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

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

1 Defendants U.S. Immigration and Customs Enforcement (“ICE”); Thomas S.  
2 Winkowski (“Winkowski”), Principal Deputy Assistant Director, ICE; <sup>1</sup>; U.S.  
3 Department of Homeland Security (“DHS”); Jeh Johnson (“Johnson”), Secretary of  
4 DHS; and Timothy Aitken (“Aitken”), Field Office Director for the ICE Enforcement  
5 and Removal Operations (“ERO”) Field Office in San Francisco (collectively,  
6 “Defendants”), without waiving affirmative defenses as follow, hereby assert their  
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8 FIRST AMENDED ANSWER to the Complaint for Injunctive and Declaratory  
9  
10 Relief filed by Plaintiffs Audley Barrington Lyon, Jr. (“Lyon”); Edgar Cornelio<sup>2</sup>  
11 (“Cornelio”); José Elizandro Astorga-Cervantes (“Astorga-Cervantes”); and Lourdes  
12 Hernandez-Trujillo (“Hernandez-Trujillo”) on behalf of themselves and all others  
13 similarly situated (collectively, “Plaintiffs”). See ECF No. 1 (hereinafter,  
14 “Complaint”).  
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16 Defendants state as follows in response to each of the numbered paragraphs  
17 in Plaintiffs’ Complaint:  
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22 <sup>1</sup> John Sandweg, who was named as a defendant in this action in his official  
23 capacity as Acting Director of ICE, resigned from this position effective February  
24 21, 2014. Mr. Winkowski is substituted for former Acting Director Sandweg under  
25 Fed. R. Civ. P. 25(d).

26 <sup>2</sup> 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           INTRODUCTION

2           1.       DENIED in part and ADMITTED in part. The first sentence of  
3 Paragraph 1 is a summary of the relief Plaintiffs seek on behalf of the class they  
4 propose to certify, to which no response is required. To the extent a response is  
5 required, Defendants deny any allegation of “ongoing violations of the constitutional  
6 and statutory rights of immigrants held in government custody pending deportation  
7 proceedings.” Defendants also deny any and all allegations that “[t]hose rights (and  
8 others) are systematically denied by Defendants. Defendants admit that the Court  
9 certified a class in this litigation on April 16, 2014. *See* ECF No. 31. Defendants  
10 admit that aliens in removal proceedings have certain procedural and substantive  
11 rights afforded by the U.S. Constitution and federal statutes.

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

20           3.       DENIED in part and ADMITTED in part. Defendants admit that one  
21 of the four named Plaintiffs – Lyon – remains in ICE custody pending resolution of  
22 his removal proceedings. Defendants deny Astorga-Cervantes is in ICE custody;  
23

1 Astorga-Cervantes posted bond and was released from detention on February 20,  
2 2104. Defendants deny that Cornelio is detained by ICE and that removal  
3 proceedings against Cornelio remain pending; Cornelio was ordered removed to  
4 Guatemala by an Immigration Judge at his hearing on January 23, 2014, and  
5 waived appeal of that decision, rendering it a final removal order, thus concluding  
6 his removal proceedings. Additionally, Cornelio was removed to Guatemala on  
7 February 11, 2014, ending his immigration detention. Defendants deny that  
8 Hernandez-Trujillo remains in ICE custody; Hernandez-Trujillo was released from  
9 custody on an Order of Supervision on or about April 9, 2014, after an immigration  
10 judge terminated her removal proceedings. Defendants admit that the Court  
11 certified a class of “all current and future immigration detainees who are or will be  
12 held by ICE in Contra Costa, Sacramento, and Yuba Counties.” See ECF No. 31.  
13 Defendants deny, however, that the class certified consists only of aliens detained  
14 by ICE “pending” their removal proceedings. Defendants admit that – with the  
15 exception of those mentally incompetent aliens who are within the class certified in  
16 *Franco-Gonzalez v. Holder*, Case No. 10-cv-02211-DMG (DTBx) – aliens in removal  
17 proceedings are not entitled to appointed counsel. Defendants lack sufficient  
18 information to admit or deny the remainder of Plaintiffs’ claims in Paragraph 3,  
19 and, therefore, deny them.

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25 4. DENIED.

1           5.       DENIED. Additionally, Defendants note that Plaintiffs' Complaint  
2 does not identify any DHS or ICE policy that allegedly denies or restricts telephone  
3 access. *See generally* Compl. (ECF No. 1).  
4

5           6.       DENIED. Defendants lack sufficient information to admit or deny the  
6 numerous causes for continuances sought by Plaintiffs or other aliens in their  
7 removal proceedings, and, therefore, deny Plaintiffs' allegations regarding the  
8 causes of such continuances. Additionally, Plaintiffs' allegation regarding "some  
9 [aliens] who would accept a removal order much earlier in the process" appears to  
10 be pure speculation, to which no response is required. To the extent a response is  
11 required, Defendants deny this allegation. Defendants deny the remainder of the  
12 allegations in Paragraph 6.  
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15           7.       Paragraph 7 contains Plaintiffs' proposed class definition and request  
16 to certify a class action, to which no response is required. To the extent a response  
17 is required, Defendants admit that the Court certified a class of "all current and  
18 future immigration detainees who are or will be held by ICE in Contra Costa,  
19 Sacramento, and Yuba Counties." *See* ECF No. 31.  
20

21                   JURISDICTION

22           8.       The allegations in Paragraph 8 contain legal conclusions as to  
23 jurisdiction, to which no response is required. To the extent a response is required,  
24 Defendants deny any allegation of independent jurisdiction under the Declaratory  
25 Judgment Act, 8 U.S.C. §§ 2201 and 2202. *See Skelly Oil Co. v. Phillips Petroleum*  
26 *Co.*, 339 U.S. 667, 671 (1950).  
27  
28

