**IN THE UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| SOUTHERN POVERTY LAW CENTER,<br>in its individual capacity and on behalf of its clients detained at LaSalle ICE Processing Center, Irwin County Detention Center, and Stewart Detention Center<br>400 Washington Ave.<br>Montgomery, AL 36104;<br><br>Plaintiff,<br><br>v.<br><br>U.S. DEPARTMENT OF HOMELAND SECURITY<br>3801 Nebraska Ave., NW<br>Washington, DC 20016;<br><br>U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT<br>500 12th St., SW<br>Washington, DC 20536;<br><br>KIRSTJEN NIELSEN, Secretary of Homeland Security, in official capacity<br>3801 Nebraska Ave., NW<br>Washington, DC 20016;<br><br>RONALD D. VITIELLO,[1] Deputy Director and Senior Official Performing the Duties of Director, U.S. Immigration and Customs Enforcement, in official capacity<br>500 12th St., SW<br>Washington, DC 20536;<br><br>MATTHEW ALBENCE, Executive Associate Director, Enforcement & Removal Operations, and Senior Official Performing the Duties of the Deputy Director, ICE<br>in official capacity | Civil Action No.<br>1.18-cv-00760-CKK<br><br>**FIRST AMENDED COMPLAINT** |

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

500 12th St., SW
Washington, DC 20536;

NATHALIE R. ASHER, Acting Executive
Associate Director, Enforcement and Removal
Operations, in official capacity
500 12th St., SW
Washington, DC 20536;

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

CLAIRE TRICKLER-MCNULTY, Deputy to
Assistant Director for Custody Management,
Enforcement and Removal Operations, in official
capacity
500 12th St., SW
Washington, DC 20536;

DAVID JENNINGS
Acting Assistant Director, Field Operations,
Enforcement and Removal Operations, in official
capacity
500 12th St., SW
Washington, DC 20536;

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

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

Defendants.

# TABLE OF CONTENTS

**INTRODUCTION** .......... **1**

**PARTIES** .......... **5**

**JURISDICTION AND VENUE** .......... **10**

**STATEMENT OF FACTS** .......... **10**

**I. The Government Has Exponentially Expanded The Scope Of Civil Immigrant Detention Despite The Availability Of Effective And Cost-Efficient Alternatives** .......... **11**

A. LaSalle ICE Processing Center .......... **15**

B. Irwin County Detention Center .......... **16**

C. Stewart County Detention Center .......... **18**

**II. High Stakes and Low Representation Rates in Complex Immigration Proceedings Produce Poor Outcomes for Detained Immigrants** .......... **20**

A. Immigration Law is Complex .......... **20**

B. Immigrants are Not Entitled to Appointed Counsel .......... **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 .......... **23**

**III. SPLC Created the Southeast Immigrant Freedom Initiative to Address the Paucity of Representation for Immigrants Detained in the Rural South by Providing Competent, Ethical Pro Bono Counsel** .......... **25**

**IV. The Totality of the Circumstances at Lasalle, Irwin and Stewart Violate Plaintiff's Constitutional Rights** .......... **30**

A. The Totality of the Circumstances at LaSalle ICE Processing Center Violate Plaintiff's Constitutional Rights .......... **36**

B. The Totality of the Circumstances at Irwin County Detention Center Violate Plaintiff's Constitutional Rights .......... **42**

C. The Totality of the Circumstances at Stewart Detention Center Violate Plaintiff's Constitutional Rights .......... **47**

**V. Defendants Are Responsible for the Violations of Plaintiff's Constitutional Rights** .......... **53**

A. Defendants Direct, Manage and Control the U.S. Immigration Detention System .......... **53**

B. Defendants Selected LaSalle, Stewart, and Irwin As Immigration Prisons .......... **55**

C. Defendants Promulgated Performance-Based National Detention Standards to Govern Conditions of Confinement in Immigration Prisons .......... **59**

D. Defendants Fail to Monitor or Enforce Compliance with the PBNDS or Remediate Violations .......... **62**

**FIRST CLAIM FOR RELIEF** .......... **68**

**SECOND CLAIM FOR RELIEF** .......... **69**

**THIRD CLAIM FOR RELIEF** .......... **70**

**FOURTH CLAIM FOR RELIEF** ........................................ **71**
**FIFTH CLAIM FOR RELIEF** ........................................ **71**
**SIXTH CLAIM FOR RELIEF** ........................................ **72**
**PRAYER FOR RELIEF** ........................................ **74**

## INTRODUCTION

1. The United States currently detains hundreds of thousands of noncitizens in civil immigration prisons each year. These detainees include both documented and undocumented people. Many have been in the United States for years and have strong family and community ties. Others have arrived more recently, frequently after fleeing persecution in their home countries. The basis for detaining noncitizens in immigration prisons is civil, not criminal. Many of these detained people have claims that would allow them to remain in the United States, and 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 ten-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 twenty times more likely to succeed in their cases than detainees without counsel.[2]

---

[2] *See* Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court,* 164 U. Pa. L. Rev. 1, 49, 70 (2015) [hereinafter Eagly & Shafer] (describing different outcomes for represented versus unrepresented noncitizens in removal proceedings between 2007 and 2012); *see also* Jennifer Stave et al., Vera Inst. of Justice, *Evaluation of the New York Immigrant Family Unity Project: Assessing the Impact of Legal Representation on Family and Community Unity* 60 (Nov. 2017), https://storage.googleapis.com/vera-web-assets/downloads/Publications/new-york-immigrant-family-unity-project-evaluation/legacy_downloads/new-york-immigrant-family-unity-project-evaluation.pdf. (success rate for immigrant detainees with legal counsel 1,100 percent greater than for pro se detainees); Emily Ryo, *Detained: A Study of Immigration Bond Hearings*, 50 Law & Soc'y Rev. 117 (2016) (immigrant detainees' chances of securing bond substantially higher when represented by counsel).

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 secure, highly restrictive immigration prisons far away from legal resources. Consistent with this policy and 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. Although the law prohibits Defendants from subjecting civil detainees to punitive incarceration, the conditions and restrictions within these immigration prisons are largely indistinguishable from—if not worse than—prisons and jails that hold criminal arrestees and people convicted of crimes.

5. Defendants' imprisonment policies and practices have far-reaching and devastating consequences. Those ensnared by Defendants' policies and practices often have strong ties to their communities, having lived in the United States for many years. Their families are torn apart often for years: parents are separated from their children and spouses from each other and other family members—all with enormous emotional distress. When a parent or other primary wage-earner is imprisoned for a long period of time, these families face immediate economic hardship as well.

6. Families face the additional burden of having to travel great distances to see their loved ones in remote immigration prisons. Many families cannot afford the cost, in terms of either time or dollars, that this travel requires and must forego any visits, putting further strain on the

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. Such policies and practices further interfere with detainees' access to, and communication with, their attorneys and impede attorneys' ability to provide effective, constitutionally guaranteed representation that comports with their ethical obligations.

