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16 **UNITED STATES DISTRICT COURT**

17 **CENTRAL DISTRICT OF CALIFORNIA**

18 ERNESTO TORRES, DESMOND
 19 TENGHE, JASON NSINANO, on
 behalf of themselves and all others
 similarly situated, AMERICAN
 20 IMMIGRATION LAWYERS
 ASSOCIATION, IMMIGRANT
 21 DEFENDERS LAW CENTER,

22 Plaintiffs,

23 v.

24 UNITED STATES DEPARTMENT OF
 HOMELAND SECURITY; KIRSTJEN
 25 M. NIELSEN, Secretary of Homeland
 Security; UNITED STATES
 26 IMMIGRATION AND CUSTOMS
 ENFORCEMENT; RONALD D.
 27 VITIELLO, Acting Director,
 Immigration and Customs Enforcement;

Case No.

**COMPLAINT FOR INJUNCTIVE
 AND DECLARATORY RELIEF**

CLASS ACTION

1 DAVID MARIN, Field Office Director,
2 Los Angeles Field Office of ICE;
3 ORANGE COUNTY SHERIFF'S
4 DEPARTMENT; GEO GROUP, INC.,
5 a Florida corporation,

6 Defendants.

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1 **INTRODUCTION**

2 1. Every day, Defendants detain thousands of immigrants in prison-like
3 conditions in Southern California. Defendants do not provide appointed counsel to
4 any of them, regardless of their age, level of education, language barriers, or length of
5 detention. At the same time, Defendants deprive these immigrants of meaningful
6 communication with private or pro bono legal counsel. Defendants have done so by
7 adopting policies and practices that vitiate immigrants’ ability to access their legal
8 counsel. Without constitutionally-adequate access to counsel, the thousands of
9 immigrants detained by Defendants every day cannot protect and preserve their due
10 process rights to life, liberty, and property.

11 2. As the American Bar Association has explained, “There is no justice in
12 denying counsel. There is only a violation of one of our most cherished and
13 fundamental human rights—freedom.”¹ The statistics bear out the ABA’s warning
14 about the injustice caused by depriving individuals of the right to meaningfully access
15 counsel. According to recent studies, immigrants denied access to legal counsel are
16 several times more likely to lose their cases against deportation than those lucky
17 enough to secure legal representation.²

18 3. This action seeks to end the unlawful and unconstitutional barriers to
19 attorney access and attorney-client communication for detained noncitizens in
20 Southern California. Defendants Immigration and Customs Enforcement (“ICE”), the
21 Geo Group, Inc. (“GEO”), and the Orange County Sheriff’s Department (“OCSD”)
22 (collectively, “Defendants”) incarcerate thousands of noncitizens in this District
23 contesting deportation in civil administrative proceedings. Defendants ICE and GEO
24

25 ¹ A.B.A., *The Right to Counsel: An Unfulfilled Constitutional Right*, 39 Human Rights Magazine
26 4 (2013)
https://www.americanbar.org/publications/human_rights_magazine_home/2013_vol_39/vol_30_no_4_gideon/the_right_to_counsel/.

27 ² See, e.g., *Access to Counsel in Immigration Court*,
28 <https://www.americanimmigrationcouncil.org/research/access-counsel-immigration-court/>
(September 28, 2016).

1 confine these individuals in a private prison located in Adelanto, California, the
2 Adelanto ICE Processing Center (“Adelanto”). Defendants ICE and the OCSD
3 confine noncitizens in two jails in Orange County—the Theo Lacy Facility (“Theo
4 Lacy”) and the James A. Musick Facility (“Musick”) (together with Adelanto, “the
5 immigration detention facilities”).

6 4. At each of the immigration detention facilities, Defendants limit
7 detainees’ access to outgoing legal telephone calls, prohibit incoming telephone calls
8 to detainees, charge prohibitively expensive calling rates, and monitor and record
9 telephonic conversations. During the times when outgoing telephone calls are
10 permitted, Defendants only allow detained noncitizens to speak on the telephone
11 within earshot of guards and other detainees, and limit the duration of telephonic
12 conversations to less than ten minutes. Defendants do not allow detainees access to
13 confidential phone calls, even when speaking with their counsel about privileged
14 matters.

15 5. Defendants also deprive detainees of a meaningful opportunity to consult
16 with counsel in person by refusing to provide an adequate number of confidential
17 attorney-client visiting rooms and forcing detainees’ attorneys to, on many occasions,
18 wait for hours just for the potential opportunity to meet with their detained clients.

19 6. Mail and email do not provide viable alternatives for confidential
20 telephonic communication and in-person visitation because Defendants prohibit
21 detainees’ access to the Internet, and Defendants’ policies and practices related to
22 legal mail make it prohibitively slow, unreliable, and, in certain circumstances, subject
23 to government intrusion or interference.

24 7. Plaintiffs Ernesto Torres, Desmond Tenghe, and Jason Nsinano
25 (“Individual Plaintiffs”) bring this class action lawsuit on behalf of themselves and
26 others similarly situated. The Individual Plaintiffs seek to represent a class of all
27 immigration detainees who are now, or in the future will be, detained at detention
28 facilities in Southern California that are owned and operated by OCSD and/or GEO.

1 8. Plaintiffs American Immigration Lawyers Association (“AILA”) and
2 Immigrant Defenders Law Center (“Imm Def”) (collectively the “Attorney Plaintiffs”)
3 are non-profit legal organizations whose attorneys and members face significant
4 obstacles that materially undermine their ability to provide legal advice and effective
5 assistance to detained noncitizens because of Defendants’ restrictions on access to
6 counsel and attorney-client communications.

7 9. The Department of Homeland Security (“DHS”) subjects thousands of
8 detained noncitizens to civil detention pending removal proceedings, which are
9 administrative proceedings to determine whether a noncitizen will be allowed to
10 remain lawfully in the United States. Although detained noncitizens have a right to
11 retain counsel for removal proceedings at their own expense, detained noncitizens are
12 not currently entitled to government-appointed counsel. As a result, they must make a
13 choice: pay for counsel, find an attorney to represent them for free, or proceed with
14 their cases without legal assistance. By contrast, the government is represented by
15 trained DHS attorneys in every removal proceeding.

16 10. Access to confidential telephones, legal visits, and legal mail are
17 necessary prerequisites for detained noncitizens to be able to find, retain, and consult
18 with counsel.

19 11. For detained noncitizens seeking legal representation, whether pro bono
20 or otherwise, confidential telephone access—especially during business hours—is also
21 necessary for contacting legal organizations, including Attorney Plaintiffs, or other
22 counsel. Confidential visitation rooms provide a necessary conduit for attorneys to
23 conduct intakes and evaluate detained noncitizens’ cases. Detained noncitizens and
24 attorneys must also be able to send and receive legal mail without fearing that
25 government officials will read their correspondence.

26 12. Access to confidential telephone calls, legal visits, and legal
27 correspondence is also critically necessary for lawyers to be able to communicate with
28 clients and to provide effective assistance. Detained individuals’ claims in removal

1 proceedings include defenses to removal (such as claims to challenging the
2 government's charges in removal proceedings), discretionary relief from removal
3 (such as asylum or cancellation of removal), and requests for release on bond. To
4 adequately represent clients, attorneys must conduct numerous in-depth client
5 interviews, frequently with non-English speakers, that explore highly sensitive topics
6 such as past trauma and abuse. Attorneys must also communicate privileged and
7 confidential information with their detained noncitizen clients to inform them about
8 the status of their proceedings, the facts, legal strategy, preparation for testimony, and
9 the potential outcomes of their proceedings. These counseling conversations typically
10 necessitate hours-long discussions with clients, often through interpreters.

