IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICANS FOR IMMIGRANT JUSTICE, et al., *Plaintiffs*, v. **U.S. DEPARTMENT OF HOMELAND SECURITY**, et al., *Defendants*.	No. 1:22-cv-03118 (CKK)

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Pursuant to Fed. R. Civ. P. 65, Plaintiffs Americans for Immigrant Justice ("AIJ"), the Florence Immigrant and Refugee Rights Project ("FIRRP"), Immigration Justice Campaign ("IJC"), Immigration Services and Legal Advocacy ("ISLA"), and Refugee and Immigrant Center for Education and Legal Services ("RAICES") (collectively, "Plaintiffs") move for the entry of a preliminary injunction requiring Defendants to provide reliable and confidential means to communicate with their clients held in immigration detention at the Florence Correctional Center in Florence, Arizona ("Florence"), the Krome North Service Processing Center in Miami, Florida ("Krome"), the Laredo Processing Center in Laredo, Texas ("Laredo"), and the River Correctional Center in Ferriday, Louisiana ("River") (collectively, the "Four Detention Facilities"). Plaintiffs FIRRP and AIJ also seek a court order requiring Defendants to provide reasonable accommodations for Detained Clients with Disabilities at Florence and Krome. Plaintiffs, all of which are non-profit legal organizations, seek this preliminary injunction on behalf of themselves and on behalf of clients and prospective clients held at the Four Detention Facilities ("Detained Clients").

As explained in the accompanying Memorandum, a preliminary injunction is warranted. Defendants' restrictions on attorney-client communications violate the prohibition under the Due Process Clause of the Fifth Amendment against subjecting civil immigration detainees to conditions that constitute punishment. Their attorney-access restrictions also deprive Detained Clients of their rights to a fundamentally fair custody proceeding to seek release from detention. Defendants further violate the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.*, by violating Attorney Access Provisions of ICE's Detention Standards. At Florence and Krome, Defendants violate Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, by failing to provide reasonable accommodations necessary for Detained Clients with Disabilities to communicate with

counsel. These constitutional and statutory violations subject Plaintiffs and Detained Clients to irreparable harm that significantly outweighs any conceivable hardship that Defendants may claim from an order requiring them to provide basic attorney-client access. The public interest similarly weighs in favor of granting this preliminary injunction.

In support of this Motion, Plaintiffs submit the accompanying Memorandum of Points and Authorities as well as the attached declarations and exhibits. A proposed injunction is attached for the Court's convenience.

Plaintiffs respectfully request oral argument on this Motion and are available at the Court's convenience.

STATEMENT PURSUANT TO LOCAL RULE 7(m)

Pursuant to Local Rule 7(m), on November 15, 2022, Plaintiffs' counsel, Eunice Cho, contacted by email Defendants' counsel, to determine if Defendants would consent to the relief requested in this motion. Plaintiffs' counsel also contacted by email the federal government's counsel in *Southern Poverty Law Ctr. v. Dep't of Homeland Security,* No. 1:18-cv-760-CKK (D.D.C.), which has been noted as a related matter, to try to identify Defendants' counsel in this case. Plaintiffs emailed the following addresses: OGC@hq.dhs.gov; OPLAServiceintake@ice.dhs.gov; Michael.a.celone@usdoj.gov; ruth.a.mueller@usdoj.gov; David.byerley@usdoj.gov; kevin.c.hirst@usdoj.gov; Richard.ingebretsen@usdoj.gov; and yamileth.g.davila@usdoj.gov. Plaintiffs received no response.

On November 17, 2022, Plaintiffs' counsel, Eunice Cho, contacted via telephone Yamileth Davila, the government's counsel in *Southern Poverty Law Ctr.* Ms. Davila confirmed receipt of the email, and inquired if service had been completed on all Defendants in this case. Ms. Cho confirmed that service had been completed, and Ms. Davila stated that although she was not

counsel in this case, Plaintiffs' counsel would receive a response from the government that day. Plaintiffs have received no further response from Defendants.

Respectfully submitted this 18th day of November, 2022.

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‡Seeking admission to or renewal of membership in D.D.C.

IN THE UNITED STATES DISTRICT COURT
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AMERICANS FOR IMMIGRANT JUSTICE, et al., *Plaintiffs*, v. **U.S. DEPARTMENT OF HOMELAND SECURITY**, et al., *Defendants*.	No. 1:22-cv-03118 (CKK)

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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I. INTRODUCTION

This case challenges the government's restrictions on communication between attorneys and their clients who are held in Immigration and Customs Enforcement ("ICE") detention facilities. The Constitution protects the rights of people held in immigration detention to retain, consult, and communicate with counsel. Defendants, however, have created barriers to communication so extreme that it is effectively impossible for attorneys to reliably schedule and conduct private, confidential phone or video-teleconference ("VTC") calls, hold confidential in-person meetings, and timely exchange legal documents with detained clients. Notably, these attorney-access conditions for immigrants in civil detention are often worse than those for people in criminal custody at many jails and prisons.

Plaintiffs, five non-profit legal organizations,[1] seek a preliminary injunction on behalf of themselves and clients and prospective clients ("Detained Clients") held at the Florence Correctional Center in Florence, Arizona ("Florence"), the Krome North Service Processing Center in Miami, Florida ("Krome"), the Laredo Processing Center in Laredo, Texas ("Laredo"), and the River Correctional Center in Ferriday, Louisiana ("River") (collectively, the "Four Detention Facilities").

A preliminary injunction is warranted here. Plaintiffs have a substantial likelihood of prevailing on the merits of their Fifth Amendment due process, Administrative Procedure Act ("APA"), and Rehabilitation Act claims. It has long been settled that all "persons" are entitled to due process under the Fifth Amendment, regardless of their immigration status. Under the Due

[1] Plaintiffs are Americans for Immigrant Justice ("AIJ"), the Florence Immigrant and Refugee Rights Project ("FIRRP"), the Immigration Justice Campaign ("IJC"), Immigration Services and Legal Advocacy ("ISLA"), and the Refugee and Immigrant Center for Education and Legal Services ("RAICES") (collectively, "Plaintiffs").

Process Clause, immigrants in civil detention cannot be subjected to conditions that constitute punishment, and are entitled to more considerate treatment than people in criminal custody. The government's restrictions on attorney access also deprive Detained Clients of the right to fundamentally fair custody proceedings to seek release from detention, and violate their own detention standards. At Florence and Krome, the government has failed to provide reasonable accommodations necessary for FIRRP and AIJ's clients with disabilities.

Any conceivable injury claimed by the government is outweighed by the irreparable harm currently borne by Plaintiffs and Detained Clients. Defendants' restrictions have prevented Plaintiffs from providing badly-needed legal services to detained immigrants, hindered communication between Plaintiffs and Detained Clients, and caused delayed or missed requests for release and complaints regarding conditions of confinement. Plaintiffs respectfully request that the Court require the government to provide them with reliable and confidential means to communicate with their clients in immigration detention.

II. STATEMENT OF FACTS

A. Plaintiffs' Detained Clients Face Urgent Challenges Requiring Adequate Legal Representation.

Plaintiffs' Detained Clients at the Four Detention Facilities face pressing and complicated legal challenges that will have profound impacts on their lives. Immigration law is notoriously complex, and in most instances the burden is on detained immigrants to prove that they are entitled to relief.[2] Immigration proceedings are generally adversarial and pit often unrepresented

[2] *See United States v. Aguirre-Tello*, 324 F.3d 1181, 1187 (10th Cir. 2003) ("[I]mmigration law is technical and complex to the point where it is confusing to lawyers, much less to laymen"); *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006) (noncitizens bear burden of proof in seeking immigration bond) (abrogated in the First Circuit by *Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021); *see also, e.g.,* 8 U.S.C. § 1158(b)(1)(B) (placing burden of proof on noncitizen to demonstrate eligibility for asylum).

noncitizens against experienced U.S. Department of Homeland Security (DHS) attorneys.[3] These proceedings are commonly on expedited schedules, offering detained immigrants little time to prepare.[4] Detained immigrants often must attempt to navigate these challenges with few resources and limited English proficiency, while separated from their families and facing tremendous stress. *See* Declaration of Javier Hidalgo ("Hidalgo Decl.") ¶ 13; Declaration of Laura St. John ("St. John Decl.") ¶ 15; Declaration of Lisa Lehner ("Lehner Decl.") ¶ 28. For all these reasons, reliable, confidential access to counsel in detention is critical.

Plaintiffs have represented or currently represent Detained Clients in various immigration proceedings seeking release from detention through bond or parole and/or challenging conditions of confinement.[5] Bond and parole proceedings, which determine whether immigrants will be released from detention, are fast-paced and fact-intensive, and detained immigrants typically bear the burden of proving that they should be released.[6] Access to counsel in these proceedings makes

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[3] *See* Declaration of Danielle Lee ("Lee Decl.") Ex. A, Executive Office for Immigration Review, Immigration Court Practice Manual ("Imm. Ct. Practice Manual"), § 9.1(e) (Aug. 17, 2022), https://bit.ly/3DifMA8 (hearings are held for detained noncitizens); Ex. B, Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. PA. L. REV. 1, 2 (2015) (only 37% of immigrants had counsel in immigration court between 2007 and 2012).

[4] *See* Lee Decl. Ex. A, Imm. Ct. Practice Manual, § 9.1(e) ("Proceedings for detained respondents are expedited."); Declaration of Homero López ("López Decl.") ¶ 22 (preparing for hearings requires working in "an expedient fashion").

[5] Unlike other plaintiffs, IJC does not maintain a direct attorney-client relationship with Detained Clients. Rather, it matches third-party volunteer attorneys with detained immigrants in need of pro bono representation. However, IJC maintains a close relationship with Detained Clients in the form of continuous, one-on-one mentoring of the volunteer attorney throughout the engagement. Declaration of Rebekah Wolf ("Wolf Decl.") ¶¶ 5-25. IJC retains responsibility for the client's case and reserves the right to end the engagement with counsel if the assigned volunteer attorney does not meet IJC's standards. Wolf Decl. ¶¶ 14, 25. Unless indicated otherwise, references to Plaintiffs, Plaintiffs' attorneys, or similar references, also refer to IJC's volunteer attorneys, and references to Plaintiffs' clients, or Detained Clients, also refer to detained immigrant clients whom IJC matches with volunteer attorneys.

[6] *See* Lee Decl. Ex. A, Imm. Ct. Practice Manual § 9.3(d), (bond hearings should be scheduled for "earliest possible date"); *Guerra*, 24 I. & N. Dec. at 38 (describing factors noncitizen must

a measurable difference: detained immigrants are ***seven times*** more likely to be released on bond when represented by counsel.[7]

Challenges to conditions of confinement, like inadequate medical care, sexual assault, retaliation, and use of force, are likewise complex and of great importance to Detained Clients. *See* Lehner Decl. ¶¶ 18-21; St. John Decl. ¶ 15. Such challenges benefit from early intervention by Plaintiffs and may require extensive fact discovery and support. Lehner Decl. ¶ 21. This type of representation includes filing administrative complaints and lawsuits. *See* Wolf Decl. ¶ 29; St. John Decl. ¶ 15; Lehner Decl. ¶¶ 25–26.

Given the procedural requirements, legal complexities, burdens of proof, and short timelines in these proceedings, Plaintiffs and Detained Clients need, and are entitled to, reliable means to confidentially communicate and share privileged and sensitive information relevant to their cases. The ability to access interpretation is also essential where the attorney and client do not speak the same language. *See* Declaration of Andrea Jacoski ("Jacoski Decl.") ¶¶ 22, 37.

Confidential communication is crucial to discussing sensitive, privileged matters candidly and without concern of unintentionally waiving attorney-client privilege or disclosing information that may cause clients to suffer harassment, abuse, retaliation, or severe distress while detained.

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establish and standard they must meet to win a grant of bond); 8 C.F.R. § 212.5(b) (listing factors for evaluating requests for parole from immigration custody); Hidalgo Decl. ¶ 11 (noting the necessary information to make an effective request for release).

[7] *See* Lee Decl. Ex. B, Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 30 (2015) (describing different outcomes for non-citizens based on representation in removal proceedings between 2007 and 2012); *see also* Lee Decl. Ex. C, Jennifer Stave et al., Evaluation *of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* 60 (Nov. 2017), https://bit.ly/3euAIdD (success rate for immigrant detainees with legal counsel is predicted to be 1,100 percent greater than for pro se detainees in New York City); Ex. D, Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, Law & Soc'y Rev. 117, 119 (2016) (immigrant detainees' likelihood of securing bond is substantially higher when represented by counsel).

See St. John Decl. ¶ 19; Hidalgo Decl. ¶ 21; Jacoski Decl. ¶¶ 21, 49. Confidential communication is particularly necessary for attorneys to build rapport with detained immigrants, who often exhibit fear and distrust due to unfamiliarity with the legal process. Hidalgo Decl. ¶ 16; Jacoski Decl. ¶ 35. The ability to communicate and exchange legal documents confidentially must be reliable enough that attorneys and clients can timely discuss factual and legal matters. Yet Defendants have restricted Plaintiffs' ability to meet confidentially with Detained Clients in the most basic ways.

Remote forms of communication, such as telephone, VTC, and exchanging documents by fax and/or email are often the only viable means for Plaintiffs and Detained Clients to communicate. However, Defendants' barriers to communication have made these options functionally unavailable, forcing counsel to travel up to three or four hours *each way* to meet clients in person, even for the most minor matters. López Decl. ¶ 9; Hidalgo Decl. ¶ 8. Traveling to timely meet in person with a client is often inefficient or impossible, given that most of the facilities are a significant distance from major city centers where Plaintiffs' offices are located. López Decl. ¶ 5 (River is 180 miles from ISLA's New Orleans office); Hidalgo Decl. ¶ 8 (Laredo is 170 miles from RAICES's San Antonio offices); St. John Decl. ¶ 14 (Florence is 70 miles from FIRRP's Phoenix and Tucson offices). IJC volunteer attorneys provide remote representation to people detained in geographically isolated facilities. Wolf Decl. ¶ 26. As a result, remote means of communication are often necessary for Plaintiffs and Detained Clients to conduct time-sensitive conversations, especially in urgent situations.

B. Defendants Are Responsible for Ensuring Attorney Access at ICE Detention Facilities.

As the federal agencies and officials responsible for managing the immigration system, Defendants are responsible for ensuring that detained immigrants' access to counsel comports with constitutional and federal law requirements. *See DeShaney v. Winnebago Cnty. Dep't of Soc.*

Servs., 489 U.S. 189, 200 n.8 (1989); *see, e.g.*, 6 U.S.C. § 345(a)(4). Where Defendants contract with local jurisdictions and private prison companies to manage detention facilities, they are not absolved from that duty. *See West v. Atkins*, 487 U.S. 42, 55–56 (1988). To the contrary, Defendants continue to have an "affirmative obligation" to ensure that the detention facilities comply with constitutional requirements. *Id.* at 56.

Recognizing that "ICE has important obligations under the U.S. Constitution and other federal and state law when it decides to keep an individual in custody," Defendants have developed standards governing conditions in immigration detention, including conditions at the Four Detention Facilities (collectively, the "Detention Standards").[8] These Detention Standards provide rules and requirements for conditions including confidential attorney-client meetings,[9] legal visitation,[10] interpretation services,[11] confidential attorney-client telephone conversations,[12] direct

[8] Lee Decl. Ex. E, ICE, National Detention Standards 2019 ("2019 NDS"), https://bit.ly/3eMSWr7; *see also* Lee Decl. Ex. F, ICE, Performance-Based National Detention Standards 2008 ("2008 PBNDS"), https://bit.ly/3F0Xq84; Ex. G, ICE, Performance-Based National Detention Standards 2011, revised in 2016 ("2011 PBNDS"), https://bit.ly/3gtp2IS. The Four Defendant Detention Facilities are governed by different, but substantially similar, detention standards. Florence Correctional Center is governed by the 2008 PBNDS. Krome and River are governed by the 2011 PBNDS. Laredo is governed by the 2019 NDS. *See* Lee Decl. Ex. H, ICE, ERO Custody Management Division, Authorized Dedicated Facility List, https://bit.ly/32BCFJW (Sept. 5, 2022) (specifying standards applicable to each facility).

[9] *See, e.g.*, Lee Decl. Ex. F, 2008 PBNDS § 5.32(V)(J)(9); Ex. G, 2011 PBNDS § 5.7(V)(J)(9); Ex. E, 2019 NDS § 5.5(II)(G)(8).

[10] *See, e.g.*, Lee Decl. Ex. F, 2008 PBNDS § 5.32(V)(J)(2); Ex. G, 2011 PBNDS § 5.7(V)(J)(2); Ex. E, 2019 NDS § 5.5(II)(G)(2).

[11] *See e.g.*, Lee Decl. Ex. F, 2008 PBNDS § 5.32(V)(J)(3)(c); Ex. G, 2011 PBNDS § 5.7(V)(J)(3)(c); *id.* § 5.7(II)(10); Ex. E, 2019 NDS § 5.5(II)(G)(3)(c).

[12] *See, e.g.*, Lee Decl. Ex. F, 2008 PBNDS § 5.31(II)(5); *id.* § 5.31(V)(F)(2); Ex. G, 2011 PBNDS § 5.6(II)(4)–(6); *id.* § 5.6(V)(F)(2); Ex. E, 2019 NDS § 5.4(II)(J).

or free calls to legal representatives,[13] delivery of messages to detainees,[14] duration of legal calls,[15] and confidentiality of legal mail[16] (collectively, "Attorney Access Provisions"). ICE incorporates these binding standards into contracts with facility operators, and regularly initiates and conducts compliance reviews and inspections of all detention facilities to ensure compliance with the Detention Standards.[17] However, ICE has consistently failed to enforce compliance with its Detention Standards. And while ICE conducts inspections and monitors detention facilities, including the Four Detention Facilities,[18] DHS's Office of Inspector General has concluded that "neither the inspections nor the onsite monitoring ensure consistent compliance with detention standards, nor do they promote comprehensive deficiency corrections."[19]

These failures extend to Detention Standards regarding attorney access. ICE admitted to Congress earlier this year that, despite regular inspections of facilities, it "does not track . . . the

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[13] *See* Lee Decl. Ex. F, 2008 PBNDS § 5.31(V)(E); Ex. G, 2011 PBNDS § 5.6(V)(E); Ex. E, 2019 NDS § 5.4(II)(E).
[14] *See* Lee Decl. Ex. F, 2008 PBNDS § 5.31(V)(J); Ex. G, 2011 PBNDS § 5.6(V)(J); Ex. E, 2019 NDS § 5.4(II)(I).
[15] *See* Lee Decl. Ex. F, 2008 PBNDS § 5.31(V)(F)(1); Ex. G, 2011 PBNDS § 5.6(V)(F)(1); Ex. E, 2019 NDS § 5.4(II)(F).
[16] *See* Lee Decl. Ex. F, 2008 PBNDS § 5.26(V)(G)(2); Ex. G, 2011 PBNDS § 5.1(V)(G)(2); Ex. E, 2019 NDS § 5.1(II)(E)(2).
[17] Lee Decl. Ex. I, DHS Office of Inspector General, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to* Sustained *Compliance or Systemic Improvements* 2–3 (2018) ("2018 DHS-OIG Report"), https://bit.ly/2Mwp2Ug.
[18] *See, e.g.*, Lee Decl. Ex. J, DHS, ICE, Off. of Det. Oversight, *Compliance Inspection of the Laredo Processing Center* 5 (2022) ("Laredo Inspection"), http://bit.ly/3OcQ18b ("ODO conducts oversight inspections of ICE detention facilities with an average daily population greater than ten, where detainees are housed for longer than 72 hours, to assess compliance with ICE national detention standards."); Ex. K, DHS, ICE Off. of Det. Oversight, *Follow-Up Compliance Inspection of the River Correctional Center* 5 (2022) ("River Inspection"), http://bit.ly/3UYRhy1 (same); Ex. L, DHS, ICE, Off. of Det. Oversight, *Follow-Up Compliance Inspection of the Krome North Service Processing Center* 5 (2022) ("Krome Inspection"), https://bit.ly/3eZ2Vtc (same); Ex. M, DHS, ICE, Off. of Det. Oversight, *Follow-Up Compliance Inspection of the CCA Florence Correction Center* 5 (2022) ("Florence Inspection"), https://bit.ly/3MTv29U (same).
[19] Lee Decl. Ex. I, 2018 DHS-OIG Report, *supra* note 17.

number of facilities that do not meet ICE standards for attorney/client communications."[20] On November 3, 2022, twenty-eight members of Congress wrote to DHS and ICE, noting that "ICE has failed as an agency to exercise even the most basic oversight or data collection regarding immigrants' access to counsel in detention."[21] As the agency's most recent facility inspection reports indicate, ICE has failed to investigate detention standards associated with attorney access at the Four Detention Facilities.[22] Even if the Detention Standards were followed, however, the standards are not in line with constitutional requirements, and in many respects, fall short.

C. Defendants Restrict Attorney-Client Communications at the Four Detention Facilities.

Defendants have restricted the ability of Plaintiffs and Detained Clients to communicate in myriad ways. *First*, Defendants restrict Plaintiffs' and Detained Clients' ability to communicate confidentially by phone. *Second*, Defendants prevent Plaintiffs and Detained Clients from meeting confidentially in person. *Third*, Defendants fail to provide, or where provided, fail to make known the availability of VTC for legal visits. *Fourth*, Defendants restrict Plaintiffs' and Detained Clients' ability to reliably and expeditiously exchange legal correspondence. *Finally*, Defendants fail to make reasonable accommodations for FIRRP and AIJ and their clients with disabilities detained at Florence and Krome to reliably and confidentially communicate with each other.

1. Defendants Restrict Reliable Access to Free, Confidential Telephone Calls.

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[20] Lee Decl. Ex. N, ICE, *Access to Due Process: Fiscal Year 2021 Report to Congress* 2, Feb. 14, 2022, https://bit.ly/3F1TMek.
[21] Lee Decl. Ex. O, Letter from Twenty-Eight Members of Congress to Alejandro Mayorkas, Secretary of DHS, and Tae Johnson, Acting Director, ICE (Nov. 3, 2022), https://bit.ly/3UsZMBI.
[22] *See* Lee Decl. Ex. J, Laredo Inspection, *supra* note 18, at 6; Ex. K, River Inspection, *supra* note 18, at 6; Ex. L, Krome Inspection, *supra* note 18, at 6; Ex. M, Florence Inspection, *supra* note 18, at 6.

Defendants restrict Detained Clients' access to legal phone calls by: (i) failing to provide private areas for calls, (ii) refusing to allow attorneys to schedule calls with Detained Clients or creating burdensome scheduling requirements, (iii) charging Detained Clients for legal calls and imposing unreasonable restrictions on access to pro bono hotlines, (iv) imposing unreasonable time limits, and (v) failing to provide access to working phones.

Lack of Private, Confidential Phone Calls. At each of the Four Detention Facilities, Defendants fail to provide access to private spaces for Detained Clients to conduct legal phone calls with their attorneys. Hidalgo Decl. ¶ 20; St. John Decl. ¶¶ 16, 19; López Decl. ¶ 31; Jacoski Decl. ¶ 15; Lehner Decl. ¶ 12. Phones are often placed in public spaces, such as in the housing units, where conversations can be easily overheard by others, or where there is so much noise that Detained Clients cannot hear. Hidalgo Decl. ¶ 20; St. John Decl. ¶¶ 16, 19; López Decl. ¶ 31; Jacoski Decl. ¶ 15; Lehner Decl. ¶ 12. Lack of access to private, confidential telephone calls directly harms Plaintiffs and Detained Clients. Detained Clients often cannot safely or comfortably share sensitive information with their attorneys critical to their cases for fear of disclosure to others within earshot of the call. *See e.g.*, López Decl. ¶¶ 31-32; Wolf Decl. ¶ 44.

Lack of Scheduling Procedures for Phone Calls. Plaintiffs also face significant barriers to scheduling phone calls with Detained Clients. Without the ability to schedule phone calls, attorneys cannot reliably speak with clients at a designated time, which leaves the ability to talk with clients largely to chance. The inability to schedule phone calls also prevents the participation of interpreters necessary for communication with clients who do not speak English; many interpretation services, particularly for rarer languages, require advance notice to ensure availability. St. John Decl. ¶¶ 29-31, Wolf Decl. ¶¶ 38, 46.

At Florence, there is no way to schedule legal phone calls at all. St. John Decl. ¶ 16; Wolf Decl. ¶ 45. The only way for Plaintiffs to communicate with Detained Clients at Florence over the phone is to leave a message with the facility in a general voicemail box or to send an email to the facility, at least 24 hours in advance of the desired time for the client to call the attorney from a recorded, public pay phone in the housing unit. St. John Decl. ¶ 17. This message delivery system is unreliable, and FIRRP attorneys must often leave several messages over the span of many days before a client returns their call, often not at the requested time. St. John Decl. ¶¶ 17-18.

At Laredo, there is no reliable scheduling system in place. Instead, attorneys must often make repeated calls to the facility to request a legal phone call, or to ask the facility to pass a message to Detained Clients to call counsel at a specified time on a pro bono hotline. Hidalgo Decl. ¶¶ 18-19. At Krome, there is no mechanism for scheduling calls. Wolf Decl. ¶ 39, Jacoski Decl. ¶ 10. Attorneys have reported that phone calls requesting to schedule calls with Detained Clients have gone unreturned, or if a response is received, it is days or weeks later. Wolf Decl. ¶ 42. At River, information regarding the scheduling system is not publicly available, nor does the system for scheduling calls function. *Id*. ¶ 38.

Phone Calls are Not Free. Detained clients must generally pay to call counsel, which limits attorney-client communication. While pro bono platforms that allow Detained Clients to contact certain non-profit legal organizations free of charge exist at some of the facilities, the current pro bono platforms at Florence and Krome are functionally impossible to use, so Detained Clients are forced to use paid platforms. At Florence, charges for calls to an attorney can cost up to $.11 per minute (approximately $10 for a 90-minute phone call), which few Detained Clients can afford. St. John Decl. ¶ 23. At Krome, Detained Clients can only contact their attorneys if they call their attorneys directly on the paid line or via a pro bono line. Jacoski Decl. ¶ 15. At both Florence and

Krome, the free pro bono hotlines are not viable alternatives for Detained Clients to communicate with their attorneys because they involve burdensome processes where the Detained Client must enter numerous, lengthy numerical codes to successfully place a call, and the complex instructions on how to place these calls are not accessible from the phone's location. St. John Decl. ¶ 25; Jacoski Decl. ¶ 18. These barriers, among others, make use of pro bono hotlines close to impossible. Jacoski Decl. ¶ 25; Lehner Decl. ¶ 9.

Unreasonable Time Limits. Defendants have placed an unreasonable 15-minute time limit on phone calls between Detained Clients and Plaintiffs at Laredo, which prevents Plaintiffs and Detained Clients from effectively communicating with each other, especially when interpreters are needed. Hidalgo Decl. ¶¶ 18, 22.

Technical Issues Disrupt Phone Calls. Defendants have also failed to ensure Detained Clients have access to functioning telephones. At Krome, Florence, and River, calls with Plaintiffs are sometimes cut short or interrupted because of high demand, routine headcounts, scheduled mealtimes, and/or poor audio connections. Jacoski Decl. ¶ 24; Lehner Decl. ¶ 16; St. John Decl. ¶¶ 20-21; López Decl. ¶ 33.

2. Defendants Restrict Access to Reliable, Confidential In-Person Attorney-Client Visits at the Four Detention Facilities.

Defendants fail to ensure means for reliable and confidential in-person communication between Plaintiffs and Detained Clients by (i) failing to provide a sufficient number of private rooms (or, in some cases, any private rooms at all); (ii) imposing unreasonable scheduling requirements and visiting hours, which lead to lengthy wait times; (iii) failing to provide or allow for interpretation services during visits; and (iv) impeding attorneys' ability to draft documents and filings during in-person meetings.

Lack of Private Spaces for In-Person Meetings. In-person visits require confidential meeting spaces to protect attorney-client privilege, and to ensure privacy for clients to feel comfortable sharing personal or sensitive information that is often critical to their cases. Each of the Four Detention Facilities lacks sufficient private areas to conduct confidential in-person visits between Detained Clients and Plaintiffs. For example, ISLA attorneys are unable to conduct confidential in-person visits at River. Instead, ISLA attorneys must communicate with Detained Clients in an open, heavily trafficked area, within earshot of ISLA's other waiting clients and facility guards who regularly pass through. López Decl. ¶¶ 10, 16-18.

Although Laredo, Florence, and Krome have some attorney visitation rooms, they are inadequate. Florence has only three or four private attorney visitation rooms, while ICE maintains capacity for 450 to 1,000 people at the facility, and there are thousands of additional people held in U.S. Marshals Service custody in the same correctional complex. St. John Decl. ¶¶ 9, 44. Similarly, Laredo has only two attorney visitation rooms for a facility with a maximum capacity of over 400 people. Hildalgo Decl. ¶ 32. The walls of the two rooms are so thin that sound freely passes between them and the immediately adjacent waiting room. Hidalgo Decl. ¶¶ 33.

Krome has only six private in-person contact visitation rooms for a facility with capacity to hold 682 people.[23] Jacoski Decl. ¶ 31. While Krome also offers one additional non-contact visitation room and 26 no-contact visitation booths, conversations in these spaces are monitored, are not private, and have poor acoustic and room design, which often prevents AIJ attorneys from being able to take notes or communicate effectively. Jacoski Decl. ¶¶ 34-35.

[23] A "contact" room enables communicate without a physical barrier, and is preferred because it permits clear communication and document exchange.

Restricted Access to Interpreters. Defendants also obstruct access to interpreters during in-person legal visits. Although interpreters are necessary when an attorney and client do not speak the same language, access to interpreters is effectively foreclosed during in-person attorney-client meetings at Florence, Laredo, and Krome. St. John Decl. ¶¶ 11, 43, 45; Hidalgo Decl. ¶ 34; Jacoski Decl. ¶ 37. Contacting an interpreter over the phone during in-person attorney-client visits is often the only way to bridge the language barrier, but at Laredo and Krome, there are no telephones available in the visitation rooms and lawyers are not allowed to access their cellphones. Hidalgo Decl. ¶ 34; Jacoski Decl. ¶ 37. Similarly, at Florence, Plaintiffs cannot use private telephones to contact interpreters during in-person legal visits. St. John Decl. ¶ 43. Instead, there is one phone, kept at a guard's desk, available upon request for attorneys who require telephonic interpretation, and is used at the visitation tables, rendering confidential communication impossible. Even if telephones were permitted inside the few private visitation rooms at Florence, attorneys and their clients are separated by a plexiglass wall and must speak through a closed-circuit phone, rendering telephonic interpretation functionally impossible. St. John Decl. ¶ 45.

Given the lack of access to telephonic interpretation, attorneys must arrange for interpreters to travel in person to the Four Detention Facilities. The interpreter approval process can be lengthy. For example, it can take between six months and one year at Laredo, and weeks at Krome. Hidalgo Decl. ¶ 34; Jacoski Decl. ¶ 37.

Lack of In-Person Access to Technology. Plaintiffs' attorneys are barred from using technology such as laptops, printers, and/or cell phones, during in-person legal visits. López Decl. ¶ 21; Jacoski Decl. ¶ 39; St. John Decl. ¶ 11 (Florence—laptops permitted); Hidalgo Decl. ¶ 33. Plaintiffs' attorneys are thus generally unable to draft or edit documents during their in-person

visits. Instead, Plaintiffs' attorneys must make several lengthy trips to detention facilities with prepared documents in hand to refine drafts or obtain client signatures.

3. Defendants Restrict Access to Free, Confidential VTC Attorney-Client Visits at the Four Detention Facilities.

Defendants also fail to provide free, confidential VTC access to Detained Clients at Florence, Krome, and Laredo. St. John Decl. ¶ 11; Jacoski Decl. ¶ 9; Hidalgo Decl. ¶ 15. Although VTC has recently been made available at River, there is no publicly available information about VTC access for attorney-client visits. López Decl. ¶ 34; Wolf Decl. ¶ 38. Confidential VTC is essential to attorney-client communication, because many ICE detention facilities are located in geographically isolated areas. Face-to-face communications between attorneys and clients—even if only virtual—are important for building relationships, evaluating the physical and mental state of clients, and sharing documents and reviewing visual evidence. St. John Decl. ¶¶ 52; Hidalgo Decl. ¶ 16; Jacoski ¶ 26.

4. Defendants Restrict Plaintiffs and Detained Clients at the Four Detention Facilities from Sending and Receiving Legal Documents.

The timely exchange of legal documents with clients is necessary to effective legal representation. Attorneys must be able to send documents for detained clients to review and sign, including declarations, forms, or other legal filings. Defendants, however, do not permit the use of widely available methods to timely exchange legal documents, such as fax and email, at any of the Four Detention Facilities. St. John Decl. ¶ 46; Jacoski Decl. ¶ 40; Hidalgo Decl. ¶¶ 30-31; López Decl. ¶¶ 26-29. These policies are more restrictive than those at other ICE detention facilities, Hidalgo Decl. ¶¶ 30-31, and conditions in nearby criminal facilities. Blanchard Decl. ¶¶ 15; Declaration of Javier Maldonado ("Maldonado Decl.") ¶ 6.

As a result, Plaintiffs and Detained Clients must rely on mail or courier delivery to exchange legal documents and obtain signatures. Mail and courier delivery service, however, are

slow, often taking several days, as a result of both the U.S. postal system *and* Defendants' failures to timely deliver mail or packages to Detained Clients once received at the facility. St. John Decl. ¶¶ 47-48; Hidalgo Decl. ¶ 29; Jacoski Decl. ¶¶ 41-43. This is particularly problematic in fast-paced proceedings, where Plaintiffs cannot wait several days to obtain a Detained Client's signature. Due to these delays and lack of email and fax, Plaintiffs' attorneys must drive to the facilities to exchange legal documents. López Decl. ¶¶ 10, 25.

5. Defendants Fail to Make Reasonable Accommodations for FIRRP and AIJ's Clients with Disabilities at Florence and Krome.

At Florence and Krome, FIRRP and AIJ attorneys represent individuals with serious mental health conditions who are unable to effectively access counsel without accommodations. These individuals ("Detained Clients with Disabilities") include people who have been determined by a qualified mental health provider[24] to have a serious mental disorder or condition.[25] FIRRP and AIJ's Detained Clients with Disabilities at Florence and Krome experience greater obstacles to attorney access than other Detained Clients because they face unique barriers due to their

[24] "Qualified mental health provider" is defined as "currently and appropriately licensed psychiatrists, physicians, physician assistants, psychologists, clinical social workers, licensed nurse practitioners, and registered nurses." *Franco-Gonzalez v. Holder*, No. 10-02211, 2014 WL 5475097, at *3 (C.D. Cal. Oct. 29, 2014).

[25] "Serious mental disorder or condition" means "a mental disorder that is causing serious limitations in communication, memory or general mental and/or intellectual functioning (*e.g.* communicating, reasoning, conducting activities of daily living, social skills); or a severe medical condition(s) (*e.g.* traumatic brain injury or dementia) that is significantly impairing mental function; or [exhibition of] one or more of the following active psychiatric symptoms or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation and/or behavior, marked anxiety or impulsivity[;] . . . or significant symptoms of Psychosis or Psychotic Disorder; Bipolar Disorder; Schizophrenia or Schizoaffective Disorder; Major Depressive Disorder with Psychotic Features; Dementia and/or a Neurocognitive Disorder; or Intellectual Development Disorder (moderate, severe, or profound)." *Franco-Gonzalez*, 2014 WL 5475097, at *3 (defining term for immigrants in detention).

disabilities and because they experience greater challenges resulting from attorney access restrictions detailed above. Declaration of Dr. Pablo Stewart ("Stewart Decl.") ¶ 13.

At Florence, FIRRP represents Detained Clients with Disabilities, including those who qualify for the National Qualified Representative Program ("NQRP").[26] St. John Decl. ¶ 50, 56. At Florence, Detained Clients with Disabilities face distinct challenges with the message relay and call-back system for telephonic communication because they are generally unable to navigate the telephone system effectively without assistance, which is not provided. *Id*. ¶ 52; Stewart Decl. ¶¶ 8-12. A significant number of Detained Clients with Disabilities experience suicidal ideation as a result of their disabilities, which often results in placement into medical or mental health observation/segregation in conditions akin to solitary confinement, where there is sharply limited or no access to telephones. St. John Decl. ¶ 54. The rate at which clients with disabilities "refuse" in-person visits is much higher at Florence than at other facilities, and Florence lacks clearly established procedures to allow in-person access to counsel for individuals who are in medical/mental health observation or segregation. *Id*. ¶¶ 53, 55. Detained Clients with Disabilities at Florence face prolonged periods in mental health segregation, resulting in a total loss of access to counsel for weeks. *Id*. ¶ 55. Defendants have also failed to consistently provide accommodations at Florence, such as permission to see Detained Clients with Disabilities in the medical unit, facility transfers, or scheduled and facilitated phone calls, despite requests from FIRRP. *Id*. ¶ 56. In a recent case, it took nearly a month of advocacy and visitation attempts before FIRRP was able to meet with a client on mental health watch. The attorney had to obtain separate approval from ICE

[26] Lee Decl. Ex. P, U.S. Dep't of Justice, *National Qualified Representative Program* (NQRP), https://bit.ly/3z3nICN (last visited Oct. 13, 2022) (providing free, appointed representation to those found by an immigration judge or the Board of Immigration Appeals to be mentally incompetent to represent themselves in immigration proceedings).

to meet with her client, outside of the normal visitation scheduling process, and even then, had to push detention staff to actually bring her client to the legal visit. *Id*.

At Krome, AIJ regularly represents Detained Clients with Disabilities who are held in the Krome Behavioral Health Unit ("KBHU"), a unit specifically designated by ICE for the detention of people with severe mental illness from jurisdictions nationwide, as well as in other areas of the facility, including the Medical Housing Unit ("MHU"), solitary confinement, and general population units. Jacoski Decl. ¶¶ 46, 51, 52.

Detained Clients with Disabilities at Krome face even greater challenges in attorney access than AIJ's other Detained Clients. AIJ's Detained Clients with Disabilities require more time to communicate and relay information as a result of their disabilities, and additional support to facilitate attorney-client communication. *Id*. ¶¶ 48, 50; Stewart Decl. ¶¶ 8-12. The lack of VTC access, which is important to establish rapport and assess competency, particularly hampers attorney access for Detained Clients with Disabilities. *Id*. ¶¶ 49; Stewart Decl. ¶ 11. The inability to have confidential legal calls is also especially detrimental to Detained Clients with Disabilities. *Id*. ¶¶ 49, 51. Detained Clients with Disabilities who are placed in solitary confinement at Krome are also cut off from access to telephone and paid messaging communications. *Id*. ¶ 55.

Plaintiffs FIRRP and AIJ have suffered concrete harm to their ability to communicate effectively with Detained Clients with Disabilities about matters crucial to legal representation. Due to attorney access barriers, FIRRP and AIJ must conduct nearly every meeting with its Detained Clients with Disabilities in person, and even these in-person meetings are delayed at Krome, or unreliable or not confidential at Florence. St. John Decl. ¶¶ 53, 55; Jacoski Decl. ¶¶ 32, 54-55. As a result, FIRRP and AIJ have been frustrated in their efforts to provide consistent, quality representation to their Detained Clients with Disabilities and have experienced lengthy periods

during which they have lacked access to clients. St. John Decl. ¶¶ 55, 58; Jacoski Decl. ¶¶ 50, 54, 56. Detained Clients with Disabilities have also suffered significantly without adequate means of communication with their attorneys. For example, these inconsistent communications have exacerbated clients' symptoms such as paranoid, persecutory, or delusional beliefs or feelings of hopelessness or isolation, and have undermined the development of a trusting attorney-client relationship. St. John Decl. ¶ 51; Jacoski Decl. ¶¶ 52-55. As a result of these barriers, AIJ has even had to turn away cases involving detained people with disabilities. Jacoski Decl. ¶ 48.

