



MEMO

To: Professional staff for the House and Senate Appropriations Subcommittees on Homeland Security
From: National Immigrant Justice Center, American Immigration Council, ACLU of Southern California, Southern Poverty Law Center
Re: Concerns re Veracity of ICE's February 2022 "Access to Due Process" Report
Date: March 22, 2022

On February 14, 2022, Immigration and Customs Enforcement (ICE) presented a report entitled "Access to Due Process" to the Chairs and Ranking Members of the House and Senate Appropriations Subcommittee on Homeland Security [hereinafter "ICE Access Memo"]. The report was responsive to direction in the Fiscal Year (FY) 2021 Joint Explanatory Report and House Report accompanying the Department of Homeland Security (DHS) Appropriations Act, P.L. 116-260, requiring ICE to provide a report on attorney access to ICE facilities, the rate of denial of legal visits, and attorney/client communications. The ICE Access Memo largely focuses on FY 2020, i.e. October 1, 2019 through September 30, 2020.

Our organizations provide legal services or represent organizations that provide legal services to individuals in ICE detention facilities throughout the United States, and work closely in coalition with many other organizations that do the same. **We write to share our concerns regarding the ICE Access Memo, which omits key facts and blatantly mis-states others.** As recently as October 2021, more than 80 NGOs delivered a [letter](#) to DHS and ICE documenting a litany of access to counsel obstacles imposed by ICE on people in detention. The Southern Poverty Law Center (SPLC) and American Civil Liberties Union (ACLU) of Southern California remain in active litigation against DHS and ICE over allegations of access to counsel violations so severe that they violate the Constitution. Yet the ICE Access Memo ignores the lawsuits and the written complaints, instead presenting a generally positive picture of the state of access to counsel and legal services for people in ICE custody. That picture bears little resemblance to the reality our legal service teams and clients experience daily in trying to communicate with each other.

This memo addresses the key points made by ICE in its Access Memo, and provides narrative and illustrative details of the misrepresentations made throughout. The topics addressed include: I) Access to legal counsel generally; II) Access to legal resources and representation (through the provision of free phone minutes and video conferencing capacity); and III) ICE's purported efforts to address issues arising with access to legal counsel.

Our legal and policy teams would also be interested in engaging in an informal briefing with

your teams to discuss these issues in greater depth. Please contact Heidi Altman at the National Immigrant Justice Center at haltman@heartlandalliance.org to arrange the briefing.

I. There are widespread, significant challenges in access to legal counsel at ICE facilities nationwide.

In its Access Memo, ICE claims that: a) “noncitizen access to legal representatives . . . has continued unabated” during the COVID-19 pandemic; b) in FY 2020, “ICE’s inspections did not identify any legal representatives being denied access to their clients, as confirmed by the DHS [Office for Civil Rights and Civil Liberties] and other oversight bodies”; and c) “Facilities continue to provide noncitizens opportunities to meet privately with their current or prospective legal representatives, legal assistants, translators, and consular officials.”

These representations make glaring omissions regarding ongoing challenges to legal access, illustrated in great detail below. Further, we note that while ICE’s inspections (which DHS’s own Inspector General [has found to be flawed](#)) may not have specifically identified legal representatives being denied access to their clients, all of our organizations have experienced these denials to be pervasive.

a) Far from continuing “unabated,” access to counsel in ICE detention has been significantly hampered during the COVID-19 pandemic.

ICE claims that “noncitizen access to legal representatives remains a paramount requirement throughout the pandemic and has continued unabated.” This claim is either an intentional misrepresentation or reflects a severe turn-a-blind-eye-mentality within the agency. DHS and ICE face ongoing litigation brought by legal service providers forced to seek emergency relief to gain even minimal remote access to their clients during the pandemic. And just months ago, DHS Secretary Mayorkas and Acting ICE Director Johnson received a [20 page letter](#) from dozens of NGOs outlining in great depth the “host of obstacles to attorney access that exist in immigration detention facilities nationwide.”¹ Referring to the agency’s commitment to providing legal access as “paramount” thus clearly omits important content from this report to Congress, the body meant to provide oversight of the agency in the public interest.

