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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' ANSWER TO FIRST**
) **SUPPLEMENTAL COMPLAINT**
 21 vs.)
 22)
 23 U.S. IMMIGRATION & CUSTOMS)
 ENFORCEMENT, *et al.*,)
 24)
 Defendants.)
 25)

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 27
 28
 DEFS.' ANSWER TO SUPPL. COMPL.
 No. 3:13-cv-05878-EMC

1 Defendants U.S. Immigration and Customs Enforcement (“ICE”); Sarah
2 Saldaña, Director, ICE¹; U.S. Department of Homeland Security (“DHS”); Jeh
3 Johnson (“Johnson”), Secretary of DHS; and Timothy Aitken (“Aitken”), Field Office
4 Director for the ICE Enforcement and Removal Operations (“ERO”) Field Office in
5 San Francisco (collectively, “Defendants”), without waiving affirmative defenses,
6 hereby assert their ANSWER to the First Supplemental Complaint for Injunctive
7 and Declaratory Relief filed by Plaintiffs Audley Barrington Lyon, Jr. (“Lyon”); José
8 Elizandro Astorga-Cervantes (“Astorga-Cervantes”); and Nancy Neria-Garcia
9 (“Neria-Garcia”) on behalf of themselves and all others similarly situated
10 (collectively, “Plaintiffs”). *See* ECF No. 99 (hereinafter, “Complaint”).
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13 Defendants state as follows in response to each of the numbered paragraphs
14 in Plaintiffs’ Complaint:
15

16 INTRODUCTION²

17 1. DENIED in part and ADMITTED in part. The first sentence of
18 Paragraph 1 is a summary of the relief Plaintiffs seek on behalf of the class, to
19 which no response is required. To the extent a response is required to the first
20 sentence of Paragraph 1, Defendants admit only that Plaintiffs seek injunctive
21 relief and declaratory relief on behalf of a class, and that the Court certified a class
22 in this litigation on April 16, 2014 (ECF No. 31), and modified the class definition
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25 _____
26 ¹ Sarah Saldaña, Director of ICE, is substituted for former Acting Director
Sandweg under Fed. R. Civ. P. 25(d).

27 ² Defendants repeat the headings from the Complaint for ease of reference only, and
28 do not admit (and specifically deny) any allegations contained therein.

1 by written order on July 27, 2015 (ECF No. 98). Defendants deny that Plaintiffs
2 are entitled to such relief, and specifically deny any allegation of “ongoing violations
3 of the constitutional and statutory rights of immigrants held in government custody
4 pending deportation proceedings.” With respect to the second and third sentences
5 of Paragraph 1, these sentences contain Plaintiffs’ theory of the case and legal
6 conclusions, to which no response is required. To the extent a response is required,
7 Defendants admit that aliens in removal proceedings have certain procedural and
8 substantive rights afforded by the U.S. Constitution and federal statutes, but deny
9 Plaintiffs’ characterization of the law to the extent it is inconsistent with binding
10 legal authority. Defendants further deny the remainder of the allegations in the
11 second and third sentences of Paragraph 1, and specifically deny that “[t]hose rights
12 (and others) are systematically denied by defendants.”

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

26 3. DENIED in part and ADMITTED in part. With respect to the first
27 sentence of Paragraph 3, Defendants admit that one of the three named Plaintiffs –

1 Neria-Garcia – remains in ICE custody pending resolution of her removal
2 proceedings. Defendants deny that Astorga-Cervantes remains in ICE custody
3 pending resolution of his removal proceedings. Defendants also deny that Lyon
4 remains in ICE custody pending resolution of his removal proceedings. Defendants
5 admit that the Court certified a class of “all current and future immigration
6 detainees who are or will be held by ICE in Contra Costa, Sacramento, and Yuba
7 Counties,” *see* ECF No. 31, and has modified that class to include detainees who are
8 or will be held by ICE in Kern County (where the Mesa Verde Facility is located),
9 *see* ECF No. 98. Defendants deny, however, that the class certified consists only of
10 aliens detained by ICE “pending” their removal proceedings. With respect to the
11 remaining allegations contained in Paragraph 3, Defendants admit only that – with
12 the exception of certain mentally incompetent aliens who are within the class
13 certified in *Franco-Gonzalez v. Holder*, Case No. 10-cv-02211-DMG (DTBx) – aliens
14 in removal proceedings are not entitled to appointed counsel. Defendants lack
15 sufficient information to admit or deny the remainder of the allegations in
16 Paragraph 3, and, therefore, deny them.

21 4. DENIED.

22 5. DENIED. Additionally, Defendants note that Plaintiffs’ Complaint
23 does not identify any DHS or ICE policy that allegedly denies or restricts telephone
24 access.
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26 6. DENIED. Defendants lack sufficient information to admit or deny
27 that aliens in removal proceedings are “forced to seek continuances” or the
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1 numerous causes for continuances sought by Plaintiffs or other aliens in their
2 removal proceedings, and, therefore, deny Plaintiffs' allegations regarding the
3 causes of such continuances. Additionally, Plaintiffs' allegation regarding "some
4 [aliens] who would accept a removal order much earlier in the process" appears to
5 be pure speculation, to which no response is required. To the extent a response is
6 required, Defendants deny this allegation. Defendants deny the remainder of the
7 allegations in Paragraph 6.
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9
10 7. Paragraph 7 contains Plaintiffs' proposed class definition and request
11 to certify a class action, to which no response is required. To the extent a response
12 is required, 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, and has modified that class to
15 include detainees who are or will be held by ICE in Kern County (where the Mesa
16 Verde Facility), *see* ECF No. 98. Defendants deny the remainder of Paragraph 7,
17 and specifically deny any implication that Defendants have violated any law or
18 constitutional provision or that Plaintiffs are entitled to the relief they seek in this
19 action.
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1 Lyon is seeking protection relief under 8 U.S.C. § 1231(b)(3) as disclosure of such
2 information is barred by 8 C.F.R. §§ 208.6, 1208.6. Defendants deny the remainder
3 of the allegations contained in Paragraph 11.
4

5 12. DENIED in part and ADMITTED in part. Defendants admit the
6 allegations in the first, second, third, fourth, and fifth sentences of Paragraph 12,
7 except that Defendants deny that Astorga-Cervantes was re-arrested on June 12,
8 2014; Astorga-Cervantes was re-arrested on June 11, 2014. Defendants lack
9 sufficient information to admit or deny the allegations in the sixth sentence of
10 Paragraph 12 and, therefore, deny them. Defendants deny the allegations
11 contained in the seventh sentence of Paragraph 12.
12

13 13. DENIED in part and ADMITTED in part. Defendants admit the
14 allegations in the first sentence of Paragraph 13. With respect to the second
15 sentence of Paragraph 13, Defendants admit that Neria-Garcia was initially
16 detained at the Yuba County Jail (“Yuba Facility”), was subsequently transferred to
17 the newly-opened Mesa Verde Facility on March 26, 2015, and was then transferred
18 to the West County Detention Facility (“Contra Costa Facility”) on June 3, 2015.
19 With respect to the third sentence of Paragraph 13, Defendants admit that Neria-
20 Garcia was in removal proceedings in the San Francisco Immigration Court, but
21 Defendants cannot admit or deny that Neria-Garcia applied for withholding of
22 removal and protection under the Convention Against Torture as release of such
23 information is barred by 8 C.F.R. §§ 208.6, 1208.6. Defendants admit the
24 allegations contained in the fourth sentence of Paragraph 13. With respect to the
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1 fifth sentence of Paragraph 13, Defendants admit only that the Board of
2 Immigration Appeals remanded her case to the San Francisco Immigration Court,
3 and deny any characterizations of that decision inconsistent with its text.
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5 Defendants admit that Neria-Garcia sought a bond hearing in Immigration Court,
6 but lack sufficient information to admit or deny the remainder of the allegations in
7 the sixth sentence of Paragraph 13 and, therefore, deny those allegations.
8
9 Defendants deny the remainder of the allegations contained in Paragraph 13.

