

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

**SOUTHERN POVERTY LAW
CENTER,**

Plaintiff,

v.

**U.S. DEPARTMENT OF HOMELAND
SECURITY, et al.,**

Defendants.

No. 1:18-cv-00760-CKK-RMM

THIRD DECLARATION OF RUSSELL WASHBURN

I, Russell Washburn, make the following Declaration:

1. I am over the age of 18 years and competent to testify to the matters set forth in this Declaration.
2. I have personal knowledge of the facts set forth in this Declaration, and if called as a witness, could competently testify to these facts.
3. I have been employed by CoreCivic, Inc. since 1996. I have 24 years of experience as corrections professional, and for the past 12 years, I have held the position of Warden at several CoreCivic facilities.
4. I am a member of the American Correctional Association. I am also the President of the North American Association of Wardens and Superintendents (“NAAWS”). I became the NAAWS President effective August 17, 2020.
5. Effective April 1, 2020, I became Warden of the Stewart Detention Center (“SDC”), in Lumpkin, Georgia. SDC is privately owned and operated by CoreCivic, who I understand is not a party to this litigation. CoreCivic is the service provider for an

Intergovernmental Service Agreement between Stewart County, Georgia and U.S. Immigration and Customs Enforcement (“ICE”).

6. It is my understanding that SDC is the largest of the four facilities at issue, with more than twice the capacity to house ICE detainees than the Irwin County Detention Center. In addition to capacity, the physical plant design of each facility presents unique operational challenges. While the facility is currently significantly below its full capacity, the policies and procedures described herein are designed to be achievable for a full facility population nearly 2,000 ICE detainees.

7. I have previously provided two Declarations in this matter, including my Second Declaration, dated June 30, 2020 in response to the Court’s June 17, 2020 Order.

8. I have been provided with, and have reviewed, Plaintiff’s Motion to Enforce the Court’s June 17, 2020 Order, filed on August 7, 2020.

Compliance with PBNDS 5.6 Optimal Requirements

9. In accordance with the Court’s June 17, 2020 Order at 3-4 [Doc. 123], I previously certified that SDC complies with Optimal Requirements of PBNDS Section 5.6 relating to Telephone Access. I stand by that certification.

10. Plaintiff and its experts appear to be asking the Court to re-write the Performance National Detention Standards (“PBNDS”). Specifically, they seek to redefine “operable telephone” to be the number of telephones in each housing unit, and to require that only telephones spaced more than six feet apart be counted. Yet, the PBNDS does not include any specification on the location of telephones. Moreover, notwithstanding Plaintiff’s other complaints, the PBNDS explicitly permits those types of exceptions to access.

11. For example, PBNDS 5.6(V)(D) requires that facility administrators only need implement rules and procedures that provide detainees “reasonable and equitable access to telephones during established facility ‘waking hours’ (excluding the hours between lights-out and the morning resumption of scheduled activities). Telephones shall be located in parts of the facility that are accessible to detainees.”

12. While the PBNDS does not require that detainee telephones be located in housing areas, Plaintiff asserts that my certification is based upon a “flawed methodology” because it did not account for the design capacity of the facility or provide the number and capacity of each housing pod.

13. On May 15, 2020, I attested that “Stewart Detention Center has a total of 214 detainee telephones in the housing areas. At capacity, the detainee-to-phone ratio is 9.53 detainees per telephone.” (Washburn Dec. at ¶ 41). Neither the number of detainee telephones nor the design capacity of the facility have changed since then.

14. As of Friday, August 7, 2020, SDC had a total count of 1,122 detainees present at the facility, with two detainees at outside medical. This is less than the detainee population I reported in paragraph 15 of my Second (June 30th) Declaration.

15. Nevertheless, the following details the design capacity and number of DTS telephones in all detainee housing areas at SDC:

Pod	Design Capacity	DTS Phones
1A	62	7
1B	62	7
1C	62	7
1D	62	7
1E	62	7
1F	62	7
2A	66	7
2B	66	7
2C	66	7
2D	66	7
2E	66	7
2F	66	7

Pod	Design Capacity	DTS Phones
3A	62	7
3B	66	7
3C	66	7
3D	62	7
3E	62	7
3F	62	7
4A	88	9
4B	80	8
4C	88	9
5A	88	9
5B	80	8
5C	88	9
6A	88	9
6B	80	8
6C	88	9
7A	38	4
7B	80	6

All general population housing pods (1A through 6C), meet or exceed the PBNDS Optimal Standards of 1 telephone for every 10 detainees. The housing pods in Unit 7 (7A and 7B) are designed as Restricted Housing Units, where in accordance with PBNDS 5.6(V)(H), access may be more limited. As previously detailed on May 15th, at full capacity, there is a 9.53 detainee to telephone ratio, which is surpasses the PBNDS 5.6 optimal standard.

16. Plaintiff and its expert also assert that SDC improperly counts toward compliance with DTS phones when detainees are not permitted to use those phones during times of count or

lockdown. Yet, PBNDS 5.6(V)(D)(2) provides that “Calls *may be restricted* or limited if necessary *to prevent interference with counts*, meals, scheduled detainee movements, court schedules, or other events constituting the orderly operation of the facility.” (Emphasis added).