11 13. Defendants' restrictions on telephone calls, mail, and legal visits also
12 stifle detained noncitizens' ability to communicate with attorneys for legal purposes
13 outside of removal proceedings, such as participating in family court, probate court, or
14 child welfare proceedings (*see generally* ICE Detained Parents Directive,
15 <https://www.ice.gov/parental-interest>); participating in state court proceedings to
16 establish a conservatorship for individuals who are gravely disabled; challenging staff
17 misconduct within the detention facilities (*see, e.g., Rivera Martinez, et al. v. The*
18 *GEO Group, Inc., et al.*, No. 18-1125 (C.D. Cal. May 25, 2018)); and preparing for
19 civil lawsuits, including about inadequate medical and mental health care (*see, e.g.,*
20 *Teneng v. Trump*, No. 18-1609 (C.D. Cal. Aug. 1, 2018)), prolonged detention (*see,*
21 *e.g., Rodriguez v. Marin*, Nos. 13-56706 & 13-56755 (9th Cir. 2018), and indefinite
22 detention (*see, e.g., Trinh, et al. v. Homan*, No. 18-316 (C.D. Cal. Feb. 22, 2018)).
23 Many detained noncitizens also need to communicate with public defenders to discuss
24 pending criminal charges and the fact that, by virtue of being detained, they are
25 prevented from adhering to probation and parole requirements.

26 14. For detained noncitizens who cannot afford an attorney and are not able
27 to retain pro bono counsel, confidential telephone access and legal correspondence are
28 essential for representing themselves in legal proceedings. To apply for asylum and

1 other forms of discretionary relief, unrepresented detainees must collect non-
2 governmental organization and academic reports to document the persecution that
3 they fled, interview potential witnesses to prepare statements, and obtain other
4 evidence from the United States and abroad, such as records documenting
5 employment, education, police activity, hospital visits, and the experiences of other
6 similarly situated asylum-seekers.

7 15. To bring other legal claims, such as petitions for habeas corpus or civil
8 rights actions, detained noncitizens need to be able to communicate with courts,
9 potential experts, and other individuals and entities necessary to fight their legal cases.
10 Defendants' communication restrictions make it virtually impossible for *pro se*
11 detained noncitizens to prepare their own cases by, *inter alia*, limiting detained
12 noncitizens' ability to make calls during specific hours (often outside of normal
13 business hours), terminating calls when detained noncitizens reach voicemail systems
14 or phone trees (both of which are prevalent at virtually every entity the detained
15 noncitizens are likely to contact to fight their legal cases), and adopting practices that
16 render it exceedingly difficult for detained noncitizens to receive messages.

17 16. Defendants' barriers to legal communication are particularly harmful to
18 detained noncitizens now because, as a result of recent policy changes imposed by the
19 Trump Administration, detained noncitizens have less time to obtain legal
20 representation than in years past. The Trump Administration has recently imposed
21 quotas requiring immigration judges to clear at least 700 cases per year in order to get
22 a "satisfactory" rating on their performance evaluations.³

23 17. This class action challenges Defendants' unlawfully restrictive telephone,
24 visitation, and mail policies and practices. Defendants' policies and practices violate
25

26 ³ See, e.g., Colleen Long, *Immigration Judges Say New Quotas Undermine Independence*, AP
27 News (Sept. 21, 2018), <https://www.apnews.com/d8008f7a66a54562b612bd74156f2bed> (last visited
28 Dec. 14, 2018); Tal Kopan, *Justice Department Rolls Out Case Quotas for Immigration Judges*,
CNN (Apr. 2, 2018, 8:55pm), [https://www.cnn.com/2018/04/02/politics/immigration-judges-
quota/index.html](https://www.cnn.com/2018/04/02/politics/immigration-judges-quota/index.html) (last visited Dec. 14, 2018).

1 detained noncitizens' rights under the Immigration and Nationality Act, the Fifth
2 Amendment's Due Process Clause, the First Amendment, and the Administrative
3 Procedure Act. Defendants' policies and practices also violate Attorney Plaintiffs'
4 First Amendment right to freedom of speech, expression, and association. But for
5 these policies and practices, many detained noncitizens would be able to successfully
6 challenge their removal and/or understand and protect their civil rights.

7
8 **PARTIES**

9 ***Plaintiffs***

10 **Ernesto Torres**

11 18. Plaintiff Ernesto Torres is a 35-year-old, monolingual Spanish speaker
12 who is originally from Mexico. Plaintiff Torres is currently detained at Adelanto. He
13 is seeking Cancellation for Removal for Certain Non-Permanent Residents under 8
14 U.S.C. § 1229b(b). He may also be eligible for a U-Visa under 8 U.S.C. §
15 1101(a)(15)(u), due to being the victim of an assault in Sacramento approximately six
16 months ago.

17 19. Plaintiff Torres came to the United States in May of 2001 without papers,
18 and he has never left. He lived in Chicago for ten years and then moved to Sacramento
19 approximately seven years ago. He has three children who are United States citizens,
20 including a seven-year-old son and two five-year-old twin daughters. Mr. Torres has
21 had sole custody over his son since the boy was about 6 weeks old. His son does not
22 have any contact with his birth mother and little-to-no other family support.

23 20. In 2011, Mr. Torres, his then six-week-old son, and Mr. Torres' girlfriend
24 at the time moved from Chicago to Sacramento because Mr. Torres had a work
25 opportunity. In 2013, Mr. Torres and his girlfriend had twin girls. In approximately
26 2015, Mr. Torres separated from his girlfriend.

27 21. Defendant ICE has detained Mr. Torres while ICE pursues proceedings
28 to deport him. During Mr. Torres' detention, his seven-year-old son has been residing

1 with his godmother. Because the son is separated from Mr. Torres, the boy is
2 experiencing behavioral issues and difficulty focusing in school.

3 22. Plaintiff Torres has appeared before an immigration judge twice. On his
4 first court date, November 30, 2018, he withdrew his request for a custody
5 redetermination hearing and asked for more time to try to get a lawyer. During his
6 second hearing, December 4, 2018, he again requested more time to find a lawyer.

7 23. Because Plaintiff Torres cannot afford to pay for an attorney, he needs to
8 find an attorney who is willing to represent him for free.

9 24. Plaintiff Torres has attempted to contact attorneys by telephone
10 approximately eight times. However, due to Defendants' "positive acceptance"
11 requirement, which requires a live person to answer the telephone in order for the call
12 to connect, Mr. Torres has not been able to reach any attorneys. Instead, he repeatedly
13 receives a message that his phone call cannot be completed.

14 25. If Plaintiff Torres is unable to find an attorney, he will need to gather
15 significant evidence on his own, including evidence showing that he has lived in the
16 United States continuously for ten years, that he does not have any criminal
17 convictions that bar his eligibility for relief, that he is a person of good moral
18 character, and that his United States citizen children, especially his seven-year-old
19 son, will suffer extreme and unusual hardship should Mr. Torres be deported. Plaintiff
20 Torres has not been able to gather any of these documents because he cannot afford to
21 purchase a calling card from Defendants and, due to Defendants' "positive
22 acceptance" requirement, he cannot connect to the various individuals and entities that
23 he needs to reach, including the Sacramento courthouse and the social worker who
24 works with his son.

25 26. In order to apply for a U-Visa, Plaintiff Torres will also need to show that
26 he was a victim of a crime in the United States and that he has helped law
27 enforcement. *See* 8 U.S.C. § 1101(a)(15)(u)(i). Plaintiff Torres requested that his
28 cousin obtain a copy of the police report from the Sacramento Police Department,

1 which shows that he was a victim of a crime, but was informed that these records
2 could only be released to Plaintiff Torres in person or to an attorney. Plaintiff Torres
3 has attempted to call the Sacramento Police Department himself, but has been unable
4 to get through. Upon information and belief, without being able call the Sacramento
5 Police Department to obtain records confirming that he was a victim of a crime in the
6 United States, was hurt, and that he assisted law enforcement, it is going to be
7 virtually impossible for Plaintiff Torres to obtain a U-Visa. Plaintiff Torres has also
8 tried calling Defendant ICE several times to inform them that he is a victim of a
9 crime, but Plaintiff Torres has been unable to connect.

10 27. Plaintiff Torres's next court date is January 2, 2019. If Plaintiff Torres
11 has not found an attorney by that time, it is possible that an immigration judge will
12 require Plaintiff Torres to proceed with his case on his own.

13 **Desmond Tenghe**

14 28. Plaintiff Desmond Tenghe is currently detained at Adelanto. He is
15 seeking asylum in the United States due to the persecution that he experienced in his
16 country of origin on account of his political opinion and membership in a particular
17 social group. Plaintiff Tenghe fled to the United States after government officials in
18 his home country arrested, detained, and tortured Plaintiff Tenghe and burned down
19 his storage unit with all of his possessions. Upon information and belief, since
20 Plaintiff Tenghe escaped, government officials have continued to look for him and
21 have arrested and detained his brother.

