



May 29, 2025

*via email*

Juan Agudelo  
Acting Miami Field Office Director  
ICE Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security

E.K. Carlton  
Warden, Federal Detention Center  
U.S. Federal Bureau of Prisons  
U.S. Department of Justice

Dear Mr. Agudelo and Mr. Carlton:

We write to ask that U.S. Immigration and Customs Enforcement (“ICE”) and the Bureau of Prisons (“BOP”) ensure that individuals in immigration detention under BOP custody at Federal Detention Center-Miami (“FDC-Miami”) are provided access to: 1) legal documents, 2) legal mail, and 3) access to counsel. As you know, failure to provide access to legal documents, timely access to legal mail, and access to counsel constitutes a violation of ICE and the BOP’s own policies, the Administrative Procedure Act, and the U.S. Constitution.

**I. ICE and BOP’s Access Denials and their Impact on Individuals in Immigration Detention at FDC-Miami**

In recent weeks, attorneys from Americans for Immigrant Justice (“AIJ”), Florida Legal Services (“FLS”), and the University of Miami Immigration Clinic have witnessed and documented troubling systemic failures to provide individuals detained in immigration custody with access to vital legal resources and counsel, as described below.

***a. Denial of Access to Legal Documents***

Attorneys report that ICE and BOP have consistently failed to provide individuals detained in immigration custody in FDC-Miami with access to legal documents, notably including Notices to Appear (NTAs) before the Executive Office of Immigration Review. Individuals in immigration custody who are detained at and/or transferred to FDC-Miami are routinely denied access to NTAs and other legal documents. Further, they are denied access to legal documents that they had in their possession prior to being transferred from other immigration detention

facilities. Such documents are essential to enabling individuals in immigration proceedings to understand the charges against them, seek counsel, and prepare for their immigration cases.

***b. Denial of Access to Legal Mail***

Attorneys have reported serious and pervasive failures to provide detained individuals access to legal mail. Individuals detained in immigration custody at FDC-Miami have not been made aware of any process enabling them to send legal mail without cost. Additionally, detained individuals lack any means to make or obtain copies of legal documents. Immigration attorneys who represent clients detained at FDC-Miami report that some clients *never* receive the legal mail the attorneys send. While other clients have received legal mail, approximately one month elapsed before it reached them, including mail sent by attorneys in Florida. These failures and delays have serious—potentially devastating—consequences for detained individuals’ ability access and communicate with counsel, as well as their ability to apply for protection in the U.S. and to fight their cases in immigration court, as is their constitutional right.

***c. Denial of Access to Counsel: Attorney Calls***

FDC-Miami has severely, and unlawfully, limited detained individuals’ access to counsel by restricting access to telephone calls with attorneys. Attorneys report extreme delays—sometimes for over a week—when they request to schedule incoming legal calls with clients. One attorney reported that she requested a call for a client, who, as she stated in her request, had an immigration court hearing three days later, and was informed that no calls were available until approximately two weeks later. Detained individuals face even more extreme obstacles in accessing phones to seek counsel and to make outgoing calls to their attorneys.

Furthermore, lock-downs at FDC-Miami, during which detained individuals are confined to their cells, often for days at a time, prevent individuals in immigration custody from making or receiving calls, including pre-scheduled legal calls. Additionally, flyers providing information about free legal service provider phone numbers are not posted at FDC-Miami. Once detained individuals receive access to outgoing calls, attorneys and detained clients report that the connection is so choppy and sound quality so poor that clients have a difficult time hearing and understanding their attorneys, and attorneys struggle to hear their clients.

***d. Denial of Access to Counsel: Legal Assistants and Law School Clinics***

BOP has imposed restrictions on legal assistants’ and law students’ access to FDC-Miami, which have severely impeded access to counsel. Both legal assistants and law students, including students who have sought and received clearance approvals to the facility, are only permitted to enter FDC-Miami when accompanied by an attorney. These restrictions severely impede access to counsel for detained individuals, given that legal assistants regularly make brief visits to detained clients, for example, to obtain urgently-needed signatures on forms and applications.

As recognized by the Immigration Court Practice Manual, law students frequently represent detained individuals in immigration court proceedings through law school immigration clinics. In order to undertake this representation, however, law students must be able to meet with their clients. And it is both impractical and unfeasible for legal clinic professors to attend every detained client meeting. As such, FDC-Miami's access restrictions have effectively barred the University of Miami Immigration Clinic—or any other law school clinic—from representing individuals detained at FDC-Miami, further inhibiting access to counsel for these individuals.

## **II. The Illegality of BOP and ICE's Access Denials**

ICE and BOP's denial of access to legal documents, legal mail, and to counsel is unlawful. As an initial matter, these denials contravene ICE and BOP's own rules. Even the most restrictive version of ICE's detention standards that govern immigration detention provides that detained individuals must be allowed to retain all their legal documents, or, in instances where they have a large amount of documents, which must be kept in storage, access within 24 hours to such materials. ICE National Detention Standards 2019 ("NDS 2019"), 6.3.II.K. Similarly, BOP's standards mandate that inmates receive "reasonable access to legal materials and counsel, and reasonable opportunity to prepare legal documents." BOP Program Statement P1315.07 CN-1 Legal Activities, Inmate at 1. BOP standards make clear that legal documents, including NTAs, are included within the scope of "an inmate's legal materials," to which inmates are entitled access. *See, id.* at 10.d.

