

**DECLARATION OF REBEKAH WOLF, IMMIGRATION JUSTICE CAMPAIGN**

Pursuant to 28 U.S.C. § 1746, I, Rebekah Wolf, declare under penalty of perjury as follows:

1. I am an attorney licensed to practice in New Mexico.
2. I am currently Policy Counsel at the Immigration Justice Campaign (IJC). I have been in that role since April 2021. Before that, I was a Technical Support Attorney within IJC's legal support team since June 2019. Prior to joining IJC, I was a staff attorney with the New Mexico Immigrant Law Center since October 2016. My duties as Policy Counsel include leading the advocacy and policy efforts of IJC. As needed, I continue to provide technical support for volunteer attorneys handling cases through IJC.
3. I make this sworn statement based upon personal knowledge, review of files, review of our database, and documents regularly maintained by IJC, as well as information supplied to me by IJC colleagues.
4. IJC is a joint initiative of the American Immigration Lawyers Association and the American Immigration Council (Council), and is housed within the Council, which is a 501(c)(3) organization. IJC is headquartered in Washington, DC.

**IJC's Model and Mission**

5. IJC is a nationwide initiative seeking to increase access to counsel for thousands of immigrants—particularly those held in immigration detention—who need pro bono legal representation. We do this by bringing together a broad network of volunteers who provide high quality pro bono legal representation and who advocate for due process and justice for immigrants.
6. In the past two years we have served immigrants detained at twenty-nine detention centers nationwide. The detention centers we serve include River Correctional Facility in Ferriday, Louisiana (River); Laredo Processing Center in Laredo, Texas (Laredo); Krome North

Service Processing Center in Miami, Florida (Krome); and Florence Correctional Center in Florence, Arizona (Florence).

7. Currently, we have a network of 2,084 volunteers, of which 1,860 are attorneys. In addition to attorneys, we rely on volunteer interpreters, law students, paralegals, and medical and psychological experts. Our volunteer attorneys often come from large, medium, and small private law firms; some are also solo practitioners. In the past year, IJC has recruited 123 volunteer attorneys to take on one or more cases representing a person in ICE detention.

8. To join our network of volunteers, an attorney must either submit a volunteer application available on our website or be directly referred to IJC for a specific case. Once the attorney has submitted an application, or has been referred to IJC, a member of our staff conducts an internet search to check their background and to ensure they are a licensed attorney in good standing. One of our staff members then sets up a preliminary conversation to discuss volunteering and evaluate whether the potential volunteer is a good fit. If the staff member determines that the attorney meets our requirements for taking a case, the attorney will be added to our pool of available volunteers.

9. IJC places cases with pro bono volunteers by partnering with legal service providers who work with people detained in immigration detention centers across the country. These organizations conduct screenings and identify individuals who need an attorney. The organizations then refer cases to IJC, and we screen the cases for placement, and then communicate the volunteer opportunities to our nationwide network of committed volunteers to find a pro bono attorney to take the case.

10. To begin the referral process, our partner organizations complete IJC's detailed ten-page pro bono case referral form. Along with a summary of the person's case, the form seeks

information about the person's identity, immigration and criminal history (if any), particular vulnerabilities (such as sexual orientation, prolonged detention, or mental or physical health concerns), and support network in the United States. It also seeks information specific to the posture of the detained person's case; such as whether the person is seeking release from immigration custody, requesting representation for a "credible fear" screening, applying for a particular form of relief from removal, or pursuing an appeal of an immigration judge's decision.

11. Our referring partners explain to the detained clients IJC's role in the process and seek their consent to share their information with IJC. IJC, in turn, will try to find the detained client a volunteer attorney.

12. While the vast majority of our cases come through the referral process described above, on occasion, we have also had detained people pass a message asking us for representation through an attorney volunteering with IJC who is representing another detained person in the same facility. We send a reply to those detained people instructing them to contact our local partner organization for an intake so that the local partner can complete a referral form. We typically do this by sending a message back through the attorney who referred the case to us. We have also received email requests for representation from family members of detained people. In that circumstance, we will communicate by email with the family member and instruct them to connect with the local partner, so that the local partner can complete an intake with the detained person. The local partner will then send us information about the case via our referral form.

13. Once IJC receives the completed referral form, along with any additional relevant documents from the partner organization, our legal support team members review the referral form to determine whether the case is appropriate for pro bono placement. This includes, but is not limited to, assessing the timeline to ensure the prospective volunteer attorney has time to

prepare for a scheduled hearing; determining whether there is a viable sponsor for a bond or parole request; assessing whether the asylum case has a colorable claim; and, if it is an appeal, determining the appeal deadline and whether there is a colorable legal issue to appeal. After we complete the screening process, we begin outreach to our nationwide network of volunteers.

14. Once a volunteer attorney agrees to represent a detained person, they must sign IJC's pro bono attorney acknowledgement form. See attached Exhibit A. By signing this form, the volunteer attorney acknowledges (1) that the representation is on a pro bono basis, (2) that the attorney will be responsible for all costs associated with the case, (3) that the attorney will provide the client with an engagement letter, (4) that the attorney will begin work on the case within one week of accepting representation and complete work within the timelines outlined in IJC's orientation, (5) that the attorney will, with the client's permission, keep IJC informed about the case, (6) advise IJC at the earliest possible opportunity if the attorney cannot continue the representation, (7) that IJC is available for mentorship, practice resources, and guidance on the case, but is not co-counsel in the case, and (8) that if the attorney does not meet the expectations outlined in the acknowledgment form, IJC may take the case back and find the client other representation.

15. IJC requires all volunteer attorneys to complete the acknowledgment form because it is part of the IJC's mission to ensure that each detained person we match with counsel receives effective representation that meets IJC's standards.

16. Once representation begins, IJC provides support to the volunteer attorney through our mentorship program. Our mentors are attorneys with expertise in various aspects of immigration law and procedure who supervise the volunteer attorneys' work. The mentors are available to provide technical assistance to the volunteer attorneys, such as explaining relevant provisions of

immigration law, reviewing draft pleadings, and providing guidance on local practices. At the outset of each case, each volunteer attorney is given an orientation manual that includes information on who their mentor is and how to contact that mentor. For new volunteer attorneys, our pro bono coordinator team member has an orientation call with the attorney. This orientation call discusses the type of case and the work that will be required to represent the client and on what timeline. We also provide details about the detention center, including how to contact a detained client in the detention center, the details of which we receive from our local partners. We also provide the volunteer attorneys with information sheets on each geographic area that includes the contact information for the immigration detention facility, local ICE contacts, contact information for the immigration court in that jurisdiction, and, in some cases, we provide the kinds of proof needed for bond and parole requests. During this call, we also remind them about our mentorship program and strongly encourage them to attend their mentor's "office hours" (discussed in more detail below). We show the attorney how to navigate our website, which includes a number of resources, guides, and timelines, explains how mentorship works, and gives the attorney access to additional resources through a page on American Immigration Lawyers Association's website called "AILALink."

17. Most of our volunteer attorneys do not focus their practice on immigration law—many have never handled an immigration-related case before. The mentorship we provide is an essential part of our mission and our daily operations to ensure that every person we place with counsel receives effective legal representation. Immigration attorneys on our team supervise volunteer attorneys on immigration law and procedure on a daily basis, and volunteer attorneys have opportunities to communicate with and learn from other attorneys handling similar cases through our group mentorship model.

18. Mentorship is provided in two ways: office hours and direct mentorship. We offer standing office hours where anyone who is being mentored can join an open zoom line of their assigned mentor. We have two attorney mentors who offer office hours twice per week, and volunteer attorneys are strongly encouraged to attend office hours. The office hours meetings are not only an opportunity for the volunteer attorneys to learn substantive law and procedure, but it allows the IJC mentors an opportunity to assess the volunteer attorney's progress to ensure they are complying with the obligations outlined in the volunteer agreement to provide effective representation to their detained client.

19. We separately have one-on-one mentorship for more complex cases, such as where the client is approaching an important hearing in immigration court. In those circumstances, the mentor schedules one-on-one calls with the volunteer attorney. As part of our mentorship program, we review filings and briefs before they are submitted upon request.

