

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

**AMERICANS FOR IMMIGRANT JUSTICE**, on  
behalf of itself and its clients detained at Krome  
North Service Processing Center  
6355 NW 36th St.,  
Virginia Gardens, FL 33166,

**FLORENCE IMMIGRANT AND REFUGEE  
RIGHTS PROJECT**, on behalf of itself and its  
clients detained at Florence Correctional Center  
P.O. Box 32670  
Phoenix, AZ 85064,

**IMMIGRATION SERVICES AND LEGAL  
ADVOCACY**, on behalf of itself and its clients  
detained at South Louisiana ICE Processing Center  
3801 Canal St., Suite 210  
New Orleans, LA 70119,

**REFUGEE AND IMMIGRANT CENTER FOR  
EDUCATION AND LEGAL SERVICES**, on behalf  
of itself and its clients detained at Laredo Processing  
Center  
1305 N. Flores St.  
San Antonio, TX 78212,

*Plaintiffs,*

v.

No. 1:22-cv-03118 (CKK)

**U.S. DEPARTMENT OF HOMELAND  
SECURITY**

245 Murray Lane, SW  
Mail Stop 0485  
Washington, D.C. 20528-0485,

**ALEJANDRO N. MAYORKAS**, in his official  
capacity as Secretary of the Department of Homeland  
Security,

2707 Martin Luther King Jr Ave. SE  
Washington, D.C. 20528,

**U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT**

500 Twelfth St. SW  
Washington, DC 20536,

**TAE D. JOHNSON**, in his official capacity as  
Acting Director of U.S. Immigration and Customs  
Enforcement

500 Twelfth St. SW  
Washington, DC 20536,

*Defendants.*

**[PROPOSED] SECOND AMENDED COMPLAINT FOR INJUNCTIVE AND  
DECLARATORY RELIEF**

**(Access to counsel at ICE detention facilities)**

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## INTRODUCTION

1. Each day, the U.S. Department of Homeland Security (“DHS”) and U.S. Immigration and Customs Enforcement (“ICE”) lock up thousands of immigrants across the United States in detention centers as they await adjudication of their civil immigration proceedings. Although detention and the outcomes of these proceedings may have life-altering consequences, the federal government does not provide appointed counsel to detained immigrants. Rather, immigrants may be represented by counsel only if they can find and pay for an attorney (from behind bars) or can access pro bono counsel.

2. The Constitution protects the rights of people in immigration detention to retain, consult with, and access counsel. Defendants, however, have restricted basic modes of communication that are necessary for detained immigrants to consult with counsel, in violation of the Fifth Amendment’s Due Process Clause, the First Amendment, and federal law.

3. Immigration law and proceedings are notoriously complicated. Whether or not people in immigration detention have legal representation is the single most important factor in determining their fate. Detained immigrants who have lawyers are *almost seven times* more likely than those who appear pro se to be released and *ten-and-a-half times* more likely to succeed in their cases.<sup>1</sup> Yet, the majority of detained immigrants are unrepresented in immigration

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<sup>1</sup> See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 9, 70 (2015) (describing different outcomes for represented versus unrepresented non-citizens in removal proceedings between 2007 and 2012); see also Jennifer Stave et al., Vera Inst. of Just., *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity*, at 60 (Nov. 2017), <https://bit.ly/3euAIdD> (success rate for indigent immigrant detainees with legal counsel is predicted to be 1,100 percent greater than for pro se detainees in New York City); Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, 50 Law & Soc’y Rev. 117, 119 (2016) (immigrant detainees’ likelihood of securing bond is substantially higher when represented by counsel).

proceedings, often because they are indigent and cannot afford to hire counsel and/or because many ICE detention facilities are located in remote areas hundreds of miles from the nearest immigration attorneys.<sup>2</sup> That is why Plaintiffs—four non-profit legal organizations—dedicate their resources to providing a variety of pro bono legal services to detained immigrants.

4. Defendants direct, manage, and control the immigration detention system. Defendant DHS and its subagency, Defendant ICE, are authorized to detain individuals who may be subject to removal as part of their authority to enforce federal immigration laws. Defendants also contract with local jurisdictions and private prison companies for the use and operation of detention facilities for this purpose. In these facilities, Defendants set the terms of contract requirements, and are responsible for oversight of detention conditions, including attorney access throughout its detention system nationwide. Defendants’ authority to detain individuals, however, is not absolute; Defendants, like all federal agencies, are bound by the limits of the Constitution and must ensure that their conduct does not infringe upon constitutional and other legal protections.

5. In at least four immigration detention facilities at which Plaintiffs provide legal services—the Florence Correctional Center in Florence, Arizona (“Florence” or “FCC”), the Krome North Service Processing Center in Miami, Florida (“Krome”), the Laredo Processing Center in Laredo, Texas (“Laredo”), and the South Louisiana ICE Processing Center in Basile, Louisiana (“Basile”) (collectively, the “Four Detention Facilities”)—Defendants have systematically failed to ensure compliance with constitutional requirements, federal law, and ICE’s

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<sup>2</sup> See Eagly & Shafer, *supra* note 1, at 30 (representation rate of detained non-citizens in removal cases is 14%); ACLU, *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, at 20-21 (2020), [https://www.aclu.org/sites/default/files/field\\_document/justice-free\\_zones\\_immigrant\\_detention\\_report\\_aclu\\_hrw\\_nijc\\_0.pdf](https://www.aclu.org/sites/default/files/field_document/justice-free_zones_immigrant_detention_report_aclu_hrw_nijc_0.pdf) (the availability of immigration attorneys within 100 miles of new detention centers (post-2017) is among the lowest of all detention facilities nationwide).

own policies regarding access to counsel. Plaintiffs bring this action for declaratory and injunctive relief on their own behalf and on behalf of clients and prospective clients held at the Four Detention Facilities (“Detained Clients”) because Defendants, through their actions and inactions, have unlawfully prevented reliable, confidential attorney-client communication that is necessary for effective legal representation.

6. As detailed below, Defendants prevent attorneys from being able to reliably and confidentially communicate with Detained Clients, both in person and via remote means (*e.g.*, by telephone and videoconference), and in some instances prevent them from being able to communicate with Detained Clients at all. There is often no viable in-person visitation option for attorney-client communication because Defendants fail to provide sufficient meeting spaces, or sometimes *any* spaces, in which Detained Clients can communicate confidentially with their attorneys. Defendants restrict attorneys from scheduling calls with or leaving confidential messages for Detained Clients. In addition, Defendants fail to ensure the availability of free, confidential outgoing phone calls from detention facilities to attorneys. Defendants also deny access to confidential and quality videoconferencing (“VTC”) technology for legal visits and fail to provide a timely and reliable method of exchanging legal documents. Moreover, Defendants deny lawyers the ability to use the tools of their trade, namely laptop computers, printers, and cellular telephones, to draft and edit legal documents while they are visiting Detained Clients. Defendants also prevent communication between Detained Clients and legal assistants, interpreters, notaries, medical experts, social workers, and others who have direct functional responsibility for preparation of the client’s case (“case-related personnel”). Underscoring the severity of these access limitations, many are *more* restrictive than those for people in criminal custody, even though Detained Clients are being held in civil detention.

7. The totality of the access-to-counsel failures at the Four Detention Facilities amounts to a clear violation of both Plaintiffs' and Detained Clients' constitutional and legal rights. These rights are guaranteed by the Fifth and First Amendments of the U.S. Constitution. Restrictions that unreasonably limit the ability of Detained Clients to effectively communicate with their lawyers violate their Fifth Amendment due process rights (1) to be free from conditions of confinement that amount to punishment, and (2) to a full and fair hearing. Undue restrictions on attorney-client communications likewise violate Detained Clients' First Amendment rights of free speech and association, as well as Plaintiffs' First Amendment rights of free speech and association. Defendants' conduct also violates Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) (the "Rehabilitation Act"), because the barriers to access to counsel more severely impact Detained Clients with certain specific disabilities.

8. The restrictions on access to counsel also violate Defendants' own policies governing conditions of confinement at ICE detention facilities. Defendants have adopted standards that govern conditions in immigration detention, including conditions at the Four Detention Facilities. These standards include the 2008 Performance-Based National Detention Standards ("2008 PBNDS"), the 2011 Performance-Based National Detention Standards (rev. 2016) ("2011 PBNDS"), and the 2019 National Detention Standards ("2019 NDS") (collectively, the "Detention Standards").<sup>3</sup> Enforcement of these standards provides a means by which

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<sup>3</sup> ICE, Performance-Based National Detention Standards 2008, <https://www.ice.gov/detain/detention-management/2008>; ICE, Performance-Based National Detention Standards 2011, <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>; ICE, National Detention Standards 2019, <https://www.ice.gov/doclib/detention-standards/2019/nds2019.pdf>. The Four Detention Facilities are governed by different, but substantially similar, detention standards. Florence is governed by the 2008 PBNDS. Krome and Basile are governed by the 2011 PBNDS with a 2016 modification. Laredo is governed by the 2019 NDS. *See* ICE, ERO Custody Management Division, Authorized Dedicated Facility List, Oct. 11, 2022,



Defendants can, and purport to, ensure some access to counsel at ICE detention facilities (although the Detention Standards in some instances fall short of constitutional requirements).

9. By adopting the Detention Standards, Defendants have recognized that it is their responsibility to ensure basic access to counsel at ICE detention facilities, including the Four Detention Facilities. However, Defendants fail to monitor or enforce consistent compliance with their own standards and the Constitution. This failure violates the Administrative Procedure Act, 5 U.S.C. § 706.

10. Defendants fail to exercise even the most basic oversight of access to counsel in ICE detention facilities, as illustrated by Defendants' failure to resolve the attorney-access barriers at the Four Detention Centers. In a report submitted to Congress this year by Defendant Tae Johnson, ICE's Acting Director, the agency admitted that it "does not track . . . the number of facilities that do not meet ICE standards for attorney/client communications."<sup>4</sup> ICE has further failed to provide adequate oversight of attorney access issues at the Four Detention Facilities, including during its annual inspections. In light of these failures, members of Congress have criticized the agency for "ICE's systematic failure to ensure that people in ICE detention have the ability to find and communicate with attorneys."<sup>5</sup>

11. Defendants' systemic failure to ensure access to counsel at ICE detention facilities, in compliance with constitutional and federal law requirements, is illustrated by a recent study regarding the denial of access to counsel in immigration detention centers nationwide. The study

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<https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx> (specifying applicable detention standards for each facility).

<sup>4</sup> ICE, *Access to Due Process: Fiscal Year 2021 Report to Congress*, at 2 (Feb. 14, 2022), <https://bit.ly/3F1TMek>.

<sup>5</sup> Letter from Members of Congress to A. Mayorkas and T. Johnson, Nov. 3, 2022, <https://grijalva.house.gov/wp-content/uploads/2022/11/Access-to-Counsel-for-ICE-detainees-FINAL.pdf>.

found that (i) at least fifty-eight ICE detention facilities do not allow attorneys to schedule phone calls with detained clients at a specific date and time when the facility will reliably make the detained client available; (ii) almost half of the facilities that do allow scheduled calls do not honor them consistently; (iii) facilities often arbitrarily deny or delay attorneys' access to their clients for in-person visits, including because the facilities fail to keep track of detained persons; (iv) attorneys often have to conduct legal meetings with clients in public visitation rooms and spaces with no privacy or confidentiality; and (v) detained people and their attorneys have missed filing deadlines because of mail delays and the inability to use fax or email to share documents.<sup>6</sup>

12. Confidential and reliable communication between attorneys and their clients forms the bedrock of the attorney-client relationship. Confidential communication is crucial to discussing sensitive, privileged matters candidly and without concern of waiving the attorney-client privilege or unintentionally disclosing information that may cause clients to suffer harassment, abuse or retaliation while in immigration detention. Moreover, confidential communication is particularly necessary for attorneys to build rapport with detained immigrants, who often exhibit fear and distrust when initially introduced to their own counsel, due to unfamiliarity with the legal process.

13. Access to such confidential communication and the ability to exchange legal documents must be regular and reliable enough that attorneys and clients can discuss and prepare factual and legal matters in sufficient detail before relevant deadlines, immigration interviews, and court appearances. This is especially important for fast-paced and time-sensitive proceedings, such as bond and custody hearings and cases concerning conditions of confinement that often address urgent, ongoing injuries to detained immigrants. As a result, without adequate access to counsel,

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<sup>6</sup> ACLU, *No Fighting Chance, ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers*, at 7-8 (2022), <https://bit.ly/3shsrgv>.

it is no surprise that detained immigrants suffer worse outcomes than those who are fortunate enough to be represented.

14. Depriving detained immigrants and their counsel of their rights to confidentially and reliably communicate with each other places detained immigrants' freedom and futures at risk. This Court should order Defendants to comply with the U.S. Constitution, federal law, and ICE's own Detention Standards, and grant the relief requested below and any other relief deemed appropriate by this Court.

### **JURISDICTION AND VENUE**

15. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question), and 28 U.S.C. § 1346 (United States as defendant). Defendants have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

16. This Court can enter declaratory and injunctive and further necessary or proper relief to recognize and remedy the underlying constitutional and legal violations under 28 U.S.C. §§ 2201 and 2202 (declaratory relief), 5 U.S.C. § 706 (agency action), and the Court's inherent equitable powers.

17. Personal jurisdiction and venue are proper pursuant to 28 U.S.C. § 1391(e) because Defendants are agencies of the United States, or officers of agencies of the United States residing in this District, and a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in this District. Specifically, Defendants have failed to fulfill their constitutional and statutory duties to ensure that individuals in their custody have adequate access to counsel.

### **PARTIES**

18. Plaintiff Americans for Immigrant Justice ("AIJ") is a 501(c)(3) non-profit organization that (i) advocates for the rights of unaccompanied immigrant children and survivors of trafficking and domestic violence; (ii) serves as a watchdog on immigration detention practices

and policies; and (iii) pursues redress on behalf of immigrant groups with particular and compelling claims to justice. AIJ is based in Florida and provides legal services to people detained at Krome, as well as other facilities throughout Florida. AIJ's legal services at Krome include representation in bond and parole proceedings as well as civil litigation challenging inhumane conditions of confinement in immigration detention. AIJ currently represents clients detained at Krome who are harmed by Defendants' restrictions on access to counsel, and are otherwise impeded from protecting their own interests regarding attorney access. In 2022, AIJ represented 90 individuals at Krome, including 38 individuals in custody proceedings or release requests. Currently, AIJ represents seven individuals at Krome, six of whom are receiving representation in custody matters and one client in matters related to conditions of confinement. Four of AIJ's current clients have a serious mental health condition or a disability.

19. Plaintiff Florence Immigrant & Refugee Rights Project ("FIRRP") is a 501(c)(3) non-profit organization that is dedicated to providing free legal and social services to the thousands of people detained in immigration custody at Florence as well as other ICE facilities in Arizona. FIRRP provides legal services, including representation in bond and parole proceedings, complaints to oversight agencies regarding conditions of confinement, and federal court litigation, which includes challenges to conditions of confinement and habeas and mandamus petitions. FIRRP currently represents clients detained at Florence who are harmed by Defendants' restrictions on access to counsel, and are otherwise impeded from protecting their own interests regarding attorney access. In 2022, FIRRP provided legal services to over 300 people detained at Florence, including direct legal representation to 27 individuals. In at least 20 of those cases, FIRRP represented people in custody proceedings, and helped individuals file complaints regarding conditions of confinement to various government oversight agencies in approximately

eight of those cases. FIRRP also provided legal representation to at least 10 people with serious mental health conditions at Florence in 2022. At this time, FIRRP represents 17 clients at Florence in custody proceedings, and five clients in matters related to conditions of confinement. FIRRP currently represents at least six people with serious mental health conditions at Florence, including six in custody proceedings such as for bond and parole, and five in matters related to conditions of confinement.

20. Plaintiff Immigration Services and Legal Advocacy (“ISLA”) is a 501(c)(3) non-profit organization that, over the past four years, has focused on providing pro bono legal services to people in ICE detention in Louisiana. Attorneys at ISLA provide direct legal services to detained people at all ICE detention facilities in Louisiana, including Basile. These services include representation in proceedings relating to bond and parole, habeas corpus petitions in federal court, and administrative complaints regarding conditions of confinement in detention. ISLA also partners with public defenders to provide clients with post-conviction representation in criminal matters. ISLA’s clients at Basile are harmed by Defendants’ restrictions on access to counsel, and are otherwise impeded from protecting their own interests regarding attorney access. In 2022 and 2023, ISLA represented approximately 35 detained clients at Basile, and represented all of them in requesting bond or parole. ISLA currently represents 16 clients detained at Basile in custody proceedings, including requests for bond and parole and in connection with at least one habeas petition. ISLA currently represents one person with a serious mental health condition at Basile.

21. Plaintiff Refugee and Immigrant Center for Education and Legal Services (“RAICES”) is a 501(c)(3) non-profit organization based in San Antonio, Texas, that provides free and low-cost legal services to underserved immigrant children, families, and refugees, including people in immigration detention. RAICES provides legal services to people in immigration

detention facilities across Texas, including Laredo. These services include representation in bond and parole proceedings. RAICES has represented clients detained at Laredo who were harmed by Defendants' restrictions on access to counsel and who are otherwise impeded from protecting their own interests regarding attorney access. Since 2021, RAICES has represented approximately 23 clients detained at Laredo. RAICES represented 11 of those clients in custody proceedings. In April 2022, RAICES temporarily paused intakes of new clients detained at the facility because of Defendants' restrictions on access to counsel, though it continued to provide limited legal services to people detained at Laredo. In September 2022, a RAICES staff member represented a person detained at Laredo. In February 2023, RAICES resumed intake and representation of new clients at Laredo despite the ongoing restrictions on access to counsel. In 2023, RAICES has represented at least three clients detained at Laredo in custodial proceedings, currently represents one client detained at Laredo in custodial proceedings, and continues to retain new clients for representation in custodial proceedings at the facility.

22. Plaintiffs bring this litigation on behalf of themselves and on behalf of Detained Clients at the Four Detention Facilities.

23. Defendant DHS is a federal executive agency responsible for, among other things, enforcing federal immigration laws and overseeing lawful immigration to the United States. DHS is charged with enforcement of Title 8 of the United States Code, under which Detained Clients are purportedly detained. 8 U.S.C. § 1103(a)(1).

24. Defendant ICE is a federal law enforcement agency that is a component of DHS. ICE is charged with managing enforcement of immigration laws, including the detention of immigrants. ICE is responsible for management and oversight of the government's civil

immigration detention system and has custody over all Detained Clients at the Four Detention Facilities.

25. Defendant Alejandro Mayorkas is the Secretary of DHS. In this capacity, Mayorkas is ultimately responsible for the actions of ICE. He is the legal custodian of all people detained in the Four Detention Facilities. Defendant Mayorkas is sued in his official capacity.

26. Defendant Tae Johnson is the Acting Director of ICE. In this capacity, Johnson is responsible for ICE's policies and practices regarding immigration detention and oversight of the immigration detention system. He is the legal custodian of all people detained in the Four Detention Facilities. Defendant Johnson is sued in his official capacity.

27. Together, Defendants are responsible for the monitoring, inspection and oversight of ICE's detention facilities, including the Four Detention Facilities, and ensuring that those facilities comply with the requirements of the U.S. Constitution, relevant statutes, and ICE's own policies, including the Detention Standards.

### **STATEMENT OF FACTS**

#### **I. THE LEGAL REPRESENTATION PROVIDED BY PLAINTIFFS IS VITAL TO PEOPLE IN IMMIGRATION DETENTION**

28. From the moment people are brought to an ICE detention facility, their futures depend on successfully deciphering labyrinthine immigration laws and regulations, as well as other laws, policies, and procedures that affect their rights and obligations. Navigating the immigration system and asserting one's civil rights while in ICE detention are extraordinarily difficult. Immigration law is notoriously complex, and in most instances the burden is on detained immigrants to prove that they are entitled to release from custody or to obtain other relief related to their detention. In addition, immigration proceedings, including bond and custody hearings, are

generally conducted through an adversarial process between the detained person and DHS attorneys, who are trained in substantive immigration law.

**A. Individual Detained Clients Suffer from Attorney Access Barriers**

29. “Mugisha” is currently detained at Florence and is a client of FIRR. FIRR represents Mugisha in his request for release from detention. Mugisha fled the Rwandan genocide, where most of his family was killed, and was forced into slavery as a child when captured attempting to escape violence in his village. He has been diagnosed with Post Traumatic Stress Disorder with dissociative symptoms, Major Depressive Disorder; Generalized Anxiety Disorder; Other Specified Disruptive, Impulse-Control, and Conduct Disorder; Alcohol Use Disorder; and Unspecified Neurocognitive Disorder. He has also been declared incompetent to represent himself in immigration court, due in part, to his inability to discuss the persecution that he experienced without severe post-traumatic stress and dissociative symptoms, and is represented by FIRR under the National Qualified Representative Program (“NQR”).

30. Mugisha has faced significant difficulty in accessing counsel at Florence. Mugisha cannot read or write in any language because he was unable to attend school as a child while enslaved. He speaks only Kinyarwanda, French, and Lingala fluently. He has been unable to make confidential, private phone calls to his attorneys because there is too much noise and no privacy, calls do not go through, and calls are too expensive. Even when he has money in his account, he cannot understand how to use the phone because the directions are not in French. It is difficult to have a private, confidential in-person conversation with his attorney because they are usually placed in a public room. The noise makes it difficult for Mugisha to process what his attorney is saying. It has been difficult to have an interpreter because the phone system in the in-person visits does not work well. There is no private, free legal VTC at the facility. Mugisha does not understand how the legal mail system works, as no one has explained it to him in a language that he speaks



fluently. Mugisha does not believe that there is any email or fax available to exchange documents with his lawyer. It has been difficult for him to begin to trust his attorney and social worker because of the many communication difficulties at Florence. He has been unable to share all relevant details or information relevant to his case with his attorney because of the lack of private, confidential attorney-client communication at Florence.

31. “Jose” is currently detained at Florence and is a client of FIRRP. Jose has been diagnosed with Post-Traumatic Stress Disorder, Insomnia Disorder, Major Depressive Disorder with mood congruent psychotic features; and Unspecified Major Neurocognitive Disorder, most likely due to Traumatic Brain Injury. During his detention at Florence, he has exhibited behavior including squatting while facing the wall of his cell and rocking back and forth, lying naked in his cell, and rolling balls of feces over the floor. He has been deemed incompetent to represent himself in immigration court, and FIRRP has been appointed to represent him under NQRP in custody proceedings.

32. Jose has faced numerous challenges in communicating with FIRRP staff for legal services. For example, at least five times over approximately two months, Florence denied FIRRP staff in-person visitation after they had already traveled to the facility. Attempts to communicate with Jose by telephone also regularly failed while he was placed in mental health observation. During a five-month period in mental health observation, FIRRP staff were only able to communicate with Jose through Florence’s call-back message system three times despite numerous attempts. FIRRP has attempted to make accommodation requests to ensure attorney-client communication with Jose on various occasions. However, neither ICE nor facility staff have provided the accommodations necessary to ensure access to counsel.

33. “Pedro” is currently detained at Florence and is a client of FIRRP. FIRRP represents Pedro in custodial proceedings. While Pedro’s symptoms are so extreme that it has been difficult to conduct a formal evaluation and obtain a clear diagnosis, medical records from FCC indicate that, at a minimum, he is experiencing psychosis and suicidality. He has also been observed attempting to self-harm by banging his head and creating a noose from clothing, has been observed apparently responding to internal stimuli speaking to himself, and throwing and smearing feces, and has expressed some bizarre delusions. He has been declared incompetent to represent himself and FIRRP has been appointed to represent him under NQRP.

34. Pedro has faced immense challenges in communicating with FIRRP staff for legal services. In four months, Florence has only permitted FIRRP staff to visit with Pedro in person at Florence on two occasions, with the last successful in-person visit with Pedro at Florence occurring over three months ago on December 1, 2022. Since initially being referred to Pedro’s case for possible bond representation on October 25, 2022, FIRRP staff have attempted to conduct in-person visits with him at least 14 times. Ten of those attempts were denied by staff. Of the four successful visits FIRRP staff have had with Pedro, two took place at another detention facility: one after an Immigration Court hearing, and one as an alternative to FIRRP’s request to do a cell-side visit at Florence in the mental health observation area. FIRRP has never been able to successfully communicate with Pedro via FCC’s phone message system, despite several attempts. FIRRP has attempted to make numerous accommodation requests to the facility and ICE to ensure attorney-client communication, but none of the accommodations agreed upon by the facility have been sufficient to ensure access to counsel.

35. “Guadalupe” is from Honduras and was recently detained at Florence. She was recently granted protection under the Convention Against Torture (“CAT”) based on her identity

as a transgender woman. She fears abuse and persecution as a result of her gender identity in Honduras. Guadalupe was detained at Florence between August 11, 2022, and January 19, 2023, even though she prevailed in her CAT case before an Immigration Judge, because ICE refused to release her even after she won her case and DHS had decided to waive appeal as it investigated possible alternative countries for potential removal. FIRRП thus represented Guadalupe in her parole request for release from detention. Guadalupe notes that she only received minimal information from ICE about what she needed to ask for release. She also notes that having an attorney helped her to better understand her legal options.

36. While detained at Florence, Guadalupe encountered significant challenges in communicating with FIRRП counsel. As Guadalupe notes, it is impossible to conduct a private, confidential legal call at Florence. The system to make pro bono calls to FIRRП is difficult to use because detained people must be locked down for much of the time when attorneys are available. The attorney message delivery system does not work, as messages were delivered without enough time to make a call as requested, or when she was otherwise not permitted to make a call. Guadalupe notes that it was easier to talk to a lawyer during her incarceration at the neighboring Central Arizona Correctional Facility (“CAFC”), a prison also located in Florence, Arizona. At CAFC, private legal calls with attorneys could be scheduled, but it is not possible to schedule such calls at Florence. Because of the lack of privacy in attorney-client communication, Guadalupe could not receive timely updates on her case, and it was difficult for her to provide all of the details related to her case to her counsel.

37. “Mateo” was detained at Florence from January to October 2022, until his transfer to Larkin Community Hospital. FIRRП was appointed as his counsel under NQRP in February 2022, and has represented him in custody and conditions of confinement proceedings. Mateo

remains FIRRP's client. Mateo is diagnosed with schizophrenia and mood disorder, and has been declared incompetent to represent himself in immigration court. Mateo presents with symptoms including auditory hallucination, delusion, and incoherence in his thought process. During his 10-month detention at Florence, Florence permitted FIRRP to meet with Mateo three times, despite FIRRP's many attempts to meet with him. FIRRP staff left several messages with Mateo requesting that he call them back, and attempted several in-person visits, which facility staff claimed he refused.

38. "Mary" was recently detained at Laredo. RAICES began representing Mary on February 16, 2023, and represented her in her request for release on parole. Mary needed the help of her RAICES attorneys because she was unfamiliar with immigration laws and did not know what evidence she needed to submit to support her request for release or the procedure for seeking parole. She had to speak to her RAICES attorneys to give them essential information to support her request for release, including details about her physical health.

