

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN POVERTY LAW CENTER,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

Civil Action No. 18-0760 (CKK)

PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER

Pursuant to Federal Rule of Civil Procedure 65(b), Plaintiff Southern Poverty Law Center (“SPLC”) respectfully moves this Court for the entry of a temporary restraining order directing Defendants to remove access barriers and remedy the dangerously punitive conditions at the four detention facilities at issue in this case.

Specifically, SPLC respectfully moves this court to issue an order providing the following relief at Pine Prairie ICE Processing Center, Irwin County Detention Center, and Stewart Detention Center:

1. That Defendants provide a ratio of at least one telephone or video telecommunication (“VTC”) console per ten detained persons in each facility, as required by PBNDS 5.6(V)(A)(1).
2. That Defendants provide privacy and confidentiality for telephone and VTC communications between detained persons and their attorneys (including attorney legal staff and their agents), as required by PBNDS 5.6(V)(F)(2).

3. That Defendants refrain from limiting the number and duration of legal phone or VTC calls between detained persons and attorneys (or their legal staff and agents), as required by PBND 5.6(V)(F)(1).
4. That Defendants make all legal telephone calls from detained persons free of charge, as required by PBND 5.6(V)(E).
5. That Defendants maintain their phone and VTC systems in proper working order, as required by PBND(V)(A)(3)–(4).
6. That Defendants designate persons authorized as points of contact at each facility to relay any issues with scheduling VTC or legal calls or to address issues concerning the quality and confidentiality of those call.
7. That Defendants create, implement, and advertise a process by which attorneys and detained immigrants may schedule confidential telephone calls and VTC within 24 hours of the request, to take place between 8:00 a.m. and 8:00 p.m.

Further, SPLC respectfully moves this court to issue an order providing the following relief at all four detention facilities at issue in this case, LaSalle ICE Processing Center, Pine Prairie ICE Processing Center, Irwin County Detention Center, and Stewart Detention Center:

1. That Defendants implement a system that requires Deportation Officers to provide immigrants and their attorneys confirmation of receipt of any parole request or custody redetermination requests within 24 hours and to provide a final determination within seven (7) days.
2. That Defendants create, implement, and advertise a process by which attorneys and detained immigrants may exchange confidential documents electronically, whether via email or fax.

3. That Defendants advertise and maintain a schedule for cleaning the shared telephones, video teleconference rooms, law library, and library.
4. That Defendants provide persons detained with sufficient gloves, masks, as well as antibacterial wipes and hand sanitizer, such that immigrants may safely access counsel through VTC or legal calls without further risk of exposure to the virus.
5. That All of the above relief shall be made available to detained immigrants who are quarantined.
6. Any other such relief as the Court deems just and proper.

In support of this Motion, Plaintiff submits the attached Memorandum of Points and Authorities in Support as well as the attached Declarations. As set forth more fully in the Memorandum of Points and Authorities, SPLC is substantially likely to succeed on the merits of its clients' Fifth Amendment claims. SPLC's clients, and others seeking but obstructed from obtaining SPLC's services, will suffer irreparable harm in the absence of emergency relief. The balance of equities and the public interest favor restraining Defendants from violating SPLC's clients' constitutional rights.

Dated: May 7, 2020

Respectfully submitted,

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**PLAINTIFF’S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
ITS MOTION FOR A TEMPORARY RESTRAINING ORDER**

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I. Introduction

The COVID-19 pandemic has changed nearly every aspect of life in the United States, and that includes forcing unprecedented changes on the legal system. Instead of meeting in person, attorneys now consult with clients over the phone or via video-conference (“VTC”). Deposition and trial testimony are taken by VTC, and judges conduct trials in courtrooms empty except for the judge and a video monitor. These actions preserve access to courts and counsel as COVID-19 has made it too dangerous for client consultations, attorney meetings, and judicial proceedings to occur in person. Defendants’ immigration detention facilities, however, have refused to make accommodations to ensure safe, constitutionally sufficient, and reliable access to counsel during this pandemic. Plaintiff the Southern Poverty Law Center (“SPLC”) therefore seeks a temporary restraining order requiring Defendants to remove barriers that unreasonably limit access to counsel during the COVID-19 pandemic at four detention facilities.

Defendants, the Department of Homeland Security (“DHS”), Immigrations and Customs Enforcements (“ICE”), and various DHS and ICE officials, are responsible for the approximately 30,000 immigrants detained in the United States on any given day, including those served by SPLC’s Southeast Immigrant Freedom Initiative (“SIFI”) at four detention facilities in the rural Southeastern United States.¹ SPLC initiated this litigation over two years ago to challenge the constitutionality of Defendants’ failure to provide access to counsel and courts to detained immigrants. SPLC alleged that Defendants failed to ensure constitutionally sufficient access to confidential legal calls and VTC, citing deficiencies in confidentiality, time limitations, access, and reliability.

¹ While some of the facilities are run by private groups such as “CoreCivic” and “GEO Group,” ICE is the ultimate custodial entity with a nondelegable legal responsibility for ensuring that it and its vendors/contractors comply with the Constitution and applicable regulations.

COVID-19 has foreseeably exacerbated these failures even as detained immigrants' need to consult with counsel via telephone or VTC has exponentially increased. While non-detained immigration courts have halted proceedings, detained courts have not, and the current administration's aggressive removal policy has continued. Detained immigrants, facing continued removal proceedings and the terror of being trapped in prisons as COVID-19 sweeps through, are desperate to speak with counsel about their cases, the need to litigate to improve conditions inside, and the possibility of release through bond, parole, habeas proceedings or other means.

Yet, as the acute need for access to counsel has grown, already inadequate access has further diminished. Defendants limit in-person access to counsel, require attorneys to provide their own personal protective equipment ("PPE") despite the near impossibility of procuring PPE in the rural South, fail to provide PPE to detained individuals, and fail to adequately clean and disinfect visitation rooms between visits or telephone and VTC equipment between calls. At the same time, Defendants have failed to implement necessary procedures to expand capacity for remote legal visitation through telephone and video calls or to facilitate the exchange of documents remotely. A federal court has already recognized that Defendants' failures to accommodate legal communications during the COVID-19 pandemic are more than likely unconstitutional and entered a temporary restraining order requiring Defendants to implement accommodations to ensure sufficient access to counsel at a detention facility in California. *See* Min. Order, *Torres v. U.S. Dep't of Homeland Sec.*, No. 5:18-CV-2604 (C.D. Cal. Apr. 11, 2010), ECF No. 144. But Defendants continue to refuse to make necessary—and life-saving—accommodations for legal communications throughout the country, including those SIFI serves.

SPLC seeks narrow relief. It does **not** seek any modifications to the public health measures at the facilities related to COVID-19, the release of any detained person, or the reinstitution of unprotected in-person visitation at the facility. Rather, SPLC requests common-sense accommodations to ensure constitutionally sufficient access to counsel, including increasing the number of VTC consoles, facilitating the scheduling of VTC calls, enjoining limitations on the number and duration of VTC calls, requiring Defendants to make all legal telephone calls from detained persons free of charge, ensuring that detained immigrants can exchange confidential documents with counsel electronically, and mandating that Defendants disinfect the shared telephone and VTC rooms and provide detained persons with personal protective equipment to ensure that they can communicate with counsel without risking exposure to the virus.

As detailed below, SPLC is likely to succeed on the merits of its claims that Defendants are violating its clients' Fifth Amendment rights to access counsel and to substantive due process. These constitutional violations constitute irreparable harm—never more so than now in the face of COVID-19, as clients without access to counsel can neither adequately fight their removal cases from detention nor seek release from detention to avoid COVID-19 infection. The balance of equities and the public interest tip sharply in favor of SPLC's clients because it is in both the government's and the public's interest to ensure protection of the constitutional rights of people in Defendants' custody.

Accordingly, and for all the reasons set forth below, this Court should grant Plaintiff's motion and enter a temporary restraining order enjoining Defendants from unreasonably limiting access to counsel during the COVID-19 pandemic and failing to ensure the safety of detained persons during legal communications.

II. Statement of Facts

A. SPLC continues to provide representation for detained persons at the Facilities during the COVID-19 pandemic, and Defendants are failing to adequately accommodate necessary remote legal communications.

The Southern Poverty Law Center established SIFI in April 2017 to provide pro bono representation to individuals in ICE custody at facilities with some of the lowest representation rates in the country: LaSalle ICE Processing Center (“LaSalle”) in Jena, Louisiana; the Pine Prairie ICE Processing Center (“Pine Prairie”) in Pine Prairie, Louisiana; the Irwin County Detention Center (“ICDC” or “Irwin”) in Ocilla, Georgia; and the Stewart Detention Center (“Stewart”) in Lumpkin, Georgia (hereinafter referenced collectively as “the Facilities”). Since SIFI’s launch, SIFI attorneys and their detained clients have experienced repeated and substantial barriers to meaningfully and reliably communicating with one another. After efforts to resolve the problems without court intervention failed, SPLC filed the underlying litigation over two years ago in April 2018.

Shortly thereafter, SPLC filed a request for preliminary injunction to resolve urgent access issues at LaSalle and reached a mediated agreement (“LaSalle Agreement”) with Defendants in August 2018. After this Court adjudicated Defendants’ motion to sever and transfer, Plaintiff amended its complaint and the parties commenced discovery. Defendants made some changes at LaSalle as a result of the LaSalle Agreement, which focused on the need for additional legal visitation meeting space and remote interpretation services for in-person meetings at LaSalle. Agarwal Decl. ¶ 3. Defendants’ noncompliance with the agreement is an ongoing issue, and has contributed to the present threat of irreparable harm to SPLC’s clients. See Agarwal Decl. ¶¶ 5–10; Notices of Noncompliance, Exs. A, C, E, and G to Agarwal Decl. Further, the LaSalle Agreement is limited in scope and does not address crucial and emergent issues that have detrimentally impacted SIFI’s clients during the COVID-19 pandemic, such as

the failure to provide a method to facilitate remote confidential document exchange (e.g., via e-mail or fax) and ICE's failure to ensure that spaces and technologies used for remote legal communications are properly disinfected.² These issues are described in greater detail below.

SPLC now seeks emergency relief because, although the circumstances for individuals detained at the Facilities and their attorneys have deteriorated significantly in light of the COVID-19 pandemic, Defendants continue to refuse to remediate barriers to legal communications during the pandemic. As of the date of filing, 3.5 million individuals have been infected worldwide, including 1.15 million people in the United States, of whom 61,000 have died. World Health Org., *Situation Report 106* (May 5, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200505covid-19-sitrep-106.pdf?sfvrsn=47090f63_2.

There are significant outbreaks in Louisiana and Georgia (the states where the Facilities are located) and within detention centers themselves. Ctrs. for Disease Control & Prevention, *Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited May 6, 2020); Rivera Decl. ¶ 14. The Centers for Disease Control published an Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities ("CDC Interim Guidance") on March 23, 2020. See Ctrs. for Disease Control & Prevention, *Interim Guidance on Management of Coronavirus Disease 2019*

² On May 4, 2020, SPLC sent a Notice of Non-Compliance to Defendants regarding violations of certain provisions of the LaSalle Agreement concerning VTC scheduling. SPLC is currently working with Defendant to resolve phone and VTC issues at LaSalle. This motion includes facts about these issues at LaSalle only to illustrate Defendants' systemic pattern of failing to ensure adequate remote legal communications during the pandemic. SPLC does not currently seek an order to remediate VTC or phone issues at LaSalle. SPLC only seeks relief to remediate other issues at LaSalle, including Defendants' failure to provide a method to facilitate remote confidential document exchange (e.g., via e-mail or fax) and to ensure that spaces and technologies used for remote legal communications are properly disinfected. SPLC reserves the right to seek additional remedies concerning VTC and phones at LaSalle if negotiations between the parties are unsuccessful, as contemplated by the LaSalle Agreement.

(COVID-19) in Correctional and Detention Facilities, <https://www.cdc.gov/coronavirus/2019-ncov/downloads/guidance-correctional-detention.pdf> (last visited May 6, 2020). A federal judge has already found ICE noncompliant with the CDC Interim Guidance with regard to the protection and provision of adequate care to medically vulnerable individuals in detention. *Frailhat v. U.S. Immigration & Customs Enf't*, No. 5:19-CV-1546, 2020 WL 1932570 (C.D. Cal. Apr. 20, 2020). Judges across the country have ordered correctional and detention facilities to take various measures to remediate the risk of COVID-19 and/or to release individuals to diminish the risk, including this Court in *Banks v. Booth*, No. 1:20-CV-849, 2020 WL 1914896 (D.D.C. Apr. 19, 2020). These facts demonstrate the crucial need for detained persons to be able to communicate with their attorneys to seek release from detention and protect themselves from the lethal risks of COVID-19.

Not surprisingly, the pandemic has fundamentally altered the way detained individuals access and communicate with counsel, as most of the legal profession has transitioned to remote communications (e.g., phone and video-teleconference) in order to protect not only themselves but also their clients and detention center staff from the prospect of transmitting the virus. This alteration is consistent with the CDC Interim Guidance, which encourages facilities to place limitations on contact visitation while expanding access to telephonic and video-conferencing legal communications as well as providing free phone calls to detained persons and cleaning surfaces used for remote communications. See CDC Interim Guidance at 13–14.

Yet Defendants have failed to accommodate these necessary and foreseeable changes to legal communications, placing SIFI attorneys in the untenable position of having to choose between engaging in-person visitation at high risk to their clients, detention center staff and themselves, or relying on remote access that was already insufficient and unreliable prior to the

pandemic and is now even worse. As Dora Schriro, a national expert on detention management and the founding director of ICE’s Office of Detention Policy and Planning, explains, at a time when detained immigrants need their lawyers most, Defendants “are currently failing to ensure that the individuals in its custody have crucially needed access to lawyers during the COVID-19 pandemic.” Schriro Decl. ¶ 17. SIFI has brought these failures to the attention of Defendants, most recently with a letter on March 25, 2020 demanding a number of remote legal visitation provisions in light of the pandemic. Agarwal Decl. ¶ 6; Demand Letter, Ex. E to Agarwal Decl.; LaSalle Notices of Noncompliance, Exs. A, C, and G to Agarwal Decl. Nevertheless, Defendants have failed to ensure that SIFI’s clients can adequately and reliably access their attorneys despite the growing and acute need. *See* Demand Letter, Ex. E to Agarwal Decl.; Rivera Decl. ¶ 20.

As explained by SIFI’s Director Laura Rivera, both pre-and post-COVID-19, SIFI’s representation of clients at the Facilities typically begins the same way: detained individuals contact SIFI’s free and unmonitored hotline through the shared telephones mounted in their units. Rivera Decl. ¶¶ 10, 36. SIFI’s hotline operators conduct an intake, ranging from thirty minutes to an hour. *Id.* Before COVID-19, SIFI staff would then conduct a screening interview of the prospective client, typically in person. These initial screenings may take sixty to ninety minutes, depending on whether a SIFI-provided interpreter is necessary. If SIFI determines it can take the case, it must meet with the individual again to explain and execute the retainer, to discuss next steps, and to answer any questions the client may have. *Id.* at ¶ 11. It is common for SIFI staff to speak with the client two or three more times to prepare the client’s bond motion or parole request even before necessary interviews related to the removal merits case. *Id.* Eliciting relevant facts usually requires several conversations, as clients typically must describe in detail personal and traumatic events and revisit them repeatedly. *Id.* Because exchanging documents

with detained clients and getting their signatures by mail is often unreliable at the Facilities, *id.* at ¶ 9, SIFI staff have historically done this in person, *id.* at ¶ 12.

Although in-person visits at the Facilities have always been deeply constrained by long wait times, limited hours, and time limits, *id.* at ¶ 6, SIFI still found in-person visits to be more effective and more reliable than the Defendants’ processes and capabilities for video teleconferences and legal phone calls at the Facilities. *Id.* at ¶¶ 7–8. Before the pandemic, SIFI staff visited Facilities two or three days a week and conducted in-person legal visits with two dozen people or more on average. *Id.* As set forth in detail below, during the COVID-19 pandemic, in-person visits have become functionally impossible, thus increasing the need for remote access, which has simultaneously become more limited—leaving clients and their attorneys in an untenable position that necessitates this Court’s immediate intervention.

B. ICE has restricted in-person legal visitation in response to COVID-19.

The exponential rate of the spread of COVID-19 inside ICE facilities is evident by ICE’s own information. More than 48% of immigrants in ICE custody who have been screened for COVID-19 have tested positive. ICE Guidance on Coronavirus, <https://www.ice.gov/coronavirus> (last visited May 6, 2020). As of the date of this application, ICE has confirmed the following positive cases of COVID-19 at the Facilities: ten detained people at LaSalle;³ twenty-six detained people at Pine Prairie; two detained people at Irwin; eleven detained people at Stewart and more than forty staff. Rivera Decl. ¶ 14; *see also* Schriro Decl. ¶ 30 (“ICE does not report the status of detention staff employed by the facilities”). At the same time, Executive Office of Immigration Review (“EOIR”) courts where SIFI lawyers practice continue to press forward in their detained dockets “as speedily as they had before the pandemic.” Rivera Decl. ¶ 15.

³ On April 27, ICE reported *twenty* cases at LaSalle. *See* Rivera Decl. ¶ 14 Ex. C.

Although Defendants are ultimately responsible for ensuring that conditions inside detention centers comply with constitutional, statutory and regulatory dictates, Defendants have done little more to address COVID-19 than publish inadequate guidance documents. Schriro Decl. at ¶¶ 37–40. Yet, ICE’s guidance has been exactly that: *guidance*—without any meaningful mandate or monitoring mechanisms to ensure compliance. ICE still has not provided concrete mandates to ensure that detention facilities—including the Facilities at issue here—implement necessary modifications to legal communication procedures during the pandemic. *Id.* at ¶ 35. On March 23, ICE posted a statement allowing only non-contact legal visitation and requiring all legal visitors to wear, “gloves, N-95 masks, and eye protection.” Rivera Decl. ¶ 18, Ex. A. Because there was and continues to be a national shortage of N-95 masks, this requirement effectively prohibited in-person legal visits. Rivera Decl. ¶ 20; López Decl. ¶ 11; *see also* Strategies to Optimize the Supply of PPE and Equipment, Centers for Disease Control and Prevention, <https://www.cdc.gov/coronavirus/2019-ncov/hcp/ppe-strategy/index.html> (last visited May 5, 2020) (“PPE shortages are currently posing a tremendous challenge to the US healthcare system because of the COVID-19 pandemic”).

For a short time, SIFI was able to acquire a limited amount of the necessary PPE. But because Defendants’ remote visitation policies continued to create intolerable delays, SIFI’s Director was forced to make tough calls, “deciding between waiting days for remote legal visits to complete time-sensitive client communications, or authorizing in-person visits by SIFI staff who could unknowingly expose clients to the virus or contract the virus themselves.” Rivera Decl. ¶ 19. It has been over a month since ICE published its PPE requirement, which effectively blocked in-person attorney-client communication at a critical time. Defendants have not provided

any remedy. To the contrary, Defendants have imposed additional restrictions on remote legal visitation that further impede detained clients' access to crucially needed legal counsel.

C. ICE has imposed additional restrictions on remote legal visitation.

The combination of ICE's PPE requirements, the shelter-in-place orders across the states, and the recorded COVID-19 outbreaks at the Facilities has effectively blocked SPLC's ability to conduct in-person legal visitation. Rivera Decl. ¶ 20; Williams Decl. ¶ 10. As the number of positive cases has risen exponentially, and clients' vulnerabilities and immediate need for legal assistance inside of these Facilities has become even more urgent, SPLC has been forced to rely on Defendants' increasingly restrictive, inconsistent, and unreliable policies for video-teleconferences and legal phone calls (hereinafter referenced together as "remote legal visitation"). Out of necessity, SPLC has also had to rely on communicating through non-confidential, collect calls with clients at these Facilities.

1. Video-teleconference access restrictions.

Defendants' pre-existing barriers to VTC access—the more effective means of attorney-client communication compared to telephones—have worsened as the pandemic has progressed. Over the past month, SIFI has experienced scheduling delays at all Facilities at every step of the process: delays in receiving a response to a VTC request, delays between the date requested and the date made available, delays on the day of the appointment, as well as outright cancellations. Rivera Decl. ¶ 22–29; Williams Decl. ¶ 11 –12. These delays can be attributed to factors that Defendants have conceded are within their control.

In an April 3 letter to SPLC, Defendants stated that, because of the public health crisis, they would provide extended VTC days and hours of operation for the Facilities. Rivera Decl. ¶ 21, Ex. B. Nearly two months into the pandemic, however, SIFI has seen no evidence of these extensions. For example, SIFI staff at Stewart reported on April 24 and April 27 that they were

offered the same hours for VTC slots as before—9am-3pm. *Id.* at ¶ 22. Defendants’ failures to ensure adequate access to VTC has resulted in devastating consequences for detained individuals. For example, due to inadequate access to VTC at Irwin, detained persons were unable to be retained and be Petitioners in a habeas action filed by SPLC and SIFI, thereby defeating their chances for release during this dangerous pandemic. Williams Decl. ¶ 19.

In addition to scheduling delays, Defendants have restricted VTC access through sudden and seemingly arbitrary restrictions at the Facilities over the past month. For instance, Stewart set a weekly cap on the number of VTC calls a SIFI attorney could have with the same client, refusing counsel’s request for a two-hour session the day before the client’s final asylum hearing. Rivera Decl. ¶ 25. Pine Prairie rescheduled a VTC appointment because the officer was on transport duty and could not bring the client. *Id.* at ¶ 26. Irwin and Stewart cancelled VTC calls without notice. *Id.* at ¶¶ 27-28. Irwin scheduled VTC calls with extremely short notice. Williams Decl. ¶¶ 12, 20. LaSalle’s VTC quality is so poor that one SIFI attorney now schedules only legal phone calls. Rivera Decl. ¶ 24; López Decl. ¶ 9. And on at least two separate occasions, Irwin failed to notify the client of the scheduled call, Rivera Decl. ¶ 33; Williams Decl. ¶ 21, and sometimes fails to notify attorneys that it has scheduled a call. Osorio Decl. ¶ 7. These barriers have a direct impact on SIFI’s ability to expeditiously prepare urgent filings, and adequately prepare their clients for hearings. Rivera Decl. ¶ 25; *see also*, López Decl. ¶ 10; Osorio Decl. ¶7 (“The failure to provide notice to immigration attorneys of when VTC appointments are scheduled makes it difficult to effectively communicate with my client and properly meet my ethical obligations to my client if I cannot have access to her.”)

When SIFI is finally able to schedule VTC calls, the attorneys experience further barriers because of Defendants’ unreasonable time restrictions. At Pine Prairie, VTCs are limited to thirty

minutes, and are sometimes even shorter than that due to the time it takes to move quarantined and non-quarantined individuals separately. Rivera Decl. ¶ 8.; López Decl. ¶ 8. At Stewart and Irwin, VTCs are limited to one hour. Williams Decl. ¶ 11. These limitations exist even when an interpreter is needed, which effectively doubles the time it takes to communicate. *See id.* at ¶16; Rivera Decl. ¶ 10 (“While a typical screening without interpretation may take one to one-and-a-half hours, a screening through an interpreter may take twice as long.”). SIFI has no choice under these strict time limits but to request additional VTC calls and go through the same scheduling delays once or twice more.

Although confidentiality is “a bedrock principle” of attorney-client communication, confidentiality is severely compromised in the VTC rooms at the Facilities. Rivera Decl. ¶ 30. At Irwin, for example, when VTC calls are conducted in the library, detention center staff frequently interrupt the call by entering and answering separate calls on a phone close to the detained individual. Williams Decl. ¶15; Osorio Decl. ¶¶ 5–6. Likewise, at Pine Prairie, VTCs occur in adjacent cubicles with thin walls, and attorney-client conversations are clearly audible. Rivera Decl. ¶31.

Finally, Defendants’ inadequate safeguards to protect detained individuals from the virus during VTC calls have forced SIFI attorneys to think twice about proceeding with remote legal visits to avoid health risks to their clients. Williams Decl. ¶¶ 8-9. One SIFI attorney has never seen any of his clients at Irwin wearing gloves during their VTC call. Rivera Decl. ¶ 32. At Stewart, a client was never provided gloves but found a pair of gloves that an officer had discarded and put them on for his own safety. Sanchez-Martinez Decl. ¶ 14. Because of Defendants’ documented failure to provide detained individuals in these Facilities with sufficient hygiene products and protection, every time clients leave their cells for a VTC appointment, they

risk exposure to the virus. Venters Decl. ¶ 11; *see* Joe Penney, Inside an ICE facility in Louisiana, detainees say ICE is depriving them of masks, under-testing for COVID-19, and moving migrants around the country, BUSINESSINSIDER (May 1, 2020) <https://www.businessinsider.com/detainees-say-ice-undertesting-for-covid19-not-giving-them-supplies-2020-5>; *see also* Debbie Nathan, Women in ICE Detention Face Reprisals For Speaking Up About Fears of Covid-19, THE INTERCEPT (April 28, 2020) <https://theintercept.com/2020/04/28/ice-detention-coronavirus-videos/> (Women detained at Irwin describe conditions of overcrowding and deficient sanitation). Likewise, the VTC equipment itself can transmit the virus, which necessitates disinfecting it and providing detained persons with proper PPE, but this is not happening. *see, e.g.*, López Decl. ¶ 16 (describing failure to disinfect VTC terminals and seats after a detained individual from a quarantined unit was at the VTC). Defendants’ ongoing failure to implement these precautionary measures puts attorneys in the untenable position choosing between preparing their clients for their legal cases and putting them at risk of transmission due to Defendants’ inadequate precautions. Rivera Decl. ¶ 47; López Decl. ¶ 18.

2. Phone access restrictions.

Due to Defendants’ worsening restrictions for VTC access, SIFI has tried to utilize “facility legal calls,” which are confidential phone calls coordinated by the facility, to reach current and potential clients. Rivera Decl. ¶ 37. But the process for setting up such legal calls is still unclear to clients and attorneys at the Facilities and, until recently, was impossible at Stewart or Pine Prairie. *Id.* at ¶ 38. Defendants’ April 3 letter stated that they would “extend” the hours for facility legal calls at the Facilities. *Id.* Ex. B. When SIFI staff at Stewart brought this information to CoreCivic employees’ attention, the employees said they were not aware of any

mechanism for facility legal calls. *Id.* at ¶ 39. Only on April 24, after several weeks and multiple email exchanges, was a new process set up at Stewart, requiring the SIFI attorney to email the warden to request the call, and the warden to confirm the time and date and then provide the attorney with a phone number. *Id.* at ¶¶ 40–41. Pine Prairie officials state that facility legal calls may be requested by detained individuals through their case managers. However, most clients at Pine Prairie do not know who their case managers are. *Id.* at ¶ 38. A SIFI attorney who has been representing clients at Pine Prairie since October 2018 has never had a client successfully request a facility legal call. *Id.*

Even where there is a process for requesting facility legal calls, there are still delays in scheduling, as with VTC calls, and detained individuals have been limited from accessing such calls due to lockdowns in their units. Rivera Decl. ¶¶ 40–42. At LaSalle, there have been significant connectivity issues when dialing in essential third parties, such as other attorneys and interpreters. *Id.* at ¶ 43. Defendants’ solution has been for the client to take the call while on speaker phone. This solution raises similar confidentiality concerns to the VTC calls because conversations can be overheard by individuals in the next room *Id.* at ¶ 31.

Because the mechanism for requesting facility legal calls is not clear, uniform, or reliable, SIFI has identified alternatives to Defendants’ restrictions to communicate with their clients during this pandemic. Although detained individuals are entitled to free access to legal calls (Schriro Decl. ¶ 58; Rivera Decl. ¶ 48), because access to such calls is so difficult to obtain, SIFI staff have arranged with clients for them to make paid calls at designated times from one of the telephones in their unit. Williams Decl. ¶ 13; Sanchez-Martinez Decl. ¶ 5. To alleviate the financial burden of this communication on their clients, SIFI set up an internal method to allow SIFI to pay for these collect calls from clients at the Facilities. Rivera Decl. ¶ 44.

SIFI has asked Defendants to place SIFI staff's phone numbers on a do-not-monitor list, but Defendants have refused to provide written confirmation and verbally confirmed that they were able to do this at only three of the facilities: Stewart, LaSalle, and Pine Prairie. Rivera Decl. ¶ 44–45; Williams Decl. ¶¶ 13–14. At Irwin, Defendants told SIFI that they cannot place them on a do-not-monitor list because Defendants do not have a contract with that facility's phone vendor. Rather, SIFI would have to reach out to Irwin's warden and make this request. SIFI made this request via email but, as of May 5th, still have not received a response. Rivera Decl. ¶ 45.

Although SIFI staff should be placed on the do-not-monitor list, it is important to note that these collect calls do not guarantee confidential attorney-client communications. Clients at the Facilities make these calls from the same telephones that they use to call the SIFI hotline as well as their loved ones. They are made in the open space, in close proximity to the individuals from their unit and are shared by many other individuals. Williams Decl. ¶ 13; Rivera Decl. ¶ 46.

Furthermore, calls made from these shared telephones raise similar safety concerns to calls made from the VTC rooms. Individuals are already unable to socially distance in their units, and using the shared phones puts them at a higher risk for contracting the virus. Venters Decl. ¶ 11, 36. When detained clients are waiting in line to use the shared telephones, they are often extremely close to one another and, because they also lack protective equipment, they are exposing themselves to the virus. Venters Decl. ¶ 36. Additionally, clients indicate that the facilities still fail to provide them with adequate hygienic products. They have not seen anyone wipe down the telephones— neither detained individuals who clean the units, nor the detention staff. Sanchez-Martinez Decl. ¶¶ 7, 12. At Stewart, a SIFI client is in a unit with ninety-two people in total with only seven working telephones. At Irwin, another SIFI client has been in a

unit when it was at capacity and had 32 people in two-person cells with a total of three shared telephones. At LaSalle, a client is currently detained in a unit that has had 88 people sharing eight telephones. At Pine Prairie, one client is in a unit that has had 56 or 57 people and eight shared telephones. Rivera Decl. ¶ 47; Sanchez-Martinez ¶¶ 10-11; Venters Decl. ¶ 36 (“Cleaning and disinfecting is a crucial aspect of infection control as there are numerous frequently used locations within facilities that may facilitate infection spread”).

SIFI’s partial solution of paying for these collect calls does not excuse Defendants’ failure to follow its own ERO COVID-19 Pandemic Response Requirements, which call on facilities “to ensure *all* detainees receive some number of free calls per week,” (Rivera Decl. ¶ 48; Schriro Decl. ¶ 58), as well as the Center for Disease Control’s guidance for detained populations, which calls on detention facilities, including those that confine immigrants, to increase access to free or low-cost telephones and virtual visitation. CDC Interim Guidance 13–14.

D. Restrictions on legal mail and document exchange.

Defendants’ COVID-19 policies on document exchange are unreasonably restrictive and make SPLC’s ability to maintain necessary contact and move expeditiously on its clients’ cases extremely and needlessly difficult. Defendants state that they will not retrieve fax documents or download electronic documents for detained individuals at the Facilities. Rivera Decl. ¶ 53, Ex. B. This is unreasonable since Irwin already allows detained individuals to send faxes to their attorneys and, for a few weeks prior to the pandemic, it had allowed attorneys to send faxes for their clients that the facility officer would retrieve for them before a VTC appointment. *Id.*; Williams Decl. ¶¶ 23–24; *see also* Rivera Decl. ¶ 12 (listing the multitude of documents typically exchanged for case preparation). All Facilities utilize fax machines to send attorneys their

clients' medical records. Rivera Decl. ¶ 12. Allowing attorneys to use the fax machines to transmit documents to clients for their signature would greatly improve access, especially with the restrictions on in-person visitation and delays in mail. For example, in trying to obtain a client's medical records at LaSalle, a SIFI attorney was told by the deportation officer that the client's verbal authorization over the phone to release their medical records was insufficient and would instead require a wet signature, delaying SIFI's ability to timely procure the files and represent the client. Rivera Decl. ¶¶ 54; *see also* López Decl. ¶ 13. Providing a mechanism for electronic or facsimile document exchange would alleviate at least one of the many compounding barriers SPLC now faces amid COVID-19.

Defendants have also stated that they "may permit" metered and preaddressed envelopes. Rivera Decl. Ex. B. At Stewart, SIFI staff has had mixed success with sending pre-stamped envelopes. At LaSalle, SIFI has been successful. Rivera Decl. ¶ 50. Defendants also refuse to permit stamps into the Facilities. Since in-person legal visitation is prohibited, Defendants' stamp prohibition forces SPLC to deposit funds into their clients' accounts or break stay-at-home orders to obtain prepaid envelopes that they *may* have success sending to facility. Williams Decl. ¶ 23.

Because of these restrictions, SPLC must send postal mail to the Facilities, which even before the pandemic, has been unreliable. Rivera Decl. ¶ 9 (explaining that delays in sending and receiving mail are commonplace; Stewart's sole post office box number is shared by multiple actors in the system; Pine Prairie has reports of detained individuals' legal mail being improperly searched); *Id.* ¶ 50 ("Mailings appear to be periodically rejected regardless of the delivery service or the type of postage"). Reliance on postal mail results in undue delay. Ms. Rivera explains that, "to even start working on an individual's case, SIFI legal workers may need to wait

at least one week after their first client meeting to receive any documents from the client. A one-week delay amid this pandemic has grave consequences for individuals medically vulnerable to COVID-19.” *Id.* at ¶ 51. Delays also harm clients’ chances of winning release. *Id.* at ¶ 52. Judges consider the applicant’s flight risk in deciding on release motions. “The closer a person’s final individual or merits hearing is, the more of a flight risk she is considered to be.” *Id.*

Finally, Defendants have restricted SPLC’s access to the ICE official who oversees their clients’ parole requests and *Fraihat* custody redeterminations. There have been weeks-long delays by ICE in responding to humanitarian parole requests. Rivera Decl. ¶ 56. For example, on or about April 15, a SIFI attorney submitted a humanitarian parole request on behalf of their medically vulnerable client. ICE had instructed her not email, but to mail the request. On April 28, she emailed an ICE agent involved in her client’s case to ask about the status of the request, only to learn that ICE had never received it. She was subsequently instructed to email the request. The ICE agent responded within one hour denying her request. *Id.* at ¶ 55.

III. Legal Standard

Motions for temporary restraining orders and preliminary injunctions are analyzed under the same four-factor standard. *Council on Am.-Islamic Relations v. Gaubatz*, 667 F. Supp. 2d 67, 74 (D.D.C. 2009). An applicant must clearly show: “(1) a substantial likelihood of success on the merits, (2) that it would suffer irreparable injury if the injunction were not granted, (3) that an injunction would not substantially injure other interested parties, and (4) that the public interest would be furthered by the injunction.” *Id.* Historically, courts have applied these four factors along a “sliding scale” in which “a particularly strong showing in one area can compensate for weakness in another.” *Id.* Lately, however, “the continued viability of that approach has been called into some doubt, as the United States Court of Appeals for the District of Columbia

Circuit has suggested, without holding, that a likelihood of success on the merits is an independent, free-standing requirement.” *Kingman Park Civic Ass’n v. Gray*, 956 F. Supp. 2d 230, 241 (D.D.C. 2013). Additionally, some Circuit judges have observed that all four factors may need to be independently shown. *See, e.g., Davis v. Pension Benefit Guar. Corp.*, 571 F.3d 1288, 1296 (D.C. Cir. 2009) (“It appears that a party moving for a preliminary injunction must meet four independent requirements.”) (Kavanaugh, J. concurring). Regardless of the status of the sliding scale approach in this Circuit, the evidence clearly shows that SPLC satisfies each of these factors, thereby warranting a temporary restraining order.

IV. Argument

A. SPLC has a substantial likelihood of succeeding on the merits of its clients’ Fifth Amendment access claims.

Defendants’ unreasonable restrictions and conditions on legal communications during the COVID-19 pandemic deprive SPLC’s clients of their fundamental right to access crucially needed counsel during this dangerous period.

“It is well established that the Fifth Amendment entitles [non-citizens] to due process of law in deportation proceedings.” *Reno v. Flores*, 507 U.S. 292, 306 (1993). This includes the right to meaningful access to counsel and the courts. *Ozoanya v. Reno*, 968 F. Supp. 1, 8 (D.D.C. 1997); *Dakane v. U.S. Att’y Gen.*, 399 F.3d 1269, 1273 (11th Cir. 2005) (non-citizens have “the constitutional right under the Fifth Amendment Due Process Clause right to a fundamentally fair hearing to effective assistance of counsel where counsel has been obtained”); *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1510 (C.D. Cal. 1988) (holding that immigration officials “have a constitutional duty not to obstruct [detained immigrants’] access to courts”). “Regulations and practices that unjustifiably obstruct the availability of professional [legal] representation or other aspects of the right of access to the courts are invalid.” *See Procunier v.*

Martinez, 416 U.S. 396, 419 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989). Accordingly, when Defendants impose unreasonable restrictions or conditions on legal communications between SPLC and its clients, Defendants’ conduct violates the Fifth Amendment. *See, e.g., Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1162 (D. Or. 2018) (“Government practices that effectively deny access to counsel include the detention of aliens far from where potential or existing counsel was located, limited attorney visitation hours, and the processing of aliens at locations where telephones were not available to them.”); *Arroyo v. U.S. Dep’t of Homeland Sec.*, No. 8:19-CV-815, 2019 WL 2912848, *17–18 (C.D. Cal. June 20, 2019) (granting preliminary injunctive relief because plaintiffs were likely to succeed on merits of Fifth Amendment claim regarding Defendants’ interference with detained immigrants’ attorney-client relationships); *Torres*, 411 F. Supp. 3d at 1063–64 (unreasonable burdens on attorney-client relationship violate Fifth Amendment rights of detained immigrants). The Central District of California has recently held that Defendants violate the Fifth Amendment by failing to accommodate access to crucially needed legal counsel during the COVID-19 pandemic. *See Min. Order, Torres*, No. 5:18-CV-2604 (ECF No. 144).

Here, the evidence plainly shows that Defendants’ policies, practices, and omissions concerning legal communications during the COVID-19 pandemic impose unreasonable restrictions on SPLC’s clients’ access to their attorneys and therefore violate the Fifth Amendment. As detailed above, the evidence shows that in-person legal visits are functionally impossible during the COVID-19 pandemic due to a variety of factors, including the high-risk of infection and the national shortage of PPE. Rivera Decl. ¶ 20; Williams Decl. ¶ 10. Consequently, SIFI and its clients must rely on remote communications, such as VTC and legal calls, in order to prepare SIFI’s clients for their removal cases and assist SIFI clients in their

efforts to be released from detention during this deadly pandemic. Rivera Decl. ¶¶ 17-48. Yet, Defendants have altogether failed to modify their policies and procedures to expand access to crucially needed remote legal communications, implement necessary precautions during remote visits (e.g., by disinfecting phones/VTC rooms and providing detained persons with necessary PPE), and provide mechanisms for exchange of legal documents remotely. To the contrary, Defendants have increased barriers to access. Rivera Decl. ¶ 20. In some cases, these barriers have altogether barred individuals from obtaining SPLC’s services, including to obtain release. Williams Decl. ¶ 19. These access barriers are unreasonable as evidenced by Defendants’ own detention standards, expert opinion, and legions of legal precedent. Schriro Decl. ¶¶ 50–100.