10 14. DENIED in part and ADMITTED in part. Defendants admit that ICE
11 is a federal law enforcement agency within DHS. Defendants admit that ICE is
12 responsible for the criminal and civil enforcement of U.S. immigration laws;
13
14 Defendants deny any implication that ICE is the sole government agency
15 responsible for the criminal and civil enforcement of U.S. immigration laws.
16
17 Defendants admit that ICE is responsible for detaining certain aliens in removal
18 proceedings or subject to final orders of removal. Defendants deny any implication
19 in Paragraph 14 that ICE is responsible for the detention of all aliens, including all
20 aliens in removal proceedings. Defendants lack sufficient information to admit or
21 deny Plaintiffs' allegation that ICE is responsible for the "incarceration" of aliens,
22 which Plaintiffs appear to distinguish from detention; Defendants therefore deny
23 this allegation. Defendants admit that ICE is responsible for the removal of certain
24 aliens subject to final removal orders, but deny any implication that ICE is
25 responsible for the removal of all aliens. Defendants admit that Enforcement and
26
27 Removal Operations ("ERO"), a division of ICE, manages and oversees ICE's
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1 detention system. Defendants admit that ICE promulgates detention standards to
2 be followed in the facilities that detain aliens subject to pre- and post-final removal
3 orders. Defendants further admit that ICE contracts with other government
4 entities and private corporations to detain those aliens subject to immigration
5 detention, but denies any implication that these are the only types of relationships
6 ICE has with detention facilities that house ICE detainees.
7

8 15. DENIED in part and ADMITTED in part. Defendants admit that ICE
9 pays a fixed rate per night to house detainees in accordance with applicable ICE
10 detention standards. Defendants deny that the detention of all ICE detainees at
11 the four detention facilities at issue in this litigation – the Rio Cosumnes
12 Correctional Center (“RCCC”), the Contra Costa Facility, the Yuba Facility, and the
13 Mesa Verde Facility – are governed by the same ICE Detention Standards.
14 Defendants deny the remainder of the allegations in Paragraph 15, and specifically
15 deny: (i) that ICE is responsible for the incarceration of aliens, which Plaintiffs
16 appear to distinguish from civil detention; and (ii) that ICE directly contracts with
17 Contra Costa County for the detention of aliens at the Contra Costa Facility.
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20 16. DENIED in part and ADMITTED in part. Defendants deny any
21 implication in Paragraph 16 that the 2011 Performance-Based National Detention
22 Standards are applicable to all of the facilities at issue in this litigation.
23 Defendants admit that the 2011 Performance-Based National Detention Standards
24 are the most recent detention standards promulgated by ICE.
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1 17. DENIED in part and ADMITTED in part. Defendants admit the
2 allegations in the first sentence of Paragraph 17. With respect to the second
3 sentence, Defendants admit only that Director Saldaña has general oversight
4 responsibilities for ICE and its components, but otherwise deny the allegations.
5 Defendants note that Plaintiffs have failed to identify any ICE policy for which the
6 Director of ICE is responsible that allegedly contributes or contributed to the harm
7 alleged by Plaintiffs.
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10 18. DENIED in part and ADMITTED in part. Defendants deny any
11 implication in Paragraph 18 that DHS is the only arm of the federal government
12 responsible for the enforcement and administration of the immigration laws.
13 Defendants admit that DHS is one arm of the federal government responsible for
14 the enforcement and administration of the immigration laws. Defendants admit
15 that ICE, U.S. Citizenship and Immigration Services (“USCIS”), and U.S. Customs
16 and Border Protection (“CBP”) are component agencies of DHS. Defendants deny
17 any implication in Paragraph 18 that ICE, USCIS, and CBP are the only component
18 agencies of DHS. Defendants further note that USCIS and CBP are not parties in
19 this action, and therefore deny Plaintiffs characterization of these agencies’
20 responsibilities within the U.S. immigration system as irrelevant to this litigation.
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24 19. DENIED in part and ADMITTED in part. Defendants admit the
25 allegations in the first sentence of Paragraph 19. With respect to the second
26 sentence, Defendants admit only that Secretary Johnson has general oversight
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1 responsibilities for DHS and its components, including ICE, but otherwise deny the
2 allegations.

3 20. DENIED in part and ADMITTED in part. Defendants deny that
4 Aitken is the Field Office Director for the San Francisco Field Office; Aitken is the
5 Field Office Director for the ICE ERO Field Office in San Francisco. Defendants
6 also deny any implication in Paragraph 20 that the San Francisco ERO Field Office
7 promulgates its own detention standards. Defendants admit the remaining
8 allegations contained in Paragraph 20.
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11 21. Paragraph 21 contains Plaintiffs' assertion that the named Federal
12 officials are sued in their official capacities only, to which no response is required.
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14 ALLEGATIONS COMMON TO ALL CLAIMS FOR RELIEF

15 **Background on Removal Proceedings**

16 22. Paragraph 22 contains Plaintiffs' characterization of removal
17 proceedings before the U.S. Immigration Courts and the Board of Immigration
18 Appeals ("BIA"), including the way in which removal proceedings are initiated, to
19 which no response is required. To the extent a response is required, Defendants
20 deny that all removal proceedings proceed in the manner described by Plaintiffs.
21 Defendants admit that the Immigration Courts and the Board of Immigration
22 Appeals are part of the Executive Office for Immigration Review within the U.S.
23 Department of Justice. Defendants further note that the named Plaintiffs do not
24 challenge the decision to place them into removal proceedings or place them in
25 immigration detention pending their removal proceedings.
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1 23. DENIED in part and ADMITTED in part. To the extent that
2 Paragraph 23 is a recitation of the Executive Office for Immigration Review,
3 Immigration Judge Benchbook, that document speaks for itself and no response is
4 required. Furthermore, Defendants deny that all removal proceedings take place in
5 the manner described. With respect to the first sentence of Paragraph 23,
6 Defendants admit that in removal proceedings before the Immigration Court, an
7 initial appearance occurs at a master calendar hearing, but Defendants deny any
8 implication in Paragraph 23 that a master calendar hearing is only held for
9 purposes of entering an initial appearance. The remaining allegations in Paragraph
10 23 include Plaintiffs' characterization of removal proceedings and how such
11 proceedings typically proceed, to which no response is required. To the extent a
12 response is required, Defendants deny that all removal proceedings in Immigration
13 Court proceed as summarized by Plaintiffs; each removal proceeding requires an
14 individual and independent review of all charges as to removability or
15 inadmissibility and any defenses to those charges or requests for relief or protection
16 from removal put forth by the alien. Defendants deny that removal proceedings can
17 be summarized *in toto* as Plaintiffs attempt to do in Paragraph 23.

18 24. Paragraph 24 contains Plaintiffs' hypothetical characterization of the
19 ways in which an alien may contest any charges of removability or inadmissibility
20 in his or her removal proceedings, to which no response is required. To the extent a
21 response is required, Defendants admit that certain respondents in Immigration
22 Court may be able to challenge the charges of inadmissibility or removability, and

1 that, if not one charge of removability or inadmissibility is ultimately sustained,
2 removal proceedings will be terminated.