20. Occasionally, IJC attorneys have drafted an emergency motion or brief addressing a complex issue for a volunteer attorney's case. Our volunteer attorneys are generally not prepared to respond to urgent, time-sensitive issues that arise in a client's case, since most are new to immigration law. For this reason, IJC attorneys will sometimes step in to take on drafting a brief or motion for the volunteer attorney. I recall this happening on approximately five to six occasions.

21. For example, in July 2020, an immigration judge denied a volunteer attorney's motion for a telephonic appearance at an upcoming hearing. The volunteer attorney was located in San Francisco representing a client detained in Oakdale, Louisiana. The attorney could not travel for the hearing because her infant was in the hospital with respiratory issues, and it was at the height of the COVID-19 pandemic. Because the hearing was less than two weeks away, I stepped in to

help write an emergency motion to continue or terminate the hearing and an emergency interlocutory appeal to the Board of Immigration Appeals (“Board”).

22. In addition to providing mentorship, IJC also provides any attorney who takes an IJC case with malpractice insurance if they do not already have it.

23. Volunteer attorneys take on cases at all stages of representation. Some attorneys represent detained persons for the purpose of release from ICE custody either through bond or parole. Some attorneys help clients prepare for their “credible fear” interview with an asylum officer. Other attorneys represent detained persons before the immigration courts and in subsequent appeals, and some attorneys take on cases for federal court litigation, including but not limited to habeas corpus petitions and appeals in federal courts.

24. In some circumstances, if an IJC mentor identifies that a detained person is not receiving effective and timely representation from their assigned volunteer attorney, we have taken cases back. This may come to our attention in a few different ways. First, the volunteer attorney may demonstrate through their communications with their IJC mentor that they are incapable of providing effective representation and following our guidance. We also may learn through working with the volunteer attorney that they can’t meet a deadline or they are not gathering information and evidence for a bond or parole case in a timely manner, delaying the client’s opportunity to be released from detention. In other instances, we have heard from our local partners that the detained person whose case they referred to us has not heard from their assigned volunteer attorney. We also utilize our internal database to track timelines to ensure the volunteer attorney is providing timely representation, as detained cases tend to move quickly. As discussed above in paragraph 16, when a case is first placed with a volunteer attorney, we provide the attorney a timeline for each individual case based on the specific needs of the client’s case. Our

legal assistants input that information into our database. As the case proceeds, we also track in our database when significant case activity happens, like the submission of a bond motion or parole application. If we see that the volunteer attorney hasn't completed a task by the given deadline, we reach out to the volunteer attorney and ask what is happening with the case. Our legal assistant also receives automated reminders from the database regarding when a particular activity should be completed. If our legal assistant sees that a deadline was missed, they alert the attorney mentor, who will reach out to the volunteer attorney.

25. If, after we talk with the volunteer attorney we determine that the attorney isn't fulfilling their obligations as outlined in the volunteer attorney agreement, we will step in and take the case back. When we take a case back, we either (1) place the case with another volunteer attorney, or (2) help the referring partner organization provide the representation themselves. We help the referring partner organization to provide representation by assisting in drafting motions and notices of appeal. We very rarely take on representation ourselves directly because that is inconsistent with our model to expand representation and takes up a significant amount of our attorneys' time, which takes time away from mentoring other volunteer attorneys.

26. The mission of IJC is to be able to expand and scale pro bono representation to immigrants in detention, and the highest need for lawyers is for people in ICE detention centers in geographically isolated locations, often hundreds of miles away from the nearest immigration lawyers. As a result, we prioritize providing people in geographically isolated detention facilities with remote legal representation, which makes remote representation essential to our model.

27. Since the COVID-19 pandemic began, 100% of our cases have involved volunteer attorneys representing their clients remotely. Indeed, even before the COVID-19 pandemic, the



majority of cases involved remote representation, but we tried to place cases with local volunteer attorneys, when possible, for in-person hearings.

28. Our volunteer attorneys often face obstacles to remote representation. I have intervened in the past when volunteer attorneys have struggled with accessing their clients remotely. For example, a volunteer attorney was representing a client detained at the Otero County Processing Center (“Otero”) in Chaparral, New Mexico, where attorneys and interpreters cannot call into the facility; detained people must call out. However, facility staff would not let the detained client call his interpreter because the interpreter was not an attorney and thus, it was not a “legal call.” After weeks of trying to come up with a solution, I served as the interpreter since I am both an attorney and proficient in Spanish. Because of the difficulties with access, we paused taking cases from Otero. We briefly resumed taking Otero cases when ICE’s Deputy Field Office Director intervened to improve telephone access for a group of clients our volunteer attorneys represented at the facility. But that intervention was short-lived and currently we do not take cases at Otero due to the lack of telephone access. To my knowledge, the only attorneys who represent detained immigrants at Otero are those who can visit the facility in person; remote representation is impossible.

29. In addition to placing detained persons’ cases with volunteer attorneys, IJC also advocates for changes in law and policy by documenting challenges that detained immigrants encounter as they fight to seek protection, including access to counsel. We look to volunteer attorneys to help identify the many due process challenges their clients face while in detention, such as prolonged detention, inadequate access to language interpretation services, and changes in immigration court practices, among others. Based on feedback from volunteer attorneys, we have long advocated for better access to counsel in immigration detention facilities, particularly

by telephone and video conference. Specifically, we have submitted joint letters with local partner organizations to the Department of Homeland Security (DHS) about telephone access. *See, e.g.*, Ex. B. We have also submitted complaints to DHS's Office of Civil Rights and Civil Liberties (CRCL) that have addressed telephone access, among other issues in detention. For example, we submitted a complaint to CRCL about the Torrance County Detention Facility in Estancia, New Mexico, that addressed a number of deficiencies at the facilities, including telephone access. *See* Ex. C.

30. The lack of access to their attorney negatively impacts detained immigrants' ability to assert their rights in federal court. In my experience working as an IJC attorney mentor and previously representing detained immigrants in New Mexico, I've seen first-hand how difficult it is for detained immigrants to bring a lawsuit without the benefit of counsel. Very few of our clients speak English, they have limited knowledge of the U.S. legal system, and few, if any, have access to legal resources. Those legal resources that are available in detention facilities are generally geared toward immigration procedure and do not address their rights under the U.S. Constitution or federal laws and regulations. As such, without the benefit of an attorney, it would be impossible for a detained immigrant to bring an access-to-counsel lawsuit on their own. The very problem of accessing an attorney—especially a remote attorney via telephone or VTC—makes it all the more difficult for a detained immigrant to raise access-to-counsel issues in court.

**Impact of Barriers to Access to Counsel on IJC's Representation Model**

31. A prerequisite to effective representation by volunteer attorneys is their ability to effectively communicate with their clients. For this reason, our attorney mentors advise volunteer attorneys and law students on how to access their client in immigration detention. Accessing clients in detention is often difficult. Immigration detention facilities often have different policies

and procedures for setting up phone calls, video calls, delivering messages, and communicating with a client by fax or email (if available), and the attorneys on our team work to help the volunteers understand the system of communication at a particular facility. Our national operations, which must function remotely, make it difficult for IJC mentors and volunteer attorneys to understand the arbitrary procedures for accessing detained clients when we are not physically present in the facilities. Before coming to IJC, I worked in a position where I represented detained clients in one facility in Cibola, New Mexico. I visited clients at the facility every week, and I was able to get to know the guards and the facility's often arbitrary procedures, which allowed me to find informal strategies to access my clients, even if those methods were not optimal because they required me to expend a lot of time and energy on tasks such as asking for assistance from a specific, helpful officer and adapting to constantly changing practices. IJC operates remotely in more than two dozen facilities, so we as mentors necessarily rely on information from local legal service providers to help access our clients. But each facility's practices regarding communication with detained people frequently change, and our volunteer attorneys are not always privy to the same information or informal methods of gaining access as the local legal service providers. We've also found that even within one facility, attorney access practices are different depending on the guard or deportation officer assigned to the case. This variation across and even within the facilities makes our remote representation model especially difficult.

