October 29, 2021

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
Washington, DC 20528

Tae D. Johnson
Acting Director
Immigration and Customs Enforcement
500 12th St SW
Washington, DC 20536

Dear Secretary Mayorkas and Acting Director Johnson:

The Biden administration has made access to legal representation and access to justice a priority.[1] Despite this commitment, the Department of Homeland Security (DHS) maintains a network of immigration detention facilities where people are routinely denied access to counsel and are prevented from effectively representing themselves. The undersigned write to highlight the host of obstacles to attorney access that exist in immigration detention facilities nationwide and make recommendations to remove these obstacles. Immigration and Customs Enforcement's (ICE) Performance-Based National Detention Standards (PBNDS) and National Detention Standards (NDS) provide inadequate protections for attorney access, and ICE has failed to abide by or monitor compliance with even these inadequate standards, creating this crisis.[2] This is a national problem that must be resolved with a strong, coherent, and consistent response from DHS and ICE Headquarters.

> Ultimately, the immigration detention system is inherently flawed, unjust, and unnecessary.[3] The only way to eliminate the barriers to access to justice for people in detention is to release them. We are opposed to any accommodations that would expand ICE detention capacity. If DHS and ICE persist in incarcerating people in civil immigration detention, they must limit the number of people in detention proportionate to the access mechanisms that can be made available through the existing or reduced carceral infrastructure. If DHS and ICE cannot provide a person access to counsel and the ability to represent themself, DHS and ICE must release that person.

[1] *See* Memorandum on Restoring the Department of Justice's Access-to-Justice Function and Reinvigorating the White House Legal Aid Interagency Roundtable, 86 Fed. Reg. 27793 (May 18, 2021), https://bit.ly/2X30Ljx.
[2] DHS Office of Inspector General, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* (June 26, 2018), https://bit.ly/3FHGsJN.
[3] The immigration detention system emerged and grew primarily as a way to detain non-white immigrants. *See, e.g.*, César Cuauhtémoc García Hernández, *Migrating to Prison: America's Obsession with Locking Up Immigrants* 21-37 (2019). The system has exploded in size since the early 1980s, when Haitian migrants began arriving by boat on American shores. *See, e.g.*, Emily Kassie, *Detained: How the United States created the largest immigration detention system in the world*, The Marshall Project (Sept. 24, 2019), https://bit.ly/2ZcnHNH.

The importance of legal representation for people in immigration proceedings cannot be overstated. A person who can retain an attorney is far more likely to succeed in immigration court.[4] Yet the immigration detention system has consistently made it a struggle for people held in detention to access counsel. Between 2007 and 2012, 86% of detained people in removal proceedings were unrepresented.[5] That number has not significantly improved. In Fiscal Year 2020, 70.9% of detained individuals did not have attorneys.[6] By locating most immigration detention facilities in geographically isolated locations far from a robust legal community—especially a removal defense bar—and by limiting basic modes of communication such as confidential visitation, telephone access, video conferencing, the Internet, and email, among others, ICE makes it extraordinarily difficult for people in detention to find and retain an attorney.[7]

ICE also places burdens on attorneys trying to represent detained people, including its 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. ICE has only exacerbated these problems in recent years by establishing new immigration detention facilities in geographically isolated locations.[8] These constant and systemic barriers degrade and violate the constitutional, statutory, and regulatory rights of people in detention to due process and access to counsel.[9]

Despite multiple lawsuits in recent years,[10] complaints to the DHS Office of Civil Rights and Civil Liberties, and congressional inquiries, DHS and ICE have failed to resolve these persistent problems.

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[4] Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Pa. L. Rev. 1, 48-59 (2015), https://bit.ly/3lxUOUU [hereinafter "Eagly, *Access to Counsel*"]; American Immigration Council, *Access to Counsel in Immigration Court*, 2-3 (Sept. 2016), https://bit.ly/2YB6X2v (explaining that among detained immigrants, people with lawyers were twice as likely to obtain relief than without lawyers).

[5] Eagly, *Access to Counsel* at 4.

[6] TRACImmigration, *State and County Details on Deportation Proceedings in Immigration Court* (through August 2021), https://trac.syr.edu/phptools/immigration/nta/.

[7] Innovation Law Lab, et al., *Cut Off: How ICE Detention Facilities Block Communication* (Aug. 2021), https://bit.ly/3jEafK0.

[8] ACLU, NIJC, and Human Rights Watch, *Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration*, 20-21 (2020), https://bit.ly/3mHMWzG [hereinafter "*Justice Free Zones*"].

[9] U.S. Const. amend V; 8 U.S.C. §§ 1362; 1229a(b)(4)(A); 5 U.S.C. § 555(b); 8 C.F.R. § 1003.16(b); 8 C.F.R. § 1292.5(b).

[10] *See, e.g. Torres v. DHS*, 411 F. Supp. 3d 1036 (C.D. Cal. 2019); *S. Poverty Law Ctr. v. DHS*, No. cv-18-760, 2020 WL 3265533 (D.D.C. Jun. 17, 2020); *Lyon v. ICE*, 300 F.R.D. 628 (N.D. Cal. 2014).