39. While detained at Laredo, Mary had significant challenges communicating with her attorneys. The only phones available to her were located in the dormitory where she was living. As Mary recalls, there were approximately eight phones lined up next to each other, divided by only a thin divider approximately two centimeters wide, in her dorm of approximately 70 women. Anyone in the area could hear what she was saying—there was no privacy. All of the calls Mary made from the dormitory phones cut off automatically after only a few minutes. While there were also approximately six tablets available in the dormitory for regular or video calls, the volume was so low that detained people had to speak loudly to communicate on the tablets and anyone in the area could hear what they were saying. No one at Laredo ever told Mary how to request a private call with her attorney. Instead, her RAICES attorney had to request a private legal call. It took

Mary's attorney six days and eight emails to arrange a second private legal call with her. As a result of these difficulties communicating with her attorney, Mary was delayed in telling her RAICES attorney that she had passed her credible fear interview, and her attorney was delayed in submitting a request for release on parole, lengthening her time in detention. Mary was eventually released on March 2, 2023.

40. "Jaime" is a client of AIJ, and was released on March 16, 2023, from custody at Krome. Jaime speaks Popti, a rare Mayan language spoken by approximately 35,000 people worldwide, and has only limited English language proficiency. Jaime is bisexual, and is a survivor of sexual violence and torture. He fled his country to seek safety in the United States. AIJ represented Jaime in his custody proceedings.

41. Jaime faced significant barriers to communicating with his attorney. It took Jaime two weeks to figure out how to call a lawyer because none of the instructions provided were in a language he understood. Jaime was initially told by an Immigration Judge that he was not eligible for bond. After he secured an AIJ attorney, his counsel successfully argued that the procedural posture of his case must change and, as a result, he became eligible to seek bond. AIJ represented Jaime in his bond proceedings, and, on March 15, 2023, he was subsequently granted a bond by an Immigration Judge, and was released the day after. Krome's restrictions on telephones in the attorney-client visitation rooms made it impossible for Jaime to have confidential communications with his lawyer. Because Krome does not allow access to phone interpreters for in-person visits, the only way for his attorney to communicate with Jaime was through a phone call where the attorney was able to access a telephonic interpreter. This is because Popti is so rare that it is challenging to locate a telephonic interpreter, let alone an in-person interpreter, particularly without advance notice.

42. While detained, Jaime was only able to call his attorney via a phone located in the common area of his housing unit. The phones are payphones located in a line and positioned close to the Krome guard station. The location of the phones means that other detained individuals and Krome staff were frequently within earshot during Jaime's legal calls. The public location of the phones also made it difficult for Jaime and his lawyer to hear each other.

43. The fact that Jaime was unable to have a scheduled call with his attorney resulted in significant delays. On at least seven occasions, Jaime's lawyer requested that Jaime call at a specific time, and scheduled a Popti telephonic interpreter to be available at that time. Each time, Jaime was unable to place a call at the agreed-upon time because the phones were not working. Moreover, each time, an AIJ attorney connected with an interpreter, who stayed on the line, both waiting to receive a call from Jaime. By the time Jaime was able to speak to his attorney, the telephonic interpreter was no longer available and the call had to be rescheduled. These interpreter services cost \$3.00 per minute. AIJ estimates that over the course of these seven missed calls, it had to pay the interpreter service approximately \$270, even though no interpretation took place. Jaime was also told that he was being called to the medical clinic at the time he was set to speak to his attorney. On approximately five occasions, Jaime was forced to choose between keeping his call appointment with his attorney or seeing a doctor.

44. The lack of confidentiality of these calls also made it difficult for Jaime to feel safe divulging sensitive details of his case without risking someone overhearing and placing him at risk.

45. "Caterina" is a transgender woman from El Salvador and a survivor of sexual violence. Caterina is HIV positive and currently housed in the Medical Housing Unit at Krome. AIJ represents Caterina in a request for release. Caterina can only communicate with her attorney

via a phone located in a common area in her unit. The phone is located next to other phones and near the television making it difficult to hear the call. Additionally, Caterina reports that the phones are often not all operational, limiting the availability of phones to call her attorney. When she is able to place a call, the call is not private and Caterina fears discussing her case in a place where others can overhear her. In fact, Caterina believes that other detainees found out about her HIV diagnosis because they overheard a conversation with her lawyer in which she shared her diagnosis. During her time in detention, Caterina has been housed in four other housing units and Administrative Segregation, and reports that access to the phones was equally as challenging in each unit.

46. “Claude” is currently detained at Krome and is a client of AIJ. AIJ represents Claude in his request for release. Claude’s calls to his attorney are not private and can be easily overheard by others in the unit. There are two phone banks with five phones each, the phones are located next to each other, and the housing unit is very loud. There are no separate phones available to place confidential phone calls to Claude’s attorney.

47. “Juan” is currently detained at Krome in the Medical Housing Unit (“MHU”) and is represented by AIJ in a request for release. Juan is missing his left leg and uses a prosthetic. When Juan first arrived in detention, his prosthetic leg was taken from him “for security reasons” and he had to use a wheelchair. The first six days in detention, Juan was in routine and mandatory quarantine. While in quarantine, the only way for Juan to place legal calls was via a tablet provided by Krome. During those six days, Juan was unable to contact an attorney because the tablet did not have internet access and could not make calls or send messages.

48. When Juan was admitted to the MHU, his ability to place legal calls did not improve. In the MHU, there is only one phone that is accessible to Juan when he is using a

wheelchair, and the phone is not always in working order. As a result, Juan has to use the regular phones where he has to hold himself up and stretch and contort his body to make a call, in a half-sitting, half-standing position, and stretch to reach the phone. For Juan, this makes calls physically painful and, in turn, makes it difficult for him to focus on what his attorney is telling him.

49. Juan is not allowed access to a private space to call his lawyer and describes the phones as being so close that detained individuals stand “shoulder to shoulder” when making calls. Juan is fearful of sharing information because he has noticed other detained individuals listening in on his phone calls. This has caused a delay in preparing Juan’s case because Juan holds back information until he believes no guard or other detainee can overhear. Juan believes that if he were able to speak in a private room, he “would be able to open up fully” to his lawyer and could build a case for release much faster. Juan also describes a general shortage of phones, including only one portable phone that the guards “sometimes” allow the detainees to use and is shared amongst the twenty-four individuals in the MHU.

50. “Donovan,” another AIJ client, has been detained at Krome for over a year. AIJ represents Donovan in an ongoing investigation into his ability to file a habeas petition and in relation to a request for investigation into his conditions of confinement. Donovan is diagnosed with schizophrenia and bipolar disorder and is currently receiving treatment for both conditions. Donovan’s mental health conditions cause him to experience active delusions and paranoia which have made it very difficult for him to contact an attorney and to understand the proceedings he is facing. Donovan only recently obtained counsel to assist him in his complaint regarding conditions of confinement and potential habeas action because he did not understand how to use the phone system to contact pro bono counsel. In fact, Donovan became an AIJ client after his attorney



happened to meet him during a tour of the facility. Donovan's delay in accessing pro bono counsel has contributed to his prolonged detention.

51. Donovan also faces great difficulty communicating with AIJ counsel at Krome. When Donovan attempts to communicate with his attorney via the phones in the common area of his housing unit, he struggles to hear and focus because the common area is used by other detained people who watch television, listen to music, and socialize. Communicating from the phone in the common area presents many challenges for Donovan. For example, the noise and people make it difficult for him to focus and hear what his lawyer is telling him. Additionally, he is uncomfortable discussing past traumas and his conditions of confinement because he is afraid people will overhear and he could be retaliated against for speaking about his treatment in detention. This is exacerbated by his mental health illnesses and symptoms.

52. "Mario" is an AIJ client currently detained in the Krome Behavioral Health Unit ("KBHU"). AIJ represents Mario in an ongoing investigation into tort claims for an injury that he suffered while he was held in state custody. Mario has been diagnosed with schizophrenia and experienced a traumatic brain injury, the latter of which was the result of the torture he experienced in Guatemala. Mario is also a survivor of sexual and physical violence that he experienced in the United States while incarcerated. He experiences auditory and visual hallucinations and has been deemed incompetent to represent himself in immigration court. When Mario was initially detained at Krome, he spent months struggling to understand how to use the phone to contact a pro bono attorney who could assist him. Even after he was able to figure out the phone system, Mario found speaking over the phone in the common area, where the phones are located, challenging because of the noise, the presence of other individuals within earshot, and poor sound quality. The noise makes it difficult for Mario hear his attorney—a problem exacerbated by the voices in his head—

and the lack of privacy makes him afraid to share important and sensitive details about his case. The lack of scheduled and private calls at Krome creates additional barriers for Mario. Mario's mental health conditions make it particularly difficult for him to build rapport with anyone, including his lawyer. The lack of predictable contact with his attorney causes him to regress in his ability to trust and confide in them. Additionally, Mario has trouble remembering dates and times. As a result, Mario has failed to make calls to his attorney at predetermined times. While incarcerated in criminal custody, Mario recalls calling his attorney's office being as easy as pressing a button on the phone. He often called to request updates or reminders about court dates because he struggled to remember important dates. It is impossible for him to have this sort of consistent contact with his attorney at Krome. AIJ has sent messages to Mario via GettingOut, the messaging system used at Krome, asking that he call at a specific date and time, but because Mario does not know how to use the tablet, he never received the messages.

53. "Hilda" is a client of ISLA and is detained at Basile. ISLA represents Hilda in her custodial proceedings. She has been deemed incompetent to represent herself in Immigration Court due to her diagnoses of Bipolar Disorder and Post-Traumatic Stress Disorder. She has experienced many obstacles in communicating with her ISLA attorney while detained at Basile. For example, it has been very challenging for Hilda to participate in scheduled legal calls or in-person visits with her attorney because of Basile's failure to locate her in the jail and tell her when her attorney is waiting to speak to her on the phone or meet with her in person. On several occasions, facility staff told ISLA that Hilda "refused" to participate in a legal call or visit, when in fact Hilda reports that she was never alerted that her attorney was trying to meet with her. A particularly harmful example of this occurred recently, when the facility's failure to locate Hilda and tell her about a call prevented her from participating in a remote psychological evaluation set up by her attorney at

ISLA and approved by the facility. The evaluation is crucial evidence for her request for release. Basile staff told the ISLA attorney that Hilda refused to attend the evaluation, but Hilda reported that staff never informed her that it was time for her appointment nor did they escort her to the room where it would occur. The evaluation will take several weeks to reschedule, which has delayed her attorney's efforts to file a parole request on her behalf.

54. "Allison" is a client of ISLA and is detained at Basile. ISLA represents Allison in her custodial proceedings, including parole requests. Allison was previously held in federal criminal custody and reports that while there, she had much easier access to phones and legal mail than at Basile, and was also able to place direct legal calls to her attorney, unlike at Basile.

55. "Beatrice" is a client of ISLA and is detained at Basile. ISLA represents Beatrice in her custodial proceedings, including a habeas petition in federal court. Beatrice was also previously in federal criminal custody and reports that while there, she could make direct calls, easily exchange documents, and have contact visitation with her attorney, unlike at Basile.

#### **B. Plaintiffs' Representation of Detained Clients**

56. Detained people—including Detained Clients at the Four Detention Facilities—frequently need counsel in various types of proceedings, including, among others, those (i) seeking release from detention through bond, parole, or another custody proceeding, or (ii) challenging conditions of confinement. Plaintiffs devote significant time and resources to preparing Detained Clients for these proceedings and defending Detained Clients' legal rights. Each of these proceedings is explained in further detail in the following paragraphs.

57. *Bond and Conditional Parole Proceedings.* After ICE arrests and detains someone, DHS makes an initial custody determination regarding whether the individual should be released

on parole, bond, recognizance, or subject to other conditions.<sup>7</sup> DHS may also determine that an individual is subject to mandatory detention and thus ineligible for release on bond, or DHS may exercise its discretion to deny release.<sup>8</sup> Certain immigrants are eligible to seek review of the DHS bond determination at a bond hearing, at which the immigration judge can (i) order release on bond, (ii) order conditional parole, or (iii) deny bond altogether.<sup>9</sup> Conditional parole allows a detained immigrant to be released, without payment of the statutory minimum amount of bond.<sup>10</sup> Detained people typically bear the burden of proving that they should be released on bond or on conditional parole by demonstrating that they (i) do not pose a danger to persons or property and (ii) are not likely to abscond before their hearings.<sup>11</sup>

58. *DHS Parole Proceedings.* Certain noncitizens subject to immigration detention who have not been admitted into the country are eligible for release on parole, which can be authorized by DHS on a case-by-case basis.<sup>12</sup> DHS may exercise its discretion to grant parole to individuals who do not present a security risk nor a risk of flight, and whose release into the country is warranted for “urgent humanitarian reasons or significant public benefit.”<sup>13</sup> While parole decisions by DHS are not reviewable by immigration judges, the agency has issued internal guidance on how officers should evaluate requests for parole by certain detained immigrants

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<sup>7</sup> See 8 C.F.R. §§ 236.1(c), 1236.1(c).

<sup>8</sup> See *id.* If DHS determines that an individual is subject to mandatory detention, the detained person may challenge DHS’s determination through a Joseph Hearing. *Matter of Joseph*, 22 I. & N. Dec. 660 (BIA 1999).

<sup>9</sup> See 8 C.F.R. §§ 1236.1(d)(1), 1003.19.

<sup>10</sup> See 8 U.S.C. § 1226(a)(2)(B); *Matter of Castillo-Padilla*, 25 I. & N. Dec. 257, 259 (BIA 2010) (describing conditional parole).

<sup>11</sup> See *Matter of Guerra*, 24 I. & N. Dec. 37, 40 (BIA 2006); 8 C.F.R. § 1236.1(c)(8).

<sup>12</sup> See 8 U.S.C. § 1182(d)(5)(A).

<sup>13</sup> *Id.*; 8 C.F.R. § 212.5(b).

through an administrative appeals process. As in bond proceedings, noncitizens bear the burden of establishing, to the satisfaction of the adjudicating officer, that they merit release on parole.<sup>14</sup>

59. Plaintiffs provide Detained Clients with representation for these bond and parole proceedings, including at the Four Detention Facilities. Legal representation in these proceedings is critical to the likelihood of a detained immigrant's success. Detained immigrants are approximately seven times more likely to be released when represented by counsel.<sup>15</sup>

60. The importance of representation in these proceedings is due in part to the extensive factual record detained immigrants may need to satisfy their burden. In making the determination whether to grant release on bond or conditional parole, immigration judges consider a number of factors, including: (1) whether the person has a fixed address in the United States; (2) how long the person has lived in the United States; (3) whether the person has family ties in the United States, and whether those ties may entitle the person to reside permanently in the country in the future; (4) the person's employment history; (5) the person's record of appearance in court; (6) the person's criminal record, including the extensiveness, recency, and seriousness of any criminal activity; (7) the person's history of immigration violations; (8) any attempts by the person to flee prosecution or otherwise escape from authorities; and (9) the person's manner of entry to the United States.<sup>16</sup> The specifics or severity of each of these factors may also be considered.<sup>17</sup> DHS

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<sup>14</sup> See *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 122 (D.D.C. 2018) (citing ICE Directive 11002.1, *Parole of Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* (Dec. 8, 2009) ("Parole Directive")).

<sup>15</sup> See Eagly & Shafer, *supra* note 1, at 70.

<sup>16</sup> *Matter of Guerra*, 24 I. & N. Dec. at 40.

<sup>17</sup> See, e.g., *Matter of Andrade*, 19 I. & N. Dec. 488, 490 (BIA 1987) (noting that even though a criminal record per se does not necessitate a high bond amount, the respondent's "extensive and recent" criminal violations "militat[ed] against his release without a significant bond").

considers similar factors in evaluating a request for parole.<sup>18</sup> To prepare an effective request for release on bond or parole, an attorney must gather detailed information and supporting documents about their client’s personal and immigration history, and any criminal history (including any mitigating circumstances), as well as information about the merits of any claim to immigration relief and information about the sponsor to whom they will be released. Frequently, this information must be obtained quickly.

61. The government has recognized the importance of accessing counsel in custodial proceedings in its regulations,<sup>19</sup> policies,<sup>20</sup> and rulemaking.<sup>21</sup>

62. Congress has similarly recognized the importance of accessing counsel, recently allocating \$10 million to DHS “to improve law libraries, update legal materials, provide online legal access, expand video attorney visitation, and facilitate the secure exchange of legal documents between noncitizens and their counsel” in the Consolidated Appropriations Act of 2023, Pub. L. No. 117-328, 136 Stat. 4459 (Dec. 29, 2022).<sup>22</sup>

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<sup>18</sup> See Parole Directive, *supra* note 14, ¶ 8.3.

<sup>19</sup> 8 C.F.R. § 1003.17(a) (addressing procedural requirements for attorneys appearing in a “custody or bond proceeding” before an immigration court); *id.* § 1003.16(b) (authorizing respondents in “proceedings before an Immigration Judge” to representation of their choice).

<sup>20</sup> Imm. Ct. Practice Manual, § 9.3(e)(2) (last updated Nov. 14, 2022), <https://www.justice.gov/eoir/reference-materials/ic/chapter-9/3> (“In a bond hearing, the respondent may be represented by a practitioner of record at no expense to the government.”).

<sup>21</sup> Separate Representation for Custody and Bond Proceedings, 80 Fed. Reg. 59499, 59501 (Oct. 1, 2015) (codifying 8 C.F.R. 1003) (finding that “increasing the number of individuals who are represented in their custody and bond proceedings” would “increase[e] the efficiency of the Immigration Courts”).

<sup>22</sup> Explanatory Statement Regarding H.R. 2617, Consolidated Appropriations Act, 2023, Division F—Department of Homeland Security Appropriations Act, 2023, 168 Cong. Rec. S8562 (daily ed. Dec. 20, 2022) (statement submitted by Sen. Leahy), <https://www.congress.gov/117/crec/2022/12/20/168/198/CREC-2022-12-20-pt2-PgS8553-2.pdf>.

63. Release from detention meaningfully improves an individual's physical and mental health, economic security, capacity to maintain family relationships, and ability to provide care and support to children and other family members. A recent study of the health of detained immigrants concluded that conditions of confinement in ICE detention facilities serve as a catalyst for worsening health, increasing the likelihood of poor general health and of a mental health condition diagnosis in the future.<sup>23</sup> The economic impact of detention, especially long-term detention, produces financial insecurity at the individual and household levels, including lost wages and the inability to pay rent, mortgage, and utility bills.<sup>24</sup> Detention also has collateral consequences on children and other family members who await their loved one's release: as researchers have documented, detention causes families to experience severe financial hardship, disruption to children's routines and relationships, extreme stress, anxiety, and depression, and declines in school performance.<sup>25</sup>

64. *Challenges to Conditions of Confinement.* Plaintiffs assist detained immigrants in challenges to conditions of confinement at ICE detention facilities. Challenges to conditions of confinement—like medical neglect, sexual assault, retaliation, race-based harassment, or use of force—are complex and of great importance to Detained Clients. Such challenges benefit from early intervention by attorneys, and may require extensive fact discovery and support. Detained

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<sup>23</sup> Altaf Saadi et al., *Cumulative Risk of Immigration Prison Conditions on Health Outcomes Among Detained Immigrants in California*, J. Racial & Ethnic Health Disparities 1, 5 (Nov. 2, 2021).

<sup>24</sup> Caitlin Patler, *The Economic Impacts of Long-Term Immigration Detention in Southern California*, at 2-3, UCLA, Inst. for Rsch. on Lab. & Emp. (2016), [https://irle.ucla.edu/old/publications/documents/CaitlinPatlerReport\\_Full.pdf](https://irle.ucla.edu/old/publications/documents/CaitlinPatlerReport_Full.pdf).

<sup>25</sup> Samantha Artiga & Barbara Lyons, *Family Consequences of Detention/Deportation: Effects on Finances, Health, and Well-Being*, Kaiser Fam. Found. (Sept. 18, 2018), <https://www.kff.org/racial-equity-and-health-policy/issue-brief/family-consequences-of-detention-deportation-effects-on-finances-health-and-well-being/>.

immigrants challenging conditions of confinement require even greater confidentiality protections in light of potential retaliation by facility staff and Defendants. Plaintiffs assist Detained Clients in filing administrative complaints and lawsuits, such as recent cases, including class action suits, filed by AIJ and FIRRP to ensure that ICE implemented COVID-19 protections for detained immigrants at detention centers in Florida, including Krome, and for detained immigrants who are medically vulnerable to the virus at ICE detention centers in Arizona. Notably, FIRRP brought cases only on behalf of detained clients at the Eloy Detention Center and La Palma Detention Center, but was unable to bring a case on behalf of detained clients at Florence to challenge the lack of COVID-19 protections during the pandemic because of the attorney access barriers at the facility. FIRRP was able to do so at Eloy and La Palma because both facilities allowed them access to schedule phone calls, unlike at Florence. In order for attorneys to timely respond to urgent conditions-related crises and intervene on behalf of their clients, detained immigrants must have reliable means of communication with their attorneys. Pursuing conditions-of-confinement claims also requires investigating facts, interviewing witnesses, preparing client declarations, appearing in expedited court hearings, reviewing confidential medical records, and significant strategic planning.

65. In 2020, AIJ served as counsel on behalf of detained clients at three Florida detention centers, including Krome, during the early days of the COVID-19 pandemic. *See Gayle v. Meade*, 2020 WL 2086482 (S.D. Fla. April 30, 2020). AIJ thus knows first-hand the challenge in collecting the necessary evidence and preparing for litigation in ICE detention. Notably, at the time the *Gayle* case was filed, AIJ had a significantly larger staff and case load and greater pro bono support. COVID-19 drastically changed the landscape of direct representation in ICE detention. AIJ's case numbers dropped significantly due to the impossibility of meeting with



clients on a regular basis. Staff numbers similarly fell. While AIJ was able to collect client declarations to demonstrate ICE's failure to institute appropriate COVID-19 protection, it was no easy task. The barriers at Krome impacted AIJ then as much as they do now. AIJ has also collected client declarations for this case, which has entailed multiple in-person trips, many missed and re-scheduled phone calls, and diverting resources from client representation. AIJ and its Detained Clients continue to be impeded by the harms and restrictions discussed herein, such as the inability to call an interpreter during a legal visit. AIJ and its Detained Clients also face serious challenges in drafting and finalizing declarations due to the impossibility of confidential legal calls. AIJ and its clients are left with the impossible choice, just as they were in *Gayle* for all Krome declarants, of pushing forward to protect Detained Clients' rights despite the harm and risks that come with not being able to conduct confidential legal calls.

66. However, there is an important difference between the conditions for meeting with clients and collecting evidence at Krome and those at other detention centers, which AIJ has experienced both in furtherance of the *Gayle* case and for this matter. The *Gayle* case also concerned Broward Transitional Center ("BTC"), where AIJ had a large number of clients. It was and is much easier for AIJ to meet with clients at BTC, and thus much easier to collect declarations, prepare for trial, and do all that is necessary to zealously represent its clients. At BTC, attorneys can meet with clients via video conference by calling the facility and requesting to visit with the client. Within 10-15 minutes on average, the facility can place clients into private, attorney-client rooms for a meeting via video conference. Because Krome does not allow confidential telephone or video calls, nor allow attorneys to schedule such meetings, Krome presents greater challenges to assert the rights of Detained Clients.

67. Plaintiffs represent Detained Clients in legal proceedings such as requests for bond and parole, and conditions of confinement challenges that are procedurally, legally, and factually complex. To navigate them, detained immigrants and their attorneys require, and are entitled to, reliable, private, and regular communication.

68. For the same reasons, Detained Clients are hindered from protecting their own interests as first parties in this case. In addition to the attorney access issues discussed here, Detained Clients face significant barriers to bringing such an action. Many Detained Clients do not speak English, typically have a limited understanding of the U.S. legal system, have little access to legal resources other than those provided by Plaintiffs, and therefore need access to counsel in order to bring a federal lawsuit. Defendants' restrictions on attorney access make it so difficult for Plaintiffs to represent Detained Clients in their urgent immigration matters, leaving little or no time for Plaintiffs to also counsel Detained Clients through first-party federal litigation. In addition, many Detained Clients do not remain at the Four Detention Facilities long enough to remain a plaintiff for the duration of a lawsuit. For example, RAICES's clients generally do not spend more than one month at Laredo before being deported, released, or transferred to another facility. Detained Clients may also fear retaliation if they bring a federal lawsuit against Defendants. For example, several of ISLA's Detained Clients at Basile who identify as LGBTQI have experienced retaliatory treatment after filing administrative complaints regarding abusive conditions and inadequate medical treatment, leading some to fear sharing their names, even under public pseudonym, in this complaint. Such treatment has included solitary confinement, denial of access to recreational time, and being called "troublemakers" by guards at Basile. The inability to conduct confidential phone calls exacerbates that fear. Clients, like AIJ's client Donovan, are apprehensive to discuss the details of their confinement with counsel out of fear of retaliation.

## II. DEFENDANTS HAVE DEVELOPED, BUT FAIL TO MONITOR OR ENFORCE, DETENTION STANDARDS AT THE FOUR DETENTION FACILITIES

69. As the federal agencies and individuals responsible for managing the immigration detention system, Defendants are responsible for ensuring that detained immigrants’ access to counsel comports with constitutional and federal law requirements. Even where Defendants contract with local jurisdictions or private prison companies to operate detention facilities—like some of the Four Detention Facilities—Defendants are not absolved from that duty.<sup>26</sup> To the contrary, Defendants must ensure that detention facilities comply with constitutional requirements and, when necessary, remedy deficiencies. Defendants’ oversight function, which is centralized in Washington, D.C., is discussed further *infra* in Section V.

70. In recognition of their responsibility for management and oversight of immigration detention facilities, Defendants developed certain binding detention standards that govern conditions in detention facilities. Compliance with these detention standards is not optional: Defendants incorporate certain sets of those standards into contracts with third parties managing detention facilities, including at the Four Detention Facilities.<sup>27</sup> The 2011 (with 2016 revisions) PBNDS are applicable to Krome and Basile. The 2008 PBNDS are applicable to Florence. The

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<sup>26</sup> Krome is directly managed by ICE, although ICE contracts with private prison companies for detention-related services at the facility. ICE operates Florence, Laredo and Basile through contracts with local jurisdictions or private prison companies.

<sup>27</sup> ICE describes the Detention Standards as requirements, and ICE’s contracts reflect that immigration detention facilities are contractually obligated to adhere to the standards. *See, e.g.*, 2011 PBNDS at 5.1, 5.6, 5.7 (uses mandatory language such as “shall” when describing the “expected outcomes” for correspondence and other mail, telephone access and visitation); 2019 NDS at 5.4(II)(J) (“The facility *shall* ensure privacy for detainees’ telephone calls regarding legal matters.”) (emphasis added).

2019 NDS are applicable to Laredo. Upon information and belief, Defendants intended to be bound by the Detention Standards.

71. The Detention Standards govern, among other things, conditions relating to immigrant detainees' ability to access and communicate with their counsel and prescribe specific requirements for facilities. Although different sets of standards apply to different facilities, the standards are consistent with one another in many respects. For example, all the standards provide that private consultation rooms must be available for legal visits;<sup>28</sup> and that a reasonable number of telephones must be available on which detainees can make calls relating to legal matters without being overheard by officers, staff, or other detainees.<sup>29</sup>

72. As detailed in the following section, the conditions in the Four Detention Facilities fall below the Detention Standards in numerous respects.