17. Population counts at SDC are conducted in accordance with PBNDS 2.8. Formal Counts are conducted at 1:00am, 2:30am, 6:20am, 12:30pm, 6:30pm, 9:00pm and 11:00pm. The amount of time for a count to be completed is typically 45-60 minutes, with the exception of the one Standing, Face to Photo Count, conducted at 6:30pm, which typically takes 60-90 minutes. During counts, detainees are to return to and remain at their bunks until cleared for movement by an officer and no detainee talking is permitted. Detainee disruptions may delay the completion of the count. Facility movement, including use of the DTS phones, may not resume until the total facility count is verified and cleared. Detainees who are approved to be out of their housing areas, such as for a legal visit, facilitated call, or VTC appointment, are permitted to continue those during counts, but must remain in those areas until the count has cleared. Aside from those formal count times, detainees are permitted to use the DTS phones from 4am to midnight Sunday-Thursday, and longer on weekends.

18. I do not agree with the interpretation of the PBNDS that DTS phones, which are also used for social calls, must be located more than six feet apart to permit private communications. The wall-mounted phones at SDC have integral hard-surface privacy panels (side partitions) that extend at least 18 inches to prevent communications from being overheard. Attachment 1 is a photograph depicting a typical set of wall-mounted DTS phones at SDC. These privacy panels are contemplated by PBNDS 5.6(V)(F)(2), and are just one of the ways SDC complies with that portion of the standard to provide privacy during legal calls.

19. I reaffirm my prior certification that SDC complies with the standards set forth in PBNDS Section 5.6(V)(E) relating to the availability of direct or free calls.

20. The Detainee Telephone System (“DTS”) is operated by Talton, pursuant to a contract between Talton and ICE. Stewart Detention Center does not set the rates for the calls or receive any profit from the Detainee Telephone System.

21. It is my understanding that the contract between ICE and Talton requires that the system permit detainees to place direct or free (or pro bono) telephone calls. Upon information and belief, the list of numbers programmed into the system to which free calls may be placed from SDC, includes but is not limited to: the Executive Officer for Immigration Review or local immigration court; the Board of Immigration Appeals; federal and state courts where the detainee is; consular officials; the Department of Homeland Security Officer of Inspector General; legal representatives (to obtain legal representation, or for consultation when subject to expedited removal); legal service providers or organizations listed on the ICE/ERO free legal service provider list; United Nations High Commissioner for Refugees; the Prison Rape Elimination Act hotline; and, the ICE Office of Professional Responsibility Joint Intake Center. Attachment 2 is a true and correct copy of the free legal service provider list posted in each of the housing pods at SDC. This list was posted at the time of my arrival at SDC and includes instructions for detainees to place free calls to multiple pro bono legal service providers, including the Southern Poverty Law Center, Southeast Immigrant Freedom Initiative to secure legal representation.

22. While SDC has no control over setting rates or determining which calls placed from the Talton DTS are free, it is my understanding that ICE does not require Talton to provide free legal calls to any legal representative aside from those on the pro bono platform. It is my understanding that detainees or their counsel must pay for calls placed to legal representatives at other phone numbers.

23. To the extent that detainees need to contact federal, state or local government officers to obtain documents relevant to their immigration cases, detainees at SDC submit a Detainee Information Request, and Unit Management team staff will assist with providing direct or free calls at no cost to the detainee.

24. SDC has not restricted the use of, or turned off, any DTS telephone to promote or ensure social distancing. However, SDC does require that detainees wear cloth face coverings at all times, which includes while detainees are using the telephone, should detainees simultaneously wish to use DTS phones located within 6 feet of one another.

25. It is my understanding that the length of any call placed from the DTS may not exceed 20 minutes in duration. If additional detainees are waiting to use the phone, detainees are requested at the end of their time, to allow another detainee to use a phone. However, there is no limit on the number of DTS calls a detainee may place in a single day.

26. Further, detainees who do not wish to use the DTS telephones to make legal calls may avail themselves to other opportunities at SDC, including facilitated legal calls. However, the DTS phones are an efficient tool for detainees to quickly contact and leave messages for their legal representatives to request or schedule a facilitated legal call or VTC session, if additional privacy is desired.

Telecommunications Quality Assurance and Reporting

27. I previously certified that that SDC complies with the standards set forth in PBNDS Sections 5.6(V)(A)(3)-(4) with respect to the DTS, and I stand by that certification.

28. SDC personnel inspect DTS telephones daily, and promptly reports out-of-order telephones to the designated Talton contact, so that any required repairs may be completed quickly.

29. DTS phone service is monitored by ensuring that each phone has a dial tone when the receiver is lifted. Officers also dial a special number in the free call platform to ensure that the free call platform for the provision of direct or free calls is available. Attachment 3 is a true and correct copy of the log form completed at SDC during daily inspections of the 42 DTS telephones in Housing Unit 1 at SDC. Similar forms are completed daily in each of the other housing areas as well. Attachment 4 is a true and correct copy of the daily DTS phone monitoring logs for August 4-6, 2020.

30. Once the forms are completed, the Telephone Response Committee is notified, who in turn notifies the Talton service technician. Attachment 5 is a true and correct copy of the most recent iteration of the telephone outage reporting procedure circulated to SDC staff and detainees.