22 29. Defendant ICE initially held Plaintiff Tenghe in immigration detention at
23 FCI-Victorville, but then transferred him to Adelanto on or around August 28, 2018.

24 30. Since arriving at Adelanto approximately three-and-a-half months ago,
25 Plaintiff Tenghe has attempted to call attorneys to seek legal representation multiple
26 times. Because Plaintiff Tenghe cannot afford to pay for an attorney, he needs to find
27 an attorney who is willing to represent him for free.

28 31. Over the course of weeks, Plaintiff Tenghe tried to call at least seven

1 different legal organizations, including Catholic Charities, El Rescate, and others. Due
2 to Defendants’ “positive acceptance” requirement for telephone calls, the telephone
3 calls have either disconnected after ringing once or twice or continued to ring without
4 answer. Plaintiff Tenghe has also attempted to call Catholic Charities to obtain
5 documents about current country conditions in his country of origin, but those
6 telephone calls also have not connected because of Defendants’ “positive acceptance”
7 requirement.

8 32. Defendants ICE and GEO have further limited Plaintiff Tenghe’s ability
9 to make telephone calls by refusing to give him free calls and refusing to allow him
10 access to the money with which he arrived in the United States. Plaintiff Tenghe put
11 money into his commissary account when first detained at Victorville. Defendant ICE
12 then transferred Plaintiff Tenghe to Adelanto, and subsequently refused to allow him
13 to transfer funds into his new commissary account. Plaintiff Tenghe has submitted
14 multiple requests to Defendant ICE in order to recover the money from his Victorville
15 commissary account, all to no avail. In light of his indigence (the impact of which has
16 been exacerbated by ICE’s refusal to allow Plaintiff Tenghe access to money that he
17 previously deposited into his Victorville commissary account), Plaintiff Tenghe has
18 also submitted at least five requests for free telephone calls. Defendants ICE and GEO
19 have never provided him with a free call in response to these requests.

20 33. Without access to free calls or his prior funds, Plaintiff Tenghe’s only
21 means of making telephone calls is through saving money by working at Adelanto.
22 He earns \$1.00 per day. For Plaintiff Tenghe to call his family in his home country
23 and to speak to them for ten minutes, it costs one week’s worth of his earnings.
24 Plaintiff Tenghe has only been able to communicate with his family three or four
25 times since arriving at Adelanto for a total of approximately thirty minutes. If Mr.
26 Tenghe were able to communicate reliably with his family abroad, they could help
27 him secure additional affidavits from individuals in his community familiar with the
28 circumstances surrounding Mr. Tenghe’s asylum claim.

1 34. Plaintiff Tenghe’s only other source of support to fight his asylum case is
2 his sponsor, a cousin who lives in Maryland. However, because of the complexities of
3 navigating Defendants’ telephone system—which require both the caller and the
4 recipient to set up an account—it took more than two months for Plaintiff Tenghe to
5 be able to speak with his sponsor by telephone. Even now, Plaintiff Tenghe can only
6 afford to call his sponsor approximately once per week because each call costs about
7 \$3.00.

8 35. The delay in reaching his sponsor and subsequent restrictions on how
9 long Mr. Tenghe could afford to speak with his sponsor in a week have hindered Mr.
10 Tenghe’s ability to gather evidence in support of his asylum case, particularly given
11 the long delays in sending and receiving mail. Plaintiff Tenghe’s sponsor has spent
12 several weeks attempting to mail some of the documents that Plaintiff Tenghe needs
13 to support his asylum application, including an affidavit from Plaintiff Tenghe’s
14 cousin, an affidavit from Plaintiff Tenghe’s father testifying to the mistreatment that
15 Plaintiff Tenghe experienced, and affidavits explaining how government officials
16 detained Plaintiff Tenghe’s brother when he attempted to gather additional records for
17 Plaintiff Tenghe. On October 24, 2018, when the documents had still not arrived at
18 Adelanto, Plaintiff Tenghe submitted an ICE detainee request form to Defendant ICE
19 to recover this mail, but Defendant ICE simply told Plaintiff Tenghe to request that his
20 sponsor re-send the documents. Plaintiff Tenghe’s sponsor mailed the documents
21 again. When they finally arrived over a month after Mr. Tenghe’s cousin initially sent
22 them, they were discolored and covered in inkblot due to unexplained water damage,
23 which made them illegible in certain places. Due to limited access to telephones and
24 long delays with mail, Plaintiff Tenghe also has not received his cousin’s tax
25 documents, which are necessary to establish his eligibility for sponsorship.

26 36. All of these restrictions and delays have materially and demonstrably
27 harmed Plaintiff Tenghe and his ability to present his asylum claim. His deadline to
28 submit evidence in support of that claim passed on December 10, 2018, and his final

1 hearing is set for December 19, 2018. He is still unrepresented and unsure of whether
2 he has gathered all of the crucial documents needed to support his application for
3 asylum.

4 **Jason Nsinano**

5 37. Plaintiff Jason Nsinano is currently detained at Theo Lacy. He has been
6 in immigration detention for more than three years. Mr. Nsinano is seeking asylum,
7 withholding of removal, and relief under the Convention Against Torture. He also has
8 a petition for habeas corpus pending in the Central District of California, Santa Ana.
9 Due to Defendants' restrictions on telephone access, Mr. Nsinano has faced
10 significant barriers in his efforts to secure release from custody and fight against his
11 deportation.

12 38. Plaintiff Nsinano is seeking asylum in the United States based on his
13 political opinion and membership in two particular social groups.

14 39. Plaintiff Nsinano first came to the United States on a tourist visa in
15 March 2010, after fleeing physical and verbal abuse that he suffered from his family,
16 community members, and police officers on account of his political opinion and
17 membership in two particular social groups. After returning to his country of origin in
18 April 2011, Plaintiff Nsinano was subjected to death threats from various police
19 officers. Between 2011 and 2013, police officers targeted and beat Plaintiff Nsinano
20 on multiple occasions, once so severely that he lost consciousness. Plaintiff Nsinano
21 fled his country of origin, believing that his life was in imminent danger.

22 40. Defendants ICE and GEO initially detained Plaintiff Nsinano at
23 Adelanto. While detained at Adelanto, Plaintiff Nsinano tried to use the Free Call
24 Platform to contact attorneys. Because Plaintiff Nsinano could not afford to pay for
25 an attorney, he needed to find an attorney who was willing to represent him for free.
26 Plaintiff Nsinano was not able to reach any attorneys who were willing to represent
27 him for free through using the Free Call Platform. On July 23, 2015, shortly after
28 being detained, Defendant ICE found Plaintiff Nsinano not to be a danger to the

1 community nor a flight risk and granted him a bond of \$10,000. Plaintiff Nsinano
2 could not afford to pay the \$10,000 and remained in detention.

3 41. During a significant portion of his time at Adelanto, Plaintiff Nsinano
4 was in administrative segregation to protect him from other detainees. Because
5 Defendants ICE and GEO confine noncitizens in administrative segregation to their
6 cells for approximately twenty-two hours per day, only allow detainees to access
7 telephones during their one-to-two hours of dayroom per day, and fail to provide any
8 means of affording privacy to those using the dayroom telephones, Plaintiff Nsinano
9 could not communicate with the United Nations High Commissioner for Refugees
10 (“UNHCR”) and the American Bar Association (“ABA”) about the country conditions
11 information that he needed for his asylum case. ICE and GEO typically would only
12 permit phone access after the close of business on the East Coast, where both UNHCR
13 and the ABA are based. On the occasions that Plaintiff Nsinano was able to make
14 legal calls from the dayroom, other detainees were often in close proximity. As a
15 result, Plaintiff Nsinano did not feel comfortable discussing sensitive facts about his
16 case on the phone, sometimes resorting to using vague terms or omitting certain
17 information that made it more difficult to obtain legal advice. Plaintiff Nsinano
18 frequently requested that Defendants ICE and GEO afford him private legal calls.
19 While these requests were granted on a couple occasions at the outset of Plaintiff
20 Nsinano’s detention, after several months, ICE and GEO refused all of Plaintiff
21 Nsinano’s requests for private legal calls.

