IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SOUTHERN POVERTY LAW CENTER,
in its individual capacity and on behalf of its clients detained at LaSalle ICE Processing Center, Irwin County Detention Center, and Stewart Detention Center
400 Washington Ave.
Montgomery, AL 36104;

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY
3801 Nebraska Ave., NW
Washington, DC 20016;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
500 12th St., SW
Washington, DC 20536;

KIRSTJEN NIELSEN, Secretary of Homeland Security, in official capacity
3801 Nebraska Ave., NW
Washington, DC 20016;

RONALD D. VITIELLO,[1] Deputy Director and Senior Official Performing the Duties of Director, U.S. Immigration and Customs Enforcement, in official capacity
500 12th St., SW
Washington, DC 20536;

MATTHEW ALBENCE, Executive Associate Director, Enforcement & Removal Operations, and Senior Official Performing the Duties of the Deputy Director, ICE
in official capacity

Civil Action No.
1.18-cv-00760-CKK

FIRST AMENDED COMPLAINT

[1] Under Federal Rule of Civil Procedure 25(d), Mr. Vitiello is substituted for Mr. Thomas Homan as a defendant.

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INTRODUCTION

1.

family. Employers and communities lose valuable contributors, often with no notice, creating further dislocation. And for those who have fled their home countries more recently due to persecution, their imprisonment in the United States simply continues a cycle of trauma they sought to escape. Without legal representation, the prospects for asserting their rights and reuniting with their families are dim.

7. And yet imprisoned in such isolated settings, people often find it impossible to secure counsel. Moreover, in the rare instances where people in these rural detention centers are able to retain counsel, Defendants' policy and practice is to detain so many people in these prisons that the small number of attorney-visitation rooms makes attorney-client meetings extremely difficult—if not impossible.

8. Defendants' policies and practices create and maintain substantial barriers that prevent meaningful access to and communication with attorneys. Defendants place people in civil detention in remote prisons where attorneys are forced to wait hours to meet with a single client, where access to critically needed interpreters is restricted, where contact visitation between attorneys and clients is categorically prohibited, where people are shackled during legal visits, and where their ability to speak remotely and confidentially with their attorneys via telephone is substantially impeded or functionally non-existent.

9. After placing people in these prisons, Defendants fail to adequately monitor their agents who operate them. Despite Defendants' nondelegable constitutional duty to ensure adequate access to counsel and the courts, Defendants do little-to-nothing to prevent their agents from compounding the barriers between detainees and attorneys. Defendants are ultimately responsible for ensuring that conditions in these prisons comply with constitutional dictates; yet, due to Defendants' abdication of their monitoring and oversight duties, the agents who operate the prisons

enjoy virtual impunity for their obstructive conduct. For example, Defendants' agents unjustifiably interrupt attorney-client visits, search attorneys' legal files, deny attorney-client meetings during counts and shift changes, prevent attorneys from seeing their clients even when visitation rooms are available, frequently and arbitrarily change visitation rules, and listen in on attorney-client communications.

10. Attorneys and others providing assistance with legal representation also endure harassment for the "unpopular work" of representing these detainees. The tactics of Defendants and their agents include following legal representatives off detention center property, examining them on the side of the road, and accusing them of supporting "illegal immigration;" forcing them to remove undergarments before entering civil prisons; pressuring them to end attorney-client visits early; interrupting and interrogating them during client visits; and trapping them for hours in locked areas of the prisons.

11.

hereinafter "LaSalle"); Irwin County Detention Center in Ocilla, Georgia ("Irwin"), and Stewart Detention Center in Lumpkin, Georgia ("Stewart"). The totality of barriers to accessing and communicating with attorneys endured by detainees in these prisons deprives SPLC' s clients of their constitutional rights to access courts, to access counsel, to obtain full and fair hearings and to substantive due process, in violation of the Due Process Clause of the Fifth Amendment. In addition, Defendants' conduct violates the Administrative Procedure Act, as well as SPLC's rights under the First Amendment to represent civil detainees.

PARTIES

14. Plaintiff Southern Poverty Law Center ("SPLC") is a non-profit corporation based in Montgomery, Alabama, with offices in four other Southern states: Florida, Georgia, Louisiana, and Mississippi. SPLC is opening an office in Washington D.C. in the coming year and has already begun to staff it with undersigned counsel.

15. SPLC engages in litigation and advocacy to make equal justice and equal opportunity a reality for all, including the most vulnerable members of our society. Lawsuits brought by SPLC have challenged institutional racism and remnants of Jim Crow segregation; bankrupted white supremacist groups; and advocated for the civil rights of children, women, people with disabilities, immigrants and migrant workers, the LGBT community, prisoners, and many others who faced discrimination, abuse, and exploitation. Plaintiff SPLC also has a history of litigation and advocacy regarding the conditions of confinement for those in government custody, including immigration imprisonment. SPLC brings this litigation on behalf of itself and its clients detained at LaSalle, Irwin, and Stewart.

16. In 2017, SPLC launched the Southeast Immigrant Freedom Initiative ("SIFI")—a legal representation project that aims to provide high-quality *pro bono* legal representation and to

administration of ICE's detention policies, procedures, and operations, including those regarding the detention of noncitizens at LaSalle, Irwin, and Stewart. He is also responsible for ensuring that all individuals held in ICE custody are detained in accordance with the Constitution and all other relevant laws. Defendant Vitiello is sued in his official capacity.

25. Defendant Matthew Albence is the Executive Associate Director of ICE's Enforcement and Removal Operations ("ERO") and the Senior Official Performing the Duties of the Deputy Director of ICE. ERO enforces the nation's immigration laws, identifies and apprehends removable noncitizens, and detains and removes these individuals from the United States when necessary. ERO transports removable noncitizens from point to point, manages noncitizens in custody or in an "alternative to detention" program, provides access to legal resources (such as law textbooks, cases, and statutes) and representatives of advocacy groups, and removes individuals from the United States who have been ordered deported. Defendant Albence is sued in his official capacity.

26. Defendant Nathalie R. Asher is the Acting Executive Associate Director, Enforcement and Removal Operations. Under the supervision of Defendant Albence, she oversees ERO's enforcement of the nation's immigration laws, identifies and apprehends removable noncitizens, and detains and removes these individuals from the United States when necessary.

27. Defendant David Jennings is the Acting Assistant Director, Field Operations for Enforcement and Removal Operations. Jennings oversees 24 field office directors nationwide. He has authority over the implementation of any remedy provided by the court and is in an immediate supervisory position to oversee compliance. Defendant Jennings is sued in his official capacity.

28. Defendant Tae Johnson is the Assistant Director for Custody Management, Enforcement and Removal Operations. In this capacity, Johnson is responsible for policy and

oversight of the administrative custody of noncitizen detainees and oversees detention operations,

JURISDICTION AND VENUE

32. 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.

33. This Court has jurisdiction to enter declaratory and injunctive relief to recognize and remedy the underlying constitutional violations under 28 U.S.C. §§ 2201 and 2202 (declaratory relief), and 28 U.S.C. § 1651 (writs).

34. Personal jurisdiction and venue is proper pursuant to 28 U.S.C. § 1391(e) because one or more defendants reside in the District of Columbia, and Defendants DHS and ICE are headquartered in this District. *Starnes v. McGuire*, 512 F.2d 918, 925-26 (D.C. Cir. 1974) (where defendant federal officers are located "within the District of Columbia for purposes of personal jurisdiction, venue is properly laid").