73. Although the Detention Standards, if followed, would ensure some minimal degree of access to counsel for detained immigrants, the standards are not in line with constitutional requirements. In many respects, they fall short. To be clear, Defendants must adhere to—and Plaintiffs seek compliance with—the relevant constitutional standards, not only the Detention Standards. Nevertheless, Defendants' failure to monitor or enforce compliance with their own Detention Standards is independently actionable and demonstrates that Defendants acknowledge

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<sup>28</sup> 2008 PBNDS at 5.32(V)(J)(9); 2011 PBNDS at 5.7(V)(J)(9); 2019 NDS at 5.5(II)(G)(8).

<sup>29</sup> 2008 PBNDS at 5.31(V)(F)(2); 2011 PBNDS at 5.6(V)(F)(2); 2019 NDS at 5.4(II)(J).

their responsibility to ensure access to counsel in the ICE detention facilities but simply fail to do so.

### **III. ACCESS TO COUNSEL AT THE FOUR DETENTION FACILITIES IS SEVERELY LIMITED**

74. ICE detention facilities across the country currently impose alarming restrictions on detained immigrants' ability to access their counsel, including at the Four Detention Facilities. These conditions are not new in the ICE detention system. To the contrary, the rampant, systemwide restrictions on access to counsel at ICE detention facilities have been well-documented and litigated in recent years. Nonetheless, significant deficiencies persist, including at the Four Detention Facilities.

75. As detailed in the following sections, Detained Clients' access to counsel is improperly limited at the Four Detention Facilities in several respects. *First*, Defendants prevent Plaintiffs and Detained Clients from meeting confidentially in person because Defendants fail to provide private spaces and other reliable and efficient means for confidential in-person legal visits. *Second*, Defendants restrict Plaintiffs' and Detained Clients' ability to communicate by telephone with each other. *Third*, Defendants restrict Plaintiffs' and Detained Clients' ability to reliably exchange legal correspondence. *Fourth*, Defendants deny the use of or fail to make known the availability of VTC legal visits. *Finally*, Defendants' restrictions on access to counsel pose specific challenges to Detained Clients with disabilities, and Defendants do not ensure that reasonable accommodations are made. These conditions, caused by Defendants' actions and inactions, do not comply with Defendants' own Detention Standards—as indicated within the following sections—let alone the Constitution or federal law.

**A. Defendants Fail to Ensure Adequate Access to Confidential In-Person Communication Between Plaintiffs and Detained Clients.**

76. Defendants fail to ensure means for reliable and confidential in-person communication between Plaintiffs and Detained Clients. Specifically, Defendants: (i) fail to provide a sufficient number of private rooms (or, in some cases, any private rooms at all) for confidential in-person attorney-client meetings; (ii) fail to accommodate or allow for interpretation services; (iii) impede attorneys' ability to draft documents and filings during in-person meetings; and (iv) impose unreasonable barriers to visitation, including unreasonable scheduling requirements and unreasonable visiting hours for the private rooms that do exist, and unreasonable wait times for legal visits.

i. Defendants fail to provide adequate private spaces for in-person attorney-client meetings.

77. Defendants fail to provide a sufficient number of or, at some facilities, **any** private attorney-client visitation rooms to allow detained people to meet confidentially with their attorneys.

78. For example, at Basile, there is only one visitation space in which attorneys are allowed to meet with their clients, which only one attorney and one client can use at a time, even though the facility holds an average daily population of over 450 people in ICE custody.<sup>30</sup> The facility frequently denies ISLA's requests to schedule legal visits with clients during visitation hours because it only has one attorney-client meeting room. ISLA receives denials for their visitation requests at Basile at a much higher rate than any other facility in Louisiana. The visitation space at Basile has a plexiglass wall that separates attorneys and clients during legal visits. This

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<sup>30</sup> U.S. Immigr. Customs Enf't, *ICE Detention Data, FY 2023*, [https://www.ice.gov/doclib/detention/FY23\\_detentionStats03032023.xlsx](https://www.ice.gov/doclib/detention/FY23_detentionStats03032023.xlsx). ICE pays the facility a "guaranteed minimum" rate for at least 700 detained people per day.

physical barrier prohibits any contact during visits and makes it very difficult for attorneys and clients to hear each other, as they must communicate via a closed-circuit phone with a short cord that has scratchy audio. This renders note-taking during client meetings almost impossible, because attorneys must lean down to hold the phone close to their mouths and ears. Communication is even more difficult because it is very noisy and difficult to hear in this visitation space, as it is located between the lobby of the jail and an intake area.

79. Laredo has only two attorney visitation rooms for a facility with a maximum capacity to detain over 400 people. When RAICES attorneys are able to meet with clients in a visitation room, their conversations often lack the privacy needed for confidential communication. The walls of the two consultation rooms are so thin that sound freely passes between them and the waiting area, which is located immediately outside of the consultation rooms. There is often no way for RAICES attorneys to communicate with clients without guards, staff, other detained persons, and/or other visitors overhearing their conversations.

80. Legal visits at Florence occur primarily in a large, cafeteria-style visitation room, which does not provide any confidential space for attorneys and clients to communicate. The room holds approximately 20 tables, spaced only a few feet apart, where any discussion is within earshot of guards, staff, detained individuals, and other visitors.

81. Florence has only two private attorney visitation rooms, even though the facility houses up to approximately 400 people in ICE detention. The visitation rooms are used by the U.S. Marshals—who also detain people at the facility—which limits their availability for attorney-client meetings. Moreover, when attorneys and clients are actually able to access one of the few private visitation rooms available, attorneys are separated from clients by a plexiglass wall and must speak

through a phone. This severely hinders the ability to use an interpreter, share legal documents, and discuss complex legal matters and sensitive facts relating to Detained Clients' legal representation.

82. Mugisha, one of FIRRP's clients at Florence, reports that it is difficult to have a private, confidential conversation when his lawyer visits in person because they usually are in a public room. However, Mugisha notes that it is too noisy and difficult to hear because they are located next to a busy hallway where people walk to and from visitation and where guards talk loudly.

83. Guadalupe is a client of FIRRP who was detained at Florence. FIRRP represented Guadalupe in her parole request and custody review process. Guadalupe also described the difficulty in having a private, confidential in-person attorney-client conversation because Defendants do not provide a private setting. Instead, Guadalupe reports that conversations are conducted out in the open, where people are so close together that it is possible to overhear other attorneys talking to their clients. This setting made it difficult for Guadalupe to discuss private, sensitive matters with her counsel relating to sexual abuse and harm that she had experienced. Guadalupe reports that she was too nervous and uncomfortable about the fact that people could overhear their conversation and was unable to have a private discussion. Guadalupe notes that she was comfortable sharing sensitive information with her attorney when there were no other people around, but that Florence did not provide that kind of space. Notably, the conditions at Florence were worse than those at the neighboring Central Arizona Correctional Facility ("CACF"), also located in Florence, Arizona, where Guadalupe served her criminal sentence before her detention by ICE. Guadalupe reports that CACF had spaces dedicated to legal visits.



84. Although the Court has required that Defendants install six private, confidential attorney-client visitation rooms or telephones that block all others from listening to legal calls in progress at Florence, this has yet to materialize. Order and Prelim. Inj., ECF No. 78.

85. Krome has only six private in-person contact visitation rooms for a facility with a capacity to hold 682 detained people.<sup>31</sup> None of these rooms are available for advance scheduling. These private in-person visitation rooms are also used for purposes other than attorney-client visits, including as: (i) waiting rooms for individuals who have a hearing or interview with the United States Citizenship and Immigration Services (“USCIS”) Asylum Office that day; (ii) private rooms for meetings between detained immigrants and ICE Enforcement and Removal Operations (“ERO”); and (iii) rooms for video immigration court proceedings. As a result, the private in-person rooms are often unavailable for confidential attorney-client meetings.

86. Krome also offers 26 no-contact visitation booths. Attorneys and detained persons must communicate across a plexiglass wall with telephones. Conversations in these booths are not confidential or private. The phone lines are recorded and subject to monitoring by ICE. Moreover, there are no enclosures on either side; there is only a plexiglass wall between the attorney and client at each booth. As a result, conversations may be heard by anyone on the same side of the plexiglass wall.

87. Krome offers another no-contact visitation room that further restricts attorney-client communication. In that room, the attorney and client can hear each other clearly only if they place their mouth or ear near a thin metal slot that is only large enough to slide a document through. As a result, the attorney and client cannot make eye contact or interpret each other’s facial

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<sup>31</sup> A “contact” room enables attorneys and clients to communicate without a physical barrier separating them, and is preferred over a “non-contact” room because it permits clear communication and facilitates the exchange of documents.

expressions or body language while speaking or listening. The room also has poor acoustics, making hearing even more difficult. To compound the challenging conditions, because of the room's location, anyone who enters the general visitation area can overhear conversations in the room.

88. The foregoing conditions do not meet requirements under the Detention Standards that: (i) meetings between detained people and attorneys or legal assistants be confidential and not be subject to auditory supervision,<sup>32</sup> and that (ii) private consultation rooms for such meetings be available.<sup>33</sup>

89. The lack of sufficient private attorney-client meeting rooms contrasts with conditions in neighboring jails and prisons. For example, criminal defense attorneys who make in-person visits to clients at neighboring correctional facilities report availability of private meeting rooms, including for contact visits, where they can conduct confidential visits with clients. These facilities, all of which hold pre-trial detainees in criminal custody and prisoners serving criminal sentences, include the Iberia Parish Jail in Iberia Parish, Louisiana<sup>34</sup>; St. Martin Parish Jail in St. Martinsville, Louisiana; the Natchitoches Parish Jail in Natchitoches Parish, Louisiana; Karnes County Correctional Center in Karnes City, Texas<sup>35</sup>; the Miami-Dade Pre-Trial Detention Center

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<sup>32</sup> 2008 PBNDS at 5.32(V)(J)(9); 2011 PBNDS at 5.7(V)(J)(9); 2019 NDS at 5.5(II)(G)(8).

<sup>33</sup> 2008 PBNDS at 5.32(V)(J)(9); 2011 PBNDS at 5.7(V)(J)(9); 2019 NDS at 5.5(II)(G)(8).

<sup>34</sup> See Iberia Par. Sheriff's Off., *Jail Information*, <https://www.iberiaso.org/jailInfo> (last visited Mar. 15, 2023) ("Iberia Parish Jail is a facility that holds . . . State Prisoners, Federal Prisoners, as well as prisoners for other local agencies.").

<sup>35</sup> See Shamrock Consulting LLC, *Prison Rape Elimination Act (PREA) Audit Report 10* (2019), [https://www.geogroup.com/Portals/0/PREA\\_Certifications/2019/Karnes%20County%20Correctional%20Center%20-%202019%20Final%20Report.pdf](https://www.geogroup.com/Portals/0/PREA_Certifications/2019/Karnes%20County%20Correctional%20Center%20-%202019%20Final%20Report.pdf) (noting that Karnes County Correctional Center holds inmates for the Idaho Department of Corrections).

in Miami, Florida; the TKG Correctional Center in Miami, Florida; the Metro West Detention Center in Miami, Florida;<sup>36</sup> and the Central Arizona Detention Center in Florence, Arizona.<sup>37</sup>

ii. Defendants restrict access to interpreters.

90. Interpreters are essential for attorney-client communication when the attorney and client do not speak the same language. When a Detained Client does not speak English or Spanish, an interpreter is frequently necessary to ensure that they can speak with their attorney.

91. Plaintiffs have had clients who speak only an indigenous language, such as a Mayan language. The communities that speak these indigenous languages in the U.S. are generally relatively small. Interpretation is a complex process that requires an understanding of not just the languages involved but also the context in which the interpretation is occurring. For example, an interpreter in an immigration proceeding needs to interpret legal concepts that do not always have a direct translation, like the concept of a determination of credible fear. As a result, the number of qualified interpreters in a particular language is very small. For some of the rarer Mayan and indigenous languages, there may be fewer than a dozen qualified interpreters in the entire United States.

92. The small size of the communities that speak indigenous languages also means that the amount of interpretation work available in those languages is small. The large majority of interpreters in those languages cannot rely on interpretation income alone and rely on additional

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<sup>36</sup> See Brian D. Bivens and Assocs., *Prison Rape Elimination Act (PREA) Audit Report 3*, 7, 15 (2022), <https://www.miamidade.gov/corrections/library/prea-audit-report.pdf> (noting that Metro West, Miami-Dade Pre-Trial, and Turner Guilford Knight (“TGK”) correctional facilities all hold Bureau of Prison (“BOP”) inmates).

<sup>37</sup> See Brian D. Bivens and Assoc’s., *Prison Rape Elimination Act (PREA) Audit Report 3* (2021), [https://www.corecivic.com/hubfs/\\_files/PREA/Facilities/CAFCC%20Final%20Report%20050321.pdf](https://www.corecivic.com/hubfs/_files/PREA/Facilities/CAFCC%20Final%20Report%20050321.pdf) (noting that the Central Arizona Florence Correctional Complex holds BOP inmates).

jobs for their primary source of income. For example, Carmelina Cadena, an interpreter who works with Plaintiffs FIRRP, AIJ, and RAICES, has over 20 years of experience as an interpreter and can interpret four different Mayan languages to English, but even she cannot make a living on interpretation alone. She supplements her interpretation income by working as the executive director of an interpretation agency, Maya Interpreters. Even those who are able to work solely as interpreters generally have full-time interpretation jobs (for example, in a hospital in a community with a significant population that speaks a particular indigenous language) and perform legal interpretation as an additional, part-time job.

93. In-person interpretation at ICE detention centers is logistically difficult for interpreters and expensive for Plaintiffs, generally costing Plaintiffs over \$2,000 per interpretation session when factoring in travel costs. Because of the small number of interpreters available, there is rarely an available, qualified interpreter close to the ICE detention center where the interpretation must take place. Carmelina reports that she has on multiple occasions traveled to Florence and Basile to provide interpretation, even though each of these visits entails a flight followed by a drive of over an hour. In-person interpretation requiring travel can also be impossible for some interpreters, who may not have access to a credit card, may be under the age of 25, may not speak English (instead interpreting from an indigenous language to a Spanish-speaking attorney), or may not be financially able to advance travel costs and wait to be reimbursed by a legal services provider. Additionally, in-person interpretation typically requires advance notice that in certain circumstances is not possible for Plaintiffs to provide.

94. Contacting an interpreter via phone is often the most practical way to utilize an interpreter's services during an in-person attorney-client visit, especially for languages less commonly spoken in the area near the detention center. Sometimes it is the only practicable way

to obtain an interpreter. Yet, Defendants prevent interpreters from participating confidentially in attorney-client meetings at Laredo, Krome, and Florence. Specifically, Defendants have blocked phone access in visitation rooms at those facilities, effectively preventing interpreters from telephonic participation. Nor are attorneys permitted to bring cellphones into their visits with clients.

95. For many languages, phone interpretation sessions must also be scheduled in advance. When an interpretation session is scheduled but the Detained Client is not available during the session, the Plaintiff who scheduled the interpretation session generally incurs charges while the interpreter waits for the Detained Client to join the call. If the Detained Client does not join the call during the window of time that the interpreter scheduled for the call, then the interpreter may be unable to interpret at all for several days.

96. Instead, attorneys must arrange to bring an interpreter in person, which is difficult given the remote location of many of the Detention Facilities. The attorney visitation rooms at Laredo do not have telephones and attorneys are not permitted to bring in cellphones, so the only option for interpretation is to bring an interpreter to Laredo. It is often impossible to find interpreters for less common languages, such as Russian, who are available and willing to travel to rural Laredo, Texas. As a result, RAICES attorneys with clients at Laredo have had to resort, in some instances, to relying on other detained people to help interpret communication with their clients. For example, a RAICES attorney representing a Haitian client in a bond application did not speak Haitian Creole, and so another detainee who spoke Haitian Creole helped translate. This “work-around,” however, is problematic. For one thing, a detained person who speaks the same language as the client may not always be available to join the in-person attorney-client meeting or have the requisite fluency of both languages to fully interpret complex conversations. Moreover,

involving a third-party in the meeting may jeopardize the attorney-client privilege or otherwise discourage the Detained Client from sharing sensitive or confidential information.

97. At Krome, the pre-approval process for interpreters typically takes two weeks. Although shorter than the time at Laredo, two weeks can be damaging in a fast-moving case. Moreover, an interpreter's approval expires after 90 days, requiring interpreters to regularly re-apply for approval.

98. Krome also does not allow telephones in the visitation rooms, which inhibits clients and attorneys from reliably using interpretation services. For example, AIJ's client Jaime speaks Popti, a rare, indigenous language. AIJ has been unable to secure a Popti interpreter who is able to travel to Krome and relies on an interpreter who is located in Guatemala. This means that the interpreter is only available on the phone. Because Krome refuses to allow telephones during attorney client visits, AIJ and Jaime had no choice while he was detained but to limit their communications to the telephone, which as described below, is not confidential and places Jaime in the impossible position of choosing his own safety or sharing information with his attorney to assist his case. Jaime is fleeing violence and threats to his life. He believes his persecutors may also have a presence in the United States, including inside Krome. He was therefore afraid to reveal pertinent details to assist his attorney with his bond hearing due to the risk of being overheard. Based on the lack of confidential phone calls at Krome and ICE's refusal to provide a telephone for interpretation services during attorney client visits, ICE impeded Jaime from having any confidential communications with his attorney.

99. FIRRP relies on the use of interpreters to communicate with clients who speak a language other than English or Spanish, which FIRRP staff are required to speak. Because of Florence's remote location and the lack of interpreters in many languages, especially rare

indigenous languages, FIRRP has struggled to identify sufficient interpreters willing and able to provide in-person interpretation at Florence. In recognition of this issue, government contracts for programs such as the Legal Orientation Program and the National Qualified Representative Program pay for and encourage providers to use telephonic interpreter services that they provide, and FIRRP pays for such services for any cases not funded through their government contracts. However, the primary interpreter line often does not provide interpreters for rare or indigenous languages. Moreover, interpreter service agencies, particularly those that provide services for rare and indigenous languages, require advance scheduling for telephonic interpretation. For these reasons, in-person interpretation is not an available alternative for languages other than English or Spanish.

100. At Florence, there is one phone available in the visitation area for attorneys who require telephonic interpretation. That one phone is kept at the guard's desk, is not located in a private space, and is only available for use in the public meeting area. Even if telephones or cell phones were permitted inside the few private visitation rooms at Florence—they are not—attorneys and their clients are separated by a plexiglass wall and must speak through a receiver through the wall, rendering telephonic interpretation with an outside interpreter nearly impossible. Mugisha, one of FIRRP's detained clients at Florence who speaks only Kinyarwanda, French, and Lingala fluently, noted that it is noisy and difficult to hear. As a result, he remarked that it is difficult to access interpretation for in-person visits because it is difficult to hear the interpreter and because the sound quality of the phones is poor. The situation is even worse in segregation. According to Mugisha, interpretation is more difficult in segregation because it requires passing a cellphone across a glass divider.

101. The restrictions at Laredo, Krome, and Florence violate the Detention Standards, which require detention facilities overseen by ICE to ensure that detained persons with limited English proficiency have access to interpretation in legal visits, and interpretation services necessary for meaningful access to programs and services.<sup>38</sup> Because legal visits must be confidential, interpretation during those visits must also be confidential.

102. These restrictions on telephonic interpretation contrast with conditions at other immigration detention centers that allow the use of phones during in-person visits. As a recent study indicated, at least 37 other ICE detention facilities nationwide currently allow attorneys to use their cellphones in legal visits.<sup>39</sup> These restrictions also contrast with conditions at surrounding jails. Carmelina, the interpreter who works with Plaintiffs FIRRP, AIJ, and RAICES, has also worked with criminal defense lawyers to interpret for their clients held in several jails, including the Palm Beach County Main Detention Center in West Palm Beach, Florida. She reports that in these jails, criminal defense lawyers are generally able to set up scheduled VTC appointments, where she can provide telephonic interpretation services with the ability to schedule her time in advance and the confidence that the interpretation is likely to take place when it is scheduled to take place.

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<sup>38</sup> 2008 PBNDS at 5.32(V)(J)(3)(c) (“The facility shall permit interpreters to accompany legal representatives and legal assistants on legal visits . . . .”); 2011 PBNDS at 5.7(II)(10) (requiring communication assistance for detainees with limited English proficiency), 5.7(V)(J)(3)(c) (requiring facility to permit interpreters to accompany legal representatives and legal assistants on legal visits); 2019 NDS at 5.5(II)(G)(3)(c) (requiring facility to permit interpreters to accompany legal representatives and legal assistants on legal visits).

<sup>39</sup> ACLU, *No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Centers*, *supra* note 6, at 27.



- iii. Defendants impede attorneys' ability to prepare documents and filings during visits.

103. Attorneys are unable to draft and review documents during in-person meetings with Detained Clients at the Four Detention Facilities. At Krome, Laredo, and Basile, attorneys are prohibited from bringing laptops and printers into client meetings. Instead, attorneys are only permitted to bring in paper files and a pen or pencil when meeting with clients. As a result, attorneys are unable to draft or edit forms, declarations, and other case documents with the assistance of Detained Clients during their in-person visits. This inability to draft, edit, or print documents in real time requires repeated and otherwise unnecessary visits to review and sign documents, a particularly difficult burden at detention facilities that are located a long distance from Plaintiffs.

104. These restrictions on the use of laptops and printers during in-person attorney visits are in contrast with conditions at neighboring facilities that hold both pre-trial detainees in criminal custody and prisoners serving criminal sentences, *see supra* ¶ 89, as well as at several other immigration detention facilities. For example, criminal defense attorneys report that they are able to bring in laptop computers to attorney-client visits at facilities including the Iberia Parish Jail in Iberia Parish, Louisiana; St. Martin Parish Jail in St. Martinsville, Louisiana; the Natchitoches Parish Jail in Natchitoches Parish, Louisiana; Karnes County Correctional Center in Karnes City, Texas; the Miami-Dade Pretrial Detention Center in Miami, Florida; the TGK Correctional Center in Miami, Florida; the Metro West Detention Center in Miami, Florida; and the Central Arizona Detention Center in Florence, Arizona.

105. State departments of corrections nationwide require prisons to permit attorneys to bring laptops and electronic devices to legal visits.<sup>40</sup> Ninety-eight, or over half of, immigration detention facilities nationwide currently allow attorneys to use their laptops in legal visits.<sup>41</sup>

106. Attorneys are also unable to confidentially review and exchange documents with clients in certain visitation rooms at Basile and Florence. At Basile, a plexiglass partition separates attorneys and clients, which makes it impossible for attorneys to exchange documents with their clients. To give a client a document, an attorney must leave the attorney-client meeting room and hand a nearby guard the document; the guard will then enter the client's side of the space, and give the document to the client. The same process has to occur for a client to return a document to an attorney. During the exchange, there is no protection against the guard reviewing the document.

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<sup>40</sup> See, e.g., Ark. Dep't Corr., Sec. Dir. 2022-15 (2022), <https://bit.ly/3Y2jxRg> (electronic devices such as cell phones, tablets, or laptops permitted if authorized in writing); Colo. Dep't Corr., Admin. Reg. 750-03 (2022), <https://bit.ly/3IsNgNO> (“[L]aptop computers may be used by an attorney/agent during a visit/proceeding.”); Conn. Dep't Corr., Admin. Dir. 10.6 (2018), <https://bit.ly/3IPOAeX> (attorneys are “permitted to bring in a tablet or laptop for official legal purposes”); Haw. Dep't Pub. Safety, Corr. Admin. Pol'y and Proc., COR 12.02 (2019), <https://bit.ly/3IPotQz> (allowing “equipment that an attorney believes is required during the inmate visit” if cleared in advance); Neb. Dep't Corr. Serv., Pol'y 205.02 (2022), <https://bit.ly/3ks0CSh> (“Attorneys are authorized to bring in the following items: digital camera, and laptop or tablet”); Okla. Dep't Corr. OP-030118 (2022), <https://bit.ly/3Z1CJQr> (“Facility heads may approve an attorney . . . to bring a computer or tablet to the visit . . . .”); Or. Admin. R. 291-127-0450, [bit.ly/3YuUSW0](https://bit.ly/3YuUSW0) (“Computers, tape recorders, and other electronic devices may be permitted” upon approval); 240-20 R.I. Code R. 20-00-3, Access to Institutional Facilities by Attorneys and Their Agents, [bit.ly/3F6OUUe](https://bit.ly/3F6OUUe) (“Recording Devices/Cameras/Lap Top Computers/Computer Tablets are permitted.”); Tex. Dep't Crim. Just., Board Pol'y No. BP-03.81 (2021), <https://bit.ly/3yamuFf> (“Attorneys and designated representatives may bring . . . computer laptops, and personal digital assistants into the visiting area.”); Vt. Dep't Corr., *Inmate Visits—Attorney Information* (2019), <https://bit.ly/3KEjYOY> (allowing “laptop, tablet, or e-reader”); Va. Dep't Corr., Legal Visit Request (2020), <https://bit.ly/3KTGkfx> (allowing requests for approval of “laptop computer” and “computer data storage device”); Wyo. Dep't Corr., Pol'y and Proc. 5.403 (2021), <https://bit.ly/3m7hleg> (permitting “[p]ortable computerized equipment, i.e., laptop or tablet computer” with pre-approval).

<sup>41</sup> ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers*, *supra* note 6, at 27.

107. If attorneys elect to use the private meeting rooms at Florence, they cannot exchange documents or procure signatures without giving them to a guard, breaching confidentiality. These restrictions also violate the Detention Standards.<sup>42</sup>

- iv. Defendants impose unnecessary barriers to legal visitation, resulting in unreasonable wait times to meet with clients.

108. Defendants have also erected unreasonable and unnecessary barriers to visitation, causing lengthy wait times and limited windows for legal visits by (i) providing insufficient private meeting spaces for attorney visitation (as discussed above), (ii) requiring attorneys to schedule their in-person visits days, and in some cases, weeks in advance, and (iii) unreasonably restricting visiting hours, including prohibiting visits during evening hours.

109. As discussed above, the inadequate number of private attorney visitation rooms means that the demand for use of these rooms far outstrips availability, leading to unreasonable and burdensome wait times. In addition, onerous scheduling requirements, ranging from first-come, first-serve policies for use of the limited private rooms (Laredo and Krome), to requirements that appointments be scheduled 24 hours in advance, by at least 3:00 p.m. the day before (Basile), contribute to lengthy wait times for attorney-client visits or, in the case of Basile, a denial of visits altogether. At Laredo, this leads to wait time of over one hour to meet with a client. At Florence, visitation is only permitted between 8:00 a.m. and 4:30 p.m. daily, and FIRRP attorneys are not aware of any procedure to schedule visits outside these hours. At Basile, wait times for a legal visit can be several hours even when an attorney pre-schedules a visit (as required) if there is another

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<sup>42</sup> 2008 PBNDS at 5.32(V)(J)(10) (requiring that the facility “provide for the exchange of documents between a detainee and the legal representative or assistant, even when contact visitation rooms are unavailable”); 2011 PBNDS at 5.7(V)(J)(10) (same).

attorney occupying the sole visitation space or if count is occurring, as the facility refuses to bring detained clients to visits during count.