ICE and BOP standards also both mandate that detained individuals receive prompt access to legal correspondence, as well as the ability to send legal mail. *See* NDS 2019, 5.1.II.C ("Barring extraordinary circumstances, incoming correspondence shall be distributed to detainees within 24 hours of receipt by the facility. Outgoing correspondence shall be delivered to the postal service no later than the day after it is received by facility staff or placed by the detainee in a designated mail depository, excluding weekends and holidays."); NDS 2019, 6.3.II.M; NDS 2019, Appendix D, p. 224 (defining "Legal Mail"); *see also*, BOP Program Statement 5265.14, Correspondence, § 540.19 Legal correspondence (requiring, in part, that BOP staff "mark each envelope of incoming legal mail (mail from courts or attorneys) to show the date and time of receipt, the date and time the letter is delivered to an inmate and opened in the inmate's presence, and the name of the staff member who delivered the letter."); *see also id.* at § 540.21(d) (requiring the provision of postage stamps for an "inmate who has neither funds nor sufficient postage and who wishes to mail legal mail...")

Furthermore, both ICE and BOP standards mandate access to free phone calls to legal providers and to courts. ICE standards mandate that detained individuals "shall always be granted access [to free legal calls] within 24 hours of his or her request," and that "incidents of delays extending beyond eight (waking) hours must be documented and reported to ICE/ERO." *See* NDS 2019, 5.4.II.E. BOP standards require that inmates receive access to unmonitored attorney calls as necessary, for example, when faced with upcoming court deadlines—a circumstance common to

individuals held in immigration detention. *See* BOP Program Statement P5264.08, Inmate Telephone Regulations, § 540.103. Likewise, BOP standards governing inmates who are not serving a criminal sentence, which apply to individuals detained in immigration custody, more broadly require that inmates be permitted to telephone the inmate’s attorney as often as resources of the institution allow. BOP Program Statement 7331.05, Policy re Pretrial Detainees, §551.117(c); *see also id.* at §551.101 (classifying ICE detainees as “pretrial” for purposes of the BOP regulations).

FDC-Miami’s restriction on legal assistant and law student access to the facility contravenes its own published visitor policy, which permits legal visits from “law clerks, paralegals, and investigators,” and notes that these parties must seek pre-approval but makes no mention of any requirement that attorney be present at such visits. BOP Program Statement MIM 5267.09B, Inmate Visiting, § 4.E.7 (linked to one the ICE website for FDC-Miami).

Additionally, the above access denials constitute Administrative Procedures Act violations, as an agency’s unexplained failure to follow its own rules constitutes “arbitrary, capricious” conduct in violation of the Administrative Procedures Act. 5 U.S.C. 706(2)(A); *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

Furthermore, the above barriers to legal access effectively deny individuals in immigration detention at FDC-Miami access to counsel, and, in so doing, directly contravene the Due Process Clause of the Fifth Amendment, which guarantees noncitizen detainees the right of access to the courts; the government may not unjustifiably obstruct that access. *See Procnier v. Martinez*, 416 U.S. 396 (1974) (striking down a ban against the use of law students and legal paraprofessionals to conduct attorney-client interviews with inmates).

These barriers also infringe upon individuals’ First Amendment right to free speech, which includes the right to communicate confidentially with attorneys. *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 427 (1993) (“A prohibition on the use of the mails is a significant restriction of First Amendment rights.”); *Mitchell v. Peoples*, 10 F.4th 1226 (11th Cir. 2021); *Al-Amin v. Smith*, 511 F.3d 1317, 1333 (11th Cir. 2008) (“the right to send and receive mail exists under the First Amendment”); *Wells v. Tucker*, 2012 WL 1538366, at \*5 (N.D. Fla. Feb. 15, 2012), report and recommendation adopted in part, rejected in part, 4:10CV441-MP-WCS, 2012 WL 1538333 (N.D. Fla. May 2, 2012) (the NDFL “confirm[ed] that “there is no legitimate governmental purpose to be attained by not allowing reasonable access to the telephone, and [that] ... such use is protected by the First Amendment.”).

### **III. Recommendations**

We recommend that ICE and BOP take the following actions to comply with their own standards and legal requirements:

- Act immediately to ensure that individuals held in immigration detention are provided prompt access to legal documents, including, but not exclusively, documents which they had in their possession prior to be transferred to FDC-Miami.
- Ensure that legal mail addressed to individuals in immigration detention at FDC-Miami is immediately processed and provided to those individuals.
- Provide individuals in immigration detention at FDC-Miami access to free stamps and the ability to send outgoing legal mail.
- Ensure that upon admission to FDC-Miami, detained individuals are informed of the process for sending free legal mail.
- Provide individuals in immigration detention at FDC-Miami with a means to copy legal documents, and ensure that they are made aware of this ability.
- Post instructions for placing free outgoing legal calls and the phone numbers for *pro bono* legal service providers in the facility in places that will ensure individuals in immigration detention at FDC-Miami are aware of their right to make free outgoing legal calls and of these numbers.
- Ensure that there are sufficient telephones and private spaces for calls to enable individuals in immigration detention at FDC-Miami to place and receive free and confidential legal calls without undue delays.
- Ensure that BOP has sufficient staff to schedule confidential legal calls requested by attorneys and law students without undue delays
- Permit legal visits by law students and legal assistants to individuals in immigration detention at FDC-Miami without the presence of an attorney.

We urge FDC-Miami to take immediate action on this matter, and we thank you for your urgent attention to these issues.

Sincerely,

Americans for Immigrant Justice  
 American Civil Liberties Union  
 ACLU of Florida  
 Catholic Legal Services, Archdiocese of Miami  
 Florida Legal Services  
 University of Miami Immigration Clinic