1           VENUE

2           9.       The allegations contained in Paragraph 9 contain legal conclusions as  
3 to venue, which do not require a response. To the extent a response is required,  
4 Defendants admit that venue for claims asserted by Plaintiffs who are or were  
5 detained in Contra Costa County and Yuba County, is proper in the Northern  
6 District of California. Defendants deny that venue for claims asserted by Plaintiffs  
7 who are or were detained in the Rio Cosumnes Correctional Facility in Sacramento  
8 County, California (“Sacramento facility”) is proper in the Northern District of  
9 California; the Sacramento facility is located in the Eastern District of California.  
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12           INTRADISTRICT ASSIGNMENT

13           10.       The allegations in Paragraph 10 contain legal conclusions as to Local  
14 Rule 3-2(d) regarding assignment to the San Francisco Division of this Court, to  
15 which no response is required.  
16

17           PARTIES

18           11.       DENIED in part and ADMITTED in part. Defendants admit that  
19 Lyon is in ICE custody at the West County Detention Center in Contra Costa  
20 County, California (“Contra Costa facility”) and that he has pending removal  
21 proceedings in the San Francisco Immigration Court. 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(a)(2). Defendants lack sufficient information to admit or deny  
24 whether Lyon “may seek cancellation of removal under 8 U.S.C. § 1229b,” and,  
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1 therefore, deny that allegation. Defendants deny the remainder of the allegations  
2 contained in Paragraph 11.

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

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

20 14. Defendants deny that Hernandez-Trujillo is in ICE custody at the  
21 Yuba County Jail (“Yuba facility”) and has removal proceedings pending in the San  
22 Francisco Immigration Court. . Hernandez-Trujillo was released from custody on  
23

1 an Order of Supervision on or about April 9, 2014, after an immigration judge  
2 terminated her removal proceedings. Defendants cannot admit or deny that  
3 Hernandez-Trujillo applied for a U-Visa as release of such information is barred by  
4 8 U.S.C. § 1367(a)(2). Defendants admit that Hernandez-Trujillo was initially  
5 detained at the Sacramento facility before being transferred to the Yuba facility in  
6 April 2013. Defendants deny the remainder of the allegations contained in  
7 Paragraph 14.

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10 15. Paragraph 15 merely states that Plaintiffs' Complaint will refer to  
11 "Lyon, Cornelio, Astorga-Cervantes, and Hernandez-Trujillo" as "the Individual  
12 Plaintiffs," to which no response is required.

13  
14 16. DENIED in part and ADMITTED in part. Defendants admit that ICE  
15 is a federal law enforcement agency within DHS. Defendants admit that ICE is  
16 responsible for the criminal and civil enforcement of U.S. immigration laws;  
17 Defendants deny any implication that ICE is the sole government agency  
18 responsible for the criminal and civil enforcement of U.S. immigration laws.  
19 Defendants admit that ICE is responsible for detaining certain aliens placed in  
20 removal proceedings, including those detained under 8 U.S.C. § 1226(a) who are  
21 denied or fail to post bond and 8 U.S.C. § 1226(c) who are subject to mandatory pre-  
22 removal order detention. Defendants further admit that ICE is responsible for  
23 detaining those aliens subject to a final removal order and subject to mandatory  
24 detention under 8 U.S.C. § 1231 as having a sufficient likelihood of removal in the  
25 reasonably foreseeable future. Defendants deny any implication in Paragraph 16



1 that ICE is responsible for the detention of all immigrants, including all immigrants  
2 in removal proceedings. Defendants lack sufficient information to admit or deny  
3 Plaintiffs' allegation that ICE is responsible for the "incarceration" of aliens, which  
4 Plaintiffs appear to distinguish from detention; Defendants therefore deny this  
5 allegation. Defendants admit that ICE is responsible for the removal of aliens  
6 subject to a final removal order. Defendants admit that Enforcement and Removal  
7 Operations ("ERO"), a division of ICE, manages and oversees the immigration  
8 detention system. Defendants admit that ICE promulgates detention standards to  
9 be followed in the facilities that detain aliens subject to pre- and post-final removal  
10 orders. Defendants further admit that ICE contracts with other government  
11 entities and private corporations to detain those aliens subject to immigration  
12 detention.  
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16 17. DENIED in part and ADMITTED in part. Defendants admit that ICE  
17 pays a fixed rate per night to house detainees in accordance with applicable ICE  
18 detention standards. Defendants deny that all the detention of all ICE detainees at  
19 the three detention facilities at issue in this litigation – the Contra Costa facility,  
20 the Yuba facility, and the Sacramento facility – is governed by the 2011 National  
21 Detention Standards. The Federal Performance-Based Detention Standards govern  
22 the detention of ICE detainees at the Contra Costa facility, which contracts with the  
23 U.S. Marshall's Service and recognizes ICE as an authorized user. The  
24 Intergovernmental Service Agreement ("IGSA") between ICE and Sacramento  
25 County, which is dated 2013, provides that the Sacramento facility "shall house  
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1 [ICE] detainees and perform related detention services in accordance with the most  
2 current edition of ICE National Detention Standards.” The Intergovernmental  
3 Service Agreement (“IGSA”) between ICE and Yuba County, which is dated 2008,  
4 provides that the Yuba facility “is required to house [ICE] detainees and perform  
5 related detention services in accordance with the most current edition of ICE  
6 National Detention Standards.”  
7

8 18. DENIED in part and ADMITTED in part. Defendants deny any  
9 implication in Paragraph 18 that the 2011 Performance-Based National Detention  
10 Standards are applicable to all three of the facilities at issue in this litigation. *See*  
11 *Defs.’ Resp. to ¶ 17*. Defendants admit that the 2011 Performance-Based National  
12 Detention Standards are the most recent detention standards promulgated by ICE.  
13  
14

15 19. DENIED. Defendants deny that John Sandweg is the Acting Director  
16 of ICE. Mr. Sandweg resigned from this position effective February 21, 2014. Mr.  
17 Winkowski, Principal Deputy Assistant Director of ICE, took over the  
18 responsibilities previously held by Mr. Sandweg. Defendants note that Plaintiffs  
19 have failed to identify any ICE policy for which the Acting Director of ICE is  
20 responsible as allegedly responsible for the harm alleged by Plaintiffs.  
21

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

8 21. ADMITTED.

