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16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEW MEXICO

18 FRANKLIN GOMEZ CARRANZA and
19 RUBEN TORRES JAUREGUI,

20 Plaintiffs,

21 v.

22 UNITED STATES IMMIGRATION AND
23 CUSTOMS ENFORCEMENT, et al.,
24 Defendants.

Case No. 20-CV-424

**PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION AND APPOINTMENT
OF CLASS COUNSEL**

1 Pursuant to Federal Rule of Civil Procedure 23, Plaintiffs respectfully request an order
2 certifying Franklin Gomez Carranza and Ruben Torres Jauregui to represent a class consisting of
3 all current and future detained individuals in the El Paso Service Processing Center and the Otero
4 County Processing Center.

5 For the reasons set forth in the memorandum of law and exhibits filed herewith, the
6 proposed class satisfies the numerosity, commonality, typicality, and adequacy of representation
7 requirements of Rule 23(a) and the requirements of Rule 23(b)(2). In addition, the undersigned
8 counsel is suitable for appointment as class counsel under Rule 23(g). Plaintiffs respectfully
9 request that this Court certify the proposed class and appoint undersigned counsel as counsel for
10 the class.
11
12

13
14 Dated: May 18, 2020

ORRICK, HERRINGTON, & SUTCLIFFE LLP

15 /s/ R. David Hosp

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2020, a true and correct copy of the foregoing PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL 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: May 18, 2020

By: /s/ Paige Pavone

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**BRIEF IN SUPPORT OF PLAINTIFFS'
MOTION FOR CLASS CERTIFICATION
AND APPOINTMENT OF CLASS
COUNSEL**

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I. INTRODUCTION

Individuals detained in the Otero County Detention Processing Center (“Otero”) and the El Paso Service Processing Center (“El Paso”) must access free, confidential legal calls in order to speak to their attorneys and to be able to effectuate their constitutional, statutory, and regulatory rights in their immigration proceedings. This case challenges the federal government’s systematic denial of such access.

Proposed class members (“Plaintiffs”) are individuals who are or will be detained in the custody of Immigration and Customs Enforcement (“ICE”) at El Paso and Otero. ICE controls the terms and conditions of Plaintiffs’ detention and their access to telephones. As set forth in the Complaint, ICE has unreasonably and unconstitutionally deprived Plaintiffs of their access to communicate with the outside world telephonically, including with their counsel or prospective counsel. Because of ICE’s conduct and policies, Plaintiffs are unable to obtain or communicate with counsel and gather evidence for the defense of their immigration cases – which for class members is their only safeguard against the persecution they will suffer if involuntarily deported to their country of origin. Plaintiffs cannot individually challenge ICE’s systematic denial of telephone access, making this matter ideal for prosecution as a class action.

The core legal question – whether Defendants’ denial and restriction of telephone access to detained individuals in Otero and El Paso violate Plaintiffs’ constitutional, statutory, and regulatory rights to access counsel – is common to the entire class. The unconstitutional restrictions on telephone access imposed by ICE are substantially similar in Otero and El Paso. Critically, Franklin Gomez Carranza and Ruben Torres Jauregui (the “Named Plaintiffs”) may not remain in ICE custody long enough to prosecute individual claims to a conclusion. Certification of a class consisting of all current and future detained individuals in El Paso and Otero thus provides the only viable means to adjudicate the underlying claims.

II. BACKGROUND¹

A. Defendants' Policies and Practices Severely Restrict Plaintiffs' Access to Counsel and Ability to Gather Evidence

Plaintiffs cannot receive incoming telephone calls or voicemail messages in either El Paso or Otero. To make an outgoing call, Plaintiffs – including indigent Plaintiffs – must either: (1) dial out from the housing unit phones, incurring the sometimes exorbitant cost of the call and compromising privacy and confidentiality; or (2) rely on an ad hoc policy that certain ICE officials may allow Plaintiffs to make a free call from a detention officer office phone or personal cell phone, again compromising privacy and confidentiality, not to mention leaving this process up to each individual ICE agent. *See* Declaration of Franklin Gomez Carranza ¶¶ 8, 12, 13, 16 (“Gomez Carranza Decl.”); Declaration of Ruben Torres Jauregui ¶¶ 4, 5 (“Torres Jauregui Decl.”); *see also* Declaration of David Jackson ¶¶ 5, 9 (“Jackson Decl.”). Even when Plaintiffs manage to make outgoing calls, the calls are not private or confidential, suffer from interfering background noise and poor sound quality, and spontaneously disconnect and/or are subject to time limits. *See* Gomez Carranza Decl. ¶ 16; Torres Jauregui Decl. ¶ 6; *see also* Jackson Decl. ¶ 9. In Otero, no legal intake calls are permitted at all, and as a result, many individuals go without attorney representation that they would otherwise be entitled to. *See* Jackson Decl. ¶ 10.

