

1 ROBERT P. VARIAN (SBN 107459)
 CHARLES J. HA (*pro hac vice*)
 2 DAVID KEENAN (*pro hac vice*)
 JUDY KWAN (SBN 273930)
 3 ALEXIS YEE-GARCIA (SBN 277204)
 MATTHEW R. KUGIZAKI (SBN 286795)
 4 ORRICK, HERRINGTON & SUTCLIFFE LLP
 5 405 Howard Street
 San Francisco, CA 94105
 6 Telephone: (415) 773-5700
 Facsimile: (415) 773-5759
 7 Email: rvarian@orrick.com

8 JULIA HARUMI MASS (SBN 189649)
 9 MICHAEL T. RISHER (SBN 191627)
 MEGAN SALLOMI (SBN 300580)
 10 AMERICAN CIVIL LIBERTIES UNION FOUNDATION
 OF NORTHERN CALIFORNIA
 11 39 Drumm Street
 San Francisco, CA 94111
 12 Telephone: (415) 621-2493
 13 Facsimile: (415) 255-8437
 Email: jmass@aclunc.org

14 *Attorneys for Plaintiffs*

15 [Additional Counsel appear on signature page]

17 UNITED STATES DISTRICT COURT
 18 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

19
 20 AUDLEY BARRINGTON LYON, JR., et. al.,
 21 Plaintiffs,
 22 v.
 23 UNITED STATES IMMIGRATION AND
 CUSTOMS ENFORCEMENT, et. al.,
 24 Defendants.

Case No.: 13-cv-05878 EMC

**FIRST SUPPLEMENTAL COMPLAINT
FOR INJUNCTIVE AND
DECLARATORY RELIEF**

CLASS ACTION

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INTRODUCTION

1
2 1. This is a class action for injunctive and declaratory relief necessary to remedy
3 ongoing violations of the constitutional and statutory rights of immigrants held in government
4 custody pending deportation proceedings. Because such proceedings seek to deprive immigrants
5 of the opportunity to live and work in the United States, the United States Constitution and
6 federal statutes afford them substantive and procedural rights, including the right to be
7 represented by counsel, the right to gather and present evidence, and the right to a fair hearing.
8 Those rights (and others) are systematically denied by defendants.

9 2. Plaintiffs Audley Barrington Lyon, Jr., José Elizandro Astorga-Cervantes, and
10 Nancy Neria-Garcia (“Individual Plaintiffs”) bring this class action lawsuit to challenge policies
11 and practices that deny and severely restrict their ability to make telephone calls necessary to
12 consult with or obtain counsel, to gather information and evidence necessary for their cases, and
13 to obtain a fair hearing while in government custody.

14 3. Individual Plaintiffs and the class they seek to represent (collectively “Plaintiffs”) are held in detention facilities under the custody of Defendant Immigration and Customs
15 Enforcement (“ICE”) pending resolution of ICE’s charges that they should be deported or
16 “removed” from the United States. Respondents in immigration proceedings are not entitled to
17 appointed counsel and most in northern and central California are held in remote locations that
18 render in-person visits impractical at best. Telephone access is therefore critical to Plaintiffs’
19 ability to locate, retain, and seek advice from legal counsel. For those who cannot afford an
20 attorney and are not able to retain *pro bono* counsel, telephone contact with the outside world is
21 essential to gather the evidence and government documents necessary to defending against
22 removal charges, locate witnesses, and do other things necessary to represent themselves in
23 complex legal proceedings. It is also necessary to enable Plaintiffs to exercise their First
24 Amendment rights to petition government agencies to obtain immigration benefits and related
25 documents that may provide relief from removal.
26
27

1 4. However, ICE, and its parent agency, the Department of Homeland Security
2 (“DHS”) have engaged in a common course of conduct that severely restricts Plaintiffs’
3 telephone access in violation of their rights under the United States Constitution and the
4 Immigration and Nationality Act (“the Act”).

5 5. Defendants’ policies, practices, and omissions in denying and restricting
6 telephone access have a dramatic impact on the outcomes of removal proceedings. As a result of
7 Defendants’ conduct, many Plaintiffs who would be eligible to remain in the United States are
8 deported.

9 6. Many Plaintiffs are also unnecessarily detained for months. Such prolonged
10 incarceration is a direct result of the Defendants’ violations of Plaintiffs’ constitutional and
11 statutory rights -- not as punishment for conviction of a crime. Plaintiffs are forced to seek
12 continuances while they struggle to locate, retain and communicate with counsel, to gather
13 evidence to be presented in the removal proceedings, and to obtain documents and immigration
14 benefits that can provide relief from removal. There are even some Plaintiffs who would accept
15 a removal order much earlier in the process if they were able to obtain legal consultation over the
16 telephone -- sparing themselves and the taxpayer the significant costs of detention.

17 7. For these reasons, the Individual Plaintiffs seek to represent a class of all current
18 and future adult immigration detainees who, like the Individual Plaintiffs at the time the original
19 complaint was filed, are or will be held in ICE custody in California immigration detention
20 facilities that house detainees with cases venued in San Francisco, *i.e.* detainees who are or will
21 be held in ICE custody in Kern County, Contra Costa County, Sacramento County, and Yuba
22 County (the “Class”) and to obtain an order from this Court enjoining the policies, practices, and
23 omissions that are preventing Plaintiffs from realizing their statutory and constitutional rights,
24 including the promise of due process in immigration proceedings.

1 **JURISDICTION**

2 8. This Court has subject-matter jurisdiction over this matter under 28 U.S.C. § 1331
3 (federal question), 28 U.S.C. §§ 2201 and 2202 (declaratory relief), and 5 U.S.C. § 706 (waiver
4 of sovereign immunity).

5 **VENUE**

6 9. Venue is proper in the Northern District of California under 28 U.S.C. §§ 1391(b)
7 and (e) because a substantial part of the events and omissions giving rise to Plaintiffs' claims
8 occurred, and continues to occur, in this district.

9 **INTRADISTRICT ASSIGNMENT**

10 10. Assignment to the San Francisco Division of this Court is proper under Local
11 Rule 3-2(d) because a substantial part of the events or omissions giving rise to Plaintiffs' claims
12 occurred, and continues to occur, in San Francisco County.

13 **PARTIES**

14 11. At the time that the original complaint was filed, Plaintiff Audley Barrington
15 Lyon, Jr. was in ICE custody at the West County Detention Facility in the city of Richmond,
16 Contra Costa County, California ("Richmond Facility") and had removal proceedings pending in
17 the San Francisco Immigration Court. On April 17, 2015, Plaintiff Lyon was granted release
18 from custody on bond; his removal proceedings are still pending in the San Francisco
19 Immigration Court. He is seeking a U visa as a victim of and witness to a crime under 8 U.S.C. §
20 1101(a)(15)(U), protection relief under 8 U.S.C. § 1231(b)(3). Defendants' restrictions on
21 telephone access in immigration detention have harmed and will continue to harm Plaintiff Lyon
22 in the event he is returned to custody by, *inter alia*, denying or severely restricting his ability to
23 obtain information and documents necessary to support his U visa application.

