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Counsel for Defendants

11 **UNITED STATES DISTRICT COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
13 **OAKLAND DIVISION**

14 MARCO ANTONIO ALFARO GARCIA,
15 CREDY MADRID CALDERON, GUSTAVO
16 ORTEGA, and CLAUDIA RODRIGUEZ DE
17 LA TORRE, on behalf of themselves and all
others similarly situated,

18 *Plaintiffs,*

19 v.

20 JEH JOHNSON, Secretary of Homeland
21 Security, LEON RODRIGUEZ, Director of U.S.
22 Citizenship and Immigration Services, and
23 JOSEPH LANGLOIS, Associate Director of
Refugee, Asylum and International Operations,

24 *Defendants.*

Case No. 4:14-cv-1775-YGR

ANSWER

Hon. Yvonne Gonzalez Rogers

1 Defendants, by and through undersigned counsel, answer Plaintiffs' Complaint on
2 information and belief as follows:

3 **JURISDICTION AND VENUE**

4 1. This paragraph is a statement of the case for which no response is required.

5 2. This paragraph asserts conclusions of law to which no response is required. To
6 the extent a response is required, Defendants aver that jurisdiction exists under 28 U.S.C. § 1331
7 with a cause of action under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, and 28
8 U.S.C. § 1361.
9

10 3. This paragraph asserts conclusions of law to which no response is required. To
11 the extent a response is required, Defendants admit that this Court has jurisdiction over
12 Defendants.
13

14 4. This paragraph asserts conclusions of law to which no response is required. To
15 the extent a response is required, Defendants admit venue is proper in this Court.
16

17 **PRELIMINARY STATEMENT**

18 5. This paragraph asserts a statement of the case and conclusions of law to which no
19 response is required.

20 6. This paragraph asserts a statement of the case and conclusions of law to which no
21 response is required.

22 7. This paragraph asserts a statement of the case and conclusions of law to which no
23 response is required, although Defendants object to the characterizations of their actions and to
24 every legal conclusion set forth by Plaintiffs.
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1 cited legal authorities speak for themselves, and deny Plaintiffs' characterization and
2 interpretation.

3 22. This paragraph contains characterizations of the case and conclusions of law to
4 which no response is required. To the extent a response is required, Defendants aver that the
5 cited legal authorities speak for themselves, and deny Plaintiffs' characterization and
6 interpretation.
7

8 23. Defendants admit the first sentence. Defendants deny the second sentence, and
9 aver that detention is subject to the discretion of ICE.

10 24. This paragraph contains characterizations of the case and conclusions of law to
11 which no response is required. To the extent a response is required, Defendants aver that the
12 cited legal authorities speak for themselves, and deny Plaintiffs' characterization and
13 interpretation.
14

15 25. Deny.

16 26. Defendants deny that USCIS has "simply ignore[d] the mandated 10 days for
17 reasonable fear determinations" but admit the remaining allegations in this paragraph.
18

19 27. Deny.

20 28. Defendants admit that USCIS does not generally complete reasonable fear
21 determinations within 10 days of referral. Defendants deny and object to Plaintiff's
22 characterizations of Defendants' actions as "routine."
23

24 29. Defendants admit that reasonable fear determinations can take several weeks to
25 months to complete. Defendants lack information on the sources relied upon for the specific
26 allegations made in this paragraph, and therefore deny all remaining allegations.
27
28

1 30. This paragraph contains characterizations of the case and conclusions of law to
2 which no response is required. To the extent a response is required, Defendants deny the
3 allegations in this paragraph.

4 31. Defendants lack information sufficient to admit or deny these allegations, and
5 therefore deny.

6 32. Defendants admit that Alfaro is a citizen of El Salvador but lack sufficient
7 information to admit or deny his residency, and therefore deny.

8 33. Defendants lack sufficient information to admit or deny this allegation, and
9 therefore deny.
10

11 34. Defendants admit the first sentence. Defendants lack sufficient information to
12 admit or deny the remaining allegations, and therefore deny.

13 35. Defendants lack sufficient information to admit or deny this allegation, and
14 therefore deny.
15

16 36. Defendants admit the first sentence. Defendants lack sufficient information to
17 admit or deny the remaining allegations, and therefore deny.

18 37. Defendants admit the first three sentences of this paragraph. Defendants aver that
19 Plaintiff Alfaro received a reasonable fear determination. Defendants lack sufficient information
20 to admit or deny the remaining allegations, and therefore deny.
21

22 38. Defendants lack sufficient information to admit or deny this allegation, and
23 therefore deny.
24

25 39. Defendants admit that Plaintiff Calderon is a citizen of Honduras. Defendants
26 lack sufficient information to admit or deny the remaining allegations, and therefore deny.
27
28

1 40. Defendants lack sufficient information to admit or deny this allegation, and
2 therefore deny.

3 41. Defendants admit the first and third sentences of this paragraph. Defendants lack
4 sufficient information to admit or deny the second sentence, and therefore deny.

5 42. Defendants lack sufficient information to admit or deny this allegation, and
6 therefore deny.

7 43. Defendants admit the first sentence. Defendants lack sufficient information to
8 admit or deny the second sentence, and therefore deny. Defendants admit the third and fourth
9 sentences. Defendants admit that, at the time Plaintiffs' Complaint was filed, Plaintiff Calderon
10 had not received a reasonable fear determination, but deny that he still has not received a
11 determination.
12

13 44. Defendants deny that Plaintiff Calderon remains detained, but otherwise admit the
14 rest of the first sentence. Defendants lack sufficient information to admit or deny the second
15 sentence, and therefore deny.
16

17 45. Defendants admit Plaintiff Ortega is a citizen of Mexico. Defendants lack
18 sufficient information to admit or deny the remaining allegations, and therefore deny.
19

20 46. Defendants admit the first and third sentences. Defendants lack sufficient
21 information to admit or deny the second sentence, and therefore deny.