As the pandemic began to spread in April 2020, SPLC was forced to seek a Temporary Restraining Order (TRO) to ensure adequate remote access to counsel in four ICE facilities in Louisiana and Georgia, and then had to file a motion to enforce that TRO. The case is still active today and the court is seeking additional information on the state of the government’s compliance with the TRO. In [granting the TRO](#) in June 2020, the D.C. District Court found in its

¹ Letter to The Honorable Alejandro Mayorkas and Tae Johnson from the American Immigration Council, the American Civil Liberties Union, et al., Oct. 29, 2021, available [here](#).

[Memorandum Opinion](#) that DHS’s response to the pandemic “with respect to increasing the capacity and possibilities for remote legal visitation and communication has been inadequate and insufficient.” The Court also found ICE to be imposing restrictions and conditions on remote legal visitation and communication that were “more restrictive than standards promulgated for criminal detainees.” The TRO, among other things, required ICE to ensure access to confidential and free phone and video calls to legal representatives, to develop a system to schedule such calls, to create troubleshooting procedures for technology problems, and to institute a system to allow for electronic document transfer.²

SPLC was not the only legal service provider forced to seek emergency relief in order to get access to its clients as the pandemic spread. Also still in active litigation is *Torres v. DHS*, a case brought by the ACLU of Southern California, Stanford Law School Immigrants’ Rights Clinic, and Sidley Austin LLP on behalf of the American Immigration Lawyers Association and Immigrant Defenders Law Center in December 2018. The *Torres* case alleges many of the same obstacles to counsel in three California facilities as those at issue in *SPLC v. DHS*, including limited access to legal phone calls, prohibitively expensive calling rates, limited access to confidential phone calls with counsel, and inadequate opportunities for in-person attorney-client visitation.³ In April 2020, the District Court for the Central District of California entered a TRO in response to the [plaintiff organizations’ arguments](#) that ICE’s COVID-19 policies had effectively barred in-person legal visitation, leaving no confidential means for attorneys and detained clients to communicate.

In [granting the TRO](#) in *Torres v. DHS*, as of April 2020, the Court found the plaintiffs “likely to succeed on the merits of their claims that [DHS’s] COVID-19 attorney-access policies violate their constitutional and statutory rights,” noting that the pre-pandemic conditions alleged by plaintiffs made out such a claim, and the post-pandemic restrictions were “far more severe.”⁴ The Court also noted: “Defendants’ non-responsiveness to Plaintiffs’ factual assertions is telling.

² In *Southern Poverty Law Center v. Dep’t of Homeland Security* (D.D.C.), 1:18-cv-00760, Dkt. 18-760, SPLC argues that the “totality of barriers to accessing and communicating with attorneys endured by detainees in these prisons [the LaSalle Detention Facility in Jena, Louisiana, the Irwin County Detention Center in Ocilla, Georgia, the Stewart Detention Center in Lumpkin, Georgia, and Pine Prairie ICE Processing Center in Pine Prairie, Louisiana] 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” and “violates the Administrative Procedure Act, as well as SPLC’s rights under the First Amendment.” The first complaint filed in April 2018 is available [here](#); further briefing and orders in the litigation are available on the SPLC’s website [here](#).

³ In *Torres v. Dep’t of Homeland Security*, (C.D. Cal.), 5:18-cv-02604-JGB, Dkt. 127-1, the ACLU of Southern California and the Immigrants’ Rights Clinic at Stanford Law School filed a class action lawsuit alleging that barriers to attorney-client communications at three ICE facilities in California (the Theo Lacy and James A. Musick county jails and the Adelanto Processing Center) were so severe as to make it nearly impossible for people in detention to reach their lawyers, in violation of statutory law, constitutional protections, and the Administrative Procedures Act. The first complaint filed in December 2018 is [here](#); further briefing and orders in the litigation are available on the ACLU of Southern California’s website [here](#).

⁴ *Torres v. Dep’t of Homeland Security*, (C.D. Cal.), 5:18-cv-02604-JGB, Dkt. 127-1, Order Granting Temporary Restraining Order, available [here](#).