24 12. At the time that the complaint was filed, Plaintiff José Elizandro Astorga-
25 Cervantes was in ICE custody at the Rio Cosumnes Correction Facility in the city of Elk Grove,
26 Sacramento County, California ("Elk Grove Facility") and had removal proceedings pending in
27 the San Francisco Immigration Court. On or about February 20, 2014, Plaintiff Astorga-

1 Cervantes was released from custody on bond. On or about June 12, 2014, ICE re-arrested
2 Plaintiff Astorga-Cervantes and placed him in custody at the Yuba County Jail in the city of
3 Marysville, Yuba County, California (“Yuba Facility”). Plaintiff Astorga-Cervantes was
4 released from ICE custody the following day. His removal proceedings are pending in the San
5 Francisco Immigration Court. He is seeking relief from removal under former § 212(c) of the
6 Immigration and Nationality Act. Defendants’ restrictions on telephone access have harmed and
7 will continue to harm Plaintiff Astorga-Cervantes in the event he is returned to custody by, *inter*
8 *alia*, preventing him from contacting attorneys for legal advice or representation and denying or
9 severely restricting his ability to gather information and evidence in support of his release from
10 custody and § 212(c) waiver of inadmissibility.

11 13. Plaintiff Nancy Neria-Garcia is in ICE custody at the Richmond Facility. She has
12 been transferred three times during her incarceration and was previously detained at the Yuba
13 Facility and the Mesa Verde Detention Facility in Bakersfield, Kern County, California
14 (“Bakersfield Facility”). She had removal proceedings in the San Francisco Immigration Court
15 and sought withholding of removal and protection under the Convention Against Torture. The
16 Immigration Judge denied her relief and she appealed her case to the Board of Immigration
17 Appeals (“BIA”). The BIA reversed and remanded her case for further proceedings in the San
18 Francisco Immigration Court, which are currently pending. She also intends to seek release from
19 custody by demonstrating to an immigration judge or ICE that she does not pose a risk of flight
20 or a danger to society. Defendants’ restrictions on telephone access have harmed and will
21 continue to harm Plaintiff Neria-Garcia by, *inter alia*, denying or severely restricting her ability
22 to consult with counsel and by denying or severely restricting her ability to gather information
23 and evidence in support of her claims for relief from removal.

24 14. Defendant ICE is a federal law enforcement agency within DHS. ICE is
25 responsible for the criminal and civil enforcement of the immigration laws, including the
26 detention, incarceration and removal of immigrants. ICE discharges its responsibility for
27 incarceration of immigrants by: (1) promulgating detention standards to be followed in the

1 facilities in which immigrants are held pending removal hearings, including with respect to
2 telephone access; and (2) contracting with the government entities and private corporations that
3 operate detention facilities, including the facilities in which all members of the Class are
4 incarcerated. Enforcement and Removal Operations (“ERO”), a division of ICE, manages and
5 oversees the immigration detention system.

6 15. Under the terms of ICE’s contracts with the jails and the private facility in which
7 Plaintiffs are incarcerated, the federal government pays a specified amount of money per
8 immigration detainee per night to house detainees in accordance with ICE’s detention standards.

9 16. ICE’s most recent set of standards purporting to govern conditions of confinement
10 in ICE custody are the 2011 Performance-Based National Detention Standards, available at
11 <http://www.ice.gov/detention-standards/2011> (last visited June 4, 2015).

12 17. Defendant Sarah Saldaña is the Director of ICE. As Director, Defendant Saldaña
13 is responsible for ICE’s policies, practices and procedures, including those relating to the
14 detention of immigrants during their removal proceedings.

15 18. Defendant DHS is the arm of the federal government responsible for the
16 enforcement and administration of the immigration laws. The component agencies of DHS
17 include ICE; United States Citizenship and Immigration Services (“CIS”), which administers the
18 legal immigration system and grants immigration benefits; and United States Customs and
19 Border Protection (“CBP”), which apprehends individuals suspected of unauthorized entry at and
20 around the border.

21 19. Defendant Jeh Johnson is the Secretary and highest-ranking member of DHS. As
22 Secretary of DHS, Defendant Johnson is responsible for DHS’s policies, practices, and
23 procedures and exercises authority and oversight over ICE.

24 20. Defendant Timothy Aitken is the Field Office Director for the San Francisco Field
25 Office of ICE. The San Francisco Field Office is responsible for carrying out ICE’s immigration
26 detention and removal operations in northern California, Hawaii, and Guam. As Director,
27

1 Defendant Aitken oversees the San Francisco Field Office's functions and implementation of its
2 detention standards, including with respect to telephone access.

3 21. Defendants Saldaña, Johnson, and Aitken are sued in their official capacities
4 only.

5 **ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF**

6 **Background on Removal Proceedings**

7 22. Deportation or "removal" proceedings begin when DHS issues a Notice to Appear
8 ("NTA") charging an immigrant as removable. Removal cases are adjudicated by the
9 immigration courts in the first instance and are reviewed by the BIA. Both the immigration
10 courts and the BIA are part of the Executive Office for Immigration Review within the United
11 States Department of Justice. Decisions of the BIA are reviewable by the United States Courts
12 of Appeals.

13 23. The initial appearance in removal proceedings is the master calendar hearing. At
14 this hearing, the immigration judge advises the respondent of his or her rights with respect to the
15 hearing, asks whether the respondent wishes to fight removal and whether he intends to seek
16 legal advice or representation, and may take pleas on the charges in the NTA. Once the
17 respondent is prepared to proceed with his case, the immigration judge will set the case for an
18 evidentiary hearing on removability, relief from removability, and other issues that determine
19 whether the respondent will be permitted to remain in the United States, or deported. *See*
20 *generally* Executive Office for Immigration Review, *Immigration Judge Benchbook*, available at
21 <http://www.justice.gov/eoir/vll/benchbook/> (last visited June 4, 2015).

22 24. An immigrant facing removal proceedings may contest the charges on which ICE
23 and DHS seek removal. For example, a respondent can demonstrate that he is in fact a U.S.
24 citizen, or -- if alleged to be removable because of a criminal offense -- that he was not convicted
25 of the alleged offense, or that the offense is not a removable offense. If the charges of
26 removability are not sustained, the removal proceedings are terminated.

1 25. An immigrant facing removal proceedings may also seek relief from removal.
2 For example, an immigration judge may grant “cancellation of removal” based on certain
3 statutory eligibility requirements and evidence demonstrating compelling reasons for being
4 permitted to remain in the United States. 8 U.S.C. § 1229b. To secure cancellation of removal,
5 an immigrant must prove his worthiness for discretionary relief through evidence such as
6 employment records and letters of support or live testimony from community members. The
7 respondent may also apply for “protection relief,” shorthand for asylum, withholding of removal,
8 and relief under the Convention Against Torture, which are related forms of relief available to
9 immigrants who would face harm if returned to their native countries. All forms of protection
10 relief have different requirements and standards, but generally require presentation of detailed
11 evidence, including affidavits, testimony and documents. *See* 8 U.S.C. §§ 1158; 1231(b)(3); 8
12 C.F.R §§ 208.16-208.18.