STATEMENT OF FACTS

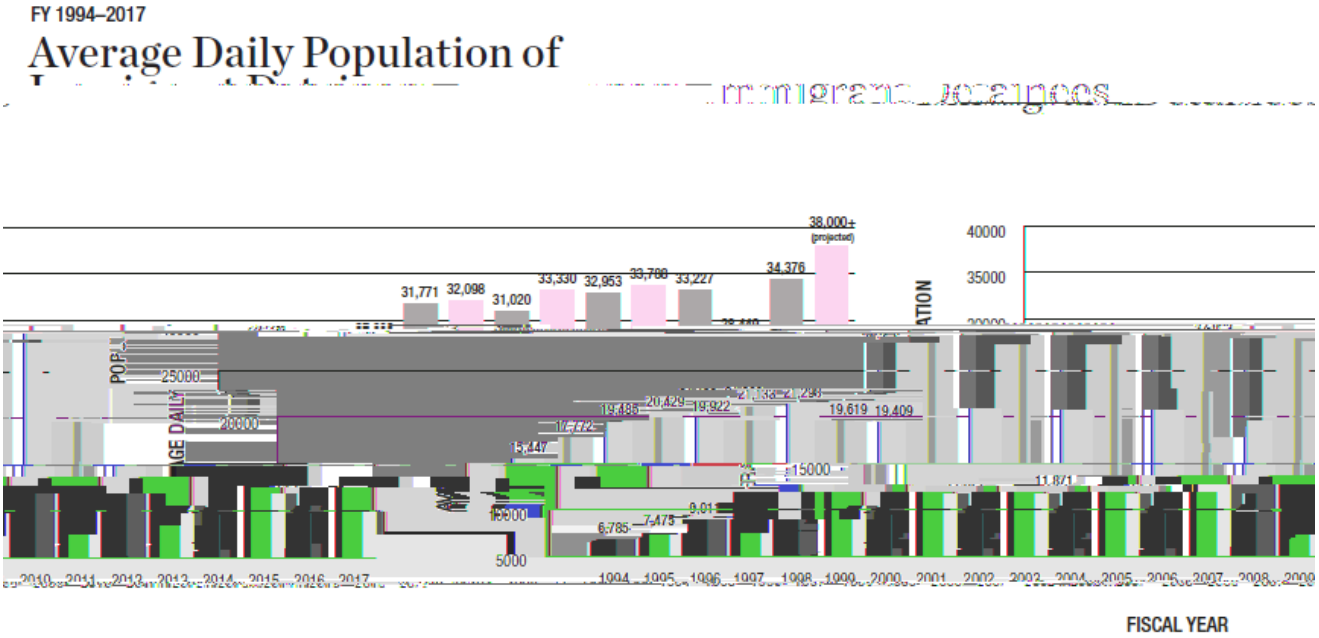
35. The United States is the world's leading incarcerator with over two million people in prisons and jails across the country. But not all of the United States' incarceration stems from our criminal justice system; the United States also maintains the world's largest immigration detention system.

36. Immigrants held in detention are not criminal detainees, but rather civil detainees who are awaiting adjudication of their immigration cases and are held pursuant to civil immigration laws. Federal custodians are, therefore, prohibited from subjecting detained immigrants to treatment that amounts to punishment.

I. THE GOVERNMENT HAS EXPONENTIALLY EXPANDED THE SCOPE OF CIVIL IMMIGRANT DETENTION DESPITE THE AVAILABILITY OF EFFECTIVE AND COST-EFFICIENT ALTERNATIVES

37. Notwithstanding that immigrants are held under civil authority that encourages release,[3] the civil incarceration of immigrants in America has followed a trajectory similar to criminal detention. In the 1980s and 1990s—as America's prison boom accelerated—mass civil detention of immigrants emerged.

38. In 1994, the U.S. government detained 6,000 noncitizens per day. By 2005, that number had grown to 20,000. Today, the government detains over 38,000 immigrants per day, or over 350,000 people each year. Defendants project that the number will increase to over 51,000 civil immigrant detainees per day in fiscal year 2018.



This graph tracks the average daily population of noncitizens held in immigration detention from FY 1994-2017.[4]

[3] *See Matter of De La Cruz*, 20 I& N Dec. 346, 349 (BIA 1991) (immigrant in removal proceedings "generally should not be detained or required to post bond pending a determination of deportability except on a finding that he is a threat to the national security or is a poor bail risk") (citing *Matter of Patel*, 15 I&N Dec. 666 (BIA 1976)).

[4] Chad C. Haddal & Alison Siskin, Cong. Research Serv., *Immigration-Related Detention: Current Legislative Issues* 12 (Jan. 27, 2010),

39. The origin of this aggressive civil detention expansion is linked to the United States' enactment of two laws in 1996—the Antiterrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigrant Reform and Immigrant Responsibility Act (IIRIRA). These laws expanded mandatory detention and also rendered any non-U.S. citizen, including legal permanent residents who committed certain offenses**,** vulnerable to detention and deportation.

40. In cases where detention is not legally required, ICE has discretion to determine whether noncitizens should be released on bond, parole, recognizance, or subject to other conditions.[5] For most people held in immigration prisons, there is no law requiring that they be imprisoned before their hearings. ICE chooses whether and where to imprison them.

41. Multiple alternatives to detention exist, and ICE's use of certain types of alternatives to detention has resulted in high rates of appearance at court proceedings—the purpose that initially drove the creation of the immigration detention system—and substantially reduced costs. Notwithstanding the availability and documented efficacy of these alternatives, ICE has significantly expanded the use of civil immigrant detention in the last decade.

42. In 2009, as part its appropriations for DHS, Congress mandated that ICE "maintain" at least 33,400 detention beds in immigration prisons across the country. ICE has construed this

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https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1712&context=key_workplace (data for FY 1994-2010); Alison Siskin, Cong. Research Serv., *Immigration-Related Detention: Current Legislative Issues* 13 (Jan. 1, 2012), https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1887&context=key_workplace (data for FY 2010-2012); U.S. Dep't of Homeland Sec., *U.S. Immigration and Customs Enforcement - Budget Overview* (2018), https://www.dhs.gov/sites/default/files/publications/CFO/17_0524_U.S._Immigration_and_Customs_Enforcement.pdf. 14 (data for FYI 2013-2016); Laura Wamsley, *As It Makes More Arrests, ICE Looks For More Detention Centers*, Nat'l Pub. Radio (Oct. 26, 2017), https://www.npr.org/sections/thetwo-way/2017/10/26/560257834/as-it-makes-more-arrests-ice-looks-for-more-detention-centers (data for FY 2017).

[5] *See* 8 C.F.R. §§ 236.1(c), 1236.1(c).

then failing to monitor or remediate the resulting constitutional violations, form the core of this complaint. These three detention centers are the LaSalle ICE Processing Center, the Irwin County Detention Center, and the Stewart Detention Center.

A. LaSalle ICE Processing Center

49. LaSalle is located in Jena, Louisiana, a city of 3,435 residents, including the noncitizens detained there. LaSalle is approximately 220 miles—a nearly four-hour drive—from New Orleans. There were no immigration attorney offices in the vicinity of Jena, Louisiana, until SPLC launched SIFI in September 2017.