B. Plaintiffs Suffer Prejudice, Injury, and Prolonged Detention as a Result of Defendants' Unconstitutional Telephone Policies and Practices.

By denying and severely restricting telephone access, Defendants' policies and practices severely and unconstitutionally deprive Plaintiffs and members of the proposed class from seeking release from immigration custody or relief from deportation under the immigration laws in a number of ways. *See* Gomez Carranza Decl. ¶¶ 17, 18. First, Defendants' policies and practices make it extremely difficult, if not impossible, to secure private counsel from within El

¹ For a full account of the facts and allegations in this case, please see the Complaint, Dkt. Entry No. 1.

Paso and Otero. *See* Jackson Decl. ¶ 10. Otero, for example, effectively forbids any free, confidential legal intake calls by requiring attorneys to present evidence of an attorney-client relationship. This, in essence, would require attorneys conducting legal intakes to enter into an attorney-client relationship with the detained individual before the call. *See id.* Second, even when detained individuals secure counsel, Defendants’ policies and practices undercut the effectiveness of the representation by restricting the length of phone calls and not providing confidentiality or privacy. *See* Gomez Carranza Decl. ¶¶ 8, 13, 16, 17, 18, 19; Torres Jauregui Decl. ¶ 6. Third, by being unable to have full-length, free, confidential legal calls to prepare a defense, attorneys routinely must seek continuances to adequately prepare for forthcoming hearings, resulting in unnecessarily prolonged detention, which also impairs the ability of Plaintiffs to present their legal claims effectively and timely. *See* Gomez Carranza Decl. ¶ 17.

C. The Named Plaintiffs

Plaintiff Franklin Gomez Carranza is in ICE custody at Otero and previously was held in ICE custody at El Paso. Gomez Carranza Decl. ¶¶ 3, 4. He is seeking asylum under 8 U.S.C. § 1158 for fear of persecution for his sexuality in his home country of Honduras. *Id.* ¶¶ 5, 19. Plaintiff Ruben Torres Jauregui is in ICE custody at Otero. Torres Jauregui Decl. ¶ 3. He is seeking asylum under 8 U.S.C. § 1158 for fear of persecution for protesting corruption in the Cuban government. Defendants’ restrictions on telephone access in Otero and El Paso have harmed Plaintiff Gomez Carranza and Plaintiff Torres Jauregui by, *inter alia*, interfering with their ability to access counsel, preventing them from preparing for their immigration court hearings, and necessitating motions to continue those hearings, thus prolonging their detention in ICE custody. *See* Gomez Carranza Decl. ¶¶ 8, 13, 16, 17, 18, 19; Torres Jauregui Decl. ¶¶ 4, 5.

III. ARGUMENT

Federal Rule of Civil Procedure 23 governs class actions in federal court, and a plaintiff whose suit meets the requirements of that Rule has a “categorical” right “to pursue his claim as a class action.” *Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co.*, 599 U.S. 393, 398 (2010). To meet these requirements, the “suit must satisfy the criteria set forth in subdivision (a)

(i.e., numerosity, commonality, typicality, and adequacy of representation), and it also must fit into one of the three categories described in subdivision (b).” *Id.* (citing Rule 23).

Plaintiffs seek to represent a class of: “All current and future adults who are or will be detained in immigration custody at the El Paso Service Processing Center and the Otero Processing Center.” This class easily meets all of Rule 23’s requirements. First, the proposed class satisfies all of the requirements of Rule 23(a): numerosity, commonality, typicality, and adequacy of representation. Second, the action is maintainable under Rule 23(b)(2), which allows class actions for declaratory or injunctive relief where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole[.]” Fed. R. Civ. P. 23(b)(2). Declaratory and injunctive relief is appropriate to the proposed class. *Id.*

A. The Proposed Class Satisfies the Requirements of Rule 23(a).

1. The Proposed Class is So Numerous That Joinder Is Impracticable.

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). In the Tenth Circuit, there is “no set formula” to determine whether the numerosity requirement is met, rather it is a “fact-specific inquiry best left to the district court’s discretion.” *Gonzales v. City of Albuquerque*, No. CIV 09–0520 JB/RLP, 2010 WL 4053947, at *7 (D.N.M. Aug. 21, 2010) (internal quotations omitted) (quoting *Rex v. Owens*, 585 F.2d 432, 436 (10th Cir. 1978)). To show numerosity, “the exact number of potential members need not be shown, and a court may make common sense assumptions to support a finding that joinder would be impracticable.” *Payne v. Tri-State CareFlight, LLC*, 332 F.R.D. 611, 658 (D.N.M. 2019) (internal quotations omitted).