For example, the lack of confidentiality in communication between SPLC’s clients and their legal teams violate DHS’s Performance Based National Detention Standards (“PBNDS”). The PBNDS mandate that “each facility shall ensure privacy by providing a reasonable number of telephones on which detainees can make such calls without being overheard by staff or other detainees.” PBNDS 5.6(V)(F)(2). Facility “staff may not monitor phone calls made in reference to legal matters.” *Id.* According to Dora Schriro, a detention operations expert, the current conditions at the facilities exhibit a failure to comply with ICE Detention Standards for confidentiality. *See* Schriro ¶¶ 92–100. The evidence further shows that these violations of the PBNDS are merely the tip of the iceberg in terms of ICE’s violation of its own standards concerning attorney access. *See* Schriro ¶¶ 110-15. “[R]estrictions which are not reasonably related to orderly administration cannot stand.” *Nunez v. Boldin*, 537 F. Supp. 578, 582 (S.D. Tex. 1982)

Defendants’ conduct is not only unreasonable, it is also dangerous—even deadly. Defendants’ refusal to expand access to remote legal communications contradicts CDC guidance.

See CDC Interim Guidance at 13–14 (detailing the need to expand virtual communications and clean electronic surfaces regularly). And even where VTC and phone use is successful, Defendants’ failure to disinfect these areas and provide detained persons with PPE forces SPLC’s clients to choose between speaking to their attorneys and risking infection with COVID-19 or foregoing a legal call (and any hope of release) to avoid transmission. Rivera Decl. ¶¶ 36, 47; Venters Decl. ¶¶ 14, 32–36.

Numerous courts have held that similar combinations of access barriers as those described herein deny timely and confidential remote legal communications in violation of a detained person’s right to access counsel and the courts. *See, e.g., Castillo v. Nielsen*, No. 5:18-CV-01317, 2018 WL 6131172 (C.D. Cal. June 21, 2018) (granting TRO enjoining DHS from limiting phone calls and in-person visits to detained immigrants housed at a medium security prison); *Innovation Law Lab*, 310 F. Supp. 3d at 1162 (granting TRO requiring detention facility to, *inter alia*, expand access to remote legal communications and requiring those communications to be confidential); *Orantes-Hernandez*, 685 F. Supp. at 1511 (“Defendants have violated detained plaintiff class members’ rights to effective representation of counsel by unduly restricting attorney and paralegal visitation, failing to provide private telephone and visitation facilities, and in some cases failing to provide adequate telephone access.”); *Louis v. Meissner*, 530 F. Supp. 924, 927 (S.D. Fla. 1981) (granting injunctive relief when there was a “general unavailability of telephones” in detention facilities thereby restricting detained persons’ access to counsel); *Johnson ex rel. Johnson v. Brelje*, 701 F.2d 1201, 1207 (7th Cir. 1983) (finding two ten-minute calls a week to criminal defendants detained was unreasonable barrier to access courts).

Most recently, a federal district court entered a temporary restraining order requiring Defendants to expand remote legal communications during the COVID-19 pandemic, holding that Defendants' failures to accommodate necessary remote legal communications at a detention facility in California during the pandemic most likely violated the Fifth Amendment. *See* Min. Order, *Torres*, No. 5:18-CV-2604 (ECF No. 144). In *Torres*, the court found that pre-existing access barriers almost identical to those complained of in this case—lack of confidential phone calls, unreliable and inconsistent procedures, strict time limitations—were exacerbated by the virtual elimination of in-person visits due to Defendants' COVID-19 restrictions. The court held that this combination of limitations on in-person legal visits and restrictions on phone and other remote communications warranted emergency relief. According to the court: "Although the harm to attorneys and clients has been magnified by the pandemic, it is still fair to say Defendants' own policies caused the harm, not the virus or the shortage in PPE." *Id.* at 10.

As in *Torres*, the evidence here establishes that Defendants' myriad—and mutually reinforcing—failures to accommodate legal communications during the COVID-19 pandemic unreasonably impedes SPLC's clients' rights to access crucially needed legal counsel. Sealed inside of Defendants' remote detention centers, SPLC's clients are unable to reliably, adequately, and confidentially communicate with attorneys who can assist them in their removal cases, in obtaining release, or in advocating for improved conditions and medical care during the pandemic. For these reasons, SPLC's clients are likely to succeed on their merits of their due process claim.

B. SPLC has a substantial likelihood of succeeding on the merits of its clients’ substantive due process claims.

Defendants’ policies, practices and omissions concerning legal communications during the COVID-19 pandemic are unnecessarily restrictive and excessive and, therefore, constitute punishment in violation of the Fifth Amendment’s substantive due process protections.

Immigration detention is “undisputedly civil” in nature, *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 187 (D.D.C. 2015), and therefore people in immigration detention are entitled to “more considerate treatment” than individuals confined pursuant to criminal process, *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982). For that reason, Defendants may not impose conditions or restrictions on people in immigration detention that are “punitive” in nature. *See Torres*, 411 F. Supp. 3d at 1064–65. Conditions or restrictions in civil detention are unconstitutionally “punitive” where there is either a “subjective intent to punish” or where the condition or restriction “is objectively unreasonable or excessive relative to the Government’s proffered justification.” *Banks*, 2020 WL 1914896, at *6 (citing *United States v. Moore*, No. 1:18-CR-198, 2019 WL 2569659, at *2 (D.D.C. June 21, 2019)); accord *Bell v. Wolfish*, 441 U.S. 520, 538–39 (1979); *Torres*, 411 F. Supp. 3d at 1064–65. A presumption of punitiveness arises (1) where those conditions “are employed to achieve objectives that could be accomplished in so many alternative and less harsh methods” or (2) where there conditions are “identical to, similar to, or more restrictive than” those under which individuals detained pursuant to criminal process are held. *Jones v. Blanas*, 393 F.3d 918, 932–34 (9th Cir. 2004).

Because SPLC can establish both presumptions, it is likely to prevail on its claims that Defendants’ conditions and restrictions concerning legal communications are unconstitutionally punitive. First, the evidence plainly establishes that Defendants’ conditions and restrictions concerning legal communications at the Facilities are objectively unreasonable and excessive

relative to any justification that Defendants could conceivably proffer. As detention expert Dora Schriro explains, Defendants have failed to ensure that policies and practices concerning legal communications at the Facilities comply with ICE’s very own standards and requirements. For example, ICE is failing to ensure that the Facilities comply with its own standards on confidential legal communications. Schriro Decl. ¶¶ 92–100. Likewise, ICE has failed to ensure that the Facilities provide expedient and reliable access to legal calls and video-conferencing services, as well as reliable facilitation of legal document exchange, in violation of its own standards. Schriro Decl. ¶¶ 57–59; ¶¶ 80–90. As the evidence lays bare, these examples are just a few of many of ICE’s outright failures to ensure that the Facilities comply with ICE’s own standards concerning legal communications. This evidence is sufficient for SPLC to establish that Defendants’ practices concerning legal communications are excessive and therefore constitute punishment. *See Torres*, 411 F. Supp. 3d at 1065 (plaintiffs’ allegations that ICE failed to follow regulations in the PBNDS at an ICE facility were sufficient to show punitive conditions and state a substantive due process claim). But there is more.

ICE’s failure to implement necessary precautions at the Facilities to ensure that spaces and devices used for legal communications are properly disinfected and that detained persons have adequate access to gloves or other protective equipment is also objectively unreasonable. Schriro Decl. ¶¶ 109–11; Venters Decl. ¶¶ 29, 36; Sanchez-Martinez Decl. ¶¶ 12–14; Rivera Decl. ¶¶ 32, 36, 47; López Decl. ¶¶ 16, 20; Report & Recommendation, *Dada v. Witte*, No. 1:20-CV-458 (W.D. La. Apr. 30, 2020), ECF No. 17 (outlining lack of hygienic conditions at LaSalle and Pine Prairie that rendered all petitioners housed at the facilities “all at moderate to high risk of exposure” to the virus). This evidence further supports a finding of punitive conditions. *Fraihat*, 2020 WL 1932570, at *25 (“During a pandemic such as this, it is likely punitive for a

civil detention administrator to fail to mandate compliance with widely accepted hygiene, protective equipment, and distancing measures until the peak of the pandemic, and to fail to take similar systemwide actions as jails and prisons.”).

Defendants’ policies requiring attorneys to rely on post mail to exchange legal documents and submit parole requests is also excessive relative to any justification that may be proffered. Rivera Decl. ¶¶ 50–56. Post mail has proven unreliable to SIFI staff (*id.* at ¶ 9) and Defendants have themselves made exceptions to this requirement. *Id.* ¶ 55 (ICE agents directed a SIFI attorney to email the humanitarian parole request after the attorney stated she had mailed to them weeks earlier, per their instructions). Defendants similarly have refused to retrieve fax or download electronic copies of legal documents for detained individuals. (Rivera Decl. ¶ 53; ex. B). This refusal is also excessive when viewed in light of the fact that all the Facilities already rely on fax to retrieve privacy waivers from, and send medical records to, attorneys. *Id.* at ¶ 12; *cf.* López Decl. ¶ 13.

Second, the evidence establishes that Defendants’ conditions and restrictions on legal communications are unconstitutionally “punitive” because they “are similar to[] or more restrictive than” policies on legal communications for individuals in criminal custody. *See Jones*, 393 F.3d at 932. For example, the Federal Bureau of Prisons COVID-19 Action Plan provides clear instructions for attorneys seeking confidential calls with their clients via a chart listing consolidated legal centers and phone numbers. Fed. Bureau of Prisons, *Federal Bureau of Prisons COVID-19 Action Plan*, https://www.bop.gov/resources/news/20200313_covid-19.jsp (last visited May 6, 2020). The CDC has also issued guidance to ensure that individuals in correctional settings have adequate methods to communicate via telephone or videoconference with their lawyers. *See CDC Interim Guidance*.

In sharp contrast, Defendants have failed to ensure that detained persons have adequate and reliable access to confidential legal communications during the COVID-19 pandemic, supporting a finding of punitive conditions. Defendants have failed to issue a single mandate to ensure access to legal communications during the pandemic. Schriro Decl. ¶¶ 35–46. As a direct consequence of Defendants’ failure to provide adequate guidance and oversight concerning legal communications, SIFI attorneys at the Facilities have been substantially impeded in obtaining securing confidential legal communications with their clients. Rivera Decl. ¶¶ 21–44. Because conditions for detained individuals are worse than those for individuals with criminal convictions, a Fifth Amendment substantive due process violation has occurred. *See, e.g., Torres*, 411 F. Supp. 3d at 1064–65 (allegations that there were less restrictive legal communication policies and practices in jails as compared to ICE facility was sufficient to create presumption of punitive conditions); *Fraihat*, 2020 WL 1932570, at *25 (comparing BOP memorandum commanding BOP director to “immediately maximize” transfers to home confinement with ICE guidelines to FODs to “please” make individualized determinations as to release).

In sum, the evidence firmly establishes that Defendants have altogether failed to provide SPLC’s clients with the “more considerate” treatment to which they are entitled during the COVID-19 pandemic. Instead, Defendants’ policies and practices concerning legal communications during the pandemic are excessive, violate their own standards, and are even more restrictive than those of certain prisons. SPLC is therefore more than likely to succeed on the merits of its Fifth Amendment substantive due process claim.

C. Defendants’ violation of SPLC’s clients’ constitutional rights causes irreparable harm.

“It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Mills v. District of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (internal citation and quotation marks omitted); *see also Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (prospective due process violation constitutes threat of irreparable harm). The mere allegation of a constitutional violation may be sufficient to show irreparable harm when the three other factors for a TRO are satisfied. *See Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 304 (D.C. Cir. 2006). More palpably, because of the heightened risk of contracting COVID-19 in the Facilities, especially among vulnerable people in detention, Venters Decl. ¶ 25, adequate and reliable access to counsel to seek release on bond, parole, or habeas is a matter of life and death for SPLC’s clients. In this context, restrictions on SPLC’s clients’ Fifth Amendment rights indisputably cause irreparable harm.

The facilities’ delays and nonresponses in scheduling remote legal visits with SIFI staff have narrowed the prospects for release for Plaintiff’s clients, increasing their risk of exposure to the coronavirus. At Irwin, for example, because a SIFI attorney’s repeated requests to schedule a VTC with a client were ignored, the call never happened. As a result, the client could not be a plaintiff in habeas litigation seeking release of medically vulnerable people. Williams Decl. ¶ 19; *see also* Rivera Decl. ¶¶ 23–24 (noting delays in humanitarian parole applications at LaSalle because SIFI cannot conduct interviews). Erratic scheduling practices have damaged SPLC’s clients’ ability to prepare for their immigration hearings with their attorneys, jeopardizing their prospects for immigration relief. Rivera Decl. ¶¶ 24, 52, 56. Further, Defendants’ failure to ensure the availability of remote legal visits has meant that SPLC’s clients must resort to

conducting legal calls without privacy in the communal day room to more timely consult with their attorneys. Rivera Decl. ¶¶ 36, 46–47; Williams Decl. ¶ 13. And in some cases, this has even led to detained persons being unable to obtain SPLC’s services to seek release from detention. Williams Decl. ¶ 19.

“[T]he irreparable harm here, the denial of access to legal counsel, is apparent on its face.” *Fed. Defs of New York, Inc. v. Fed. Bureau of Prisons*, 416 F. Supp. 3d 249, 251 (E.D.N.Y. 2019) (prison banned legal visitation outright). Denial of access to counsel and the courts that creates a risk of missed filing deadlines, ineffective relief applications or other motions, and hastily prepared oral presentations at hearings, also creates the threat of irreparable harm warranting emergency relief. Compounding this harm is the risk to SPLC’s clients of contracting COVID-19 and sustaining severe illness, organ failure and even death. This risk increases with the duration of their detention, notwithstanding viable claims for release that they cannot file because of access barriers in Defendants’ control, and this injury is irreparable. The stakes of immigration proceedings are simply too high to deny a respondent access to counsel. *See Innovation Law Lab*, 342 F. Supp. 3d at 1081 (“The harms likely to arise from the denial of access to legal representation in the context of asylum applications are particularly concrete and irreparable.”); *Valentine v. Beyer*, 850 F.2d 951, 957 (3d Cir. 1988) (“Clearly no greater harm than the inability to meet filing deadlines, potentially precluding litigation forever, is possible when the question of access to the courts is at issue.”); *Doe v. McAleenan*, 415 F. Supp. 3d 971, 979 (S.D. Cal. 2019) (“Petitioners allege that without access to counsel, they risk the irreparable harm of a non-reviewable erroneous decision that forces them to return to Mexico to face persecution. Petitioners emphasize the complexity of non-refoulement interviews that they—as unsophisticated migrants in stressful and foreign circumstances—do not understand; and that

without access to their counsel, their ability to answer questions and meaningfully participate in the interview is significantly impaired. Given the high stakes of the interview, the Court finds Petitioners have shown likelihood of irreparable harm.”).

The injury caused by the loss of access to counsel and the courts is not only irreparable, but for SPLC’s clients concrete and ongoing. To obstruct someone’s access to counsel as she tries to challenge her detention in a facility with confirmed COVID-19 cases where “ICE will be unable to stop the spread of the virus through the facility,” (Venters Decl. ¶ 9), and to defend against her removal, is to deny her the right to counsel when she needs it most. In the last month, while SIFI attorneys have struggled to schedule phone calls and set up VTC appointments to communicate with their clients, EOIR courts have operated as if it were business as usual. Rivera Decl. ¶ 15. SPLC’s clients have had to prepare various filings and prepare for hearings with reduced assistance from their legal teams. Rivera Decl. ¶ 25; Williams Dec. ¶¶ 7, 19, 11. Immigration law is second only to the tax code in complexity; it is “a labyrinth that only a lawyer could navigate.” *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005). Without adequate and reliable access to their counsel, SPLC’s clients suffer real harm as they try to navigate this labyrinth during this deadly pandemic.

D. The balance of equities and the public interest weigh in favor of restraining Defendants from violating SPLC’s clients’ constitutional rights.

The balance of equities and the public interest favor issuing a temporary restraining order to remove the access barriers between SPLC and its clients at Defendants’ facilities. When the government is the non-movant, these final considerations for a grant of injunctive relief merge into one “because the government’s interest is the public interest.” *Pursuing Am.’s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (emphasis in original). A movant may satisfy this factor by demonstrating a violation of her constitutional rights. *Simms v. District of Columbia*,

872 F. Supp. 2d 90, 105 (D.D.C. 2012) (“It is always in the public interest to prevent the violation of a party’s constitutional rights.”); *see also Upshaw v. Alameda Cty.*, 377 F. Supp. 3d 1027, 1033 (N.D. Cal. 2019) (finding public interest in enjoining punitive conditions of confinement in violation of due process); *Doe v. McAleenan*, 415 F. Supp. 3d 971, 979 (S.D. Cal. 2019) (“[T]he public interest is served by allowing Petitioners’ access to retained counsel prior to and during their non-refoulement interviews.”). In addition to the public interest in the vindication of constitutional rights, the attorney-client relationship is “an institutionally significant . . . relationship” in the American legal system, and as such, a court order protecting that relationship “advances broader public interests in the observance of law and administration of justice.” *Council on Am.-Islamic Relations*, 667 F. Supp. 2d at 79 (internal quotation marks and citation omitted).

A TRO would serve the public interest by ensuring the protection of SPLC’s clients’ constitutional rights and upholding the integrity of removal proceedings during the COVID-19 pandemic. It also would place a minimal administrative burden on Defendants given the limited scope of relief requested. SPLC seeks an order which largely mirrors policies envisioned by Defendants’ own regulations and guidance. *See* Min. Order at 11, *Torres*, No. 5:18-CV-2604 (ECF No. 144) (“Although a grant of relief requires Defendants to take steps to ensure access to counsel, any administrative burden will be minor based on the limited scope of that relief, which can mirror policies already envisioned by Defendants’ own regulations and guidance.”). An order enforcing Defendants’ own access standards requires Defendants to enforce what they already have the authority and means to do. All Facilities were always supposed to have, for example, “at least one operable telephone for every 25 detainees,” legal calls unlimited in number or duration, and confidential phone lines, but simply never have. PBNDS 5.6(V)(A)(1);

id. (V)(F)(1)–(2). Defendants have the ultimate and non-delegable constitutional obligation to ensure that conditions in the facilities comply with constitutional, statutory, and regulatory mandates. Defendants also have the contractual authority to require this from their operators, and an extensive monitoring and compliance bureaucracy to ensure that it happens.⁴ All this motion asks is that they finally, and immediately, fulfill those obligations and use their authority, which they have historically refused to do. Schriro Decl. ¶¶ 17–24.

E. The Court should waive a security bond for this application.

SPLC also requests that the Court exercise its broad discretion to waive any security bond for issuance of the TRO. Federal Rule of Civil Procedure 65(c) provides that “[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined or restrained.” However, it is well settled that, “[t]he amount of security required is a matter for the discretion of the trial court; it may elect to require no security at all.” *Citizen's Alert Regarding Env't v. U.S. Dep't of Justice*, No. 95-CV-1702, 1995 WL 748246, at *12 n.10 (D.D.C. Dec. 8, 1995) (citation omitted). “Waiving the bond requirement is particularly appropriate where a plaintiff alleges the infringement of a fundamental constitutional right.” *Complete Angler, LLC v. City of Clearwater, Fla.*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009). To impose a financial condition on the vindication of a movant’s constitutional right may “impact negatively on the exercise of” those rights. *Smith v. Bd. of Election Comm'rs for City of Chicago*, 591 F. Supp. 70, 72 (N.D. Ill. 1984).

⁴ See Nat’l Immigrant Justice Ctr, *ICE Offices Involved in Detention Center Inspections*, <https://immigrantjustice.org/sites/immigrantjustice.org/files/images/T%26HR%20DHS%20flow%20chart%20linked%20version2.pdf>.

SPLC is a non-profit organization seeking to vindicate the constitutional rights of its indigent clients who are civilly detained. The possible loss that Defendants would suffer from a TRO requiring they comply with the Constitution and enforce their own detention standards is minimal. SPLC merely asks that Defendants comply with their constitutional obligations—in part, by enforcing various parts of the PBNDS requiring free legal phone calls, prohibiting limitations on legal communications, requiring competent scheduling, and requiring a sufficient ratio of phone or VTC equipment to detained persons. The relief SPLC seeks that is beyond the mere enforcement of the PBNDS also imposes a minimal administrative burden. Providing detained persons with documents through fax or email, for instance, at facilities where attorneys already communicate with staff through fax or email does not entail purchasing or designing any new communication systems. When the possible monetary loss caused by an injunction is minimal, waiver or a minimal bond is appropriate. *See, e.g., Simms v. District of Columbia*, 872 F. Supp. 2d 90, 107 (D.D.C. 2012) (“[T]he costs or damages sustained by the District would be modest...”).

F. The relief sought is tailored to the access barriers created by Defendants’ COVID-19 access restrictions

This Circuit has “long held that an injunction must be narrowly tailored to remedy the specific harm shown.” *Nebraska Dep’t of Health & Human Servs. v. Dep’t of Health & Human Servs.*, 435 F.3d 326, 330 (D.C. Cir. 2006). SPLC seeks relief that is particularly tailored to the specific access barriers and substantive due process violations at Defendants’ Facilities. SPLC has demonstrated that unreliable scheduling, delays, restrictive time limits, poor connectivity, lack of confidentiality in remote legal communications, and restrictions on legal document exchange obstruct its clients’ access to counsel and the courts. As a remedy, SPLC seeks more robust scheduling systems and staffing, the removal of time limits on communications,

maintenance of phones and VTC systems, the provision of private settings for confidential legal communications, and an ability to exchange necessary legal documents with clients through a reliable and effective method (e.g., fax or e-mail).

These remedies fit the violations narrowly. *See, e.g.*, Min. Order at 12–14, *Torres*, No. 5:18-CV-2604 (ECF No. 144) (finding free legal phone calls, 24-hour scheduling system, and document drop box appropriately tailored remedies to similar access barriers); *Innovation Law Lab*, 310 F. Supp. 3d at 1165 (issuing TRO requiring new phone lines be installed, that detained immigrants have expanded access to legal calls, and that staff resources be dedicated to accommodate increase in attorney visits); *McClendon v. City of Albuquerque*, 272 F. Supp. 2d 1250, 1260 (D.N.M. 2003) (enjoining jail from limiting the length of legal calls).

SPLC has also demonstrated that Defendants are violating its clients’ substantive due process rights to be free from punitive conditions by confining them in conditions that are worse than those in facilities where individuals with criminal convictions are held. The remedies SPLC seeks for this constitutional violation are also narrowly tailored. *See Basank v. Decker*, No. 20-CV-2518, 2020 WL 1481503, at *7 (S.D.N.Y. Mar. 26, 2020) (TRO releasing medically vulnerable persons from ICE detention); *Fraihat*, 2020 WL 1932570, at *25 (preliminary injunction ordering nationwide custody reviews of medically vulnerable persons in ICE detention); Mem. Op. at 33–37, *Mays v. Dart*, No. 1:20-CV-2134 (N.D. Ill. Apr. 9, 2020), ECF No. 47 (issuing TRO ordering various sanitation measures but declining to release detained persons in Cook County Jail during coronavirus pandemic); Mem. Op. at 27–29, *Banks v. Booth*, No. 1:20-CV-849 (D.D.C. Apr. 20, 2020), ECF No. 51 (issuing TRO ordering D.C. DOC provide various sanitation measures and adhere to social distancing protocols).

V. Conclusion

For the reasons set forth above, SPLC respectfully requests this Court enter a Temporary Restraining Order requiring Defendants to immediately implement the requested remedies.

Dated: May 7, 2020

Respectfully submitted,

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**Admitted Pro Hac Vice*

DECLARATION OF ARISTOTELES SANCHEZ MARTINEZ

I, Aristoteles Sanchez Martinez, declare the following is true to the best of my knowledge:

1. I am at least 18 years of age and am competent to sign this declaration. I am originally from Venezuela. I was in ICE custody from approximately September 2018 to April 16, 2020. I was transferred to Stewart Detention Center in Lumpkin, Georgia, on March 23, 2020, from the Houston Contract Detention Facility ("HCDF") in Houston, Texas. I had been at HCDF since about January 10, 2020. Before HCDF, I was at Stewart Detention Center ("Stewart"). Previously, I was at Folkston ICE Processing Center in Folkston, Georgia.
2. I am a named plaintiff in *Frailhat v. ICE*. I am also a petitioner in *Sanchez Martinez v. Donahue*. While I was detained at Stewart Detention Facility during the pandemic, my medical care continued to decline and I was very afraid, as my many medical conditions put me at a higher risk for contracting COVID-19. I faced many obstacles trying to speak to my attorneys in *Frailhat v. ICE* and *Sanchez-Martinez v. Donohue*.
3. I am 47 years old and have several medical conditions that make me vulnerable to COVID-19. I have Type II diabetes and hypertension, which both put me at a higher risk for contracting COVID-19. While I was in ICE custody, my hemoglobin A1C levels and sugar levels were dangerously high, at times at 9.7 and 345, respectively. I am recovering from a hernia repair surgery that occurred on or around March 11, 2020. The surgeon removed a large right flank hernia on my abdomen, which had grown substantially since being in ICE custody. I also have neuropathy, a bone spur on my left foot, Charcot foot, avascular necrosis, non-palpable pulses in lower extremities, and venous insufficiency.
4. When I was transferred from HCDF to Stewart on or about March 22, 2020, I was not given any reason for my transfer. Nor, to my understanding, was my attorney notified about the transfer. When I arrived at Stewart, I placed a collect call to my daughter from the shared telephones in my unit to ask her to let my *Frailhat* attorney know that they transferred me back to Stewart.
5. To my knowledge, the only options available for me to speak to my attorneys was by Skype call that my attorneys had to set up with the facility, or by telephone collect call using one of the telephones in my unit. In the almost four weeks that I was detained in Stewart during the pandemic, I only had two skype calls with my attorneys. My attorneys and I had to talk on the telephone in my unit and coordinate our next conversation to be placed on those phones.
6. My attorneys for the two cases explained to me that they would be paying for this call but that we could not treat this communication as a confidential legal call. They explained that

their phone numbers *should* be on a “do-not-monitor” list, but that ICE had not given them a written confirmation of this fact. So, it was difficult to speak about important and confidential information.

7. I also was very careful about what I shared during these telephone calls because I was not very comfortable speaking in the common area and surrounded by other detainees. I was also scared to be using the phone too often, because I knew that it was not cleaned, and it was used by many other detainees. Because we were not provided with our own additional cleaning supplies, I used to use the alcohol pad that the nurse gives me when I receive my insulin shot to wipe down the telephone.
8. I was never given instructions for how to ensure my attorneys’ phone numbers were on the do-not-monitor list. One time, towards the end of the Skype, my attorney asked the guard who came to take me back to my unit if there was a way to confirm this fact or make this happen. The guard said that “he could do it,” referring to me. I did not know of any process and the guard did not explain anything to me when he brought me back to my unit.
9. One of the days I had coordinated with my attorney to speak with her on the shared telephone, I could not call her until because my entire unit was placed on lockdown. I was locked inside my cell.
10. Until March 31, I was living in a dorm unit with approximately eighty (80) other men. I shared a cell with another detainee. The entire unit had eight telephones to share. We were regularly in close proximity to each other and did not have the ability to exercise any social distancing. I was also initially placed in a wheelchair that I could not move on my own and I relied on other people, including my cellmate, to help me move.
11. On Tuesday, March 31st, I was transferred to a separate dorm unit at Stewart. In that unit, I was living in a dorm with approximately twenty (20) other men. I was assigned a cell without any roommates. The unit had about nine telephones, at least one of them was broken. I usually used the same phone. Everyone in the unit would share a shower and eat our meals at the tables in the common area within 6 feet of each other.
12. Since the COVID-19 crisis started and throughout my time at Stewart, ICE did not make any changes to the cleaning schedule for our dorm. My unit was only cleaned by other detainees who did not seem to have adequate cleaning supplies. I never once saw a detainee or someone who works at Stewart cleaning the telephones. Nor were we provided with additional cleaning supplies to keep our dorm disinfected and sufficiently clean.

13. ICE maintained the same schedule for distribution of personal hygiene supplies. Every Thursday, we received one toilet paper roll, batteries, one small bar of body soap (for washing hands and showering), one bottle of body lotion, and one tube of toothpaste. When we would run out of these provisions before the end of the week, the only option was to buy additional supplies at the commissary.
14. Guards would often enter and exit our unit without masks. I was not given a mask until around the time of my last Skype call with my attorney. I was never provided with gloves. Rather, I saw one glove that a guard had just discarded, so I picked it up and used it for my own safety.
15. During my time in ICE detention, before the pandemic, I used to try and spend as much time as possible at the law library. But during the pandemic, I was scared to go there because I worried that it will not be cleaned.
16. Instead, to keep myself busy, I spent my time playing videogames in the common area of the unit. But, even there, I was worried for my life. Again, because we were not provided with additional cleaning supplies, I used to use the alcohol pad that the nurse gives me when I receive my insulin shot to wipe down the video console.

I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge.

Executed on May 6, 2020

A. S. SANCHEZ

DECLARATION OF BENJAMIN OSORIO

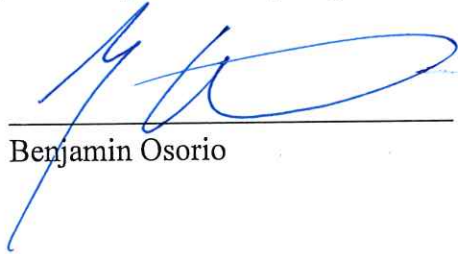
I, Benjamin Osorio, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. I am an attorney and a partner at Murray Osorio, PLLC.
2. I have represented individuals confined in immigrant detention centers across the country and currently represent a client detained at the Irwin County Detention Center ("Irwin") in Ocilla, Georgia.
3. I represent the Irwin client in her individual immigration case. Her final hearing was scheduled for April 23, 2020, but the hearing was cancelled after the Atlanta Immigration Court closed for several days when one of the staff was diagnosed with Covid-19. We are currently awaiting a rescheduled date for the hearing.
4. In preparation for the filing, I have conducted several video teleconference ("VTC") meetings with the client to prepare her, including on February 4 and 20, on March 18, and on April 8, 17, and 21 of 2020.
5. In all of these VTC legal visits, I have observed Irwin staff coming and going from the VTC room, compromising the confidentiality of the meeting. At times, guards have sat in the back of the VTC room while I have discussed case preparations with the client.
6. The presence of facility staff during VTC legal visits has impacted in my ability to speak freely with my client, caused delay in the preparation of her case due to delayed discussion of sensitive topics, and impeded on my ability to simply hear my client due to constant disruptions and background noise caused by the entry and exit of the staff.
7. I have had difficulty getting VTC legal visits arranged at Irwin. For example, on April 15, 2020, I requested a VTC legal visit for April 21 to finish preparing my client for her individual hearing scheduled for two days later, on April 23. Despite several emails to Irwin requesting the VTC appointment, I received no confirmation and was unaware if the meeting would be moving forward. Fortunately, my client's husband advised me on the morning of April 21 that the appointment had been confirmed to the client for 2 PM later that day. The failure to provide notice to immigration attorneys of when VTC appointments are scheduled makes it difficult to effectively communicate with my client and properly meet my ethical obligations to my client if I cannot count on having access to her.

8. Prior to Covid-19, I have met with clients at Irwin in-person to prepare the clients for their final hearings. Because of a number of factors, including local and state directives on social distancing, ICE's requirements for attorneys to procure personal protective equipment (which is in short supply), and in order to limit exposure, I proceeded with preparation for this client's individual hearing via VTC.

I declare under penalty of perjury and under the laws of the United States, pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, memory, and belief.

Executed on the 28th day of April, in the year 2020, in the city of Fairfax, Virginia.



Benjamin Osorio

DECLARATION OF DR. DORA SCHIRO

I, Dora Schiro, declare as follows:

I. Background and Qualifications

1. I am a career public servant who has served as an executive-level administrator, policy maker, and homeland security advisor. I was appointed to lead a number of city and state agencies and a federal office.
2. I was the Commissioner of the Connecticut Department of Emergency Services and Public Protection consisting of six state agencies including the Connecticut State Police and Homeland Security and Emergency Management, from 2014 through 2018. I served concurrently as Connecticut's Homeland Security Advisor from 2016 through 2018. My Department of Homeland Security (DHS) security clearance was Top Secret. During my tenure as Director, we grappled with Ebola and through our Division of Emergency Management and Homeland Security, developed a protocol specifically for the state's first responders. Additionally, as the state's Homeland Security Advisor, I interfaced with many of the DHS offices and agencies on an ongoing basis including the Federal Emergency Management Agency with which we had an active and ongoing partnership.
3. I was Senior Advisor to DHS Secretary Janet Napolitano on U.S. Immigration and Customs Enforcement (ICE) Detention and Removal, and the founding Director of the ICE Office of Detention Policy and Planning in 2009. During my tenure, I authored the report *Immigration Detention Overview and Recommendations*, DHS' template for immigration detention reform. My report included a number of recommendations specific to risk assessments, the continuum of control, pre-release planning, alternatives to detention, and healthcare. Specific to healthcare, I found the assessment, treatment, and management of pandemic and contagious diseases was inconsistent across Division of Immigration Health Services (DIHS)-staffed and non-dedicated facilities and recommended improvements should be made to ensure that all facilities are capable of managing large-scale outbreaks. Access to legal information, another mandated service, was often treated as optional and had to be addressed. Accountability, the operating framework and process for decision-making, was not but should the means by which ICE would provide oversight, pursue improvement, and achieve transparency. I regret to say these conditions continue to affect the agency's performance today.
4. I was the Commissioner of two city jail systems: the St. Louis City Division of Corrections, which included the St. Louis Police Department Prison Intake Facility, from 2001 to 2003; and the New York City (NYC) Department of Correction from 2009 to 2014. I was also the Warden of the Medium Security Institution, a jail in St. Louis City, Missouri, from

1989 to 1993. During an earlier appointment to the NYC Department of Correction as Assistant Commissioner for Programs Services from 1985 to 1989, I was responsible for most the mandated activities including the operation of all the jails' law libraries.

5. I was the Director of two state correctional systems: the Missouri Department of Corrections, which encompasses state prisons, probation, and parole, from 1993 to 2001; and the Arizona Department of Corrections, which encompasses state prisons and parole, from 2003 to 2009. During my tenure as Director of the Arizona Department of Corrections, the department was the first correctional system to be selected Winner of the Innovations in American Government awards program, for a prison-based reform that we named Parallel Universe, pre-release preparation in which all inmates participated from the first to the last day of their incarceration guided by norms and values closely mirroring those of the community. As Director of the Missouri Department of Corrections, I also served on the state's Sentencing Commission.
6. I was a member of the adjunct faculties of University of Missouri-St. Louis Department of Criminology from 1990 to 1998, St. Louis University School of Law from 2000 to 2002, and Arizona State University Sandra Day O'Connor School of Law from 2005 to 2008, during which time I taught graduate-level Criminology and Correctional Law courses and led Sentencing Seminars.
7. I have served continuously on the Women's Refugee Commission since 2012, and the American Bar Association (ABA) Commission on Immigration since 2014.
8. I am knowledgeable about both the American Correction Association and ICE Performance-Based and National Detention Standards, including Medical Care, Disability Identification, Assessment and Accommodations, and Classification Systems, which is premised on objective, evidence-based risk assessments and the least restrictive housing and community-based assignments consistent with those assessments. I have also participated in the development of ABA professional standards for both correctional systems and ICE detention facilities. I am familiar with the California Board of State and Community Corrections Title 15 Minimum Standards for Local Detention Facilities.
9. I am knowledgeable about the operation of civil detention and criminal pre-trial and sentenced correctional facilities, and the individuals in the custody of both systems.
10. I have served as a corrections expert for the California Department of Justice, Disability Rights California, and the Hampton County, Massachusetts Sheriff's Department. I am currently engaged by the California Department of Justice, the Southern Poverty Law

Center, the American Civil Liberties Union, Human Rights First, and the St. Louis University School of Law Legal Clinics.

11. A complete and correct resume, which includes a list of my publications from the last ten years, is attached as Appendix A.
12. In the previous four years, I have testified as an expert at trial or by deposition in the following case: *Endicott v. Hurley*, No. 2:14-cv-107 DDN (E.D. Mo.).
13. The Southern Poverty Law Center (SPLC) represents immigration detainees assigned by ICE to the Pine Prairie ICE Processing Center (Pine Prairie facility) and the LaSalle ICE Processing Center (LaSalle facility) in Louisiana, and the Stewart County Detention Center (Stewart facility) and the Irwin County Detention Center (Irwin facility) in Georgia. The Pine Prairie ICE facility, the LaSalle facility, and the Stewart facility are dedicated immigration facilities; the Irwin facility is not.¹ A dedicated facility may house only immigration detainees whereas a non-dedicated facility may house one or more correctional populations in addition to ICE detainees.
14. The Pine Prairie facility, the LaSalle facility, and the Stewart facility must comply with ICE 2011 Performance-based National Detention Standards (PBNDS)(revised 2016).² The Irwin facility must comply with ICE 2008 Performance-based National Detention Standards.³ These detention standards set forth minimum requirements for the care of persons in ICE custody.
15. Access to Counsel requirements are enumerated in five detention standards.⁴ They are Standard 6.4 Law Libraries and Legal Material⁵ and Standard 6.5 Legal Rights Group Presentations⁶ each one in its entirety, and relevant portions of Standard 5.1

¹ Facility Inspections, [ICE Dedicated Non-Dedicated Facility List \(4.6.20\)](https://www.ice.gov/facility-inspections), <https://www.ice.gov/facility-inspections>, [hereinafter ICE Facility Inspections].

² ICE 2011 Performance-based National Detention Standards (rev. Dec. 2016, last reviewed/updated Dec. 18, 2019), <https://www.ice.gov/detention-standards/2011> [hereinafter 2011 PBNDS].

³ *Id.* ICE 2008 Performance-based National Detention Standards (last reviewed/updated Dec. 18, 2019), <https://www.ice.gov/detention-standards/2008>, [hereinafter 2008 PBNDS].

⁴ ICE Detention Standards, <https://www.ice.gov/factsheets/facilities-pbnbs>

⁵ ICE 2008 PBNDS, Law Library and Legal Research Material, https://www.ice.gov/doclib/dro/detention-standards/pdf/law_libraries_and_legal_material.pdf; ICE 2011 PBNDS, Law Library and Legal Research Material, <https://www.ice.gov/doclib/detention-standards/2011/6-3.pdf> [hereinafter, collectively, “PBNDS Law Library and Legal Research”].

⁶ ICE 2008 PBNDS, Legal Rights Group Presentation, https://www.ice.gov/doclib/dro/detention-standards/pdf/law_libraries_and_legal_material.pdf; ICE 2011 PBNDS, Legal Rights Group Presentation, <https://www.ice.gov/doclib/detention-standards/2011/6-4.pdf>. [hereinafter, collectively, “PBNDS Legal Rights Group Presentation”].