III. LEGAL STANDARD

To obtain preliminary injunctive relief, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc*., 555 U.S. 7, 20 (2008). When seeking such relief, the movant bears the burden of showing that "all four factors, taken together, weigh in favor of the injunction." *Abdullah v. Obama*, 753 F.3d 193, 197 (D.C. Cir. 2014).

Courts in this Circuit have traditionally applied these factors using a sliding scale framework, under which a stronger showing on one factor can compensate for a weaker showing on another. *See, e.g., Davenport v. Int'l Bhd. of Teamsters,* 166 F.3d 356, 360-61 (D.C. Cir. 1999). While some courts have suggested that a likelihood of success on the merits may be an "independent, free-standing requirement," the D.C. Circuit has not yet abandoned the sliding scale analysis. *Sherley v. Sebelius*, 644 F.3d 388, 392-93 (D.C. Cir. 2011) (quoting *Davis v. Pension Ben. Guar. Corp.*, 571 F.3d 1288, 1296 (D.C. Cir. 2009)); *see also League of Women Voters of United States v. Newby,* 838 F.3d 1, 7 (D.C. Cir. 2016). Regardless of the approach, here, Plaintiffs have made the necessary "clear showing" on all four factors such that a preliminary injunction in their favor on the claims detailed below is warranted. *Winter*, 555 U.S. at 22.

IV. ARGUMENT

A. Plaintiffs Have Third-Party Standing to Bring Claims on Behalf of Detained Clients.

Plaintiffs satisfy the requirements of third-party standing to bring these claims on behalf of Detained Clients. To establish third-party standing, a plaintiff must demonstrate (1) "an 'injury in fact,' thus giving him or her a 'sufficiently concrete interest' in the outcome of the issue in dispute," (2) "a close relation to the third party," and (3) "some hindrance to the third party's ability to protect his or her own interests." *Powers v. Ohio*, 499 U.S. 400, 411 (1991) (citation omitted). "In the context of a preliminary injunction motion, the plaintiff must show a substantial likelihood of standing under the heightened standard for evaluating a motion for summary judgment." *Whitman-Walker Clinic, Inc. v. U.S. Dep't of Health & Hum. Servs.*, 485 F. Supp. 3d 1, 18 (D.D.C. 2020) (internal quotation marks and citation omitted). Here, Plaintiffs have "set forth by affidavit or other evidence specific facts that, if taken to be true, demonstrate a substantial likelihood of standing." *Elec. Priv. Info. Ctr. v. Presidential Advisory Comm'n on Election Integrity*, 878 F.3d 371, 377 (D.C. Cir. 2017) (internal quotation marks and citation omitted).

Each Plaintiff has suffered the requisite injury. Courts apply a "two-part inquiry" to determine whether organizational plaintiffs have suffered an injury in fact: "we ask, first, whether the agency's [(defendant's)] action or omission to act injured the [organization's] interest and, second, whether the organization used its resources to counteract that harm." *Food & Water Watch, Inc. v. Vilsack*, 808 F.3d 905, 919 (D.C. Cir. 2015) (internal quotation marks and citation omitted) (second alteration in original). To show that the defendant's conduct injured the organization's interest, "an organization must allege that the defendant's conduct 'perceptibly impaired' the organization's ability to provide services." *Turlock Irr. Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015). "An organization's ability to provide services has been perceptibly impaired when the

defendant's conduct causes an 'inhibition of [the organization's] daily operations.'" *Food & Water Watch, Inc.*, 808 F.3d at 919 (citation omitted).

Each Plaintiff dedicates its resources to providing legal representation for Detained Clients. FIRRP, ISLA, RAICES, and AIJ provide direct legal services and IJC recruits, supervises, and trains volunteer attorneys to represent detained immigrants pro bono at the Four Detention Facilities. St. John Decl. ¶ 3; López Decl. ¶ 4; Hidalgo Decl. ¶ 5; Wolf Decl. ¶¶ 6-9, 16-19. Defendants' restrictions on attorney-client access at the Four Detention Facilities have "inhibit[ed] the organization[s'] daily operations" by interfering with their abilities to provide legal services to Detained Clients. *Freedom Watch, Inc. v. McAleenan*, 442 F. Supp. 3d 180, 188 (D.D.C. 2020) (internal quotation marks and citation omitted).

FIRRP, ISLA, and RAICES estimate that the access-to-counsel barriers have forced them to expend up to twice the amount of time they otherwise would need to spend to represent their clients and thus have decreased the number of clients they can represent. St. John Decl. ¶ 13; López Decl. ¶ 38; Hidalgo Decl. ¶ 10. Similarly, for AIJ, attorney-access constraints have significantly impaired its ability to represent clients by lengthening the time it takes to prepare for a case. Lehner Decl. ¶ 11. Defendants' restrictions on attorney-client access have impeded IJC's daily operations by requiring IJC to spend significantly more time providing one-on-one mentorship and advice to volunteer attorneys with clients at the Four Detention Facilities. Wolf Decl. ¶¶ 31-33, 50.

Plaintiffs have also "used [their] resources to counteract [the] harm" Defendants' access-to-counsel restrictions have imposed on their daily operations. *Food & Water Watch, Inc.*, 808 F.3d at 919. An organizational plaintiff "must show that it expended resources — beyond those normally carried out to advance [its] mission and excluding 'self-inflicted' expenditures — to address th[e] impairment." *Citizens for Resp. & Ethics in Wash. v. U.S. Off. of Special Couns.*, No.

19-3757, 480 F. Supp. 3d 118, 128 (D.D.C. Aug. 6, 2020). Here, FIRRP has diverted significant resources to maintain hotline hours with dedicated staff designated to answer calls because of telephone restrictions at Florence. St. John Decl. ¶ 33. The access barriers at Krome have required AIJ to expend more resources than usually required because "they compelled [AIJ] to solicit and train local law students and other organizations located closer to Krome." Lehner Decl. ¶ 24. According to ISLA's estimates, "the attorney-client communication barriers at River cause ISLA to expend on average $1,080 in additional resources per month for a single case at River, including expenses such as renting cars and paying for gas for the six-hour drives to and from the office to the facility." López Decl. ¶ 11. For RAICES, the additional resources needed at Laredo, requiring "double the time and resources" than "at any other detention center," were so "onerous" that it had to pause taking new cases there. Hidalgo Decl. ¶¶ 10, 14-15. IJC explained that it is required to expend more resources on "individualized assistance just to [help volunteer attorneys] gain access to their clients." Wolf Decl. ¶ 32.

Plaintiffs also satisfy the "close relationship" requirement because they each share an "identity of interests" with Detained Clients "such that [Plaintiffs] will act as [] effective advocate[s] of [Detained Clients'] interests." *Lepelletier v. FDIC*, 164 F.3d 37, 44 (D.C. Cir. 1999). "[C]onfidential or contractual relationships, for example, those between . . . attorneys and clients . . . have most often been found to support third-party standing." *Turner v. U.S. Agency for Glob. Media*, 502 F. Supp. 3d 333, 361 (D.D.C. 2020). Detained Clients are existing or prospective clients of FIRRP, ISLA, AIJ, and RAICES, with which they possess a "confidential" attorney-client relationship. *See* St. John Decl. ¶ 3; López Decl. ¶ 4; Hidalgo Decl. ¶ 5. Although IJC does not have a direct attorney-client relationship with Detained Clients, "neither the Supreme Court nor the D.C. Circuit has ever 'required' such a relationship." *Turner*, 502 F. Supp. 3d at 361. IJC

satisfies the crux of the "close relationship" requirement because it has "an identity of interests" with Detained Clients such that it "will act as an effective advocate of" their interests. *Lepelletier*, 164 F.3d at 44. IJC shares Detained Clients' interest in fair opportunities to be heard and IJC's mission to increase access to counsel for the benefit of Detained Clients, particularly in geographically isolated locations. Wolf Decl. ¶¶ 5-6, 26.

Finally, Detained Clients face significant "hindrance[s] to [their] ability to protect [their] own interests." *Powers*, 499 U.S. at 411. The hindrance prong "does not require an absolute bar from suit, but some hindrance to the third party's ability to protect his or her own interests." *S. Poverty L. Ctr. v. U.S. Dep't of Homeland Sec.* (*SPLC v. DHS*), No. 18-760, 2020 WL 3265533, at *14 (D.D.C. June 17, 2020) (internal quotation marks and citation omitted). Detained Clients face obstacles to bringing such a suit on their own, including language barriers, limited understanding of the U.S. legal system, inadequate access to legal resources, and fear of retaliation. Hidalgo Decl. ¶ 13; Wolf Decl. ¶ 30; López Decl. ¶ 40; St. John Decl. ¶ 15; Lehner Decl. ¶ 28. Moreover, the same access-to-counsel barriers that form the subject of this action serve as obstacles restricting Detained Clients' ability to litigate as first parties. Detained Clients' claims are also subject to mootness due to the risk that Detained Clients may be released from detention or deported before their claims are adjudicated, and "'[i]mminent mootness' is one of various obstacles that may warrant third-party standing." *SPLC*, 2020 WL 3265533, at *14 (quoting *Singleton v. Wulff*, 428 U.S. 106, 117 (1976)). These substantial barriers impede Detained Clients' ability to protect their own interests, justifying Plaintiffs litigating on their behalf.

B. Plaintiffs Are Likely to Succeed on the Merits of Detained Clients' Fifth Amendment Claims.

1. Defendants' Restrictions on Adequate Access to Counsel Constitutes Punishment in Violation of Detained Clients' Substantive Due Process Rights.

Defendants' restrictions on access to counsel impermissibly punish Detained Clients at the Four Detention Facilities, in violation of their Fifth Amendment right to substantive due process. Immigration detention is civil in nature. *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 187 (D.D.C. 2015). Because Detained Clients are persons subject to civil immigration detention, they cannot be subjected to conditions that constitute punishment, and are entitled to more considerate treatment than those in criminal custody. *Youngberg v. Romeo*, 457 U.S. 307, 322 (1982); *Bell v. Wolfish*, 441 U.S. 520, 535 (1979).

A person subject to civil detention can prevail in showing that a challenged condition constitutes punishment by showing "that a restriction is objectively unreasonable or excessive relative to the Government's proffered justification." *SPLC*, 2020 WL 3265533, at *18. To determine whether a condition or restriction is "reasonably related to a legitimate governmental objective," the court considers whether the conditions are "employed to achieve objectives that could be accomplished in so many alternative and less harsh methods." *Id.* (internal citations and quotations omitted). Where civil detainees face conditions that are "not more considerate than those at pretrial and prison facilities," such conditions "may be punitive in nature and may therefore violate the substantive due process clause." *Id.* at *19 (quoting *Torres v. U.S. Dep't of Homeland Sec.*, 411 F. Supp. 3d 1036, 1065 (C.D. Cal. 2019)).

Defendants' restrictions on access to counsel at the Four Detention Facilities impermissibly punish Detained Clients because these restrictions are not reasonably related to a legitimate governmental objective. Current restrictions on attorney-client communication at the Four Detention Facilities bear no reasonable relation to the government's interest in operational security and facility management, nor to its interest in ensuring attendance at immigration proceedings or reducing danger to the community. *See Torres,* 411 F. Supp. 3d at 1064 (describing potential

government justifications for access-to-counsel restrictions); *R.I.L-R*, 80 F. Supp. 3d at 188 (describing government interest in detention). Many of the attorney-access measures sought by Plaintiffs are already required by ICE's own detention standards. *See supra* Part II.B. Other immigration detention facilities have implemented these measures, demonstrating that they can be successfully implemented while accounting for security and facility management interests. Indeed, staff at Florence themselves planned to implement programs such as scheduled attorney phone calls to improve facility operations and efficiency, only to have those plans canceled by an ICE official. St. John Decl. ¶¶ 37-39.

It is also clear that Defendants could easily employ the "alternative and less-harsh methods" requested by Plaintiffs to provide access to counsel. *SPLC,* 2020 WL 3265533, at *18. First, attorney access conditions at the Four Detention Facilities fall short of requirements outlined in ICE's own detention standards, which "offer an example of less restrictive alternative means." *Torres*, 411 F. Supp. 3d at 1065.[27] Second, it is clear that other ICE detention centers employ alternative and less-harsh methods to ensure access to counsel. For example, at least 37 ICE

[27] *See, e.g.*, Lee Decl. Ex. F, 2008 PBNDS § 5.31(V)(F)(2) (requiring all facilities to "ensure privacy" of legal calls), Ex. G, 2011 PBNDS § 5.6(V)(F)(2) (same), Ex. E, 2019 NDS § 5.4(II)(J) (same); Ex. F, 2008 PBNDS § 5.32(V)(J)(9) (requiring "[p]rivate consultation rooms" for legal visits), Ex. G, 2011 PBNDS § 5.7(V)(J)(9) (same), Ex. E, 2019 NDS § 5.5(II)(G)(8) (same); Ex. F, 2008 PBNDS § 5.32(V)(J)(3)(c) (requiring all facilities to permit interpreters in legal visits), Ex. G, 2011 PBNDS § 5.7(V)(J)(3)(c) (same), Ex. E, 2019 NDS § 5.5II(G)(3)(c) (same); Ex. G, 2011 PBNDS § 5.7(V)(J)(10) (requiring facilities to provide for exchange of documents, even when contact visitation rooms are unavailable); Ex. F, 2008 PBDNS § 5.31(II) (requiring that facility telephone procedures foster legal access), Ex. G, 2011 PBNDS at 5.6(II) (same); Ex. F, 2008 PBNDS § 5.31(V)(J) (requiring message delivery no less than 3 times a day); Ex. G, 2011 PBNDS § 5.6(V)(J) (requiring delivery of messages "as promptly as possible"); Ex. E, 2019 NDS § 5.4(II)(I) (requiring message delivery within 8 hours); Ex. F, 2008 PBNDS § 5.31(V)(F)(1) (specifying that time limits on phone calls be no shorter than 20 minutes), Ex. G, 2011 PBNDS § 5.6(V)(F)(1) (same), Ex. E, 2019 NDS § 5.4(II)(F) (same); Ex. F, 2008 PBNDS § 5.26(V)(G)(2) (requiring confidentiality of legal mail), Ex. G, 2011 PBNDS § 5.1(V)(G)(2) (same), Ex. E, 2019 NDS § 5.1(II)(E)(2) (same).

detention facilities currently allow attorneys to schedule legal calls in advance.[28] ICE touts its national Virtual Attorney Visitation Program, which currently provides for free, private, and unmonitored VTC visits at 25 ICE detention facilities across the country.[29] *See also* Lehner Decl. ¶ 17 (explaining that other ICE facilities in Florida offer VTC legal visits). Forty-five immigration detention facilities nationwide provide contact visits for attorneys, 98 facilities currently allow attorneys to use their laptops, and at least 37 allow cell phones in legal visits.[30] Other nearby immigration detention facilities provide for the exchange of legal documents by fax or email. López Decl. ¶¶ 21, 28 (noting that other Louisiana ICE detention facilities allow laptops in legal visits and access to fax machines for legal document exchange); Hidalgo Decl. ¶¶ 30-31 (identifying other ICE facilities in Texas that allow for the use of fax or email).

In fact, in response to other litigation, ICE has agreed to many of the measures Plaintiffs request here, making clear that "less restrictive alternative means" are available. In a case challenging attorney telephone access at detention facilities in California, ICE entered into a settlement agreement that provided a host of protections, including (a) extension or elimination of automatic call cut-offs, (b) the construction of private phone booths, (c) access to a private phone room designated for legal calls that may be scheduled in advance, (d) three-way calling to accommodate interpreters, and (e) a requirement that each facility have at least one designated telephone access facilitator available during business hours. Settlement Agreement and Release, *Lyon v. ICE*, No. 3:13-cv-05878 (N.D. Cal. June 13, 2016), ECF No. 262, https://bit.ly/3VJSE4M. Similarly, ICE entered into a settlement agreement to improve access at LaSalle ICE Processing

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[28] Lee Decl. Ex. Q, ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers* 15 (2022), https://bit.ly/3shsrgv.
[29] Lee Decl. Ex. R, ICE, Virtual Attorney Visitation, (last updated Nov. 7, 2022), https://www.ice.gov/detain/attorney-information-resources.
[30] Lee Decl. Ex. Q, ACLU, *No Fighting Chance* at 25, 27, *supra* note 28.

Center in Jena, Louisiana, that required, *inter alia*, (a) the construction of private rooms for telephone calls that allow for three-way calling and for in-person visits, (b) the availability of scheduled legal calls and visits, and (c) that confidential legal calls not be limited to less than two hours. Settlement Agreement on Pl.'s Mot. for Prelim. Inj. re: the LaSalle ICE Processing Ctr., *SPLC*, No. 18-0760 (D.D.C. Sept. 5, 2018), ECF No. 42.

Courts have likewise ordered similar remedial measures. *See Torres v. U.S. Dep't of Homeland Sec.*, No. 18-2604, 2020 WL 3124216 (C.D. Cal. Apr. 11, 2020); *Torres v. U.S. Dep't of Homeland Sec.*, No. 18-2604, 2020 WL 3124305, at *2 (C.D. Cal. Apr. 24, 2020) (requiring defendants to implement policies permitting detained clients to schedule unrecorded, unmonitored, and free calls); *SPLC*, 2020 WL 3265533, at *34-35 (ordering clear written procedures for scheduling telephone and VTC calls and electronic means for confidentially sharing documents).

Finally, it is clear that attorney access conditions at the Four Detention Facilities are "not more considerate than those at pretrial and prison facilities." *SPLC*, 2020 WL 3265533, at *19. Nearby jails and criminal pretrial detention facilities often provide better attorney access, specifically with respect to telephones, VTC, in-person visitation, and exchange of documents than the Four Detention Facilities. For example, nearby U.S. Marshals Service (USMS) facilities that hold people in pre-trial criminal detention allow attorneys to schedule free, confidential, unmonitored legal phone calls with their clients. Blanchard Decl. ¶¶ 12, 14 (certain USMS facilities in Louisiana); Maldonado Decl. ¶ 4 (USMS facility in Texas). Neighboring USMS facilities and local jails also provide free, confidential, unmonitored, and scheduled VTC calls. Blanchard Decl. ¶¶ 10-11 (certain USMS facilities in Louisiana); Botello Decl. ¶¶ 11-12 (USMS facility in Arizona); Tibbett Decl. ¶¶ 11-15 (certain criminal detention centers in Florida). Indeed,

legal VTC is available to people in USMS custody at Florence, even as it is denied to Detained Clients there. St. John Decl. ¶ 40.

Likewise, conditions for in-person attorney visits at many jails and USMS facilities exceed those at the Four Detention Facilities. Neighboring USMS facilities and jails provide private spaces for confidential, in-person, attorney-client "contact" visits, without lengthy waits. Botello Decl. ¶¶ 7-10; Blanchard Decl. ¶¶ 4-9; Maldonado Decl. ¶5; Tibbett Decl. ¶¶ 4-7, 10. Nearby jails and USMS facilities also provide attorneys and their clients with superior methods to quickly exchange legal documents, including by email, fax, or reliable mail delivery. Blanchard Decl. ¶¶ 15-16; Maldonado Decl. ¶ 6; Botello Decl. ¶ 16. At the Central Arizona Detention Center, which detains people in federal criminal pre-trial custody and is managed together with Florence at the same correctional complex,[31] attorneys may have private meetings with clients in medical, mental health and segregation units, and arrange for lengthy evaluations by retained experts. Botello Decl. ¶¶ 7-10. Defendants' restrictions on access to counsel at the Four Detention Facilities thus constitute punishment of Detained Clients, all of whom are civil detainees.

2. Defendants' Restrictions on Adequate Access to Counsel at the Four Detention Facilities Deprive Detained Clients of Their Due Process Right to a Full and Fair Custody Proceeding.

Defendants' restrictions on access to counsel at the Four Detention Facilities violate Detained Clients' due process right to a fundamentally fair bond hearing or similar custody proceeding seeking release from detention. The Fifth Amendment's Due Process Clause provides that the federal government may not deprive *any person*, including noncitizens in immigration

[31] Lee Decl. Ex. S, The Nakamoto Group, Inc., *Annual Inspection of the CCA Florence Correctional Center* 2 (Aug. 26, 2021), https://bit.ly/3Djq8jj ("Originally constructed in 1999 and operated as two facilities, the Central Arizona Detention Center (west compound) and the Florence Correctional Center (east compound) were merged in 2017 as the Central Arizona Florence Correctional Complex").

detention, of "liberty . . . without due process of law." U.S. Const. Amend. V; *see also Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("[T]he Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent."); *Mathews v. Diaz*, 426 U.S. 67, 77 (1976) (noting that "[e]ven one whose presence in this country is unlawful, involuntary, or transitory is entitled" to protection under the Fifth Amendment "from deprivation of life, liberty, or property without due process of law").

"A procedural due process violation occurs when an official deprives an individual of a liberty or property interest without providing appropriate procedural protections." *Atherton v. D.C. Off. of Mayor*, 567 F.3d 672, 689 (D.C. Cir. 2009). Obtaining freedom from detention is a quintessential liberty interest that applies to Detained Clients. "Freedom from bodily restraint has always been at the core of the liberty protected by the Due Process Clause from arbitrary governmental action." *Foucha v. Louisiana*, 504 U.S. 71, 80 (1992). People in immigration detention possess a liberty interest protected by the Due Process Clause. *See, e.g.*, *Zadvydas*, 533 U.S. at 694-95; *R.I.L-R*, 80 F. Supp. 3d 164, 187–88 (D.D.C. 2015). Moreover, the Immigration and Nationality Act entitles immigrants who are discretionarily detained to request a hearing before an immigration judge, at which they may be issued bond or conditional parole. *See* 8 U.S.C. §§ 1226(a)(2)(A)-(B); 8 C.F.R. § 236.1(d)(1). Although immigrants held in mandatory detention lack the same right to request a bond hearing, they have the right to challenge whether they are properly subject to mandatory detention and to file a habeas petition in federal court contesting their detention. *See Demore v. Kim*, 538 U.S. 510, 526-31 (2003).

The restrictions on access to counsel at the Four Detention Facilities deprive Detained Clients of a meaningful opportunity to be heard, "[a] fundamental requirement of due process." *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965). Specifically, Defendants' restrictions deny

Detained Clients access to full and fair hearings to seek bond or conditional parole, or other proceedings seeking release from detention, such as habeas review.

Courts apply the three-prong test established in *Mathews v. Eldridge*, 424 U.S. 319 (1976), to determine what safeguards the Due Process Clause requires to make a civil proceeding "fundamentally fair." *Turner v. Rogers*, 564 U.S. 431, 444 (2011). The *Mathews* factors are:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.

Mathews, 424 U.S. at 335. All three factors weigh heavily in favor of requiring Defendants to provide Detained Clients adequate access to counsel.

Freedom from detention is one of the strongest types of private interests under the *Mathews* balancing test. The Supreme Court has long recognized that "[i]n our society liberty is the norm, and detention prior to trial or without trial is the carefully limited exception." *United States v. Salerno*, 481 U.S. 739, 755 (1987); *see also Turner*, 564 U.S. at 445. The fact that immigration detention is "civil" does not lessen the gravity of Detained Clients' liberty interest given that "civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection." *Addington v. Texas*, 441 U.S. 418, 425 (1979). Similarly, Detained Clients' "lack of a legal right to 'live at large in this country'" fails to diminish their liberty interest, *Zadvydas*, 533 U.S. at 696, as courts have recognized that a detained immigrant's "interest in his freedom pending the conclusion of his removal proceedings deserves great 'weight and gravity.'" *Clerveaux v. Searls*, 397 F. Supp. 3d 299, 309 (W.D.N.Y. 2019).

Defendants' restrictions on access to counsel at the Four Detention Facilities create a high risk that Detained Clients will be denied a meaningful opportunity to be heard. Access to counsel is critical to avoid the erroneous deprivation of a detained immigrant's liberty; detained immigrants

are approximately seven times more likely to be released on bond when represented by counsel.[32] As described above, Detained Clients and their attorneys must have access to reliable means of confidential communication to timely and adequately prepare applications, requests, or petitions for release. Detained immigrants typically bear the burden of proving that they should be released on bond or parole because they are not a flight risk and do not pose a danger to the community.[33] They therefore need to develop and submit a factual record sufficient to satisfy their burden, including facts regarding their family ties and employment and immigration history, as well as medical and mental health conditions, which may require a psychiatric evaluation or consultation with a medical expert. Obtaining this information and developing a complete, accurate record requires timely, reliable, and confidential attorney access to avoid missing deadlines and prolonging detention. In addition to the extensive factfinding required, determining a detained immigrant's eligibility for various options for release requires complex legal analysis, and no alternative safeguards can substitute for the assistance of an attorney trained in immigration law.[34] Adequate access to counsel would therefore substantially reduce the likelihood that Detained Clients will be erroneously deprived of their liberty.

Any "fiscal and administrative burdens" on the government are modest. *Mathews*, 424 U.S. at 335. First, Defendants may effectuate the changes Plaintiffs seek in a cost-effective manner;

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[32] *See* Lee Decl. Ex. B, Eagly & Shafer, *supra* note 3, at 70.
[33] 8 C.F.R. § 1236.1(c)(8); *Johnson v. Arteaga-Martinez*, 142 S. Ct. 1827, 1833 (2022) (stating in dicta that detained people bear the burden of proof in seeking bond under 8 U.S.C. § 1226(a)); *Guerra*, 24 I. & N. Dec. at 37; *but see Hernandez-Lara v. Lyons*, 10 F.4th 19 (1st Cir. 2021).
[34] Lee Decl. Ex. T, Kerin Berberich & Nina Siulc, *Why Does Representation Matter? The Impact of Legal Representation in Immigration Court* (2018), https://bit.ly/3TyWITT ("Only 5 percent of cases that won between 2007 and 2012 did so without an attorney; 95 percent of successful cases were represented."); Ex. U, New York Immigrant Representation Study, *Accessing Justice: The Availability and Adequacy of Counsel in Immigration Proceedings* 3 (2011), https://bit.ly/3FdId3w ("The two most important variables affecting the ability to secure a successful outcome in a case . . . are having representation and being free from detention.").

Plaintiffs' requested remedies will not necessarily impose any expenditures or costs on Defendants. For example, providing sufficient access to private legal visits can be as simple as designating enough private rooms as "attorney-client visitation rooms" and permitting attorneys to send legal documents by commonly available methods such as fax or email. Similarly, some of the Four Detention Facilities already have the now-ubiquitous technology and infrastructure for VTC. St. John Decl. ¶ 40.

Second, providing adequate access to counsel will serve the government's and the public's interest by preventing unnecessary prolonged detention. "[L]imiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention." *Hernandez-Lara v. Lyons*, 10 F.4th at 33. Providing counsel for detained noncitizens would likely "pay for itself," in part because detained immigrants represented by counsel "would be more likely to secure release at the outset of removal proceedings through a successful bond hearing," saving the government the costs of extra time in detention.[35] *See also Velasco Lopez v. Decker*, 978 F.3d 842, 855 n.11 (2d Cir. 2020) ("Detention costs taxpayers approximately $134 per person, per day, according to ICE's estimates.").

On balance, Detained Clients' interest in freedom from detention, and the risk of erroneous deprivation of liberty, compared to the low fiscal and administrative burdens on the government, weigh in favor of requiring Defendants to cure attorney access restrictions.

C. Plaintiffs Are Likely to Succeed on the Merits of Their APA Claim.

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[35] Lee Decl. Ex. V, John D. Montgomery, *Cost of Counsel in Immigration: Economic Analysis of Proposal Providing Public Counsel to Indigent Persons Subject to Immigration Removal Proceedings* 5, NERA Econ. Consulting (May 28, 2014), https://bit.ly/3N6RxZ5.

Plaintiffs are also entitled to a preliminary injunction requiring Defendants to comply with their own Detention Standards.[36] Defendants' restrictions on attorney-client access at the Four Detention Facilities violate the Detention Standards' Attorney Access Provisions. Under the *Accardi* doctrine, "agencies may not violate their own rules and regulations to the prejudice of others." *Battle v. FAA*, 393 F.3d 1330, 1336 (D.C. Cir. 2005); *see United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954). Defendants have done just that. Plaintiffs are likely to succeed on the merits of their claims that the Court should (1) compel Defendants' compliance with the Detention Standards as "agency action unlawfully withheld or unreasonably delayed," 5 U.S.C. § 706(1); and (2) "hold unlawful and set aside" Defendants' decision not to comply with their own standards, which is "arbitrary, capricious, . . . or otherwise not in accordance with the law," *id.* § 706(2)(A), and "contrary to constitutional right[s]," *id.* § 706(2)(B).

The Detention Standards are binding on Defendants under the *Accardi* doctrine, which holds that agency rules and regulations are legally binding, regardless of whether they are "formal regulations," "if so intended" by the agency, and when they are "promulgated for the protection of individuals." *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336 (D.D.C. 2018) (citations omitted); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.").

Defendants have evinced an intent to be bound by the Detention Standards. *See Damus*, 313 F. Supp. 3d at 336 (courts assess "the substance and intent of the agency action, as well as whether it confers individual protections or privileges" in determining whether it is binding) (quoting *Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1985)). The Detention Standards are

[36] The Detention Standards fall short of constitutional requirements. Defendants' compliance with them is necessary but not sufficient to comply with their constitutional obligations.

facially mandatory: they repeatedly state that facilities "shall" or are "required" to adhere to the standards.[37] *See Moghaddam v. Pompeo*, 424 F. Supp. 3d 104, 120-21 (D.D.C. 2020) (determining agency intent under *Accardi* requires an examination of "mandatory language"); *O'Donnell v. U.S. Agency for Int'l Dev.*, No. 18-03126, 2019 WL 2745069, at *3 (D.D.C. July 1, 2019) ("shall" constitutes mandatory language). Defendants hold themselves out as acting to ensure compliance with the standards.[38] *See Aracely R. v. Nielsen*, 319 F. Supp. 3d 110, 151 (D.D.C. 2018) (granting preliminary injunction against ICE under *Accardi* where compliance analyses evinced intent to be bound by parole directive). Crucially, the Detention Standards also confer "individual protections" for Detained Clients by establishing standards for attorney access.

Defendants' failure to require compliance with the Attorney Access Provisions is "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1) (emphasis added). Defendants are failing to take action that is "legally required" and "discrete." *Norton v. S. Utah W. All.* (*SUWA*), 542 U.S. 55, 62-64 (2004) ("The APA provides relief for a failure to act in § 706(1)

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[37] *See, e.g.*, Lee Decl. Ex. F, 2008 PBNDS § 5.26(V)(D) (using "shall" in provisions pertaining to correspondence), Ex. G, 2011 PBNDS §5.1(V)(D) (same), Ex. E, 2019 NDS § 5.1(II)(C) (same); Ex. F, 2008 PBNDS § 5.31(V)(D) (same, for telephone access), Ex. G, 2011 PBNDS § 5.6(V)(D) (same), Ex. E, 2019 NDS § 5.4(II)(A) (same); Ex. F, 2008 PBNDS § 5.32(V)(J) (same, for legal visitation), Ex. G, 2011 PBNDS § 5.7(V)(J) (same), Ex. E, 2019 NDS § 5.5(II)(G) (same); *see also* Lee Decl. Ex. W, ICE, *2008 Operations Manual ICE Performance-Based National Detention Standards* (last updated Feb. 18, 2022), https://bit.ly/3gDOUli (stating that the 2008 PBNDS prescribe "requirements"); Ex. G, 2011 PBNDS § 5.6(II), 5.7(II) (telephone access and attorney visitation provisions are "specific requirements"); Ex. X, ICE, *2019 National Detention Standards for Non-Dedicated Facilities* (last updated Feb. 18, 2022), https://bit.ly/3W0uHGB (the 2019 NDS focus on "essential requirements").

[38] *See* Lee Decl. Ex. Y, U.S. GAO, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards* 30, 35-40 (Oct. 2014), https://bit.ly/3f0wwTp (discussing ICE's mechanisms for assessing facilities' compliance with detention standards); Ex. Z, ICE, *Facility Inspections* (last updated Oct. 11, 2022), https://www.ice.gov/detain/facility-inspections (annual detention inspections ensure that facilities comply with ICE standards and that "any deficiencies noted are immediately resolved by facility management").

. . . where a plaintiff asserts that an agency failed to take a *discrete* agency action that it is *required* to take."). Defendants are "legally required" to comply with the Attorney Access Provisions because they are binding, as discussed above, *See Moghaddam v. Pompeo*, 424 F. Supp. 3d 104, 121 (D.D.C. 2020) (plaintiffs stated *Accardi* claim under § 706(1) where Department of State violated its own binding guidance). Defendants' failure is "discrete" because the Attorney Access Provisions mandate "specific" actions that a court can "competently compel and supervise."[39] *Ctr. for Biological Diversity v. Zinke*, 260 F. Supp. 3d 11, 20 (D.D.C. 2017).

Defendants have not only failed to require compliance with the Attorney Access Provisions, they have made an affirmative decision not to require compliance with them, which should be "h[e]ld unlawful and set aside" as "arbitrary, capricious, . . . or otherwise not in accordance with law" and "contrary to constitutional right[s]" under the APA. 5 U.S.C.§ 706(2). *See Aracely*, 319 F. Supp. 3d at 150 ("Agency actions may be arbitrary and capricious when they do not comply with binding internal policies governing the rights of individuals."); *Sorto-Vasquez Kidd v. Mayorkas*, No. 20-03512, 2021 WL 1612087, at *9-10 (C.D. Cal. Apr. 26, 2021) (agency action in violation of *Accardi* and the Constitution was found actionable under the APA as "contrary to constitutional right[s]").

Defendants' decision not to require compliance with the Attorney Access Provisions constitutes final agency action redressable under Section 706(2). *See Torres*, 411 F. Supp. 3d at 1069 ("final agency action" found where plaintiffs alleged both "non-compliance" with PBNDS and "an agency decision"). Defendants' decision is final because (1) it marks the "consummation"

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[39] *See, e.g.*, Lee Decl. Ex. F, 2008 PBNDS § 5.32(V)(J)(2) ("Each facility shall permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days . . . ."); *see generally* Lee Decl. Ex. F, 2008 PBNDS; Ex. G, 2011 PBNDS; Ex. E, 2019 NDS.

of a decision-making process, as opposed to being "tentative or interlocutory," and (2) it determines rights or obligations. *Bennett v. Spear,* 520 U.S. 154, 177-78 (1997). In assessing finality, courts take a "pragmatic" and "flexible" approach. *Abbott Labs v. Gardner*, 387 U.S. 136, 149, 150 (1967), *abrogated on other grounds* by *Califano v. Sanders*, 430 U.S. 99 (1977).

Plaintiffs meet both requirements for finality here. *First*, Defendants' non-enforcement of the Attorney Access Provisions reflects a "consummation" of their decision-making process, because it is "attributable to the agency itself and represents the culmination of [its] consideration of an issue." *Nat. Res. Def. Council v. Wheeler*, 955 F.3d 68, 78 (D.C. Cir. 2020) (quoting *Bennett*, 520 U.S. at 177-78). Agency action is not interlocutory where an agency's continuous failure to act deprives individuals of legal rights. *See Immigrant Defs. L. Ctr. v. U.S. Dep't of Homeland Sec.*, No. 21-0395, 2021 WL 4295139, at *10 (C.D. Cal. July 27, 2021). ICE admitted earlier this year that it is not even monitoring—let alone requiring—compliance with the Attorney Access Provisions: ICE reported to Congress that it "does not track . . . the number of facilities that do not meet ICE standards for attorney/client communications."[40]

Defendants have not even required compliance with the Attorney Access Provisions following inspections of the Four Detention Facilities, which further demonstrates their decision not to enforce the Attorney Access Provisions. This year, Defendants did not bother to include in their inspections of Laredo and River *any* standards related to attorney access.[41] At Krome and Florence, Defendants did not inspect compliance with standards related to attorney visitation or

[40] Lee Decl. Ex. N, ICE, *Access to Due Process: Fiscal Year 2021 Report to Congress*, *supra* note 20, at 2.
[41] *See* Lee Decl. Ex. K, *River Inspection*, *supra* note 18, at 6; Lee Decl. Ex. J, *Laredo Inspection*, *supra* note 18, at 6.

mail and only partially inspected conditions related to telephone access.[42] Non-compliance with the Attorney Access Provisions following these inspections is "the result of an agency decision" not to require compliance with those provisions, and in some cases, not to even monitor compliance with them. *See Torres*, 411 F. Supp. 3d at 1068-69 (ICE failure to enforce attorney access-related provisions of 2011 PBNDS sufficiently alleged to be "agency decision"). This failure also amounts to a decision by Defendants not to enforce the terms of contracts with Florence, Laredo, and River, because the Detention Standards are incorporated therein.[43]

Second, Defendants' failure to ensure compliance with the Attorney Access Provisions determines "rights or obligations," *Bennett*, 520 U.S. at 178 (citation omitted), because it directly impacts Detained Clients' and Plaintiffs' rights and abilities to communicate. *See Torres*, 411 F. Supp. 3d at 1069 ("The Court assumes that the rights of detainees and obligations of detention contract facilities would flow from any agency action regarding detention standards compliance and enforcement."); *CSI Aviation Servs., Inc. v. U.S. Dep't of Transp.,* 637 F.3d 408, 412 (D.C. Cir. 2011) (finding final agency action where "immediate and significant burden" was imposed on regulated party).

D. Plaintiffs FIRRP and AIJ Are Likely to Succeed on the Merits of Their Claim Under Section 504 of the Rehabilitation Act.

Plaintiffs FIRRP and AIJ bring an additional claim under Section 504 of the Rehabilitation Act based on the discriminatory effects of the barriers on access to counsel on their Detained Clients with Disabilities. *See Tennessee v. Lane*, 541 U.S. 509, 526-27 (2004). FIRRP and AIJ

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[42] The Krome inspection found no deficiencies, and the Florence inspection found no documentation for inspecting and logging telephones daily, but Part II.C, *supra*, demonstrates the widespread violations at these facilities. *See* Lee Decl. Ex. L, *Krome Inspection*, *supra* note 18, at 6; Ex. M, *Florence Inspection*, *supra* note 18, at 6, 18.

[43] *See supra* Part II.B.

bring this claim to remove the barriers that prevent their Detained Clients with Disabilities from communicating with attorneys, and sharing relevant facts in administrative and court proceedings.

Another court has found that the Rehabilitation Act protects the meaningful participation in immigration bond and parole hearings and conditions of confinement cases. That court recognized that certain detained immigrants' "ability to meaningfully participate in the immigration court process" is "hindered by their mental incompetency," and ordered that the government provide an attorney or other qualified representative to assist detained immigrants who required that accommodation in immigration court. *Franco-Gonzalez v. Holder*, No. 10-02211, 2013 WL 3674492, at *5, *9 (C.D. Cal. Apr. 23, 2013).[44] FIRRP and AIJ's Rehabilitation Act claim is a straightforward corollary to the right to a representative already found in *Franco-Gonzalez*: just as the government must provide a representative to people who require one to communicate their case to the immigration court, it must also provide other accommodations to people who require them to communicate with their legal representatives.