The proposed class more than meets the Rule 23(a)(1) requirement that the class be “so numerous that joinder of all members is impracticable.” The class here is too numerous, consisting of over 1,500 members: Otero houses approximately 798 individuals and El Paso houses approximately 806 individuals. *See Anderson Living Trust v. WPX Energy Prod., LLC*, 306 F.R.D. 312, 436 (D.N.M. 2015) (noting that the a “per se numerosity threshold seems to

1 exist somewhere south of the 150 proposed class members” (quoting *Mullen v. Treasure Chest*
 2 *Casino, LLC*, 186 F.3d 620 624 (5th Cir. 1999))). Given the number of individuals in the
 3 proposed class, joinder would be impracticable. Accordingly, the numerosity requirement is
 4 satisfied.

5 2. **Questions of Law and Fact are Common to All Members of the**
 6 **Proposed Class.**

7 Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Fed.
 8 R. Civ. P. 23(a)(2). Even “factual differences in the claims of the individual putative class
 9 members should not result in a denial of class certification where common questions of law
 10 exist.” *Payne*, 332 F.R.D. at 654 (quoting *In re Intelcom Grp. Sec. Litig.*, 169 F.R.D. 142, 148
 11 (D. Colo. 1996) (Daniel, J.)). The commonality requirement involves a showing “(i) that the
 12 common question is central to the validity of each claim that the proposed class brings; and
 13 (ii) that the common question is capable of a common answer.” *Id.* (citing *Wal-Mart v. Dukes*,
 14 564 U.S. 338, 348-52 (2011)). “Thus, the common question or questions cannot be ‘incidental,’
 15 nor can the plaintiff submit a long list of ‘incidental’ questions or issues, and say that they
 16 predominate over the real issues.” *Id.* at 661.

17 The proposed class and its named representatives share factual and legal issues more than
 18 adequate to support findings of commonality. The central question driving this case is whether
 19 Defendants’ denial and restriction of telephone access to detained individuals in Otero and El
 20 Paso violate Plaintiffs’ constitutional, statutory, and regulatory rights to access counsel. The
 21 Defendants’ failure to provide adequate telephone access affects all class members and
 22 Plaintiffs’ injuries do not arise out of circumstances unique to each class member. Further, all
 23 class members seek the same declaratory and injunctive relief. This Court’s determination of the
 24 legality of Defendant’s actions and inactions on one or more of the grounds the class alleges will
 25 resolve all class members’ claims in “one stroke.” *See Wal-Mart*, 564 U.S. at 350.

26 While Defendants may assert that the individual Named Plaintiffs’ situations are different
 27 based on where they are currently in custody, or whether they have a claim for relief in

immigration court, the basis of liability is not dependent upon their individual circumstances, but instead on whether Defendants have provided Plaintiffs with telephone access that enables them to engage in meaningful conversations with, and to receive adequate representation from, their attorneys. This is the issue that predominates, and the differences that Defendants may assert would be incidental facts and thus irrelevant to this motion. *See Payne*, 332 F.R.D. at 661. Accordingly, the proposed class satisfies the commonality requirement of Rule 23(a)(2).

3. The Named Plaintiffs' Claims are Typical of the Proposed Class They Seek to Represent.

Rule 23(a)(3) requires that the named representative's claims or defenses be "typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "Typicality measures whether a sufficient nexus exists between the claims of the named representatives and those of the class at large." *Payne*, 332 F.R.D. at 661. "[D]iffering fact situations of class members do not defeat typicality . . . so long as the claims of the class representative and class members are based on the same legal or remedial theory." *Menocal v. GEO Grp., Inc.*, 882 F.3d 905, 914 (10th Cir. 2018) (quoting *Colo. Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1216 (10th Cir. 2014)). The Tenth Circuit "has said that the typicality requirement is satisfied if there are common questions of law or fact." *Payne*, 332 F.R.D. at 661 (citing *Gianzero v. Wal-Mart Stores Inc.*, No. CIV 09-00656 REB/BNB, 2010 WL 1258071, at *3 (D. Colo. Mar. 29, 2010) (Blackburn, J.) (collecting cases)). As such, a proposed class representative will not be considered "typical" if "the representative is subject to a unique defense that is likely to become a major focus of the litigation." *Id.* In such a case, the concern is that the representative will devote more time and effort to their unique defense as opposed to the common class issue. *Id.*

For reasons similar to those of commonality, typicality is satisfied. The Named Plaintiffs are members of the class, their injuries arise from the same course of conduct—Defendants' restrictions on telephone access to class members—and seek the same relief as the class. The same is true of the legal injury: the Named Plaintiffs' claims and the claims of all other class members concern whether Defendants' failure to provide detained immigrants telephone access

to their counsel is a violation of their statutory or constitutional rights. Further, Named Plaintiffs do not have any particular claims or defenses that would distract from that of the overall class. *See Payne*, 332 F.R.D. at 661. Accordingly, the Named Plaintiffs satisfy the typicality requirement.