3 25. DENIED. Paragraph 25 contains Plaintiffs' characterization of relief
4 or protection from removal that aliens may seek under 8 U.S.C. §§ 1158 & 1229b,
5 each of which speaks for itself and to which no response is required. To the extent a
6 response is required, Defendants deny Plaintiffs' characterization of the types of
7 "relief" or "protection" from removal, including any implication in Paragraph 25
8 that 8 U.S.C. § 1231(b)(3) or 8 C.F.R. § 208.16-208.18 provides any relief from the
9 issuance of a removal order, and specifically deny any suggestion that all forms of
10 relief or protection from removal require the presentation of affidavits, testimony,
11 and documents.
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15 26. DENIED in part and ADMITTED in part. Defendants deny any
16 implication in Paragraph 26 that all "forms of statutory relief from removal" not
17 previously mentioned in Plaintiffs' Complaint "are granted by CIS." Defendants
18 admit that USCIS is the component of DHS that determines whether an alien in
19 removal proceedings is eligible to receive a visa under 8 U.S.C. § 1101(a)(15)(U),
20 and that the grant of such a visa results in the termination of removal proceedings
21 without the issuance of a removal order. Defendants further state that 8 U.S.C.
22 § 1101(a)(15)(U) speaks for itself and is the best evidence of its contents.
23
24

25 27. Paragraph 27 is Plaintiffs' characterization of custody redetermination
26 hearings, which Plaintiffs concede are not available to all aliens held in ICE
27 custody, to which no response is required.
28

1 28. DENIED. Defendants lack sufficient information to admit or deny the
2 allegations in Paragraph 28, and, therefore, deny them.

3 29. DENIED. Defendants lack sufficient information to admit or deny the
4 allegations in Paragraph 29, and, therefore, deny them.
5

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

7 30. DENIED. Defendants lack sufficient information to admit or deny the
8 allegations in Paragraph 30, and, therefore, deny them.
9

10 31. DENIED in part and ADMITTED in part. Defendants deny that ICE
11 contracts with Contra Costa County; the U.S. Marshals Service contracts with
12 Contra Costa County but recognizes ICE as an authorized user, allowing for the
13 detention of ICE detainees in the Contra Costa Facility. Defendants admit that
14 ICE has entered into Intergovernmental Service Agreements with Yuba and
15 Sacramento Counties to house ICE detainees. Defendants deny the implication
16 that the contracts limit the use of the facilities to house ICE detainees with cases
17 venued in San Francisco.
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19 32. DENIED in part and ADMITTED in part. Defendants admit only that
20 ICE contracted with the City of McFarland, California to house ICE detainees in
21 the Mesa Verde Facility on January 23, 2015, and otherwise deny the allegations in
22 Paragraph 32. Defendants deny the implication that the contract limits the use of
23 the facility to house ICE detainees with cases venued in San Francisco.
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25 33. DENIED in part and ADMITTED in part. Defendants admit the
26 following: the Contra Costa facility is approximately 21 miles driving distance from
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1 San Francisco; RCCC is approximately 83 miles driving distance from San
2 Francisco; the Yuba Facility is approximately 123 miles driving distance from San
3 Francisco; and the Mesa Verde Facility is approximately 282 miles driving distance
4 from San Francisco. Defendants lack sufficient information to admit or deny the
5 remainder of the allegations on Paragraph 33, and, therefore, deny them.
6

7 34. DENIED. Defendants lack sufficient information to admit or deny the
8 allegations in Paragraph 34, and, therefore, deny them.
9

10 35. DENIED. Defendants lack sufficient information to admit or deny the
11 allegations in Paragraph 35, and, therefore, deny them; Defendants cannot
12 determine how the term “transfer” and “detention facilities” are defined in this
13 sentence.
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15 36. DENIED. Defendants lack sufficient information to admit or deny the
16 allegations in Paragraph 36, and, therefore, deny them. Defendants especially lack
17 sufficient information to admit or deny the allegation in Paragraph 36 that “*all* of
18 the immigration detainees” at RCCC and the Contra Costa, Yuba, and Mesa Verde
19 facilities “have, have had, or may have proceedings in the San Francisco
20 Immigration Court,” and, therefore, deny that allegation. (Emphasis added).
21

22 **Defendants’ Denial and Restrict of Telephone Access Results in a Dramatic**
23 **Disparity of Outcomes.**³

24 37. DENIED.
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27 ³ Although this is a heading to which no response is required, Defendants deny the
28 allegations contained in this heading.

1 38. DENIED. Defendants lack sufficient information to admit or deny the
2 allegations in Paragraph 38, and, therefore, deny them. Furthermore, Defendants
3 deny any implication in Paragraph 38 that an alien's detention pending his or her
4 removal proceedings is the sole determinative factor as to whether that alien is able
5 to retain counsel. Defendants further deny any implication in Paragraph 38 that an
6 alien's detention pending his or her removal proceedings is the sole determinative
7 factor as to whether that alien can successfully challenge his or her charges of
8 removability or successfully secure relief from removal.
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10

11 **Defendants' Denial and Restriction of Telephone Access.⁴**

12 39. DENIED. Defendants deny the entirety of Plaintiffs' allegations in
13 Paragraph 39. Defendants further note that Plaintiffs' Complaint fails to identify
14 any specific or particular ICE detention standard as allegedly "deficient."
15 Defendants also specifically deny the implication that all three versions of ICE
16 Detention Standards apply to each of the four facilities at issue.
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19 40. DENIED in part and ADMITTED in part. Defendants admit that
20 ICE's National Detention Standards provide that the facility shall permit an ICE
21 detainee to make direct calls to (1) the local Immigration Court and the BIA; (2) to
22 Federal and State courts where the detainee is or may become involved in a legal
23 proceeding; (3) to consular officials; (4) to legal service providers; (5) to a
24 government office, to obtain documents relevant to his or her immigration case; and
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26

27 ⁴ Although this is a heading to which no response is required, Defendants deny the
28 allegations contained in this heading.

1 (6) in a personal or family emergency, or when the ICE detainee can otherwise
2 demonstrate a compelling need. Defendants further admit that the 2011
3 Performance-Based National Detention Standards provide that indigent detainees
4 “are afforded the same telephone access and privileges as other detainees.”
5 Defendants deny the allegation in the first sentence that ICE’s detention standards
6 require a system that permits ICE detainees to leave voicemail messages.
7 Defendants lack sufficient information to admit or deny the remainder of the
8 allegations in Paragraph 41, and, therefore, deny them. With respect to the
9 allegations contained in Footnote 1 of the Complaint, Defendants lack sufficient
10 information to admit or deny Plaintiffs’ allegations that “the majority of
11 immigration attorneys [and] all local, state and federal government offices outside
12 of DHS” are not pre-programmed into the telephone system at any of the facilities
13 at issue in this litigation, and therefore deny those allegations. Defendants further
14 deny any implication in Footnote 1 that ICE has any obligation to provide its
15 detainees with free telephone calls to “private parties.”
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20 41. DENIED in part and ADMITTED in part. Defendants deny any
21 implication in Paragraph 41 that the methods for placing telephone calls described
22 in Paragraph 41 are the only methods by which an immigration detainee could
23 place a call at the Contra Costa Facility, the Yuba Facility, the Mesa Verde Facility,
24 or RCCC. Defendants further deny that the Mesa Verde Facility uses “calling
25 cards.” Defendants admit the remainder of the allegations in Paragraph 41.
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1 42. DENIED. Defendants lack sufficient information to admit or deny the
2 allegations in the first sentence of Paragraph 42, and, therefore, deny them.
3 Defendants further deny that any of the named Plaintiffs claims to be a language
4 minority or have a disability. Defendants deny the allegations contained in the
5 second and third sentences of Paragraph 42.
6