The impact on people in detention is severe. Here are just two examples:

- The Immigration Justice Campaign placed the case of a man detained at the El Paso Service Processing Center (EPSPC) in Texas with a volunteer attorney at a law firm in Pittsburgh, Pennsylvania in June 2021. That attorney sent three emails to EPSPC requesting that a message be delivered to the client to call his new attorney. The attorney then learned that the client had been transferred to Otero County Processing Center (Otero) and sent two more emails to that facility requesting a call with the client. On June 28, an ICE officer claimed a message had been delivered to the client. On July 6, the client appeared before an immigration judge and stipulated to an order of deportation, seeing no way to fight his case and no way to find an attorney. That evening, the client received two of the attorney's messages and was finally able to contact her, but the damage had been done.

- The National Immigrant Justice Center (NIJC), based in Chicago, Illinois, struggled to represent a transgender woman with severe competency limitations detained at Otay Mesa Detention Center (Otay Mesa) in California. Otay Mesa will not schedule legal calls of any kind. Instead, NIJC attorneys must ask guards to pass messages to their clients. This is a significant problem, especially because many of NIJC's clients have serious competency issues. In the case of the transgender client, NIJC had to seek multiple continuances of her immigration court dates over a period of six months because they could not prepare their client for her individual hearing over the phone, especially due to her limited capacity. Among other obstacles, NIJC could not discuss her protection claims over the phone while she was in a crowded unit where she was housed with men. Altogether, she was detained for more than a year waiting for an immigration judge decision.

In Part I of this letter we will describe some of the many barriers people in detention face in accessing legal representation and representing themselves, illustrated by examples. In Part II we provide recommendations to ensure adequate access to legal representation and access to legal materials and the outside world which are necessary for pro se representation. Where used, "access to legal representation" and "access to counsel" includes access to all attorneys, paralegals, Board of Immigration Appeals-accredited representatives, volunteer legal service providers, interpreters, medical and mental health evaluators, and other experts working to evaluate, prepare, or present a detained person's legal claims. A legal call or visit includes all calls or visits intended to help prepare a detained individual's legal claim, whether or not the call or visit is with a legal representative.

I. Impediments to Legal Representation Access in Immigration Detention

Providing competent immigration representation is an extraordinarily complicated job.[11] An effective advocate must build trust with their client, ensure effective interpretation, conduct a thorough intake, explain the complex and evolving immigration laws, elicit all relevant facts—often traumatic or sensitive facts, gather supporting evidence, complete lengthy forms, draft detailed declarations, communicate with a client's family members, arrange for necessary expert evaluations, prepare testimony, and respond to emergencies as they arise. All this work must be done on the expedited timeframe of bond hearings, detained removal proceedings, and the even faster expedited removal process. It is simply impossible to do this work effectively without access to the client.

The challenge of obtaining full access to the courts (a guaranteed constitutional right) is even higher for people who cannot secure representation. Immigration law is a highly technical, complex area of law, which federal courts themselves have observed can confuse even experienced lawyers.[12] The statistics speak for themselves: detained people are ten times as likely to have a successful case outcome if represented by counsel. Only two percent of detained people without counsel have successful case outcomes.[13] Moreover, the few resources provided to detained people in facility law libraries remain woefully inadequate, even if detainees are allowed to use them in the first place.[14]

This section will discuss two categories of obstacles to access. First, we will outline obstacles to remote access—that is, access where the legal representative cannot visit the detention facility in person. Second, we will outline obstacles to in-person access. It is essential that detained people can communicate with their representatives both remotely and, whenever possible, in-person.

A. Obstacles to Remote Legal Representative Access

Remote access has always been extremely important. Immigration detention centers are frequently outside of metropolitan areas and accessible only by car. The length of time and

[11] Of course, people in immigration detention may have retained counsel for matters other than or in addition to their immigration cases. For example, they may be involved in an on-going civil litigation matter as a plaintiff or defendant that may also require them to communicate with their legal counsel regularly.
[12] *See, e.g. United States v. Aguirre-Tello*, 324 F.3d 1181, 1187 (10th Cir. 2003) ("immigration law is technical and complex to the point that it is confusing to lawyers, much less to laymen"); *Castro-O'Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1987) ("With only a small degree of hyperbole, the immigration laws have been termed 'second only to the Internal Revenue Code in complexity.'").
[13] Eagly, *Access to Counsel* at 19.
[14] *Justice Free Zones* at 29.

resources required to travel to and wait to see clients at geographically isolated detention facilities can pose an unsurmountable barrier to services by immigration attorneys and other legal service providers. Some facilities—particularly newer facilities—are so isolated that in-person visitation is effectively impossible.[15] As a result, remote representation is frequently the only option for people detained in these detention facilities. In addition, ICE frequently transfers represented clients to facilities far from their attorneys, so that telephone calls and video conferencing are necessary for continued representation. The global COVID-19 pandemic has only increased the importance of effective remote communication, as detention facilities, legal service providers and immigration practitioners have limited or eliminated in-person visits to protect detained people, staff, and the surrounding community.