4. Plaintiffs and Their Counsel Will Fairly and Adequately Protect the Interests of the Class.

The final Rule 23(a) requirement is that “the representative parties will fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). In evaluating this requirement, “[t]he Tenth Circuit has identified two questions relevant to the adequacy of representation inquiry: (i) whether the named plaintiffs and their counsel have any conflicts with other proposed class members; and (ii) whether the named plaintiffs and their counsel will vigorously prosecute the action on the class’ behalf.” *Daye v. Cmty. Fin. Serv. Ctrs., LLC*, 313 F.R.D. 147, 164 (D.N.M. 2016) (quoting *Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1187–88 (10th Cir.2002)). “In considering this second question, the experience and competence of the attorney representing the class may inform the court’s analysis.” *Id.* at 164 (citing *Lopez v. City of Santa Fe*, 206 F.R.D. 285, 289-90 (D.N.M. 2002)).

The Named Plaintiffs are adequate representatives of the Class because their interests in the vindication of the legal claims raised here are entirely aligned with the interests of the other Class Members, who each have the same basic statutory and constitutional claims. *See Gomez Carranza Decl.* ¶ 20. They are members of the Class, and their interests coincide with, and are not antagonistic to, those of the other Class Members. *Id.*

There are no known conflicts of interest among class members. *See Gomez Carranza Decl.* ¶ 21; *Torres Jauregui Decl.* ¶ 8. The Named Plaintiffs and class members are suffering the same harms. They assert the same legal claims, seek the same litigation outcomes, and would benefit from the same declaratory and injunctive relief requiring the Defendants to provide telephone access for communications with attorneys. Moreover, the Named Plaintiffs are not seeking monetary relief, so no financial conflict can arise between the claims of the Named

1 Plaintiffs and those of other class members. The Named Plaintiffs are committed to a class-wide
 2 resolution, and they will fairly and adequately protect the interests of the class. *See Gomez*
 3 *Carranza Decl.* ¶ 20. Further, counsel representing the Named Plaintiffs are experienced and
 4 competent and will represent the needs of the class. *See Daye*, 313 F.R.D. at 164; *see also*
 5 *Declaration of Paige Pavone* ¶¶ 2-9 (“Pavone Decl.”). Accordingly, the Named Plaintiffs satisfy
 6 the adequacy of representation requirement.

7 **B. The Proposed Class Satisfies the Requirements of Rule 23(b)(2).**

8 Assuming the proposed class satisfies the requirements of Rule 23(a), Plaintiffs must also
 9 meet the requirements of Rule 23(b)(1), (2), or (3). *DG ex rel. Stricklin v. Devaughn*, 594 F.3d
 10 1188, 1199 (10th Cir. 2010). Class certification under Rule 23(b)(2) is authorized where “the
 11 party opposing the class has acted or refused to act on grounds that apply generally to the class,
 12 so that final injunctive relief or corresponding declaratory relief is appropriate respecting the
 13 class as a whole.” Where class members seek only injunctive relief, Rule 23(b)(2) requires that
 14 (1) the “defendants’ actions or inactions are based on grounds generally applicable to all class
 15 members” and (2) the injunctive relief sought is “appropriate for the class as a whole.” *Access*
 16 *Now, Inc. v. PHC-Las Cruces, Inc.*, Civ. No. 09-1156 JCH/LAM, 2012 WL 13081445, at *5
 17 (D.N.M. Feb. 10, 2012) (quoting *Shook v. Board of Cty. Comm’rs*, 543 F.3d 597, 612 (10th Cir.
 18 2008)). These requirements include “cohesiveness among class members with respect to their
 19 injuries.” *Id.* To establish this cohesiveness, plaintiffs must show that the class is “sufficiently
 20 cohesive that any classwide injunctive relief satisfies Rule 65(d)’s requirement that every
 21 injunction state its terms specifically; and describe in reasonable detail the act or acts restrained
 22 or required.” *Id.* (internal quotations omitted) (quoting *Shook*, 543 F.3d at 612). Plaintiffs must
 23 also show that the injuries are “sufficiently similar that they can be remedied in a single
 24 injunction without differentiating between class members.” *Id.* (internal quotations omitted).

