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July 13, 2017

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Re: Attorney Access at Stewart Detention Center

Dear Sirs:

On April 10, 2017, Southern Poverty Law Center (SPLC) attorneys Daniel Werner and Laura Rivera met with Stewart Detention Center management to address attorney visitation policies at the facility. They discussed SPLC's new *pro bono* representation project for immigrant detainees at Stewart with Warden Spivey and his staff, and requested that Immigration and Customs Enforcement ("ICE") and CoreCivic address expected barriers to

attorney access at the facility. At Warden Spivey's request, Mr. Werner sent a follow-up email on April 13, 2017 requesting specific improvements in the Stewart Detention Center attorney access protocols designed to provide meaningful attorney-client access. In the 90 days since, neither CoreCivic nor ICE has made any substantive modifications to the access protocols.

We write now because current policies and practices at Stewart continue to "unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts," *Procunier v. Martinez*, 416 U.S. 396, 419 (1974), in violation of detainees' due process rights. We request immediate remedies.

It is "well established" that immigrants have the right to counsel at their own expense, including *pro bono* counsel, in immigration proceedings. *Dakane v. U.S. Attorney General*, 399 F.3d 1269, 1273 (11th Cir. 2005); 8 U.S.C. § 1362; 29 U.S.C. § 1229a(b)(4)(A) (recognizing due process right to counsel at detainee's expense); *see generally Reno v. Flores*, 507 U.S. 292, 306 (1993). Notably, immigration detention is civil detention, and is not criminal in nature. *See, e.g. Edwards v. Johnson*, 209 F.3d 772, 778 (5th Cir. 2000). Restrictions on detainees may thus be invalid if officials have "exaggerated their response" to legitimate governmental concerns. *Bell v. Wolfish*, 441 U.S. 520, 540 n.23 (1979). Immigration detention facilities may not "unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts," in violation of detainees' due process rights. *Procunier*, 416 U.S. at 419; *Nunez v. Boldin*, 537 F. Supp. 578, 582 (S.D. Tex. 1982) ("requirement of access to courts and counsel extends to civil matters as well as criminal proceedings"). These impediments are further compounded by the difficulties faced by detainees in securing and communicating with counsel, given Stewart's location in a "remote area[] lacking attorneys with experience in immigration law," and "individuals able to act as translators." *Louis v. Meissner*, 530 F. Supp. 924, 926 (S.D. Fla. 1981).

#### I. Barriers to Legal Representation at the Stewart Detention Center.

Significant barriers exist for immigrant detainees to access counsel and the courts at Stewart Detention Center. Stewart Detention Center is remotely located from the majority of legal resources in Georgia: Lumpkin is nearly 150 miles from Atlanta. There is only one immigration attorney with an office based in Lumpkin, Georgia (with the exception of SPLC's new initiative). Travel from Atlanta to Lumpkin takes approximately two and one-half hours by car, meaning that an Atlanta-based attorney who needs to meet with a client must travel for at least five hours to make the round trip. As a recent national study revealed, only 6 percent of detainees at Stewart Detention Center were represented by counsel between 2007 and 2012, in contrast to a 14 percent representation rate of all detained individuals, and a 37 percent representation rate of all immigrants in removal proceedings nationwide.<sup>1</sup>

In light of these poor rates of representation, SPLC has launched the Southeast Immigrant Freedom Initiative ("SIFI") to expand access to legal representation for detained immigrants at Stewart. Through SIFI, *pro bono* attorneys, principally from major national law firms, as well as attorney-supervised law students and interpreters, take week-long shifts at

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<sup>1</sup> Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 7, 38 (2015).



Stewart to conduct intakes and provide legal representation to detainees under the supervision of SIFI's staff immigration attorneys. To ensure that attorneys reach as many detainees in need of assistance as possible, and depending on the status of pending cases, SIFI sends groups of *pro bono* attorneys, law students, and interpreters to Stewart to conduct concurrent daily legal visits. For example, this week, thirteen attorneys and law students each intend to conduct multiple client interviews and meetings. If there were adequate facilities at Stewart, there are weeks when *pro bono* attorneys and law students could conduct as many as 50-intakes and other client meetings per day to prepare for representation in immigration court.