1. Video Conferencing and Telephone Access

Video conference calls, where a person can see his or her attorney, are frequently the best substitute for an in-person visit. It is difficult to establish an attorney-client relationship and communicate sensitive or traumatic information when you cannot see the person to whom you are speaking. For people with certain disabilities, including hearing impaired individuals, it may be the only effective way for remote communication. Although ICE has, by contract terms, required some detention facilities to implement legal video teleconferencing calls,[16] many immigration detention facilities do not yet offer confidential legal calls by video, either by tablets or by Video Teleconferencing (VTC) equipment. Even where VTC is available, it is often expensive, subject to unreasonable time limits and poor connectivity, and not private or confidential.

Legal telephone calls from immigration detention are plagued with problems, including calls that are not confidential and lack privacy, are prohibitively expensive or technically difficult to access, are subject to suddenly dropping, and are of poor quality. At many facilities ICE or the contractor refuses to schedule or otherwise facilitate legal calls, making it difficult for people to communicate with their attorneys and access interpreters or mental health evaluators. People arriving at a new detention facility are sometimes forced to wait days or even weeks to have meaningful access to telephones.

Some examples:

- The El Paso Immigration Collaborative (EPIC) recruits pro bono attorneys to represent detained people in the El Paso area detention facilities, including the Torrance County

[15] *Justice Free Zones* at 20-21.

[16] *See, e.g.* Southern Poverty Law Center, *Practice Guide: VTC Communication with Detained Clients at Stewart Detention Center* (Sept. 6, 2016), https://bit.ly/2Z4WcWC (noting installation of VTC machines for legal calls as a contract requirement).

Detention Facility (Torrance). Staff at Torrance have repeatedly told EPIC attorneys that they simply do not have capacity to arrange legal calls—with delays that can last for one week or more. For example, a call scheduling officer stated in August 2021: "Courts are my main priority and when I get chances to make attorney calls I will get to that."

- An attorney with Legal Services of New Jersey had a client transferred from Essex County Correctional Facility in New Jersey to Glades County Detention Center (Glades) in Florida at the end of July 2021. It took the attorney approximately one month to arrange for her client to make free calls to the attorney's telephone number on a line that was not recorded. However, she is still unable to schedule calls with her client and instead has to rely on an unreliable message delivery system.

- The Immigration Detention Accountability Project (IDAP) of the Civil Rights Education and Enforcement Center (CREEC) answers calls to a free hotline available in immigration detention centers nationwide to monitor ICE compliance with the injunction in *Fraihat v. ICE*.[17] IDAP staff routinely receive reports from callers—typically people with medical vulnerabilities or need of accommodations—that they do not receive free calls for the purpose of finding an attorney, and the cost of telephone calls in detention is prohibitive for finding a removal defense attorney.

- An attorney with the University of Texas Immigration Law clinic attempted to schedule a VTC visit with a client who had recently been detained at the South Texas ICE Processing Center, commonly referred to by its location in Pearsall, Texas. A GEO staff member informed the attorney that there were no VTC visits available for two weeks—and even then availability was "tentative." ICE's webpage for Pearsall asserts that VTC appointments are available daily, 6 a.m. to 9 p.m., and can be scheduled 24 hours in advance.

- NIJC staff are frequently unable to reach their clients during their first fourteen days of detention at McHenry County Adult Correctional Facility (McHenry) in Illinois. During the pandemic, McHenry has instituted a mandatory fourteen-day quarantine period, during which detained people are only allowed out of their cells for one hour per day, every two days. This is the only time they have to make phone calls, but also to take a shower and take care of commissary. If the person is able to make a call, the call is from the common area, without any privacy. Thus, there is no way to make a confidential, private phone call while in quarantine, despite clear guidelines to the contrary.

[17] 445 F. Supp. 3d 709 (C.D. Cal. 2020).

- CREEC IDAP staff attempted to have a video call with a client detained at Krome North Service Processing Center (Krome) in Florida in September 2021. ICE provided only one option: a video call made from a tablet using the program Getting Out. The call was monitored, and the client was forced to call from a housing unit without privacy. The call connection was terrible, making it very difficult to see or hear the client.

- An attorney based in Sacramento, California, represented a man detained at Golden State Annex (GSA), approximately four hours away from any city in rural McFarland, California. The man was scared that a Mexican cartel would target him and was afraid to speak openly over the phone. The attorney could not assure her client that their conversations were private, because many times she could hear the guards speaking in the background. For this reason, the man failed to give the attorney sensitive information that would have contributed to his asylum claim, increasing his chances for a positive outcome for his case.

- ICE transferred a group of people from Clay County Jail in Brazil, Indiana, ten hours away to Kay County Detention Center (Kay) in Newkirk, Oklahoma, in January 2021. Many of the people in the group were clients or potential clients of Indiana and Chicago-area practitioners. These attorneys struggled to conduct legal intakes for the group, because Kay required signed Form G-28s to talk with clients, in clear violation of the PBNDS.