13 26. Other forms of statutory relief from removal are granted by CIS, the component
14 of DHS that administers immigration benefits. For example, immigrants in removal proceedings
15 who have been injured as victims of crime and are able to obtain a “certification” from a law
16 enforcement agency that they assisted in the investigation or prosecution of the crime may obtain
17 a U visa. 8 U.S.C. § 1101(a)(15)(U). The grant of a U visa results in termination of removal
18 proceedings and allows the crime victim to remain in the United States.

19 27. With some exceptions, immigrants held in ICE custody can request a bond
20 redetermination hearing at which an immigration judge reviews ICE’s initial custody
21 determination. At this hearing, which is separate from evidentiary hearings on removability and
22 relief from removability, the immigrant has the right to present evidence to demonstrate that he is
23 neither a danger to the community nor a flight risk. This evidence may include, among other
24 things, the immigrant’s own testimony, testimony from third-party witnesses, and documentary
25 evidence of his good character and community ties.

26 28. In order to seek release on bond, most detained immigrants seek legal
27 representation. If they cannot afford to hire an attorney and are unable to secure *pro bono*

1 representation, they need to obtain legal advice and independently gather information and
2 evidence in connection with bond redetermination hearings.

3 29. Of all immigration proceedings completed in fiscal year 2011, 42% involved
4 respondents who were detained during the proceedings. Lenni B. Benson & Russell R. Wheeler,
5 *Enhancing Quality and Timeliness in Immigration Removal Adjudication*, at 19 (June 7, 2012),
6 available at [http://www.acus.gov/sites/default/files/documents/Enhancing-Quality-and-](http://www.acus.gov/sites/default/files/documents/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-7-2012.pdf)
7 [Timeliness-in-Immigration-Removal-Adjudication-Final-June-7-2012.pdf](http://www.acus.gov/sites/default/files/documents/Enhancing-Quality-and-Timeliness-in-Immigration-Removal-Adjudication-Final-June-7-2012.pdf) (last visited June 4,
8 2015).

9 **Immigration Detention in Northern and Central California**

10 30. In addition to obstacles generated by incarceration, English language limitations,
11 and the complexity of the immigration and procedural laws governing removal proceedings and
12 relief from removal, Plaintiffs' efforts to exercise their rights to be represented by counsel, gather
13 and present evidence, and obtain a fair hearing are restricted by geographic isolation. In many
14 cases telephone communication provides the only avenue through which Plaintiffs can secure
15 and exercise those rights.

16 31. ICE contracts with Yuba County, Sacramento County, and Contra Costa County
17 to hold immigration detainees with cases venued in San Francisco in the Yuba, Elk Grove, and
18 Richmond Facilities, respectively.

19 32. In or around January 23, 2015, ICE contracted with The GEO Group, Inc. to hold
20 immigration detainees with cases venued in San Francisco at the Bakersfield Facility.

21 33. Plaintiffs are geographically isolated from the San Francisco Immigration Court,
22 and from the immigration attorneys who practice removal defense, most of whom are based in or
23 near San Francisco. Of the four detention facilities, only the Richmond Facility is within an
24 hour's drive from San Francisco. The Yuba and Elk Grove Facilities are several hours away
25 from San Francisco. The Bakersfield Facility, ICE's newest detention facility housing detainees
26 with cases venued in San Francisco, is located approximately 280 miles, or more than four hours,
27 away from San Francisco.

1 34. Many Plaintiffs are also geographically isolated from their families and others
2 who might provide assistance in obtaining documents and other evidence necessary to defend
3 against removal or seek relief from deportation.

4 35. The effects of Plaintiffs' geographical isolation are compounded by the fact that
5 ICE frequently transfers detainees among detention facilities based on the agency's operational
6 needs. Between 1998 and 2010, 40% of detainees experienced at least one transfer, and 46% of
7 those detainees were transferred two or more times. *See* Human Rights Watch, *A Costly Move:
8 Far and Frequent Transfers Impede Hearings for Immigrant Detainees in the United States*, at
9 17 (June 2011), available at
10 http://www.hrw.org/sites/default/files/reports/us0611webwcover_0.pdf (last visited June 4,
11 2015).

12 36. All of the immigration detainees in the Yuba, Elk Grove, Richmond, and
13 Bakersfield Facilities have, have had, or may have proceedings in the San Francisco Immigration
14 Court located at 630 Sansome Street. Most detainees have active removal proceedings in the San
15 Francisco Immigration Court. Other detainees had removal proceedings in the San Francisco
16 Immigration Court, and are deciding whether to appeal to the BIA or are awaiting the outcome of
17 their appeals. Some cases pending on appeal may be remanded for further proceedings at the
18 San Francisco Immigration Court. Some await an agency determination as to whether they will
19 have a hearing in the San Francisco Immigration Court based on reasonable fear of returning to
20 their home countries.

21 **Defendants' Denial and Restriction of Telephone Access Results in a Dramatic Disparity of**
22 **Outcomes**

23 37. Defendants' denial and restriction of telephone access in these circumstances
24 denies or severely limits Plaintiffs' statutory and constitutional rights to retain counsel, to
25 communicate with retained counsel, to gather and present evidence, to obtain a fair hearing, and
26 to apply for immigration benefits from CIS in seeking relief from removal, with a dramatic and
27 devastating impact on Plaintiffs.

1 38. Of all removal proceedings completed in San Francisco in fiscal year 2011, only
 2 34% of detained respondents were able to exercise their right to retain counsel, compared to 75%
 3 of non-detained respondents. *Enhancing Quality and Timeliness, supra* ¶ 29 at 127. Of all
 4 removal proceedings completed in San Francisco in fiscal year 2011, only 11% of detained
 5 respondents had successful outcomes in their cases, compared to 59% of non-detained
 6 respondents. Transactional Records Access Clearinghouse, *Immigration Court Processing Time*
 7 *by Outcome*, available at
 8 http://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php (last visited
 9 June 4, 2015).

10 **Defendants’ Denial and Restriction of Plaintiffs’ Telephone Access**

11 39. Defendants’ policies, practices, and omissions in denying and restricting
 12 telephone access violate Plaintiffs’ statutory and constitutional rights in numerous ways. They
 13 also violate ICE’s own detention standards with respect to telephone access, which are both
 14 deficient and not adhered to or enforced by Defendants. *See* 2011 Performance-Based National
 15 Detention Standards, *Telephone Access*, available at [http://www.ice.gov/doclib/detention-](http://www.ice.gov/doclib/detention-standards/2011/telephone_access.pdf)
 16 [standards/2011/telephone_access.pdf](http://www.ice.gov/doclib/detention-standards/2011/telephone_access.pdf) (last visited June 2, 2015) (“2011 PBNDS”); 2008
 17 Performance-Based National Detention Standards, available at
 18 http://www.ice.gov/doclib/dro/detention-standards/pdf/telephone_access.pdf (last visited June 2,
 19 2015) (“2008 PBNDS”); 2000 National Detention Standards, available at
 20 <http://www.ice.gov/doclib/dro/detention-standards/pdf/teleacc.pdf> (last visited June 2, 2015)
 21 (“2000 NDS”).

