

**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.

Civil Action No. 18-0760 (CKK)

DECLARATION OF SHALINI GOEL AGARWAL

I, Shalini Goel Agarwal, hereby declare as follows:

1. I am an attorney with the Southern Poverty Law Center (“SPLC”) and one of the counsel for Plaintiff in this action. I have personal knowledge of the facts in this declaration.
2. SPLC filed this action on April 4, 2018, on behalf of itself and its Southeast Immigrant Freedom Initiative (“SIFI”) clients who are detained at four immigration detention centers in the Southeast, including LaSalle ICE Processing Center (“LaSalle”) in Jena, Louisiana. SPLC alleges that Defendants’ policies, practices, and omissions create unconstitutional barriers for detained people to access and communicate with attorneys in violation of their Fifth Amendment right to access courts, right to counsel, and right to a full and fair hearing.
3. The parties reached a settlement as to Plaintiff’s Motion for a Preliminary Injunction with respect to SPLC’s request for additional legal visitation meeting space and remote interpretation services for in-person meetings at LaSalle. The agreement requires, among other things, that Defendants schedule remote legal visits by video teleconference (“VTC”) to take place the same day as a request by SIFI staff.
4. Under the terms of the agreement, Plaintiff should notify Defendants of noncompliance to be quickly remediated by Defendants. The usual recourse for Plaintiff is the Alternative Dispute Resolution (“ADR”) process. However, if SPLC’s clients will likely suffer an imminent and irreparable harm, injury, or loss due to the

violation and ADR is not feasible or practicable, Plaintiff may apply to the court for relief.

5. Since the settlement, and before COVID-19-related restrictions on access to counsel at LaSalle, Plaintiff has twice sent formal notices of noncompliance to Defendants.
 - a. On December 13, 2019, Plaintiff sent a notice of noncompliance to Defendants regarding the malfunctioning phones in the attorney visitation rooms that impeded access to interpreters during legal visits. A copy of this correspondence is attached as Exhibit A.
 - b. Defendants responded to this notice on December 17, 2019, explaining that they conducted two 60-second test calls from each of the three phone lines and that the phones worked. A copy of this correspondence is attached as Exhibit B.
 - c. On February 20, 2020, Plaintiff sent a notice of noncompliance to Defendants again flagging problems with the phone lines for interpreters in the attorney visitation rooms that made attorney-client communications ineffective. A copy of this correspondence is attached as Exhibit C.
 - d. Defendants responded to this notice on February 24, 2020, explaining that they again tested the phone lines, found some problems that they corrected, and would continue to periodically test the phones. A copy of this correspondence is attached as Exhibit D.
6. After that, on March 25, Plaintiff sent Defendants a letter describing several of the increasingly onerous barriers to detained individuals' access to counsel due to COVID-19-related restrictions. Among these were delays of up to six days between the time a VTC remote legal visit was requested to the time it was scheduled at LaSalle. The letter specifically demanded:
 - a. Both VTC and legal phone calls be available at each of the four facilities;
 - b. Sufficient VTC consoles for free, confidential legal VTCs 8am-8pm, with conference calling, available within 24 hours by request of attorney or detained person;
 - c. Free unmonitored calls in a confidential booth with a sufficient number of booths and staffing so that they can be scheduled at any time by request of attorney or detained person;

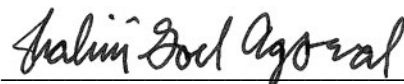
- d. A mechanism for free and quick exchange of confidential legal documents by fax or electronically;
- e. Directives to staff to permit signatures based on verbal authorization of detained people rather than signatures by their own hand, given the difficulty and delay of in-person visits and mail; and
- f. A process for confidential legal calls and VTCs for those in quarantine.

A copy of this correspondence is attached as Exhibit E.

- 7. Defendants responded nine days later on April 3, 2020. In their response, Defendants conceded that there had been six-day delays at LaSalle between Plaintiff's request for a legal VTC and when the remote visitation was actually scheduled. As a result, Defendants committed to extending VTC hours of operation at LaSalle. Despite this commitment, SIFI staff still report scheduling delays for VTC remote legal visits. A copy of this correspondence is attached as Exhibit F.
- 8. Also in this correspondence, Defendants asserted that they would continue to make legal phone calls and VTCs available at each facility, temporarily extend the hours when VTCs could be made, and temporarily extend the hours for legal calls at all of the Facilities except Pine Prairie, where they deemed access to be sufficient. Defendants refused to allow 24/7 access to legal phone calls. Defendants also refused to create a process for confidential legal documents to be exchanged by fax or electronically and refused to allow Plaintiff to send stamped envelopes to its clients.
- 9. Plaintiff sent a third notice of noncompliance on May 4, seeking a response on May 5, regarding the repeated delays in scheduling VTCs at LaSalle that continued even after Defendants' response to the demand letter. A copy of this correspondence is attached as Exhibit G.
- 10. Defendants responded to this notice on May 6, asserting that additional VTC consoles were installed at LaSalle, that they functioned properly, and that Defendants would conduct follow-up inspections. A copy of this correspondence is attached as Exhibit H.

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

Executed in Tallahassee, Florida, on May 6, 2020.



Shalini Goel Agarwal (Fla. Bar No. 90843)

Southern Poverty Law Center
106 East College Avenue, Suite 1010
Tallahassee, Florida 32302
Tel: (850) 521-3024
shalini.agarwal@splcenter.org

Exhibit A



Fighting Hate
Teaching Tolerance
Seeking Justice

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December 13, 2019

VIA E-MAIL

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Room 9060
Washington, D.C. 20536
Jonathan.L.Kaplan@ice.dhs.gov

Re: *SPLC v. DHS, et al.*, No. 18-760-CKK (D.D.C.) (Notice of Non-Compliance)

Dear Mr. Kaplan:

Please consider this letter a Notice of Non-Compliance pursuant to paragraph 28 of the parties' September 5, 2018 Settlement Agreement regarding the LaSalle ICE Processing Center ("LaSalle") in the above-captioned matter. *See* ECF No. 42. Specifically, I write to notify you that DHS is not in compliance with Paragraph 19 of the Settlement Agreement.