31. Should detainees observe a phone is not functioning, they may notify any Unit Management team member, who will report the outage to the Telephone Response Committee.

32. Additionally, SDC detainees are instructed to report any phone issues directly to Talton Customer Service, by entering their Personal Identification Number (“PIN”) and dialing 211#. Instructions for this are contained in the SDC Detainee Handbook Supplement at pages 20-21. Attachment 6 is a true and correct copy of the SDC Detainee Handbook Supplement, which is issued to all ICE detainees at intake. A Spanish language version is provided to detainees as necessary.

33. It appears that Plaintiff’s sole complaint is that SDC has not identified by name a single individual who should be contacted for any technical issues.

34. While I understand Dr. Schriro’s theoretical organization concern relating to accountability, due to staff screenings and quarantine protocol, it is highly possible, if not likely, that any single named individual may not be present in the facility for an extended period of time to address issues. As a result, the designated contacts at SDC are identified by positions and titles to ensure coverage during any scheduled or unexpected staff absence. Identifying and designating a certain point of contact by an individual’s name would serve only to create a failure point when such person is not available. At SDC the point of contact for all technical issues relating to voice and VTC calls is the Chief of Unit Management. If the Chief of Unit Management is not available due to an absence, inquiries should be directed to the employee designated as the acting Chief of Unit Management.

35. The designated ICE/ERO free legal services providers have also been notified to contact the main facility phone number ((229) 838-5000) to report any problems with calls placed to them through the Video Teleconferencing systems (“VTC”). Likewise, if there are issues with the quality of a call placed from the DTS, the same number should be called. The facility operator can then direct the call to the Chief of Unit Management, or employee acting in that capacity, during the Chief’s absence.

36. VTC systems at SDC are also monitored daily to ensure adequate hardware and software functionality. Attorney complaints regarding functioning may also be reported via e-mail to the address used to schedule attorney/client VTC visits.

37. Because the VTC systems rely upon an internet connection, I understand that issues of “lag” in audio or video during VTC sessions may be more likely to occur in periods of high demand for internet bandwidth, as well as competing demands for bandwidth at the legal representative location, where multiple devices may be connected to the same network or router, particularly home networks. SDC lacks the ability to control internet connectivity issues arising outside of the facility.

38. Detainees are escorted out of their housing pod and visually supervised by staff in locations where facilitated legal calls (rather than calls placed through the DTS) and VTC legal appointments occur. If a detainee has an immediate concern regarding a technical issue during any such communication, they should alert the staff member who is visually observing them from out of earshot. Concerns which do not require immediate resolution may be brought to the attention of the Chief of Unit Management, through any member of the detainee’s Unit Management Team.

39. Plaintiff neither asserts nor identifies any specific technical issue with the inability to engage in a legal communication with any detainee at SDC for any particular telephone call or VTC appointment since June 30, 2020.

40. I am also not aware of any instances where there have been any reported issues regarding the functioning of DTS phones, staff telephones, or VTC systems.

Confidentiality of Attorney-Client Communication

41. I previously certified that SDC complies with the standards set forth in PBNDS Sections 5.6(V)(F)(2) relating to the confidentiality and privacy of detainee-attorney communications placed using the DTS. I stand by that certification.

42. With respect to SDC, Plaintiff complains that facilitated legal calls which take place in staff offices are not confidential, because staff maintain *visual* supervision of the inmate. Such complaint either misinterprets or demonstrates a fundamental misunderstanding of the PBNDS. PBNDS 5.6(V)(F)(2)(d) specifically requires that even during such legal calls, “detainees ***shall be supervised within eyeshot***, but out of earshot.” (Emphasis added).

43. I understand the Court's June 17, 2020 order to direct SDC to certify compliance with PBNDS 5.6(V)(F)(2). SDC does so by (1) having sufficiently sized privacy panels on DTS telephones in detainee housing areas; (2) locating DTS telephones away from where staff may overhear them; and (3) permitting and facilitating calls from staff office telephones.

44. Specifically, I previously attested, and reaffirm here that the Talton DTS has the ability to restrict the monitoring and recording of calls placed by detainees to their attorneys. Detainees or attorneys can request that their numbers be placed on the do not monitor/do not record list.

45. Attorneys who wish to be placed on this list should provide the facility with a request, along with their state bar identification, driver's license, phone number(s) and G-28 form reflecting representation of at least one detainee at the facility. This information may be sent to the facility via facsimile or email. Attorneys do not need to send a request for multiple detainees, and once on the list, they will remain. To the extent that an attorney wishes to have a non-attorney legal representative, such as a paralegal or investigator acting under the attorney's supervision to have such privileges, the attorney will need to provide a letter identifying the person they are supervising, and that person will also need to provide valid photo identification and the additional numbers to be blocked. The main facility phone and fax numbers are posted at <https://www.corecivic.com/facilities/stewart-detention-center> (last accessed June 30, 2020). These requests may also be emailed to the Chief of Unit Management, currently jacqueline.norman@corecivic.com.

46. I reaffirm that attorneys who are not sure their number(s) are on the do not monitor or record list, are welcome to submit a request via facsimile or email, along with a copy of their state bar identification, driver's license, and a G-28 form reflecting representation of at least one detainee at the facility. If attorneys change their phone numbers, they should also submit updated numbers when those changes occur.