A. Insufficient Attorney-Client Meeting Rooms.

Stewart Detention Center is one of the largest immigrant detention centers in the United States, with the capacity to house over 1900 detainees per day, all of whom effectively are in a pre-trial posture (awaiting hearings or final disposition of their case). However, there are only three attorney visitation rooms at Lumpkin. The lack of sufficient attorney-client meeting rooms has significant consequences for detained immigrants and their attorneys. For example:

- SIFI attorneys have spent hours waiting for an available room to meet with their clients. This has resulted in over 150 hours, or an equivalent of over \$30,000, in lost attorney time in the 2.5 months SIFI has been operating at Stewart.
- Because of limited space for attorney visits, attorney-client meetings are sometimes limited to one hour. While that may be sufficient for some perfunctory meetings, it is not sufficient for most substantive attorney-client meetings, particularly if interpretation is required. This leads to the situation where an attorney may wait for hours to see a client, only to be forced to return on another day because the meeting could not be completed.
- Stewart Detention Center recently changed its practice regarding attorney visits prior to morning hearings. In the past, attorneys representing clients at 10 a.m. hearings were allowed to visit with their clients between 6:00 a.m. and 7:45 a.m. Under the new policy, attorneys may only visit clients after 8:00 a.m., which is roughly when count occurs at the detention center. This later start time combined with visitation delays from morning count often means that attorneys have no more than a few minutes to meet with their clients before court hearings. This is wholly inadequate.

The delays resulting from the lack of sufficient space and meeting times for attorney visitation deny detainees meaningful access to counsel and hinder efforts to pursue legal claims. Particularly in combination with the other obstructions, these delays constitute a clear violation of detainees' due process rights. *See, e.g. Benjamin v. Kerik*, 102 F. Supp.2d 157 (S.D.N.Y. 2000), *aff'd Benjamin v. Fraser*, 264 F.3d 175, 187 (2d Cir. 2001) (concluding that wait of 45 minutes to two hours infringed right of access to counsel); *Johnson-El v. Schoemehl*, 878 F.2d 1043, 1052 (8th Cir. 1989) (prison policy resulting in delays to speak with counsel, including meetings in the open, was unconstitutional); *Wolfish v. Levi*, 573 F.2d 118, 133 (2d Cir. 1978) (affirming judgment requiring additional time and facilities for attorney visitation in light of long delays).



The limited number of attorney-client meeting rooms at Stewart, as well as barriers to access to counsel, is particularly severe when compared with conditions at correctional facilities in the region. For example, the nearby Muscogee County Jail in Columbus, Georgia, has nineteen contact attorney meeting rooms in a facility that houses fewer than 1,000 prisoners; additional non-contact attorney visitation rooms are available. Public defenders have access to confidential video teleconferencing with clients; and prisoners represented by both public defenders and private attorneys have access to free confidential emails to their attorneys.<sup>2</sup>

#### B. Inadequacy of the Non-Contact Attorney-Client Meeting Rooms.

A plexi-glass window separates detainees from their attorneys in each visitation room, with a small slot to pass documents back and forth. The detainee and attorney must communicate with each other through a closed circuit telephone, often with the assistance of an interpreter.

Generally, non-contact attorney-client visitation policies “will not be upheld if they unnecessarily abridge the defendant’s meaningful access to his attorney and the courts.” *Mann v. Reynolds*, 46 F.3d 1055, 1061 (10th Cir. 1995); *see also Ching v. Lewis*, 895 F.2d 608, 610 (9th Cir. 1990) (“a prisoner’s right of access to the courts includes contact visitation with his counsel”); *Lopez v. Cook*, No. 2:03-CV-1605 KJM DAD, 2014 WL 1488518, at \*4 (E.D. Cal. Apr. 15, 2014) (“In light of the court’s conclusion that the prison has not adequately shown an adverse impact on internal security, the refusal to allow plaintiff to have a contact visit with his counsel is a disproportionate response to any security or logistic concerns.”).

The inadequacy of non-contact attorney-client meeting rooms at Stewart is particularly pronounced because interpretation is required in the vast majority of attorney-client meetings with detainees. For the following reasons, this makes language interpretation very challenging, and in some circumstances impossible:

- Because only one person can be heard at a time, either the attorney or the interpreter must yell through the slot in the barrier to be heard. The conversations therefore are audible outside the meeting room and in adjoining rooms, thereby compromising the attorney-client privilege.
- Where an in-person interpreter is not available, a detainee cannot communicate with his or her attorney because Stewart Detention Center security staff do not allow attorneys to bring laptop computers, tablets, or mobile phones – which could be used to call a language line service – into the attorney-client meeting rooms.<sup>3</sup>

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<sup>2</sup> Muscogee County Sheriff’s Office, Inmate Handbook, Muscogee County Jail (2017).

<sup>3</sup> Although Stewart Detention Center offers two video teleconferencing computers for attorney-client meetings, this cannot be a substitute for in-person meetings. First, attorneys frequently need to review documents with clients and have clients sign documents. This cannot be done over video teleconference (or in a non-contact meeting space with no means to pass documents between the attorney and the client). Further, while video teleconferencing meetings can be helpful for remote attorneys who need to communicate with their clients about discrete subjects not requiring review of documents, the SIFI *pro bono* attorneys are in Lumpkin and seek to meet in person with SIFI’s clients.