- The Refugee and Immigrant Center for Education and Legal Services (RAICES) in San Antonio, Texas faces consistent problems trying to speak to clients detained at the facility in Pearsall, Texas. For example, over the course of one month in April and May 2021, RAICES staff struggled to prepare a declaration for a Request for Reconsideration (RFR) of a negative credible fear interview for a client due to a host of communication failures at the facility. After RAICES was unable to contact the client for three days (despite prior regular calls) RAICES staff was finally about to reach their client, but the call dropped before the declaration was complete and GEO staff prohibited the client from calling back; GEO staff did not schedule a VTC call as requested; GEO staff cancelled a VTC call; and a telephone call to attempt to finalize the RFR declaration had sound quality so poor that it was difficult to hear the client. These obstacles to access delayed the submission of the clients RFR by several weeks.

- The Florence Immigrant & Refugee Rights Project (FIRRP) has difficulty conducting legal intakes at La Palma Correctional Center (La Palma) in Arizona because guards frequently cut calls short. FIRRP works to complete intakes in just twenty to thirty minutes. Yet in the first two weeks of July 2021, it was unable to complete intakes for five potential clients because their calls were cut short by La Palma staff.

- ICE transferred several clients of an attorney with Legal Services of New Jersey to Plymouth County Correctional Facility (Plymouth) in Massachusetts. The only way for clients at Plymouth to call their attorneys is from their paid accounts. One client was held in segregation multiple times during his detention, during which time the facility turned off his telephone account and there was no way for him to call his attorney, or anyone else. It was impossible to get in touch with him at all for periods of a week or more. When his attorney inquired at Plymouth about other options to speak with her client, she was told that "the policy is for attorneys to visit clients in person." Another new client was transferred to Plymouth shortly after he filed a pro se petition for review. He knew he needed to try to get counsel, but as he tells it he was unable to make outgoing calls to the lawyers on the pro bono list for weeks. He ended up missing his briefing deadline. His new attorney has entered an appearance and requested extension of the briefing schedule, but they do not know yet whether that will be granted.

2. Legal Paperwork

People in detention must have access to all necessary legal paperwork and need to sign forms and declarations in order to present their claims and to allow for legal representation. Timely access to this paperwork is essential, but detention facilities interfere by preventing access to email, refusing to accept faxed documents, slowly processing legal mail, and confiscating legal paperwork.

Some examples:

- Carolina Migrant Network is the only nonprofit in North Carolina or South Carolina that represents detained individuals free of charge. In addition to Carolina residents, the organization has taken on a significant number of cases for recent entrants, including people detained at Winn Correctional Center (Winn) in Louisiana. Winn has the lowest availability of immigration attorneys in the entire country: a recent study showed that there was one immigration attorney for every 234 detained people at Winn within a 100-mile radius of the facility.[18] Winn is so far from most immigration attorneys and legal services providers that most attorneys who serve that facility must do so remotely, but Winn will not facilitate getting legal documents to and from clients. Winn will not allow attorneys to email or fax a Form G-28, Notice of Entry of Appearance as Attorney, for signing. Instead, attorneys must mail a Form G-28 with a return self-addressed stamped envelope. It takes approximately two business weeks for Carolina Migrant Network attorneys to receive a signed Form G-28, because the facility is so geographically isolated that the postal service will not guarantee overnight mail.

[18] *Justice Free Zones* at 22.

Carolina Migrant Network attorneys need a signed Form G-28 to contact a client's deportation officer, make a parole request, or submit an RFR.

- An attorney with Mariposa Legal in Indianapolis, Indiana routinely confronts obstacles to reaching clients at Boone County Jail (Boone) in Kentucky. Those challenges include a faulty fax machine as the only mechanism for requesting client calls or visits, the facility's refusal to allow any calls on Thursdays, staff who bring the wrong person to the attorney client room, and the use of attorney-client rooms as dorms when the population level increases. Boone's mail system is particularly problematic. An attorney sent paperwork via FedEx to a client in July 2021 and the client simply never received the package. Jail staff made an "exception" and allowed the attorney to email the documents but delayed the attorney being able to file a time-sensitive Freedom of Information Act (FOIA) request by more than a week.

- An attorney at the Migrant Center for Human Rights received a copy of an asylum seeker's credible fear interview results from the Pearsall, Texas facility four weeks after the decision, so she was unable to conduct a legal consultation with the individual to determine eligibility for representation and prepare them for their hearing before the immigration judge reviewed and ordered the person deported. This is one of several cases where mail from the facility was received several weeks after the facility staff postmarked it.

- The New York Legal Assistance Group (NYLAG) represented a man detained at Orange County Correctional Facility in Goshen, New York, a town located over one drive hour from New York City. An attorney was assigned to the case three business days before the first Master Calendar Hearing (MCH) on March 2, 2021 and was ordered to file all applications for relief at the next MCH on March 18, less than three weeks later. The only method to have the client review and sign necessary paperwork was to mail records to the facility with a self-addressed stamped return envelope. The attorney mailed records by FedEx and although the package was scheduled to arrive on March 6, the client did not receive the paperwork from facility officials until March 11. The client promptly completed the paperwork, but the package was delayed and his wife drove to the facility to pick up the package. Despite giving the jail advance notice, and arriving early, his wife was forced to wait many hours to get the package.