47. In addition, legal representatives, who wish to confirm that their number is not monitored, may also wish to email ICESupport@Talton.com and advise ICE's contracted telephone provider that their

number is an attorney number. Talton will validate that the number is an attorney number and can confirm that it will not be recorded or monitored.

48. I reaffirm that detainees wishing to ensure that their calls using the DTS are not monitored or recorded, need to provide a request through their Unit Management Team to the Telephone Information Officer¹ listing their attorney's name and phone number. Once the information is verified by the facility investigator, the attorney's number will be placed on the do not monitor/do not record list in the DTS. This process is normally completed within two business days. These instructions are posted in both English and Spanish in each housing pod at SDC. Attachment 7 is a photograph depicting the posting in a typical housing unit.

49. Each general population housing pod at SDC has two separate banks of telephones in the unit. There is a set of wall-mounted telephones in each pod, which include integral privacy panels (side partitions) that extend at least 18 inches to prevent communications from being overheard. Attachment 1 is a photograph depicting a typical set of wall-mounted DTS phones at SDC. Additionally, there is a second set of phones, with four phones mounted on a concrete pedestal which is at the opposite end of the housing pod from the wall-mounted phones. These phones are depicted in Attachment 8.

50. The two separate sets of telephones in each housing area also serve to maintain privacy because they are placed in different areas, such that conversations are not readily overheard by others.

51. Detainee telephones at Stewart are not located near the posts for CoreCivic Detention Officers. While detainees using the DTS phones are within eyeshot of SDC personnel, the DTS phones are located out of earshot in each housing pod, so that Officers are not able to overhear any DTS conversations occurring inside a housing pod.

¹ The Telephone Information Officer is a CoreCivic employee who has been provided access by Talton to enter numbers into the system as do not monitor/record, and also is the primary liaison with Talton regarding Talton-provided telecommunications equipment.

52. Furthermore, it has been my considerable experience in corrections that while there are multiple phones in each unit, detainees prefer not to use a phone immediately adjacent to another phone which is in use, but rather will wait until the first detainee has completed his call before using the phone. As detainees are reminded by SDC staff to maintain physical distancing due to risks associated with COVID-19, this is even truer today.

53. Each of the sets of wall-mounted and pedestal phones in the SDC general population housing pods is wired through the poured concrete floor and/or walls which comprise the unit. Moving or relocating the phones is impractical and would require additional masonry work to run lines and mount such telecommunications hardware in the housing units, which would need to be completed by third-party vendors.

54. In Unit 7, which is designated as a Restrictive Housing Unit, there are portable telephones, which are brought to each cell. An SDC staff member dials the call, and hands the receiver through the food-tray slot in the door, and the detainee may complete the call in the privacy of his or her cell, out of earshot of staff or other detainees.

55. Similarly, each VTC unit at SDC is located in a separate office location, with solid walls and a steel security door. Attachment 9 is a series of photographs depicting one of the VTC rooms. The second VTC room is similar. Aside from connecting the call, SDC staff do not remain in the room during VTC calls, but leave once they have confirmed it is underway. Staff may monitor the detainee through the window in the door, which is out of earshot.

56. Finally, on April 24, 2020, SDC began providing facilitated legal calls. These calls are placed from staff offices, such as the offices depicted in Attachment 10. As with the VTC Rooms, the Unit Staff offices have solid walls, steel security doors, and security windows. Aside from placing the call and ensuring the requesting party answers, SDC staff do not remain in the room during facilitated confidential legal calls, but leave once they have confirmed it is underway. Staff will visually monitor the detainee through the window into the office, which is out of earshot.

57. SDC is used by ICE to house low, medium and high custody detainees. Detainees are classified in accordance with PBNDS 2.2. High custody detainees present an increased risk

to the safe and orderly operation of the facility, and require additional security restrictions compared to low custody detainees. Further, the PBNDS requires the separation of high and low custody ICE detainees.

58. Further, I understand that Plaintiff does not identify any specific instance since June 30, 2020 where any SDC employee has overheard any attorney-client communication by telephone or VTC.

Scheduling of Legal Communications

59. I disagree that that SDC “has not provided detained individuals with a clear process for scheduling or initiating VTC or legal calls.”

60. Detainees housed in the general population areas are permitted to use the DTS phones to place unrecorded and unmonitored legal calls to registered numbers, except during times when they are to be in their cell or bunk area for count, or lockdown. Typically, detainees at Stewart are permitted telephone access between the hours of 4:00 AM and midnight Sunday through Thursday, and longer on weekends. The call will be completed if the legal representative answers the phone and accepts the call.

61. Unmonitored legal calls, facilitated by staff, may be requested either by a detainee or a detainee’s legal representative.

62. Legal representatives requesting such calls may contact the facility, by calling the Warden’s Assistant during normal business hours, 7:00 AM to 3:00 PM, Monday through Friday, with documentation establishing the attorney-client relationship with a detainee and a time for the call. The Warden’s Assistant can be reached, by dialing the main facility number (229-838-5000), and then pressing 7 when prompted by the directory. Within 48-hours of receipt of the request, the legal representative will be contacted to schedule a time for the request, and it will be placed on the calendar by the Warden’s Assistant. The Warden’s Assistant will then notify Unit Management team staff of the time for the call. At the appointed time, the detainee is taken to the Unit Manager’s Office in the detainee’s respective housing unit, and is placed on the phone with the attorney.