22 42. On or around December 28, 2015, an immigration judge denied Plaintiff
23 Nsinano’s application for asylum, withholding of removal, and relief under the
24 Convention Against Torture. The immigration judge found, in part, that Plaintiff
25 Nsinano’s documentary evidence did not support a finding that he will be persecuted
26 on account of his situation, and that he failed to provide information supporting a
27 finding that there is a well-founded fear of future persecution. On June 2, 2016, the
28 Board of Immigration Appeals (“BIA”) affirmed the immigration judge’s decision,

1 finding that Plaintiff Nsinano's testimony and background evidence were not
2 sufficient to prove that he suffered past persecution or a well-founded fear of future
3 persecution. On August 19, 2016, the BIA denied Plaintiff Nsinano's motion to
4 reconsider, in part finding that his country conditions evidence failed to show that
5 violence against individuals in his particular social groups is so systematic or
6 pervasive that it constitutes a pattern or practice of persecution. On December 14,
7 2016, the BIA denied Plaintiff Nsinano's Motion to Reopen and/or Reconsider,
8 finding that the evidence presented with the motion was unlikely to alter the outcome
9 of proceedings.

10 43. In or around February 2017, Defendant ICE transferred Plaintiff Nsinano
11 to Theo Lacy, where he has again been held in segregation for his own safety.
12 Defendants ICE and OCSD also confine noncitizens in segregation at Theo Lacy to
13 their cells for approximately twenty-two hours per day, and rotate the one-to-two hour
14 window during which detainees can use dayroom telephones every day. Because the
15 dayroom schedule is difficult to predict and frequently falls outside of business hours,
16 Plaintiff Nsinano is often unable to make legal telephone calls. From April 2018 to
17 May 2018, Defendants' restrictions on telephone access and changes to the dayroom
18 schedule prevented Plaintiff Nsinano from making any legal telephone calls for four
19 weeks. Plaintiff Nsinano filed a written complaint to ICE about this problem on May
20 15, 2018. Defendant ICE's response was simply to direct Plaintiff Nsinano to file a
21 grievance with Defendant OCSD.

22 44. Due to the problems that Defendants' restrictions on telephone access
23 pose to Plaintiff Nsinano's ability to represent himself, Plaintiff Nsinano has asked
24 Defendants OCSD and ICE to allow him to make telephone calls outside of dayroom
25 hours, but Defendants rarely grant these requests. Plaintiff Nsinano also has tried to
26 make international phone calls to human rights organizations abroad to obtain
27 evidence that would establish his claims, but, upon information and belief, the
28 international telephone service does not connect to his country of origin. As a result,

1 Plaintiff Nsinano has not been able to gather more evidence about the human rights
2 violations occurring in his home country.

3 45. On multiple occasions, Plaintiff Nsinano has not been able to file
4 evidence with the immigration court and BIA in support of his asylum claim because
5 of Defendants' restrictions on telephone access. For example, upon information and
6 belief, Plaintiff Nsinano needed to file a country conditions report with the Board of
7 Immigration Appeals on or around April 20, 2017, as part of a Motion to Reopen
8 based on changed country conditions. But, because he was not able to call the
9 necessary human rights organizations, he could not obtain a country conditions report
10 in time and was forced to submit his application without one. The Board of
11 Immigration Appeals then denied his motion to reopen.

12 46. On March 23, 2018, the Ninth Circuit granted in part Plaintiff Nsinano's
13 petition for review, holding that, "[a]s to Nsinano's asylum and withholding of
14 removal claims, substantial evidence does not support the agency's finding that the
15 harm Nsinano experienced did not rise to the level of persecution." *Nsinano v.*
16 *Sessions*, 716 Fed. App'x 669, 670 (9th Cir. 2018). The Ninth Circuit then remanded
17 Plaintiff Nsinano's case to the BIA for further proceedings.

18 47. Upon information and belief, the BIA mailed Plaintiff Nsinano a briefing
19 schedule on October 16th, but he did not receive it until November 4, 2018, more than
20 two and a half weeks after it was mailed. Under the briefing schedule, Plaintiff
21 Nsinano's brief was due on November 6, 2018, just two days after he received the
22 BIA's notice in the mail. However, Plaintiff Nsinano had contacted the BIA by
23 telephone after his case was remanded, and learned about the briefing deadline well
24 before the notice arrived in the mail. As a result, he was able to request, and obtain, an
25 extension. Had he not happened to contact the BIA by phone, he likely would have
26 missed his briefing deadline. Even with an extension, Plaintiff Nsinano was unable to
27 obtain all of the documents that he wished to submit with his motion. For example, he
28 was unable to obtain and submit a report showing that his home country fails to

1 comply with its obligations under the Convention Against Torture. With his
2 immigration case still pending, Plaintiff Nsinano fears that the inability to gather
3 important evidence due to limited telephone access is at a risk of future repetition.

4 48. In addition to limited telephone access, on at least two occasions Plaintiff
5 Nsinano's legal mail has been opened outside of his presence. On one occasion,
6 Defendant OCSD opened legal mail from a nonprofit that assists asylum-seekers
7 before Plaintiff Nsinano received it. This mail contained documents that Plaintiff
8 Nsinano needed for his petition for habeas corpus. On more than one occasion,
9 Defendant OCSD opened mail from UNHCR outside of Plaintiff Nsinano's presence,
10 which contained evidence, articles, and case law. Defendant OCSD's practice of
11 opening legal mail outside of Plaintiff Nsinano's presence makes him fearful of
12 communicating by mail, particularly out of concern of retaliation by Defendants
13 OCSD and ICE.

14 49. Mr. Nsinano has also experienced severe delays in getting mail that, in
15 combination with his lack of telephone access, has impacted his ability to fight his
16 case pro se. For example, Plaintiff Nsinano has a petition for habeas corpus pending
17 in the district court in Santa Ana alleging that he has been subjected to prolonged and
18 indefinite detention and requesting release or, in the alternative, a bond hearing. On or
19 about October 17, 2018, the district court sent an order requiring the government to
20 respond to this petition, but Plaintiff Nsinano did not get the district court's order until
21 November 4, 2018. He could not call the district court because the district court's
22 telephone number was recently taken off the Free Call Platform and a live person does
23 not answer the telephones at that courthouse, which makes it impossible for Plaintiff
24 Nsinano to get through. By the time that Plaintiff Nsinano received the district court's
25 order, he missed the deadline to consent to a magistrate judge. He is concerned that he
26 will miss future court deadlines due to these communication barriers.

27 50. Plaintiff Nsinano has recently obtained pro bono counsel for the purpose
28 of seeking a bond hearing before the immigration court. Due to Defendant OCSD and

1 ICE's restrictions on telephones, Plaintiff Nsinano has never been able to speak with
2 his attorneys by telephone. Plaintiff Nsinano has attempted to call his attorneys on at
3 least two occasions, but each time his call was cut off after reaching his attorneys'
4 automated answering service. He has met with them in-person approximately three to
5 four times, but they have never been permitted to have a contact visit, where they are
6 able to speak in a completely private space. Instead, his attorneys have been forced to
7 speak with him through a plexiglass window with a single phone receiver. When
8 multiple members of Plaintiff Nsinano's legal team attend these meetings, only one
9 attorney at a time can use the phone receiver to communicate with Plaintiff Nsinano,
10 significantly inhibiting communication with his legal team.

11 51. Plaintiff Nsinano has filed grievances with Defendants OCSD and ICE
12 about the numerous issues that he has experienced with communication at Theo Lacy,
13 but Defendants have not meaningfully responded to these grievances. ICE officers
14 typically state that they will pass his grievance to a supervisor, but Plaintiff Nsinano
15 has never received a response from a supervisor or any other follow up. Defendant
16 OCSD does not respond to his grievances at all. As a result, Plaintiff Nsinano believes
17 that the grievance process is futile and has given up on using it as a means to resolve
18 his concerns. He is also scared that he will face retaliation if he files additional
19 grievances.