* * *

When ICE makes remote representation unduly burdensome, it reduces the availability of counsel for all the people in that facility. For example:

- FIRRP in Arizona provides direct legal services and coordinates a robust pro bono program that places hundreds of cases with volunteer attorneys. Both programs require some remote representation, because FIRRP has offices located one hour or more away from the nearest immigration detention facilities and most volunteer attorneys are located outside of Arizona. ICE and CoreCivic refuse to schedule legal calls at two detention facilities within FIRRP's service area—the Florence Detention Center and the Central Arizona Florence Correctional Complex. Instead, they will only deliver messages to clients, which is an ineffective and unreliable way for attorneys to remain in contact with their clients. As a result, FIRRP is generally unable to place cases at these facilities with remote pro bono attorneys and has more limited capacity to take on direct representation for people detained at those two facilities.

B. Obstacles to In-Person Legal Representative Access

Where possible, in-person visits are the best way for people in detention to communicate with their legal representatives. Private, face-to-face meetings develop trust in attorney-client relationships and allow people to safely share sensitive information. ICE undermines in-person access by detaining people at facilities far from attorneys, by failing to provide private places for meetings in the facility, by providing too few attorney visiting rooms, by forcing legal visitors to wait for long periods, by prohibiting the use of laptops and cellular phones during visits, and by placing unreasonable restrictions on access by paralegals, interpreters, and medical and mental health evaluators.

Some examples:

- The University of Texas School of Law Immigration Clinic serves women detained at the T. Don Hutto Residential Center (Hutto) in Texas. Hutto's visitation space consist of four to five plastic cubicles within a large room, which are used for credible fear interviews as well as attorney-client meetings. The walls of the cubicles do not reach the ceiling. It is possible from outside to hear conversations taking place inside the cubicles, and it is completely possible to see the client, including crying and gestures. In addition, from within the cubicle, it is easy to hear outside conversations between guards or visitors, as well as prison noises, making it challenging to hear a client and a phone interpreter, where applicable. Since the start of the COVID-19 pandemic, clients sit in one plastic cubicle and the attorneys sit in another. While the cubicles are not confidential, they do create a serious sound barrier to effective conversation. Attorneys and clients must raise their voices to speak to one another, further limiting confidentiality. Phone interpretation is impossible through the plastic barrier. Two clinic students recently spoke to several women from Haiti who had experienced sexual assaults that did not get discussed at their credible fear interviews. These women had not spoken to attorneys

before the interviews, because of limits on attorney access, and so had little understanding of the process and the importance of describing their experiences fully. One woman was deported even after the students took on the case, because it took so long for legal counsel to learn about the details of the assault due to communication barriers.

- The Northwest Immigrant Rights Project (NWIRP) represents people detained at the Northwest Detention Center (NWDC) in Washington. Prior to the pandemic, when the NWDC was typically close to capacity at 1,575 beds, with seven attorney visit rooms it was common for NWIRP attorneys to wait over an hour, and sometimes several hours, to see clients.

Where ICE restricts in-person access and renders remote access ineffective, it prevents people in detention from meaningfully accessing their representatives.

II. Recommendations

The following are recommendations for ensuring adequate access to counsel and a meaningful opportunity for people to represent themselves. These recommendations are drawn from practices currently in place, piecemeal, in some detention facilities. We maintain that all these accommodations are necessary and should be standardized across all detention facilities. The undersigned reiterate that we oppose any accommodations that would expand ICE detention capacity. If a detention facility is unable to implement these recommendations, DHS and ICE must stop using the facility. If DHS and ICE cannot provide a person access to counsel and the ability to represent themself, DHS and ICE must release that person.

- Provide private, confidential, free video conferencing for legal visits to all people in immigration detention.
    - Provide confidential, private space for all legal video calls. Private means an enclosed space where nobody else can hear the conversation. Video calls made from open housing units are not private.
    - Provide confidential video teleconference (VTC) hardware and software with the capability to include an interpreter in a multi-party legal call.
    - Ensure that there are sufficient VTC consoles available to guarantee availability for confidential calls such that legal representatives can schedule video conferencing calls within 24 hours of request, and that such calls are not capped at less than 2 hours.
    - Ensure that confidential VTC legal calls are available 24 hours a day/7 days a week.

- Ensure that detained immigrants in segregation (medical, disciplinary, or administrative) have equal access to VTC legal calls. Attorney access may not be limited in retaliation or as punishment to detained people.
- Ensure that all legal VTC calls are free, regardless of whether the call is initiated by the legal representative or the detained person and not limited to calls with a subset of legal service providers.
- Ensure that no Form G-28, Notice of Entry of Appearance as Attorney, is required to arrange a VTC legal visit.[19]
- In addition, ensure that there are sufficient tablets with multi-party video call and email capabilities such that legal representatives can schedule confidential legal video calls within 24 hours of request, and that such calls are not capped at less than 2 hours. Ensure that those tablets function properly and have adequate connectivity. Ensure that all legal calls made on a tablet can occur in a confidential, private space.