To prove a violation of Section 504 of the Rehabilitation Act, FIRRP and AIJ "must show that (1) [Detained Clients with Disabilities] are disabled within the meaning of the Rehabilitation Act, (2) they are otherwise qualified, (3) they were excluded from, denied the benefit of, or subject to discrimination under a program or activity, and (4) the program or activity is carried out by a federal executive agency or with federal funds." *Am. Council of the Blind v. Paulson,* 525 F.3d 1256, 1266 (D.C. Cir. 2008). Each of these four elements is satisfied here.

First, Detained Clients with Disabilities necessarily have disabilities within the meaning of the Rehabilitation Act. An individual is "disabled" "if she can show that she (1) 'has a physical or

[44] The definition of Detained Clients with Disabilities, or people who have been determined by a "qualified mental health provider" to have a "serious mental disorder or condition," is based in the court's enforcement order in *Franco-Gonzalez*. 2014 WL 5475097, at *2-3.

mental impairment which substantially limits one or more . . . major life activities,' (2) 'has a record of such an impairment,' or (3) 'is regarded as having such an impairment.'" *Adams v. Rice*, 531 F.3d 936, 943 (D.C. Cir. 2008) (quoting 29 U.S.C. § 705(20)(B)). Detained Clients with Disabilities, all of whom have been found by a qualified mental health provider to have a serious mental disorder or condition, meet these qualifications. *See Franco-Gonzalez*, 2013 WL 3674492, at *4 n.2; *supra* Part II.C.5 n.25 (defining "Detained Clients with Disabilities" with reference to terms defined for the *Franco-Gonzalez* class).

Second, Detained Clients with Disabilities are entitled to participate in communications with counsel. Defendants provide access to counsel as a service or benefit to all people in detention, including Detained Clients with Disabilities. *See Franco-Gonzalez*, 2013 WL 3674492, at *4 n.2.

Third, FIRRP and AIJ's Detained Clients with Disabilities face barriers to access to counsel "by reason of [their] disability" that exclude and deny them the benefits of attorney access, and subject them to discrimination. *Pierce v. Dist. Of Columbia*, 128 F. Supp. 3d 250, 267 (D.D.C. 2015). The Rehabilitation Act requires detention facilities to ensure that people with disabilities have equal access to means of communications. *See, e.g.*, *Rogers v. Colo. Dep't of Corr.*, No. 16-02733, 2019 WL 4464036, at *16 (D. Colo. Sept. 18, 2019) (requiring VTC as a reasonable accommodation under the Rehabilitation Act); *Niece v. Fitzner*, 922 F. Supp. 1208, 1219 (E.D. Mich. 1996) (upholding an ADA claim seeking a Telecommunications Device for the Deaf (TDD)). Defendants deny Detained Clients with Disabilities this equal access in several ways.

Defendants permit discriminatory policies at Florence and Krome that specifically deny attorney access to Detained Clients with Disabilities. Detained Clients with Disabilities who have mental health symptoms such as suicidal ideation are more likely than others to be housed in medical or mental health observation or segregation. St. John Decl. ¶ 54; Jacoski Decl. ¶¶ 46, 51.

Defendants limit or bar access to telephones, messaging, and in-person attorney visits in these units, and may not inform counsel about moves to these types of housing, complicating counsel's efforts to contact their clients. St. John Decl. ¶¶ 54-55; Jacoski Decl. ¶ 51. As a result, attorneys have experienced periods as long as multiple months when they are unable to have any contact at all with a Detained Client with a Disability. St. John Decl. ¶ 55; *see also* Jacoski Decl. ¶ 48.

Additionally, many of the constraints discussed above have unique impacts on Detained Clients with Disabilities, resulting in discrimination against them, and exclusion from and denial of benefits. Defendants' refusal to implement a system for scheduling and facilitating attorney-client calls particularly affects Detained Clients with Disabilities. Stewart Decl. ¶¶ 8-11, 13. The call-back system at Florence places the onus on these clients—some of whom have memory impairments or lack orientation to place and time—to comprehend and remember a message that they should call their attorney at a particular time, and then place the call at the correct time. St. John Decl. ¶ 52. Similarly, the complex menu of options that Detained Clients must navigate to access the pro bono platform at Florence and Krome, *see supra* Part II.C.1., poses an even more significant barrier to Detained Clients with Disabilities. St. John Decl. ¶ 52; Jacoski Decl. ¶¶ 18, 48. As a result of these two discriminatory systems, FIRRP experiences even higher rates of unsuccessful call-backs from its Detained Clients with Disabilities than its other clients. St. John Decl. ¶ 52. The lack of VTC at Florence and Krome similarly has a particularly heightened impact on Detained Clients with Disabilities, who require communications with a visual component to develop trust and rapport, and whose attorneys may need to visually assess their clients' mental state or cognition. St. John Decl. ¶ 52; Jacoski Decl. ¶ 49; Stewart Decl. ¶¶ 10, 13. These access issues force FIRRP and AIJ to conduct nearly all communication with Detained Clients with

Disabilities in person—a time-consuming measure that would not be necessary if Defendants were to make available basic, reasonable accommodations. St. John Decl. ¶ 53; Jacoski Decl. ¶ 53.

Detained Clients with Disabilities also experience compounding effects of the barriers to attorney access. Detained Clients with Disabilities require more support and consistent attorney contact to develop trust and effective communication. St. John Decl. ¶ 51; Jacoski Decl. ¶¶ 52-55. Conditions that cause interruptions in contact can prevent Detained Clients with Disabilities from effectively conveying information to their attorneys and thus to the court. St. John Decl. ¶ 51; Jacoski Decl. ¶¶ 52-55. These interruptions in contact can also exacerbate symptoms by contributing to feelings of hopelessness and isolation, or by playing into persecutory or delusional beliefs, which further harms these clients' abilities to participate in their cases. St. John Decl. ¶ 51; Jacoski Decl. ¶¶ 50-52.[45] AIJ has had to turn away cases of potential clients with disabilities at Krome due to attorney access difficulties at the facility. Jacoski Decl. ¶ 48.

Fourth, attorney access is a program or activity carried out by a federal executive agency, here by DHS and its subcomponent ICE. *See* 6 C.F.R. § 15.2 (The Rehabilitation Act applies to "all programs or activities" conducted by executive agencies).

E. Defendants' Failure to Ensure Adequate Access to Counsel at the Four Detention Facilities Causes Detained Clients and Plaintiffs to Suffer Irreparable Harm.

[45] These harms can be remedied in large part by basic accommodations (including scheduled in-person meetings, and facilitated telephone and VTC calls, between Detained Clients with Disabilities and their attorneys, regardless of housing status in segregation). People held at the Central Arizona Detention Center ("CADC"), which is within the same correctional complex as Florence, receive VTC access for attorney calls, as have people held at the complex in the past when it held overflow populations for out-of-state prison systems. St. John Decl. ¶ 40. Florence can reasonably provide that same service to people it holds for ICE. *See Rogers,* 2019 WL 4464036 at *14-15 (finding VTC access to be a reasonable accommodation).

Barriers to attorney access at the Four Detention Facilities violate Detained Clients' Fifth Amendment rights and obstruct Plaintiffs' effective advocacy and organizational missions, causing irreparable harm. A preliminary injunction "requires only a likelihood of irreparable injury," a showing easily met by Plaintiffs. *League of Women Voters*, 838 F.3d at 8-9.

"It has long been established that the loss of constitutional freedoms, 'for even minimal periods of time, unquestionably constitutes irreparable injury.'" *Mills v. Dist. of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). Plaintiffs have shown that Defendants' restrictions on attorney access violate Detained Clients' due process rights to be free from punishment and to a full and fair custody proceeding. *See supra* Part VI.B. Accordingly, Plaintiffs meet their burden of showing the injury necessary for a preliminary injunction. *See SPLC*, 2020 WL 3265533, at *32.

Defendants' restrictions on confidential attorney-client communication have also caused Detained Clients unnecessary and prolonged detention and subjected them to harmful conditions of confinement. Plaintiffs routinely represent Detained Clients in bond and parole proceedings and requests for release. *See* St. John Decl. ¶ 5; Lehner Decl. ¶ 2; Wolf Decl. ¶ 23; López Decl. ¶ 6; Hidalgo Decl. ¶ 6. However, Defendants' restrictions on confidential communication and effective information-sharing crucial to legal representation cause delays resulting in needless detention of Detained Clients. *See* Wolf Decl. ¶¶ 42, 43, 45, 49; St. John Decl. ¶¶ 19, 55; López Decl. ¶¶ 18-20; Hidalgo Decl. ¶¶ 12, 28. For example, RAICES represented a female client at Laredo in a release request who suffered from a painful medical condition exacerbated when ICE took away her medication, which formed the basis of the release request. However, delays in scheduling private legal calls at Laredo delayed the attorney's ability to learn this highly relevant information, leading to delayed submission of the release request, which was ultimately granted. But for the

deficiencies in arranging confidential legal calls, the client would have been able to be released sooner. Hidalgo Decl. ¶ 12. Similarly, ISLA represented a client at River with a sensitive medical condition who was likely detained longer than he otherwise would have been due to the lack of confidential attorney-client communication. Because the client was unwilling to fully disclose his medical condition in a public setting, ISLA was forced to request and wait for the client's medical records to obtain the necessary information, causing over a week's delay in requesting release. López Decl. ¶¶ 19-20.

Detained Clients have also suffered dangerous conditions of confinement and physical and psychological harm as a result of attorney access barriers. *See* Hidalgo Decl. ¶¶ 21, 28. In one case, RAICES was unable to quickly advocate for the protection of two lesbian clients at Laredo who faced threats of violence within the facility because of their sexual orientation. Because the clients could only call counsel from public phones in their housing units, they feared further harm if they discussed the nature of and reason for their harassment on the phone. As a result, the clients remained detained longer, and suffered otherwise avoidable harassment. Hidalgo Decl. ¶ 21.

Deprivations of liberty, such as those suffered by Detained Clients due to Defendants' attorney access restrictions, "are the sort of actual and imminent injuries that constitute irreparable harm." *Aracely, R.*, 319 F. Supp. 3d at 155; *see also SPLC*, 2020 WL 3265533, at *32. The "major hardship posed by needless prolonged detention," which Detained Clients have experienced due to the obstacles imposed by Defendants, is in itself a form of irreparable harm. *R.I.L-R*, 80 F. Supp. 3d at 191 (internal quotation omitted). And where, as here, "plaintiff requests injunctive relief mandating that an agency comply with a process that, if completed could secure plaintiff's freedom or could alleviate harsh conditions of confinement, the harm from detention surely cannot be remediated after the fact." *Ramirez v. U.S. ICE*, 310 F. Supp. 3d 7, 31 (D.D.C. 2018).

Defendants' attorney access restrictions also harm Plaintiffs by hindering them from offering quality legal representation to Detained Clients and from serving more clients, both of which are crucial to their organizational missions. *See Pangea Legal Services v. U.S. Dep't of Homeland Sec.*, 512 F. Supp. 3d 966, 975 (N.D. Cal. 2021) ("Organizations can establish irreparable injury by showing ongoing harms to their organizational missions, including the organizational mission of representing [] asylum seekers.") (internal quotations omitted); *see also SPLC*, 2020 WL 3265533, at *12 ("[L]egal aid organizations suffer an injury when their organizational purpose or mission has been thwarted.") (internal quotations omitted). Plaintiffs are impeded in adequately preparing Detained Clients' cases because of the lack of confidential meeting rooms, unreliable, time-limited legal calls, mail delays, and barriers to interpretation. Plaintiff IJC was once forced to communicate with a Detained Client at River via interpretation provided by *another detained person* because of Defendants' failure to provide a reliable means to schedule confidential legal calls necessary for interpretation. Wolf Decl. ¶ 38. FIRRP has represented several clients at Florence who have missed critical filing deadlines due to excessive delays in outgoing mail from the facility. St. John Decl. ¶ 47. These breaches of confidentiality and case-related failings degrade attorney-client relationships and injure Plaintiffs' effective advocacy on behalf of Detained Clients. Delays and inefficiencies caused by Defendants' restrictions on access to counsel also inhibit Plaintiffs from serving more detained immigrants. *See, e.g.,* Hidalgo Decl. ¶¶ 9-10; López Decl. ¶ 38; Jacoski Decl. ¶¶ 51, 57; Wolf Decl. ¶¶ 31-34. Such harms to Plaintiffs demonstrate a likelihood of irreparable injury that will continue without injunctive relief. *See Pangea Legal Services*, 512 F. Supp. 3d at 975-76; *SPLC*, 2020 WL 3265533, at *12.

F. The Balance of Equities and Public Interest Weigh Heavily in Plaintiffs' Favor.

The balance of equities and the public interest merge in cases against the government. *See Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (internal citations omitted). Where Defendants' unlawful restrictions on attorney access deprive Detained Clients of their Fifth Amendment rights and subject them to irreparable harm, both factors tip in Plaintiffs' favor. *See Simms v. Dist. 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.").

The public—and therefore the government—has an interest in protecting the due process rights of people in detention and ensuring the rule of law. *See Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982) (such protection "goes to the very heart of the principles and moral precepts upon which this country and its Constitution were founded"); *Torres*, 2020 WL 3124216, at *9 ("[T]he public has an interest in the orderly administration of justice."). Moreover, Defendants' policies lead to prolonged detention and inhibit challenges to dangerous and unlawful conditions of confinement—injuries that the public has great interest in avoiding. *See Hernandez-Lara*, 10 F.4th at 33 ("[U]nnecessary detention imposes substantial societal costs.").

Finally, the relief sought is narrowly tailored to remove the unconstitutional barriers to access to counsel and therefore is not an undue burden for Defendants. In fact, as discussed in Part IV.B.1., *supra*, the proposed remedies are procedures Defendants have already put in place at other ICE detention facilities or are required by ICE's own detention standards. *See SPLC*, 2020 WL 3265533, at *33. Thus, the third and fourth factors weigh heavily in Plaintiffs' favor.

V. CONCLUSION

For these reasons, Plaintiffs respectfully request that this Court issue a preliminary injunction requiring Defendants to provide at the Four Detention Facilities:

1. Scheduled, free, confidential, and private legal telephone calls, honored if requested 24 hours in advance (and sooner if urgent), to include legal assistants, interpreters, notaries,

experts, and social workers ("case-related personnel"), with accommodations for interpretation;

2. Private, confidential spaces for detained people to receive and make legal telephone calls, to include calls to case-related personnel, with clear written and publicly posted instructions for access in proximity to the telephone, such that a detained person would be able to view and read such instructions while using the telephone;

3. Scheduled, free, confidential, and private legal VTC calls, honored if requested 24 hours in advance (and sooner if urgent), to include case-related personnel, with accommodations for interpretation;

4. Sufficient private, confidential, contact visitation spaces to conduct in-person legal visits, to include case-related personnel, with access to confidential telephonic interpretation;

5. The ability for attorneys and case-related personnel to bring computers, printers, and cellular phones with them to in-person legal visits;

6. A method for timely and confidential legal communication, including document exchange, including by fax or email;

7. At Florence and Krome, reasonable accommodations for Detained Clients with Disabilities, including allowing counsel and case-related personnel in-person legal visits in observation, medical, mental health, suicide, or segregation housing; providing facilitated, scheduled telephone and VTC legal calls; and providing personnel to manage attorney-access accommodation requests for Detained Clients with Disabilities.

The Court should also order that no security bond shall be required under Federal Rule of Civil Procedure 65.

Respectfully submitted this 18th day of November, 2022.

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*Admitted *pro hac vice*

**Application for admission *pro hac vice* forthcoming.

†Application for admission to the D.C. bar pending; motion for admission *pro hac vice* submitted with the Court.

‡Seeking admission to or renewal of membership in D.D.C.

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

AMERICANS FOR IMMIGRANT JUSTICE, et al., *Plaintiffs*, v. **U.S. DEPARTMENT OF HOMELAND SECURITY**, et al., *Defendants*.	No. 1:22-cv-03118 (CKK)

[PROPOSED] PRELIMINARY INJUNCTION

Upon consideration Plaintiffs' Motion for a Preliminary Injunction, and Defendants' opposition thereto,

Having determined that Plaintiffs are likely to succeed on the merits of their claims under the Due Process Clause of the Fifth Amendment, the Administrative Procedure Act, 5 U.S.C. § 551 *et seq.,* and Section 504 of the Rehabilitation Act, 29 U.S.C. § 701 *et seq.*, that Plaintiffs and clients and prospective clients detained at the Florence Correctional Center in Florence, Arizona ("Florence"), the Krome Detention Center in Miami, Florida ("Krome"), the Laredo Processing Center in Laredo, Texas ("Laredo"), and the River Correctional Center in Ferriday, Louisiana ("River") (collectively, the "Four Detention Facilities") will suffer irreparable injury in the absence of injunctive relief, and that the balance of hardships and public interest favor this relief, it is, therefore,

ORDERED that Plaintiffs' Motion for a Preliminary Injunction is hereby GRANTED; and that Defendants, their agents, representatives, and all persons or entities acting in concert with them are hereby:

1. ORDERED, pending further order of this court, to provide scheduled, free, confidential, and private legal telephone calls, honored if requested 24 hours in advance (and sooner if urgent), to include calls to legal assistants, interpreters, notaries, experts, and social workers ("case-related personnel"), with accommodations for interpretation, at the Four Detention Facilities;
2. ORDERED, pending further order of this court, to provide private, confidential spaces for detained people at the Four Detention Facilities to receive and make legal telephone calls, to include calls to case-related personnel, with clear written and publicly posted

instructions for access in proximity to the telephone, such that a detained person would be able to view and read such instructions while using the telephone;

3. ORDERED, pending further order of this court, to provide scheduled, free, confidential, and private legal video-teleconference ("VTC") calls, honored if requested 24 hours in advance (and sooner if urgent), to include case-related personnel, with accommodations for interpretation, at the Four Detention Facilities;
4. ORDERED, pending further order of this court, to provide sufficient private, confidential, contact visitation spaces to conduct in-person legal visits at the Four Detention Facilities, to include case-related personnel, with access to confidential telephonic interpretation;
5. ORDERED, pending further order of this court, to allow attorneys and case-related personnel to bring computers, printers, and cellular phones with them to in-person legal visits at the Four Detention Facilities;
6. ORDERED, pending further order of this court, to provide a method for timely and confidential legal communication, including document exchange, including by fax or email at the Four Detention Facilities;
7. ORDERED, pending further order of this court, to provide reasonable accommodations for Detained Clients with Disabilities at Florence and Krome, including allowing counsel and case-related personnel in-person legal visits in observation, medical, mental health, suicide, or segregation housing; providing facilitated, scheduled telephone and VTC legal calls; and providing personnel to manage attorney-access accommodation requests for Detained Clients with Disabilities.

It is further ORDERED that Plaintiffs shall not be required to furnish security for costs.

_____
Hon. Colleen Kollar-Kotelly
United States District Judge

Dated: _____

DECLARATION OF ANDREA JACOSKI,
AMERICANS FOR IMMIGRANT JUSTICE

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

1. I am a licensed attorney and a member in good standing of the Minnesota State Bar. I am currently employed as the Director of Detention Program at Americans for Immigrant Justice ("AIJ"). I have practiced as an immigration attorney with AIJ from September 2016 to March 2020 and from May 2022 to the present.

2. Since joining AIJ in September 2016, I have served as an Equal Justice Works Fellow, Staff Attorney, and now Director of the Detention Program. I have served in my current position as Director of Detention since May of 2022 and previously worked as a staff attorney and Equal Justice Works Fellow from September 2016 to March 2020. At AIJ, I have exclusively focused on the provision of free legal services to immigrants detained in Immigration and Customs Enforcement ("ICE") custody, primarily at the Krome Service Processing Center ("Krome") and other ICE detention facilities in South Florida. AIJ also represents people detained at ICE facilities in other parts of Florida.

3. AIJ is an award-winning non-profit 501(c)(3) law firm founded in 1996 that protects and promotes the basic rights of immigrants through direct representation, impact litigation, advocacy, and outreach. In Florida, and more broadly on a national level, we champion the rights of unaccompanied immigrant children; advocate for survivors of trafficking and domestic violence; serve as a watchdog on immigration detention practices and policies; fight to keep families informed, empowered and together; and pursue redress on behalf of immigrant groups with particular and compelling claims to justice. AIJ's direct client work informs its broader policy work that benefits all people navigating our country's immigration system.

AIJ's Scope

4. AIJ maintains a staff of 57 employees, including 22 attorneys, 10 paralegals, 20 support staff, and 5 management staff. Our staff has served over 145,000 immigrants from all corners of the world since opening our doors in January 1996. At any given time, AIJ has more than fifteen to twenty clients it is representing who are detained at Krome alone. Each year, AIJ assists approximately 80 people in immigration detention and represents approximately 100 individuals in immigration court.

5. Our Detention Program (the "Program") advises and represents individuals in ICE custody before ICE, U.S. Citizenship and Immigration Services ("USCIS") and the Executive Office for Immigration Review ("EOIR") Immigration Court. We represent detained immigrants at Krome in bond hearings and parole applications to obtain their release from detention and in immigration proceedings to help people obtain permanent immigration status. Our Detention Program also monitors, reports on and, where necessary, files lawsuits to remedy inhumane conditions in immigration detention centers

to bring about systemic change. Clients include recently arrived asylum seekers, survivors of crimes, and long-term residents. Our focus is on representing individuals in bond and parole proceedings so that they can be released from detention and may reunite with their support systems.

6. Our direct services work informs our advocacy and litigation work. AIJ helps shape and advance policies that protect immigrants at our borders while safeguarding the basic civil and constitutional rights of all people. AIJ's staff fight for just and humane DHS policies and practices by testifying before Congress and filing lawsuits that change state and national laws. AIJ has won dozens of lawsuits over the years and have compelled the government to disclose information key to reforming our broken immigration system.

7. Throughout its more than two decades of service to immigrant communities, AIJ has received recognition in the form of awards and commendations from leading human rights organizations and politicians at all levels of government and across political beliefs and party affiliation. AIJ has received awards and commendations from, among other organizations, the Miami Dade County League of Women Voters, The Florida Bar Foundation, the Anti-Defamation League, Lawdragon, Florida International University College of Law, National Crime Victims' Rights Committee and Coral Gables Police Department, National Black Prosecutors Association, National Immigration Forum, National Lawyers Guild, and American Immigration Lawyers Association.

Communication Barriers at Krome

8. AIJ provides *pro bono* representation to detained immigrants in ICE custody at Krome. I have represented clients detained at Krome in a wide range of proceedings including withholding-only proceedings, bond hearings, Reasonable Fear Interviews, Credible Fear Interviews, request for stays of removal, and humanitarian requests for release or parole with ICE/ERO. In some cases, we represent people before USCIS where it impacts what they may be eligible for in immigration court. I have visited clients in contact and non-contact visitation in the attorney-client areas before and during the pandemic.

9. AIJ's ability to provide legal consultations and legal representation to detained immigrants at Krome is extraordinarily complicated and difficult due to the numerous barriers to communication, visitation, and the facility's location. Regular communication between attorneys and our detained clients is at times impossible, even by phone. Virtual video visitation is not available to lawyers, despite existing use of video teleconference ("VTC") technology for remote immigration court proceedings at the Krome Immigration Court. The Krome Immigration Court is located inside of the Krome detention center and is comprised of three presiding judges. Remote VTC proceedings at the Krome Immigration Court started during the COVID-19 pandemic. However, before COVID-19, Krome had a dedicated VTC room for individuals detained at Krome but whose immigration court proceedings occurred at other facilities. This was commonly referred to as "room and board," where the individual was housed at Krome but attended immigration court remotely in Krome's dedicated VTC room because the proceedings

occurred off-site. In-person legal visitation is hampered due to competition for rooms among attorneys and health concerns related to COVID-19, which I detail below.

10. Broadly speaking, there is no system or mechanism for a detained immigrant at Krome to make or receive a private and confidential call with an attorney. There are no private rooms for confidential phone calls at Krome. No system exists for attorneys to schedule calls or for detained immigrants at Krome to schedule calls with their attorneys. Attorneys are unable to use telephones, cell phones, laptops, or printers during in-person legal visits, and all electronics must be stored in a locker, making it impossible to call interpreters when needed or to access or make changes to petitions, declarations and other documents needed for our clients' cases in real time during client meetings.

11. AIJ has accepted very few cases for direct representation at the Krome Immigration Court due to the COVID-19 pandemic, the various restrictions surrounding visitation, and the substantial barriers in place to meaningfully and privately communicate with clients by phone, video, letter, or alternative forms of communication. These constraints have significantly impaired AIJ's ability to effectively represent clients in individual proceedings and in class action litigation. Our work at Krome has predominantly focused on cases related to custody and obtaining release of clients, particularly those who are medically vulnerable. Our representation of detained clients at Krome has been limited to release requests with ICE/ERO; parole requests with ICE/ERO; and other discretionary humanitarian requests.

12. Under current conditions, attorneys who are not able to visit the facilities because of COVID-19 risk factors or who live with family members at risk for COVID-19 are unable to represent clients at Krome due to the lack of a confidential, reliable methods of remote communication that would allow attorneys to effectively prepare for their clients' cases. Immigration proceedings, including bond hearings, require building rapport with clients, witness and testimony preparation, drafting applications and declarations, gathering corroborating evidence and reviewing it with clients. This work simply cannot be done where attorneys do not have access to remote meeting platforms, or reliable systems for private, confidential legal calls, and are unable to confidentially and reliably schedule a discussion with their clients. Further, detained immigrants at Krome are unable to make or schedule private and confidential calls with their attorneys. The ability to meet with clients virtually by video would dramatically change our ability to represent people detained at Krome.

13. Recruiting volunteer attorneys to accept cases at Krome is challenging because of the practical impossibility of representing people remotely due to the lack of access to confidential and reliable phone calls and videoconferencing. AIJ's ability to represent detained clients is severely constrained, as is our ability to even refer cases to other organizations, pro bono law firms, or volunteer pro bono attorneys. Our Program does not regularly refer cases to volunteer attorneys because of the nightmare we experience attempting to contact our own clients. Volunteer attorneys who do not have access to the same EOIR Pro Bono Phone Platform are only able to communicate with clients via in-person visitation, mail, or paid phone calls through the Telmate platform phone system.

Another ICE detention center, the Broward Transitional Center in Pompano Beach, Florida, offers free legal video visitation in private rooms in the attorney-visitation area. Accordingly, we know ICE has the capacity and resources to offer video visitation at Krome, but chooses not to for reasons unknown to AIJ.

Lack of Access to Confidential Telephone Calls at Krome

14. It is virtually impossible for attorneys to schedule calls with clients detained at Krome. There is no method or system for attorneys to place a scheduled and confidential call to a detained client at Krome. There is no method for attorneys to hold private, confidential, unmonitored phone calls with detained clients in ICE custody at Krome. The only tool for communicating directly with clients or to instruct clients to call attorneys at a specific time is via the GettingOut application, a paid, electronic tablet-based application, which is monitored and reviewed by detention authorities, and only available to individuals in the housing units. GettingOut is an unacceptable platform for privileged attorney-client communication because the tablets cannot be used in a confidential location, are monitored, and cannot be brought to a private room or other confidential area.

15. The only way attorneys can speak with clients detained at Krome over the phone is if the clients call us, at a charge or if they call the EOIR Pro Bono Phone Platform. When detained clients call AIJ attorneys, these calls are not confidential, because detained clients must make all calls from telephones located in the open housing unit, which are within an earshot of other detained individuals and the guards. Detained immigrants are not permitted access to private spaces to talk on the telephone with their counsel at AIJ, even though Krome has the space and the resources to do so.

16. To make matters worse, the phones in the housing pods are located on the wall adjacent the television. The television volume is often very loud and results in significant and distracting background noise that makes it nearly impossible for the attorney and client to hear and understand each other. Clients speaking with us over the phone are standing near whomever is watching television. As a result, the conversation is not private and anyone trying to enjoy television is simultaneously able to listen to the conversation.

17. Further, the telephones are located next to the guard station without any privacy. Therefore, ICE officers or other Krome staff can overhear any ongoing conversation, prohibiting any chance of confidential attorney client communication

18. Individuals detained at Krome can call AIJ using the EOIR Pro Bono Phone Platform. EOIR and ICE have established a system of pro bono telephone lines for detained people to call legal service providers, including AIJ, for free. ICE has indicated that these lines are unmonitored and unrecorded. Each facility, apart from Krome, also has slight modifications or changes to the instructions on how to place calls to those codes. The instructions to call AIJ from Krome involve five different steps and these instructions are not posted publicly in the housing pods. These five steps include dialing 1 for English or 2 for Spanish, dialing a designated PIN number, dialing 6 to enter the Pro Bono Code system, dialing the appropriate code for AIJ and then the appropriate extension.

However, the EOIR pro bono platform is of limited use as currently implemented. Before AIJ staff can even conduct an initial screening with someone detained at Krome, staff must make efforts to inform the person detained what our code is and how to place a call to our pro bono line. Efforts include mailing a letter to Krome, in which case we are forced to wait the time it takes for the mail to be received and handed to the person in detention, or through a message on the GettingOut platform, which a detained person at Krome can only read if they have funds in their account, and again, which are monitored by detention authorities

19. Because of the challenges of coordinating phone calls with prospective clients and clients at Krome, and the risks posed to staff in entering a detention center during the COVID-19 pandemic, AIJ started paying for GettingOut, a monitored and recorded website platform available on the tablets that are available in the recreational areas of the housing pods in the facility that people detained at Krome can use for a fee. GettingOut usage has led to increased expenses for our non-profit organization, given the significant costs associated with accepting each message and sending each message on the tablet. Sending a message on GettingOut costs $0.25. Even though AIJ covers costs for our clients to message us through GettingOut, prospective clients are reluctant to use the app to contact us if they have limited financial resources because they reasonably believe that the costs associated with the messaging will be deducted from their personal account. Many clients also have no money whatsoever and cannot add funds or pay to receive messages.

20. GettingOut has additional limitations beyond price that render it impractical for legal communication. GettingOut is the only way for attorneys to try to instruct clients at Krome to call them on the phone at a specified date and time. To do so, we message people on the GettingOut website platform, give them the five step instructions to call us with a date and a time, and wait for them to contact us. However, as explained above, this does not guarantee that a phone call will actually happen at the designated time, and this call is not confidential due to the lack of privacy detailed above. We do not use the GettingOut platform for conversations, sending documents, or anything substantive because use of the application does not guaranty confidentiality. Although you can register an account as a confidential attorney account, all GettingOut message are monitored by detention authorities, even those sent to or from legal counsel on a registered attorney account. Therefore, we only use the platform when there is no other way to reach clients in a timely manner. Although we can mail letters to clients via FedEx, that process is extremely costly to our non-profit organization and inefficient because of delays in sending and receiving mail that would not permit us to adequately represent clients in time-sensitive proceedings and/or to meet court deadlines.

21. There are 9 tablets per housing pod with the GettingOut app and approximately fifty people per housing pod. To use the video function on the tablets, the tablets must be in their docking station, which are stationed directly under the televisions and next to the guard stations, prohibiting confidential usage. The tablets can also be used for commissary and other services. As set forth above, it is my understanding that ICE treats all communications on the tablets as if they were friends or family visitation portals, meaning, ICE may both record and monitor the conversations. Video conferences for

attorney accounts are evidently not recorded or monitored, but the video conferences, as described above, are only possible in the housing pods in the recreation areas next to the guard stations and television. Therefore, it is impossible to have a private, confidential conversation with a client via the video feature on GettingOut. Based on these issues, I have directed my staff not to use GettingOut for anything other than instructing clients and prospective clients to call us at a specific time, given the sensitive nature of the cases of our clients and retaliation prior clients have experienced at the hands of guards at various ICE facilities, including Krome, such as the arbitrary use of solitary confinement and prohibiting use of GettingOut or the tablets as punishment.

22. Due to Krome's refusal to provide confidential legal communications or to schedule legal calls, we are practically unable to represent individuals who speak languages other than Spanish or English because we cannot schedule phone calls at Krome. Because Krome does not allow for any scheduled calls, we must rely on clients calling us back. Due to the various barriers to accessing phones within the housing pods, it is extremely difficult to arrange for an interpreter, particularly in the cases where we need to book an interpreter service in advance. These added barriers can lead to lengthy delays in the provision of meaningful services to those who speak languages other than English or Spanish.

23. Phones at Krome are difficult for individuals to access due to the number of individuals in each housing pod. In any given pod at Krome, there are 9 phones per 50 or so individuals. Phones are shut off during lunch hour, head count, shift change, and in the evenings. On any given day, I am able to speak with my client in the morning before they go to recreation, briefly between recreation and lunch, and later in the afternoon after head count and shift change. My clients have sacrificed precious time from their permitted outdoor recreation time – the 60 minutes a day they are allowed outside of their housing pod – in order to access a phone to talk with me because there is only one phone in the recreation area. Not only that, but we have experienced Krome staff arbitrarily cutting off access to the phones or instructing detained individuals to get off the phone, cutting short our legal calls.

24. I regularly receive phone calls where there is no audio on the detained individuals' end because the phones are malfunctioning. There is always background noise from t the housing pods, people shouting, static, and other indiscernible noise that make conversation extremely difficult and taxing. I have to regularly ask my clients to repeat themselves, which wastes time and impedes our ability to have a meaningful conversation. Sometimes the volume level is so low that I ask my clients to call me from a different phone, which could result in hearing back from them the next day, later in the week, or not at all.

25. These barriers to telephone access at Krome hinder AIJ's ability to provide legal services and harms our clients in detention. Productive, confidential calls are impossible at all times based on the location of the phones and tablets.

Lack of Videoconferencing Access for Attorney Visits at Krome

26. Unlike other ICE detention facilities, Krome has no program to allow attorneys to conduct private, confidential remote videoconferencing with detained clients in ICE custody. This is problematic because access to videoconferencing would allow AIJ to provide more effective remote representation and expand the number of cases we can take from Krome. Private, face-to-face communication with clients is essential to representation. Only videoconferencing provides an adequate substitute to in-person visitation when in-person visitation is impractical or, in the case of COVID-19, presents a health threat to our staff.

27. While Krome does not make videoconferencing available for attorney-client visits, Krome routinely uses videoconferencing for other matters. Rooms previously designated for attorney-client visitation are now also used for detained individuals to appear for immigration court proceedings via VTC. I have witnessed several televisions on rolling carts in the various attorney-client visitation rooms where detained individuals are appearing remotely for their removal proceedings through VTC. I have also seen the rolling carts in various parts of the visitation area and in the USCIS rooms where USCIS officials conduct Reasonable Fear and Credible Fear Interviews through VTC.

28. In addition, Krome has a room specifically designated for VTC, located on the far end of the visitation area, past the normal attorney-client contact visitation rooms. Before the pandemic, I represented one client in the Arlington, Virginia Immigration Court who was housed at Krome for "room and board" only. Meaning, despite being housed at Krome, his immigration court proceeding was based in another jurisdiction and he appeared remotely through VTC. We appeared together in a VTC room on the far end of visitation. The room included a television, a telephone, and a table with chairs.

29. ICE therefore appears to have the capacity to allow VTC for immigration court proceedings both at the Krome Immigration Court and outside of Florida, and has the requisite VTC technology already set up at Krome. However, we are still unable to use videoconferencing to meet confidentially with our clients at Krome. Access to confidential video calls is important to our representation and daily client services because they would allow us to build rapport with clients, build attorney-client relationships and trust, and meaningfully prepare clients for their cases. Greater communication and relationship-building naturally occurs when video is available. Further, reviewing evidence and documents together or even showing a client where to sign a document can be achieved over video as opposed to over the phone. We are aware that ICE has the ability to bring landline or portable phones into the attorney visitation rooms (as they do for medical patients who are confined to their rooms), but opt not to, which hinders AIJ's ability to effectively represent its clients.

Obstacles to Timely, Confidential In-Person Legal Visits at Krome

30. In-person visits are hampered by the limited number of private attorney client visitation rooms, which can lead to long waits to see clients, and the inability for attorneys to bring laptops or other technology into these visits.

31. Krome has only 6 attorney-client visitation rooms. These few visitation rooms serve several purposes apart from client visitation. In my experience as a practitioner, I have witnessed the attorney-client rooms serve as visitation space for ICE/ERO officers and other federal agents. I have also witnessed Krome use the attorney-client contact visitation rooms as waiting rooms for individuals who have a hearing that day or an interview with the USCIS Asylum Office. On any given day, the rooms could be completely full in the morning, preventing attorney-client visits from taking place in those rooms.

32. As a result, the number of private attorney visitation rooms is insufficient to accommodate detained immigrants to meet with their attorneys. In recent memory, I have had to wait anywhere between forty-five minutes to over an hour and a half to meet with a client in visitation. The various rooms are occupied with people waiting for court, ICE/ERO meeting with people, or because the rooms were being used for VTC Immigration Court proceedings. Krome does not allow attorneys to reserve attorney-client visitation rooms or schedule in-person meetings in advance.

33. Attorneys and legal visitors have to compete with ICE/ERO officers for attorney-client visitation in contact rooms. I have witnessed ICE/ERO officers on multiple occasions, before the pandemic and in recent history, meet with detained individuals in the attorney-client contact rooms. I have waited for a room to meet with my client due to rooms being full, including with ICE/ERO officers and despite the fact that Krome has additional meeting spaces specifically reserved for ICE/ERO staff to conduct meetings with detained individuals.

34. Krome offers a single non-contact visitation room to attorneys and 26 non-contact booths located adjacent to the non-contact visitation room. However, the booths are not confidential or private. They are in an open space, with no ability to maintain privacy and conversations can easily be overheard by guards and staff. Conversations happen over a telephone line that I understand is monitored and treated the same as a normal family visitation. There are no enclosures on either the client side or the attorney side. All conversations on the same side of the divider may be heard by anyone in the area.

35. The single non-contact legal visitation room at Krome has its own set of issues. Instead of speaking through corded phones, communication is through a thin metal slot the length of a piece of paper and only wide enough to slide a document through The room has poor acoustics and the noise echoes. The room echo requires both the individual detained and the attorney to stand and place their ears near the thin metal slot. The view is entirely obstructed when both the attorney and the client try to hear one another. For me to speak

with my client and hear my client at the same time, we both need to either shout or place our ears near the metal slot in order to hear. When I meet with clients in this room, I cannot speak with my client and look at them in the eyes or connect with their facial expressions or body language. This negatively affects my ability to establish a strong rapport with my client, which ultimately hampers my representation and the services I am providing to my client. I am unable to stand, write down notes, and either speak or listen to my client simultaneously. Appropriate client interviewing, drafting declarations for applications for relief, and regular rapport building is not possible in this room. As an attorney and advocate, my role in part is to build trust with my clients in highly stressful, traumatic situations and that in some circumstances are life-threatening.

36. In addition, this single non-contact legal visitation room does not allow for confidential communication. It is next to the guard station that oversees the entire visitation area. One or two guards are seated directly outside of the door on the attorney side of the enclosed room. The visitation room is also the first room when entering the visitation area. The room is not confidential, the acoustics are horrendous, and the setup with the metal slot with the obstructed view render the room unusable for substantive client meetings. The non-contact legal visitation room is also not sound proof and conversations can be easily overheard outside the room. I have personally overheard attorney client conversations while waiting for an attorney client room to become available. The guards are stationed directly outside the non-contact legal visitation room and thus can likely overhear confidential attorney client conversations.

37. Further, Krome inhibits my ability to bring support staff or a translator with me to in-person meetings as Krome requires a preapproval process for all non-attorney support staff and translators which typically takes two weeks and expires after ninety (90) days. These requirements inhibit the ability to have a translator, paralegal, or other necessary support staff emergent or time sensitive issues. This is especially problematic when clients or prospective clients and AIJ attorneys do not speak the same language. We recently were unable to represent a Q'eqchi' speaker detained at Krome because we could not schedule a legal call and we do not have in-person interpreter services for rare indigenous languages. We were ultimately unable to represent the Q'eqchi' speaker.