9 22. DENIED in part and ADMITTED in part. Defendants deny that  
10 Aitken is the Field Office Director for the San Francisco Field Office; Aitken is the  
11 Field Office Director for the ICE ERO Field Office in San Francisco. Defendants  
12 also deny any implication in Paragraph 22 that the San Francisco ERO Field Office  
13 promulgates its own detention standards. Defendants admit the remaining  
14 allegations contained in Paragraph 22.  
15

16 23. Paragraph 23 contains Plaintiffs’ assertion that the named Federal are  
17 sued in their official capacities only, to which no response is required.  
18

19 ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

20 **Background on Removal Proceedings**

21 24. Paragraph 24 contains Plaintiffs’ characterization of removal  
22 proceedings before the U.S. immigration courts and the Board of Immigration  
23 Appeals (“BIA”), including the way in which removal proceedings are initiated, to  
24 which no response is required. Defendants further note that four named Plaintiffs  
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1 do not challenge the decision to place them into removal proceedings or place them  
2 in immigration detention pending their removal proceedings.

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

17           26. Paragraph 26 contains Plaintiffs' characterization of the ways in which  
18 an alien may contest any charges of removability in his or her removal proceedings,  
19 to which no response is required.

20           27. DENIED. Paragraph 27 contains Plaintiffs' characterization of relief  
21 from removal that aliens may seek under 8 U.S.C. §§ 1158 & 1229b, each of which  
22 speaks for itself and to which no response is required. Defendants deny any  
23

1 implication in Paragraph 27 that 8 U.S.C. § 1231(b)(3) provides any relief from  
2 removal that would result in the termination of removal proceedings without the  
3 issuance of a removal order.

4  
5 28. DENIED in part and ADMITTED in part. Defendants deny any  
6 implication in Paragraph 28 that all “forms of statutory relief from removal” not  
7 previously mentioned in Plaintiffs’ Complaint “are granted by CIS.” Defendants  
8 admit that CIS is the component of DHS that determines whether an alien in  
9 removal proceedings is eligible to receive a visa under 8 U.S.C. § 1101(a)(15)(U),  
10 and that the grant of such a visa results in the termination of removal proceedings  
11 without the issuance of a removal order.  
12

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14 29. Paragraph 29 is Plaintiffs’ characterization of bond redetermination  
15 hearings, which Plaintiffs concede are not available to all immigrants held in ICE  
16 custody, to which no response is required.

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18 30. DENIED. Defendants lack sufficient information to admit or deny the  
19 allegations in Paragraph 30, and, therefore, deny them.

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

23 **Immigration Detention in Northern California**

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

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28 33. DENIED in part and ADMITTED in part. Defendants deny that ICE  
contracts with Contra Costa County; the U.S. Marshalls’ Service contracts with

1 Contra Costa County but recognizes ICE as an authorized user, allowing for the  
2 detention of ICE detainees in the Contra Costa facility. Defendants admit that ICE  
3 has entered into Intergovernmental Service Agreements with Yuba and Sacramento  
4 counties to house immigration detainees.  
5

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

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

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

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

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

15 38. DENIED.

16 39. DENIED. Defendants lack sufficient information to admit or deny the  
17 allegations in Paragraph 39, and, therefore, deny them. Furthermore, Defendants  
18 deny any implication in Paragraph 39 that an alien’s detention pending his or her  
19 removal proceedings is the sole determinative factor as to whether that alien is able  
20 to retain counsel. Defendants further deny any implication in Paragraph 39 that an  
21 alien’s detention pending his or her removal proceedings is the sole determinative  
22 factor as to whether that alien can successfully challenge his or her charges of  
23 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  
8 ICE’s National Detention Standards provide that the facility shall permit an ICE  
9 detainee to make direct calls to (1) the local immigration court and the BIA; (2) to  
10 Federal and State courts where the detainee is or may become involved in a legal  
11 proceeding; (3) to consular officials; (4) to legal service providers; (5) to a  
12 government office, to obtain documents relevant to his or her immigration case; and  
13 (6) in a personal or family emergency, or when the ICE detainee can otherwise  
14 demonstrate a compelling need. Defendants further admit that the 2011 National  
15 Detention Standards provide that indigent detainees “are afforded the same  
16 telephone access and privileges as other detainees.” Defendants lack sufficient  
17 information to admit or deny the remainder of the allegations in Paragraph 41, and,  
18 therefore, deny them.<sup>3</sup>

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24 <sup>3</sup> Defendants lack sufficient information to admit or deny Plaintiffs’ allegations in  
25 Footnote 1 of their Complaint that “the majority of immigration attorneys [and] all  
26 local, state and federal government offices outside of DHS” are not pre-programmed  
27 into the telephone system at any of the three facilities at issue in this litigation, and  
28 therefore deny those allegations. Defendants deny any implication in Footnote 1 of  
Plaintiffs’ Complaint that ICE has any obligation to provide its detainees with free  
telephone calls to “private parties.”



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 National Detention Standards require that ICE detainees have reasonable access to  
15 telephones during established facility waking hours. Defendants deny any  
16 implication in Paragraph 44 that the Sacramento facility is located in the Northern  
17 District of California; the Sacramento facility is located in the Eastern District of  
18 California. Defendants deny the remainder of the allegations in Paragraph 44.  
19