63. Detainees seeking to schedule such calls, may do so by submitting a Detainee Information Request form containing the attorney's name, firm or organization name, and telephone number. Attachment 11 is a true and correct copy of my April 21, 2020 Memorandum to SDC Staff and Detainees, explaining these procedures, and is posted in all housing pods at SDC.

64. In terms of my April 21, 2020 Attorney Phone Call Request Memorandum posted in the housing units (Attachment 11), I believe that Plaintiff incorrectly conflates the two separate sections of the memorandum. The first section details the process for detainees to request a facilitated legal call. The second section, below the heading "Exempt Legal Telephone Calls" clearly explains that if a detainee wishes to "exercise their Attorney confidentiality privileges while utilizing the detainee telephones" (i.e., the DTS telephones located in each housing pod, instead of the unmonitored phones in staff offices), in that case a Request to Staff is to be submitted to the Telephone Information Officer, to ensure that the attorney number is on the do not record list.

65. No detainee has approached me or SDC staff, expressing any confusion about these practices.

66. Copies of that memorandum is shared upon request with known attorney representatives. However, SDC does not maintain a list of each detainee's legal representatives, and instead relies upon the detainees to communicate the possibility of a facilitated legal call with their counsel.

67. Nevertheless, on August 13, 2020, SDC prepared a summary legal access procedures for attorneys detailing privatization of calls placed from the DTS, facilitated legal calls, VTC appointments, and fax procedures to be posted on the ICE Stewart Detention Center page (<https://www.ice.gov/detention-facility/stewart-detention-center>). After significant discussion, the form of this notice was approved on August 21, 2020 for posting. Attachment 12 is a true and correct copy of the approved final form of the notice.

68. Between April 24, 2020 and June 30, 2020, there have only been 17 requests for facilitated legal calls, at least six of which were made at the request of Erin Argueta and one of which was made by Matthew Boles, who I understand represent detainees through the Southern

Poverty Law Center. Attachment 12 is a true and correct copy of the SDC log documenting those scheduled calls.

69. Further, Plaintiff does not identify any detainee or specific call at SDC which was not scheduled upon the detainee's request. In fact, SDC personnel have facilitated 25 detainee telephone calls with counsel between July 1, 2020 and August 6, 2020. Attachment 12 is a true and correct copy of pages of SDC facilitated detainee call logs during that period.

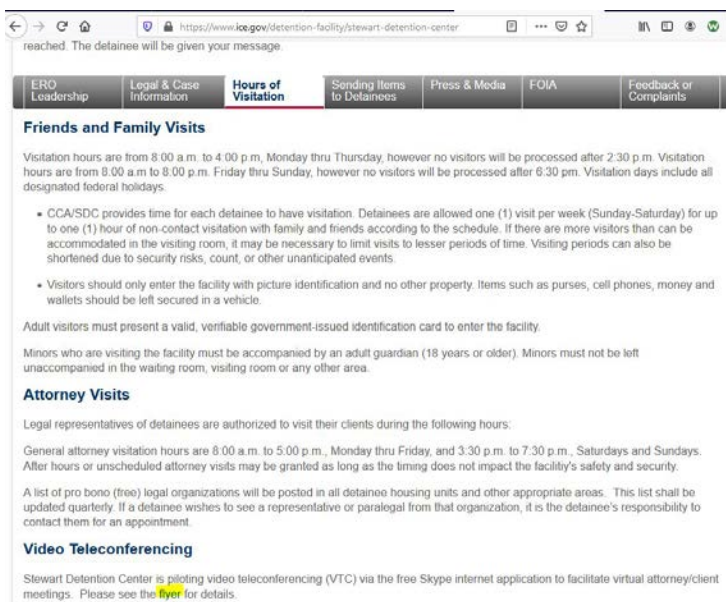
70. I understand that in paragraph 14 of Ms. Rivera's Declaration, she alleges that one SIFI legal worker experienced a delay in scheduling a legal call, and that the call could not be completed at the scheduled time. Further, while an email was sent, there was a delay as the facility worker did not reply over the course of an intervening weekend. Unfortunately, this did occur because primary staff failed to set a back-up to cover responsibilities during their scheduled absence. The appropriate staff members have been addressed, and formal corrective action shall follow for future violations.

71. Further, in paragraph 17 of Ms. Rivera's Declaration, it is apparent that Ms. Rivera or her unnamed clients, are confusing the free social phone calls with legal calls. To reduce the burden on detainees due to lack of in-person visitation, ICE's DTS telephone vendor, Talton Communications, is providing every detainee with 520 free calling minutes per month. That time is allocated in 13 ten-minute increments, issued each Wednesday. The 130 free minutes expire at the end of the week, if not used. Those free social calls must be placed from the DTS phones and are limited to 10-minutes in duration. There is no limit on the provision of free and direct calls placed using the pro bono platform, or on the length or amount of facilitated legal calls at SDC.

72. While the telephone lines in these offices are not recorded or monitored, detainees may not be left unsupervised in staff offices during calls, since confidential detainee records are also likely to be present in those offices. Detainees participating in facilitated legal calls, remain subject to visual monitoring by CoreCivic staff, who observe the detainee from a window outside of the office.