- Ensure timely access to private, confidential, free legal phone calls of unlimited duration and adequate quality.
  - ICE must ensure the facilitation of legal calls, to ensure that detained individuals are able to speak to their attorneys at prearranged times, in private locations, on free and unmonitored telephone lines. Calls should be scheduled and facilitated in a manner similar to in-person visitations. A request to schedule a call shall be honored if made 24 hours in advance (and sooner if urgent).
  - Ensure that all legal calls are free – regardless of indigency metrics and not limited to calls to a subset of legal service providers.
  - Ensure that all calls with legal representatives are private, unmonitored, and confidential regardless of who initiates the call. Private means an enclosed space where nobody else can hear the conversation. Privacy panels (side partitions) do not provide privacy. Telephone calls from open housing units are not private.
    - If the facility requires lines be designated "legal" to be unrecorded and/or unmonitored, ensure that the process to designate a legal line allows for quick approval (within 24 hours), and is easy, publicly distributed, and applicable for all individuals providing legal representation, including non-attorneys.
    - OR ensure that the detention facility has sufficient designated legal phone lines.
  - Ensure sufficient telephone lines and space for confidential legal calls for all detained people such that legal representatives can schedule legal calls within 24 hours of request, and that such calls are not capped at less than 2 hours.

[19] As a reminder, attorneys may be seeking access to detained individuals to assist them with civil or criminal matters unrelated to their on-going immigration case.

- Ensure that detained people can make telephone calls within 24 hours of admission to a facility.
- Provide telephone access for legal calls 24 hours a day/7 days a week.
- Ensure that attorney messages are promptly (within 2 hours) delivered to detained individuals.
- Ensure that detained immigrants in segregation or isolation units (medical, administrative, or disciplinary) have equal access to legal calls. Attorney access may not be limited in retaliation or as punishment to detained people.
- Remove the positive-acceptance requirement so detained immigrants can leave a voicemail message. A positive-acceptance requirement means a person must answer the phone in order for the caller to complete a call. When a person does not answer the phone but is instead directed to a phone tree or voicemail, the call automatically disconnects.
- Ensure that all legal calls allow the inclusion of a third-party line to allow for interpretation.
- Allow for international legal calls upon request.
- Maintain phones in working order, including reasonable sound quality. ICE must fix broken phones within 48 hours.
- Ensure that no Form G-28, Notice of Entry of Appearance as Attorney is required to schedule or conduct a legal telephone call.

- Ensure that people who require accommodations under the Americans with Disabilities Act (ADA) and the Rehabilitation Act have equal to access to legal representatives and to the outside world.
    - Ensure that each facility implements a system for affirmatively identifying detained people who require accommodations within 24 hours of their admission to the facility and for ongoing monitoring to identify accommodation needs. The system must track all requests for accommodations, whether or not an accommodation is provided in response to each accommodation request, and accommodations made for each person detained at the facility.
    - Ensure that Deaf people have equal access to video calls as hearing people have access to telephones and other means of remote communication, consistent with the other recommendations in this letter.
    - Ensure that a video relay service is available to connect Deaf people with interpreters 24 hours a day/7 days a week. Text Telephones (TTY) do not provide adequate access to counsel.
    - Ensure that video calls are of sufficient quality so that a Deaf person is able to communicate through an interpreter.
    - Provide a captioner service for detained people who are hard of hearing. A captioner simultaneously transcribes the words of the speaker.
- Ensure timely, confidential access to legal paperwork.

- Ensure that people in detention retain all legal paperwork in their housing unit. Legal paperwork includes any paperwork related to immigration matters, criminal matters, civil matters, and any other paperwork relating to a legal or court process.
- Ensure that mail for detained people is timely processed and distributed. Mail marked as legal should be provided to the detained person within 24 hours of receipt by the facility.
- Ensure that mail from detained people is mailed the same day so long as the person provides it to facility staff before a clearly posted mail time, Monday through Saturday.
- Ensure that ICE/guards open legal mail only in the detained individual's presence.
- Ensure that detained people do not need to pay to send out legal mail, regardless of indigency metrics.
- Allow detained individuals access to email and fax for legal communication. Provide the necessary technology to review, sign, and return legal documents by email and fax.
- Ensure that detained people in segregation or isolation (medical, administrative, or disciplinary) have equal access to legal paperwork. Attorney access may not be limited in retaliation or as punishment to detained people.
- Post on the ICE webpage for each facility clear, up-to-date instructions for obtaining a copy of a detained person's medical records and disciplinary file. Standardize this process to the extent possible across all facilities.

