Yuba facility, and the
5 Sacramento facility to house immigration detainees. Defendants deny that any
6 other defendants in this action contract with these three facilities to house
7 immigration detainees. Defendants deny any implication in Paragraph 91(e) that
8 the 2000 National Detention Standards governing telephone access at three
9 facilities at issue in this litigation are inadequate or otherwise disregard
10 immigration detainees' constitutional and statutory rights as alleged by Plaintiffs.

11 (f) Paragraph 91(f) contains Plaintiffs' request for injunctive and
12 declaratory relief, to which no response is required. To the extent a response is
13 required, Defendants deny that Plaintiffs are entitled to the relief they seek in this
14 litigation.

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18 DECLARATORY RELIEF ALLEGATIONS

19 92. DENIED in part and ADMITTED in part. Defendants admit that a
20 controversy exists between Plaintiffs and Defendants. Defendants admit that they
21 "deny that their policies, practices and omissions [if any] violate Plaintiffs'
22 constitutional and statutory rights." Defendants deny any implication in Paragraph
23 92 that Defendants' policies and practices regarding telephone access at three
24 facilities at issue in this litigation are inadequate or otherwise disregard
25 immigration detainees' constitutional and statutory rights as alleged by Plaintiffs.
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1 FIRST CLAIM FOR RELIEF

2 **Right to Representation of Counsel**

3 **(Fifth Amendment Due Process Clause; 8 U.S.C. §§ 1362; 1229a(b)(4)(A))**

4 93. Defendants incorporate by reference all foregoing responses in
5 response to the allegation in Paragraph 93 that “Plaintiffs reallege the foregoing
6 paragraphs and incorporate them herein by this reference.”

7 94. Paragraph 94 contains legal conclusions to which no response is
8 required.

9 95. Paragraph 95 contains legal conclusions to which no response is
10 required.

11 96. DENIED.

12 97. DENIED.

13 SECOND CLAIM FOR RELIEF

14 **Right to a Full and Fair Hearing**

15 **(Fifth Amendment Due Process Clause; 8 U.S.C. § 1229a(b)(4)(B))**

16 98. Defendants incorporate by reference all foregoing responses in
17 response to the allegation in Paragraph 98 that “Plaintiffs reallege the foregoing
18 paragraphs and incorporate them herein by this reference.”

19 99. Paragraph 99 contains legal conclusions to which no response is
20 required.

21 100. Paragraph 100 contains legal conclusions to which no response is
22 required.

23 101. DENIED.

24 102. DENIED.

1 THIRD CLAIM FOR RELIEF

2 **Right to Petition the Government for Redress of Grievances**
3 **(First Amendment Petition Clause)**

4 103. Defendants incorporate by reference all foregoing responses in
5 response to the allegation in Paragraph 98 that “Plaintiffs reallege the foregoing
6 paragraphs and incorporate them herein by this reference.”

7 104. Paragraph 104 contains legal conclusions to which no response is
8 required.

9 105. DENIED.

10 106. DENIED.

11 PRAYER FOR RELIEF

12
13 The remainder of the Complaint for Injunctive and Declaratory Relief
14 consists of Plaintiffs’ Prayer for Relief, to which no response is required. To the
15 extent a response is required, Defendants deny that ICE’s policies and practices
16 governing telephone access at the Contra Costa facility, Yuba facility, or
17 Sacramento facility are inadequate or otherwise disregard Plaintiffs’ constitutional
18 and statutory rights such that Plaintiffs are entitled to any relief.

19
20
21 **FIRST AFFIRMATIVE DEFENSE**

22 The Complaint for Injunctive and Declaratory Relief fails in whole or in part
23 to state a claim upon which relief can be granted.

24
25 **SECOND AFFIRMATIVE DEFENSE**

26 Plaintiffs have failed to allege claims sufficient to certify the proposed class,
27 which is too broadly defined and lacks the prerequisites of Fed. R. Civ. P. 23.
28

1 **THIRD AFFIRMATIVE DEFENSE**

2 Venue for any and all claims related to immigration detainees housed at the
3 Rio Cosumnes Correctional Facility in Sacramento County, California is improper
4 in the Northern District of California; the Sacramento facility is located in the
5 Eastern District of California.
6

7 **FOURTH AFFIRMATIVE DEFENSE**

8 Defendants have not violated any rights, privileges or immunities under the
9 Constitution, laws of the United States, or any political subdivision thereof.
10

11 **FIFTH AFFIRMATIVE DEFENSE**

12 Plaintiffs fail to allege or demonstrate standing for those proposed class
13 members who cannot show an actual injury caused by Defendants’ policies and
14 practices related to their conditions of confinement, including their access to
15 telephones while in immigration custody. *See Lewis v. Casey*, 518 U.S. 343 (1996).
16

17 **SIXTH AFFIRMATIVE DEFENSE**

18 To the extent Plaintiffs assert challenges to their individual immigration
19 proceedings – including review of, or relief from, their respective immigration
20 proceedings – this Court lacks jurisdiction to hear any such claims. *See* 8 U.S.C.A. §
21 1252(g).
22

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 Plaintiffs fail to state a cognizable claim under the Administrative Procedure
25 Act (“APA”) insofar as the allegations in the complaint do not challenge final agency
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1 action within the meaning of the APA. 5 U.S.C. § 704; *see also Bennett v. Spear*,
2 520 U.S. 154, 177–78 (1997).

3 **EIGHTH AFFIRMATIVE DEFENSE**

4
5 Defendants reserve the right to assert additional affirmative defenses.

6
7
8 DATED:

February 21, 2014

9
10 STUART DELERY
Assistant Attorney General
11 Civil Division

12 COLIN A. KISOR
13 Acting Director

14 ELIZABETH J. STEVENS
15 Assistant Director

16 /s/ Jennifer A. Bowen
17 JENNIFER A. BOWEN
Trial Attorney
18 District Court Section
Office of Immigration Litigation
19 Civil Division
20 United States Department of Justice

21 *Attorneys for Defendants*
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

No. 3:13-cv-05878-EMC

I hereby certify that on this 21st day of February 2014, a true and correct copy of DEFENDANTS' ANSWER was served with the Clerk of Court by using the CM/ECF system, which provided an electronic notice and electronic link of the same to all attorneys of record through the Court's CM/ECF system.

/s/ Jennifer A. Bowen
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