

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 Detention Facility, Irwin  
County Detention Center, and Stewart Detention  
Center  
400 Washington Ave.  
Montgomery, Alabama 36104

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND  
SECURITY  
3801 Nebraska Avenue, NW  
Washington, D.C. 20016;

U.S. IMMIGRATION AND CUSTOMS  
ENFORCEMENT  
500 12th Street, SW  
Washington, D.C. 20536;

KIRSTJEN NIELSEN, Secretary of Homeland  
Security,  
in official capacity  
3801 Nebraska Avenue, NW  
Washington, D.C. 20016;

THOMAS HOMAN, Deputy Director and Acting  
Director, U.S. Immigration and Customs  
Enforcement, in official capacity  
500 12th Street, SW  
Washington, D.C. 20536;

CLAIRE TRICKLER-MCNULTY, Acting  
Director, U.S. Immigration and Customs  
Enforcement, Office of Detention Policy and  
Planning, in official capacity  
500 12th Street, SW  
Washington, D.C. 20536;

Civil Action No.

1.18-cv-\_\_\_\_\_

COMPLAINT

MATTHEW ALBENCE, Executive Associate  
Director, Enforcement & Removal Operations,  
in official capacity  
500 12th Street, SW  
Washington, D.C. 20536;

TAE JOHNSON, Assistant Director for Custody  
Management, Enforcement & Removal Operations,  
in official capacity  
500 12th Street, SW  
Washington, D.C. 20536;

NATHALIE R. ASHER, Acting Assistant Director,  
Field Operations for Enforcement and Removal  
Operations, in official capacity  
500 12th Street, SW  
Washington, D.C. 20536;

DAVID RIVERA, Field Office Director, U.S.  
Immigration and Customs Enforcement,  
New Orleans Field Office, in official capacity  
830 Pine Hill Road  
Jena, Louisiana 71342;

SEAN GALLAGHER, Field Office Director, U.S.  
Immigration and Customs Enforcement,  
Atlanta Field Office, in official capacity  
180 Ted Turner Drive, SW. Suite 522  
Atlanta, Georgia 30303

Defendants.

many also have viable claims that they should be released on bond or parole pending completion of their removal proceedings. Legal representation often ensures that such people are not unnecessarily detained for long periods of time, and also frequently makes the difference between whether they are allowed to remain safely in the United States or are permanently separated from family and returned to danger or even death.

2. Noncitizen detainees represented by counsel are 10-and-a-half times more likely to succeed in their cases, and almost seven times more likely to obtain bond, as compared to their *pro se* counterparts. Individuals who are released from detention and are able to secure counsel are almost 20 times more likely to succeed in their cases than detainees without counsel.<sup>1</sup>

3. The Fifth Amendment to the U.S. Constitution contemplates the crucial role of counsel in high-stakes court proceedings. Courts consistently interpret this amendment to afford people in removal proceedings the right to legal representation at their own expense at full and fair hearings. Yet this right is all but illusory for the thousands of people whom Defendants detain in isolated prisons in remote and rural parts of the United States.

4. For decades, the Department of Homeland Security, Immigration and Customs Enforcement, and their officials (“Defendants”) have deliberately detained people in immigration prisons far away from legal resources. Consistent with this longstanding practice, Defendants have contracted with local municipalities and private prison companies to detain noncitizens in some of the most rural and remote locales in the Southeast—far from major cities, law firms, nonprofit legal organizations, and professional interpretation services.

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<sup>1</sup> See Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 49, 70 (2015) (describing different outcomes for represented versus unrepresented noncitizens in removal proceedings between 2007 and 2012).

5. Defendants' imprisonment practices have far-reaching and devastating consequences. Those ensnared by

a single client, restricting access to critically needed interpreters, and substantially impeding the ability of people to speak remotely and confidentially with their attorneys via telephone.

9. Exacerbating these hurdles to accessing counsel, Defendants fail to prevent their agents who operate these remote prisons from erecting additional barriers between detainees and attorneys. Although Defendants are ultimately responsible for ensuring that conditions in these prisons comply with constitutional dictates, Defendants permit the day-to-day operators of these prisons to enjoy virtual impunity in engaging in obstructive conduct, such as unjustifiably interrupting attorney-client visits, denying attorney-client meetings during counts and shift changes, preventing attorneys from seeing their clients even when visitation rooms are available, frequently and arbitrarily changing visitation rules, and listening in on attorney-client communications.