12. Nationally, only 14 percent of detained noncitizens are represented in immigration removal proceedings—compared to 37 percent of all immigrants. Representation rates are even lower—in some cases, as low as six percent—for noncitizens held in some of the large, rural detention centers in the Southeast. The comparatively paltry representation rates in the Southeast flow directly from Defendants' policies, practices, and omissions.

13. This lawsuit is brought by the Southern Poverty Law Center ("SPLC") on behalf of itself and its clients detained in three immigration prisons in the Southeastern United States—LaSalle Detention Facility in Jena, Louisiana (also known as "LaSalle ICE Processing Center,"

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

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 and their agents impose at LaSalle, Irwin, and Stewart.

17. The myriad barriers to meaningful representation endured by Plaintiff'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.

18. Any lawyers who tried to represent Plaintiff's clients in civil litigation would encounter the same obstacles to access that SIFI staff and volunteers regularly encounter—including the inadequate number of attorney-visitation rooms, lack of contact visits, shackling, 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, detained immigrants' communications 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.

19. 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 *pro se* litigation 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 with counsel regarding their removal proceedings, thereby further disincentivizing their pursuit of civil remedies.

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

21. 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.

22. 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.

23. 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.

24. Defendant Ronald D. Vitiello is the Senior Official Performing the Duties of Director of ICE. Vitiello oversees the enforcement of the nation's immigration laws and the operation of the government's immigration detention system. To that end, he directs the

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, including those at local prisons operating under intergovernmental service agreements and contract detention facilities. Defendant Johnson is sued in his official capacity.

29. Defendant Claire Trickler-McNulty is a Deputy to Defendant Tae Johnson, and was previously the Acting Director of ICE's Office of Detention Policy and Planning ("ODPP"). In that capacity, Trickler-McNulty oversaw ICE's efforts to improve the current immigration detention system, working extensively with both internal and external stakeholders. Upon information and belief, the ODPP was eliminated and its employees and responsibilities were distributed within ICE. Defendant Trickler-McNulty is sued in her official capacity.

30. Defendant Sean Gallagher is the Field Office Director for the ICE Atlanta Field Office. Gallagher has day-to-day responsibility for implementation of DHS and ICE policies, procedures, and practices relating to the detention of immigrants in Georgia, South Carolina, and North Carolina. He is responsible for implementation of DHS and ICE policies and procedures that ensure that all individuals held in ICE custody in detention centers in these states are detained in accordance with the Constitution and all relevant laws. Defendant Gallagher is sued in his official capacity related to Irwin and Stewart.

31. Defendant David Rivera is the Field Office Director for the ICE New Orleans Field Office. Rivera has day-to-day responsibility for implementation of DHS and ICE policies, procedures, and practices relating to the detention of immigrants in Louisiana, Alabama, Arkansas, Mississippi, and Tennessee. He is responsible for implementation of DHS and ICE policies and procedures that ensure that all individuals held in ICE custody in detention centers in these states are detained in accordance with the Constitution and all relevant laws. Defendant Rivera is sued in his official capacity related to LaSalle.

## 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.

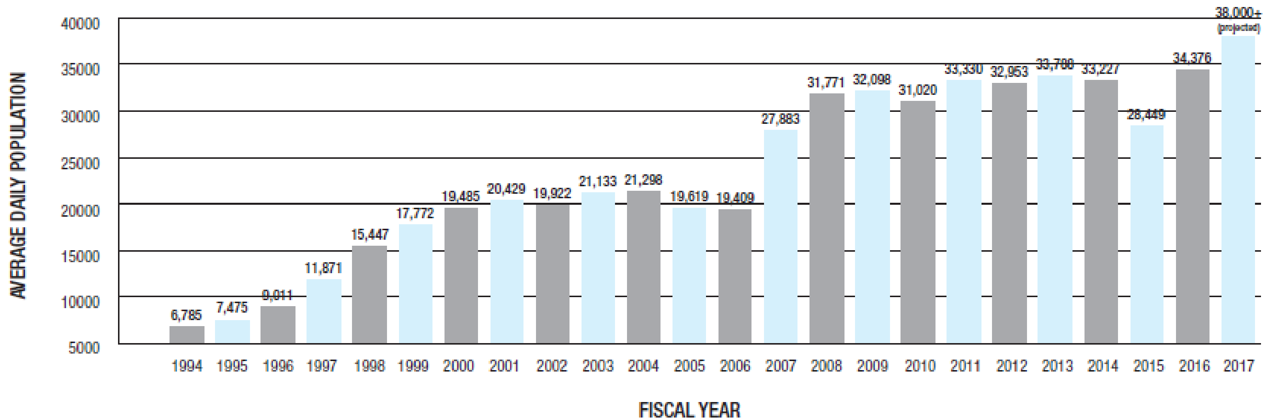
## I. THE GOVERNMENT HAS EXPONENTIALLY EXPANDED THE SCOPE OF CIVIL IMMIGRANT DETENTION DESPITE THE AVAILABILITY OF EFFECTIVE AND COST-EFFICIENT ALTERNATIVES

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.

FY 1994–2017

Average Daily Population of Immigrant Detainees




**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

---

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).

language to mandate that it will fill every one of the detention beds it "maintains," such that this so-called "bed mandate" or "bed quota" is used to justify enforcement actions against individuals whose detention can help keep those beds full. The number of beds included in the mandate has steadily increased since its inception.

43. In Fiscal Year 2018, Defendant ICE estimates the cost for one adult immigration bed will be $133.99 per day.[6] ICE also runs an Alternatives to Detention ("ATD") Program. Under one of ATD's costlier programs, the Intensive Supervision Appearance Program, ICE spends no more than an average of $4.50 a day per participant.[7] A recent GAO review of the ATD program found that, of those immigrants participating in the "Full-Service" component of ATD, "over 99 percent of [immigrants] with a scheduled court hearing appeared at their scheduled court hearings. . . with the appearance rate dropping slightly to over 95 percent of [immigrants] with a scheduled final hearing appearing at their final removal hearing[.]" [8]

44. Defendants detain immigrants who are in removal proceedings in over 200 immigration prisons across the country. Many of these prisons were designed to incarcerate individuals charged with or sentenced for violating criminal law, but actually incarcerate both

---

[6] U.S. Dep't of Homeland Sec., *U.S. Immigration and Customs Enforcement - Budget Overview* 14 (2018), https://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf; *see also* U.S. Gov't Accountability Office, *Immigration Detention*, *Opportunities Exist to Improve Cost Estimates* 12 n.19 (Apr. 2018), https://www.gao.gov/assets/700/691330.pdf. ("ICE's fiscal year 2018 budget request for adult beds was $2,390,489,000. The correct calculation to fund adult beds is 48,879 x $133.99 x 365 = $2,390,493,000, which is slightly more than what ICE requested.").

[7] U.S. Dep't of Homeland Sec., *U.S. Immigration and Customs Enforcement - Budget Overview* 179–80 (2018), https://www.dhs.gov/sites/default/files/publications/ICE%20FY18%20Budget.pdf.