73. Attorneys seeking to schedule VTC visits with detainees at SDC, do so by emailing a request to a designated e-mail address used to maintain the schedule of those appointments. Attachment 15 is a true and correct copy of the posting detailing the VTC process, which is posted in each housing pod at SDC. SDC has provided copies of this form to known attorney representatives. It is also publicly posted at ICE.gov, specifically at <https://www.ice.gov/sites/default/files/documents/Document/2017/vtcStewart.pdf> (last visited June 26, 2020).

74. I do not understand Plaintiff's assertion that the notice of VTC procedures is not readily available on the ICE website. At all times I have been Warden, the detailed instructions and website link identified above, has been hyperlinked to the ICE page for Stewart Detention Center, under the "Hours of Visitation" tab, below the "Video Teleconferencing" header:



(<https://www.ice.gov/detention-facility/stewart-detention-center>, last accessed August 11, 2020) (highlight added).

75. Detainees are not permitted to request and schedule VTC calls directly since SDC does not know if an attorney will be available at any particular time. If a detainee desires a VTC

meeting with his legal representative, he should notify the representative, and ask the representative to submit a request at least 24-hours in advance to schedule the VTC meeting.

76. Attorney VTC meetings are scheduled on a first-come, first-served basis, in 60-minute blocks. In late March 2020, the available hours were expanded and visits may now be scheduled between 8:00 AM and 6:00 PM, Eastern Time, Monday through Friday. This schedule permits up to 100 VTC legal visits to be conducted at Stewart each week.

77. Attorneys are not limited on the number of VTC appointments they can request, but no attorney is permitted more than one 60-minute appointment with any one detainee on any single calendar day. The 60-minute per appointment slot is to ensure that attorneys and detainees with later appointments the same day, are permitted to begin on schedule, and will not have to be cancelled or rescheduled because another attorney or detainee ran over time. Attorneys who anticipate a need for longer consultation, are permitted to schedule multiple visits with a single detainee on consecutive days.

78. Available time slots for VTC attorney visits are seldom completely filled on any given day. When that occurs, the requesting attorney is free to request the next available slot.

79. Because SDC recognizes that attorneys tend to face multiple time constraints, SDC will generally not suggest alternative VTC visit times, but expects the attorney to request other dates and times which work for them, should a requested appointment time be taken.

80. While Plaintiff does not report any concern regarding the scheduling of VTC appointments at SDC, between July 1, 2020 and August 5, 2020, SDC completed more than 325 VTC appointments between SDC detainees and their legal counsel. Yet, over that five-week period, more than 100 available VTC appointments at SDC went unused. Attachment 16 is a true and correct copy of the SDC VTC log detailing these calls.

On-Going Compliance with CDC Guidelines

81. While the CDC updated its Interim Guidance on Management of Coronavirus 2019 (COVID-19) in Correctional and Detention Facilities on July 14, 2020, that updated guidance does not change the CDC's recognition that: "This guidance will not necessarily address every possible

custodial setting and may not use legal terminology specific to individual agencies' authorities or processes. **The guidance may need to be adapted based on individual facilities' physical space, staffing, population, operations, and other resources and conditions.**" (Attachment 17 at 1) (emphasis in original).

82. Similarly, the updated July 2020 CDC guidance does not recommend the cleaning and disinfecting of telephones "after each use." Rather, the CDC Guidelines, state "[s]everal times per day, clean and disinfect surfaces and objects that are frequently touched, especially in common areas. Such surfaces may include objects/surfaces not ordinarily cleaned daily (e.g., doorknobs, light switches, sink handles, countertops, toilets, toilet handles, recreation equipment, kiosks, and telephones)." (Attachment 17 at 10).

83. SDC complies fully with these guidelines, in that hard contact surfaces and shared equipment (radios, keys, handcuffs), which are contracted only by multiple staff (as opposed to equipment in a private office unshared by staff) are cleaned and disinfected several times a day using EPA-registered anti-viral disinfectants and appropriate protective equipment based upon the cleaning agent used. Such equipment is also cleaned and disinfected at the conclusion of a staff member's use period, before being issued to another employee for use.

84. While detainee volunteers participating in the ICE Volunteer Work Program continue to be responsible for cleaning common areas, the frequency of their cleaning of the common areas, including the DTS phones, has increased at SDC, in accordance with the CDC Interim Guidance.

85. Additionally, in June 2020 SDC began assigning staff in each housing pod to clean and disinfect the DTS telephones in each housing area once a day. This is in addition to the multiple cleanings done each day by detainee pod porters at SDC.

86. However, given the frequency of use of DTS phones, it is not possible for staff or detainee pod porters to clean them between each use, without significantly restricting detainee access to place social or legal calls. Rather, individual detainees are provided with access to cleaning and sanitizing materials located in the dayrooms, and have been given instruction at Town

Hall meetings on proper procedures to clean and disinfect hard contract surfaces, including the DTS phones.

87. SDC has also posted additional reminders for detainees to sanitize the DTS phones before and after their individual use. Attachment 18E accurately depicts the placement of notices near all DTS phones in the SDC housing pods.