38. The poor acoustics in the non-contact legal visitation room also inhibit our ability to bring support staff or interpreters with me to legal visits. Not only is the preapproval process burdensome (especially for time sensitive matters), but because I can only effectively communicate with my clients by bending down to speak through the metal paper slot, an interpreter or support staff is unable to hear to effectively assist during the meeting. This forces us to take turns bending down to speak and hear the client's responses through the metal paper slot, which is incredibly cumbersome and inhibits my conversations with clients and prospective clients.

39. Finally, attorneys are not permitted to bring modern-day tools of the trade like laptops, printers, or cellphones into legal visits, which are essential to the practice of law. Attorneys are only able to take handwritten notes. This technology is necessary to allow attorneys to draft declarations, complete necessary applications, and connect with

interpreters during a visit. Instead, the attorney must return home, draft necessary paperwork based on the interview notes, and then figure out to efficiently send confidential drafts for client review and/or signature, which can be timely and an impediment to confidential work product, as Krome opens all legal mail prior to delivery to detained individuals.

Barriers to Legal Correspondence

40. Barriers to legal correspondence at Krome also greatly hinder AIJ's ability to represent detained clients, and adversely affect our clients. Detained clients have no access to the internet or email at Krome and are not able to receive legal correspondence electronically or through facsimile.

41. In our experience, physical mail received by Krome is not distributed to our clients on the day it is received. It typically takes at least 1-3 days for mail to be received from our office to the Krome facility. Upon receipt at Krome, ICE usually waits twenty-four after receipt to distribute the mail. The mail – even legal mail – is opened and can be reviewed by ICE, which has a chilling effect on our clients who are often cautious about sharing information with us that should be treated as confidential but is not due to ICE's policy of opening the mail.

42. There is no mechanism other than U.S. Postal Service (USPS) mail or in-person visitation to send or exchange documents with detained clients for review and signature. Our clients are indigent and cannot afford legal services; they do not have the luxury to mail documents at a faster rate via Priority Mail or FedEx, etc.

43. AIJ has no system to gather signatures from clients without visiting the facility, absent awaiting delays in mail. We cannot rely on USPS legal mail for time-sensitive communications or for delivery of documents that require a prompt signature, particularly if the client needs to return the document to our office. We resort to FedEx in emergency situations; however, this is very costly and not sustainable for our limited resources and discretionary funding.

Barriers to Representation of Disabled Individuals with Mental Illness

44. Krome houses a large population of individuals with severe mental illness that impede individuals' ability to represent themselves in court proceedings. Upon arrival at Krome, all detained immigrants go through an initial mental health intake where their previous medical history and current symptoms or conditions are documented. AIJ has represented many people over the years that either exhibit active psychiatric symptoms and/or behavior such as severe depression symptoms; disorganization, disorientation or active hallucinations or delusions; mania; anxiety; and suicidal ideation and/or behavior and/or that have diagnoses, as documented in their Krome medical records, such as Bipolar Disorder, Schizophrenia, Major Depressive Disorder, or some sort of intellectual

development disorder that severely impedes their ability to competently represent themselves without the assistance of counsel.

45. AIJ has a case screening and intake process for all prospective clients. Part of this screening and intake process includes assessing whether prospective clients suffer from mental health conditions and disabilities, as these conditions or disabilities may warrant release from detention, accommodation, or otherwise impact the specific needs of these prospective clients and qualify these individuals for any other accommodations they may need in furtherance of their representation. Our Detention Program currently represents eleven people detained in ICE custody. Four of those clients are currently detained at Krome with severe mental illness and are actively receiving psychiatric treatment.

46. Krome is also the site of the Krome Behavioral Health Unit ("KBHU") designated by ICE for detention of persons with severe mental illness or psychiatric needs from all around the United States. The KBHU population is comprised of individuals with mental health illness that is not so severe as to require hospitalization but significant enough such that housing in general population is inappropriate. The KBHU is considered a less stimulating environment than general population and consists of 30 beds. Each housing room in KBHU is configured for two individuals. The KBHU offers several group therapy sessions a day, programming, and other support. Not all detained individuals with severe mental illness are housed in the KBHU, and Krome has several mechanisms for diagnosing, treating, and documenting severe mental illness. The KBHU is one such method, but Krome also houses individuals with severe mental illness and disabilities in the Medical Housing Unit ("MHU") and off-site facilities. Krome medical staff also diagnose and treat individuals with severe mental illness housed in general population. Krome medical records and ICE's Transfer Summaries reflect such past and present diagnoses and treatment. Although not designated a National Qualified Representative Program ("NQRP") provider, AIJ represents disabled clients in detention at Krome with mental health illness and conditions that may render them incompetent to represent themselves.

47. I have personally represented clients with severe mental illness who were housed in the KBHU, MHU, and in general population. I have represented such individuals in various legal matters including requests to ICE to secure their release from detention and to advocate against abuses that have occurred due to their conditions of confinement. Individuals at Krome with severe mental illness, including both those detained in KBHU, MHU, and in general population regularly solicit legal assistance from our office. Individuals who exhibit severe mental health symptoms and/or that have been diagnosed with severe mental illness may not be provided with legal representation under the NQRP. Meaning, having a severe mental illness or disability that may render someone incompetent to represent themselves does not guarantee that an individual will be appointed an attorney or the assistance of a NQRP representative by the immigration court. In my experience, individuals with severe mental illness or disability, such as those who may be mentally incompetent to represent themselves, require counsel who can pay particular attention to their cases, which tend to be more time and labor intensive. Clients

at Krome with severe mental illness have also historically endured horrific instances of trauma and violence, including civil war and sexual assault.

48. The attorney access impediments at Krome, especially issues with scheduling legal calls, legal mail, and lack of legal video visitation are compounded when working with persons with severe mental illness. Clients and prospective clients with severe mental illness require more time to communicate and relay information regarding their cases. Their requests for release generally require extensive medical records review, records requests, and sometimes outside experts or professionals to review their records. For this reason, I have recently turned away two compelling KBHU cases due to the logistical challenges associated with both representing and communicating with people at Krome and which especially impact individuals with severe mental illness.

49. Not only do these cases require extensive time and more contact with the client and/or prospective clients, but Krome's impediments to access to counsel are especially detrimental on individuals with severe mental illness. For example, the lack of VTC visits at Krome is harmful to clients and prospective clients with severe mental illness or disability that may render someone incompetent to represent themselves. Many of our clients and prospective clients have any number of mental health conditions such as severe depression, post-traumatic stress disorder, paranoia, and other conditions and disabilities that make it imperative to be able to meet with these individuals over VTC to establish rapport and trust and to assess their current mental state and any special accommodations or assistance they may need. The lack of confidential legal calls is also especially difficult for clients and prospective clients with severe mental illness. For individuals suffering from conditions such as paranoia, post-traumatic stress disorder, psychosis, and many other conditions, having to speak about sensitive issues within the ear shot of guards and other detained individuals can be especially triggering and make it virtually impossible for these individuals to maintain consistent contact over the telephone. These individuals not only suffer from conditions that can increase despondency, paranoia, and anxiety over discussing sensitive topics in front of guards or other detained individuals, but they often require time and space to fully articulate their concerns, goals, and share the background necessary to fully assess and further their case. I recently had a prospective client who was so distrustful of the telephones at Krome and whether the calls were monitored or recorded, that he was unable to speak with me. As a result, we were not able to proceed with a consultation, let alone legal representation.

50. Clients with severe mental illness require more careful counseling and lengthier attorney client discussions to assure the client understands the nature of his or her release requests and the likelihood of their success. I have found clients with paranoid tendencies require regular communication in order to facilitate trust and cooperation. Absent regular, confidential communication, clients can become distrustful and anxious, even when efforts are made to schedule calls on a regular basis. The inability to meet with clients via VTC or schedule confidential legal calls undermines AIJ's ability to give clients and prospective clients with severe mental illness that may render someone incompetent to represent themselves the time and attention they need to fully assess their cases and options for release and relief.

51. All of these access issues compound to undermine AIJ's representation of individuals with severe mental illness. For example, I recently represented four men who were detained in KBHU. They all at some point experienced solitary confinement that was inappropriate based on their severe mental illnesses and disabilities. In these cases, and generally, Krome denies access to my clients due to their custody in solitary confinement by cutting off their access to the GettingOut application and telephones and often refusing to provide confirmation of my clients' whereabouts. This denial of access to my clients, the inconsistent ability to communicate with my clients, and the harmful impact on clients with severe mental illness hinders my legal representation. In this example, my clients suffered terribly from their time in solitary confinement. At least one of my clients become withdrawn and did not engage in our regularly scheduled phone calls: behavior consistent with his mental illness. With consistent, reliable access to my clients, I believe my clients would have had improved outcomes in their cases. Regular, reliable, confidential access to clients at all times, particularly clients with mental illness, would allow for AIJ to accept more cases for legal representation.

52. Not only is this lack of access to clients in solitary confinement detrimental to my ability to represent my clients, but it is especially harmful to clients with severe mental illness. For individuals suffering from severe mental illness, solitary confinement and being cut off from contact with counsel can be incredibly traumatizing. I have had clients with severe mental illness experience severe mental health symptoms and reactions to such treatment which has made is difficult for them to effectively communicate with counsel. For example, and as discussed above in Paragraph 51, clients with severe depression have become more withdrawn and fearful of communicating with anyone, including counsel, due to the trauma of solitary confinement and/or being cut off from contact with counsel.

53. Time-sensitive case decisions such as whether to launch an advocacy strategy regarding abusive or inhumane conditions of confinement require careful consideration both for AIJ and for the detained client or prospective client. In order to weigh all options and appropriately inform my clients and prospective clients with severe mental illness of their options, it is critical to have consistent and ready access to my clients and prospective clients. As explained above in Paragraphs 48-52, for clients and prospective clients with severe mental illness, it is even more critical that I can meet with them face-to-face through either VTC or in-person legal visits to build necessary rapport and assess clients' mental and emotional state. This information is necessary to thoroughly weigh available options and make decisions with my clients and prospective clients' about their cases. In my experience, clients with severe mental illness in ICE detention require additional safeguards and accommodations to communicate effectively with counsel, namely, regular video visitation and phone calls in confidential, private spaces, that can be requested on demand.

54. I have had several clients with severe mental illness who reported abusive and inhumane conditions of confinement, such as unwarranted and inappropriate use of solitary confinement. The lack of access to such clients at Krome has impeded AIJ's ability to

assess these complaints and timely determine an appropriate advocacy strategy. This is especially detrimental for clients suffering from severe mental illness whose symptoms are greatly exacerbated by the traumatic and stressful environment of solitary confinement. As a further example, AIJ receives calls from prospective clients who seek assistance addressing abusive conditions of confinement, but due to severe mental illness and symptoms, such as extreme paranoia, mania, or severe depression, are unable to share their complaints over the telephone due to the lack of confidentiality and the location of the phones in the middle of recreation area, which is often busy and full of people.

55. I currently have a blind client with severe mental illness who specifically suffers from psychotic symptoms and episodes. He was placed in both segregation and medical housing, although his severe mental illness and symptoms should have prevented him from being housed in solitary confinement. I am assisting him not only in his request for release from detention but also in advocacy to the Department of Homeland Security Office of Civil Rights and Civil Liberties ("CRCL") due to his mistreatment while in confinement at Krome. My client had difficulty figuring out how to provide the necessary documentation for his case and was unable to send it to me. I believe his inability to copy and mail documents was due to his segregation in solitary confinement and his psychotic symptoms which inhibited basic functioning and understanding how to navigate Krome's procedures to request assistance making copies and sending legal mail. This was compounded by my inability to schedule a VTC visit or confidential legal call with him, in which I could have spoken with him face-to-face, or at least over the telephone, and could have assisted in facilitating the exchange of documents. I ultimately had to travel to Krome to visit him to secure the necessary documents, but this delayed our progress on his case and his subsequent release request and complaint to the CRCL. I believe my client suffered unnecessarily at Krome due to these delays, including being forced to stay longer in solitary confinement and in detention generally without the intervention of the CRCL. Due to these impediments to access counsel, including but not limited to the lack of VTC visits and confidential legal calls, and the issues with in-person legal visits described herein, AIJ is unable to take these cases or investigate and build advocacy strategies regarding these reports of abusive conditions of confinement that can be especially destructive to individuals with severe mental illness.

Conclusion

56. Barriers to attorney-client communication at Krome harm AIJ's ability to represent and provide effective assistance to our detained clients, and harm detained immigrants at Krome in their ability to communicate with counsel. The systematic barriers impact our ability to even accept cases for full representation at the Krome Immigration Court. Our resources are limited as a non-profit organization and the need to travel to Krome is especially burdensome due to the remote location of the facility.

57. In some cases, these barriers have inhibited our ability to gather key information from clients due to the lack of confidential settings necessary to share sensitive and privileged information, particularly in cases where a client has experienced horrific trauma. We have less opportunity to build rapport with clients, regularly review evidence, and prepare

for their cases. We waste time, resources, and money by commuting to a remote location that every day has several confirmed cases of COVID. The added delay and outlay of time required to communicate with detained clients also reduce our ability to represent more people. The entire facility placement and lack of communication systems inhibits placing cases with volunteer attorneys. The effect is that individuals detained at Krome are more likely to remain detained, even if eligible for release, suffer from unconstitutional conditions of confinement, and are left unable to pursue immigration benefits and relief for which they are eligible. Their shot at a fair opportunity in immigration proceedings is diminished by their detention, exacerbated by their inability to communicate regularly with their attorneys, worn down further by the remote location of the facility, and emotionally strained by the chaos and dangers inherent within ICE detention where they are not treated like human beings.

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

Executed this 2nd day of November 2022 in Broward County, Florida.

Andrea Jacoski

DECLARATION OF ANA BOTELLO, ASSISTANT FEDERAL PUBLIC DEFENDER, PHOENIX, ARIZONA

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

2. I am a licensed attorney and member in good standing of the Arizona bar. I am currently employed as an Assistant Federal Public Defender (AFPD) for the District of Arizona. I have been an AFPD for over seven years, the past five and a half in the Phoenix Office.

3. Most of the clients I have represented and currently represent are in the custody of the United States Marshals Service (USMS) at the Central Arizona Detention Center (CADC) in Florence, Arizona. It is located at 1155 North Pinal Parkway, Florence, AZ 85132. CADC is privately-owned by CoreCivic, which contracts with USMS.

In-Person Visits at CADC

4. I visit clients in person at CADC about one to four times per month. I can enter CADC with my laptop without prior permission. If I enter with my laptop, I sign an electronic log indicating that I've entered the facility with my computer and provide a description of the items (i.e. charging cables, external hard drives and wired headphones) that I am bringing in with me on the log provided.

5. Most of my visits occur in a large single community room setting with small tables—like a cafeteria with various guards, other attorneys, inmates and family members nearby. These are what one can call "contact" visits and allow me to shake my client's hand. The family members present in this room are typically visiting their inmate relatives through a clear plexiglass screen and telephone and are not allowed contact.

6. Because this community room can sometimes be noisy and not very private, I am able to meet with clients in a more private room upon request—for example, if I need to review audio, video or sensitive information. The private room is usually a small room with sufficient space for a small table for two to four chairs that is located in the same community room, but which has a door with a window. While more private and less noisy, one can still hear outside conversations as the rooms usually do not have an enclosed roof or ceiling and instead have a roof made out of wire fence material.

7. In some specific instances, I am able to visit with my clients in more private and quiet settings if I make prior arrangements by email. For example, for my clients that are in medical units, mental health units, or juveniles, I have been able to visit them directly in their units. A staff member will escort me (and my belongings including electronics) to the specific units where my clients are housed and allow me to visit them outside their pods within the unit. CADC requires that we make prior arrangements by email at least 24 hours in advance, but in these instances I try to make arrangements at least a week before my

visit to ensure there is adequate staffing. These tend to be rare instances where my client's age or medical/behavioral needs require such a visit. These visits usually last no longer than an hour.

8. In other instances, like when my clients are in segregated housing or sex offender units, I am not taken into the actual unit, but escorted to an unused office, barber shop room or storage room with a table and chairs near my client's unit that are in the hallways outside of the unit/pods. For these visits, I usually send an email at least 24 hours prior to my visit. In the confirmation email response, I am advised that my client is in a special unit and that I will require a staff person from CADC to escort me to the specific unit to meet with my client at a specific time.

9. During these visits, a CADC staff person will usually wait outside of the room where we are meeting facing away from us. Similarly, these units last no longer than one hour. But, if the staff person does not have another visit scheduled in the room and they have capacity to stay, I have been able to visit with my clients in this specific room for longer time periods.

10. I have personally rarely needed to spend more than an hour on such visits with my clients, but I have retained experts to evaluate my clients suffering from mental illness who have requested this setup for up to four hours. These experts have similarly been allowed to bring in laptops and other preapproved equipment.

Video Teleconference (VTC) Visits at CADC

11. When I am unable to make visits in person, I have the ability to schedule and conduct free VTC visits with my clients from the FPD office or Sandra Day O'Connor Federal Courthouse in Phoenix. To my knowledge, these free VTC visits are allowed for all FPD and Criminal Justice Act (CJA) court-appointed attorney visits. I prefer to use the VTC system (with an added audio line) for visits that require an interpreter because it allows the interpreter to join without having to make a three-hour round trip from Phoenix to Florence. This is especially important when the interpreter is for a rare language or dialect where a local interpreter is not available.

12. These visits require a strict 48-hour or two business days' notice and are set up through one FPD administrative staff person. FPDs in Phoenix submit a request internally, and that administrator reaches out to the court staff and CoreCivic facility to schedule a VTC visit for us. VTC visits are scheduled in time allotments of 30 minutes, one hour, or an hour and a half and during certain hours for certain pods. I click a link emailed to me to join the VTC from my computer, or dial-in using a phone. My clients at CADC are taken to a small room that includes a telephone with a video screen mounted on a wall and a chair for them to sit.

Phone Calls at CADC

13. Because we have access to VTC and in-person visits, I do not often rely or use phone calls to communicate with my clients. However, there are times when emergencies arise that I have utilized the option to relay a message (via the warden's assistant's email who relays it to a correction's officer in the pod) for a client to call us as soon as possible.

14. In the event of an emergency, I have been able to speak to my client on the phone by contacting the warden's assistant. The warden has approved my requests for an emergency phone call usually within the same day when such a situation has arisen and I have been able to speak with my client sometimes from a CADC staff member's office. Such emergency situations include, for example, deaths in my client's family.

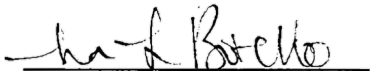
Legal Mail at CADC

15. I can bring documents for my clients to in-person visits, and typically will leave legal mail with them during my visits if I have documents to share with them. The legal mail is enclosed in a manila envelope and checked by the guards to make sure there isn't anything other than paper in the envelope. I can also have clients sign and review documents during my in-person visits.

16. I have also sent and received legal mail via the postal mail system from my clients at CADC. At most, there is a delay of about two-to-three business days in clients receiving mail I sent, and I have had very few complaints about mail delays from my clients.

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

Executed this 26th day of October, 2022 in Phoenix, Arizona.



Ana Botello

DECLARATION OF DANIEL TIBBITT
CRIMINAL DEFENSE ATTORNEY, MIAMI, FL

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

2. I am a licensed attorney and member in good standing of the Florida bar. I am currently employed as a criminal defense attorney at the Law Office of Daniel J. Tibbitt, P.A. I previously worked as a public defender at the Miami-Dade Public Defender's Office. I have been practicing criminal defense since 2004.

3. I have represented and currently represent clients in criminal custody at several facilities in Florida. These include the Miami-Dade Pretrial Detention Center, TGK Correctional Center, and Metro West Detention Center, all located in Miami, Florida (together, "the Facilities"). This declaration is based only on my personal experiences representing clients at the Facilities and is not necessarily reflective of other attorneys' experiences. All three Facilities are run by the Miami-Dade Corrections and Rehabilitation Department.

In-Person Visits at the Facilities

4. I generally visit clients in person about 3-4 times per week. I am not required to schedule in-person visits at the Facilities in advance or obtain approval before visiting. When I arrive at one of the Facilities for a drop-in visit, I provide my bar card and the client's name. After the facility verifies that I represent the client, an officer escorts me to a room to meet with the individual.

5. The rooms where I meet with clients at the Facilities are private and allow for confidential communications. The door to the room is always closed, and I have never had an issue with officers listening to or recording my conversations with clients.

6. I am permitted to have contact visits with my clients at the Facilities—*i.e.*, there is no barrier or separation preventing physical contact during the visit, which allows me to review documents more easily with my clients.

7. There is typically minimal wait time before I can meet with clients at the Facilities. For example, at the Pretrial Detention Center and TGK, I am typically able to see clients within 10 or 15 minutes of walking into the facility.

8. I am allowed to bring my laptop into my meetings with clients and have done so in order to review documents relating to their cases.

9. I am allowed to bring legal documents with me to the Facilities and have clients review and sign documents during the visit.

10. There is no time limit on legal visits at the Facilities. I have never been told to limit my visit to a certain amount of time, and I can recall instances where I have spent up to two hours meeting with a client.

Video Teleconference (VTC) Visits at the Facilities

11. Since the COVID-19 pandemic began, I have also been able to conduct VTC visits with my clients at the Facilities. VTC visits for private attorneys are available through Global Tel Link (GTL), a private prison telecommunications company. I have a registered GTL attorney account.

12. To schedule a VTC visit, I first send an email with documentation that I represent the client (*e.g.*, a notice of appearance). Once the client has been added to my list of approved VTC contacts, I can schedule a VTC visit through the GTL website. GTL permits attorneys to schedule visits for as soon as the following day. I can choose whether I would like the visit to be 25 minutes or 55 minutes.

13. During a VTC visit, my client is located in a private interview room. No officer is present in the room with the client. The visits are not recorded, and I have no reason to believe that officers listen to my conversations with clients over VTC.

14. The VTC program is straightforward and easy to use. I have not generally experienced technological or other difficulties when conducting VTC visits at the Facilities. Neither attorneys nor clients have to pay for VTC attorney visits.

15. Because in-person visitation and the VTC program are generally effective and easy to use, I do not rely on telephone calls for substantive communications with my clients.

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

Executed this 7th day of October, 2022 in Miami, Florida.

Daniel Tibbitt

DECLARATION OF HOMERO LÓPEZ, JR.,
IMMIGRATION SERVICES AND LEGAL ADVOCACY

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. My name is Homero López, Jr., and I am the Legal Director at Immigration Services and Legal Advocacy ("ISLA"), a nonprofit legal services organization focused on providing pro bono direct representation to detained immigrants in Louisiana. I make this sworn statement based on my personal knowledge, review of files and documents regularly maintained by ISLA, and reliable information supplied to me by ISLA staff that I supervise.
2. I am a licensed attorney and a member in good standing of the Louisiana bar.
3. I am the Legal Director and Co-Founder of ISLA, where I supervise a team currently consisting of four attorneys (including two legal fellows), one legal fellow whose bar admission is currently pending, one paralegal, and one administrative assistant. I co-founded ISLA in March of 2018 and have been employed by ISLA since then. Previously, I was the managing attorney at Catholic Charities-Archdiocese of New Orleans, where I oversaw a team of attorneys, accredited representatives, and legal assistants representing unaccompanied children and immigrant victims of crime.
4. ISLA is a 501(c)(3) nonprofit legal services organization that is committed to defending the rights of immigrant communities and advocating for just and humane immigration policy. Over the past four years, ISLA has focused exclusively on providing direct legal services to people detained in U.S. Immigration and Customs Enforcement ("ICE") facilities in Louisiana, including River Correctional Center ("River"), located at 26362 LA-15, Ferriday, LA 71334. All attorneys and legal fellows at ISLA provide direct legal services to detained immigrants at all ICE detention facilities in Louisiana, including River.

I have personally represented and have supervised attorneys representing approximately a dozen clients held in ICE custody at River. As of the date of this declaration, we are actively representing two clients held in ICE custody at River.

ISLA's Mission and Scope

5. ISLA is dedicated to providing high-quality pro bono direct legal services to immigrants held in ICE detention facilities in Louisiana. ISLA's only office is located at 3801 Canal Street, Suite 210, New Orleans, LA 70119. River Correctional Center is located 180 miles away from ISLA's office, a three-hour drive each way for our attorneys and paralegal to visit clients at the facility in person.

6. ISLA attorneys provide a variety of direct representation services to detained immigrants at River. Our attorneys provide representation in matters including bond hearings, expedited removal and credible fear interviews, parole requests, petitions for release from detention due to medical vulnerability to COVID-19, habeas petitions, civil rights complaints with the Department of Homeland Security's Office for Civil Rights and Civil Liberties ("CRCL"), and representation in clients' preliminary and merits proceedings. ISLA also represents people before the U.S. Citizenship and Immigration Services ("USCIS") with family-based petitions, U-visas petitions for victims of crime, T-visas petitions for victims of trafficking, and Special Immigrant Juvenile Status ("SIJS") petitions for unaccompanied minors who qualify to seek such relief under the Trafficking Victims Protection Reauthorization Act (TVPRA). ISLA partners with public defenders in Louisiana to provide post-conviction representation.

7. Since its founding, ISLA has represented hundreds of detained immigrants in Louisiana, including at least twelve detained immigrants at River. All legal services provided by ISLA to detained immigrants at River have been on a pro bono basis.

Attorney-Client Communication Barriers at River

8. As noted above, ISLA provides pro bono direct legal services to people held in ICE custody at River. So far in 2022, ISLA has represented six individuals detained at River, with two current active cases.

9. Barriers to attorney-client communication at River have severely impaired ISLA's ability to provide direct legal representation to immigrants detained at the facility. Because of our clients' concerns with confidentiality during phone calls and the historic unavailability of legal videoconferencing (VTC), ISLA primarily relies on in-person visits, which require a three-hour drive each way from ISLA's office in New Orleans, Louisiana, to River in Ferriday, Louisiana.

10. In-person visits at the facility, however, are no better. The in-person visitation spaces at River make it impossible for attorneys to have private, confidential conversations with their clients. An ISLA legal fellow visited clients in person at River on October 6, 2022. I last visited clients in person at River on September 1, 2022, and between June and September 2022, I visited clients in person at River at least once a month, sometimes every three weeks. All of my most recent client meetings in River have taken place in an open area where other clients are present and guards are constantly passing through (in the area described below as the "multi-purpose room"). Moreover, lengthy delays in sending and receiving legal mail to detained clients and lack of access to fax machines at River to exchange legal documents prevent ISLA attorneys from being able to share and file

important court documents on time and require ISLA attorneys to visit clients at River in person in order to exchange documents.

11. These restrictions on attorney-client communication have severely impacted ISLA's ability to provide high quality legal services to immigrants detained at River and hamper ISLA's mission to advocate for detained immigrants' rights. According to our estimates, the attorney-client communication barriers at River cause ISLA to expend on average $1,080 in additional resources per month for a single case at River, including expenses such as renting cars and paying for gas for the six-hour drives to and from the office to the facility. If these barriers did not exist, ISLA would be able to spend more time preparing for existing clients' cases, would save extra resources it is currently required to expend to represent clients detained at River, and could provide representation to more individuals detained at River, in furtherance of ISLA's core mission.

Lack of Confidential In-Person Legal Visits

12. The in-person visitation process and spaces at River make it impossible for attorneys to have timely, confidential visits with detained clients.

13. In order to visit in person, attorneys must schedule their visit with the facility at least 24 hours in advance. In some instances, the facility has barred drop-in visits by attorneys. Requiring attorneys to schedule in-person visits in advance prevents ISLA attorneys from being able to visit clients if there is an emergent situation requiring an urgent visit with less than 24 hours' notice.

14. The requirement to schedule in-person visits with all clients in advance also prevents ISLA attorneys from being able to visit a client in person even if an attorney is already present at the facility visiting other clients, simply because that client was not on the list of clients

with whom visits were scheduled in advance. For example, one time when I was visiting clients at River, I received a call from my colleague at ISLA who needed documents urgently signed by a client who was not on the list of clients I was pre-approved to visit. The facility denied my request to add the client to my list so that I could get the document signed for my colleague, creating unnecessary and entirely avoidable delay.

15. The attorney-client visitation hours at River are only regular business hours (8:00AM to 5:00PM, Sunday through Saturday). These limited visitation hours are in contrast to other ICE detention facilities in Louisiana such as LaSalle ICE Processing Center ("Jena"), which is located in Jena, which allows attorney-client visits between 6:00AM and 11:00PM Monday-Sunday. Given the long distance we are required to travel to visit clients in person at River, it would be helpful if we could visit clients at River during evening hours after 5:00PM as well.

16. It is impossible to have a confidential in-person meeting with clients at River. There are two main attorney-client visitation spaces at River, neither of which permit confidential meetings. In each of my most recent visits to River over the past year, I have been meeting clients at River in person in a relatively large multi-purpose room that has tables and chairs that are periodically rearranged into different configurations and there are no partitions or barriers separating the tables/chairs. During attorney visits, the facility has placed one table at one end of the room where an attorney can meet with a client individually; our other clients we are scheduled to meet with that day are kept lined up on chairs at the other end of the room with the guards sitting next to them. There are also steel doors operated by central control, with one door located near a buzzer that causes frequent interruptions because of the loud sound each time the door opens/closes and another door that is

generally propped open. The doors in this room appear to be the main way to enter and exit the facility, and is a heavily trafficked area. During a recent visit in July 2022, in the hour or so I spent meeting with two clients, I noticed about 10 guards come and go through those doors. There are also vending machines in this multi-purpose meeting room which increases the foot traffic as guards come in and out to purchase snacks.

17. The other attorney-client visitation space at River is a smaller room; I last met clients in this smaller room about a year ago. In late June or early July 2022 when I visited River, I asked whether they use the smaller room for attorney-client visits and the staff responded that they were using the room for consular visits at that time. As I recall from my experience, in that room there is a long table built into the wall (it looks like a bench) with four seats on the attorney and client sides and partial dividers between the seats on the client side only. There is a plexiglass wall between the attorney and client, which prohibits any physical contact during visits and makes it very difficult for attorneys and clients to hear each other and nearly impossible to review and/or exchange documents during the meeting. There is also an echo in the visitation room, and on the other side of the wall of the visitation room there is a bathroom with the toilet repeatedly flushing. When I was last in this visitation room about a year ago, this spot on the side of the wall next to the bathroom was the only seat available; the other plexiglass walls were boarded up or otherwise covered. In addition, when I have been in this room, I have been able to hear everything going on outside of the room even with the doors closed, making it all the more difficult for my clients and I to hear each other. There is also a risk that the attorney-client meetings in this visitation room are not confidential because there is no separation between the seats.

18. By design, the attorney-client meeting spaces at River make confidential conversations impossible. Because the multi-purpose room where I have been meeting clients is an open area, all other individuals in the room—including other clients and facility employees—are privy to the conversations ISLA attorneys have with their clients. As a result, clients must write notes or lean in and whisper when the conversation turns to private topics that the client does not want a guard to overhear. Moreover, the meeting space is located in a high-traffic area within the facility through which different staff and other detained individuals frequently pass. Accordingly, our clients are unable to have open conversations with us and often feel uncomfortable sharing sensitive details about their experiences that may be crucial to their cases or petitions.

19. For example, because we were not in a private, confidential meeting space, in July 2022, one of our clients was unwilling to discuss the anal bleeding he has been suffering from due to ruptured hemorrhoids. Our client informed me that he was experiencing some type of medical issue, and we wanted to learn more to see if we can use his medical condition as a basis for his parole request and in his bond application. However, due to the lack of a confidential in-person visitation space, combined with the lack of access to confidential legal telephone calls (at the time, I was unaware VTC calls were an option, considering that, as discussed below, I only found out about VTC calls at River a month and a half ago from other attorneys), our client was unwilling to share any details about this deeply private and potentially embarrassing health matter. Instead, he suggested I obtain his medical records, which I did by getting him to mail them to me (the facility refused to fax us his records). It took about 1.5 weeks to finally obtain his medical records, through which I learned about his ruptured hemorrhoids. Afterwards, I discussed his medical condition with

him through handwritten notes we passed back and forth during an in-person visit because he could not speak with me without risking others in the facility overhearing.

20. Because of the lack of any confidential means to communicate, I was required to take these additional steps—including spending 1.5 weeks obtaining his medical records in order to discover the relevant medical condition in the first place—that delayed the submission of his parole request, bond application, and other release-related advocacy based on his medical condition. Specifically for our client's bond application, if the in-person visits or legal telephone calls were confidential and my client could have shared his medical condition with me from the beginning, I could have and would have filed a bond application on his behalf almost immediately because copies of medical records are not as necessary for bond applications as they are for parole requests (because my client would have had an opportunity to testify as to his condition at a bond hearing, whereas a parole request is determined solely by the documents submitted). For our client's parole request, if I did not need to wait to obtain his medical records to discover his medical condition because of the confidentiality concerns that prevented our client from directly sharing his condition with me, I could have been conducting all of the additional preparation and required research related to his condition, including potentially consulting with a medical expert, while waiting for his medical records to arrive, allowing me to submit a parole request on his behalf much sooner. The delays caused by the lack of a confidential means to communicate ultimately caused our client to remain detained longer than he otherwise potentially would have. (He was ultimately released on bond, and his medical condition was part of his bond application).

21. In addition to the lack of private, confidential attorney-client meeting spaces at River, the facility does not permit attorneys to bring in laptops and printers. Instead, attorneys are only allowed to bring with them paper files and a pen or pencil. As a result, the efficiency of our visits is severely diminished because we are unable to draft and/or edit declarations and other case-related documents, and print them for the client's signature, during our in-person meeting time with the client. Because attorneys cannot bring laptops into in-person visits, ISLA attorneys need to expend extra time that could be otherwise spent preparing for our clients' cases if the facility permitted attorneys to bring this now ubiquitous technology. Other ICE detention facilities in Louisiana, such as Winn Correctional Center ("Winn") in Winnfield, permit attorneys to bring in laptops to attorney-client visits, demonstrating that this policy is feasible.

Lack of Timely Access to Legal Mail

22. ISLA attorneys are not able to send and receive legal mail to and from detained clients at River in a timely manner. In order to adequately represent clients and prepare for their upcoming hearings, including bond hearings, and comply with court deadlines, we must be able to send and receive documents in an expedient fashion.

23. However, at River, the process for sending and receiving legal documents via mail takes longer than average, and longer than it takes in our experience at other ICE detention facilities in Louisiana, such as Pine Prairie. At River, it takes more than a week for our mail to reach our clients.

24. At River, our clients must pay to send legal mail. The cost is dependent on the weight of the documents being sent.

25. Due to these difficulties with sending and receiving legal mail at River, ISLA attorneys cannot rely on legal mail for time-sensitive communications or documents that may require a prompt signature to meet a court filing deadline.

Lack of Access to Confidential Email/Faxing Ability

26. ISLA attorneys are not able to confidentially send or receive emails to detained clients at River. Although clients have access to a paid electronic messaging app called "JailATM," any messages sent or received on this app are not confidential and are subject to monitoring by the facility and/or the company that owns the app. As a result, we cannot use this app for confidential communications or to exchange legal documents with clients.
27. There is no alternative electronic-messaging or email access at the facility that would permit confidential communications between attorneys and clients.
28. In addition, there is no fax machine accessible to attorneys at the facility for sending legal documents via fax. River does not allow our clients to use the fax machines at the facility to send documents to us, nor does it allow us to use the fax machines to send documents to our clients. This is in contrast to other ICE detention facilities in Louisiana, such as Winn, Jena, and Pine Prairie ICE Processing Center ("Pine Prairie"), located in Pine Prairie which permit attorneys to send documents to clients via fax and vice versa.
29. Due to the lack of access to confidential emailing and faxing, the slow-paced and unreliable legal mail system described above is the only option available to ISLA attorneys to send and receive legal documents, short of visiting in person. However, because we cannot depend on the legal mail system, when we need to have time-sensitive documents reviewed and signed, we need to drive to the facility and do so in-person. The lack of a functional way to exchange legal documents short of an in-person visit also limits how many detained

people at River we can represent and restricts the quality of our representation because it prevents us from moving at a faster pace for our clients.

Lack of Access to Confidential Phone Calls

30. River has, in theory, a system for attorneys to schedule confidential phone calls with clients. However, this system is deeply flawed. To schedule a phone call, I send an email to the facility with the same information as I provide to set up an in-person visit, including our client's name, Alien Number, my license and bar card, and time I want to schedule the phone call. The facility requires 24-hour notice to schedule a legal phone call, just as it does for in-person visits. The facility then calls your number at the given time and connects the client. In early 2018, ISLA set up with ICE a legal phone line connected to our main office phone number, my cell phone number, and my colleague's cell phone number so that clients calling those numbers would not need to pay and those calls would be unmonitored. Recently, however, my colleague tried to also add the cell phone numbers of our legal fellows with ICE and was not able to, as ICE seemed unaware of this being permitted in the first place.

31. As noted above, phone calls at River are not confidential and private. Our clients have told us that their phone calls with us take place at a desk in a hallway. There are multiple desks in that hallway where guards are sitting doing work. The officer assigned to the client making the call remains present and nearby at all times, waiting for the client to finish the call and able to overhear everything the client is saying. If an attorney has requested calls with multiple clients for that day, other clients are also present in that hallway and can overhear the client's phone conversation. Clients who want to call us can directly do so using the public phones in their dorms, but those calls do not take place in a private setting.

If clients want to speak with us over the phone in a private space, they need to contact their case manager, who will then contact us to schedule a legal phone call—which will take place, as mentioned, in the open hallway setting that is also not private and confidential.

32. Clients do not have any alternative methods of privately communicating information to their attorney over the phone regarding, for example, difficult conditions or abuse they may be experiencing at the facility. Indeed, clients have explicitly told us they do not feel comfortable speaking over the phone with ISLA attorneys because it is impossible to share sensitive details over the phone. This was the case with our client in the example above in paragraphs 19 and 20, who told me he did not feel comfortable discussing his medical condition over the phone because of the lack of privacy.

33. In addition to the lack of confidentiality, the audio connections on the telephone lines at River are highly unstable. There are sometimes static issues that make it difficult for us to hear our clients and vice-versa, and I have had calls with clients drop a few times. Furthermore, the facility does not permit attorneys to speak with clients immediately if we call and request to speak with a client. The requirement to schedule phone calls in advance limits our ability to address emergent situations or have urgent conversations with clients.

VTC Access at River

34. For most of ISLA's time representing clients at River, ISLA attorneys were unable to conduct any VTC calls with detained clients at River because the facility and ICE never informed us that this was possible. Indeed, ICE has not made publicly available *any* information on how attorneys can communicate with clients at River, or other ICE detention facilities in Louisiana. We have only been able to learn how we can communicate with people held in ICE custody in Louisiana through our own research. At River, we only

discovered about a month and a half ago from other attorneys with clients at River that VTC is available at all for attorney-client visits and by proactively asking the facility to set up a VTC call, without knowing whether they would agree. At Jena and Pine Prairie, which have had legal VTC access since at least 2019, there are handouts posted on the walls at the facilities that give instructions for setting up legal VTC calls; River has not posted any such information either in the facility or online. The fact that ICE already has a designated website for most detention facilities, including River,[1] demonstrates that it is entirely feasible for ICE to make information about VTC access, as well as other means of attorney-client communication, publicly available.