25 The proposed class satisfies the requirements of Rule 23(b)(2) because Defendants do not
 26 provide telephone access for class members to contact and effectively communicate with their
 27 attorneys. This harm is applicable to all class members. Defendants’ challenged practices are

1 not tailored to individual Plaintiffs, but apply to the population of immigrants in ICE custody
2 who are, or will in the future be, subject to the Defendants' refusal to provide telephone access
3 that satisfies Plaintiffs' constitutional, statutory, and regulatory rights to access counsel. The
4 relief is applicable to the class as a whole because the relief would remedy the issues that the
5 class as a whole is experiencing.

6 As to the cohesiveness requirement, the injunctive relief requested would satisfy
7 Rule 65(d). *See Access Now, Inc.*, 2012 WL 13081445, at *7. Here, the injunctive relief
8 requested specifically seeks to remedy Defendants' violations of the class members'
9 constitutional, statutory, and regulatory rights by ensuring that class members can communicate
10 with their attorneys. The injunctive relief specifically includes that Defendants provide free,
11 confidential legal calls, and to make reasonable accommodations for non-legal calls for indigent
12 class members. Compl. at pages 28-29. The injunctive relief would also include requiring
13 Defendants to ensure the privacy of legal calls and no obstructive background noise. *Id.*
14 Further, the injunctive relief requested includes Defendants assisting class members in
15 penetrating telephone voicemail tress for legal calls, leaving voicemails for legal calls, providing
16 class members with adequate notice about the communication options available to them, and
17 providing accommodations for non-English speaking class members, illiterate class members,
18 and class members with disabilities. *Id.* These remedies provided by injunctive relief would
19 rectify the harm committed by Defendants and ensure Plaintiffs' access to counsel. Further to
20 the cohesiveness requirement, the injury sustained by the class members is "sufficiently similar,"
21 because all of the class members are unable to effectively communicate with their attorneys or
22 prospective attorneys. *See Access Now, Inc.*, 2012 WL 13081445, at *7. As such, the injunctive
23 relief would remedy this injury. Therefore, certification under Rule 23(b)(2) is appropriate.

24 **C. The Court Should Designate Plaintiffs' Counsel as Class Counsel Pursuant to**
25 **Rule 23(g)(1).**

26 The Court must appoint Class counsel, considering "(i) the work counsel has done in
27 identifying or investigating potential claims in the action; (ii) counsel's experience in handling

class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." These factors strongly support appointing Orrick, Herrington, & Sutcliffe LLP ("Orrick") as counsel. *See* Pavone Decl. ¶¶ 2-9.

Plaintiffs' counsel satisfies all four criteria. *Id.* As reflected in the complaint, Plaintiffs' counsel has already devoted substantial time investigating the factual and legal issues in this case and will continue do so throughout the pendency of the litigation. *See id.* ¶ 8. The class counsel is experienced in handling class actions and other complex litigation. *Id.* ¶¶ 2-5, 7. Counsel has already committed many hours to representing the Class and will continue to advocate to ensure Class Members have adequate access to counsel via the telephone. *See* ¶ 8.

IV. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that this Court certify the proposed Class and appoint the undersigned counsel as counsel for the Class.

Dated: May 18, 2020

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2020, a true and correct copy of the foregoing BRIEF IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION AND APPOINTMENT OF CLASS COUNSEL 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: May 18, 2020

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Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO

FRANKLIN GOMEZ CARRANZA AND
RUBEN TORRES JAUREGUI,

Plaintiffs,

v.

UNITED STATES IMMIGRATION
AND CUSTOMS ENFORCEMENT, ET
AL.,

Defendants.

Case No. 20-CV-424

**DECLARATION OF FRANKLIN GOMEZ CARRANZA IN
SUPPORT OF PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

I, Franklin Gomez Carranza, declare as follows:

1. I make this declaration from my personal knowledge and, if called to testify to these facts, could and would do so competently.
2. I am 21-years-old and a native and citizen of Honduras.