Paragraph 19 of the parties' Settlement Agreement requires, *inter alia*, each attorney visitation room to contain confidential three-way telephone lines to access outside interpretation services without interference or static. *See* Settlement Agreement ¶ 19. The phone lines Defendants ultimately installed are currently malfunctioning and, as a direct consequence, attorneys and legal representatives are unable to consistently access crucially needed interpreters to facilitate attorney-client communications. Frequently, the telephone lines either do not work at all or cut off unexpectedly in the middle of a visit. In addition, static and poor sound quality on the phone lines frequently impedes interpreters from hearing attorneys or clients or vice-versa, thereby requiring parties to repeat themselves and unnecessarily extending the amount of time for visits. Sometimes, the static is so loud or the sound quality so poor that the parties on the call cannot hear one another at all.

As a result of these technical problems, Plaintiff has been forced to forgo in-person legal visits with individuals who require an interpreter or otherwise been prevented from effective attorney-client communications. This consequence further strains Plaintiff's resources and impedes meaningful access to counsel for individuals imprisoned at LaSalle.

We appreciate your prompt attention to this Notice of Non-Compliance and look forward to working with you over the next two business days to try to resolve this dispute as provided in Section 29 of the Settlement Agreement.

Sincerely,

A handwritten signature in black ink, reading "Shalini Goel Agarwal". The signature is fluid and cursive, with the first name "Shalini" being the most prominent.

Shalini Goel Agarwal
Senior Supervising Attorney

cc: Daniel Schaefer
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
Daniel.Schaefer@usdoj.gov

Sheetul S. Wall
Trial Attorney
Department of Justice | Civil Division
Office of Immigration Litigation - District Court Section
P.O. Box 868 | Ben Franklin Station | Washington, DC 20044
Sheetul.S.Wall2@usdoj.gov

Exhibit B

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

December 17, 2019

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC v. DHS*, No. 18-760-CKK (D.D.C.)

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) December 13, 2019 Notice of Noncompliance (Notice) in which it alleges that U.S. Immigration and Customs Enforcement (ICE) is in noncompliance with the September 5, 2018 Settlement Agreement (Agreement). Specifically, SPLC alleges that the "confidential three-way telephone lines" in the three attorney visitation rooms at the LaSalle ICE Processing Center (LaSalle) "are currently malfunctioning" in that the telephone lines frequently "either do not work at all or cut off unexpectedly in the middle of a visit." Letter from Shalini Goel Agarwal to Jon Kaplan, Associate Legal Advisor, ICE (Dec. 13, 2019). SPLC also alleges that the telephone lines have "static and poor sound quality", which interfere with telephonic communications. *Id.*

ICE is aware of SPLC's concerns and has conferred with its Enforcement and Removal Operations (ERO) New Orleans field office and the GEO Group, Inc. (GEO), which operates LaSalle, to confirm the accuracy of the allegations and whether corrective measures are necessary to ensure compliance with the Agreement. On December 16, 2019, at about 9:00 a.m., an ERO officer, the GEO Assistant Warden, and a Talton Communications (Talton) service technician checked the six telephones in the attorney visitation rooms, three on each side, and found that they were working properly. (As information, Talton is the telecommunications company that provides telephone service for detainees at LaSalle.) The three telephones on the attorney side of the visitation rooms were used to call the Talton office and each one-minute call was completed on the first attempt with no dropped calls and no static, and both sides were able to communicate with each other without any interference. The telephone in the first room on the detainee side did have a slightly muffled sound and the Talton service technician immediately repaired the handset on that telephone. Additionally, the telephones were used to call a translation number to ensure that those communications

Shalini Goel Agarwal, Esq.

SPLC

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were clear. Each one-minute telephone call was reported as clear. Since yesterday, ERO has received no further complaints about the telephones used in the attorney visitation rooms.

Please contact Ruth Ann Mueller and James Walker, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to the Notice.

Sincerely,



Jon Kaplan

Associate Legal Advisor

District Court Litigation Division

cc: Sheetul S. Wall
Ruth Ann Mueller
James Walker
Trial Attorneys, OIL

Exhibit C



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February 20, 2010

VIA E-MAIL

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Room 9060
Washington, D.C. 20536
Jonathan.L.Kaplan@ice.dhs.gov

Re: *SPLC v. DHS, et al.*, No. 18-760-CKK (D.D.C.) (Notice of Non-Compliance)

Dear Mr. Kaplan:

Please consider this letter a Notice of Non-Compliance pursuant to paragraph 28 of the parties' September 5, 2018 Settlement Agreement regarding the LaSalle ICE Processing Center ("LaSalle") in the above-captioned matter. *See* ECF No. 42. Specifically, I write to notify you that DHS continues to be noncompliant with Paragraph 19 of the Settlement Agreement, which requires, *inter alia*, that each attorney visitation room contain confidential three-way telephone lines to access outside interpretation services without interference or static. *See* Settlement Agreement ¶ 19.

On December 13, 2019, Plaintiff informed Defendants that the LaSalle phone lines were malfunctioning and, as a result, attorneys and legal representatives were unable to reliably conduct legal visitation with individuals who require outside interpretation services. On December 17, 2019, Defendants informed us that they had conducted an on-site inspection; that the inspection revealed all but one of the phones to be working properly; and that a technician fixed a "muffling" sound on the one malfunctioning phone.

However, since Defendants' inspection, technical problems with the language lines in all three visitation rooms persist. Most recently, on February 3, 2020, Plaintiff discovered that one of the phone lines, in the second visitation room from the entrance, did not work at all. When Plaintiff's attorney attempted to use the phone in the first visitation room closest to the entrance instead, the attorney found that the remote interpreter could not hear the detained individual at all. The phone lines in both the first visitation room and the third visitation room farthest from the entrance cut in and out periodically so that the attorney and detained person are unable to hear the interpreter

or vice versa. As a result of these continued technical problems, Plaintiff has been prevented from effective attorney-client communications.