32. Thus, the number one impediment to our ability to increase representation for detained individuals is the lack of clear, reliable, and established policies for attorneys to contact their clients at many detention centers. Because IJC's model focuses on remote representation, we cannot place cases at detention facilities where pro bono attorneys cannot communicate remotely

with their clients. If remote representation at a particular detention facility is theoretically possible, but requires significant one-on-one mentoring, IJC is limited in the number of cases we can place at that facility because of the strain on our resources. When a detention center has an unclear, complex, burdensome, or otherwise ineffective system for communicating with clients, the volunteer attorneys will often need individualized assistance just to gain access to their clients. The more opaque, complex or burdensome attorney access is at a particular facility, the more time we have to spend providing one-on-one mentorship.

33. IJC's model is to scale representation of people in immigration detention. The model relies heavily on IJC's group supervision of volunteer attorneys. This method generally works because most volunteers have the same set of questions that can be addressed during the weekly office hours we provide. But if the attorney can't gain access to their client at a particular facility, we cannot address those issues and questions in a group setting. It is an inefficient use of time for other attorneys on the office hours calls to discuss facility-specific access issues. Therefore, we usually address access issues through one-on-one mentorship in order to get the attorney to the point at which they can speak with their client. This often amounts to double the work to mentor each volunteer attorney when they have an attorney access obstacle. In turn, the extra time spent restricts the number of cases the mentor can handle at a particular time, in addition to harming IJC's overall goal to scale legal representation in immigration detention nationally.

34. We have regularly restricted referrals to a maximum number of detention centers for this reason and therefore the reach of our program is constrained, often at the facilities where our services are most needed. We have also stopped taking referrals from particular detention centers if there is no reliable way for a volunteer attorney to get in touch with their client. In one

instance, IJC took a case back from a volunteer attorney due to lack of telephone access after the volunteer attorney had been trying for weeks to contact their client with an interpreter and wasn't able to do so. The attorney, who did not speak Spanish, was unable to arrange for a three-way telephone call with the interpreter. I stepped in and represented the detained client in their bond hearing in that case on behalf of IJC. I also experienced difficulties contacting the client but was ultimately able to have one 15-minute call with the client before the bond hearing. Because I have done hundreds of bond hearings and am proficient in Spanish (thus not needing an interpreter), I was able to efficiently obtain the bare minimum information from the client in that short call; namely, he provided me with the name and contact information of his sister, who had to fill in all the details about the client's case because of the lack of telephone access.

35. As discussed above, we ceased taking cases from the Otero facility in New Mexico due to the poor remote access. At Otero, we have long had issues with telephone access, which has made remote representation very difficult for our volunteer attorneys. At Otero, the attorney must send a message through the officers to their client. The officers copy and paste the message into a system that appears on tablets in the general area of the cells, and then the client must read the message, and call us back. The message delivery system is extremely unreliable, especially when it comes to any non-English speaking/reading client and any client who is not literate. Because of our continual access issues at Otero, we stopped taking cases from that facility.

36. We have also stopped placing cases of people detained at Jackson Parish Correctional Center in Jonesboro, Louisiana, and Adams County Correctional Center in Adams County, Mississippi, because of the insurmountable challenges with accessing clients.

37. In the past, we have also declined to provide representation at Krome Detention Center (Krome) in Miami, Florida, and Glades County Detention Center (Glades) in Glades County,

Florida. In April and May 2020, IJC staff communicated with attorneys at Americans for Immigrant Justice (AIJ) about placing cases of people detained at Krome, Glades, and Broward County Detention Center with volunteer attorneys. Before we began accepting referrals, we investigated the remote access at all three facilities (*i.e.*, telephone and video teleconferencing capacity) and learned that there was no way to conduct free, confidential legal calls at Krome or Glades, and so we declined to accept case referrals from those two facilities. We did, however, accept case referrals of people detained at Broward because that facility had a process to set up free, confidential, private legal calls, making remote representation possible. Recently, upon request from local legal service providers we have reengaged with the Krome facility and placed two cases with volunteer attorneys, who have not been able to contact their clients by telephone, as discussed more fully below.

#### **Remote Access at River, Krome, Laredo, and Florence**

38. At River, there is no reliable way for a volunteer attorney to place a call to a client at the facility, nor is there a way for an attorney or client to set up a confidential legal call. Initially, the facility provided an email address and telephone number to use to request that a legal call be arranged. We learned of this telephone number and email address through the local non-profit, Immigration Services and Legal Advocacy (ISLA). But that method for setting up calls has ended. Recently, we placed a case at River with a volunteer attorney in August 2022. The attorney was attempting to represent an individual in a request for release, and I was the attorney's mentor. This attorney was an experienced volunteer with IJC, but even with that experience, she was unable to set up a legal call or get a message to her client at River through any formal means. The attorney called or emailed the facility six times to set up a call with her client, but the facility never responded. During this time, the volunteer attorney and I exchanged

several emails in which she reported to me what steps she had taken to gain access, and I, in turn, suggested other options for contacting her client, such as other guards or officers to reach out to, whose information I had learned from other practitioners who represent detained clients in Louisiana facilities. Each time the volunteer attorney wrote back saying that her efforts had not produced a result, I suggested that she contact a different deportation officer or facility staff member. We hoped that one of these officers was the right contact or would forward the email to the correct deportation officer, but that didn't happen. Ultimately, she had to rely on contact information we had from the referring organization, ISLA, for the client's mother. The attorney contacted the client's mother, who in turn gave the client the attorney's phone number along with a time to call when the attorney and the interpreter were both available. However, due to this tenuous means of communication, the first time the client called—using his own funds—it was not at the proposed time and the interpreter was not available. The call was on a monitored line, based on a recorded message they heard on the line, and the call took place in a room that was not private and with other detained persons and guards present. The attorney was able to have some basic communication with the client through the little Spanish she knew and with the assistance of another detainee at the facility who helped interpret the phone call. The attorney was able to gather from the client's wife that the client had been told that he must submit his application of asylum before his next hearing, which was on September 13, 2022. It had taken the attorney two weeks just to get in touch with the client, which delayed the attorney's ability to submit a release request. The attorney reported that she would have helped the client complete his application for asylum pro se (the attorney had only been retained to represent the client for his release request), but she did not feel it was ethical to do so in a non-confidential setting, thus severely impacting his ability to apply for asylum. Because the attorney was unable to interview

the client about his asylum claim, she was also unable to describe the basis for relief from removal in the parole application, which would have made the parole application stronger. The client's parole application remains pending. After the attorney submitted the parole application, IJC learned that video teleconferencing (VTC) may now be available at River, but that has never been communicated to the attorney during her many attempts to contact her client, nor is information about VTC access publicly available, including on ICE's website.

39. At Krome, there is no mechanism to set up a telephone call of any sort through the facility. The only means of communication between a client and an attorney is either through mail or if the client has personal funds in his commissary to make outgoing calls on monitored lines in the general common spaces in the cells with no privacy. Because our model places clients with our volunteer attorneys after their case is referred from a local partner, the client doesn't know the identity of their attorney or their contact information. That is why it is critical to have a mechanism for the attorney to initiate a call to a client.

40. For two recent cases at Krome that I mentored, the attorneys were only successful in contacting their clients because their clients happened to be from English-speaking countries and were literate in English, and therefore the attorneys mailed the clients letters identifying themselves and setting up a time for the client to call. In both cases, the clients had to pay to use the phones to call the attorneys and called from public spaces on monitored and recorded lines.