10.

rates are even lower—in some cases, as low as six percent—for noncitizens held in some of the

15. 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 safeguard due process rights for the thousands of people held in civil prisons across the Southeast. At the expense of fully pursuing and fulfilling its institutional goals, SPLC has been forced to devote and redirect significant portions of its monetary and personnel resources to counteract the unlawful barriers to accessing and communicating with counsel that Defendants have imposed at LaSalle, Irwin, and Stewart.

16. The myriad barriers to meaningful representation endured by SPLC’s clients at LaSalle, Irwin, and Stewart, which are the basis for this constitutional challenge, not only undermine their chances of prevailing in removal proceedings but also make it virtually impossible for them to pursue litigation on their own behalf to protect their constitutional rights.

17. Any lawyers who tried to represent SPLC clients in civil litigation would encounter the same obstacles to access with which SIFI’s staff and volunteers are currently grappling—including the inadequate number of attorney-visitation rooms, lack of contact visits, unavailability of interpreters, lack of access to video-teleconferencing (“VTC”) and telephones, lack of confidentiality, prohibition on electronic devices, and arbitrary changes in rules regarding attorney visitation. In fact, communicating with counsel to remediate access barriers would have the perverse consequence of exacerbating these very barriers due to the scarcity of attorney-client visitation rooms and confidential telephone lines.

18. Further, given that most of SPLC’s detained clients have limited knowledge of the U.S. legal system and lack proficiency in English, the likelihood that they could undertake litigation *pro se* is virtually nil. Even if legal representation were available, many would be deterred from pursuing constitutional litigation due to a fear of retaliation by Defendants and

their agents that could adversely impact their immigration cases. This is especially true in light of the intimidating conduct of Defendants' agents detailed herein. Likewise, communicating with attorneys to pursue civil remedies to vindicate their rights to access counsel and the courts would further limit the insufficient time that detainees have to seek and consult counsel regarding their removal proceedings, thereby further dis-incentivizing their pursuit of civil remedies.

19. Given that SPLC's detained clients are substantially hindered from protecting their own rights, SPLC has third-party standing to bring this action based on its role in providing noncitizen detainees with legal services and its ability to properly and zealously frame the issues.

20. Defendant U.S. Department of Homeland Security ("DHS") is a federal executive agency responsible for, among other things, enforcing federal immigration laws and overseeing lawful immigration to the United States.

21. Defendant U.S. Immigration and Customs Enforcement ("ICE") is a component of DHS. As the principal investigative arm of DHS, ICE is charged with enforcement of immigration laws. ICE's primary duties include the investigation of persons suspected to have violated immigration laws, and the apprehension, detention, and removal of noncitizens who are unlawfully present in the United States.

22. Defendant Kirstjen Nielsen is the Secretary of DHS. Nielsen is charged with enforcing and administering immigration laws. She oversees each of the component agencies within DHS, including ICE, and has ultimate authority over all policies, procedures, and practices relating to ICE detention facilities. She is responsible for ensuring that all individuals held in ICE custody are detained in accordance with the Constitution and all relevant laws. Defendant Nielson is sued in her official capacity.