Correspondence and Other Mail,⁷ Standard 5.6 Telephone Access,⁸ and Standard 5.7 Visitation.⁹ This analysis is based upon four of the five standards, Correspondence and Other Mail, Telephone Access, Visitation, and Law Libraries and Legal Material. Consideration of Law Libraries and Legal Material is included because it also directly addresses the issues at hand. Also considered are revisions adopted by ICE in 2016, and applicable to all facilities, to fortify its commitment and rectify compliance issues impacting limited English proficiency detainees, detainees with disabilities, and detainees in special housing units.¹⁰ Performance indicators for each of these detention standards are provided as Appendix B.

16. There are few substantive differences between 2008 and 2011 Performance-based National Detention Standards (rev. 2016) concerning Access to Counsel.¹¹ The 2016 Revisions are applicable to all facilities.¹² This analysis is based on the 2011 Performance-based National Detention Standards (rev. 2016).

II. DHS and ICE Have Historically Failed to Adequately Monitor and Oversee Its Detention Facilities

17. As detailed in Section V below, DHS and ICE are currently failing to ensure that the individuals in its custody have crucially needed access to lawyers during the COVID-19 pandemic. To provide historical context for this current failure, I briefly trace in this section ICE's long-entrenched abdication of its oversight function.
18. ICE monitors immigration detention facility activity and operations by several means to ensure compliance and to address deficiencies. They include on-site agency monitors at larger facilities; an independent office, the Office of Detention Oversight, within ICE but outside of Enforcement and Removal Operations (ERO) to conduct independent reviews; and a contract with the Nakamoto Group Inc. to make annual inspections.

⁷ *Id.* ICE 2008 PBNDS, Correspondence and Other Mail, https://www.ice.gov/doclib/dro/detention-standards/pdf/correspondence_and_other_mail.pdf; ICE 2011 PBNDS, Correspondence and Other Mail, <https://www.ice.gov/doclib/detention-standards/2011/5-1.pdf> [hereinafter, collectively, "PBNDS Correspondence and Other Mail"].

⁸ *Id.* ICE 2008 PBNDS, Telephone Access, https://www.ice.gov/doclib/dro/detention-standards/pdf/telephone_access.pdf; ICE 2011 PBNDS, Telephone Access, <https://www.ice.gov/doclib/detention-standards/2011/5-6.pdf> [hereinafter, collectively, "PBNDS Telephone Access"].

⁹ ICE 2008 PBNDS, Visitation, <https://www.ice.gov/doclib/dro/detention-standards/pdf/visitation.pdf>; ICE 2011 PBNDS, Visitation, <https://www.ice.gov/doclib/detention-standards/2011/5-7.pdf> [hereinafter, collectively, "PBNDS Visitation"].

¹⁰ ICE Detention Standards, <https://www.ice.gov/factsheets/facilities-pbnbs>, 2016 Revisions, Summary of Revisions to the ICE Performance-Based National Detention Standards, December 2016, (last reviewed/updated Dec. 18, 2019), <https://www.ice.gov/detention-standards/2011> [hereinafter 2016 Revisions].

¹¹ 2008 PBNDS, *supra* note 3, and 2011 PBNDS, *supra*, note 2 [hereinafter PBNDS].

¹² 2016 Revisions, *supra* note 15.

19. These efforts to achieve and maintain compliance, as implemented, have failed to realize their intended outcomes – accountability, transparency, and continuous improvement.
20. The U.S. Office of Government Accountability (GAO) has made several recent studies of ICE detention operations. The GAO identified a number of reoccurring impediments to realizing these minimum requirements including its ongoing inability to assess cost, failure to adopt and assess performance measures across facilities and over time, continued use of multiple detention standards, and an apparent lack of interest in detainee complaints and concerns.
- In October 2014, the Government Accountability Office (GAO) issued GAO-15-153, IMMIGRATION DETENTION, Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards.¹³ The GAO assessed the two different methods ICE used to collect and access data on detention costs and determined neither method yielded complete or correct data for managing detention costs across facilities and facility types. The GAO also evaluated the three different sets of detention standards that ICE employed, each with its own performance indicators and methodology, and concluded this practice further undercut its efforts towards a uniformly effective and efficient system.
 - In February 2016, the GAO issued GAO-16-231, IMMIGRATION DETENTION, Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care.¹⁴ The GAO determined similar practices impeded ICE Health Service Corp (IHSC) efforts to collect information about on-site and off-site health care services and to assess their utilization. ICE relied incorrectly on facility-specific, year-end decision-making to improve a nationwide health care system over a period of years. IHSC also neglected to conduct trend analyses of key performance indicators including detainee complaints.
 - In May 2016, the GAO issued GAO-16-231, IMMIGRATION DETENTION, Additional Actions Needed to Strengthen DHS Management of Short-term Holding Facilities.¹⁵ CBP and ICE both operate short-term holding facilities and neither had a mechanism to determine how many detainees exceeded the agencies' respective facility maximum lengths of stay. The GAO pointed out this problem was compounded by

¹³ GAO-15-153, Immigration Detention, Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards at <https://www.gao.gov/products/GAO-15-153>.

¹⁴ GAO-16-231, IMMIGRATION DETENTION, Additional Actions Needed to Strengthen Management and Oversight of Detainee Medical Care at <https://www.gao.gov/assets/680/675484.pdf>.

¹⁵ GAO-16-231, IMMIGRATION DETENTION, Additional Actions Needed to Strengthen DHS Management of Short-term Holding Facilities, May 2016, at <https://www.gao.gov/assets/680/677484.pdf>.

delays in both agencies' recording of "book-ins" and "book-outs." The GAO also considered the various mechanisms DHS used to elicit and address detainees' complaints and concluded none clearly identified the facilities about which the complaints had been made. The failure to collect timely and complete information about both these activities impacted CBP and ICE assessments of bench (versus bed) utilization¹⁶ and their compliance with their respective detention standards.¹⁷

21. The Department of Homeland Security Office of the Inspector General (DHS OIG) also studied DHS' oversight of ICE and reported on ICE detention operations. Of special note are recent reports with findings and recommendations concerning questionable procurement practices, faulty facility inspections and monitoring, continuing non-compliance with detention standards, and repeated failure to enforce contract requirements.

- In February 2018, the DHS OIG issued *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services*.¹⁸ The OIG determined ICE improperly modified an existing IGSA with the City of Eloy, Arizona to establish a 2,400-bed detention facility in Dilley, Texas, thereby increasing taxpayer cost by \$438,00 annually in fees and another undetermined sum annually in detention services. ICE disagreed with OIG's recommendation to discontinue modifying Eloy's IGSA to procure detention space in Dilley, Texas. The IGSA remains in place today.
- In June 2018, the DHS OIG issued *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*.¹⁹ This report addressed ICE's use of two inspection types, annual inspections, and onsite monitoring, to assess detention facilities' compliance with PBNDS. The OIG determined neither the inspections, a combination of private and public sector efforts, nor onsite agency monitoring, were implemented as intended. As a result, ICE failed to achieve compliance with detention standards and to address the underlying deficiencies. The OIG concluded although the practices ICE adopted mitigated some deficiencies, they did not yield the intended oversight or systematic improvements in detention conditions, some of which had been languishing for years. The OIG made five recommendations and ICE concurred with all of them. Fifteen months later, in

¹⁶ Bench or bed capacity is a function of numbers admitted and released within a 24-hour day and each person's length of stay.

¹⁷ Generally, CBP does not keep anyone in its custody for more than 72 hours. ICE designates some of its detention facilities as suitable for detention less than 72 hours and all the rest, for detention greater than 72 hours.

¹⁸ DHS OIG, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services*, February 2018, at <https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf>.

¹⁹ DHS OIG, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, June 2018, at <https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf>.

September 2019, Tae Johnson, Assistant Director for Custody Management, ICE Enforcement and Removal Operations, appeared before the Committee on Homeland Security, Subcommittee on Oversight, Management, and Accountability, regarding Oversight of Detention Facilities.²⁰ He reported, responding to the OIG findings, that ICE was reevaluating its current inspection practices and planned to modify some of its requirements. He stated ERO had also begun to monitor Nakamoto, the vendor with which it contracted to monitor detention facilities.

- In January 2019, the DHS OIG issued *ICE Does Not Fully Use Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*.²¹ At the time of that study, ICE contracted for 206 detention facilities. The OIG focused on 106 facilities which, when combined, received in excess of \$3 billion the prior year to detain removable aliens. Although ICE had a system in place to manage and oversee detention contracts, just 28 of the 106 contracts included the Quality Assurance Surveillance Plan (QASP) provision, which would allow ICE to impose financial penalties to ensure facilities met performance standards. The OIG determined ICE imposed financial penalties on only two occasions despite documenting thousands of instances of facilities' failures to comply with detention standards. Instead, ICE issued waivers, exempting facilities with deficient conditions, from complying with certain standards. The OIG discovered ICE also failed to generate written instruction to govern the waiver process, thereby enabling staff at HQ and in the field to grant waivers without clear authority to do so.
- Also, in January 2019, the DHS OIG issued *DHS Needs to Improve the Process for Identifying Acquisition Planning Capability Needs*.²² DHS acquisition planning had been an area of weakness since the department's inception. Efforts to improve included a process to guide identification of agency capabilities, gaps, and opportunities, and adding controls to prevent its circumvention by the agencies. DHS was uneven in its enforcement, however; failing to hold the agencies accountable for not following instructions, failing to document those shortfalls, and failing to improve upon the guidance it had previously promulgated.

²⁰ Statement of Tae Johnson, Asst. Director for Custody Management, ICE Enforcement and Removal Operations, regarding Oversight of Detention Facilities, before the Committee on Homeland Security, Subcommittee on Oversight, Management, and Accountability, September 2019, at <https://www.ice.gov/sites/default/files/documents/Testimony/2019/190926johnson.pdf>.

²¹ DHS OIG, *ICE Does Not Fully USE Contracting Tools to Hold Detention Facility Contractors Accountable for Failing to Meet Performance Standards*, January 2019, at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>.

²² DHS OIG, *DHS Needs to Improve the Process for Identifying Acquisition Planning Capability Needs*, January 2019, at <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-19-Jan19.pdf>.

22. Most recently, in the wake of the pandemic, ICE suspended all facility annual inspections by the Nakamoto Group, Inc. for 30 days. Despite this vendor's documented deficiencies, in a time of heightened uncertainty, a marked increase in complaints by detainees, family members, attorneys and other advocates about facilities' non-compliance with detention standards, and less access by detainees to facility staff for assistance, additional oversight could be beneficial and should be resumed.

23. These failures of oversight extend to the four facilities at issue in this litigation.

- The Irwin County Detention Center,²³ It was last inspected by the Nakamoto Group, Inc. (NGI) on June 13, 2019.²⁴ Based on my experience having reviewed hundreds of detention files over the years, detainees filed far more grievances at this facility than at others, with a spike more than twice its elevated rate during the third quarter of 2019; NGI provided no information about those grievances. NGI identified eight deficiencies in five areas, five of which were reoccurring. NGI also provided little information about the deficiencies. NGI determined the facility's performance was "Acceptable."
- The Stewart County Detention Center²⁵ was last inspected by the Nakamoto Group, Inc. (NGI) on May 9, 2019.²⁶ The inspection forms that NGI used to conduct this inspection provided only aggregated information. NGI identified four deficiencies, one of which was reoccurring. NGI provided little information about the deficiencies. NGI determined the facility's performance "Meets Standards."
- The LaSalle ICE Processing Center²⁷ was last inspected by the Nakamoto Group, Inc. (NGI) on September 26, 2019.²⁸ NGI identified one unspecified deficiency concerning the standard, Law Library and Legal Material. NGI did not provide any information about this deficiency. NGI determined the facility's performance was "Acceptable."

²³ The Irwin facility, capacity 1,201 beds, houses U.S. Marshal Service (USMS) prisoners, ICE detainees, and Irwin County inmates. Fiscal Year 2020 to date, the ICE average daily population is 754 male and female detainees. ICE accesses the county-owned and -operated facility through the USMS agreement with Irwin County. The facility has no accreditations. It is operated by a private company called LaSalle Corrections.

²⁴ ICE Facility Inspections, Annual Inspection of the Irwin County Detention Center, June 13, 2019, <https://www.ice.gov/facility-inspections>.

²⁵ The Stewart facility, capacity 1,752 beds, is owned and operated by CoreCivic, formerly Corrections Corporation of America. Fiscal Year 2020 to date, the ICE average daily population is 1,550 male detainees. Stewart County contracts with the CoreCivic and ICE contracts with the county by means of an intergovernmental service agreement. ICE is the only occupant.

²⁶ ICE Facility Inspections, Annual Inspection of the Stewart Detention Center, May 9, 2019, <https://www.ice.gov/facility-inspections>.

²⁷ The LaSalle facility, capacity 1,660 beds, is owned and operated by the Geo Group Inc. (GEO). Fiscal Year 2020 to date, the ICE average daily population is 1,221 male and female detainees. The LaSalle Economic Development Group (EDG) has an intergovernmental service agreement (IGSA) with GEO, and ICE has an IGSA with the EDG. ICE is the only occupant.

²⁸ ICE Facility Inspections, Annual Inspection of the LaSalle ICE Processing Center, September 26, 2019, <https://www.ice.gov/facility-inspections>.

- The Pine Prairie ICE Processing Center²⁹ was last inspected by the Nakamoto Group, Inc. (NGI) on April 25, 2019.³⁰ At the time of that inspection, the facility was “cohorting” over 500 detainees following an outbreak of mumps among the population. NGI did not indicate whether mandatory services were interrupted during the quarantine and if the facility took any measures to mediate the impact of the quarantine on detainees’ access to mandated services including access to counsel. NGI identified two deficiencies about which no information was provided. Also missing on-line from the file was the accompanying Detention Review Summary Form or the Facility Significant Incident Summary report. NGI determined its performance was “Acceptable.”

24. The examples of failed monitoring described above are not an anomaly. In 2009, DHS Secretary Napolitano appointed me Sr. Advisor on Immigration Detention and Removal Operations and directed that I make a comprehensive review and evaluation of the U.S. Immigration and Custom Enforcement system of immigration detention. Top among the recommendations in the report that followed, I wrote ICE should establish a system of immigration detention with the requisite management tools and informational systems to detain, or supervise in the community, the persons in its custody consistent with their standing as civil detainees held pursuant to civil immigration laws. To fulfill this obligation, ICE must also provide federal oversight of key detention operations to track performance and outcomes, commit to continuous improvement, and hold the agency and its contractors accountable.³¹

III. DHS & ICE Have a Continuing Duty to Ensure Access to Counsel During COVID-19

25. The mission of the Department of Homeland Security (DHS) is emergency planning and preparedness for all manner of incursions, natural and man-made, foreign and domestic. Realization of this mandate helps to ensure that as a nation, we are ready to respond, informed by the evidence and faithful to the law.

26. The DHS was formed in November 2002. Since its inception, the United States and the world have encountered several pandemic diseases: an influenza pandemic (H1N1) in 2009, Ebola, also a viral infection in 2014, and the coronavirus (COVID-19) in 2020. In

²⁹ The Pine Prairie facility, capacity 700 beds, is owned and operated by the GEO Group Inc. (GEO). Fiscal Year 2020 to date, the ICE average daily population is 641 male detainees. ICE contracts directly from GEO. ICE is the only occupant.

³⁰ ICE Facility Inspections, Annual Inspection of the Pine Prairie ICE Processing Center, April 25, 2019, <https://www.ice.gov/facility-inspections>.

³¹ Dora Schriro, DHS Immigration and Customs Enforcement, Immigration Detention Overview and Recommendations, Oct. 6, 2009, <https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf>.

the United States, the Department of Homeland Security along with the Department of Health and Human Services are the primary federal agencies whose responsibility it is plan, prepare and respond.

27. In detention facilities, infectious and contagious diseases such as mumps, measles, and chicken pox, reoccur periodically. Usually, the consequences are not severe and there are vaccines for some/all of them. Despite the regularity with which these outbreaks occur, ICE has not improved its practices, and is still prone to quarantining large groups of detainees, failing to screen and separate detainees who may be at risk by more measured means, and repeatedly disrupting detainees' access to counsel.
28. DHS's mandate to plan for emergencies including medical emergencies such as N1H1, Ebola and the coronavirus pandemics, and ICE's custodial obligations, require ensuring that its COVID-19 response protects detained individuals' ready access to their lawyers. Yet, as detailed herein, both DHS and ICE are failing to ensure that people have access to lawyers during this crucial time.
29. COVID-19 is a highly infectious and deadly disease. There is no vaccine to prevent transmission, and there is no cure for COVID-19 today.³² The likelihood of recurrence is great.³³
30. As of May 4, there were 3,529,408 confirmed cases of COVID-19 resulting in 248,025 deaths worldwide. The United States accounted for 1,194,145 confirmed cases and 68,797 deaths, more than any other country.³⁴ The states of Louisiana and Georgia have been severely impacted as well. There have been 29,673 confirmed cases and 1,991 deaths in Louisiana including the Evangeline Parish where the Pine Prairie ICE Processing Center (Pine Prairie facility) is located and reported 60 confirmed cases and one death, and the LaSalle Parish where the LaSalle ICE Processing Center (LaSalle facility) is located and reported 27 confirmed cases. In Georgia, there have been 29,145 confirmed cases and 1,207 deaths including Stewart County where the Stewart County Detention Center (Stewart facility) is located and reported 25 confirmed cases, Irwin County where the Irwin County Detention Center (Irwin facility) is located and reported 18 positive cases and one death.³⁵ ICE detainees account nationwide for 606 confirmed cases including the 25 people held at

³² *Coronavirus Disease 2019 (COVID-19): Situation Summary*, CDC, (LAST UPDATED APR. 26, 2020, 5:59PM), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>.

³³ Ed Yong, *How the Pandemic Will End*, ATLANTIC (Mar. 25, 2020), <https://www.theatlantic.com/health/archive/2020/03/how-will-coronavirus-end/608719/>.

³⁴ Coronavirus (COVID-19) pandemic, May 4, 2020, at 1:47 PM, <https://www.bing.com/search?q=pa+map+of+covid+19+cases+by+county&form=ANSPH1&refig=0afa3913a0be4a0fad9408b8f9276010&sp=2&q=SC&pq=pa+map+of+covid-19+casse&sk=PRE51SC1&sc=2-24&cvid=0afa3913a0be4a0fad9408b8f9276010> [hereinafter COVID-19 cases].

³⁵ *Id.*

Pine Prairie facility, and 10 people held at the LaSalle facility in Louisiana, and 11 people held at the Stewart facility and 2 people held at the Irwin facility in Georgia.³⁶ An additional 39 confirmed cases represent ICE employees assigned to detention facilities including 2 staff members assigned to the Stewart facility in Georgia.³⁷ ICE does not report the status of detention staff employed by the facilities.

31. The lethal and highly infectious nature of COVID-19 makes it even more important that DHS and ICE ensure individuals in detention can reliably and adequately communicate with lawyers.

32. For example, at each of the facilities at issue, immigration proceedings are ongoing.³⁸ Access to immigration lawyers is not only important for purposes of the removal determination itself, but immigration attorneys may be able to obtain their clients' release on bond or parole—especially given the dangers of detention during COVID-19. It is therefore incumbent on detention officials to ensure that detained people can freely communicate with their attorneys (and their attorneys' agents) during this pandemic.

33. Moreover, ready access to attorneys during COVID-19 is crucial for ensuring that detained persons' constitutional right to adequate medical care and statutory rights to disability accommodations are respected during this pandemic. Across the country, many detained persons are filing actions related to inadequate medical care and poor conditions during the COVID-19 pandemic. DHS and ICE are obligated to ensure that detained persons can communicate with lawyers concerning their conditions of confinement and are not impeded from accessing courts to vindicate their constitutional and statutory rights.

IV. Consistent with a Long History of Oversight Failures, DHS and ICE Are Failing to Ensure Access to Counsel at the Four Facilities During COVID-19.

34. As detailed below, DHS and ICE are failing to ensure that people in their custody can adequately and reliably communicate with attorneys during the COVID-19 pandemic, including at the four facilities at issue.

35. To date, DHS and ICE have not issued any comprehensive guidance or mandate to ensure that attorney access is not materially impeded during the COVID-19 pandemic. I first outline ICE's inadequate response to COVID-19 as it relates to attorney communications.

³⁶ ICE Guidance on COVID-19, Confirmed Cases, last updated May 4, 2020 at 5:30PM.

³⁷ *Id.*

³⁸ U.S. Department of Justice, Executive Office for Immigration Review, EOIR Operational Status During Coronavirus Pandemic, (last reviewed May 4, 2020), <https://www.justice.gov/eoir/eoir-operational-status-during-coronavirus-pandemic>.

I then explain how, as a direct consequence, the four facilities at issue here fail to ensure adequate and reliable attorney communications for those in its custody.

36. To date, ICE has issued three directives of consequence concerning access to counsel and COVID-19. None of them is sufficient and, critically, none of them unequivocally mandates that detention facilities make crucially needed modifications to ensure that detained persons can adequately and reliably communicate with attorneys.
37. The ICE Health Services (IHSC) issued the first of the three directives, IHSC Interim Reference Sheet on 2019-Novel Coronavirus (COVID-19), on March 6, 2020.³⁹ It did not concern access to counsel per se; however, the agency's approach to ascertaining whether symptomatic and monosymptomatic individuals were infected with the virus primarily by means of "cohorting" large numbers of detainees together for days had a profound impact on their health and their access to counsel.
38. ICE issued the second of three directives, Memorandum on Coronavirus Disease 2019 (COVID-19), Action Plan, Revision 1, on March 27, 2020.⁴⁰ Its stated goal was to ensure a unified response but that was not the case. The Memorandum is applicable only to ICE's 42 dedicated facilities therefore, it applies to the Stewart, LaSalle and Pine Prairie facilities and not to the Irwin facility.⁴¹ With regards to the remaining 191 non-dedicated facilities, ICE deferred to local, state, tribal, territorial and federal public health authorities, recommending the actions contained in this memo be considered best practices.⁴² Its brief treatment of only some of the issues relevant to access to counsel failed to provide crucially needed mandates for all detention centers. The affirmation, "Detainee access to legal representatives remains a paramount requirement..." was undercut mid-sentence with the qualification, "... and should be accommodated to the *maximum extent practicable*,"⁴³ language that signals individual detention facilities may continue to do as they please without fear of any consequences on their underlying contracts with ICE.
39. The Memorandum's brief treatment of other issues key to access to counsel failed to provide crucially needed mandates for all detention centers in the following ways.

³⁹ ICE Health Service Corps, Interim Reference Sheet On 2019-Novel Coronavirus (COVID-19) (Mar. 6, 2020) [hereinafter IHSC Interim Reference Sheet].

⁴⁰ ICE Enforcement and Removal Operations, *Memorandum on Coronavirus Disease 2019 (COVID-19) Action Plan, Revision 1*, ICE (Mar. 27, 2020), <https://www.ice.gov/doclib/coronavirus/attF.pdf> [hereinafter March 27 ICE Memorandum].

⁴¹ A dedicated facility is an immigration detention center that houses only ICE detainees. A non-dedicated facility hosts more than one confined population. ICE currently utilizes 233 facilities to detain persons in its custody of which 42 are dedicated and 191 are non-dedicated. IHSC staffs 21 of the 42 dedicated detention facilities.

⁴² ICE Facilities List, Facility Inspections, *supra* note 1.

⁴³ March 27 ICE Memorandum, *supra* note 40.

- ICE directed that facilities shall afford indigent detainees the same access and related privileges as are other detainees including the ability to make calls to the ICE-provided list of free legal service providers and consulates at no charge to the detainee or receiving party.⁴⁴ ICE did not require facilities to submit a plan with a timeline or to report progress.
- ICE directed that legal visitation must continue unless determined to pose a risk to the safety and security of the facility.⁴⁵ These are subjective terms for which ICE did not provide clear definitions or require field office review and opportunity for appeal.
- ICE stated that attorneys should be offered non-contact visitation (e.g., Skype or teleconference) first to limit exposures, but stipulated in-person contact visits should be permitted if determined essential by the legal representative.⁴⁶ ICE added that the ultimate legal visit approving authority lies with the warden or facility administrator, however; in which case the facility should notify the field office of any denied visit at the earliest opportunity.⁴⁷ ICE delegated its decision-making entirely to the facilities without any provision to review facility denials of attorneys' essential in-person meetings with clients.
- ICE directed that modified operations should be implemented to maximize social distancing in facilities "as much as practicable." Administrators should consider staggered mealtimes and recreation to limit congregate gatherings.⁴⁸ ICE provided no statement affirming that Law Library access is mandated, legal mail must be delivered timely without first being searched, document exchange must be facilitated, facsimiles and emails accepted, notarizing and making copies of documents must remain readily available, and scheduling of confidential phone calls and video visitation and including those utilizing interpreters must continue and without delay.

40. ICE issued the third of three directives, COVID-19 Pandemic Response Requirements, Version 1.0, on April 10, 2020.⁴⁹ The Pandemic Response Requirements (PPR) is the first communication from ICE to require all detention facilities comply with CDC guidance and which includes CDC recommendations about access to counsel, but not all of which ICE incorporated in its requirements. The PPR also directs all detention facilities comply with both the provisions of their relevant ICE contract or agreement and the detention standards applicable to their facility, already longstanding obligations. Additionally, ICE directs

⁴⁴ *Id.*, p. 2.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*, p. 6.

⁴⁹ ICE, ERO. Pandemic Response Requirements [hereinafter ERO COVID-19 PPR].

dedicated facilities must continue to comply with its March 27 Memorandum to Detention Wardens and Superintendents and subsequent updates.

41. ICE Pandemic Response Requirements (PRR) contain critical enforcement tools that are required – its detention standards, facility contracts, and pandemic instruction – to provide the detained population with the access to counsel it is owed, and that is precisely the problem. The PRR identifies a number of crucially needed modifications in a number of areas *including* access to counsel—such as leveraging technology and facilitating telephonic appointments— and still, it fails to expressly mandate that these modifications be implemented. Instead, the PRR merely states over and over that these modifications “may” be implemented to the extent practicable.
42. The Pandemic Response Requirements suggest several ways to enhance legal visits. Nevertheless, the PRR is highly unlikely to rectify longstanding issues affecting access to counsel. Since its release, impediments to access have worsened for attorneys and their clients. These Requirements, as were those in the previous Memorandum, are merely requests.
43. ICE directed that during suspended (social) or modified (legal) visitation programs, facilities should provide access to virtual visitation options where available. When not possible, all visitors shall be screened on entry for symptoms of COVID-19 and temperature checks performed, when possible.⁵⁰
44. ICE recommended facilities extend law library hours of operation and stagger detainee access to reduce social distancing.⁵¹
45. ICE added that it continues to explore opportunities to enhance attorney access while legal visits are impacted. For facilities at which immigration hearings are conducted or where detainees are otherwise held who have cases pending immigration proceedings ICE indicated this may include several promising practices:
 - Adding all immigration attorneys of record to the Talton Pro-bono platform.
 - Requiring facilities to establish a process for detainees/immigration attorneys to schedule appointments and facilitate the calls.
 - Leveraging technology (e.g., tablets, smartphones) to facilitate attorney/client communication.

⁵⁰ *Id.*, p. 12.

⁵¹ *Id.*, p. 13.

- Working with various detention contractors and telephone service providers to ensure all detainees receive some number of free calls per week.⁵²

46. ICE did not commit to adopting any of the improvements. ICE did not indicate whether it would require a requisite level of effort by the facilities and field offices to enhance visitation at any location. It did indicate whether Headquarters would monitor to assess its impact and intervene as needed.

47. The U.S. Centers for Disease Control and Infection (CDC) issued Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities on March 23, 2020.⁵³ The CDC provided interim guidance concerning operational preparedness, prevention, and management, to ensure continuation of essential public services and protection of the health and safety of persons in custody and staff.⁵⁴ ICE incorporated portions of the CDC guidelines concerning access to counsel in its March 27 Memorandum and April 10 Requirements.

48. Missing from the documents issued by ICE is CDC instruction intended to improve communication and promote collaboration and that it is applicable to access to counsel:

- *Communication and Coordination.* Develop information-sharing with partners. Create and test communication plans to disseminate critical information to detained persons, staff, contractors, vendors, and visitors as the pandemic progresses. Communicate with the public about any changes to facility operations, including visitation.
- *Coordination with court officials.* Identify any lawful alternatives to in-person court appearances, such as virtual court, as a social distancing measure to reduce the risk of COVID-19 transmission. While confirmation of suspected cases are pending confirmation or upon confirmation, when possible, arrange lawful alternatives to in-person court appearances.
- *Prevention practices for visitors.* If possible, communicate with potential visitors to discourage contact visits in the interest of their health and others. Perform verbal screening and temperature check for all visitors on entry. Provide alcohol-based hand sanitizer with at least 60% alcohol in visitor entrances, exits, and waiting areas. Provide visitors with information to prepare them for screening. Promote non-contact visits.

⁵² *Id.*, pp. 12-13.

⁵³ U.S. Centers for Disease Control and Infection (CDC), Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities, Mar. 23, 2020, <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html> [hereinafter CDC COVID-19]⁵⁴ *Id.*

⁵⁴ *Id.*

Consider reducing or temporarily eliminating the cost of phone calls. Consider increasing phone privileges.

- *Implementation, modification of visitation programs.* If moving to virtual visitation, clean electronic surfaces regularly. Inform potential visitors of changes and the reasons. Clearly communicate any changes to the detained population. If suspending contact visits, provide alternate means to engage with legal representatives and other individual with whom they have a legal right to consult.

49. ICE Pandemic Response Requirements incorporate some, not all, CDC guidelines including those concerning access to counsel, but direct all facilities to comply, presumably in full, with the CDC guidelines as well as the relevant ICE detention standards and ICE contract. If ICE headquarters has not made the effort to reconcile the differences in its instructions and those of the CDC, and issue one clear and unequivocal set of requirements that must be fulfilled, what assurance has ICE Headquarters that the field is willing or able to do so.

V. Immigration Detention Oversight & Operational Deficiencies Impede Access to Counsel

50. As was established in Section II, Immigration and Customs Enforcement has had considerable difficulty with detention operations for years. The agency is comprised primarily of law enforcement personnel with extensive expertise performing removal functions, but not in the design and delivery of detention facilities. Based on my years of executive experience in immigration detention, state and local correctional systems, and enforcement agencies including ICE, it is my opinion that ICE has not yet established a system of immigration detention with the requisite management tools, informational systems and oversight to detain and supervise this population as is required. Its lack of expertise *and* interest in this area, coupled with its continual search for more beds, creates conditions under which ICE is continually deferential to its contractors and facility administrators, a situation that its providers take advantage.

51. ICE detention standards recognize attorneys must have access to their clients every day of the week including weekends and holidays.⁵⁵ Among its many performance-based requirements of the facilities to protect detainees' rights, "Facilities are required to provide access by means of in-person contact and non-contact visits, phone calls, and mail, all of which should be confidential and at no cost to either party."⁵⁶ "Facilities are encouraged to

⁵⁵ PBNDS Visitation, *supra* note 13.

⁵⁶ PBNDS Law Library and Legal Research Material, *supra*, note 5.

utilize electronic means of communication such as video-telephonic conferencing and Skype, to increase opportunity for access.”⁵⁷

52. What ICE says is not what ICE does. To follow is a brief summary of access to counsel prior to and during the pandemic at the Irwin, LaSalle, Pine Prairie and Stewart facilities.

53. Prior to the pandemic, attorneys report their ability to communicate with clients was limited in every modality: in-person visitation, video teleconference calls (VTC), phone calls, mail, email and facsimile. All four facilities had insufficient infrastructure to support attorney calls by video teleconference or phone. There were not enough computers, too few time slots to meet demand, not enough staff, and significant issues with scheduling practices.

54. Noteworthy examples of the facilities’ chronic problems include the following.

- Irwin, LaSalle, and Stewart facilities did not allow contact legal visits; while at Pine Prairie, contact visits are the only form of in-person visitation.
- The number of visitation rooms at all four facilities was far too few to accommodate the large numbers of detainees they held, and contributed to long wait times, limited hours, and time limits well before stay-at-orders were in effect.
- Wait-times at all the locations for VTC visits precluded its use in time-sensitive matters when in-person visits were still possible.
- The Stewart, Irwin, and Pine Prairie facilities did not permit attorneys to phone off-site interpreters for translation assistance during in-person visitation, and the supportive technology at these locations was so limited, it further impeded their access to interpretation services.
- Mail was not a reliable method to exchange documents. Delays in sending and receiving and searching legal mail not in the presence of the detainee recipient were routine.

55. The pandemic has further taxed facilities’ scant resources and ICE’s lack of resolve. The providers continue to fail to address their longstanding deficiencies or to respond to the additional requirements ICE imposed. ICE continues to operationalize its requirements, as it had in the past, as mere requests.

⁵⁷ PBNDS Telephone Access, *supra* note 11.

56. Conditions have worsened in the past several months since the pandemic took hold.

A. Failure to Increase the Number of Video Teleconferencing Equipment & Telephones and Hours of Operation

57. The ICE Visitation Detention Standard directs in part, that each facility shall permit legal visitation 7 days a week, including holidays, for a minimum of 8 hours per day on regular business days (Monday through Friday), and a minimum of 4 hours per day on weekends and holidays. In emergency circumstances, facilities may consider requests from legal representatives for extended visits or visits outside normal facility visiting hours. The number of visitors a detainee may receive, and the length of visits, shall be limited only by reasonable constraints of space, scheduling, staff availability, safety, security and good order. Generally, visits should be for the maximum period practicable but not less than one hour. Detainees with hearing or speech disabilities shall be granted reasonable accommodations to allow for equal access to telephone services. Detainees may meet privately with current or prospective legal representatives and their legal assistants. Visits between legal representatives and assistants and an individual detainee are confidential and shall not be subject to auditory supervision. Private consultation rooms shall be available for such meetings. Detainees shall be advised of their right to contact their consular representatives and receive visits from their consulate officers. Facilities are encouraged to provide opportunities for both contact and non-contact visitation with approved visitors during both day and evening hours. Persons allowed to attend legal visits include attorneys and other legal representatives, legal assistants, and translators and interpreters. Additionally, the facility shall permit messengers who are not legal assistants to deliver documents to and from the facility.⁵⁸

58. The ICE Telephone Access Detention Standard directs in part, that detainees and their legal counsel shall be able to communicate effectively with each other. Privacy for detainee telephone calls regarding legal matters shall be ensured. Telephone access procedures shall foster legal access and confidential communications with attorneys. Detainees shall be able to make free calls to the ICE/ERO-provided list of free legal service providers. Telephones shall be maintained in proper working order. Detainees with hearing or speech disabilities shall be granted reasonable accommodations to allow for equal access to telephone services. Facilities shall strive to reduce telephone costs, including through the use of emerging telecommunications, voiceover, and Internet protocol technologies.⁵⁹

⁵⁸ ICE Detention Standards, 5.7 Visitation, Visits by Legal Representatives and Legal Assistants (last rev. Dec. 2016) PBNDS Visitation, *supra* note 13.

⁵⁹ ICE Detention Standard, 5.6 Telephone Access (last rev. Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/5-6.pdf>. PBNDS Telephone Access, *supra* note 11.

59. The ICE Law Libraries and Legal Material Detention Standard directs in part that detainees shall have access to courts and counsel. Detainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone and through correspondence. Special scheduling consideration shall be given to detainees facing deadlines or time constraints.⁶⁰
60. In the March 27 memorandum for Detention Warden and Superintendents through Field Office Directors,^{61 62} ICE ERO directed facilities to offer legal representatives non-contact visits, e.g., Skype or VTC, whenever possible to reduce the risk associated with COVID-19, and only provide contact visits when the representatives determined it was essential. ICE also directed that each facility must ensure all detainees are able to make calls to the ICE-provided list of free legal service providers and consulates at no charge to the detainee or receiving party. In order to partake of remote attorney visitation, and place calls to free legal service providers and consulates, ICE directed there must be both adequate access and sufficient communication equipment in good working order at every location, and a uniform system of oversight.⁶³
61. It is unknown whether ICE ERO Headquarters required the Field Offices to monitor for compliance and what measures Headquarters took when the Field Offices or the facilities failed to comply. It is known ICE ERO, the Field Offices and facilities failed to comply. There are inadequate access and insufficient communication equipment in good working order at all four facilities, and no uniform system of oversight.
62. When ICE released its Pandemic Response Requirements on April 10, ERO reiterated all detention facilities and local jails housing ICE detainees “must” comply with the ICE national detention standards applicable to their facility.⁶⁴
63. The Pandemic Response Requirements included an additional requirement, directing facilities where immigration hearings are conducted or detainees who have cases pending

⁶⁰ ICE Detention Standards, 6.3PBND Standards Law Library and Legal Material (last rev. Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/6-3.pdf>, *supra* note 5.

⁶¹ March 27 ICE Memorandum, *supra* note 49, p. 2.

⁶² ICE maintains 24 field offices. Detention facilities in Georgia are overseen by the Atlanta field office; detention facilities in Louisiana are overseen by the New Orleans field office. ICE Enforcement and Removal Operations Field Offices (last rev. 4/29/2020), <https://www.ice.gov/contact/ero#fieldOffice>. ICE issued directions to the field offices to convey to the facilities and delegated to each facility warden or superintendent final decision-making.

⁶³ ICE maintains 24 field offices. Detention facilities in Georgia are overseen by the Atlanta field office; detention facilities in Louisiana are overseen by the New Orleans field office. ICE Enforcement and Removal Operations Field Offices (last rev. 4/29/2020), <https://www.ice.gov/contact/ero#fieldOffice>. ICE issued directions to the field offices to convey to the facilities and delegated to each facility warden or superintendent final decision-making. March 27 ICE Memorandum, *supra* note 49, p. 2.

⁶⁴ ERO COVID-19 PRR, *supra* note 58.

immigration proceedings are housed to establish a process for detainees and immigration attorneys to schedule appointments and facilitate these (remote) calls.⁶⁵

64. The Pandemic Response Requirements also suggested (a) adding all immigration attorneys of record to the Talton Pro-Bono platform, (b) leveraging technology (e.g., tablets and smartphones) to facilitate attorney/client communication, and (c) working with the various detention contactors and telephone service providers to ensure that *all* detainees receive some number of free calls per week.⁶⁶
65. It is unknown whether ICE ERO Headquarters required the Field Offices to monitor for compliance and what measures Headquarters took when the Field Offices or the facilities failed to comply. It is known that ICE ERO, the Field Offices and facilities failed to comply. There are both inadequate access and insufficient communication equipment in good working order at all four facilities, and no uniform system of oversight.
66. Since the suspension of all social visitation in response to the pandemic, the demand for VTC visits and attorney calls further exceeds its capacity. The facilities have made few changes and realized little improvement: Attorneys struggle to meet their ethical obligations to their clients. Detainees are unable to communicate with their attorneys.
67. Currently, attorneys wait as long as four to six days to receive a VTC appointment and as much as an additional six days to meet in-person or remotely with their client.
68. Facilities limit the number of VTC calls an attorney may have with their client in a period of time.
69. Clearing interpreters to participate in three-way calls continues to be impeded by the availability of the government attorneys to make those arrangements has not changed.
70. Appointments are made with little advance notice, and on a take-it-or-leave-it basis.
71. Appointments are canceled without notice or an explanation.
72. Detainees arrive late to appointments, and detainees are returned early to their housing units.
73. There is no clear practice in place to accommodate quarantined detainees to participate in a VTC or regular phone call with their attorney.