7 43. ADMITTED in part and DENIED in part. With respect to the first,
8 second, third, and fourth sentences of Paragraph 43, Defendants admit that the
9 telephone systems generally available to detainees in the housing units at RCCC
10 and the Yuba, Mesa Verde, and Contra Costa Facilities, with some exceptions,
11 require a live person to answer and accept any call; this feature is deemed
12 necessary to ensure that the caller or recipient is not charged for a call until the
13 call connects to the recipient, as well as to prevent detainees, including criminal
14 inmates not in ICE custody but housed at the same facilities, from calling any crime
15 victims or leaving threatening messages. Defendants deny that calls made from the
16 Pro Bono Platform on the housing unit phones require a live person to answer and
17 accept any call, and deny any implication that the housing unit phones are the only
18 telephones available to detainees at the four facilities. With respect to the fifth
19 sentence of Paragraph 43, Defendants admit that three-way calls are not permitted
20 from the telephone systems generally available to detainees in the housing units at
21 RCCC, and the Yuba, Mesa Verde, and Contra Costa Facilities, but deny the
22 allegations with respect to calls made from the Pro Bono Platform, and deny any
23 implication that the housing unit phones are the only telephones available to
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1 detainees at the four facilities. Defendants deny the allegations contained in the
2 sixth and seventh sentences of Paragraph 43.

3 44. DENIED in part and ADMITTED in part. Defendants admit that the
4 applicable ICE National Detention Standards require that ICE detainees have
5 reasonable and equitable access to telephones during established facility waking
6 hours, subject to certain restrictions. Defendants deny the remainder of the
7 allegations in Paragraph 44.
8

9 45. DENIED in part and ADMITTED in part. Defendants deny the
10 allegations contained in the first sentence of Paragraph 45. With respect to the
11 second sentence of Paragraph 45, Defendants admit that applicable ICE National
12 Detention Standards require that ICE detainees are ensured a reasonable degree of
13 privacy for telephone calls regarding legal matters. Defendants deny the remainder
14 of the allegations in the second sentence of Paragraph 45. With respect to the
15 allegations in the third sentence of Paragraph 45, Defendants deny the allegations,
16 and specifically deny that the cost of telephone calls from the Yuba Facility, the
17 Contra Costa Facility, and RCCC is “unreasonably” or “prohibitively” expensive.
18 With respect to the fourth sentence of Paragraph 45, Defendants admit that the cost
19 of an intrastate, long distance call from the Contra Costa facility is \$3.00 to connect
20 the call plus \$0.25 per minute, but deny the allegation that the cost is “prohibitively
21 expensive,” and deny the implication that this is the only type of call available to
22 indigent detainees. Defendants lack sufficient information to admit or deny the
23 allegations in the fifth sentence of Paragraph 45, and, therefore, deny them. With
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1 respect to the sixth sentence of Paragraph 45, Defendants admit that the 2011
2 National Detention Standards cited by Plaintiffs in Paragraph 45 contain the
3 quoted language. Defendants also admit that, at the time this lawsuit was filed, a
4 call placed from the housing unit phones at the Yuba facility or RCCC would be cut
5 off after fifteen minutes in order to ensure equitable access and prevent ICE
6 detainees and criminal inmates housed at the facilities from monopolizing the
7 phones, but deny any implication that housing unit phones were the only phones
8 available to ICE detainees housed at these facilities.
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11 46. DENIED in part and ADMITTED in part. Defendants admit that the
12 housing unit telephones at the four facilities do not receive incoming telephone
13 calls, but otherwise deny the allegations contained in Paragraph 46 of the
14 Complaint. With respect to the allegations in footnote 2 of the Complaint,
15 Defendants admit that RCCC permits incoming messages via an online system, but
16 deny that this system can never be used for confidential communications.
17 Defendants lack sufficient information to admit or deny whether such messages to
18 RCCC are reviewed or recorded, and therefore deny that allegation.
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21 **Defendants' Modifications to Plaintiffs' Telephone Access in Response to**
22 **Litigation**

23 47. DENIED in part and ADMITTED in part. Defendants admit that,
24 since the filing of this lawsuit, there have been some enhancements and changes to
25 telephone access for ICE detainees housed at the Yuba Facility, the Contra Costa
26 Facility, and RCCC, but deny Plaintiffs' characterization of those changes.
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1 48. DENIED in part and ADMITTED in part. Defendants admit that calls
2 from the housing unit telephones at RCCC no longer disconnect after 15 minutes,
3 and that they now disconnect after 20 minutes. Defendants admit that detainees
4 are required to pay a connection fee for paid calls from the housing unit telephones
5 from RCCC and for paid, intrastate calls from the Yuba Facility. Defendants deny
6 the remainder of the allegations in Paragraph 48, and deny any implication that the
7 housing unit telephones are the only telephones available to ICE detainees housed
8 at these facilities.
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11 49. DENIED in part and ADMITTED in part. Defendants admit that,
12 after the lawsuit was filed, both the Yuba Facility and the Contra Costa Facility
13 made additional options available for detainees to obtain free, unmonitored calls by
14 setting up enclosed telephone rooms for use by ICE detainees, and that the Contra
15 Costa Facility set up an email messaging system to contact ICE detainees housed at
16 that facility. Defendants deny the remainder of the allegations in Paragraph 49,
17 and specifically deny any implication that ICE detainees at these two facilities were
18 not able to obtain free, unmonitored legal calls, or that ICE detainees at the Contra
19 Costa Facility were unable to receive messages prior to these changes.
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22 50. DENIED in part and ADMITTED in part. Defendants admit that, in
23 each housing unit that houses ICE detainees at the Contra Costa Facility, there is
24 an enclosed room containing a telephone from which ICE detainees at the Contra
25 Costa Facility may make telephone calls relating to their immigration proceedings.
26 Defendants deny the remainder of the allegations in Paragraph 50, and specifically
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1 deny any implication that this is the only method for a detainee housed at Contra
2 Costa Facility to obtain free, unmonitored telephone calls.

3 51. DENIED in part and ADMITTED in part. Defendants admit that, at
4 the Yuba County Jail, there is an enclosed room containing two telephones from
5 which ICE detainees may make free, unmonitored telephone calls upon request.
6 Defendants further admit that, due to high demand and to ensure equitable access
7 for the making of legal calls, the Yuba County Jail may limit the use of this room,
8 but deny that use of the room is in all circumstances limited to phone calls to
9 attorneys or law offices. Defendants admit that, unless the detainee or his or her
10 attorney requests a specific time for a scheduled telephone call, ICE detainees who
11 have requested to use these telephones are given notice that a telephone is available
12 at or near the time the telephone becomes available. Defendants admit that
13 detainees may share the room with another detainee while making a telephone call,
14 but deny that they are required to do so, and deny that the telephones “do not offer
15 privacy.” Defendants admit the allegations in the sixth sentence of Paragraph 51.
16 Defendants lack sufficient knowledge or information to admit or deny the
17 remainder of the allegations in Paragraph 51, and therefore deny them. Defendants
18 also deny any implication that these are the only phones that have been available
19 for detainees at the Yuba County Jail to make free, unmonitored legal calls.