41. In the first case, the attorney received our placement email on July 31, 2022. When I first reached out to the attorney, I provided IJC's contact sheet for Krome that included the main telephone number for the facility and the name and email address of a deportation officer. Anytime we come into contact with a deportation officer and learn of their contact information, we update our facility contact sheet with that information. I typically also provide the outreach



email address for the ICE Enforcement and Removal Operations (ERO) field office where the detention facility is located, but that was not possible for Krome because the outreach email is not posted publicly. Krome is under the jurisdiction of the Miami Field Office, but ICE's website does not list an outreach email address for the Miami Field Office. In fact, there is no information about the Miami Field Office's Enforcement and Removal Operations (ERO) unit, which oversees immigration detention. *See* ICE, ICE Field Offices, <https://www.ice.gov/contact/field-offices> (see page 5, showing no "ERO" information for the Miami field office) (last visited October 6, 2022). This is particularly problematic because in recent stakeholder engagements with ICE and DHS headquarters, headquarters officials have repeatedly told legal service providers to contact the field office through the outreach email address to report access-to-counsel issues. But in the case of the Miami field office, there is no published contact information for ICE ERO. However, even when IJC or its volunteer attorneys contact field offices in other parts of the country via the ERO outreach email address to raise issues around attorney access, the emails go unanswered or receive an automated response.

42. Over the course of nearly two weeks, the volunteer attorney made ten attempts to set up a call with her client by sending emails, placing phone calls, and leaving voicemails at both the facility and to an ICE deportation officer. According to the volunteer attorney, on August 5, 2022, she sent an email to a deportation officer at Krome who was listed on our contact sheet. On August 8, the deportation officer responded that the attorney should contact a different deportation officer in charge of her client's case, but he did not provide contact information for that officer. The same day, August 8, the attorney called the main line at Krome and left a message on the detainee contact line for the client to call her. She also called and left a message on the "urgent" phone line, asking for the same. On August 10, she called and left a message

again on the detainee contact line for her client to call her. On August 12, the attorney sent another email to the first deportation officer, asking for contact information for the officer in charge of her client's case. She did not receive a response to that email. On August 12, she also left a message on the main line. On August 17, the attorney twice called 305-207-2001, the phone number for Krome on ICE's website, and selected "4" (after choosing the English language), which is the line to speak to a "deportation assistant." She received a busy signal both times. The attorney called the same number a third time and stayed on the line to speak with the operator. She waited for five minutes and did not get through during that time. She called a fourth time and left a voicemail message with the client's name, A number, and country of origin, asking him to call her.

43. During that time, I was in regular communication with the volunteer attorney, advising her on next steps to access her client. I advised the attorney to keep trying to reach her client by telephone, but suggested she also send her client a letter asking to call her. On or about August 12, 2022, upon my advice, the attorney sent a letter to the client with her name and contact information and also included the G-28 attorney appearance form for him to sign. The attorney finally received a telephone call from the client on August 17, 2022. The client reported that he never received any message from the facility or from his deportation officer to call his attorney, or that an attorney was attempting to contact him. In this case, which is currently ongoing, the client is limited in how long he can talk to his attorney because he has limited funds to pay for the calls, and he only receives three free 10-minute calls per week. When the client does contact his attorney, there is a lot of background noise, indicating that it is in a public space. The calls are sometimes of very poor sound quality, and the attorney reported that it is hard to hear her client. The attorney believes it is on a monitored line based on the recorded message at the

beginning of the calls. Additionally, and contrary to ICE policy, ICE is refusing to turn over requested documents to the volunteer attorney, which are needed to prepare the client's request for bond. ICE insists they need a G-28 attorney appearance form signed by the client before they will do so. The volunteer attorney only recently received the signed G-28 through the postal mail because there is no mechanism to email or fax legal documents to or from the client, which has significantly delayed obtaining documents and in turn has delayed the request for release, subjecting the client to additional time in detention.

44. In another recent case at Krome, the volunteer attorney needed to ask the client about sensitive information related to his family relationships for the purpose of identifying sponsors and ties to the community for his release request. Again, the volunteer attorney was unable to schedule a private, unmonitored, free telephone call. This attorney ended up on an IJC mentor office hours call with the volunteer attorney assigned to the case discussed above, and so she also contacted her client by letter, asking him to call her. When the attorney spoke to the client on the phone, he was reluctant to speak freely about these relationships in a public space, and the volunteer attorney was hindered in providing a full explanation of his legal case. The client's release request remains pending.

45. At Florence, IJC has found no consistent way to set up confidential legal calls. There is no published policy or practice at the facility or on ICE's website. At times, guards pass messages to the client to call the attorney back, but there is no consistency in message delivery. Even when messages are delivered, the client must call the attorney using their own funds on a monitored line in a non-private space. On limited occasions, an attorney may call and ask for a specific guard and sometimes that guard will find the client and put them on the phone. Even when the guard arranges for a call with the client, the attorney may need to wait on hold for 45

minutes before the guard finds the client. This individual guard, however, is not always available, and if he isn't, there is no substitute guard who will find the client. This is a consistent challenge with representing clients in immigration detention remotely—many facilities require information about who the “right” guard or facility staff is to set up telephone or video calls with detained clients, which our remote volunteer attorneys do not have.

46. Recently, in a case I was mentoring at Florence, the volunteer attorney was not able to set up a call with his client. After I sent the attorney information about the facility, the attorney called the facility and was placed on hold for 30 minutes. He then spoke to an officer and said it was urgent that he speak to his client. The officer told the attorney that the facility does not accept incoming attorney calls to detained clients. The officer asked the attorney why he wanted to speak to the client, and the attorney told the officer that he would not share the purpose of the legal call. The officer finally said he would have the detained client call the volunteer attorney within 48 hours, but it was four days before the detained client called the attorney. They were only able to have a one-minute conversation, which was not enough time to get the interpreter on the line. The client called from the general housing unit and had to pay for the call. Over the next four weeks, the volunteer attorney only had two more one-minute calls with his client. Instead, most of the information he gathered about the case came to the attorney via his client's family. This led to a misunderstanding with the client, and he believed that he was going to be released when his state criminal sentence was vacated, but in fact, he was not and needed to continue working with the volunteer attorney. The client then stopped calling his attorney. This client was ultimately ordered removed on or about August 26, 2022, without a request for release having been successfully submitted due to the difficulties contacting the client to get necessary information for the release request.

47. As the attorney mentor, I spent a significant amount of time advising the volunteer attorney during this case about how to contact the sponsor who will provide support to the client when released, and how to work the sponsor and interpreter once it became apparent that he would be unable to maintain telephone contact with his client. I also helped him troubleshoot obtaining the G-28 attorney appearance form signed when the attorney couldn't contact the client.

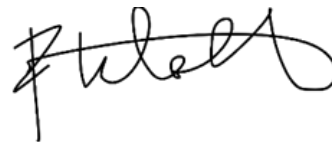
48. Another case I am mentoring at Florence shows the arbitrary nature of the facility's practices regarding legal phone calls. The volunteer called the facility for the first time on Friday, September 30, 2022, and talked to a facility staff member who told her to call back and ask for the sergeant. The volunteer called three times on October 3, 2022, and twice more on October 4, 2022. The volunteer finally reached the sergeant on the second call on October 4. The sergeant told the volunteer attorney to email him, which she did, and the sergeant forwarded the email to a staff member. The staff member emailed the volunteer attorney asking for her number so the client could call her back. While the volunteer attorney wanted to set up a time to call her client at the facility, the staff member insisted on the detained client initiating the phone call from her office. During this exchange, I advised the volunteer attorney to give the facility staff her number.

49. On October 6, 2022, the volunteer attorney received a call at the arranged time from the detention center. The staff member told the volunteer attorney that the only reason she was allowing this call from her office was because the client needed an interpreter and there was not three-way call capacity on the phones in the public housing unit. The staff member also advised that she was making an exception and would not be making such an exception in the future. The volunteer attorney was told she could merge an interpreter into the call, but the call dropped

when she attempted to do so. Fortunately, the detained client spoke enough English that the volunteer attorney could get the information she needed to begin working on his parole application. Since then, the detained Client has had to use his own funds to call the volunteer attorney. Ten days went by in which he was unable to call his attorney because he had no funds. The attorney repeatedly emailed the facility to arrange a call, informing them that the client had no funds. When the detained Client finally called the volunteer attorney on October 31, the call was brief because he did not want to expend all of his telephone minutes on the call to his attorney.

50. IJC is prepared to take more referrals from these facilities if attorneys had reliable access to confidential calls or VTC that could be initiated by the attorney at a specific time and could arrange for interpretation for an unlimited duration. However, with the current barriers, we are unable to continue to expend the resources necessary to place additional cases in these locations.