35. To set up a VTC call with a client detained at River, I emailed the facility requesting an attorney visit via video-teleconferencing, providing mostly the same information I would to set up an in-person visit or to schedule a phone call, including my five clients' names, their Alien Numbers, my license and bar card, the time I wanted to schedule the VTC call, as well as a Zoom link. The requirement for me to send my own Zoom link is inconsistent with the practice at Jena, where the facility sends a calendar invite with their meeting link whenever I need to schedule a VTC call, and the procedure at Pine Prairie, where the facility will confirm your scheduled VTC call and call you via Skype at the time the call was scheduled.

36. I logged on the Zoom link at the scheduled time for the VTC visit, and no one was on for the first fifteen minutes. Around thirteen minutes into waiting, I called the facility's main office phone number to ask about my VTC call that I had scheduled, after which they put me on hold to check and about two minutes later my client was on the VTC call. My client

[1] https://www.ice.gov/detain/detention-facilities/river-correctional-center.

was in a small, windowless room with the computer for the VTC call on a fold-out table, and the door was closed. During the call, my client informed me that the other four clients I also had scheduled VTC calls with were lined up and waiting directly outside the door to the room where our call was taking place. Guards would pass by every so often to check in through the window in the door to see if the VTC call was still going on.

37. With both VTC and phone calls, there is no way for us to immediately connect with a client if we need to and cannot meet in person. To our knowledge and in our experience, both phone calls and VTC calls, as well as in-person visits, need to be scheduled by at least 3:00PM the day before we want the visit to take place. As a result, ISLA has sometimes needed to wait more than 32 hours (the day after the following day) before being able to talk with a client even if an earlier conversation is required. For example, ISLA has clients at River who are transported to local hospitals or health clinics for medical appointments. We are not informed in advance when a client is going to be transported for a medical appointment or how long the client will be away from the detention center. As a result, we have scheduled in-person legal visits with clients who—when we arrived at the facility for the visit—were unavailable to meet with us at the scheduled time because they were transported to a medical appointment without letting us know, making it impossible for our attorneys to properly schedule an in-person visit with them. During these times, being able to connect with our clients remotely—either through VTC or a phone call—without needing to schedule by at least 3:00PM the day before and having a prompt confidential conversation would not only avoid delays and denials of in-person visits, but also allow us to timely discuss our client's medical care and how that may affect their case.

Conclusion

38. Because of the above-described obstacles to attorney-client communication, ISLA attorneys are hampered in their ability to provide legal representation to clients at River. The lack of access to email and fax; confidential, private telephone calls; confidential, private in-person meeting spaces, and up until very recently, VTC calls, require ISLA attorneys to expend double the amount of time, money, and resources to represent clients than we otherwise would. The obstacles to attorney-client communication at the facility also significantly impair ISLA's organizational mission to provide the highest quality direct legal representation to individuals detained at River. If these obstacles did not exist, not only would we be able to better serve our clients, but we would also be able to represent more detained individuals, in furtherance of our mission. These obstacles have actively and directly prevented ISLA from being able to represent approximately twice as many additional prospective clients detained at River.

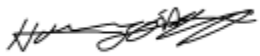
39. Basic improvements to attorney-client access at River are necessary for ISLA attorneys to provide adequate representation to existing clients and fulfill ISLA's objectives. These improvements include access to confidential, private meeting spaces with clients where the attorney-client privilege is honored; access to free, confidential emailing and faxing for attorneys to exchange legal documents and written communications; the ability to visit clients in person without needing to schedule the visit in advance; the ability to bring laptops and printers to in-person client visits; the ability to promptly connect with clients over the phone to conduct time-sensitive conversations that take place in private settings and cannot be overheard by guards or others; ICE timely making information and updates

about attorney access at River publicly available; and the ability to visit clients in person at non-business hours in light of the required travel time.

40. I have observed that our clients at River face several obstacles that prevent them from being able to bring lawsuits or pursue relief in court on their own. Because of the restrictions on access to counsel, most people detained at River would need to proceed pro se in order to bring claims in court. However, their abilities to do so are severely constrained by the fact that most of them do not speak English, have a limited understanding of the U.S. legal and immigration systems, and generally lack access to legal aid resources except for those provided in occasional Know Your Rights presentations. Our clients at River are also often unwilling to sue ICE or other government officials due to fear of retaliation, and are unable to access outside resources, such as medical experts, as required to support their claims and provide corroborating evidence. As a result, it is impractical for our clients at River to even adequately prepare bond applications and parole requests on their own, let alone a federal lawsuit challenging conditions of confinement like inadequate access to counsel.

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

Executed this 2nd day of November, 2022, in New Orleans, Louisiana.



Homero López, Jr.

DECLARATION OF JAVIER HIDALGO,
THE REFUGEE AND IMMIGRANT CENTER FOR EDUCATION AND LEGAL SERVICES

Pursuant to 28 U.S.C. § 1746, I, Javier Hidalgo, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in the states of New York and Texas.

2. I am currently employed as Director of Pre-Removal Services with the Refugee and Immigrant Center for Education and Legal Services (RAICES). I have been an attorney at RAICES since August 2018, and Director of Pre-Removal Services since January 2022. RAICES's Pre-Removal Services team is based out of San Antonio, Texas.

3. I make this sworn statement based upon personal knowledge, review of files and documents regularly maintained by RAICES, as well as reliable information supplied to me by RAICES colleagues and staff that I supervise.

4. RAICES is a 501(c)(3) nonprofit agency based in San Antonio, Texas, that promotes justice by providing free and low-cost legal services to underserved immigrant children, families, and refugees. With legal services, social programs, bond assistance, and an advocacy team focused on changing the narrative around immigration in this country, RAICES operates on the national frontlines of the fight for immigrants' rights.

5. RAICES provides pro bono legal services to low-income immigrants, including immigrants in immigration detention. RAICES provides legal services to people in detention facilities across Texas, including Laredo Processing Center (Laredo), located at 4702 East Saunders, Laredo, Texas 78401.

Obstacles to Access to Counsel at Laredo

6. RAICES provides representation to individuals detained at Laredo in bond hearings, parole requests, requests for release under *Fraihat v. ICE*, [1] and requests for Immigration and Customs Enforcement (ICE) supervisory review of release requests, as well as expedited removal proceedings. The RAICES team that provides these services at Laredo currently has five attorneys, including myself, four legal assistants, three data entry staff, and an administrative assistant. All attorneys on this team provide representation at Laredo.

7. Since 2021, RAICES has represented approximately 18 people detained at Laredo. However, as a direct result of the obstacles to attorney-client communication described herein, in April 2022, RAICES paused new intakes of individuals detained in Laredo. If it became easier to communicate with clients at Laredo, RAICES would resume taking new cases at the facility.

8. While RAICES has a staff presence in Laredo, Texas, those staff members are restricted by grant funding from working with detained populations, including RAICES clients detained in Laredo. The closest RAICES offices that provide the legal services needed by individuals detained in Laredo are in San Antonio, Texas. Laredo is at least 170 miles, or a three- to four-hour drive, from RAICES's San Antonio offices. For that reason, attorneys in those offices must rely almost exclusively on remote representation to serve clients detained at Laredo.

9. RAICES's ability to provide legal services is severely constrained by the difficulties we face in communicating with people detained at Laredo. These barriers to communication include the lack of access to legal video-teleconferencing (VTC), no reliable method to schedule legal

[1] Pursuant to a preliminary injunction in *Fraihat v. ICE*, 9, 445 F. Supp. 3d 709 (C.D. Cal. 2020), *rev'd and remanded*, 16 F.4th 613 (9th Cir. 2021), ICE was required to conduct custody redeterminations for detained individuals with certain risk factors that made them more vulnerable to COVID-19.

telephone calls that take place in a private space, fifteen-minute time limits and lack of a private space for outgoing telephone calls to attorneys by clients, delays in legal mail such that mail cannot be used for time-sensitive proceedings, in-person visitation rooms that do not allow for confidential communications, and lengthy waits for in-person visits because the facility has only two attorney-client visitation rooms.

10. These barriers to attorney-client communication at Laredo mean that our attorneys have to spend more time on each case in order to provide adequate representation, which reduces our capacity to take other cases in general and at Laredo in particular. Overcoming these obstacles to visit just one client means that a remote meeting at Laredo takes, at minimum, double the time and resources from RAICES staff as meeting a client at any other detention center where Pre-Removal Services currently operates.

11. The delays and difficulties in contacting detained clients causes significant harm to detained clients at Laredo, because delay in collecting information necessary to support a claim for release may prolong a client's detention. To make an effective request for release, either to ICE or to an immigration judge, we need to gather a range of information from our clients, including details about their ties to the United States, their immigration history, the merits of any claim to immigration relief (a stronger claim for relief makes release much more likely), details about any criminal history and mitigating circumstances, and information about any specific vulnerabilities or unique characteristics that render a client particularly at risk in detention (such as physical or mental health conditions, sexual orientation or gender identity). To gather this privileged information, much of which is highly sensitive, we need to have confidential conversations with our clients—frequently multiple conversations—as well as time to gather

supporting records. Any obstacles to having those conversations delays our ability to make a compelling request for release from ICE or prepare for a bond hearing.

12. For example, we had a female client who suffered from painful cysts that were exacerbated by the fact that ICE had taken away her birth control medication, as well as chronic sinusitis—conditions that ultimately formed the basis of our request for release with ICE. Due to past trauma, she was only comfortable speaking with female RAICES staff. But delays in scheduling private calls slowed our ability to gather and document this important medical information, which in turn delayed our release request and unnecessarily prolonged our client's detention. The local ICE office initially denied our release request, but ICE eventually released our client after we sought supervisory review. Were it not for the delays caused by access barriers, our client would have been released sooner.

13. RAICES' detained clients at Laredo and other ICE detention facilities are generally unable to bring federal lawsuits themselves to challenge barriers to attorney access. They frequently do not speak English, have a limited knowledge of the U.S. legal system, have no access to legal resources beyond those provided by RAICES, and/or may be removed before they can initiate litigation. In addition, our detained clients are often hesitant to sue federal immigration authorities themselves, given that they are in federal custody and worry about retaliation. All of these limitations are exacerbated by the barriers to attorney access in detention. What limited access RAICES' clients have with their attorneys is used to prepare for the more immediate demands of their immigration cases, including their bond proceedings or parole requests.

14. RAICES provides legal services to individuals at several detention centers. It is impossible to schedule and execute meetings with multiple clients at different detention centers

when counsel cannot make a firm appointment to meet with their client over the phone. Under the current system at Laredo, attorneys are forced to keep large blocks of time open and available in order to have the best chance of speaking with a client at Laredo whenever a telephonic meeting can actually be facilitated. We have canceled or rescheduled other visits with clients in other detention centers in order to remain available for a call from Laredo. Even then, we might still not be able to speak with our client at Laredo. This limits our ability to have remote visits with other clients at other detention centers and greatly limits the number of clients we can speak with in a business day.

15. Because of these obstacles, we have experienced a significant negative impact on our daily operations and ability to provide services to our clients at Laredo and at other detention centers. When taking into consideration the time needed to arrange a telephone call with clients, continuing to take cases at Laredo proved to be too onerous for our team. We had to make the difficult decision to pause taking cases at Laredo. Were these obstacles to counsel removed, RAICES would resume taking cases from Laredo. This pause in our services due to lack of access frustrates our mission to provide legal services to detained immigrants in Texas detention facilities. It also deprives detained immigrants the benefit of free legal representation and services from RAICES.

Lack of VTC Technology

16. Unlike other detention facilities in Texas, Laredo does not offer access to VTC technology for attorney-client visits. VTC technology, if the video and audio are of sufficient quality and the calls are private, provides an important way to communicate with clients, develop attorney-client trust and rapport, and allow clients to discuss sensitive details of their cases. It is more difficult to communicate with clients, especially clients we are unable to meet with in

person, when we cannot see each other's faces.In addition, lack of access to VTC prejudices clients by creating an obstacle to robust psychological evaluation. Psychological evaluations are often crucial in our representation as many of our clients have experienced significant trauma or suffer from untreated mental health conditions, all of which can impact important aspects of their claims for release and eventual relief. While attempting to coordinate a psychological evaluation for one client in support of her request for release and reconsideration of a negative credible fear determination, a RAICES attorney was unable to pre-schedule an evaluation and thus was unsure if the psychological evaluation would be possible at all given the psychiatrist's schedule. Although the evaluation was able to take place, the psychiatrist expressed that the lack of VTC made it impossible to evaluate the body language and facial expressions of the client, which are essential pieces to a psychological evaluation. This undermined the strength of the evaluation. ICE denied our request for release and our client was ultimately deported.

Inadequate Telephone Access

17. There are only two ways to talk to clients on the phone at Laredo. Neither are sufficient for effective attorney-client communication.

Calls from Public Phones

18. The first method for attorney phone calls at Laredo requires a client to call an attorney using a free hotline set up by RAICES Pre-Removal Services from a telephone located in a public, non-confidential setting in the housing units at the facility. The line operates in all the detention centers that Pre-Removal Services serves, including Laredo. RAICES pays $4.99 per month for the line, $109.99 per month for the first 5,000 toll-free minutes, plus $100.00 per month for each additional 2,565 toll-free minute bundle. The cost to maintain the hotline in July

2022 was approximately $582.41. Even though RAICES pays for the hotline, the Laredo facility limits these calls to 15 minutes, so after 15 minutes the call automatically drops. When the call drops, an automated voice in Spanish and English announces the call has dropped. Several Haitian Creole-speaking clients were disturbed by this message, which they could not understand, because they thought someone had been listening to their call. Clients are often confused by the frequent cut offs, and several minutes at the beginning of the next call are used to explain the phone system and why the call was cut off, leaving very little of the 15-minute call for substantive discussions. In addition, even when clients understand why the calls are cut off, they are often distracted by the abrupt ending to the call or were cut off in the middle of a sentence without realizing, and cannot recall what they were about to share. As a result, clients lose their train of thought, or counsel does not hear part of what they related, leading to a loss of information and spending time on the next call retelling what was said on the last call.

19. In addition, calls on RAICES's free hotline cannot be scheduled. Instead, attorneys must leave several messages with facility staff requesting a time and date for the client to call from their housing unit and hope that the message is successfully delivered to the client. The facility does not inform the attorney whether they have delivered the message to their client, or whether the client has confirmed they will call the attorney. As a result, this message delivery system is not reliable. Attorneys will call repeatedly over the course of a day to request that a message is delivered. Sometimes, a client will eventually call, but often not at the time the attorney originally requested. Clients frequently report that despite the several messages left by the attorney with the facility, the client received only one message.

20. While calls to the RAICES hotline from the public phones are not recorded and are free, this is only because RAICES provides a free hotline approved by Talton, the telephone service

provider. However, it is impossible to have a confidential call on the hotline—other detained people and guards standing near the phone can hear our clients on the phone. The sound quality on these calls is also frequently bad – the sound may be garbled, full of static, or includes an echo that makes it very difficult to communicate.

21. The lack of privacy, time limits, and poor quality of the calls make it extremely difficult, if not impossible, to have a meaningful conversation with a client calling our free hotline, especially when it is necessary to discuss sensitive details of a client's case. For example, our clients, a lesbian couple at Laredo, experienced harassment and threats of violence from other detainees on account of their sexual orientation. Because of the lack of confidentiality for these calls, and the long delays to schedule private calls with the facility (discussed further below), it took several meetings for these clients to feel comfortable enough to express to counsel their sexual orientation. Our clients could not convey details regarding the harm they suffered because they were lesbian women due to the fact that other detainees could overhear their conversations with us and would insult and threaten to harm the clients whenever their sexual orientation was brought up on phone calls with us. Our ability to advocate for and request that the facility separate and protect them from the other detainees was thus delayed, causing them to face entirely avoidable harassment and threats, because the communication barriers at Laredo made it nearly impossible for us to discuss with our clients the harassment they were suffering and options for how they wished to request changes while in detention.

22. In addition, it is very difficult to conduct these truncated calls with an interpreter, because the interpreter must wait on hold on a third-party line each time the call drops, and then reorient the client when he or she calls back.

Attorney Phone Calls

23. The second method to communicate with a client by telephone at Laredo is to arrange for a private attorney phone call. However, there is no reliable, consistent way to schedule these calls in advance. RAICES attorneys have tried different approaches to arrange legal phone calls at Laredo that are unmonitored, but also take place in a private room. Our team generally arranges these calls through a facility employee responsible for setting up private legal visits. However, this process is unreliable and full of problems. On at least one occasion, that employee unilaterally decided that a client call from a public phone line in the housing unit to an unmonitored attorney line would suffice. A RAICES attorney spent hours clarifying that a private attorney call not only needed to be unmonitored but also made from a private place.

24. Even after that issue was finally resolved, the facility employee has refused to schedule legal calls in advance. Instead, to have a legal call in a private room on any given day, RAICES attorneys have to send a list of telephone visitation requests in the morning and follow up several times during the day to see if the scheduled calls can occur. The rooms where these calls happen are the same rooms used by U.S. Citizenship and Immigration Services (USCIS) to conduct asylum interviews. Whether or not the attorney can arrange a call on a given day depends on whether a room happens to be available. The facility generally does not tell attorneys in advance if a call will be possible on the day requested, so RAICES staff must remain available the entire day, in case the facility employee calls back with availability—sometimes with just five minutes notice. If the facility says that there is no availability that day, the attorney has to call again the next day. Often, the facility employee does not respond to visit requests for days at a time, then responds two to three days later saying that he will be calling the attorney in five minutes. Given the lack of timely response, RAICES attorneys have at times not been able to be immediately

available to take such calls, or have had to take the calls without adequate opportunity to review the client's case before beginning to speak to the client.

25. These communication barriers and delays at Laredo at times have produced frustration and mistrust in the attorney-client relationship: clients often believed that delayed communication was the fault of attorneys who did not attempt to contact them. The lack of scheduled phone calls also degrades the relationship because unexpected calls cause attorneys to be less prepared when speaking with their clients, due to their inability to sufficiently review client files in advance.

26. There are more examples of the difficulties faced by RAICES attorneys in scheduling legal calls at Laredo. For example, a RAICES attorney was forced to track down her clients' assigned Immigration and Customs Enforcement (ICE) deportation officer because the Laredo facility employee responsible for arranging legal calls failed to arrange the legal call. To do this, the attorney had to contact different deportation officers multiple times until she obtained the name and telephone number of her client's deportation officer. The attorney then called the assigned deportation officer and repeatedly pressed her to reach out to the facility employee responsible for arranging calls. Eventually, the deportation officer reached out to the facility employee. For a time, the attorney was able to schedule calls by emailing both the assigned deportation officer and the employee. However, when the client was assigned a new deportation officer, the attorney again had to track down that deportation officer and again press this new deportation officer to instruct the employee to facilitate the calls. The facility employee ignored the attorney's requests when the deportation officer was not involved.

27. Telephone protocols for scheduling legal calls at Laredo are not publicly available. RAICES staff have learned them from our informal experiences interacting with ICE and facility

staff to attempt to coordinate telephonic visitation. Telephone protocols are not posted at the facility, online, or in any other public place. When the one and only facility employee responsible for legal calls is on vacation or otherwise out of the office, there is no alternative way to schedule calls. This means that until that employee is back in the office, calls either may not be facilitated, or RAICES attorneys spend most of the day attempting to establish another way to try and schedule a call with their detained clients.

28. Our attorneys witnessed first-hand the negative effects of the lack of access to counsel on clients' mental health while they were detained at Laredo. At the onset of the COVID-19 pandemic, one of our attorneys worked with a client who was transferred from the Karnes detention center in Texas to Laredo. The client suffered severe trauma-induced and health-related problems, with symptoms consistent with post-traumatic stress disorder. Once the client was detained in Laredo, his mental and physical health eroded further because he could not consistently communicate with his attorney. He was increasingly depressed, had difficulty maintaining focus, and experienced increased incontinence. His illnesses severely impacted his ability to participate in his case. Our attorney had to call the facility every hour for four to five hours, if not longer, before the facility finally delivered the messages and the client called back. This client did not speak Spanish or English, and it is unclear how the facility conveyed our messages to the client, if at all, because facility staff only speak English and Spanish. At that time, the client was only permitted to make calls that lasted for approximately ten to fifteen-minute intervals, which caused unnecessary anxiety for him and considerable time was spent just trying to overcome the disruption of having to reconnect the call with the client, language interpreter, and attorney every few minutes. As the client's mental health deteriorated at Laredo, our attorney had to spend precious time providing emotional support for this client in order to

ensure the client could participate in his own case, further limiting the legal services we were able to provide to other clients detained at Laredo and elsewhere in the face of the access–to-counsel hurdles. On several occasions the attorney had to spend the better part of a day reaching out to ICE to request that they instruct the facility to arrange calls with this vulnerable client.

Delays in Legal Mail

29. Delays in legal mail and exchanging documents with clients detained at Laredo also hinder our representation and daily operations. The facility's internal mail delivery system is too slow for fast-moving cases and delays our ability to make release requests. A RAICES attorney has tried to send documents by FedEx, but there was a lag of several days between the package's arrival at the detention facility and delivery to the client. Guards open all mail – even mail marked "legal" – outside the presence of the detained person.

30. Unlike at other ICE detention facilities in Texas, including Karnes and the South Texas ICE Processing Center in Pearsall, Texas, it is generally not possible to send or receive faxes from clients detained at Laredo. It appears to depend on the particular guard on duty and there is no clear policy about faxing documents.

31. Unlike at other ICE detention facilities in Texas, such as T. Don Hutto Residential Center, it is not possible to email documents for clients detained at Laredo to review, sign and return. People detained at Laredo have no access to email.

Obstacles to In-Person Visitation

32. It is generally cost- and time-prohibitive for RAICES attorneys to go to Laredo. The time it takes to travel between our office to Laredo is three to four hours each way, resulting a total of up to eight hours to visit the facility. However, on a few occasions we have made the trip because there was an urgent court-related deadline which required obtaining a client's signature.

In those instances, there were significant obstacles to attorney access. There are only two attorney visitation rooms for a facility with a maximum capacity to detain over 400 people, which can lead wait times that are over an hour. In our experience, there is no way to schedule an in-person visit in advance to avoid the wait.

33. There is no privacy in those visitation rooms because the walls are thin and allow sound to pass freely. The visitation rooms are right next to each other, and the waiting area is immediately outside the visitation rooms, so it is easy to hear what is said inside the visitation rooms. RAICES staff have been able to hear others' conversations inside visitation rooms while waiting outside the rooms and while meeting with clients. The facility prohibits attorneys from bringing in any technology to the detention center, so RAICES attorneys cannot use laptops or cell phones in their visits. As a result, attorneys cannot show electronic documents or simultaneously draft or edit declarations or other court documents during their all-day visit to the facility.

34. There is no telephone available in the visitation room for telephonic interpretation, and attorneys are not permitted to bring in cell phones to legal visits. Instead, attorneys must arrange to bring in an interpreter in person, who must first be approved by ICE, in a process that can take between six months and one year. It is often impossible to find interpreters for less common languages, such as Russian, who are available and willing to travel to rural Laredo. These problems with in-person visitation make it virtually impossible to meet with clients who do not speak their attorney's language. For example, in a case involving a bond application for a Haitian woman, the RAICES attorney did not speak Haitian Creole, so the client had to bring another detainee who spoke fluent in Haitian Creole and knew some Spanish, so that our attorney and her

client could communicate. We could not arrange for an in-person interpreter and there is no option for telephonic interpretation.

Conclusion

35. Because of all these obstacles, RAICES has struggled to meet our clients' needs and was forced to pause taking new cases from Laredo. As a result, inadequate access to counsel at Laredo directly harms RAICES's organizational mission and daily operations, which include providing the highest quality direct representation to detained immigrants at Laredo and other facilities in Texas.

36. Certain basic attorney access improvements, such as providing access to private VTC calls, promptly scheduling private attorney calls of at least two hours, ensuring timely mail delivery within the facility, permitting detained individuals to fax or email documents to their attorneys, increasing the number of attorney visitation rooms that provide real privacy, providing access to a telephone line during in-person visits to allow for telephonic interpretation, and permitting attorney to bring technology such as laptops and cell phones into the visitation room would significantly address the issues RAICES faces representing clients at Laredo, would reduce the harm caused by the currently-existing access-to-counsel barriers on RAICES's daily operations, and allow RAICES to resume accepting new cases at Laredo and represent more detained immigrants in Texas.

I declare under the penalty of perjury that the foregoing is true and correct. Executed this 15th day of November, in San Antonio, Texas.

Javier Hidalgo

DECLARATION OF JAVIER N. MALDONADO, LAW OFFICE OF JAVIER N. MALDONADO, SAN ANTONIO, TEXAS

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

2. I am a licensed attorney and member in good standing of the Texas bar. Since March 2006, I have been in private practice representing individuals in criminal and immigration cases, as well as employment discrimination matters. For eight years, until 2021, I was on the Criminal Justice Act panel for the Western District of Texas, taking court-appointed criminal cases. At present, I take only private criminal defense cases. Prior to starting my private practice, from 2001 to 2006, I served as the Executive Director of the Texas Lawyers' Committee for Civil Rights Under Law. From 1999 to 2001, I worked as a Trial Attorney for the San Antonio Office of the Equal Employment and Opportunity Commission. Before that, from 1996 to 1999, I was a staff attorney with the Mexican American Legal Defense and Education Fund (MALDEF).

3. I have represented and currently represent clients in criminal custody with the United States Marshals Service (USMS) in Karnes County Correctional Center (Karnes), located at 810 Commerce Street, Karnes City, Texas, 78118. I have represented clients at Karnes since it became a USMS facility approximately 10 years ago. In my experience, Karnes has been accommodating to ensure attorney access, including procedures to schedule telephone calls, to conduct in-person visits in private attorney visitation rooms, and to send documents by email to the facility for my client's signature and return by fax. On some occasions, USMS will call my office to let me know one of my clients needed to speak with me.

Telephone Access

4. Karnes has a designated point of contact for scheduling attorney calls. My assistant will call a designated staff person and provide the name of the client and proposed dates and times for the scheduled calls. Usually, the facility will arrange the call within 2 to 3 days, but if it is a time-sensitive call, they are accommodating. Recently, I had a client who had a hearing the next day and the facility promptly arranged the call. There is no time limit on these calls. The calls are free and on an unmonitored line. It's my understanding that my clients make these calls from a separate room, though my clients have reported that sound can travel to people outside the room.

In Person Visitation

5. In-person visits occur in one of approximately five private attorney visitation rooms. These visits are contact visits, which allows for me to exchange documents with my clients. I can request permission to bring my laptop into the visit (such as when I need to review discovery with my client) from one of the officers in charge at the facility. Attorney visits are scheduled in advance, typically 2 to 3 days before a visit. However, as with scheduling

telephone calls, I have found Karnes to be accommodating of requests for urgent in-person meetings.

Access to Legal Documents

6. I generally use postal mail to send documents to my clients, and in my experience, clients receive mail in a timely fashion without more delay than the typical time it takes with the postal mail system. However, for time-sensitive documents that require a client's signature, Karnes facility staff will accept documents I send by email, obtain my client's signature, and fax those documents back to me.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of October, 2022 in San Antonio, Texas.

Javier N. Maldonado

DECLARATION OF JAVIER N. MALDONADO, LAW OFFICE OF JAVIER N. MALDONADO, SAN ANTONIO, TEXAS

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

2. I am a licensed attorney and member in good standing of the Texas bar. Since March 2006, I have been in private practice representing individuals in criminal and immigration cases, as well as employment discrimination matters. For eight years, until 2021, I was on the Criminal Justice Act panel for the Western District of Texas, taking court-appointed criminal cases. At present, I take only private criminal defense cases. Prior to starting my private practice, from 2001 to 2006, I served as the Executive Director of the Texas Lawyers' Committee for Civil Rights Under Law. From 1999 to 2001, I worked as a Trial Attorney for the San Antonio Office of the Equal Employment and Opportunity Commission. Before that, from 1996 to 1999, I was a staff attorney with the Mexican American Legal Defense and Education Fund (MALDEF).

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I declare under penalty of perjury that the foregoing is true and correct. Executed this 11th day of October, 2022 in San Antonio, Texas.

Javier N. Maldonado

DECLARATION OF LAURA ST. JOHN,
FLORENCE IMMIGRANT & REFUGEE RIGHTS PROJECT

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

1. I am a licensed attorney and a member in good standing in both the California and Arizona bars. I am currently employed as the legal director of the Florence Immigrant & Refugee Rights Project ("Florence Project" or "FIRRP"). I have practiced as an immigration attorney with FIRRP since March 2011.

2. Founded in 1989, FIRRP is a 501(c)(3) non-profit law firm that is dedicated to providing free legal and social services to the thousands of adults and children detained in immigration custody in Arizona on any given day. As the only 501(c)(3) non-profit organization in Arizona dedicated to providing free legal services to people in immigration detention, our vision is to ensure that every person in detention has access to counsel, understands their rights under the law, and is treated fairly and humanely.

3. I have practiced as an immigration attorney in Arizona with FIRRP for over a decade. Within FIRRP, I have worked as a staff attorney, managing attorney, and legal director providing free legal services to adults who are detained in Immigration and Customs Enforcement ("ICE") custody in Florence and Eloy, Arizona. I have served in my current position as legal director since December 2015. During my time at FIRRP, I have personally provided free legal services, both direct representation and pro se support, to hundreds of individuals held in ICE custody at the Central Arizona Florence Correctional Complex ("Florence Correctional Center" "Florence" or "FCC"), located at 1100 Bowling Rd., Florence, Arizona. Additionally, as a managing attorney and legal director I have supervised attorneys, legal assistants, and social workers who have provided free legal services, both direct representation and pro se support, to thousands of individuals held in custody at FCC.

I. Florence Project's Mission and Scope

4. FIRRP provides high-quality immigration legal services and education to the thousands of people detained in immigration custody in Arizona every year. Our attorneys and legal assistants provide detailed legal orientation and technical support to thousands of detained *pro se* respondents each year, including group orientations and workshops that enable people to represent themselves in bond hearings, parole requests, credible and reasonable fear interviews and reviews, and removal proceedings.

5. Our attorneys represent hundreds of clients each year, focusing primarily on immigrants who are held in geographically isolated detention centers in Eloy and Florence, Arizona. FIRRP staff provide free legal services in the form of pro se orientation, workshops, pro bono screenings, and other pro se support each year to thousands more. Our staff provide free legal services and representation before immigration courts, Board of Immigration

Appeals ("BIA"), and federal courts. Our services include all matters relevant to detained individuals before the immigration agency including bond proceedings, requests for parole, petitions for release from detention due to COVID-19 medical vulnerability, expedited removal, credible fear interviews, reasonable fear interviews, and removal defense. FIRRP has also represented detained people in challenges to conditions of confinement through civil litigation in federal district court, including for failure to provide adequate safeguards to the COVID-19 pandemic, complaints regarding conditions of confinement with the Department of Homeland Security's Office of Civil Rights and Civil Liberties and other oversight agencies, and federal habeas corpus and mandamus petitions. We also partner with other organizations bringing federal litigation to identify individuals impacted by unlawful government practices and facilitate their participation in such lawsuits. In 2021 alone, FIRRP's adult program directly represented 249 people who are or were detained in Arizona's ICE detention centers.

6. FIRRP also provides representation before U.S. Citizenship and Immigration Services ("USCIS") for family-based petitions for individuals who are eligible to adjust status before the immigration judge ("IJ"), U-visas for victims of crime, T-visas for victims of trafficking, and Special Immigrant Juvenile Status ("SIJS") for unaccompanied minors who qualify to seek such relief under the Trafficking Victims Protection and Reauthorization Act (TVPRA). FIRRP attorneys also serve as appointed counsel for individuals deemed mentally incompetent to represent themselves in removal proceedings and, working with support from our legal assistants and social workers, maintain a caseload of just over one hundred such clients throughout Arizona under the National Qualified Representative Program ("NQRP").

7. FIRRP maintains a staff of more than 150 attorneys, legal assistants, social workers, and support staff dedicated to providing legal and social services to the approximately five thousand detained adults and children in Arizona on any given day. Our adult program provides services to adults in Arizona's ICE detention facilities. FCC is one of the three currently operational ICE detention facilities in Arizona. Our adult program staff who work regularly in the ICE detention facilities is comprised of approximately 30 attorneys, 2 BIA accredited representatives, 20 legal assistants, and 6 social workers. Our staff are based in main offices located in Phoenix, Tucson, and a small administrative office in Florence, Arizona.

8. FIRRP also has a robust *pro bono* program that places numerous cases with volunteer attorneys. In 2021, FIRRP placed nearly 70 matters with volunteer attorneys and in 2020, FIRRP placed over 100 matters with volunteer attorneys.

II. Communication Barriers at the Florence Correctional Center

9. FIRRP provides *pro bono* representation to detained immigrants in ICE custody at FCC. The number of people detained by ICE at FCC has varied over time, but I believe that ICE maintains a capacity of between 450 to 1,000 beds at FCC at any given time, in addition to thousands of additional people held in U.S. Marshals custody in the same correctional complex. In 2022, from the beginning of the year through August 31, 2022,

FIRRP represented or provided free legal services to over 260 detained people at FCC. Indeed, over the past five years, FIRRP has provided free legal services to approximately 250 people, on average, at FCC annually. However, in 2020 and 2021, during the height of the COVID-19 pandemic, the numbers of clients we were able to serve were exceptionally low – only approximately 50 people in 2020 and approximately 180 people in 2021 – overwhelmingly due to the deeply flawed and insufficient systems in place for access to counsel through remote mechanisms at that facility.

10. FIRRP's ability to provide legal representation and free legal services to detained immigrants at FCC has been severely hampered by onerous limits placed on communication between attorneys and detained clients at the facility by phone, video-teleconference ("VTC"), in-person legal visitation, and mail. For example, current policies make it almost impossible for an attorney to call a detained client on the telephone at FCC. There is no way for a detained person to place a private and confidential call to an attorney from FCC. People held at FCC generally must use the phone banks in the housing units even for legal phone calls. These phone banks are in public spaces within the housing units and offer little to no privacy for sensitive legal calls. There is a "pro bono" telephone platform that is supposed to provide detained immigrants with free, confidential calls to their consulate, various government offices, and select legal service providers like FIRRP, but, as described below, that line is so difficult to navigate that many clients are never able to make calls.

11. There is no VTC program for people in ICE custody at FCC, unlike other facilities in Arizona. In-person legal visits at FCC take place between 8 a.m. and 4:30 p.m. in a single, large, but often crowded visitation room where tables are placed only feet apart, making it extremely difficult to hold a confidential conversation with a client. Attorneys are unable to use their cell phones during in-person legal visits and there is only one FCC phone made available to attorneys for interpretation upon request, which makes it difficult to call interpreters when needed.

12. There is no mechanism other than legal mail, such as a fax machine or email, to send or exchange documents with detained clients for review and signature. Legal mail is often severely delayed. Clients tell us that it can take two to three days to send mail from the facility and it takes an additional day to several days for FIRRP to receive the mail. In addition, the cost of postage can be prohibitive to detained clients, resulting in further delay and additional burdens on FIRRP who must either send pre-paid postage envelopes to detained individuals to complete the mailing, or have legal staff arrange for in person visits to collect legal documents directly from our clients.

13. These constraints have significantly affected FIRRP's ability to represent clients at FCC. First, these constraints affect FIRRP's ability to represent clients by increasing how much time is needed to prepare a case. Our attorneys estimate that these barriers can double the amount of time it takes to represent detained clients. Because of these communication barriers, attorneys are forced to conduct in-person visits for even the smallest aspect of case preparation, like checking minor details, asking a clarifying question, or confirming document receipt because there is no way to speak with detained clients on a private

phone call or VTC call. Attorneys who could otherwise complete intake interviews or brief legal visits via a private phone call or VTC call have no option but to visit the facility in person. This requires legal staff to delay other case work, including drafting documents and briefs, preparing for argument, or appearing in court.

14. FCC's geographic isolation further adds to the burden, as the facility is located approximately 70 miles from both Phoenix and Tucson, where all FIRRP attorneys are based. This distance adds two hours or more of driving round-trip, plus added time waiting to pass security and have the client brought to visitation, each time a FIRRP staff member conducts an in-person visit at FCC. FIRRP is likewise hampered in its ability to recruit volunteer pro bono attorneys able to represent detained clients at FCC given communication barriers and geographic isolation. As a result, FIRRP's ability to represent detained clients is severely constrained by FCC's policies, which ultimately reduces the total number of people that can receive our pro bono services.

15. Communication barriers at FCC also preclude FIRRP from representing detained people in urgent litigation and advocacy, including cases related to conditions of confinement. For example, FIRRP recently filed a federal lawsuit in U.S. District Court against ICE on behalf of medically vulnerable immigrants to raise issue with COVID-19 conditions at other Arizona ICE facilities. Based on reports from family members of detained people, we knew that conditions at FCC were dire. However, because of barriers that inhibit attorney-client communication, we were unable to reach medically vulnerable immigrants at FCC to discuss representation for the lawsuit. This not only affected FIRRP's ability to fulfill our mission and to conduct our work of representing detained immigrants, but also meant that medically vulnerable immigrants detained at FCC did not have the benefit of joining these lawsuits. In my experience, the vast majority of detained people, including our clients at FCC, are generally unable to bring federal lawsuits themselves, particularly because they may be new to the United States, may not be fluent in English, may lack deep knowledge of the legal system, and may not be present in the United States for the pendency of litigation. Some may also fear retaliation by ICE if they file a lawsuit.

III. Lack of Telephone Access at the Florence Correctional Center

16. It is virtually impossible for attorneys to use the telephone to communicate with detained clients at FCC. There is no way for attorneys to directly connect a call to a detained client at FCC at all, let alone on a phone in a confidential space on an unmonitored and unrecorded line. Nor is there a mechanism by which FCC helps facilitate pre-scheduled legal phone calls in a private, confidential space on an unmonitored line. Rather, attorneys must leave messages with FCC staff to pass along to detained individuals asking them to call the attorney back. The only way attorneys can speak to clients detained in FCC on the phone is if the client calls them from a phone in the common area in housing units.

A. The Client Message Delivery System Is Inadequate to Facilitate Attorney-Client Communication.

17. In order to communicate with detained immigrant clients at FCC by phone, legal staff must leave a message with the facility in a general voicemail box or send an email to the facility staff requesting that a detained client call them at a specified time and date. FIRRP staff typically provide a message with the client's full name and Alien Number, the FIRRP staff's name, organization, and phone number, as well as a preferred time and date for the client to call back. This message must be provided to the facility at least 24 hours in advance of the time we hope to receive a call from the client. We must then hope that a message is timely delivered to the detained client, and that the client is able to successfully place a phone call from their housing unit at the specified hour.

18. In our experience, legal staff must typically make several message requests before a detained client actually calls back from FCC. When we do hear back from clients, they often report that previous messages were either not timely delivered or not delivered at all. If clients call at a different time than that specified in the call-back request, the FIRRP staff member who requested the call may not be available to speak because they may be on another call, visiting other clients at the facility, or in court. In some instances, clients who do not speak either English or Spanish may not be able to understand the message provided by the facility. To make matters worse, some detained clients lack funds to call FIRRP staff and when they are finally able to connect to the pro bono platform for free, the calls drop frequently making it difficult for FIRRP staff to collect relevant information.

B. Calls from Detained Clients Are Never Confidential, Are of Poor Quality and Limited in Duration, and Are Prohibitively Costly.