First, it took Defendants multiple rounds of briefing and two hearings to state whether there is any definite procedure to access free confidential legal calls and what that procedure is. Even if a procedure exists, Defendants do not rebut Plaintiffs’ showing that few detainees have ever accessed a free confidential legal call.” The Court further addressed the common problem of individuals in detention being forced to pay exorbitant phone rates for what should be free legal calls, stating, “Nor do Defendants explain why it is reasonable to expect detainees earning about one dollar a day . . . , or their families in the midst of an economic crisis, to fund paid ‘legal’ calls on recorded lines in the middle of their housing unit.”⁵

While litigation is ongoing in *SPLC v. DHS* and *Torres v. DHS*, our own legal teams throughout the country face daily, grueling obstacles in communicating with and effectively representing their detained clients, obstacles that have been compounded during the pandemic. ICE’s representations regarding phone and video-conference access are frequently belied by on-the-ground challenges including subcontractors’ belligerence, technology difficulties, or complex and opaque processes that even trained attorneys struggle to understand. As described by advocates in their October 2021 [letter](#) to DHS, the following examples are illustrative:

- *Video-conference (VTC) technology is often not available or extremely limited in availability, even when facility policy states otherwise:* 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 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.
- *Emails and phone messages from attorneys go undelivered:* The American Immigration Council’s Immigration Justice Campaign placed the case of a man detained at the El Paso Service Processing Center in Texas with a volunteer attorney at a law firm in Pittsburgh, Pennsylvania in June 2021. That attorney sent three emails to the El Paso facility 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 the Otero County Processing Center 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.

⁵ *Id.*

- *Poor sound quality, dropped calls, and limited phone access:* 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 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 then did not schedule a VTC call as requested, canceled a VTC call, and a telephone call to attempt to finalize the client’s declaration had sound quality so poor that it was difficult to hear the client. These obstacles to access delayed the submission of the client’s Request for Reconsideration by several weeks. Similarly, The Florence Immigrant & Refugee Rights Project (FIRRP) has difficulty conducting legal intakes at La Palma Correctional Center 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.

- *Phone access restricted during quarantine and beyond:* The El Paso Immigration Collaborative (EPIC) represents detained people in the El Paso area detention facilities, including the Tarrant County Detention Facility. Staff at the Tarrant facility 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.” Throughout the El Paso district, ICE denies any access to over-the-phone legal intakes and/or legal calls to people who are in quarantine for being exposed to COVID-19.

- *Prohibitive cost of phone calls:* The Immigration Detention Accountability Project 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*. Hotline staff routinely receive reports from callers—typically people with medical vulnerabilities or in 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.

- *Obstacles to sending and receiving legal documents:* The Carolina Migrant Network represents a significant number of people detained at the Winn Correctional Center in

Louisiana. The Winn facility 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.⁶ 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.

→ *Intransigence of subcontractors and inadequate access policies in local jails:* An attorney with Mariposa Legal in Indianapolis, Indiana routinely confronts obstacles to reaching clients at the Boone County Jail 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 request by more than a week.

b) Legal representatives are routinely denied access to their clients in ICE custody.

The ICE Access Memo states that, “ICE ERO does not track the number of legal visits that were denied or not facilitated and/or the number of facilities that do not meet ICE standards for attorney/client communications. However, in FY 2020, ICE’s inspections did not identify any legal representatives being denied access to their clients, as confirmed by the DHS Office for Civil Rights and Civil Liberties (CRCL) and other oversight bodies.” Given ICE’s own admission that it does not track or keep records of visit denials, this statement is meaningless.

As organizations providing legal services to individuals in detention, we can confirm that in-person and virtual legal visits are in fact *routinely* denied either outright or because of facility

⁶ This study is found in a report called *Justice-Free Zones*, which also provides in-depth evidence and data regarding the lack of availability of lawyers for many of ICE’s newest detention facilities. See American Civil Liberties Union, National Immigrant Justice Center, Human Rights Watch, [Justice-Free Zones: U.S. Immigration Detention Under the Trump Administration](#) (2020), 20-23. The report discusses at length the ways in which ICE’s use of remote detention centers and prisons for its detention sites undermines the ability of those in custody to find counsel. This topic is not addressed in this memo, but underlies the entirety of the due process crisis for detained immigrants facing removal proceedings.

policies so restrictive as to constitute denials in practice. SPLC has documented over two dozen incidents of legal visits, including four in-person visits and 22 calls and VTCs, that were denied or not facilitated at the Stewart, Irwin, LaSalle and Pine Prairie facilities in FY 2020 alone. Attorneys attempting in-person meetings in 2020 were often left waiting for their visits for so long that they had to leave the detention center and come back another day, a constructive denial even if not outright. SPLC attorneys also report phone calls and VTCs being regularly canceled or unilaterally rescheduled by facility staff with no notice to attorneys, often preventing attorneys from speaking to clients on time-sensitive matters.