110. The rules at Basile about in-person visitation also frequently change without prior notice to attorneys, and staff have refused to give ISLA a manual on visitation policies despite several requests. For example, Basile staff have at times told ISLA staff that legal visits are limited to 30 minutes, despite no mention of this limitation during other visits. Lack of flexibility in scheduling in-person visits, with a strict requirement that all visits be requested by 3 p.m. the previous day, also prevents ISLA from visiting Detained Clients if there is an emergent situation urgently requiring communication. This is exacerbated by the fact that phone calls also cannot occur on a same-day basis, even for emergencies. For example, in February 2023, ISLA received a referral from a partner organization over the weekend for a woman held at Basile who had speech and hearing problems. An ISLA attorney already had an in-person visit with other clients scheduled for the following Monday, so he attempted to add the new potential client to that visit but was told by Basile staff that this was not possible because the deadline had passed. Shortly afterwards, ISLA learned that the woman was no longer at Basile, meaning that she could have been deported or transferred, and ISLA was never able to meet with her.

111. These in-person visitation policies contrast with conditions in surrounding jails and prisons. For example, criminal defense attorneys with clients at correctional facilities that hold both pre-trial detainees in criminal custody and prisoners serving criminal sentences, *see supra* ¶ 89, report less onerous wait times for legal visits. These facilities include the Iberia Parish Jail in Iberia Parish, Louisiana; St. Martin Parish Jail in St. Martinsville, Louisiana; the Natchitoches Parish Jail in Natchitoches Parish, Louisiana; Miami-Dade Pretrial Detention Center in Miami,

Florida; the TKG Correctional Center in Miami, Florida; and the Metro West Detention Center in Miami, Florida.

112. Defendants' failure to provide the facility's legal visitation policy at Basile also violates Detention Standards pertaining to attorney access.<sup>43</sup>

**B. Defendants Restrict Telephone Access between Plaintiffs and Detained Clients.**

113. Free, confidential telephone access is a critical tool in the representation of detained people, particularly when confidential in-person communication is not easily available. Not only do Defendants fail to ensure reliable in-person communication, but Defendants also unlawfully restrict Detained Clients from making and receiving calls by, among other things: (i) refusing to allow attorneys to schedule calls with their clients or creating burdensome scheduling requirements, (ii) failing to provide private areas where Detained Clients can make confidential legal phone calls, (iii) charging Detained Clients prohibitively expensive rates to use paid phones to call attorneys and imposing unreasonable restrictions on access to pro bono hotlines, and/or (iv) imposing time limits that impede clear and effective communication.

i. Restrictions on scheduled phone calls at the Four Detention Facilities harm Plaintiffs' ability to represent Detained Clients.

114. Plaintiffs' ability to schedule phone calls with Detained Clients is essential to legal representation. Despite the critical need for attorneys to be able to schedule confidential calls with their clients, doing so is either impossible or extremely difficult at Florence, Krome, Laredo, and Basile, harming Plaintiffs and Detained Clients.

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<sup>43</sup> 2011 PBNDS at 5.7(V)(J)(15) (requiring availability of facility's legal visitation policy upon request).

115. At Florence, attorneys have no means to schedule a call with Detained Clients. The only way for attorneys to communicate with 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 a desired time for the client to call the attorney from a public pay phone in the housing unit. This voicemail or email must request that a message be delivered to the client, instructing them to call the attorney at a specified time and date. This message delivery system is unreliable. 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. More often than not, attorney messages are not timely delivered or not delivered to clients at all. This is a violation of the Detention Standard requiring that the facility deliver telephone messages to detained immigrants as promptly as possible.<sup>44</sup>

116. As FIRRP's clients note, this message delivery system hampers attorney access at Florence. Mugisha, one of FIRRP's clients at Florence, noted that sometimes detained people will receive a message from the detention center telling them to call their lawyers, but this system does not really work. Mugisha explains that detained people cannot call their lawyers when they get these messages because the phone system is too confusing. Once, Mugisha's attorney left him a message to call back. Mugisha wanted to call his attorney. However, when he tried to talk to ask the staff for help, the housing manager shouted at him. Guadalupe similarly recalls the failure of the message relay system. Guadalupe reports that officers notified her that her attorney has requested that she call him only five minutes before the requested time, which did not work because she had to wait for a phone to become available, or because the call was supposed to happen during count time, when officers would not permit detained people to use the phones.

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<sup>44</sup> 2008 PBNDS at 5.31(V)(J).

117. In addition, there are no accommodations in place for clients who require an interpreter for legal calls at Florence. As described above, telephonic interpretation is often the only way in which FIRRP counsel may speak to clients who do not speak either English or Spanish. Because the telephone system at Florence relies on the clients returning the attorney's call, it is impossible to schedule and secure interpreters when an attorney does not know when a client will call, particularly in the cases of languages that are less commonly spoken since interpreters must be scheduled well in advance.

118. There is no mechanism for attorneys to set up a telephone call with Detained Clients at Krome. AIJ's attorneys have resorted to sending electronic messages to clients through the GettingOut app, a paid, monitored electronic tablet-based app, instructing clients to call at a designated time from paid phone lines in detention housing units. AIJ's clients, however, are sometimes reluctant to use GettingOut because they lack the funds to pay to receive messages. Moreover, there is no guarantee that the client will call at the requested time, and even then, the clients must call either from monitored, paid phone lines in detention units where conversations are overheard by other detained people and ICE officers, or by using the pro bono hotline, which is similarly located in a public space, and which requires a complex multi-step procedure for which instructions are not readily available near the phones. As AIJ clients Jaime, Donovan, and Mario all have experienced, the complexity of this system causes significant delays in Detained Clients' ability to access pro bono counsel, which unnecessarily prolongs their time in detention.

119. Similarly, the lack of scheduled calls at Krome further impedes access to counsel, particularly for clients with competency concerns or mental health conditions like AIJ client Mario, who struggles to remember dates and times. At Krome, attorneys are forced to rely on informal "call-back" procedures, where a client like Mario is unlikely to remember to call at the

agreed upon time. If an interpreter is needed to conduct legal calls—as was necessary for AIJ’s Detained Client Jaime—the lack of scheduling procedures necessarily results in delays because more coordination is needed, and calls cannot be scheduled in advance. This is even worse for telephonic interpreters for rare languages that have more limited availability. The attorney cannot preschedule the interpreter appointment without risking incurring penalties for last minute cancelations. Because the calls are not prescheduled, they often conflict with other internal activities such as medical visits, resulting in clients having to choose between speaking to their attorney or seeing a doctor, which happened to Jaime on multiple occasions. The call may also be delayed by the availability of phones in the common area, as they are shared with the entire unit. For example, Jaime had to ask another detainee using one of the phones if he could use the phone himself so that he could make a call to his attorney when all the phones were being used. Similarly, as described by AIJ clients Caterina, Jaime, and Juan, not all of the shared phones are in working order, further limiting the Detained Clients’ ability to call an attorney at a predetermined time. Even when attorneys attempt to work around these barriers, there is no possible solution: after multiple failed attempts to have both Jaime and an interpreter on the phone at the same time, an AIJ attorney requested a private legal call with Jaime. ICE told the attorney that she should meet up with her client in person instead. As previously stated, an in-person meeting with Jaime is not feasible because there is no Popti interpreter available to travel to Krome.

120. Similarly, at Laredo, attorneys have no reliable method to schedule confidential legal calls *in advance*, leaving RAICES with inadequate and unreliable options for attorney-client calls. Detained people may initiate calls to RAICES, by way of a public hotline in the housing unit that is paid for by RAICES. But attorneys cannot schedule calls to take place at a certain time on the free hotline. Attorneys must send several messages for their clients, in the hopes that facility



staff will deliver the messages to the client and that the client will call them. This message delivery system is unreliable, and clients have often reported that despite several messages left by the attorney with the facility, the clients only received one.

121. Information regarding the process for arranging private attorney calls with clients is not publicly available. In addition, the process for arranging private legal calls is neither consistent nor reliable. RAICES attorneys have tried different approaches for arranging private calls, but generally have resorted to contacting a facility employee responsible for setting up private legal visits. This approach is plagued by a host of issues that inhibit effective attorney-client communication. Often, the facility employee does not respond to call requests for days at a time. In order to have place a second private call to their former client Mary, a RAICES attorney had to send eight emails to the facility employee over the course of six days in order to arrange the call. When the RAICES attorney asked if there was a way to arrange the call for a particular time in advance, the facility employee said RAICES should continue following the same process—sending emails or calling until the facility employee is able to arrange the call. Mary explains that no one at the detention center ever explained to her how to request a private call with an attorney. In another example, a RAICES attorney, unable to arrange calls with her client through the facility employee, was forced to track down her client's assigned ICE deportation officer and then repeatedly request that the officer contact the facility employee to arrange a phone call with the client. On another occasion, a RAICES attorney had to leave a message with the facility every hour, for almost five hours, asking to send a request that the client call her back. Because RAICES attorneys have been forced to spend so much time attempting to arrange calls, they have been hampered in their ability to effectively provide legal services to the clients they are seeking to contact, and to other clients at Laredo and elsewhere.

122. Even at the facilities that do have scheduling systems in place, like Basile, these systems are flawed. Basile provides no way for attorneys to communicate with clients in urgent situations. All phone calls must be requested in advance by 3 p.m. on the previous day; the facility has never made an exception for ISLA, meaning that ISLA has no way to speak immediately with their clients on the phone in urgent situations. Moreover, detained clients cannot place direct, free, legal calls to ISLA attorneys. They must request a legal call from a case manager at Basile, who takes one to two days to contact ISLA and schedule a call—at the very earliest, a client-requested call can happen the next day. Allison and Beatrice, ISLA’s current clients at Basile, were previously in federal criminal custody, and report that it was much easier for them to schedule legal calls with their attorneys when they were in criminal custody.

123. These barriers to telephone communication significantly hinder Plaintiffs’ ability to adequately provide legal representation to Detained Clients, particularly in fast-moving situations such as bond hearings.

124. These conditions violate the requirements in the Detention Standards (i) that detainees and their legal counsel shall be able to communicate effectively with each other via telephone and that telephone procedures be designed to foster legal access and confidential communications with attorneys,<sup>45</sup> and (ii) that facilities promptly deliver telephone messages to detainees.<sup>46</sup>

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<sup>45</sup> 2008 PBDNS at 5.31(II)(5) (“[t]elephone access procedures will foster legal access”); 2011 PBDNS at 5.6(II)(6) (“[t]elephone access procedures shall foster legal access and confidential communications with attorneys”); 2019 NDS at 5.4(II)(J) (“[t]he facility shall ensure privacy for detainees’ telephone calls regarding legal matters”).

<sup>46</sup> 2008 PBDNS at 5.31(V)(J) (requiring message delivery “as promptly as possible” and no less than 3 times a day); 2011 PBDNS at 5.6(V)(J) (delivery of messages “as promptly as possible”); 2019 NDS at 5.4(II)(I) (requiring message delivery normally within 8 waking hours).

125. Restrictions against scheduled phone calls at the Four Detention Facilities also stand in contrast to scheduled phone call practices at facilities that hold both pre-trial detainees in criminal custody and prisoners serving criminal sentences, as well as other immigration detention centers. *See supra* ¶ 89. Guadalupe, FIRRP’s client, can make this direct comparison, as she served a criminal sentence at the Central Arizona Correctional Facility, a prison also in Florence, Arizona, prior to her detention by ICE at Florence. Guadalupe reported that she had a lot of legal calls while in prison, and that prison officials scheduled the call, made sure that she got the call when it was scheduled, and made sure that she got private space for the call. Scheduled attorney calls are available at correctional facilities such as the Iberia Parish Jail in Iberia Parish, Louisiana; St. Martin Parish Jail in St. Martinsville, Louisiana; the Natchitoches Parish Jail in Natchitoches Parish, Louisiana; and Karnes County Correctional Center in Karnes City, Texas. At Iberia Parish Jail, St. Martin Parish Jail, and Natchitoches Parish Jail, a federal public defender is also able to speak with clients over the phone immediately if needed. State prisons nationwide are also required to provide scheduled, confidential legal calls to people serving criminal sentences.<sup>47</sup>

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<sup>47</sup> Conn. Dep’t Corr. Admin. Dir. 10.7 (2022), <https://bit.ly/3IQkyI2> (requiring facilities statewide to honor “requests by attorneys . . . for privileged calls. . . at the time specified by the attorney”); Fla. Admin. Code Ann. Rev. 33-602.205 (2022), [bit.ly/3Zy9cy3](https://bit.ly/3Zy9cy3) (“[A]n attorney shall be permitted to request prior arrangements be made with the warden or warden’s designee to have an inmate receive a private telephone call from the attorney on an unmonitored telephone[.]”); Idaho Dep’t Corr., Stand. Op. Proc. 402.02.01.001 (2019), <https://bit.ly/3ISMbjB> (“An attorney or attorney’s staff member may contact the facility paralegal to arrange a time for the inmate to call the attorney[.]”); Iowa Admin. Code 201-20.4(3)(x), [bit.ly/3YyxhUn](https://bit.ly/3YyxhUn) (last updated Sept. 9, 2021) (detailing protocol for attorneys to schedule unmonitored incoming legal calls); Minn. Dep’t Corr., Pol’y 302.210 (2020), <https://bit.ly/3xOpl6m> (“Attorneys must contact the designated facility staff to schedule a call at a mutually-agreeable date and time.”); N.C. Dep’t Pub. Safety Prisons, Pol’y and Proc. G.0200 (2022), <https://bit.ly/3xPbAEH> (allowing attorneys to “make a formal written request to communicate with the offender via telephone”); Or. Dep’t Corr., Professional Visits, <https://bit.ly/3kkkqqU> (last visited Mar. 15, 2023) (“Legal telephone calls may be scheduled when a professional visit is not possible.”); Penn. Dep’t Corr., Pol. No. DC-ADM 818 (2022), <https://bit.ly/3Zlltpi> (“[E]ach facility has established phone booths that can be utilized by inmates

126. Scheduled phone calls are also available at other immigration detention centers. As a recent study found, at least 37 immigration detention facilities nationwide currently allow attorneys to schedule phone calls in advance with their clients,<sup>48</sup> and at least seven facilities also permit attorneys to immediately connect with a client over the phone.<sup>49</sup>

127. In spite of Defendants’ actions, it is clear that detention facility staff recognize the efficiency of scheduled attorney calls with people in detention. In 2022, facility staff at Florence attempted to set up a system to schedule phone calls in coordination with FIRR. However, when ICE learned of the proposed plan on a call organized by members of the Arizona Congressional delegation, FIRR was informed that no new system for scheduling legal calls would take place at the facility.

ii. Defendants fail to provide private spaces for Detained Clients to make confidential legal phone calls.

128. Defendants fail to ensure that Detained Clients can make legal phone calls in private areas where their calls cannot be overheard or monitored. Privacy during attorney-client phone calls is paramount to facilitating free and open attorney-client communication—the bedrock of effective representation. Detained Clients often do not feel comfortable sharing sensitive

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under certain pre-arranged circumstances . . . at the request of . . . inmates’ attorneys[.]”); Tex. Dep’t Crim. Just. Board Pol’y No. BP-03.81 (2021), <https://bit.ly/3yamuFf> (calls requested by attorneys “can be scheduled on the same day as the request or on a day that is convenient for all parties”); Utah Dep’t Corr., Attorney Information, <https://bit.ly/3Z1755Q> (last visited Mar. 15, 2023) (“[A]n attorney of record for an inmate may be able to set up a telephone call with a client,” and an “appropriate case manager” will “arrange a call.”); Wash. Dep’t Corr., Attorney Communication with Individuals Incarcerated at DOC (2021), <https://bit.ly/3ITNICj> (attorneys may “schedule phone meetings . . . by sending written notice”); *c.f.* Neb. Dep’t Corr. Serv., Pol’y 205.03 (2022), <https://bit.ly/3YXRJyQ> (“As each incarcerated individual has a tablet there is no scheduling need to make phone calls.”).

<sup>48</sup> ACLU, *No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Centers*, *supra* note 6, at 15.

<sup>49</sup> *Id.*

information that may be important for their legal proceedings with their attorneys in the absence of privacy. As a result, Detained Clients and their cases suffer.

129. Lack of privacy, and clients' resulting hesitance to share information, require FIRRP to spend substantial time conducting in-person follow-up visits to obtain basic case information, and at times, results in FIRRP attorneys operating with incomplete or inaccurate information. At Florence, all calls are made through telephones located in the open housing unit. There is no private place for detained immigrants to communicate confidentially with counsel. Detained Clients must make calls on one of approximately four phones mounted on the wall or in a phone bank, mounted only two to three feet apart, without any privacy dividers. In addition to the lack of privacy, it is difficult for FIRRP attorneys to hear what Detained Clients are saying because of the background noise generated by other people in the housing area. As Mugisha, one of FIRRP's clients currently detained at Florence, reports, it is difficult to have a private conversation with his lawyer on these telephones because there is so much noise and no privacy. Mugisha notes that because he cannot have a private phone conversation with his lawyer in detention, his case has been harmed because there are some things he has never been able to tell his lawyer given the lack of privacy. Guadalupe, another FIRRP client who was detained at Florence, recalls that these phones are not in a private area, and anyone can hear what others are saying. Guadalupe notes that she did not want all the people she was living with to know all of her private affairs and felt embarrassed talking about some aspects of her case without privacy.

130. At Laredo, RAICES staff must often rely on receiving client calls from public phones in the housing units on the RAICES hotline. The phones are in a row with small, thin dividers between them, and are located in the same large space as the dormitory bunk beds. Despite the dividers, the phones are very close together and sound is not blocked. A person speaking on

one phone could touch the shoulder of the person standing at the phone next to them. As RAICES's former client Mary explains, anyone who is in the area can hear what others are saying, and there is no real privacy. As Mary recalls, there are also tablets in the housing units that can be used to make regular and video calls, but they are difficult to use because the volume is very low and you have to speak very loudly to hear and communicate. Because the tablets are located in the same space as the dormitory beds, anyone in the area can hear the conversation. This lack of privacy has harmed RAICES's clients. For example, two RAICES clients, a lesbian couple, had experienced harassment and threats of violence from other detained people at Laredo because of their sexual orientation. Given the public nature of telephone calls, these clients initially did not feel comfortable sharing by phone with RAICES counsel information about their sexual orientation and the resulting harassment they faced. The clients' inability to have a private phone call with RAICES counsel delayed RAICES's understanding of the serious issues facing its clients, its ability to intervene on their behalf, and its eventual request that the facility provide its clients with protection from harassment and threats.

131. At Krome, the paid phones are located close together and the conversations can easily be overheard by other detained people and guards. The phones are located adjacent to the television and next to the guard's desk, forcing both attorney and client to compete with other distracting noises during calls. AIJ's client, Claude, reports that the calls in the housing units are not confidential and all conversations take place within ear shot of Krome staff and other detained individuals. As Claude and Caterina, another client of AIJ currently detained at Krome, confirmed, the below image of phone booths at Krome, published online at USA Today, is either identical or

virtually identical to the phone banks in their housing unit.<sup>50</sup> Caterina reports that the only difference is that some dividers are made of metal instead of plastic. Caterina notes that when she makes a call from the phone bank in her housing unit, the call is not confidential. Her conversation can be heard by the guards and other individuals who are detained in her housing unit which, Caterina explains, makes her very uncomfortable to talk by phone in these settings. Caterina further notes that she has HIV and believes that other detainees found out about her status after having conversations with her lawyer on the phone.



As Andrea Jacoski, Director of AIJ's Detention Program, confirms, the phones in the housing pods are located on the wall adjacent to the television. The television volume is often very loud and results in significant and distracting background noise that makes it nearly impossible for the

<sup>50</sup> *Exclusive Look Inside the Krome ICE Detention Center in Miami*, USA TODAY (Apr. 7, 2020), <https://www.usatoday.com/picture-gallery/news/nation/2019/12/19/exclusive-look-inside-the-krome-ice-detention-center-in-miami/2674094001/>.

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. Ms. Jacoski confirms that the lack of privacy and impossibility of having confidential legal calls impede AIJ's ability to both screen and represent Detained Clients at Krome.

132. The lack of privacy and confidentiality for legal calls presents additional problems for AIJ's clients, such as Mario and Donovan, who have mental health conditions that hinder their ability to focus in the noisy common area of the housing unit where the phone is located. For example, because Mario experiences auditory and visual hallucinations, the background noise makes it even harder for him to hear his attorney on the phone. Donovan also suffers from paranoid thoughts and is uncomfortable describing the details of his case without fearing someone is listening in on his conversation. Though compounded by his mental health condition, this fear is well-founded. Another AIJ client, Juan, explains that when he has had calls around other detainees, he has noticed that they try to listen in to see if they can get tips to fight their own immigration cases. When he senses they are listening, Juan reports that it makes him not want to share anything with his attorney.

133. At Basile, most of the legal calls provided through the scheduling system are not private. Clients are taken to a case manager's office at the facility for the call, but the office remains open and the case manager remains in the vicinity and within earshot during the phone conversation. Thus, ISLA's legal calls with Detained Clients frequently are not confidential.



134. At each of the Four Facilities, Defendants violate the Detention Standards' requirements that detainees can make calls relating to legal matters without being overheard by officers, other staff, or other detainees.<sup>51</sup>

135. Defendants have been able to ensure the provision of private and unmonitored legal calls in other ICE detention facilities. For example, as part of the settlement agreement in *Lyon v. ICE*, No. 3:13-cv-5878 (N.D. Cal.) [ECF No. 280-01], ICE agreed to provide phone rooms consisting of an enclosed space where detained people can make free, direct, unrecorded, and unmonitored legal calls at the West County Detention Facility, Yuba County Jail, Rio Cosumnes Correctional Center, and Mesa Verde Detention Facility, all in California. ICE also installed phone booths in housing units to ensure privacy for legal calls at these facilities.

- iii. Outgoing phone calls from Detained Clients to attorneys are often prohibitively expensive, and pro bono lines, when available, are not viable alternatives.

136. Detained Clients are usually unable to make free outgoing phone calls to their attorneys.

137. The Executive Office for Immigration Review ("EOIR") and ICE established the EOIR pro bono platform as a system of pro bono telephone lines for detained people to call legal service providers for free. At Krome, clients can only contact their attorneys if they call their attorneys directly on the paid line or if they call the EOIR pro bono phone platform.<sup>52</sup> The free

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<sup>51</sup> 2008 PBNDS at 5.31(V)(F)(2) (for legal calls, "each facility shall ensure privacy by providing a reasonable number of telephones on which detainees can make such calls without being overheard by staff or other detainees"); 2011 PBNDS at 5.6(V)(F)(2) (same); 2019 NDS at 5.4(II)(J) (a "facility shall provide a reasonable number of telephones on which detainees can make such calls without being overheard by officers, other staff, or other detainees").

<sup>52</sup> Further, the pro bono line only facilitates calls with a limited group legal service providers, including AIJ. Other pro bono attorneys and legal service providers cannot access the EOIR Pro Bono Phone line.

hotline is not a viable option for many Detained Clients because of the burdensome process required: the instructions involve five different steps, and these instructions are not publicly posted 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 dialing the appropriate extension. Many clients report that it is almost impossible to make calls using the EOIR pro bono platform.

138. At Florence, there are three ways for clients to call attorneys: (i) clients can place the call on a pay phone; (ii) clients can place a collect call, which requires the recipient to have set up a paid account in advance of receiving the call; or (iii) clients can try to make a call on the free pro bono platform. Clients who pay for the calls themselves must pay charges ranging up to \$.22 per minute (approximately \$20 for a 90-minute phone call), which few clients can afford. Moreover, paid calls and collect calls are monitored and recorded by the facility, unless the attorney has added that specific number to a list with the phone company. The free pro bono hotline involves a burdensome registration process where the detained client must enter numerous, lengthy numerical codes perfectly to successfully place a call. Defendants have created unnecessary barriers to accessing the pro bono line by failing to place instructions on entering these codes within reading distance of the phones themselves, and where instructions are posted far from the phones, they are incomplete and misleading. The process to access the FIRRP pro bono phone line is so difficult to navigate that many clients are never able to make a call through it. In addition, Defendants only permit FIRRP to register one telephone number on the pro bono platform at Florence, which leads to a bottleneck of calls from the facility. As a result, FIRRP has sometimes been forced to set up multiple accounts to accept collect calls from Detained Clients at a significant

cost. When FIRPP manages to have calls with its clients via the pro bono platform, these calls are often plagued with poor audio quality, random disconnects, and static.

139. For example, Mugisha, one of FIRRP's Detained Clients at Florence, has been unable to make confidential, private phone calls to his attorneys because there is too much noise and no privacy. Calls do not go through on the paid lines. Paid calls are expensive, and even when he has money in his account, Mugisha cannot understand how to use the phone because the directions are not in French or any of the other languages he speaks. He does not know how the "free" pro bono line to FIRRP works, and the instructions are not in any language that he speaks. He has never been able to make a legal call using this free line. Likewise, Guadalupe, a FIRRP client formerly held at Florence, recalls that it was difficult to have calls with her lawyer because the calls were so expensive. Guadalupe also notes that the system for the pro bono hotline is also hard to use and takes a long time to navigate. By the time she completed navigating through the dial system, she explained that it is someone else's turn to use the phone.

140. *Any* charge for telephone use is burdensome for detained people, particularly for indigent clients. And while pro bono telephone lines at Krome and Florence can in theory provide access, they are generally confusing, often to the point where they are unusable. For example, AIJ clients Mario and Donovan reported going a long time—even weeks or months—without being able to make calls due to the complexity of the system. Notwithstanding any hurdles caused by language access or mental health symptoms, Mario describes this being a common issue for others. He notes that no one explains how to use the phone when detained people arrive at Krome, and he did not know how to use the phone to call pro bono lawyers until after he had been detained for many months and a friend explained how the phone works. Mario believes that not knowing how to use the phone slowed down the process of working on his case. He further states that he is not

the only person who has difficulty using the phones and difficulty using the phones to call a pro bono attorney. Mario knows many people who have been detained at Krome who asked for deportation because they could not figure out how to call an attorney and did not have hope.

141. Separately, the costs of outgoing calls apart from the pro bono lines prevent attorneys and Detained Clients from being able to communicate effectively, in violation of the requirements that each facility provide detainees with direct or free calls to their legal representatives and/or other legal service providers.<sup>53</sup>

142. It is clear that Defendants can ensure the availability of free and private legal phone calls in immigration detention facilities. As part of a settlement agreement in *Lyon*, ICE agreed to provide: (i) free unmonitored telephone calls to attorneys providing legal services to people detained at the West County Detention Facility, Yuba County Jail, Rio Cosumnes Correctional Center, and Mesa Verde Detention Facility in California, (ii) accommodations for indigent class members (e.g., allowing extra access to phone rooms or by providing phone credit for housing unit phones), and (iii) on-site facilitators to ensure that detained people have access to legal calls.

- iv. Defendants impose time limits and other restrictions that impede clear and effective attorney-client communication by telephone.

143. Effective attorney-client communication by telephone is impaired by arbitrary rules and technical failures that cause calls to be inaudible, frequently interrupted, or both. For example,

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<sup>53</sup> 2008 PBNDS at 5.31(V)(E) (requiring free calls to legal representatives, to obtain legal representation, and to legal service providers listed on the ICE/ERO free legal service provider list); 2011 PBNDS at 5.6(V)(E) (same); 2019 NDS at 5.4(II)(E) (same).

Defendants impose time limits of 10 to 30 minutes on legal calls, which is extremely disruptive to attorney-client communication.