20 52. Plaintiff Nsinano is still unrepresented for both his immigration case and
21 his pending petition for habeas corpus.

22 **American Immigration Lawyers Association**

23 53. Plaintiff AILA is the national association of more than 15,000 attorneys
24 and law professors who practice and teach immigration law. Founded in 1946, AILA
25 is a nonpartisan, not-for-profit organization established to promote justice, advocate
26 for fair and reasonable immigration law and policy, advance the quality of
27 immigration and nationality law and practice, and enhance the professional
28 development of its members. AILA's Southern California Chapter is comprised of

1 more than 1,150 attorneys who practice law in Los Angeles, Orange, Riverside, San
2 Bernardino, Santa Barbara, San Luis Obispo, and Ventura Counties. AILA attorneys
3 represent detained noncitizens at Adelanto, Theo Lacy, and Musick.

4 54. Plaintiff AILA has long advocated for improved attorney access at
5 immigration detention centers. Plaintiff AILA regularly tracks obstacles its members
6 face when representing detained noncitizen clients and raises these issues with
7 Immigration and Customs Enforcement in meetings at the local and national level. In
8 addition, Plaintiff AILA provides its members with practice resources to help them
9 navigate the difficulties they face in trying to meet, consult with, talk to, and locate
10 their detained noncitizen clients. Plaintiff AILA has also submitted organizational
11 comments on revised ICE Detention Standards to push for improved methods of
12 communication with detained noncitizen clients, and to advocate for standards that
13 would prioritize attorney access to detained noncitizen clients. Additionally, through
14 the Immigration Justice Campaign, a joint initiative with the American Immigration
15 Council, Plaintiff AILA has documented instances in detention facilities where the
16 ability of counsel to effectively represent their clients has been restricted, including in
17 complaints to the DHS Office of Civil Rights and Civil Liberties and other
18 correspondence.

19 **Immigrant Defenders**

20 55. Plaintiff Imm Def is a nonprofit organization that provides free legal
21 services to noncitizens in Southern California. Plaintiff Imm Def has approximately
22 thirty-three full-time attorneys who provide full-scale deportation defense to nearly
23 1,000 noncitizens per year. Plaintiff Imm Def focuses on representing the most
24 marginalized communities, including adults with mental health conditions and
25 children in detention. At any given time, Plaintiff Imm Def represents approximately
26 fifty detainees at Adelanto, Theo Lacy, and Musick.

27 ***Defendants***

28 56. Defendant United States Department of Homeland Security (“DHS”) is a

1 department of the executive branch of the United States government that is tasked
2 with, among other things, administering and enforcing the federal immigration laws.
3 Defendant Immigration and Customs Enforcement (“ICE”) is the agency within DHS
4 that is specifically responsible for managing all aspects of the immigration
5 enforcement process, including detention.

6 57. Defendant Kirstjen Nielsen is the Secretary of DHS. Secretary Nielsen is
7 ultimately responsible for the actions of ICE. She is the legal custodian of the
8 Individual Defendants and detained noncitizens incarcerated at Adelanto, Theo Lacy,
9 and Musick. Secretary Nielsen is named in her official capacity.

10 58. Defendant Ronald D. Vitiello is the Acting Director of ICE, a component
11 of DHS. ICE is responsible for apprehension, detention, and removal of noncitizens
12 from the United States. He is the legal custodian of Individual Plaintiffs and
13 noncitizens incarcerated at Adelanto, Theo Lacy, and Musick. Director Vitiello is
14 named in his official capacity.

15 59. Defendant David Marin is the Field Office Director for the Los Angeles
16 Field Office of ICE. Director Marin is responsible for the enforcement of the
17 immigration laws within this district, and for ensuring that ICE officials follow the
18 agency’s policies and procedures. He is the legal custodian of Individual Plaintiffs and
19 noncitizens incarcerated at Adelanto, Theo Lacy, and Musick. He is named in his
20 official capacity.

21 60. Defendant Orange County Sheriff’s Department is a public entity, duly
22 organized and existing under the laws of the State of California. The OC Sheriff’s
23 Department is responsible for the day-to-day operations of the Theo Lacy Facility in
24 Orange, California, and the James A. Musick Facility in Irvine, California.

25 61. Defendant Geo Group, Inc. is a private company that contracts with
26 government entities to provide corrections officers and other detention-related
27 services. It is headquartered in Boca Raton, Florida. GEO contracts with ICE to
28 operate the Adelanto ICE Processing Center.

1 **JURISDICTION AND VENUE**

2 62. Jurisdiction is proper pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 1361,
3 and 28 U.S.C. §§ 2201 and 2202. A substantial, actual, and continuing controversy
4 exists between the parties.

5 63. Venue is proper in the Central District of California under 28 U.S.C. §
6 1391, because at least one federal Defendant is in this District, Plaintiffs Torres,
7 Tenghe, and Nsinano are detained in this District, Plaintiff Imm Def resides in this
8 District, Plaintiff AILA has members who reside in this District, and a substantial part
9 of the events giving rise to the claims in this action took place in this District.

10
11 **FACTUAL ALLEGATIONS**

12 64. Defendant ICE contracts with Defendants OCSD and GEO to hold
13 detained noncitizens, including the Individual Plaintiffs, in three immigration
14 detention facilities in this District pending a decision on whether they should be
15 removed from the United States.

16 65. Upon information and belief, Defendant ICE contracts with GEO to
17 house almost 1,900 detained noncitizens in the Adelanto ICE Processing Center, a
18 private facility that is located in San Bernardino County.

19 66. Upon information and belief, Defendant ICE contracts with OCSD to
20 hold hundreds of detained noncitizens per day at two county jails, Theo Lacy and
21 Musick. In cells not holding immigration detainees at Theo Lacy and Musick, OCSD
22 incarcerates pretrial detainees, individuals convicted of misdemeanor crimes, and
23 individuals convicted of felonies who are awaiting transfer to state prison. Upon
24 information and belief, the OCSD policies in place at Theo Lacy and Musick are
25 similar in purpose and effect.

26 67. Defendants ICE, GEO, and OCSD regularly transfer detained noncitizens
27 between Adelanto, Theo Lacy, and Musick resulting in such individuals spending time
28 at one, two, or all three immigration detention facilities. Upon information and belief,

1 Defendants OCSD and GEO, acting on behalf of Defendants ICE and DHS, frequently
2 fail to inform attorneys when their clients have been transferred to, from, or between
3 these immigration detention facilities.

4 68. Immigrant detention at Adelanto, Theo Lacy, and Musick is
5 indistinguishable as a practical matter from criminal incarceration.

6 69. Adelanto, Theo Lacy, and Musick are lock-down facilities surrounded by
7 barbed-wire fences and patrolled by armed guards. Defendants OCSD and GEO lock
8 detained noncitizens in cells or pods for several hours a day, require detained
9 noncitizens to wear facility-issued clothing and identification wristbands, subject
10 detained noncitizens to official counts, lockdowns, and searches of their persons and
11 property, and restrict their access to meeting with family members and other loved
12 ones. On information and belief, Defendant ICE approves these practices.

13 70. Adelanto, Theo Lacy, and Musick are plagued by substandard conditions
14 and abuse. For example, the DHS Office of Inspector General has concluded that the
15 Adelanto and Theo Lacy facilities fail to provide access to adequate medical and
16 mental health care, offer frequently inedible food, often lack hot water and sanitary
17 conditions, present rampant suicide hazards, and rely on improper and overly
18 restrictive segregation.⁴

19 71. Because detained noncitizens are almost completely isolated from the
20 outside world, their only reliable means of communicating with individuals or entities
21

22 ⁴ See, e.g., DHS Off. Inspector General, *Management Alert—Issues Requiring Action at the*
23 *Adelanto ICE Processing Center in Adelanto, CA*, OIG-18-86 (Sept. 27, 2018),
<https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Off.
24 Inspector General, *Management Alert on Issues Requiring Immediate Action at the Theo Lacy*
Facility in Orange, CA, OIG-17-43-MA (Mar. 6, 2017),
<https://www.oig.dhs.gov/sites/default/files/assets/Mga/2017/oig-mga-030617.pdf>. See also Esther
25 Lim & Daisy Ramirez, ACLU of Southern California, *Orange County Jails* (June 2017),
<https://www.aclusocal.org/sites/default/files/ocjails2017-aclu-socal-report.pdf>; Christina Fialho &
26 Victoria Mena, Civic & Detention Watch Network, *Abuse in Adelanto: An Investigation into a*
California Town’s Immigration Jail, at 4 (Oct. 2015),
27 [https://www.detentionwatchnetwork.org/sites/default/files/reports/CIVIC%20DWN%20Adelanto%20](https://www.detentionwatchnetwork.org/sites/default/files/reports/CIVIC%20DWN%20Adelanto%20Report.pdf)
28 [Report.pdf](https://www.detentionwatchnetwork.org/sites/default/files/reports/CIVIC%20DWN%20Adelanto%20Report.pdf).