⁶⁵ *Id.*

⁶⁶ *Id.*

74. There is no apparent policy in place to enable an attorney to access her client by any means in the event of an emergency for the duration of the pandemic.
75. Attorneys continue to experience difficulty arranging confidential phone or video teleconferencing calls with their clients because there is not enough communication equipment in working order and corresponding connectivity to meet the demand.
76. Detainees continue to experience difficulties reaching their attorneys. As demand for phone use increases, the number of phones in dayrooms not working or disconnected is reported to have risen. The wait time for working phones is greater.
77. Additionally, the primary means by which detainees can speak with their attorney is from their housing units where most phone calls are recorded. There is also a phone to a hotline in the housing units and its calls are not recorded. None of the phone conversations in the housing units are confidential however, as all conversations can be overheard by staff and the other detainees in the unit.
78. All these conditions fail to comply with ICE Detention Standards. Non-compliance with ICE Detention Standards is also a material breach of the facilities' contracts with ICE. Failure to comply with ICE Detention Standards and facilities' contracts with ICE constitutes failure to comply with the ICE March 27 Memorandum for all dedicated detention facilities and the April 10 Pandemic Response Requirements for all detention facilities housing ICE detainees.

B. Failure to Deliver Mail and Modify Document Exchange Procedures

79. The ICE Correspondence and Other Mail Detention Standard directs detainees shall be able to correspond with their families, the community, legal representatives, government offices and consular officials. Incoming and outgoing letters shall be held for no more than 24 hours and packages no more than 48 hours before distribution, excluding weekends, holidays or exceptional circumstances. Incoming and outgoing mail, with the exception of special correspondence or legal mail, shall be opened to inspect for contraband and to intercept cash, checks and money orders. Detainees shall be permitted to send special correspondence or legal mail to a specified class of persons and organizations such as SIFI, and incoming mail from these persons shall be opened only in the presence of the detainees to check for contraband. All facilities shall implement policies and procedures addressing acceptable and non-acceptable mail. Detainees may receive as correspondence any material reasonably necessary for the detainee to present his/her legal claim, in accordance with this standard. When timely communication through the mail is not possible, the facility

administrator may in his/her discretion allow for a reasonable amount of communication by means of facsimile device between the detainee and his/her designated legal representatives.⁶⁷

80. The ICE Law Libraries and Legal Material Detention Standard requires detainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone and through correspondence.⁶⁸
81. The ICE Telephone Access Detention Standard requires detainees and their legal counsel shall be able to communicate effectively with each other.⁶⁹
82. The ICE Visitation Detention Standard encourages facilities to provide opportunities for both contact and non-contact visitation with approved visitors during both day and evening hours. And, it requires the facility shall permit messengers who are not legal representatives or legal assistants to deliver documents to and from the facility, but not to visit detainees.⁷⁰
83. When ICE released its Pandemic Response Requirements on April 10, ERO reiterated all detention facilities and local jails housing ICE detainees “must” comply with the ICE national detention standards applicable to their facility.⁷¹
84. Pandemic-related disruptions to in-person visitation and difficulties with remote communication have increased the need for reliable mail service and document exchange.
85. Mail service is not reliable at the four facilities. Attorneys use both the U.S. Postal Service and FedEx to send legal mail to detainees, but detainees do not receive everything that their attorneys have sent by either carrier. And, facilities do not routinely return undeliverable legal mail to the Postal Service or FedEx.
86. Delays in mail delivery transmittals impede attorney representation of their clients who increasing include medically vulnerable individuals. These delays can impact detainees’ health as well as the outcome of their cases.

⁶⁷ ICE Detention Standard 5.1 PBNDS Correspondence and Other Mail (last rev. Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/5-1.pdf>, *supra* note 9.

⁶⁸ ICE Detention Standards, 6.3 PBNDS Law Library and Legal Material (last rev. Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/6-3.pdf>, *supra* note 5.

⁶⁹ PBNDS Telephone Access, *supra* note 11

⁷⁰ PBNDS Visitation, *supra* note 13.

⁷¹ ERO COVID-19 PRR, *supra* note 58.

87. ICE and the facilities have not resolved mail delivery and three of the four facilities are unwilling to adopt facsimile or the Internet as alternative means of delivery. Only the Irwin facility has a system in place to accomplish this.
88. Attorneys also encounter difficulty corresponding directly with ICE by mail. There are occasions when ICE does not accept emails and did not respond to correspondence when it arrives by regular mail. Facsimiles have also proven to be unreliable.
89. Email and faxes are widely accepted and customary means of communication within the government including DHS, ICE and ERO and should be accommodated at all facilities.
90. The increased demand for humanitarian parole considerations may have increased the agency's workload; however, ICE has not put in place a viable plan to address it.
91. All these conditions fail to comply with ICE Detention Standards. Non-compliance with ICE Detention Standards is also a material breach of the facilities' contracts with ICE. Failure to comply with ICE Detention Standards and facilities' contracts with ICE constitutes failure to comply with the ICE March 27 Memorandum for all dedicated detention facilities and the April 10 Pandemic Response Requirements for all detention facilities housing ICE detainees.

C. Failure to Comply with Confidentiality Requirements.

92. The ICE Visitation Detention Standard⁷² directs visits between legal representatives and assistants and an individual detainee are confidential and shall not be subject to auditory supervision. Private consultation rooms shall be available for such meetings.
93. The ICE Correspondence and Other Mail Detention Standard⁷³ requires incoming and outgoing mail, with the exception of special correspondence or legal mail, shall be opened to inspect for contraband and to intercept cash, checks and money orders. Detainees shall be permitted to send special correspondence or legal mail to be specified class of persons and organizations, and incoming and outgoing mail from these persons shall be opened only in the presence of the detainees unless waived to check for contraband.
94. The ICE Telephone Access Detention Standard⁷⁴ requires privacy for detainee telephone calls regarding legal matters shall be ensured. Telephone access procedures shall foster

⁷² PBNDS Visitation, *supra* note 20.

⁷³ PBNDS Correspondence and Other Mail, *supra* note 18.

⁷⁴ PBNDS Telephone Access, *supra* note 11.

legal access and confidential communications with attorneys. Detainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone and through correspondence.

95. The ICE Law Libraries and Legal Material Detention Standard⁷⁵ requires detainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone, and through correspondence.
96. Confidentiality is a concern under any circumstances and particularly during a pandemic when medical as well as legal information is at risk. It is also a commitment that ICE, and by extension, its agents must keep. When ICE released its Pandemic Response Requirements on April 10, ERO reiterated all detention facilities and local jails housing ICE detainees “must” comply with the ICE national detention standards applicable to their facility.⁷⁶
97. Chronic and current coronavirus-related factors – risk of infection while attending an in-person attorney visit, significant and growing larger wait times for VTC calls/video conferencing, and problems with mail delivery and inspection – push detainees towards utilizing the regular phones and hotline numbers in their housing units to place legal calls to their attorneys with or without realizing these calls are recorded as well as overhead by other detainees and staff in the immediate area, because they have no other choice.
98. Physical plant limitations infringe upon confidentiality. Attorneys report VTC conferences with clients have been overheard in areas where there are no partitions or sound absorption.
99. Security practices also affect confidentiality. Attorneys report custody staff has the practice of standing closer to groups of three – the attorney, her client, and an interpreter. Additionally, the detainee’s time out-of-cell to meet or speak with counsel, is an opportunity for a cell search, and the impermissible confiscation of legal material.
100. All these conditions fail to comply with ICE Detention Standards. Non-compliance with ICE Detention Standards is also a material breach of the facilities’ contracts with ICE. Failure to comply with ICE Detention Standards and facilities’ contracts with ICE constitutes failure to comply with the ICE March 27 Memorandum for all dedicated detention facilities and the April 10 Pandemic Response Requirements for all detention facilities housing ICE detainees.

D. Failure to Accommodate LEP Detainees and Detainees with Disabilities

⁷⁵ PBNDS Law Libraries and Legal Material, *supra* note 5.

⁷⁶ ERO COVID-19 PRR, *supra* note 58.

101. The 2016 revisions to the 2011 ICE Performance-based National Detention Standards represent a substantial effort to fortify detainee rights and facilities' responsibility to afford access for detainees including those who are limited in their English proficiency (LEP) and detainees with disabilities.⁷⁷ These protections include:

- Communication assistance for LEP detainees.
- Language assistance, including bilingual staff or professional interpretation and translation services, to provide LEP detainees with meaningful access to its programs and activities.
- Auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices (TTYs), interpreters, and notetakers, as needed for detainees with disabilities.
- Mobility assistance for physically or visually impaired persons, the infirm and the elderly.
- Other forms of reasonable accommodation.

102. ICE did not issue any instruction concerning COVID-19 that modified these provisions to accommodate detainees with disabilities and limited English proficiency; therefore, these standards stand as written.

103. Persons who are limited in their English proficiency (LEP) or have disabilities frequently require more time to complete tasks than do those who do not have these characteristics. One widely recognized method of accommodation is affording LEP individuals additional time.

104. The use of translation and interpretative services requires more time as each question must be asked and answered in two languages, including the American Sign Language. The additional time for translation alone doubles the time needed, and differences in languages and dialects frequently require additional clarification, extending further the minimum time needed.

105. The four facilities fail to do so.

⁷⁷ 2011 Operations Manual ICE Performance-Based National Detention Standards, 2016 Revisions PBNDS, *supra* note 2, Summary of Revisions to the ICE Performance-Based National Detention Standards, December 2016, <https://www.ice.gov/detention-standards/2011>.

106. Attorneys who request additional time when scheduling an appointment with clients who will require interpretative services are routinely denied.

107. In addition to outright denials, there are several other impediments to accommodation.

- In order to litigate Habeas Counsel petitions, legal staff must schedule remote consultations with clients and potential clients, and not in-person meetings, for all the reasons previously cited. Third party interpretation must be coordinated and provided by Habeas Counsel. There is no ability to request a remote legal visit for the weekend or in the evening. There is also no ability to schedule an expedite remote legal visit for any reason.
- When an interpreter is present, there is a tendency on the part of custody staff to remain nearby rendering a confidential visit, non-confidential.
- Detainees in quarantined housing units have less access, and less certain access to remote communication with counsel.

108. All these conditions fail to comply with ICE Detention Standards. Non-compliance with ICE Detention Standards is also a material breach of the facilities' contracts with ICE. Failure to comply with ICE Detention Standards and facilities' contracts with ICE constitutes failure to comply with the ICE March 27 Memorandum for all dedicated detention facilities and the April 10 Pandemic Response Requirements for all detention facilities housing ICE detainees.

E. Failure to Address the Spread of Coronavirus in the Detention Facilities.

109. ICE directed all the detention facilities comply with the CDC's Interim Guidance on Management of Coronavirus Disease 2019 in Correctional and Detention Facilities to prevent the spread of COVID-19 at their locations.⁷⁸ Fundamental to compliance are social-distancing and aggressive sanitation and personal hygiene. Specific to legal visits, the CDC recommends verbal screening of visitors, 60% alcohol-based hand sanitizer availability at visitor entrance and exits, in the waiting areas and visitation rooms, that frequently touched items are cleaned and disinfected several times a day, and that everyone in those areas maintains a distance of 6 feet from one another.⁷⁹

⁷⁸ CDC, Interim Guidance, *supra* note 62.

⁷⁹ *Id.*, p. 13-14.

110. Visiting attorneys report the areas to which they have access – the lobby, waiting areas, restrooms, and visiting rooms – are dirty, hand sanitizer is not available, and social distancing is not enforced. They also report rolling requirements for personal protection equipment – masks, and sometimes, specifically 95-respirator masks, gloves and gowns – that they must bring with them and wear or they will be denied entry. The insistence that the masks be 95-respirator masks, which is not a CDC requirement and often was unavailable for purchase and otherwise held for first responders, is both an arbitrary and highly effective way to impede attorney and detainee access to one another. Additionally, this was not required of detention staff.

111. Attorneys also expressed concern that the facilities are not disinfecting frequent-touch items as CDC guidelines require, especially the phones that detainees use in their housing units, to call their attorneys and others.

F. Summary of Violations of Performance-Based National Detention Standards

112. There are several ICE detention standards that lay out the parameters of Access to Counsel. This analysis concerns four of them. They are Correspondence and Other Mail, Telephone Access, Visitation and Law Libraries and Legal Material. ICE also adopted special provisions in 2016, and applicable to all facilities, to fortify its commitment and rectify compliance with operational issues impacting limited English proficiency detainees and detainees with disabilities.

113. Based on my review of the declarations of SIFI attorneys concerning what is happening on the ground during the COVID-19 pandemic, I conclude that Defendants are likely violating the following standards set forth in the PBNDS:

114. Correspondence and Other Mail. This detention standard ensures detainees shall be able to correspond with their legal representatives, government offices and consular officials. In part, this requires incoming and outgoing mail, with the exception of special correspondence or legal mail, shall be opened to inspect for contraband and to intercept cash, checks and money orders. Correspondence may be delivered by a messenger. Incoming and outgoing letters shall be held for no more than 24 hours and packages no more than 48 hours before distribution, excluding weekends, holidays, or exceptional circumstances. All facilities shall implement policies and procedures addressing acceptable and unacceptable mail. Detainees may receive as correspondence, any material reasonably necessary for the detainee to present their legal claim, in accordance with this standard. When timely communication through mail is not possible, the facility administrator may in their discretion allow for a reasonable amount of communication by means of a facsimile

device between the detainee and their legal representative. ICE ERO and the facilities have failed to meet these requirements.

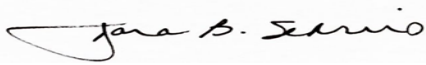
115. Telephone Access. This detention standard requires detainees may communicate with legal representatives, consulates, courts, and government agencies by providing them reasonable and equitable access to telephone services. In part, this requires detainees and their legal counsel shall be able to communicate effectively with each other. Privacy for detainee telephone calls regarding legal matters shall be ensured. Telephone access procedures shall foster legal access and confidential communications with attorneys. Telephones shall be maintained in proper working order. Detainees with hearing or speech disabilities shall be granted reasonable accommodations to allow for equal access to telephone services. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency and reasonable accommodation to avail themselves of this assistance. ICE ERO and the facilities have failed to meet these requirements.

116. Visitation. This detention standard affirms visits between legal representatives and assistants and an individual detainee are confidential and shall not be subject to auditory supervision. In part, this requires private consultation rooms shall be available for such meetings. Each detainee may meet privately with current or prospective legal representatives and their legal assistants. Each facility shall permit legal visitation seven days a week, including holidays, for a minimum of 8 hours per day on regular business days, Monday through Friday, and a minimum of 4 hours per day on weekends and holidays. In emergency circumstances, facilities may consider requests from legal representatives for extended visits or visits outside normal facility visiting hours. Facility staff shall not be present in the confidential area during the meeting unless the legal representative or legal assistant requests the presence of an officer; however, as long as staff cannot overhear the conversation, staff may observe such meetings visually through a window or camera, to the extent necessary to maintain security. When a situation arises in which private conference rooms are in use and the attorney wishes to meet in a regular or alternate visiting room, the request shall be accommodated to the extent practicable. Such meetings shall be afforded the greatest possible degree of privacy under the circumstances. The facility's written legal visitation procedures must provide for the exchange of documents between a detainee and the legal representative or assistant, even when contact visitation rooms are unavailable. Documents or other written material provided to a detainee during a visit with a legal representative shall be inspected but not read. The facility shall permit messengers who are not legal representatives or legal assistants to deliver documents to and from the facility, but not to visit detainees. Detainees are entitled to retain legal material received for their personal use. ICE ERO and the facilities have failed to meet these requirements.

117. Law Libraries and Legal Material. This detention standard affirms detainees shall have access to courts and counsel. In part, this requires detainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone, and through correspondence. It directs the facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency. ICE ERO and the facilities have failed to meet these requirements.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed this 5th day in May 2020, in New York City, NY.

A handwritten signature in black ink, appearing to read "Dora B. Schriro", is written over a light gray rectangular background.

Dora Schriro

Appendix A

DORA B. SCHRIRO, Ed.D. J.D.
EXECUTIVE EXPERIENCE

State of Connecticut, Middletown CT (2014–2018)

CT Homeland Security Advisor (2016–2018), DHS clearance, Top Secret, appointed by Gov. Dannel Malloy
Commissioner, Department of Emergency Services & Public Protection (2014–2018), appt. by Gov. Malloy

- Responsible for CT State Police, Emergency Management & Homeland Security, Scientific Services, Fire Prevention & Control, Police Officer Standards & Training, Statewide Telecommunications.
- FY2018 operating budget, \$185M; federal grants, \$348M; bond funding, \$79M; 1817 employees
- Public Safety & Service, Homeland Security, and Emergency Response, Recovery & Resiliency
- Accomplishments: 1. Comprehensive procedural justice effort with body-worn cameras, all state police on patrol, civilian complaint process, 21st century curricula for state & local law enforcement, an investigative protocol for officer-involved shootings, annual reports of uses of force, traffic stops & police pursuits, mandatory police agency accreditation, and ICE-interface protocol; 2. Drug intervention & enforcement including a dark-web opioid taskforce, equipping all troopers and training first responders to administer naloxone; 3. Other harm reduction efforts including a multi-jurisdictional cybersecurity investigative unit, comprehensive gun control, community-focused active shooter preparedness, wrap-around DV safety & support, K-12 & post-secondary school safety planning, and Ebola & Zika first responder protocols

City of New York, New York, New York (2009–2014)

Commissioner, New York City Department of Correction, appointed by Mayor Michael Bloomberg

- Responsible for adult detention, prisoner processing, and operation of criminal court pens, an average of 12,000 inmates daily and 100,000 pretrial and city-sentenced inmate admissions annually
- FY2014 operating budget, \$1.065B, capital budget, \$691.9M; 10,440 employees
- Focus: Special Populations; Intake, Classification and Discharge Planning; Staff Accountability; Alternatives to Disciplinary Segregation; Alternatives to Detention
- Accomplishments: 1st U.S. Social Impact Bond funded program, adolescent pre-release initiative; Justice Reinvestment funded pre-release preparation for adults; pre-trial & post-plea diversion for the mentally ill; comprehensive reform of disciplinary segregation with clinical alternatives for special populations; centralized intake with risk & needs classification, gang identification, and discharge planning

US Department of Homeland Security, Washington DC (2009–2009)

Senior Advisor to Secretary on ICE Detention and Removal, appointed by DHS Sec. Janet Napolitano

Director, ICE Office of Detention Policy and Planning, appointed by ICE Asst. Sec. John Morton

- Focus: Design a civil detention system satisfying all safety and security needs and legal requirements
- Authored, *2009 Report on ICE Detention Policies and Practices: A Recommended Course of Action for Systems Reform*, DHS' adopted template for improving the operation of immigration detention
- Improved the efficiency and effectiveness and increased the transparency of ICE detention operations

State of Arizona, Phoenix, Arizona (2003–2009)

Department Director, Arizona Department of Corrections, appointed by Gov. Janet Napolitano

- Responsible for adult corrections and community supervision including 39,000 inmates and 7,200 parolees daily and 55,000 felons annually (21,000 admissions/11,500 case openings)
- FY2009 operating budget, \$1.23B; 9,750 employees
- Focus: Systems reform, re-entry, victim services, strategic planning, privatization oversight
- Winner, 2008 Innovations in American Government, and first prison-based reform awards recipient

Dora B. Schriro, Ed.D. J.D.

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City of St. Louis, St. Louis, Missouri (2001–2003)

Commissioner of Corrections, St. Louis City Division of Corrections, appointed by Mayor Francis Slay

- Responsible for adult detention, prisoner processing, and city probation and parole including 1,500 jail inmates and 2,000 offenders on supervision daily (9,000 admissions/63,000 bookings annually)
- FY2003 operating budget, \$68M; 615 employees
- Focus: Population management, alternative sentencing initiatives, staff development
- Opened and operated the city's first combined police prisoner processing and detention center

State of Missouri, Jefferson City, Missouri (1993–2001)

Department Director, Missouri Department of Corrections, appointed by Gov. Mel Carnahan

- Responsible for adult corrections and probation and parole services including 28,000 prisoners and 65,000 offenders on community supervision daily, 35,000 admissions/72,000 case openings annually
- FY2002 operating budget, \$500M; 11,000 employees
- Focus: Systems and sentencing reform, litigation reduction, restorative justice, capital construction
- Winner, Council of State Governments Innovations award program; four-time Innovations in American Government Finalist and Semi-Finalist

City of St. Louis, St. Louis Missouri (1989–1993)

Correctional Superintendent, St. Louis City Division of Correction, appointed by Mayor Vince Schoemehl

- Responsible for 600 pre-trial and city sentenced inmates, 4,000 admissions annually
- FY1993 operating budget, \$26M; 210 employees
- Focus: Court oversight, overcrowding, certified juveniles, community relations

City of New York, New York, New York (1984–1989)

Assistant Commissioner, New York City Department of Correction, appointed by Mayor Ed Koch

- Responsible for design and delivery of inmate programs services, programs development, grants
- Services provided to 100,000 pre-trial and city sentenced inmates annually by 200 employees
- Focus: Public-funded and accredited education, school-aged inmates; contracts management

Assistant Deputy Director, Office of the Mayor, Coordinator of Criminal Justice

- Grants administration, federal and state funded systems reforms, \$189M annually
- Focus: Alternatives to detention, intermediate sanctions, policy analysis, applied research

CONSULTING SERVICES

Dora B. Schriro Consulting Services, LLC (est. 2013)

EDUCATION

St. Louis University, St. Louis, Missouri, Juris Doctorate, School of Law (2002)

Columbia University, New York, New York, Doctor of Education, Teachers College (1984)

University of Massachusetts at Boston, Massachusetts, Master of Education (1980)

Northeastern University, Boston, Massachusetts, Bachelor of Arts cum laude (1972)

MANAGERIAL PROGRAMS

Council of State Governments, Toll Fellowship (2018)

Harvard University, JFK School of Government, Innovations in Governance (2005)

Harvard University, JFK School of Government, Strategic Public Sector Negotiations (1996)

Harvard University, JFK School of Government, Senior Executives in State and Local Government (1992)

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HONORS AND AWARDS, INNOVATIONS

Innovations in American Government, 2008 Winner, Getting Ready: Keeping Communities Safe
Innovations in American Government, 2000 Semi-finalist, Correcting Corrections
Innovations in American Government, 1999 Semi-finalist, Constituent Services
Innovations in American Government, 1998 Semi-finalist, Pre-Promotional Training
Innovations in American Government, 1997 Finalist, Constituent Services
Council of State Governments, 1998 Innovations Award Winner, Waste Tire to Energy
Council of State Governments, 1997 Innovations Award Regional Finalist, Pre-Promotional Training
Council of State Governments, 1996 Innovations Award Finalist, Constituent Services

OTHER HONORS AND AWARDS

U.S. Department of Justice, Office for Victims of Crime, Allied Professional Award, 2012
Florida Immigrant Advocacy Center, American Justice Award, 2011
Hofstra University (Hempstead, New York) Presidential Medal, 2010
National Governors Association, Distinguished Service to State Government Award, 2006
Arizona Parents of Murdered Children, Filling Empty Shoes, 2006 Honoree
Farmingdale Public Schools (Farmingdale, New York), Wall of Fame, 2001 Inductee
St. Louis Forum, Trailblazer Award, 2000
Association of Correctional Administrators, Michael Francke Award for Outstanding Leadership, 1999
Jefferson City (Missouri) Ten Most Influential Women, 1998
Missouri Governor Award for Quality and Productivity, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000
Missouri Governor Torch of Excellence Gold Award, 1999
Missouri Governor Torch of Excellence Award, 1997
International Association of Correctional Training Personnel Award, Pre-Promotional Training, 1996
Women's Self-Help Center, Twenty Distinguished Women, 1996
St. Louis (Missouri) YWCA Special Leadership Award for a Government Official, 1995
Jefferson City (Missouri) News Tribune Statesman of the Month, June 1995

PUBLICATIONS, IMMIGRATION DETENTION REFORM

Weeping in the Playtime of Others: The Obama Administration's Failed Reform of ICE Family Detention Practices, in Journal on Migration and Human Security, The Law that Begot the Modern U.S. immigration Enforcement System: IIRIRA 20 Years Later (December 2018)
Women and Children First: An Inside Look at the Impediments to Reforming Family Detention in the U.S., in Challenging Immigration Detention, ed. by Flynn and Flynn. Edward Elgar Publishing (September 2017)
Afterword, Intimate Economies, Anomie and Moral Ambiguity, in Intimate Economies of Immigration Detention: Critical Perspectives, ed. by Conlon and Hiemstra. Routledge Publishers (2016)
Improving Conditions of Confinement for Immigrant Detainees: Guideposts toward a Civil System of Civil Detention in The New Deportation Delirium, ed. by Kanstroom and Lykes. NYU Press (2015)
Family Immigration Detention: The Past Cannot be Prologue, co-author, ABA Commission on Immigration (2015)
Envisioning a Civil System of Civil Detention: Our Opportunity, Our Challenge (Foreword), in Outside Justice, ed. by Brotherton, Stageman and Leyro. Springer Press (2013)
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The 2009 Report on ICE Detention Policies and Practices: A Recommended Course of Action for Systems Reform, U.S. Department of Homeland Security (October 2009)
Rethinking Civil Detention and Supervision, Arizona Attorney (July–August 2009)

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PUBLICATIONS, CORRECTIONS REFORM

Smart and Safe: Making the Most of Adolescents' Time in Detention, the Physical Plant, Our Workforce, and the "What Works" Literature, in *The State of Criminal Justice*, American Bar Association (2013)

Corrections: The Justice-Involved Mentally Ill, A Practitioner's Perspective, in *The State of Criminal Justice*, American Bar Association (2012)

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Is Good Time a Good Idea? *Federal Sentencing Reporter*, Vol. 21, No. 3 (February 2009)

Correcting Corrections: The Arizona Plan: Creating Conditions for Positive Change in Corrections, *Confronting Confinement: A Report of the Commission on Safety and Abuse in American Prisons* (2006)

Missouri's Parallel Universe: Blueprint for Effective Prison Management, *Corrections Today* (April 2001)

Correcting Corrections: Missouri's Parallel Universe, *Papers from the Executive Sessions on Sentencing and Corrections*, U.S. Department of Justice, Office of Justice Programs (May 2000)

Avoiding Inmate Litigation: The 'Show-Me' State Shows How, *Sheriff's Magazine*, (March–April 1999)

Best Practices: Excellence in Corrections, American Correctional Association (August 1998)

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Corrections Management Quarterly, Issue Editor, Aspen Publications (1997)

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Safe Schools, Sound Schools, ERIC Clearinghouse on Urban Education (January 1985)

What Works with Serious Juvenile Offenders: US Experience, *Juvenile Delinquency in Australia* (1984)

What Makes Correctional Education Educational: Ethnography of an Instructionally Effective School, University Microfilm (1983)

STANDARDS, SENTENCING AND RELATED CIVIL-CRIMINAL JUSTICE REFORM ACTIVITIES

Women's Refugee Commission, Commissioner (2012–2020)

American Bar Association, Commission on Immigration, Special Advisor (2019–2020)

American Bar Association, Commission on Immigration, Advisory Board Member (2017–2019)

American Bar Association, Commission on Immigration, Standards for the Custody, Placement and Care; Legal Representation, and Adjudication of Unaccompanied Alien Children in the United States (2018)

U.S. Dept. of Homeland Security, DHS Family Residential Ctr. Advisory Committee, member (2015–2016)

American Bar Association, Commission on Immigration, Commissioner (2014–2016)

American Bar Association, Commission on Immigration, Co-chair, Standing Subcommittee on Punitive Segregation, (2012–2014)

American Bar Association, Commission on Immigration, Civil Detention Standards Task Force (2011–2012)

American Bar Association, Criminal Justice Standards Subcommittee, ACA representative (2005–2008)

Arizona State University School of Law, Sentencing Policy Seminar (2004–2005)

Arizona Attorney General Sentencing Advisory Committee (2004–2008)

St. Louis University School of Law, Instructor, Sentencing Policy Seminar (2000–2002)

Missouri Sentencing Advisory Commission, Vice Chair (1994–2001)

U.S. Department of Justice Executive Sessions on Sentencing and Corrections, in conjunction with Harvard University JFK School of Government and University of Minnesota Law School (1997–2000)

Partnership for Criminal Justice Workshop, Institute on Criminal Justice, University of Minnesota Law School, State Partner (1997–2000)

State Sentencing and Corrections Program, Vera Institute of Justice, National Associate (1999–2002)

U.S. Dept. of Justice, Bureau of Justice Assist., Discretionary Grant Program, Peer Reviewer (1994–2002)

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PRE-DOCTORAL EMPLOYMENT, LECTURING AND RELATED EXPERIENCE

Employment

- Executive Director, Planned Parenthood of Bergen County, Hackensack, New Jersey (1983–1984)
- Director, Correctional Education Consortium, Long Island City, New York (1982–1983)
- Supervising Social Worker, Franklin Public Schools, Franklin, Massachusetts (1978–1981)
- Director, Adult and Continuing Education, Franklin Public Schools, Franklin, MA (1978–1981)
- Director, Staff Development, Wrentham State School, Wrentham, Massachusetts (1977–1978)
- Program Administrator, Medfield-Norfolk Prison Project, Medfield, Massachusetts (1974–1976)

Academic Experience

- Instructor, Arizona State University School of Law, Corrections Law Seminar (2005–2008)
- Instructor, St. Louis University School of Law, Sentencing Policy (2000–2002)
- Senior Policy Fellow, Public Policy Research Center, University of Missouri-St. Louis (2001)
- Visiting Lecturer, Strategic Planning, National Institute of Corrections (1998–2002)
- Adjunct Professor, Criminal Justice, University of Missouri-St. Louis (1990–1998)
- Adjunct Professor, Criminal Justice, Long Island University at CW Post (1986–1988)
- Instructor, Innovation, Open Center of New York City (1987)
- Teaching Assistant, Field Research Methodology, Administrative Intern to the School Superintendent, Franklin Public Schools, Franklin, Massachusetts (1979)
- Visiting Lecturer, Special Education, Framingham State College, Framingham, Massachusetts (1979)
- Adjunct Professor, Psychology, Fischer Junior College, Boston, Massachusetts (1978)

Related Activities

- Institutional Research Board, St. Louis University (2002–2003)
- Institutional Research Board, University of Missouri-St. Louis (2001–2003)

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Professional References available upon request

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Access to Counsel, Key ICE Performance-Based National Detention Standards Indicators

- I. ICE National Detention Standards delineate the immigration detainee's Access to Counsel. ICE's contract or written agreement with its detention providers including its enforcement provisions, is the means by which ICE procures and ensures provision of these critical activities is provided to the population. ICE Performance-Based National Detention Standards prescribe both the expected outcomes of each detention standard and the expected practices required to achieve them. This summary is based on the 2011 Performance-Based National Detention Standards (revised 2016).
- II. There are two standards in their entirety that address access to counsel. They are: 6.3 Law Libraries and Legal Material, and 6.4 Legal Rights Group Presentations.
 1. 6.3 Law Libraries and Legal Material. The purpose of this detention standard is to protect detainees' rights by ensuring their access to courts, counsel and comprehensive legal materials.
 - a. Key ICE Performance-Based Compliance Indicators, Law Libraries and Legal Material.
 - i. Detainees shall have access to courts and counsel.
 - ii. Detainees shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone and through correspondence.
 - iii. Special scheduling consideration shall be given to detainees facing deadlines or time constraints.
 - b. COVID-19 Modifications to Law Libraries and Legal Material. ICE recommended facilities extend law library hours of operation and stagger detainee access to reduce social distancing.¹
 2. 6.4 Legal Rights Group Presentations. The purpose of this detention standard is to protect detainees' rights by providing all detainees' access to information presented by authorized persons and organizations for the purpose of informing them of U.S. immigration law and procedures.
 - a. Key ICE Performance-Based Compliance Indicators, Legal Rights Group Presentations.
 - i. Detainees shall have access to group presentations on U.S. immigration law and procedures and all other relevant issues related to the immigration court, appeals and removal processes, including a detainee's legal rights.

¹ ERO COVID-19 PRR, *supra* note 62.

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- ii. Detainees shall be able to communicate and correspond with representatives from the legal groups that make presentations at the facilities.
 - iii. Detainees shall have access to information and materials provided by legal groups. Organizations shall be permitted to distribute information in response to specific legal inquiries.
 - b. COVID-19 Modifications to Legal Rights Group Presentations. ICE suspended all legal orientation programs except for Department of Justice-funded presentations provided at a limited number of detention facilities.²
- III. There are three additional detention standards with portions addressing access to counsel. They are: 5.1 Correspondence and Other Mail, 5.6 Telephone Access, and 5.7 Visitation.
- 1. 5.1 Correspondence and Other Mail. The purpose of this standard is to ensure that detainees shall be able to correspond with legal representatives, embassies and consulates consistent with the facility's safe and orderly operation.
 - a. Key ICE Compliance Indicators, Correspondence and Other Mail.
 - i. Detainees shall be able to correspond with their families, the community, legal representatives, government offices and consular officials.
 - ii. Incoming and outgoing mail, with the exception of special correspondence or legal mail, shall be opened to inspect for contraband and to intercept cash, checks and money orders.
 - iii. Detainees shall be permitted to send special correspondence or legal mail to a specified class of persons and organizations, and incoming mail from these persons shall be opened only in the presence of the detainees (unless waived) to check for contraband (except when contamination is suspected).
 - iv. Incoming and outgoing letters shall be held for no more than 24 hours and packages no more than 48 hours before distribution, excluding weekends, holidays, or exceptional circumstances.
 - v. All facilities shall implement policies and procedures addressing acceptable and non-acceptable mail. Detainees may receive as correspondence any material reasonably necessary for the detainee to present their legal claim, in accordance with this standard.
 - vi. When timely communication through the mail is not possible, the facility administrator may in their discretion allow for a reasonable amount of communication by means of facsimile device between the detainee and his/her designated legal representatives.

² March 27 ICE Memorandum, *supra* note 53.

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- b. COVID-19 Modifications to Correspondence and Other Mail. There are none.
- 2. 5.6 Telephone Access. The purpose of this detention standard is to ensure that detainees may maintain ties with their families and others in the community, legal representatives, consulates, courts and government agencies by providing them reasonable and equitable access to telephone services.
 - a. Key ICE Compliance Indicators, Telephone Access.
 - i. Detainees and their legal counsel shall be able to communicate effectively with each other.
 - ii. Privacy for detainee telephone calls regarding legal matters shall be ensured.
 - iii. Telephone access procedures shall foster legal access and confidential communications.
 - iv. Detainees with hearing or speech disabilities shall be granted reasonable accommodations to allow for equal access to telephone services.
 - v. Telephones shall be maintained in proper working order.
 - vi. Detainees shall be able to make free calls to the ICE/ERO-provided list of free legal service providers for the purpose of obtaining initial legal representation, to consular officials, the DHS OIG, and the ICE Office of Professional Responsibility Joint Intake Center.
 - vii. Indigent detainees, who are representing themselves pro se, shall be permitted free calls on an as-needed basis to family or other individuals assisting with the detainee's immigration proceedings.
 - b. COVID-19 Modifications to Telephone Access. ICE directed facilities to ensure all detainees are able to make calls to its list of free legal service providers and consulates at no charge to the detainee or the receiving party.³
- 3. 5.7 Visitation. The purpose of this detention standard is to ensure that detainees shall be able to maintain morale and ties through visitation with their families, the community, legal representatives and consular officials, within the constraints of the safety, security and good order of the facility.
 - a. Key ICE Compliance Indicators, Visitation.
 - i. Detainees shall be able to receive visits from legal representatives, consular officials, and others.

³ Effective March 13, ICE suspended social visitation until further notice to offset its impact. ICE "requested" the facilities maximize detainee phones, video visitation (e.g., Skype, FaceTime), email, and/or tablets with extended hours where possible. It also requested facilities make a "timely effort" to identify indigent detainees and afford them the same telephone access and related privileges. ICE provided no guidance how to accommodate increased demand for family/social and legal communication and contact.

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- ii. Visits between legal representatives and assistants and the detainee confidential and shall not be subject to auditory supervision. Private consultation rooms shall be available for such meetings.
- iii. Each facility shall permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days (Monday through Friday), and a minimum of four hours per day on weekends and holidays. The facility shall provide notification.
- iv. In visits referred to as legal visitation, each detainee may meet privately with current or prospective legal representatives and their legal assistants. Legal visits may not be terminated for routine official counts.
- v. In emergency circumstances, facilities may consider requests from legal representatives for extended visits or visits outside normal facility visiting hours.
- vi. Persons allowed to visit include attorneys and other legal representatives, legal assistants, and translators and interpreters. Additionally, the facility shall permit messengers who are not legal representatives or legal assistants to deliver documents to and from the facility, but not to visit detainees.

- b. COVID-19 Modifications to Visitation. The March 27 Memorandum directed non-contact legal visitation (e.g., Skype or teleconference) should be offered first to limit exposure to ICE detainees but in-person contact visitation should be permitted if determined essential by the legal representative. Prior to the in-person visit, the legal representative must undergo the same medical screening required for staff entry into the facility. The ultimate legal visit approving authority lies with the Warden or Facility Administrator; however, the facility should notify its local Field Office Director as soon as possible of any denied legal visits.⁴

The ERO COVID-19 PRR added, ICE continues to explore opportunities to enhance attorney access while legal visits are impacted.⁵ For facilities at which immigration hearings are conducted or where detainees are otherwise held who have cases pending immigration proceedings, this may include:

- i. Adding attorneys of record to the Talton Pro-bono platform.
- ii. Requiring facilities to establish a process for detainees/immigration attorneys to schedule appointments and facilitate the calls.
- iii. Leveraging technology to facilitate attorney/client communication.
- iv. Working with detention contractors and telephone service providers to ensure all detainees receive “some number” of free calls per week.

The PRR also directed that there by communication with the public about any changes to facility operations including visitation programs. Facilities were encouraged to prohibit

⁴ March 27 Memorandum, *supra* note 53.

⁵ ERO COVID-19 PRR, *supra* note 62.

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or, at a minimum, significantly adopt restricted visitation programs.” ICE’s meaning is unclear. Social visitation was suspended indefinitely effective March 13.

IV. ICE national detention standards also address accommodations for detainees with disabilities and limited English proficiency to partake of mandated activities including access to counsel.

1. The facility shall provide communication assistance to detainees with disabilities and detainees who are limited in their English proficiency (LEP).
2. The facility will provide detainees with disabilities with effective communication, which may include the provision of auxiliary aids, such as readers, materials in Braille, audio recordings, telephone handset amplifiers, telephones compatible with hearing aids, telecommunications devices for deaf persons (TTYs), interpreters, and notetakers, as needed.
3. The facility will also provide detainees who have limited English proficiency (LEP) with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.
4. There are no COVID-19 modifications to provisions to address accommodations for detainees with disabilities and limited English proficiency.