50. LaSalle has capacity to hold 1,200 detainees. For context, that is one-third of the town of Jena's population.

51. Immigrant detention is the latest use of the facility, which originally opened in 1998 as the Jena Juvenile Corrections Facility. Advocacy groups reported significant civil and human rights abuses there; the United States Department of Justice announced an investigation; and the prison was closed three years later after being deemed unfit for use.

52. In 2005, the prison was repurposed to hold prisoners evacuated from New Orleans in the aftermath of Hurricane Katrina. The prison was closed down again after multiple reports of inhumane treatment at the facility.

53. In 2007, ICE selected LaSalle for a contact to hold federal imm atihe pris

54. The transition to immigration imprisonment did not save the facility from its notorious reputation—LaSalle has had the highest number of deaths of any immigration prison in the United States over the last two years.[11]

55. Defendants' policies, procedures, and practices govern the selection of the LaSalle ICE Processing Center as an immigration prison and the terms of the contracts pursuant to which it operates; the placement of ICE detainees at that prison and which detainees are selected for

counties whose jails were full. It was significantly expanded in 2007 and now has the capacity to incarcerate approximately 1,200 people.

60. In 2009, with the county deeply in debt over the expansion, Georgia's federal legislators sought federal detainees to populate the facility. According to an investigative article published in *The Nation* about the decision to place immigrant detainees at Irwin, "Initially, ICE officials seemed reluctant. E-mails obtained through open records requests showed they were concerned about the detention center's distance from legal services and ICE staff."[12] Nonetheless, ICE contracted for the housing of federal immigration detainees at Irwin and began placing them there in late 2010.

61. Irwin typically detains around 700 noncitizens. The detainees at Irwin are transported there despite its remote and inconvenient location far from ICE's administrative offices, the vast majority of immigration lawyers, and the immigration courts in Atlanta that adjudicate the cases of many Irwin detainees. In addition to people in removal proceedings, Irwin also detains individuals charged with criminal violations of federal law under the supervision of the U.S. Marshals Service and a minimal number of county detainees who have been charged with violations of state criminal law.

62. Defendants' policies, procedures, and practices govern the selection of the Irwin County Detention Center as an immigration prison and the terms of the contracts pursuant to which it operates; the placement of ICE detainees at that prison and which detainees are selected for placement there; the conditions of confinement that they endure; and, for many of them, whether and under what circumstances they are released.

[12] Hannah Rappleye & Lisa Riordan Seville, *How One Georgia Town Gambled its Future on Immigrant Detention*

63. Detainees at the Irwin County Detention Center are there pursuant to ICE's custodial authority over them as federal detainees.

64. Defendants are ultimately responsible for ensuring that the conditions at Irwin comply with constitutional and other legal requirements, including ensuring that detainees have meaningful access to legal representation. Defendants have utterly failed in that regard. Defendants are derelict in that duty because they have failed to remediate the substantial barriers that impede Irwin detainees' access to counsel.

C. Stewart County Detention Center

65. Stewart is located in Lumpkin, Georgia. Lumpkin is a small town of approximately 1,091 residents and is approximately 140 miles from Atlanta—a drive of two and a half hours. Stewart County itself is one of Georgia's least populous counties, with fewer than 6,000 residents, of whom approximately 25 percent are people held at the detention center. Lumpkin has very few businesses, no grocery store and no library. The detention center is the town's primary employer.

66. Stewart County constructed the facility in 2004. In 2006, Defendant ICE entered into a contractual arrangement whereby the facility would serve as an immigration detention center.

67. Stewart is one of the largest detention facilities in the country, with the capacity to hold nearly 2,000 men. In December 2017, the Department of Homeland Security's Office of Inspector General ("OIG") released a report entitled "Concerns about ICE Detainee Treatment and Care at Detention Facilities" that documented the results of unannounced inspect

for the administration, justification, and documentation of segregation and lock-down of detainees. ICE concurred in the OIG's recommendations that the Acting Director of ICE should ensure that ERO field offices develop a process for conducting specific reviews of the areas where deficiencies were found, and that deficiency and corrective action should be reported to ERO headquarters to ensure deficiencies are corrected.

68. Defendants' policies, procedures, and practices govern the selection of the Stewart Detention Center as an immigration prison and the terms of contracts pursuant to which it operates; the placement of ICE detainees at that prison and which detainees are selected for placement there; the conditions of confinement that they endure; and, for many of them, whether and under what circumstances they are released.

69. Detainees at the Stewart Detention Center are there pursuant to ICE's custodial authority over them as federal detainees.

70. Defendants are ultimately responsible for ensuring that the conditions at Stewart comply with constitutional and other legal requirements, including ensuring that detainees have meaningful access to legal representation.

71. Defendants have utterly failed in that regard. Since SIFI launched at Stewart in April 2017, the conditions, policies, and practices at the facility have routinely prevented detainees from accessing their attorneys and have impeded attorneys' ability to meaningfully represent detained immigrants at Stewart.

II. HIGH STAKES AND LOW REPRESENTATION RATES IN COMPLEX IMMIGRATION PROCEEDINGS PRODUCE POOR OUTCOMES FOR DETAINED IMMIGRANTS

A. Immigration Law is Complex

72. Immigration is complex and highly technical.[13] Multiple federal courts have observed that the immigration laws rival the tax laws in their complexity.[14]

73. The Supreme Court has consistently reaffirmed the "purely civil" nature of immigration proceedings.[15]

74. Civil immigration proceedings pit the government against the noncitizen in an adversarial process where each side is presumed to have the ability to represent its own interests. A DHS attorney—called the trial attorney—trained in substantive immigration law and immigration court procedures represents the government. This attorney acts as a prosecutor, and seeks to establish the noncitizen's removability.

75. Respondents—who bear the burden of proof to establish that they are statutorily entitled to immigration relief and, in many cases, merit a favorable exercise of discretion—must

[13] *See Drax v. Reno*, 338 F.3d 98, 99 (2d Cir. 2003) (referencing the "labyrinthine character of modern immigration law—a maze of hyper-technical statutes and regulations that engender waste, delay, and confusion for the Government and petitioners alike"); *Baltazar-Alcazar v. INS*, 386 F.3d 940, 947-48 (9th Cir. 2004) ("A petitioner must weave together a complex tapestry of evidence and then juxtapose and reconcile that picture with the voluminous, and not always consistent, administrative and court precedent in this changing area."); *United States v. Aguirre-Tello*, 324 F.3d 1181, 1187 (10th Cir. 2003) ("The district judge observed that immigration law is technical and complex to the point that it is confusing to lawyers, much less to laymen."), vacated, 324 F.3d 1181 (en banc); *Lok v. INS*, 548 F.2d 37, 38 (2d Cir. 1977) (Immigration laws bear a "striking resemblance …[to] King Minos's labyrinth in ancient Crete. The Tax Laws and the Immigration and Nationality Acts are examples we have cited of Congress's ingenuity in passing statutes certain to accelerate the aging process of judges").

[14] *See, e.g., 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.'") (internal quotation and citation omitted).

[15] *See, e.g., INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038 (1984); *see also Fong Yue Ting v. United States*, 149 U.S. 698, 728-29 (1893); *Li Sing v. United States*, 180 U.S. 486, 494 (1901); *Harisiades v. Shaughnessy*, 342 U.S. 580 594 (1952).