1 outside of the facility in which they are detained is via telephone calls, in person
2 visits, and mail.

3 72. OCSD and GEO are contractually bound by Defendant ICE’s National
4 Detention Standards. These standards were “crafted to . . . increase access to legal
5 services . . . , improve communication with detainees with limited English
6 proficiency, improve the process for reporting and responding to complaints, and
7 increase . . . visitation,”⁵ and specifically include provisions related to telephone
8 access, legal visits, and legal mail. Yet Defendants OCSD and GEO, acting under
9 Defendant ICE’s authority and with ICE’s knowledge, have repeatedly violated these
10 detention standards.⁶

11 **I. Defendants Substantially Restrict and Prevent Plaintiffs’ Telephone
12 Access.**

13 73. Defendants OCSD and GEO, acting under Defendant ICE’s authority and
14 with ICE’s knowledge, impose numerous barriers on the telephone calls that detained
15 noncitizens need to be able to communicate with counsel, including Attorney
16 Plaintiffs, or to prepare their own legal cases. Upon information and belief,
17 Defendants OCSD and GEO, acting under Defendant ICE’s authority and with ICE’s
18 knowledge, unlawfully restrict detained noncitizens from making calls by: failing to
19 provide free calls, even to attorneys; requiring that a live person answer a call and
20 have a pre-established account in order for the call to connect; charging prohibitively
21 expensive rates; limiting the times during which telephones can be used; and
22 monitoring and recording conversations. They also restrict detained noncitizens from

23 ⁵ 2011 Operations Manual ICE Performance-Based National Detention Standards (“PBNDS”),
24 <https://www.ice.gov/detention-standards/2011>; *see also* 2008 Operations Manual ICE Performance-
25 Based National Detention Standards, <https://www.ice.gov/detention-standards/2008> (showing the
these standards were “designed to improve safety, security and conditions of confinement for
detainees”).

26 ⁶ *See, e.g.*, DHS Off. Inspector General, *Management Alert—Issues Requiring Action at the*
27 *Adelanto ICE Processing Center in Adelanto, CA*, OIG-18-86 (Sept. 27, 2018),
28 <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf>; DHS Off.
Inspector General, *Management Alert on Issues Requiring Immediate Action at the Theo Lacy*
Facility in Orange, CA, OIG-17-43-MA (Mar. 6, 2017),
<https://www.oig.dhs.gov/sites/default/files/assets/Mga/2017/oig-mga-030617.pdf>.

1 receiving calls by failing to set up a reliable system by which attorneys and others can
2 leave messages. When calls occur in spite of these obstacles, Defendants fail to
3 provide any means to ensure the confidentiality of communications, even when
4 detained individuals need to discuss confidential and privileged topics with their
5 attorneys. And OCSD and GEO, acting under ICE's authority and with ICE's
6 knowledge, impose unreasonable time limits on calls and fail to maintain the
7 telephones' operability or connectivity, such that scheduled calls do not occur, or
8 calls, once started, are dropped.

9 **A. Defendants Unlawfully Restrict Plaintiffs' Ability to Make**
10 **Telephone Calls.**

11 74. Defendants OCSD and GEO, acting under Defendant ICE's authority and
12 with Defendant ICE's knowledge, generally do not permit detained noncitizens to
13 make free telephone calls, whether to their attorneys or to others with whom they must
14 communicate to prepare their cases, even if detained noncitizens are indigent.

15 75. Although Defendant ICE purports to provide a "free call platform" so
16 that detained citizens can access some free legal service providers, consulates, and
17 government agencies,⁷ this platform does not allow free calls to the vast majority of
18 legal service providers, who do not appear on Defendant ICE's pre-approved list.
19 Upon information and belief, of the few nonprofit organizations included on the free
20 call platform, some provide assistance only to asylum seekers, some conduct know-
21 your-rights presentations but have limited capacity to provide individual
22 representation, and some do not represent individuals in detention at all. Because of
23 these limitations, the "free call platform" is effectively useless for detained
24 noncitizens.

25 76. Outside of the "free call platform," Defendants frequently reject or ignore
26 detained noncitizens' requests for free phone calls, even when a request for a free call

27 _____
28 ⁷ See 2011 PBNDS, Part 5.6 at V.A.4 (Rev'd Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/5-6.pdf>.

1 is so that a detained individual can speak with an attorney regarding an emergency.
2 These practices flout the ICE Detention Standards, which state that “[e]ach facility
3 shall permit detainees to make direct or free calls to ... [l]egal representatives, to
4 obtain legal representation, or for consultation when subject to expedited removal,”
5 among others, and that “[a]ccess shall always be granted within 24 hours of the
6 request.” 2011 PBNDS 5.6, V, E; 2008 PBNDS Part 5, 31,V.E. In the rare
7 circumstances when such requests are granted, Defendants often only allow a detained
8 individual to use the telephone during non-business hours and/or limit calls to five or
9 ten minutes, which undermines their practical utility as an avenue to access or
10 communicate with legal counsel.

11 77. Detained noncitizens are similarly unable to make free calls to family
12 members or other individuals assisting with their legal cases. This, too, runs contrary
13 to the ICE Detention Standards, which state that indigent detainees shall be allowed to
14 make free telephone calls to immediate family members or others on an “as-needed”
15 basis.⁸

16 78. The few free calls that Defendants permit are allowed only to those that
17 Defendants deem indigent. Upon information and belief, Defendants only consider
18 detained noncitizens to be “indigent” if they have less than fifteen dollars in their
19 commissary account for ten or more days. Accordingly, if detained noncitizens have
20 slightly more than fifteen dollars in their commissary accounts, but less than the price
21 needed to purchase a calling card—which generally costs approximately twenty
22 dollars—they are without recourse or any ability to retain or contact legal counsel by
23 telephone for free.

24 79. Because detained noncitizens, even those who are indigent, cannot
25 typically make telephone calls for free, they must arrange to pay for these calls. Upon
26

27 ⁸ See 2011 PBNDS, Part 5.6 at V.E.3 (Rev’d Dec. 2016), <https://www.ice.gov/doclib/detention-standards/2011/5-6.pdf>.

1 information and belief, Defendant OCSD has a contract with Global Tel Link to
2 provide paid telephone services at Theo Lacy and Musick,⁹ and GEO contracts with
3 Talton Communications to provide telephone services at Adelanto. Upon information
4 and belief, Defendants OCSD and GEO profit from detained noncitizens' telephone
5 usage.¹⁰

6 80. Upon information and belief, there are generally three ways for detained
7 noncitizens to make outgoing telephone calls (aside from free calls) at Adelanto, Theo
8 Lacy, and Musick: (1) a detained noncitizen can place a collect call, which requires
9 the recipient to have set up a paid account in advance of even receiving the call; (2) a
10 detained noncitizen can purchase a calling card through the commissary; or (3) a
11 family member or friend can establish a PIN-linked pre-paid account or contribute to a
12 detainee's commissary.

13 81. Detained noncitizens who attempt to purchase prepaid calling cards face
14 prohibitively expensive calling charges. This contradicts the ICE Detention Standards,
15 which provide that "[d]etainees shall have reasonable and equitable access to
16 reasonably priced telephone services." 2011 PBNDS Part 5.6, II.1; 2008 PBNDS Part
17 5, 31, V.A.2. Upon information and belief, for each call, Defendants charge detained
18 noncitizens both a call initiation fee and a fee per minute. At Theo Lacy and Musick,
19 for example, a local, intrastate call costs approximately \$0.23 per minute.¹¹ This
20 means that detained noncitizens cannot even afford a five-minute local phone call in
21 California with the wages earned from one full day of work at the facility. Interstate
22 and international phone calls are even more expensive. Upon information and belief,
23 short international calls can cost detained noncitizens over \$20.00 per call.