23. Defendant Thomas Homan is the Deputy Director and Senior Official Performing



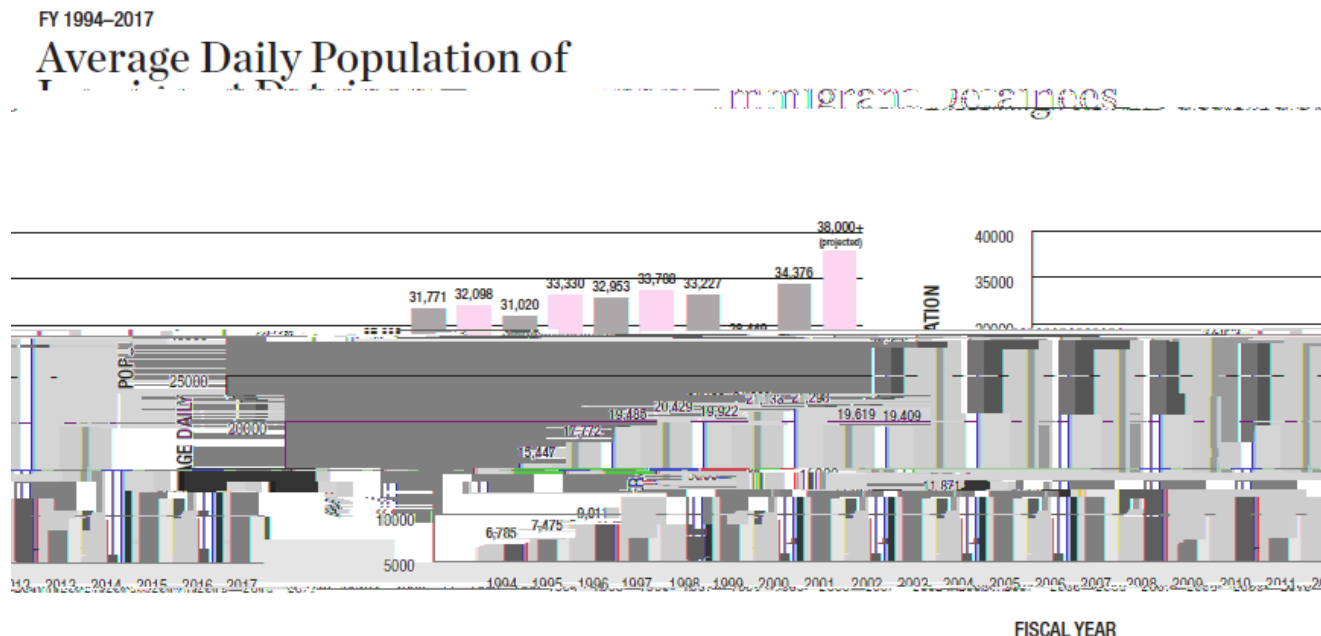
31. This Court has jurisdiction to enter declaratory and injunctive relief to recognize and remedy the underlying constitutional violations under 28 U.S.C. §§ 2201 and 2202 (declaratory relief), and 28 U.S.C. § 1651 (writs).

32. 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.

### STATEMENT OF FACTS

33. The United States is the world's leading incarcerator with over two million people

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This graph tracks the average daily population of noncitizens held in immigration detention from FY 1994-2017.<sup>2</sup>

37. The origin of this 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.

<sup>2</sup> Chad C. Haddal & Alison Siskin, *Immigration-Related Detention: Current Legislative Issues*, CONGRESSIONAL RESEARCH SERVICE, p. 12 (Jan. 27, 2010), available at: [https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1712&context=key\\_workplace](https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1712&context=key_workplace) (Data for FY 1994-2010) (last accessed Apr. 3, 2018); Alison Siskin, *Immigration-Related Detention: Current Legislative Issues*, CONGRESSIONAL RESEARCH SERVICE, p. 13 (Jan. 1, 2012), available at: [https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?referer=https://www.google.com/&httpsredir=1&article=1887&context=key\\_workplace](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) (last accessed Apr. 3, 2018); U.S. DEP’T OF HOMELAND SEC., *U.S. Immigration and Customs Enforcement - Budget Overview*, (2018), available at: [https://www.dhs.gov/sites/default/files/publications/CFO/17\\_0524\\_U.S.\\_Immigration\\_and\\_Customs\\_Enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/CFO/17_0524_U.S._Immigration_and_Customs_Enforcement.pdf) (Data for FYI 2013-2016) (last accessed Apr. 3, 2018); Laura Wamsley, *As It Makes More Arrests, ICE Looks For More Detention Centers*, NAT’L PUB. RADIO, Oct. 26, 2017, available at: <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) (last accessed Apr. 3, 2018).

38. 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.<sup>3</sup> For the majority of people held in immigration prisons, there is no law requiring that they be imprisoned before their hearings.

39. 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. Yet, civil detention of noncitizens has significantly expanded since 2009.

40. In 2009, Congress mandated that ICE maintain at least 33,400 detention beds in immigration prisons across the country. > > 3

that an immigrant detainee will be released on bond or parole and therefore avoid such prolonged detention.

#### Defendants' Oversight of Private Prisons Holding Noncitizens

44. ICE's Performance Based National Detention Standards ("PBNDS") govern the prisons it 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.

45. According to ICE's website, the PBNDS were "crafted to . . . increase access to legal services . . . , improve communication with detainees with no or limited English proficiency, . . . and increase . . . visitation."