20           45.   DENIED in part and ADMITTED in part. Defendants admit that  
21 National Detention Standards require that ICE detainees are ensured a reasonable  
22 degree of privacy for telephone calls regarding legal matters. Defendants lack  
23 sufficient information to admit or deny the remainder of the allegations in  
24 Paragraph 45, and therefore deny them.  
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1           46.   DENIED in part and ADMITTED in part. Defendants deny any  
2 implication in Paragraph 46 that the Sacramento facility is located in the Northern  
3 District of California; the Sacramento facility is located in the Eastern District of  
4 California. Defendants deny the allegation in Paragraph 46 that the cost of  
5 telephone calls from each of the three facilities at issue in this litigation is  
6 “unreasonably” expensive. Defendants admit that the 2011 National Detention  
7 Standards cited by Plaintiffs in Paragraph 46 require that facilities provide access  
8 to reasonably priced telephone services. Defendants admit that the National  
9 Detention Standards require each facility housing ICE detainees to “provide  
10 detainees with reasonable and equitable access to telephones during established  
11 facility ‘waking hours.’” Defendants admit that the cost of an intrastate, long  
12 distance call from the Contra Costa facility is \$3.00 to connect the call plus \$0.25  
13 per minute. Defendants deny that a phone call placed from the Contra Costa  
14 facility will disconnect after fifteen minutes; calls placed from the Contra Costa  
15 facility do not automatically disconnect. Defendants admit that a call placed from  
16 the Yuba facility or the Sacramento facility will be cut off after fifteen minutes in  
17 order to prevent ICE detainees and criminal inmates housed at the facility from  
18 monopolizing the phones. Defendants lack sufficient information to admit or deny  
19 the remainder of the allegations in Paragraph 46, and, therefore, deny them.  
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25           47.   DENIED.<sup>4</sup>  
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27 <sup>4</sup> Defendants admit the allegation in footnote 2 of the Complaint that the  
28 Sacramento facility, which is located in the Eastern District of California, permits  
incoming messages via an online system. Defendants deny any implication in  
DEFS.’ FIRST AMENDED ANSWER

1           48.    DENIED in part and ADMITTED in part. 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 deny that a phone call placed from the  
7 Contra Costa facility will disconnect after fifteen minutes; calls placed from the  
8 Contra Costa facility do not automatically disconnect. Defendants admit that a call  
9 placed from the Yuba facility or the Sacramento will automatically disconnect after  
10 fifteen minutes; this feature is deemed necessary to prevent detainees from  
11 monopolizing the phones. Because Plaintiffs have failed to provide an exhaustive  
12 list of the “basic technical features of the telephone system” that are allegedly  
13 “common across all housing units and detention facilities,” Defendants lack  
14 sufficient information to admit or deny the remainder of Paragraph 48, and  
15 therefore further deny any additional allegations or implications regarding the  
16 telephone systems in place at the Contra Costa, Yuba and Sacramento facilities in  
17 this paragraph.  
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22           49.    DENIED. Defendants deny that “it is common” for ICE to move  
23 detainees within a facility or between facilities; while it is not “common,” reasons  
24 for moving a detainee within a facility or between facilities include – but are not  
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26 footnote 2 of the Complaint that this online system can never be used to relay  
27 messages which are not of a confidential nature, such as requesting that a detainee  
28 return a telephone call between certain hours.

1 limited to – disciplinary issues, medical issues, and problems with staff or other  
2 detainees.

3 **DENIED. Defendants deny Plaintiffs’ assertion on page 12 of their**  
4 **Complaint between Paragraphs 49 and 50 regarding any “Denial of Rights**  
5 **to Legal Representation”**

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

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

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

7       53. DENIED. Defendants lack sufficient information to admit or deny the  
8 allegations in Paragraph 53, and, therefore, deny them.  
9

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

12       55. DENIED in part and ADMITTED in part. Defendants deny any  
13 implication in Paragraph 55 that ICE detainees in removal proceedings and housed  
14 at any of the three facilities at issue in this litigation are unreasonably and  
15 unnecessarily restricted or denied access to a telephone in any way that violates  
16 their statutory or constitutional rights. Defendants deny any implication in  
17 Paragraph 55 that ICE detainees at any of the three facilities at issue in this  
18 litigation may only receive written correspondence related to legal matters.  
19

20 Defendants admit that any letters sent to ICE detainees housed at any of the three  
21 facilities at issue in this litigation must be inspected to ensure that those letters do  
22 not contain contraband. With respect to the Yuba facility, Defendants admit that  
23 any incoming mail from an attorney, judicial officer, elected representative, or  
24 government entity to an ICE detainee is opened in the presence of that detainee for  
25 inspection of contraband only. With respect to the Sacramento facility, Defendants  
26  
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28

1 admit that all mail is inspected for contraband except for legal mail; legal mail is  
2 given to the ICE detainee to be opened in the presence of a deputy. With respect to  
3 the Contra Costa facility, Defendants admit that, with the exception of legal mail,  
4 all mail is opened and inspected before being brought into the facility and that legal  
5 mail is opened in front of the detainee for security purposes. Defendants lack  
6 sufficient information to admit or deny the allegation in Paragraph 55 that “legal  
7 correspondence to and from ICE custody can take a week in each direction,” and  
8 therefore deny that allegation. With respect to the Yuba facility, Defendants note  
9 that incoming mail is distributed to detainees the same day it is picked up from the  
10 Post Office. With respect to the Sacramento facility, Defendants note that all mail  
11 is delivered the day it arrives with the exception of Sunday, holidays, and any mail  
12 that is forwarded to investigations following inspection. With respect to the Contra  
13 Costa facility, Defendants note that received mail will be inspected and given to the  
14 detainee within a day or less. Defendants deny the allegation in Paragraph 55 that  
15 attorneys representing ICE detainees in removal proceedings and housed in any of  
16 the three facilities at issue in this litigation have no ability to arrange calls with  
17 their detained client(s). Defendants lack sufficient information to admit or deny the  
18 remainder of the allegations in Paragraph 55, and, therefore, deny them.

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24 56. DENIED. Defendants deny any implication in Paragraph 56 that ICE  
25 detainees in removal proceedings who are housed at any of the three facilities at  
26 issue in this litigation are unreasonably and unnecessarily restricted or denied  
27 access to a telephone in any way that violates their statutory or constitutional  
28

1 rights. Defendants lack sufficient information to admit or deny the remainder of  
2 the allegations in Paragraph 56, and, therefore, deny them.

3 **DENIED. Defendants deny Plaintiffs' assertion on page 14 of their**  
4 **Complaint between Paragraphs 56 and 57 regarding any "Denial of Right**  
5 **to Gather and Present Evidence"**

6 57. DENIED. Defendants deny any and all allegations in Paragraph 57  
7 that ICE detainees in removal proceedings who are housed at any of the three  
8 facilities at issue in this litigation are unreasonably and unnecessarily denied  
9 access to a telephone in any way that violates their statutory or constitutional  
10 rights. Defendants lack sufficient information to admit or deny the remainder of  
11 the allegations in Paragraph 57, and, therefore, deny them.