Given the severe lack of interpreters near LaSalle, Plaintiff requires reliable access to functioning language lines in order to communicate with individuals who require interpreters. Consequently, reliable access to language lines is a key feature of the Settlement Agreement between the parties.

Accordingly, and consistent with the ADR procedures prescribed by the Settlement Agreement, Plaintiff requests that Defendants promptly resolve the ongoing technical problems with the language lines at LaSalle. To be sure, Plaintiff expects Defendants not only to ensure that the language lines are currently working but also to ensure that the language lines reliably work. Because Defendants' December inspection did not ensure the phone lines reliably worked, Plaintiff expects that Defendants will need to go beyond a mere inspection to ensure reliable access to language lines. Plaintiff hopes to resolve these issues without intervention by mediators or the Court. However, if these issues persist and language-line access continues to be hampered, Plaintiff will be required to elevate this issue.

We appreciate your prompt attention to this Notice of Non-Compliance and look forward to working with you over the next two business days to try to resolve this dispute as provided in Section 29 of the Settlement Agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "Shalini Goel Agarwal".

Shalini Goel Agarwal
Senior Supervising Attorney

cc:

Daniel Schaefer

Daniel.Schaefer@usdoj.gov

Sheetul S. Wall

Sheetul.S.Wall2@usdoj.gov

Ruth Ann Mueller

Ruth.A.Mueller@usdoj.gov

James Walker

James.Walker3@usdoj.gov

Defendants' Counsel

Exhibit D

Office of the Principal Legal Advisor

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

February 24, 2020

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC v. DHS*, No. 18-760-CKK (D.D.C.)

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) February 20, 2020 Notice of Noncompliance (Notice) in which it alleges that U.S. Immigration and Customs Enforcement (ICE) is in noncompliance with the September 5, 2018 Settlement Agreement (Agreement). Specifically, SPLC alleges that on February 3, 2020, the "confidential three-way telephone lines" in the three attorney visitation rooms at the LaSalle ICE Processing Center (LaSalle) continue to experience "technical problems" in that one of the phone lines "did not work at all", "the remote interpreter could not hear the detained individual at all" on another phone line, and two of the phone lines "cut in and out periodically", preventing the attorney or detainee from hearing the interpreter or vice versa. Letter from Shalini Goel Agarwal to Jon Kaplan, Associate Legal Advisor, ICE (Feb. 20, 2020).

ICE is aware of SPLC's concerns and has conferred with its Enforcement and Removal Operations (ERO) New Orleans (NOL) field office and the GEO Group, Inc. (GEO), which operates LaSalle, to confirm the accuracy of the allegations and whether corrective measures are necessary to ensure compliance with the Agreement. On February 21, 2020, ERO NOL tested the phone lines in the legal visitation area, using an assigned interpreter line number. In the first visitation room, the interpreter could neither hear the ERO supervisory officer nor LaSalle's assistant warden even though they could clearly hear her. In the second visitation room, there was static in the phone line although the supervisory officer, assistant warden, and interpreter could hear each other. In the third visitation area, the supervisory officer, assistant warden, and interpreter had a clear connection after the facility called the interpreter a second time. As a result, GEO contracted a phone technician to inspect and test the three phone lines. On February 24, 2020, the technician replaced one of the headsets in the first visitation room, which fixed that line. Additionally, the technician remedied the other two lines, and ICE has confirmed that all three phone lines now provide clear calls to the interpreter line number. Further, ERO NOL will periodically test the phone lines to ensure that they

Shalini Goel Agarwal, Esq.

SPLC

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are working and will coordinate with GEO to remedy any deficiencies identified. Nevertheless, ICE suggests that SPLC immediately notify LaSalle of any phone line difficulties to enable the facility to take prompt action to fix the problems.

Please contact Ruth Ann Mueller, James Walker, and David Byerley, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to this Notice.

Sincerely,

A handwritten signature in black ink, appearing to read "Jon Kaplan". The signature is fluid and cursive, with the first name "Jon" being more prominent.

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division

cc: Ruth Ann Mueller
James Walker
David Byerley
Trial Attorneys, OIL

Exhibit E



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Southern Poverty
Law Center

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March 25, 2020

VIA E-MAIL

Jon Kaplan
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Jonathan.L.Kaplan@ice.dhs.gov

Julie Plavsic
Senior Policy Advisor
Office of Legal Access Programs
U.S. Immigration and Customs Enforcement
500 12th Street, S.W.
Washington, D.C. 20536
Julie.Plavsic@ice.dhs.gov

Re: *SPLC v. DHS, et al.*, No. 18-760-CKK (D.D.C.)
Ensuring Access to Counsel during COVID-19 Pandemic

Dear Mr. Kaplan and Ms. Plavsic:

We write to raise serious concerns regarding COVID-19 and the emergent situation at LaSalle ICE Processing Center (“LaSalle”); Pine Prairie ICE Processing Center (“Pine Prairie”); Irwin County Detention Center (“Irwin”); and Stewart Detention Center (“Stewart”).

As you are aware, new coronavirus (COVID-19), a disease that has led to a global pandemic, presents an immediate and substantial threat to life.¹ To date, there are over 59,502 confirmed cases of COVID-19 in the United States across all 50 states, and 804 deaths.² As the number of diagnosed cases rises exponentially, the urgent need to combat the spread of this disease is clear. Medical experts and epidemiologists have called for alternatives to incarceration, noting the heightened danger to people in prisons and jails.³ In response, several jails and prisons have begun implementing plans to release individuals.⁴ The same is not true for immigrant detention centers, though they hold individuals in civil detention, which is legally required to be less punitive than criminal incarceration.⁵ Despite ICE's knowledge of the heightened vulnerability of detained individuals, its documented failure to adequately respond to outbreaks of other diseases within detention centers,⁶ and its ultimate authority to release detainees,⁷ Defendants

¹ World Health Organization, WHO Director-General's opening remarks at the media briefing on COVID-19 (March 11, 2020), <https://www.who.int/dg/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>.