88. Further, the updated CDC guidelines continue to contemplate that detainees, rather than facility staff, will be responsible for cleaning common areas. *See* Attachment 17 at 10. (“Consider increasing the number of staff and/or incarcerated/detained persons trained and responsible for cleaning common areas to ensure continual cleaning of those areas throughout the day.”)

89. I previously certified that, before and after each use, SDC personnel are cleaning and disinfecting staff telephones used for facilitated legal calls as well as VTC equipment, even though such equipment is not a detainee contact point. I stand by those certifications.

90. With respect to equipment used for facilitated legal telephone calls and video visits, detainees are not permitted to handle or touch such equipment at SDC, due to legitimate and compelling safety and security reasons. Many of the detainees at SDC are currently detained by ICE following completion of a felony sentence, which involved not only significant prison time, but also due to the seriousness of the felonies of which they were convicted, renders them removable. As a result, the DTS contains an announcement that the call is being placed from a Detention Center, identifies the detainee placing the call, and must be affirmatively accepted before the detainee is permitted to speak. This prevents detainees from calling or threatening victims, prosecutors, and members of the Court, because those members can choose to reject a call. When calls are placed from staff offices, the staff member enters the long distance or telephone access code (which exists to prevent unsupervised detainees from having access to unmonitored phone lines), and dials the number for the call. Detainees at SDC do not need to, and should not be touching the telephone keypad. Staff then exits the office and remains out of earshot while the detainee completes the call on the speakerphone setting. The call is terminated either

when the called party hangs up, or when the detainee alerts the staff member that he is done with the call.

91. While the private Unit Manager offices where the calls are placed are cleaned and sanitized at least once daily by the resident Unit Management team member, should a detainee wish to use the handset, rather than speakerphone, at minimum the staff member will clean and disinfect the handset before and after placing the call.

92. Similarly, detainees are neither required nor permitted to touch the VTC equipment at SDC. The VTC systems necessarily include internet access, and for legitimate and compelling safety and security reasons detainees are not permitted unfettered access, which can provide them information to locate victims, witnesses, and prosecutors; gain information on ways to compromise facility security, either to introduce contraband or escape; gain personal information which can be used to compromise or intimidate staff or other detainees; or, to engage in additional criminal activities. Keeping detainees from touching the VTC equipment, also helps ensure that the equipment remains in good working order, but also reduces a potential means of transmission of infectious diseases, such as COVID-19. While SDC VTC equipment is not a contact point for potential transmission of COVID-19, such equipment is cleaned between each use, and at least once a day when not in use.

93. Further, I am a named respondent in *Sanchez-Martinez v. Donahue*, filed in the United States District Court for the Middle District of Georgia, where the SPLC on behalf of detainees at SDC and Irwin County, seek relief claiming that the conditions at the facilities and response to COVID-19 are tantamount to punishment and do not comply with the CDC Interim Guidelines. Judge Land has considered Plaintiff's positions, even those supported following expedited discovery, and even viewed the video recording of the virtual tour I conducted for Homer Venters (who was retained by the SPLC in that matter), and thrice rejected them, most recently on July 23, 2020. Attachments 19-21 are true and correct copies of Judge Land's Order denying the SPLC's relief. While Plaintiff does not raise any issue or factual allegation in the instant motion which was not previously litigated in the Middle District of Georgia, I note that in that matter, they

did not complain that they had insufficient access to any of their clients or third-party detainees they deposited in that case. Further, the petitioners in that matter filed a Notice of Voluntary Dismissal on August 17, 2020.

94. Attachment 22 is a true and correct copy of the publicly filed version of my Fourth Declaration, which details additional methods by which SDC not only complies with, but exceeds the standards set forth in the CDC Interim Guidance. All of those procedures remain in effect at SDC.

95. As I detailed there, detainee porters have been trained by the Safety Manager in appropriate cleaning and are issued PPE, including masks and gloves while cleaning. For example, Detainee pod and shower porters clean and disinfect the communal restrooms and showers throughout the day with HDQ Neutral and also a bleach solution, as directed by the facility Safety Manager. In addition, detainees who participate in the Voluntary Work Program as pod porters, are provided additional PPE, in particular gloves, while cleaning and disinfecting hard surfaces in the pods. Detainee participants in the Voluntary Work Program who work off-unit assignments, such as in the kitchen or laundry, are required to wear masks and gloves, and are also temperature checked before beginning work. Additionally, detainees assigned to the laundry are instructed in accordance with CDC guidelines, not to shake laundry out so as to not distribute germs into the air, and to ensure that the laundry is dried completely. This instruction is easily adhered to when detainee laundry is washing a mesh bag assigned to the detainee, and thus the detainee's laundry does not leave the bag for washing and drying. (Attachment 22, ¶¶ 134, 156 and 157).

96. Further, the United States retained Dr. Owen Murray, an independent expert witness in that matter, who conducted an audit of the involved facilities, including SDC, and concluded that SDC met or exceeded the standards set forth in the CDC Interim Guidance. Attachment 23 is a true and correct copy of his expert report.