12 58. DENIED. Defendants deny any and all allegations in Paragraph 58  
13 that ICE detainees in removal proceedings who are housed at any of the three  
14 facilities at issue in this litigation are unreasonably and unnecessarily restricted or  
15 denied access to a telephone in any way that violates their statutory or  
16 constitutional rights. Defendants deny that it is "rare" for an ICE detainee housed  
17 at any of the three facilities at issue in this litigation to have access to a telephone  
18 during "business hours." Defendants further deny the allegation that costs of  
19 making a telephone call from any of the three facilities at issue in this litigation are  
20 "prohibitive," and deny any implication in Paragraph 58 that the costs of placing a  
21 telephone call at each facility are unreasonable. Additionally, Plaintiffs' allegation  
22 that "the prohibitive telephone rates render most Plaintiffs unable to actually  
23 complete the call," appears to be pure speculation, to which no response is required.  
24  
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1 To the extent a response is required, Defendants deny this allegation. Defendants  
2 lack sufficient information to admit or deny the remainder of the allegations in  
3 Paragraph 58.

4  
5 **DENIED Defendants deny Plaintiffs' assertion on page 15 of their**  
6 **Complaint between Paragraphs 58 and 59 regarding any "Prolonged**  
7 **Incarceration." Defendants further note that Plaintiffs are not**  
8 **challenging the legality of their immigration detention, but rather**  
9 **challenging conditions of their lawful detention in this litigation.**

10 59. DENIED. Defendants deny any and all allegations in Paragraph 59  
11 that ICE detainees in removal proceedings who are housed at any of the three  
12 facilities at issue in this litigation are unreasonably and unnecessarily restricted or  
13 denied access to a telephone in any way that violates their statutory or  
14 constitutional rights, including the right to not be subject to unreasonably or  
15 unconstitutionally prolonged detention. Defendants lack sufficient information to  
16 admit or deny the remainder of the allegations in Paragraph 59, and, therefore,  
17 deny them.

18  
19 60. DENIED. Defendants deny any and all allegations in Paragraph 60  
20 that ICE detainees in removal proceedings who are housed at any of the three  
21 facilities at issue in this litigation are unreasonably and unnecessarily restricted or  
22 denied access to a telephone in any way that violates their statutory or  
23 constitutional rights, including the right to not be subject to unreasonably or  
24 unconstitutionally prolonged detention. Defendants lack sufficient information to  
25 admit or deny the remainder of the allegations in Paragraph 60, and, therefore,  
26 deny them.  
27  
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1           ADDITIONAL ALLEGATIONS RE: INDIVIDUAL PLAINTIFFS

2   **Audley Barrington Lyon, Jr.**

3           61.    ADMITTED.

4  
5           62.    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(a)(2).  
7 Defendants lack sufficient information to admit or deny the remainder of the  
8 allegations in Paragraph 62 and, therefore, deny them.

9  
10          63.    DENIED. Defendants lack sufficient information to admit or deny  
11 the allegations in Paragraph 63, and, therefore, deny them. Defendants note that  
12 Lyon is currently represented in his removal proceedings.

13  
14          64.    DENIED in part and ADMITTED in part. Defendants cannot admit or  
15 deny whether Lyon is seeking a U-Visa as disclosure of such information is barred  
16 by 8 U.S.C. §1367(a)(2). Defendants admit that the Contra Costa facility does not  
17 permit detainees to purchase calling cards or phone credit. Defendants deny any  
18 implication in Paragraph 64 that the family of an ICE detainee at the Contra Costa  
19 facility could not contact the facility's phone provider and put money into an  
20 account for the detainee to make calls. Defendants lack sufficient information to  
21 admit or deny the remainder of the allegations in Paragraph 64, and, therefore,  
22 deny them.  
23

24  
25          65.    DENIED in part. Defendants cannot admit or deny whether Lyon is  
26 seeking a U-Visa as disclosure of such information is barred by 8 U.S.C. §1367(a)(2).  
27  
28

1 Defendants lack sufficient information to admit or deny the remainder of the  
2 allegations in Paragraph 65, and, therefore, deny them.

3           66. DENIED. Defendants lack sufficient information to admit or deny the  
4 allegation in Paragraph 66, and, therefore, deny this allegation.  
5

6           67. DENIED. Defendants cannot admit or deny whether Lyon is seeking a  
7 U-Visa as disclosure of such information is barred by 8 U.S.C. §1367(a)(2).  
8 Defendants otherwise deny the allegation in Paragraph 67.  
9

10 **Edgar Cornelio**

11           68. DENIED. Defendants deny that Cornelio is “a 36-year old man”; ICE  
12 records reflect that Cornelio is approximately thirty-one (31) years of age.  
13 Defendants deny that Cornelio is currently in ICE custody; Cornelio was removed to  
14 Guatemala on February 11, 2014. Defendants lack sufficient information to admit  
15 or deny the remaining allegation in Paragraph 68, and therefore deny it. DHS  
16 records reflect that Cornelio entered the United States without inspection – thus  
17 without being admitted or paroled – and cannot confirm Cornelio’s date of illegal  
18 entry.  
19

20  
21           69. DENIED in part. Defendants cannot admit or deny whether Cornelio  
22 previously applied for asylum as release of such information is prohibited by 8  
23 C.F.R. § 208.6. Defendants deny that Cornelio currently seeks any form of relief  
24 from removal; Cornelio was ordered removed to Guatemala by an Immigration  
25 Judge at his removal hearing on January 23, 2014, and waived appeal of that  
26  
27  
28

1 decision, rendering it a final removal order, thus concluding his removal  
2 proceedings.

3           70. DENIED in part and ADMITTED in part. Defendants deny any and  
4 all allegations or implications in Paragraph 70 that Cornelio, while he was in  
5 immigration detention at the Contra Costa facility prior to his removal on February  
6 11, 2014, was unreasonably or unnecessarily restricted or denied access to a  
7 telephone in any way that violated his statutory or constitutional rights.  
8 Defendants admit that the Contra Costa facility does not allow detainees to  
9 purchase calling cards. Defendants lack sufficient information to admit or deny the  
10 remainder of the allegations in Paragraph 70, and, therefore, deny them.