² Mitchell Smith, *Coronavirus Map: U.S. Cases Surpass 10,000*, N.Y. TIMES (Updated March 25, 2020, 12:03 P.M. E.T.), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>. The number of people who have tested positive has increased twelve-fold from 5,726 people as of last Tuesday, March 17, 2020. The number of deaths has almost doubled in the past two days, from 428 on Monday, March 23. *Id.*

³ See Dr. Anne Spaulding, *Coronavirus and the Correctional Facility: for Correctional Staff Leadership*, at 15, Mar. 9, 2020, https://www.ncchc.org/filebin/news/COVID_for_CF_Administrators_3.9.2020.pdf. ("Consider alternatives to incarceration, in order to keep stock population down (diversionary courts, community corrections). Consider measures other than detention (at-home electronic monitoring). Ask who you can release on their own recognizance?"); Dr. Amanda Klonsky, *An Epicenter of the Pandemic Will Be Jails and Prisons, if Inaction Continues*, N.Y. TIMES (March 16, 2020), <https://www.nytimes.com/2020/03/16/opinion/coronavirus-in-jails.html>; Dr. Marc Stern, *Washington State Jails Coronavirus Management Suggestions in 3 "Buckets,"* Letter to Washington Jails (March 13, 2020), <https://waspc.memberclicks.net/assets/docs/suggestions%20for%20jails%20%203.5.20.pdf>; Camilo Montoya-Galvez, "Powder kegs": Calls grow for ICE to release immigrants to avoid coronavirus outbreak, CBS NEWS (March 19, 2020), <https://www.cbsnews.com/news/coronavirus-ice-release-immigrants-detention-outbreak/> (calling for release of immigrants from detention by infectious disease expert Dr. David Cennimo, among others); *Open Letter to ICE from Medical Professionals Regarding COVID-19* (March 22, 2020), <https://nylpi.org/wp-content/uploads/2020/03/FINAL-LETTER-Open-Letter-to-ICE-From-Medical-Professionals-Regarding-COVID-19.pdf> (urging ICE to implement community-based alternatives; signed by over 3,000 medical professionals).

⁴ *US jails begin releasing prisoners to stem Covid-19 infections*, BBC NEWS (March 19, 2020), <https://www.bbc.com/news/world-us-canada-51947802> (describing decarceration efforts in New York City, Los Angeles, and Cleveland, including release of 600 people by Los Angeles County Sheriff's Department). See also Darwin Bond Graham, *San Francisco Officials Push to Reduce Jail Population to Prevent Coronavirus Outbreak*, THE APPEAL (March 11, 2020), <https://theappeal.org/coronavirus-san-francisco-reduce-jail-population/>; Jerry Ianeli, *After Criticism, Miami-Dade State Attorney Pledges to Help Release Nonviolent Arrestees*, MIAMI NEW TIMES (March 16, 2020), <https://www.miaminewtimes.com/news/miami-dade-jails-state-attorney-rundle-outlines-coronavirus-plan-11598148>.

⁵ See *Shaughnessy v. United States Ex Rel. Mezei*, 345 U.S. 206 (1953).

⁶ Between October 2018 and August 2019, five cases of mumps in two ICE detention centers ballooned to 898 cases in 57 facilities, with 84% of patients exposed while in custody. "Mumps in Detention Facilities that House Detained Migrants — United States, September 2018–August 2019" *Morbidity and Mortality Weekly Report*, 68:34 (Aug. 20, 2019) pp.749-50. <https://www.cdc.gov/mmwr/volumes/68/wr/pdfs/mm6834a4-H.pdf>; See also Christina Potter, *Outbreaks in Migrant Detention Facilities*, OUTBREAK OBSERVATORY (July 11, 2019), <https://www.outbreakobservatory.org/outbreakthursday-1/7/11/2019/outbreaks-in-migrant-detention-facilities>

have announced no plans to release individuals from immigrant detention, including at the four facilities at issue.⁸ This is true even though staffing has been reduced at some facilities, including at Stewart.

Defendants have likewise failed to present a sufficient plan for the prevention and management of COVID-19 for individuals in ICE custody, and instead have only published a brief guidance.⁹ This limited guidance is not even being followed in the facilities at issue. For example, during a March 20 legal visit to Pine Prairie, Plaintiff observed staff operating in the quarantined dorm without protective gear and bringing in transfers to the quarantined dorm. Further, detained individuals assigned to clean the quarantined dorm were doing so without masks, gloves, or other protective gear. To date, ICE has not taken enough proactive measures such as identifying high-

(noting multiple infectious disease outbreaks in CBP and ICE facilities in 2018 and 2019, facilitated by overcrowding, poor access to healthcare or sanitation, and improper use of isolation and quarantine).

⁷ Section 236(a)(2)(B) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a)(2)(B) (2006) authorizes the Department of Homeland Security (“DHS”) to release an immigrant on conditional parole, and section 212(d)(5)(A) of the Act, 8 U.S.C. § 1182(d)(5)(A) (2006), provides a different procedure for *temporary* parole, based on urgent humanitarian reasons or significant public benefit. See *In re Castillo-Padilla*, 25 I. & N. Dec. 257, 259 (B.I.A. June 18, 2010). Former Acting ICE Director John Sandweg has criticized ICE’s failure to release individuals amid Coronavirus, citing the Agency’s complete discretion. “Unlike the Federal Bureau of Prisons, ICE has complete control over the release of individuals. ICE is not carrying out the sentence imposed by a federal judge... It has 100% discretion.” Camilo Montoya-Galvez, “Powder kegs,” *supra* note 4.