82. However, the Due Process Clause of the Fifth Amendment "indisputably affords an [noncitizen] the right to counsel of his or her own choice at his or her own expense."[19] This right to counsel is "fundamental," and courts consistently "have warned [the government] not to treat it casually."[20] The right "must be respected in substance as well as in name."[21]

83. "Th[is] right to counsel is a particularly important procedural safeguard because of the grave consequences of removal . . . [which] 'visits a great hardship on the individual and deprives him of the right to stay and work in this land of freedom.'"[22]

C. Representation and Release from Detention via Parole or Bond Significantly Impact an Immigrant's Chance of Success on the Merits of His or Her Case

84. Release from prison greatly enhances an individual's chances of prevailing in immigration court. In addition to restoring physical liberty, release facilitates a person's ability to retain and meaningfully engage with counsel. In fact, non-detained immigrants are five times more likely to obtain counsel than those who are detained.[23] Further, non-detained immigrants have a substantially greater ability to access translation and interpretation services, to gather evidence for their cases, and to derive support from family and friends throughout the process.

85. With the exception of certain individuals subject to mandatory detention, the Immigration and Nationality Act permits the release of noncitizens on their own recognizance or on bond.[24]

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[19] *Leslie v. Att'y Gen. of United States*, 611 F.3d 171, 181 (3d Cir. 2010).
[20] *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554 (9th Cir. 1990).
[21] *Baires v. INS*, 856 F.2d 89, 91 n.2 (9th Cir. 1988).
[22] *Leslie*, 611 F.3d at 181 (quoting *Bridges*, 326 U.S. at 154).
[23] Eagly & Shafer, *supra* note 2, 32.
[24] 8 U.S.C. § 1226(a)(2)(A).

86.

93. SIFI launched at Stewart in April 2017, at Irwin in August 2017, and at LaSalle in

immigrants have fled torture or other types of persecution, and they continue to suffer acute trauma while in detention, as detention exacerbates existing trauma and may cause new trauma. Although recounting their painful experiences is crucial for building a defense to removal, detained clients are routinely traumatized again in the process of recounting their experiences. Confidential contact

107. Many detainees have been targeted for persecution in the countries from which they fled, making them vulnerable to harm not only in their home countries but also at the hands of fellow detainees or guards. Without the assurance of confidentiality, detainees may be chilled from speaking about sensitive issues to their attorneys, which may detrimentally impact their cases. For example, a gay Iranian detainee, who has lived in the United States for decades, may be afraid to discuss how his sexuality will make him a target for violence if he knows that a guard or a fellow detainee can overhear his every word.

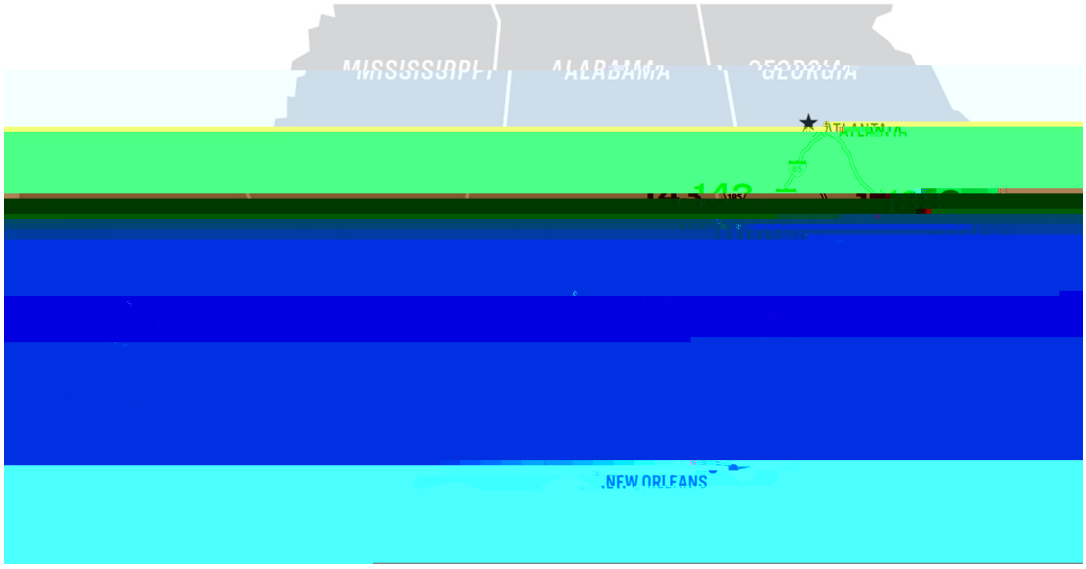
108. Adequate preparation time is crucial because clients likely will not provide their attorneys with all the information relevant to available relief at their first meeting. Some are unable or unwilling to share information immediately, even with their own attorneys, because they have suffered trauma in their home countries or on their journeys to the United States. Many are simply unaware of what information is relevant and important to share. Others need time to build trust before sharing intimate personal details that are critical to prevailing in immigration court. Language barriers and the need for interpretation can lengthen this process.

109. Confidential attorney-visitation rooms, as well as unmonitored telephone and videoconference lines, are crucial to ensure that detainees can speak openly and honestly with their attorneys and that attorneys can obtain the information necessary to effectively advise and advocate for their clients.

110. In spite of the crucial need for effective, reliable, and confidential communication between attorneys and clients, Defendants have chosen to place immigrants in prisons that structurally and operationally obstruct immigrants' access to counsel and the courts, frustrate SPLC's ability to zealously represent its clients, and preclude SPLC's clients from defending their

rationally related to a legitimate governmental objective" or that the conditions are "excessive in relation to that purpose."[42]

113. In spite of these constitutional commands, Defendants funnel tens of thousands of noncitizens into isolated prisons where they encounter substantial and often insurmountable barriers to accessing and communicating with counsel. Many of these prisons are located in rural and remote places hours away from major cities, immigration attorneys, and professional interpreters.



114. Legal representation rates are staggeringly low in large civil immigration prisons in the Southeast. Only six out of every 100 people detained at Stewart have legal representation. The same is true at LaSalle. Representation rates are also low at Irwin.

115. In the rare instances where detained people are able to obtain counsel, it is typical that legal representatives are required to travel two, three, or even four hours to these prisons, only to confront additional barriers to accessing and communicating with their clients once they arrive.

[42] *Kingsley v. Hendrickson*, 135 S. Ct. 2466, 2473–74 (2015).

116. Despite differences in the physical infrastructure at LaSalle, Irwin, and Stewart, similar barriers to accessing meaningful representation exist at all three prisons. None of the prisons has an adequate number of attorney-visitation rooms to accommodate their populations. At the time the Complaint was filed, LaSalle has one room for up to around 1,200 people; upon information and belief, this remains true today. Stewart has three rooms for approximately 1,900 people. Irwin has one room for up to approximately 1,200 people.

117. Attorneys at each prison must regularly wait in excess of an hour—and, in many cases, as long as three or four hours—to meet with their clients. As a result, attorneys often must cut meetings short or see only one client instead of several. Some attorneys do not take cases at these detention centers because they cannot lose several hours of productivity due to long waits and lengthy travel time and still provide ethical representation to all of their clients.