97. Dr. Schriro's opinions do not appear to consider the practices actually in place at SDC, many of which were implemented prior to the issuance of the CDC guidelines and ICE ERO Pandemic Response Requirements (*See* Attachment 22). It also appears that she also disregards

Dr. Owen Murray's independent findings and conclusions that "SDC [has] overwhelmingly implemented the CDC Interim Guidance" and also exceeds the CDC guidelines in certain respects (Attachment 23 at 4 and 7).

98. I further attest that SDC complies with the updated July 14, 2020 CDC Interim Guidance, including the routine testing of close contacts of detainees with COVID-19 infection, which is a very recent and significant change from prior guidance to only test symptomatic detainees.

99. Further, while Ms. Rivera details unspecified reports from her clients that La Salle is not providing cleaning and sanitation supplies, she does not relate or detail any such claims relating to SDC.

100. While SDC provides cleaning and sanitation supplies to the general detainee population, due to legitimate and compelling safety and security reasons, latex or nitrile gloves are not issued to the detainee population, except for voluntary work program participants while engaged in their assignments. For example, detainees have been known to use such gloves to cover and conceal contraband, including but not limited to narcotics, either by swallowing it or concealing it in a body cavity to hide it from facility staff. Not only does the contraband itself in the facility pose a risk to the health and safety of the detainees and staff, but when concealed in the body, such items can rupture, become stuck, or otherwise pose a significant medical risk to the detainee who is concealing it.

Remote Exchange of Legal Documents

101. In accordance with the plan detailed in my Second Declaration, SDC has completed installation of fax machines for detainees to exchange confidential documents with their counsel. Attachment 24 accurately depicts those machines.

102. Further, a notice detailing the procedure has been posted in all detainee housing units on or about July 23, 2020. Attachment 25 is a true and correct copy of that notice. Attachment 26 is a photograph accurately depicting the posting of that notice in each detainee housing pod at SDC.

103. To ensure confidentiality, detainees are to submit a detainee request to the Law Librarian indicating that they wish to send a legal fax. Additional procedures for submission by detainees in Restricted Housing, Medical Isolation or cohort/quarantine status are provided since they cannot submit their request in the box outside the chow hall. Detainees are then called to the law library and will carry their own documents, which will be inspected, but not read, to ensure that they are legal documents, rather than personal correspondence.

104. As of August 17, 2020, there have been 2 legal faxes sent, and 0 received by SDC detainees.

105. A copy of this notice was provided to SPLC on August 13, 2020. Attachment 27 is a true and correct copy of that email transmittal.

106. On August 17, 2020 I spoke with Monica Whatley of the SPLC and provided additional clarification of the email process. On August 18th, she sent me an email confirming that discussion and provided me with the first weekly list identifying 39 detainees who are potential fax recipients. Attachment 28 is a true and correct copy of that list.

107. While the fax machines were installed and operational, on Sunday, August 16, 2020 a detainee in the Restrictive Housing Area, became irate and intentionally destroyed the fax machine placed there for legal faxes as well as other facility equipment. Attachment 29 is a true and correct copy of the reports of that incident. SDC has ordered replacement equipment, but until it arrives the only fax machine for detainee legal faxes is in the facility law library.

108. Once the attorney legal access instructions have been finalized and posted online, SDC will issue an updated memo to staff and the detainee population detailing additional operational changes.

Staff and Detainee Training

109. Plaintiff alleges only that SDC “provide[d] documentation of insufficient training.” In particular, Plaintiff and Ms. Rivera detail an issue which occurred on June 25, 2020, *before* SDC Unit Management Team leaders provided the refresher training detailed in my Second (June 30th) Declaration.

110. In accordance with the Court's June 17, 2020 Order, SDC conducted refresher staff training for SDC staff regarding procedures for scheduling facilitated legal calls; scheduling VTC appointments; respecting attorney-client confidentiality during those calls, as well as for potential calls placed using the DTS phones in the housing pods; ensuring the functioning of the equipment; and information of points of contact for reported outages or technical difficulties. Attachment 30 is a true and correct copy of the staff Training/Activity Attendance Roster for those training sessions.

111. Additionally, SDC conducted Town Hall meetings with the detainee population to reinforce the detainee education relating to use of the DTS phones for unmonitored legal calls, practices to sanitize the DTS phones before and after individual use, process for obtaining facilitated confidential legal calls, and availability of the VTC appointment system to their attorneys. Attachment 31 is a true and correct copy of the minutes of those Town Hall meetings.


112. Further the detailed procedures set forth in Attachments 7, 11, 15, 24, and 29 have been disseminated to facility staff for review.

113. Since the training was completed, I am unaware of any detainee or staff report that personnel could not facilitate detainee requests for legal calls, redial a facilitated legal call, or that there was any issue with VTC calls.

114. Due to revisions as the legal fax procedure was initially rolled out, broad staff training on these procedures has not yet occurred. In addition, SDC is currently installing and issuing tablets for use by the detainee population, which also requires additional staff training. I expect that by September 30, 2020 additional training will have been provided to all relevant staff which includes reiterating procedures for scheduling facilitated legal calls and VTC sessions; ensuring attorney-client confidentiality during calls and meetings; who to contact with technical difficulties; the legal facsimile procedures; and the use, maintenance, and troubleshooting of the tablet devices.

I declare under the penalty of perjury that the foregoing is true and correct.

Executed this 21st day of August, 2020 in Lumpkin, Georgia.


Russell Washburn

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