In many facilities, the procedures and rules around setting up attorney-client visits are so cumbersome as to make visitation nearly impossible; in these cases ICE may not be denying visits outright but they are allowing conditions to persist that constitute a blanket denial. In a number of facilities in Louisiana, for example, attorneys are not allowed to meet with clients in person unless visits are scheduled by 3 p.m. the day before. This policy renders visits entirely unavailable for attorneys who need to meet with a client for time-sensitive matters that cannot wait 24 hours.

In *Torres v. DHS*, the court noted in ordering a TRO in April 2020 that ICE “equivocate[d]” on the question of whether contact visitation was allowed at all at the Adelanto facility in California. ICE eventually admitted that “only two contact visits” had been allowed between March 13 and April 6, 2020.⁷

c) Legal representatives frequently face obstacles to meeting in a private confidential space with current or prospective clients.

The ICE Legal Access Memo states that, “Facilities continue to provide noncitizens opportunities to meet privately with their current or prospective legal representatives, legal assistants, translators, and consular officials.” However, it is our experience that in many facilities it is not possible for individuals to meet in person with their lawyers in a private setting, and that access to translators is also frequently compromised. Many detained individuals are also unable to access private, confidential remote communication with their attorney. The ability to access a confidential space may be the difference between presenting a successful claim to relief or being order deported, especially for individuals sharing difficult or traumatic experiences or sharing information that they fear will place them at risk if overheard by other people in detention such as sexual orientation or gender identity.

In many facilities, especially since the pandemic, it is nearly or completely impossible to access a confidential space to have a remote communication with one’s attorney. Some facilities may

⁷ *Torres v. Dep’t of Homeland Security*, (C.D. Cal.), 5:18-cv-02604-JGB, Dkt. 127-1, Order Granting Temporary Restraining Order, available [here](#).

claim to provide confidential spaces, but the reality is quite different. In the Pine Prairie facility, for example, the spaces designated for “confidential” attorney-client phone calls and VTC are actually cubicles with walls that do not reach the ceiling and allow for noise to travel outside the cubicle. Cubicle-style spaces with walls that do not reach the ceiling are also the only spaces available for so-called confidential attorney-client meetings at the T. Don Hutto Residential Center in Texas, where the University of Texas School of Law Immigration Clinic provides services. Similarly, confidential phone calls are provided at the Stewart facility but are limited to 30 minutes, which is far from sufficient for many types of legal calls necessary to gather facts or prepare for an immigration court case, especially if an interpreter is needed.

There are also severe restrictions to individuals’ ability to meet in person with their lawyers in confidential settings. At Pine Prairie, for example, because the cubicles described above have been reserved for VTC during the pandemic, attorneys must meet with their clients or prospective clients at a table in the middle of an open-plan intake space that is the most highly-trafficked part of the facility. There is absolutely no privacy—guards, ICE officers, other facility staff, other detained individuals and even people refilling the vending machines all travel through or wait in this space frequently, making it impossible to have a confidential conversation.

We also contest ICE’s claim that it provides ready access to translators as necessary for attorney-client communication. As explained in briefing in *SPLC v. DHS*, for example, the non-contact attorney-client visitation rooms in the LaSalle, Irwin, and Stewart facilities provide only one phone on the “attorney side” of the room, which means that there is no way for an attorney to be accompanied by a legal assistant or interpreter. Also at these facilities, a “no-electronics policy” is maintained meaning that attorneys are effectively denied from accessing remote interpretation services (there are also no outside phone lines available).

The following examples provide further evidence of the ways in which access to confidential in-person or remote communications are restricted throughout ICE detention:

- *Restricted access to confidential remote communications during periods of COVID quarantine:* In the McHenry County Jail in Illinois, prior to its closure, individuals were subjected to a mandatory fourteen-day quarantine period if exposed to COVID-19, during which they had literally zero access to confidential attorney-client phone calls. In January 2022, the National Immigrant Justice Center (NIJC) raised this issue to the Office of the Immigration Detention Ombudsman, sharing several case examples. One of the examples was that of an NIJC client who was represented by pro bono attorneys at a major law firm. In the weeks leading up to the client’s asylum merits hearing, the pro bono team contacted the facility and were told that no time slots were available because their client was in COVID-related quarantine. The facility informed the pro bono attorneys that their

only option to speak with their client was if he called them during the one hour every other day when he had access to the communal phones. Although the communal phones offered no confidentiality, it was the only option for them to speak with their client. The pro bono team had to deposit money into their client's commissary account in order for him to call out, and then faxed him a letter asking him to call them during his one hour window. Their client did call, but he could barely hear his attorneys because the noise from the television and other people in detention speaking in the background was so loud.