[8] U.S. Gov't Accountability Office, *Alternatives to Detention* 30 (Nov. 2014), https://www.gao.gov/assets/670/666911.pdf.

civilly detained immigrants and individuals incarcerated pursuant to criminal proceedings. In many instances, the conditions civilly detained immigrants experience do not differ from those who are incarcerated related to criminal proceedings, and in some instances, they are worse.

45. ICE itself has recognized that there are "important distinctions between the characteristics of the Immigration Detention population in ICE custody and the administrative purpose of the detention . . . as compared to the punitive purpose of the Criminal Incarceration system."[9] Yet, as Defendants themselves have previously recognized, immigrant detainees and criminal detainees "are typically managed in similar ways . . . in secure facilities with hardened perimeters in remote locations at considerable distances from counsel and/or their communities."[10]

46. In January 2017, the Trump Administration took office armed with an aggressive immigration enforcement agenda, and civil arrests on immigration charges increased by 38 percent within its first four months. By October 2017, ICE was eyeing locations for five new detention centers that could house thousands more detainees, while the number of immigration arrests continued to increase.

47. Detained people may languish in ICE's prisons for years before their removal proceedings are completed. Accessing and retaining an attorney substantially increases the odds that an immigrant detainee will be released on bond or parole and therefore avoid such prolonged detention.

48. Defendants' policies, procedures, and practices of placing detainees in three remote prisons that create structural and operational barriers to detainees' access to courts and counsel,

---

[9] Dora Schriro, U.S. Immigration and Customs Enforcement, *Immigration Detention Overview and Recommendations* 2 (Oct. 2009), https://www.ice.gov/doclib/about/offices/odpp/pdf/ice-detention-rpt.pdf.
[10] *See id.* at 4.

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 immigration detainees, and it opened its doors as an immigration prison shortly thereafter.

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 placement there; the conditions of confinement that they endure; and, for many of them, whether and under what circumstances they are released.

56. Detainees at the LaSalle are there pursuant to ICE's custodial authority over them as federal detainees.

57. Defendants are ultimately responsible for ensuring that the conditions at LaSalle 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 their duty because they have failed to remediate the substantial barriers that impede LaSalle detainees' access to counsel.

**B. Irwin County Detention Center**

58. 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.

59. The Irwin County Detention Center was previously operated variously as a boot camp for youth, a holding facility for U.S. Marshals Service detainees, and a jail for neighboring

---

[11] Oliver Laughland, *Inside Trump's Secretive Immigration Court: Far From Scrutiny and Legal Aid*, The Guardian (June 7, 2017), https://www.theguardian.com/us-news/2017/jun/07/donald-trump-immigration-court-deportation-lasalle.

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*, The Nation (Apr. 10, 2012), https://www.thenation.com/article/how-one-georgia-town-gambled-its-future-immigration-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 inspections at six detention facilities, one of which was Stewart. Among other things, the OIG reported that staff at Stewart misclassified detainees upon intake; that there was an insufficiently documented grievance system; that the number to the OIG hotline was restricted; and that staff were violating procedures

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).

admit or deny allegations, compile voluminous evidence, and articulate sophisticated legal arguments. The opportunity for federal court review of removal orders is relatively limited because immigration judges' factual findings receive deference unless they are clearly erroneous.

76. Although the government has the burden of proof, the respondent may concede the allegations against him at the initial master calendar hearing. If that happens, the immigration judge may find that the government has established the respondent's removability, even in the absence of other evidence. Without meaningful representation, the respondent may forego the opportunity to contest the charges against him, identify potential avenues of relief, marshal the facts and law necessary to establish his eligibility, or follow the requisite procedures to apply for relief from removal.

77. Additional challenges for the unrepresented lurk at every turn. For instance, applications for relief are in English and must be completed in English. If a *pro se* individual writes an application in a language other than English, the applications are deemed abandoned and the respondents are ordered removed. Moreover, an applicant seeking asylum or withholding of removal based on membership in a particular social group must clearly indicate on the record before the Immigration Judge the exact delineation of any proposed particular social group. Precise delineation is absolutely critical as it becomes the basis for the court's case-specific analysis to determine whether the proposed social group is immutable, "particular," and socially distinct in the country from which the respondent fled. Such a hurdle is almost impossible for a detained individual, without counsel, to overcome and obtain appropriate documentation to substantiate.

78. 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."[16]

79. 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.

80. The potentially life-altering consequences of removal proceedings, which "may result in the loss of all that makes life worth living,"[17] makes the lack of more checks and balances particularly inexcusable.[18]

**B. Immigrants are Not Entitled to Appointed Counsel**

81. Because immigration proceedings are civil, not criminal, in nature, the Sixth Amendment does not guarantee a lawyer to immigrants in removal proceedings.

---

[16] U.S. Dep't of Justice, Executive Office for Immigration Review, *Immigration Court Practice Manual* 19 (Aug. 2, 2018), https://www.justice.gov/eoir/page/file/1084851/download.
[17] *Bridges v. Wixon*, 326 U.S. 135, 147 (1945) (internal quotations omitted).
[18] For more information on the differences between the U.S. immigration system and the U.S. criminal justice system, see Am. Immigration Council, *Two Systems of Justice: How the Immigration System Falls Short of American Ideals of Justice* (Mar. 2013), https://www.americanimmigrationcouncil.org/sites/default/files/research/aic_twosystemsofjustice.pdf.

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]

---

[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. 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.[25] DHS may also determine that an individual is subject to mandatory detention and thus ineligible for release, or exercise its discretion to deny release.[26]

87. 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."[27] 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.

88. At the bond hearing, the immigration judge determines whether the individual can be released on bond, recognizance, or subject to other conditions.[28] 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.[29] Detained noncitizens are approximately seven times more likely to be released on bond when represented.[30]

89. The immigration judge has complete discretion to grant or deny release.[31] A request to reconsider a decision regarding custody status or bond may be allowed only if "circumstances have changed materially since the prior bond determination."[32]

---

[25] *See* 8 C.F.R. §§ 236.1(c), 1236.1(c).
[26] *See id.*
[27] *See* 8 C.F.R. §§ 1003.19(a), (h)(2)(i).
[28] *See* 8 C.F.R. §§ 1236.1(d)(1), 1003.19.
[29] 8 C.F.R. § 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).
[30] *See* Eagly & Shafer, *supra* note 2, 70.
[31] 8 U.S.C. § 1226(e).
[32] 8 C.F.R. § 1003.19(e).

90. Both the detained individual and ICE can appeal the immigration judge's bond decision to the Board of Immigration Appeals within 30 days.[33]

91. The importance of release on bond or parole is born out in immigration court outcomes. Whereas just two percent of detained *pro se* immigrants obtain successful outcomes in their removal proceedings, that number jumps to seven percent of *pro se* immigrants who were released from custody and 17 percent of *pro se* immigrants who were never detained.[34] The numbers grow exponentially for those who have counsel: represented immigrants who are released from custody have a 39 percent success rate, and those with counsel who were never detained have a 60 percent success rate.[35] This compares to a 21 percent chance of success for represented immigrants who remain in detention throughout their proceedings.[36]

## III. SPLC CREATED THE SOUTHEAST IMMIGRANT FREEDOM INITIATIVE TO ADDRESS THE PAUCITY OF REPRESENTATION FOR IMMIGRANTS DETAINED IN THE RURAL SOUTH BY PROVIDING COMPETENT, ETHICAL PRO BONO COUNSEL

92. In 2017, Plaintiff launched SIFI to provide desperately needed legal representation to indigent immigrants detained in remote locations in the Southeast, where attorneys are scarce and immigration attorneys even more so. SPLC seeks to fulfill this mission by providing direct representation to detained immigrants in bond proceedings, training *pro bono* attorneys to provide effective representation to indigent detainees in their bond proceedings, and facilitating representation in merits hearings for people who would otherwise have no legal recourse.