22 40. Although ICE’s detention standards on telephone access provide that detention
 23 facilities must operate a system that permits detained immigrants to make free calls to and leave
 24 voicemail messages for nonprofit legal services providers and certain government entities
 25 (referred to as the “free call platform”), *see* 2011 PBNDS at 361-63; 2008 PBNDS at 4-5; and
 26 2000 NDS at 2, the free call platform is ineffectual and has little practical impact on the ability of
 27

1 immigrants in ICE custody to obtain counsel, gather evidence, or secure their rights to a fair
2 removal hearing.¹

3 41. In general, there are three ways to make a telephone call from immigration
4 detention in the Yuba, Elk Grove, Richmond, and Bakersfield Facilities: A detainee can place a
5 collect call, in which the recipient agrees to accept the charges for the call. A family member or
6 friend can contact the telephone service provider for the detention facility to establish a prepaid
7 account, which funds a detainee's calls to a specific telephone number. In the Yuba, Elk Grove,
8 and Bakersfield Facilities, a detainee can use his own money to purchase a calling card.

9 42. Plaintiffs who are language minorities or who have disabilities face special
10 difficulties using the phone systems in the facilities. Instructions on how to use the free call
11 platform or other calling systems are generally unavailable in minority languages. ICE and
12 Facility officers routinely ignore or deny requests for assistance from these Plaintiffs, often
13 instructing detainees to obtain advice and assistance from other detainees.

14 43. The telephone systems in the housing units of the detention facilities allow a call
15 to be completed only if a live person answers the telephone and accepts the call (by pressing a
16 number in response to a prompt), even if a prepaid account has been established. If a recorded
17 greeting begins to play, the call is disconnected. Consequently, Plaintiffs cannot leave voicemail
18 messages even to parties who have set up prepaid accounts or on calls Plaintiffs are willing and
19 able to pay for through calling cards. Plaintiffs are also unable to complete calls to offices that
20 use voicemail trees, *i.e.*, automated systems that require selection of options to reach a live
21 person. Three-way calls are not permitted in any of the facilities. Detainees cannot make
22 international calls from the Richmond facility. International calls are prohibitively expensive
23 from the Yuba and Elk Grove facilities.

24
25
26 ¹ Unless otherwise specified, the remainder of allegations in this section of the complaint are
27 related to the telephone system detainees must use to reach anyone that is not included on the
free call platform, *i.e.*, the substantial majority of immigration attorneys; all local, state and
federal government offices outside of DHS; and private parties.

1 44. At the Yuba, Elk Grove, and Richmond facilities, many Plaintiffs spend up to 22
2 hours a day confined to their cells. They are permitted to make telephone calls only during “free
3 time,” which occurs at inconsistent hours and often early in the morning or at night. Thus,
4 Plaintiffs cannot reliably arrange to call people at particular times. When free time occurs outside
5 of business hours, Plaintiffs are unable to reach law offices or any other offices. *Cf.* 2011
6 PBNDS at 362 (detainees shall be provided “reasonable and equitable access to telephones
7 during established facility ‘waking hours’”).

8 45. At the time the original complaint was filed, Plaintiffs held in the Yuba, Elk
9 Grove, and Richmond facilities were only allowed to use telephones that were located in the
10 common areas of each housing unit (“housing unit phones”). Plaintiffs had absolutely no
11 privacy when making privileged calls to current or prospective attorneys, which are often about
12 sensitive topics. *Cf. id.* at 364 (facilities shall ensure privacy for legal calls and may do so by
13 installing privacy panels, placing telephones in locations where conversations are not readily
14 overheard, or by providing detainees access to office telephones). Plaintiffs’ ability to locate,
15 retain and communicate with counsel, and to gather and present evidence in their removal
16 proceedings, is further restricted by the fact that telephone calls from the housing unit phones at
17 the Yuba, Elk Grove, and Richmond facilities are unreasonably -- and often prohibitively --
18 expensive. In the Richmond Facility, for example, an intrastate, long-distance call costs \$3.00 to
19 connect plus \$0.25 per minute, totaling \$5.50 for a ten-minute call, making it prohibitively
20 expensive for many members of the class, who are indigent. The phone systems at these
21 facilities regularly malfunction and fail to connect or disconnect mid-call for technical reasons,
22 requiring Plaintiffs to pay a new connection fee to continue their conversations. Moreover, at the
23 time the complaint was filed, calls made from the Yuba and Sacramento facilities automatically
24 disconnected after 15 minutes. *Cf. id.* at 360 (facilities shall provide access to “reasonably priced
25 telephone services”); *id.* at 363 (“Indigent detainees are afforded the same telephone access and
26 privileges as other detainees.”).

1 46. Immigrants held in ICE custody are completely unable to receive incoming
2 telephone calls. Thus, attorneys, family members and others who might assist in gathering
3 evidence necessary to defend removal charges or seek relief from removal can contact Plaintiffs
4 only by mail or by in-person visitation.²

5 **Defendants' Modifications to Plaintiffs' Telephone Access in Response to Litigation**

6 47. Around September 2014, approximately nine months after Plaintiffs filed their
7 complaint, Defendants made some limited changes to the Plaintiffs' telephone access at the
8 Yuba, Elk Grove, and Richmond detention facilities in response to the litigation.

9 48. In response to this litigation, Defendants adjusted the telephone systems at Yuba
10 and Elk Grove so that Plaintiffs' calls automatically disconnect after 20 minutes instead of 15
11 minutes. Plaintiffs at those facilities are still required to pay a new connection fee after their call
12 is automatically disconnected due to the time limit.

13 49. Also in response to this litigation, Defendants began permitting some Plaintiffs
14 held at the Yuba and Richmond facilities to make free, unmonitored telephone calls in support of
15 their immigration cases from a private or a semi-private room. In addition, officials at Yuba and
16 Richmond also began accepting messages from attorneys wishing to speak with Plaintiffs at
17 those facilities.

18 50. In the Richmond Facility, there is one free, unmonitored telephone in a closed
19 room available to detainees in each housing unit. Access to this telephone is limited based on
20 particular deputy practices, and generally is available only during free time hours. The telephone
21 can be used only to place calls to attorneys. There are often more detainees who want to use this
22 telephone than there is time for each person to make a call and detainees must limit the time of
23 their calls or wait another day to try to get access to the telephone.

24 51. In the Yuba Facility there are two free, unmonitored telephones in a closed room.
25 Detainees can submit a written request to use these telephones. After submitting their requests,

26 ² The Elk Grove Facility permits incoming messages via an online system, but the system
27 cannot be used for confidential communications because all messages are reviewed by jail staff
or recorded.