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

20 Defendants admit that following Cornelio's most recent immigration detention  
21 commencing in September 2013, he had hearings before an Immigration Judge on  
22  
23  
24

1 the following dates: October 29, 2013; November 12, 2013; December 3, 2013;  
2 January 8, 2014; and January 24, 2014.

3           72. DENIED. Defendants deny any and all allegations or implications in  
4 Paragraph 70 that Cornelio, while he was in immigration detention at the Contra  
5 Costa facility prior to his removal on February 11, 2014, was unreasonably or  
6 unnecessarily restricted or denied access to a telephone in any way that violated his  
7 statutory or constitutional rights. Defendants deny the allegation in Paragraph 72  
8 that it is impossible for ICE detainees housed at the Contra Costa facility to make  
9 international calls; ICE detainees at the Contra Costa facility can make  
10 international-collect calls or the detainees family can contact the phone provider  
11 and set up an account for the detainee, allowing him to make international calls.  
12 Defendants cannot admit or deny whether Cornelio previously applied for asylum as  
13 release of such information is prohibited by 8 C.F.R. § 208.6. Defendants lack  
14 sufficient information to admit or deny the remainder of the allegations in  
15 Paragraph 72, and, therefore, deny them.

16 **Jose Elizandro Astorga-Cervantes**

17           73. DENIED in part and ADMITTED in part. Defendants admit that  
18 Astorga-Cervantes is a 52-year-old man previously held in ICE custody at the  
19 Sacramento facility. Defendants deny that Astorga-Cervantes is currently in ICE  
20 custody; Astorga-Cervantes posted bond and was released from immigration  
21 detention on February 20, 2014. Defendants note that the Sacramento facility is  
22 located in the Eastern District of California. Defendants further admit that

1 Astorga-Cervantes was admitted to the United States in January 1977, when  
2 Astorga-Cervantes was approximately fifteen-years old, as an IR-2 Immigrant.  
3 Defendants admit Astorga-Cervantes has been a Lawful Permanent Resident  
4 (“LPR”) since 1977, when he was admitted as an Immigrant IR-2. Defendants lack  
5 sufficient information to admit or deny the allegation that Astorga-Cervantes “has  
6 lived in the United States since he was a child,” and, therefore, deny that allegation.  
7 Defendants note that DHS records do not support any allegation that Astorga-  
8 Cervantes lived in the United States prior to his admission in January 1977 when  
9 he was approximately fifteen-years old.  
10  
11

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

25 75. DENIED. Defendants deny any and all allegations and/or implications  
26 in Paragraph 75 that Astorga-Cervantes, while previously in immigration detention  
27 at the Sacramento facility, was unreasonably or unnecessarily restricted or denied  
28

1 access to a telephone in any way that violated his statutory or constitutional rights.  
2 Defendants lack sufficient information to admit or deny the remainder of the  
3 allegations in Paragraph 75, and, therefore, deny them. Defendants note that  
4 Astorga-Cervantes was granted bond in the amount of \$6,000 by an Immigration  
5 Judge on January 23, 2014; he posted bond and was released from ICE custody on  
6 February 20, 2014.  
7

8           76. DENIED. Defendants lack sufficient information to admit or deny the  
9 allegations in Paragraph 76, and, therefore, deny them.  
10

11 **Lourdes Hernandez-Trujillo**

12           77. DENIED in part and ADMITTED in part. Defendants deny that  
13 Hernandez-Trujillo is currently in ICE custody in the Yuba facility. Hernandez-  
14 Trujillo was released from ICE custody on an Order of Supervision on or about April  
15 9, 2014, after an immigration judge terminated her removal proceedings.  
16 Defendants admit that Hernandez-Trujillo is a 29-year old woman. Defendants lack  
17 sufficient information to admit to deny the remaining allegation in Paragraph 77,  
18 and, therefore, deny this allegation.  
19

20           78. DENIED in part. Defendants cannot admit or deny whether  
21 Hernandez-Trujillo applied for relief from removal under the Convention Against  
22 Torture (CAT) as release of such information is prohibited by 8 C.F.R. § 208.6.  
23 Additionally, Defendants cannot admit or deny whether Hernandez-Trujillo sought  
24 a U-Visa as disclosure of such information is barred by 8 U.S.C. § 1367(a)(2).  
25  
26  
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28

1 Defendants lack sufficient information to admit or deny the remainder of the  
2 allegations in Paragraph 78, and, therefore, deny them.

3           79. DENIED in part and ADMITTED in part. Defendants admit that  
4 Hernandez-Trujillo was initially detained in the Sacramento facility, in the Eastern  
5 District of California, for the first 160 days of her immigration detention following  
6 the commencement of her removal proceedings in November 2012. Defendants  
7 deny any and all allegations and/or implications in Paragraph 79 that Hernandez-  
8 Trujillo, while in immigration detention at the Sacramento facility, was  
9 unreasonably or unnecessarily restricted or denied access to a telephone in any way  
10 that violated her statutory or constitutional rights. Defendants deny that  
11 Hernandez-Trujillo was housed in segregation while she was detained in the  
12 Sacramento facility, and as such was confined to her cell for approximately 22 hours  
13 each day. Defendants deny that Hernandez-Trujillo had “no access to a telephone”  
14 while detained at the Sacramento facility. Defendants further note that ICE  
15 detainees in segregation at the Sacramento facility can make legal phone calls  
16 outside the two-hour time frame outside their cells by submitting a written or oral  
17 request to facility staff. Defendants lack sufficient information to admit or deny the  
18 remainder of the allegations in Paragraph 79, and, therefore, deny them.