46. The PBNDS provide that meetings between detainees and attorneys or legal assistants are "confidential" and "shall not be subject to auditory supervision." Private consultation rooms shall be available for such meetings. If all such rooms are in use and an attorney wishes to meet in a different room, "the request shall be accommodated to the extent practicable."

47. With respect to conduct during legal visits, the PBNDS require the facility's procedures to "provide for the exchange of documents between a detainee and the legal representative or assistant, even when contact visitation rooms are unavailable." Any written material provided to detainees during such meetings "shall be inspected but not read."

48. On regular business days, legal visits may take place during scheduled meal periods, in which case detainees "shall receive a tray or sack meal after the visit."

49. Prior to the establishment of an attorney-client relationship, "a legal service provider's representative need not complete a Form G-28 . . . ." In addition, visitors, including

attorneys and legal representatives, “are not required to file a Form G-28 to participate in a consultation visit or provide consultation during an asylum officer interview or Immigration Judge’s review of a negative credible fear determination.”

50. During regular legal visitation hours, legal assistants are explicitly permitted to meet alone with detainees “[u]pon presentation of a letter of authorization from the legal representative under whose supervision he/she is working.”

51. The PBNDS, which are specifically incorporated into ICE’s management contracts for LaSalle, Irwin, and Stewart, are not enforced.

52. Even if the PBNDS were enforced at LaSalle, Irwin and Stewart, they are wholly insufficient to protect the important rights of noncitizens held in these prisons. The PBNDS further reflect that Defendants have no interest in maintaining the obstacles to accessing and communicating with attorneys detailed herein.

53. ICE’s routine interference with SPLC’s clients’ access to counsel—by detaining them in facilities with an insufficient number of attorney-visitation rooms, depriving them of confidential contact with their attorneys, and preventing the exchange of documents—violates even the minimal protections embodied in the PBNDS.

#### Complexity of Immigration Law

54. Immigration is complex and highly technical.<sup>4</sup> Several federal courts have observed that the immigration laws

55. The Supreme Court has consistently reaffirmed the “purely civil” nature of immigration proceedings.<sup>6</sup>

56. 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.

57. Respondents—who bear the burden of proof to establish that they are statutorily





61. Acknowledging the complexity of the immigration laws, the Office of the Chief Immigration Judge “recommends that those [respondents] who can obtain qualified professional representation do so.”<sup>7</sup>

62. Despite the hyper-technical nature of immigration law and the inherent imbalance of power between the government and the respondent, the immigration removal process lacks most of the basic procedural safeguards enshrined in the U.S. criminal justice system. Noncitizens in civil immigration proceedings have no right to government-appointed counsel or a speedy trial. Immigration judges may apply harsh immigration laws retroactively, allow the government to prove its case using unlawfully obtained evidence, and exercise an inordinate amount of discretion. Moreover, immigration proceedings are not governed by the Federal Rules of Evidence.

63. The potentially life-altering consequences of removal proceedings, which “may result in the loss of all that makes life worth living,”<sup>8</sup> makes the lack of more checks and balances particularly inexcusable.<sup>9</sup>

#### Release on Bond from ICE Prisons

64. Given the significant barriers to accessing counsel that detained immigrants face, release from prison can greatly enhance an individual’s chances of prevailing in immigration court. In addition to restoring physical liberty, release facilitates a person’s ability to a G S !

obtain counsel than those who are detained.<sup>10</sup> 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.

65. 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.<sup>11</sup>

66. Following the arrest of a noncitizen, DHS makes an initial custody determination regarding whether the individual should be released on bond, recognizance, or subject to other conditions.<sup>12</sup> DHS may also determine that an individual is subject to mandatory detention and thus ineligible for release, or exercise its discretion to deny release.<sup>13</sup>

67. A detained individual is generally entitled to seek review of ICE's initial custody determination before an immigration judge at a hearing commonly termed a "bond hearing."<sup>14</sup> Even in cases where ICE has concluded that an individual is ineligible for bond, the detained individual may request a bond hearing to challenge that finding.