20 52. DENIED in part and ADMITTED in part. With respect to the first
21 sentence of Paragraph 52, Defendants admit that officers at the Yuba Facility and
22 the Contra Costa Facility accept messages by telephone and email, respectively, to

1 be delivered to ICE detainees, but deny that the facilities did not accept any
2 messages for ICE detainees prior to the filing of the lawsuit. Defendants lack
3 sufficient knowledge or information to admit or deny the allegations in the second
4 sentence of Paragraph 52, and therefore deny them.
5

6 53. DENIED in part and ADMITTED in part. With respect to the first
7 sentence of Paragraph 53, Defendants admit that, in March 2015, ICE began
8 housing ICE detainees who did not have immigration cases currently pending with
9 the San Francisco Immigration Court at the newly-opened Mesa Verde Facility in
10 Bakersfield, Kern County, California. Defendants admit that they have transferred
11 detainees from RCCC, the Yuba Facility, and the Contra Costa Facility to the Mesa
12 Verde Facility, but deny that these detainees were “Plaintiffs” in this action.
13 Defendants admit the allegations in the second sentence of Paragraph 53.
14
15

16 54. DENIED in part and ADMITTED in part. Defendants deny the
17 allegations contained in the first sentence of Paragraph 54. With respect to the
18 second sentence of Paragraph 54, Defendants admit that the telephone system
19 generally available to detainees in the housing units at the Mesa Verde Facility
20 requires a live person to answer and accept the call; this feature is necessary to help
21 ensure that detainees cannot contact individuals via telephone who do not want to
22 speak with them or whom they are not permitted to contact, such as crime victims,
23 victims of harassment, or those who possess valid orders of protection or no-contact
24 orders against the detainee making the call. Defendants deny that calls made from
25 the Pro Bono Platform on the housing unit phones require a live person to answer
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27
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1 and accept any call, and deny that detainees are unable to leave voicemail messages
2 or penetrate voicemail trees when using the Pro Bono Platform.

3 55. DENIED.

4
5 56. DENIED in part and ADMITTED in part. Defendants admit that the
6 housing unit telephones at the Mesa Verde Facility are located in open areas of
7 dormitory-style rooms. Defendants deny the remainder of the allegations in
8 Paragraph 56.

9
10 57. DENIED in part and ADMITTED in part. Defendants admit that the
11 Mesa Verde Facility has at least four enclosed rooms with telephones from which
12 ICE detainees may make free, unmonitored phone calls. Defendants deny the
13 remainder of the allegations in Paragraph 57, and specifically deny that detainees
14 may only use the enclosed rooms to make calls to attorneys.

15
16 58. DENIED in part and ADMITTED in part. Defendants admit only that
17 enclosed rooms that may be used for detainee telephone calls may also be used for
18 attorney visitation and videoteleconference hearings, but deny that this places any
19 limitations on the availability of free, unmonitored telephone calls. Defendants
20 deny the remainder of the allegations in Paragraph 58.

21
22 59. Paragraph 59 contains Plaintiffs' characterization of their case, to
23 which no response is required. To the extent a response is required, Defendants
24 deny the allegations in Paragraph 59. Additionally, Defendants note that the
25 Complaint does not identify any DHS or ICE policy that allegedly denies or restricts
26 telephone access.
27
28

1 60. DENIED in part and ADMITTED in part. The first sentence of
2 Paragraph 60 contains Plaintiffs' characterization of their case, to which no
3 response is required. To the extent a response is required, Defendants lack
4 sufficient information to admit or deny whether "there are few immigration
5 attorneys nearby" the Mesa Verde Facility, and, therefore, deny this allegation;
6 Defendants deny the remainder of the allegations. Defendants admit the
7 allegations in the second sentence of Paragraph 60. With respect to the third
8 sentence of Paragraph 60, ICE admits that it does not typically transport detainees
9 from the Mesa Verde Facility to meet with counsel in San Francisco, but states that
10 detainees at the Mesa Verde Facility and their counsel may schedule
11 videoteleconference meetings.
12
13
14

15 **Denial of Right to Legal Representation⁵**

16 61. DENIED. Defendants lack sufficient information to admit or deny the
17 allegations in Paragraph 61, and, therefore, deny the allegations.
18

19 62. DENIED in part and ADMITTED in part. Defendants admit that, as
20 described above, the telephone systems generally available to detainees from the
21 housing unit phones at the four facilities at issue (with some exceptions and outside
22 the Pro Bono Platform) require a live person to answer and accept any call; this
23 feature is deemed necessary to prevent detainees, including criminal inmates not in
24 ICE custody but housed at the same facilities, from calling any crime victims or
25

26
27

⁵ Although this is a heading to which no response is required, Defendants deny the
28 allegations contained in this heading.

1 leaving threatening messages. Defendants deny Plaintiffs' allegations that ICE
2 detainees are confined to their cells for most of the day and that it is difficult or
3 impossible for attorneys to arrange calls with ICE detainees. Defendants also deny
4 Plaintiffs' allegations that aliens without sufficient funds are unable to make any
5 telephone calls. Defendants lack sufficient information to admit or deny the
6 remainder of the allegations in Paragraph 62, and, therefore, deny them.
7

8 63. DENIED. Defendants lack sufficient information to admit or deny the
9 allegations in Paragraph 63, and, therefore, deny them.
10

11 64. DENIED. Defendants lack sufficient information to admit or deny the
12 allegations in Paragraph 64, and, therefore, deny them.
13

14 65. DENIED in part and ADMITTED in part. Defendants deny the
15 allegations in the first and second sentence of Paragraph 65, and specifically deny
16 any implication in Paragraph 65 that ICE detainees in removal proceedings who are
17 housed at any of the four facilities at issue in this litigation are unreasonably and
18 unnecessarily restricted or denied access to a telephone in any way that violates
19 their statutory or constitutional rights. Defendants lack sufficient information and
20 knowledge to admit or deny the allegations contained in the third and sixth
21 sentences of Paragraph 65, and, therefore, deny them. With respect to the fourth
22 and fifth sentences of Paragraph 65, Defendants admit that non-legal letters sent to
23 ICE detainees housed at any of the four facilities at issue in this litigation must be
24 inspected to ensure that those letters do not contain contraband. With respect to
25 the Yuba Facility, Defendants admit that any incoming mail from an attorney,
26
27
28

1 judicial officer, elected representative, or government entity to an ICE detainee is
2 opened in the presence of that detainee for inspection for contraband only. With
3 respect to RCCC, Defendants admit that all mail is inspected for contraband except
4 for legal mail; legal mail is given to the ICE detainee to be opened in the presence of
5 a deputy. With respect to the Contra Costa Facility, Defendants admit that, with
6 the exception of legal mail, all mail is opened and inspected before being brought
7 into the facility, and that legal mail is opened in front of the detainee for security
8 purposes. With respect to the Mesa Verde Facility, Defendants admit that, with the
9 exception of legal mail, mail is opened in the presence of the detainee; Defendants
10 state that legal mail is delivered to the detainee, and the detainee signs a form
11 acknowledging receipt of the mail item. Defendants lack sufficient information to
12 admit or deny the allegation in Paragraph 65 that “legal correspondence to and
13 from ICE custody can take a week in each direction,” and therefore deny that
14 allegation. With respect to the Yuba facility, Defendants note that incoming mail is
15 distributed to detainees the same day it is picked up from the Post Office. With
16 respect to the RCCC facility, Defendants note that all mail is delivered the day it
17 arrives with the exception of Sunday, holidays, and any mail that is forwarded to
18 investigations following inspection. With respect to the Contra Costa Facility,
19 Defendants note that received mail will be inspected and given to the detainee
20 within a day or less. With respect to the Mesa Verde Facility, mail is distributed to
21 detainees within 24 hours of its receipt.
22
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1 66. DENIED. Defendants deny that any “alternative means of
2 communication” are “inherent[ly] limited,” and any implication in Paragraph 66
3 that ICE detainees in removal proceedings who are housed at any of the facilities at
4 issue in this litigation are unreasonably and unnecessarily restricted or denied
5 access to a telephone in any way that violates their statutory or constitutional
6 rights. Defendants lack sufficient information to admit or deny the remainder of
7 the allegations in Paragraph 66, and, therefore, deny them.