118.

120. While a single closed-circuit telephone is provided in some of the non-contact attorney-visitation rooms in these facilities, this mechanism impedes meaningful communication between attorney and client. Because only one phone is provided

impact the attorney-client relationship in a number of respects. First, because there is no outside phone line to conference in an interpreter, the policy effectively denies an attorney access to remote interpretation services. The use of interpreters is critically necessary for attorneys and clients to communicate effectively, especially at these remote locations where there are no nearby interpreters who can appear in person. SPLC's staff and volunteers would have the ability to contact such interpretation services if Defendants permitted at

125. Importantly, the unreasonableness of the no-electronics restriction is evidenced by the immigration detention centers across the country where attorneys are permitted to bring electronic devices to client meetings, thereby facilitating efficient representation of the client as well as contact with interpreters. Examples include those priso

A. The Totality of the Circumstances at LaSalle ICE Processing Center Violate Plaintiff's Constitutional Rights

129. LaSalle holds 1,200 civil immigration detainees, yet at the time the Complaint was filed, it had only one room for "confidential" attorney-client visits. Upon information and belief, this remains true as of the date of filing of this Amended Complaint.

130. The failure to ensure LaSalle was equipped with an adequate number of rooms for visitation is telling—Defendants clearly never planned for individuals in their custody imprisoned in isolated LaSalle to have the ability to consult with lawyers.

131. Despite Defendants' apparent assumption that few lawyers would travel several hours through rural Louisiana to represent people sent to LaSalle, the single attorney visitation room is frequently full. When the only attorney-visitation room is occupied, lawyers sometimes wait in the small lobby for hours—as no suitable confidential room is made available as an alternative despite ample office space near the attorney-visitation room.

132. The one attorney-visitation room is, in fact, not confidential. It is directly adjacent to a family-visitation room with several non-contact visitation cubicles. The attorney-visitation room is not soundproof. Confidential conversations with clients about sexual abuse, political persecution, and other sensitive topics can be overheard by guards and by people in the family-visitation room on the other side of the thin wall.

133. LaSalle conducts six counts per day, at least four of which are during attorney visitation. A visit cannot start during count, each of which lasts about 45 minutes but can last longer. A "count" is a procedure whereby prison staff members determine the whereabouts of each person at the facility. In addition to counts, shift changes stop attorney visitation. For instance, during the 6 p.m. shift change, visitation is delayed consistently for close to 45 minutes.

134.

visitation hours because there is an attorney in the visitation room meeting with a male client. For attorneys trying to visit a specific client, available visiting hours are frequently quite limited because of a combination of the gender rules, count, and shift changes.

139. The delays are often longer for clients who are being kept in segregation. The clients in segregation are often severely mentally ill. LaSalle will not bring a client being held in segregation to a visitation room if anyone else is in that room or in the adjacent family-visitation room. LaSalle only permits certain staff to transport clients held in segregation. This often causes even longer delays. An attorney could spend all day in the waiting room before being able to see a client who is held in segregation.

140. The long delays at LaSalle frequently require SPLC's staff and SIFI volunteers to cut meetings short. On occasion, SPLC's staff and volunteers also forego meetings with clients altogether out of concern that they will be forced to endure long delays that prevent them from completing other necessary legal work.

141. In isolated Jena, access to remote interpretation is crucial. Many interpreters flatly refuse to travel to LaSalle even if compensated. Due to the lack of access to interpreters, SPLC has been unable to provide representation at LaSalle to detainees who speak certain languages because there was no way to communicate with them.

142. SPLC's staff and volunteers would have the ability to contact remote interpretation services if the visitation room had a telephone or video teleconferencing, or if Defendants required their agents to permit attorneys and their staff to bring in cell phones or computers. But as a result of the restrictive policies at LaSalle, LEP clients are virtually barred from reliable access to interpretation during in-person meetings with their attorneys. Defendants do not require their fru h

VTC in immigration courtrooms and for credible fear interviews and various embassy communications.

143. VTC does not substitute for, but can complement, in-person visitation. If attorneys could use VTC at LaSalle, then SPLC—as well as other immigration practitioners—could communicate with clients through a remote interpretation service.

144. Scheduling a telephone call with a LaSalle detainee is extremely difficult and involves significant delay. Attorneys frequently call LaSalle to schedule a phone call, but their calls often go unanswered. Although LaSalle has an answering machine, messages are frequently not returned.

145. Reports vary regarding what happens after an attorney calls to schedule a phone visit, but attorneys frequently receive no response whatsoever.

146. Upon information and belief, LaSalle asserts that the policy is as follows: when a detainee requests a legal call, the request goes to the case manager, who has 72 hours to contact the a yUpo ɣ ƥ ʻ

148. Such delay can have a detrimental impact on a detainee's case, especially when the purpose of the call is to prepare for an impending hearing, finalize a court filing, or address another time-sensitive matter.

149. People who do not speak English or Spanish, and people who are severely mentally ill, often cannot understand or complete the paperwork that LaSalle requires in order to schedule a call with an attorney. For these detainees, obtaining a phone call on their own initiative is virtually impossible.

150. LaSalle limits attorney phone calls to only 20 minutes per client per day. This is a wholly insufficient amount of time to complete any substantive task. If an attorney needs to draft a client declaration, she cannot ask questions in 20 minutes that will elicit the necessary information. She also cannot advise a client regarding case strategy, explore ways to obtain evidence, obtain sufficient facts to credibly assess defenses to removal, or prepare a client for a hearing. By limiting attorney-client phone meetings to 20 minutes, LaSalle effectively prevents meaningful communication.

151. Because of the difficulty involved in scheduling an attorney call, detainees in need of urgent advice sometimes resort to monitored phone lines, which are more easily available, despite the lack of confidentiality. These calls are also limited to 20 minutes.

152. Not only is there a general dearth of interpreters within driving distance of Jena, Louisiana, there are no regularly available interpreters who are conversant in languages other than English and Spanish. In order to represent LEP clients who communicate in these languages, attorneys rely on phone interpretation services ("language lines"). Without an in-facility mechanism to access a language line, the sole avenue to communicate with these clients is by phone.

153. Yet, time spent connecting to the language line is deducted from the 20-minute time period allotted for confidential attorney-client conversations. This puts LEP clients at a significant disadvantage if they need interpreters to communicate with their counsel. Based on the experience of SPLC employees and volunteers, the use of interpreters can more than double the length of a conversation—which further restricts their ability to consult with counsel.

154. These barriers to telephonic comm

161.

be clearly overheard by employees of the detention center who often stand near or walk by the room, and by people in the nearby family visitation rooms.

166. The door on the attorney visitation room is controlled by staff in the prison's operational control room. Once it is closed, the door locks; people in the room have no ability to get out, except by attracting the attention of the guard who operates the door from the control room. There is no mechanism—like a buzzer or speakerphone—in the visitation room to facilitate communication with the control room. Thus, attorneys are relegated to waving at the guard through the control room's tinted window and knocking on the window of the visitation room. On more than one occasion, attorneys have been trapped in the room for

clients in rooms located in an area of the prison that SIFI staff and volunteers are not permitted to enter.