→ *So-called "confidential spaces" providing no privacy:* The University of Texas School of Law Immigration Clinic serves women detained at the Hutto facility, where since the start of the COVID pandemic attorneys have been required to sit in one plastic cubicle while their clients sit in another. This requires attorneys and their clients to raise their voices while speaking to one another, further limiting confidentiality. Two clinic students spoke to several women from Haiti who had experienced sexual assaults. The women had not been able to speak to attorneys prior to their credible fear interviews because of limits placed on attorney access, and so had little understanding of the process and the importance of describing their experiences fully. Because of this obstacle to due process, the women did not share their experiences of sexual assault during their credible fear interview. 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.

II. **ICE's claims that it provides enhanced access to legal resources and representation are belied by the experiences of legal service providers and detained people.**

In the Access Memo, ICE claims that it "made improvements in legal access accommodations by enhancing detained noncitizens' remote access to legal service providers," specifically including: a) the provision of more than 500 free phone minutes to "most noncitizens" and b) by expanding the Virtual Attorney Visitation (VAV) program from five to nine programs in FY 2020. ICE fails to mention, however, that the rollout of both programs has been extremely flawed. The 500 free minutes, for those in facilities where they are offered, are usually not available on a confidential line (making them generally not usable for attorney-client communication) and detained individuals often face severe obstacles in accessing the minutes at all. The VAV program, similarly, is in practice often inaccessible to attorneys trying to reach their clients.

a) The 500 free minutes do not meaningfully enhance legal access because they are usually available only on non-confidential lines and the length of calls is restricted.

ICE describes in the Access Memo that 520 minutes per month are provided to individuals detained in all facilities with Talton operated phone systems. The list of Talton-served facilities is

available on the AILA website [here](#). However, these minutes are of limited utility in enhancing access to legal counsel for two primary reasons: First, the minutes can generally be used only in 10 or 15-minute increments after which time the call automatically cuts off, disrupting attorney-client calls and making conversations with interpreters particularly difficult. Second, in most cases it appears the minutes are available only on phones in public areas of housing units, and therefore cannot be used for confidential attorney-client communication. It has also been our experience that it is difficult for individuals who do not read Spanish or English to access the minutes at all, as the instructions for how to use them are usually provided in English and Spanish without accommodation for speakers of other languages, including indigenous languages.

Our own legal service teams and clients have experienced these challenges:

- The Otay Mesa Detention Center in California is one of the facilities ICE claims provides 520 free minutes. NIJC provides legal services to individuals at the Otay Mesa facility, and has found it to be difficult and often impossible for attorneys providing remote representation to get a secure line set up using clients' free minutes. One NIJC attorney has had some success in doing so by calling the facility, asking for her client to submit a form adding her to their attorney list, and then calling her back. However, she has found this to only work in rare instances and notes that it usually takes at least three days' advance notice.
- The American Immigration Council works with partners who provide legal services at the Otero County Processing Center in New Mexico, which is also on the list of facilities providing 520 free minutes. However, the free minutes available at the Otero facility are available only on recorded lines from phones in public areas of the housing units, thus not confidential. In July 2020, a law clerk with EPIC shared that they had conducted an intake interview with a potential client at Otero which had to be conducted over four short calls, because the first three calls were free ten minute calls that automatically cut off. The client paid for the fourth call, which cut off before the intake could be completed. This made it difficult to maintain a conversation, caused confusion, and impeded the law clerk's ability to ask the client a full range of questions.
- The practice of dividing the 520 monthly minutes into calls of such short duration that they disrupt attorney-client communication was confirmed by ICE Assistant Field Officer Director Gabriel Valdez in a [written affidavit](#) filed in *Torres v. DHS* stating that as of April 2020 at the Adelanto facility, the 520 free minutes were provided as a maximum of 13 calls per week, with each call permitted to last no longer than 10 minutes. Legal service providers at Adelanto also confirm that these free minutes are provided only on

the phones in the common spaces of the Adelanto facilities, where attorney-client confidentiality is not protected.

b) The Virtual Attorney Visitation (VAV) program is severely compromised in its utility by restrictions on usage and technology problems, and in certain facilities does not even appear to be operational.