19           80. DENIED in part and ADMITTED in part. Defendants deny any and  
20 all allegations and/or implications in Paragraph 80 that Hernandez-Trujillo, while  
21 in immigration detention at the Sacramento facility or Yuba facility, was  
22 unreasonably or unnecessarily restricted or denied access to a telephone in any way  
23

1 that violated her statutory or constitutional rights. Defendants cannot admit or  
2 deny whether Hernandez-Trujillo sought a U-Visa as disclosure of such information  
3 is barred by 8 U.S.C. §1367(a)(2). Defendants admit that Hernandez-Trujillo was  
4 represented by counsel in her removal proceedings. Defendants lack sufficient  
5 information to admit or deny the remainder of the allegations in Paragraph 80, and,  
6 therefore, deny them.  
7

8           81. DENIED. Defendants deny any and all allegations in Paragraph 81  
9 that Hernandez-Trujillo was unreasonably and unnecessarily restricted or denied  
10 access to a telephone while in ICE detention that in any way violated her statutory  
11 or constitutional rights, including the right to not be subject to unreasonably or  
12 unconstitutionally prolonged detention. Defendants lack sufficient information to  
13 admit or deny the remainder of the allegations in Paragraph 81, and, therefore,  
14 deny them.  
15

16           82. DENIED in part and ADMITTED in part. Defendants deny any and all  
17 allegations in Paragraph 81 that Hernandez-Trujillo was unreasonably and  
18 unnecessarily restricted or denied access to a telephone while she was in ICE  
19 detention that in any way violated her statutory or constitutional rights, including  
20 the right to not be subject to unreasonably or unconstitutionally prolonged  
21 detention and her right to counsel. Defendants admit that Hernandez-Trujillo was  
22 transferred from the Sacramento facility to the Yuba facility in April 2013.  
23 Defendants deny that, while she was in ICE detention, “under Defendants’ policies  
24 and practices [Hernandez-Trujillo’s] attorney [could not] call or schedule a call” with  
25



1 Hernandez-Trujillo; on a case-by-case basis, the Yuba facility will accommodate  
2 requests to permit a scheduled call between a detainee and their counsel.

3 Defendants note that Plaintiffs have failed to identify a single DHS or ICE policy  
4 that would allegedly prohibit an attorney from calling or scheduling a call with  
5 their client in immigration detention. Defendants further admit that the telephone  
6 system provided to ICE detainees at the Yuba facility cannot navigate a phone tree.  
7 Defendants lack sufficient information to admit or deny the remainder of the  
8 allegations in Paragraph 82, and, therefore, deny them.  
9  
10

11 CLASS ALLEGATIONS

12 83. Paragraph 83 contains Plaintiffs proposed class definition, to which no  
13 response is required. Defendants admit that the Court certified a class of “all  
14 current and future immigration detainees who are or will be held by ICE in Contra  
15 Costa, Sacramento, and Yuba Counties.” *See* ECF No. 31. Defendants deny any  
16 implication in Paragraph 83 that the Sacramento facility in Sacramento County is  
17 located within the Northern District of California; Sacramento County is located  
18 within the Eastern District of California.  
19  
20

21 84. DENIED.

22 85. Paragraph 85 contains Plaintiffs statement as to the relief they seek in  
23 this litigation, to which no response is required. To the extent a response is  
24 required, Defendants deny any implication in Paragraph 85 that Plaintiffs are  
25 entitled to the relief they seek.  
26  
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1           86. Paragraph 86 contains Plaintiffs' legal conclusion that joinder is  
2 impracticable, to which no response is required. Defendants admit that the Court  
3 certified a class of "all current and future immigration detainees who are or will be  
4 held by ICE in Contra Costa, Sacramento, and Yuba Counties." *See* ECF No. 31.  
5 Defendants admit that the Contra Costa, Sacramento, and Yuba facilities can "hold  
6 a combined total of between 500 and 600 immigration detainees on an average day";  
7 Defendants deny any implication in Paragraph 86 that this average is not subject to  
8 change as it could fluctuate up or down on any given day. Defendants deny any  
9 implication in Paragraph 86 that the Sacramento facility is located within the  
10 Northern District of California; Sacramento County is located within the Eastern  
11 District of California.  
12  
13  
14

15           87. Paragraph 87 contains Plaintiffs' legal conclusion that joinder is  
16 impracticable, to which no response is required. Defendants admit that the Court  
17 certified a class of "all current and future immigration detainees who are or will be  
18 held by ICE in Contra Costa, Sacramento, and Yuba Counties." *See* ECF No. 31.  
19

20           88. Paragraph 88 contains Plaintiffs' legal conclusion that there are  
21 questions of law and fact common to their purported class, to which no response is  
22 required. Defendants admit that the Court certified a class of "all current and  
23 future immigration detainees who are or will be held by ICE in Contra Costa,  
24 Sacramento, and Yuba Counties." *See* ECF No. 31.  
25

26           (a) DENIED

27           (b) DENIED  
28

1 (c) DENIED

2 (d) DENIED

3 (e) DENIED

4  
5 89. DENIED.

6 90. Paragraph 90 contains Plaintiffs' legal conclusion that the four named  
7 Plaintiffs "will fairly and adequately represent the interests of the [purported]  
8 class," to which no response is required. Defendants admit that the Court certified  
9 a class of "all current and future immigration detainees who are or will be held by  
10 ICE in Contra Costa, Sacramento, and Yuba Counties." *See* ECF No. 31.

11  
12 91. Defendants admit that the Court certified a class of "all current and  
13 future immigration detainees who are or will be held by ICE in Contra Costa,  
14 Sacramento, and Yuba Counties." *See* ECF No. 31.