DECLARATION OF HOMER VENTERS, M.D.

I, Homer Venters, declare the following under penalty of perjury pursuant to 28 U.S.C. § 1746 as follows:

BACKGROUND

1. I am a physician, internist and epidemiologist with over a decade of experience in providing, improving and leading health services for incarcerated people. My clinical training includes a residency in internal medicine at Albert Einstein/Montefiore Medical Center (2007) and a fellowship in public health research at the New York University School of Medicine (2009). My experience in correctional health includes two years visiting immigration detention centers and conducting analyses of physical and mental health policies and procedures for persons detained by the U.S. Department of Homeland Security. This work included and resulted in collaboration with ICE on numerous individual cases of medical release, formulation of health-related policies as well as testimony before the U.S. Congress regarding mortality inside ICE detention facilities.
2. After my fellowship training, I became the Deputy Medical Director of the NYC Jail Correctional Health Service. This position included both direct care to persons held in NYC's 12 jails, as well as oversight of medical policies for their care. This role included oversight of chronic care, sick call, specialty referral and emergency care. I subsequently was promoted to the positions of Medical Director, Assistant Commissioner, and Chief Medical Officer. In the latter two roles, I was responsible for all aspects of health services including physical and mental health, addiction, quality improvement, re-entry and morbidity and mortality reviews as well as all training and oversight of physicians, nursing and pharmacy staff. In these roles I was also responsible for evaluating and making recommendations on the health implications of numerous security policies and practices including use of force and restraints. During this time, I managed multiple communicable disease outbreaks including H1N1 in 2009, which impacted almost a third of housing areas inside the adolescent jail, multiple seasonal influenza outbreaks, a recurrent legionella infection and several other smaller outbreaks.
3. In March 2017, I left Correctional Health Services of NYC to become the Director of Programs for Physicians for Human Rights. In this role, I oversaw all programs of Physicians for Human Rights, including training of physicians, judges and law enforcement staff on forensic evaluation and documentation, analysis of mass graves and mass atrocities, documentation of torture and sexual violence, and analysis of attacks against healthcare workers.
4. Between December 2018 and April 30, 2020, I served as the Senior Health and Justice Fellow and subsequently as the President for Community Oriented Correctional Health

Services (COCHS), a nonprofit organization that promotes evidence-based improvements to correctional practices across the U.S. As of May 1, 2020, I left COCHS to focus exclusively on COVID-19 response work as a medical expert. I wrote a book on the health risks of jail (*Life and Death in Rikers Island*) which was published in early 2019 by Johns Hopkins University Press. A copy of my curriculum vitae, which includes my publications, a listing of cases in which I have been involved and a statement of my compensation, is attached to this report.

TRANSMISSION OF COVID-19

5. Information and understanding about the transmissibility of the coronavirus disease of 2019 (COVID-19) is rapidly evolving. New information is relevant to the health of ICE detainees and staff.
 - a. In addition to transmission by aerosolized droplets expelled from the mouth by speaking, coughing, sneezing, and breathing, COVID-19 appears to be transmissible through aerosolized fecal contact. This is relevant because the plume of aerosolized fecal material that occurs when a toilet is flushed is not addressable in many detention centers because ICE detainee toilets generally lack lids. This mode of transmission would pose a threat to anyone sharing a cell with a person who has COVID-19 and could occur before a person becomes symptomatic. This mode of transmission could also extend beyond cellmates, especially in circumstances where common bathrooms exist or where open communication between cells exists.¹
 - b. CDC and state guidance now recommend the use of protective masks for anyone who is in close contact with others, at less than 6 feet distance.² This recommendation applies to staff and detainees alike.

COVID-19 IN ICE DETENTION

6. COVID-19 is a viral pandemic. This is a novel virus for which there is no established curative medical treatment and no vaccine.
7. ICE has not been able to stop the spread of COVID-19 in detention centers. ICE reported that, as of April 7, there were 19 detained people in 11 facilities, 11 ICE employees in 6 facilities, and 60 ICE employees not assigned to a facility who had all tested positive for COVID-19. As of April 20, less than two weeks later, ICE reported a jump to 220 detained people in 28 facilities, 30 ICE employees in 9 facilities, and 86 ICE employees

¹ <https://www.medpagetoday.com/infectiousdisease/covid19/85315>.

² <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/cloth-face-cover.html>.

not assigned to a facility who had tested positive for COVID-19.³ These numbers, which do not include non-ICE staff and contractors at the facilities, are likely just the tip of the iceberg in terms of the number of ICE staff and detainees who are already infected but are unaware due to the lack of testing nationwide, and the fact that people who are infected can be asymptomatic for several days.

8. When COVID-19 impacts a community, it will also impact the detention facilities. In New York, one of the areas of early spread in the U.S., multiple correctional officers and jail and prison inmates have become infected with COVID-19. The medical leadership in the NYC jail system have announced that they will be unable to stop COVID from entering their facilities and have called for release as the primary response to this crisis. Staff are more likely to bring COVID-19 into a facility, based solely on their movement in and out every day.
9. Once COVID-19 is inside a facility, ICE will be unable to stop the spread of the virus throughout the facility given long-existing inadequacies in ICE's medical care and also in light of how these facilities function. ICE has faced longstanding challenges in maintaining adequate health staffing for many years, and the outbreak of this pandemic will dramatically worsen this problem.
10. I have been inside multiple ICE detention facilities, both county jails that house ICE detainees and dedicated facilities. My experience is that the densely packed housing areas, the structure of health services, food services, recreation, bathroom and shower facilities for detained people, as well as the arrangement of entry points, locker rooms, meal areas, and control rooms for staff, all contribute to many people being in small spaces.
11. Detention facilities are designed to force close contact between people and rely on massive amounts of movement every day from one part of the facility to another, e.g., for programming, access to cafeterias, commissary, and medical, just to name a few. This movement is required of detained people as well as staff. My experience managing smaller outbreaks is that it is impossible to apply hospital-level infection control measures on security staff. In a hospital or nursing home, staff may move up and down a single hallway over their shift, and they may interact with one patient at a time. In detention settings, officers move great distances, are asked to shout or yell commands to large numbers of people, routinely apply handcuffs and operate heavy doors/gates, operate large correctional keys and are trained in the use of force. These basic duties cause the personal protective equipment they are given to quickly break and become useless, and even when in good working order, may impede their ability to talk and be

³ ICE Guidance on COVID-19, IMMIGRATION & CUSTOMS ENFORCEMENT (Updated Apr. 20, 2020), <https://www.ice.gov/coronavirus>.

understood, in the case of masks. For officers working in or around patients at risk or with symptoms, there may be an effort to have them wear protective gowns, as one would in any other setting with similar clinical risks. These gowns cover their radios, cut down their ability to use tools and other equipment located on their belts and in my experience working with correctional staff, are basically impossible to use as a correctional officer.

12. Efforts to lock detained people into cells will worsen, not improve this facility-level contribution to infection control. Units that are comprised of locked cells require additional staff to escort people to and from their cells for showers and other encounters, and medical, pharmacy and nursing staff move on and off these units daily to assess the welfare and health needs of these people, creating the same movement of virus from the community into the facilities as if people were housed in normal units.
13. ICE's detention procedures and practices have manifestly failed to mitigate the rapid spread of the novel coronavirus within their facilities. As of the date of this declaration, there are confirmed cases of COVID-19 among both detainees and staff at the four facilities in this case. Nine detainees and one employee at Stewart Detention Center, two detainees at Irwin County Detention Center, five detainees at LaSalle ICE Processing Center, and seventeen detainees at Pine Prairie ICE Processing Center have tested positive for the virus.⁴ These figures likely underestimate the number of people infected at each facility, as ICE only tests people who meet the CDC's definition of a person under investigation;⁵ that is, someone exhibiting symptoms of COVID-19. Many carriers of coronavirus are asymptomatic, and thus would not qualify for testing by ICE.

ICE RESPONSE TO COVID-19 IN DETENTION CENTERS IS DEFICIENT

14. On the whole, ICE's response to the COVID-19 pandemic is grossly deficient and at odds with recommendations of the CDC regarding detention settings in a manner that threatens the health and survival of ICE detainees. I've reviewed available documents regarding their planning, including the March 6, 2020 interim guidance sheet provided by ICE Health Service Corps,⁶ March 27, 2020 Memorandum to ICE wardens ("March 27 memo"),⁷ ICE's guidance on its website,⁸ the April 4, 2020 Docket Review memo,⁹ and the April 10, 2020 ERO COVID-19 Pandemic Response Requirements ("ERO document").

A. The March 6 and March 27 Memoranda

⁴ <https://www.ice.gov/coronavirus>.

⁵ Id.

⁶ <https://www.aila.org/infonet/ice-interim-reference-sheet-coronavirus>.

⁷ <https://www.ice.gov/doclib/coronavirus/attF.pdf>.

⁸ <https://www.ice.gov/covid19>.

⁹ <https://www.ice.gov/doclib/coronavirus/attk.pdf>.

15. I have reviewed ICE's March 6 and March 27, 2020 documents addressing COVID-19 (together, the "March 2020 ICE Protocols"); although I understand the March 6 interim guidance policies to be superseded by the April 10, 2020 ERO document, it is worth noting that these policies were deficient and at odds with recommendations of the CDC regarding detention settings in a manner that threatens the health and survival of ICE detainees. The April 10 ERO document mandates compliance with the March 27 memo, which also fails to comply with CDC guidance.
16. ICE's March 27 memo takes the dangerous approach of limiting clinical guidelines for COVID-19 response to the detainees being provided direct care by ICE Health Services Corps (IHSC) staff, which represents approximately 13,000 detainees.¹⁰ As a result, detention centers operated by public and private contractors are not provided with this guidance. This approach to management of the COVID-19 outbreak ensures that vital information would remain in these facilities, instead of being acted upon by ICE. As a result, ICE could not have known when its own policies or even basic standards of infection control were being followed.
17. The March 2020 ICE Protocols failed to address the key recommendation of the CDC on the need for adequate staffing and training of staff. ICE's March 27 memo simply states that "facilities are expected to be appropriately staffed," but provides no guidance whatsoever on how that could be accomplished in the context of existing staffing gaps, a decreased workforce, and increased needs resulting from steps required to screen, monitor and treat detainees for COVID-19. CDC Detention Guidelines make clear the need for a concrete plan for ensuring adequate staffing as part of the COVID-19 response.¹¹ These guidelines also make clear the need to orient staff to the critical need to stay home if and when they experience symptoms of COVID-19 infection. The March 27 guidance mentions only the "expectation" of appropriate staffing levels rather than implementing any meaningful oversight system to ensure that staffing levels are appropriate. Critically, appropriate staffing levels refers not only to a sufficient number of staff but also to a sufficient number of qualified staff. In my experience, many facilities rely heavily on guards and LPNs to do medical work that they are not qualified to do; likewise, many facilities rely on RNs to do medical work that only doctors or physician-assistants are qualified to do. There is no indication whatsoever that ICE is implementing procedures to ensure not only sufficient numbers of staff but also sufficient numbers of qualified staff. This is a very serious defect because access to qualified medical professionals is crucial during this rapidly evolving pandemic.

¹⁰ <https://www.ice.gov/ice-health-service-corps>.

¹¹ Guidance for Correctional & Detention Facilities ("CDC Detention Guidelines") <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html>.

18. The March 2020 ICE Protocols failed to address the key recommendation of the CDC on the need for adequate intake screening of detainees. CDC Detention Guidelines make clear that everyone arriving in a detention facility should be screened for signs and symptoms of COVID-19, but the March 2020 ICE Protocols relied on questions about travel or other known contacts as a precursor to temperature checks and other sign and symptom checks. It is likely that almost everyone in the general public who is not practicing social distancing is in contact with the COVID-19 virus, and these questions give a false impression that they will somehow help identify those most likely to have this type of contact. According to the CDC, the appropriate focus should be on checking for active symptoms including fever and known sick contacts of any type every time a person, whether a staff member or detained person, enters an ICE facility. The March 2020 ICE Protocols also failed to clearly mandate that all symptomatic patients be immediately given a mask and placed in medical isolation, and that all staff who have further contact with that patient wear personal protective equipment, as set forth in the CDC Detention Guidelines. These protocols also failed to address the now-standard CDC advice that everyone who cannot engage in social distancing wear a face covering.¹²
19. The March 2020 ICE Protocols provided no guidance about identification of high-risk patients at the time of entry or any special precautions that would be enacted to protect them. The protocol also failed to address the identification of high-risk patients who have already been admitted.
20. The March 2020 ICE Protocols stated that people with suspected COVID-19 contact would be monitored for 14 days with symptom checks. The protocols were written as if this would be a rare occurrence, reflecting smaller outbreak management, but the prevalence of COVID-19 has grown to such an extent that a large share of newly arrived people will have recent contact with someone who is infected. ICE would need to use this level of monitoring for every person arriving in detention. Accordingly, ICE would need to dramatically expand its medical facilities and staffing to conduct this daily monitoring of every newly arrived person for 14 days. The protocols failed to contemplate these necessary changes.
21. The March 2020 ICE Protocols failed to address the key recommendation of the CDC on the need for monitoring and care of symptomatic patients.
 - a. The CDC Detention Guidelines make clear that patients who exhibit symptoms of COVID-19 should be immediately placed in medical isolation. The March 2020 ICE Protocols only invoked this response for newly arrived detainees who also

¹² <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

answered yes to screening questions. This approach results in a failure to actively screen the large majority of detainees: people who are already detained.

- b. CDC Detention Guidelines clearly indicate the need for twice-daily monitoring of patients who are symptomatic or in quarantine, and ICE only mandated a daily check.
 - c. ICE made no mention of access to masks for patients in quarantine settings.
 - d. ICE failed to present a plan for how isolation would be conducted when the number of people exceeded the number of existing isolation rooms or cells, a near certainty.
22. The March 2020 ICE Protocols failed to address the key recommendation of the CDC Detention Guidelines on the need for social distancing. ICE's March 27 memo mentions social distancing briefly, but fails to address how ICE facilities will enact modified meal or recreation times and also fails to address the most common scenarios in which high risk detainees find themselves in close quarters, including shared cells, medication lines, bathroom facilities, common walkways and day rooms, sally ports and transportation. Again, because there is no cure for COVID-19, social distancing remains the most effective means of prevention, and ICE failed to meaningfully implement this precaution in its March 2020 guidance.
23. The March 2020 ICE Protocols failed to address the recommendation of the CDC Detention Guidelines on the need to limit transportation of detainees as a means to limit the spread of COVID-19. CDC Detention Guidelines state that transfers should be limited to those that are absolutely necessary and that receiving facilities must have capacity to isolate symptomatic patients upon arrival. ICE protocols failed to address these issues. CDC Detention Guidelines make clear the need for a clear plan for all aspects of transport of suspected COVID-19 infected people, and ICE does not have or did not report such a plan. The CDC Detention Guidelines recommend a level of infection control measures in transportation of symptomatic or potentially COVID-19 positive patients that would require far more staffing and training than ICE has the capacity to provide for large scale transfers: "If a transfer is absolutely necessary, perform verbal screening and a temperature check as outlined in the Screening section below, before the individual leaves the facility. If an individual does not clear the screening process, delay the transfer and follow the protocol for a suspected COVID-19 case – including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing. If the transfer must still occur, ensure that the receiving facility has capacity to properly isolate the individual upon arrival. Ensure that staff transporting the individual wear recommended PPE . . . and that the transport vehicle is cleaned thoroughly after transport." In other words, transferring

people between facilities, as ICE routinely does and as I understand is still going on, requires far more measures than ICE implements and should be ceased.

24. The March 2020 ICE Protocols failed to address the recommendation of the CDC Detention Guidelines on the need for environmental cleaning of both housing areas and other common spaces within facilities. CDC Detention Guidelines provide clear details about the types of cleaning agents and cleaning processes that should be employed, while ICE provided no guidance to facilities on this critical issue. Reliance on detainees for conducting critical environmental cleaning, without proper training, protection or supervision, represents a gross deviation from correctional practices, and will likely contribute to the spread of COVID-19 throughout the ICE detention system.

B. The April 4, 2020 Docket Review Guidance

25. None of the ICE COVID-19 protocols set forth sufficient policies or protocols addressing release of medically vulnerable detained people in light of the significant risks to those people posed by COVID-19. This must be done immediately and is in contrast to the efforts made in many prison and jail systems across the country.
26. The April 4 list of risk factors for serious illness and death from COVID-19 infection developed by ICE is inconsistent with CDC guidelines and fails to adequately advise facilities on which detainees are at elevated risk. This list is included in a memo to Field Office Directors regarding Docket Review, and fails to include very basic risk factors identified by the CDC, including body mass index over 40 and being a current or former smoker.¹³ By apparently assigning this process to field directors and their staff, who are not medical professionals, advising security staff to check with medical professionals after the fact, and failing to include CDC-identified risk factors, this docket review process will likely leave many people with true risk factors in detention. This is particularly the case if they're detained under certain immigration law provisions, where the guidance recommends officers not release them despite risks. Thus, the guidance appears to be just that – guidance, and the risk factors are not determinative. In fact, the guidance appears to not make these risk factors determinative for release—even for people who are not subject to mandatory detention. ICE also identifies people under the age of 60 in this cohort but the age of 55 is appropriate. Because detained people have consistently been identified as having higher levels of health problems that reflect that they are 10-15 years more progressed than chronological age, numerous organizations and research studies have used the age of 55 to define the lower limit of older detainees.¹⁴ ICE also limits the high risk period for women to 2 weeks after child birth, yet one of the

¹³ <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html> and <https://www.cdc.gov/mmwr/volumes/69/wr/mm6913e2.htm>.

¹⁴ <https://nicic.gov/aging-prison> and <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3464842/>.

most serious increased risk during pregnancy is hypercoagulable state, which increases the risk of blood clots in the large veins of the lower extremities, and sometimes in the lung which can prove fatal. This risk extends to 6 weeks post-partum and also occurs independently with COVID-19 infection.¹⁵ Accordingly, ICE should include these definitions in its list of risk factors. ICE should also put in place a mechanism to ensure that risk factors reflect the evolving science and data concerning COVID-19, since it is likely that additional risk factors will emerge as more data is collected.

27. The April 4 promulgation of an incomplete list of risk factors in a memo relating to discretion for release occurs in a complete vacuum of guidance on special protection and clinical management of people with those risk factors while in detention. This Memo describes an overly discretionary decision-making process for release that does not sufficiently favor depopulation as public health requires and that has no urgency to it. Reviews and releases must be undertaken immediately.
28. The April 4 ICE memo to Field Directors on identification and release of detained people with risk factors for serious illness and death from COVID-19 infection is both incomplete and revelatory. ICE has omitted multiple important risk factors identified by the CDC in its own list but has also failed to create any surveillance of the outbreak across facilities that includes the number of patients experiencing symptoms, confirmed COVID-19 infection or hospitalization by presence or absence of CDC risk factors.

C. The April 10, 2020 ERO Document

29. The ERO document identifies multiple areas of COVID-19 response that all facilities holding ICE detainees must supposedly adhere to. Multiple sections of this document reflect inconsistencies or critical omissions from CDC Detention Guidelines for response to COVID-19. In addition, ICE is unlikely to ensure compliance with the policies laid out in this document due to longstanding lack of information systems, quality assurance and oversight mechanisms that are standard in other carceral or detention settings. These inconsistencies and omissions increase the risk that facilities holding ICE detainees will not follow evidence-based practices in infection control and that ICE detainees will experience higher risks of serious illness and death because of these deficiencies.
30. The ERO document omits key aspects of CDC guidelines for self-monitoring and quarantine for staff and detainees who have had contact with suspected or known cases of COVID-19.

¹⁵ <https://www.acog.org/patient-resources/faqs/womens-health/preventing-deep-vein-thrombosis> and <https://www.medpagetoday.com/infectiousdisease/covid19/85865>.

- a. Staff who have contact with a known or suspected case of COVID-19 are only mentioned in one section of this document “Exposed employees must then self-monitor for symptoms (i.e., fever, cough, or shortness of breath).” This omits several critical aspects of CDC guidelines that bear on this very scenario, contacts between critical staff and COVID-19 suspected or known cases. The CDC guidelines include the following directives:¹⁶
 - i. Pre-Screen: Employers should measure the employee’s temperature and assess symptoms prior to them starting work. Ideally, temperature checks should happen before the individual enters the facility.
 - ii. Regular Monitoring: As long as the employee doesn’t have a temperature or symptoms, they should self-monitor under the supervision of their employer’s occupational health program.
 - iii. Wear a Mask: The employee should wear a face mask at all times while in the workplace for 14 days after last exposure. Employers can issue face masks or can approve employees’ supplied cloth face coverings in the event of shortages.
 - iv. Social Distance: The employee should maintain 6 feet and practice social distancing as work duties permit in the workplace.
 - v. Disinfect and Clean work spaces: Clean and disinfect all areas such as offices, bathrooms, common areas, shared electronic equipment routinely.
- b. In addition, the ERO document provides no guidance on how facilities should act if one of these staff members with a known/suspected contact becomes ill at work. The CDC provides clear guidance however:
 - i. “If the employee becomes sick during the day, they should be sent home immediately. Surfaces in their workspace should be cleaned and disinfected. Information on persons who had contact with the ill employee during the time the employee had symptoms and 2 days prior to symptoms should be compiled. Others at the facility with close contact within 6 feet of the employee during this time would be considered exposed.”
- c. Key CDC recommendations for detainees who have contact with a known or suspected case of COVID-19 are similarly left out of the ERO document. The ERO document addresses this aspect of facility management with the following:

¹⁶ <https://www.cdc.gov/coronavirus/2019-ncov/community/criticalworkers/implementing-safety-practices.html>.

“If an individual is a close contact of a known COVID-19 case or has traveled to an affected area (but has no COVID-19 symptoms), quarantine the individual and monitor for symptoms two times per day for 14 days.” This omits several critical aspects of CDC guidelines that bear on this very scenario, the quarantine of detainees who have contacts with suspected or known cases. In the section on “Management,” the CDC Detention Guidelines include specific protocols applicable to quarantine. Examples of these protocols include:¹⁷

- i. Provide PPE to staff working in quarantine settings, and masks to detainees in these settings.
- ii. **Quarantined individuals should be monitored for COVID-19 symptoms twice per day, including temperature checks.**
- iii. **Meals should be provided to quarantined individuals in their quarantine spaces.** Individuals under quarantine should throw disposable food service items in the trash. Non-disposable food service items should be handled with gloves and washed with hot water or in a dishwasher. Individuals handling used food service items should clean their hands after removing gloves.

31. The ERO document mandates that every facility holding ICE detainees have a COVID-19 mitigation plan in place. The ERO document specifies the following: “Consistent with ICE detention standards, all facilities housing ICE detainees are required to have a COVID-19 mitigation plan that meets the following four objectives:

- a. To protect employees, contractors, detainees, visitors to the facility, and stakeholders from exposure to the virus;
- b. To maintain essential functions and services at the facility throughout the pendency of the pandemic;
- c. To reduce movement and limit interaction of detainees with others outside their assigned housing units, as well as staff and others, and to promote social distancing within housing units; and
- d. To establish means to monitor, cohort, quarantine, and isolate the sick from the well.

¹⁷ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#management>.

32. My experience in reviewing policies and procedures in detention settings around the nation is that many facilities holding ICE detainees do not have such a plan and that since a critical part of the CDC recommendations include preparation for COVID-19, many facilities have already failed to meet many basic elements of the COVID-19 responses recommended by the CDC. Even if ICE is able to ensure and report that every facility has created such a plan, it is likely that the lack of COVID-19 response plan to prepare many facilities and respond to the early stages of the outbreak will increase the risk of serious illness or death. Many ICE facilities are in the throes of COVID-19 infection, and waiting until this pandemic is at its peak to require a mitigation plan represents a gross deviation from both CDC guidelines and basic correctional practice. Key areas of work that must be conducted before COVID-19 arrives include training of staff, ordering of supplies, planning for quarantine housing and monitoring, and identification of surge staffing. Starting these basic tasks immediately makes it much less likely that facilities will succeed in their efforts to slow spread of the virus.
33. The ERO document identifies a list of high-risk conditions that is inconsistent with the guidance given by ERO just days earlier and fails to adhere to CDC guidelines.
- a. The new ERO document fails to identify pregnant or post-partum women. The ERO docket review guidelines dated April 4, 2020, failed to identify smoking history or body mass index over 40 as risk factors, both of which are included by the CDC.
 - b. The age for older detainees was indicated as 65 in the new ERO document and 60 in the prior document. The correct age, based on correctional standards, should be 55.
34. The purpose of the ERO document's identification of high-risk patients is unclear beyond custody review, but it fails to establish any higher level of protection from COVID-19 infection.
- a. The prescribed actions in the ERO document regarding high-risk detainees include identifying who they are, emailing their name, location, medical issues and medications, and facility point of contact information to ICE headquarters apparently for review for release.
 - b. No guidance is given about how these high-risk patients can be protected from being infected with COVID-19, unless and until they are in a quarantine area or have been identified as symptomatic.
 - c. Having identified the detainees who are at increased risk of serious illness and death, and initiated a process to effectuate their release based on that risk, ICE

must also create increased surveillance of these detainees, including twice daily symptom checks with temperature checks.

35. The ERO document creates an unwieldy and unrealistic process for facilities to notify ICE headquarters regarding high risk detainees.

- a. The process of requiring every facility to send emails about every individual detainee with risk factors is unwieldy and unlikely to be effective. I have created surveillance tools for high risk patients in multiple detention scenarios and several key elements of this process are problematic:¹⁸
 - i. The process of emailing thousands of names with relevant information, or even spreadsheets, tables and other documents from over 150 facilities creates an unreliable and error prone system for finding the most vulnerable detainees inside ICE facilities.
 - ii. The process identified by ICE is static, meaning that as detained people move from one facility to another, there will be no way for their location to be automatically updated with their high-risk status, requiring labor intensive and error-prone records reviews.
 - iii. This approach will not allow for day to day management of the high-risk population by ICE leadership, since there will not be any way to be automatically notified when people are released, become ill for non-COVID-19 reasons, or even to automatically cross check the new COVID-19 cases against this initial batch of hundreds or thousands of emails.
 - iv. ICE should create single portal into which every facility can enter data on the detainees who meet CDC criteria for being high-risk. I employed such a portal as Chief Medical Officer of the NYC jail system, and we relied on this before and after the implementation of an electronic medical record as a way to identify high-risk patients and then track them from one facility to another. This type of approach is also essential for ICE to meet its stated obligations regarding re-entry planning for people who are leaving amid the COVID-19 crisis and coordination with local and state public health partners.
 - v. The net effect to this cumbersome and inefficient process will be that it will move unacceptably slowly in a fast-changing situation, far fewer

¹⁸ <https://cochs.org/files/health-it-hie/nyc-meaningful-use.pdf>;
https://www.researchgate.net/publication/264512394_Data-Driven_Human_Rights_Using_the_Electronic_Health_Record_to_Promote_Human_Rights_in_Jail.

detainees with risk factors will actually be released than could have occurred based on policies, and more high-risk patients will be at risk of serious illness and death in ICE detention.

36. The ERO document fails to include vital elements of CDC guidelines on preventing the spread of COVID-19 inside detention settings:

- a. The ERO document fails to mention or provide guidance on key aspects of social distancing including;
 - i. Intake pens
 - ii. Clinical and medication lines
 - iii. Bathroom and shower areas
 - iv. Sally ports
 - v. Staff entry, symptom checking, meal and locker room areas
- b. The ERO document fails to include guidance on the importance of communication with detainees about changes to their daily routine and how they can contribute to risk reduction, both of which are explicitly identified by the CDC guidelines. This is particularly important in a cross-cultural, multi-lingual setting like ICE detention. Simply posting signs is insufficient to communicate with detained people or staff, particularly during a stressful and chaotic situation like an outbreak. My personal experience leading both small and large scale outbreak responses behind bars is that frequent communication, in housing areas and other parts of detention settings where detained people are held, and where staff work, is critical to delivering important messages about infection control and also hearing about what is working and what isn't.
- c. The ERO document fails to include many critical aspects of cleaning and disinfection outlined in CDC guidelines including:
 - i. CDC guidelines identify a higher level of cleaning and disinfection after a person has been identified as a suspected COVID-19 case. This common sense approach is critical to ensuring that the most high-risk scenarios encountered by detainees and staff alike are responded to appropriately.
 - ii. The ERO document only mentions cleaning of vehicles after transport of a known/suspected case but fails to mention anything about the

housing area, cell, bunk or personal effects of detainees, or the computer, equipment or other belongings of staff.

- iii. CDC guidelines indicate that in settings where people are held overnight, response to a known or suspected COVID-19 case should include closing off areas used by the person who is sick, opening outside doors and windows to increase air circulation in the area and waiting 24 hours (or as long as possible) before cleaning/disinfecting.
 - iv. The ERO document fails to establish what PPE should be utilized by staff or detainees cleaning areas occupied by a known or suspected COVID-19 case.
 - v. Cleaning and disinfecting is a crucial aspect of infection control as there are numerous frequently used locations within facilities that may facilitate infection spread. This includes but is not limited to telephones, videoconferencing equipment, the law library, legal visitation spaces, and any other space that may be used by detained individuals. Facility staff should be sure to disinfect these spaces between uses given the likelihood of spread. In addition to cleaning, providing gloves and masks to detained individuals between uses of these spaces is a crucial component of infection control and prevention.
- d. CDC guidelines clearly recommend against transfer of detainees between facilities, as a means to prevent the regional spread of COVID-19. This approach is only mandated with regard to non-ICE detainees by the April 10 ERO document, leaving transfers of people in custody of ICE unrestricted.
 - e. The ERO document requires that everyone in facilities engage in hand washing for 20 seconds with soap and water but fails to address how this can be accomplished in facilities that utilize metered faucets that make this process essentially impossible.
 - f. The ERO document fails to establish or mandate a respiratory protection program, a critical guideline of the CDC: **“If not already in place, employers operating within the facility should establish a respiratory protection program as appropriate, to ensure that staff and incarcerated/detained persons are fit tested for any respiratory protection they will need within the scope of their responsibilities.”** Simply giving out N95 or other masks to staff and detainees and failing to train them and identify the high-risk tasks or scenarios they will encounter serves only to decrease the overall effectiveness of infection

control and increase the risk of serious illness and death in ICE facilities. The ERO document gives some details about cloth masks, but there is no mention of any plan to train, record or supervise members of the respiratory protection team, despite the CDC clearly including security personnel in this team.¹⁹

37. The ERO document fails to address the re-entry needs of people leaving ICE custody. This is a critical failure given their ongoing docket review. The CDC makes clear recommendations on this process:

- a. If an individual does not clear the screening process, follow the protocol for a suspected COVID-19 case²⁰ – including putting a face mask on the individual, immediately placing them under medical isolation, and evaluating them for possible COVID-19 testing.
- b. If the individual is released before the recommended medical isolation period is complete, discuss release of the individual with state, local, tribal, and/or territorial health departments to ensure safe medical transport and continued shelter and medical care, as part of release planning. Make direct linkages to community resources to ensure proper medical isolation and access to medical care.
- c. Before releasing an incarcerated/detained individual with COVID-19 symptoms to a community-based facility, such as a homeless shelter, contact the facility's staff to ensure adequate time for them to prepare to continue medical isolation, or contact local public health to explore alternate housing options.

D. Critical Issues the ICE Has Failed to Address Absent Direct CDC Guidance

38. ICE does not have any mechanisms to monitor or promote the health of all people in its charge. This failure is documented in many reports about ICE's inadequate healthcare system, but now poses a grave risk to their survival as ICE struggles to mount a competent response to COVID-19 across more than 150 facilities, on behalf of roughly 40,000 detainees and almost as many direct and contract staff. ICE's failure to properly monitor and oversee medical care at its detention centers has been a chronic concern in the health services provided to ICE detainees prior to this outbreak and has been cited as

¹⁹ <https://www.cdc.gov/niosh/npptl/hospresptoolkit/programeval.html>. CDC definition of healthcare personnel includes "paid and unpaid persons who provide patient care in a healthcare setting or support the delivery of healthcare by providing clerical, dietary, housekeeping, engineering, security, or maintenance services."

²⁰ <https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#Medicalisolation>.

a core failure of ICE in its obligations to establish quality assurance throughout its detention network.²¹ There is no indication that ICE can adequately monitor the response across its system to COVID-19. Absent robust and centralized oversight, ICE will not be able to provide a coordinated response informed by on-the-ground data from detention centers. This is in stark contrast to many prison systems across the country that are coordinating their efforts, including with health departments.

39. ICE has no plan or even capacity to provide daily clinical guidance to all of the clinical staff it relies on to care for ICE detainees, whether at ICE-operated facilities or contract facilities. The differing levels of oversight and clinical involvement across the various types of ICE facilities means that ICE is unable to promulgate and support a consistent set of clinical practices for all ICE detainees. This is a core failure because of the new nature of COVID-19 and constantly changing clinical guidance on how to treat patients. Daily briefings with health administrators and medical and nursing leadership should be held; both are a core aspect of outbreak management and provide a critical avenue for receiving feedback on real-time conditions inside facilities. ICE has not articulated any plan to ensure that this type of basic communication is in place across its network of detention settings. This guidance should also include uniform recommendations on when and how to transport patients to the hospital. Failure to implement this kind of procedure—particularly in light of the other defects described herein—poses a significant risk to the health and lives of ICE detainees.
40. As ICE determines to release people from detention, they should be afforded symptom screening akin to what is done with staff, but the release of detainees to the community will lower their own risks of infection and will also serve to flatten the overall epidemic curve by decreasing the rate of new infections and the demands on local hospital systems. From a medical and epidemiologic standpoint, people are safer from COVID-19 infection when not detained, and the epidemic curve of COVID-19 on the general community is flattened by having fewer people detained.

I declare under penalty of perjury that the statements above are true and correct to the best of my knowledge.

Signed this 2nd day of May, 2020 in Port Washington, NY.

²¹ <https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf>;
<https://www.oig.dhs.gov/sites/default/files/assets/2019-06/OIG-19-47-Jun19.pdf>.

A handwritten signature in black ink, appearing to read 'H. Venters', is centered within a light gray rectangular box. Below the box, a horizontal line extends across the page.

Homer Venters

DECLARATION OF HOMERO LÓPEZ, JR.

I declare under penalty of perjury pursuant to 28 USC §1746 that the foregoing is true and correct:

1. My name is Homero López, Jr. I am the Executive Director of Immigration Services and Legal Advocacy (ISLA), a nonprofit, legal services organization focused on providing pro bono direct representation to detained individuals in Louisiana.
2. I am an active member of the American Immigration Lawyers Association.
3. Over the past two years, ISLA has focused exclusively on handling a detained caseload with the majority of our cases arising out of the Pine Prairie ICE Processing Center (PPIPC) but also handling cases out of the many other detention centers which have opened up in the state. During this time, we have made weekly trips, oftentimes staying the night or making multiple trips in a week, to the detention centers and immigration courts to meet with clients and attend hearings.
4. At this moment, our office is representing clients who are detained at the PPIPC in Pine Prairie, Louisiana and the Winn Correctional Center (Winn) in Winnfield, Louisiana.
5. As a result of the COVID-19 outbreak in Louisiana, and the subsequent quarantines and changes in visitation policies by the detention centers, it has been nearly impossible to visit or communicate with our clients since March 17, 2020.
6. On March 17, 2020, we received calls from clients at PPIPC informing us that there were suspected cases of COVID-19 there and that an entire dorm had been quarantined. I followed up with the Executive Administrative Assistant at PPIPC, Ms. Tammy Fontenot, who confirmed that there were folks who were “cohorted,” the term the detention center uses regarding quarantines. As a result, in person, contact visitations were cancelled at PPIPC. While PPIPC does have access to video teleconference meetings for attorneys, those are limited to 30 minutes per client per day.
7. These video calls present many problems. First, there are only two visitation rooms, meaning that only two attorneys can be handling the calls at the same time. As such, scheduling the times can become very complicated as the facility staff needs to coordinate the various requests coming in and schedule them on a first come, first serve basis. This ends up creating conflicts with hearings, other meetings, family obligations, etc. which leads attorneys to have to sacrifice either the client meeting or their other obligations.
8. Second, while, in theory, there are 30 minutes per call, that’s not always the case in practice. Clients who are in segregation or in quarantine cannot be in the same room as those who are not. Therefore, if a two-hour time block is scheduled with four clients and one is in quarantine and one in segregation, the facility staff will first bring the two that are not segregated or quarantined, allowing them to go back to back. Then, those two will have to be returned to their dorms, the walkway and waiting room cleared, and then the

segregated client can be brought. After that call is over, the same process must take place before the quarantined client can be brought. These additional steps take time and that time is deducted from the 30 minutes allocated to that client's visit.

9. Third, not being in person with a client makes it nearly impossible to properly review and discuss documents. This is a result of the connection oftentimes being interrupted; either the video stops working, the call completely drops, the audio goes in and out, or all three. This mostly happens due to the remote, rural location of this facilities and the fact that internet service in those areas is not of the highest quality. That internet connection is worsened when the weather is bad, creating situations where the actual, real time amount of time spent with clients is closer to 10 minutes than the allocated 30.
10. As a result of these various issues, many attorneys oftentimes "stack" their video requests, requesting more clients than they actually need to visit with in order to use their left over time from these other clients for the ones they really need to prepare. While this may serve as a workable loophole at times, given that there are approximately 32 slots a day available (visitation is from 8AM-5PM with 30 minute slots and two available visitation rooms), this deprives other attorneys from being able to get a slot to prepare their clients as well.
11. On March 23, 2020, we received a memorandum from Mr. Keith Deville, Warden at Winn, informing attorneys that, as per ICE instructions, all attorneys must wear gloves and an N-95 mask when conducting visits. Given the nationwide shortage of such protective equipment, even for medical personnel, such a requirement has, in practice, created a ban on in-person attorney visits.
12. Since then, Pine Prairie's policy as to in-person legal visitation has changed repeatedly. Some days it is permitted and some days it is not. The only way to find out for sure is to walk up to the facility and look to see if there is a sign at the door about whether in person visitation is available that day. Given the lack of access to PPE, even when visitation is allowed, it is not in the interest of myself, my client, or the public health for me to conduct the visit in person. However, not visiting in person means I cannot get documents signed, thereby potentially harming my client's case.
13. As a result, it has become functionally impossible for us to obtain the medical records we need to prepare our clients' cases. We cannot get medical records without obtaining signatures from our clients, and ICE refuses to provide our clients with the releases to sign or us with a mechanism to retrieve the signed documents. This is an intolerable limitation on our ability to adequately represent our clients.
14. As of April 5, 2020, 5 men have died as a result of COVID-19 at the Oakdale Federal Institute. The facility has also become so overwhelmed by the virus, that officials have decided to stop testing for it. On April 3, 2020, ICE reported a confirmed case at Pine Prairie. That person was transferred from Oakdale Federal Institute on March 23, 2020. Further, on that same day ICE confirmed that two employees at the Alexandria Staging Facility, the main travel hub for immigrants being transported to or from Louisiana, had

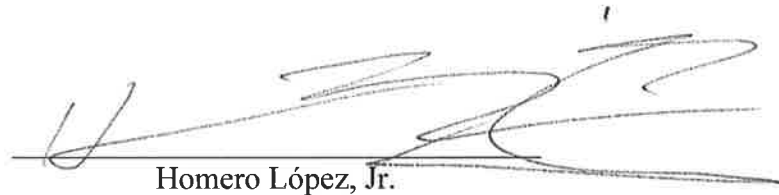
also tested positive for COVID-19. One of my clients at Pine Prairie is now COVID positive.