22 47. Defendants deny that Plaintiff Ortega remains detained, but otherwise admit the
23 rest of the first sentence. Defendants admit the second sentence. Defendants lack sufficient
24 information to admit or deny the remaining allegations, and therefore deny.
25
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1 48. Defendants admit the first sentence. Defendants admit that at the time Plaintiffs'
2 Complaint was filed, Plaintiff Ortega had not received a reasonable fear determination, but deny
3 that he still has not received a determination.

4 49. Defendants admit that Plaintiff Rodriguez is a citizen of Mexico. Defendants lack
5 sufficient information to admit or deny the remaining allegations, and therefore deny.
6

7 50. Defendants admit the first sentence of this paragraph. Defendants lack sufficient
8 information to admit or deny the second sentence, and therefore deny this sentence. Defendants
9 admit the remaining allegations in this paragraph.

10 51. Defendants lack sufficient information to admit or deny the allegations in this
11 paragraph, and therefore deny.
12

13 52. Defendants admit the first sentence. Defendants deny the second sentence.

14 53. Defendants lack sufficient information to admit or deny the allegations in this
15 paragraph, and therefore deny.

16 54. No response is required. Plaintiff Bardalez is no longer a party to this suit. She
17 voluntarily dismissed her claims on December 5, 2014. *See* Notice of Voluntary Dismissal, Doc.
18 No. 72.
19

20 55. No response is required. Plaintiff Bardalez is no longer a party to this suit. She
21 voluntarily dismissed her claims on December 5, 2014. *See* Notice of Voluntary Dismissal, Doc.
22 No. 72.
23

24 56. No response is required. Plaintiff Bardalez is no longer a party to this suit. She
25 voluntarily dismissed her claims on December 5, 2014. *See* Notice of Voluntary Dismissal, Doc.
26 No. 72.
27
28

1 57. No response is required. Plaintiff Bardalez is no longer a party to this suit. She
2 voluntarily dismissed her claims on December 5, 2014. *See* Notice of Voluntary Dismissal, Doc.
3 No. 72.

4 58. No response is required. Plaintiff Bardalez is no longer a party to this suit. She
5 voluntarily dismissed her claims on December 5, 2014. *See* Notice of Voluntary Dismissal, Doc.
6 No. 72.

7 59. No response is required. Plaintiff Bardalez is no longer a party to this suit. She
8 voluntarily dismissed her claims on December 5, 2014. *See* Notice of Voluntary Dismissal, Doc.
9 No. 72.

10
11 **CLASS ACTION ALLEGATOINS**

12
13 60. This paragraph contains characterizations of the case and conclusions of law to
14 which no response is required. To the extent a response is required, Defendants deny that class
15 certification is proper in this case.

16 61. This paragraph asserts a description of the proposed class to which no response is
17 required. To the extent a response is required, Defendants aver that this Court granted Plaintiffs'
18 request for class certification, and deny that class certification is proper in this case.

19 62. This paragraph asserts conclusions of law to which no response is required. To
20 the extent a response is required, Defendants deny that class certification is proper in this case.

21 63. Defendants admit the first sentence. The remaining allegations are conclusions of
22 law to which no response is required. To the extent a response is required, Defendants deny that
23 class certification is proper in this case.

24 64. This paragraph asserts conclusions of law to which no response is required. To
25 the extent a response is required, Defendants deny that class certification is proper in this case.
26
27
28

1 75. Deny.

2 76. Deny.

3 **SECOND CAUSE OF ACTION**

4 77. Defendants incorporate by reference the responses to paragraphs 1 through 76.

5 78. This paragraph asserts conclusions of law to which no response is required.

6 79. Deny.

7
8 Any allegations not expressly admitted above is denied.

9 **PRAYER FOR RELIEF**

10 The remainder of Plaintiffs' Complaint constitutes Plaintiffs' request for relief to which
11 no response is required. To the extent that a response is required, Defendants deny that Plaintiffs
12 are entitled to the relief requested or any relief whatsoever.

13
14 **AFFIRMATIVE DEFENSES**

15 Defendants assert the following affirmative defenses and reserve their right to plead
16 additional defenses according to proof:

17 **First Affirmative Defense:** Plaintiffs failed to state a claim upon which relief can be granted.

18 **Second Affirmative Defense:** This Court lacks jurisdiction over Plaintiffs' claims.

19 **Third Affirmative Defense:** Defendants are entitled to judgment as a matter of law.

20 **Fourth Affirmative Defense:** Plaintiffs' individual claims are moot.

21
22 //

23
24 //

1 WHEREFORE, Defendants ask this Court that this Complaint be dismissed with
2 prejudice, judgment be entered for Defendants, and that the Court grants all such other relief it
3 may deem proper.

4 DATED: January 16, 2015

Respectfully submitted.

5 JOYCE BRANDA
6 Acting Assistant Attorney General

7 WILLIAM PEACHEY
8 Director, District Court Section
9 Office of Immigration Litigation

10 ELIZABETH STEVENS
11 Assistant Director, District Court Section

12 /s/ Victor M. Mercado-Santana
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Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system. I certify that all participants are CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: January 16, 2015

Respectfully submitted.

/s/ Victor M. Mercado-Santana
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