⁸ To the contrary, ICE has continued immigration arrests, even placing people in Aurora Detention Center, where at least ten people have been quarantined for possible exposure to the coronavirus. Alex Burness, *ICE immigration arrests continuing in Denver despite coronavirus outbreak*, THE DENVER POST (March 17, 2020), <https://www.denverpost.com/2020/03/17/coronavirus-ice-immigration-arrest-colorado-denver/>. And while the Federal Bureau of Prisons has suspended facility transfers for 30 days to reduce likelihood of exposure, ICE has continues facility-to-facility transfer of detained people, as recently as March 15, 2020. *Compare Federal Bureau of Prisons COVID-19 Action Plan*, BOP (March 13, 2020), https://www.bop.gov/resources/news/20200313_covid-19.jsp with Hamed Aleaziz, *A Local Sheriff Said No to More Immigrant Detainees Because of Coronavirus Fears, so ICE Transferred Them All to New Facilities*, BUZZFEED NEWS (March 18, 2020), <https://www.buzzfeednews.com/article/hamedaleaziz/wisconsin-sheriff-ice-detainees-coronavirus>. ICE’s lack of a plan for release is troubling given the fact that an employee exhibiting symptoms of the virus in an immigrant detention facility continued to work in the medical ward and was diagnosed with Coronavirus. Emily Kassie, *First ICE Employee Tests Positive for Coronavirus*, THE MARSHALL PROJECT (March 19, 2020), <https://www.themarshallproject.org/2020/03/19/first-ice-employee-tests-positive-for-coronavirus>. The situation on Riker’s Island is instructive—on the night of March 18, one inmate tested positive, and by the next afternoon, four employees tested positive. *Three More Correction Officers Test Positive, Officials say, The Coronavirus Outbreak*, NYTIMES (updated on March 19, 2020), <https://www.nytimes.com/2020/03/19/nyregion/coronavirus-new-york-update.html#link-1b054716>. As ICE continues to make arrests and transfers without a release strategy, a similar exponential increase of COVID-19 in ICE facilities is also imminent.

⁹ *ICE Guidance on COVID-19*. U.S. IMMIGRATIONS AND CUSTOMS ENFORCEMENT. <https://www.ice.gov/covid19>. The “guidance” provides scant information about protective measures in detention. As to how ICE ensures that detained people are kept safe in this crisis, it notes only that ICE is cohorting detainees “as an alternative to self-monitoring” and that staff uses “N95 masks, available respirators, and additional personal protective equipment.” Further, the guidance simply states that detainees who “require higher levels of care or monitoring” are transported to appropriate hospitals with no plan of action for detention centers in remote areas like those at issue here far from hospitals with requisite expertise. Finally, the guidance creates troubling loopholes—to wit, detainees who are asymptomatic but meet CDC criteria for epidemiological risk “are housed separately in a single cell, or as a group, depending on available space.” (emphasis added).

risk populations, providing free and adequate hygiene products, or creating an emergency outbreak plan.

Furthermore, Defendants have done nothing to protect detained individuals' due process rights in light of this public health crisis. This is especially concerning, given both the existing barriers to access to counsel in the four facilities,¹⁰ and EOIR's announcement that all calendar hearings for detained individuals will proceed as scheduled.¹¹ Just this week, on March 24, Plaintiff asked to set up video teleconference ("VTC") calls with 5 clients at LaSalle and was given only one slot on March 30, six days later. Likewise, Plaintiff requested a VTC call with a client at Stewart on March 25 but was told no slots were available until the following week. The impact of Defendant's failure to provide sufficient VTC access is compounded by its new requirement that attorneys bring their own Personal Protective Equipment ("PPE") for all in-person visitations.¹² Given the national shortage of PPE for healthcare providers, the practical effect of this new policy is to prohibit attorneys from visiting their clients in the various facilities. It is incumbent upon Defendants to guarantee that the COVID-19 pandemic does not result in a further strain on individuals' access to counsel.

To be clear, releasing individuals from detention is the best way to ensure their health and access to counsel, insofar as released individuals will be able to call and correspond with their attorneys freely in support of their immigration cases while reducing the risks of transmission in the detention center in this rapidly evolving health crisis. Plaintiff's ability to counsel its clients at the four facilities depends on its ability to enter the facilities and visit clients, a reality that is less likely to remain when COVID-19 enters and spreads rapidly in the facilities. Plaintiff has heard reports of confirmed cases of COVID-19 at Irwin, LaSalle, and Pine Prairie. We urge Defendants to take proactive measures, including releasing vulnerable individuals, as we have previously communicated to ICE,¹³ before it is too late.

We demand that Defendants take the following immediate actions to mitigate existing barriers to counsel at the four facilities in the face of this public health emergency:

¹⁰ Individuals detained at these four remote facilities continue to be impeded from meaningfully communicating with lawyers due to inadequate facilities, policies and practices, and failure of ICE and its agents to monitor or remediate resulting constitutional violations. These deficiencies, such as Pine Prairie's sole VTC room, Stewart's inability to set up pre-scheduled legal calls at an attorney's request, Irwin's VTC calendar coordination that requires 2-3 days advance notice, and LaSalle's extremely limited daily VTC availability, are highlighted in the Complaint.

¹¹ DOJ EOIR (@DOJ_EOIR), TWITTER (Mar 15, 2020, 10:49 PM), https://twitter.com/DOJ_EOIR/status/1239383175882776576.

¹² "ICE will require all legal visitors to provide and wear PPE (e.g., gloves, N-95 masks, and eye protection) while visiting with any client at any facility." *ICE Guidance on COVID-19*, *supra* note 9.

¹³ See *Letter to ICE Officials and Wardens Re: COVID-19* (March 13, 2020), https://www.splcenter.org/sites/default/files/ltr_to_ice_and_wardens_re_covid-19_-_2020.03_-_final.pdf; see also *Letter to ICE and EOIR Re: Legal Access in Immigration Detention and Immigration Courts During COVID-19 Pandemic* (March 23, 2020), <https://www.aila.org/advo-media/aila-correspondence/2020/aila-and-partners-send-letter-to-eoir-and-ice>.