15. I have other clients in “cohorted” dorms in which movement to other parts of the facility is limited but not eliminated. My clients tell me that most dorms at Pine Prairie are now quarantined. Dorms are cohorted when a person from that dorm is taken out of the dorm because of their COVID-19 symptoms. Usually, no matter what the person’s symptoms are, they won’t be removed unless they have a fever over 100 degrees. One of my clients told me that a man in his dorm had a cough for a week and a half but was not tested or isolated because he did not yet have a fever. Even after the person is removed, the rest of the people in the dorm are left there together. There is no ability to socially distance in these dorms, which are mostly full, even though they have been exposed to a symptomatic person. My clients report that nothing has changed in regards to the orientation of or space between the beds, which are much less than six feet apart and mostly full. There has been no increase in cleaning supplies or frequency of cleaning.
16. Pine Prairie staff has been placing my clients at risk by not wiping down the terminals and seats when they have their legal skype calls with me. On April 21, 2020, for example, the guards mistakenly brought in one detained person from a cohorted dorm to the skype cubicle. After I told the guard that he was not my client, they took him out of the cubicle, then brought in my client, who was not in a cohorted dorm, without wiping down the area. I have emailed the warden twice about this unsafe practice, once before, and once after this incident, but he has neither responded nor resolved the issue.
17. Another area of concern is that ICE reports when employees or detained people test positive for COVID-19, but not their contractors. Pine Prairie is almost exclusively run by contractors from the GEO Group. I would assume that the guards are either sick or scared. My clients are telling me that many guards are not coming in.
18. Our clients are understandably fearful of contracting the disease as persons are being transferred into the facility from facilities with confirmed cases. This makes it incredibly difficult for us to meet with and represent our clients since going to facilities with confirmed cases, especially when travelling from the most affected area of the state, puts us, our clients, our families, and everyone with whom we come in contact at risk of infection.
19. Our clients are extremely worried about potentially becoming ill with the virus, in particular since various dorms have been quarantined at different facilities and they hear the news of the virus’s spread throughout the state.
20. Clients at Pine Prairie also expressed fears due to a lack of personal protective equipment. On April 19, 2020, guards told them that they needed to sign a document in order to be

provided with face masks. Because the document was in English and the detained people did not speak English and refused to sign the document without it being translated, the face masks were not distributed.

21. Further exacerbating the situation is that Pine Prairie does not have adequate infrastructure to properly contain and prevent the spread of the virus within, and outside, its walls, much less the required medical care to make sure that people who become infected will be well treated. This facility is located in isolated, remote areas of the state, approximately three to four hours radius from any major metropolitan area, making it difficult, or nearly impossible, to timely access the required medical care. With hospitals around the country already strained in the fight against the virus, detained individuals in rural areas are at the highest risk of being left untreated.

Executed on May 5, 2020.



Homero López, Jr.

DECLARATION OF LAURA G. RIVERA, ESQ.

I, Laura G. Rivera, Esq., make this declaration on my personal knowledge and if called to testify, I could and would do so competently as follows:

1. I serve as the Director of the Southeast Immigrant Freedom Initiative of the Southern Poverty Law Center (“SIFI”). I have worked at SIFI since its launch in early 2017, serving variously as Deputy Director and Advocacy Attorney. I became the Director in September 2019.
2. SIFI provides *pro bono* representation to detained immigrants in proceedings before the Executive Office for Immigration Review, U.S. Immigration and Customs and Enforcement (“ICE”), and the Board of Immigration Appeals (“BIA”). SIFI focuses on seeking clients’ release from ICE custody. SIFI also represents some individuals in merits proceedings before EOIR and the BIA, and provides *pro se* support to some custody clients in their merits proceedings.
3. SIFI represents individuals confined inside the LaSalle ICE Processing Center (“LaSalle”) in Jena, Louisiana; the Pine Prairie ICE Processing Center (“Pine Prairie”) in Pine Prairie, Louisiana; the Irwin County Detention Center (“Irwin”) in Ocilla, Georgia; the Folkston ICE Processing Center (“Folkston”) in Folkston, Georgia; and the Stewart Detention Center (“Stewart”) in Lumpkin, Georgia. The facilities at issue in this litigation (LaSalle, Pine Prairie, Irwin, and Stewart) will hereinafter be referenced collectively as “the four facilities.”
4. Since the start of the COVID-19 outbreak, SIFI has started to represent a few medically vulnerable people confined under alarming conditions at Adams County Correctional Facility (“Adams”) in Natchez, Mississippi; South Louisiana ICE Processing Center (“Basile”) in Basile, Louisiana; and Winn Correctional Center (“Winn”) in Winnfield, Louisiana. SPLC has also partnered with Asian Americans Advancing Justice-Atlanta and Kilpatrick, Townsend, & Stockton LLP (hereinafter “Habeas Counsel,” referring to

counsel collectively) to represent medically vulnerable immigrants in habeas petitions at Stewart and Irwin.

5. Before SIFI's launch in 2017, the previous Director and I attempted to negotiate terms for legal access with CoreCivic managers at Stewart Detention Center. SIFI undertook similar efforts at the four facilities, without success.
6. SIFI's ability to communicate with our clients has been constrained from the very beginning. The constraints exist across every medium of communication: in-person visitation, video teleconference ("VTC") calls, phone calls, and mail. For example, in-person visits at Stewart, Irwin, and LaSalle do not allow contact between attorneys and clients, while at Pine Prairie, contact visits are the only form of in-person legal visitation. The number of visitation rooms are too few considering that hundreds of individuals in essentially a pre-trial posture are confined at each of the four facilities. Long wait times, limited hours, and time limits on visits have been commonplace at the four facilities. These are the conditions SIFI staff faced before the pandemic as they visited the four facilities. Each week, SIFI staff visited facilities two or three days, on average, conducting visitation with two dozen people or more, depending on the week.
7. SIFI has also made use of VTC and legal phone calls to communicate with clients, especially where staff requires interpreters for effective communication, because Stewart, Irwin, and Pine Prairie have not consistently allowed attorneys to call interpreters during in-person visitation, or provide a method that is workable in practice. For example, in the past few months, Stewart began allowing legal visitors to use a cell phone during in-person visits solely to call interpreters. In practice, however, this method is unworkable. Since Stewart only allows non-contact visits, the legal visitor must place the cell phone with the interpreter on the line up to the glass or the receiver of the facility phone, and the client often cannot hear it.
8. But these means of communications, too, are so limited that SIFI staff experience chronic delays in developing cases. For example, Stewart, has only two VTC consoles with VTC

calls limited to one hour, and, until last week, no process for confidential legal phone calls. Until recently, Pine Prairie had only one VTC console; each VTC call is limited to thirty minutes. Irwin requires two to three days' advanced notice to coordinate a VTC call. Similar or longer wait times are the norm at LaSalle and Stewart. (Collectively, legal phone calls and VTC are hereinafter referenced as "remote legal visit").

9. Mail has not proven to be a reliable method to exchange documents with clients. For example, at Stewart, where a single post office box number is shared by the court, ICE prosecutors, ICE Enforcement and Removal Operations agents, and people confined inside the detention center, mail sometimes does not reach its intended recipient. At Pine Prairie, detained individuals have reported that legal mail has been searched and evidence improperly confiscated as contraband. Delays in sending and receiving are the norm.
10. Taken together, these constraints lengthen the time it takes for SIFI staff to prepare a case, given the many steps involved in developing an application for release to EOIR or ICE. In a typical case, SIFI staff conduct a phone intake with a potential client via SIFI's free and confidential hotline. The intake may last from 30 minutes to more than an hour, depending on the caller's circumstances and whether an interpreter is necessary. SIFI staff then conduct a more in-depth screening with that individual. The screening usually takes place in-person unless the individual speaks a foreign language that SIFI staff do not speak. In those cases, the screening is conducted via VTC, and SIFI call an interpreter. While a typical screening without interpretation may take one to one-and-a-half hours, a screening through an interpreter may take twice as long.
11. If SIFI determines it may accept the case, staff again meet with the individual to explain SIFI's retainer, discuss the next steps in developing the case, and answer the client's questions. To prepare the client's bond motion or parole request, SIFI staff may speak with the client two or three more times, in-person or remotely. Eliciting relevant facts for the case usually takes several conversations, especially because most clients have experienced trauma on account of their detention, their migration journey, life experiences in their home countries or the United States, or any combination of those. In

such cases, SIFI staff, employing trauma-informed approaches to representation, may invest time building rapport with clients, spread triggering subject matter across conversations, and revisit difficult topics as clients recollect suppressed details.

12. Clients typically possess documentary evidence and case filings that are not otherwise available to SIFI staff, and because the mail is unreliable, staff generally have collected those documents in person. Documents that include sensitive material may be the client's only copy; in which case, the ability to take it from them in person, make a copy of it, and bring it back to them safely is invaluable. For similar reasons, SIFI staff have tended to obtain signatures from clients via in-person visits rather than by mail. Examples of typical documents exchanged include the G-28, Entry of Appearance before ICE, the ICE Privacy Waiver, authorizations for the release of medical records, ICE charging documents, and copies of identification documents and other records from clients' home countries. Facilities have allowed SIFI attorneys to fax authorizations for release of medical records and often subsequently receive the medical records from the facility via fax.
13. The outbreak of the novel coronavirus has heightened the urgency of release for clients confined in close quarters, as they and those around them contract the virus, face food shortages, and suffer violence in response to protesting for basic sustenance, hygiene supplies, and healthcare. Medically fragile clients especially need legal representatives now more than ever to advocate for their release from confinement, given Homeland Security medical experts' characterization of detention centers as a "tinderbox" for contagion, as well as a federal district court's finding that "[a]ny medically vulnerable individual in an ICE facility likely confronts an unreasonable risk of infection, severe illness, and death." *Faour Abdallah Fraihat, et al v. U.S. Immigration and Customs Enforcement, et al*, Case No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), ECF No. 132.

14. The exponential rate of spread of COVID-19 inside ICE detention centers is evident even from ICE's public representations. ICE Guidance on Coronavirus,

<https://www.ice.gov/coronavirus>. As of May 6, 2020, ICE has confirmed the following cases of COVID-19 among the detained population at the four facilities:

- 11 detained people at LaSalle (on April 27, ICE had reported 20 cases at LaSalle (Exhibit C);
- 26 detained people at Pine Prairie;
- 2 detained people at Irwin;
- 11 detained people at Stewart and more than 40 staff. *See* Stephannie Stokes, *More than 40 Employees at Ga. Immigration Detention Center Test Positive For COVID-19* (Apr. 28, 2020), <https://bit.ly/3f4zJfC>. At a hearing on April 10, 2020, almost one month ago, when the confirmed number of cases at Stewart was 5, Warden Washburn confirmed that there were 30 suspected cases of COVID19 among the detained population at Stewart and that they had only tested 9 in total.

15. At the same time, most of the EOIR courts where SIFI lawyers practice continue to press forward on their detained dockets as speedily as they had before the pandemic. With few interruptions, EOIR courts with jurisdiction over the four facilities—Stewart, Atlanta, LaSalle, and Oakdale—have set and held master calendar, individual, and bond hearings for detained respondents throughout the pandemic. The only exception I am aware of is in the Allen Parish Correctional Complex in Oberlin, Louisiana, where a detained individual’s relative reported that court proceedings are stalled until cameras are installed in the jail. This means people in ICE custody there have no recourse to a timely custody hearing.

16. The fast pace of EOIR’s detained docket means SIFI staff must act quickly to seek clients’ release before their final immigration court hearings. Yet SIFI’s ability to timely prepare cases is even more stymied since the COVID-19 outbreak, as ICE’s past practices, coupled with its current response, create unprecedented obstacles to communications with clients.

SIFI's Representation of Detained Individuals in the Time of Coronavirus

17. In early March, as reports of confirmed COVID-19 cases spread across the country, SIFI adopted guidelines for in-person client visits consistent with public health experts' advice. To reduce the risk of transmission between SIFI staff and clients, SIFI staff were required to follow certain safety precautions, and to limit in-person visits to certain circumstances. Staff were provided with and instructed to wear surgical masks and gloves during visits, and to use hand sanitizer after visits. Visits were authorized for retained clients only to obtain necessary signatures or time-sensitive documents, or to prepare clients for hearings.
18. In late March, ICE issued a conflicting sequence of statements on its website concerning the requirements for in-person legal visitation. These shifting requirements put SIFI in the position of scrambling for virtually nonexistent personal protective equipment for legal visitation against the admonition of public health experts to save N-95 masks for health care providers. On March 23, ICE posted a statement indicating that non-contact legal visitation would be permitted, and that visitors may be required to wear protective equipment. The next day, ICE posted new language indicating that all legal visitors would be required to wear "gloves, N-95 masks, and eye protection" (see March 24, 2020 guidance attached as Exhibit A). Then, in a letter dated April 3, 2020, ICE stated that, until further notice, "ICE will continue requiring attorneys to bring in their own PPE and undergo wellness screening should they decide to visit the facilities to minimize the risk of exposure to and/or spread of the virus." Attached as Exhibit B.
19. During the period that the N-95 requirement was in effect, SIFI's inability to source N-95 masks amid the national shortage virtually foreclosed compliance with this requirement. Thereafter, SIFI had the necessary personal protective equipment to fulfill the remaining requirements. However, SIFI's COVID-19 guidelines restricting in-person visitation came up against untenable delays to remote legal visitation. This put me in the difficult position of deciding between waiting days for remote legal visits to complete time-

sensitive client communications, or authorizing in-person visits by SIFI staff who could unknowingly expose clients to the virus or contract the virus themselves.

20. The combination of ICE's PPE requirements, local and state constraints on interpersonal interactions, including shelter-in-place orders, and the recorded COVID-19 outbreaks at the four facilities, has effectively paused in-person visitation to detention centers for the foreseeable future. All communications must now be conducted by VTC calls or phone calls. This means SIFI must now rely entirely on remote legal visitation to communicate with clients, a system that remains inadequate and has only worsened during this pandemic. SIFI staff have reported all of the following experiences to me.

VTC Problems: Limited Consoles and Time Slots, Delays in Scheduling, Limited Duration of VTC Calls, Cancellations without Notice, and Other Irregularities

21. Before the COVID-19 outbreak, the four facilities already had limited infrastructure for VTC calls, including limited computers and time slots. Since the COVID-19 outbreak, the spike in demand for these limited resources has far outpaced the facilities' capacity to provide adequate access to communications through VTC. And although ICE has promised to extend VTC days and hours of operation (Exhibit B), access remains limited by factors in ICE's control, like the number of computers connected to VTC and the staff available to schedule and initiate calls.
22. SIFI staff report delays relating to VTC requests at all four facilities, both in the time that it takes facility staff to send an initial response to the request, and in the number of days between the date of the request and the dates offered for VTC slot availability. These delays have persisted in the past month despite ICE's promises to provide extended hours for VTC. Exhibit B. There is no indication that these extensions have been fully applied. For example, for VTC slots on April 24 and April 27, SIFI attorneys at Stewart were offered the same hours that Stewart has always had – 9am to 3pm.

23. With respect to VTC delays, at LaSalle, SIFI staff have repeatedly had to wait four to six days between the date they request a VTC call and the date they complete the corresponding VTC call. On March 24, 2020, a SIFI legal worker requested VTC calls with five people inside LaSalle. While GEO Group staff did respond within minutes, it was only to say that no time slots were available for the next six days. The first available time slot was March 30, 2020 at 3 p.m. Central. Two of the detained people had engaged in a hunger strike for more than 140 days and had recently subjected to forced feeding via nasogastric tubes. The other three were medically fragile due to other conditions. The six-day delay happened again, on March 25, 2020, when the same SIFI legal worker requested another VTC call with another medically vulnerable client. GEO Group officials did not respond until the following day, saying the earliest available VTC slot was on Tuesday, March 31, 2020, at noon Central.

24. The SIFI legal worker was distressed to learn about the six-day delay because of the time-sensitive nature of her work and the harm of delay to her clients. All the clients she intended to visit were medically fragile. As such, they required immediate assistance in seeking release due to their increased vulnerability to serious illness or death should they contract COVID-19. The purpose of the calls with them was to gather evidence for humanitarian parole applications in light of COVID-19 vulnerabilities. Each day in delaying the preparation of the applications increased the risk that they would contract COVID-19 inside LaSalle. The harm from delays imposed by Defendants on SIFI's ability to prepare such applications for release is substantial and applies to all SIFI's detained clients. Instead of aiming to correct these delays, ICE has simply acknowledged their existence. (Exhibit B) (stating "upon initial investigation, LaSalle acknowledges that the six-day delay to set up video-teleconference (VTC) calls is likely accurate given the high demand to use Skype during the pandemic and the limited resources at the facility.") Moreover, despite ICE's promise to extend VTC hours, SIFI staff still report scheduling delays. On April 6, a SIFI attorney at LaSalle requested a VTC for the next day. She received a response on April 7, providing a slot on April 8. In addition, the quality of the VTCs at LaSalle continues to be so poor that the participants routinely cannot understand

each other. Because of this, some SIFI staff at LaSalle have moved exclusively to using legal phone calls.

25. In one incident at Stewart, CoreCivic staff set a weekly cap on the number of VTC calls that a SIFI attorney was permitted to have with the same client, harming her ability to adequately prepare her client for his individual hearing. On April 6, the SIFI attorney had a VTC call with her client to prepare for his final hearing. The SIFI attorney entered her appearance and planned to prepare with him for his final merits hearing, which was scheduled for April 10. Although she had two VTCs scheduled for Monday and Tuesday, she requested two more hours before the Friday hearing, explaining the situation and the amount of time that normally goes into preparing for a final asylum hearing. Because VTC calls are limited to one hour each, she requested two slots, both for April 9. CoreCivic staff quickly denied one of her two requests, saying two slots per week for one client was sufficient. She was finally scheduled for one more slot on Thursday, April 9, but that VTC was cancelled during a lockdown at the facility, denying counsel her final opportunity to speak to the client before the hearing. The SIFI attorney did not have the time she needed, in her assessment, to adequately prepare her client for his asylum hearing.

26. Understaffing may be playing a role in delayed responses to VTC requests, at least in some facilities. For example, on April 14, an officer at Pine Prairie told a SIFI attorney that the reason they had to reschedule the VTC appointment from the prior day was because the officer was on transport duty. Similarly, to SIFI's knowledge, one CoreCivic employee is responsible for coordinating the VTC program at Stewart. Even before the pandemic, SPLC staff requested VTC calls at Stewart on several occasions, but because the employee was out, SIFI did not receive a response until her return. In at least one instance, this resulted in a weeklong delay. In the past month, the same issue has occurred on at least two occasions.

27. At Irwin, delays in responses to VTC requests have grown longer since the COVID-19 outbreak. Where, before COVID-19, responses generally were made within 24 hours,

since COVID-19, it has been taking two to three days to schedule VTC calls, and sometimes staff completely miss an email or individual. For example, on April 21, a SIFI attorney requested VTC calls with four individuals in a single email. He did not receive a response, so the next day, he sent a follow-up email. On April 23, Irwin staff responded with an offer of available VTC slots for two individuals only. The next day, the SIFI attorney replied to ask about the remaining two. He got no response. Then, on April 27, he requested a VTC call with a different person, and that's when he received a response about the two forgotten individuals. One of those is a woman who was placed in solitary confinement because she participated in a video demonstration that has circulated widely in Spanish-language media and social media.

28. SIFI staff have also experienced cancellations without notice. This happened to a SIFI attorney on April 16, when he was unable to speak to one of four individuals inside Stewart with whom he had scheduled VTCs. All four individuals had disclosed COVID-19 vulnerabilities at intake, prompting the need for time-sensitive follow-up given the rise in COVID-19 cases at Stewart. The VTC calls were set back-to-back, starting at 12 p.m. CoreCivic staff did not call until 1 p.m. At that point, the VTC took place with the second individual he was scheduled to meet. No mention was made of the first individual he had been scheduled to speak with at 12 p.m. The SIFI attorney completed three interviews from 1 p.m. to 4 p.m., then asked the VTC coordinator about the missed call at 12 p.m. He did not receive a response, so SIFI staff again had to follow up. Eventually, the SIFI attorney was forced to reschedule the meeting with that individual for six days later, April 22.

29. Another example of a cancellation without notice occurred at Pine Prairie this month. On the afternoon of April 10, a SIFI attorney requested a VTC for a time-sensitive matter for Monday, April 13 at 4:30 p.m. She did not receive a response. So, on the morning of April 13, she followed up to ask if the call would be scheduled. She then received a confirmation that the facility "had her scheduled" for that afternoon. However, at the confirmed time, she did not receive any call, nor did she receive a response to her follow-up emails. She was forced to reschedule the VTC.

30. Confidentiality is especially an issue with VTC calls at Irwin and Pine Prairie.

Confidentiality is a bedrock principle of the attorney-client relationship and remains vital during COVID-19. SIFI staff must have recourse to confidential conversations with actual and potential clients if we are to ethically represent them. Without confidentiality, SIFI staff cannot ethically ask clients and potential clients to disclose potentially traumatic information that may constitute the grounds for their claim for relief. Detained individuals must have assurances that the personal information they disclose to SIFI staff is confidential if we are to build the rapport with clients that we need to elicit this sensitive information, whether it be about past domestic abuse, persecution, torture, threats, or other experiences. As well, in the time of COVID-19, as detained individuals' medical and mental health conditions become more and more relevant to their eligibility for release from custody, SIFI staff must have a guarantee of confidentiality as a pre-condition to eliciting personal medical information.

31. Pine Prairie does not provide spaces that allow for private and confidential VTC conversations. The VTC consoles sit in cubicles with thin walls that are not soundproof and do not reach to the ceiling. A SIFI attorney was conducting a VTC call with a client on April 7 when she received a text message from a fellow attorney that practices with ISLA- Immigration Services & Legal Advocacy. The attorney alerted her that they were conducting their own VTC with an individual at Pine Prairie and could clearly hear everything that the SIFI attorney and SIFI client were saying.

32. At Irwin, it is very common for employees to go in and out of the library room during VTCs. A SIFI attorney at Irwin states they have never seen their clients wearing gloves during VTC.

33. One other irregularity in access to VTC calls concerns facility staff failing to inform SIFI detained clients of incoming VTC calls from their attorneys. On March 13, a SIFI attorney had scheduled a VTC call with a client detained at Irwin. At the time of the VTC, Irwin employees told the SIFI attorney that the individual did not want to speak

with him. It was not until a rescheduled call days later that he was able to meet with the client, and the client stated that if he had known it was the SIFI attorney on the VTC, he would have certainly taken the call.

Legal Phone Calls

34. To date, SIFI's primary mode of contact with confined individuals has been through a free and confidential hotline through which confined individuals may reach us. The hotline has typically been staffed by two full-time SIFI staff who operate the hotline Monday through Thursday of each week during business hours. Since March 16, 2020, in light of the COVID-19 pandemic, SPLC has closed its offices, and three SPLC employees have rotated staffing the hotline remotely on Mondays and Thursdays only. Additionally, the call center technology available to SIFI in its office is not available outside the office, such that SIFI may answer only one call at a time. Changes in staffing, technology, and hours of operation mean fewer callers are reaching SIFI via the hotline.
35. Historically, there have been issues of connectivity with calls made to the hotline. Most recently, SIFI hotline staff have reported issues with disturbance in calls made from multiple facilities. On Monday, April 27th, one of the two days the hotline was scheduled to be open for the week, making it near impossible to have a clear conversation with the caller. Additionally, there were also issues of calls dropping when trying to answer or soon after answering the call. To SIFI's knowledge, there is no designated point of contact at the various facilities, to whom they may troubleshoot questions or report quality issues on any given day.
36. The SIFI hotline was never intended to and did not operate as a channel for SIFI legal teams to develop actual clients' substantive claims, for several reasons. First, hotline callers lack privacy. Generally, they call the hotline from common areas inside their unit, open spaces with twenty to more than eighty other individuals. A client detained at Irwin reported that phone stations in their unit are about two to three feet apart. Second, since the COVID-19 outbreaks, callers who use these shared phones are exposed to the risk of

transmission of the virus because, according to clients, facility staff do not disinfect the telephones, and detained people lack sufficient hygienic products to do so themselves.

37. The physical dangers of in-person visits, the decreased volume of calls through SIFI's hotline, and the worsening access to VTC calls has pushed SIFI to resort to phone calls to fulfill our need to access actual and potential clients. There are two forms of phone calls at issue: free legal phone calls coordinated through facility staff and conducted in a private space ("facility legal calls"); and paid phone calls initiated by detained people through phones available in housing units and common areas ("paid detainee calls").
38. In a letter dated April 3, ICE stated that it would extend hours for facility legal calls at the four facilities. (Exhibit B). However, to SIFI's knowledge, there had never been a process to set up facility legal calls at Stewart or Pine Prairie. After multiple requests, a new process was set up at Stewart on April 24, 2020. At Pine Prairie, although officials have represented to SIFI that detained persons may request a facility legal call through their case manager, this does not occur in practice. To date, only one of SIFI's clients at Pine Prairie has been informed who their case manager is. And upon information and belief, the case managers at Pine Prairie only speak English, making communication with detained persons who do not speak English impossible. Furthermore, to SIFI's knowledge, none of their clients have been informed by their facilities of any process for requesting a facility legal call. One SIFI attorney who has been working with people detained at the facility since October 2018 states that no client of hers has ever been able to successfully request a facility legal call.
39. Even after ICE's April 3 letter, SIFI staff at Stewart who approached CoreCivic employees about facility legal calls reported that CoreCivic employees expressed confusion. CoreCivic employees said they were not aware of any mechanism for facility legal calls (Exhibit B). On April 14, a SIFI legal worker requested a facility legal call at Stewart. The VTC coordinator responded that she would pass along the message to the detained person and instructed the SIFI legal worker to wait for the message to be relayed and the caller to contact the SIFI attorney. When nothing happened, the SIFI legal worker

followed up with CoreCivic staff on April 17. Staff told her they had not been updated about the new policy on allowing legal calls and advised her to email the warden about it. A SIFI attorney emailed the warden that day. As of April 21, she had not gotten a response, so she followed up with him. On April 21, the warden replied to her, stating he would provide a clear process for scheduling legal calls by the end of the day.

40. As of April 23, the SIFI attorney had not gotten a response from the warden, so she wrote to him. She asked for clarification on procedures and requested a facility legal call with a detained person SIFI had been seeking to communicate with since April 6 without success. SIFI had placed a VTC call request to speak with him on April 6 and were assigned a VTC slot for April 10. But that VTC call did not occur; SIFI staff were told that he could not have a VTC because he was in quarantine. SIFI had made a further request for a facility legal call with this individual on April 16. Later, on April 23, the SIFI attorney wrote a second email requesting a legal call with a client whose family was concerned that they had not heard from him for several days.

41. On April 24, the SIFI attorney was confirmed for facility legal calls with both individuals. For the first call, the SIFI attorney was given a phone number to call at 10 a.m. She called the number and twice got voicemail. When she called a third time, a person answered and asked who she needed. About ten minutes later, her client spoke into the phone line and she was able to talk with him. The second call was scheduled for 12 noon. It did not happen at 12 noon, and when the attorney inquired, she was told she could do the call at 1 p.m. She called at 1 p.m. and was finally able to speak with the potential client.

42. In April, a client detained at Stewart told SIFI staff that for the preceding four days, he and about 100 others in his unit had been cut off from all communications, prohibited from leaving their rooms, and even denied the right to shower. He and others were told that they would not be allowed to make calls—including legal calls of any kind—and would only have the right to send letters. On April 27, someone in another unit reported

that his unit, too, had been put on lockdown and no one was being allowed to make any calls to their lawyers or families.

43. At LaSalle, facility legal calls suffer from frequent connectivity issues and problems dialing in third parties. SIFI often needs to dial in a third party, whether that is another SIFI attorney, expert, or an interpreter. On April 6, SIFI staff attempted to conference an additional party into the call and the line stopped functioning. When SIFI staff raised the issue to Geo Group staff, they stated this was likely because the detained client was attempting to use the receiver rather than take the call on speaker phone. On April 23 and April 25, a SIFI attorney had legal calls with clients, but the phone connectivity each time was very rough and the call itself kept breaking up. In the April 25 instance, the client tried to hang up and call using another phone, but the issues remained. Connectivity issues for legal calls at LaSalle are especially frustrating because, for example, one SIFI attorney only schedules legal calls due to LaSalle's extremely poor VTC quality.
44. Due to delays and confusion in setting up facility legal calls, SPLC has pivoted to provide alternate methods of communication, including setting up accounts to allow for collect calls made from detained individuals and charged to SIFI. SIFI did this by contacting telephone vendors directly. In mid-March, SIFI also contacted ICE to request that a list of SIFI cell phone numbers be placed on a do-not-monitor-or record list for paid calls. SIFI requested written assurances that calls to these numbers would not be monitored or recorded. While ICE did not provide any promises of confidentiality in writing, the agency did verbally confirm that calls would be confidential at three of the four facilities.
45. ICE's assurances concerning the privacy of paid calls do not apply to Irwin because this facility's phone vendor, Correct Solutions, does not have a contract with ICE. To obtain assurances of privacy for Irwin calls, SIFI staff spoke with the Irwin warden. He agreed to contact the vendor to request that certain phone numbers be placed on a do-not-monitor or record list. After that conversation, a SIFI attorney emailed the warden with a list of the telephone numbers. The warden asked for the names of the phone owners; SIFI declined to provide the names of its legal workers. As of May 5th, the Irwin warden had

not yet responded to SIFI's repeated requests for confirmation that calls made to these numbers are unmonitored.

46. Even if Correct Solutions and/or ICE were to confirm that collect calls to SIFI attorneys are not being monitored, these calls face the same confidentiality concerns as calls made to the SIFI hotline, as they are made in the unit on a shared telephone.

47. Several individuals detained at Irwin, Stewart, and LaSalle have reported to SIFI about the number of shared telephones in their units. Until April 14, one client detained at Irwin was in a unit that was at capacity – with 32 detained individuals in 2-person cells, and three telephones in the common area for all of them to share. On or about April 14, Irwin staff transferred some individuals to a different unit, in an attempt to disrupt a hunger strike. As of April 29, there were 16 individuals in the two-person cells. Another detained individual at Irwin reported that in their unit, which is an open dorm with 40-50 bunk beds, there are 6 to 7 telephones for everyone to share. At Stewart, one client reported on April 29 that their unit, which holds 92 people, has 9 telephones but only 7 that are working. Another individual at Stewart is in a pod with about 60 people and 8 shared telephones. On April 30, a client detained at LaSalle reported that there are 8 telephones in their unit that currently has about 56 individuals, but there have been up to 88 people at various points. On April 30, a client detained at Pine Prairie provided that his unit, while it currently has 45 people, has had up to 56-57 people in the past and all share eight telephones. These numbers are especially concerning given the accounts from our clients that they have not seen a change in the hygienic practices of the facilities, and the inability for individuals at these facilities to socially distance. SIFI attorneys are wary of these conditions and take into consideration that a client speaking to them on these shared telephones is surrounded by others in their unit – eating, waiting in line for the phone, entering and exiting the bathrooms. When SIFI attorneys must communicate with clients on the shared telephones, they are weighing the various factors that bear on confidentiality and safety/exposure to the virus.

48. Furthermore, ICE has still not fulfilled its obligation, according its own COVID-19 guidance, to provide free calls. See ERO COVID-19 Pandemic Response Requirements (Version 1.0, April 10, 2020), at 13 <https://bit.ly/3fvn5Xw>. Rather, it seems that *some* facilities have provided limited free phone calls *on and off* over the past month, in a manner that is not entirely beneficial to our clients. For example, several times in the week of March 30, SIFI staff experienced calls with clients being cut off at five minutes. At the beginning of the call, they heard a voice stating, “this is a free call,” and then, at or around four minutes, it stated, “there is one minute left.” There did not appear to be an option for the client to not use those five free minutes for the call with the SIFI staff, which SIFI already pays for. Hence, on several occasions, clients have had to use the free five-minute call provided to them not for a call with a loved one, but rather for their call with SIFI staff. On April 29, 2020 a SIFI client confined at Pine Prairie told SIFI that the facility was providing detainees with three ten-minute long phone calls free of charge. These calls automatically end after ten minutes and, because clients cannot request a legal phone call, they must be made from phones in the facility dormitories that lack privacy and do not provide confidentiality. Similarly, the client did not have an option to not use those free calls for the call with the SIFI attorney and was forced to use two of his three free calls.

Mail and Document Exchange

49. Disruptions to in-person visitation have forced SIFI to rely on the mail to exchange documents with actual and potential clients, revealing the systemic problems with the mail at the four facilities. The problems range from delays in sending, processing, and receiving to improper inspection and seizure of legal mail and confiscation of return envelopes with postage.
50. SIFI staff has been using the U.S. Postal Service and FedEx to send mail to detained people. SIFI provides pre-stamped or pre-metered envelopes for the recipient to return documents to SIFI. SIFI staff report inconsistent results with receipt of correspondence from people detained at Stewart, while SIFI LaSalle have been successful. Mailings appear to be periodically rejected regardless of the delivery service or the type of postage.

51. One result of mail problems is to unduly delay the exchange of documents necessary for SIFI staff to evaluate a potential client's legal claims, to obtain client authorization for the release of personal information, and to timely prepare EOIR and ICE filings, especially on behalf of clients medically vulnerable to COVID-19. In practical terms, this means that to even start working on an individual's case, SIFI legal workers may need to wait at least one week after their first client meeting to receive any documents from the client. A one-week delay amid this pandemic has grave consequences for individuals medically vulnerable to COVID-19. To illustrate, in a matter of one week, ICE reported the number of confirmed COVID-19 cases among individuals detained at LaSalle increased from two to twenty. See attached Exhibit C (ICE Guidance on COVID-19 <https://www.ice.gov/coronavirus> (updated Apr. 20, 2020 and April 27, 2020)).
52. Delays also generally harm clients' chances of winning release. One factor an immigration judge considers in a release motion is the applicant's flight risk. The closer a person's final individual or merits hearing is, the more of a flight risk she is considered to be. By obstructing a client's access to her attorney and therefore delaying the completion of her release application, the facilities also reduce her chances of succeeding.
53. Despite SIFI's showing of these problems, ICE has not consistently allowed SIFI to exchange legal documents with clients via facsimile or Internet. Instead, on April 3, ICE stated that the facilities would not "retrieve facsimiles or download electronic copies of legal documents for detainees." (Exhibit B). Out of the four facilities, SIFI has received faxes from their detained clients at Irwin, as it seems there is a system in place for this one-way communication. Additionally, for about two to three weeks before the pandemic, Irwin also allowed attorneys to send faxes to the facility before VTC appointments, to be delivered to their client.
54. Defendants' refusal to facilitate timely exchange of documents hinders effective representation. For example, in late March a SIFI attorney requested her client's medical records from LaSalle after receiving express verbal authorization from her client to do so.

The deportation officer, after consulting with his supervisor, refused to accept the medical records release without a wet signature by the detainee himself—something the facility’s own restrictions have made very hard to procure. Instead, the deportation officer instructed the attorney to send him the release, and then he would send it to the facility, which would then return it by mail. Getting such a signature by mail (rather than by fax or some electronic means) increases the interval before the medical records can be sent to SIFI, effectively delaying clients’ access to counsel.

55. Another consequence of mail problems is to subvert the timeliness of adjudications of release requests to ICE. For example, on or about April 15, a SIFI attorney submitted a humanitarian parole request on behalf of a medically vulnerable client detained at LaSalle. Because ICE had instructed her not to email the request, she sent it by mail (she also tried to send it by facsimile, but it did not go through). Not having received a response, on the morning of April 28, she emailed ICE agents involved with her client’s case to inquire into the status of the parole request. An ICE Deportation Officer promptly responded, stating that he had no record of any such request, and asking how she had sent it. The SIFI attorney replied at 9:54 a.m., stating that she used the mail and attaching to the email a copy of the parole request. The Deportation Officer responded in less than one hour, at 10:37 a.m., stating that “the New Orleans Field Office has decided not to parole your client at this time.” The SIFI attorney was distressed to note that a decision had been made on her client’s voluminous parole request after less than one hour of review of material that, according to the ICE agent, had not been in ICE’s possession until that very morning.

56. This is just one instance in a pattern of weeks-long delays by ICE in responding to humanitarian parole requests. SIFI staff continue to face difficulty in getting responses from deportation officers. Based on a conversation between a deportation officer and a SIFI staff member, it appears that officers on the ground have been overwhelmed and not able to keep up with parole applications being submitted; are not aware when new applications are submitted; and are working erratic schedules. Based on a conversation between a different deportation officer and a different SIFI staff member, who has several

cases awaiting responses for parole requests, another source of delay is the review of a line ICE agent's recommendation at the level of Field Office Director, Deputy Field Office Director, or Assistant Field Office Director. There is also lack of clarity from ICE about where to send correspondence and parole applications, in what format, and to whom. This problem will be exacerbated as attorneys prepare to submit custody redetermination requests in light of *Frailhat*, which requires ICE to identify and consider for release all medically vulnerable individuals in custody Case No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), ECF No. 13. *Frailhat* also gives all subclass members in ICE custody the right to submit a custody redetermination request. *Id.*

Quarantined Units

57. Detained individuals inside the four facilities are being subjected to ICE's method of "cohorting," a practice that has been criticized by experts as ineffective to combating coronavirus.

58. ICE has not clarified what if any rules apply to legal access to detained individuals who are in quarantine, cohorting, or isolation in the four facilities. However, for SIFI clients subject to these types of confinement, SIFI staff have faced obstacles to access. For example, SIFI staff communicated with CoreCivic employees for more than two weeks in an attempt to schedule a remote legal visit with a potential client who was subject to quarantine inside Stewart. The first request for a VTC call dates back to April 6. The VTC coordinator assigned SIFI a VTC slot with the potential client for April 10. But on that date, a CoreCivic officer told a SIFI legal worker that the individual could not be brought to the VTC room because he was under quarantine. The SIFI legal worker asked the officer to relay her phone number to the potential client and ask him to call her. She had not heard from the potential client as of April 16, so she followed up with the VTC coordinator that day to request a facility legal call with him. A SIFI attorney then took up communications with the Stewart warden to secure a facility legal call. It eventually took place on April 24. See *supra*, paragraphs 35-36.

Conclusion

59. Our clients inside LaSalle, Pine Prairie, Stewart, and Irwin need SIFI's legal assistance now as much as ever.

60. The access barriers that SIFI faced before the coronavirus pandemic have been exacerbated. What SIFI staff have personally experienced in attempting to communicate with detained individuals amid COVID-19 exhibits a grossly deficient response by ICE to protect individuals' constitutional right to counsel.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: May 6, 2020



Laura G. Rivera, Esq.