8
9
10 **Denial of Right to Gather and Present Evidence⁶**

11 67. DENIED. Defendants deny any and all allegations in Paragraph 67
12 that ICE detainees in removal proceedings who are housed at any of the facilities at
13 issue in this litigation are unreasonably and unnecessarily denied access to a
14 telephone in any way that violates their statutory or constitutional rights.
15 Defendants lack sufficient information to admit or deny the remainder of the
16 allegations in Paragraph 67, and, therefore, deny them.

17
18 68. DENIED. Defendants deny any and all allegations in Paragraph 68
19 that ICE detainees in removal proceedings who are housed at any of the facilities at
20 issue in this litigation are unreasonably and unnecessarily restricted or denied
21 access to a telephone in any way that violates their statutory or constitutional
22 rights. Defendants specifically deny that it is “rare” for an ICE detainee housed at
23 any of the facilities at issue in this litigation to have access to a telephone during
24
25
26

27 ⁶ Although this is a heading to which no response is required, Defendants deny the
28 allegations contained in this heading.

1 “business hours” or to place a call that is not “blocked.” Defendants further deny
2 the allegation that costs of making a telephone call from any of the facilities at issue
3 in this litigation are “prohibitive,” and deny any implication in Paragraph 68 that
4 the costs of placing a telephone call at each facility are unreasonable. Additionally,
5 Plaintiffs’ allegation that “the prohibitive telephone rates render most Plaintiffs
6 unable to actually complete the call,” appears to be pure speculation, to which no
7 response is required. To the extent a response is required, Defendants deny this
8 allegation, and note that there are means for indigent aliens in each facility to make
9 free legal calls. Defendants lack sufficient information to admit or deny the
10 remainder of the allegations in Paragraph 68.

11 **Prolonged Incarceration.**⁷

12
13
14
15 69. DENIED. Defendants deny any and all allegations in Paragraph 69
16 that ICE detainees in removal proceedings who are housed at any of the facilities at
17 issue in this litigation are unreasonably and unnecessarily restricted or denied
18 access to a telephone in any way that violates their statutory or constitutional
19 rights, including the right to not be subject to unreasonably or unconstitutionally
20 prolonged detention. Defendants lack sufficient information to admit or deny the
21 remainder of the allegations in Paragraph 69, and, therefore, deny them.
22
23
24
25

26 ⁷ Although this is a heading to which no response is required, Defendants deny the
27 allegations contained in this heading, and further note that Plaintiffs are not
28 challenging the legality of their ICE detention, but rather the conditions of their
lawful detention.

1 70. DENIED. Defendants deny any and all allegations in Paragraph 70
2 that ICE detainees in removal proceedings who are housed at any of the facilities at
3 issue in this litigation are unreasonably and unnecessarily restricted or denied
4 access to a telephone in any way that violates their statutory or constitutional
5 rights, including the right to not be subject to unreasonably or unconstitutionally
6 prolonged detention. Defendants lack sufficient information to admit or deny the
7 remainder of the allegations in Paragraph 70, and, therefore, deny them.
8
9

10 ADDITIONAL ALLEGATIONS RE: INDIVIDUAL PLAINTIFFS

11 **Audley Barrington Lyon, Jr.**

12 71. ADMITTED in part. Defendants admit that Mr. Lyon is a 35-year-old
13 man who was previously detained at the Contra Costa Facility and was released
14 from ICE detention on bond; Defendants also admit that Mr. Lyon entered the
15 United States as a legal permanent resident when he was approximately ten years
16 old.
17

18 72. DENIED in part. Defendants cannot admit or deny whether Lyon is
19 seeking a U-Visa as disclosure of such information is barred by 8 U.S.C. §1367(a)(2);
20 8 C.F.R. § 214.14(e). Defendants also cannot admit or deny whether Lyon is seeking
21 protection relief under 8 U.S.C. § 1231(b)(3) as disclosure of such information is
22 barred by 8 C.F.R. §§ 208.6, 1208.6.
23

24 73. DENIED in part and ADMITTED in part. Defendants admit that
25 Lyon is currently represented in his removal proceedings by Eleni Wolfe-Roubatis of
26
27
28

1 Centro Legal de la Raza. Defendants lack sufficient information to admit or deny
2 the remainder of the allegations in Paragraph 73, and, therefore, deny them.

3 74. DENIED in part and ADMITTED in part. Defendants admit that the
4 Contra Costa facility does not permit detainees to purchase calling cards or phone
5 credit. Defendants cannot admit or deny whether Lyon is seeking a U-Visa as
6 disclosure of such information is barred by 8 U.S.C. § 1367(a)(2); 8 C.F.R. §
7 214.14(e). Defendants deny the allegation that Lyon’s “only option was to place a
8 collect call to the police department.” Defendants lack sufficient information to
9 admit or deny the remainder of the allegations in Paragraph 74, and, therefore,
10 deny them.
11

12 75. DENIED in part. Defendants cannot admit or deny whether Lyon is
13 seeking a U-Visa as disclosure of such information is barred by 8 U.S.C. §
14 1367(a)(2); 8 C.F.R. § 214.14(e). Defendants lack sufficient information to admit or
15 deny the remainder of the allegations in Paragraph 75, and, therefore, deny them.
16

17 76. DENIED. Defendants lack sufficient information to admit or deny the
18 allegation in Paragraph 76, and, therefore, deny this allegation.
19

20 77. DENIED. Defendants lack sufficient information to admit or deny the
21 allegation in Paragraph 77, and, therefore, deny this allegation.
22

23 78. DENIED. Defendants cannot admit or deny whether Lyon is seeking a
24 U-Visa as disclosure of such information is barred by 8 U.S.C. § 1367(a)(2); 8 C.F.R.
25 § 214.14(e). Defendants otherwise deny the allegation in Paragraph 78.
26
27
28

Jose Elizandro Astorga-Cervantes

79. DENIED in part and ADMITTED in part. With respect to the allegations in the first sentence of Paragraph 79, Defendants admit that Astorga-Cervantes is a 53-year-old man who was released from ICE detention on bond. Defendants admit the allegations in the second sentence of Paragraph 79. With respect to the third sentence of Paragraph 79, Defendants admit that Astorga-Cervantes was admitted to the United States in January 1977, when Astorga-Cervantes was approximately fifteen-years old, as an IR-2 Immigrant. Defendants admit Astorga-Cervantes has been a Lawful Permanent Resident (“LPR”) since 1977, when he was admitted as an Immigrant IR-2. Defendants lack sufficient information to admit or deny the allegation that Astorga-Cervantes “has lived in the United States since he was a child,” and, therefore, deny that allegation. Defendants note that DHS records do not support any allegation that Astorga-Cervantes lived in the United States prior to his admission in January 1977 when he was approximately fifteen-years old.