15  
16 (a) DENIED;

17 (b) DENIED. Defendants lack sufficient information to admit or  
18 deny the allegations in Paragraph 91(b), and, therefore, deny them. Defendants  
19 deny any implication in Paragraph 91(b) that any conduct by DHS or ICE has  
20 violated any legal rights of immigration detainees at the Contra Costa facility, Yuba  
21 facility, and Sacramento facility;  
22

23 (c) DENIED. Paragraph 91(c) includes Plaintiffs' legal conclusion  
24 that "prosecution of individual actions would be impossible," to which no response is  
25 required. To the extent a response is required, Defendants lack sufficient  
26  
27  
28

1 information to admit or deny the allegations in Paragraph 91(c), and, therefore,  
2 deny them;

3 (d) DENIED. Paragraph 91(d) includes Plaintiffs' legal conclusion  
4 that "prosecution of separate actions . . . would be inefficient," to which no response  
5 is required. To the extent a response is required, Defendants lack sufficient  
6 information to admit or deny the allegations in Paragraph 91(d), and, therefore,  
7 deny them;  
8

9 (e) DENIED in part and ADMITTED in part. Defendants deny that  
10 ICE contracts with Contra Costa County; the U.S. Marshalls' Service contracts with  
11 Contra Costa County but recognizes ICE as an authorized user, allowing for the  
12 detention of ICE detainees in the Contra Costa facility. Defendants admit that ICE  
13 has entered into Intergovernmental Service Agreements with Yuba and Sacramento  
14 counties to house immigration detainees. Defendants deny that any other  
15 defendants in this action contract with these three facilities to house immigration  
16 detainees. Defendants deny any implication in Paragraph 91(e) that the National  
17 Detention Standards governing telephone access at three facilities at issue in this  
18 litigation are inadequate or otherwise disregard immigration detainees'  
19 constitutional and statutory rights as alleged by Plaintiffs.  
20

21 (f) Paragraph 91(f) contains Plaintiffs' request for injunctive and  
22 declaratory relief, to which no response is required. To the extent a response is  
23 required, Defendants deny that Plaintiffs are entitled to the relief they seek in this  
24 litigation.  
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1                   DECLARATORY RELIEF ALLEGATIONS

2           92.    DENIED in part and ADMITTED in part. Defendants admit that a  
3 controversy exists between Plaintiffs and Defendants. Defendants admit that they  
4 “deny that their policies, practices and omissions [if any] violate Plaintiffs’  
5 constitutional and statutory rights.” Defendants deny any implication in Paragraph  
6 92 that Defendants’ policies and practices regarding telephone access at three  
7 facilities at issue in this litigation are inadequate or otherwise disregard  
8 immigration detainees’ constitutional and statutory rights as alleged by Plaintiffs.  
9  
10

11           FIRST CLAIM FOR RELIEF

12           **Right to Representation of Counsel**  
13           **(Fifth Amendment Due Process Clause; 8 U.S.C. §§ 1362; 1229a(b)(4)(A))**

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

17           94.    Paragraph 94 contains legal conclusions to which no response is  
18 required.

19           95.    Paragraph 95 contains legal conclusions to which no response is  
20 required.

21           96.    DENIED.

22           97.    DENIED.  
23  
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1 SECOND CLAIM FOR RELIEF

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

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

4 98. 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 99. Paragraph 99 contains legal conclusions to which no response is  
8 required.

9 100. Paragraph 100 contains legal conclusions to which no response is  
10 required.

11 101. DENIED.

12 102. DENIED.

13 THIRD CLAIM FOR RELIEF

14 **Right to Petition the Government for Redress of Grievances**

15 **(First Amendment Petition Clause)**

16 103. 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.”

19 104. Paragraph 104 contains legal conclusions to which no response is  
20 required.

21 105. DENIED.

22 106. DENIED.

1 PRAYER FOR RELIEF

2 The remainder of the Complaint for Injunctive and Declaratory Relief  
3 consists of Plaintiffs' Prayer for Relief, to which no response is required. To the  
4 extent a response is required, Defendants deny that ICE's policies and practices  
5 governing telephone access at the Contra Costa facility, Yuba facility, or  
6 Sacramento facility are inadequate or otherwise disregard Plaintiffs' constitutional  
7 and statutory rights such that Plaintiffs are entitled to any relief.  
8

9  
10 **FIRST AFFIRMATIVE DEFENSE**

11 The Complaint for Injunctive and Declaratory Relief fails in whole or in part  
12 to state a claim upon which relief can be granted.  
13

14 **SECOND AFFIRMATIVE DEFENSE**

15 Venue for any and all claims related to immigration detainees housed at the  
16 Rio Cosumnes Correctional Facility in Sacramento County, California is improper  
17 in the Northern District of California; the Sacramento facility is located in the  
18 Eastern District of California.  
19

20 **THIRD AFFIRMATIVE DEFENSE**

21 Defendants have not violated any rights, privileges or immunities under the  
22 Constitution, laws of the United States, or any political subdivision thereof.  
23

24 **FOURTH AFFIRMATIVE DEFENSE**

25 Plaintiffs fail to allege or demonstrate standing for those proposed class  
26 members who cannot show an actual injury caused by Defendants' policies and  
27  
28

1 practices related to their conditions of confinement, including their access to  
2 telephones while in immigration custody. *See Lewis v. Casey*, 518 U.S. 343 (1996).

3 **FIFTH AFFIRMATIVE DEFENSE**

4  
5 To the extent any of the named Plaintiffs assert challenges to their individual  
6 immigration proceedings – including review of, or relief from, their respective  
7 immigration proceedings – this Court lacks jurisdiction to hear any such claims.  
8 *See* 8 U.S.C.A. § 1252(g).

9  
10 **SIXTH AFFIRMATIVE DEFENSE**

11 Plaintiffs fail to state a cognizable claim under the Administrative Procedure  
12 Act (“APA”) insofar as the allegations in the complaint do not challenge final agency  
13 action within the meaning of the APA. 5 U.S.C. § 704; *see also Bennett v. Spear*,  
14 520 U.S. 154, 177–78 (1997).

15  
16 **SEVENTH AFFIRMATIVE DEFENSE**

17 Defendants reserve the right to assert additional affirmative defenses.

18  
19 //

20  
21 //

22  
23 //



1 DATED:

June 10, 2014

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3 Assistant Attorney General  
4 Civil Division

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9 /s/ Jennifer A. Bowen  
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15 Civil Division  
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17 *Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

No. 3:13-cv-05878-EMC

I hereby certify that on this 10th day of June 2014, a true and correct copy of **DEFENDANTS' FIRST AMENDED 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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DEFS.' FIRST AMENDED ANSWER  
CERTIFICATE OF SERVICE  
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