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August 22, 2017

Re: Barriers to Law Library Access at Folkston ICE Processing Center

Dear Sirs:

We write to raise concerns with detainees' access to law library facilities and to personal legal materials at the Folkston ICE Processing Center ("Folkston") in Folkston, Georgia. Based on complaints that we have received from detainees, current practices regarding access to law library facilities at Folkston violate detainees' constitutional rights and fail to comply with applicable detention standards. We request immediate remedies.

Immigrant detainees have the right to counsel, but only at their own expense. *Dakane v. U.S. Attorney General*, 399 F.3d 1269, 1273 (11th Cir. 2005); 8 U.S.C. § 1362; 29 U.S.C. § 1229a(b)(4)(A) (recognizing due process right to counsel at detainee's expense). Significant barriers exist for immigrant detainees to access counsel; on average, only fourteen percent of

immigrant detainees nationwide are represented by counsel.¹ For this reason, detainees' ability to access adequate legal resources to prepare for hearings while detained is particularly critical.

I. Violations of Due Process and PBNDS Requirements for Access to Law Libraries at Folkston

Immigration detention facilities may not violate detainees' constitutional right to due process through undue restrictions to law libraries. Such practices "unjustifiably obstruct the availability . . . of the right of access to the courts." *Procunier v. Martinez*, 416 U.S. 396, 419 (1974). In addition, the Performance Based National Detention Standards 2011 ("PBNDS 2011") require immigration detention facilities to provide "meaningful access" of "no less than five hours a week" to law libraries, legal materials, and equipment.² Under PBNDS 2011, detainees "shall not be required to forgo recreation time to use the law library," and "special consideration should be given to detainees facing deadlines or time constraints."³ The facility "shall permit a detainee to retain all personal legal material upon admittance to general population or to Administrative Segregation or Disciplinary segregation units."⁴

Detainees have reported the following practices with respect to law library access at Folkston:

- Detainees lack regular access to the law library; there is no clear schedule that staff follows to provide access to the law library. When detainees have had access to the law library, it has fallen well below the required five hours per week.
- Detainees must choose between recreation time and time in the law library.
- Detainees are not permitted to retain their legal materials, including computer flash drives which are used to store digital legal documents, research, and other legal files. Instead, detainees are required to turn over their computer flash drives to officers, who open and transfer files to their own flash drives, and then download the files to law library computers. This practice allows officers to view potentially privileged computer files, and raises the risk that detainees may no longer have access to his electronic files if transferred or released.

These practices violate PBNDS 2011 and the detainees' constitutional rights.

II. Recommendations

In light of these reports, we provide the following recommendations:

¹ Ingrid V. Eagly & Steven Shafer, *A National Study of Access to Counsel in Immigration Court*, 164 U. Penn. L. Rev. 1, 30 (2015). No current information is available for the rate of representation of detainees at Folkston, as the facility opened only eight months ago.

² PBNDS 2011 § 6.3(II).

³ PBNDS 2011 § 6.3(II.4-5).

⁴ PBNDS 2011 § 6.3(V.J).

- Immediately establish and implement a clear schedule for law library access for all detainees. The schedule must provide for access of a minimum of five hours per week, without interference with recreation time, and more where detainees face impending deadlines. Schedules must be posted in all dorms; all detainees must be informed of their right to access the law library.
- Detainees must be able to keep personal legal materials with them, including electronic flash drives. Where detainees have voluminous personal legal files, Folkston must provide a secure manner in which detainees may store and easily access their files.

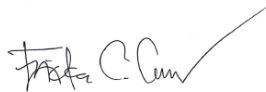
Timely implementation of these recommendations is particularly important because SPLC's Southeast Immigrant Freedom Initiative (SIFI) plans to provide *pro bono* attorneys to detainees at Folkston starting later this year. Barriers impacting detainees' access to the law library also will impact SIFI's ability to provide meaningful representation to the detainees.

We appreciate your prompt attention to these matters. We appreciate the opportunity to further engage with you regarding these practices and any corrective measures. Please contact Eunice Cho at eunice.cho@splcenter.org and Ericka Curran at ecurran@fcsf.edu, with any questions.

Sincerely,



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