19. Calls that detained clients make from housing units, including those made to attorneys, are never confidential. Telephones are located in the common area of the housing unit within earshot of other detained people and FCC staff. No separate phones are provided for legal calls. Clients must make calls to counsel on one of the approximately four phones available in each housing unit. The phones are mounted on a wall or in a central phone bank in the common area of the housing unit. They are only approximately two to three feet apart. Other detained people standing nearby or waiting in line can typically overhear what is being said on the phone and our staff have reported hearing substantial background noise from the housing unit and other voices over the phone when they are able to connect with clients on the phone, leading them to conclude that the call was not private. Because the phones are located in a large, open space in the housing unit, it can be difficult for our staff to hear what a client is saying if they are speaking in a lowered voice or if there is ambient noise. Detained clients are often hesitant to share highly sensitive, confidential, and privileged topics in this setting. This lack of privacy can lead detained clients to decline to share details important to their cases. Our legal teams may thus have incomplete or inaccurate information. As a result, our staff must often spend substantial time conducting in-person follow up visits to obtain basic case information.

20. Calls also can be limited in duration for a number of reasons, including interference from other activities in the facility, such as meals or count; the client runs out of money to pay for the call; high demand for the phone lines from other detained people; guards instructing people to hang up; or because the phone line simply cuts off for unknown reasons – a particular problem FIRRP staff have observed with clients who are calling through the pro bono platform. FIRRP staff have experienced calls that repeatedly disconnect after 15 to 20 minutes for no discernable reason.

21. In addition, calls from FCC often have poor audio quality. There is also often significant ambient noise that makes communication very difficult.

22. COVID-19 pandemic restrictions also have reduced access to telephones for those in quarantined housing units. In quarantine, people have reduced access to telephones and may be given very little time outside of their cells—sometimes less than 20 minutes per day—to shower, or make any phone calls (including those to family and friends). In our experience, it is not unusual for housing units that have been placed on quarantine or cohort to undergo a lengthy series of extensions of the quarantine/cohort period due to failure to manage the spread of COVID within the facility and housing units. These "repeat quarantines" can undermine our ability to communicate with individuals who are in those housing units because they cannot be brought out of quarantine for in-person visits and we must rely solely on telephonic visitation with all of its issues as well as added barriers depending on the level of lockdown in the unit.

23. When clients are able to call FIRRP from the housing unit, their calls are generally not free. There are three ways for detained people to make telephone calls at FCC. First, detained clients can pay for the call themselves. Depending on the type of call, a detained person at FCC must pay between $.07 per minute to a U.S. landline, $.11 per minute to a U.S. cell phone, $.15 to an international landline, up to $.22 to an international cell phone. These costs, however, can be prohibitively expensive, particularly for indigent clients. Moreover, a detained immigrant must set up an account and get a PIN to be able to make a phone call—a process that may take several days—before being able to pay for calls.

C. ICE's "Pro Bono" Telephone Platform Is Faulty, Complicated, and Functionally Impossible for Detained Clients to Use.

24. Detained clients can also try to make a call to FIRRP on the free pro bono platform. In theory, ICE has established a system for detained people to call their consulate, some government offices, and certain pro bono legal service providers like FIRRP for free. These phone calls are not monitored or recorded; however, as described above, they are not private as they are generally conducted within earshot of other detained people and FCC guards. Although FIRRP is a designated pro bono organization that can theoretically be reached for free from detention on the pro bono platform, the operation of the pro

bono phone line at FCC has systematically failed to ensure that detained people, particularly those without funds, can use the line.

25. The process to use the designated pro bono line is extremely complicated, involving a multi-step process where the detained person must enter numerous, lengthy numerical codes perfectly to successfully place a call. Given the complexity of this process, the pro bono platform can be functionally impossible to use, as detained clients often are unable to successfully place a call on the pro bono line. Specifically, the steps at FCC are as follows:

    (1) Select number for appropriate language;
    (2) Press "1" to make a call;
    (3) Enter detained individual's PIN number and the "#" sign;
    (4) Press 0 to make a speed dial call
    (5) Press the "*" sign and "467" and follow the voice prompts;
    (6) Reenter the number for appropriate language;
    (7) Enter the detained person's 9-digit A#. (If the A# is less than 9-digits, put a "0" before the A#);
    (8) Enter the speed dial number: 1845 and the "#" sign and wait for call to connect to the Florence Project.

26. ICE has created phone instructions that are posted in each unit by the phones, but those instructions are often incomplete or misleading. For example, the primary posting regarding phone calls states that making a call is "Easy as 1-2-3-," but this poster includes no information whatsoever about the pro bono line. Instructions about the pro bono line are available on a separate posting, but this posting is typically not posted within reading distance of the phones themselves, and is in much smaller font that is impossible to see from the phones. Moreover, even these published instructions are incomplete, only providing steps six through eight above, leading to great confusion. Because of the complexity of the process and the lack of clear instructions, and because guards also lack familiarity or willingness to assist with use of the pro bono line, detained clients often are unable to navigate the phone system and fail in their efforts to make free calls through the pro bono platform.

27. Even when a client successfully dials the pro bono line, FIRRP's rapid access code in ICE's pro bono platform can be affiliated with only one phone number for the entire organization, creating a bottleneck of calls to our main line while they are routed to the correct attorney. If a client attempts to use the pro bono platform to dial an attorney's direct number, the call will fail. If a client tries to use the pro bono platform to contact FIRRP outside of our main business hours from 8:30 a.m. to 5:00 p.m., the client can leave a message on the general line, but will not be able to be patched through to the correct attorney working on the case.

D. Restrictions on Telephone Access Significantly Hinder FIRRP's Ability to Provide Legal Services, Harms Our Detained Clients, and Imposes Additional Burdens on the Organization.

28. Restrictions on telephone access significantly hinder FIRRP's ability to provide legal services and representation, and harms our clients in detention. These barriers have generally reduced FIRRP's ability to represent clients, including in cases with exigent circumstances or short deadlines. These restrictions have also imposed additional costs on FIRRP.

29. The inability to schedule phone calls with detained clients at FCC seriously complicates our ability to provide services to "third-language-speakers"—people who speak languages other than English or Spanish. While all of our direct services staff members are bilingual in Spanish and English, we require interpreters to communicate with third-language-speakers. FIRRP staff regularly encounter third-language-speakers in detention, serving people who spoke 37 different languages in 2021 alone. Two major difficulties arise when we try to access third-language-speakers telephonically through the call-back request system.

30. First, it is unclear to what extent messages requesting a call back are even conveyed to third-language speakers in a language that they understand. ICE tells us that messages are relayed in English and Spanish, but has never confirmed that third-language-speakers receive call-back messages in a language they understand.

31. Second, even if a third-language speaker receives a message and calls FIRRP, this requires FIRRP to be able to (1) identify the caller's language over the phone and (2) obtain an interpreter on short notice to join the call. Because detained clients are rarely able to call FIRRP back at the time and date requested, it can be extremely difficult to obtain a telephonic interpreter without notice. Rare language interpreters, including for many indigenous languages regularly spoken by detained people held at FCC, have extremely limited availability and almost always require advance scheduling. Ultimately, the refusal to implement a system to schedule legal phone calls with detained individuals means that we often cannot communicate at all with third-language speakers by telephone. This, in turn, leads both to lengthy delays in the provision of meaningful services to third-language speakers and additional time lost driving to detention because we must conduct every visit with third-language speakers in person, no matter how minor the matter.

32. Telephone restrictions have also increased FIRRP's cost to communicate with clients via phone. Detained clients may place collect calls to contact FIRRP. Paid calls and collect calls, however, are also generally monitored and recorded by the facility as the default. Despite this limitation, FIRRP was forced to set up an account to accept and pay for collect calls from detained people because of the inability for so many detained people to use the pro bono line, and our inability to schedule calls with our clients. This has led to an undue expense to our non-profit organization, given the significant costs associated

with accepting collect calls.

33. These conditions have become even more difficult in light of the COVID-19 pandemic. Ongoing quarantines and cohorts in detention have limited in-person client access, making telephonic access to clients even more important. For that reason, FIRRP instituted specific hotline hours with dedicated staff members assigned to be on-call to accept calls from the detention centers. The maintenance of specific hotline hours with dedicated staff designated to answer calls in those times is a significant diversion of resources that FIRRP has had to make in response to the lack of more structured systems for facilitating telephonic visitation with clients at FCC.

E. FIRRP Has Repeatedly Raised the Issue of Inadequate Telephone Access with ICE, Leading ICE to Further Restrict Access at FCC.

34. FIRRP managers have communicated regularly with ICE and FCC officials regarding the need to improve telephonic access to individuals detained at FCC. FIRRP has also communicated with members of Arizona's congressional delegation, who have also expressed concern to both local and national ICE officials regarding the matter, and who have asked for improvements in attorney access in ICE detention facilities, including FCC.

35. FIRRP has repeatedly tried to overcome the communication restrictions at FCC, to no avail. For example, where possible, FIRRP has tried to improve detained individuals' understanding of the phone system at FCC. FIRRP recently created detailed and up-to-date instructions on how to access the pro bono phone platform, and obtained approval for posting them in the housing units. We mail copies of these instructions to every detained person at FCC. We also developed a Florence Project specific form that FIRRP staff email with our call-back requests to the facility laying out in detail all of the information for the requested call back and a brief explanation of who FIRRP is and what we do in an effort to help ensure FCC staff have complete information to convey to our clients regarding call-back requests. However, even after developing the form, clients continued to report that guards only told them that "your lawyer called you," without any other information when passing on call-back requests. Ultimately, despite FIRRP's efforts to improve the system, our staff continue to experience difficulty connecting with clients via telephone at FCC.

36. FIRRP has raised this issue in stakeholder meetings with ICE, where we have requested a system for scheduled telephonic legal visitation at FCC. Although two other ICE detention facilities in Arizona have offered scheduled telephonic legal calls, officials at FCC and ICE have told us that scheduled calls are not possible at FCC, largely due to lack of resources and cost. During a stakeholder call on March 10, 2022, the Warden at FCC asked if FIRRP would help pay to upgrade technology and put in additional phones to enable scheduled calls at the facility. Given FIRRP's status as a 501(c)(3) non-profit legal services organization, it would not be appropriate for us to fund ICE detention facility infrastructure.

37. It is clear that creating a system of scheduling legal phone calls is possible at FCC. In fact, the facility staff themselves have attempted to set up such a system, only to be abruptly blocked by ICE officials. In Spring of 2022, the Warden's Secretary at FCC, who coordinates the system for attorneys to leave messages requesting that clients call them back at a specific time, informed us that the facility was overwhelmed with the number of requests, and stated that the current system was unsustainable. Based on those concerns, in March 2022, FIRRP managers reached out to Assistant Warden Arlene Hickson, offering to discuss the possibility of a scheduled legal call system that could streamline telephonic visits and reduce the overall number of requests sent to FCC. We reached out to Assistant Warden Hickson in light of her prior instruction to reach out to her directly regarding phone issues in FCC. After we reached out to Assistant Warden Hickson, she put FIRRP managers in direct communication with the Warden's Secretary, Marie Rolfsmeier, to discuss and work out a mutually beneficial system for a limited number of scheduled legal calls. FIRRP managers also notified ICE's compliance officer, Justin Smith, of the system they were working out with FCC on March 25, 2022. At that time, ICE encouraged FIRRP to continue working on access with FCC directly. On March 29, 2022, FCC unit staff, the Warden's Secretary, and FIRRP managers agreed to a plan for a set number of pre-scheduled legal calls, to begin the first week of April, 2022.

38. On March 30, 2022, ICE abruptly blocked implementation of a scheduled call system at FCC. In a stakeholder meeting arranged by members of the Arizona Congressional delegation, FIRRP shared the positive development of a scheduled call system that was ready to implement in FCC. Present at that meeting with ICE Officer in Charge for the Phoenix Field Office over the Florence Detention Centers, Jason Ciliberti. Officer Ciliberti expressed surprise regarding the new plan for scheduled legal calls at FCC, even though FIRRP had notified ICE about the system five days before. While still in the stakeholder meeting, it appeared that Officer Ciliberti communicated by text and phone with FCC's warden. Officer Ciliberti then announced that no new system for scheduled legal calls at FCC would take place, and the plan for scheduled legal calls was not approved.

39. FIRRP noted to Officer Ciliberti our concern that he had vetoed a plan that had been arranged and approved by the Assistant Warden and the Warden's Secretary, who coordinates the call-back system. FIRRP also sent Officer Ciliberti follow-up emails documenting our communication, and the need to implement scheduled legal calls, in light of ICE's own COVID-19 Pandemic Response Requirements ("PRR"). However, as a result of ICE Officer Ciliberti's decision, the proposed system for scheduled legal calls at FCC was never implemented. While FIRRP continues to raise concerns about the need for the scheduled calls and increased access, ICE has consistently rejected those requests.

IV. Lack of VTC Access at the Florence Correctional Center

40. Unlike other ICE detention facilities, FCC has no program to allow attorneys to contact detained clients in ICE custody through VTC. This is in contrast with even the limited

VTC access that criminal defense attorneys tell FIRRP is available for federal pre-trial detainees currently held in criminal custody for the U.S. Marshals at FCC. Additionally, FCC has provided VTC services to people incarcerated in state custody at the facility in the past, when FCC held overflow prison populations from states other than Arizona.

V. Lack of Timely, Confidential, and Contact Legal Visits

41. In-person visitation at FCC is also generally not conducted in private or sufficiently confidential spaces. FCC has one, large, cafeteria-style visitation room for legal visits. The visitation room holds approximately 20 tables, placed only a few feet apart, where attorneys conduct visits with clients. It is extremely difficult for legal service providers to hold a confidential, private conversation with clients in this setting. Legal service providers and clients typically have to keep their voices down, and even then, it is easy to overhear what others in the room are saying. FCC is contracted with ICE to hold between 500 to 1000 detainees, and the facility also uses the same attorney visitation space for visitation with individuals in U.S. Marshals custody facing criminal charges. Although these populations are not supposed to mix within the facility, those in U.S. Marshal and ICE custody regularly await legal visits in the same visitation room at the same time, sitting in slightly different areas of the room.

42. Visitation hours at FCC are from 8 a.m. to 4:30 p.m. daily. FIRRP is not aware of any established procedure to accommodate visitation outside of these established hours. Attorneys are required to provide advance notice of the clients they will visit. Although FIRRP staff provide 24-hour advance notice of our visits, and provide the facility with a list of clients to be visited, FIRRP staff are typically not notified until their arrival if a client will actually be made available for the visit. FCC has stated that a client is unavailable due to quarantine, placement in a segregation unit, or because the client is allegedly refusing a legal visit. Because FIRRP staff drive approximately one hour each way to conduct legal visits at FCC, late notice that a client is not available for visitation can result in a significant waste of time and resources.

43. Attorneys are prohibited from bringing in cell phones for legal calls, which are a critical tool to provide interpretation during in-person visits. There is only one telephone available in the in-person visitation area at FCC for legal service providers to call interpreters to communicate with third-language-speakers. The phone is kept at the visitation guard's desk and is provided upon request. It is generally used at the normal visitation tables, where confidentiality is not possible. If an attorney asks for more privacy, FCC guards can allow a legal visit with the telephonic interpreter to take place in the hallway that detained individuals use to enter and exit the visitation room. However, that space is likewise not private as other detainees, inmates, and FCC guards are constantly passing through the space on their way to and from visitation.

44. Aside from the open visitation area, FCC has three or four private attorney visitation rooms for private legal visits. The number of private attorney visitation rooms is insufficient to accommodate the number of detained immigrants who need to meet with their attorneys, including those from FIRRP, in a private setting. Moreover, typically

those rooms are not made available for private visitation unless the client in question has been designated as a security risk. Most visits are strongly encouraged to take place in the main room and additional advocacy is needed to meet with a client in the private rooms.

45. The private visitation rooms that exist are all non-contact rooms, meaning that the attorney and client are separated by a plexiglass wall and must speak through a phone. This setting renders the use of telephonic interpreters impossible as, to the best of our knowledge, the phones that allow for communication with the client through the plexiglass barrier are not capable of dialing out or adding a caller. Additionally, because the rooms are non-contact, attorneys must also decide between having a private space for a legal visit, versus being able to conduct a visit in a space where they can review documents and obtain client signatures easily, without having to wait for guards to shuttle documents and writing implements to clients and without guards having to handle potentially sensitive documents.

VI. Barriers to Legal Correspondence

46. Barriers to legal correspondence at FCC also greatly hinder FIRRP's ability to represent detained clients, and adversely affects our clients. Detained clients have no access to the internet or email at FCC, and are not able to receive legal correspondence electronically. FCC also lacks a method to receive and send legal correspondence by fax.

47. FIRRP staff and our clients face lengthy delays in the delivery and receipt of legal mail at FCC. Mail can take anywhere from two to three days to be delivered to detained clients. Detained clients also face lengthy delays for their outgoing mail to be received. FIRRP has represented several individuals at FCC who have missed critical filing deadlines or have had to ask for continuances in bond or removal proceedings because of excessive delays in mail leaving the facility, leading to unnecessary and prolonged detention. Because of these delays, FIRRP cannot rely on legal mail for time-sensitive communications or for delivery of documents that require a prompt signature.

48. Detained clients also face difficulty and delay in sending legal mail from FCC. Legal mail is only free to detained individuals if they are considered "indigent" – defined as having less than $15 in their commissary account. Individuals with more than $15 must pay postage for outgoing mail, even legal mail. This policy can lead the facility to reject some outgoing mail and return the unsent mail to the detained client, causing significant delay. In some cases involving larger mailings, detained clients who are at or near the $15 threshold may have sufficient funds to not be considered "indigent" for purposes of sending free legal mail, but insufficient funds to actually cover the cost of the larger mailing. In such cases, sizable mailings may be rejected by the facility repeatedly, or the individual may have to wait for several days to receive a pre-paid envelope from FIRRP in order to mail out copies of documents.

49. These correspondence barriers hamper FIRRP's ability to represent clients, causing undue delay in receiving documents necessary to fully assess a case and, at times, delaying the receipt of client signatures on forms required for an attorney to officially

enter an appearance on behalf of the client either before the Immigration Court, ICE, or USCIS.

VII. Barriers to Communication and Representation of Disabled Clients at FCC

50. These barriers are even more onerous for FIRRP's representation of detained immigrants with mental disabilities. FIRRP attorneys serve as appointed counsel for individuals deemed mentally incompetent by the Immigration Court to represent themselves as a result of a serious mental health condition or disability. FIRRP maintains a caseload of approximately one hundred such clients throughout Arizona under the National Qualified Representative Program ("NQRP"). In 2021, FIRRP provided representation to 115 NQRP clients in Arizona. FIRRP also routinely provides legal services, including representation, to individuals with serious mental health conditions who have not, or not yet, been found incompetent by an Immigration court for purposes of NQRP eligibility. On average, FIRRP provides legal services to two to three such clients at FCC each month. At the time of this declaration, FIRRP represents at least seven clients with serious mental health conditions, including at least four NQRP clients, who are detained at FCC.

51. In our experience, each of the constraints noted above pose even greater barriers to communicating effectively with our clients with serious mental health conditions. People with serious mental conditions often require more support and consistent communication to establish rapport. Interruptions in communication can undermine the attorney-client relationship and, in some cases, can exacerbate certain mental health symptoms, for example, by contributing to feelings of hopelessness and isolation in clients suffering from major depressive disorder, or by playing into clients' persecutory or delusional beliefs. Additionally, attorneys working with clients with mental health conditions often require both more frequent and lengthier conversations to obtain and understand basic facts or convey information effectively to their clients. Generally, cases that involve clients with mental health disabilities take at least twice and sometimes triple the time to prepare compared to other cases. The problems with access, and the unique ways in which they affect individuals with serious mental health conditions, are a significant contributing factor.

52. FCC's exclusive reliance on a message relay and call-back system for telephonic communication with clients poses distinct barriers to communicating effectively with our clients with serious mental health conditions, who are uniquely unable to navigate the call-back system effectively due to their symptoms. For example, some of our clients lack orientation to place and time, which makes them particularly unable to call their attorneys at a set date and time without some facilitation or assistance from FCC staff, which is not provided. Others experience mental health symptoms that impair or interfere with their memory, which again makes an unfacilitated message relay and call-back system that places the onus on completing the call on the detained individual ineffective for this population. Symptoms of delusions and paranoia can make some of our clients unwilling to speak about their cases from the housing units. Additionally, our clients with serious mental health conditions are often less capable of navigating the already confusing

instructions for using the pro-bono platform, described above, which poses yet another barrier communicating effectively with this population. FCC and ICE staff have assured FIRRP that messages requesting call-backs are conveyed to our disabled clients and they assert that our clients are simply refusing to call us back, but they rarely provide any specific information about the alleged refusal. They have also declined to offer possible accommodations we have suggested, such as facilitation of pre-scheduled calls to address these issues. While instances of clients not calling back is not unique to people with mental health conditions, it does occur at a higher rate with this population. When our clients do call back, FIRRP attorneys report that they hear significant ambient noise in the background, indicating that the calls are not being placed from a sufficiently private location. The lack of VTC access also harms our clients with serious mental health conditions because many need to be able to see their attorneys when communicating, and it is also helpful for attorneys to be able to see clients. Visual information, such as appearance, expression, and other body language cues can be vital to assess the mental status of clients with serious mental health conditions, and to determine whether the client is experiencing symptoms that may interfere with cognition or communication. For example, in cases where clients have a history of auditory or visual hallucinations, a client's body language, including head and eye movement may help counsel identify if the client is experiencing hallucinations that may interfere with communication at the time of the visit.

53. As a result of these barriers, when serving our clients with serious mental health conditions, FIRRP staff are effectively forced to conduct nearly all client communication through time-consuming in-person visits, no matter how minor the follow up. We conduct even these minor communications in person because it is a more reliable form of communication than the message relay and call-back system for communications by telephone. Based on our staff's conversations with clients, I understand that this increased rate of success for in-person visits is due in part to the fact that these visits necessarily require detention staff to take the steps of informing the client that a visit is set to occur and escorting the client to a room for the visit. Based on my observations and our staff's experience at other ICE facilities in the area where scheduled facilitated telephonic visits were available during the pandemic, FCC could achieve increased reliability of telephonic visitation by simply facilitating calls – meaning providing a confidential space for calls and having guards remind and escort clients to the telephonic visitation space at the time of the telephonic visit. This could fundamentally change telephonic access in these facilities, particularly if the calls could be pre-scheduled. However, FCC has declined to facilitate pre-scheduled calls to address these issues. Even when we visit in person, we are often informed that some of our clients with serious mental health conditions refuse to leave their housing unit to come to in-person visitation. While clients do occasionally refuse to come to legal visitation at other facilities, in our experience, these "refusals," particularly for our clients with serious mental health conditions, occur at a higher rate at FCC than at other facilities.

54. A significant number of our clients with serious mental health conditions also experience suicidal ideation, which often results in placement into medical or mental health observation/segregation in conditions akin to solitary confinement. While on mental

health watch, it is our belief and understanding that individuals are not given access to telephones at all as a safety precaution. If housed in segregated housing outside of the medical unit, they can have limited access to the telephones, but the facility still does not have a system for attorneys to schedule private legal phone calls, does not provide VTC for this population, and FIRRP attorneys must rely on the message relay and call-back system with its many flaws.

55. Moreover, FCC does not have clearly established procedures to allow even in-person access to counsel for individuals who are in medical/mental health observation or segregation. In some cases, a client's prolonged confinement in mental health segregation can result in a total loss of access to counsel for weeks. For example, in one recent case, we were denied telephone and even in-person visits for nearly a month with a client under "mental health watch," during which time our client's immigration case before the court continued. As was the case with this client, FIRRP staff are generally simply denied any access to our clients or notified that clients are unavailable for visits, because they are in mental health watch. Indeed, even when FIRRP staff schedules an in-person visit with a client in medical/mental health watch a day in advance, FCC typically informs FIRRP staff that they cannot bring the client from observation or segregation to the legal visitation area only once the attorney arrives at the facility for the legal visit. As such, FIRRP staff have lost countless hours to unnecessary travel and have experienced periods ranging from days to months in which we simply could not access our clients at all due to their mental health conditions. This not only can undermine our attorney-client relationships, but can also result in significant delay to our ability to prepare a case.

56. We are unaware of any other accommodations made to ensure that detained clients with mental disabilities have access to counsel at FCC. Despite requesting accommodations such as permission to see our clients in the medical unit, facility transfers, or scheduled and facilitated phone calls, the facility generally does not provide the accommodations we request. When our staff bring up requests for accommodations, staff often appear to lack knowledge or awareness of what responsibilities they or the facility may have to accommodate detained people with disabilities. In some cases, we have also sought accommodation directly from ICE officers. For example, we requested that a client be transferred to another facility with fewer access issues, or even transported for the day to the facility where the immigration court is held because we have had more success speaking to our client in that facility. However, those requests have also been unsuccessful. In a recent case, it took nearly a month of advocacy and visitation attempts before we were able to meet with one of our clients on mental health watch. The attorney on this case had to obtain separate approval from ICE to meet with her client, outside of the normal visitation scheduling process, and even then had to push FCC staff to actually bring her client to visitation. To my knowledge, there is no publicly available procedure about managing and addressing such accommodation requests at FCC and no designated official to whom to make such requests.

In addition to serving as appointed counsel in cases where the Immigration Court has identified individuals as mentally incompetent under the NQRP, FIRRP staff regularly

encounter and provide services to additional detained individuals with serious mental health conditions or serious mental disabilities at FCC. These detained individuals include people who are incompetent to represent themselves in immigration proceedings, but whom the Immigration Court has not yet deemed to be eligible for appointed counsel under the NQRP. They also include others who might not be eligible for the NQRP, either because they are not properly identified to the court as potentially eligible for appointed counsel under the NQRP, often as the result of government error, or they are found by the immigration court to be competent though they nonetheless have serious mental health conditions or disabilities that make them unable to effectively access counsel without accommodations. FIRRP staff often become aware of a person's mental health condition prior to the Immigration Court or DHS and routinely assists individuals who are experiencing mental health symptoms in custody, but who have not yet been designated NQRP, file complaints regarding detention conditions, medical care, and treatment in custody. Additionally, one of FIRRP's priorities for bond representation are individuals who have serious mental health disorders or disabilities, but who were nonetheless found competent to represent themselves and not appointed counsel under the NQRP. We have struggled to obtain timely and effective access to these clients, including having to make repeated visitation requests when clients aren't made available for visits; complaints from clients regarding incomplete, inaccurate or undelivered messages, resulting in missed telephonic visit attempts. As a result, these cases often require more resources and FIRRP staff time than standard bond cases, specifically because of the unique ways in which serious mental health conditions interfere with disabled clients' ability to utilize the already limited mechanisms for access to counsel at FCC.

57. The unique ways in which the barriers to access to counsel described above disproportionately undermine our NQRP clients' access to counsel are exactly the same for these clients who are experiencing serious mental health conditions and symptoms, but for whom the Court and/or DHS either have not, or have not yet, identified as being eligible for appointed counsel under the NQRP.

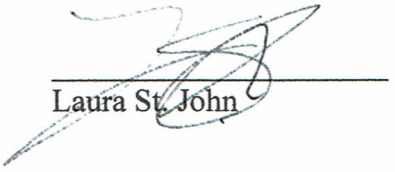
VIII. Conclusion

58. These barriers to attorney-client communication at FCC harm FIRRP's ability to represent and provide effective assistance to our detained client, and harm detained immigrants' ability to communicate with counsel. In some cases, these barriers have inhibited our ability to gather key information from clients due to the lack of confidential settings necessary to share sensitive and privileged information. The added delay and outlay of time required to communicate with detained clients also interferes with FIRRP's ability to represent individuals, reduces FIRRP's overall capacity of how many people we can reasonably represent at a given time, and impedes FIRRP's efforts to place additional cases with volunteer pro bono attorneys. These communication barriers also hinder FIRRP's ability to provide effective assistance to pro se detainees. The effect is

that detained immigrants at FCC are more likely to remain detained, even if eligible for release, suffer from unconstitutional conditions of confinement, and face deportation.

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

Executed this 14th day of November, 2022 in Flagstaff, Arizona.



Laura St. John

DECLARATION OF LISA LEHNER, AMERICANS FOR IMMIGRANT JUSTICE

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

1. I am a licensed attorney and a member in good standing of the Florida Bar since 1983. I currently hold the position of Director of Litigation at the Americans for Immigrant Justice ("AIJ"). I am admitted to practice before the United States Supreme Court, the Eleventh Circuit Court of Appeals, and the Southern and Middle Districts of Florida.

2. Founded in 1996, AIJ is a 501(c)(3) non-profit organization in South Florida dedicated to providing free legal services to people in immigration detention. Those services include, but are not limited to, representation of immigrants in connection with various immigration petitions, removal proceedings, bond hearings, and class actions at ICE's Krome Service Processing Center ("Krome").

3. I have practiced as a federal court litigator at AIJ since 2017. I started at AIJ as a Senior Staff Counsel and became Director of Litigation in 2019. As the Director of Litigation, I have participated in and supervised other staff in all of the federal court litigation pursued by AIJ.

4. Because our immigration work often addresses conditions of detention, our litigation team works closely with the AIJ staff who represent clients at Krome, and therefore, the obstacles that these staff members face are equally obstacles for our litigation efforts. Krome has capacity to house 682 individuals, but the actual number of individuals held in detention at the facility fluctuates.

AIJ's Purpose

5. AIJ attorneys represent hundreds of clients each year, including immigrants who are held in geographically isolated detention centers in Baker Detention Center located in Macclenny, Florida, at Krome in Miami, Florida, Broward Transition Center in Pompano Beach, Florida, and Glades County Detention Center in Moore Haven, Florida.

6. AIJ's Children's Legal Program, Family Defense, Detention, and Lucha Programs provide representation to clients before U.S. Citizenship and Immigration Services ("USCIS") for family-based petitions, U-visas for victims of crime, T-visas for victims of trafficking, and Special Immigrant Juvenile Status ("SIJS") for unaccompanied minors who qualify to seek such relief under the Trafficking Victims Protection and Reauthorization Act (TVPRA).

7. AIJ has a robust pro bono program that pairs interested law firms, many of which are national law firms that do not have offices in Florida, with AIJ litigators to co-counsel in federal court litigation. Due to the size of AIJ's Litigation Program compared to the large population of immigrants in need of representation in South Florida, the pro bono support that out-of-state lawyers provide is critical to AIJ's overall mission.

The Impact of Krome's Communication Barriers on AIJ's Advocacy

8. There is no uniformity among immigration detention facilities in Florida with respect to the available communication methods between attorneys and detained individuals. This patchwork system means that a detained immigrant's ability to consult with an attorney is very much determined by which facility one is housed in. For example, the Broward Transitional Center provides detained immigrants with private rooms to conduct remote meetings with their attorneys via Skype. Krome, on the other hand, does not permit detained individuals to speak on the phone or participate in videoconferences with their attorneys in a private or confidential setting.

9. Current policies at Krome make it almost impossible for an attorney to call a detained client on the telephone. There is no system through which attorneys can schedule private, confidential calls with their clients, which is a commonly available procedure at most state prisons. Moreover, there is no way for a detained immigrant to place a private and confidential call to an attorney at Krome because the phones that detained people can use to place calls to their counsel are located in shared spaces like the housing units. The current "pro bono" telephone platform that is supposed to provide detained immigrants with free calls to legal service providers is not confidential or private due to the location of the phones, and is so difficult and cumbersome to navigate that many clients find it almost impossible to make calls. There are no private rooms at Krome to accommodate remote or virtual meetings between detained individuals and their legal counsel, unlike other detention facilities.

10. Attorneys are unable to use telephones or cell phones during in-person legal visits, making it impossible to call interpreters when needed. Attorneys are also barred from bringing laptops or portable printers to their in-person meetings with detained clients, which prevents attorneys from revising declarations and other legal documents or conducting legal research in real time. Further, there is no access to the internet or hot spots available for attorneys to log onto the internet so that they can conduct research, access secure files, edit and save confidential legal documents to a secure file sharing system, or connect to portable printers or scanners (should they be allowed access to same). Instead, AIJ attorneys must waste valuable time traveling back and from their office to Krome with various drafts of documents or other legal documents that require review and/or signature by our clients. Krome should address these deficiencies by providing access to the internet through wi-fi access or hotspots available to attorneys, along with allowing computers, portable printers, and other equipment necessary for attorney-client meetings and consultations.

11. These constraints have significantly impaired AIJ's ability to represent clients by lengthening the time it takes to prepare for a case. Because of these communication barriers, attorneys are forced to conduct an in-person visit whenever they need to interview the client on sensitive details of their case, in order to develop the facts further because there is no way to talk confidentially through remote means (phone or video calls) with a detained client, or for simple ministerial tasks like securing a signature on a time sensitive document. Under current conditions, AIJ attorneys and staff must spend valuable time overcoming communication barriers, driving to Krome and waiting in line each time they need to discuss something with

a client, instead of talking with clients, drafting documents and briefs, preparing for argument, or appearing in court. In-person visits by AIJ staff have been made all the more difficult in light of the COVID-19 pandemic, as many staff members are reluctant or unable to visit in person due to health and medical concerns. Despite repeated requests made by AIJ to Krome personnel and the Department of Homeland Security, Krome does not allow attorneys to schedule remote video conferences or in-person meetings in advance or to reserve an attorney-client meeting room.

12. Calls by detained clients from the housing unit are never confidential because detained clients must make all calls from telephones located in the open housing unit where they are in the presence of other detained people as well as ICE officers and detention center staff. These calls often involve highly sensitive, confidential, and privileged topics. There are no separate phones located in private rooms for legal calls. Clients must make calls to counsel on one of approximately 4 to 6 phones located in a unit with approximately 50 to 66 beds. The phones are mounted on a wall, each placed only 2 to 3 feet apart in the open housing bay. Although some phones have metal dividers between them, the dividers do not prevent others from listening to the conversation. Other detained people standing next to a client or waiting in line can easily overhear what is being said on the phone. The phones are also located next to the guard's desk, where an officer is usually stationed while the phone call takes place.

13. In addition, because the phones are located in a large, open unit, it can be difficult for an attorney to hear what a client is saying, and calls are often disrupted by background noise. Calls can be limited in duration because of interference from other activities in the facility, such as meals or headcount, because of the high demand for the phone lines from other detained people, and/or because of instructions by officers to detained clients telling them to end the call.

14. There are several challenges posed by the pro bono telephone line, including the fact that information on the steps needed to place these calls is not readily available to clients detained at Krome and the complete absence of a system to schedule confidential, private legal phone calls. As a result, AIJ was forced to set up an account on the paid GettingOut communications platform in order to send messages to clients and potential clients at Krome, which often include information on how to call AIJ on the pro bono platform from Krome as well as when the attorney or staff member will be available to receive the call. This has caused our non-profit organization to expend more money than we otherwise would to represent our clients and increases costs for detained immigrants who must also pay to read and respond to our messages. Not only that, but GettingOut messages are monitored by detention authorities, even when the GettingOut account is registered as a confidential attorney account.

15. The inability to schedule phone calls with detained clients at Krome further complicates our ability to provide services to people who require the use of an interpreter. A system that relies on a client calling an attorney back makes it extremely difficult to arrange for provision of an interpreter, particularly when the client speaks a language which is not readily available and advance scheduling is required for interpreter availability. This failure can lead to

lengthy delays in the provision of meaningful services to clients who speak languages other than English or Spanish.

16. In addition, AIJ attorneys have encountered several issues with poor audio quality in phone calls from clients at Krome. MThere have been many times when AIJ attorneys and staff have experienced disconnected calls and static, making it difficult to conduct a conversation with the client.

17. Unlike other ICE detention facilities, Krome has no program to allow attorneys to conduct confidential video teleconferencing ("VTC") calls with detained clients in ICE custody. This is in contrast, for example, with a neighboring immigration detention center in Ft. Lauderdale, Florida, the Broward Transitional Center, which provides private rooms for video teleconferencing calls between attorneys and their clients. No such system exists for Krome.

Impact of Lack of Access on AIJ's Advocacy and Litigation Work

18. In addition to providing clients with direct representation on immigration matters, AIJ monitors detention conditions and engages in advocacy and litigation to improve the conditions for people in ICE detention and ensure that their treatment is lawful. This work can include preparing and filing an administrative complaint with one of the Department of Homeland Security's oversight offices, like the Office of the Inspector General, demand letters to the local ICE Field Office, writing research and advocacy reports on topics related to immigration detention, and litigating habeas corpus petitions and other cases in federal district court.

19. Since its opening, AIJ has authored 12 reports detailing the conditions of immigration detention, with reports in recent years on ICE's shackling practices[1], conditions across all south Florida detention centers, including Krome,[2] and the impact of the COVID-19 pandemic on detained immigrants at Krome and other detention centers.[3]

20. In addition to monitoring conditions and advocacy work, AIJ also has a robust federal litigation program that has filed and litigated habeas petitions on behalf of those wrongfully detained; co-counseled with law firms and other organizations many of which are not located

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[1] Lily Hartmann and Lisa Lehner, *"They Left Us with Marks:" The Routine Handcuffing and Shackling of Immigrants in ICE Detention,* Americans for Immigrant Justice (April 2018), https://aijustice.org/wp-content/uploads/2020/05/They_Left_Us_with_Marks.pdf.

[2] *Prison by Any Other Name: A Report on South Florida Detention Facilities,* Americans for Immigrant Justice and The Southern Poverty Law Center (2019), https://aijustice.org/wp-content/uploads/2020/05/cjr_fla_detention_report-final_1.pdf.

[3] Cheryl Little and Lisa Lehner, *In Their Own Words: Voices from ICE Detention During COVID,* Americans for Immigrant Justice (October 2021), https://aijustice.org/wp-content/uploads/2021/10/AIJustice_Report_InTheirOwnWords_10.21_.pdf.

in Florida; and pursued federal court litigation aimed at improving conditions of confinement in immigration detention.

21. Advocacy and litigation work related to immigration detention require numerous interviews and conversations with the detained client, or clients, in order to fully develop the facts of the case. Further, the information collected for advocacy and litigation work related to immigration detention is often highly sensitive. AIJ attorneys and staff routinely interview detained individuals regarding cases of medical neglect, sexual assault, voyeurism, physical assault by detention officers, and racist harassment, among other issues. In doing this work, AIJ staff must also conduct confidential conversations with individuals in detention who risk retaliation or other consequences for raising issue with the conditions of the facility. AIJ's work to develop complaints, to identify potential plaintiffs for litigation, including class actions, and to prepare witnesses for testimony is often hindered by the lack of access to confidential and private methods of communication with people detained at Krome.

22. Because Krome does not provide access to confidential videoconferencing or private, confidential calls between attorneys and their detained clients, AIJ staff are forced to collect information on detention conditions and conduct these critical conversations when detained individuals call AIJ from the telephones in their housing units, where they are in the presence of other detained people as well as detention staff and guards. The detention staff at Krome, whether it be contract officers, ICE officers, or medical staff, are able to overhear conversations between attorneys and their detained clients due to the location of the phones in the housing units. Our clients are frequently hesitant to share information over the phone for fear of retaliation.

23. The following paragraphs provide a few examples of instances in which Krome's failure to provide VTC or scheduled confidential and private legal calls has impeded AIJ's ability to prepare and move forward AIJ's advocacy and litigation work.

24. In 2018, AIJ staff recruited and organized a large team of pro bono attorneys to provide individual representation on Motions to Reopen for a large group of Somali men and women, who were returned to Miami after a failed deportation flight that stranded them on a tarmac in Senegal for nearly two days. The effort required dozens of attorneys, many of whom are not located in Florida. AIJ staff also monitored the medical conditions of the Somalis who suffered injuries on the flight. Because Krome does not permit confidential, legal calls or confidential VTC visitation for attorneys, the team of pro bono attorneys was forced to rely on local law school students and non-profit organizations in the Miami area to conduct in-person visits to Krome to gather documents from their Somali clients and conduct follow-up interviews related to sensitive information to develop the motion or client declaration. The lack of access to these detained clients created delays in the pro bono attorneys' abilities to prepare and file the clients' Motions to Reopen in the accelerated time frame that the Court had imposed. The access barriers also required us to expend more resources than we usually would to represent our clients because they compelled us to solicit and train local law students and other organizations located closer to Krome.