The Performance Based National Detention Standards 2011 (“PBNDS”), which set minimum standards for conditions of confinement for immigrant detainees, and which apply to Stewart Detention Center, provide that facilities should provide accommodations to facilitate detainees’ access to counsel. For example, PBNDS § 5.7(J)(9) provides that:

visits between legal representatives or legal assistants and an individual detainee are confidential and shall not be subject to auditory supervision. Private consultation rooms shall be available for such meetings . . . . When a situation arises in which private conference rooms are in use and the attorney wishes to meet in a regular or alternate visiting room, the request shall be accommodated to the extent practicable. Such meetings shall be afforded the greatest possible degree of privacy under the circumstances.

In addition, PBNDS § 5.7(II)(10) underscores the importance of greater access to detainees “with disabilities and detainees who are limited in their English proficiency (LEP).” The Section provides for accommodations, such as “telephone handset amplifiers, telephones compatible with hearing aids, . . . interpreters, and note takers, as needed. The facility will also provide detainees who are [limited English proficient] with language assistance, including bilingual staff or professional interpretation and translation services, to provide them with meaningful access to its programs and activities.” PBNDS § 5.7 includes no restrictions on the use of electronic devices, such as telephone language access lines, to facilitate greater communication.

#### C. Improper Prohibition of Electronic Devices During Attorney-Client Meetings.

As discussed above, attorneys are not permitted to bring laptop computers, tablets, or mobile phones into the attorney-client meeting rooms. Access to electronics is critical to the modern practice of law. For example, attorneys use digital tools to enter and access client files and information, to conduct live legal research during client meetings, take digital notes, and potentially to access language line services. SIFI’s leadership has offered (1) to bring in laptops without cameras; and (2) to use a consistent set of preregistered tablets, which security personnel would have the opportunity to physically inspect before each attorney-client visit. Stewart Detention Center’s Chief of Security has rejected both proposals.

Other detention centers, including the South Texas Family Residential Center in Dilley, Texas; the Aurora Detention Facility in Aurora, Colorado; the Cibola County Correctional Center in Milan, New Mexico; and the Central Arizona Detention Center in Florence, Arizona allow attorneys to bring in electronic devices. There is no legitimate security reason why attorneys cannot be permitted to bring electronic devices into client meetings at Stewart.



### III. Demand for Remedial Measures.

SPLC requests the following remedial measures. We believe that these measures limit disruption and burden on facility administration, while ensuring that detainees have meaningful access to counsel:

- Attorney-client meeting space with room for six to eight attorneys and two to four interpreters to conduct in-person contact attorney-client visits;
- Implementation of procedures to ensure that attorneys are not required to wait more than 30 minutes to meet clients;
- Attorney-client visitation between 6:00 a.m. and 7:45 a.m. for attorneys representing clients at hearings at hearings scheduled at 10:00 a.m. or earlier;
- If the attorney-client meeting space is inside the secure perimeter of the detention center, attorneys and interpreters would be subject to the standard security screening and search procedures for attorney-client visits, without a need to attend a volunteer orientation training of 6-8 hours, or the security clearance process, which would take 30 days or longer;
- Meeting rooms with capacity for telephonic interpretation via pre-approved, secure cellular phones, an unmonitored landline speakerphone, or Skype on a laptop or tablet;
- To protect attorney-client privilege, EOIR, ICE and detention center personnel would not have the capacity to listen to (audio) attorney-client meetings. If the meeting space has video security cameras, they will be disabled or covered during meetings, or attorneys will be permitted and able to obstruct the view of documents, screens on their electronic devices, and written notes.
- Attorneys will be able to bring electronic devices (laptops or tablets) into attorney-client meetings. Attorneys will certify that they will not use the cameras on their devices while in the facility, and any cameras will be disabled or covered for the duration of the visit. Attorneys will further certify that they are using their electronic devices in furtherance of their representation of their client(s). Attorneys will need access to outlets or a power strip for their devices.
- Attorneys will need to bring in portable wireless modems for internet access to log into the intake software and access Skype to call our language line interpretation service.

The current access protocols are wholly inadequate. They severely inhibit SIFI's clients at the Stewart Detention Center from meaningfully accessing their volunteer attorneys. It is in the interest of detainees, their attorneys, and all the stakeholders involved in the operation of the Stewart Detention Center to resolve the attorney-client access issues described in this letter without involving the courts. However, if we are unable to resolve this matter satisfactorily, we will take whatever legal action we deem necessary to protect our clients' rights.

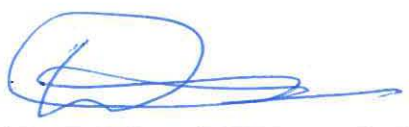
Please do not hesitate to contact me at (334) 549-0498 if you would like to discuss this further. We appreciate your cooperation.

Sincerely,



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