[33] 8 C.F.R. §§ 236.1(d)(3)(i), 1003.19(f), 1003.38.
[34] Eagly & Shafer, *supra* note 2, 49-50.
[35] *Id.*
[36] *Id.*

93. SIFI launched at Stewart in April 2017, at Irwin in August 2017, and at LaSalle in September 2017. SIFI is on the referral list of the Legal Orientation Program, which identifies potential *pro bono* legal resources for detainees, at LaSalle, Irwin and Stewart.

94. As of October 2018, SPLC and its volunteers had communicated with 1,360 detainees since launching at these locations. The SIFI project currently represents 49 people at the three prisons at issue in this litigation.

95. 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, D.C., among other cities.

96. SPLC's advocacy, however, is not limited to SIFI's on-the-ground activities at the detention centers and local immigration courts. In addition, SIFI recruits *pro bono* attorneys from across the country to represent detainees in the merits phases of their cases, and SIFI staff provide supervision and technical support for all of these cases.

97. Through SIFI, Plaintiff endeavors to provide effective and ethical removal defense to all their detained clients. To do so, SIFI staff and volunteers—like all immigration practitioners—require the ability to meaningfully, reliably, and confidentially communicate with their detained clients.

98. The American Bar Association's Model Rules of Professional Conduct for attorneys include rules regarding client communication (Rule 1.4) and confidentiality (Rule 1.6).

Rule 1.4 provides, *inter alia*, that a lawyer must reasonably consult with the client about the means by which the client's objectives are to be accomplished; keep the client reasonably informed about the status of the matter; and explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Rule 1.6 provides, *inter alia*, that a lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent; the disclosure is impliedly authorized in order to carry out the representation; or the disclosure is subject to one of a few limited exceptions.

99. Many detained immigrants do not speak English. ICE's own Performance Based National Detention Standards ("PBNDS") require immigration prisons to ensure that detainees who are limited English proficient ("LEP") have access to bilingual staff and/or professional interpretation services to provide them with meaningful access to the prison's programs and services.[37]

100. In this context of immigration representation, effective communication often necessitates access to interpretation services in order for the attorney and client to understand one another. An English-speaking attorney who cannot speak Portuguese and a Portuguese-speaking client who cannot speak English would be hard-pressed to exchange the simplest of greetings, much less discuss the complex reasons why the client was forced to flee Brazil.

101. Interpreters are therefore crucial not only for communicating with a client but also for gathering the information that is necessary to defend against removal.

102. Effective communication in this context also requires conditions conducive to establishing a client's trust, which may be essential to obtain critical evidence. Many detained

[37] U.S. Immigration and Customs Enforcement, *Performance Based National Detention Standards* 2.4(II)(9) (Dec. 2016), https://www.ice.gov/doclib/detention-standards/2011/2-4.pdf.

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 visits between attorney and client provide the best mechanism for putting the client sufficiently at ease to share her experiences and assist in preparing a defense to removal.

103. Reliable communication between attorney and client is also a critical component of removal defense. When attorneys are subject to long waits to see detained clients, their representation of those clients and others are detrimentally impacted. Visits may be cut short due to time constraints or, worse, attorneys may be deterred from visiting detained clients at all.

104. Long amounts of time spent in a waiting room is time that cannot be spent conducting legal research, gathering evidence, drafting legal documents, or meeting with other clients.

105. Remote attorneys representing detained clients likewise require the ability to consistently communicate with their clients in order to discuss the details of their cases. This means being able to schedule client calls without unreasonable delay and having enough time to discuss necessary matters. These communications also may require the services of third-party interpreters in order for attorneys to effectively communicate with their clients.

106. Detained clients must also be able to communicate confidentially with their attorneys. Although confidentiality is an important feature in every attorney-client relationship, the need for confidentiality is especially acute for detained immigrants in removal proceedings given the sensitivity of the issues that must be discussed.

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

own constitutional rights. Defendants have failed to monitor or remediate these ongoing constitutional violations.

## IV. THE TOTALITY OF THE CIRCUMSTANCES AT LASALLE, IRWIN AND STEWART VIOLATE PLAINTIFF'S CONSTITUTIONAL RIGHTS

111. The right to counsel is a crucial procedural safeguard for detained noncitizens seeking release on bond or parole given the high stakes in immigration cases and the dire conditions and consequences of imprisonment.[38] While behind bars in immigration prisons, people are separated from their families, unable to maintain employment, and subjected to harsh conditions, including inadequate medical care and lack of recreation opportunities. They are also removed from access to witnesses and other evidence they need to prove their cases for relief. For these reasons, procedural safeguards—including access to counsel—are crucial to ensuring that people are not unjustifiably imprisoned pending resolution of their removal cases.[39]

112. In addition, the Fifth Amendment's substantive due process protections prohibit the imposition of punishment on civil immigrant detainees.[40] As other courts have recognized, "[a civil] detainee is entitled to more considerate treatment than his criminally detained counterparts . . . . Therefore, when a [civil] detainee is confined in conditions identical to, similar to, or more restrictive than those in which his criminal counterparts are held," a presumption arises "that the detainee is being subjected to punishment."[41] Moreover, conditions may constitute punishment where they are intended to punish, or where objective evidence shows that the conditions are "not

---

[38] *See, e.g.*, *Hernandez v. Sessions*, 872 F.3d 976, 995 (9th Cir. 2017).
[39] *See id*.
[40] *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 690-91 (2001); *R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 187 (D.D.C. 2015).
[41] *Jones v. Blanas*, 393 F.3d 918, 933 (9th Cir. 2004) (internal quotations and citations omitted).

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

119. Once inside the attorney-visitation room, legal representatives and their clients face excessive restrictions on their ability to communicate with one another. Although many prisons holding criminal detainees permit contact visits between attorneys and clients, Defendants permit LaSalle, Irwin, and Stewart to maintain a categorical ban on contact visitation for civil detainees. Instead lawyers must see clients in non-contact visitation rooms, where thick partitions separate the lawyer and client from each other. This set up hampers attorneys' ability to review documents with clients. It also detrimentally impacts the lawyer's ability to create the rapport and trust with his or her client that is crucial to encouraging the client's confidences and gathering all the information necessary to defend against removal, especially for clients who have been persecuted or are otherwise traumatized.