I declare under the penalty of perjury that the forgoing is true and correct. Executed this 16<sup>th</sup> day of November, in Albuquerque, NM.



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REBEKAH WOLF

# **EXHIBIT A**

# IMMIGRATION JUSTICE CAMPAIGN



## Pro Bono Attorney Acknowledgement

Name of Client: \_\_\_\_\_

Name of Pro Bono Attorney: \_\_\_\_\_

We thank you for your willingness to represent a pro bono client in the \_\_\_\_\_ (type of case) for \_\_\_\_\_ (client name). This acknowledgement outlines some important aspects of your representation, and an understanding of the responsibilities that representation entails. By signing this agreement, you agree to the contents herein, and that if you are unable to complete the case, you agree that IJC may take the case back for re-placement:

1. Your representation of your client is on a pro bono basis; you will neither request nor accept remuneration for your client's case.
2. You will be responsible for all costs normally associated with your client's legal representation, including but not limited to document delivery and postage. If you are representing a client on a habeas matter, costs may include getting admitted into the appropriate federal district court.
3. You agree to provide your client with an engagement letter setting forth the terms of your representation. The scope of your engagement letter with your client will govern the duration of your representation in this matter.
4. You agree to begin work on this case within, at minimum, one week of accepting representation, and to complete work within the timeframe outlined in our materials and orientation or, in the alternative, provide the Immigration Justice Campaign with an explanation and revised timeline.
5. Throughout your representation of your client, you will, with your client's permission, keep the Immigration Justice Campaign informed of significant developments in the case, including hearing dates, deadlines, and the outcome of the case.
6. If you are unable to continue with the representation of this matter, you agree to notify the Immigration Justice Campaign at the earliest possible opportunity.
7. You understand that the Immigration Justice Campaign is available to provide mentorship, practice resources, and guidance on your case. However, the Campaign is not co-counsel on this matter, nor can Campaign staff serve as your legal assistant. You



have the same full ethical obligation of representation that you would have representing any other client.

8. I hereby acknowledge receiving this document entitled "Pro Bono Attorney Acknowledgment." I understand that if I do not meet the expectations outlined in this document, the Justice Campaign may take the case back and find the client other representation.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

# **EXHIBIT B**



DIOCESAN MIGRANT & REFUGEE SERVICES, INC.  
**DMRS**  
SERVICIOS DIOCESANOS PARA MIGRANTES Y REFUGIADOS

**HIAS**  
Welcome the stranger.  
Protect the refugee.

**INNOVATION**  
**LAW LAB**



**NMILC**  
NEW MEXICO IMMIGRANT LAW CENTER



**SANTA FE**  
**DREAMERS**  
**PROJECT**



March 1, 2021

Secretary Alejandro Mayorkas

U.S. Department of Homeland Security

500 12th St. SW Washington, D.C. 20536

Acting Director Tae D. Johnson

U.S. Immigration and Customs Enforcement

500 12th St. SW Washington, D.C. 20536

Re: Legal phone access at Otero County Processing Center and El Paso Service Processing Center

Dear Secretary Mayorkas and Acting Director Johnson:

The undersigned attorneys and organizations provide legal services to individuals detained by U.S. Immigration and Customs Enforcement (“ICE”) at the El Paso Service Processing Center (“EPSPC”) in El Paso, Texas, and the Otero County Processing Center (“Otero”) in Chaparral, New Mexico. We write to express our concerns regarding serious due process violations caused by insufficient legal phone access for individuals detained in these two facilities. We request that ICE expeditiously create and implement a detailed plan that will fully protect the right of detained individuals to speak to legal service providers. This plan must ensure that legal phone access is free, confidential, and comprehensive, both during and after the COVID-19 pandemic.

Phone access is essential as ICE detention facilities are frequently in remote locations, sometimes thousands of miles away from families and attorneys, preventing in-person visits. Improvements to phone access were needed at EPSC and Otero before the COVID-19 pandemic, which has only made the situation more urgent. Many legal service providers who could previously visit their clients in detention can no longer do so. Detained individuals at EPSPC and Otero report phone access that is further limited during quarantines and lockdowns, even though they are forced to proceed with their cases in immigration court.

### **Legal calls in detention must be free of cost**

The preparation of an immigration case requires many hours of conversation with a legal service provider. A lack of preparation can cause prolonged detention and deportation, which in turn can mean permanent family separation or even death. Currently, detained individuals must pay 11 cents for audio calls or 21 cents for video calls except to the phone numbers on the Executive Office for Immigration Review (“EOIR”)’s list of pro bono organizations, which excludes many legal service providers. Even if an organization is on EOIR’s pro bono list, the process to access free calls is cumbersome and difficult. Many detained individuals have arrived in the United States with very few resources, and even those individuals who can work in detention may make as little as \$1 a day. Therefore, many individuals cannot afford to pay for the legal calls they need.

### **Legal calls must be unmonitored and confidential**

Meaningful immigration case preparation requires the sharing of very sensitive information. Individuals detained in EPSPC and Otero frequently must make legal calls from communal spaces where they are likely to be uncomfortable sharing personal or traumatizing details. Failing to share this information can cost them their immigration case.

### **ICE must facilitate phone access, including by scheduling legal calls**

ICE must play an active role in ensuring that individuals in its custody have adequate access to counsel by scheduling confidential, private, free legal calls. ICE must schedule legal calls to address a host of phone access problems that plague detained individuals, including their inability to control their own schedules and other limitations, such as language barriers, mental illness, and trauma.

While individuals at EPSPC and Otero do have some access to phone calls, this access is vastly inadequate for meaningful legal preparation. ICE recently implemented a system in which a written message is sent to tablets that are accessible to people in detention. However, instruction on how to access these messages is inadequate, the messages are not translated into the individual’s native language, and the system is inaccessible to individuals who are illiterate. There is no way for an attorney to arrange a specific time and date for a call with a client. Even if an individual can navigate the message system, they do not have access to free, confidential calls to respond to the message.

Individuals detained at EPSPC and Otero also report a large range of other challenges including an inability to navigate prerecorded menus or to leave voicemails, delays in learning that an attorney is trying to contact them, and frequent interruptions to calls. For example, one accredited representative reported that her legal call was interrupted a total of three times in one day when ICE refused to bring her client lunch, the barracks were fumigated, and then a headcount took place. Legal service providers representing individuals in Otero and EPSPC also report the inability to make incoming calls, leave messages for their clients, schedule calls in

advance, or add a third-party, such as an interpreter, to the call. They also report intermittently receiving blanket denial of calls to prospective clients who they have not yet committed to represent.

Legal service providers have been suggesting for over a year a simple fix: that the Enforcement and Removal Operations implement at El Paso and Otero what they have implemented at other detention centers in the same jurisdiction, such as Cibola County Detention Center in Milan, New Mexico and Torrance County Detention Facility in Estancia, New Mexico. At these facilities, legal calls are arranged exactly like legal visits, with an attorney sending an email to ICE to reserve a time and date with the client. ICE then brings the client to a legal visitation room to use a private, unmonitored phone for the legal call.

### **These challenges have been the subject of ongoing litigation**

The barriers to phone access reported by attorneys and detainees in EPSPC and Otero prompted the filing of a lawsuit in New Mexico on May 4, 2020, which is still pending. Since then, the situation has not improved and in some respects, has gotten worse.

We urge ICE to protect due process by preparing a phone access plan that ensures the following:

- ICE must facilitate confidential, private, and free legal calls.
- Confidential, private, and free, legal calls must include calls to and from paralegals and volunteers, not just attorneys and BIA accredited representatives. Legal calls should take place in a location where the detained individual cannot be overheard by ICE, facility staff, or other detained individuals, and where the call does not have background noise.
- Legal service providers should be able to schedule calls in advance.
- ICE should provide instruction to all detained individuals on use of the phone system, including the pro bono platform—a speed dial system for certain EOIR-registered non-profit organizations to receive free calls, until they can use it correctly. Instruction through posters and a public address system alone is insufficient. Instruction must be accessible to individuals who are illiterate and available in the native language of each individual.
- Detained individuals should be able to leave voicemails and navigate automated phone menus.
- Legal service providers should be able to call into the facility to speak to a detained individual.
- Legal service providers should be able to add a third party, such as an interpreter, to a call.
- ICE should immediately deliver messages left by legal service providers for their detained clients.