68. At the bond hearing, the immigration judge determines whether the individual can be released on bond, recognizance, or subject to other conditions.<sup>15</sup> The detained individual bears the burden of proving that he does not pose a danger to persons or property; is not likely to

abscond before his hearing; and does not threaten national security.<sup>16</sup> Detained noncitizens are approximately seven times more likely to be released on bond when represented.<sup>17</sup>

69. The immigration judge has complete discretion to grant or deny release.<sup>18</sup> A request to reconsider a decision regarding custody status or bond may be allowed only if “circumstances have changed mater

73. At the time of filing, SPLC and volunteers had communicated with 664 detainees at these three locations. The SIFI project currently represents 79 people at the three prisons at issue in this litigation.

74. SPLC employs on-the-ground SIFI staff, including immigration attorneys and advocates whose offices are near the three prisons. In addition, SIFI relies on volunteer *pro bono* attorneys from across the United States who travel to the prisons for week-long rotations in order to meet with potential clients, conduct interviews, gather evidence, draft legal documents, and assist clients in obtaining release on bond or parole. Since SIFI's inception, volunteer attorneys have traveled from Seattle, New York, Chicago, San Francisco, and Washington, DC, among other cities.

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83. Attorneys representing detained clients from afar likewise requ

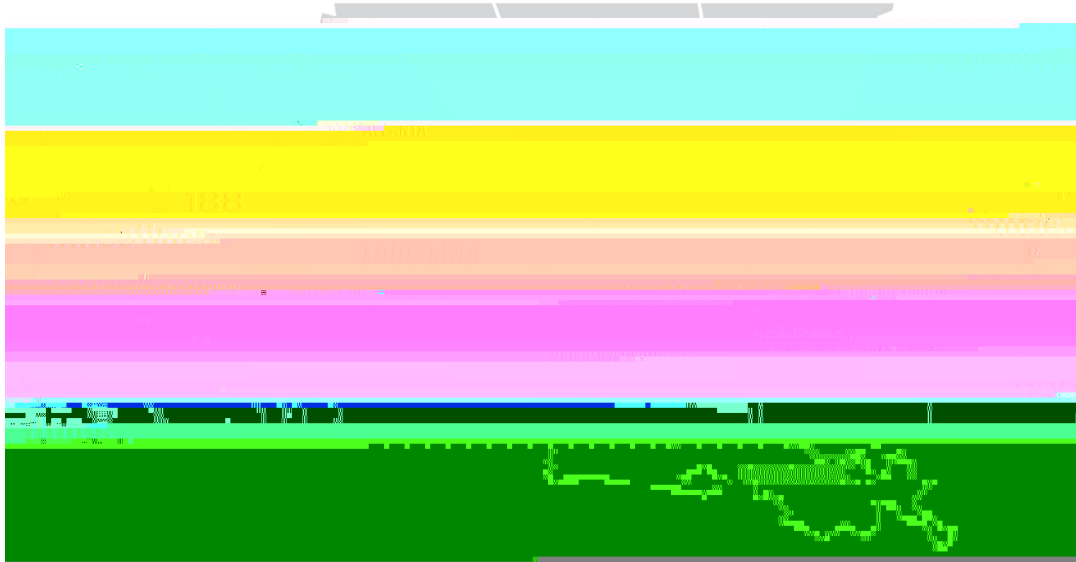
SPLC's ability to zealously represent its clients at LaSalle, Irwin, and Stewart, and that preclude its clients from defending their own constitutional rights.

#### The Detention Facilities and the Barriers to Access to Counsel

88. Although the Sixth Amendment does not guarantee a lawyer to immigrants in removal proceedings, the Due Process Clause of the Fifth Amendment "indisputably affords an



90. 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.



91. 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. At Irwin, around 20 out of every 100 people have counsel.

92. 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.

93. Despite differences in the physical infrastructure at LaSalle, Irwin, and Stewart, similar barriers to access to meaningful representation exist at all three prisons. None of the prisons has an adequate number of attorney-visitation rooms to accommodate their populations:

LaSalle has one room for up to around 1,200 people. Stewart has three rooms for approximately 1,900 people. Irwin has one room for up to approximately 1,200 people.

94. 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 spend the wait time in addition to the lengthy travel time and still provide ethical representation.

95. Frequent “counts” and staff shift changes exacerbate these delays and sometimes prevent attorneys from visiting clients altogether.