144. The Laredo facility limits calls from the public phones to RAICES's free hotline to 15 minutes. Mary, RAICES's former client, found her calls from the public phones cut off even faster—after just 3 to 5 minutes. This occurs even though RAICES has paid a substantial amount to ensure adequate minutes are provided on the hotline. RAICES pays \$4.99 per month for the line, \$109.99 per month for the first 5,000 toll-free minutes, and \$100.00 per month for each additional 2,565 toll-free minute bundle. Detained Clients are often confused by the frequent cut-offs, and attorneys must spend several minutes at the beginning of the next call explaining the phone system and why the call was cut off, leaving very little of the 15-minute call available for substantive discussions. When a call drops, an automated voice in Spanish and English announces that the call has dropped. Several Haitian Creole-speaking Detained Clients could not understand the message, and thought someone had been listening to their call. In addition, even when Detained Clients understand why the calls are cut off, they are often distracted by the abrupt ending to the call. As a result, clients lose their train of thought and cannot recall what they were about to share because of the interruption, or their attorneys do not hear part of what was relayed, leading to a loss of information and degradation in attorney-client communication. Time limits also make it burdensome to conduct calls with clients who need the aid of an interpreter because the interpreter must wait on hold with a third-party line each time the call drops and then reorient the client when the client calls back.

145. At Florence, attorneys' calls to Detained Clients are often cut short or limited (i) because of interference from other jail activities such as count, meals, or recreation hours; (ii) because clients run out of money to pay for the call; (iii) because of high demand from others to

use one of the designated phone lines; or (iv) because of instructions from the guards to hang up. As Guadalupe recalls, even though there is a system for free calls to FIRRP, it is often difficult to use it because detained people are placed in lockdown without access to phones from 10:00 a.m. to 12:00 p.m., and then again from 2:30 to 4:00 p.m. If an attorney is only available during those times, Detained Clients cannot make calls on their own from the telephones in the unit.

146. At Krome, although there are not specific time limits on phone calls, 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. AIJ client Jaime describes that sometimes on the days and times when his lawyer has told him to call her, guards told him that it was at the same exact time he must go to see the doctor. This happened on approximately five occasions. Jaime explains that when this happened, he tried to ask guards to allow him to go to the doctor at a different time because he knew that it was very important that he talk with his lawyer, and missing a call with her would delay preparing his case. But, Jaime notes, the guards refused to pay attention to him, and instead forced him to lose the opportunity to speak with his lawyer.

147. The Detention Standards require that legal calls not be restricted to less than 20 minutes.<sup>54</sup> At other facilities, Defendants have been able to extend or eliminate automatic cut-offs for phone calls placed from detention. For example, as part of the *Lyon* settlement agreement, ICE agreed to extend or eliminate automatic cut-off for phone calls at the West County Detention Facility, Yuba County Jail, Rio Cosumnes Correctional Center, and Mesa Verde Detention Facility

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<sup>54</sup> 2008 PBNDS at 5.31(V)(F)(1) (specifying that time limits on phone calls be no shorter than 20 minutes); 2011 PBNDS at 5.6(V)(F)(1) (same); 2019 NDS at 5.4(II)(F) (same).

in California. ICE also installed phone booths in housing units to ensure privacy for legal calls at these facilities.

**C. Defendants Restrict Plaintiffs' Ability to Reliably Exchange Legal Correspondence with Detained Clients.**

148. The timely exchange of legal documents with clients is necessary to effective legal representation. In the course of representation, attorneys need to send documents to be reviewed by their detained clients and to obtain signatures on declarations and other legal filings or paperwork. Email and fax are the most efficient means for exchanging documents, especially in fast-paced proceedings and time-sensitive matters. However, these options are generally unavailable at the Four Detention Facilities, and postal mail is neither quick nor reliable.

149. Detained Clients are not permitted to exchange documents with counsel via email or fax. Detained Clients at Basile have access to a paid electronic messaging app called "GettingOut," but any messages sent or received on this app are not confidential, since they are subject to monitoring by the facility and/or the company that owns the app, so the app cannot be used for confidential communications or to exchange legal documents. While staff at Basile have stated that a fax machine is available for attorney-client document exchange, every time one of ISLA's Detained Clients has requested to fax documents to their attorney, the facility had denied their request. Additionally, on at least three occasions, despite faxing documents to the number provided by Basile per the facility's instructions, and receiving confirmation of the fax being transmitted to the facility, ISLA's Detained Clients have said that they were never given the faxed documents.

150. Thus, attorneys and their clients must rely on mail delivery to exchange legal documents. Mail delivery is not dependable and can take lengthy periods of time due to both the remote locations of the ICE detention facilities and delays by Defendants.

151. At Florence, it routinely takes two or three days for mail to be delivered to Detained Clients, and Detained Clients have faced lengthy delays in their counsels' receipt of their outgoing mail. FIRR has represented several clients at Florence 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. As both Mugisha and Guadalupe have observed, there is no fax or email system at Florence for detained people to use.

152. At Laredo, the facility's internal mail delivery system hinders RAICES's ability to represent Detained Clients. Even documents sent by FedEx take several extra days to reach the client after delivery to the facility. This delay has hindered RAICES's ability to make release requests for clients.

153. At Basile, it takes a week for mail from ISLA attorneys to reach their Detained Clients, on average. Mail sent to Basile often takes longer to arrive than mail sent to other ICE detention facilities in Louisiana, such as Pine Prairie Processing Center. ISLA cannot rely on legal mail for time-sensitive communications or documents that may require a prompt signature to meet a court filing deadline.

154. At Krome, mail typically takes one to three days to be received from AIJ's office. And, when mail is received at Krome, the mail is not immediately delivered to Detained Clients, adding a day or more to the time between sending and receiving important legal documents. Krome has no system to allow AIJ to gather signatures from clients without visiting the facility. AIJ cannot rely on legal mail for time-sensitive communications or documents that require a prompt signature. AIJ must resort to FedEx in emergency situations, but it is costly and not sustainable for the non-profit organization. Further, mail that is delivered to Detained Clients, including legal mail, is often opened and screened at the Four Detention Facilities before it is distributed. For example, at



Laredo, guards open all mail, including mail marked “legal,” outside the presence of the detained person, impairing the ability of attorneys to ensure that their communications with clients remain private. This practice violates the Detention Standards.<sup>55</sup> Legal communications sent via fax or email, which do not carry the risk of containing contraband, would not require the same level of scrutiny.

155. Clients at Basile must pay to send legal mail. While ICE has stated to ISLA and other legal providers at Basile that detained individuals do not need to pay for legal mail if they are “indigent” under ICE’s criteria (i.e. have a small amount of money in their commissary accounts), neither ICE nor Basile staff have ever instructed ISLA’s Detained Clients that there is an exception to having to pay for legal mail, nor have they explained the requirements of that exception. Therefore, Detained Clients are forced to pay, even if they are indigent.

156. The ability for attorneys to exchange legal documents with their Detained Clients is crucial to effective representation. Defendants’ failure to provide Plaintiffs and Detained Clients with access to email and fax, considering that mail is an insufficient alternative due to cost and delays, means that attorneys run the risk of missing important deadlines for Detained Clients’ cases if they use mail or are unable to take on more clients despite their best efforts.

157. State prisons that hold people serving criminal sentences nationwide provide for the exchange of legal documents through fax and email.<sup>56</sup> Many other immigration detention

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<sup>55</sup> 2008 PBNDS at 5.26(V)(F) (specifying that staff shall neither read nor copy legal mail and shall open and inspect incoming legal mail in the presence of the detainee); 2011 PBNDS at 5.1(V)(F)(2) (same); 2019 NDS at 5.1(II)(E)(2) (same).

<sup>56</sup> Alaska Dep’t Corr., Pol’y and Proc. 810.01, (2020), <https://bit.ly/3YmGVZV> (“The Department shall implement a system by which attorneys may leave messages for prisoners via facsimile or via e-mail.”); Iowa Dep’t Corr., Attorney Contact with Incarcerated Clients (last updated Sept. 9, 2021), [bit.ly/3YyxhUn](https://bit.ly/3YyxhUn) (describing “O-mail” electronic mail system); N.J. Inmate Handbook (2014), <https://bit.ly/3ZgeuOV> (describing guidelines for confidential transmission of faxes).

facilities have made fax machines or email available for attorneys and their detained clients to exchange documents, including the Karnes County Residential Center in Karnes, Texas; South Texas ICE Processing Center in Pearsall, Texas; T. Don Hutto Residential Center in Taylor, Texas; Winn Detention Center in Winnfield, Louisiana; LaSalle Detention Center in Jena, Louisiana; Pine Prairie ICE Processing Center in Pine Prairie, Louisiana; and Stewart Detention Center in Lumpkin, Georgia.

158. Indeed, in February 2021, ICE issued instructions to detention facilities outlining “best practices” that allow detained people and their counsel to exchange legal documents and obtain signatures via electronic means, including by fax or email.<sup>57</sup> These “best practices” instructed detention facilities to “use dedicated fax line(s), with limited staff access, to help ensure confidentiality of communications,” “help ensure that documents are not lost or commingled and are kept private by using envelopes for each detainee,” “inspect but do not read all incoming and outgoing fax/email documents (consistent with ICE detention standards),” “maintain a logbook of faxes received and sent; have detainees sign for incoming faxes when delivered,” “institute a maximum 24-hour turnaround time . . . on fax requests or delivery of faxed documents (consistent with ICE detention standards),” “develop a procedure for accommodating urgent requests,” and “post the procedures for sending and receiving faxes on the facility page on ICE.gov.”<sup>58</sup> As ICE stated, “this method is a best practice consistent with the intent of the ICE detention standards.”<sup>59</sup>

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between attorneys and clients); Tex. Dep’t Crim. Just. Board Pol’y No. BP-03.81 (2021), <https://bit.ly/3yamuFf> (attorneys permitted to send incarcerated clients emails through the “official inmate correspondence process”).

<sup>57</sup> *Attorney Information and Resources*, U.S. Immig. & Customs Enf’t, <https://www.ice.gov/detain/attorney-information-resources>, Feb. 2021 (updated Feb. 24, 2023).

<sup>58</sup> *Id.*

<sup>59</sup> *Id.*

**D. Defendants Deny Plaintiffs Adequate Access to Confidential Videoconferencing to Communicate with Detained Clients.**

159. Defendants deny attorneys and clients adequate access to confidential video teleconferencing (“VTC”). Confidential VTC is essential to attorney-client communication, especially when in-person meetings are not feasible, and because many ICE detention facilities are located in geographically isolated areas that are difficult for attorneys to reach. Face-to-face communications between attorneys and clients—even if only virtually—are important for building relationships, evaluating the physical, emotional, and mental state of clients, and sharing documents and reviewing visual evidence. It is even more essential in the representation of clients with certain disabilities.

160. Free, confidential VTC is not available at Florence, Krome, Laredo, or Basile, even though it is reportedly provided at other ICE detention facilities, such as the Broward Transitional Center in Pompano Beach, Florida. The fact that other ICE detention facilities are able to provide free, confidential VTC access to facilitate attorney-client communications, and that ICE has made information about VTC access publicly available for at least some facilities on its website,<sup>60</sup> demonstrates that it is feasible for Defendants to provide confidential, free, and reliable VTC access to attorneys and their clients at Florence, Krome, Laredo, and Basile.

161. The failure to provide scheduled, confidential, legal VTC calls at the Four Detention Facilities contrasts with practices at facilities that hold prisoners serving criminal sentences, as well as other immigration detention centers. *See supra* ¶ 89. For example, state

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<sup>60</sup> ICE, Virtual Attorney Visitation (last updated Nov. 7, 2022), <https://www.ice.gov/detain/attorney-information-resources>; ICE, Detention Facilities (last updated Mar. 15, 2023), <https://www.ice.gov/detention-facilities>; *see also* ACLU, *No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Facilities*, *supra* note 6, at 18.

prisons nationwide are required to provide scheduled, confidential VTC calls to people serving criminal sentences.<sup>61</sup>

162. ICE has touted its Virtual Attorney Visitation program, which enables legal representatives to meet with clients virtually by using video technology in private rooms for remote legal visits. ICE has reported that this legal videoconferencing program is available at 25 detention facilities nationwide.<sup>62</sup> Defendants fail to ensure universal access to confidential VTC despite the fact that VTC is now a ubiquitous, easy, and low-cost way to avoid violating the constitutional rights of detained persons. Indeed, immigration courts in detention facilities routinely conduct court proceedings via VTC, making clear that this technology is clearly available to the government.

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<sup>61</sup> See, e.g. Del. Dep't Corr. *COVID-19 Frequently Asked Question* (2020), <https://bit.ly/3m09fnz> ("The DOC is working to accommodate video meetings for attorneys who prefer to meet with their clients remotely."); Ind. Court Times, *State Public Defender Uses Videoconferencing to Reduce Costs and Improve Services*, Aug. 16, 2011, <https://bit.ly/3lTRGp5> (describing installation of confidential VTC for attorney-client communication); Ky. Corr., Pol'y and Proc. 16.5 (2022), <https://bit.ly/3m09gYF> ("Attorneys of record may use the video visitation system . . . video visits shall not be recorded" and describing scheduling process); Me. Dep't Corr., Pol. No. (AF) 21.04.01, (2022), <https://bit.ly/3SJ0OcN> (describing protocols for scheduled, privileged video visits); Mass. Dep't Corr., Std. Operating Proc. (SOP) Attorney Video Visits, <https://bit.ly/3ECsPNa> (last visited Feb. 25, 2022) (establishing guidelines for confidential, scheduled, free attorney video calls); Mich. Dep't Corr., Video Visiting Standards (2021), <https://bit.ly/3YZBnWF> (describing guidelines for scheduling attorney video calls); N.J. Inmate Handbook (2014), <https://bit.ly/3ZgeuOV> (describing guidelines for scheduled, confidential attorney videoconference calls); N.D. Dep't Corr. and Rehab., Access to Courts, <https://bit.ly/3XYxmQY> (last visited Feb. 25, 2023) ("After an attorney and resident complete the required application process, they may communicate through remote video visitation that is not audio-monitored or recorded."); Ohio Dep't of Rehabilitation and Corr., Information for Attorneys (2022), <https://bit.ly/3Zg4iG9> (describing availability of confidential attorney video visits); Penn. Dep't Corr., Policy No. DC-ADM 812 (2022), <https://bit.ly/3klBnRL> (attorney video visits "are not recorded" and "scheduled in advance"); Tenn. Dep't Corr., Index No. 109.09, (2020), <https://bit.ly/41D050P> ("[A]ttorneys of record requesting videoconferencing with their client shall be provided with the facilities VC contact information.").

<sup>62</sup> ICE, Virtual Attorney Visitation, *supra* note 60.

163. VTC is purportedly available for legal calls at Basile, but the facility has never permitted ISLA to use the system to communicate with detained clients despite numerous requests to do so. ICE states that attorneys can request VTC calls with their clients by following specific instructions; these instructions are available on ICE's website and posted at the jail. Nonetheless, neither ISLA nor other attorneys representing people at Basile with whom ISLA is in contact have ever been able to successfully schedule a VTC legal call at Basile. In each of ISLA's requests over several months, including as recently as March 13, 2023, ISLA attorneys have been told that the VTC system "is down" or "having tech issues." Neither ICE nor Basile staff have told ISLA when the VTC system will be fixed and available for legal visitation. While Basile does not functionally have VTC for legal visits, the facility does allow detained clients to use VTC for certain virtual medical appointments and for remote immigration court appearances and Asylum Office interviews.

164. The lack of VTC prejudices ISLA's clients, particularly those who speak languages other than English and Spanish, like their many Turkish and Russian clients. ISLA relies on remote interpreters due to a lack of local Turkish and Russian interpreters. Interpretation over the telephone is challenging, and communication would be improved if the interpretation were conducted over video. ISLA's clients with serious mental illness would also benefit from VTC. It is particularly important for the attorney and client to be able to see each other because of specific challenges to building connections and trust with clients who suffer from serious mental illness.

165. At Florence, there is no VTC program for legal visits with detained immigrants, even though these services are made available to individuals held in criminal custody at the same facility.

166. Laredo does not offer VTC for attorney-client communication. This prejudices clients significantly. For example, lack of VTC creates an obstacle to robust psychological evaluation. During a psychological evaluation for a RAICES attorney's client via telephone, the psychiatrist expressed that the lack of confidential VTC made it impossible to evaluate the client's body language and facial expressions, which are essential pieces of a psychological evaluation. This undermined the integrity of the evaluation.

167. At Krome, detained people can make video calls on a tablet app, but the service is not confidential or free. Each housing pod, which has beds for approximately 50 detained individuals, is equipped with nine electronic tablets. Each tablet includes the GettingOut app, owned and operated by a private company, which has video capabilities. The tablets can be used only in the communal housing pods and cannot be brought into separate rooms or other areas to afford the user confidentiality or privacy. The video sessions and messages exchanged on the app are monitored and recorded by guards at Krome. Even so, AIJ Clients have also reported that lack of access to the internet in certain units such as the MHU makes the tablets unusable. As AIJ client Juan describes, the first six days that he was detained, he was placed in the MHU where there was no access to the internet. The guards gave him a tablet computer, which he wanted to use to contact a lawyer. However, because there was no internet connection in the MHU, he could not use the tablet to communicate the entire time. Private and confidential VTC meetings with attorneys cannot be scheduled at Krome. While an attorney can register their account for unmonitored VTC meetings through the "GettingOut" platform, all messages are monitored, and private, confidential VTC calls are impossible. Instead, if an attorney initiates a VTC call via the GettingOut app, all of the tablets in the housing pod will indicate that a VTC call is incoming for a particular detained person. If that detained person is not using the tablet at the time the VTC request comes in, it is up

to other detainees using the tablets at the time to alert the detained person of the incoming video call. There are three VTC docking stations in each pod that the tablet must be connected to for videoconferencing. Two of the stations are positioned directly underneath a television. These VTC sessions are commonly viewed by other detained people who are watching TV at the time and by officers stationed in the housing pod. The other station is a wheelchair-accessible docking station that is situated lower on the wall, requiring detained people who are not in wheelchairs to sit on the floor or kneel to view the video monitor. The GettingOut app account requires a detained person to pay to initiate VTC calls, but not to receive them.

**E. Defendants Fail to Provide Reasonable Access to Counsel Accommodations for Detained Clients with Disabilities at Florence, Krome, and Basile.**

168. At Florence, Krome, and Basile, FIRRP, AIJ, and ISLA provide legal representation to detained people with serious mental health conditions or mental disabilities who, as a result, are unable to effectively access counsel without reasonable accommodations. These individuals (“Detained Clients with Disabilities”) include people who have been determined by a “qualified mental health provider,” as having a “serious mental disorder or condition.” *Franco-Gonzalez v. Holder*, No. 10-02211, 2014 WL 5475097, at \*2-3 (C.D. Cal. Oct. 29, 2014).

169. “Qualified mental health providers” include “currently and appropriately licensed psychiatrists, physicians, physician assistants, psychologists, clinical social workers, licensed nurse practitioners, and registered nurses.” *Id.* at \*3.

170. A “serious mental disorder or condition” is “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[;] . . . significant symptoms of . . . (1) Psychosis or Psychotic Disorder; (2) Bipolar Disorder; (3) Schizophrenia or Schizoaffective Disorder; (4) Major Depressive Disorder with Psychotic Features; (5) Dementia and/or a Neurocognitive Disorder; or (6) Intellectual Development Disorder (moderate, severe, or profound).” *Id.* at \*3 (defining term for immigrants in detention).

171. In 2022, ICE instituted a national directive to all detention facilities regarding the treatment of detained immigrants with serious mental disabilities, including requirements to facilitate attorney-client communication. The directive requires “[f]acilitation of communication” including, “but not limited to” “facilitating the pre-scheduling of attorney of record, legal representative, and/or QR calls at no cost,” and “[p]roviding extended time for calls or visitation with the noncitizen’s attorney of record.”<sup>63</sup> However, as described below, these provisions have not been implemented at Florence, Krome, or Basile.

172. Detained Clients with Disabilities face even greater obstacles to attorney access than other Detained Clients because they face unique barriers as a result of their disabilities and because they experience even greater challenges resulting from the attorney access impediments at Florence, Krome, and Basile.

173. For example, Jose is a FIRRP client currently detained at Florence who has been diagnosed with Post-Traumatic Stress Disorder, Insomnia Disorder, Major Depressive Disorder with mood congruent psychotic features, and Unspecified Major Neurocognitive Disorder, most

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<sup>63</sup> U.S. ICE, *ICE Directive 11063.2, Identification, Communication, Recordkeeping, and Safe Release Planning for Detained Individuals with Serious Mental Disorders or Conditions and/or Who Are Determined to Be Incompetent By An Immigration Judge*, Apr. 5, 2022, at 10-11, <https://www.ice.gov/doclib/news/releases/2022/11063-2.pdf>.



likely due to Traumatic Brain Injury. During his detention at Florence, he has exhibited behavior including squatting while facing the wall of his cell while rocking back and forth, lying naked in his cell, and rolling balls of feces over the floor. He has been deemed incompetent to represent himself in immigration court, and FIRRP has been appointed to represent him under NQRP. FIRRP represents Jose in proceedings pertaining to custody and conditions of confinement.

174. Jose has faced numerous challenges in communicating with FIRRP staff for legal services. For example, for at least five times over approximately two months, FCC denied FIRRP staff in-person visitation after they had already traveled to the facility. While he was placed in mental health observation, attempts to communicate with Jose by telephone also regularly failed. During a five-month period in mental health observation, FIRRP staff were only able to communicate with Jose through FCC's call back system three times despite numerous attempts.

175. FIRRP has made accommodation requests to ensure attorney-client communication with Jose on various occasions. However, neither ICE nor facility staff have provided the accommodations necessary to ensure that Jose has access to counsel. For example, FIRRP has routinely requested in meetings with ICE personnel that individuals with known serious mental health conditions like Jose's have access to private, scheduled legal phone calls facilitated by Florence staff. Notably, one of the few successful calls that FIRRP was able to place with Jose while he was in medical observation took place when a medical staff member assisted him with making a call. This request was repeatedly denied, despite interest in such a system by those charged with telephonic visitation scheduling at Florence. FIRRP staff also sought accommodations for Jose by requesting specific confirmation and approval from ICE for in-person visit requests with Jose. Despite requests for confirmation, FIRRP staff were consistently informed after they arrived to the facility for the in-person visits that Jose would not be brought to visit

because he was in medical observation. And, even when ICE specifically approved the visit and cleared it with medical staff ahead of time per the accommodation requests, facility staff often still denied or attempted to deny the visits.

176. After nearly two months of failed attempted in-person visits, FIRRП legal staff managed to see Jose in-person only after (1) obtaining specific advance approval for the visit from both Jose's Deportation Officers, who in turn had the visit pre-cleared with medical staff at Florence, and (2) pushing back firmly with Florence officials' initial attempts to deny the visit despite that authorization. When the visit was eventually allowed, it was conducted in the non-contact attorney-client visitation space where the FIRRП attorney had to communicate through the plexiglass with phones and could not pass any documents or obtain signatures, which was a primary reason for the visit in light of an upcoming bond appeal deadline. A guard remained directly outside the door through the entire visit.

177. Pedro is another FIRRП client with serious mental conditions currently detained at Florence. While Pedro's symptoms are so extreme that it has been difficult to conduct a formal evaluation and obtain a clear diagnosis, medical records from Florence indicate that, at a minimum, he is experiencing psychosis and suicidality. He has appeared to attempt self-harm by banging his head and creating a noose from clothing, has been observed apparently responding to internal stimuli speaking to himself, has thrown and smeared feces, and has had some expression of bizarre delusions. He has been declared incompetent to represent himself, and FIRRП has been appointed to represent him under NQRP.

178. Pedro has faced immense challenges in communicating with FIRRП staff for legal services. In four months, FIRRП staff have only been able to visit with Pedro in person at Florence on two occasions, with the last successful in-person visit with Pedro at Florence occurring over

three months ago on December 1, 2022. Since initially being referred to Pedro's case for possible bond representation on October 25, 2022, FIRRP staff have attempted at least fourteen times to conduct in-person visits with him. Ten of those attempts were denied by staff because Pedro was in mental health observation and either would not or could not come to visitation at FCC or because he likewise refused to attend court or other appointments at the nearby Florence Detention Center, where the Immigration Court is located. Of the four successful visits FIRRP staff have had with Pedro, two of those took place at another detention facility, one after an Immigration Court hearing and one as an alternative to FIRRP's request to do a cell-side visit at Florence in the mental health observation area. FIRRP has never been able to successfully communicate with Pedro via Florence's phone message system despite several attempts.

179. On numerous occasions, FIRRP has requested accommodations in order to meet with Pedro. For example, after sending Pedro a message requesting that he call FIRRP staff through the facility message system, FIRRP also requested that staff provide Pedro with assistance and encouragement to make a phone call given the state of his mental health. Although this request was passed on to officers working in the housing unit, FIRRP has still never received a phone call from Pedro. Likewise, FIRRP have requested other potential accommodations for in-person visitation with Pedro, including asking visitation officers to go to the housing unit to explain and convince Pedro to attend the legal visit. FIRRP staff later learned that the officers only stated "abogados"—Spanish for "attorneys"—to Pedro, without further explanation. FIRRP staff have further sought to have Pedro transferred to the Florence Detention Center, another nearby ICE facility, for legal visits and an expert psychological evaluation necessary for the development of his legal case. However, in all but one instance, even these accommodation requests involving transportation to a different detention center have failed. Given the exhaustion of other

accommodation attempts, FIRRP requested the ability to visit Pedro at his cell. Based on a conversation with Florence visitation officers, such a request has been granted at least once before. However, FIRRP's request to visit Pedro cell side was denied. Instead, ICE instructed FIRRP to try to have Pedro transported to the Florence Detention Center again. When that failed, the ICE Assistant Field Officer, Floyd Craig, simply suggested that FIRRP attempt to visit him at Florence again. Despite many attempts, the lack of accommodations has prevented FIRRP from being able to communicate with Pedro since the day of his last court date on January 17, 2023.

180. As another example, Donovan is an AIJ client detained at Krome. He has been diagnosed with paranoia and schizophrenia. These disabilities have caused him to experience several challenges in communicating with AIJ staff for legal services. For example, Donovan initially was unable to figure out how to use the phones at Krome to call a lawyer, leading to a delay in his ability to obtain legal representation. Even now that he knows how to call AIJ lawyers, he struggles to remember the pin code he must use to place free attorney calls.

181. Donovan also experiences difficulties communicating through the mail system at Krome. Donovan could not provide AIJ attorneys with medical records they helped him request because he lacked the funds to mail them.

182. Donovan similarly experiences ongoing difficulties as a result of his disabilities in communicating with his attorneys by phone. Because the only phones he can use are in a public setting where other detained individuals frequently make noise, he struggles to hear calls and to focus during them. Additionally, he fears that others will overhear him describing the way he is treated in detention and retaliate against him.

183. Mario is also an AIJ client detained at Krome. He has been diagnosed with schizophrenia and experiences auditory and visual hallucinations. Like Donovan, Mario

experiences difficulty using the phones at Krome because of his disability. These issues with the phones at Krome delayed his ability to secure legal assistance—until another person detained at Krome taught him how to use the phones. Even though he now can use the phones and has counsel, Mario experiences difficulty as a result of his disability remembering when he must call his attorney. His disability also causes him difficulty during phone calls with his attorneys because of frequent and disruptive background noise, as well as his well-founded fear that Krome staff and other detained people can listen to his calls.