24 82. Detained noncitizens who need to place collect calls to family members,
25

26 ⁹ See OC Sheriff's Department Telephone Contract, attached as Exhibit A; Global Tel Link
27 Amendment to Contract, attached as Exhibit B.

28 ¹⁰ See *id.*, Ex. B at 5 (showing that OC Sheriff's Department earns at least \$264,000 per month in
revenue from Global Tel Link based on telephone services provided at the Orange County Jails).

¹¹ See *id.*, Ex. B at 3.

1 friends, or attorneys, or need assistance from these individuals in setting up pre-paid
2 calling accounts, may never be able to reach their desired recipients due to the
3 cumbersome process involved in setting up the telephone accounts, particularly for
4 individuals who do not speak English.

5 83. Upon information and belief, even when detained noncitizens are able to
6 make telephone calls, they cannot reach any legal organization that uses a pre-
7 recorded message to route calls, or leave messages for attorneys who are unable to
8 answer the call. Defendants' telephone systems only allow calls to be completed if a
9 live person answers the telephone and accepts the call. If a recorded greeting begins to
10 play, the call disconnects. At Theo Lacy and Musick for instance, Defendant OCSD's
11 telephone system includes an "acceptance process" that requires the recipient to dial
12 numbers into a touch-tone or rotary phone and "mute[s] the [detained individual's]
13 ability to speak to the called party until the call is accepted."¹² Upon information and
14 belief, the same process applies at Adelanto. This acceptance process interferes with
15 the ability of detained noncitizens to communicate with attorneys, including Attorney
16 Plaintiffs, even when detained noncitizens have paid for calling cards and/or attorneys
17 have set up prepaid accounts. Detained noncitizens and attorneys, including Attorney
18 Plaintiffs, are only able to communicate by telephone if: (1) a detainee is able to call
19 an attorney on a direct line, and (2) the attorney is able to answer the telephone call at
20 the precise moment when the detainee calls. The same process applies for detained
21 noncitizens who need to communicate with other individuals outside of the
22 immigration detention facility in order to collect evidence for their immigration cases
23 or other legal matters, such as courthouse administrators and police department
24 employees who manage legal records, hospital employees who manage medical
25 records, school administrators who maintain academic transcripts, and individuals
26 who work at non-governmental organizations that collect country conditions

27
28 ¹² See Ex. A, OCSD Telephone Contract at 28.

1 information.

2 84. Defendants further restrict telephone access by severely limiting the
3 availability of telephones. Upon information and belief, the majority of telephones are
4 located in the dayroom of detained noncitizens' housing units. Yet, at Theo Lacy,
5 Defendant OCSD confines detained noncitizens in certain modules (the I-module and
6 the O-module) to their cells for twenty-one to twenty-two hours per day, and provides
7 only two hours of dayroom access on a rotating basis—frequently early in the
8 morning and late at night. The rotating schedule prevents detained noncitizens from
9 being able to make legal calls during regular business hours, and makes it virtually
10 impossible to set up times to speak with attorneys or other professionals in advance.
11 Defendant OCSD's restrictions prevent detained noncitizens from connecting with
12 attorneys and other professional organizations and entities for days or weeks at a time.

13 85. Upon information and belief, at Adelanto, Defendant GEO also confines
14 detainees in administrative segregation—which generally includes those who are in
15 need of protective custody and/or have mental health conditions—to their cells for
16 approximately twenty-one hours to twenty-two hours per day and permits detained
17 noncitizens to have only one-to-two hours of dayroom access per day. These
18 restrictions on telephone access make it difficult or impossible for detained
19 noncitizens to contact individuals for legal purposes.

20 86. Upon information and belief, for detained noncitizens in disciplinary
21 segregation at Adelanto, Defendant GEO does not allow detained noncitizens to use
22 telephones outside of their cells at all. Instead, Defendant GEO uses two corded
23 “telephones on wheels,” which are telephones that can be rolled to the various cells
24 and require a detained individual to speak on a headset that fits through the meal slot
25 of a cell door. Detained noncitizens must share the two “telephones on wheels” with
26 all of the other detainees in segregation, and are afforded virtually no privacy in any of
27 their conversations.

28

1 **B. Defendants Prevent Detained Noncitizens from Receiving Incoming**
2 **Calls and Messages.**

3 87. Defendants ICE, OCSD, and GEO effectively prohibit detained
4 noncitizens from receiving incoming telephone calls from attorneys, including
5 Attorney Plaintiffs, and other individuals assisting with detained individuals' legal
6 proceedings.¹³

7 88. Although the ICE Detention Standards provide that detention facilities
8 "shall take and deliver telephone messages to detainees as promptly as possible,"¹⁴
9 Defendants OCSD and ICE do not employ a reliable process for leaving or relaying
10 telephone messages for detained noncitizens at Theo Lacy and Musick. As a result,
11 Attorney Plaintiffs who need to reach their detained clients are effectively at the whim
12 of detention facility staff and deportation officers who, upon information and belief,
13 refuse to take any messages for detained noncitizens except perhaps in extreme
14 emergencies.

15 89. While Defendants GEO and ICE purportedly have a process for
16 accepting short telephone messages at Adelanto, detained noncitizens and Attorney
17 Plaintiffs report that this process is unreliable and generally ineffective. Upon
18 information and belief, Defendants GEO and ICE frequently deliver messages several
19 hours, days, or weeks late if they deliver the messages at all.

20 90. Without a reliable message system at any of the immigration detention
21 facilities, Defendants ICE, GEO, and OCSD prevent detained noncitizens from
22 knowing when an attorney needs to speak with them or whether there have been
23 material developments in their legal cases.

24 **C. When Telephone Calls Occur, Defendants Do Not Provide for**
25 **Privacy.**

26 91. Defendants OCSD and GEO generally do not allow detained noncitizens

27 ¹³ See, e.g., OCSD Telephone Contract, Ex. A, at 27 ("The [Inmate Calling Manager] shall
28 prohibit all incoming calls.").

¹⁴ See 2011 PBNDS, Part 5.6, V.J.; 2008 PBNDS, Part 5, 31, V.J.

1 to make private or confidential telephone calls regarding legal matters. Upon
2 information and belief, in each of the detention facilities' dayrooms, Defendants
3 OCSD and GEO have installed a row of between four and twelve telephones, each
4 approximately two feet apart. None of these telephones has panels or partitions
5 sufficient to ensure privacy or confidentiality. All of these telephones are located close
6 to televisions or other communal spaces such that other detainees and facility staff can
7 easily overhear the content of detained noncitizens' telephone conversations.

8 92. Upon information and belief, Defendants have also posted signs by each
9 telephone informing detained noncitizens that their conversations may be monitored
10 and recorded. Recently, Defendant OCSD has changed the telephone service such that
11 all outgoing calls state specifically that they are being recorded and monitored. If
12 detained noncitizens do not consent to their call being monitored, they are unable to
13 complete the call. Likewise, to accept a call from Theo Lacy, an attorney must
14 acknowledge that the call may be monitored by dialing "0." If an attorney does not
15 dial "0," the call will not connect.

16 93. Upon information and belief, detained noncitizens at Theo Lacy and
17 Musick are particularly wary of their lack of privacy because, over the past few years,
18 Defendant OCSD and its telephone service provider have illegally recorded more than
19 1,000 telephone calls between persons held at the Orange County Jails and lawyers.¹⁵

20 94. All other phone calls that detained noncitizens need to make to pursue
21 their legal rights—whether to courts, hospitals, academic institutions, penal
22 institutions, human rights organizations, or to family and friends—are also subject to
23 monitoring and recording.