96. Once inside the attorney-visitation room, legal representatives and their clients face additional barriers to communication. All three prisons enforce policies that permit only non-contact visits, which hamper attorneys’ ability to review documents with clients and also to create the rapport and trust that is crucial to gathering all the information necessary to defend against removal. Thick partitions separate lawyers from their c

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98. Making matters worse, the telephone lines themselves are compromised by significant static. As a result, the attorney and client cannot clearly hear each other over the closed-circuit phone, forcing them not only to repeat questions and answers but also to yell and thereby compromise confidentiality. Guards are routinely stationed outside the rooms as a matter of course or for frequent shift changes. The noise made by guards further impedes attorneys' ability to communicate with clients, and guards are able to hear what attorneys say inside the

guesstimates, and whatever else can be communicated through broken or no English in order to gather crucial evidence to avert deportation. Many immigration attorneys refuse to take cases at these immigration prisons because they do not believe that a case can be translated

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criminal defense attorneys are allowed to bring in laptops and use them during client meetings in at least one of the prisons.

104. Many obstacles to accessing and communicating with counsel at LaSalle, Irwin, and Stewart stem from Defendants' practice of contracting with and failing to adequately supervise private prison companies, which have a financial incentive to understaff detention centers and to refuse to improve conditions that impede access. SPLC s









124.



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.

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

136. 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



prevent lawyers and clients from engaging in the communications needed to determine whether to enter into a representation. That is why Defendants' written policies actually provide that legal visitation cannot be denied on the basis that the lawyer has not entered a notice of appearance in the case. That same day SPLC clients had visits cancelled in the facility for people SIFI represents even though SIFI did, in fact have G-28 forms on file.

142. Defendants' written policy is that legal assistants, with a letter of authorization from their supervising attorney, may visit detainees. That same day, legal volunteers were prevented from using the open attorney-client room because they were not lawyers and "ICE had not approved" them for legal visits. The prison staff terminated the meeting midway through and did not extend the same rules for legal visitation.

143. Upon information and belief, Defendants have exclusively targeted SPLC in enforcing this purported policy in hostility toward the presence and mission of the organization and its volunteers.

#### ***B. Irwin County Detention Center***

144. Irwin is located in Ocilla, Georgia—a city of 3,604 residents that is 185 miles from Atlanta. The drive from Atlanta takes approximately three hours each way. Today, the immigration prison is the second largest employer in Irwin County.

145. Irwin typically detains around 700 noncitizens in a correctional facility with the capacity to detain 1,200 people. 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 a number of federal pre-trial



150. Making matters worse, once SIFI staff and volunteers are escorted into the visitation room, they frequently must wait long periods of time—sometimes close to an hour—for the detainee to be brought to them. Lawyers seeing more than one client frequently wait protracted periods for each client to be escorted to and from the visitation room.

151. Conditions inside the single attorney-visitation room further frustrate detainees' ability to communicate with their attorneys. The room is not soundproof. Confidential conversations with clients about sensitive topics, like sexual abuse and political persecution, can 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.

152. 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 long periods of time. Meanwhile, other lawyers sit in the waiting room, and their clients are deprived of valuable time with their counsel.

153. On certain days, Irwin permits SIFI attorneys and volunteers to conduct non-contact visits with clients in the family visitation room. But it is not a confidential meeting space. While attorneys meet with clients in that room, Irwin staff use the room as a throughway, and staff often loiter in an adjacent office, with the door open.





short because the guard who was facilitating the visit informed the attorney that she had to go to lunch.

160. Irwin fails to adequately coordinate the VTC calendar—leading to missed appointments with clients and preventing attorneys from relying



Lumpkin has very few businesses, no grocery store and no library. The detention center is the town's primary employer.

171.

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. Even in instances when count was not occurring, SIFI staff and volunteers have arrived at Stewart well before 5:00 pm to meet with clients but were forced to wait until 5:00 p.m., when visitation hours end.

176. SIFI staff and volunteers are thus frequently subjected to lengthy delays before they can see clients. Wait times in excess of one or two hours are frequent, and some staff and volunteers have been forced to wait as long as three hours. Attorneys cannot simply leave the facility and come back later because they risk losing their place in line.

177. Between May 10, 2017 and December 22, 2017, the average wait time for SPLC's attorneys, staff, volunteers, and interpreters at the facility was almost an hour. Approximately 20 visits required waits in excess of two hours—many in excess of three and four hours. Moreover, attorneys are frequently subjected to further delay once inside the attorney-visitation room while waiting for their clients to be transported.