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 on the "attorney side" of the room, it effectively forecloses bringing paralegal or other support staff to assist with these meetings. For example, in those rare instances where an interpreter can be located and brought into the facilities, the interpreter must listen to the attorney with the ear that is not against the phone; interpret into the phone; listen to the client's response; and then interpret back to the attorney. The attorney and client cannot hear one another's voices. The tone and dynamic of the conversation is lost, thereby creating yet another barrier to effective communication between attorney and client.

121. 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 to repeat questions and answers and sometimes to yell and thereby compromise confidentiality. Guards are routinely stationed outside the rooms as a matter of course or for frequent shift changes, where they are able to hear what attorneys say inside the visitation rooms. For example, following an attorney interview with a prospective client at Stewart, the attorney overheard a guard remark to another guard that the attorney had not even been discussing removal issues with the client. Throughout the client visit, the client had remarked to the attorney that the guard had been frequently lurking behind the attorney at the visitation room door.

122. In addition, the phones in the attorney-visitation rooms have short cords and are located in a way that virtually prevents attorneys and clients from facing one another directly, further frustrating their ability to effectively communicate.

123. Defendants permit all three of the prisons to enforce a "no-electronics" policy which prohibits attorneys and staff from bringing in cell phones or laptops. These restrictions

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 attorneys and their staff to bring in electronic devices such as cell phones or computers. Under the circumstances, however, attorneys are left to rely on gestures, 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 feel they can adequately and ethically represent clients with whom they cannot communicate.

124. The prohibition on electronics not only prevents access to interpreters who could be contacted using a cell phone or laptop, but also limits attorneys' ability to efficiently represent their clients. If SPLC's attorneys and staff could bring computers or tablets into the visitation room, they could draft client declarations or other legal documents during their meetings with clients. Clients' stories could be memorialized, and errors could be corrected, in real time. This is particularly important given that long periods spent in the waiting room restrict the time attorneys have to work on client cases. Attorneys who represent clients at other immigration prisons where laptops are permitted report that they are able to more effectively and efficiently represent their clients as a result of their access to computers. Some also report either access to landlines or the ability to use cell phones to contact interpreter services that would otherwise be inaccessible for in-person meetings.

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 prisons in Aurora, Colorado; Dilley, Texas; Florence, Arizona; Elizabeth, New Jersey; and Tacoma, Washington.

126. In addition, the "no electronics" policies are not uniformly administered: ICE and private prison staff at some of the detention centers have cell phones. In addition, criminal defense attorneys are allowed to bring in laptops and use them during client meetings in at least one of the prisons.

127. The obstacles to accessing and communicating with counsel at these immigration prisons stem from Defendants' practice of contracting with and failing to adequately supervise private prison companies, sometimes via Inter-Governmental Service Agreements (IGSAs) with local entities, which have a financial incentive to understaff detention centers and to refuse to improve conditions that impede access. SPLC staff and volunteers are routinely informed that delays stem from insufficient staffing. Likewise, many of the other access barriers described herein arise from poor or inadequate conditions in the facilities operated by these private companies. Money spent on additional staffing and on improving conditions is money that could be distributed to shareholders. At worst, Defendants permit their agents to focus on profit margins at the expense of the constitutional rights of people in their custody; at best, they blithely ignore the ongoing constitutional violations.

128. The totality of the circumstances at each facility impede detainees' meaningful access to counsel and SPLC's ability to express and fulfill its mission.

**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. While lawyers are sometimes permitted to use the family-visitation room if available, that room is even less suitable for confidential attorney-client communication. The room is comprised of several individual, interconnected cubicles with clear partitions that separate the detainees from their visitors. A guard is stationed in the room, within earshot, and detainees awaiting their visits are seated approximately two feet behind the cubicles. Even attempts to speak in lowered voices are insufficient to prevent others from hearing a conversation.

135. There is no slot or other opening in the plastic divider in the family-visitation room to permit the exchange of confidential, legal documents. Guards have instructed attorneys that no documents can be exchanged during these meetings. On occasion the guards will break this rule, and offer to take confidential papers from one person and deliver them to the person on the other side of the partition. Guards who do so frequently search the documents. In most instances, however, a meeting in the family-visitation room means no legal documents can be exchanged.

136. The insufficient number of adequate attorney-visitation rooms at LaSalle has routinely caused SPLC's staff and volunteers to endure substantial waits in order to see clients, thereby diminishing SPLC's resources and undermining its mission to provide quality representation to its clients. These wait times are frequently in excess of 90 minutes and can be as long as five hours.

137. Delays are compounded by specific, additional policies and practices maintained by Defendants at LaSalle. For example, if SPLC staff and volunteers seek to visit a client of one gender in the attorney-visitation room, they may not do so if the adjacent family-visitation room is being occupied by a detainee of the opposite gender.

138. Attorneys cannot see a male client between 11 a.m. and 1 p.m. or a female client between 9 a.m. and 11 a.m. Attorneys are often unable to visit female clients during female-

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 agents to allow VTC communications between lawyers and clients at LaSalle, despite the use of

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 attorney and schedule the call. Likewise, when attorneys request a legal call, the request is sent to “classification” and then to the detainee’s case manager, who has 72 hours to schedule the call. Thus—even if LaSalle uniformly followed the policy—it could take as long as three days to schedule a call, making phone calls an unreliable method to reach clients regarding time-sensitive matters.

147. In practice, however, attorneys are scheduled for calls approximately seven days from the date of a request. An attorney cannot schedule more than one call with a client until the attorney and client have completed the first scheduled phone call. An attorney is required to repeat the scheduling process after the call takes place, often requiring another week before the next call.

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 communication have had especially dire consequences for detainees who are represented by SIFI volunteers from outside Louisiana, for whom reliable telephonic communication is indispensable to provide effective representation.

155. For instance, SIFI volunteers from New York and Washington, D.C. sought to schedule a phone call with their client at LaSalle to obtain information needed for his merits hearing. The client's case was assigned to an expedited docket, meaning that frequent substantive communication was crucial in order to prepare for the impending hearing. However, despite repeated attempts by the SIFI volunteers to call LaSalle to schedule a client call, no one picked up the phone. Days later, when a LaSalle staff member finally answered, the call could not be scheduled for several more days. In total, it took more than a week for the call to occur. Making matters worse, LaSalle staff limited the call to only 20 minutes, which was inadequate to gather the necessary information. When the attorneys sought to schedule a follow-up call, the same series of events occurred: days passed before a LaSalle staff member answered the telephone; even more days passed before the call could take place; and when the call finally occurred more than a week later, it was again limited to just 20 minutes—despite the rapidly approaching merits hearing.

156. Because attorneys cannot schedule multiple phone calls with the same client on a given day and cannot spend more than 20 minutes on a given call, they must make in-person visits and sit for hours in the waiting room to access the sole visitation room.

157. Defendants and their agents are targeting SPLC and its volunteers based on hostility to SPLC's mission. The longer SIFI is operational at LaSalle, the more Defendants and their agents at LaSalle interfere with SPLC's efforts to meet with clients and prospective clients. For example, on March 30, 2018, Defendants' agents prevented SIFI staff and volunteers from meeting with clients and prospective clients at LaSalle on the basis that they had not entered appearances in the relevant cases. This requirement had never been mentioned in the months since SIFI began operating at LaSalle or during the hundreds of previous visits. Enforcing such a policy would 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 prohibit legal visitation from being denied on the basis that the lawyer has not entered a notice of appearance in the case. That same day, attorney visits with SPLC clients represented by SIFI were cancelled, even though SIFI did, in fact, have notices of appearance on file.