3. I am currently detained in ICE custody at the Otero County Processing Center. I have been detained here since March 20, 2020.
4. Before ICE transferred me to Otero, I was detained in ICE custody at the El Paso Processing Center since approximately October 2019.
5. I believe that I am entitled to asylum because I fear persecution in Honduras for my sexuality.
6. Even since being detained in ICE custody, I have had difficulty communicating with my attorney because of limited access to telephones.
7. When I was detained in El Paso, my attorney visited me in person because the telephones were not a reliable means of communication. Because of the COVID-19 pandemic shutdowns, my attorney and I must communicate over the phone now.
8. When I attempted to prepare for my immigration court hearing with my attorney over the telephone, ICE detention officers have ordered me off the call before we were through preparing; ICE detention officers have not permitted me to call my attorney when we had scheduled calls; I have not been given a private place from which to make a confidential phone call to my attorney; and I have had to pay out-of-pocket for many of my legal calls.
9. In early March, my final hearing had been cancelled. My attorney informed me this was due to the docket management system, and that I would have a new hearing. However, on Tuesday, March 17, my attorney became aware that my case had not been moved, and I was still going to have my final hearing on March 25.
10. On March 20, I was transferred to the Otero County Processing Center, 5 days before my hearing in El Paso.

11. I have become aware that on March 18, March 19, and March 20, my attorney attempted to speak with me via telephone, and that all three attempts were ignored by ICE.
12. On March 23, I managed to make contact with my attorney, but the interview was cut off after roughly an hour, and the interview was not able to continue. By that time, my lawyer was no longer allowed into the facility without protective gear.
13. On March 24, the day before my trial, I was allowed to speak with my lawyer. However, this interview occurred roughly 40 minutes late, and after roughly 40 minutes into our scheduled 3 hour call, an ICE officer approached me and told me to hang up the phone. I thought it was about a parole request, but he only wanted to verify that I had been talking to my lawyer. I told him that I was, and asked permission to call him back. The ICE officer told me no. My final hearing was the next day. Instead, I had to go back to my barrack and call him from there, at my own expense. I have no money, and was only able to speak for another half hour before I could no longer continue the call.
14. On March 27, I was scheduled for another phone call with my lawyer to prepare me for a new setting on April 7, but the phone lines were down due to heavy winds.
15. I was scheduled for another call on March 30, but they did not let me call
16. I am unable to speak openly with my attorney about my asylum case because I will be overheard by ICE detention officers and other detained individuals.
17. Because of how difficult it has been to speak with my attorney over the phone and prepare my defense, I asked my attorney to reschedule my hearing. This has resulted in me being held in ICE custody longer than necessary.

18. I am worried that if I am unable to be given the opportunity to prepare a defense with my attorney over the telephone, I will not have a fair opportunity to defend myself, and a judge may deport me.
19. I am fighting for the opportunity to remain in the United States to avoid persecution in Honduras for my sexuality. I need to be able to communicate with my attorney.
20. I would like to fight for the rights of all detained immigrants to have basic telephone access so that they can locate and communicate with lawyers. I intend to vigorously pursue the claims that have been made in the lawsuit on behalf of others who are being denied the opportunity to make telephone calls necessary to defend themselves against deportation, and I will participate in this litigation as my counsel and I determine is appropriate. I intend to remain involved with this case and represent the proposed class of detained individuals if I am released from custody.
21. I have never served as a class representative in any prior action.
22. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.
23. For reasons due to the COVID-19 pandemic shutdown, I am executing this declaration on May 13, 2020 via my attorney.

Michael Groves

For Franklin Gomez Carranza

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15 *Attorneys for Plaintiffs*

16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEW MEXICO

18 FRANKLIN GOMEZ CARRANZA and
19 RUBEN TORRES JAUREGUI,

20 Plaintiffs,

21 v.

22 UNITED STATES IMMIGRATION AND
23 CUSTOMS ENFORCEMENT, et al.,

24 Defendants.

Case No. 20-CV-424

**DECLARATION OF RUBEN TORRES
JAUREGUI IN SUPPORT OF
PLAINTIFFS' MOTION FOR CLASS
CERTIFICATION**

1 I, Ruben Torres Jauregui, declare as follows:

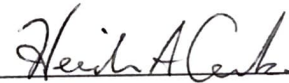
- 2 1. I make this declaration from my personal knowledge and, if called to testify to these
3 facts, could and would do so competently.
- 4 2. My name is Ruben Torres Jauregui. My A# is 201 933 594.
- 5 3. I am detained in Otero County Processing Center since August 2, 2019. I have a case
6 here and am waiting for my final hearing.
- 7 4. Since the beginning of COVID-19, my lawyer has not been able to visit me, or call
8 me. The little communication we have had was because my brothers help me and put
9 money in my account so that I can talk to her. Because we have to pay for phone calls
10 with ICE. Here on the inside, they don't make phone calls available for preparing my
11 case.
- 12 5. Each call costs 9 cents a minute. You can imagine how much I have spent to be able
13 to prepare for my hearing. But also, imagine those who don't have money to call their
14 lawyers. Here in my dormitory, there are men who have had to exchange their plate
15 of food and go without eating in order to be able to call their lawyer.
- 16 6. These are some of the things, and many more, that immigrants here suffer in Otero.
17 When I have to call my lawyer from the barracks, others hear my calls, they can
18 interrupt me, and it's difficult to hear on the phone.
- 19 7. I am going to live my whole life and die and I will never understand why there are
20 human beings, made of flesh and bone like us, that make us suffer so much.
- 21 8. I have never served as a class representative in any prior action.
- 22 9. I declare under penalty of perjury that the foregoing is true and correct to the best of
23 my knowledge.
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1 10. For reasons due to the COVID-19 pandemic shutdown, I am unable to sign this
2 declaration physically and I am executing this declaration on May 12, 2020 via my
3 attorney, Heidi Cerneka.
4