1 detainees wait several days and sometimes two or more weeks to be informed it is their turn to
2 use one of these telephones. Detainees are not given notice before a telephone is made available
3 to them, and they are therefore unable to make advance arrangements for their intended call
4 recipients to be available to take their calls. Detainees often have to share the room with another
5 person and therefore the telephones do not offer privacy. These telephones can be used only to
6 place calls to attorneys and they have an outgoing message informing the recipient of the call
7 that it is being made from a detention facility. Calls from these telephones do not connect unless
8 the recipient affirmatively accepts the call.

9 52. Officials at the Yuba and Richmond Facilities also began accepting messages
10 verbally and through e-mail, respectively, from attorneys wishing to speak with Plaintiffs at
11 those facilities. The Facilities' practices and procedures for accepting and delivering such
12 messages are uncertain and inconsistent.

13 53. In March 2015, Defendants began transferring many Plaintiffs held at the Yuba,
14 Elk Grove, and Richmond Facilities to a new detention facility in Kern County, California (the
15 Bakersfield Facility). Plaintiffs are informed and believe and thereon allege that Defendants
16 have also begun to house new detainees whose cases are venued in San Francisco in the
17 Bakersfield Facility.

18 54. The basic technical features of the telephones available in the housing units at the
19 Bakersfield Facility are identical to the Yuba, Elk Grove, and Richmond Facilities, as alleged in
20 paragraphs 40-43, *supra*. For example, Plaintiffs at the Bakersfield Facility calling from the
21 housing unit telephones are unable to leave voicemail messages or penetrate voicemail trees and,
22 in order for the call to connect, a live person must answer and accept the call.

23 55. Like Plaintiffs at Yuba, Elk Grove, and Richmond, Plaintiffs at the Bakersfield
24 Facility are required to pay for all outgoing calls from the housing unit telephones. Other than
25 the free call platform, there is no free calling option for indigent Plaintiffs who need to make
26 calls from the housing units in support of their immigration cases.

1 56. The housing unit telephones in the Bakersfield Facility are located in open areas
2 of 100-bed dormitories, allowing no privacy for calls made from those telephones. All calls
3 from the housing unit phones are monitored and recorded.

4 57. The Bakersfield Facility has four rooms with free, unmonitored telephones.
5 Pursuant to a written policy that is attached to the First Supplemental Complaint as Exhibit “1,”
6 detainees can request to use the room only to call attorneys. Plaintiffs are only permitted to use
7 the private telephones if Bakersfield Facility staff and the telephone service provider approve the
8 attorney as “a legal representative.”

9 58. The telephone rooms in the Bakersfield Facility are not soundproof and calls are
10 within earshot of an officer at the Facility, so calls made from those rooms are not confidential.
11 Similar to the private phone rooms at the Yuba and Richmond Facilities, Plaintiffs’ requests to
12 make free legal calls from the attorney rooms are frequently ignored or denied. Plaintiffs may
13 wait a week or longer for a response to their requests to use an unmonitored telephone. The
14 rooms in which these telephones are located at the Bakersfield Facility are also designated for
15 attorney visitation. Plaintiffs are informed and believe and thereon allege that at least two of the
16 four rooms that hold these unmonitored telephones will be used during business hours for
17 videoconference hearings in Immigration Court and will therefore be unavailable to detainees for
18 unmonitored telephone use. Plaintiffs are informed and believe and thereon allege that the
19 telephones available in the Bakersfield Facility will be inadequate to meet the needs of detainees
20 for direct, private calls to seek legal advice and representation, to contact witnesses and
21 government agencies, and to gather evidence and information necessary for Plaintiffs’
22 immigration cases and affirmative applications for relief.

23 59. The changes Defendants have made in response to litigation fail to address many
24 of Plaintiffs’ concerns in this action and are insufficient to fully support Plaintiffs’ rights.
25 Defendants maintain the changes were not necessary to effectuate Plaintiffs’ rights as alleged in
26 this case. The limited improvements to telephone access since the filing of this litigation are
27

1 subject to change at Defendants' discretion; they are not embodied in any contract modifications
2 or amendments to ICE detention standards.

3 60. The need for private telephones is even clearer at the Bakersfield Facility than in
4 the Richmond, Yuba, and Elk Grove Facilities because it is a greater distance from the San
5 Francisco Immigration Court and there are few immigration attorneys nearby. It has been and
6 continues to be ICE's practice to transport detainees from the Richmond, Yuba, and Elk Grove
7 Facilities to meet with *pro bono* counsel upon request of counsel. However, ICE has announced
8 to representatives of the immigration bar in San Francisco that such accommodations will not be
9 made for detainees in the Bakersfield Facility and their *pro bono* counsel.

10 **Denial of Right to Legal Representation**

11 61. The capacity of nonprofit legal services providers in northern and central
12 California to provide representation for detained immigrants is very limited. The bulk of the
13 legal representation for detained immigrants is provided by the private immigration bar,
14 sometimes on a low-fee or sliding scale basis, and occasionally on a *pro bono* basis. There are
15 no nonprofit legal services providers who represent immigrants in removal proceedings in the
16 region surrounding Bakersfield, California, where ICE located its newest detention facility.

17 62. The restriction and denial of telephone access makes it extremely difficult, and
18 often impossible, for Plaintiffs to secure private counsel from within detention facilities.
19 Plaintiffs often obtain the names and telephone numbers of attorneys who represent detained
20 immigrants through word of mouth in the detention facility, but restrictions on telephone access
21 prevent Plaintiffs from contacting those attorneys. Some Plaintiffs are confined to their cells for
22 most of the day; many lack sufficient funds to make calls. Plaintiffs who are able to access the
23 telephones during business hours and pay for calls are stymied by the inability to leave voicemail
24 messages and navigate voicemail trees, and it is difficult – and sometimes impossible – for
25 attorneys to call or arrange calls with Plaintiffs to follow up on Plaintiffs' requests for
26 representation.
27

1 63. Although immigrants held in ICE custody can sometimes locate counsel through
2 family members, many Plaintiffs do not have family members or friends who are able and
3 willing to help them retain counsel. Many Plaintiffs have been transferred far from their
4 communities, sometimes without the knowledge of those who might otherwise attempt to assist
5 in locating counsel. Some Plaintiffs are eligible for immigration relief based on abusive
6 domestic relationships and cannot rely on their partners to facilitate that relief. In addition, when
7 Plaintiffs must funnel their communications with counsel through family members, they are
8 forced to compromise the attorney-client privilege.

9 64. ICE's free call platform can rarely help Plaintiffs secure counsel. Half of the
10 organizations on the list that are designated as free legal services providers do not accept the
11 cases of immigrants who are detained during their removal proceedings. Most of the
12 organizations that do represent detained immigrants can only accept a low volume of "detained
13 cases" due to resource constraints. Accordingly, one immigration judge in San Francisco
14 routinely advises detained immigrants to look for private counsel because the nonprofit legal
15 services organizations are inundated with requests for assistance.