- Organizations that provide legal service orientations or know-your-rights programming should be able to conduct presentations over the phone and by video to groups or individuals, whichever the organization determines to be best for the situation.
- Calls should be as long as needed by the detained individual and attorney given that they are in many cases replacing in-person legal visits during the COVID-19 pandemic.
- A schedule should be available to all legal service providers of any essential activities that may interrupt calls, such as headcounts or fumigation. ICE and facility staff should make efforts to accommodate the need for legal calls and minimize interruptions.
- All these guidelines should apply to calls to legal services providers by both prospective clients and those already represented. A G-28 should not be a prerequisite for scheduling a phone call.

Sincerely,

Catholic Charities of Southern New Mexico

Daniel Caudillo, Esq.

Diocesan Migrant & Refugee Services

Eduardo Beckett, Esq.

HIAS

Jessie Miles, Esq.

Innovation Law Lab

Pamela Genghini Munoz, Esq.

Las Americas Immigrant Advocacy Center

Carlos Spector, Esq.

New Mexico Immigrant Law Center

Ernesto Sanchez, Esq.

Santa Fe Dreamers Project

Melissa Untereker, Esq.

Brenda Villalpando, Esq.

CC: Angela Kelley, Senior Counselor, U.S. Department of Homeland Security

Timothy Perry, Chief of Staff, U.S. Department of Homeland Security

# **EXHIBIT C**



November 23, 2021

Katherine Culliton-González  
Office for Civil Rights and Civil Liberties  
[katherine.culliton-gonzalez@hq.dhs.gov](mailto:katherine.culliton-gonzalez@hq.dhs.gov)  
[CRCLCompliance@hq.dhs.gov](mailto:CRCLCompliance@hq.dhs.gov)

Inspector General Joseph V. Cuffari  
Office of the Inspector General

CC: Director David Neal  
Executive Office of Immigration Review  
[David.Neal@usdoj.gov](mailto:David.Neal@usdoj.gov)

Ombudsman David Gersten  
Office of the Immigration Detention Ombudsman  
[david.gersten@hq.dhs.gov](mailto:david.gersten@hq.dhs.gov)

Re: Severe Violations of Due Process and Inhumane Conditions at Tarrant County Detention Facility

Dear Ms. Culliton-González and Inspector General Cuffari,

We, the undersigned organizations, jointly file this complaint to request an investigation into severe violations of due process and inhumane conditions reported by individuals detained at Tarrant County Detention Facility ("Tarrant") in Estancia, New Mexico and by attorneys and legal representatives attempting to provide them with legal services. The due process violations under the Department of Homeland Security's purview include the denial of access to counsel, language access, information about the asylum process, and individualized custody determinations. These issues are exacerbated by violations of due process in the immigration courts, including improper immigration judge advisals and unusually rapid proceedings.

While most of these violations affect everyone detained at Tarrant, some, such as the denial of language access, the unusually rapid proceedings, and blanket denials of request for release disproportionately affect Haitian people. It is our understanding that there are approximately 80 Haitian men detained at Tarrant, and that they are asylum seekers who recently arrived in the United States and were apprehended in the vicinity of Del Rio, Texas. Some of them are likely victims or witnesses of Customs and Border Protection (CBP) misconduct that occurred there.<sup>1</sup>

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<sup>1</sup> Joel Rose, "The inquiry into border agents on horseback continues. Critics see a 'broken' system," *NPR*, November 6, 2021, <https://www.npr.org/2021/11/06/1052786254/border-patrol-agents-horseback-investigation-haitian-immigrants>.



### Violations of Access to Counsel

Since September 27, 2021, attorneys and legal representatives from the El Paso Immigration Collaborative (EPIC) have attempted to provide legal services to the Haitian men detained at Torrance. The detention facility has frequently denied EPIC's requests for legal calls or has failed to respond to them for days. Facility staff have told EPIC that a legal call cannot be scheduled for several days because the person who schedules them is "out sick" or "really busy". They have also told EPIC to "try again next week," even if the client has an upcoming hearing for which they must prepare.

On or around September 30, 2021, EPIC visited Torrance with prior approval to conduct a group legal meeting with 58 men from two units. After EPIC attorneys traveled to Torrance and waited two hours, facility staff informed them that they would not be able to conduct the meeting because the two units were in quarantine. EPIC's requests to conduct the meeting outdoors and/or in full personal protective equipment were denied. Eventually, the attorneys were allowed to briefly yell to one of the units of men through a door barricaded with a trash can in a non-confidential setting without access to interpretation.

On or around October 14, 2021, an attorney was able to conduct a group legal visit with approximately half of the group of Haitian men. Facility staff stated that attorneys could not meet with the other half of the men because they were in quarantine.

ICE initially did not respond to EPIC's further requests to meet with the remaining men and then later changed the requirements for the visit to be those of a Legal Orientation Program (LOP) provider. These requirements include the pre-approval of a syllabus and the limitation of attendance only to people who have expressed interest on a sign-up sheet, which ICE would not commit to providing in Haitian Creole. Even after complying with these requirements, EPIC was not allowed a second group meeting until November 12, 2021, more than four weeks after the first group meeting. ICE recently informed EPIC that it could meet telephonically with the detained individuals but often limited the calls to five people per day. This is insufficient given the number of individuals and urgency of their legal situations.

This denial of legal access to EPIC means a complete denial of access to counsel at Torrance, as there are no other non-profit legal service providers serving the facility. To the best of EPIC's knowledge, only a few of the men have an attorney representing them in their removal proceedings.

These events demonstrate Torrance's non-compliance with the in-person or telephonic legal representative access requirements of the Performance Based National Detention Standards 2011 ("PBNDS 2011"). The PBNDS 2011 require the facility to provide people consistent, unobstructed access to in-person legal visits seven days per week. Specifically, immigration detention facilities must "permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days . . . and a minimum of four hours per day on weekends and holidays."<sup>2</sup> Before any such visitation, legal representatives "shall not be asked to state the legal subject matter of the meeting."<sup>3</sup> Such legal visitations

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<sup>2</sup> See ICE PBNDS 2011 at Ch. 5.7(J)(2).

<sup>3</sup> Id. at Ch. 5.7(J)(4).

include pre-representation visits, during which “the facility shall permit detainees to meet with prospective legal representatives or legal assistants.”<sup>4</sup> When a legal rights group presentation is requested, “[a]ll facilities are required to cooperate fully with authorized persons seeking to make such presentations.”<sup>5</sup> The PBNDS 2011 also states that “Legal rights group presentations shall be accommodated to the greatest extent possible absent significant logistical or security-related concerns.”<sup>6</sup>

The PBNDS 2011 also requires that Torrance provide detained individuals with written notice of “the procedure for obtaining an unmonitored call to a court, a legal representative or for the purposes of obtaining legal representation.”<sup>7</sup> Notice shall be provided not only in Spanish but also “in the language of significant segments of the population with limited English proficiency”<sup>8</sup>—in this case, Haitian Creole.

The Fifth Amendment of the U.S. Constitution as well as a host of statutes, regulations, and long-standing practice also entitle these individuals to access counsel to understand and pursue their legal remedies and pursue the same.

### **Violations of Language Access**

There is no consistent way for speakers of Haitian Creole to communicate with Torrance staff or ICE, the latter of which is not present onsite. The detained Haitians who have spoken with EPIC report not knowing what is happening in their immigration cases due to this lack of communication. When an individual calls the Executive Office for Immigration Review (EOIR) Automated Case Information System or the Detention Reporting and Information Line, they receive initial instructions to navigate the menu only in English and Spanish, without an option for Haitian Creole. The facility also shows detained individuals an informational video on the asylum process only in Spanish, with no interpretation.