5 Ruben Torres Jauregui
6

7 **Certificate of Interpretation**

8 I am the attorney representing Ruben Torres Jauregui in his asylum proceedings. On May 12,
9 2020, I met telephonically with Mr. Torres Jauregui and recorded and interpreted the above
10 Declaration of Ruben Torres Jauregui ("Declaration") from Spanish to English. Due to the
11 COVID-19 shutdowns and public health concerns, I was unable to physically meet with Mr.
12 Torres Jauregui for his signature for the Declaration. Mr. Torres Jauregui affirmed over the
13 telephone that the contents of his Declaration are true and accurate to the best of his knowledge.
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17 Heidi Cerneka, Esq.
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15 *Attorneys for Plaintiffs*

16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEW MEXICO

18 FRANKLIN GOMEZ CARRANZA and
19 RUBEN TORRES JAUREGUI,

20 Plaintiffs,

21 v.

22 UNITED STATES IMMIGRATION AND
23 CUSTOMS ENFORCEMENT, et al.,
24 Defendants.

Case No. 20-CV-424

**DECLARATION OF DAVID JACKSON
IN SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION**

1 I, David Jackson, declare as follows:

- 2 1. I make this declaration from my personal knowledge and, if called to testify to these
3 facts, could and would do so competently.
- 4 2. As the Supervising Intake Specialist, I am responsible for scheduling phone calls with
5 clients and potential clients at both El Paso Service Processing Center and Otero
6 County Processing Center so that volunteers and myself have intake consultations with
7 these individuals.
- 8 3. As of 3/19/2020 up until 5/13/2020, I have missed approximately 20-25 calls with
9 clients and potential clients at Otero County Processing Center.
- 10 4. I have waited up to 4 hours to receive calls form Otero which is not included in the
11 missed calls.
- 12 5. I have been denied access to free legal calls with clients and potential clients left with
13 the option of pursuing legal calls at the cost of the detainee at Otero County Processing
14 Center.
- 15 6. I have been denied access to three-way call capabilities for interpreter purposes to
16 accommodate non-Spanish speaking detainees.
- 17 7. As of 3/19/2020 up until 5/13/2020, I have missed approximately 8-12 calls with clients
18 and potential clients at El Paso Service Processing Center.
- 19 8. I have waited up to 6 hours to receive calls from El Paso Service Processing Center
20 which is not included in the missed calls.
- 21 9. Both facilities have experienced difficulty in securing privacy for legal-confidential
22 calls. Both facilities have experienced numerous call-drops where the calls end pre-
23 maturely.
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1 10. Las Americas Detained Deportation Team's intake process is the first step to providing
2 free legal services to those who are detained by attaining information from each
3 detainee to have them processed into our screening, prior to representing or advocating
4 for them.

5 As of 3/19/2020 until now, roughly 35 detainees have been denied access to our intake
6 process due to the lack of cooperation of setting free legal calls on the part of Otero.
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8 11. I declare under penalty of perjury that the foregoing is true and correct to the best of
9 my knowledge. Executed on 5/13/2020 in El Paso, Texas.

10
11 /s/ David Jackson

12 David Jackson
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15 *Attorneys for Plaintiffs*

16 UNITED STATES DISTRICT COURT
17 DISTRICT OF NEW MEXICO

18 FRANKLIN GOMEZ CARRANZA and
19 RUBEN TORRES JAUREGUI,

20 Plaintiffs,

21 v.