- Ensure meaningful access to private, confidential in-person visitation with legal representatives.
  - Ensure that all legal visits occur in visitation rooms that are enclosed and sound-proof.
  - Ensure that legal visitation rooms are of sufficient size to hold multiple people and wheelchairs. Ensure that there is no limit on the number of people who may attend a legal visit so long as those people can fit in a legal visitation room.
  - Ensure that there are sufficient enclosed and sound-proof legal visitation rooms to guarantee that legal representatives can schedule in-person visits within 24 hours of request, and that such visits are not capped at less than 2 hours.
  - Ensure that legal visitation is allowed at any time during weekdays and on weekends at least between 7 am and 8 pm.
  - Ensure that attorneys with appointments do not wait more than 20 minutes between arrival at the facility and meeting their clients in a private legal visitation room, inclusive of check-in time, time spent waiting to go to the attorney room, and time waiting for the client to be brought to the visit.
    - Make count and shift-change schedules available upon request.

- Ensure that all legal visits are "contact visits" unless either the detained person or the legal representative requests a no-contact visit.
- Ensure that any visual monitoring of in-person legal visits does not interfere with the privacy and confidentiality of the visit.
- Permit access and adequate space for "know your rights" presentations in addition to individual visits.
- Ensure that non-attorney legal representatives, including paralegals and BIA-accredited representatives, are allowed in-person access equal to attorney legal representatives.
- Ensure that interpreters accompanying attorneys and legal representatives have in-person access equal to attorneys for the purpose of legal consultations.
- Ensure that the process for approval to allow a medical or mental health expert evaluator and interpreter to enter the facility is simple and publicly posted and results in an approval (or denial) within 24 hours. An interpreter will not be required to submit interpreter credentials to obtain approval to enter the facility.
- After an initial approval to enter a facility, ensure that an interpreter may enter the facility along with a legal representative without needing to seek advance permission.
- Provide free, confidential telephonic interpreter services for all in-person legal visits in addition to in-person interpreter access. Equip all legal visitation rooms with a phone and an outside line and a speaker phone.
- Allow any legal representative, interpreter, or evaluator to bring a laptop and telephone into and to use them in visitation rooms.
- Ensure that detained people in segregation or isolation (including medical, administrative, or disciplinary) have equal access to in-person legal visitation.
- Ensure that no Form G-28, Notice of Entry of Appearance as Attorney is required for an in-person legal visit.

- Coordinate with the Executive Office for Immigration Review and ensure that detained people can privately communicate with their representatives immediately before, during, and after all VTC immigration court hearings. Ensure that people proceeding pro se may confidentially submit documentation to immigration court on the day of a VTC hearing.
- Ensure that the processes for attorney access are clear, accurate, available to all detained people in a language they understand, and publicly posted, including near the telephones and VTC consoles.
    - Ensure that ICE provides people they detain a copy of the ICE National Detainee Handbook and the handbook of the facility where the person will be held at the moment Form I-286, Notice of Custody Determination is completed.

- Publicly post in all dorm rooms and include in every detainee handbook instructions for (a) arranging a legal visit by videoconference and (b) arranging a free, private, confidential legal call.
    - These instructions should be simple, easily understood, accurate and up-to-date, and at a minimum, translated into the following 10 languages: (1) English, (2) Spanish, (3) Mandarin, (4) Portuguese, (5) Haitian Creole, (6) Hindi, (7) Urdu, (8) Arabic, (9) French, (10) Swahili, and (11) Tagalog.
    - ICE shall provide interpretation services for detained people who do not speak any of the 10 languages listed above.
    - ICE shall insure that these instructions are orally communicated in a language the detained person can understand where the person cannot see or read.
    - Include the name and contact information for a staff member or ICE officer responsible for assisting detained people with attorney access.
  - Post on the ICE website for each facility accurate and up-to-date instructions for arranging (a) a legal visit by video conference consistent with the demands listed above, (b) a legal call consistent with the demands listed above, (c) an in-person legal visit consistent with the demands listed above, (d) instructions for sending legal mail; and (e) instructions for sending and receiving secure legal messages by email or fax. Standardize these processes across all facilities.
  - Create and publicly post on the ICE facility webpage a process for timely updating the local list of free legal service providers available to people detained in each facility.
- Prohibit the transfer of already-represented individuals and individuals eligible for free local representation to facilities more than 100 miles from local counsel except in extraordinary circumstances. If a transfer does occur, ICE must notify the attorney or legal representative at least 72 hours in advance of the transfer, provide the attorney or representative with the address and contact information of the new facility, and ensure that the detained person is able to contact his or her representative within 24 hours of transfer.
- Ensure that legal representatives can timely communicate with ICE Deportation Officers (DOs) assigned to their clients' cases, including by providing a way for attorneys to identify and contact the relevant DO and mandating that DOs respond to communications within 24 hours (unless there is an emergency that requires immediate response).
- Ensure that staff at each detention facility are adequately trained to render all attorney access recommendations operational. Staff must be trained on these standards within 7 days of starting a position at the facility, and must receive refresher trainings at least once a year. DHS/ICE must preserve records for 10 years from when these trainings

were offered, which must indicate who provided the training, the content of the training, and who attended the training.