16 65. When Plaintiffs are able to locate and retain an attorney, the restriction and denial
17 of telephone access also severely undercuts the effectiveness of the representation and Plaintiffs'
18 ability to gather evidence and obtain a fair hearing. Plaintiffs have limited ability to call their
19 attorneys, and their attorneys have limited ability to call or arrange calls with Plaintiffs. Unlike
20 pretrial criminal defendants, who are detained in the county where their public defenders are
21 based, most Plaintiffs are incarcerated hours away from their attorneys. Legal correspondence to
22 and from ICE custody can take a week in each direction. Letters must be inspected to ensure that
23 they are indeed legal mail and do not contain contraband, and incoming letters must be opened in
24 the presence of the detainee to protect the confidentiality of legal mail. Moreover, some
25 Plaintiffs cannot communicate by mail because they cannot read or write in any language.

26 66. In addition, Defendants' policies and practices restricting and denying telephone
27 access, in light of Plaintiffs' geographic isolation and the inherent limitations on alternative

1 means of communication, impose logistical constraints that make it impossible for lawyers who
2 are otherwise willing and able to represent Plaintiffs in connection with removal proceedings to
3 do so, which further restricts and denies Plaintiffs' right to be represented by counsel.

4 **Denial of Right to Gather and Present Evidence**

5 67. The denial and restriction of telephone access to immigrants in ICE custody also
6 prevent Plaintiffs, and particularly Plaintiffs who must represent themselves, from obtaining and
7 presenting evidence necessary to obtain a fair hearing. This includes evidence that would entitle
8 them to release from detention, relief from removal, or immigration benefits from CIS that would
9 terminate deportation proceedings. For example, a Plaintiff seeking relief from removal via a U
10 visa may need to contact a police department to obtain a police report, a hospital to obtain
11 medical records, or a district attorney's office to obtain a law enforcement certification. Plaintiffs
12 seeking bond redetermination from an immigration judge may need to contact character
13 witnesses and obtain documentary evidence of their good works in the community, completion
14 of rehabilitation programs, or the financial hardship their detention imposes on their United
15 States citizen children.

16 68. Defendants' restriction and denial of telephone access make it difficult or
17 impossible for Plaintiffs to obtain this documentation while held in ICE custody. Even in the
18 rare circumstance when Plaintiffs are theoretically able to make a telephone call during business
19 hours that is not blocked by Defendants' technological barriers, the prohibitive telephone rates
20 render most Plaintiffs unable to actually complete the call.

21 **Prolonged Incarceration**

22 69. In addition to denying Plaintiffs' their statutory and constitutional rights to be
23 represented by counsel, to gather and present evidence, to a fair hearing and to meaningful
24 participation in proceedings in which ICE seeks to remove them from the United States,
25 Defendants' restriction and denial of telephone access to immigrants held in ICE custody
26 substantially prolongs Plaintiffs' incarceration pending removal hearings. At master calendar
27 hearings, Plaintiffs are forced to ask the immigration judge for a continuance to retain counsel, to

1 prepare their cases, or simply to obtain legal advice that permits them to make an informed
2 decision whether to seek relief from deportation or accept a removal order. Some Plaintiffs state
3 during their master calendar hearings that lack of telephone access is the reason they need a
4 continuance. Plaintiffs routinely seek and receive multiple continuances.

5 70. The prolonged periods of incarceration resulting from Defendants' restriction and
6 denial of telephone access to immigrants held in ICE custody deprives Plaintiffs of their
7 freedom, not as punishment for conviction of a crime, but rather because Defendants' policies
8 and practices have made it difficult or impossible for Plaintiffs to exercise their statutory and
9 constitutional rights. The fact that Plaintiffs are willing to endure prolonged incarceration in
10 their efforts to obtain those rights underscores the egregiousness of the violations alleged herein.

11 **ADDITIONAL ALLEGATIONS RE INDIVIDUAL PLAINTIFFS**

12 **Audley Barrington Lyon, Jr.**

13 71. Plaintiff Audley Barrington Lyon, Jr. is a 35-year-old man currently on
14 conditional release from ICE custody. At the time the original complaint was filed and Plaintiffs
15 moved for class certification in this matter, Mr. Lyon was detained in the Richmond Facility. He
16 entered the United States as a lawful permanent resident when he was approximately ten years
17 old.

18 72. Mr. Lyon seeks relief from removal in the form of a U visa, as the victim of a
19 shooting who cooperated with the East Palo Alto Police Department in connection with the
20 crime. He is also seeking protection relief under 8 U.S.C. § 1231(b)(3).

21 73. Mr. Lyon cannot afford to retain an immigration attorney. After more than two
22 months in immigration custody at the Richmond Facility, Mr. Lyon was able to retain pro bono
23 counsel, Eleni Wolfe-Roubatis of Centro Legal de la Raza.

24 74. Due to Defendants' denial of telephone access to immigration detainees, Mr.
25 Lyon was unable to call the East Palo Alto Police Department to obtain a police report and the
26 law enforcement certification required for his U visa application. Because the Richmond Facility
27 does not permit detainees to purchase calling cards or phone credit, Mr. Lyon's only option was

1 to place a collect call to the police department. Government agencies, however, generally do not
2 accept collect calls.

3 75. Until Mr. Lyon retained pro bono counsel, he relied on his wife to assist him with
4 his U visa application. However, Mr. Lyon's wife earns limited income and could not afford to
5 accept collect calls or establish a prepaid account to accept calls from Mr. Lyon. Instead, Mr.
6 Lyon and his wife communicated with one another regarding his U visa application by mail.

7 76. Mr. Lyon's wife attempted to obtain a police report on his behalf, but was
8 informed that the police department would only release the report to Mr. Lyon or his legal
9 representative.

10 77. It was only after retaining counsel that Mr. Lyon was able to secure the
11 documents required to seek relief from removal.

12 78. Defendants' restrictions on telephone access severely obstructed Mr. Lyon's
13 attempts to apply for a U visa and to seek advice and pro bono representation.

14 **José Elizandro Astorga-Cervantes**

15 79. Plaintiff José Elizandro Astorga-Cervantes is a 53-year-old man currently on
16 conditional release from ICE custody. At the time the original complaint was filed and Plaintiffs
17 moved for class certification in this matter, Mr. Astorga-Cervantes was detained in the Elk Grove
18 Facility. He has lived in the United States since he was a child and became a lawful permanent
19 resident of the United States in 1977.

20 80. While Mr. Astorga-Cervantes was detained at the Elk Grove Facility, he sought
21 release from custody by demonstrating to an immigration judge or ICE that he does not pose a
22 risk of flight or a danger to society.

23 81. Mr. Astorga-Cervantes intends to apply for relief from removal under former
24 section 212(c) of the Immigration and Nationality Act, a form of discretionary relief similar to
25 cancellation of removal. Release from custody and 212(c) relief both require letters or testimony
26 from family and community members who can attest to Mr. Astorga-Cervantes's character and
27 community ties.

1 82. Due to Defendants' telephone access policies and practices, Mr. Astorga-
2 Cervantes was almost completely unable to speak to his family members and community
3 contacts in connection with his efforts to secure release from custody and immigration relief for
4 more than a month. Mr. Astorga-Cervantes did not have sufficient funds in his inmate account to
5 purchase phone credit.