Furthermore, as there is no LOP provider at Torrance and legal access is being denied to the only legal service provider available to people detained there, it is functionally impossible for asylum seekers who cannot read or write in English to fill out their I-589 Applications for Asylum and Withholding of Removal.

### **Lack of or Improper Adjudication of Release Requests**

On or around November 3, 2021, EPIC submitted parole requests on behalf of 17 Haitian men detained at Torrance. Since then, EPIC has submitted 7 additional requests for a total of 24. All of the men have sponsors willing to receive them, no criminal history in the United States, and pending removal proceedings. As of November 17, 2021, 19 of the 24 requests have been denied. ICE has ignored the remaining 5 requests. ICE sent the first denial less than an hour after the request was submitted, in the form of a very short email stating that the request had been denied because there was “NO humanitarian” basis for parole (emphasis in original) and suggesting that the client seek bond. ICE followed this email denial

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<sup>4</sup>Id. at Ch. 5.7(J)(4).

<sup>5</sup>Id. at Ch. 6.4(I).

<sup>6</sup>See id. at Ch. 6.4(C); Ch. 5.7(J)(12).

<sup>7</sup>See id. at Ch. 5.6(V)(B)(3).

<sup>8</sup>Id.

with a parole denial form that had “flight risk” and “danger to community” marked as justification for the decision, contradicting the justification the agency provided in the original email. This is a misapplication of the spirit of parole directives.

For some requests for release, there was no formal adjudication or individualized determination at all, just an email saying that ICE was declining to parole the respondent and that there was no humanitarian basis for parole. EPIC has also filed 13 requests for release pursuant to a court order in *Fraihat v. ICE*, all of which have been denied or ignored.<sup>9</sup>

### **Inhumane Detention Conditions**

Torrance failed its annual inspection for compliance with the PBNDS 2011 in July 2021 with 22 deficiencies, 4 of which occurred in “priority components.”<sup>10</sup> The inspection findings included that the facility is severely short-staffed. Litigation is pending regarding improper use of force after facility staff pepper-sprayed men in ICE custody for participating in a peaceful hunger strike.<sup>11</sup>

People detained at Torrance, including the Haitian men, have reported dangerous conditions and medical neglect. Some have developed rashes with a tingling or stinging sensation after taking showers, which come from the same source as the drinking water. People have reported being served uncooked meat and a meal of “raw cornmeal mixed with water.” A man with a serious medical condition was left on the floor for half an hour after he collapsed and was not taken to a doctor. Another man reported that he is losing weight and that his “eyes are sinking back in [his] head faster every day.”

### **Improper Immigration Judge Advisals and Expedited Case Scheduling**

Every Haitian with whom EPIC has spoken who has had a hearing before an immigration judge has stated that the judge told them they needed an attorney present in order to proceed with seeking asylum. The immigration judges are not advising these individuals that they can proceed pro se. This misinformation is leading to respondents with asylum claims being ordered removed at their first or second hearing. At least 4 Haitian immigrants have already been ordered removed at their initial master calendar hearing because, although they express fear of returning to Haiti, they had received no or very little access to legal services and did not understand the meaning of the term “asylum” when it was used by the judge. These men reported receiving the EOIR legal service provider list only in English and at the same hearing at which they were ordered removed. Some reported not even knowing that they had been ordered removed.

Based on the data collected by EPIC, we also believe that the Haitian asylum seekers detained at Torrance since September 2021 are being rushed through these proceedings significantly more quickly than the pace

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<sup>9</sup> *Fraihat v. ICE*, Case No. 5:19-cv-01546-JGB-SHK (C.D. Cal. Apr. 20, 2020), ECF No. 133

<sup>10</sup> Leonardo Castañeda, “Understaffed, Unsanitary ICE Facility in Torrance County Fails Annual Inspection,” *ACLU New Mexico*, September 17, 2021, <https://www.aclu-nm.org/en/news/understaffed-unsanitary-ice-facility-torrance-county-fails-annual-inspection>.

<sup>11</sup> *Santa Fe Dreamers Project et al. v. CoreCivic et al.*

of proceedings prior to their arrival and to that of other nationalities. This is disparate treatment in violation of the Equal Protection Clause.

We understand that these court-related issues are a matter for the Department of Justice, not DHS. We are in communication with the Executive Office of Immigration Review, but it is important to note that these additional due process violations compound the effects of the violations by ICE listed above. Access to counsel is especially crucial given the urgent risk of removal. ICE must not remove individuals who are being rushed through removal proceedings without due process.

## **Conclusion**

We urge your office to investigate the violations of due process and inhumane conditions described above and in the following affidavits from an attorney seeking legal access at Torrance and two people detained there. Torrance failed its only PBNDS compliance inspection in part due to an extreme staffing shortage, which Torrance has repeatedly referenced as an excuse for why requests for legal calls are denied or are not responded to for days. These staffing issues do not relieve ICE or Torrance of their obligations under the PBNDS 2011. If ICE is unable to staff the facility appropriately and provide individuals in its custody the services required by the written detention standards, ICE should release these people immediately.

Further, given the rapidly scheduled removal hearings of the Haitian men detained at Torrance, the facility is unable to provide them with the access to counsel and language appropriate information to ensure the protection of their rights in removal proceedings. Releasing them would permit these men to obtain pro bono counsel, reunite with family members already in the United States, and access appropriate social service and community support while they pursue applications for asylum. Keeping them detained at Torrance while EOIR speeds through their proceedings will only lead to more due process violations and wrongful removal orders.

This situation is especially egregious given that the Haitian men detained at Torrance entered the United States through Del Rio, Texas and many were present at the encampment there. We believe many were likely victims or witnesses of possible violations of federal law by law enforcement officers. Special attention must therefore be paid to ensure that they receive access to counsel in order to understand and exercise their rights under immigration law, provide statements to investigating bodies, and/or pursue potential civil claims. They must not be removed without the opportunity to do so.

Sincerely,

**ACLU of New Mexico**

**American Immigration Council**

**American Immigration Lawyers Association**

**Innovation Law Lab**

**National Immigration Project of the National Lawyers Guild**

### **Affidavit of Allegra Love**

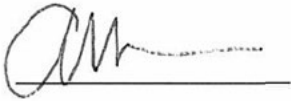
I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. I, Allegra Love, am an attorney barred in the state of New Mexico. I have been practicing immigration law for 10 years. I currently provide legal services to immigrants detained near El Paso, Texas, on behalf of the El Paso Immigration Collaborative (EPIC).
2. On or around September 27, 2021, I learned that a group of Haitian men were in U.S. Immigration and Customs Enforcement (ICE) custody at the Tarrant County Detention Facility ("Tarrant") in Estancia, New Mexico. That same day, I emailed Tarrant staff requesting to schedule a group legal presentation and individual legal intakes with these men. After originally requiring individual names and A numbers of meeting attendees, which I did not have, the facility scheduler eventually agreed to a group legal meeting with all "recently arrived Haitians" 3 days later.
3. Also that same day, I emailed ICE officer Patricia Bates at the Albuquerque Field Office, requesting the number of Haitian people detained at Tarrant, and whether they were in 235 expedited removal proceedings, 240 removal proceedings, or subject to Title 42. Officer Bates quickly responded to me, cc'ing SDDO Josh Chapman at Otero County Processing Center and asking me to submit G-28s for the people with whom I wanted to meet. I explained that I did not have G-28s yet but was looking for information in order to plan legal services. I did not receive a response.
4. On or around September 30, 2021, my colleague and I visited Tarrant to conduct the group legal meeting. After we waited for an hour, a member of the facility staff brought me to the library and informed me that I would be meeting with 58 men from 2 units. We waited another hour until Tarrant Chief Segura and Officer Edmundton arrived and informed us that we would not be able to conduct the meeting because we did not have G-28s. We explained that we were requesting a pre-representation meeting. Chief Segura and Officer Edmundton then stated that we could not meet with the 2 units because they were in quarantine. They denied our requests to conduct the meeting outside and/or in full personal protective equipment. Eventually, we were allowed to briefly yell to one of the units of men through a door barricaded with a trash can in a non-confidential setting without access to interpretation. We asked to speak to the other unit but facility staff told us it "was just too much."
5. Since that visit to Tarrant, I have repeatedly requested legal calls with the Haitian men detained at Tarrant. Facility staff have frequently denied the requests or have failed to respond to them for days. Staff have told me that a legal call cannot be scheduled for several days because the scheduler is "out sick" or "really busy". Staff have told me to "try again next week," even if the person with whom I have requested to meet had an upcoming hearing for which they needed to prepare.
6. On or around October 14, 2021, EPIC was able to conduct a group legal visit with approximately half of the group of Haitian men. Facility staff stated that EPIC could not meet with the other half of the men because they were in quarantine.
7. I informed ICE of my request for a group legal visit with the remaining men. ICE initially did not respond, and then changed the requirements for the visit to be those of a Legal Orientation

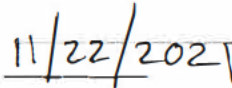
Program (LOP) provider. These requirements include pre-approval of a syllabus and attendance only of people who have expressed interest on a sign-up sheet, which ICE would not commit to providing in Haitian Creole. Even after complying with these requirements, EPIC was not allowed to conduct a second group legal meeting until November 12, 2021, over four weeks after the first group legal meeting.