- Ensure adequate internal monitoring and technical support as well as external oversight of attorney access by third-party monitors to assess and track the implementation of these suggested reforms.
    - Require that each facility have available at all times a staff member responsible for timely resolving any technical issues that arise with video conferencing, telephone access, internet access, tablets, email, and any other means of ensuring adequate attorney access. The name and contact information should be listed on the ICE website for the facility.
    - Designate ICE officers responsible for facilitating attorney access at each facility. ICE must designate sufficient officers so that there is always an officer available to address attorney access issues as they arise and receive complaints. The names and contact information for those ICE officers should be listed on the ICE website for the facility.
    - Ensure rigorous review of each facility by a subject-matter qualified and experienced third-party monitor every 3 months. A facility that fails to comply with these requirements upon review by the subject-matter expert shall be given a rating of "deficient" for purposes of the facility's annual inspection.

We look forward to your careful review of this letter and your consideration of its recommendations. We hope to have opportunity to discuss this matter further. Please contact Jorge Loweree, jloweree@immcouncil.org and (202) 507-7543, and Eunice Cho, echo@aclu.org and (202) 548-6616, to arrange a meeting.

Sincerely,

Aldea - The People's Justice Center
American Civil Liberties Union
American Gateways
American Immigration Council
American Immigration Lawyers Association
Americans for Immigrant Justice
Amnesty International USA
Bellevue Program for Survivors of Torture
Boston University Immigrants' Rights and Human Trafficking Program
Bridges Faith Initiative
California Collaborative for Immigrant Justice (CCIJ)
California Rural Legal Assistance Foundation (CRLA Foundation)
Cameroon Advocacy Network

Capital Area Immigrants' Rights Coalition (CAIR Coalition)
Carolina Migrant Network
Casa San Jose
Catholic Charities of Southern New Mexico
Center for Gender & Refugee Studies
Church World Service
Civil Rights Education and Enforcement Center
Cleveland Jobs with Justice
Colorado Asylum Center
Columbia Law School Immigrants' Rights Clinic
Cornell Law School Asylum and Convention Against Torture Appellate Clinic
Daniel M. Kowalski, Bender's Immigration Bulletin (LexisNexis)*
Denise Gilman, University of Texas School of Law Immigration Clinic*
Elissa Steglich, University of Texas School of Law Immigration Clinic*
El Paso Immigration Collaborative (EPIC)
Envision Freedom Fund
Families for Freedom
Fatma Marouf, Texas A&M Immigrant Rights Clinic*
Florence Immigrant & Refugee Rights Project
Freedom for Immigrants
Haitian Bridge Alliance
Harvard Immigration and Refugee Clinical Program
Houston Immigration Legal Services Collaborative
Human Rights First
Immigrant Action Alliance
Immigrant and Non-Citizen Rights Clinic, CUNY School of Law
Immigrant Legal Advocacy Project
Immigration Equality
Immigration Hub
Immigration Services and Legal Advocacy (ISLA)
Innovation Law Lab
Interfaith Community for Detained Immigrants
Jackson Heights Immigrant Solidarity Network
Jewish Activists for Immigration Justice of Western MA
Jewish Family & Community Services - East Bay
La Resistencia
Las Americas Immigrant Advocacy Center
Latin America Working Group (LAWG)
Legal Aid Justice Center
Louisiana Advocates for Immigrants in Detention
Mariposa Legal, program of COMMON Foundation

Migrant Center for Human Rights
Mississippi Center for Justice
Mothers and Others, Justice and Mercy for Immigrants
National Immigrant Justice Center
National Immigration Law Center
National Immigration Litigation Alliance
National Immigration Project
National Network for Immigrant and Refugee Rights
NETWORK Lobby for Catholic Social Justice
New Haven Legal Assistance Association
New York Immigration Coalition
New York Legal Assistance Group (NYLAG)
Northwest Immigrant Rights Project
Oasis Legal Services
Opening Doors, Inc.
Pangea Legal Services
Prisoners' Legal Services of MA
RAICES
Rainbow Beginnings
Rapid Defense Network (RDN)
Robert F. Kennedy Human Rights
Rocky Mountain Immigrant Advocacy Network (RMIAN)
ROC-Ubuntu
SB County Immigrant Legal Defense Center
Showing Up for Racial Justice (SURJ) NYC
Southern Poverty Law Center
Tahirih Justice Center
The Legal Aid Society (New York)
Transgender Law Center
UCSF Health and Human Rights Initiative
UndocuBlack Network
Witness at the Border
Women's Refugee Commission
Young Center for Immigrant Children's Rights

*Affiliation for identification purposes only

cc. Timothy Perry, Chief of Staff
Corey Price, Executive Associate Director, Enforcement and Removal Operations

Kerry E. Doyle, Principal Legal Advisor
Deborah Fleischaker, Assistant Director for Policy
Claire Trickler-McNulty, Assistant Director, Office of Immigration Program Evaluation
Eva Millona, Assistant Secretary, Office of Partnership and Engagement
David Gersten, Acting Ombudsman for Immigration Detention
Katherine Culliton-González, Officer for Civil Rights & Civil Liberties
Angela Kelley, Senior Counselor to the Secretary
Charanya Krishnaswami, Senior Counselor to the Secretary
Royce B. Murray, Counselor to the Secretary
Esther Olavarria, Deputy Director of the Domestic Policy Council