6 83. Mr. Astorga-Cervantes was also unable to complete a collect call to his home for
7 more than a month. As Mr. Astorga-Cervantes was the primary income earner in his household,
8 his family faced severe financial strain and could not afford to pay for expensive telephone calls
9 from detention.

10 84. Defendants' restrictions on telephone access severely obstructed Mr. Astorga-
11 Cervantes's attempts to prepare for his bond hearing, apply for a U visa, and seek legal advice
12 and representation.

13 **Nancy Neria-Garcia**

14 85. Plaintiff Nancy Neria-Garcia is a 26-year-old woman currently in ICE custody in
15 the Richmond Facility. She first came to the United States in November 2010.

16 86. Ms. Neria-Garcia is seeking withholding of removal and protection under the
17 Convention Against Torture, based on abuse and fear of abuse and torture by her ex-partner if
18 she is returned to Mexico.

19 87. Ms. Neria-Garcia entered ICE custody on or about June 26, 2014. She was
20 detained at the Yuba Facility from June 26, 2014 until March 26, 2015, when she was transferred
21 to the Bakersfield Facility. She remained in custody at the Bakersfield Facility until June 3,
22 2015, when she was transferred to the Richmond Facility, where she is currently in custody.

23 88. Defendants' denial and restriction of telephone access has severely undercut Ms.
24 Neria-Garcia's statutory and constitutional right to be represented by counsel and to gather and
25 present evidence or witnesses for her immigration case. While she was in the Yuba Facility, she
26 often lacked sufficient funds to call her attorney and others in support of her immigration case. In
27 one of the housing units where Ms. Neria-Garcia was detained at the Yuba Facility, she was

1 locked down in her cell for 23 hours a day with no access to the telephone. Even when she was
2 able to access the telephones and pay for calls, the limited functionality of the telephones and the
3 lack of privacy for housing unit telephones made confidential attorney-client communications
4 impossible. The semi-private telephone room that was added to the Yuba Facility during Ms.
5 Neria-Garcia's detention there was also insufficient. Ms. Neria-Garcia did not receive a response
6 -- much less a telephone call -- to many of her requests to use the semi-private room.

7 89. While in the Bakersfield Facility, Ms. Neria-Garcia was unable to use the
8 telephone to communicate confidentially with her attorney regarding sensitive matters in her
9 immigration case. Given the lack of adequate telephone access, Ms. Neria-Garcia resorts to
10 writing letters or waiting for in-person visits with her attorney, which, because of the
11 geographical distance from the detention facilities, are rare.

12 CLASS ALLEGATIONS

13 90. The Individual Plaintiffs bring this action on behalf of themselves and all others
14 similarly situated under Rule 23 of the Federal Rules of Civil Procedure. They propose the
15 following Class:

16 All current and future adult immigration detainees who are or will be held by ICE
17 in Contra Costa County, Kern County, Sacramento County, or Yuba County.
18

19 91. Defendants have engaged in a common course of conduct that has denied
20 constitutional and statutory rights on a classwide basis, including by promulgating,
21 implementing, maintaining and enforcing the policies and practices that deny and restrict
22 Plaintiffs' telephone access at the Bakersfield, Richmond, Elk Grove and Yuba Facilities, and by
23 failing to take actions necessary to allow Plaintiffs to consult with or obtain representation by
24 counsel, to gather and present evidence, to petition government agencies to obtain immigration
25 benefits and documents necessary to seek relief from removal, and to obtain a fair hearing.

26 92. Plaintiffs seek injunctive and declaratory relief only, on grounds that apply
27 broadly to the Class as a whole.

1 93. Members of the Class are so numerous that joinder is impracticable. Plaintiffs are
2 informed and believe, and on that basis allege, that the Bakersfield, Richmond, Elk Grove, and
3 Yuba Facilities hold a combined total of between 600 and 700 immigration detainees on an
4 average day.

5 94. Joinder is also impracticable because membership in the Class is fluid, as
6 immigration detainees are frequently released from custody, transferred to other regions of the
7 country, or removed from the United States. The Class includes individuals who will be
8 subjected to Defendants' policies, practices, and omissions in the future and therefore cannot be
9 joined.

10 95. There are numerous questions of law and fact common to the Class, which
11 predominate over any individual questions, including:

12 (a) the extent to which Defendants' policies, practices and omissions denying
13 and restricting telephone access interfere with Plaintiffs' ability to consult with and retain
14 counsel; communicate effectively with counsel; and gather information and evidence in
15 support of their claims, defenses, and applications for relief;

16 (b) whether Defendants' policies, practices and omissions in denying and
17 restricting telephone access violate Plaintiffs' right to be represented by counsel under the
18 Fifth Amendment Due Process Clause, and the Act and its implementing regulations;

19 (c) whether Defendants' policies, practices and omissions in denying and
20 restricting telephone violate Plaintiffs' right to a fair hearing, and to gather and present
21 evidence, under the due process clause of the Fifth Amendment and the Act and its
22 implementing regulations;

23 (d) whether Defendants' policies, practices and omissions in denying and
24 restricting telephone access violate the First Amendment's Petition Clause by denying
25 and restricting the ability of Class members to obtain information, documents, and
26 immigration benefits that can provide relief from removal; and
27

1 (e) whether Defendants' policies, practices and omissions violate the
2 detention standards promulgated by ICE with respect to telephone access.

3 96. The Individual Plaintiffs are members of the Class or were previously certified as
4 Class Representatives, and are or will be, in the event they are returned to custody, subjected to
5 telephone access policies and practices that deny, violate and impair the constitutional and
6 statutory rights of the Class as a whole.

7 97. The Individual Plaintiffs will fairly and adequately represent the interests of the
8 class. Fed. R. Civ. P. 23(a)(4). They seek relief identical to the relief sought by all Class
9 members and have no interests adverse to other members of the Class. Plaintiffs are represented
10 by *pro bono* counsel who are experienced in federal class action and civil rights litigation, and
11 will adequately represent the interests of the class.

12 98. A class action is superior to all other available methods for adjudicating this
13 controversy, and is manageable, because:

14 (a) Defendants are acting and refusing to act on grounds generally applicable
15 to the Class;

16 (b) many Class members are unaware of their legal rights, and are unable to
17 obtain individual counsel due to the conduct alleged herein;

18 (c) prosecution of individual actions would be impossible because individual
19 Class members would not remain in ICE custody pending removal proceedings long
20 enough to prosecute such actions to a conclusion;

21 (d) even if it were possible, prosecution of separate actions by individual
22 Class members would be inefficient, create a risk of conflicting or inconsistent
23 adjudications, and might, as a practical matter, be dispositive of the interests of individual
24 members of the Class;

25 (e) by virtue of Defendants' roles in contracting with the facilities in which
26 Class members are held in ICE custody, in promulgating, implementing, enforcing, and
27

1 in failing to promulgate, implement and enforce, detention standards relating to telephone
2 access for Class members; and

3 (f) the injunctive and declaratory relief sought herein will enable Defendants to
4 formulate and implement measures necessary to address and remedy the constitutional
5 and statutory violations resulting from denial and restriction of telephone access, without
6 undue intrusion on legitimate governmental interests.