184. Mario has asked guards at Krome to allow him to make calls from a private room in his unit that contains a phone. However, that request was denied, and he was told that the private call room is only for emergencies.

185. Andrea Jacoski, an attorney at AIJ, confirms the specific challenges that Donovan and Mario face due to their mental health disabilities and the impediments to legal representation and access to counsel at Krome. Ms. Jacoski reports that these challenges and the lack of accommodations provided to her disabled clients impedes her ability to effectively communicate with Donovan, Mario, and any other client similarly situated, which in turn impedes her ability to represent her clients.

186. As yet another example, Hilda is a detained client of ISLA at Basile. Hilda has Bipolar Disorder and has been deemed incompetent to represent herself in immigration court.

187. Due in significant part to Hilda's Bipolar Disorder, she is less comfortable speaking with her attorney on the telephone than over VTC. When Hilda was held at the Central Louisiana ICE Processing Center in Jena, Louisiana, she was able to speak with her attorneys at ISLA via VTC. She has since been transferred to Basile. As explained above, VTC is functionally unavailable at Basile. As a result of this lack of availability, Hilda is less able to share information

about her case and confer meaningfully with her attorney now that these communications can no longer take place over VTC. Hilda's attorney at ISLA has specifically requested to meet with her by VTC, but Basile has not accommodated those requests.

188. Hilda has been denied access to her counsel, and has received limited access to her counsel, on the basis of her Bipolar Disorder. She has been placed in solitary confinement because of her Bipolar Disorder. For example, on one occasion, while she was experiencing symptoms of her Bipolar Disorder, multiple facility staff members violently restrained her, leaving her bruised. When she complained that the facility staff that they had bruised her, they denied responsibility and alleged that she was already bruised before the incident. Now, when she expects facility staff may again restrain her, she removes her clothing so that the security cameras will capture that she is not bruised when staff first approach her. However, staff has placed her in solitary confinement as punishment for removing her clothing, which they view as a disciplinary infraction. When she is in solitary confinement, she faces attorney-access restrictions and is unable to access her counsel for in-person and telephonic appointments. For example, on one occasion, facility staff called Hilda's name at the door of the unit where she had been held for an appointment with her ISLA attorneys, even though Hilda was at the time being held in solitary confinement. Hilda of course could not respond, because she was being housed in an entirely separate solitary confinement unit from the unit where her name had been called, and staff considered this a "refusal" to meet with her attorneys. These staff therefore cancelled the attorney-client meeting.

189. FIRRP maintains a caseload of approximately one hundred Detained Clients with Disabilities throughout Arizona. In 2021, FIRRP provided representation to 115 detained people with mental disabilities who were deemed incompetent to represent themselves in Arizona. In addition to those individuals, FIRRP also routinely provides legal services, including

representation, to approximately two to three Detained Clients with Disabilities per month who have not, or not yet, been found incompetent by an Immigration Court. More specifically, FIRRP currently represents six Detained Clients with Disabilities at Florence, including six in bond custody proceedings and five in matters related to conditions of confinement. FIRRP's Detained Clients with Disabilities include those who qualify for the National Qualified Representative Program ("NQRP"), which provides free appointed representation to those found by an immigration judge or the Board of Immigration Appeals to be mentally incompetent to represent themselves in court. FIRRP's Detained Clients with Disabilities also include clients who have not yet been deemed eligible for appointed counsel under NQRP, and clients found to be competent but who have serious mental health disorders or conditions that make them unable to effectively access counsel without reasonable accommodations.

190. AIJ currently represents four Detained Clients with Disabilities at Krome, including two in custody matters. AIJ regularly represents Detained Clients with Disabilities who are held in the KBHU, a unit at Krome specifically designated by ICE for the detention of people with severe mental illness or psychiatric needs from jurisdictions nationwide. AIJ also represents Detained Clients with Disabilities located in other parts of the facility, including MHU, solitary confinement, and general population units. Detained individuals with serious mental health conditions at Krome regularly solicit legal assistance from AIJ. Not all individuals with disabilities who are detained at Krome are provided legal representation through the local NQRP provider, so it is imperative that they can access AIJ's free legal services.

191. ISLA is the NQRP provider assigned to Basile, and through this program it provides representation to Detained Clients with Disabilities. ISLA currently has one Detained Client with

a Disability at Basile: Hilda. ISLA also represents other Detained Clients with Disabilities at Basile outside of the NQRP program.

192. Defendants exclude Detained Clients with Disabilities from, deny them the benefit of, and subject them to discrimination on the basis of disability under a program or activity because Defendants' restrictions on access to counsel specifically inhibit their ability to meaningfully access legal representation. This is because Defendants impose certain barriers disproportionately on Detained Clients with Disabilities and because other barriers that apply both to Detained Clients with Disabilities and other Detained Clients have a disproportionate effect on Detained Clients with Disabilities.

193. Detained Clients with Disabilities often require more support and consistent communication to establish the rapport necessary for an effective attorney-client relationship. 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 disorders, or by playing into clients' persecutory or delusional beliefs. Additionally, attorneys working with Detained Clients with Disabilities often require more frequent and lengthier conversations to obtain and understand basic facts or convey information effectively to their clients. Generally, the representation of Detained Clients with Disabilities requires more time. For FIRRP, cases that involve Detained Clients with Disabilities can take at least twice and sometimes three times the amount of time to prepare as compared to other Detained Client cases, due in large part to the barriers surrounding the necessary accommodations to access counsel at Florence.

194. FIRRP's representation of Detained Clients with Disabilities is particularly difficult given that a significant number of these clients also experience suicidal ideation, which often



results in placement into medical or mental health observation/segregation – conditions which are akin to solitary confinement at Florence. While on mental health watch, upon information and belief, Florence does not give Detained Clients with Disabilities access to telephones as a safety precaution. If housed in segregated housing outside of the medical unit, Detained Clients with Disabilities may have limited access to the telephones, but Florence still does not have a system for attorneys to schedule private legal phone calls, nor does it provide VTC for this population.

195. Florence does not have clearly established procedures regarding in-person access to counsel for individuals who are in medical/mental health observation or segregation. Because of this, Detained Clients with Disabilities may experience a total loss of access to counsel for weeks because of prolonged periods in mental health segregation. For example, in one recent case, a FIRRP attorney was denied telephone and in-person visits for nearly a month with a Detained Client with a Disability, who was under “mental health watch,” during which time the client’s case continued before the court.

196. FIRRP staff are generally denied all access to their clients and notified that Detained Clients with Disabilities are unavailable for visits because they are in mental health watch. Indeed, even when FIRRP staff schedule an in-person visit a day in advance with a client in medical/mental health watch, Florence typically informs FIRRP staff that they will not bring the client from observation or segregation to the legal visitation area until 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 FIRRP could not access its Detained Clients with Disabilities at Florence on account of their mental health status.

197. At Florence, the exclusive reliance on a message relay and call-back system for telephonic communication with clients poses distinct barriers to communicating effectively with

Detained Clients with Disabilities, who are especially unable to navigate the call-back system effectively due to their symptoms or conditions. For example, some Detained Clients with Disabilities lack orientation to place and time, which makes calling their attorneys at a set date and time particularly difficult without some facilitation or assistance from 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 of completing the call on the detained individual—ineffective for this vulnerable population. Symptoms of delusions and paranoia can cause some Detained Clients with Disabilities to be unwilling to speak about their cases from the housing units, and such clients are often less capable of navigating the already confusing instructions for using the pro bono platform, as described above.

198. Defendants have assured FIRRP that messages requesting call-backs are conveyed to Detained Clients with Disabilities and have stated that these clients are simply refusing to call back, but Defendants rarely provide any specific information about the alleged refusal and they have declined to offer possible accommodations. While instances of Detained Clients failing to call back are not unique to people with mental health conditions, it occurs at a higher rate with Detained Clients with Disabilities. When Detained Clients with Disabilities 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.

199. Detained Clients with Disabilities at Florence need other accommodations to effectively communicate with attorneys. Such accommodations include clearly established procedures for attorneys to visit with clients in medical, isolation, or segregation units, contact or video visits where clients can communicate with attorneys face-to-face, as well as additional time

to communicate given mental disabilities. The lack of confidential in-person and VTC access especially harms Detained Clients with Disabilities because their disabilities often make it essential for them to be able to visually see their attorneys when communicating and make it helpful for their attorneys to be able to see them. Without confidential in-person or VTC meetings, clients with serious mental health conditions often cannot meaningfully communicate with counsel.

200. Even though FIRRP has requested accommodations—such as permission to see Detained Clients in the medical unit, facility transfers, or scheduled and facilitated phone calls—Florence generally does not provide these accommodations. When FIRRP attorneys mention requests for accommodations, facility staff often appear to lack knowledge or awareness of what responsibilities they have to accommodate detained people with disabilities. In some cases, FIRRP has also sought accommodations directly from ICE officers. For example, FIRRP requested that a Detained Client with a Disability 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 the FIRRP attorney had more success speaking to the client in that facility. However, those requests were unsuccessful. 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 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 Florence staff to actually bring her client to visitation.

201. Detained Clients with Disabilities at Krome also require, but have not received, accommodations necessary to ensure attorney access. Impediments to access to counsel at Krome include a lack of VTC calls, a lack of scheduled and confidential legal calls, and communication

restrictions in solitary confinement: all of which pose particularly heightened challenges for Detained Clients with Disabilities at Krome.

202. Cases involving Detained Clients with Disabilities have a greater need for face-to-face meetings, either via VTC or in-person, to establish the rapport necessary for an effective attorney-client relationship, fully assess mental status, and identify specific accommodations required. The lack of VTC visits at Krome poses particular challenges to Detained Clients with Disabilities, as attorneys lack this important method of communication to establish this rapport, build trust, and assess the mental state of their clients.

203. The inability to schedule and successfully hold confidential legal VTC or telephone calls at Krome also poses heightened difficulty for Detained Clients with Disabilities. Individuals with conditions such as paranoia and psychosis may have even greater difficulty speaking about traumatic or sensitive issues in front of guards and other detained individuals, making it excessively difficult for these individuals to communicate with counsel via the telephone at Krome. For example, AIJ recently had a prospective client with a serious mental condition which rendered him extremely distrustful of the telephones at Krome. Due to his concerns about whether the calls were monitored or recorded, he was unable to speak with attorneys, and AIJ was unable to proceed with his consultation and legal representation. AIJ's client, Mario, whose symptoms from a traumatic brain injury cause him to forget important tasks, reports that even when his lawyer requests that he call at a specified time, he sometimes forgets to place the call at that time. If Krome were to schedule and facilitate calls, Mario could avoid this issue and the delays it has caused in preparing his release request.

204. AIJ also receives calls from prospective clients with serious mental health conditions who seek assistance addressing abusive conditions of confinement, but who are unable

to share details of their complaints over the telephone due to the severity of their mental illness and symptoms, such as extreme paranoia, mania, or depression. Because of the lack of confidential VTC visits and legal phone calls, and the issues with in-person legal visits described above, AIJ is often unable to take these cases or investigate and build advocacy or litigation strategies regarding these reports of abusive conditions of confinement.

205. At Krome, Detained Clients with Disabilities who are placed in solitary confinement are cut off from access to telephones and the messaging app, which is essential to contacting counsel. Detained Clients with Disabilities who are placed in solitary confinement also experience severe deterioration of mental health, making it more difficult to establish effective communication with counsel, thus further degrading the attorney-client relationship. For example, at least one client with a serious mental illness who was placed in solitary confinement at Krome became even more withdrawn and could no longer engage in regularly scheduled phone calls.

206. These attorney access restrictions have impeded AIJ's ability to assess complaints regarding conditions of confinement by Detained Clients with Disabilities at Krome and have prevented AIJ from timely determining appropriate advocacy or litigation strategies to ameliorate those conditions. This is especially detrimental for Detained Clients with Disabilities suffering from severe mental illnesses whose symptoms are greatly exacerbated by traumatic, inhumane, or abusive treatment. For example, AIJ represented a blind individual who suffers from psychotic symptoms and episodes. AIJ assisted this individual with a request for release from detention and engaging in an advocacy campaign to address abusive conditions of confinement at Krome. This individual was unable to send AIJ the necessary documents for his case because he was placed in segregation housing and his psychotic symptoms inhibited basic functioning, thus he was unable to navigate onerous procedures for copying documents and sending legal mail at Krome.

Ultimately, an AIJ attorney had to travel to Krome to secure the documents in person, but these restrictions delayed submission of his release request and the filing of his complaint with the Department of Homeland Security Office of Civil Rights and Civil Liberties (“CRCL”), causing AIJ’s client to suffer unnecessarily at Krome and prolonging his time in detention.

207. Similarly, Defendants deny Detained Clients with Disabilities at Basile the important accommodation of VTC access. As explained above, cases involving Detained Clients with Disabilities have a greater need for face-to-face meetings, either via VTC or in-person, and the functional unavailability of VTC at Basile harms Detained Clients with Disabilities on the basis of their disabilities. Plaintiffs describe above, as a specific example, how ISLA’s client, Hilda, has been denied this accommodation.

208. Likewise, Defendants deny Detained Clients with Disabilities at Basile adequate access to their attorneys by holding them in solitary confinement, either on mental health watch based on their disabilities, or by deeming symptoms and consequences of their disabilities disciplinary infractions and holding them in solitary confinement for punitive purposes. When ISLA’s Detained Clients with Disabilities are held in solitary confinement, they are denied adequate access to their attorneys. Plaintiffs describe above, as a specific example, how ISLA’s client, Hilda, has been denied adequate access to her attorneys while she was held in solitary confinement on the basis of her disability.

209. FIRRP, AIJ, ISLA, and their Detained Clients with Disabilities have suffered a concrete harm to their abilities to communicate effectively about matters crucial to legal representation.

210. In some cases, FIRRP attorneys have experienced periods from days to months where they could not access Detained Clients with Disabilities at all because of these barriers.

Defendants' failure to ensure FIRRP attorneys can communicate effectively with their Detained Clients with Disabilities has caused them to lose many hours to failed visitation attempts and unnecessary travel, thereby diminishing FIRRP's resources and undermining its ability to provide quality representation to other clients. This is in contrast to attorney access to clients at the Central Arizona Detention Center, managed together with Florence as part of the same correctional complex, where criminal defense attorneys meet with their clients directly in the mental health units, and where VTC phone access is available.

211. Restrictions on regular, reliable, and confidential access to Detained Clients with Disabilities at Krome have required AIJ to turn away cases of prospective clients with severe mental illness and have injured its ability to secure favorable, expeditious outcomes in bond and parole proceedings and in filing complaints related to unconstitutional conditions of confinement. This harms AIJ's ability to perform its work in furtherance of the organization's mission and objectives, injuring AIJ's Detained Clients with Disabilities by impeding AIJ's ability to provide legal services and representation.

212. Defendants' failure to provide adequate access to Detained Clients with Disabilities at Basile has harmed ISLA and its Detained Clients with Disabilities. The lack of VTC, along with limitations on access to counsel when Detained Clients with Disabilities are held in solitary confinement, have impeded and delayed ISLA attorneys' ability to obtain facts from their clients and otherwise communicate effectively about their cases, which has hampered and delayed their efforts to secure favorable outcomes in bond and parole proceedings and in filing complaints related to unconstitutional conditions of confinement. These issues harm ISLA's ability to work in furtherance of its organizational goals. They have similarly harmed ISLA's Detained Clients with Disabilities by impeding ISLA's efforts to represent them.

**IV. DEFENDANTS' RESTRICTIONS ON ACCESS TO COUNSEL AT THE FOUR DETENTION FACILITIES HARM PLAINTIFFS AND DETAINED CLIENTS**

**A. The Restrictions on Attorney-Client Communication Impair Plaintiffs' Ability to Provide Effective Legal Representation to Detained Clients and Harm Detained Clients.**

213. Defendants' restrictions on attorney-client communications interfere with Detained Clients' ability to communicate effectively with their counsel and Plaintiffs' ability to provide effective legal services to their clients. Defendants' restrictions affect all aspects of attorney-client communication necessary for representation, including, among other things: (i) conducting an initial assessment of Detained Clients' legal claims and eligibility for substantive and procedural relief (*e.g.*, release from custody); (ii) interviewing Detained Clients to obtain personal statements relating to sensitive facts supporting their cases; (iii) gathering information to investigate whether Detained Clients face inadequate conditions of confinement, such as medical neglect, unsanitary conditions, or physical abuse; (iv) counseling Detained Clients as to their legal options and developments in their cases; (v) obtaining signatures on release forms when seeking Detained Clients' records from outside agencies; and (vi) preparing Detained Clients for testimony, questioning, or cross-examination by government attorneys or officials. Effectively completing these tasks requires lengthy conversations between Detained Clients and their counsel that involve complex issues, often with the assistance of interpreters and other case-related personnel. Defendants' restrictions on such communication prevent Detained Clients and Plaintiffs from having these necessary exchanges in a timely and reliable manner—a particularly urgent issue in pressing situations requiring an immediate attorney visit, such as in cases involving bond hearings or urgent complaints regarding conditions of confinement.

214. Detained Clients' inability to communicate confidentially with attorneys has a particularly negative impact on the ability to provide adequate representation. Without confidential



communication, a lawyer cannot fully assess whether a client is eligible for release from detention, whether the conditions of confinement should be challenged, or other types of legal claims the client may be entitled to pursue. Without confidential communication, a lawyer is similarly prevented from gathering the information and evidence necessary to effectively prepare a case. For example, to prepare for a client's bond hearing or other request for release, attorneys must ask their clients about sensitive topics. These conversations may include details of past persecution; underlying medical conditions that put the client at greater risk from COVID-19 infection; personal and family circumstances; whether a client is in recovery from substance use; and, if relevant, facts about any criminal history. To gather facts about abusive conditions in detention, an attorney may need to delve into sensitive information in a potentially retaliatory environment, and explain procedures for reporting misconduct by facility staff or ICE. If an attorney needs to include this information in a written declaration or use this information to prepare a client to testify on these matters in an adversarial proceeding, as is often required, these conversations can take several hours and require multiple visits to solicit relevant information and counsel the client.

215. Without safe, confidential settings to discuss these sensitive issues, Detained Clients are less willing to share private information about their cases, which undermines Plaintiffs' ability to provide Detained Clients with legal advice and to adequately prepare for matters such as their bond and parole applications or conditions-of-confinement cases. For example, FIRRP client Mugisha reported that this has harmed his case because there is some information he has never been able to share with his lawyer because he does not have a private space. Another FIRRP client, Guadalupe, reported that absent the difficulties in communicating with counsel, she would have been able to give more details about what happened to her and would not have felt like she needed to withhold information that her attorney might have wanted or needed to know. Relatedly, without

a method to ensure confidentiality in all attorney-client communications at the Four Detention Facilities, attorneys, mindful of protecting privilege, are limited in the types of questions they can ask Detained Clients and the advice and counsel that they can provide.

216. Defendants' restrictions on attorney-client communication at the Four Detention Facilities harms Plaintiffs' ability to advocate for Detained Clients and, as a result, impacts the relief Detained Clients obtain. For example, without the ability to schedule calls, attorneys have no way to ensure that they can promptly speak to their clients at a time when both parties are available, leading to tremendous inefficiencies and delays in communication. These delays have material consequences on the effectiveness of the representation, particularly when time-sensitive matters, such as bond hearings, are at issue.

217. For example, in order to have private phone calls with her RAICES attorneys, Mary had to wait for her attorney to be able to arrange a private call—nobody at Laredo told her how to make those arrangements. Because it took six days for RAICES attorneys to be able to arrange for a second private call, RAICES was delayed in submitting Mary's parole request. After receiving Mary's parole request, ICE released her. The delay communicating with Mary likely unnecessarily lengthened her detention. Similarly, Donovan did not understand how to use the phone system at Krome to contact pro bono counsel, and he only recently obtained counsel to assist in requesting his release and other matters related to conditions of his confinement. In fact, Donovan became an AIJ client after his attorney happened to meet him during a tour of the facility. Donovan's delay in accessing pro bono counsel has prolonged his detention. As another example, RAICES had a female client who had chronic sinusitis and suffered from painful cysts that worsened because ICE had taken away the client's birth control medication. These conditions ultimately formed the basis of a request for release from detention. Due to past trauma, the client was only comfortable

speaking with female RAICES staff. But delays in scheduling private calls slowed RAICES attorneys' ability to gather and document important medical information, which delayed a release request and unnecessarily prolonged the client's detention.

218. In other cases, Plaintiffs have been hampered or entirely prevented from bringing otherwise viable legal claims or seeking relief on behalf of Detained Clients. For example, AIJ frequently has difficulties in completing client screenings due to the challenges in navigating the pro bono telephone system. AIJ recently sent eight letters to prospective clients who had previously contacted AIJ requesting legal assistance, asking them to contact AIJ's office at a particular time for initial consults. Of the eight clients, five did not call. Even when AIJ successfully screens clients, limited attorney access causes cases they accept at Krome to require substantial devotion of resources. AIJ is thus forced to turn away three to five potential clients on a weekly basis. For existing AIJ clients, the result of restrictions on attorney-client communications has caused significant delays in in case preparation, which in turn results in prolonged detention. For example, Jaime faced great difficulty in contacting AIJ because he was unable to use the telephones at Krome. He had been told that he was ineligible to seek release on bond prior to obtaining counsel. After an AIJ attorney talked to Jaime during a tour of the facility, he became AIJ's client. Jaime's AIJ attorney successfully argued that he should be eligible for release on bond and assisted him in preparing for a bond hearing. Thus, the obstacles in accessing pro bono counsel in Krome unnecessarily caused Jaime's custody case to be delayed, prolonging his detention.

219. As another example, ISLA has been hampered in its ability to file a parole request on behalf of Hilda. As mentioned above, Hilda has been diagnosed with Bipolar Disorder and Post-Traumatic Stress Disorder. The facility has failed to locate her in the jail and tell her when her attorney is waiting to speak with her on the phone or meet with her in-person. Facility staff have

reported to ISLA that Hilda “refused” to participate, when in fact Hilda reports that she was never alerted that her attorney was trying to meet with her. This has caused significant delays in Hilda’s case. For example, the facility’s failure to actually locate Hilda and tell her about a call prevented her from participating in a remote psychological evaluation set up by her attorney at ISLA and approved by the facility. The evaluation is crucial evidence for her request for release. Basile staff told the ISLA attorney that Hilda refused to attend the evaluation; however, Hilda reported that she was not told by staff that it was time for her appointment or escorted to the room where it would occur. The evaluation will take several weeks to reschedule, which has delayed her attorney’s efforts to file a parole request on her behalf.

220. Defendants’ failure to ensure compliance with the Constitution, federal law, and the Detention Standards injures Plaintiffs by making it more difficult to provide effective legal representation to Detained Clients, thus directly impeding their organizational missions and interfering with their daily operations.

**B. Defendants’ Restrictions Force Plaintiffs to Use Their Limited Resources to Counteract the Harm Caused by Defendants’ Attorney Access Restrictions.**

221. Plaintiffs must use their resources to counteract the harm caused by Defendants’ attorney access restrictions. The restrictions on access to counsel at the Four Detention Facilities cause Plaintiffs to expend more resources to carry out their organizational missions than they would otherwise normally require. For example, due to restrictions on telephone, VTC, email, fax, and mail at certain detention facilities, Plaintiffs must incur expenses and spend time traveling to certain detention facilities, even for simple or brief matters that could otherwise be addressed remotely. Those in-person meetings may entail significant wait times and may not be confidential. Even when a remote option is available, Plaintiffs may incur additional costs. With telephone calls,

for example, Plaintiffs may incur exorbitant charges of up to \$20 for a 25-minute collect call from a Detained Client.

222. The access to counsel barriers at Basile have caused ISLA to expend approximately 25 percent more time, money, and resources to represent Detained Clients as would be required without Defendants' barriers. This includes costs incurred from, among other things, the five- to six-hour drive to and from the ISLA office to Basile, which ISLA is forced to undertake, especially when communicating with their clients who do not speak English or Spanish, given the challenges of telephonic interpretation when all three parties are on the phone. ISLA's expenses are increased by the lack of VTC and the inability to fax or email documents to clients, requiring ISLA's counsel to travel to Basile even for minor matters. These obstacles have actively and directly prevented ISLA from being able to represent approximately 25 percent more prospective Detained Clients detained at Basile.

223. RAICES attorneys are forced to devote, at minimum, double the time and resources to arrange a remote meeting at Laredo as compared to other detention centers that RAICES serves. Because Laredo staff refuse to reliably schedule calls in advance, in order to speak to a Detained Client at Laredo, RAICES staff have needed to clear large blocks of time and cancel meetings with other clients detained in other facilities in order to remain available. The obstacles to access to counsel are so severe at Laredo, and have had such a negative impact on RAICES's ability to serve clients at Laredo and other detention facilities, that RAICES had previously paused taking new cases at Laredo. While RAICES has resumed taking new cases at Laredo, the obstacles to attorney access and the resulting drain on RAICES's time and resources remain the same.

224. By hindering FIRRP's mission and ability to effectively represent detained clients at Florence, FIRRP must spend more time preparing each case, doubling the amount of time it

would otherwise take to represent a detained client. FIRRP staff are forced to conduct in-person visits for even the most minor aspects of case preparation, including obtaining signatures, asking clarifying questions, and confirming document receipt. FIRRP attorneys who could otherwise complete intake interviews or other brief conversations by phone or VTC are forced to make a two-hour drive to and from their offices to visit the facility. Legal staff must delay other case work, including drafting briefs, preparing for arguments, or appearing in court due to these barriers.

225. Access to counsel barriers at Krome impede AIJ's ability to carry out its mission and provide effective legal representation to detained immigrants. These barriers have reduced AIJ's ability to offer representation for a greater number of detained individuals at the Krome Immigration Court and engage in other forms of advocacy challenging conditions of confinement and abuse at the facility. AIJ attorneys have fewer opportunities and less time to build rapport with clients, review evidence, and prepare for cases. AIJ staff are also forced to waste time, resources, and money by traveling to Krome for matters that could otherwise be handled by phone, VTC, fax, or email, further reducing the number of cases that AIJ can accept. For example, Krome personnel's refusal to provide a telephone during an in-person attorney-client visit made it functionally impossible for AIJ client Jaime to have a confidential conversation with his attorney. Because legal calls cannot be scheduled at Krome, AIJ expended resources to schedule and reschedule calls with Jaime and an interpreter in Guatemala for a phone call that typically requires multiple attempts to organize before AIJ could secure both client and interpreter on the line. This is but one example of how Krome's impediments to counsel drain AIJ's resources and diminish AIJ's ability to represent clients at Krome.

**V. DEFENDANTS HAVE VIOLATED PLAINTIFFS’ AND DETAINED CLIENTS’ CONSTITUTIONAL AND STATUTORY RIGHTS**

**A. Defendants Are Responsible for Monitoring, Inspection, and Oversight of Conditions at the Four Detention Facilities.**

226. Detained immigrants are held under the custodial authority of Defendants, including DHS, and DHS has delegated that authority to its component agency, ICE.<sup>64</sup> The Constitution and federal law impose non-delegable and non-negotiable requirements for the treatment of detained immigrants in Defendants’ custody. As a result, Defendants are responsible for the conditions at the detention facilities, including the Four Detention Facilities—even where they have contracted with third parties to operate the facilities. Defendants are required to oversee, monitor, and manage the conditions at detention facilities, and, where needed, remedy deficient conditions.