178. SPLC volunteers and staff need to visit with multiple clients every day, making these wait times a substantial drain on SPLC's resources and undermining its ability to effectively advocate for its clients. In fact, attorneys spent more than 210 hours sitting in the waiting room at Stewart over the seven-month period between May and December 2017. That is more than a month of 40-hour work weeks.

179. Due to the "no-electronics" policy enforced at Stewart, SIFI staff and volunteers must spend additional time trying to make up for the hours lost while waiting to meet with clients.

180. Delays at Stewart routinely prevent SIFI staff and volunteers from spending sufficient time with clients, either because visitation hours may end or the attorney must cut the meeting short to see another client.

181. In some cases, the lengthy delays have prevented SIFI attorneys and volunteers from meeting with their clients at all.

182. 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 again subjected to lengthy delays at the follow-up visit. As a result, matters that could have been handled within a single efficient visit often take multiple trips and multiple hours of waiting, thereby further straining SPLC's resources.

183. These delays have prevented SIFI staff from meeting with clients and prospective clients prior to important court hearings. As a result, SPLC's clients and prospective clients have not been adequately prepared for their hearings.

184. In one instance, SPLC learned about a potential client just prior to his bond hearing. A SIFI volunteer attempted to visit the person before his hearing to provide important advice. Yet, the delay of well over an hour prevented the attorney from speaking with the client prior to the hearing. The bond hearing went forward, and bond was denied.

185. Because the "no-electronics" policy impedes access to interpreters and prevents SPLC from engaging in client work during lengthy waits, SPLC ha

safeguards to permit attorneys to bring in electronic devices at other immigration detention centers. Yet, Defendants have outright rejected these proposals at Stewart and continue to prohibit attorneys from bringing electronic devices into the fa

189. All of these barriers to attorney-client communications are compounded by Defendants' failure to remediate persistently obstructive conduct by Stewart staff. Stewart staff frequently and arbitrarily change rules without notice; for example, the ever-evolving requirements to obtain visitation authorization have delayed client visits, blocked visits altogether, and drained 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,

192. These recent occurrences are but a few of the many instances in which Defendants' agents have engaged in conduct that frustrates detainees' efforts to access legal counsel. Upon information and belief, such conduct is directed specifically and deliberately at SIFI staff and volunteers—not at other attorneys who visit the facility.

193. 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 attorneys to facilitate visits



Although photographs are frequently critical pieces of evidence in removal cases, the guard interrogated the attorney about his conduct.

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

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

197. 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 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.

198. An ICE patrol car passed her, drove about halfway toward the detention center and turned around. The ICE officer drove up behind her, activated his lights, and pulled her over. The ICE officer, who did not immediately identify himself, asked what she was doing. When she explained, he acknowledged there was nothing wrong with taking photos, but said he still had to take her information. He asked if she had a business card, and she said no. He then asked for her name and phone number, which he transcribed with a pen on the palm of his hand. When he asked who she was with, she said "SPLC." He asked if she was helping to "support illegal

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199. An actual and substantial controversy exists between SPLC and Defendants as to their respective legal rights and duties with respect to Defendants' policies, practices, and omissions in obstructing SPLC's ability to zealously represent its clients. SPLC contends that Defendants' policies, practices, and omissions alleged herein violate the constitutional rights of SPLC and its clients as alleged in the following paragraphs.

FIRST CLAIM FOR RELIEF

Denial of Access to Courts in Violation of the Due Process Clause of the Fifth Amendment

(SPLC, on behalf of its clients detained at LaSalle)

200. SPLC realleges and incorporates by reference the foregoing paragraphs and incorporates them herein by this reference.

201. The Due Process Clause of the Fifth Amendment guarantees noncitizen detainees the right of access to courts and prohibits the government and its agents from unjustifiably obstructing that access.

202. As such, SPLC's clients require meaningful access to SPLC in order to seek release on both bond and parole and to defend themselves against removal from the United States—the very reason that they are detained at LaSalle.

203. The regulations and practices at LaSalle unjustifiably obstruct the availability of meaningful legal professional representation for SPLC's clients and impede upon other aspects of their right of access to the courts. These regulations and practices are invalid.

204. SPLC's clients at LaSalle are civil detainees.

205. As a result, Defendants cannot invoke "penological interests" as justification for any of the barriers they have placed between SPLC's clients and SPLC.