80. ADMITTED in part and DENIED in part. Defendants admit Astorga-Cervantes sought review of his custody conditions from the Immigration Court and was granted bond in the amount of \$6,000 by an Immigration Judge on January 23, 2014. DHS records reflect that Astorga-Cervantes posted bond and was released from ICE custody on February 20, 2014. Defendants deny any implication that Astorga-Cervantes demonstrated that he does not pose a risk of

1 flight. Defendants lack sufficient information to admit or deny the remainder of the
2 allegations in Paragraph 80, and, therefore, deny them.

3 81. DENIED. Defendants lack sufficient knowledge or information
4 regarding Astorga-Cervantes's intentions or his application for section 212(c) relief
5 to admit or deny the allegations in Paragraph 81 and, therefore, deny them.

6 Defendants deny that release from custody and 212(c) relief "require" letters or
7 testimony from family or community members, and further state that, with respect
8 to Astorga-Cervantes's custody redetermination hearing, the record of proceedings
9 speaks for itself with respect to any evidence presented.

10 82. DENIED. Defendants deny any and all allegations and/or implications
11 in Paragraph 82 that Astorga-Cervantes, while previously in immigration detention
12 at RCCC, was unreasonably or unnecessarily restricted or denied access to a
13 telephone in any way that violated his statutory or constitutional rights.

14 Defendants lack sufficient information to admit or deny the remainder of the
15 allegations in Paragraph 82, and, therefore, deny them. Defendants note that
16 Astorga-Cervantes was granted bond in the amount of \$6,000 by an Immigration
17 Judge on January 23, 2014; he posted bond and was released from ICE custody on
18 February 20, 2014.

19 83. DENIED. Defendants lack sufficient information to admit or deny the
20 allegations in Paragraph 83, and, therefore, deny them.

21 84. DENIED. Defendants deny any and all allegations and/or implications
22 in Paragraph 84 that Astorga-Cervantes, while previously in immigration detention
23

1 at RCCC, was unreasonably or unnecessarily restricted or denied access to a
2 telephone in any way that violated his statutory or constitutional rights.

3 Defendants cannot admit or deny whether Astorga-Cervantes has applied for a U
4 Visa, as disclosure of such information is barred by 8 U.S.C. § 1367(a)(2); 8 C.F.R.
5 § 214.14(e). Defendants lack sufficient information to admit or deny the remainder
6 of the allegations in Paragraph 84, and, therefore, deny them. Defendants note that
7 Astorga-Cervantes has been represented in his immigration proceedings since at
8 least January 13, 2014, and that he was granted bond in the amount of \$6,000 by
9 an Immigration Judge on January 23, 2014; he posted bond and was released from
10 ICE custody on February 20, 2014.

11 **Nancy Neria-Garcia**

12
13
14
15 85. DENIED in part and ADMITTED in part. Defendants admit that
16 Neria-Garcia is a 26-year old woman and that she is currently in ICE custody at the
17 Contra Costa Facility. Defendants lack sufficient information to admit to deny the
18 remaining allegation in Paragraph 85, and, therefore, deny this allegation.

19
20 Defendants admit only that DHS records demonstrate Neria-Garica was ordered
21 removed on November 16, 2010, after illegally entering the United States, and that
22 her removal order was reinstated on November 20, 2010, upon her subsequent
23 illegal re-entry to the United States.

24
25 86. DENIED in part. Defendants cannot admit or deny whether Neria-
26 Garcia is seeking withholding of removal or protection under the Convention
27

1 Against Torture, as disclosure of such information is barred by 8 C.F.R. §§ 208.6,
2 1208.6.

3 87. ADMITTED.

4
5 88. DENIED in part. Defendants deny the first and fifth sentences of
6 Paragraph 88, and deny any and all allegations and/or implications in Paragraph 88
7 that Neria-Garcia, while in immigration detention, was unreasonably or
8 unnecessarily restricted or denied access to a telephone in any way that violated her
9 statutory or constitutional rights. Defendants deny the allegation in the third
10 sentence of Paragraph 88 that Neria-Garcia had “no access” to any telephone for 23
11 hours a day while in immigration detention at the Yuba Facility. Defendants lack
12 sufficient information to admit or deny the remainder of the allegations in
13 Paragraph 88, and, therefore, deny them.

14
15
16 89. DENIED in part. Defendants deny the first sentence of Paragraph 89
17 and any and all allegations and/or implications in Paragraph 89 that Neria-Garcia,
18 while in immigration detention at the Mesa Verde Facility, was unreasonably or
19 unnecessarily restricted or denied access to a telephone in any way that violated her
20 statutory or constitutional rights. Defendants lack sufficient information to admit
21 or deny the remainder of the allegations in Paragraph 89, and, therefore, deny
22 them.
23
24

25 CLASS ALLEGATIONS

26 90. Paragraph 83 contains Plaintiffs’ proposed class definition, to which no
27 response is required. Defendants admit that the Court certified a class of “all
28

1 current and future immigration detainees who are or will be held by ICE in Contra
2 Costa, Sacramento, and Yuba Counties,” *see* ECF No. 31, and has modified that
3 class to include detainees who are or will be held by ICE in Kern County (where the
4 Mesa Verde Facility is located), *see* ECF No. 98.

5
6 91. DENIED.

7 92. Paragraph 92 contains Plaintiffs’ statement as to the relief they seek
8 in this litigation, to which no response is required. To the extent a response is
9 required, Defendants deny that Plaintiffs are entitled to the relief they seek.
10

11 93. Paragraph 93 contains Plaintiffs’ legal conclusion that joinder is
12 impracticable, to which no response is required. To the extent a response is
13 required, Defendants admit that the Court certified a class of “all current and
14 future immigration detainees who are or will be held by ICE in Contra Costa,
15 Sacramento, and Yuba Counties,” *see* ECF No. 31, and has modified that class to
16 include ICE detainees who are or will be held by ICE in Kern County (where the
17 Mesa Verde Facility is located), *see* ECF No. 98. Defendants admit that RCCC, the
18 Contra Costa Facility, the Mesa Verde Facility, and the Yuba Facility can “hold a
19 combined total of between 600 and 700 immigration detainees on an average day”;
20 Defendants deny any implication in Paragraph 93 that this is the average ICE-
21 detained population among the facilities.
22
23
24

25 94. Paragraph 94 contains Plaintiffs’ legal conclusion that joinder is
26 impracticable, to which no response is required. To the extent a response is
27 required, Defendants admit that the Court certified a class of “all current and
28

1 future immigration detainees who are or will be held by ICE in Contra Costa,
2 Sacramento, and Yuba Counties,” *see* ECF No. 31, and has modified that class to
3 include detainees who are or will be held by ICE in Kern County (where the Mesa
4 Verde Facility is located), *see* ECF No. 98.

6 95. Paragraph 95 contains Plaintiffs’ legal conclusion that there are
7 questions of law and fact common to their purported class, to which no response is
8 required. To the extent a response is required, Defendants admit that the Court
9 certified a class of “all current and future immigration detainees who are or will be
10 held by ICE in Contra Costa, Sacramento, and Yuba Counties,” *see* ECF No. 31, and
11 has modified that class to include detainees who are or will be held by ICE in Kern
12 County (where the Mesa Verde Facility is located), *see* ECF No. 98; Defendants
13 deny that there are questions of law and fact common to the Class.
14
15

16 (a) DENIED

17 (b) DENIED

18 (c) DENIED

19 (d) DENIED

20 (e) DENIED

21
22 96. DENIED.