Exhibit A

 Official Website of the Department of Homeland Security



ICE

Report Crimes: [Email](#) or Call 1-866-DHS-2-ICE

Search ICE.gov 

NOTICE

[Click here for the latest ICE guidance on COVID-19](#)

ICE Guidance on COVID-19

Introduction

U.S. Immigration and Customs Enforcement (ICE) is working closely with the Department of Homeland Security (DHS) and other federal, state, and local agencies to facilitate a speedy, whole-of-government response in confronting Coronavirus Disease 2019 (COVID-19), keeping everyone safe, and helping detect and slow the spread of the virus. In order to keep the public, media and family members of those in custody and other stakeholders informed, we will update this site frequently during this extremely fluid situation.

[Expand All](#) [Collapse All](#)

GENERAL
CONFIRMED CASES
IMMIGRATION ENFORCEMENT and CHECK-INS
BONDS
DETENTION
VISITATION AT DETENTION FACILITIES
My family member or friend is currently in ICE custody, will visitation to the facility still be allowed? ICE, like other law enforcement agencies with a detained population, is taking important steps to further safeguard those in our care and as a precautionary measure, ICE has temporarily suspended social visitation in all of its detention facilities. ICE will continue to collaborate with the CDC, IHSC, and its network of care providers to provide updates and revise procedures as necessary. Updated 03/15/2020 2:38pm
How will family member communicate with their family members? ICE recognizes the substantial impact of temporarily curtailing personal visitation, but the agency has determined it necessary in order to maintain the safety and security of the facility, the detainees and those who work at the facility. ICE will take steps to facilitate such communication with families, in the absence of visitation, through extended access to telephones and other reasonable means. ICE will continue to collaborate with the CDC, IHSC, and its network of care providers to provide updates and revise procedures as necessary. Updated 03/15/2020 2:38pm
Will individuals in ICE custody be able to meet with their legal representatives? Detainee access to legal counsel remains a paramount requirement and will be accommodated to the maximum extent practicable. Unless and until it is determined to pose a risk to the safety and security of the facility, legal visitation will continue; but ICE is encouraging all legal representatives to contact the facility at which they must visit their clients in-person to determine current policies and procedures regarding legal visits. Non-contact legal visitation (e.g., Skype or teleconference) should be offered first, if available, to limit exposure to ICE detainees; but if the attorney believes the legal visit requires contact, the facility should permit the visit with the appropriate guidelines it has established. For in-person, contact (without any physical barriers) visits to occur, the attorney must undergo screening using the same procedures as staff. ICE will require all legal visitors to provide and wear PPE (e.g., gloves, N-95 masks, and eye protection) while visiting with any client at any facility. Legal representatives may also be required to go through similar testing as employees of the detention facility, as determined by

Updated 03/24/2020 2:15pm

Updated 03/24/2020 2:15pm

Last Reviewed/Updated: 03/25/2020

Exhibit B

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

April 3, 2020

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC* Novel Corona Virus Outbreak

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) March 25, 2020 letter concerning access to counsel during the novel coronavirus pandemic for aliens detained at Irwin County Detention Center (Irwin), LaSalle ICE Processing Center (LaSalle), Pine Prairie ICE Processing Center (Pine Prairie), and Stewart Detention Center (Stewart). This letter, however, does not address *SPLC v. DHS, et al.*, No. 18-760 (D.D.C. SAC filed Aug. 28, 2019), which is before the United States District Court for the District of Columbia.

U.S. Immigration and Customs Enforcement (ICE) is reviewing its "at risk population" to include the elderly, pregnant detainees, and others with compromised immune systems to ensure that detention is appropriate given the extenuating circumstances. Custody determinations are made on a case-by-case basis at each detention facility and include, among other factors, the public safety risk that such release could create and the requirement to detain certain aliens under law. See Section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226. The agency will continue to review its "at risk population" at the four detention facilities in the days and weeks ahead when deciding whether any detainees should be released from custody.

Separately, ICE rejects SPLC's assertion that, as of March 25, 2020, there were "confirmed cases of COVID-19 at Irwin, LaSalle, and Pine Prairie." Letter from Shalini Goel Agarwal, Senior Supervisory Attorney, to Jon Kaplan, Associate Legal Advisor, Office of the Principal Legal Advisor, and Julie Plavsic, Senior Policy Advisor, Office of Legal Access Programs at 4 (Mar. 25, 2020) (SPLC Letter). At that time, all four locations had reported that there are no confirmed cases of COVID-19 at any of the facilities. On April 1, 2020, at 8:54 p.m., however, ICE received confirmation that an alien detained at Pine Prairie who transferred as an inmate from the Federal Bureau of Prisons in Oakdale, LA, tested positive for

SPLC

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COVID-19. At the time, he was found to be asymptomatic. Since the detainee's arrival at Pine Prairie, he has been kept in a negative pressure chamber in the facility and has not interacted with the general population in any manner. Additionally, in the exercise of caution, the detainee arrived at Pine Prairie wearing personal protective equipment (PPE). The detainee will remain in isolation until April 6, 2020, before he is placed in a general population pod at the facility. Notwithstanding this incident, ICE will continue to coordinate with medical professionals and monitor the facilities and detainees in an effort to minimize the chances of entry of COVID-19 into the facilities.

SPLC further raises three alleged incidents on March 20, 2020, at Pine Prairie, March 24, 2020, at LaSalle, and March 25, 2020, at Stewart relating to the facilities' responses to the public health crisis. First, Pine Prairie rejects the allegation about the quarantined dorm incident because SPLC, like other visitors, are limited to the legal visitation area, which is adjacent to the front entrance and which does not provide visual access into the dorm area. Accordingly, please provide any evidence supporting SPLC's allegations. Additionally, ICE encourages SPLC visitors to file complaints with the facility regarding any issues encountered during visits. Second, and upon initial investigation, LaSalle acknowledges that the six-day delay to set up video-conference (VTC) calls is likely accurate given the high demand to use Skype during the pandemic and the limited resources at the facility. To reduce the current backlog for access to VTC at LaSalle, GEO Group (GEO) has agreed to extend the hours from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and anticipates installing two additional Skype units by April 10, 2020. (Please note that LaSalle, like the other facilities, will continue to schedule VTC sessions on a first-come, first-serve basis.) Third, in reviewing the pertinent e-mail exchange between SPLC and CoreCivic, it appears that SPLC was able to conduct a virtual legal visitation with its detained client at Stewart on March 30, 2020. ICE is sensitive to SPLC's concerns about access to counsel and will make accommodations when appropriate, but maintains that health and safety are of paramount interest. Accordingly, until further notice, ICE will continue requiring attorneys to bring in their own PPE and undergo wellness screening should they decide to visit the facilities to minimize the risk of exposure to and/or spread of the virus.

Finally, ICE has discussed with the facilities SPLC's six immediate action demands concerning access to counsel enumerated in your letter. The facilities' responses are as follows:

1. Irwin and Stewart: VTC and telephone calls for attorney-client communications already are in place. LaSalle: There has been a delay in processing VTC and legal call requests because of the public health crisis, and GEO has agreed to temporarily extend the hours of service. Pine Prairie: No issues with scheduling VTC and telephone calls.
2. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities agree to temporarily extend the hours for Skype use consistent with the security and orderly operation of the facility. Specifically, Irwin has agreed to extend Skype calls from 8:00 a.m. to 7:00 p.m., Tuesdays through Fridays, if needed, and ordered an additional laptop for the Skype unit. (Skype calls will continued to be scheduled from 8:00 a.m. to 5:00 p.m. on

Mondays because of staffing issues.) Stewart has agreed to extend Skype calls from 8:00 a.m. to 6:00 p.m., Mondays through Fridays. As discussed above, LaSalle has agreed to extend Skype calls from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and anticipates installing two additional Skype units by April 10, 2020. Pine Prairie has agreed to extend Skype calls from 8:00 a.m. to 7:00 p.m., Mondays through Fridays, and, at this time, has agreed to provide Skype service from 8:00 a.m. to 4:00 p.m., Saturdays and Sundays. Attorneys may set up three-way calling to include interpreters or experts using their portable electronic devices.

3. Irwin, LaSalle, Pine Prairie, and Stewart: Irwin, LaSalle, and Pine Prairie have agreed to temporarily extend the hours for legal calls consistent with the security and orderly operations of the facilities, but none of the facilities will agree to “confidential phone booths for calls to be available *at any time* by the request of detained individuals or attorneys”, SPLC Letter at 6 (emphasis in original), as this demand is unreasonable. Irwin has agreed to extend legal calls from 8:00 a.m. to 7:00 p.m., Tuesdays through Fridays, if needed, and Stewart will continue to provide for legal calls from 8 a.m. to 8:00 p.m., Mondays through Fridays. LaSalle has agreed to extend legal calls from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and Pine Prairie’s hours will remain the same because the facility continues to meet the needs of detainees and their attorneys for legal calls. As SPLC should be aware, SPLC is currently on the *pro-bono* call list that allows detainees to make unmonitored calls to SPLC at any time for free. Nevertheless, the facilities will make funds available for indigent detainees, to the extent necessary, to place telephone calls in accordance with the 2008 and 2011 Performance Based National Detention Standards (PBNDS). The facilities will also extend VTC availability within facility capabilities and staffing availabilities.

Attorneys may set up three-way calling to include interpreters or experts using their portable electronic devices. Irwin indicated that upon request, attorneys may set up unmonitored telephone calls from detained clients by way of the facility’s telephone system, and detainees may request making or receiving legal calls by way of the CoreCivic employees or kiosk. Stewart indicated that attorneys may set up unmonitored telephone calls from detained clients by way of the facility’s telephone system.

4. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities’ unit managers and law library officers will continue to assist the detainees with their needs to exchange a hardcopy of legal documents with their attorneys, but will not retrieve facsimiles or download electronic copies of legal documents for detainees. Additionally, the facilities will not permit stamps into the facilities because they may be used for improper means, such as currency or barter; however, the facilities may permit metered and preaddressed envelopes.
5. Irwin, LaSalle, Pine Prairie, and Stewart: In accordance with 2008 PBNDS and 2011 PBNDS, the facilities will permit attorneys to conduct initial consultations without

SPLC

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executed G-28s, but cannot agree to waiving signature requirements for ICE privacy waivers.

6. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities will permit confidential legal calls and VTC visits for quarantined detainees to the extent that such access can be provided in accordance with medical directives or guidelines, and without compromising the health or safety of the detainee population or detention employees. To the extent certain detainees are quarantined, the facilities will continue to appropriately schedule and permit such calls and/or VTC visits to occur. The facilities are further amenable to setting up unmonitored legal calls by way of detainee telephones.

Please contact Ruth Ann Mueller, James Walker, and David Byerley, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to this letter. ICE will continue to coordinate with the facilities its response to the global pandemic and will supplement this letter if necessary.

Sincerely,



Jon Kaplan

Associate Legal Advisor

District Court Litigation Division

cc: Ruth Ann Mueller, OIL
James Walker, OIL
David Byerley, OIL
Brian Boyd, OPLA DCLD
Julie Plavsic, ICE ERO

Exhibit C



ICE

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ICE Guidance on COVID-19

Overview &
FAQs

Confirmed
Cases

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Statements

DETAINEES

220

There have been 220 confirmed cases of COVID-19 among those in ICE custody*.

- 8 detainees in Adams County Correctional Center (Natchez, MS)
- 2 detainees in Bergen County Jail (Hackensack, NJ)
- 45 detainees in Buffalo Federal Detention Facility (Batavia, NY)
- 1 detainee in Catahoula Correctional Center (Harrisonburg, LA)
- 13 detainees in Elizabeth Detention Center (Elizabeth, NJ)
- 4 detainees in El Paso Processing Center (El Paso, TX)
- 2 detainees in Essex County Correctional Facility (Newark, NJ)
- 9 detainees in Florence Detention Center (Florence, AZ)
- 8 detainees in Hudson County Jail (Kearny, NJ)
- 1 detainee in IAH Secure Adult Detention Facility (Livingston, TX)
- 1 detainee in Irwin County Detention Center (Ocilla, GA)
- 2 detainees in Krome Detention Center (Miami, FL)
- 13 detainees in La Palma Correctional Facility (Eloy, AZ)
- 2 detainees in LaSalle Correctional Center (Olla, LA)
- 1 detainee in LaSalle ICE Processing Center (Jena, LA)
- 1 detainee in Montgomery Processing Center (Conroe, TX)
- 20 detainees in Otay Mesa Detention Center (San Diego, CA)
- 1 detainee in Otero County Processing Center (Chaparral, NM)
- 24 detainees in Prairieland Detention Center (Alvarado, TX)
- 11 detainees in Pike County Correctional Facility (Hawley, PA)
- 9 detainees in Pine Prairie ICE Processing Center (Pine Prairie, LA)
- 6 detainees in Pulaski County Detention Center (Ullin, IL)
- 20 detainees in Richwood Correctional Center (Monroe, LA)
- 2 detainee in River Correctional Center (Ferriday, LA)
- 3 detainees in St. Clair County Jail (Huron, MI)

- 9 detainees in Stewart Detention Center (Lumpkin, GA)
- 1 detainee in Winn Correctional Center (Winnfield, LA)
- 1 detainee in York County Prison (York, PA)

*Some detainees may no longer be in ICE custody.

Updated 04/20/2020 5:40pm

ICE
EMPLOYEES
AT
DETENTION
CENTERS

30

There have been 30 confirmed cases of COVID-19 among ICE employees working in ICE detention facilities.

- 13 at Alexandria Staging Facility (Alexandria, LA)
- 2 at Aurora Contract Detention Facility (Aurora, CO)
- 1 at Butler County Jail (Hamilton, OH)
- 2 at Elizabeth Contract Detention Facility (Elizabeth, NJ)
- 1 at Florence Correctional Center (Florence, AZ)
- 1 at Houston Contract Detention Facility (Houston, TX)
- 1 at Hudson County Jail (Kearny, NJ)
- 8 at Otay Mesa Detention Center (San Diego, CA)
- 1 at Stewart Detention Center (Lumpkin, GA)

Updated 04/20/2020 5:40pm

ICE
EMPLOYEES

86

There have been 86 confirmed cases of COVID-19 among ICE employees not assigned to detention facilities.

Updated 04/20/2020 5:40pm

Last Reviewed/Updated: 04/20/2020

**ICE**Report Crimes: [Email](#) or Call [1-866-DHS-2-ICE](#)

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ICE Guidance on COVID-19

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Share

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DETAINEES

360

There have been 360 confirmed cases of COVID-19 among those in ICE custody*.

- 12 detainees in Adams County Correctional Center (Natchez, MS)
- 2 detainees in Bergen County Jail (Hackensack, NJ)
- 1 detainee in Bluebonnet Detention Facility (Anson, TX)
- 49 detainees in Buffalo Federal Detention Facility (Batavia, NY)
- 2 detainees in Caroline Detention Facility (Bowling Green, VA)
- 3 detainees in Catahoula Correctional Center (Harrisonburg, LA)
- 7 detainees in El Paso Processing Center (El Paso, TX)
- 13 detainees in Elizabeth Detention Center (Elizabeth, NJ)
- 2 detainees in Essex County Correctional Facility (Newark, NJ)
- 10 detainees in Florence Detention Center (Florence, AZ)
- 8 detainees in Hudson County Jail (Kearny, NJ)
- 1 detainee in IAH Secure Adult Detention Facility (Livingston, TX)
- 2 detainees in Irwin County Detention Center (Ocilla, GA)
- 4 detainees in Krome Detention Center (Miami, FL)
- 23 detainees in La Palma Correctional Facility (Eloy, AZ)
- 20 detainees in LaSalle ICE Processing Center (Jena, LA)
- 3 detainees in Montgomery Processing Center (Conroe, TX)
- 1 detainee in Morrow County Correctional Facility (Mount Gilead, OH)
- 75 detainees in Otay Mesa Detention Center (San Diego, CA)

- 2 detainees in Otero County Processing Center (Chaparral, NM)
- 14 detainees in Pike County Correctional Facility (Hawley, PA)
- 17 detainees in Pine Prairie ICE Processing Center (Pine Prairie, LA)
- 36 detainees in Prairieland Detention Center (Alvarado, TX)
- 9 detainees in Pulaski County Detention Center (Ullin, IL)
- 37 detainees in Richwood Correctional Center (Monroe, LA)
- 2 detainees in River Correctional Center (Ferriday, LA)
- 2 detainees in South Texas ICE Processing Center (Pearsall, TX)
- 5 detainees in St. Clair County Jail (Huron, MI)
- 9 detainees in Stewart Detention Center (Lumpkin, GA)
- 2 detainees in Winn Correctional Center (Winnfield, LA)
- 1 detainee in Wyatt Detention Center (Central Falls, RI)
- 1 detainee in York County Prison (York, PA)

*Some detainees may no longer be in ICE custody.

Updated 04/27/2020 5:45pm

ICE
EMPLOYEES
AT
DETENTION
CENTERS

35

There have been 35 confirmed cases of COVID-19 among ICE employees working in ICE detention facilities.

- 14 at Alexandria Staging Facility (Alexandria, LA)
- 2 at Aurora Contract Detention Facility (Aurora, CO)
- 1 in Bergen County Jail (Hackensack, NJ)
- 1 at Butler County Jail (Hamilton, OH)
- 2 at Elizabeth Contract Detention Facility (Elizabeth, NJ)
- 1 at Essex County Correctional Facility (Newark, NJ)
- 1 at Florence Correctional Center (Florence, AZ)
- 2 at Houston Contract Detention Facility (Houston, TX)
- 1 at Hudson County Jail (Kearny, NJ)
- 8 at Otay Mesa Detention Center (San Diego, CA)
- 1 at Stewart Detention Center (Lumpkin, GA)

Updated 04/24/2020 5:00pm

ICE
EMPLOYEES

89

There have been 88 confirmed cases of COVID-19 among ICE employees not assigned to detention facilities.

Updated 04/24/2020 5:00pm

Last Reviewed/Updated: 04/27/2020

DECLARATION OF LORILEI WILLIAMS

I, Lorilei Williams, make the following declaration based on my personal knowledge and declare under the penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

Introduction

1. I am a senior staff attorney for the Southeast Immigrant Freedom Initiative (“SIFI”) of the Southern Poverty Law Center (“SPLC”). SIFI provides *pro bono* representation to detained immigrants in proceedings before the Executive Office for Immigration Review and U.S. Immigration and Customs and Enforcement (“ICE”). SIFI prioritizes representing detained individuals in seeking their release from ICE custody. SIFI also represents some individuals in the merits phase of their removal proceedings before the immigration courts and in appeals to Board of Immigration Appeals (“BIA”). In addition, SIFI provides *pro se* support to detained individuals in their custody and merits proceedings before ICE and the immigration courts.
2. SIFI represents individuals confined inside the following detention centers in Louisiana and Georgia: the LaSalle Detention Center (“LaSalle”) in Jena, Louisiana; the Pine Prairie ICE Processing Center (“Pine Prairie”) in Pine Prairie, Louisiana; the Irwin County Detention Center (“Irwin”) in Ocilla, Georgia; the Folkston ICE Processing Center (“Folkston”) in Folkston, Georgia; and the Stewart Detention Center (“Stewart”) in Lumpkin, Georgia.
3. I have worked at SPLC since September 2019. In my capacity as senior staff attorney, I provide SIFI staff with training, mentoring, and professional development support, and I contribute to the development of our *pro se* resources and participate in other projects and litigation relevant to our work. Additionally, I served as the Interim Lead Attorney for SIFI’s Ocilla office from September 2019 until March 2020.
4. Since early March 2020, SIFI has been acutely aware that the COVID-19 pandemic poses a grave threat to the health and safety of everyone connected to the immigration detention centers where we work. Given the grossly inadequate medical care, unsanitary conditions, and inability to accomplish social distancing at these facilities, we were

concerned that COVID-19 would spread quickly among the detained population and the surrounding communities. Our concerns include the grave impacts COVID-19 outbreaks will have on the under-resourced, rural communities the detention centers we serve are a part of. It became clear and necessary for our staff to seek the immediate release of detained immigrants with certain medical conditions who are particularly vulnerable to complications arising of COVID-19. SPLC partnered with Asian Americans Advancing Justice-Atlanta and Kilpatrick, Townsend, & Stockton LLP (collectively, “Habeas Counsel”) to seek immediate release on behalf of numerous individuals with such conditions. I am a member of SPLC’s litigation team on these matters and an attorney of record for the matters referenced below.

5. On April 7, 2020, Habeas Counsel filed a Petition for Writ of *Habeas Corpus* and Complaint for Declaratory and Injunctive Relief along with a Motion for Temporary Restraining Order on behalf of three petitioners detained at Stewart and five petitioners detained at Irwin. That case, *Sanchez Martinez v. Donahue*, Case No. 7:20-CV-62 (CDL), is pending in the Middle District Court of Georgia.
6. On April 8, 2020, Habeas Counsel filed a Petition for Writ of *Habeas Corpus* and Complaint for Declaratory and Injunctive Relief along with a Motion for Temporary Restraining Order on behalf of three petitioners detained at Folkston. That case, *Benavides vs. Gartland*, Case No. 4:20-cv-00069-RSB-CLR, is pending in the Southern District Court of Georgia.
7. In our ongoing work on the above matters, Habeas Counsel have experienced extreme difficulty communicating with detained individuals at Stewart, Irwin, and Folkston through in-person visitation as well as by phone and video teleconference (legal phone calls and video-teleconferencing are hereinafter referenced as “remote legal visits”).

COVID19 Conditions at Stewart and Irwin that necessitated Habeas Filing

8. The conditions at Stewart and Irwin necessitated Habeas Counsel’s immediate action on behalf of the medically vulnerable individuals detained there. Individuals at these

facilities are unable to adequately socially distance *Sanchez Martinez*, Case No. 7:20-CV-62, Dkt. 1-12 ¶60, are not provided access to items necessary for personal hygiene (*Id.* at ¶63) and are forced to live in flagrantly unsanitary conditions. *Id.* at ¶61. The facilities are understaffed (*Id.* at ¶71) and provide inadequate medical care. *Id.* at ¶71.

9. Those conditions are still ongoing. In filing a Motion for Emergency Inspection and Expedited Preliminary Injunction Hearing on May 1, Habeas Counsel raised the following: Inadequate care and response to symptomatic individuals (regularly ignored or receive only Tylenol); failure to implement and maintain social distancing; inadequate cleaning, disinfecting, and hand hygiene; inadequate communication and education regarding COVID-19 prevention; inadequate use of PPE (inconsistent use by staff and detained people often do not receive PPE at all); inadequate pre-entry screening. *Sanchez Martinez v. Donahue*, Case No. 7:20-CV-62, Dkt.32 (CDL).

Preparing Habeas Petitions (and subsequent filings) during COVID-19 Pandemic

10. In order to litigate Habeas Counsel's petitions, members of our team need to schedule remote legal visits with existing and potential petitioners to discuss the scope of representation; personal, medical, and legal history; and other relevant matters. Legal visits must be remote due to ICE's personal protective equipment (PPE) requirement for attorney visitation, the applicable shelter-in-place and stay-at-home orders, restrictions on travel, and medical vulnerabilities of members of Habeas Counsel. Habeas Counsel must also be able to send and receive documentation from petitioners, such as retainers, releases, medical records and other legal documents. Due to the rapidly deteriorating health of petitioners and the particular danger they face, Habeas Counsel has rushed to expedite our filings, creating a critical need for quick, reliable access to our clients.
11. Remote legal visitation is requested at Irwin and Stewart in similar manners. Counsel may send a request via email to the designated scheduling contact for the detention center. The detention center typically schedules our request for a one-hour appointment one to three days after our original request. Generally, visitation is limited to one hour, even when an interpreter is needed for the remote legal visit. Third party interpretation

must be coordinated and provided by Habeas Counsel. There is no ability to request a remote legal visit for the weekend or in the evening. There is also no ability to schedule an expedited remote legal visit for any reason.

12. In my experience, when Irwin finally responds to a request for a remote legal visit, Irwin routinely provides very short notice of the selected time and day and does not give Habeas Counsel any opportunity to reschedule due to conflicts. As exemplified below, Irwin often offers remote legal visits to attorneys on a take-it or leave-it basis, meaning that if the requesting attorney is unavailable to take the call at Irwin's selected time, the request for a legal call is effectively denied.
13. Because of the difficulty of scheduling remote legal visits with petitioners, we have relied heavily on petitioners' ability to call us using the same phones they use to call loved ones, which are located in open, shared spaces that do not allow for confidential conversations. On numerous occasions, petitioners have reported an inability to access these phones either because phones in their pods or units have been disconnected or because their ability to access phones located outside of their pods or units has been limited. Their inability to call us has greatly interfered with our ability to act expeditiously.
14. SPLC has requested that several phone numbers of SPLC staff who regularly provide legal assistance to detained individuals at Irwin and Stewart be placed on a do-not-monitor list. While we have received verbal confirmation that these phone numbers have been placed on a do-not-monitor list for detained individuals at Stewart, Warden Paulk has refused to confirm whether our calls with detained individuals at Irwin are unmonitored.
15. Additionally, at Irwin, if the library video-teleconference station is used for the remote legal visit, detention center staff frequently interrupt our visit by entering the library and answering calls on a phone placed just a few feet away from the detained individual.

16. Petitioners who require the services of an interpreter to speak with Habeas Counsel generally require more than twice as many hours of legal visitation but are subject to the same time constraints discussed above.
17. Below are but a few of the additional barriers my co-counsel and I have encountered in trying to communicate effectively with clients and potential petitioners in this case.
18. On April 15, 2020, Victoria Mesa requested a remote legal visit with one of our petitioners detained at Irwin by emailing the designated contact at Irwin. Ms. Mesa sent several emails following up on this request. Irwin did not respond until April 17, 2020.
19. On April 15, 2020, Hillary Li also requested a remote legal visit with a potential plaintiff detained at Irwin by emailing the designated contact at Irwin. Ms. Li followed up multiple times on this request to which Irwin failed to adequately respond. Ultimately, this remote legal visit was never scheduled. As a result, Habeas Counsel was unable to interview this individual for potential inclusion in our litigation. Similar restrictions have negatively impacted the Habeas Team's ability overall to identify, communicate with, and ultimately include potential petitioners at these facilities in our litigation.
20. On April 15, 2020, I requested remote legal visits for two of our petitioners detained at Irwin by emailing the designated contact at Irwin. I sent emails following up on this request on April 16 and 17. On April 17, I received an unexpected Skype call from one of the petitioners. Irwin had failed to confirm the date and time of this remote legal visit. While I was able to answer the call, I was unprepared for the visit and was unable to accomplish everything I had planned to address during our visit. On April 17, I sent an additional follow up email inquiring as to the status of the request for the second petitioner. This visit was scheduled for April 20, 2020, five days after the date of my original request.
21. On April 22, 2020 at 2 pm, Ms. Mesa was scheduled for a remote legal visit with one of our petitioners detained at Irwin. Irwin never presented our petitioner for the visit. Irwin

represented to Ms. Mesa that our petitioner did not want to speak with her. Ms. Mesa subsequently spoke with our petitioner's immigration counsel and family, who informed Ms. Mesa that our plaintiff was told that Ms. Mesa was an attorney trying to "poach" her. Irwin's interference with Ms. Mesa's remote legal visit was grossly inappropriate.

22. On approximately April 20 and 21, one of our petitioners detained at Irwin was taken to the hospital for stress tests and an MRI. When he came back to his cell, several items were missing. He had been working on a drawing of the layout and conditions of his pod to assist Habeas Counsel with this litigation. The drawing was not in his cell when he returned, and in his experience only guards take personal items away from detained people at Irwin without notice. On information and belief, guards or other staff at Irwin knew about Petitioner Thompson's participation in this litigation. On information and belief, guards or other staff at Irwin confiscated the drawing.

23. In addition to the access issues related to remote legal visits, Habeas Counsel have been unable to exchange documents with petitioners in an expeditious manner. Before the pandemic, we typically exchanged documents and obtained signatures during in-person legal visits. Now, with in-person visitation effectively prohibited, the only means for documents exchange is postal mail, which is a slow and unreliable process. We are unable to include stamps in our written correspondence with petitioners because stamps are banned by the detention centers. This forces us to deposit funds into petitioners' commissary accounts or break social distancing protocols and stay-at-home orders to obtain prepaid envelopes that can be used by petitioners to return documents to us.

24. Additionally, as far as I know, we are unable to send faxes to any of our detained petitioners at Stewart or Irwin. We are able to receive faxes from our petitioners detained at Irwin, but we are unable to receive faxes from our petitioners detained at Stewart.

Conclusion

25. Since the implementation of COVID-19 related restrictions on in-person legal visits, communication with clients and potential petitioners at Irwin, Stewart, and Folkston

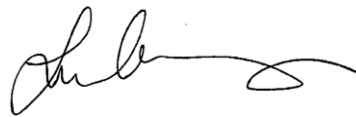
detention centers has been severely limited and rendered ineffective. Remote legal visitation is difficult and sometimes impossible to schedule. When it is scheduled, it often raises confidentiality issues, as our clients are not in private settings. Exchanging documents and obtaining client signatures—ordinary necessities in direct immigration representation—is also slow and unreliable at the facilities.

26. My co-counsel and I are deeply concerned for the lives of our petitioners as we witness detention center conditions deteriorate rapidly as they await completion of their civil immigration matters. We are very disappointed in ICE's continued failure to respect the lives and dignity of detained migrants and callous disregard for the urgent humanitarian crisis unfolding before us as COVID-19 wreaks havoc throughout our society.

27. We are especially alarmed by ICE's continued refusal to re-assess and release significant numbers of immigrants that is required to meet social distancing guidelines within these spaces of confinement; refusal to adequately educate and inform detained individuals on critical information relating to COVID-19; continued transfer of detained individuals who are medically vulnerable or who have been exposed to COVID-19; disturbing refusal to provide basic hygiene supplies for detained individuals; and, failure to provide treatment and testing to those exhibiting COVID-19 symptoms.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge, memory, and belief.

Executed on the 5th day of May, in the year 2020, in the city of Stone Mountain, Georgia.



Lorilei Williams
Southeast Immigrant Freedom Initiative
Southern Poverty Law Center
T 404.858.2567
Lorilei.williams@splcenter.org

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN POVERTY LAW CENTER,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

Civil Action No. 18-0760 (CKK)

DECLARATION OF SHALINI GOEL AGARWAL

I, Shalini Goel Agarwal, hereby declare as follows:

1. I am an attorney with the Southern Poverty Law Center (“SPLC”) and one of the counsel for Plaintiff in this action. I have personal knowledge of the facts in this declaration.
2. SPLC filed this action on April 4, 2018, on behalf of itself and its Southeast Immigrant Freedom Initiative (“SIFI”) clients who are detained at four immigration detention centers in the Southeast, including LaSalle ICE Processing Center (“LaSalle”) in Jena, Louisiana. SPLC alleges that Defendants’ policies, practices, and omissions create unconstitutional barriers for detained people to access and communicate with attorneys in violation of their Fifth Amendment right to access courts, right to counsel, and right to a full and fair hearing.
3. The parties reached a settlement as to Plaintiff’s Motion for a Preliminary Injunction with respect to SPLC’s request for additional legal visitation meeting space and remote interpretation services for in-person meetings at LaSalle. The agreement requires, among other things, that Defendants schedule remote legal visits by video teleconference (“VTC”) to take place the same day as a request by SIFI staff.
4. Under the terms of the agreement, Plaintiff should notify Defendants of noncompliance to be quickly remediated by Defendants. The usual recourse for Plaintiff is the Alternative Dispute Resolution (“ADR”) process. However, if SPLC’s clients will likely suffer an imminent and irreparable harm, injury, or loss due to the

violation and ADR is not feasible or practicable, Plaintiff may apply to the court for relief.

5. Since the settlement, and before COVID-19-related restrictions on access to counsel at LaSalle, Plaintiff has twice sent formal notices of noncompliance to Defendants.
 - a. On December 13, 2019, Plaintiff sent a notice of noncompliance to Defendants regarding the malfunctioning phones in the attorney visitation rooms that impeded access to interpreters during legal visits. A copy of this correspondence is attached as Exhibit A.
 - b. Defendants responded to this notice on December 17, 2019, explaining that they conducted two 60-second test calls from each of the three phone lines and that the phones worked. A copy of this correspondence is attached as Exhibit B.
 - c. On February 20, 2020, Plaintiff sent a notice of noncompliance to Defendants again flagging problems with the phone lines for interpreters in the attorney visitation rooms that made attorney-client communications ineffective. A copy of this correspondence is attached as Exhibit C.
 - d. Defendants responded to this notice on February 24, 2020, explaining that they again tested the phone lines, found some problems that they corrected, and would continue to periodically test the phones. A copy of this correspondence is attached as Exhibit D.
6. After that, on March 25, Plaintiff sent Defendants a letter describing several of the increasingly onerous barriers to detained individuals' access to counsel due to COVID-19-related restrictions. Among these were delays of up to six days between the time a VTC remote legal visit was requested to the time it was scheduled at LaSalle. The letter specifically demanded:
 - a. Both VTC and legal phone calls be available at each of the four facilities;
 - b. Sufficient VTC consoles for free, confidential legal VTCs 8am-8pm, with conference calling, available within 24 hours by request of attorney or detained person;
 - c. Free unmonitored calls in a confidential booth with a sufficient number of booths and staffing so that they can be scheduled at any time by request of attorney or detained person;

- d. A mechanism for free and quick exchange of confidential legal documents by fax or electronically;
- e. Directives to staff to permit signatures based on verbal authorization of detained people rather than signatures by their own hand, given the difficulty and delay of in-person visits and mail; and
- f. A process for confidential legal calls and VTCs for those in quarantine.

A copy of this correspondence is attached as Exhibit E.

- 7. Defendants responded nine days later on April 3, 2020. In their response, Defendants conceded that there had been six-day delays at LaSalle between Plaintiff's request for a legal VTC and when the remote visitation was actually scheduled. As a result, Defendants committed to extending VTC hours of operation at LaSalle. Despite this commitment, SIFI staff still report scheduling delays for VTC remote legal visits. A copy of this correspondence is attached as Exhibit F.
- 8. Also in this correspondence, Defendants asserted that they would continue to make legal phone calls and VTCs available at each facility, temporarily extend the hours when VTCs could be made, and temporarily extend the hours for legal calls at all of the Facilities except Pine Prairie, where they deemed access to be sufficient. Defendants refused to allow 24/7 access to legal phone calls. Defendants also refused to create a process for confidential legal documents to be exchanged by fax or electronically and refused to allow Plaintiff to send stamped envelopes to its clients.
- 9. Plaintiff sent a third notice of noncompliance on May 4, seeking a response on May 5, regarding the repeated delays in scheduling VTCs at LaSalle that continued even after Defendants' response to the demand letter. A copy of this correspondence is attached as Exhibit G.
- 10. Defendants responded to this notice on May 6, asserting that additional VTC consoles were installed at LaSalle, that they functioned properly, and that Defendants would conduct follow-up inspections. A copy of this correspondence is attached as Exhibit H.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Tallahassee, Florida, on May 6, 2020.



Shalini Goel Agarwal (Fla. Bar No. 90843)

Southern Poverty Law Center
106 East College Avenue, Suite 1010
Tallahassee, Florida 32302
Tel: (850) 521-3024
shalini.agarwal@splcenter.org

Exhibit A



Fighting Hate
Teaching Tolerance
Seeking Justice

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Tallahassee, FL 32302-2788
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December 13, 2019

VIA E-MAIL

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Room 9060
Washington, D.C. 20536
Jonathan.L.Kaplan@ice.dhs.gov

Re: *SPLC v. DHS, et al.*, No. 18-760-CKK (D.D.C.) (Notice of Non-Compliance)

Dear Mr. Kaplan:

Please consider this letter a Notice of Non-Compliance pursuant to paragraph 28 of the parties' September 5, 2018 Settlement Agreement regarding the LaSalle ICE Processing Center ("LaSalle") in the above-captioned matter. See ECF No. 42. Specifically, I write to notify you that DHS is not in compliance with Paragraph 19 of the Settlement Agreement.

Paragraph 19 of the parties' Settlement Agreement requires, *inter alia*, each attorney visitation room to contain confidential three-way telephone lines to access outside interpretation services without interference or static. See Settlement Agreement ¶ 19. The phone lines Defendants ultimately installed are currently malfunctioning and, as a direct consequence, attorneys and legal representatives are unable to consistently access crucially needed interpreters to facilitate attorney-client communications. Frequently, the telephone lines either do not work at all or cut off unexpectedly in the middle of a visit. In addition, static and poor sound quality on the phone lines frequently impedes interpreters from hearing attorneys or clients or vice-versa, thereby requiring parties to repeat themselves and unnecessarily extending the amount of time for visits. Sometimes, the static is so loud or the sound quality so poor that the parties on the call cannot hear one another at all.

As a result of these technical problems, Plaintiff has been forced to forgo in-person legal visits with individuals who require an interpreter or otherwise been prevented from effective attorney-client communications. This consequence further strains Plaintiff's resources and impedes meaningful access to counsel for individuals imprisoned at LaSalle.

We appreciate your prompt attention to this Notice of Non-Compliance and look forward to working with you over the next two business days to try to resolve this dispute as provided in Section 29 of the Settlement Agreement.

Sincerely,

A handwritten signature in black ink, reading "Shalini Goel Agarwal". The signature is fluid and cursive, with the first name "Shalini" being the most prominent.

Shalini Goel Agarwal
Senior Supervising Attorney

cc: Daniel Schaefer
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
Daniel.Schaefer@usdoj.gov

Sheetul S. Wall
Trial Attorney
Department of Justice | Civil Division
Office of Immigration Litigation - District Court Section
P.O. Box 868 | Ben Franklin Station | Washington, DC 20044
Sheetul.S.Wall2@usdoj.gov

Exhibit B

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

December 17, 2019

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC v. DHS*, No. 18-760-CKK (D.D.C.)

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) December 13, 2019 Notice of Noncompliance (Notice) in which it alleges that U.S. Immigration and Customs Enforcement (ICE) is in noncompliance with the September 5, 2018 Settlement Agreement (Agreement). Specifically, SPLC alleges that the "confidential three-way telephone lines" in the three attorney visitation rooms at the LaSalle ICE Processing Center (LaSalle) "are currently malfunctioning" in that the telephone lines frequently "either do not work at all or cut off unexpectedly in the middle of a visit." Letter from Shalini Goel Agarwal to Jon Kaplan, Associate Legal Advisor, ICE (Dec. 13, 2019). SPLC also alleges that the telephone lines have "static and poor sound quality", which interfere with telephonic communications. *Id.*

ICE is aware of SPLC's concerns and has conferred with its Enforcement and Removal Operations (ERO) New Orleans field office and the GEO Group, Inc. (GEO), which operates LaSalle, to confirm the accuracy of the allegations and whether corrective measures are necessary to ensure compliance with the Agreement. On December 16, 2019, at about 9:00 a.m., an ERO officer, the GEO Assistant Warden, and a Talton Communications (Talton) service technician checked the six telephones in the attorney visitation rooms, three on each side, and found that they were working properly. (As information, Talton is the telecommunications company that provides telephone service for detainees at LaSalle.) The three telephones on the attorney side of the visitation rooms were used to call the Talton office and each one-minute call was completed on the first attempt with no dropped calls and no static, and both sides were able to communicate with each other without any interference. The telephone in the first room on the detainee side did have a slightly muffled sound and the Talton service technician immediately repaired the handset on that telephone. Additionally, the telephones were used to call a translation number to ensure that those communications

Shalini Goel Agarwal, Esq.