170. Irwin has two VTC computers that facilitate meetings between remote attorneys and their clients. VTC meetings take place from 9 a.m. to 4 p.m. with an hour-long break for lunch. While VTC has the potential to facilitate greater access to attorneys, the opportunities for client contact remain wholly insufficient.

171. VTC meetings are strictly limited to one hour, which is often an insufficient amount of time to render legal advice.

172. Mechanical issues regularly undermine basic communications during the one-hour VTC allotment.

173. SPLC's meetings with clients on VTC have frequently been interrupted, cut short, delayed by connection issues, and/or subject to other interference. In such instances, Irwin guards strictly adhere to the one-hour limitation, thereby forcing SPLC staff and volunteers to rush through their VTC conversations. On one occasion, a VTC visit was cut short because the guard who was facilitating the visit informed the attorney that she had to go to lunch.

174. Irwin fails to adequately coordinate the VTC calendar—leading to missed appointments with clients and preventing attorneys from relying on VTC as a reasonable alternative to in-person visits. Irwin guards regularly forget to initiate the VTC visit, initiate VTC visits at unscheduled times, and bring the wrong person to the VTC room.

175. VTC visitation at Irwin occurs in the law library. Upon information and belief, detainees are unable to use the law library between 9 a.m. and 4 p.m. when calls occur.

176. Guards consistently tell SPLC's staff and volunteers that they cannot take all the available VTC slots—even when the slots are not being used. By preventing SIFI from scheduling

182. The three-hour drive means that lawyers cannot meet with their clients immediately before a morning hearing. All Atlanta bond hearings take place in the morning.

183. Because attorneys are not in the same location as their clients, they cannot easily engage in confidential communications—for example, to request clarification of a factual point or advise the client on how to respond to a question from the immigration judge. To speak privately with the client, the lawyer must ask the immigration judge and trial attorney to leave the courtroom.

C. The Totality of the Circumstances at Stewart Detention Center Violate Plaintiff's Constitutional Rights

184. Although Stewart typically detains between 1,800 and 1,900 immigrants, the prison has only three attorney-visitation rooms.

185. The small number of attorney-visitation rooms relative to the number of detainees, along with inadequate staffing, means that those visitation rooms are regularly unavailable, such that SPLC attorneys and volunteers often must wait for extended periods before meeting with their clients.

186. Delays are further compounded during detainee counts and shift changes when there can be no movement, including taking attorneys to visit clients, in the facility. Stewart conducts six counts per day, at least two of which are scheduled during attorney visitation hours. Each count and shift change can take an hour or longer. On occasion, shift change and count occur back-to-back, compounding delays to see clients. As a result, counts and shift changes substantially narrow the actual attorney visitation hours. Although regular visitation hours are supposed to last until 5:00 p.m., SIFI staff and volunteers have arrived to conduct client visits prior to 5:00 p.m. only to be told that count was occurring; in some instances, count lasted until 5:00 p.m., and SIFI staff and volunteers were prevented from meeting with their clients at all. Even in instances when count was not occurring, SIFI staff and voluntee

before 5:00 pm to meet with clients but were forced to wait until 5:00 p.m., when visitation hours ended and they could no longer meet with clients.

187. SIFI staff and volunteers are thu

193. Attorneys invariably must return to the facility to see their clients in order to discuss matters that could not be addressed due to time constraints at the initial meeting. Attorneys are

197. After SPLC staff complained in 2016 that video-teleconferencing was supposed to be available under the terms of the 2014 Stewart contract, two VTC portals were installed at Stewart. However, Defendants and their agents maintain policies that obstruct clients' reliable access to VTC for the purpose of communicating with their attorneys. For example, Defendants' agents maintain a strict policy of cutting off the calls one hour after the scheduled start time regardless of need or availability. Mechanical difficulties often delay or interrupt these calls. Yet, Stewart staff refuse to replace such lost time and instead insist on strictly adheri

SPLC's resources. Recently, SIFI staff followed the longstanding procedure of faxing a letter indicating which clients a volunteer attorney intended to visit the following day. After completing some visits in the morning, the volunteer attorney returned that afternoon to conduct the remaining client visits. However, Stewart staff refused her entry, insisting that she would need to fax a second letter if she wanted to re-enter the facility. The volunteer was unable to see her remaining clients that day.

201. Similarly, during a recent set of client visits, SIFI volunteers sought to bring in business cards for their own clients as well as other indigent detainees in need of legal representation. However, Stewart guards refused to allow the SIFI volunteers to enter with any extra business cards. Guards enforce this policy with some regularity, thereby depriving unrepresented Stewart detainees of access to information that could assist them in securing crucially-needed legal counsel.

202. Stewart guards have also engaged in conduct to pressure attorneys and detainees to keep legal visits short. Recently, during a prospective client's interview with an attorney, a detainee noticed that a Stewart guard was pacing back and forth outside the attorney-visitation room. While the interview was in progress, the attorney overheard that guard state that the interview was taking too long. When the interview was finished, the same guard stated "Finally," signaling to the attorney that he should keep his remaining interview short.

203. These recent occurrences are but a few of the many instances in which Defendants' agents have engaged in conduct that frustrates detainees' effor

204. Defendants have also failed to remediate other obstructive conduct by Stewart staff. In some instances, guards at Stewart have forced SIFI staff and volunteers to wait even when there are available attorney-visitation rooms. Upon information and belief, such conduct is directed specifically and deliberately at SIFI staff and volunteers—not at other attorneys who visit the facility. In a recent incident, a volunteer interpreter arrived at Stewart with two SIFI attorneys to facilitate visits with three clients. When she walked under the metal detector, it started beeping. A guard speculated that the underwire in her bra had triggered the detector. The volunteer requested that they use the readily available and regularly used metal detection wand to clear her. The guard called for supervisory approval. After waiting for approximately 15 minutes, the volunteer asked another guard for an update on her clearance; in response, the guard asked the volunteer when she planned to change her clothes. She removed her bra in the public waiting area, passed through again, and the metal detector again beeped. She was then forced to leave the facility and change clothes before being allowed to re-enter. Although the Stewart guard refused to use the readily available wand on the SIFI volunteer, that volunteer observed the same guard using the wand on a non-SIFI visitor who set off the metal detector on that same day.

205. Guards have also interrupted attorney-client meetings at Stewart without cause. In one instance, a guard peered through the small window on the visitation door and opened the door during a client visitation, stating that he had seen the attorney showing the client a photograph. Although photographs are frequently critical pieces of evidence in removal cases, the guard interrogated the attorney about his conduct.

206. Guards at Stewart have prevented SIFI staff and volunteers from wearing scarves and from carrying CDs that containing a client's immigration court files.

207. Guards and Defendants' other agents have also inspected and commented on legal files held by attorneys and confiscated legal papers from detainees.

208. In addition, Defendants have engaged in conduct aimed at intimidating SIFI staff and volunteers. For instance, a volunteer attorney left Stewart on the morning of March 13, 2018 at about 10:15 a.m. She lawfully stopped on the side of Main Street in Lumpkin, Georgia in order to take photos of the water tower and the signage pointing to the detention center, and then returned to her car and resumed driving.

209.