227. ICE’s own statements and policies, such as the Detention Standards, underscore that access to counsel conditions at detention facilities, including the Four Detention Facilities, are Defendants’ responsibilities.

228. According to ICE, the purpose of its Detention Standards is to establish “consistent conditions of confinement, access to legal representation, and safe and secure operations across the detention system.”<sup>65</sup> The Detention Standards are binding on Defendants. They are incorporated into the contracts between ICE and the third-party operators of detention facilities, including the Five Detention Facilities. In addition, they are facially mandatory: they repeatedly

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<sup>64</sup> See 8 U.S.C. § 1103(a)(1); 8 C.F.R. § 2.1 (Secretary of Homeland Security has authority to administer and enforce the immigration laws, which may be delegated to any DHS official, officer or employee); 8 C.F.R. § 100.1 (authority to administer and enforce immigration laws has been delegated to ICE, as well as U.S. Customs and Border Protection and U.S. Citizenship and Immigration Services).

<sup>65</sup> ICE, *Detention Management* (last updated Sept. 29, 2022), <https://www.ice.gov/detention-management>.

state that facilities “shall” or are “required” to adhere to the standards.<sup>66</sup> On information and belief, ICE intends to be bound by the Detention Standards. In recognition of the binding nature of the Detention Standards, Defendants hold themselves out as acting to ensure compliance with the standards via public-facing statements and purported inspections of detention facilities.

229. Defendants purport to fulfill their responsibility to ensure that individual facilities adhere to ICE’s Detention Standards through a system of monitoring, inspection, and oversight. ICE claims that it aims to ensure that detained people in its custody reside in “safe, secure and humane environments” by maintaining an “aggressive inspections program” that is designed to ensure compliance with ICE’s Detention Standards.<sup>67</sup> These internal mechanisms include, among other things, a detention monitoring program conducted by ICE’s Enforcement and Removal Operations (“ERO”) and its Office of Detention Oversight (“ICE-ODO”).<sup>68</sup> ICE-ODO inspects detention facilities that hold ICE detainees for over 72 hours (and have an average daily population of over 10 detainees) about once every three years.<sup>69</sup>

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<sup>66</sup> See, e.g., 2008 PBNDS § 5.26(V)(D) (using “shall” in provisions pertaining to correspondence); 2011 PBNDS § 5.1(V)(D) (same); 2019 NDS § 5.1(II)(C) (same); 2008 PBNDS § 5.31(V)(D) (same, for telephone access); 2011 PBNDS § 5.6(V)(D) (same); 2019 NDS § 5.4(II)(A) (same); 2008 PBNDS § 5.32(V)(J) (same, for legal visitation); 2011 PBNDS § 5.7(V)(J) (same); 2019 NDS § 5.5(II)(G) (same); see also 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”); 2011 PBNDS § 5.6(II), 5.7(II) (telephone access and attorney visitation provisions are “specific requirements”); 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”).

<sup>67</sup> *Id.*

<sup>68</sup> See DHS Off. Inspector Gen., *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance of Systemic Improvements* (the “2018 DHS-OIG Report”), at 1, 3 (June 2018), <https://bit.ly/2Mwp2Ug>.

<sup>69</sup> *Id.* at 3.



230. ERO is a subcomponent of ICE headquartered in the District of Columbia that is directed by Defendant Johnson. ERO “manages and oversees” ICE’s Detention Facilities, including the Four Detention Facilities.<sup>70</sup> ERO’s Custody Management Division, headquartered in the District of Columbia, “provides policy and oversight for . . . administrative custody,”<sup>71</sup> and “[m]anages ICE detention operations to efficiently and effectively provide for the safety, security, and care of persons in ICE custody.”<sup>72</sup>

**B. Defendants Fail to Adequately Manage and Oversee Detention Facilities, Including the Four Detention Facilities.**

231. Defendants have failed to meet their management and oversight responsibilities to ensure that ICE detention facilities, including at the Four Detention Facilities, provide access to counsel consistent with constitutional and federal law requirements, as well as with their own standards.

232. Upon information and belief, Defendants violate the Detention Standards by failing to ensure compliance with provisions relating to attorney access.

233. As described above, ICE has established Detention Standards that provide rules and requirements for legal correspondence, telephone access, and legal visitation in immigration detention facilities.

234. These Detention Standards set forth specific, discrete requirements for attorney-client access, including requirements (i) that meetings between detained people and attorneys or legal assistants be confidential and not subject to auditory supervision;<sup>73</sup> (ii) that private

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<sup>70</sup> ICE, *Detention Management*, *supra* note 65.

<sup>71</sup> *Frailhat v. ICE*, 16 F.4th 613, 623 (9th Cir. 2021) (citation omitted); ICE, *Enforcement and Removal Operations* (last updated Oct. 6, 2022), <https://www.ice.gov/about-ice/ero>.

<sup>72</sup> *Enforcement and Removal Operations*, *supra* note 71.

<sup>73</sup> 2008 PBNDS at 5.32(V)(J)(9); 2011 PBNDS at 5.7(V)(J)(9); 2019 NDS at 5.5(II)(G)(8).

consultation rooms be made available for attorney-client visits;<sup>74</sup> (iii) that legal visits be available seven days a week, including holidays, for a minimum of eight hours per day on regular business days and four hours per day on weekends and holidays;<sup>75</sup> (iv) that detained persons with limited English proficiency have access to interpretation in legal visits;<sup>76</sup> (v) that calls made to legal representatives and/or other legal service providers shall be easily accessible and allowed to be made as soon as possible after submission of requests;<sup>77</sup> (vi) that facilities promptly deliver telephone messages to detainees;<sup>78</sup> (vii) that facilities provide detainees with direct or free calls to their legal representatives and/or other legal service providers;<sup>79</sup> (viii) that detainees can make calls relating to legal matters without being overheard by officers, other staff, or other detainees;<sup>80</sup> and (ix) that legal calls not be restricted to less than 20 minutes.<sup>81</sup> These provisions determine Defendants' responsibilities by providing little room for discretion and also determine Plaintiffs' rights by ensuring, to a minimum degree, detained immigrants' right to access counsel.

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<sup>74</sup> 2008 PBNDS at 5.32(V)(J)(9); 2011 PBNDS at 5.7(V)(J)(9); 2019 NDS at 5.5(II)(G)(8).

<sup>75</sup> 2008 PBNDS at 5.32(V)(J)(2); 2011 PBNDS at 5.7(V)(J)(2); 2019 NDS at 5.5(II)(G)(2).

<sup>76</sup> *See* 2008 PBNDS at 5.32(V)(J)(3)(c) (stating that “[t]he facility shall permit interpreters to accompany legal representatives and legal assistants on legal visits, subject to Visitor Identification and Search Procedures”); 2011 PBNDS at 5.7(V)(J)(3)(c) (same); 2019 NDS at 5.5(II)(G)(3)(c) (same, but stating that interpreters shall “undergo the regular security clearance process”). *See also* 2011 PBNDS at 5.7(II)(10) (stating that “[t]he facility shall provide communication assistance to detainees . . . who are limited in their English proficiency,” including “bilingual staff or professional interpretation and translation services”).

<sup>77</sup> 2008 PBNDS at 5.31(V)(E)(1), (2); 2011 PBNDS at 5.6(V)(D)(E)(1), (2). 2019 NDS at 5.4(II)(E).

<sup>78</sup> 2008 PBNDS at 5.31(V)(J); 2011 PBNDS at 5.6(V)(J); 2019 NDS at 5.4(II)(I).

<sup>79</sup> 2008 PBNDS at 5.31(V)(E); 2011 PBNDS at 5.6(V)(E); 2019 NDS at 5.4(II)(E).

<sup>80</sup> 2008 PBNDS at 5.31(V)(F)(2) (staff or other detainees); 2011 PBNDS at 5.6(V)(F)(2) (same); 2019 NDS at 5.4(II)(J) (officers, other staff, or other detainees).

<sup>81</sup> 2008 PBNDS at 5.31(V)(F)(1); 2011 PBNDS at 5.6(V)(F)(1); 2019 NDS at 5.4(II)(F).

235. The DHS Office of Inspector General (“DHS-OIG”) has noted ICE’s consistent failure to enforce compliance with its Detention Standards through its inspection and review process. In a 2018 report, *ICE’s Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements*, the DHS-OIG concluded that “neither the inspections nor the onsite monitoring ensure consistent compliance with detention standards, nor do they promote comprehensive deficiency corrections.”<sup>82</sup> The DHS-OIG further noted that “ICE’s inspections, follow-up processes, and onsite monitoring of facilities . . . do not ensure adequate oversight or systemic improvements in detention conditions, with some deficiencies remaining unaddressed for years.”<sup>83</sup> The DHS-OIG report specifically criticized inspections conducted by ICE-ODO and ICE contractor the Nakamoto Group.<sup>84</sup>

236. Even before the DHS-OIG report, ICE had been on notice for many years that it does not properly ensure compliance with detention standards. As the DHS-OIG reported, noting its prior 2006 and 2017 reports, “ICE’s difficulties with monitoring and enforcing compliance with detention standards stretch back many years and continue today.”<sup>85</sup> In its 2018 report, the DHS-OIG noted that it had identified issues related to inspections in 2006 and issued recommendations then, and that over ten years later, a 2017 report found “some of the same [problem] areas noted in the 2006 report.”<sup>86</sup>

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<sup>82</sup> 2018 DHS-OIG Report, *supra* note 68.

<sup>83</sup> *Id.*

<sup>84</sup> As of October 1, 2022, ICE-ODO “has the congressionally mandated responsibility to conduct ICE detention facility inspections.” ICE, *ODO ICE Facility Inspections*, <https://www.ice.gov/foia/odo-facility-inspections> (last visited Mar. 17, 2023). ICE had contracted with the Nakamoto Group since 2007. 2018 DHS-OIG Report, *supra* note 68, at 2, n.4.

<sup>85</sup> 2018 DHS-OIG Report, *supra* note 68, at 4.

<sup>86</sup> *Id.* at 4–5.

237. DHS-OIG also recommended that ICE “[r]evise the inspection scope and methodology for annual and biennial contracted inspections to ensure that the inspection procedures are adequate to evaluate actual conditions at the facilities.”<sup>87</sup> ICE concurred with the recommendation, and stated that it would “re-evaluate the existing inspection scope and methodology in the statement of work for annual and biennial contracted inspections to ensure that inspection procedures are adequate and appropriately resourced to fully evaluate detention conditions at facilities. ICE anticipates these actions to be complete by July 30, 2019.”<sup>88</sup> In response to this report, ICE also committed to “ensure that inspection procedures are adequate and appropriately resourced to fully evaluate detention conditions at facilities.”<sup>89</sup> However, it is clear that subsequent inspection procedures remain inadequate and under-resourced to fully evaluate detention conditions, including at the Four Detention Facilities.

238. ICE’s failure to ensure compliance with its Detention Standards regarding access to counsel is no different. ICE’s inspections fail to inspect for and/or enforce violations of its rules regarding access to counsel in detention. As the agency admitted to Congress last year, ICE ERO “does not track . . . the number of facilities that do not meet ICE standards for attorney/client communications.”<sup>90</sup>

239. On November 3, 2022, four years after the issuance of the 2018 DHS-OIG report, 28 members of Congress wrote to DHS Secretary Mayorkas and ICE Acting Director Johnson expressing their deep concern with ICE’s failure to ensure that immigrants can access their legal representation in detention. Their letter noted ICE’s “systematic failure to ensure that people in

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<sup>87</sup> *Id.* at 15.

<sup>88</sup> *Id.* at 16.

<sup>89</sup> *Id.* at 16.

<sup>90</sup> ICE, *Access to Due Process: Fiscal Year 2021 Report to Congress*, *supra* note 4, at 2.

ICE detention have the ability to find and communicate with attorneys, directly refuting ICE’s reporting to Congress on access to counsel issues in FY 21.” The Congressional letter also noted that “ICE has failed as an agency to exercise even the most basic oversight or data collection regarding immigrants’ access to counsel in detention.”<sup>91</sup>

240. ICE’s “systematic failure” to ensure access to counsel for detainees is demonstrated in part by its inadequate policies and procedures for conducting inspections. DHS-OIG’s 2018 criticism of these policies and procedures, *see supra* ¶ 235-37, and Defendant ICE’s promise in 2018 to improve those procedures, *see supra* ¶ 237, reflect Defendants’ awareness of their failures, and thus suggest that they decided to forego compliance with attorney access provisions, particularly when juxtaposed against Defendants’ acknowledgement to Congress in early 2022 that it does not track the number of facilities that do not meet ICE standards for attorney-client communications, *see supra* ¶ 238, and Defendants’ ongoing policy of not routinely assessing for compliance with attorney access provisions, *see infra* ¶ 241-248.

241. ODO inspections are neither comprehensive nor frequent enough to ensure compliance with attorney access provisions, particularly when considered against the reality of conditions at detention facilities, including the Four Detention Facilities. As of the time of the DHS-OIG Report, the 15 to 16 “core standards” that ICE-ODO inspects for in the 2008 PBNDS and 2011 PBNDS do not include any attorney access provisions other than telephone access, meaning that the ODO will not inspect for compliance with visitation or mail and correspondence standards unless ICE leadership requests it or specific conditions warrant it.<sup>92</sup> The DHS-OIG critiqued ODO’s focus on so few standards, noting that the core standards constituted “fewer than

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<sup>91</sup> 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>.

<sup>92</sup> 2018 DHS-OIG Report, *supra* note 68, at 6, n.11, 26.

half.”<sup>93</sup> It is therefore unsurprising that none of the Four Detention Facilities (except for Florence in 2022),<sup>94</sup> has *ever* been inspected for all three categories of attorney-client access—visitation, telephone access, and correspondence and mail—within the same year.<sup>95</sup> This demonstrates that

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<sup>93</sup> *Id.* at 6.

<sup>94</sup> ODO would not have inspected Florence for all three categories of attorney-client access in 2022 were it not for its unannounced inspection beginning in November 2022 (slightly over a month after the commencement of this litigation) when it assessed standards related to correspondence and mail, upon information and belief, for the first time in the history of ODO inspections at Florence, and standards related to visitation, upon information belief, for the first time at Florence since 2012. *See Unannounced Compliance Inspection of CCA Florence Correctional Center* at 6–7 (Nov.–Dec. 2022), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2022-CCAFlorenceCC-FlorenceAZ-December.pdf> (“Nov. 2022 Florence Inspection”); *see also* DHS, ICE Off. Det. Oversight, *Follow-Up Compliance Inspection of CCA Florence Correctional Center* at 6 (June 2022), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2022-florenceSPC-FlorenceAZ-Jun.pdf> (“June 2022 Florence Inspection”); DHS, ICE Off. Det. Oversight, *Compliance Inspection of CCA Florence Correctional Center* at 6–7 (Dec. 2021), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/FlorenceCCDecember2021.pdf>; DHS, ICE Off. Det. Oversight, *Follow-Up Compliance Inspection of CCA Florence Correctional Center* at 6 (June 2021), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/ccFlorenceCorrCtrFlorenceAZ\\_Jun14-17\\_2021\\_followup.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/ccFlorenceCorrCtrFlorenceAZ_Jun14-17_2021_followup.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of CCA Florence Correctional Center* at 6 (Jan. 2021), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/florenceCorrCtrFlorenceAZ\\_Jan11-14\\_2021.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/florenceCorrCtrFlorenceAZ_Jan11-14_2021.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of CCA, Florence Correctional Center* at 3 (June 2016), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/florenceCorrectionalCenterFlorenceArizJun28\\_30\\_2016.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/florenceCorrectionalCenterFlorenceArizJun28_30_2016.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of Florence Correctional Center* at 7 (Nov. 2012), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/florence-correctional-Nov13-15-2012.pdf> (collectively, the “Florence ODO Inspections”).

<sup>95</sup> *See* Florence ODO Inspections, *supra* note 93; DHS, ICE Off. Det. Oversight, *Compliance Inspection of South Louisiana Detention Center*, [https://www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCtrBasileLA\\_Mar08-10\\_2022.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCtrBasileLA_Mar08-10_2022.pdf) (Mar. 2022); <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2022-LaredoPC-LaredoTX-Sep.pdf>; DHS, ICE Off. Det. Oversight, *Compliance Inspection of Laredo Processing Center* at 6 (Mar. 2022), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcCtrLaredoTX\\_Mar21-24\\_2022.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcCtrLaredoTX_Mar21-24_2022.pdf); DHS, ICE Off. Det. Oversight, *Follow-Up Compliance Inspection of Laredo Processing Center* at 6 (Sept. 2021), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcCtrLaredoTX\\_Sep13-16\\_2021\\_followup.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcCtrLaredoTX_Sep13-16_2021_followup.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of Laredo Processing Center* at 6 (Mar. 2021), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcCtrLaredoTX\\_Mar8-11\\_2021.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcCtrLaredoTX_Mar8-11_2021.pdf); DHS, ICE Off. Det. Oversight,

*Compliance Inspection of Laredo Processing Center* at 6 (Aug. – Sept. 2020), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/LaredoPC-LaredoTX-August2020.pdf>; DHS, ICE Off. Det. Oversight, *National Detention Standards, Laredo Processing Center* at 2 (Sept. 2018), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcCntrLaredoTX\\_Sept11-13\\_2018.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcCntrLaredoTX_Sept11-13_2018.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of Laredo Processing Center* at 3 (July 2015), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/laredoProcessingCenterLaredoTxJul14-16-2015.pdf>; DHS, ICE Off. Det. Oversight, *Compliance Inspection of Laredo Processing Center* at 7 (Jan. 2012), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2012laredoprocessingcenter-laredo-tx-jan24-26-2012.pdf>; DHS, ICE Off. Det. Oversight, *Follow-Up Compliance Inspection of Krome North Service Processing Center* at 6 (May 2022), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2022-KromeNorthServiceProcessingCenter-MiamiFL-May.pdf> (“May 2022 Krome Inspection”); DHS, ICE Off. Det. Oversight, *Compliance Inspection of Krome North Service Processing Center* at 6 (Oct. 2021), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2021-KromeNorthServiceProcessingCenter-MiamiFL-102528-2021.pdf>; DHS, ICE Off. Det. Oversight, *Follow-Up Compliance Inspection of Krome North Service Processing Center* (May 3–6, 2021), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/kromeNorthSPC\\_MiamiFL\\_May\\_3-6\\_2021\\_followUp.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/kromeNorthSPC_MiamiFL_May_3-6_2021_followUp.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of Krome North Service Processing Center* at 6 (Dec. 2020), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/kromeNorthProcCntrMiamiFL\\_Dec14-17\\_2020.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/kromeNorthProcCntrMiamiFL_Dec14-17_2020.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of Krome North Service Processing Center* at 2 (Jan. – Feb. 2018), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/kromeNorthSPC\\_MiamiFL\\_Jan3-Feb1\\_2018.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/kromeNorthSPC_MiamiFL_Jan3-Feb1_2018.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of Krome North Service Processing Center* at 3 (June 2015), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/kromeNorthServiceProcessingCenterMiamiFLJun2-4-2015.pdf>; DHS, ICE Off. Det. Oversight, *Compliance Inspection of Krome Service Processing Center* at 7 (Aug. 2012), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/2012krome-service\\_processing-cntr\\_miami\\_FL\\_aug21-23\\_2012.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/2012krome-service_processing-cntr_miami_FL_aug21-23_2012.pdf); DHS, ICE Off. Det. Oversight, *Follow-Up Compliance Inspection of South Louisiana Detention Center* at 6 (Sept. 2022), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/sLouisianaDetCntrBasileLA\\_Sep13-15\\_2022.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/sLouisianaDetCntrBasileLA_Sep13-15_2022.pdf) (“Sept. 2022 Basile Inspection”); DHS, ICE Off. Det. Oversight, *Compliance Inspection of South Louisiana Detention Center* 6 (Mar. 2022), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCntrBasileLA\\_Mar08-10\\_2022.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCntrBasileLA_Mar08-10_2022.pdf); DHS, ICE Off. Det. Oversight, *Follow-Up Compliance Inspection of South Louisiana Detention Center* at 6 (Aug. 2021), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2021-SouthLADC-LA-Aug.pdf>; DHS, ICE Off. Det. Oversight, *Compliance Inspection of South Louisiana Detention Center* at 6 (Apr. 2021), <https://www.ice.gov/doclib/foia/odo-compliance-inspections/2021-SouthLADC-LA-0412-162021.pdf>; DHS, ICE Off. Det. Oversight, *Compliance Inspection of South Louisiana Detention Center* at 6 (Aug. 2020), [https://www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCntrBasileLA\\_Aug17-20\\_2020.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCntrBasileLA_Aug17-20_2020.pdf); DHS, ICE Off. Det. Oversight, *Compliance Inspection of South Louisiana Detention Center* at 7 (Apr. 2012),



Defendants’ continued noncompliance is not just some temporary practice. It reflects the consummation of Defendants’ decision-making to eschew compliance with the standards.

242. Moreover, despite being informed in 2018 that ICE-ODO inspections are “too infrequent to ensure compliance” with Detention Standards, and despite ICE’s confirmation in 2018 that it would improve its inspection procedures by July 2019,<sup>96</sup> ICE-ODO has since *decreased* the scope of its inspections. Beginning in Fiscal Year 2022, ICE-ODO instituted a process “of rotating all standards on a 3-year basis,”<sup>97</sup> meaning that at a minimum, certain standards will be assessed only every six years. Moreover, as part of this process, “some standard components may not be present in all standards.”<sup>98</sup>

243. ICE-ODO’s inspection procedures, including in the recent inspections of the Four Detention Facilities, do not ensure consistent compliance with attorney access provisions. From September 20 to 22, 2022, ICE-ODO conducted an inspection of Laredo’s compliance with detention standards.<sup>99</sup> The inspection report notes that ICE-ODO assessed only 16 of 33 standards under the 2019 NDS, and found four deficiencies.<sup>100</sup> The inspection report, however, indicates that ICE inspectors did not investigate certain standards associated with attorney-client access described above, including 2019 NDS Standard 5.5 (Visitation).<sup>101</sup> The only mention of any

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[https://www.ice.gov/doclib/foia/odo-compliance-inspections/south-louisiana-correctionalcenter\\_la\\_4\\_17-19\\_2012.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/south-louisiana-correctionalcenter_la_4_17-19_2012.pdf).

<sup>96</sup> 2018 DHS-OIG Report, *supra* note 68, at 5, 16. ICE represented that it would “ensure that inspection procedures are adequate and appropriately resourced to fully evaluate detention conditions at facilities.” *Id.* at 16.

<sup>97</sup> *See* Nov. 2022 Florence Inspection, *supra* note 93, at 6, n.6.

<sup>98</sup> *Id.*

<sup>99</sup> Sept. 2022 Laredo Inspection, *supra* note 93.

<sup>100</sup> *Id.* at 8.

<sup>101</sup> *Id.* at 6.



standard related to attorney-client access is inspections of Standard 5.1 (Correspondence and Other Mail) and Standard 5.4 (Telephone Access), which did not identify any deficiencies. However, around that time, as discussed in Section III, clients at Laredo experienced issues related to in-person visitation, telephone communication, and legal correspondence in violation of protections afforded by the Constitution and Detention Standards.<sup>102</sup>

244. From September 13 to 15, 2022, ICE-ODO conducted an inspection of Basile's compliance with detention standards.<sup>103</sup> The inspection reports that ICE-ODO assessed only 18 standards under the 2011 PBNDS, and found four deficiencies.<sup>104</sup> One of these deficiencies relates to Standard 5.1 (Correspondence and Other Mail): ICE-ODO found that one of the housing units failed to post rules related to Correspondence and Mail in common areas.<sup>105</sup> The inspection report, however, indicates that ICE inspectors did not investigate detention standards associated with attorney access, including Standard 5.6 (Telephone Access) and Standard 5.7 (Visitation).

245. From March 8 to March 10, 2022, ICE-ODO conducted an inspection of Basile's compliance with detention standards.<sup>106</sup> The inspection report notes that ICE-ODO assessed only 24 standards under the 2011 PBNDS and found 11 deficiencies. The inspection report, however, indicates that ICE inspectors did not investigate detention standards associated with attorney-client access described above, including Standard 5.6 (Telephone Access) and Standard 5.7 (Visitation). The only mention of any standard related to attorney-client access in the inspection report is a

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<sup>102</sup> *Id.* at 8.

<sup>103</sup> Sept. 2022 Basile Inspection, *supra* note 93.

<sup>104</sup> *Id.* at 10.

<sup>105</sup> *Id.* at 9.

<sup>106</sup> DHS, ICE Off. Det. Oversight, *Compliance Inspection of the South Louisiana Detention Center* (Mar. 8–10, 2022) [https://www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCntrBasileLA\\_Mar08-10\\_2022.pdf](https://www.ice.gov/doclib/foia/odo-compliance-inspections/southLouisianaDetCntrBasileLA_Mar08-10_2022.pdf).

discussion of procedures governing detainee access to mail and the communication of postage information.<sup>107</sup> However, around the time of the Basile inspections, as discussed in Section III, clients at Basile experienced even more issues related to in-person visitation, telephone communication, and legal correspondence, in violation of protections afforded by the Constitution and Detention Standards.

246. From May 10 to May 12, 2022, ICE-ODO also conducted an inspection of Krome's compliance with detention standards.<sup>108</sup> The inspection report notes that ICE-ODO assessed only 18 standards under the 2011 PBNDS and found six deficiencies.<sup>109</sup> The inspection report, however, indicates that ICE inspectors did not investigate detention standards associated with attorney-client visitation, including Standard 5.7 (Visitation) and Standard 5.1 (Correspondence and Other Mail).<sup>110</sup> ICE-ODO investigated 2011 PBNDS Standard 5.6 (Telephone Access), but found no violation.<sup>111</sup> However, around that time, as discussed in Section III, clients at Krome experienced issues related to in-person visitation, telephone communication, and legal correspondence in violation of protections afforded by the Constitution and Detention Standards.

247. From November 29 to December 1, 2022, after the commencement of this action, ICE-ODO conducted an inspection of Florence's compliance with detention standards.<sup>112</sup> The inspection report notes that ICE-ODO assessed only 23 standards under the 2008 PBNDS and

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<sup>107</sup> *Id.* at 10.

<sup>108</sup> DHS, ICE Off. Det. Oversight, *Follow-Up Compliance Inspection of the Krome North Service Processing Center* (2022), <https://bit.ly/3eZ2Vtc>.

<sup>109</sup> *See id.* at 6.

<sup>110</sup> *See id.*

<sup>111</sup> *Id.*

<sup>112</sup> May 2022 Krome Inspection, *supra* note 93.

found 10 deficiencies.<sup>113</sup> The inspection report, however, indicates that ICE inspectors did not investigate detention standards associated with attorney-client communication, including PBNDS 2008 Standard 5.31 (Telephone Access).<sup>114</sup> ICE-ODO investigated Standard 5.26 (Correspondence and Other Mail) and Standard 5.32 (Visitation) and found one deficiency related to visitation: it found no posted visitor schedule and other rules in Spanish, in violation of PBNDS 2008 § (V)(C).<sup>115</sup> Prior to that inspection, in June 2022, ICE-ODO inspected for Standard 5.31 (Telephone Access), but not Standard 5.26 (Correspondence and Other Mail) or Standard 5.32 (Visitation), and found one deficiency—a failure to adequately inspect and log telephones daily.<sup>116</sup> However, around the time of those inspections, as discussed in Section III, clients at Florence experienced more issues related to in-person visitation, telephone communication, and legal correspondence in violation of protections afforded by the Constitution and Detention Standards.