23
24 97. Paragraph 97 contains Plaintiffs’ legal conclusion that the named
25 Plaintiffs “will fairly and adequately represent the interests of the [purported]
26 class,” to which no response is required. To the extent a response is required,
27 Defendants admit that the Court certified a class of “all current and future
28

1 immigration detainees who are or will be held by ICE in Contra Costa, Sacramento,
2 and Yuba Counties,” *see* ECF No. 31, and has modified that class to include
3 detainees who are or will be held by ICE in Kern County (where the Mesa Verde
4 Facility is located), *see* ECF No. 98. Defendants deny that the named Plaintiffs will
5 fairly and adequately represent the interests of the class. Defendants further deny
6 that Plaintiffs’ counsel are acting as “pro bono” counsel.
7

8 98. Paragraph 98 contains Plaintiffs’ legal conclusion that “a class action is
9 superior to all other available methods for adjudicating this controversy and is
10 manageable,” to which no response is required. To the extent a response is
11 required, Defendants admit that the Court certified a class of “all current and
12 future immigration detainees who are or will be held by ICE in Contra Costa,
13 Sacramento, and Yuba Counties,” *see* ECF No. 31, and has modified that class to
14 include detainees who are or will be held by ICE in Kern County (where the Mesa
15 Verde Facility is located), *see* ECF No. 98; Defendants deny that the class as
16 certified is manageable.
17

18
19
20 (a) DENIED;

21 (b) DENIED. Defendants lack sufficient information to admit or
22 deny the allegations in Paragraph 98(b), and, therefore, deny them. Defendants
23 deny any implication in Paragraph 98(b) that any conduct by DHS or ICE has
24 violated any legal rights of ICE detainees;
25

26 (c) DENIED. Paragraph 98(c) includes Plaintiffs’ legal conclusion
27 that “prosecution of individual actions would be impossible,” to which no response is
28

1 required. To the extent a response is required, Defendants lack sufficient
2 information to admit or deny the allegations in Paragraph 98(c), and, therefore,
3 deny them;

4
5 (d) DENIED. Paragraph 98(d) includes Plaintiffs' legal conclusion
6 that "prosecution of separate actions . . . would be inefficient," to which no response
7 is required. To the extent a response is required, Defendants lack sufficient
8 information to admit or deny the allegations in Paragraph 98(d), and, therefore,
9 deny them;

10
11 (e) DENIED in part and ADMITTED in part. Defendants deny that
12 ICE contracts with Contra Costa County; the U.S. Marshals Service contracts with
13 Contra Costa County but recognizes ICE as an authorized user, allowing for the
14 detention of ICE detainees in the Contra Costa Facility. Defendants admit that
15 ICE has entered into Intergovernmental Service Agreements with Yuba County,
16 Sacramento County, and the City of McFarland, California to house ICE detainees.
17 Defendants deny that any other defendants in this action contract with these
18 entities to house ICE detainees. Defendants deny any implication in Paragraph
19 98(e) that the ICE detention standards governing telephone access are the same at
20 all four facilities at issue in this litigation, or that any of the detention standards
21 are inadequate or otherwise disregard ICE detainees' constitutional and statutory
22 rights as alleged by Plaintiffs.
23
24
25

26 (f) Paragraph 98(f) contains Plaintiffs' request for injunctive and
27 declaratory relief, to which no response is required. To the extent a response is
28

1 required, Defendants deny that Plaintiffs are entitled to the relief they seek in this
2 litigation and deny the existence of any constitutional and statutory violations
3 resulting from telephone access at the four facilities at issue.
4

5 DECLARATORY RELIEF ALLEGATIONS

6 99. Paragraph 99 contains Plaintiffs' statement and theory of their case, to
7 which no response is required. To the extent a response is required, Defendants
8 admit that they "deny that their policies, practices and omissions [if any] violate
9 Plaintiffs' constitutional and statutory rights." Defendants deny the remainder of
10 the allegations, and specifically deny any implication in Paragraph 99 that
11 Defendants' policies and practices regarding telephone access at the four facilities at
12 issue in this litigation are inadequate or otherwise disregard ICE detainees'
13 constitutional and statutory rights as alleged by Plaintiffs.
14
15

16 FIRST CLAIM FOR RELIEF

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

19 100. Defendants incorporate by reference all foregoing responses in
20 response to the allegation in Paragraph 100 that "Plaintiffs reallege the foregoing
21 paragraphs and incorporate them herein by this reference."
22

23 101. Paragraph 101 contains legal conclusions to which no response is
24 required.

25 102. Paragraph 102 contains legal conclusions to which no response is
26 required. To the extent a response is required, Defendants state that the statutory
27 provisions cited speak for themselves.
28

1 103. DENIED.

2 104. DENIED.

3 SECOND CLAIM FOR RELIEF
4 **Right to a Full and Fair Hearing**
5 **(Fifth Amendment Due Process Clause; 8 U.S.C. § 1229a(b)(4)(B))**

6 105. Defendants incorporate by reference all foregoing responses in
7 response to the allegation in Paragraph 105 that “Plaintiffs reallege the foregoing
8 paragraphs and incorporate them herein by this reference.”

9
10 106. Paragraph 106 contains legal conclusions to which no response is
11 required.

12 107. Paragraph 107 contains legal conclusions to which no response is
13 required. To the extent a response is required, Defendants state that the statutory
14 provisions cited speak for themselves.

15
16 108. DENIED.

17 109. DENIED.

18
19 THIRD CLAIM FOR RELIEF
20 **Right to Petition the Government for Redress of Grievances**
21 **(First Amendment Petition Clause)**

22 110. Defendants incorporate by reference all foregoing responses in
23 response to the allegation in Paragraph 110 that “Plaintiffs reallege the foregoing
24 paragraphs and incorporate them herein by this reference.”

25 111. Paragraph 111 contains legal conclusions to which no response is
26 required. To the extent a response is required, Defendants deny Plaintiffs’
27 characterization of the law.

1 112. DENIED.

2 113. DENIED.

3 PRAYER FOR RELIEF

4
5 The remainder of the Complaint for Injunctive and Declaratory Relief
6 consists of Plaintiffs' Prayer for Relief, to which no response is required. To the
7 extent a response is required, Defendants deny that ICE's policies and practices
8 governing telephone access at the facilities at issue in this litigation are inadequate
9 or otherwise disregard Plaintiffs' constitutional and statutory rights and deny that
10 Plaintiffs are entitled to any relief.

11
12 **FIRST AFFIRMATIVE DEFENSE**

13
14 The Complaint fails in whole or in part to state a claim upon which relief can
15 be granted.

16 **SECOND AFFIRMATIVE DEFENSE**

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

19
20 **THIRD AFFIRMATIVE DEFENSE**

21 Plaintiffs fail to allege or demonstrate standing for those proposed class
22 members who cannot show an actual injury caused by Defendants' policies and
23 practices related to their conditions of confinement, including their access to
24 telephones while in immigration custody. *See Lewis v. Casey*, 518 U.S. 343 (1996).
25
26
27
28

1 **FOURTH AFFIRMATIVE DEFENSE**

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

7 **FIFTH AFFIRMATIVE DEFENSE**

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

13 **SIXTH AFFIRMATIVE DEFENSE**

14 Defendants reserve the right to assert additional affirmative defenses.
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1 DATED:

August 28, 2015

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CERTIFICATE OF SERVICE

No. 3:13-cv-05878-EMC

I hereby certify that on this 28th day of August, 2015, a true and correct copy of **DEFENDANTS' ANSWER TO FIRST SUPPLEMENTAL COMPLAINT** 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.

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DEFS.' ANSWER TO SUPPL. COMPL.
CERTIFICATE OF SERVICE
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