22 UNITED STATES IMMIGRATION AND
23 CUSTOMS ENFORCEMENT, et al.,
24 Defendants.

Case No. 20-CV-424

**DECLARATION OF PAIGE PAVONE IN
SUPPORT OF PLAINTIFFS' MOTION
FOR CLASS CERTIFICATION AND
APPOINTMENT OF CLASS COUNSEL**

1 I, Paige Pavone, declare as follows:

- 2 1. I am an attorney in private practice and a Managing Associate at Orrick, Herrington
3 & Sutcliffe LLP, where I am currently employed. The following facts are based on
4 my personal knowledge and, if called to testify to these facts, I could and would do so
5 competently.
6
- 7 2. I have been practicing law as a licensed attorney since 2016 and from 2017 to 2018
8 I clerked for the Honorable Dora L. Irizarry in the United States District Court for the
9 Eastern District of New York.
- 10 3. I have worked closely with the partner responsible for this action, R. David Hosp.
11 R. David Hosp has tried matters to both juries and judges, and his more notable cases
12 include serving as lead trial counsel for the *New York Times* and *The Boston Globe* in
13 *Gatehouse v. The New York Times*, Civ. Action No. 08-12114-WGY (D. Mass. 2009)
14 and as lead trial counsel in the successful defense of his client Recorded Books against
15 trademark and copyright claims in *Brilliance Audio v. Hights Cross*
16 *Communications*, 474 F.3d 365 (6th Cir. 2007). He has been recognized as a leading
17 practitioner in *The American Lawyer*, *The World Trademark Review 100*, and *The*
18 *Legal 500*.
19
- 20 4. I have also worked closely with the other attorney responsible for this action, Rene
21 Kathawala. From 2004 to 2005, Rene Kathawala clerked for the Honorable Leo
22 Glasser in the United States District Court for the Eastern District of New York. Rene
23 Kathawala has a long-standing commitment to access to justice issues, and this was
24 recognized when he was appointed to serve as a member of the New York City Bar
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1 Association Right to Counsel Task Force and the New York City Bar Association
2 Family Court Judicial Appointment & Assignment Process Work Group.

3 5. The associates assigned to this matter, Lauren Allen and I, have significant experience
4 litigating complex class actions in federal court.

5 6. Orrick has approximately 1,000 attorneys and approximately 250 attorneys in the New
6 York office alone.

7
8 7. Orrick is uniquely situated to represent the class in this case because it was pro-bono
9 co-counsel with the American Civil Liberties Union (“ACLU”) of Northern California
10 in a similar class action suit against U.S. Immigration Customs and Enforcement
11 (“ICE”) detention facilities in the Northern District of California. *See* First
12 Supplemental Complaint for Injunctive and Declaratory Relief, *Lyon et al v. I.C.E. et*
13 *al*, No. 13-cv-05878-EMC (N.D. Cal. Aug. 27, 2015), Dkt. No. 99. In that action,
14 Orrick and the ACLU of Northern California asserted that the Northern California ICE
15 facilities were not providing adequate telephone access for detained immigrants to
16 contact their attorneys. *Id.* Orrick and the ACLU of Northern California successfully
17 entered into a settlement agreement with ICE and the Department of Homeland
18 Security (“DHS”), whereby ICE and DHS agreed to implement certain procedures and
19 practices that would ensure that class members were able to contact their attorneys via
20 the telephone. *See* Settlement Agreement, *Lyon*, No. 13-cv-05878-EMC (N.D. Cal.
21 Oct. 31, 2016), Dkt. No. 208-1; *see also* *ACLU Settlement with ICE Will Allow*
22 *Immigrants Held in Detention to Use Functional Telephones for Contacting Lawyers,*
23 *Families, Government Agencies*, ACLU NOR CAL (June 13, 2016),
24 <https://www.aclunc.org/news/aclu-settlement-ice-will-allow-immigrants-held->
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[detention-use-functional-telephones-contacting](https://www.colorlines.com/articles/ice-agrees-overhaul-phone-policy-immigrant-detainees); Kenrya Rankin, *ICE Agrees to Overhaul Phone Policy for Immigrant Detainees*, COLORLINES (June 15, 2016), <https://www.colorlines.com/articles/ice-agrees-overhaul-phone-policy-immigrant-detainees>.

8. Since January 2020, Mr. Hosp, Mr. Kathawala, Ms. Allen, and I have been working on a pro bono basis to investigate telephone access afforded to detained immigrants in the Otero County Processing Center and the El Paso Processing Center. We have researched the applicable laws and corresponded with various interested and knowledgeable parties to investigate this matter. Based on this work, we are familiar with the issues facing members of the proposed class in this action, specifically including the factual and legal elements presented.
9. Orrick has the capacity to thoroughly and vigorously prosecute the claims in this case and properly represent the plaintiff class and intends to commit all necessary resources to do so.
10. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. Executed on May 13, 2020 in Norfolk, Virginia.

By: /s/ Paige Pavone
PAIGE PAVONE