1. Ensure that both VTC *and* phone calls are available at each detention center for attorney-client communication.
2. Provide sufficient VTC consoles such that detained individuals can have free, confidential VTC with attorneys from 8:00 a.m. to 8:00 p.m. Such VTC calls must be available within 24 hours of request by detained individuals or attorneys and need to take place in private spaces to protect confidentiality. They must also allow for conference calling to include interpreters and experts in legal calls.
3. Ensure a process for free unmonitored legal calls at each facility and provide enough confidential phone booths for calls to be available *at any time* by the request of detained individuals or attorneys. Sufficient staff must be available to accommodate requests from attorneys to schedule legal calls. These calls must allow for conference calling for interpreters and experts to participate.
4. Provide a mechanism for attorneys and detained individuals to freely, quickly, and confidentially exchange legal documents, either electronically or via fax. In addition, enable detained individuals to send mail to attorneys for original documents, either by paying for the postage of detained individuals or by allowing attorneys to mail them self-addressed stamped envelopes.
5. Issue directives to staff encouraging flexibility by ICE and facility staff to permit free attorney-client communication for the purpose of intake without signature on ordinarily required forms, including but not limited to the ICE privacy waiver and the G-28.
6. Employ processes that permit confidential legal calls and VTC visits for quarantined individuals.

We urge you to immediately take these actions to address Plaintiff's concerns. Plaintiff otherwise reserves the right to take necessary steps to ensure that detained individuals at the facilities in question have effective access to counsel during this pandemic.

Sincerely,



Shalini Goel Agarwal

cc:

David Byerley

David.Byerley@usdoj.gov

Ruth Ann Mueller

Ruth.A.Mueller@usdoj.gov

Daniel Schaefer

Daniel.Schaefer@usdoj.gov

James Walker

James.Walker3@usdoj.gov

Defendants' Counsel

Exhibit F

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

April 3, 2020

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC* Novel Corona Virus Outbreak

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) March 25, 2020 letter concerning access to counsel during the novel coronavirus pandemic for aliens detained at Irwin County Detention Center (Irwin), LaSalle ICE Processing Center (LaSalle), Pine Prairie ICE Processing Center (Pine Prairie), and Stewart Detention Center (Stewart). This letter, however, does not address *SPLC v. DHS, et al.*, No. 18-760 (D.D.C. SAC filed Aug. 28, 2019), which is before the United States District Court for the District of Columbia.

U.S. Immigration and Customs Enforcement (ICE) is reviewing its "at risk population" to include the elderly, pregnant detainees, and others with compromised immune systems to ensure that detention is appropriate given the extenuating circumstances. Custody determinations are made on a case-by-case basis at each detention facility and include, among other factors, the public safety risk that such release could create and the requirement to detain certain aliens under law. *See* Section 236 of the Immigration and Nationality Act, 8 U.S.C. § 1226. The agency will continue to review its "at risk population" at the four detention facilities in the days and weeks ahead when deciding whether any detainees should be released from custody.

Separately, ICE rejects SPLC's assertion that, as of March 25, 2020, there were "confirmed cases of COVID-19 at Irwin, LaSalle, and Pine Prairie." Letter from Shalini Goel Agarwal, Senior Supervisory Attorney, to Jon Kaplan, Associate Legal Advisor, Office of the Principal Legal Advisor, and Julie Plavsic, Senior Policy Advisor, Office of Legal Access Programs at 4 (Mar. 25, 2020) (SPLC Letter). At that time, all four locations had reported that there are no confirmed cases of COVID-19 at any of the facilities. On April 1, 2020, at 8:54 p.m., however, ICE received confirmation that an alien detained at Pine Prairie who transferred as an inmate from the Federal Bureau of Prisons in Oakdale, LA, tested positive for

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COVID-19. At the time, he was found to be asymptomatic. Since the detainee's arrival at Pine Prairie, he has been kept in a negative pressure chamber in the facility and has not interacted with the general population in any manner. Additionally, in the exercise of caution, the detainee arrived at Pine Prairie wearing personal protective equipment (PPE). The detainee will remain in isolation until April 6, 2020, before he is placed in a general population pod at the facility. Notwithstanding this incident, ICE will continue to coordinate with medical professionals and monitor the facilities and detainees in an effort to minimize the chances of entry of COVID-19 into the facilities.

SPLC further raises three alleged incidents on March 20, 2020, at Pine Prairie, March 24, 2020, at LaSalle, and March 25, 2020, at Stewart relating to the facilities' responses to the public health crisis. First, Pine Prairie rejects the allegation about the quarantined dorm incident because SPLC, like other visitors, are limited to the legal visitation area, which is adjacent to the front entrance and which does not provide visual access into the dorm area. Accordingly, please provide any evidence supporting SPLC's allegations. Additionally, ICE encourages SPLC visitors to file complaints with the facility regarding any issues encountered during visits. Second, and upon initial investigation, LaSalle acknowledges that the six-day delay to set up video-conference (VTC) calls is likely accurate given the high demand to use Skype during the pandemic and the limited resources at the facility. To reduce the current backlog for access to VTC at LaSalle, GEO Group (GEO) has agreed to extend the hours from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and anticipates installing two additional Skype units by April 10, 2020. (Please note that LaSalle, like the other facilities, will continue to schedule VTC sessions on a first-come, first-serve basis.) Third, in reviewing the pertinent e-mail exchange between SPLC and CoreCivic, it appears that SPLC was able to conduct a virtual legal visitation with its detained client at Stewart on March 30, 2020. ICE is sensitive to SPLC's concerns about access to counsel and will make accommodations when appropriate, but maintains that health and safety are of paramount interest. Accordingly, until further notice, ICE will continue requiring attorneys to bring in their own PPE and undergo wellness screening should they decide to visit the facilities to minimize the risk of exposure to and/or spread of the virus.