211. Detained immigrants are held under the custodial authority of the Department of Homeland Security, which has been delegated to its component agency Immigration and Customs Enforcement.[43] ICE Enforcement and Removal Operations (ERO) "manages and oversees the civil immigration detention of one of the most highly transient and diverse populations of any detention or correctional system in the world."[44]

212. ERO is responsible for identifying, arresting, and removing unlawfully present immigrants. It "transports removable aliens from point to point, manages aliens in custody or in an alternative to detention program, provides access to legal resources and representatives of advocacy groups, and removes individuals from the United States who have been ordered to be deported."[45]

213. ERO has six divisions, one of which is the Custody Management Division. This division "provides policy and oversight for the administrative custody of more than 33,000

214. ERO oversees "more than 210 local and state facilities operating under inter-governmental service agreement, contract detention facilities, ICE-owned facilities and facilities operated by the Bureau of Prisons."[48]

215. Within the Custody Management Division is the ERO's Detention Management Division, which "[c]oordinates with the 24 ERO field offices to ensure a safe and secure environment for aliens within ERO custody through facility compliance, on-site monitoring, and the acquisition of detention facilities."[49]

B. Defendants Selected LaSalle, Stewart, and Irwin As Immigration Prisons

216. Defendants' accountability for unconstitutional access to courts and counsel begins with the instrumental act of contracting for the use of physical structures that—by virtue of their design—guarantee inadequate physical space for legal visitation. Upon information and belief, the decision to house immigrants in a designated facility is made by Defendants' acquisition office, located in the District of Columbia.

217. The ICE Office of Acquisition Management (OAQ), based in the District of Columbia, "negotiates and manages detention facility contracts and agreements."[50] OAQ's mission is to "deliver quality acquisition solutions in support of the ICE and DHS missions."[51] 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."[52] This office

[48] *Id*.
[49] *Id*.
[50] 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.
[51] *Office of Acquisition Management (OAQ)*, Immigration and Customs Enforcement, https://www.ice.gov/management-administration/oaq (last updated Jul. 26, 2018).
[52] *Id.*

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 headquarters in Washington, D.C.

218. Via a contract executed on July 7, 2007, ICE selected LaSalle ICE Processing Center to imprison immigration detainees. The contract is signed by an ICE Contracting Officer.

219. Upon information and belief, Defendant ICE selected LaSalle for the imprisonment of immigrants notwithstanding Defendants' knowledge of the structural barriers limiting detainees' access to counsel, such as the existence of only one attorney visitation room for approximately 1,200 total prisoners.

220.

224. Via a contract executed with the U.S. Marshal's Service on July 25, 2007, Defendant ICE selected Irwin County Detention Center to imprison ICE detainees in its custody.

225. Upon information and belief, Defendant ICE selected the Irwin County Detention Facility for the imprisonment of immigrants notwithstanding Defendants' knowledge of the structural barriers limiting detainees' access to counsel, such as the existence of only one attorney visitation r a ɤ for ɑpproximes.

226. ICE Detention Standards and the most current edition of the ACA Standards for Adult Local Detention Facilities. It explicitly requires that, in the event other standards conflict with ICE standards, the ICE standards prevail.

227. In the contract, Irwin agrees to submit to periodic inspections by federal government inspectors.

228. The contract makes clear that ICE detainees may ou ɑ ş ⅜ Ǝ Ǝ ǯ Ŏ as the

procedures related to operations, reporting, and compliance with relevant law and regulations. ICE disagreed with OIG's findings.[53]

C. Defendants Promulgated Performance-Based National Detention Standards to Govern Conditions of Confinement in Immigration Prisons

236. ICE claims that it ensures detainees in its custody reside in "safe, secure and humane environments" through an "aggressive inspections program" designed to ensure compliance with ICE's National Detention Standards. These standards were first established in 2000. The purpose of ICE's detention standards was to establish "consistent conditions of confinement, access to legal representation, and safe and secure operations across the detention system."[54] The standards exist in addition to, and do not limit, Defendants' nondelegable constitutional duties.

237. In 2008, ICE renamed the standards as the Performance Based National Detention Standards ("PBNDS"), and revised them to "more clearly delineate the results or outcomes to be accomplished by adherence to their requirements" and improve, *inter alia*, the "conditions of confinement" for detained immigrants.

238. Finally, in 2011, ICE again revised the PBNDS to improve several specific aspects of conditions of confinement, including "access to legal services . . . improve[ment of] communication with detainees with limited English proficiency" and access to visitation.[55]

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[53] DHS Office of Inspector General, *Immigration and Customs Enforcement Did Not Follow Federal Procurement Guidelines When Contracting for Detention Services* (OIG-18-53) 5 (February 2018), https://www.oig.dhs.gov/sites/default/files/assets/2018-02/OIG-18-53-Feb18.pdf.

[54] *Detention Management*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/detention-management (last updated Aug. 27, 2018).

[55] U.S. Immigration and Customs Enforcement, *Preface to Performance-Based National Detention Standards 2011* [hereinafter 2011 PBNDS], https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf. (last updated Dec. 2016).

239. The PBNDS govern the prisons ICE uses to hold civil detainees, including service processing centers, contract detention facilities, and state or local government facilities used by ERO pursuant to intergovernmental service agreements to hold detainees for more than 72 hours.

240. Defendants' PBNDS are the primary mechanism through which they execute their duty to ensure constitutional access to counsel for the thousan

representative or assistant, even when contact visitation rooms are unavailable."[61] Any written material provided to detainees during such meetings "shall be inspected but not read."[62]

244. The PBNDS additionally prohibit staff from being present in the confidential visitation area during a legal meeting, unless their presence is requested by the legal representative or assistant.[63]

245. As to legal visitation that occurs at the same time as other regular activities in the prison's daily schedule, the PBNDS provide that legal visitation may take place during scheduled meal periods, in which case detainees "shall receive a tray or sack meal after the visit."[64] Additionally, legal visits may not be terminated for routine official counts.[65]

246. The PBNDS state that "[l]egal representatives and legal assistants shall not be asked to state the legal subject matter of the meeting"[66] and "[a]ttorneys representing detainees on legal matters unrelated to immigration are not required to complete a Form G-28 [Notice of Appearance]."[67]

247. Facilities are required to allow detainees to meet with prospective legal representatives or legal assistants.[68] For these pre-representation meetings, "a legal service provider's representative need not complete a Form G-28 . . . ."[69] In addition, visitors, including attorneys and legal representatives, "are not required to file a Form G-28 to participate in a

[61] 2011 PBNDS at 5.7(V)(J)(10).
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consultation visit or provide consultation during an asylum officer interview or Immigration Judge's review of a negative credible fear determination."[70]

248. During regular legal visitation hours, legal assistants are explicitly permitted to meet alone with detainees by presenting "a letter of authorization from the legal representative under whose supervision he/she is working."[71]

249. The PBNDS encourage facilities "to provide opportunities for both contact and non-contact visitation with approved visitors during both day and evening hours."[72]

D. Defendants Fail to Monitor or Enforce Compliance with the PBNDS or Remediate Violations

250. Defendants are responsible for the issuance and enforcement of immigrant detention standards that apply to all prisons in the system; monitoring compliance with those standards through inspections, investigations and onsite supervision; and negotiating, developing and executing the contracts that designate physical structures for the detention of immigrants that comply with those standards and other applicable law.

251. These standards reflect that Defendants have no legitimate interest in maintaining obstacles that prevent detainees from accessing and communicating with attorneys. Yet, as detailed *infra*, Defendants wholly fail to enforce the PBNDS—which are specifically incorporated into ICE's management contracts for LaSalle, Irwin, and Stewart.