206. There are no security interests or administrative needs that justify these barriers at the expense of SPLC’s clients’ access to courts and counsel. Under the totality of the circumstances—including, but not limited to, the remoteness of the facility, the inadequate number of visitation rooms, restrictions on visitation hours, delays in attorney access, lack of confidentiality in visitation rooms, lack of meaningful access to interpretation services, and barriers to remotely and confidentially communicating with their attorneys, Defendants are detaining SPLC’s clients in a manner that prevents them from meaningfully accessing courts.

207. SPLC’s clients have suffered and will in the future suffer from the same mistreatment and denial of access to courts and counsel.   
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212. SPLC'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.

THIRD CLAIM FOR RELIEF

Denial of the Right to a Full and Fair Hearing in Violation of the  
Due Process Clause of the Fifth Amendment

(SPLC, on behalf of its clients detained at LaSalle)

213. SPLC realleges and incorporates by reference the foregoing paragraphs and incorporates them herein by this reference.

214. The Due Process Clause of the Fifth Amendment guarantees SPLC's clients the right to a full and fair hearing in their removal cases.

215. Defendants' conduct creates a substantial likelihood that SPLC's clients' rights to a full and fair hearing will be violated, because Defendants' policies and practices severely restrict the ability of Plaintiff to communicate with its clients and to conduct necessary legal work on their behalf in connection with their removal proceedings.

216. SPLC's clients have a substantial

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219. SPLC'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.

FOURTH CLAIM FOR RELIEF

Denial of the Right to Free Speech in Violation of the First Amendment  
(SPLC, on behalf of itself)

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

221. The First Amendment protects SPLC's activities as a legal organization in

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238. The Due Process Clause of the Fifth Amendment guarantees SPLC's clients the right to a full and fair hearing in their removal cases.

239. Defendants' conduct creates a substantial likelihood that SPLC's clients' rights to a full and fair hearing will be violated, because Defendants' policies and practices severely restrict the ability of Plaintiff to communicate with its clients and to conduct necessary legal work on their behalf in connection with their removal proceedings.

240. SPLC's clients have a substantial interest in avoiding prolonged detention and ultimately prevailing in their removal proceedings.

241. All of the obstacles to accessing and communicating with counsel described herein create a substantial risk that errors will occur in bond and removal proceedings; eliminating these barriers creates a greater likelihood of preventing an erroneous deprivation of SPLC's clients' rights.

242. The government's interest in maintaining the current obstacles is de minimis, especially in light of the countervailing interests of SPLC's clients.

243. SPLC'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.

#### EIGHTH CLAIM FOR RELIEF

Denial of the Right to Free Speech in Violation of the First Amendment  
(SPLC, on behalf of itself)

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



245. The First Amendment protects SPLC's activities as a legal organization in informing and representing its clients because those activities are modes of expression and association.

246. Defendants' policies, practices, and omissions have interfered with and obstructed SPLC's ability to inform and represent its clients at Irwin.

247. The First Amendment also prohibits the government from restricting SPLC's expression on the basis of its viewpoint, or treating SPLC's expression differently from other attorneys on the basis of viewpoint.

248. Upon information and belief, many of the obstacles described above have been



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

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

260. SPLC'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.

#### ELEVENTH CLAIM FOR RELIEF

Denial of the Right to a Full and Fair Hearing in Violation of the  
Due Process Clause of the Fifth Amendment

(SPLC, on behalf of its clients detained at Stewart)

261. SPLC realleges and incorporates by reference the foregoing paragraphs and incorporates them herein by this reference.

262. The Due Process Clause of the Fifth Amendment guarantees SPLC's clients the right to a full and fair hearing in their removal cases.

263. Defendants' conduct creates a substantial likelihood that SPLC's clients' rights to a full and fair hearing will be violated, because Defendants' policies and practices severely restrict the ability of Plaintiff to communicate with its clients and to conduct necessary legal work on their behalf in connection with their removal proceedings.

264. SPLC's clients have a substantial interest in avoiding prolonged detention and ultimately prevailing in their removal proceedings.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

1. Accept jurisdiction of this case and set it for hearing at the earliest opportunity;
2. Issue a judgment declaring that Defendants' policies, practices, and omissions described herein violate SPLC's and its clients' rights under the United States Constitution;
3. Enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting Plaintiff and its clients to the unlawful-

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- 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: April 4, 2018

Respectfully submitted,

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