SPLC

Page 2 of 2

were clear. Each one-minute telephone call was reported as clear. Since yesterday, ERO has received no further complaints about the telephones used in the attorney visitation rooms.

Please contact Ruth Ann Mueller and James Walker, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to the Notice.

Sincerely,



Jon Kaplan

Associate Legal Advisor

District Court Litigation Division

cc: Sheetul S. Wall
Ruth Ann Mueller
James Walker
Trial Attorneys, OIL

Exhibit C



SPLC
Southern Poverty
Law Center

Fighting Hate
Teaching Tolerance
Seeking Justice

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February 20, 2010

VIA E-MAIL

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Room 9060
Washington, D.C. 20536
Jonathan.L.Kaplan@ice.dhs.gov

Re: *SPLC v. DHS, et al.*, No. 18-760-CKK (D.D.C.) (Notice of Non-Compliance)

Dear Mr. Kaplan:

Please consider this letter a Notice of Non-Compliance pursuant to paragraph 28 of the parties' September 5, 2018 Settlement Agreement regarding the LaSalle ICE Processing Center ("LaSalle") in the above-captioned matter. See ECF No. 42. Specifically, I write to notify you that DHS continues to be noncompliant with Paragraph 19 of the Settlement Agreement, which requires, *inter alia*, that each attorney visitation room contain confidential three-way telephone lines to access outside interpretation services without interference or static. See Settlement Agreement ¶ 19.

On December 13, 2019, Plaintiff informed Defendants that the LaSalle phone lines were malfunctioning and, as a result, attorneys and legal representatives were unable to reliably conduct legal visitation with individuals who require outside interpretation services. On December 17, 2019, Defendants informed us that they had conducted an on-site inspection; that the inspection revealed all but one of the phones to be working properly; and that a technician fixed a "muffling" sound on the one malfunctioning phone.

However, since Defendants' inspection, technical problems with the language lines in all three visitation rooms persist. Most recently, on February 3, 2020, Plaintiff discovered that one of the phone lines, in the second visitation room from the entrance, did not work at all. When Plaintiff's attorney attempted to use the phone in the first visitation room closest to the entrance instead, the attorney found that the remote interpreter could not hear the detained individual at all. The phone lines in both the first visitation room and the third visitation room farthest from the entrance cut in and out periodically so that the attorney and detained person are unable to hear the interpreter

or vice versa. As a result of these continued technical problems, Plaintiff has been prevented from effective attorney-client communications.

Given the severe lack of interpreters near LaSalle, Plaintiff requires reliable access to functioning language lines in order to communicate with individuals who require interpreters. Consequently, reliable access to language lines is a key feature of the Settlement Agreement between the parties.

Accordingly, and consistent with the ADR procedures prescribed by the Settlement Agreement, Plaintiff requests that Defendants promptly resolve the ongoing technical problems with the language lines at LaSalle. To be sure, Plaintiff expects Defendants not only to ensure that the language lines are currently working but also to ensure that the language lines reliably work. Because Defendants' December inspection did not ensure the phone lines reliably worked, Plaintiff expects that Defendants will need to go beyond a mere inspection to ensure reliable access to language lines. Plaintiff hopes to resolve these issues without intervention by mediators or the Court. However, if these issues persist and language-line access continues to be hampered, Plaintiff will be required to elevate this issue.

We appreciate your prompt attention to this Notice of Non-Compliance and look forward to working with you over the next two business days to try to resolve this dispute as provided in Section 29 of the Settlement Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Shalini Goel Agarwal".

Shalini Goel Agarwal
Senior Supervising Attorney

cc:

Daniel Schaefer

Daniel.Schaefer@usdoj.gov

Sheetul S. Wall

Sheetul.S.Wall2@usdoj.gov

Ruth Ann Mueller

Ruth.A.Mueller@usdoj.gov

James Walker

James.Walker3@usdoj.gov

Defendants' Counsel

Exhibit D

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

February 24, 2020

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC v. DHS*, No. 18-760-CKK (D.D.C.)

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) February 20, 2020 Notice of Noncompliance (Notice) in which it alleges that U.S. Immigration and Customs Enforcement (ICE) is in noncompliance with the September 5, 2018 Settlement Agreement (Agreement). Specifically, SPLC alleges that on February 3, 2020, the "confidential three-way telephone lines" in the three attorney visitation rooms at the LaSalle ICE Processing Center (LaSalle) continue to experience "technical problems" in that one of the phone lines "did not work at all", "the remote interpreter could not hear the detained individual at all" on another phone line, and two of the phone lines "cut in and out periodically", preventing the attorney or detainee from hearing the interpreter or vice versa. Letter from Shalini Goel Agarwal to Jon Kaplan, Associate Legal Advisor, ICE (Feb. 20, 2020).

ICE is aware of SPLC's concerns and has conferred with its Enforcement and Removal Operations (ERO) New Orleans (NOL) field office and the GEO Group, Inc. (GEO), which operates LaSalle, to confirm the accuracy of the allegations and whether corrective measures are necessary to ensure compliance with the Agreement. On February 21, 2020, ERO NOL tested the phone lines in the legal visitation area, using an assigned interpreter line number. In the first visitation room, the interpreter could neither hear the ERO supervisory officer nor LaSalle's assistant warden even though they could clearly hear her. In the second visitation room, there was static in the phone line although the supervisory officer, assistant warden, and interpreter could hear each other. In the third visitation area, the supervisory officer, assistant warden, and interpreter had a clear connection after the facility called the interpreter a second time. As a result, GEO contracted a phone technician to inspect and test the three phone lines. On February 24, 2020, the technician replaced one of the headsets in the first visitation room, which fixed that line. Additionally, the technician remedied the other two lines, and ICE has confirmed that all three phone lines now provide clear calls to the interpreter line number. Further, ERO NOL will periodically test the phone lines to ensure that they

Shalini Goel Agarwal, Esq.

SPLC

Page 2 of 2

are working and will coordinate with GEO to remedy any deficiencies identified. Nevertheless, ICE suggests that SPLC immediately notify LaSalle of any phone line difficulties to enable the facility to take prompt action to fix the problems.

Please contact Ruth Ann Mueller, James Walker, and David Byerley, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to this Notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Kaplan". The signature is fluid and cursive, with the first name "Jon" being more prominent than the last name "Kaplan".

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division

cc: Ruth Ann Mueller
James Walker
David Byerley
Trial Attorneys, OIL

Exhibit E



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Southern Poverty
Law Center

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Seeking Justice

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March 25, 2020

VIA E-MAIL

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Room 9060
Washington, D.C. 20536
Jonathan.L.Kaplan@ice.dhs.gov

Julie Plavsic
Senior Policy Advisor
Office of Legal Access Programs
U.S. Immigration and Customs Enforcement
500 12th Street, S.W.
Washington, D.C. 20536
Julie.Plavsic@ice.dhs.gov

Re: *SPLC v. DHS, et al.*, No. 18-760-CKK (D.D.C.)
Ensuring Access to Counsel during COVID-19 Pandemic

Dear Mr. Kaplan and Ms. Plavsic:

We write to raise serious concerns regarding COVID-19 and the emergent situation at LaSalle ICE Processing Center (“LaSalle”); Pine Prairie ICE Processing Center (“Pine Prairie”); Irwin County Detention Center (“Irwin”); and Stewart Detention Center (“Stewart”).

As you are aware, new coronavirus (COVID-19), a disease that has led to a global pandemic, presents an immediate and substantial threat to life.¹ To date, there are over 59,502 confirmed cases of COVID-19 in the United States across all 50 states, and 804 deaths.² As the number of diagnosed cases rises exponentially, the urgent need to combat the spread of this disease is clear. Medical experts and epidemiologists have called for alternatives to incarceration, noting the heightened danger to people in prisons and jails.³ In response, several jails and prisons have begun implementing plans to release individuals.⁴ The same is not true for immigrant detention centers, though they hold individuals in civil detention, which is legally required to be less punitive than criminal incarceration.⁵ Despite ICE's knowledge of the heightened vulnerability of detained individuals, its documented failure to adequately respond to outbreaks of other diseases within detention centers,⁶ and its ultimate authority to release detainees,⁷ Defendants

¹ World Health Organization, WHO Director-General's opening remarks at the media briefing on COVID-19 (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

² Mitchell Smith, *Coronavirus Map: U.S. Cases Surpass 10,000*, N.Y. TIMES (Updated March 25, 2020, 12:03 P.M. E.T.), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>. The number of people who have tested positive has increased twelve-fold from 5,726 people as of last Tuesday, March 17, 2020. The number of deaths has almost doubled in the past two days, from 428 on Monday, March 23. *Id.*

³ See Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, at 15, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf. ("Consider alternatives to incarceration, in order to keep stock population down (diversionary courts, community corrections). Consider measures other than detention (at-home electronic monitoring). Ask who you can release on their own recognizance?"); Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. TIMES (March 16, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>; Dr. Marc Stern, *Washington State Jails Coronavirus Management Suggestions in 3 "Buckets,"* Letter to Washington Jails (March 13, 2020), <https://waspc.memberclicks.net/assets/docs/suggestions%20for%20jails%20%203.5.20.pdf>; Camilo Montoya-Galvez, "Powder kegs": Calls grow for ICE to release immigrants to avoid coronavirus outbreak, CBS NEWS (March 19, 2020), <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/> (calling for release of immigrants from detention by infectious disease expert Dr. David Cennimo, among others); *Open Letter to ICE from Medical Professionals Regarding COVID-19* (March 22, 2020), <https://nylpi.org/wp-content/uploads/2020/03/FINAL-LETTER-Open-Letter-to-ICE-From-Medical-Professionals-Regarding-COVID-19.pdf> (urging ICE to implement community-based alternatives; signed by over 3,000 medical professionals).

⁴ *US jails begin releasing prisoners to stem Covid-19 infections*, BBC NEWS (March 19, 2020), <https://www.bbc.com/news/world-us-canada-51947802> (describing decarceration efforts in New York City, Los Angeles, and Cleveland, including release of 600 people by Los Angeles County Sheriff's Department). See also Darwin Bond Graham, *San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak*, THE APPEAL (March 11, 2020), <https://theappeal.org/coronavirus-san-francisco-reduce-jail-population/>; Jerry Ianeli, *After Criticism, Miami-Dade State Attorney Pledges to Help Release Nonviolent Arrestees*, MIAMI NEW TIMES (March 16, 2020), <https://www.miaminewtimes.com/news/miami-dade-jails-state-attorney-rundle-outlines-coronavirus-plan-11598148>.

⁵ See *Shaughnessy v. United States Ex Rel. Mezei*, 345 U.S. 206 (1953).

⁶ Between October 2018 and August 2019, five cases of mumps in two ICE detention centers ballooned to 898 cases in 57 facilities, with 84% of patients exposed while in custody. "Mumps in Detention Facilities that House Detained Migrants — United States, September 2018–August 2019" *Morbidity and Mortality Weekly Report*, 68:34 (Aug. 20, 2019) pp.749-50. <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6834a4-H.pdf>; See also Christina Potter, *Outbreaks in Migrant Detention Facilities*, OUTBREAK OBSERVATORY (July 11, 2019), <https://www.outbreakobservatory.org/outbreakthursday-1/7/11/2019/outbreaks-in-migrant-detention-facilities>

have announced no plans to release individuals from immigrant detention, including at the four facilities at issue.⁸ This is true even though staffing has been reduced at some facilities, including at Stewart.

Defendants have likewise failed to present a sufficient plan for the prevention and management of COVID-19 for individuals in ICE custody, and instead have only published a brief guidance.⁹ This limited guidance is not even being followed in the facilities at issue. For example, during a March 20 legal visit to Pine Prairie, Plaintiff observed staff operating in the quarantined dorm without protective gear and bringing in transfers to the quarantined dorm. Further, detained individuals assigned to clean the quarantined dorm were doing so without masks, gloves, or other protective gear. To date, ICE has not taken enough proactive measures such as identifying high-

(noting multiple infectious disease outbreaks in CBP and ICE facilities in 2018 and 2019, facilitated by overcrowding, poor access to healthcare or sanitation, and improper use of isolation and quarantine).

⁷ Section 236(a)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a)(2)(B) (2006) authorizes the Department of Homeland Security (“DHS”) to release an immigrant on conditional parole, and section 212(d)(5)(A) of the Act, 8 U.S.C. § 1182(d)(5)(A) (2006), provides a different procedure for *temporary* parole, based on urgent humanitarian reasons or significant public benefit. See *In re Castillo-Padilla*, 25 I. & N. Dec. 257, 259 (B.I.A. June 18, 2010). Former Acting ICE Director John Sandweg has criticized ICE’s failure to release individuals amid Coronavirus, citing the Agency’s complete discretion. “Unlike the Federal Bureau of Prisons, ICE has complete control over the release of individuals. ICE is not carrying out the sentence imposed by a federal judge... It has 100% discretion.” Camilo Montoya-Galvez, “Powder kegs,” *supra* note 4.

⁸ To the contrary, ICE has continued immigration arrests, even placing people in Aurora Detention Center, where at least ten people have been quarantined for possible exposure to the coronavirus. Alex Burness, *ICE immigration arrests continuing in Denver despite coronavirus outbreak*, THE DENVER POST (March 17, 2020), <https://www.denverpost.com/2020/03/17/coronavirus-ice-immigration-arrest-colorado-denver/>. And while the Federal Bureau of Prisons has suspended facility transfers for 30 days to reduce likelihood of exposure, ICE has continues facility-to-facility transfer of detained people, as recently as March 15, 2020. *Compare Federal Bureau of Prisons COVID-19 Action Plan*, BOP (March 13, 2020), https://www.bop.gov/resources/news/20200313_covid-19.jsp with Hamed Aleaziz, *A Local Sheriff Said No to More Immigrant Detainees Because of Coronavirus Fears, so ICE Transferred Them All to New Facilities*, BUZZFEED NEWS (March 18, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/wisconsin-sheriff-ice-detainees-coronavirus>. ICE’s lack of a plan for release is troubling given the fact that an employee exhibiting symptoms of the virus in an immigrant detention facility continued to work in the medical ward and was diagnosed with Coronavirus. Emily Kassie, *First ICE Employee Tests Positive for Coronavirus*, THE MARSHALL PROJECT (March 19, 2020), <https://www.themarshallproject.org/2020/03/19/first-ice-employee-tests-positive-for-coronavirus>. The situation on Riker’s Island is instructive—on the night of March 18, one inmate tested positive, and by the next afternoon, four employees tested positive. *Three More Correction Officers Test Positive, Officials say, The Coronavirus Outbreak*, NYTIMES (updated on March 19, 2020), <https://www.nytimes.com/2020/03/19/nyregion/coronavirus-new-york-update.html#link-1b054716>. As ICE continues to make arrests and transfers without a release strategy, a similar exponential increase of COVID-19 in ICE facilities is also imminent.

⁹ *ICE Guidance on COVID-19*. U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT. <https://www.ice.gov/covid19>. The “guidance” provides scant information about protective measures in detention. As to how ICE ensures that detained people are kept safe in this crisis, it notes only that ICE is cohorting detainees “as an alternative to self-monitoring” and that staff uses “N95 masks, available respirators, and additional personal protective equipment.” Further, the guidance simply states that detainees who “require higher levels of care or monitoring” are transported to appropriate hospitals with no plan of action for detention centers in remote areas like those at issue here far from hospitals with requisite expertise. Finally, the guidance creates troubling loopholes—to wit, detainees who are asymptomatic but meet CDC criteria for epidemiological risk “are housed separately in a single cell, or as a group, depending on available space.” (emphasis added).

risk populations, providing free and adequate hygiene products, or creating an emergency outbreak plan.

Furthermore, Defendants have done nothing to protect detained individuals' due process rights in light of this public health crisis. This is especially concerning, given both the existing barriers to access to counsel in the four facilities,¹⁰ and EOIR's announcement that all calendar hearings for detained individuals will proceed as scheduled.¹¹ Just this week, on March 24, Plaintiff asked to set up video teleconference ("VTC") calls with 5 clients at LaSalle and was given only one slot on March 30, six days later. Likewise, Plaintiff requested a VTC call with a client at Stewart on March 25 but was told no slots were available until the following week. The impact of Defendant's failure to provide sufficient VTC access is compounded by its new requirement that attorneys bring their own Personal Protective Equipment ("PPE") for all in-person visitations.¹² Given the national shortage of PPE for healthcare providers, the practical effect of this new policy is to prohibit attorneys from visiting their clients in the various facilities. It is incumbent upon Defendants to guarantee that the COVID-19 pandemic does not result in a further strain on individuals' access to counsel.

To be clear, releasing individuals from detention is the best way to ensure their health and access to counsel, insofar as released individuals will be able to call and correspond with their attorneys freely in support of their immigration cases while reducing the risks of transmission in the detention center in this rapidly evolving health crisis. Plaintiff's ability to counsel its clients at the four facilities depends on its ability to enter the facilities and visit clients, a reality that is less likely to remain when COVID-19 enters and spreads rapidly in the facilities. Plaintiff has heard reports of confirmed cases of COVID-19 at Irwin, LaSalle, and Pine Prairie. We urge Defendants to take proactive measures, including releasing vulnerable individuals, as we have previously communicated to ICE,¹³ before it is too late.

We demand that Defendants take the following immediate actions to mitigate existing barriers to counsel at the four facilities in the face of this public health emergency:

¹⁰ Individuals detained at these four remote facilities continue to be impeded from meaningfully communicating with lawyers due to inadequate facilities, policies and practices, and failure of ICE and its agents to monitor or remediate resulting constitutional violations. These deficiencies, such as Pine Prairie's sole VTC room, Stewart's inability to set up pre-scheduled legal calls at an attorney's request, Irwin's VTC calendar coordination that requires 2-3 days advance notice, and LaSalle's extremely limited daily VTC availability, are highlighted in the Complaint.

¹¹ DOJ EOIR (@DOJ_EOIR), TWITTER (Mar 15, 2020, 10:49 PM), https://twitter.com/DOJ_EOIR/status/1239383175882776576.

¹² "ICE will require all legal visitors to provide and wear PPE (e.g., gloves, N-95 masks, and eye protection) while visiting with any client at any facility." *ICE Guidance on COVID-19*, *supra* note 9.

¹³ See *Letter to ICE Officials and Wardens Re: COVID-19* (March 13, 2020), https://www.splcenter.org/sites/default/files/ltr_to_ice_and_wardens_re_covid-19_-_2020.03_-_final.pdf; see also *Letter to ICE and EOIR Re: Legal Access in Immigration Detention and Immigration Courts During COVID-19 Pandemic* (March 23, 2020), <https://www.aila.org/advo-media/aila-correspondence/2020/aila-and-partners-send-letter-to-eoir-and-ice>.

1. Ensure that both VTC *and* phone calls are available at each detention center for attorney-client communication.
2. Provide sufficient VTC consoles such that detained individuals can have free, confidential VTC with attorneys from 8:00 a.m. to 8:00 p.m. Such VTC calls must be available within 24 hours of request by detained individuals or attorneys and need to take place in private spaces to protect confidentiality. They must also allow for conference calling to include interpreters and experts in legal calls.
3. Ensure a process for free unmonitored legal calls at each facility and provide enough confidential phone booths for calls to be available *at any time* by the request of detained individuals or attorneys. Sufficient staff must be available to accommodate requests from attorneys to schedule legal calls. These calls must allow for conference calling for interpreters and experts to participate.
4. Provide a mechanism for attorneys and detained individuals to freely, quickly, and confidentially exchange legal documents, either electronically or via fax. In addition, enable detained individuals to send mail to attorneys for original documents, either by paying for the postage of detained individuals or by allowing attorneys to mail them self-addressed stamped envelopes.
5. Issue directives to staff encouraging flexibility by ICE and facility staff to permit free attorney-client communication for the purpose of intake without signature on ordinarily required forms, including but not limited to the ICE privacy waiver and the G-28.
6. Employ processes that permit confidential legal calls and VTC visits for quarantined individuals.

We urge you to immediately take these actions to address Plaintiff's concerns. Plaintiff otherwise reserves the right to take necessary steps to ensure that detained individuals at the facilities in question have effective access to counsel during this pandemic.

Sincerely,



Shalini Goel Agarwal

cc:

David Byerley

David.Byerley@usdoj.gov

Ruth Ann Mueller

Ruth.A.Mueller@usdoj.gov

Daniel Schaefer

Daniel.Schaefer@usdoj.gov

James Walker

James.Walker3@usdoj.gov

Defendants' Counsel

Exhibit F

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

April 3, 2020

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC* Novel Corona Virus Outbreak

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) March 25, 2020 letter concerning access to counsel during the novel coronavirus pandemic for aliens detained at Irwin County Detention Center (Irwin), LaSalle ICE Processing Center (LaSalle), Pine Prairie ICE Processing Center (Pine Prairie), and Stewart Detention Center (Stewart). This letter, however, does not address *SPLC v. DHS, et al.*, No. 18-760 (D.D.C. SAC filed Aug. 28, 2019), which is before the United States District Court for the District of Columbia.

U.S. Immigration and Customs Enforcement (ICE) is reviewing its "at risk population" to include the elderly, pregnant detainees, and others with compromised immune systems to ensure that detention is appropriate given the extenuating circumstances. Custody determinations are made on a case-by-case basis at each detention facility and include, among other factors, the public safety risk that such release could create and the requirement to detain certain aliens under law. See Section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226. The agency will continue to review its "at risk population" at the four detention facilities in the days and weeks ahead when deciding whether any detainees should be released from custody.

Separately, ICE rejects SPLC's assertion that, as of March 25, 2020, there were "confirmed cases of COVID-19 at Irwin, LaSalle, and Pine Prairie." Letter from Shalini Goel Agarwal, Senior Supervisory Attorney, to Jon Kaplan, Associate Legal Advisor, Office of the Principal Legal Advisor, and Julie Plavsic, Senior Policy Advisor, Office of Legal Access Programs at 4 (Mar. 25, 2020) (SPLC Letter). At that time, all four locations had reported that there are no confirmed cases of COVID-19 at any of the facilities. On April 1, 2020, at 8:54 p.m., however, ICE received confirmation that an alien detained at Pine Prairie who transferred as an inmate from the Federal Bureau of Prisons in Oakdale, LA, tested positive for

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COVID-19. At the time, he was found to be asymptomatic. Since the detainee's arrival at Pine Prairie, he has been kept in a negative pressure chamber in the facility and has not interacted with the general population in any manner. Additionally, in the exercise of caution, the detainee arrived at Pine Prairie wearing personal protective equipment (PPE). The detainee will remain in isolation until April 6, 2020, before he is placed in a general population pod at the facility. Notwithstanding this incident, ICE will continue to coordinate with medical professionals and monitor the facilities and detainees in an effort to minimize the chances of entry of COVID-19 into the facilities.

SPLC further raises three alleged incidents on March 20, 2020, at Pine Prairie, March 24, 2020, at LaSalle, and March 25, 2020, at Stewart relating to the facilities' responses to the public health crisis. First, Pine Prairie rejects the allegation about the quarantined dorm incident because SPLC, like other visitors, are limited to the legal visitation area, which is adjacent to the front entrance and which does not provide visual access into the dorm area. Accordingly, please provide any evidence supporting SPLC's allegations. Additionally, ICE encourages SPLC visitors to file complaints with the facility regarding any issues encountered during visits. Second, and upon initial investigation, LaSalle acknowledges that the six-day delay to set up video-conference (VTC) calls is likely accurate given the high demand to use Skype during the pandemic and the limited resources at the facility. To reduce the current backlog for access to VTC at LaSalle, GEO Group (GEO) has agreed to extend the hours from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and anticipates installing two additional Skype units by April 10, 2020. (Please note that LaSalle, like the other facilities, will continue to schedule VTC sessions on a first-come, first-serve basis.) Third, in reviewing the pertinent e-mail exchange between SPLC and CoreCivic, it appears that SPLC was able to conduct a virtual legal visitation with its detained client at Stewart on March 30, 2020. ICE is sensitive to SPLC's concerns about access to counsel and will make accommodations when appropriate, but maintains that health and safety are of paramount interest. Accordingly, until further notice, ICE will continue requiring attorneys to bring in their own PPE and undergo wellness screening should they decide to visit the facilities to minimize the risk of exposure to and/or spread of the virus.

Finally, ICE has discussed with the facilities SPLC's six immediate action demands concerning access to counsel enumerated in your letter. The facilities' responses are as follows:

1. Irwin and Stewart: VTC and telephone calls for attorney-client communications already are in place. LaSalle: There has been a delay in processing VTC and legal call requests because of the public health crisis, and GEO has agreed to temporarily extend the hours of service. Pine Prairie: No issues with scheduling VTC and telephone calls.
2. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities agree to temporarily extend the hours for Skype use consistent with the security and orderly operation of the facility. Specifically, Irwin has agreed to extend Skype calls from 8:00 a.m. to 7:00 p.m., Tuesdays through Fridays, if needed, and ordered an additional laptop for the Skype unit. (Skype calls will continued to be scheduled from 8:00 a.m. to 5:00 p.m. on

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Mondays because of staffing issues.) Stewart has agreed to extend Skype calls from 8:00 a.m. to 6:00 p.m., Mondays through Fridays. As discussed above, LaSalle has agreed to extend Skype calls from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and anticipates installing two additional Skype units by April 10, 2020. Pine Prairie has agreed to extend Skype calls from 8:00 a.m. to 7:00 p.m., Mondays through Fridays, and, at this time, has agreed to provide Skype service from 8:00 a.m. to 4:00 p.m., Saturdays and Sundays. Attorneys may set up three-way calling to include interpreters or experts using their portable electronic devices.

3. Irwin, LaSalle, Pine Prairie, and Stewart: Irwin, LaSalle, and Pine Prairie have agreed to temporarily extend the hours for legal calls consistent with the security and orderly operations of the facilities, but none of the facilities will agree to “confidential phone booths for calls to be available *at any time* by the request of detained individuals or attorneys”, SPLC Letter at 6 (emphasis in original), as this demand is unreasonable. Irwin has agreed to extend legal calls from 8:00 a.m. to 7:00 p.m., Tuesdays through Fridays, if needed, and Stewart will continue to provide for legal calls from 8 a.m. to 8:00 p.m., Mondays through Fridays. LaSalle has agreed to extend legal calls from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and Pine Prairie’s hours will remain the same because the facility continues to meet the needs of detainees and their attorneys for legal calls. As SPLC should be aware, SPLC is currently on the *pro-bono* call list that allows detainees to make unmonitored calls to SPLC at any time for free. Nevertheless, the facilities will make funds available for indigent detainees, to the extent necessary, to place telephone calls in accordance with the 2008 and 2011 Performance Based National Detention Standards (PBNDS). The facilities will also extend VTC availability within facility capabilities and staffing availabilities.

Attorneys may set up three-way calling to include interpreters or experts using their portable electronic devices. Irwin indicated that upon request, attorneys may set up unmonitored telephone calls from detained clients by way of the facility’s telephone system, and detainees may request making or receiving legal calls by way of the CoreCivic employees or kiosk. Stewart indicated that attorneys may set up unmonitored telephone calls from detained clients by way of the facility’s telephone system.

4. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities’ unit managers and law library officers will continue to assist the detainees with their needs to exchange a hardcopy of legal documents with their attorneys, but will not retrieve facsimiles or download electronic copies of legal documents for detainees. Additionally, the facilities will not permit stamps into the facilities because they may be used for improper means, such as currency or barter; however, the facilities may permit metered and preaddressed envelopes.
5. Irwin, LaSalle, Pine Prairie, and Stewart: In accordance with 2008 PBNDS and 2011 PBNDS, the facilities will permit attorneys to conduct initial consultations without

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executed G-28s, but cannot agree to waiving signature requirements for ICE privacy waivers.

6. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities will permit confidential legal calls and VTC visits for quarantined detainees to the extent that such access can be provided in accordance with medical directives or guidelines, and without compromising the health or safety of the detainee population or detention employees. To the extent certain detainees are quarantined, the facilities will continue to appropriately schedule and permit such calls and/or VTC visits to occur. The facilities are further amenable to setting up unmonitored legal calls by way of detainee telephones.

Please contact Ruth Ann Mueller, James Walker, and David Byerley, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to this letter. ICE will continue to coordinate with the facilities its response to the global pandemic and will supplement this letter if necessary.

Sincerely,



Jon Kaplan

Associate Legal Advisor

District Court Litigation Division

cc: Ruth Ann Mueller, OIL
James Walker, OIL
David Byerley, OIL
Brian Boyd, OPLA DCLD
Julie Plavsic, ICE ERO

Exhibit G



SPLC
Southern Poverty
Law Center

Fighting Hate
Teaching Tolerance
Seeking Justice

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May 4, 2020

VIA E-MAIL

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Room 9060
Washington, D.C. 20536
Jonathan.L.Kaplan@ice.dhs.gov

Re: *SPLC v. DHS, et al.*, No. 18-760-CKK (D.D.C.) (Notice of Non-Compliance)

Dear Mr. Kaplan:

Please consider this letter a Notice of Non-Compliance pursuant to Paragraph 28 of the parties' September 5, 2018 Settlement Agreement ("Settlement Agreement") regarding the LaSalle ICE Processing Center ("LaSalle") in the above-captioned matter. *See* ECF No. 42. Because DHS's non-compliance presents a threat of imminent and irreparable injury to SPLC's clients, SPLC is invoking Paragraph 30 of the Settlement Agreement, requiring the parties meet and confer immediately and authorizing SPLC to make an application for relief to the Court if the parties cannot resolve the non-compliance by 5:00 PM Eastern Time, May 5, 2020.

Specifically, I write to notify you that DHS is not in compliance with Paragraph 22 of the Settlement Agreement. This paragraph requires, among other things, that DHS provide confidential legal visitation through video conferencing ("VTC") software at LaSalle. These VTC calls shall be scheduled in accordance with Paragraph 18 of the Settlement Agreement, which requires the calls occur within twenty-four hours of SIFI's request.

VTC calls at LaSalle have not been scheduled to occur within twenty-fours of SIFI's request. On March 17, 2020, a SIFI attorney requested a VTC call with a client. LaSalle scheduled it for six days later. On March 24, 2020, a SIFI legal worker requested VTC calls with five people detained at LaSalle. The facility again responded that there were no VTC time slots for the next six days. On March 25, 2020, a SIFI legal worker requested a VTC call with a client medically vulnerable to COVID-19. LaSalle again responded that it did not have any time slots for the next six days. On April 6, 2020, a SIFI attorney requested a VTC call for the next day. LaSalle assigned her a time slot on April 8, 2020 instead.

The spread of the novel coronavirus throughout DHS's detention facilities has made the need for prompt VTC access only more critical, particularly in light of the many other barriers to access to counsel at the facilities, including at LaSalle. ICE's restrictions on in-person visitation have forced SIFI to rely exclusively on VTC and confidential legal telephone calls, and the grave risk of infection at DHS's facilities has increased the immediate need for SIFI attorneys to communicate with their clients as they seek parole and other forms of relief. Defendants' repeated violations of the 24-hour notice requirement set forth in the Settlement Agreement has not only been detrimental to SIFI's ability to meet with its clients in the past but means that SIFI cannot currently reliably depend on LaSalle to schedule calls at a time when the notice requirement is of utmost importance.

We appreciate your prompt attention to this urgent issue.

Sincerely,

A handwritten signature in black ink, reading "Shalini Goel Agarwal". The signature is fluid and cursive, with the first name "Shalini" being the most prominent.

Shalini Goel Agarwal
Senior Supervising Attorney

cc:

Daniel Schaefer
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Ruth Ann Mueller
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James Walker
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Defendants' Counsel

Exhibit H

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

May 6, 2020

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC v. DHS*, No. 18-760-CKK (D.D.C.)

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) May 4, 2020 Notice of Noncompliance (Notice) in which it alleges that U.S. Immigration and Customs Enforcement (ICE) is in noncompliance with the September 5, 2018 Settlement Agreement (Agreement), ECF No. 42. Specifically, SPLC alleges that on March 17, 2020, March 24, 2020, March 25, 2020, and April 6, 2020, Southeast Immigrant Freedom Initiative (SIFI) attorneys or legal workers requested to conduct confidential legal visitations via video teleconferencing (VTC) with aliens who were detained at the LaSalle ICE Processing Center (LaSalle) in Jena, LA, and were not given access within 24 hours as required by the Agreement. In three of the four incidents, the VTC calls were scheduled six days after the initial requests. See Letter from Shalini Goel Agarwal to Jon Kaplan, Associate Legal Advisor, ICE (May 4, 2020).

ICE has investigated SPLC's allegations and has conferred with its Enforcement and Removal Operations (ERO) New Orleans (NOL) field office and the GEO Group, Inc. (GEO), which operates LaSalle, to confirm the accuracy of the allegations and whether corrective measures are necessary to ensure compliance with the Agreement. GEO has retrieved e-mails for three of the incidents, which are summarized as follows. On March 17, 2020, a SIFI legal fellow requested to conduct a Skype visit with her client on March 19. Unfortunately, the GEO employee informed her that that date was unavailable and the only dates available for the week of March 16 was either March 18 at 8:00 a.m. or March 20 at 4:00 p.m. The SIFI attorney then requested that the VTC legal visit be scheduled for the week of March 23, preferably on March 23 between 11:00 a.m. and 1:00 p.m., and her appointment was confirmed for March 23 at 11 a.m. On March 24, 2020, a SIFI legal project coordinator requested VTC visits with five detainees and was told that the next available appointment was March 30 at 3:00 p.m. On April 6, 2020, the project coordinator requested a VTC visit on April 7 and the GEO employee informed her that the next available appointment was April 8 at 8:00 a.m.,

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which was confirmed. GEO has no records of SIFI's March 25, 2020 request to conduct a VTC call with its client.

ICE agrees that Paragraph 18(c) of the Agreement reads that "Plaintiff will request legal in-person visits and legal telephone calls the day before, or, at the latest, the morning of, the scheduled visit or call", and acknowledges that GEO scheduled the VTC legal visits beyond the one-day limit. On May 6, 2020, ERO NOL reminded GEO of the Agreement's requirements, including the timely scheduling of VTC appointments, and has received assurances that these incidents won't happen again. In fact, GEO since has installed three additional Skype units at LaSalle to facilitate communications between attorneys and their detained clients and promote the use of video technology to provide an alternate means of access to counsel. GEO indicated that it has tested the Skype units and they are working without any interference. ERO NOL will meet and confer with Shad Rice, who is the new GEO warden at LaSalle, and assistant warden and follow-up with inspections and visits to ensure that this deficiency has been remedied. Finally, GEO believes that it has been responsive to SIFI's appointment requests and will continue to work with the organization in scheduling visits with its detained clients.

Thank you for bringing this matter to our attention. In the future, we respectfully request that SPLC provide more timely notice of alleged noncomplying conditions so that the agency may promptly identify and correct the confirmed deficiencies. Please contact Ruth Ann Mueller and James Walker, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to this Notice.

Sincerely,



Jon Kaplan
Associate Legal Advisor
District Court Litigation Division

cc: Ruth Ann Mueller
James Walker
Trial Attorneys, OIL

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN POVERTY LAW CENTER,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

Civil Action No. 18-0760 (CKK)

CERTIFICATE OF COUNSEL REQUIRED BY LOCAL RULE 65.1

Pursuant to Local Rule 65.1(a), the undersigned counsel for Plaintiff Southern Poverty Law Center (“SPLC”) hereby certifies that actual notice was provided to opposing counsel. Copies of SPLC’s motion for a temporary restraining order, memorandum of points and authorities in support, supporting declarations, and proposed order were delivered to Defendants by email addressed to Defendants’ counsel Mueller, Ruth A. (CIV) (Ruth.A.Mueller@usdoj.gov); Walker, James (CIV) (James.Walker3@usdoj.gov); Davila, Yamileth G (CIV) (Yamileth.G.Davila@usdoj.gov); Byerley, David (CIV) (David.Byerley@usdoj.gov); Schaefer, Daniel (USADC) (Daniel.Schaefer@usdoj.gov), sent on May 7, 2020 at 2:24 p.m. EST.

Dated: May 7, 2020

Respectfully submitted,

/s/ Shalini Goel Agarwal
Shalini Goel Agarwal (Fla. Bar No. 90843)*
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Tallahassee, Florida 32302
Telephone: (850) 521-3024
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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN POVERTY LAW CENTER,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

Civil Action No. 18-0760 (CKK)

**[PROPOSED] ORDER GRANTING PLAINTIFF’S MOTION FOR A TEMPORARY
RESTRAINING ORDER**

THIS MATTER comes before the Court on Plaintiff Southern Poverty Law Center’s (“SPLC”) Motion for a Temporary Restraining Order.

Having reviewed Plaintiff’s Motion, the Memorandum of Points and Authorities in Support thereof, the attached declarations, and Defendants’ opposition (if any), the Court, being fully apprised, will GRANT Plaintiff’s Motion.

It is hereby ORDERED that Plaintiff’s Motion a Temporary Restraining Order be GRANTED; and further ORDERED that at Pine Prairie ICE Processing Center, Irwin County Detention Center, and Stewart Detention Center Defendants shall:

1. Provide a ratio of at least one telephone or video telecommunication (“VTC”) console per ten detained persons in each facility, as required by PBNDS 5.6(V)(A)(1).
2. Provide privacy and confidentiality for telephone and VTC communications between detained persons and their attorneys (including attorney legal staff and their agents), as required by PBNDS 5.6(V)(F)(2).

3. Refrain from limiting the number and duration of legal phone or VTC calls between detained persons and attorneys (or their legal staff and agents), as required by PBNDS 5.6(V)(F)(1).
4. Make all legal telephone calls from detained persons free of charge, as required by PBNDS 5.6(V)(E).
5. Maintain their phone and VTC systems in proper working order, as required by PBNDS(V)(A)(3)–(4).
6. Designate persons authorized as points of contact at each facility to relay any issues with scheduling VTC or legal calls or to address issues concerning the quality and confidentiality of those call.
7. Create, implement, and advertise a process by which attorneys and detained immigrants may schedule confidential telephone calls and VTC within 24 hours of the request, to take place between 8:00 a.m. and 8:00 p.m.

It is further ORDERED that at LaSalle ICE Processing Center, Pine Prairie ICE Processing Center, Irwin County Detention Center, and Stewart Detention Center Defendants shall:

1. Implement a system that requires Deportation Officers to provide immigrants and their attorneys confirmation of receipt of any parole request or custody redetermination requests within 24 hours and to provide a final determination within seven (7) days.
2. Create, implement, and advertise a process by which attorneys and detained immigrants may exchange confidential documents electronically, whether via email or fax.
3. Advertise and maintain a schedule for cleaning the shared telephones, video teleconference rooms, law library, and library.

4. Provide persons detained with sufficient gloves, masks, as well as antibacterial wipes and hand sanitizer, such that immigrants may safely access counsel through VTC or legal calls without further risk of exposure to the virus.
5. Make all of the above relief available to detained immigrants who are quarantined.

Date

COLLEEN KOLLAR-KOTELLY
United States District Judge