ICE describes in its Access Memo that the VAV program was expanded from five to nine facilities in Fiscal Year 2020, allowing legal representatives to meet with their clients through video technology in private rooms or booths to ensure confidentiality of communications. ICE posts a list of the facilities it claims are VAV-enabled [here](#).

Many of our legal service teams had never heard of the VAV program until reviewing the ICE Access Memo, which speaks to the extent to which it can be utilized in practice. Included in ICE's list of VAV-enabled facilities are three facilities where SPLC currently provides services—the Folkston ICE Processing Center, the LaSalle ICE Processing Center, and the Stewart Detention Center. Yet SPLC's legal teams are entirely unaware of any VAV programs having been accessible at any of these three facilities in Fiscal Year 2020. While some VTC capacity was present at these facilities using Skype, they do not appear to have been part of the VAV program which is largely conducted using Teams and WebEx, according to the Access Memo. Further, the number of confidential VTC rooms in use at these facilities was dismally low. In the Stewart Detention Center, for example, which can detain up to 2,040 people, there are only two VTC rooms, neither of which are confidential.

Another facility on ICE's list of VAV-enabled facilities is the Otay Mesa Detention Center, where NIJC provides legal services. Yet NIJC's attorneys who represent individuals at Otay Mesa through a program focused on ensuring legal representation for LGBTQI individuals have found that there is no way for NIJC to schedule legal calls or VTC sessions for free, through the VAV or any other program. For one current NIJC client, the legal team must provide funds to the client's commissary to be able to speak with them, and even then the calls cut off every ten minutes.

The ICE website describes the VAV program as providing detained individuals access to their attorneys in a "timely and efficient manner." Yet at the Boone County Jail, one of the listed VAV-enabled facilities, NIJC's clients report that there are very limited available hours for attorneys to call through the VAV program, and they must be requested well in advance. On one occasion, for example, an NIJC attorney called to ask for a VAV session in the ensuing 48 hours and was told none were available. Instead, the facility staff directed the attorney to the iwebvisit.com website where she could "purchase confidential visits" at \$7.75 per 15-minute interval. Boone strictly limits the availability of free confidential VAV calls, and charges for calls

occurring during many slots in normal business hours. Given the limited availability that Boone provides for free calls on the VAV platform, NIJC has had to pay these fees in order to communicate with clients. Additionally, the quality of the videoconferences on the platform used by Boone County Jail is poor, and NIJC attorneys and advocates struggle to hear clients. Finally, the process for adding third-party interpreters through Boone's system is extremely onerous, which raises serious concerns about accessibility for speakers of diverse languages. Third party interpreters are unable to join calls unless they go through a registration and clearance process with the jail and like attorneys, must also pay fees for 15-minute intervals if the call takes place during certain hours.

III. **ICE's stated increased coordination with Enforcement and Removal Operations (ERO) to address issues with access to legal counsel has not been communicated to legal service providers.**

ICE notes in its Access Memo that it has designated Legal Access Points of Contact (LA-POC) in field offices, who are intended to "work with the ICE ERO Legal Access Team at headquarters to address legal access-related issues and to implement practices that enhance noncitizen access to legal resources and representation." Among the four organizations authoring this memo, none of our legal service teams reported knowing how to access these designated points of contact or had experienced them resolving concerns or issues. For many of us, the Access Memo was in fact the first time we had even heard of LA-POCs, which is fairly remarkable given that all four of our organizations either provide large quantities of legal services to detained individuals or represent other organizations that do.

Meaningful and prompt access to confidential communication with counsel is literally a life and death matter for individuals who are in ICE detention. Barriers to communication can prevent an individual from being fully prepared for a court hearing that will determine whether they are permanently separated from their loved ones. A lack of confidential space for attorney-client communications can mean that an LGBTQI person may never feel safe to disclose their sexual orientation or gender identity, compromising both their own safety and their ability to present their full claim to asylum or other protection.

ICE has submitted this report, in effect asking Members of Congress to believe that they have been responsive and thoughtful in their approach to ensuring access to counsel, even while legal service providers are forced to seek emergency relief in the federal courts simply to be able to communicate with their detained clients. The ICE Access Memo represents a disingenuous and cavalier approach to a gravely serious topic, and we urge Chairpersons Roybal-Allard and Murphy to hold the agency accountable.