Finally, ICE has discussed with the facilities SPLC's six immediate action demands concerning access to counsel enumerated in your letter. The facilities' responses are as follows:

1. Irwin and Stewart: VTC and telephone calls for attorney-client communications already are in place. LaSalle: There has been a delay in processing VTC and legal call requests because of the public health crisis, and GEO has agreed to temporarily extend the hours of service. Pine Prairie: No issues with scheduling VTC and telephone calls.
2. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities agree to temporarily extend the hours for Skype use consistent with the security and orderly operation of the facility. Specifically, Irwin has agreed to extend Skype calls from 8:00 a.m. to 7:00 p.m., Tuesdays through Fridays, if needed, and ordered an additional laptop for the Skype unit. (Skype calls will continued to be scheduled from 8:00 a.m. to 5:00 p.m. on

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Mondays because of staffing issues.) Stewart has agreed to extend Skype calls from 8:00 a.m. to 6:00 p.m., Mondays through Fridays. As discussed above, LaSalle has agreed to extend Skype calls from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and anticipates installing two additional Skype units by April 10, 2020. Pine Prairie has agreed to extend Skype calls from 8:00 a.m. to 7:00 p.m., Mondays through Fridays, and, at this time, has agreed to provide Skype service from 8:00 a.m. to 4:00 p.m., Saturdays and Sundays. Attorneys may set up three-way calling to include interpreters or experts using their portable electronic devices.

3. Irwin, LaSalle, Pine Prairie, and Stewart: Irwin, LaSalle, and Pine Prairie have agreed to temporarily extend the hours for legal calls consistent with the security and orderly operations of the facilities, but none of the facilities will agree to “confidential phone booths for calls to be available *at any time* by the request of detained individuals or attorneys”, SPLC Letter at 6 (emphasis in original), as this demand is unreasonable. Irwin has agreed to extend legal calls from 8:00 a.m. to 7:00 p.m., Tuesdays through Fridays, if needed, and Stewart will continue to provide for legal calls from 8 a.m. to 8:00 p.m., Mondays through Fridays. LaSalle has agreed to extend legal calls from 7:00 a.m. to 7:00 p.m., Mondays through Fridays, and Pine Prairie’s hours will remain the same because the facility continues to meet the needs of detainees and their attorneys for legal calls. As SPLC should be aware, SPLC is currently on the *pro-bono* call list that allows detainees to make unmonitored calls to SPLC at any time for free. Nevertheless, the facilities will make funds available for indigent detainees, to the extent necessary, to place telephone calls in accordance with the 2008 and 2011 Performance Based National Detention Standards (PBNDS). The facilities will also extend VTC availability within facility capabilities and staffing availabilities.

Attorneys may set up three-way calling to include interpreters or experts using their portable electronic devices. Irwin indicated that upon request, attorneys may set up unmonitored telephone calls from detained clients by way of the facility’s telephone system, and detainees may request making or receiving legal calls by way of the CoreCivic employees or kiosk. Stewart indicated that attorneys may set up unmonitored telephone calls from detained clients by way of the facility’s telephone system.

4. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities’ unit managers and law library officers will continue to assist the detainees with their needs to exchange a hardcopy of legal documents with their attorneys, but will not retrieve facsimiles or download electronic copies of legal documents for detainees. Additionally, the facilities will not permit stamps into the facilities because they may be used for improper means, such as currency or barter; however, the facilities may permit metered and preaddressed envelopes.
5. Irwin, LaSalle, Pine Prairie, and Stewart: In accordance with 2008 PBNDS and 2011 PBNDS, the facilities will permit attorneys to conduct initial consultations without

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executed G-28s, but cannot agree to waiving signature requirements for ICE privacy waivers.

6. Irwin, LaSalle, Pine Prairie, and Stewart: The facilities will permit confidential legal calls and VTC visits for quarantined detainees to the extent that such access can be provided in accordance with medical directives or guidelines, and without compromising the health or safety of the detainee population or detention employees. To the extent certain detainees are quarantined, the facilities will continue to appropriately schedule and permit such calls and/or VTC visits to occur. The facilities are further amenable to setting up unmonitored legal calls by way of detainee telephones.

Please contact Ruth Ann Mueller, James Walker, and David Byerley, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to this letter. ICE will continue to coordinate with the facilities its response to the global pandemic and will supplement this letter if necessary.

Sincerely,



Jon Kaplan

Associate Legal Advisor

District Court Litigation Division

cc: Ruth Ann Mueller, OIL
James Walker, OIL
David Byerley, OIL
Brian Boyd, OPLA DCLD
Julie Plavsic, ICE ERO

Exhibit G



SPLC
Southern Poverty
Law Center

Fighting Hate
Teaching Tolerance
Seeking Justice

Southern Poverty Law Center
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Tallahassee, FL 32302-2788
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www.splcenter.org

May 4, 2020

VIA E-MAIL

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Room 9060
Washington, D.C. 20536
Jonathan.L.Kaplan@ice.dhs.gov

Re: *SPLC v. DHS, et al.*, No. 18-760-CKK (D.D.C.) (Notice of Non-Compliance)

Dear Mr. Kaplan:

Please consider this letter a Notice of Non-Compliance pursuant to Paragraph 28 of the parties' September 5, 2018 Settlement Agreement ("Settlement Agreement") regarding the LaSalle ICE Processing Center ("LaSalle") in the above-captioned matter. *See* ECF No. 42. Because DHS's non-compliance presents a threat of imminent and irreparable injury to SPLC's clients, SPLC is invoking Paragraph 30 of the Settlement Agreement, requiring the parties meet and confer immediately and authorizing SPLC to make an application for relief to the Court if the parties cannot resolve the non-compliance by 5:00 PM Eastern Time, May 5, 2020.

Specifically, I write to notify you that DHS is not in compliance with Paragraph 22 of the Settlement Agreement. This paragraph requires, among other things, that DHS provide confidential legal visitation through video teleconferencing ("VTC") software at LaSalle. These VTC calls shall be scheduled in accordance with Paragraph 18 of the Settlement Agreement, which requires the calls occur within twenty-four hours of SIFI's request.