8. ICE recently started to allow me to schedule legal phone calls with people detained at Torrance but on some days limited the calls to 5 people. This is insufficient given the number of individuals and urgency of their legal situations.
9. The men I have spoken to say that they cannot communicate with facility staff or ICE, the latter of which is not present onsite, due to a lack of Haitian Creole interpretation at the facility. These men have told me that they do not know what is happening in their immigration cases due to this lack of communication. They have also told me that the facility also shows detained individuals an informational video on the asylum process only in Spanish, with no interpretation.
10. I am extremely concerned about Torrance denying me legal access because EPIC is the only legal service provider available to people detained there. Therefore, this denial of access to EPIC means a complete denial of access to counsel at the facility. Out of 44 people EPIC has spoken to at Torrance, only 3 have attorneys representing them in their removal proceedings. There is no LOP at Torrance so it is functionally impossible for asylum seekers who cannot read or write in English to fill out their I-589 Application for Asylum and Withholding of Removal.
11. On or around November 3, 2021, I submitted parole requests on behalf of 17 Haitian men detained at Torrance. Since then, I have submitted an additional 6 parole requests for a total of 23. All of the men have sponsors willing to receive them, no criminal history in the United States, and pending removal proceedings. Less than an hour after I submitted the requests, I received the first denial via a very short email suggesting that the client seek bond. This email denial was followed later by a parole denial form that had “flight risk” and “danger to community” marked as justification for the decision, even though the email had stated that the reason for denial was that there was “NO humanitarian” basis for parole (emphasis in original).
12. ICE has denied 19 of the 23 requests, with the remaining 4 requests still pending. One of the denials is for a trans woman who is being held in an all-male unit. For some denials, ICE did not provide any justification besides an email saying that ICE was declining to parole the respondent or that “Although you did provide the sponsor documentation, in your clients case there is NO present urgent humanitarian reason or significant public benefit for release.” I have also filed 13 requests for release pursuant to a court order in *Fraihat v. ICE*, all of which have been denied or ignored.
13. People detained at Torrance, including the Haitian men, have told me about dangerous conditions and medical neglect at the facility. Some of them have said that they developed rashes with a tingling or stinging sensation after taking showers, which come from the same source as the drinking water. They have also told me that they are served uncooked meat and a meal of “raw cornmeal mixed with water.” One person told me that a man with a serious medical condition was left on the floor for half an hour after he collapsed and was not taken to a doctor. Another man reported that he is losing weight and that his “eyes are sinking back in [his] head faster every day. One man reported that a detention center guard kicked him.

14. I am very worried about the denial of access to counsel at Torrance because people detained there who appear in court without an attorney are receiving false advisals from the immigration judges. Every Haitian with whom EPIC has spoken who has had a hearing before an immigration judge has stated that the judge told them they needed an attorney present in order to proceed with seeking asylum. This misinformation is leading to respondents with asylum claims being ordered removed at their first or second hearing. At least 4 of the Haitian men have already been ordered removed at their initial master calendar hearing. These men have told EPIC that they did not understand the meaning of the term "asylum". They have said that they received the EOIR legal service provider list only in English and at the same hearing at which they were ordered removed. Some expressed that they did not even know that they had been ordered removed.
15. Based on the data collected by EPIC, I believe that the Haitian asylum seekers detained at Torrance since September 2021 are being rushed through these proceedings significantly more quickly than the pace of proceedings prior to their arrival and that of other nationalities.
16. The men I have spoken to entered the United States through Del Rio, Texas. I believe many were witnesses to possible violations of federal law by law enforcement officers. I am very concerned that they will be deported without the opportunity to share the information they have on these events.
17. I have worked in ICE detention since 2014. In my career I have never felt so disrespected by detention center staff and field office employees. I am scared for my clients and absolutely disgusted by my government. I believe there are extraordinary human rights violations afoot at this detention center and beg CRCL to take swift action.



Allegra Love



Date



**Affidavit of** [REDACTED]

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. My name is [REDACTED]. I was born on [REDACTED]. I am currently detained at the Torrance County Detention Facility in Estancia, New Mexico. I fled my home country of Haiti on January 26, 2020, because I was afraid for my life. I traveled through South and Central America and arrived to the United States on September 17, 2021.
2. I attended my first immigration hearing on October 25, 2021. The judge told me that I had to have an attorney by November 25, 2021, or he would order me removed. At that time, I still had not spoken to an attorney at all. I wanted to talk to an attorney, but no one told me how to talk to one or that I had a right to do so. At that hearing, I was given a list of attorneys to call but I could not read the list because it was in English, and it was already too late for them to help me in court.
3. The judge asked me whether I wanted to apply for asylum. I did not know what asylum was. The only thing I had heard about asylum was from a man who was detained with me. He said that we needed proof to apply for asylum, so I was worried that I could not apply because I do not have proof of the danger I would be in if I returned to Haiti. This is why I told the judge that I did not want to apply for asylum. The judge then ordered me removed.
4. I speak Haitian Creole. I do not speak Spanish or English. There are no Haitian Creole interpreters at the detention center. If I need to speak to the detention center staff, I often have to ask someone who is detained with me to interpret or ask a relative to interpret over the phone.
5. The water in the showers at the detention center makes my whole body itch, from my head to my toes. I do not know what is wrong with the water. I am worried that there are similar problems with the water we have to drink. The food here is also so bad that we can barely eat it.
6. My family has put \$10 on my phone account five times, for a total of \$50 but I have tried to use this money and have not been able to make calls with it.

/detained/  
[REDACTED]

11/15/21

Date



**Affidavit of Anonymous**

I swear under penalty of perjury of the laws of the United States of America that the following is true and correct.

1. I am currently detained at the Torrance County Detention Facility in Estancia, New Mexico. I fled my home country of Haiti because I was afraid for my life. I arrived in the United States on September 16, 2021.
2. I went to immigration court and received a list of immigration attorneys. I have been making phone calls to the attorneys on the list, but they do not answer or call back. The only attorney I have been able to talk to is Allegra Love.
3. The shower water gives us a rash on our bodies that itches. I can see that it is the same water that we drink; the detention center staff take it from the bathroom and put it in our room.
4. The staff speak English and sometimes Spanish. There are no Haitian Creole interpreters at the detention center. I don't speak any English at all, and I only speak a little Spanish so it is difficult to communicate. It is even more difficult for other people detained here who do not speak any Spanish.
5. The food is very bad at the detention center. It is not sufficiently cooked. Some people have diarrhea after eating it. I have diabetes so I need to eat food with less flour and sugar in it but that is not available.
6. No matter what medical problems we have, the medical staff give all of us, including me, the same pill. I do not know what the medication is. About a week ago, I felt sick and had to go to the hospital because of low blood sugar. Even after that, I still am not receiving treatment for diabetes. I am experiencing headaches because of my diabetes. I had to keep the phone call for taking this declaration short because I am not feeling well right now.

/detained/  
Anonymous

11/15/21  
Date