252. Defendants purport to fulfill their responsibility for individual prisons' adherence to the PBNDS through a system of monitoring, inspection and oversight. That system includes internal divisions and programs within ICE that are designated to ensure compliance with ICE

[70] 2011 PBNDS at 5.7(V)(K)(7).
[71] 2011 PBNDS at 5.7(V)(J)(4).
[72] 2011 PBNDS at 5.7(I)(4).

detention standards at immigrant detention facilities—including LaSalle, Irwin and Stewart. Those internal mechanisms include the Custody Management Division, Enforcement and Removal Operations, directed by Defendant Johnson, and the Detention Monitoring Program, which provides for continual monitoring by on-site ICE staff.[73]

253. According to its website, August of 2009, ICE created the Office of Detention Oversight (ODO). ODO is a unit of ICE's Office of Professional Responsibility, Inspections and Detention Oversight Division. ODO is institutionally separate from ERO and reports directly to the ICE director.[74] Its inspections are intended to provide ICE leadership with an independent assessment of ICE facilities.[75] It bases its inspection schedule on perceived risk, ICE direction, or national interest, and its leadership selects facilities for review each year based on staff capacity, agency priorities, and special requests by ICE leadership.

254. In October 2009, ICE centralized detention facility management contracts under ICE Headquarters supervision in order to aggressively enforce c

255. More recently, upon information and belief, one of the offices previously tasked with internal oversight—the Office of Detention Policy and Planning (ODPP)—was eliminated by Defendants.[77]

256. Importantly, ODPP was established to be "institutionally separate" from ICE Enforcement and Removal Operations so that it could provide an "independent assessment of detention facilities."[78] Defendants' action to eradicate ODPP is at odds with their duty to ensure that detained immigrants are housed in facilities that adhere to the PBNDS.

257. Defendants' failure to properly oversee its immigration prisons for compliance with its own policies or the Constitution has been well-documented by external stakeholders as well as DHS itself. Most recently, a report issued in 2018 by DHS' own Office of the Inspector General ("OIG") entitled "ICE's Inspections and Monitoring of Facilities Do Not Lead to Sustained Compliance or Systemic Improvements" details Defendants' utter failure to ensure compliance with the PBNDS. A damning assessment of ICE detention oversight and inspection, the report concludes that none of the on-site inspections employed by ICE adequately "ensure[ ] consistent compliance with detention standards or comprehensive correction of identified deficiencies."[79] The DHS Inspector General further states that "ICE does not adequately follow up on identified

[77] Caitlin Dickerson, *Trump Plan Would Curtail Protections for Detained Immigrants*, New York Times (Apr. 13, 2017), https://www.nytimes.com/2017/04/13/us/detained-immigrants-may-face-harsher-conditions-under-trump.html.
[78] *Detention Reform*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/detention-reform#tab1 (last updated Jul. 24, 2018); *see also* DHS Office of Inspector General, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* (OIG-18-67) (June 2018), https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf
[79] DHS Office of Inspector General, *ICE's Inspections and Monitoring of Detention Facilities Do Not Lead to Sustained Compliance or Systemic Improvements* (OIG-18-67) 4 (June 2018), https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf.

deficiencies or systematically hold facilities accountable for correcting deficiencies[.]"[80] Ultimately, the report finds that the entire system employed by ICE for monitoring and enforcing compliance with the PBNDS "do[es] not ensure adequate oversight or systemic improvements in detention conditions; certain deficiencies remain unaddressed for years."[81]

258. The documentation of Defendants' failure goes back more than a decade. In a 2006 report, the OIG identified issues with ICE detention facility inspections and corrective action plans. OIG advised ICE to improve its inspection process and correct non-compliance deficiencies.[82]

259. 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 documented the results of the "first-ever system wide look at the federal government's compliance with its own standards regulating immigrant detention facilities." The report's authors analyzed the results of inspections conducted by the American Bar Association, the United Nations High Commissioner for Refugees, and ICE itself. Based on this review, the report found that "the persistent failure of facilities to respect detainees' visitation rights severely hampers detainees' ability to exercise their constitutional and statutory right to counsel." 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

[80] *Id*.
[81] *Id.*
[82] DHS Office of Inspector General, *Treatment of Immigration Detainees Housed at Immigration*

proceedings; and they fail to prevent punitive conditions of legal visitation, such as non-contact

barriers to remotely and confidentially communicating with their attorneys, Defendants are detaining Plaintiff's clients in a manner that prevents them from meaningfully accessing courts.

Plaintiff's clients 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.

SECOND CLAIM FOR RELIEF

Denial of the Right to Counsel in Violation of the Due Process Clause of the Fifth Amendment

(SPLC, on behalf of its clients at LaSalle, Irwin and Stewart)

271. Plaintiff realleges and incorporates by reference the foregoing paragraphs and incorporates them herein by this reference.

272. The Due Process Clause of the Fifth Amendment guarantees Plaintiff's clients the right to the effective assistance of counsel in their removal proceedings at no cost to the Government.

273. Plaintiff's clients have retained Plaintiff to represent them in removal proceedings.

274. For all the reasons assigned above, Defendants' policies, practices, and omissions have created substantial barriers to Plaintiff's efforts to provide effective and ethical representation to their clients.

275. Plaintiff's clients have suffered and will imminently suffer ir

296. The Administrative Procedure Act ("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.

297. ICE's Performance-Based National Detention Standards ("PBNDS") apply at all ICE civil detention facilities, including LaSalle, Irwin, and Stewart. The PBNDS are the primary mechanism through which Defendants execute their duty to ensure constitutional access to counsel for the thousands of detained immigrants across the United States.

298. With respect to legal visitation, the PBNDS require, among other things, that meetings between detainees and attorneys or legal assistants be confidential, be permitted for at least eight hours on weekdays a

300. An agency's unexplained failure to follow its own rules constitutes "arbitrary, capricious" conduct in violation of the Administrative Procedure Act. 5 U.S.C. § 706(2)(A); *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

3. Enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting Plaintiff and its clients to the unlawful acts and omissions described herein, and issue an injunction sufficient to remedy the violations of Plaintiff's and its clients' constitutional and statutory rights, including:

    a. An order that Defendants provide sufficient space for timely, confidential and contact attorney-client meetings;

    b. An order that Defendants do not locate more noncitizen detainees at LaSalle, Irwin, and Stewart than can be reasonably accommodated for attorney visitation space;

    c. An order that Defendants provide a cost-effective and functional means of accessing remote interpretation services within the attorney-visitation meeting rooms;

    d. An order that Defendants permit confidential attorney-client telephonic and/or video teleconference communications in excess of one hour without limitation on the number of such communications;

    e. An order that Defendants institute protocols to ensure that such telephonic and/or video teleconference communications can be scheduled without unreasonable delay; and

    f. An order that Defendants permit SPLC's staff and volunteers to use laptops, tablets and cellular telephones in the waiting rooms and attorney-visitation rooms after Plaintiff certifies that such use is in furtherance of its representation of its clients.

4. Grant Plaintiff its reasonable attorney fees and costs pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412, and any other applicable law.

5. Grant such other relief as the Court deems just and proper.

Dated: October 10, 2018

Respectfully submitted,

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