VTC calls at LaSalle have not been scheduled to occur within twenty-fours of SIFI's request. On March 17, 2020, a SIFI attorney requested a VTC call with a client. LaSalle scheduled it for six days later. On March 24, 2020, a SIFI legal worker requested VTC calls with five people detained at LaSalle. The facility again responded that there were no VTC time slots for the next six days. On March 25, 2020, a SIFI legal worker requested a VTC call with a client medically vulnerable to COVID-19. LaSalle again responded that it did not have any time slots for the next six days. On April 6, 2020, a SIFI attorney requested a VTC call for the next day. LaSalle assigned her a time slot on April 8, 2020 instead.

The spread of the novel coronavirus throughout DHS's detention facilities has made the need for prompt VTC access only more critical, particularly in light of the many other barriers to access to counsel at the facilities, including at LaSalle. ICE's restrictions on in-person visitation have forced SIFI to rely exclusively on VTC and confidential legal telephone calls, and the grave risk of infection at DHS's facilities has increased the immediate need for SIFI attorneys to communicate with their clients as they seek parole and other forms of relief. Defendants' repeated violations of the 24-hour notice requirement set forth in the Settlement Agreement has not only been detrimental to SIFI's ability to meet with its clients in the past but means that SIFI cannot currently reliably depend on LaSalle to schedule calls at a time when the notice requirement is of utmost importance.

We appreciate your prompt attention to this urgent issue.

Sincerely,

A handwritten signature in black ink, reading "Shalini Goel Agarwal". The signature is fluid and cursive, with the first name "Shalini" being the most prominent.

Shalini Goel Agarwal
Senior Supervising Attorney

cc:

Daniel Schaefer
Daniel.Schaefer@usdoj.gov
Ruth Ann Mueller
Ruth.A.Mueller@usdoj.gov
James Walker
James.Walker3@usdoj.gov
David Byerley
David.Byerley@usdoj.gov

Defendants' Counsel

Exhibit H

U.S. Department of Homeland Security
500 12th Street SW, Room 9060
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

May 6, 2020

VIA E-MAIL

Shalini Goel Agarwal
Senior Supervising Attorney
Southern Poverty Law Center
P.O. Box 10788
Tallahassee, FL 32302-2788

Re: *SPLC v. DHS*, No. 18-760-CKK (D.D.C.)

Dear Ms. Goel Agarwal:

I write in response to Southern Poverty Law Center's (SPLC) May 4, 2020 Notice of Noncompliance (Notice) in which it alleges that U.S. Immigration and Customs Enforcement (ICE) is in noncompliance with the September 5, 2018 Settlement Agreement (Agreement), ECF No. 42. Specifically, SPLC alleges that on March 17, 2020, March 24, 2020, March 25, 2020, and April 6, 2020, Southeast Immigrant Freedom Initiative (SIFI) attorneys or legal workers requested to conduct confidential legal visitations via video teleconferencing (VTC) with aliens who were detained at the LaSalle ICE Processing Center (LaSalle) in Jena, LA, and were not given access within 24 hours as required by the Agreement. In three of the four incidents, the VTC calls were scheduled six days after the initial requests. *See* Letter from Shalini Goel Agarwal to Jon Kaplan, Associate Legal Advisor, ICE (May 4, 2020).

ICE has investigated SPLC's allegations and has conferred with its Enforcement and Removal Operations (ERO) New Orleans (NOL) field office and the GEO Group, Inc. (GEO), which operates LaSalle, to confirm the accuracy of the allegations and whether corrective measures are necessary to ensure compliance with the Agreement. GEO has retrieved e-mails for three of the incidents, which are summarized as follows. On March 17, 2020, a SIFI legal fellow requested to conduct a Skype visit with her client on March 19. Unfortunately, the GEO employee informed her that that date was unavailable and the only dates available for the week of March 16 was either March 18 at 8:00 a.m. or March 20 at 4:00 p.m. The SIFI attorney then requested that the VTC legal visit be scheduled for the week of March 23, preferably on March 23 between 11:00 a.m. and 1:00 p.m., and her appointment was confirmed for March 23 at 11 a.m. On March 24, 2020, a SIFI legal project coordinator requested VTC visits with five detainees and was told that the next available appointment was March 30 at 3:00 p.m. On April 6, 2020, the project coordinator requested a VTC visit on April 7 and the GEO employee informed her that the next available appointment was April 8 at 8:00 a.m.,

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which was confirmed. GEO has no records of SIFI's March 25, 2020 request to conduct a VTC call with its client.

ICE agrees that Paragraph 18(c) of the Agreement reads that "Plaintiff will request legal in-person visits and legal telephone calls the day before, or, at the latest, the morning of, the scheduled visit or call", and acknowledges that GEO scheduled the VTC legal visits beyond the one-day limit. On May 6, 2020, ERO NOL reminded GEO of the Agreement's requirements, including the timely scheduling of VTC appointments, and has received assurances that these incidents won't happen again. In fact, GEO since has installed three additional Skype units at LaSalle to facilitate communications between attorneys and their detained clients and promote the use of video technology to provide an alternate means of access to counsel. GEO indicated that it has tested the Skype units and they are working without any interference. ERO NOL will meet and confer with Shad Rice, who is the new GEO warden at LaSalle, and assistant warden and follow-up with inspections and visits to ensure that this deficiency has been remedied. Finally, GEO believes that it has been responsive to SIFI's appointment requests and will continue to work with the organization in scheduling visits with its detained clients.

Thank you for bringing this matter to our attention. In the future, we respectfully request that SPLC provide more timely notice of alleged noncomplying conditions so that the agency may promptly identify and correct the confirmed deficiencies. Please contact Ruth Ann Mueller and James Walker, Trial Attorneys, Office of Immigration Litigation (OIL), to discuss any additional concerns SPLC may have in reply to ICE's response to this Notice.

Sincerely,



Jon Kaplan
Associate Legal Advisor
District Court Litigation Division

cc: Ruth Ann Mueller
James Walker
Trial Attorneys, OIL