25. At the outset of the COVID-19 pandemic, AIJ joined other Florida-based legal organizations and the national law firm of King and Spalding in filing a class action lawsuit against ICE to ensure that COVID-19 protections would be implemented in all three Florida detention centers, including Krome. Because of the urgent nature of this case, given the need to protect the health and safety of people detained at Krome from a highly transmissible virus, time was very much of the essence. The litigation team screened and identified detained individuals with medical conditions that placed them at high-risk in the case of infection with COVID-19. Each named plaintiff in the lawsuit provided a declaration, which had to be prepared only over the phone, and often with only one call because attorneys or legal assistants were not able to call their clients at Krome back for any follow-up questions.

26. During the COVID-19 class action, AIJ monitored COVID-19 outbreaks at Krome. However, AIJ staff were forced to wait until named plaintiffs or other class members called our office to report on the conditions because there was no way to arrange legal calls. After receiving reports of new COVID-19 cases or violations of COVID-19 protocols, AIJ staff shared the information with co-counsel and if it was decided that the plaintiff needed to provide a declaration, AIJ staff either had to wait days for the individual to call back or send a message to the client over the GettingOut platform requesting they place a call to AIJ, in hopes they would see the message quickly. In instances where we never received a call from the detained individual, we could not collect a declaration from them, even if they were aware of information that was critical to the litigation, like COVID-19 outbreaks or violations of COVID-19 protocols at the detention center.

27. At numerous points in the COVID-19 litigation, AIJ was tasked with identifying and preparing witnesses to appear at hearings related to pending motions, such as a motion to compel compliance with the preliminary injunction and for the fairness hearing. AIJ was often forced to prepare these witnesses on short timelines, and preparing a witness required multiple phone calls. Because there are no confidential legal calls at Krome, all of these calls had to be conducted using AIJ's pro bono, free phone line, with AIJ staff conferencing in our out- of state co-counsel once the client called our office. Moreover, the preparation time to get witnesses ready to testify was also limited by the facility's other restrictions, such as count times, meals, and competition for the few available phones in the housing units. Therefore, in many instances in this litigation, the amount of witness preparation time was severely curtailed, sometimes only amounting to one hour, which is in stark contrast to what occurs in most class action litigation.

Impact of Lack of Access on AIJ's Clients

28. The lack of access to counsel at Krome also severely impacts our clients' abilities to assert their rights and file their own lawsuits. AIJ's clients at Krome need the assistance of lawyers to bring lawsuits challenging their conditions of confinement and to obtain release or other forms of humanitarian relief from the authorities. Many are new arrivals to the United States, do not speak English, and have little knowledge of how to utilize the U.S. legal system to secure relief from their circumstances. Very few other local organizations have a regular, sustained presence at Krome to provide legal assistance to detainees. Because of the lack of

rule of law in their home countries, many are simply unaware they can sue or challenge government action. Others have expressed fear that they will be retaliated against for complaining. The limitations placed on their access to AIJ detailed in this and my colleague Andrea Jacowski's declaration hinder detained clients from filing and participating in their own lawsuits.

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

Executed this 11 day of October 2022 in Miami, Florida.

Lisa Lehner

DECLARATION OF PABLO STEWART, MD IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

I. Background / Expert Qualifications

1. I am a physician licensed to practice in the states of California and Hawai'i, and I maintain a practice in clinical and forensic psychiatry. I am currently a Clinical Professor and Psychiatrist at the Burns School of Medicine at the University of Hawai'i. As part of my academic duties, I serve as an attending psychiatrist at the Oahu Community Correctional Center and supervise psychiatry residents assigned to work at the facility. I have extensive experience in forensic and correctional psychiatry, including monitoring conditions of confinement and assessing policies, procedures, and protocols for the adequacy of mental health and medical care in custodial settings. As an expert for more than 30 years, I have rendered professional assistance to courts, governmental agencies, and counsel for incarcerated and detained people with regard to managing, monitoring, and reforming correctional mental health and medical care systems, including the implementation of remedial decrees in conditions of confinement cases; assessing the quality of medical and mental health care provided to incarcerated and detained people; and opining as to conditions of confinement that aggravate or exacerbate traumatic symptoms and mental illness. My responsibilities include inspecting correctional institutions, reviewing custodial, medical, and mental health care policies and procedures, and rendering an opinion on the risks posed to incarcerated and detained populations by inadequate or ineffective custodial and health care procedures.

2. Most recently, from 2016 to the present, I have served the U.S. District Court for the Central District of Illinois as its court-appointed monitor in *Rasho v. Baldwin*, a statewide class action involving mental health care in the Illinois state prison system. From 2014 to the present, I have served as an expert in *Hernandez v. County of Monterey*, in the U.S. District Court for the

Northern District of California. In 2014, I participated in a year-long review of segregated housing units for the Federal Bureau of Prisons' Special Housing Unit Review. From 2008 to 2019, I served as an expert in *Graves v. Arpaio*, a case in the District of Arizona involving conditions in the Maricopa County Jail. I was an expert in the U.S. Supreme Court case *Brown v. Plata*, and my opinion is cited in that decision. 563 U.S. 493, 519 and n.6 (2011). From 1998 to 2004, I was a psychiatric consultant to the Institute on Crime, Justice and Corrections at George Washington University, which monitored the agreement between the U.S. Department of Justice and the State of Georgia to improve the quality of that State's juvenile justice facilities, critical mental health, medical, and educational services, and treatment programs. From 2003 to 2004, I monitored the provisions of a settlement between incarcerated people and the New Mexico Corrections Department about conditions in the Department's "supermax" unit. I have testified numerous times in state and federal courts as an expert and provided expert opinions relied on by federal district courts, the federal courts of appeals, and the Supreme Court.

3. I have held numerous positions with responsibility for ensuring quality clinical services at inpatient and community-based programs, and maintaining the psychological well-being of incarcerated people. I have extensive clinical, research, and academic experience in the diagnosis, treatment, and community care programs for persons with psychiatric disorders, and the management of patients in institutionalized populations with dual diagnoses, including psychotic disorders. From 1986 to 1990, I was the Senior Attending Psychiatrist at the Forensic Unit at University of California, San Francisco ("UCSF") / San Francisco General Hospital ("SF General"), where I was responsible for a twelve-bed maximum-security psychiatric ward. From 1988 to 1989, I was the Director of Forensic Psychiatric Services for the City and County of San Francisco, and had administrative and clinical responsibilities for psychiatric services for the jail

population. My duties included direct clinical and administrative responsibility for the Jail Psychiatric Services and Forensic Unit at SF General. From 1991 to 1996, I served the Department of Veterans Affairs Medical Center in San Francisco as: Medical Director of the Comprehensive Homeless Center (where I had overall responsibility for the medical and psychiatric services at the Homeless Center); Chief of the Intensive Psychiatric Community Care Program (a community-based case management program); Chief of the Substance Abuse Inpatient Unit (where I had overall clinical and administrative responsibilities for the unit); and Psychiatrist for the Substance Abuse Inpatient Unit (where I provided consultation to the Medical / Surgical Units regarding patients with substance abuse problems). From 1991 to 2006, I served as the Chief of Psychiatric Services at the Haight Ashbury Free Clinic.

4. Concurrent to this professional work, I have held several academic appointments where I actively supervise medical students, residents, and fellows in psychiatry. As noted above, I am currently a Clinical Professor and Psychiatrist at the Burns School of Medicine at the University of Hawai'i. At UCSF School of Medicine's Department of Psychiatry, I was a Clinical Professor from 2006 to 2018; Associate Clinical Professor from 1995-2006; Assistant Clinical Professor from 1989-95; and Clinical Instructor from 1986-89. I received multiple awards for "Excellence in Teaching" and "Outstanding Faculty Member of the Year," including the academic years 1985-86, 1986-87, 1988-89, 1990-91, 1994-95 and 2014-15.

5. In 1973, I obtained a Bachelor of Science in chemistry from the U.S. Naval Academy, and served in the U.S. Marine Corps from 1973 to 1978. I received my Doctor of Medicine degree from UCSF in 1982. I also completed my residency in Psychiatry at UCSF. In 1985, I received the Mead-Johnson American Psychiatric Association Fellowship for demonstrated commitment to public sector psychiatry and was selected as the Outstanding

Psychiatric Resident by the graduating class at UCSF. In 1985-1986, I was the Chief Resident for the Department of Psychiatry at UCSF Hospital and SF General.

6. My current CV is attached as **Exhibit 1**. My billing rate for my work in this case at a rate of $300 per hour, with a daily cap of $2,500.

II. Analysis and Conclusions

7. For this declaration, I have been asked to offer my opinions on the effects that certain serious mental illnesses and intellectual disabilities have on people's ability to communicate with their attorneys, and measures that must be taken to ensure that people with these illnesses or disabilities can communicate with their attorneys at a level approaching that of people without these illnesses or disabilities. I have been asked to consider three categories of serious mental illnesses or cognitive impairments.

8. The first category is psychotic disorders. Serious psychotic disorders include Schizophrenia, Schizoaffective Disorder, and Unspecified Psychosis. People with serious psychotic disorders exhibit thinking that is not based in reality, which can make communication difficult. People with serious psychotic disorders generally find it most straightforward and effective to communicate in person. Communications through other means such as telephone or mail can be complicated by delusions that frequently cause people with serious psychotic disorders to mistrust these means of communication or to experience miscommunications through them. The best method of remote communication for people with serious psychotic disorders is by video because that best mimics in-person communication, but even video communication can be challenging. Communications by means other than video can be very challenging for people with serious psychotic disorders.

9. The second category of serious mental illness is mood disorders. Serious mood disorders include Bipolar Disorder and Major Depressive Disorder. These disorders can also have effects that make it difficult for people to communicate. For example, mood disorders can cause psychotic symptoms similar to those discussed above for psychotic disorders. They can also cause cognitive distortions that affect people's ability to communicate. For example, someone with Major Depressive Disorder who missed a phone call with an attorney, a disappointing experience for anyone, might experience cognitive distortions that cause them to have suicidal ideations as a result of missing this phone call. For this category of serious mental illness, too, in-person communications will be most effective, and communications over video will generally be much more effective than communications by other means such as phone or mail. Where a phone call is the best available option, support and facilitation of this call is often necessary.

10. The third category I considered is cognitive impairments. This category includes Neurocognitive Disorder (sometimes referred to as "dementia") and Intellectual Development Disorder. People with cognitive impairments frequently experience logistical difficulties communicating by telephone or mail and are generally better able to understand communications that include a visual component in addition to a voice component. These people generally are best able to communicate in person, and may also be able to communicate effectively by video and, to a lesser extent, by telephone, so long as an on-site facilitator can ensure that this method of communication is properly set up and working.

11. For people who fall into any of these three categories and are institutionalized or incarcerated, facilitated communication (where a staff member walks the person to a private room, sets up the connection, makes sure it is working, and then leaves the person alone) is far more effective than relying on the person with the disorder or impairment to start the videoconference

or place the call. This is because symptoms of any of these disorders or impairments can complicate a person's ability to navigate the steps necessary to place a call themselves, which include remembering the scheduled time for a call, placing the call at that time, and navigating through the sometimes complex menu of options to place the call.

12. Before 2020, my work with patients with serious mental illnesses took place almost exclusively in person. After the COVID-19 pandemic began, I started to see some patients for competency evaluations and other purposes remotely. I conduct these remote sessions over video because I find that I am not able to communicate effectively with these patients over other means, like by telephone or mail. These video communications are facilitated by staff at the facilities where the patients are housed, a measure that I view as necessary to ensure that I can effectively communicate with those patients with serious mental illnesses.

13. Counsel have requested that I review a definition that the court in the case *Franco-Gonzalez v. Holder* used to identify a set of people with serious mental illness who should be evaluated to determine whether they should be appointed a lawyer. That group of people was defined as those identified by a qualified mental health provider to have "a mental disorder that is causing serious limitations in communication, memory or general mental and/or intellectual functioning (e.g. communicating, reasoning, conducting activities of daily living, social skills); or a severe medical condition(s) (e.g. traumatic brain injury or dementia) that is significantly impairing mental function; or exhibition of one or more of the following active psychiatric symptoms or behavior: severe disorganization, active hallucinations or delusions, mania, catatonia, severe depressive symptoms, suicidal ideation and/or behavior, marked anxiety or impulsivity; or . . . significant symptoms of Psychosis or Psychotic Disorder, Bipolar Disorder; Schizophrenia or Schizoaffective Disorder; Major Depressive Disorder with Psychotic Features; Dementia and/or a

Neurocognitive Disorder; or Intellectual Development Disorder (moderate, severe, or profound)." *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG DTBX, 2014 WL 5475097, at *3 (C.D. Cal. Oct. 29, 2014). This definition generally consists of people who fall into the three categories I discuss above. People who fall within this definition will necessarily experience difficulty communicating with their lawyers unless they are able to do so in person or by facilitated telephone or, preferably, video calls.

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

Dated this 11TH day of November, 2022, at Honolulu, Hawai'i.

PABLO STEWART, M.D.

DECLARATION OF REBEKAH WOLF, IMMIGRATION JUSTICE CAMPAIGN

Pursuant to 28 U.S.C. § 1746, I, Rebekah Wolf, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in New Mexico.

2. I am currently Policy Counsel at the Immigration Justice Campaign (IJC). I have been in that role since April 2021. Before that, I was a Technical Support Attorney within IJC's legal support team since June 2019. Prior to joining IJC, I was a staff attorney with the New Mexico Immigrant Law Center since October 2016. My duties as Policy Counsel include leading the advocacy and policy efforts of IJC. As needed, I continue to provide technical support for volunteer attorneys handling cases through IJC.

3. I make this sworn statement based upon personal knowledge, review of files, review of our database, and documents regularly maintained by IJC, as well as information supplied to me by IJC colleagues.

4. IJC is a joint initiative of the American Immigration Lawyers Association and the American Immigration Council (Council), and is housed within the Council, which is a 501(c)(3) organization. IJC is headquartered in Washington, DC.

IJC's Model and Mission

5. IJC is a nationwide initiative seeking to increase access to counsel for thousands of immigrants—particularly those held in immigration detention—who need pro bono legal representation. We do this by bringing together a broad network of volunteers who provide high quality pro bono legal representation and who advocate for due process and justice for immigrants.

6. In the past two years we have served immigrants detained at twenty-nine detention centers nationwide. The detention centers we serve include River Correctional Facility in Ferriday, Louisiana (River); Laredo Processing Center in Laredo, Texas (Laredo); Krome North

Service Processing Center in Miami, Florida (Krome); and Florence Correctional Center in Florence, Arizona (Florence).

7. Currently, we have a network of 2,084 volunteers, of which 1,860 are attorneys. In addition to attorneys, we rely on volunteer interpreters, law students, paralegals, and medical and psychological experts. Our volunteer attorneys often come from large, medium, and small private law firms; some are also solo practitioners. In the past year, IJC has recruited 123 volunteer attorneys to take on one or more cases representing a person in ICE detention.

8. To join our network of volunteers, an attorney must either submit a volunteer application available on our website or be directly referred to IJC for a specific case. Once the attorney has submitted an application, or has been referred to IJC, a member of our staff conducts an internet search to check their background and to ensure they are a licensed attorney in good standing. One of our staff members then sets up a preliminary conversation to discuss volunteering and evaluate whether the potential volunteer is a good fit. If the staff member determines that the attorney meets our requirements for taking a case, the attorney will be added to our pool of available volunteers.

9. IJC places cases with pro bono volunteers by partnering with legal service providers who work with people detained in immigration detention centers across the country. These organizations conduct screenings and identify individuals who need an attorney. The organizations then refer cases to IJC, and we screen the cases for placement, and then communicate the volunteer opportunities to our nationwide network of committed volunteers to find a pro bono attorney to take the case.

10. To begin the referral process, our partner organizations complete IJC's detailed ten-page pro bono case referral form. Along with a summary of the person's case, the form seeks

information about the person's identity, immigration and criminal history (if any), particular vulnerabilities (such as sexual orientation, prolonged detention, or mental or physical health concerns), and support network in the United States. It also seeks information specific to the posture of the detained person's case; such as whether the person is seeking release from immigration custody, requesting representation for a "credible fear" screening, applying for a particular form of relief from removal, or pursuing an appeal of an immigration judge's decision.

11. Our referring partners explain to the detained clients IJC's role in the process and seek their consent to share their information with IJC. IJC, in turn, will try to find the detained client a volunteer attorney.

12. While the vast majority of our cases come through the referral process described above, on occasion, we have also had detained people pass a message asking us for representation through an attorney volunteering with IJC who is representing another detained person in the same facility. We send a reply to those detained people instructing them to contact our local partner organization for an intake so that the local partner can complete a referral form. We typically do this by sending a message back through the attorney who referred the case to us. We have also received email requests for representation from family members of detained people. In that circumstance, we will communicate by email with the family member and instruct them to connect with the local partner, so that the local partner can complete an intake with the detained person. The local partner will then send us information about the case via our referral form.

13. Once IJC receives the completed referral form, along with any additional relevant documents from the partner organization, our legal support team members review the referral form to determine whether the case is appropriate for pro bono placement. This includes, but is not limited to, assessing the timeline to ensure the prospective volunteer attorney has time to

prepare for a scheduled hearing; determining whether there is a viable sponsor for a bond or parole request; assessing whether the asylum case has a colorable claim; and, if it is an appeal, determining the appeal deadline and whether there is a colorable legal issue to appeal. After we complete the screening process, we begin outreach to our nationwide network of volunteers.

14. Once a volunteer attorney agrees to represent a detained person, they must sign IJC's pro bono attorney acknowledgement form. See attached Exhibit A. By signing this form, the volunteer attorney acknowledges (1) that the representation is on a pro bono basis, (2) that the attorney will be responsible for all costs associated with the case, (3) that the attorney will provide the client with an engagement letter, (4) that the attorney will begin work on the case within one week of accepting representation and complete work within the timelines outlined in IJC's orientation, (5) that the attorney will, with the client's permission, keep IJC informed about the case, (6) advise IJC at the earliest possible opportunity if the attorney cannot continue the representation, (7) that IJC is available for mentorship, practice resources, and guidance on the case, but is not co-counsel in the case, and (8) that if the attorney does not meet the expectations outlined in the acknowledgment form, IJC may take the case back and find the client other representation.

15. IJC requires all volunteer attorneys to complete the acknowledgment form because it is part of the IJC's mission to ensure that each detained person we match with counsel receives effective representation that meets IJC's standards.

16. Once representation begins, IJC provides support to the volunteer attorney through our mentorship program. Our mentors are attorneys with expertise in various aspects of immigration law and procedure who supervise the volunteer attorneys' work. The mentors are available to provide technical assistance to the volunteer attorneys, such as explaining relevant provisions of

immigration law, reviewing draft pleadings, and providing guidance on local practices. At the outset of each case, each volunteer attorney is given an orientation manual that includes information on who their mentor is and how to contact that mentor. For new volunteer attorneys, our pro bono coordinator team member has an orientation call with the attorney. This orientation call discusses the type of case and the work that will be required to represent the client and on what timeline. We also provide details about the detention center, including how to contact a detained client in the detention center, the details of which we receive from our local partners. We also provide the volunteer attorneys with information sheets on each geographic area that includes the contact information for the immigration detention facility, local ICE contacts, contact information for the immigration court in that jurisdiction, and, in some cases, we provide the kinds of proof needed for bond and parole requests. During this call, we also remind them about our mentorship program and strongly encourage them to attend their mentor's "office hours" (discussed in more detail below). We show the attorney how to navigate our website, which includes a number of resources, guides, and timelines, explains how mentorship works, and gives the attorney access to additional resources through a page on American Immigration Lawyers Association's website called "AILALink."

17. Most of our volunteer attorneys do not focus their practice on immigration law—many have never handled an immigration-related case before. The mentorship we provide is an essential part of our mission and our daily operations to ensure that every person we place with counsel receives effective legal representation. Immigration attorneys on our team supervise volunteer attorneys on immigration law and procedure on a daily basis, and volunteer attorneys have opportunities to communicate with and learn from other attorneys handling similar cases through our group mentorship model.

18. Mentorship is provided in two ways: office hours and direct mentorship. We offer standing office hours where anyone who is being mentored can join an open zoom line of their assigned mentor. We have two attorney mentors who offer office hours twice per week, and volunteer attorneys are strongly encouraged to attend office hours. The office hours meetings are not only an opportunity for the volunteer attorneys to learn substantive law and procedure, but it allows the IJC mentors an opportunity to assess the volunteer attorney's progress to ensure they are complying with the obligations outlined in the volunteer agreement to provide effective representation to their detained client.

19. We separately have one-on-one mentorship for more complex cases, such as where the client is approaching an important hearing in immigration court. In those circumstances, the mentor schedules one-on-one calls with the volunteer attorney. As part of our mentorship program, we review filings and briefs before they are submitted upon request.

20. Occasionally, IJC attorneys have drafted an emergency motion or brief addressing a complex issue for a volunteer attorney's case. Our volunteer attorneys are generally not prepared to respond to urgent, time-sensitive issues that arise in a client's case, since most are new to immigration law. For this reason, IJC attorneys will sometimes step in to take on drafting a brief or motion for the volunteer attorney. I recall this happening on approximately five to six occasions.

21. For example, in July 2020, an immigration judge denied a volunteer attorney's motion for a telephonic appearance at an upcoming hearing. The volunteer attorney was located in San Francisco representing a client detained in Oakdale, Louisiana. The attorney could not travel for the hearing because her infant was in the hospital with respiratory issues, and it was at the height of the COVID-19 pandemic. Because the hearing was less than two weeks away, I stepped in to

help write an emergency motion to continue or terminate the hearing and an emergency interlocutory appeal to the Board of Immigration Appeals ("Board").

22. In addition to providing mentorship, IJC also provides any attorney who takes an IJC case with malpractice insurance if they do not already have it.

23. Volunteer attorneys take on cases at all stages of representation. Some attorneys represent detained persons for the purpose of release from ICE custody either through bond or parole. Some attorneys help clients prepare for their "credible fear" interview with an asylum officer. Other attorneys represent detained persons before the immigration courts and in subsequent appeals, and some attorneys take on cases for federal court litigation, including but not limited to habeas corpus petitions and appeals in federal courts.

24. In some circumstances, if an IJC mentor identifies that a detained person is not receiving effective and timely representation from their assigned volunteer attorney, we have taken cases back. This may come to our attention in a few different ways. First, the volunteer attorney may demonstrate through their communications with their IJC mentor that they are incapable of providing effective representation and following our guidance. We also may learn through working with the volunteer attorney that they can't meet a deadline or they are not gathering information and evidence for a bond or parole case in a timely manner, delaying the client's opportunity to be released from detention. In other instances, we have heard from our local partners that the detained person whose case they referred to us has not heard from their assigned volunteer attorney. We also utilize our internal database to track timelines to ensure the volunteer attorney is providing timely representation, as detained cases tend to move quickly. As discussed above in paragraph 16, when a case is first placed with a volunteer attorney, we provide the attorney a timeline for each individual case based on the specific needs of the client's case. Our

legal assistants input that information into our database. As the case proceeds, we also track in our database when significant case activity happens, like the submission of a bond motion or parole application. If we see that the volunteer attorney hasn't completed a task by the given deadline, we reach out to the volunteer attorney and ask what is happening with the case. Our legal assistant also receives automated reminders from the database regarding when a particular activity should be completed. If our legal assistant sees that a deadline was missed, they alert the attorney mentor, who will reach out to the volunteer attorney.

25. If, after we talk with the volunteer attorney we determine that the attorney isn't fulfilling their obligations as outlined in the volunteer attorney agreement, we will step in and take the case back. When we take a case back, we either (1) place the case with another volunteer attorney, or (2) help the referring partner organization provide the representation themselves. We help the referring partner organization to provide representation by assisting in drafting motions and notices of appeal. We very rarely take on representation ourselves directly because that is inconsistent with our model to expand representation and takes up a significant amount of our attorneys' time, which takes time away from mentoring other volunteer attorneys.

26. The mission of IJC is to be able to expand and scale pro bono representation to immigrants in detention, and the highest need for lawyers is for people in ICE detention centers in geographically isolated locations, often hundreds of miles away from the nearest immigration lawyers. As a result, we prioritize providing people in geographically isolated detention facilities with remote legal representation, which makes remote representation essential to our model.

27. Since the COVID-19 pandemic began, 100% of our cases have involved volunteer attorneys representing their clients remotely. Indeed, even before the COVID-19 pandemic, the

majority of cases involved remote representation, but we tried to place cases with local volunteer attorneys, when possible, for in-person hearings.

28. Our volunteer attorneys often face obstacles to remote representation. I have intervened in the past when volunteer attorneys have struggled with accessing their clients remotely. For example, a volunteer attorney was representing a client detained at the Otero County Processing Center ("Otero") in Chaparral, New Mexico, where attorneys and interpreters cannot call into the facility; detained people must call out. However, facility staff would not let the detained client call his interpreter because the interpreter was not an attorney and thus, it was not a "legal call." After weeks of trying to come up with a solution, I served as the interpreter since I am both an attorney and proficient in Spanish. Because of the difficulties with access, we paused taking cases from Otero. We briefly resumed taking Otero cases when ICE's Deputy Field Office Director intervened to improve telephone access for a group of clients our volunteer attorneys represented at the facility. But that intervention was short-lived and currently we do not take cases at Otero due to the lack of telephone access. To my knowledge, the only attorneys who represent detained immigrants at Otero are those who can visit the facility in person; remote representation is impossible.

29. In addition to placing detained persons' cases with volunteer attorneys, IJC also advocates for changes in law and policy by documenting challenges that detained immigrants encounter as they fight to seek protection, including access to counsel. We look to volunteer attorneys to help identify the many due process challenges their clients face while in detention, such as prolonged detention, inadequate access to language interpretation services, and changes in immigration court practices, among others. Based on feedback from volunteer attorneys, we have long advocated for better access to counsel in immigration detention facilities, particularly

by telephone and video conference. Specifically, we have submitted joint letters with local partner organizations to the Department of Homeland Security (DHS) about telephone access. *See, e.g.*, Ex. B. We have also submitted complaints to DHS's Office of Civil Rights and Civil Liberties (CRCL) that have addressed telephone access, among other issues in detention. For example, we submitted a complaint to CRCL about the Torrance County Detention Facility in Estancia, New Mexico, that addressed a number of deficiencies at the facilities, including telephone access. *See* Ex. C.

30. The lack of access to their attorney negatively impacts detained immigrants' ability to assert their rights in federal court. In my experience working as an IJC attorney mentor and previously representing detained immigrants in New Mexico, I've seen first-hand how difficult it is for detained immigrants to bring a lawsuit without the benefit of counsel. Very few of our clients speak English, they have limited knowledge of the U.S. legal system, and few, if any, have access to legal resources. Those legal resources that are available in detention facilities are generally geared toward immigration procedure and do not address their rights under the U.S. Constitution or federal laws and regulations. As such, without the benefit of an attorney, it would be impossible for a detained immigrant to bring an access-to-counsel lawsuit on their own. The very problem of accessing an attorney—especially a remote attorney via telephone or VTC—makes it all the more difficult for a detained immigrant to raise access-to-counsel issues in court.

Impact of Barriers to Access to Counsel on IJC's Representation Model

31. A prerequisite to effective representation by volunteer attorneys is their ability to effectively communicate with their clients. For this reason, our attorney mentors advise volunteer attorneys and law students on how to access their client in immigration detention. Accessing clients in detention is often difficult. Immigration detention facilities often have different policies

and procedures for setting up phone calls, video calls, delivering messages, and communicating with a client by fax or email (if available), and the attorneys on our team work to help the volunteers understand the system of communication at a particular facility. Our national operations, which must function remotely, make it difficult for IJC mentors and volunteer attorneys to understand the arbitrary procedures for accessing detained clients when we are not physically present in the facilities. Before coming to IJC, I worked in a position where I represented detained clients in one facility in Cibola, New Mexico. I visited clients at the facility every week, and I was able to get to know the guards and the facility's often arbitrary procedures, which allowed me to find informal strategies to access my clients, even if those methods were not optimal because they required me to expend a lot of time and energy on tasks such as asking for assistance from a specific, helpful officer and adapting to constantly changing practices. IJC operates remotely in more than two dozen facilities, so we as mentors necessarily rely on information from local legal service providers to help access our clients. But each facility's practices regarding communication with detained people frequently change, and our volunteer attorneys are not always privy to the same information or informal methods of gaining access as the local legal service providers. We've also found that even within one facility, attorney access practices are different depending on the guard or deportation officer assigned to the case. This variation across and even within the facilities makes our remote representation model especially difficult.

32. Thus, the number one impediment to our ability to increase representation for detained individuals is the lack of clear, reliable, and established policies for attorneys to contact their clients at many detention centers. Because IJC's model focuses on remote representation, we cannot place cases at detention facilities where pro bono attorneys cannot communicate remotely

with their clients. If remote representation at a particular detention facility is theoretically possible, but requires significant one-on-one mentoring, IJC is limited in the number of cases we can place at that facility because of the strain on our resources. When a detention center has an unclear, complex, burdensome, or otherwise ineffective system for communicating with clients, the volunteer attorneys will often need individualized assistance just to gain access to their clients. The more opaque, complex or burdensome attorney access is at a particular facility, the more time we have to spend providing one-on-one mentorship.

33. IJC's model is to scale representation of people in immigration detention. The model relies heavily on IJC's group supervision of volunteer attorneys. This method generally works because most volunteers have the same set of questions that can be addressed during the weekly office hours we provide. But if the attorney can't gain access to their client at a particular facility, we cannot address those issues and questions in a group setting. It is an inefficient use of time for other attorneys on the office hours calls to discuss facility-specific access issues. Therefore, we usually address access issues through one-on-one mentorship in order to get the attorney to the point at which they can speak with their client. This often amounts to double the work to mentor each volunteer attorney when they have an attorney access obstacle. In turn, the extra time spent restricts the number of cases the mentor can handle at a particular time, in addition to harming IJC's overall goal to scale legal representation in immigration detention nationally.

34. We have regularly restricted referrals to a maximum number of detention centers for this reason and therefore the reach of our program is constrained, often at the facilities where our services are most needed. We have also stopped taking referrals from particular detention centers if there is no reliable way for a volunteer attorney to get in touch with their client. In one

instance, IJC took a case back from a volunteer attorney due to lack of telephone access after the volunteer attorney had been trying for weeks to contact their client with an interpreter and wasn't able to do so. The attorney, who did not speak Spanish, was unable to arrange for a three-way telephone call with the interpreter. I stepped in and represented the detained client in their bond hearing in that case on behalf of IJC. I also experienced difficulties contacting the client but was ultimately able to have one 15-minute call with the client before the bond hearing. Because I have done hundreds of bond hearings and am proficient in Spanish (thus not needing an interpreter), I was able to efficiently obtain the bare minimum information from the client in that short call; namely, he provided me with the name and contact information of his sister, who had to fill in all the details about the client's case because of the lack of telephone access.

35. As discussed above, we ceased taking cases from the Otero facility in New Mexico due to the poor remote access. At Otero, we have long had issues with telephone access, which has made remote representation very difficult for our volunteer attorneys. At Otero, the attorney must send a message through the officers to their client. The officers copy and paste the message into a system that appears on tablets in the general area of the cells, and then the client must read the message, and call us back. The message delivery system is extremely unreliable, especially when it comes to any non-English speaking/reading client and any client who is not literate. Because of our continual access issues at Otero, we stopped taking cases from that facility.

36. We have also stopped placing cases of people detained at Jackson Parish Correctional Center in Jonesboro, Louisiana, and Adams County Correctional Center in Adams County, Mississippi, because of the insurmountable challenges with accessing clients.

37. In the past, we have also declined to provide representation at Krome Detention Center (Krome) in Miami, Florida, and Glades County Detention Center (Glades) in Glades County,

Florida. In April and May 2020, IJC staff communicated with attorneys at Americans for Immigrant Justice (AIJ) about placing cases of people detained at Krome, Glades, and Broward County Detention Center with volunteer attorneys. Before we began accepting referrals, we investigated the remote access at all three facilities (*i.e.*, telephone and video teleconferencing capacity) and learned that there was no way to conduct free, confidential legal calls at Krome or Glades, and so we declined to accept case referrals from those two facilities. We did, however, accept case referrals of people detained at Broward because that facility had a process to set up free, confidential, private legal calls, making remote representation possible. Recently, upon request from local legal service providers we have reengaged with the Krome facility and placed two cases with volunteer attorneys, who have not been able to contact their clients by telephone, as discussed more fully below.

Remote Access at River, Krome, Laredo, and Florence

38. At River, there is no reliable way for a volunteer attorney to place a call to a client at the facility, nor is there a way for an attorney or client to set up a confidential legal call. Initially, the facility provided an email address and telephone number to use to request that a legal call be arranged. We learned of this telephone number and email address through the local non-profit, Immigration Services and Legal Advocacy (ISLA). But that method for setting up calls has ended. Recently, we placed a case at River with a volunteer attorney in August 2022. The attorney was attempting to represent an individual in a request for release, and I was the attorney's mentor. This attorney was an experienced volunteer with IJC, but even with that experience, she was unable to set up a legal call or get a message to her client at River through any formal means. The attorney called or emailed the facility six times to set up a call with her client, but the facility never responded. During this time, the volunteer attorney and I exchanged

several emails in which she reported to me what steps she had taken to gain access, and I, in turn, suggested other options for contacting her client, such as other guards or officers to reach out to, whose information I had learned from other practitioners who represent detained clients in Louisiana facilities. Each time the volunteer attorney wrote back saying that her efforts had not produced a result, I suggested that she contact a different deportation officer or facility staff member. We hoped that one of these officers was the right contact or would forward the email to the correct deportation officer, but that didn't happen. Ultimately, she had to rely on contact information we had from the referring organization, ISLA, for the client's mother. The attorney contacted the client's mother, who in turn gave the client the attorney's phone number along with a time to call when the attorney and the interpreter were both available. However, due to this tenuous means of communication, the first time the client called—using his own funds—it was not at the proposed time and the interpreter was not available. The call was on a monitored line, based on a recorded message they heard on the line, and the call took place in a room that was not private and with other detained persons and guards present. The attorney was able to have some basic communication with the client through the little Spanish she knew and with the assistance of another detainee at the facility who helped interpret the phone call. The attorney was able to gather from the client's wife that the client had been told that he must submit his application of asylum before his next hearing, which was on September 13, 2022. It had taken the attorney two weeks just to get in touch with the client, which delayed the attorney's ability to submit a release request. The attorney reported that she would have helped the client complete his application for asylum pro se (the attorney had only been retained to represent the client for his release request), but she did not feel it was ethical to do so in a non-confidential setting, thus severely impacting his ability to apply for asylum. Because the attorney was unable to interview

the client about his asylum claim, she was also unable to describe the basis for relief from removal in the parole application, which would have made the parole application stronger. The client's parole application remains pending. After the attorney submitted the parole application, IJC learned that video teleconferencing (VTC) may now be available at River, but that has never been communicated to the attorney during her many attempts to contact her client, nor is information about VTC access publicly available, including on ICE's website.

39. At Krome, there is no mechanism to set up a telephone call of any sort through the facility. The only means of communication between a client and an attorney is either through mail or if the client has personal funds in his commissary to make outgoing calls on monitored lines in the general common spaces in the cells with no privacy. Because our model places clients with our volunteer attorneys after their case is referred from a local partner, the client doesn't know the identity of their attorney or their contact information. That is why it is critical to have a mechanism for the attorney to initiate a call to a client.

40. For two recent cases at Krome that I mentored, the attorneys were only successful in contacting their clients because their clients happened to be from English-speaking countries and were literate in English, and therefore the attorneys mailed the clients letters identifying themselves and setting up a time for the client to call. In both cases, the clients had to pay to use the phones to call the attorneys and called from public spaces on monitored and recorded lines.

41. In the first case, the attorney received our placement email on July 31, 2022. When I first reached out to the attorney, I provided IJC's contact sheet for Krome that included the main telephone number for the facility and the name and email address of a deportation officer. Anytime we come into contact with a deportation officer and learn of their contact information, we update our facility contact sheet with that information. I typically also provide the outreach

email address for the ICE Enforcement and Removal Operations (ERO) field office where the detention facility is located, but that was not possible for Krome because the outreach email is not posted publicly. Krome is under the jurisdiction of the Miami Field Office, but ICE's website does not list an outreach email address for the Miami Field Office. In fact, there is no information about the Miami Field Office's Enforcement and Removal Operations (ERO) unit, which oversees immigration detention. *See* ICE, ICE Field Offices, https://www.ice.gov/contact/field-offices (see page 5, showing no "ERO" information for the Miami field office) (last visited October 6, 2022). This is particularly problematic because in recent stakeholder engagements with ICE and DHS headquarters, headquarters officials have repeatedly told legal service providers to contact the field office through the outreach email address to report access-to-counsel issues. But in the case of the Miami field office, there is no published contact information for ICE ERO. However, even when IJC or its volunteer attorneys contact field offices in other parts of the country via the ERO outreach email address to raise issues around attorney access, the emails go unanswered or receive an automated response.

42. Over the course of nearly two weeks, the volunteer attorney made ten attempts to set up a call with her client by sending emails, placing phone calls, and leaving voicemails at both the facility and to an ICE deportation officer. According to the volunteer attorney, on August 5, 2022, she sent an email to a deportation officer at Krome who was listed on our contact sheet. On August 8, the deportation officer responded that the attorney should contact a different deportation officer in charge of her client's case, but he did not provide contact information for that officer. The same day, August 8, the attorney called the main line at Krome and left a message on the detainee contact line for the client to call her. She also called and left a message on the "urgent" phone line, asking for the same. On August 10, she called and left a message

again on the detainee contact line for her client to call her. On August 12, the attorney sent another email to the first deportation officer, asking for contact information for the officer in charge of her client's case. She did not receive a response to that email. On August 12, she also left a message on the main line. On August 17, the attorney twice called 305-207-2001, the phone number for Krome on ICE's website, and selected "4" (after choosing the English language), which is the line to speak to a "deportation assistant." She received a busy signal both times. The attorney called the same number a third time and stayed on the line to speak with the operator. She waited for five minutes and did not get through during that time. She called a fourth time and left a voicemail message with the client's name, A number, and country of origin, asking him to call her.

43. During that time, I was in regular communication with the volunteer attorney, advising her on next steps to access her client. I advised the attorney to keep trying to reach her client by telephone, but suggested she also send her client a letter asking to call her. On or about August 12, 2022, upon my advice, the attorney sent a letter to the client with her name and contact information and also included the G-28 attorney appearance form for him to sign. The attorney finally received a telephone call from the client on August 17, 2022. The client reported that he never received any message from the facility or from his deportation officer to call his attorney, or that an attorney was attempting to contact him. In this case, which is currently ongoing, the client is limited in how long he can talk to his attorney because he has limited funds to pay for the calls, and he only receives three free 10-minute calls per week. When the client does contact his attorney, there is a lot of background noise, indicating that it is in a public space. The calls are sometimes of very poor sound quality, and the attorney reported that it is hard to hear her client. The attorney believes it is on a monitored line based on the recorded message at the

beginning of the calls. Additionally, and contrary to ICE policy, ICE is refusing to turn over requested documents to the volunteer attorney, which are needed to prepare the client's request for bond. ICE insists they need a G-28 attorney appearance form signed by the client before they will do so. The volunteer attorney only recently received the signed G-28 through the postal mail because there is no mechanism to email or fax legal documents to or from the client, which has significantly delayed obtaining documents and in turn has delayed the request for release, subjecting the client to additional time in detention.