248. Nakamoto facility inspections similarly cannot be credited because, according to the 2018 DHS-OIG report, ICE’s guidance to Nakamoto was “unclear” and Nakamoto’s inspection practices were “not consistently thorough,” leading to the inspections’ failure to “fully examine actual conditions or identify all compliance deficiencies.”<sup>117</sup> In fact, employees of Defendant ICE characterized the inspections as “useless” and noted that Nakamoto inspectors do not actually assess whether facilities are implementing the Detention Standards.<sup>118</sup>

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<sup>113</sup> *Id.* at 9.

<sup>114</sup> *Id.* at 6–7.

<sup>115</sup> *Id.* at 9, n.17.

<sup>116</sup> June 2022 Florence Inspection, *supra* note 93, at 6, 18–19.

<sup>117</sup> 2018 DHS-OIG Report, *supra* note 68, at 4.

<sup>118</sup> *Id.* at 7, n.12.

249. By failing to ensure compliance with attorney access provisions, Defendants violate the Detention Standards. In light of persistent non-compliance with attorney access provisions of the Detention Standards and ICE's failure to address that non-compliance through its persistently inadequate inspections, which ICE itself has designed, upon information and belief, Defendants have made a final agency decision not to enforce those provisions of their Detention Standards.

**C. Defendants Could Require Improvements to Attorney Access at the Four Detention Facilities Via Contract.**

250. The ICE Office of Acquisition Management (OAQ), based in the District of Columbia, "negotiates and manages detention facility contracts and agreements."<sup>119</sup> OAQ's mission is to "deliver quality acquisition solutions in support of the ICE and DHS missions."<sup>120</sup> OAQ's procurements include: "[l]aw enforcement services and products, including handcuffs, hand restraints, guns and ammunition" and "[d]etention and removal services such as temporary housing, food, clothing and transportation, including air charter flights."<sup>121</sup> This office additionally approves subsequent amendments to contractual agreements to provide funding for, among other things, structural improvements to the facilities. All contracting and procurement responsibilities are centralized at ICE's headquarters in Washington, D.C.

251. Defendants could require improvements to attorney access conditions at the Four Detention Facilities described herein, including lack of private, confidential attorney-client meeting rooms, lack of free, scheduled, private, confidential telephone and VTC access for legal

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<sup>119</sup> U.S. Gov't Accountability Office, *Immigration Detention: Additional Actions Needed to Strengthen Management and Oversight of Facility Costs and Standards* 2 (October 2014), <https://www.gao.gov/assets/670/666467.pdf>.

<sup>120</sup> *Office of Acquisition Management (OAQ)*, Immigration and Customs Enforcement, <https://www.ice.gov/management-administration/oaq> (last updated Jul. 26, 2018).

<sup>121</sup> *Id.*

communication, lack of access to fax or email document exchange, through the enactment of contact requirements that reinforce and supplement the requirements of Detention Standards at each facility. While including clear contractual requirements is not necessarily sufficient to ensure compliance with attorney access provisions, as demonstrated by violations of the Detention Standards, Defendants are able to require facilities to provide additional channels of attorney access by way of contractual arrangements, as evidenced by their efforts in other facilities. For example, in 2014, ICE amended its service contract for Stewart Detention Center in Lumpkin, Georgia to “implement a videoconferencing platform to allow detainees to consult with their attorneys in preparation for administrative immigration proceedings at the Stewart Detention Center.”<sup>122</sup> In 2020, ICE amended its service contract at the Kandiyohi County Detention Center in Willmar, Minnesota, to “incorporate virtual attorney visitation.”<sup>123</sup> More recently, in 2021, ICE amended its service contract agreement at the Denver Contract Detention Facility in Aurora, Colorado, to “incorporate attached Virtual Attorney Visitation . . . into the contract at no cost.”<sup>124</sup> As described in the Denver contract, VAV “utilizes common web conferencing and videoconferencing applications to enable legal representatives to meet with their clients or prospective clients virtually using video technology in private rooms or booths to ensure confidentiality of communications during remote legal visits.”<sup>125</sup> The Denver contract also

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<sup>122</sup> Amendment of Solicitation of Contract, ICE Detention Management, Stewart County GA, Sept. 30, 2014 at 38, [https://www.ice.gov/doclib/foia/detFacContracts/DROIGSA-06-00005\\_StewartCoLumpkinGA.pdf](https://www.ice.gov/doclib/foia/detFacContracts/DROIGSA-06-00005_StewartCoLumpkinGA.pdf).

<sup>123</sup> Amendment of Solicitation/Modification of Contract, U.S. ICE and Kandiyohi County, Aug. 9, 2020, at 2, [https://www.ice.gov/doclib/foia/detFacContracts/ACD-2-H-1005\\_KandiyohiCoIGSA\\_WilmarMN.pdf](https://www.ice.gov/doclib/foia/detFacContracts/ACD-2-H-1005_KandiyohiCoIGSA_WilmarMN.pdf).

<sup>124</sup> Amendment of Solicitation/Modification of Contract, ICE and GEO Group, Oct. 15, 2021 at 1–3, <https://www.ice.gov/doclib/foia/detFacContracts/70CDCR22D00000001-Denver.pdf>.

<sup>125</sup> *Id.* at 2.

required “procedures, in writing, through which detained individuals and legal representatives may exchange confidential documents, via electronic means (e.g. facsimile or email), such as to obtain signatures.”<sup>126</sup>

252. In contrast, upon information and belief, ICE’s service contracts make no specific mention whatsoever regarding attorney access at the Four Detention Facilities beyond the requirement to comply with the Detention Standards. For example, not one page of ICE’s publicly-posted contracts for the Laredo, Krome, or Basile facilities makes any mention of attorney-client visitation.<sup>127</sup>

**D. Access to Counsel Deficiencies in ICE Detention Facilities Nationwide Demonstrate Defendants’ Oversight and Enforcement Failures.**

253. In 2022, the ACLU published “No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Facilities,” which documented the results of the “the first comprehensive study of the denial of access to counsel in U.S. immigration detention centers nationwide.”<sup>128</sup> The report analyzes the results of research conducted at 148 detention facilities and survey responses submitted by 89 immigration attorneys and legal representatives about their experiences,<sup>129</sup> and demonstrates that the issues at the Four Detention Facilities discussed above

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<sup>126</sup> *Id.* at 3.

<sup>127</sup> See generally Contract, ICE Detention Management, Apr. 4, 2021, [https://www.ice.gov/doclib/foia/detFacContracts/HSCEOM-13-R-00001\\_Krome.pdf](https://www.ice.gov/doclib/foia/detFacContracts/HSCEOM-13-R-00001_Krome.pdf); Amendment of Solicitation/Modification of Contract, ICE Detention Compliance & Removals, Aug. 7, 2015, [https://www.ice.gov/doclib/foia/detFacContracts/EROIGSA-15-0006\\_SouthLouisiana\\_VillePlatteLA.pdf](https://www.ice.gov/doclib/foia/detFacContracts/EROIGSA-15-0006_SouthLouisiana_VillePlatteLA.pdf); Amendment of Solicitation/Modification of Contract, ICE Detention Compliance & Removals, Oct. 18, 2019, [https://www.ice.gov/doclib/foia/detFacContracts/70CDCR18DIG000010\\_LaredoCenter.pdf](https://www.ice.gov/doclib/foia/detFacContracts/70CDCR18DIG000010_LaredoCenter.pdf). No facility contract for Florence is currently available on ICE’s public website.

<sup>128</sup> ACLU, *No Fighting Chance: ICE’s Denial of Access to Counsel in U.S. Immigration Detention Facilities*, *supra* note 6, at 5.

<sup>129</sup> *Id.* at 6–7.

are not isolated, but rather are systemic and reflective of Defendants' oversight and enforcement failures.

254. At least 20 surveyed facilities delayed or completely denied in-person attorney access to clients because of the facility's own failure to keep track of detained people, inadequate staffing, or arbitrary and changing attorney dress code rules.<sup>130</sup> At least one-third of the facilities the ACLU surveyed do not permit attorneys to have contact visits where attorneys and clients sit together at a table without barriers, which impedes clear communication and the confidential review of documents.<sup>131</sup>

255. The ACLU report found "pervasive" problems with legal telephone access, noting that at 20% of the detention facilities called by their researchers in the study "no one ever picked up the phone or operators refused to answer basic questions about attorney access."<sup>132</sup> The results for the facilities that did answer the questions were abysmal. At least 58 ICE detention facilities do not allow attorneys to schedule phone calls with clients at a certain date and time.<sup>133</sup> Of the 37 facilities the ACLU surveyed that permit attorneys to schedule legal calls with their clients, only about half consistently honored these scheduled calls.<sup>134</sup>

256. The lack of VTC access at ICE facilities is also a systemic problem. Almost half of the surveyed detention facilities were found to have no VTC program for attorneys and clients and the ACLU could not determine whether a legal-specific VTC program existed at an additional 18%

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<sup>130</sup> *Id.* at 8.

<sup>131</sup> *Id.* at 25.

<sup>132</sup> *Id.* at 12.

<sup>133</sup> *Id.* at 13.

<sup>134</sup> *Id.* at 15.

of facilities.<sup>135</sup> The inability to send and receive legal documents in a timely manner is a nationwide problem as well. Attorneys at 19% of the detention facilities surveyed reported that they or their clients missed a filing deadline due to problems with legal mail.<sup>136</sup> The majority of detention facilities surveyed also do not provide detained people with access to email or electronic message alternatives to communicate with their attorneys.<sup>137</sup>

257. The pervasive issues with access to counsel in immigration detention centers are well documented. In 2009, two advocacy groups along with the law firm Holland & Knight published a report entitled “A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers,” which found that “the persistent failures of facilities to respect detainees’ visitation rights severely hampers detainees’ ability to exercise their constitutional and statutory rights of access to counsel.”<sup>138</sup> It also found that ICE had consistently failed to ensure compliance with telephone standards, noting that “the most pervasive and troubling violations are lack of privacy afforded to detainees when making confidential legal calls, monitoring of legal calls by facility officials . . . arbitrary and unnecessary time limits placed on detainees’ telephone calls, and refusal by facility staff to deliver telephone messages to detainees.”<sup>139</sup>

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<sup>135</sup> *Id.* at 18.

<sup>136</sup> *Id.* at 21.

<sup>137</sup> *Id.* at 20.

<sup>138</sup> Nat’l Immigr. L. Ctr. et al., *A Broken System: Confidential Reports Reveal Failures in U.S. Immigrant Detention Centers*, at viii (2009), <https://www.nilc.org/wp-content/uploads/2016/02/A-Broken-System-2009-07.pdf>.

<sup>139</sup> *Id.* at ix.



258. In 2015, three national non-profit organizations issued a report entitled “Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse.”<sup>140</sup> The authors reviewed five years’ worth of ICE inspections for 105 of the largest immigration detention prisons in the country and concluded that ICE’s inspection process “remains a ‘checklist culture’” where inspectors, either directly employed by ICE or via subcontracts, conduct “perfunctory reviews of detention facilities that are designed to result in passing ratings.”<sup>141</sup>

259. In October 2021, more than 80 nonprofit organizations, including Plaintiffs, delivered a letter to DHS and ICE highlighting many of the obstacles to access to counsel described in this complaint and recommending ways to remove those obstacles.<sup>142</sup> For example, the letter called attention to ICE’s “refusal to schedule legal calls with clients, failure to provide a timely way to have clients review and sign necessary documents, its hostile treatment of attorneys at detention centers and failure to provide sufficient private attorney-client meeting space leading to long waits, and a host of other challenges that have reduced the number of attorneys able and willing to take detained cases.”<sup>143</sup> However, conditions at the Four Detention Facilities remain inadequate for Plaintiffs and their Detained Clients.

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<sup>140</sup> Nat’l Immigr. Just. Ctr. et al., *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse* (2015), <https://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2017-03/THR-Inspections-FOIA-Report-October-2015-FINAL.pdf>.

<sup>141</sup> *Id.* at 2.

<sup>142</sup> ACLU, *Coalition Letter to DHS and ICE on Access to Counsel in Immigration Detention* (2021), <https://www.aclu.org/letter/coalition-letter-dhs-and-ice-access-counsel-immigration-detention>.

<sup>143</sup> *Id.* at 2.

**FIRST CLAIM FOR RELIEF**

**Denial of Substantive Due Process in Violation of the Fifth Amendment  
(AIJ, FIRRP, ISLA, and RAICES on behalf of Detained Clients at the Four Detention  
Facilities)**

260. Plaintiffs reallege and incorporate by reference the foregoing paragraphs and incorporates them herein by this reference.

261. The Fifth Amendment's Due Process Clause prohibits holding civil detainees in conditions that rise to the level of punishment.

262. Conditions of confinement that are expressly intended to punish, that are not reasonably related to a legitimate governmental objective, and/or that are excessive in relation to that objective, constitute punishment of civil detainees in violation of the Due Process Clause.

263. The conditions of confinement for Detained Clients at the Four Detention Facilities meet that standard and therefore violate the Due Process Clause.

264. The restrictions on attorney access described herein violate the Due Process Clause because they, individually and collectively: (1) are identical to, similar to, or more restrictive than those under which persons accused or convicted of crimes are confined; (2) are not reasonably related to legitimate governmental objectives; and/or (3) are excessive in relation to any proffered objective.

265. Detained Clients have suffered and will imminently suffer irreparable injury as a result of Defendants' policies, practices, and failures to act and are entitled to injunctive relief to avoid any further injury.

**SECOND CLAIM FOR RELIEF**

**Denial of the Right to a Full and Fair Custody Proceedings, in Violation of the Due Process Clause of the Fifth Amendment  
(AIJ, FIRRP, ISLA, and RAICES on behalf of Detained Clients at the Four Detention Facilities)**

266. Plaintiffs reallege and incorporate by reference the foregoing paragraphs and incorporate them herein by this reference.

267. The Due Process Clause of the Fifth Amendment guarantees Detained Clients the right to a full and fair custody proceeding, such as a bond hearing or other proceeding related to release from detention.

268. Defendants' conduct creates a substantial likelihood that Detained Clients' right to a full and fair bond hearing or other custody proceeding will be violated because Defendants' policies and practices severely restrict Detained Clients' ability to access and communicate with Plaintiffs and Plaintiffs' ability to effectively represent Detained Clients.

269. Detained Clients have a substantial liberty interest in seeking release from detention, and avoiding prolonged detention.

270. All of the obstacles to accessing and communicating with counsel described herein create a substantial risk that wrongful outcomes, delayed relief, and other errors will occur in Detained Clients' custody proceedings. Eliminating these barriers would decrease the likelihood of the wrongful, erroneous, and unlawful deprivation of Detained Clients' liberty interest.

271. Any fiscal or administrative burden on the government by requiring Defendants to provide adequate access to counsel at the Four Detention Facilities is modest, especially in light of the countervailing interests of Detained Clients.

272. Detained Clients have suffered and will imminently suffer irreparable injury as a result of Defendants' policies, practices, and failures to act and are entitled to injunctive relief to avoid any further injury.

### **THIRD CLAIM FOR RELIEF**

#### **Denial of the Right to Free Speech in Violation of the First Amendment (AIJ, FIRRP, ISLA, and RAICES on behalf of themselves)**

273. Plaintiffs reallege and incorporate by reference the foregoing paragraphs and incorporate them herein by this reference.

274. The First Amendment rights of free speech and association protect Plaintiffs' activities as legal organizations in advising and representing their clients because those activities are modes of expression and association.

275. Defendants' policies, practices, and failure to act have interfered with and obstructed Plaintiffs' AIJ, FIRRP, ISLA, and RAICES's ability to advise and represent Detained Clients and other detained people in need of legal assistance.

276. Plaintiffs have suffered and will imminently suffer irreparable injury as a result of Defendants' policies, practices, and failures to act and are entitled to injunctive relief to avoid any further injury.

### **FOURTH CLAIM FOR RELIEF**

#### **Denial of the Right to Free Speech in Violation of the First Amendment (AIJ, FIRRP, ISLA and RAICES on behalf of Detained Clients at the Four Detention Facilities)**

277. Plaintiffs reallege and incorporate by reference the foregoing paragraphs and incorporate them herein by this reference.

278. The First Amendment rights of free speech and association guarantee Detained Clients the ability to communicate with the outside world.

279. These First Amendment rights also guarantee Detained Clients' ability to hire, consult with, and communicate with an attorney. The government may not unreasonably restrict this right.

280. By depriving Detained Clients of the ability to hire, consult, and communicate with Plaintiffs, Defendants have violated and continue to violate Detained Clients' rights of free speech and association under the First Amendment.

281. Detained Clients also have a First Amendment right, grounded in the Free Speech Clause, to receive legal mail without government interference. This protection includes the right to send and receive mail, and the right to have legal mail inspected and opened in the Detained Client's presence. By preventing Detained Clients from receiving sealed legal mail without government interference, Defendants have violated and continue to violate Detained Clients' First Amendment rights to freedom of speech.

282. Detained Clients have suffered and will imminently suffer irreparable injury as a result of Defendants' policies, practices, and failures to act and are entitled to injunctive relief to avoid any further injury.

#### **FIFTH CLAIM FOR RELIEF**

#### **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2) (AIJ, FIRRP, ISLA, and RAICES on behalf of themselves and Detained Clients at the Four Detention Facilities)**

283. Plaintiffs reallege and incorporate by reference the foregoing paragraphs and incorporate them herein by this reference.

284. The APA, 5 U.S.C. § 551, *et seq.*, authorizes suits by "[a] person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant strategy." 5 U.S.C. § 702.

285. ICE's Detention Standards are the primary mechanism through which Defendants purportedly endeavor to execute their duty to ensure adequate access to counsel for immigrants. These Detention Standards are ICE's own rules, which govern the conditions of confinement at ICE detention facilities. The Detention Standards apply at all ICE civil detention facilities, including the Four Detention Facilities

286. Defendants have failed to ensure compliance with them. Among other things, Defendants have (i) provided an inadequate number of private legal visitation rooms; (ii) deprived Detained Clients of confidential contact with Plaintiffs; (iii) deprived Detained Clients with limited English proficiency of access to interpreters during legal visits; (iv) deprived Detained Clients and Plaintiffs of the ability to communicate on the telephone; (v) failed to provide free calls from Detained Clients to Plaintiffs; (vi) restricted the length of legal phone calls; and/or (vii) prevented the timely and confidential exchange of documents between Detained Clients and Plaintiffs.

287. An agency's disregard for, or failure to follow its own rules constitutes "arbitrary, capricious" conduct in violation of the Administrative Procedure Act. 5 U.S.C. § 706(2)(A).

288. In addition, the agency's failure to comply with or enforce the attorney access requirements and Plaintiffs' and Detained Clients' constitutional rights is not "in accordance with law." 5 U.S.C. § 706(2)(B).

289. Defendants' final agency action, *i.e.*, their decision not to enforce their policies, as well as Defendants' failure to act (*i.e.*, their failure to enforce their policies), have caused Plaintiffs and Detained Clients at the Four Detention Facilities to suffer injuries in fact because Defendants' failures restrict Plaintiffs' rights related to attorney-client communication.

290. The interests that Plaintiffs seek to protect are within the zone of interests regulated by the applicable provisions of the Constitution, federal law, and the 2008 PBNDS, 2011 PBNDS, and 2019 NDS.

291. Defendants' final agency action and failure to act are the direct cause of the injuries to Plaintiffs and Detained Clients.

292. Plaintiffs' requested relief would redress these injuries.

293. Plaintiffs have no adequate remedy at law to redress the wrongs suffered as set forth in this Complaint.

294. Detained Clients have suffered and will imminently suffer irreparable injury as a result of Defendants' policies, practices, and failures to act and are entitled to injunctive relief to avoid any further injury.

#### **SIXTH CLAIM FOR RELIEF**

#### **Violation of the Administrative Procedure Act, 5 U.S.C. § 706(1) (AIJ, FIRRP, ISLA, and RAICES on behalf of themselves and Detained Clients at the Four Detention Facilities)**

295. Plaintiffs reallege and incorporate by reference the foregoing paragraphs and incorporate them herein by this reference.

296. The agency's failure to comply with its own Detention Standards constitutes "agency action unlawfully withheld or unreasonably delayed." 5 U.S.C. § 706(1).

297. Defendants' unlawfully withheld or unreasonably delayed agency action, *i.e.*, Defendants' failure to act to enforce their policies, have caused Plaintiffs and Detained Clients at the Four Detention Facilities to suffer injuries in fact.

298. Agency action need not be final to violate 5 U.S.C. § 706(1). However, to the extent it is required, Defendants' final agency action, *i.e.*, their decision not to enforce their policies, as well as Defendants' failure to act, *i.e.*, their failure to enforce their policies, have caused Plaintiffs

and Detained Clients at the Four Detention Facilities to suffer injuries in fact because Defendants' failures restrict Plaintiffs' rights related to attorney-client communication.

299. The interests that Plaintiffs seek to protect are within the zone of interests regulated by the applicable provisions of the Constitution, federal law, and the 2008 PBNDS, 2011 PBNDS, and 2019 NDS.

300. Defendants' final agency action and failure to act are the direct cause of the injuries to Plaintiffs and Detained Clients.

301. Plaintiffs' requested relief would redress these injuries.

302. Plaintiffs have no adequate remedy at law to redress the wrongs suffered as set forth in this Complaint.

303. Detained Clients have suffered and will imminently suffer irreparable injury as a result of Defendants' policies, practices, and failures to act and are entitled to injunctive relief to avoid any further injury.

#### **SEVENTH CLAIM FOR RELIEF**

**Violation of Rehabilitation Act, 29 U.S.C. § 701 *et seq.*  
(FIRRP, AIJ, and ISLA, on behalf of their disabled clients at Florence, Krome, and Basile)**

304. Plaintiffs FIRRP, AIJ, and ISLA reallege and incorporate by reference the foregoing paragraphs and incorporate them herein by this reference.

305. Section 504 of the Rehabilitation Act provides, in relevant part, "No otherwise qualified individual with a disability in the United States . . . shall, solely by reason of her or his disability, be . . . denied the benefits of . . . any program or activity receiving Federal financial assistance . . . ." 29 U.S.C. § 794(a). Section 504 applies to "individual[s] with a disability." *See* 29 U.S.C. § 705(20)(B). The Supreme Court has framed this as an affirmative obligation and has



indicated that the relevant inquiry under the Rehabilitation Act for determining if discrimination has occurred is whether meaningful access has been provided to individuals with disabilities.

306. FIRRP's, AIJ's, and ISLA's Detained Clients with Disabilities are covered by the Rehabilitation Act. They have been found by a qualified mental health provider to have a serious mental disorder or condition. These Detained Clients with Disabilities have physical or mental impairments which substantially limit their life activity and make access to counsel to assist them all the more critical. This finding by a qualified mental health provider also serves as a record of such an impairment and indicates that they are regarded as having such an impairment. They therefore meet the requirements for coverage under the Rehabilitation Act.

307. FIRRP, AIJ's, and ISLA's Detained Clients with Disabilities are being excluded from participation in, or being denied benefits, services, programs, or other activities for which a public entity is responsible. Defendants are federal government actors and provide access to counsel as a service or benefit to disabled individuals in detention. The Detention Standards and the Constitution require Defendants to provide access to this service. Detained Clients with Disabilities are qualified to participate in this benefit, as are all individuals in ICE detention.

308. Although there are barriers to access to counsel that apply to all detained individuals in Defendants' facilities, FIRRP's, AIJ's, and ISLA's Detained Clients with Disabilities are particularly affected by their ability to access counsel *because* of their disability. Defendants' constitutional obligation to provide adequate mental and health care to individuals in ICE detention facilities includes the subsidiary requirement that Defendants know which individuals in its custody have disabilities.

309. Defendants have unlawfully excluded Detained Clients with Disabilities from, denied them the benefit of, and subjected them to discrimination on the basis of disability because

certain barriers to counsel, as discussed *supra*, have specifically and especially affected Detained Clients with Disabilities at Florence, Krome, and Basile.

310. Detained Clients with Disabilities have suffered and will imminently suffer irreparable injury as a result of Defendants' policies, practices, and omissions and are entitled to injunctive relief to avoid any further injury.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs respectfully request that the Court:

1. Issue a judgment declaring that Defendants' policies, practices, and omissions described herein violate Plaintiffs' and their clients' rights under the United States Constitution, the Administrative Procedure Act, and the Rehabilitation Act;
2. Enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting Plaintiffs and Detained Clients to the unlawful acts and omissions described herein, and issue an injunction sufficient to remedy the violations of Plaintiffs' and Detained Clients' constitutional and statutory rights, including:
  - a. An order that Defendants remove all barriers to communication between attorneys, their case-related personnel (including interpreters, notaries, experts, and social workers), and clients or prospective clients, and ensure the continual availability of effective attorney-client communication for persons in Defendants' custody;
  - b. An order that Defendants provide for free, confidential in-person and virtual communication between attorneys, their case-related personnel, and clients or prospective clients by whatever means are reasonably available as of the

time of this Complaint and by means available through future technology advances;

- c. An order that Defendants ensure timely, confidential, visits between attorneys, their case-related personnel, and clients or prospective clients, with access to telephone interpretation;
- d. An order that Defendants provide a sufficient number of private rooms for confidential visits between attorneys, their case-related personnel, and clients or prospective clients;
- e. An order that Defendants ensure that attorneys and their case-related personnel can meet with clients and prospective clients in a timely manner and without restrictions of advance notice;
- f. An order that Defendants ensure that attorneys and their case-related personnel can meet with clients and prospective clients;
- g. An order that Defendants provide private, unmonitored, unrecorded legal calls, with sufficient space and staffing;
- h. An order that Defendants ensure that attorneys and their case-related personnel are able to leave voicemail messages for their clients and prospective clients which are timely communicated to the clients or prospective clients;
- i. An order that Defendants ensure that telephones are in good working order with adequate audio connection for attorney-client communication;
- j. An order that Defendants ensure that legal calls are not interrupted by disconnections or time limits;

- k. An order that Defendants provide free telephone access for clients and prospective clients to make calls to attorneys and their case-related personnel;
- l. An order that Defendants provide free, confidential VTC access for legal calls between attorneys or case-related personnel and clients or prospective clients;
- m. An order that Defendants implement an adequate process by which attorneys and their case-related personnel can schedule legal calls, VTC calls, and visits with clients or prospective clients, including in excess of one hour;
- n. An order that Defendants will make clients or prospective clients available to participate in scheduled legal calls, VTC calls, and visits, including in excess of one hour;
- o. An order that Defendants allow use of laptops, printers, cellular phones, and similar devices in waiting and attorney-visitation rooms;
- p. An order that Defendants pre-approve interpreters in a timely manner;
- q. An order that Defendants ensure timely delivery of legal mail;
- r. An order that Defendants provide confidential fax and email systems, and any other similar technology, to allow timely exchange of legal communication, including legal documents;
- s. An order that Defendants provide reasonable accommodations for Detained Clients with Disabilities at Florence, Krome, and Basile, including allowing attorneys 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.

3. Award Plaintiffs their reasonable attorneys' fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable law.
4. Grant such other relief as the Court deems just and proper.

Respectfully submitted this 18th day of March, 2023.

/s/ Eunice H. Cho

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