158. Also, 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. Defendants' written policy is that legal assistants, with a letter of authorization from their supervising attorney, may visit detainees. Defendants' agents terminated the meeting midway through even though the volunteers had presented the required letter.

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

**B. The Totality of the Circumstances at Irwin County Detention Center Violate Plaintiff's Constitutional Rights**

160. Irwin presently houses approximately 700 immigrant detainees but the prison has only one attorney visitation room for these immigrant detainees to access counsel.

161. The one visitation room is frequently occupied when SIFI staff and volunteers arrive at the detention center to visit clients. That one room is not exclusively used for attorney-client visitations. Weddings, clergy visits and social worker meetings also take place there. Consequently, SIFI staff and volunteers are often subjected to delays of one hour or much longer—sometimes up to three or four hours.

162. These frequent, lengthy delays are compounded by Defendants' and their agents' policy of prohibiting movement within the facility during count, while failing to efficiently transport clients prior to count. In other words, even when the attorney-visitation room is available prior to count, Irwin staff may fail to bring a client to the attorney-visitation room before count begins, meaning that an attorney must wait until count is over—sometimes up to an hour or more—before the visit can commence. And Irwin conducts seven counts per day, all of which are during times when attorneys are permitted to visit.

163. Attorneys frequently occupy the room for many hours to see multiple clients, effectively precluding visitation for all other detainees whose counsel are attempting to meet with them.

164. 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.

165. 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.

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

167. On certain days, Irwin permits SIFI attorneys and volunteers to conduct non-contact visits with clients in the family visitation room, which 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.

168. As with LaSalle, the lack of contact during visits substantially hinders the ability to establish rapport and trust between lawyer and client. Public defenders and other criminal defense attorneys representing pre-trial detainees at Irwin are permitted to conduct contact visits with their clients. Unlike SIFI staff and volunteers, they can freely exchange documents with one another and more easily foster effective communication and trust.

169. Whereas SIFI attorneys and volunteers are largely relegated to meet with clients in the single, non-contact attorney-visitation room, upon information and belief, public defenders are rarely required to use that room. Irwin allows public defenders to conduct contact visits with their

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

as many meetings as possible, this arbitrary restriction creates a significant hardship to SPLC and its many volunteer attorneys.

177. There are indications that Irwin gives preferential treatment to other visitors over SPLC personnel and volunteers. Despite a first-come, first-served visitation policy, social workers have received priority over SPLC staff and volunteers. On one occasion, Irwin staff interrupted an SPLC client visit to insist that the attorney room be vacated for a social worker visit. On another occasion, although a volunteer attorney had been waiting an hour to meet with a SIFI client, a social worker arrived and was permitted to meet with his clients first.

178. Furthermore, upon information and belief, the attorneys for pre-trial, criminal detainees are allowed to bring their laptops to client meetings. This is at odds with the treatment of SPLC staff and volunteers, who have been consistently prohibited from bringing electronics into any part of the prison, including the waiting room.

179. Defendants restrict attorney access to Irwin in other problematic ways. For instance, immigration court proceedings for Irwin detainees occur in Atlanta. The detainees participate in the proceedings via VTC from a room inside Irwin near the attorney-visitation room. Because Defendants prohibit attorneys' access to that VTC room, lawyers representing Irwin detainees are forced to drive three hours to Atlanta and enter their appearance there rather than appearing alongside their clients in the detention center.

180. Immigration judges say they have no authority over the prisons where Defendants choose to house civil detainees.

181. While Defendants allow attorney access to the VTC rooms in some prisons during immigration hearings, this access is uniformly denied at Irwin.

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 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 ended and they could no longer meet with clients.

187. 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 over three hours. Attorneys cannot simply leave the facility and come back later because they risk losing their place in line.

188. 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 have 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.

189. 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.

190. 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.

191. 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.

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

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 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.

194. 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.

195. 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.

196. Because the "no-electronics" policy impedes access to interpreters and prevents SPLC from engaging in client work during lengthy waits, SPLC has sought to negotiate with Defendants to revise the prohibition on electronic devices at Stewart. SPLC has made multiple offers of accommodation, including proposals to purchase laptops with no cameras, to bring in only pre-registered tablets that Stewart staff could inspect, and to certify that any laptops or cell phones are utilized exclusively for client representation purposes. Defendants and their agents have implemented such 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 facility, which negatively impacts SPLC and its clients.

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 adhering to the policy.

198. In one case, an SPLC volunteer attorney met with an Arabic-speaking SIFI client to review the client's sworn declaration. Because there is no access to a language line in Stewart, VTC was the only mechanism by which the attorney could access an Arabic interpreter. The call began eight minutes late, and technical difficulties occurred approximately twenty-five minutes later. The attorney was able to resume the call twelve minutes before the hour expired, by which time the officer had sent the detainee back for count. When the volunteer asked the officer to bring the client back, she refused on the basis that the attorney had just seven minutes left of her allotted hour. The attorney was thus unable to complete review of the client's declaration during that meeting.

199. Access to confidential telephone lines for attorney-client communications is not an alternative at Stewart. Upon information and belief, Stewart only allows confidential telephone calls between attorneys and clients if the VTC is not working.

200. 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, 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' 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.

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. 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 the volunteer attorney explained, the officer 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 immigration" and asked what she was doing. She said she was court watching. When he again asked for the name of her organization, she said "the Southeast Immigrant Freedom Initiative, with the Southern Poverty Law Center," and he wrote that information on the palm of his hand. The officer then said he had to write down her license plate information.

## V. DEFENDANTS ARE RESPONSIBLE FOR THE VIOLATIONS OF PLAINTIFF'S CONSTITUTIONAL RIGHTS

### A. Defendants Direct, Manage and Control the U.S. Immigration Detention System

210. Defendants direct, manage and control the U.S. immigrant detention system and the conditions of confinement therein, including at LaSalle, Irwin, and Stewart.

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 detainees daily and roughly 440,000 detainees annually,"[46] and "[m]anages ICE detention operations to efficiently and effectively provide for the safety, security, and care of persons in ICE custody."[47]

---

[43] *See* 8 U.S.C. § 1103(a)(1); 8 C.F.R. § 2.1 (Secretary of Homeland Security has authority to administer and enforce the immigration laws, which may be delegated to any DHS official, officer or employee); 8 C.F.R. § 100.1 (authority to administer and enforce immigration laws has been delegated to ICE, as well as U.S. Customs and Border Protection and U.S. Citizenship and Immigration Services).

[44] *Facility Inspections*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/facility-inspections (last updated Sept. 17, 2018).

[45] *Enforcement and Removal Operations*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/ero (last updated Jul. 31, 2018).

[46] *Custody Management – Leadership*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/custody-management (last updated Jan. 3, 2018).