7 **DECLARATORY RELIEF ALLEGATIONS**

8 99. An actual and substantial controversy exists between Plaintiffs and Defendants as
9 to their respective legal rights and duties with respect to Defendants' policies, practices and
10 omissions in denying and restricting telephone access to the Class. Plaintiffs contend that
11 Defendants' policies, practices and omissions alleged herein violate their constitutional and
12 statutory rights as alleged in the foregoing paragraphs. Defendants deny that their policies,
13 practices and omissions violate Plaintiffs' constitutional and statutory rights, and intend to
14 continue such conduct.

15 **FIRST CLAIM FOR RELIEF**

16 **Right to Representation of Counsel**

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

18 100. Plaintiffs reallege the foregoing paragraphs and incorporate them herein by this
19 reference.

20 101. The due process clause of the Fifth Amendment guarantees Plaintiffs the right to
21 representation of counsel of their choice, at no expense to the government.

22 102. Plaintiffs also have a statutory right to representation of counsel at no expense to
23 the government under the Act. 8 U.S.C. §§ 1362; 1229a(b)(4)(A).

24 103. Defendants have violated Plaintiffs' right to representation of counsel by denying
25 and severely restricting Plaintiffs' ability to make telephone calls to locate, consult with, and
26 retain counsel, and Plaintiffs' ability to communicate with retained counsel.

1 104. Plaintiffs have suffered and will imminently suffer irreparable injury as a result of
2 Defendants' policies, practices, and omissions and are entitled to injunctive relief to avoid any
3 further injury.

4 **SECOND CLAIM FOR RELIEF**

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

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

7 105. Plaintiffs reallege the foregoing paragraphs and incorporate them herein by this
8 reference.

9 106. The due process clause of the Fifth Amendment guarantees Plaintiffs the right to a
10 full and fair hearing of their removal cases, including a reasonable opportunity to gather and
11 present evidence.

12 107. Plaintiffs also have a statutory right to gather and present evidence in connection
13 with their removal proceedings under the Act. 8 U.S.C. § 1229a(b)(4)(B).

14 108. Defendants have violated Plaintiffs' right to a full and fair hearing by denying and
15 severely restricting Plaintiffs' ability to make telephone calls to gather information and obtain
16 evidence in support of their immigration cases.

17 109. Plaintiffs have suffered and will imminently suffer irreparable injury as a result of
18 Defendants' policies, practices, and omissions and are entitled to injunctive relief to avoid any
19 further injury.

20 **THIRD CLAIM FOR RELIEF**

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

22 **(First Amendment Petition Clause)**

23 110. Plaintiffs reallege the foregoing paragraphs and incorporate them herein by this
24 reference.

25 111. The First Amendment guarantees Plaintiffs the right to petition the government
26 for redress of grievances, including the right to petition a federal agency for immigration benefits
27 that, if granted, would result in termination of their removal proceedings.

1 112. Defendants have violated Plaintiffs' right to petition the government by denying
2 and severely restricting the telephone access necessary to seek legal representation and obtain
3 documents and evidence in support of their applications for immigration benefits.

4 113. Plaintiffs have suffered and will imminently suffer irreparable injury as a result of
5 Defendants' policies, practices, and omissions and are entitled to injunctive relief to avoid any
6 further injury.

7 **PRAYER FOR RELIEF**

8 WHEREFORE, Plaintiffs respectfully request that the Court:

9 1. Issue an order certifying this action to proceed as a class action pursuant to Rule
10 23 of the Federal Rules of Civil Procedure.

11 2. Appoint the undersigned as class counsel pursuant to Rule 23(g) of the Federal
12 Rules of Civil Procedure.

13 3. Issue a judgment declaring that Defendants' policies, practices, acts, and
14 omissions described herein violate Plaintiffs' rights under the United States Constitution and the
15 Immigration and Nationality Act.

16 4. Enjoin Defendants, their subordinates, agents, employees, and all others acting in
17 concert with them from subjecting Plaintiffs to the unlawful conditions described herein, and
18 issue an injunction sufficient to remedy the violations of Plaintiffs' constitutional and statutory
19 rights, including:

20 a. An order that Defendants afford sufficient time during business hours to complete
21 legal calls, and establish a process by which Plaintiffs can make legal calls outside
22 of free time;

23 b. An order that Defendants establish an adequate process by which immigration
24 attorneys can schedule legal calls with Plaintiffs;

25 c. An order that Defendants make reasonable accommodations for Plaintiffs who are
26 indigent and cannot afford to make legal calls, including international calls;

- d. An order that Defendants afford Plaintiffs the ability to make private, unmonitored, unrecorded calls with attorneys, without being overheard by other detainees or staff;
- e. An order that Defendants afford Plaintiffs the ability to penetrate automated telephone voicemail trees to make legal calls;
- f. An order that Defendants afford Plaintiffs the opportunity to leave voicemail messages when making legal calls;
- g. An order that Defendants provide adequate notice to Plaintiffs of the communication options available to them; and
- h. An order that Defendants provide accommodations for non-English proficient Plaintiffs, illiterate Plaintiffs, and Plaintiffs with disabilities that impact their access to legal calls.

5. Grant Plaintiffs their reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable law.

6. Grant such other relief as the Court deems just and proper.

Dated: August 27, 2015

AMERICAN CIVIL LIBERTIES UNION FOUNDATION
OF NORTHERN CALIFORNIA

By: /s/ Megan Sallomi
MEGAN SALLOMI (SBN 300580)
JULIA HARUMI MASS (SBN 189649)
MICHAEL T. RISHER (SBN 191627)
39 Drumm Street
San Francisco, CA 94111
Telephone: (415) 621-2493
Facsimile: (415) 255-8437
Email: jmass@aclunc.org

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ORRICK, HERRINGTON & SUTCLIFFE LLP
ROBERT P. VARIAN (SBN 107459)
CHARLES J. HA (WA Bar No. 34430 (*pro hac vice*))
DAVID KEENAN (WA Bar No. 41359 (*pro hac vice*))
JUDY KWAN (SBN 273930)
ALEXIS YEE-GARCIA (SBN 277204)
MATTHEW R. KUGIZAKI (SBN 286795)
ORRICK, HERRINGTON & SUTCLIFFE, LLP
405 Howard Street
San Francisco, CA 94105
Telephone: (415) 773-5700
Facsimile: (415) 773-5759
Email: rvarian@orrick.com

AMERICAN CIVIL LIBERTIES UNION
NATIONAL PRISON PROJECT
CARL TAKEI (SBN 256229)
915 15th Street, N.W., 7th Floor
Washington, DC 20005
Telephone: (202) 393-4930
Facsimile: (202) 393-4931
Email: ctakei@aclu.org

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on August 27, 2015, a true and correct copy of the foregoing FIRST SUPPLEMENTAL COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF was served with the Clerk of the 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.

Dated: August 27, 2015

By: /s/ Megan Sallomi
 MEGAN SALLOMI

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