44. In another recent case at Krome, the volunteer attorney needed to ask the client about sensitive information related to his family relationships for the purpose of identifying sponsors and ties to the community for his release request. Again, the volunteer attorney was unable to schedule a private, unmonitored, free telephone call. This attorney ended up on an IJC mentor office hours call with the volunteer attorney assigned to the case discussed above, and so she also contacted her client by letter, asking him to call her. When the attorney spoke to the client on the phone, he was reluctant to speak freely about these relationships in a public space, and the volunteer attorney was hindered in providing a full explanation of his legal case. The client's release request remains pending.

45. At Florence, IJC has found no consistent way to set up confidential legal calls. There is no published policy or practice at the facility or on ICE's website. At times, guards pass messages to the client to call the attorney back, but there is no consistency in message delivery. Even when messages are delivered, the client must call the attorney using their own funds on a monitored line in a non-private space. On limited occasions, an attorney may call and ask for a specific guard and sometimes that guard will find the client and put them on the phone. Even when the guard arranges for a call with the client, the attorney may need to wait on hold for 45

minutes before the guard finds the client. This individual guard, however, is not always available, and if he isn't, there is no substitute guard who will find the client. This is a consistent challenge with representing clients in immigration detention remotely—many facilities require information about who the "right" guard or facility staff is to set up telephone or video calls with detained clients, which our remote volunteer attorneys do not have.

46. Recently, in a case I was mentoring at Florence, the volunteer attorney was not able to set up a call with his client. After I sent the attorney information about the facility, the attorney called the facility and was placed on hold for 30 minutes. He then spoke to an officer and said it was urgent that he speak to his client. The officer told the attorney that the facility does not accept incoming attorney calls to detained clients. The officer asked the attorney why he wanted to speak to the client, and the attorney told the officer that he would not share the purpose of the legal call. The officer finally said he would have the detained client call the volunteer attorney within 48 hours, but it was four days before the detained client called the attorney. They were only able to have a one-minute conversation, which was not enough time to get the interpreter on the line. The client called from the general housing unit and had to pay for the call. Over the next four weeks, the volunteer attorney only had two more one-minute calls with his client. Instead, most of the information he gathered about the case came to the attorney via his client's family. This led to a misunderstanding with the client, and he believed that he was going to be released when his state criminal sentence was vacated, but in fact, he was not and needed to continue working with the volunteer attorney. The client then stopped calling his attorney. This client was ultimately ordered removed on or about August 26, 2022, without a request for release having been successfully submitted due to the difficulties contacting the client to get necessary information for the release request.

47. As the attorney mentor, I spent a significant amount of time advising the volunteer attorney during this case about how to contact the sponsor who will provide support to the client when released, and how to work the sponsor and interpreter once it became apparent that he would be unable to maintain telephone contact with his client. I also helped him troubleshoot obtaining the G-28 attorney appearance form signed when the attorney couldn't contact the client.

48. Another case I am mentoring at Florence shows the arbitrary nature of the facility's practices regarding legal phone calls. The volunteer called the facility for the first time on Friday, September 30, 2022, and talked to a facility staff member who told her to call back and ask for the sergeant. The volunteer called three times on October 3, 2022, and twice more on October 4, 2022. The volunteer finally reached the sergeant on the second call on October 4. The sergeant told the volunteer attorney to email him, which she did, and the sergeant forwarded the email to a staff member. The staff member emailed the volunteer attorney asking for her number so the client could call her back. While the volunteer attorney wanted to set up a time to call her client at the facility, the staff member insisted on the detained client initiating the phone call from her office. During this exchange, I advised the volunteer attorney to give the facility staff her number.

49. On October 6, 2022, the volunteer attorney received a call at the arranged time from the detention center. The staff member told the volunteer attorney that the only reason she was allowing this call from her office was because the client needed an interpreter and there was not three-way call capacity on the phones in the public housing unit. The staff member also advised that she was making an exception and would not be making such an exception in the future. The volunteer attorney was told she could merge an interpreter into the call, but the call dropped

when she attempted to do so. Fortunately, the detained client spoke enough English that the volunteer attorney could get the information she needed to begin working on his parole application. Since then, the detained Client has had to use his own funds to call the volunteer attorney. Ten days went by in which he was unable to call his attorney because he had no funds. The attorney repeatedly emailed the facility to arrange a call, informing them that the client had no funds. When the detained Client finally called the volunteer attorney on October 31, the call was brief because he did not want to expend all of his telephone minutes on the call to his attorney.

50. IJC is prepared to take more referrals from these facilities if attorneys had reliable access to confidential calls or VTC that could be initiated by the attorney at a specific time and could arrange for interpretation for an unlimited duration. However, with the current barriers, we are unable to continue to expend the resources necessary to place additional cases in these locations.

I declare under the penalty of perjury that the forgoing is true and correct. Executed this 16th day of November, in Albuquerque, NM.

REBEKAH WOLF

EXHIBIT A

IMMIGRATION **JUSTICE** CAMPAIGN

American Immigration Council | AILA AMERICAN IMMIGRATION LAWYERS ASSOCIATION | AIRP American Immigrant Representation Project

Pro Bono Attorney Acknowledgement

Name of Client: _____

Name of Pro Bono Attorney: _____

We thank you for your willingness to represent a pro bono client in the _____ (type of case) for _____ (client name). This acknowledgement outlines some important aspects of your representation, and an understanding of the responsibilities that representation entails. By signing this agreement, you agree to the contents herein, and that if you are unable to complete the case, you agree that IJC may take the case back for re-placement:

1. Your representation of your client is on a pro bono basis; you will neither request nor accept remuneration for your client's case.
2. You will be responsible for all costs normally associated with your client's legal representation, including but not limited to document delivery and postage. If you are representing a client on a habeas matter, costs may include getting admitted into the appropriate federal district court.
3. You agree to provide your client with an engagement letter setting forth the terms of your representation. The scope of your engagement letter with your client will govern the duration of your representation in this matter.
4. You agree to begin work on this case within, at minimum, one week of accepting representation, and to complete work within the timeframe outlined in our materials and orientation or, in the alternative, provide the Immigration Justice Campaign with an explanation and revised timeline.
5. Throughout your representation of your client, you will, with your client's permission, keep the Immigration Justice Campaign informed of significant developments in the case, including hearing dates, deadlines, and the outcome of the case.
6. If you are unable to continue with the representation of this matter, you agree to notify the Immigration Justice Campaign at the earliest possible opportunity.
7. You understand that the Immigration Justice Campaign is available to provide mentorship, practice resources, and guidance on your case. However, the Campaign is not co-counsel on this matter, nor can Campaign staff serve as your legal assistant. You

have the same full ethical obligation of representation that you would have representing any other client.

8. I hereby acknowledge receiving this document entitled “Pro Bono Attorney Acknowledgment.” I understand that if I do not meet the expectations outlined in this document, the Justice Campaign may take the case back and find the client other representation.

Signature: _____

Date: _____

EXHIBIT B

March 1, 2021

Secretary Alejandro Mayorkas

U.S. Department of Homeland Security

500 12th St. SW Washington, D.C. 20536

Acting Director Tae D. Johnson

U.S. Immigration and Customs Enforcement

500 12th St. SW Washington, D.C. 20536

Re: Legal phone access at Otero County Processing Center and El Paso Service Processing Center

Dear Secretary Mayorkas and Acting Director Johnson:

The undersigned attorneys and organizations provide legal services to individuals detained by U.S. Immigration and Customs Enforcement ("ICE") at the El Paso Service Processing Center ("EPSPC") in El Paso, Texas, and the Otero County Processing Center ("Otero") in Chaparral, New Mexico. We write to express our concerns regarding serious due process violations caused by insufficient legal phone access for individuals detained in these two facilities. We request that ICE expeditiously create and implement a detailed plan that will fully protect the right of detained individuals to speak to legal service providers. This plan must ensure that legal phone access is free, confidential, and comprehensive, both during and after the COVID-19 pandemic.

Phone access is essential as ICE detention facilities are frequently in remote locations, sometimes thousands of miles away from families and attorneys, preventing in-person visits. Improvements to phone access were needed at ESPC and Otero before the COVID-19 pandemic, which has only made the situation more urgent. Many legal service providers who could previously visit their clients in detention can no longer do so. Detained individuals at EPSPC and Otero report phone access that is further limited during quarantines and lockdowns, even though they are forced to proceed with their cases in immigration court.

Legal calls in detention must be free of cost

The preparation of an immigration case requires many hours of conversation with a legal service provider. A lack of preparation can cause prolonged detention and deportation, which in turn can mean permanent family separation or even death. Currently, detained individuals must pay 11 cents for audio calls or 21 cents for video calls except to the phone numbers on the Executive Office for Immigration Review ("EOIR")'s list of pro bono organizations, which excludes many legal service providers. Even if an organization is on EOIR's pro bono list, the process to access free calls is cumbersome and difficult. Many detained individuals have arrived in the United States with very few resources, and even those individuals who can work in detention may make as little as $1 a day. Therefore, many individuals cannot afford to pay for the legal calls they need.

Legal calls must be unmonitored and confidential

Meaningful immigration case preparation requires the sharing of very sensitive information. Individuals detained in EPSPC and Otero frequently must make legal calls from communal spaces where they are likely to be uncomfortable sharing personal or traumatizing details. Failing to share this information can cost them their immigration case.

ICE must facilitate phone access, including by scheduling legal calls

ICE must play an active role in ensuring that individuals in its custody have adequate access to counsel by scheduling confidential, private, free legal calls. ICE must schedule legal calls to address a host of phone access problems that plague detained individuals, including their inability to control their own schedules and other limitations, such as language barriers, mental illness, and trauma.

While individuals at EPSPC and Otero do have some access to phone calls, this access is vastly inadequate for meaningful legal preparation. ICE recently implemented a system in which a written message is sent to tablets that are accessible to people in detention. However, instruction on how to access these messages is inadequate, the messages are not translated into the individual's native language, and the system is inaccessible to individuals who are illiterate. There is no way for an attorney to arrange a specific time and date for a call with a client. Even if an individual can navigate the message system, they do not have access to free, confidential calls to respond to the message.

Individuals detained at EPSPC and Otero also report a large range of other challenges including an inability to navigate prerecorded menus or to leave voicemails, delays in learning that an attorney is trying to contact them, and frequent interruptions to calls. For example, one accredited representative reported that her legal call was interrupted a total of three times in one day when ICE refused to bring her client lunch, the barracks were fumigated, and then a headcount took place. Legal service providers representing individuals in Otero and EPSPC also report the inability to make incoming calls, leave messages for their clients, schedule calls in

advance, or add a third-party, such as an interpreter, to the call. They also report intermittently receiving blanket denial of calls to prospective clients who they have not yet committed to represent.

Legal service providers have been suggesting for over a year a simple fix: that the Enforcement and Removal Operations implement at El Paso and Otero what they have implemented at other detention centers in the same jurisdiction, such as Cibola County Detention Center in Milan, New Mexico and Torrance County Detention Facility in Estancia, New Mexico. At these facilities, legal calls are arranged exactly like legal visits, with an attorney sending an email to ICE to reserve a time and date with the client. ICE then brings the client to a legal visitation room to use a private, unmonitored phone for the legal call.

These challenges have been the subject of ongoing litigation

The barriers to phone access reported by attorneys and detainees in EPSPC and Otero prompted the filing of a lawsuit in New Mexico on May 4, 2020, which is still pending. Since then, the situation has not improved and in some respects, has gotten worse.

We urge ICE to protect due process by preparing a phone access plan that ensures the following:

- ICE must facilitate confidential, private, and free legal calls.
- Confidential, private, and free, legal calls must include calls to and from paralegals and volunteers, not just attorneys and BIA accredited representatives. Legal calls should take place in a location where the detained individual cannot be overheard by ICE, facility staff, or other detained individuals, and where the call does not have background noise.
- Legal service providers should be able to schedule calls in advance.
- ICE should provide instruction to all detained individuals on use of the phone system, including the pro bono platform—a speed dial system for certain EOIR-registered non-profit organizations to receive free calls, until they can use it correctly. Instruction through posters and a public address system alone is insufficient. Instruction must be accessible to individuals who are illiterate and available in the native language of each individual.
- Detained individuals should be able to leave voicemails and navigate automated phone menus.
- Legal service providers should be able to call into the facility to speak to a detained individual.
- Legal service providers should be able to add a third party, such as an interpreter, to a call.
- ICE should immediately deliver messages left by legal service providers for their detained clients.

- Organizations that provide legal service orientations or know-your-rights programming should be able to conduct presentations over the phone and by video to groups or individuals, whichever the organization determines to be best for the situation.
- Calls should be as long as needed by the detained individual and attorney given that they are in many cases replacing in-person legal visits during the COVID-19 pandemic.
- A schedule should be available to all legal service providers of any essential activities that may interrupt calls, such as headcounts or fumigation. ICE and facility staff should make efforts to accommodate the need for legal calls and minimize interruptions.
- All these guidelines should apply to calls to legal services providers by both prospective clients and those already represented. A G-28 should not be a prerequisite for scheduling a phone call.

Sincerely,

Catholic Charities of Southern New Mexico

Diocesan Migrant & Refugee Services

HIAS

Innovation Law Lab

Las Americas Immigrant Advocacy Center

New Mexico Immigrant Law Center

Santa Fe Dreamers Project

Daniel Caudillo, Esq.

Eduardo Beckett, Esq.

Jessie Miles, Esq.

Pamela Genghiní Munoz, Esq.

Carlos Spector, Esq.

Ernesto Sanchez, Esq.

Melissa Untereker, Esq.

Brenda Villalpando, Esq.

CC: Angela Kelley, Senior Counselor, U.S. Department of Homeland Security

Timothy Perry, Chief of Staff, U.S. Department of Homeland Security

EXHIBIT C

November 23, 2021

Katherine Culliton-González
Office for Civil Rights and Civil Liberties
katherine.culliton-gonzalez@hq.dhs.gov
CRCLCompliance@hq.dhs.gov

Inspector General Joseph V. Cuffari
Office of the Inspector General

CC: Director David Neal
Executive Office of Immigration Review
David.Neal@usdoj.gov

Ombudsman David Gersten
Office of the Immigration Detention Ombudsman
david.gersten@hq.dhs.gov

Re: Severe Violations of Due Process and Inhumane Conditions at Torrance County Detention Facility

Dear Ms. Culliton-González and Inspector General Cuffari,

We, the undersigned organizations, jointly file this complaint to request an investigation into severe violations of due process and inhumane conditions reported by individuals detained at Torrance County Detention Facility ("Torrance") in Estancia, New Mexico and by attorneys and legal representatives attempting to provide them with legal services. The due process violations under the Department of Homeland Security's purview include the denial of access to counsel, language access, information about the asylum process, and individualized custody determinations. These issues are exacerbated by violations of due process in the immigration courts, including improper immigration judge advisals and unusually rapid proceedings.

While most of these violations affect everyone detained at Torrance, some, such as the denial of language access, the unusually rapid proceedings, and blanket denials of request for release disproportionately affect Haitian people. It is our understanding that there are approximately 80 Haitian men detained at Torrance, and that they are asylum seekers who recently arrived in the United States and were apprehended in the vicinity of Del Rio, Texas. Some of them are likely victims or witnesses of Customs and Border Protection (CBP) misconduct that occurred there.[1]

[1] Joel Rose, "The inquiry into border agents on horseback continues. Critics see a 'broken' system," *NPR*, November 6, 2021, https://www.npr.org/2021/11/06/1052786254/border-patrol-agents-horseback-investigation-haitian-immigrants.

Violations of Access to Counsel

Since September 27, 2021, attorneys and legal representatives from the El Paso Immigration Collaborative (EPIC) have attempted to provide legal services to the Haitian men detained at Torrance. The detention facility has frequently denied EPIC's requests for legal calls or has failed to respond to them for days. Facility staff have told EPIC that a legal call cannot be scheduled for several days because the person who schedules them is "out sick" or "really busy". They have also told EPIC to "try again next week," even if the client has an upcoming hearing for which they must prepare.

On or around September 30, 2021, EPIC visited Torrance with prior approval to conduct a group legal meeting with 58 men from two units. After EPIC attorneys traveled to Torrance and waited two hours, facility staff informed them that they would not be able to conduct the meeting because the two units were in quarantine. EPIC's requests to conduct the meeting outdoors and/or in full personal protective equipment were denied. Eventually, the attorneys were allowed to briefly yell to one of the units of men through a door barricaded with a trash can in a non-confidential setting without access to interpretation.

On or around October 14, 2021, an attorney was able to conduct a group legal visit with approximately half of the group of Haitian men. Facility staff stated that attorneys could not meet with the other half of the men because they were in quarantine.

ICE initially did not respond to EPIC's further requests to meet with the remaining men and then later changed the requirements for the visit to be those of a Legal Orientation Program (LOP) provider. These requirements include the pre-approval of a syllabus and the limitation of attendance only to people who have expressed interest on a sign-up sheet, which ICE would not commit to providing in Haitian Creole. Even after complying with these requirements, EPIC was not allowed a second group meeting until November 12, 2021, more than four weeks after the first group meeting. ICE recently informed EPIC that it could meet telephonically with the detained individuals but often limited the calls to five people per day. This is insufficient given the number of individuals and urgency of their legal situations.

This denial of legal access to EPIC means a complete denial of access to counsel at Torrance, as there are no other non-profit legal service providers serving the facility. To the best of EPIC's knowledge, only a few of the men have an attorney representing them in their removal proceedings.

These events demonstrate Torrance's non-compliance with the in-person or telephonic legal representative access requirements of the Performance Based National Detention Standards 2011 ("PBNDS 2011"). The PBNDS 2011 require the facility to provide people consistent, unobstructed access to in-person legal visits seven days per week. Specifically, immigration detention facilities must "permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days . . . and a minimum of four hours per day on weekends and holidays."[2] Before any such visitation, legal representatives "shall not be asked to state the legal subject matter of the meeting."[3] Such legal visitations

[2] See ICE PBNDS 2011 at Ch. 5.7(J)(2).
[3] Id. at Ch. 5.7(J)(4).

include pre-representation visits, during which "the facility shall permit detainees to meet with prospective legal representatives or legal assistants."[4] When a legal rights group presentation is requested, "[a]ll facilities are required to cooperate fully with authorized persons seeking to make such presentations."[5] The PBNDS 2011 also states that "Legal rights group presentations shall be accommodated to the greatest extent possible absent significant logistical or security-related concerns."[6]

The PBNDS 2011 also requires that Torrance provide detained individuals with written notice of "the procedure for obtaining an unmonitored call to a court, a legal representative or for the purposes of obtaining legal representation."[7] Notice shall be provided not only in Spanish but also "in the language of significant segments of the population with limited English proficiency"[8]—in this case, Haitian Creole.

The Fifth Amendment of the U.S. Constitution as well as a host of statutes, regulations, and long-standing practice also entitle these individuals to access counsel to understand and pursue their legal remedies and pursue the same.

Violations of Language Access

There is no consistent way for speakers of Haitian Creole to communicate with Torrance staff or ICE, the latter of which is not present onsite. The detained Haitians who have spoken with EPIC report not knowing what is happening in their immigration cases due to this lack of communication. When an individual calls the Executive Office for Immigration Review (EOIR) Automated Case Information System or the Detention Reporting and Information Line, they receive initial instructions to navigate the menu only in English and Spanish, without an option for Haitian Creole. The facility also shows detained individuals an informational video on the asylum process only in Spanish, with no interpretation.

Furthermore, as there is no LOP provider at Torrance and legal access is being denied to the only legal service provider available to people detained there, it is functionally impossible for asylum seekers who cannot read or write in English to fill out their I-589 Applications for Asylum and Withholding of Removal.

Lack of or Improper Adjudication of Release Requests

On or around November 3, 2021, EPIC submitted parole requests on behalf of 17 Haitian men detained at Torrance. Since then, EPIC has submitted 7 additional requests for a total of 24. All of the men have sponsors willing to receive them, no criminal history in the United States, and pending removal proceedings. As of November 17, 2021, 19 of the 24 requests have been denied. ICE has ignored the remaining 5 requests. ICE sent the first denial less than an hour after the request was submitted, in the form of a very short email stating that the request had been denied because there was "NO humanitarian" basis for parole (emphasis in original) and suggesting that the client seek bond. ICE followed this email denial

[4] Id. at Ch. 5.7(J)(4).
[5] Id. at Ch. 6.4(I).
[6] See id. at Ch. 6.4(C); Ch. 5.7(J)(12).
[7] See id. at Ch. 5.6(V)(B)(3).
[8] Id.

with a parole denial form that had "flight risk" and "danger to community" marked as justification for the decision, contradicting the justification the agency provided in the original email. This is a misapplication of the spirit of parole directives.

For some requests for release, there was no formal adjudication or individualized determination at all, just an email saying that ICE was declining to parole the respondent and that there was no humanitarian basis for parole. EPIC has also filed 13 requests for release pursuant to a court order in *Fraihat v. ICE*, all of which have been denied or ignored.[9]

Inhumane Detention Conditions

Torrance failed its annual inspection for compliance with the PBNDS 2011 in July 2021 with 22 deficiencies, 4 of which occurred in "priority components."[10] The inspection findings included that the facility is severely short-staffed. Litigation is pending regarding improper use of force after facility staff pepper-sprayed men in ICE custody for participating in a peaceful hunger strike.[11]

People detained at Torrance, including the Haitian men, have reported dangerous conditions and medical neglect. Some have developed rashes with a tingling or stinging sensation after taking showers, which come from the same source as the drinking water. People have reported being served uncooked meat and a meal of "raw cornmeal mixed with water." A man with a serious medical condition was left on the floor for half an hour after he collapsed and was not taken to a doctor. Another man reported that he is losing weight and that his "eyes are sinking back in [his] head faster every day."

Improper Immigration Judge Advisals and Expedited Case Scheduling

Every Haitian with whom EPIC has spoken who has had a hearing before an immigration judge has stated that the judge told them they needed an attorney present in order to proceed with seeking asylum. The immigration judges are not advising these individuals that they can proceed pro se. This misinformation is leading to respondents with asylum claims being ordered removed at their first or second hearing. At least 4 Haitian immigrants have already been ordered removed at their initial master calendar hearing because, although they express fear of returning to Haiti, they had received no or very little access to legal services and did not understand the meaning of the term "asylum" when it was used by the judge. These men reported receiving the EOIR legal service provider list only in English and at the same hearing at which they were ordered removed. Some reported not even knowing that they had been ordered removed.

Based on the data collected by EPIC, we also believe that the Haitian asylum seekers detained at Torrance since September 2021 are being rushed through these proceedings significantly more quickly than the pace

[9] Fraihat v. ICE, Case No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), ECF No. 133
[10] Leonardo Castañeda, "Understaffed, Unsanitary ICE Facility in Torrance County Fails Annual Inspection," *ACLU New Mexico*, September 17, 2021, https://www.aclu-nm.org/en/news/understaffed-unsanitary-ice-facility-torrance-county-fails-annual-inspection.
[11] Santa Fe Dreamers Project et al. v. CoreCivic et al.

of proceedings prior to their arrival and to that of other nationalities. This is disparate treatment in violation of the Equal Protection Clause.

We understand that these court-related issues are a matter for the Department of Justice, not DHS. We are in communication with the Executive Office of Immigration Review, but it is important to note that these additional due process violations compound the effects of the violations by ICE listed above. Access to counsel is especially crucial given the urgent risk of removal. ICE must not remove individuals who are being rushed through removal proceedings without due process.

Conclusion

We urge your office to investigate the violations of due process and inhumane conditions described above and in the following affidavits from an attorney seeking legal access at Torrance and two people detained there. Torrance failed its only PBNDS compliance inspection in part due to an extreme staffing shortage, which Torrance has repeatedly referenced as an excuse for why requests for legal calls are denied or are not responded to for days. These staffing issues do not relieve ICE or Torrance of their obligations under the PBNDS 2011. If ICE is unable to staff the facility appropriately and provide individuals in its custody the services required by the written detention standards, ICE should release these people immediately.

Further, given the rapidly scheduled removal hearings of the Haitian men detained at Torrance, the facility is unable to provide them with the access to counsel and language appropriate information to ensure the protection of their rights in removal proceedings. Releasing them would permit these men to obtain pro bono counsel, reunite with family members already in the United States, and access appropriate social service and community support while they pursue applications for asylum. Keeping them detained at Torrance while EOIR speeds through their proceedings will only lead to more due process violations and wrongful removal orders.

This situation is especially egregious given that the Haitian men detained at Torrance entered the United States through Del Rio, Texas and many were present at the encampment there. We believe many were likely victims or witnesses of possible violations of federal law by law enforcement officers. Special attention must therefore be paid to ensure that they receive access to counsel in order to understand and exercise their rights under immigration law, provide statements to investigating bodies, and/or pursue potential civil claims. They must not be removed without the opportunity to do so.

Sincerely,

ACLU of New Mexico

American Immigration Council

American Immigration Lawyers Association

Innovation Law Lab

National Immigration Project of the National Lawyers Guild

Affidavit of Allegra Love

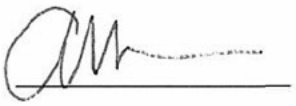
I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. I, Allegra Love, am an attorney barred in the state of New Mexico. I have been practicing immigration law for 10 years. I currently provide legal services to immigrants detained near El Paso, Texas, on behalf of the El Paso Immigration Collaborative (EPIC).
2. On or around September 27, 2021, I learned that a group of Haitian men were in U.S. Immigration and Customs Enforcement (ICE) custody at the Torrance County Detention Facility ("Torrance") in Estancia, New Mexico. That same day, I emailed Torrance staff requesting to schedule a group legal presentation and individual legal intakes with these men. After originally requiring individual names and A numbers of meeting attendees, which I did not have, the facility scheduler eventually agreed to a group legal meeting with all "recently arrived Haitians" 3 days later.
3. Also that same day, I emailed ICE officer Patricia Bates at the Albuquerque Field Office, requesting the number of Haitian people detained at Torrance, and whether they were in 235 expedited removal proceedings, 240 removal proceedings, or subject to Title 42. Officer Bates quickly responded to me, cc'ing SDDO Josh Chapman at Otero County Processing Center and asking me to submit G-28s for the people with whom I wanted to meet. I explained that I did not have G-28s yet but was looking for information in order to plan legal services. I did not receive a response.
4. On or around September 30, 2021, my colleague and I visited Torrance to conduct the group legal meeting. After we waited for an hour, a member of the facility staff brought me to the library and informed me that I would be meeting with 58 men from 2 units. We waited another hour until Torrance Chief Segura and Officer Edmundton arrived and informed us that we would not be able to conduct the meeting because we did not have G-28s. We explained that we were requesting a pre-representation meeting. Chief Segura and Officer Edmundton then stated that we could not meet with the 2 units because they were in quarantine. They denied our requests to conduct the meeting outside and/or in full personal protective equipment. Eventually, we were allowed to briefly yell to one of the units of men through a door barricaded with a trash can in a non-confidential setting without access to interpretation. We asked to speak to the other unit but facility staff told us it "was just too much."
5. Since that visit to Torrance, I have repeatedly requested legal calls with the Haitian men detained at Torrance. Facility staff have frequently denied the requests or have failed to respond to them for days. Staff have told me that a legal call cannot be scheduled for several days because the scheduler is "out sick" or "really busy". Staff have told me to "try again next week," even if the person with whom I have requested to meet had an upcoming hearing for which they needed to prepare.
6. On or around October 14, 2021, EPIC was able to conduct a group legal visit with approximately half of the group of Haitian men. Facility staff stated that EPIC could not meet with the other half of the men because they were in quarantine.
7. I informed ICE of my request for a group legal visit with the remaining men. ICE initially did not respond, and then changed the requirements for the visit to be those of a Legal Orientation

Program (LOP) provider. These requirements include pre-approval of a syllabus and attendance only of people who have expressed interest on a sign-up sheet, which ICE would not commit to providing in Haitian Creole. Even after complying with these requirements, EPIC was not allowed to conduct a second group legal meeting until November 12, 2021, over four weeks after the first group legal meeting.

8. ICE recently started to allow me to schedule legal phone calls with people detained at Torrance but on some days limited the calls to 5 people. This is insufficient given the number of individuals and urgency of their legal situations.
9. The men I have spoken to say that they cannot communicate with facility staff or ICE, the latter of which is not present onsite, due to a lack of Haitian Creole interpretation at the facility. These men have told me that they do not know what is happening in their immigration cases due to this lack of communication. They have also told me that the facility also shows detained individuals an informational video on the asylum process only in Spanish, with no interpretation.
10. I am extremely concerned about Torrance denying me legal access because EPIC is the only legal service provider available to people detained there. Therefore, this denial of access to EPIC means a complete denial of access to counsel at the facility. Out of 44 people EPIC has spoken to at Torrance, only 3 have attorneys representing them in their removal proceedings. There is no LOP at Torrance so it is functionally impossible for asylum seekers who cannot read or write in English to fill out their I-589 Application for Asylum and Withholding of Removal.
11. On or around November 3, 2021, I submitted parole requests on behalf of 17 Haitian men detained at Torrance. Since then, I have submitted an additional 6 parole requests for a total of 23. All of the men have sponsors willing to receive them, no criminal history in the United States, and pending removal proceedings. Less than an hour after I submitted the requests, I received the first denial via a very short email suggesting that the client seek bond. This email denial was followed later by a parole denial form that had "flight risk" and "danger to community" marked as justification for the decision, even though the email had stated that the reason for denial was that there was "NO humanitarian" basis for parole (emphasis in original).
12. ICE has denied 19 of the 23 requests, with the remaining 4 requests still pending. One of the denials is for a trans woman who is being held in an all-male unit. For some denials, ICE did not provide any justification besides an email saying that ICE was declining to parole the respondent or that "Although you did provide the sponsor documentation, in your clients case there is NO present urgent humanitarian reason or significant public benefit for release." I have also filed 13 requests for release pursuant to a court order in *Fraihat v. ICE*, all of which have been denied or ignored.
13. People detained at Torrance, including the Haitian men, have told me about dangerous conditions and medical neglect at the facility. Some of them have said that they developed rashes with a tingling or stinging sensation after taking showers, which come from the same source as the drinking water. They have also told me that they are served uncooked meat and a meal of "raw cornmeal mixed with water." One person told me that a man with a serious medical condition was left on the floor for half an hour after he collapsed and was not taken to a doctor. Another man reported that he is losing weight and that his "eyes are sinking back in [his] head faster every day. One man reported that a detention center guard kicked him.

14. I am very worried about the denial of access to counsel at Torrance because people detained there who appear in court without an attorney are receiving false advisals from the immigration judges. Every Haitian with whom EPIC has spoken who has had a hearing before an immigration judge has stated that the judge told them they needed an attorney present in order to proceed with seeking asylum. This misinformation is leading to respondents with asylum claims being ordered removed at their first or second hearing. At least 4 of the Haitian men have already been ordered removed at their initial master calendar hearing. These men have told EPIC that they did not understand the meaning of the term "asylum". They have said that they received the EOIR legal service provider list only in English and at the same hearing at which they were ordered removed. Some expressed that they did not even know that they had been ordered removed.
15. Based on the data collected by EPIC, I believe that the Haitian asylum seekers detained at Torrance since September 2021 are being rushed through these proceedings significantly more quickly than the pace of proceedings prior to their arrival and that of other nationalities.
16. The men I have spoken to entered the United States through Del Rio, Texas. I believe many were witnesses to possible violations of federal law by law enforcement officers. I am very concerned that they will be deported without the opportunity to share the information they have on these events.
17. I have worked in ICE detention since 2014. In my career I have never felt so disrespected by detention center staff and field office employees. I am scared for my clients and absolutely disgusted by my government. I believe there are extraordinary human rights violations afoot at this detention center and beg CRCL to take swift action.



Allegra Love

11/22/2021

Date

Affidavit of [redacted]

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is [redacted]. I was born on [redacted]. I am currently detained at the Torrance County Detention Facility in Estancia, New Mexico. I fled my home country of Haiti on January 26, 2020, because I was afraid for my life. I traveled through South and Central America and arrived to the United States on September 17, 2021.
2. I attended my first immigration hearing on October 25, 2021. The judge told me that I had to have an attorney by November 25, 2021, or he would order me removed. At that time, I still had not spoken to an attorney at all. I wanted to talk to an attorney, but no one told me how to talk to one or that I had a right to do so. At that hearing, I was given a list of attorneys to call but I could not read the list because it was in English, and it was already too late for them to help me in court.
3. The judge asked me whether I wanted to apply for asylum. I did not know what asylum was. The only thing I had heard about asylum was from a man who was detained with me. He said that we needed proof to apply for asylum, so I was worried that I could not apply because I do not have proof of the danger I would be in if I returned to Haiti. This is why I told the judge that I did not want to apply for asylum. The judge then ordered me removed.
4. I speak Haitian Creole. I do not speak Spanish or English. There are no Haitian Creole interpreters at the detention center. If I need to speak to the detention center staff, I often have to ask someone who is detained with me to interpret or ask a relative to interpret over the phone.
5. The water in the showers at the detention center makes my whole body itch, from my head to my toes. I do not know what is wrong with the water. I am worried that there are similar problems with the water we have to drink. The food here is also so bad that we can barely eat it.
6. My family has put $10 on my phone account five times, for a total of $50 but I have tried to use this money and have not been able to make calls with it.

/detained/ 11/15/21

[redacted] Date

Affidavit of Anonymous

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. I am currently detained at the Torrance County Detention Facility in Estancia, New Mexico. I fled my home country of Haiti because I was afraid for my life. I arrived in the United States on September 16, 2021.
2. I went to immigration court and received a list of immigration attorneys. I have been making phone calls to the attorneys on the list, but they do not answer or call back. The only attorney I have been able to talk to is Allegra Love.
3. The shower water gives us a rash on our bodies that itches. I can see that it is the same water that we drink; the detention center staff take it from the bathroom and put it in our room.
4. The staff speak English and sometimes Spanish. There are no Haitian Creole interpreters at the detention center. I don't speak any English at all, and I only speak a little Spanish so it is difficult to communicate. It is even more difficult for other people detained here who do not speak any Spanish.
5. The food is very bad at the detention center. It is not sufficiently cooked. Some people have diarrhea after eating it. I have diabetes so I need to eat food with less flour and sugar in it but that is not available.
6. No matter what medical problems we have, the medical staff give all of us, including me, the same pill. I do not know what the medication is. About a week ago, I felt sick and had to go to the hospital because of low blood sugar. Even after that, I still am not receiving treatment for diabetes. I am experiencing headaches because of my diabetes. I had to keep the phone call for taking this declaration short because I am not feeling well right now.

/detained/	11/15/21
Anonymous	Date

DECLARATION OF WAYNE BLANCHARD, ASSISTANT FEDERAL PUBLIC DEFENDER, LAFAYETTE, LA

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

2. I am a licensed attorney and member in good standing of the Louisiana bar. I am currently employed as an Assistant Federal Public Defender in the Lafayette, Louisiana office. I have been a federal public defender in the Lafayette office for 28 years.

3. I have represented and currently represent clients in the custody of the United States Marshals Service (USMS) in the Iberia Parish Jail (Iberia), located in Iberia Parish, Louisiana, the St. Martin Parish Jail (St. Martin), located in St. Martinville, Louisiana, and the Natchitoches Parish Jail (Natchitoches), located in Natchitoches Parish, Louisiana (collectively, the "Facilities"), as well as other facilities in Louisiana. Most of my clients are in Iberia and St. Martin. This declaration is based only on my personal experiences representing clients at the Facilities and is not necessarily reflective of other attorneys' experiences. All of the Facilities are run by their respective Sherriff's Office, which have contracts with USMS.

In-Person Visits at the Facilities

4. Before the pandemic, I visited clients at these Facilities about 2 times per week; more recently, I visit clients at these Facilities about 2 times a week. To visit my clients in person, I send an email to a standard email inbox prior to my visit. In the email, I include a list of clients I need to visit and the specific times I'd like to see them. I generally send this request the day before I want to visit; there is no strict requirement to make the request 24 hours in advance. I receive a confirmation email response to confirm my visit within 1 hour of sending the email request.

5. In my experience, if I need to visit a client and was unable to schedule an in-person visit in advance, I am able to do drop-in visits to see clients at Iberia and St. Martin. The ability to conduct drop-in visits has been helpful for when I have needed to visit clients on an urgent basis.

6. When I arrive at these Facilities to visit clients, there is minimal to no wait time. I am able to see clients generally within five minutes of arriving at these Facilities.

7. I can enter all of the Facilities with my laptop, and use my laptop while I'm meeting with clients.

8. There are private spaces where I meet clients at Iberia and St. Martin. At Natchitoches, there is one attorney-client meeting room, and if that room is occupied, staff will let us use their offices or conference rooms as private spaces for my meetings with clients. All of my

visits at the Facilities are "contact" visits; there is no barrier or separation preventing physical contact during my legal visits. My clients and I are able to have confidential conversations in the private meeting spaces at the Facilities, and we are able to hear each other well and exchange documents during the visit.

9. There is no time limit on legal visits at the Facilities.

Video Teleconference (VTC) Visits at the Facilities

10. Since the pandemic, I have primarily relied on VTC visits with my clients at the Facilities. VTC visits at the Facilities take place over Zoom. To schedule a VTC visit, I email the Facilities usually the day before, providing my client's name, the time I want to talk with the client, and the Zoom meeting link and information. There is no strict requirement to send a request 24 hours in advance to schedule a VTC visit. In some cases, I am able to set up a VTC visit on short notice. For example, I recently had a client at Natchitoches who I could not visit in person before his initial appearance before a United States Magistrate Judge, so I asked to conduct a VTC visit on the same day he was brought to the facility, the afternoon before his initial appearance, and the facility accommodated this request.

11. VTC visits take place in a private room at Natchitoches, St. Martin, and Iberia, usually a closed-door office or conference room. I have not experienced technological or other difficulties in conducting VTC visits via Zoom at the Facilities.

Phone Calls at the Facilities

12. Because VTC and in-person visits at the Facilities are generally reliable and seamless, I rely less on phone calls with clients at the Facilities. I can schedule phone calls in advance at the Facilities, but there is no strict requirement—if I need to speak with a client over the phone immediately, staff at the Facilities will locate my client and connect us so that I can speak with him/her as long as he is available. I experience problems with scheduled phone calls at the Facilities from time to time, but they are generally honored. I can also ask staff at the Facilities to have a client call me back, and this has worked for me.

13. When clients make outgoing phone calls to us, they are sometimes calling us from their housing pods, in which case the phone calls are not private and confidential. However, at Iberia, attorneys can ask staff to bring the client to a private space for the phone call, which the facility has done for me.

14. When clients at the Facilities call us, they are generally required to pay; our office accepts collect calls from clients. However, when we call to speak with our client at the Facilities—either by a previously-scheduled phone call, or a phone call on immediate request—the client does not need to pay.

Exchanging Legal Documents and Legal Mail at the Facilities

15. I am able to bring legal documents with me when I visit clients at the Facilities and have clients review and sign documents during the visit. Sometimes, I have been able to email certain documents to staff at the Facilities, asking them to print and give the documents to my client. Based on my experience, I am able to trust the staff not to read the documents.

16. I also rely on postal mail to send and receive documents from clients at the Facilities. Although the postal mail system can be slow at times, I have not missed any court deadlines for any of my clients at the Facilities due to delays in the mail system and it is generally reliable in my experience.

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

Executed this 30 day of SEPT 2022 in Lafayette, Louisiana.

Wayne Blanchard

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