[47] *Custody Management – Overview*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/custody-management (last updated Jan. 3, 2018).

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. The contract requires compliance with, *inter alia*, the most current editions of the ICE Detention Standards and the American Correctional Association (ACA) Standards for Adult Local Detention Facilities (ALDF). It explicitly requires that, in the event other standards conflict with ICE standards, the ICE standards prevail.

221. It also includes a lengthy "Quality Assurance Surveillance Plan" through which the Defendants are supposed to validate that the service provider is complying with government-mandated quality standards in operating the facility, including compliance with standards related to legal rights.

222. The contract provides that ICE is exclusively responsible for the placement of detainees at LaSalle. ICE detainees may not be accepted into LaSalle custody except upon presentation by properly identified ICE personnel and ICE detainees may not be released from Irwin custody except to properly identified ICE personnel or with ICE authorization.

223. In the contract, ICE maintains "final approving authority" for all LaSalle staff hired to work with immigrants detained by ICE.

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 room for approximately 1,200 total prisoners.

226. The contract requires compliance with, *inter alia*, 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 not be accepted into Irwin custody except upon presentation by a properly identified federal officer, and ICE detainees may not be released from Irwin custody except to properly identified ICE personnel or with ICE authorization.

229. Via a contract executed on June 30, 2006, ICE selected Stewart Detention Center to imprison ICE detainees in its custody. The contract is signed by an ICE Contracting Officer.

230. Upon information and belief, Defendant ICE selected the Stewart Detention Center for the imprisonment of immigrants notwithstanding Defendants' knowledge of the structural barriers limiting detainees' access to counsel, such as the existence of just three attorney visitation room for approximately 1,900 detained immigrants.

231. The contract requires compliance with, *inter alia*, the most current editions of the ICE Detention Standards and 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.

232. In the contract, Stewart agrees to submit to periodic inspections by ICE inspectors.

233. The contract makes clear that ICE detainees may not be accepted into Stewart custody except upon presentation by a properly identified federal officer and ICE detainees may not be released from Stewart custody except to properly identified ICE personnel or with ICE authorization.

234. The insufficient number of legal visitation rooms, inadequate soundproofing in the rooms, and physical barriers to contact visitation, as detailed herein, result from Defendants' choice to house immigrants in these buildings and their subsequent failure to authorize and advance funding to improve the buildings to ensure adequate legal visitation space.

235. DHS's Office of Inspector General recently observed that ICE does not have sufficient policies or guidance for certain "procurement instruments" including Inter-Governmental Service Agreements (IGSAs). LaSalle, Irwin, and Stewart are operated pursuant to IGSAs. OIG noted that ICE has failed to formally define IGSA as one of the three types of procurement instruments available to the federal government for obtaining supplies and services (grants, cooperative agreements, and procurement contracts). OIG reported that ICE does not follow Office of Management and Budget's statutory uniform administrative requirements for Federal awards or Federal Acquisition Regulations, and observed that ICE "should have developed policies and procedures for negotiating, executing, and modifying IGSAs." Finally, OIG noted that ICE is not in compliance with OMB's Circular A-123, Management Responsibility for Enterprise Risk Management and Internal Control, which requires agencies to establish policies and

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]

---

[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 thousands of detained immigrants across the United States.

241. The PBNDS provide that meetings between detainees and attorneys or legal assistants are "confidential" and "shall not be subject to auditory supervision."[56] The PBNDS further specify that "[p]rivate consultation rooms shall be available for such meetings."[57] 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" and "[s]uch meetings shall be afforded the greatest possible degree of privacy under the circumstances."[58]

242. Regarding the availability of legal visitation, the PBNDS require facilities to permit legal visitation every day, including holidays.[59] Legal visitation must be available for at least eight hours on weekdays and at least four hours on weekend days.[60]

243. 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

[56] 2011 PBNDS at 5.7(I)(2).
[57] *Id.*
[58] 2011 PBNDS at 5.7(V)(J)(9).
[59] 2011 PBNDS at 5.7(V)(J)(2).
[60] *Id.*

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).
[62] *Id.*
[63] 2011 PBNDS at 5.7(V)(J)(9).
[64] 2011 PBNDS at 5.7(V)(J)(2).
[65] *See* 2011 PBNDS at 5.7(V)(J)(9).
[66] 2011 PBNDS at 5.7(V)(J)(4).
[67] 2011 PBNDS at 5.7(V)(J)(8).
[68] 2011 PBNDS. at 5.7(V)(J)(4).
[69] 2011 PBNDS at 5.7(V)(J)(7).

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 contract compliance and initiate new procurements.[76] Beginning in December 2009, ICE collaborated with vendors to provide specific no-cost improvement, such as increased recreation and contact visitation, to improve conditions of confinement. In December 2010, ICE created the Detention Monitoring Council, which engages ICE senior leadership in the review of facility inspection reports, assessment of corrective action plans, implementation of detention reforms, and other ongoing oversight issues.

---

[73] *See generally* 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.
[74] *Id*. at 3.
[75] *Id*.
[76] *Detention Reform*, U.S. Immigration and Customs Enforcement, https://www.ice.gov/detention-reform#tab1 (last updated Jul. 24, 2018).

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 and Customs Enforcement Facilities* (OIG-07-01) (December 2006), https://www.oig.dhs.gov/assets/Mgmt/OIG_07-01_Dec06.pdf.

time limits placed on detainees' telephone calls, and refusal by facility staff to deliver telephone messages to detainees."[83]

260. In 2015, three national non-profit organizations issued a report entitled "Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse."[84] The authors reviewed five years' worth of ICE inspections for 105 of the largest immigration detention prisons in the country and concluded that ICE's inspection process "remains a 'checklist culture' in which inspectors – employed by ICE directly or via subcontracts- engage in pre-planned, perfunctory reviews of detention centers that are designed to result in passing ratings. . . ." This report includes an in-depth section on Stewart that notes that attorneys in the region complained as far back as 2012 that the visitation rooms were inadequate because they had to communicate with their clients through a phone and Plexiglas, making it difficult to prepare for court and provide confidential documents—but that none of these concerns were reflected in the facility inspection reports.[85]

261. Even if Defendants enforced the PBNDS at LaSalle, Irwin, and Stewart, the standards are entirely insufficient to protect the rights of noncitizens held in these prisons. Among other facially inadequate aspects of the PBNDS, they allow prison staff to improperly interfere with the attorney-client relationship; they fail to mandate timely access in all situations where communication with counsel is imperative to provide adequate representation in dispositive

---

[83] Nat'l Immigration Law Ctr., *A Broken System: Confidential Reports Reveal Failures in U.S. Immigration Detention Centers* ix, https://www.nilc.org/wp-content/uploads/2016/02/A-Broken-System-2009-07.pdf.
[84] Nat'l Immigrant Justice Ctr., *Lives in Peril: How Ineffective Inspections Make ICE Complicit in Immigration Detention Abuse* 2, http://immigrantjustice.org/lives-peril-how-ineffective-inspections-make-ice-complicit-detention-center-abuse-0.
[85] *See id*. at 25–26.

proceedings; and they fail to prevent punitive conditions of legal visitation, such as non-contact visitation and shackling of immigrants during legal visits.

262. Defendants' repeated and consistent failure to adequately direct and manage the immigration system that they control results in ongoing and routine interference with Plaintiff's clients' access to counsel—by detaining them in facilities with an insufficient number of attorney-visitation rooms, actually and constructively depriving them of confidential contact with their attorneys or legal representatives, preventing the confidential exchange of documents, and subjecting them to punitive conditions such as shackling during legal visitation. Defendants' conduct violates the minimal protections embodied in the PBNDS and, ultimately, the protections afforded to immigrants by the Constitution.

263. Defendants have abdicated their duty at every point in the process of setting and enforcing compliance with standards for immigration detention. This abdication, along with the inadequacies of the oversight and monitoring scheme itself, are the cause of the unconstitutional lack of access to counsel and to courts at immigration prisons across the country, including LaSalle, Irwin, and Stewart.

## 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 at LaSalle, Irwin and Stewart)**

264. SPLC reallege and incorporate by reference the foregoing paragraphs and incorporate them herein by this reference.

265. 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.

266. As such, Plaintiff's clients require meaningful access to Plaintiff 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 these immigration prisons.

267. The regulations and practices of the Defendants 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 at facilities across the Southeast. These regulations and practices are invalid.

268. SPLC's clients at these facilities are civil detainees.

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

270. 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 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 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 at LaSalle, Irwin and Stewart)

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

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

278. Defendants' conduct creates a substantial likelihood that Plaintiff'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.

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

280. 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 Plaintiff's clients' rights.

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

282. 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.

## FOURTH CLAIM FOR RELIEF

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

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

284. 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.

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

286. 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 that of other attorneys on the basis of viewpoint.

287. Upon information and belief, many of the obstacles described above have been targeted at the SPLC alone—and not other immigration lawyers who practice at LaSalle, Stewart, or Irwin—due to SPLC's underlying mission.

## FIFTH CLAIM FOR RELIEF

**Denial of Substantive Due Process in Violation of the Fifth Amendment**
**(SPLC, on behalf of its clients at LaSalle, Irwin and Stewart)**

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

289. Due process prohibits imprisoning civil detainees in conditions that rise to the level of punishment.

290. Conditions of confinement that are expressly intended to punish, that are not reasonably related to a legitimate governmental objective, and/or that are excessive in relation to that objective, constitute punishment of civil detainees in violation of the Due Process Clause.

291. The conditions of confinement for Plaintiff's clients at LaSalle, Irwin, and Stewart, violate the Due Process Clause.

292. At each facility, Defendants' policies and practices obstruct civil detainees from accessing and communicating with attorneys in a manner that is equivalent to or even more restrictive than conditions imposed upon criminal detainees in jails and prisons.

293. For example, contact visits with attorneys are categorically prohibited at LaSalle, Irwin, and Stewart. Rather than requiring an individualized assessment of whether a particular civil detainee poses a security threat sufficient to justify an individual ban on contact visits, Defendants deliberately choose to maintain policies and practices that permit categorical bans on contact visits between attorneys and their detained immigrant clients.

294. The constellation of restrictions on attorney access described herein violate the Due Process Clause because they, individually and collectively: (1) are identical to, similar to, or more restrictive than those under which persons accused or convicted of crimes are confined; (2) are expressly intended to punish civil detainees; (3) are not reasonably related to legitimate governmental objectives; and/or (4) are excessive in relation to any proffered objective.

## SIXTH CLAIM FOR RELIEF

### Violation of the Administrative Procedure Act, 5 U.S.C. § 706

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

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

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 and four hours on weekend days (including holidays, scheduled meal periods, and routine official counts that take place after a visit has begun), and provide for the exchange of documents even when contact visitation rooms are unavailable. The PBNDS strongly encourage contact visitation. In addition, the PBNDS require that facilities allow detainees to meet with prospective legal representatives or legal assistants, who need not file a notice of appearance to participate in a consultation visit or to provide consultation during an asylum officer interview or an Immigration Judge's review of a negative credible fear determination.

299. Although the PBNDS are incorporated into ICE's management contracts for LaSalle, Irwin, and Stewart, Defendants have failed miserably to ensure compliance with them. In particular, Defendants have provided an inadequate number of soundproof legal visitation rooms, deprived detainees of confidential contact with their attorneys or legal representatives, prevented the confidential exchange of documents between detainees and their attorneys or legal assistants, and imposed punitive barriers to contact visitation.

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).

301. In addition, the agency's failure to comply with the attorney access requirements and SPLC's First Amendment rights under the Constitution is not "in accordance with law." 5 U.S.C. § 706(2)(A).

302. Defendants' final agency actions have caused Plaintiff and its clients detained at LaSalle, Irwin, and Stewart to suffer injuries in fact.

303. The interests that Plaintiff seeks to protect are within the zone of interests regulated by the applicable provisions of the Constitution and the PBNDS.

304. Defendants' final agency actions are the direct cause of the injuries to Plaintiff's detained clients.

305. Plaintiff's requested relief would redress these injuries.

306. Plaintiff has no adequate remedy at law to redress the wrongs suffered as set forth in this Complaint.

## 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 Plaintiff and its clients' rights under the United States Constitution and the Administrative Procedure Act;

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,

/s/ Lisa S. Graybill
Lisa Graybill
Jamila Johnson
Jared Davidson
Southern Poverty Law Center
201 St. Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
Tel: (504) 486-8982
Lisa.Graybill@splcenter.org
Jamila.Johnson@splcenter.org
Jared.Davidson@splcenter.org

/s/ Melissa Crow
Melissa Crow (DC Bar No. 453487)
Southern Poverty Law Center
1666 Connecticut Avenue, NW, Suite 100
Washington, DC 20009
Tel: 202-355-4471
Melissa.Crow@splcenter.org

/s/ Natalie Lyons
Natalie Lyons
Southern Poverty Law Center
150 E. Ponce de Leon Ave., Ste. 340
Decatur, GA 30030
Tel: (404) 521-6700
Natalie.Lyons@splcenter.org

/s/ John T. Bergin
John T. Bergin (DC Bar No. 448975)
Kilpatrick Townsend & Stockton LLP
607 14th Street NW, Suite 900
Washington, DC 20005
Tel: (202) 481-9942
JBergin@kilpatricktownsend.com

/s/ William E. Dorris
William E. Dorris
Susan W. Pangborn
Jeffrey Fisher
Kilpatrick Townsend & Stockton LLP
1100 Peachtree Street NE, Suite 2800
Atlanta, GA 30309
Tel: (404) 815-6104
BDorris@kilpatricktownsend.com
SPangborn@kilpatricktownsend.com
JFisher@kilpatricktownsend.com

/s/ Gia L. Cincone
Gia L. Cincone
Kilpatrick Townsend & Stockton LLP
Two Embarcadero Center, Suite 1900
San Francisco, CA 94111
Tel: (415) 273-7571
GCincone@kilpatricktownsend.com

Attorneys for Plaintiff