24 95. Upon information and belief, Defendant OCSD and GEO's practices of
25 recording and monitoring telephone calls causes detained noncitizens to fear that the

26 _____
27 ¹⁵ See, e.g., Matt Ferner, *Confidential Inmate Calls with Lawyers Recorded Illegally in*
28 *California Jails for Years*, Huffington Post, Aug. 17, 2018,
https://www.huffingtonpost.com/entry/california-jail-recording-inmate-calls_us_5b771e73e4b0a5b1febb18eb.

1 information that they communicate over the telephone will be used against them in
2 their legal proceedings or will expose them to mistreatment by their jailors.
3 Defendants' policies of monitoring and recording telephone conversations also chill
4 attorneys' speech because attorneys, including Attorney Plaintiffs, cannot
5 communicate substantive information or legal strategies over the telephone without
6 concerns that they will waive the attorney-client privilege.

7 96. Although Defendants ICE, OCSD, and GEO purportedly permit detained
8 noncitizens to request private telephone calls at each of the immigration detention
9 facilities, Defendants fail to maintain a system that provides detained noncitizens with
10 reliable access to confidential telephone calls on a timely basis. As with requests for
11 free calls, detained noncitizens are frequently forced to wait several days or weeks for
12 a response to a private call request. Even in instances when Defendants respond to a
13 detained noncitizen's request for a confidential legal call, Defendants frequently deny
14 the request without justification or provide the call late at night, when attorneys and
15 other professionals are no longer in their offices.

16 **D. Defendants Fail to Maintain Phones and Do Not Ensure**
17 **Connectivity.**

18 97. Upon information and belief, Defendants OCSD, GEO, and ICE further
19 restrict detained noncitizens' ability to make telephone calls by deactivating service to
20 telephones, failing to timely repair broken or inoperable telephones, and refusing to
21 ensure service to all countries and/or to fix connectivity problems to certain countries.

22 98. Upon information and belief, at Adelanto, Defendants GEO and/or ICE
23 turn(s) off telephones in particular housing units without advance notice whenever a
24 noncitizen from that unit is being deported, which happens frequently, and refuses to
25 reactivate the telephones for several hours thereafter. In so doing, Defendants GEO or
26 ICE regularly deprive detained noncitizens in these housing units of telephone access
27 for anywhere between two and eight hours at a time. At Theo Lacy and Musick,
28 Defendants OCSD or ICE have simply chosen to turn off multiple operational

1 telephones throughout the facilities at all times. Defendant OCSD or ICE’s decision to
2 deactivate several telephones at Musick and Theo Lacy significantly limits the number
3 of functional telephones available to detained noncitizens at these jails.

4 99. Upon information and belief, at all of the immigration detention facilities,
5 Defendants fail to repair broken phones in a timely fashion and fail to fix interruptions
6 in telephone service that prevent calls from connecting to certain countries or cause
7 telephone calls to suddenly drop or disconnect. Whenever telephone calls drop,
8 detained noncitizens are required to pay additional fees to initiate new telephone calls.

9 **II. Defendants Fail to Provide Sufficient Space and Staffing for Timely,
10 Confidential, and Contact Legal Visits.**

11 100. None of the detention facilities provides a sufficient number of
12 confidential visiting rooms to adequately accommodate the needs of detained
13 noncitizens to meet with their attorneys, including Attorney Plaintiffs. This runs
14 contrary to the ICE Detention Standards, which provide that “[v]isits between legal
15 representatives and assistants and an individual detainee are confidential and shall not
16 be subject to auditory supervision. Private consultation rooms shall be available for
17 such meetings.” 2011 PBNDS Part 5.7, II.2 & V.J.9.

18 101. Upon information and belief, Defendants OCSD and ICE provide no
19 “private consultation rooms” for the detained noncitizens held at Theo Lacy to meet
20 with their attorneys, and only two such rooms at Musick.

21 102. Instead of private consultation rooms, at Theo Lacy and Musick, detained
22 noncitizens are forced to communicate with attorneys either in an open café-like
23 setting or in narrow booths separated by plexiglass windows with telephones affixed
24 to the walls. There is effectively no way for detained noncitizens and their attorneys to
25 communicate with each other without OCSD guards, other detainees, and/or other
26 visitors overhearing these conversations. Upon information and belief, this lack of
27 attorney-client confidentiality threatens to chill the speech of both detained
28 noncitizens and their attorneys.

1 103. Upon information and belief, Defendants OCSD and ICE also impose
2 significant wait times on attorney-client visitation at Theo Lacy and Musick. Indeed,
3 Defendants OCSD or ICE have posted a sign in Theo Lacy that states: “Visitors be
4 prepared to wait anywhere between 5 minutes to 2 hours sometimes. . . . Be patient,
5 please don’t come and ask us why it is taking so long.”

6 104. Upon information and belief, if Defendants OCSD or ICE provided an
7 adequate number of contact visitation rooms at Theo Lacy and Musick, wait times
8 would be far shorter and attorneys and detained noncitizens would be better able to
9 communicate effectively and confidentially.

10 105. Defendants GEO and ICE also fail to provide a sufficient number of
11 confidential attorney visitation rooms at Adelanto to accommodate the size of the
12 facility. For noncitizens held at Adelanto West, there are approximately eight attorney
13 visitation rooms for about 1280 detainees. At Adelanto East, there are two visitation
14 rooms for approximately 660 detainees. Upon information and belief, the number of
15 attorneys who need to meet with detained noncitizens at Adelanto far outstrips the
16 number of attorney visitation rooms available and the capacity of staff to
17 accommodate these visits.

18 106. Although Defendants GEO and ICE have a system at Adelanto whereby
19 attorneys can make appointments to meet with detained clients twenty-four hours in
20 advance, Defendants GEO and ICE do not reliably make detained noncitizens
21 available at the designated times. Instead, upon information and belief, Defendants
22 GEO and ICE generally force attorneys, including Attorney Plaintiffs, to wait between
23 half an hour and four-and-a-half hours for each visit with a noncitizen detainee. Upon
24 information and belief, the attorney visit list is not always printed and given to GEO
25 employees tasked with the attorney visit process, which creates unnecessary confusion
26 and further delay. Further, even an attorney visit scheduled in advance does not
27 always mean that room space has been reserved because of a lack of communication
28 among GEO staff.

1 107. If an attorney visiting a client at Adelanto, including an Attorney
2 Plaintiff, does not have an appointment in advance, the attorney must put his or her
3 name on a list and wait for a space to open. Upon information and belief, waiting for
4 an attorney visitation space to open at Adelanto can take several hours. If an attorney
5 has appointments to meet with multiple clients in one day, and one appointment runs
6 fifteen minutes over the time of another appointment, the second appointment is
7 cancelled and Defendants add the attorney to the “first-come-first-served” list.

8 108. Upon information and belief, Defendants GEO and ICE also fail to fill
9 open attorney visiting rooms, and fail to provide sufficient staffing to check attorneys
10 into the facility, oversee attorney visitation, and bring and return detained noncitizens
11 from their housing units in a timely manner. These failures cause additional delays for
12 attorney visitation at Adelanto.

13 109. Defendants’ policies and procedures related to interpreters further hinder
14 attorneys’ ability to meet and speak with detained noncitizens. A large number of
15 detained noncitizens do not speak English. If an attorney does not speak the same
16 language as a client, the attorney needs an interpreter to communicate. Upon
17 information and belief, at each of the detention facilities, Defendants frequently
18 change and/or delay processing security clearances for interpreters, and at times fail to
19 relay such clearances to detention facility staff, which prevents attorneys from being
20 able to meet with their detained clients for several days or weeks. While Defendant
21 GEO permits attorneys to use a language line in some of the attorney-visiting rooms at
22 Adelanto, less than half of the attorney visitation rooms have telephones that can be
23 used to call an outside language line. Because Defendants OCSD and/or ICE do not
24 permit any telephones at Theo Lacy and Musick, the only way to access a language
25 line is through use of a deputy’s phone. Upon information and belief, at Theo Lacy
26 and Musick, Defendant OCSD rarely grants such requests. Due to these challenges,
27 many attorneys such as Attorney Plaintiff Imm Def find it almost impossible to
28 represent clients who require an interpreter.

1 **III. Defendants' Policies and Practices Related to Legal Correspondence**
2 **Exacerbate Communication Barriers.**

3 110. Detained noncitizens and attorneys, including Attorney Plaintiffs, cannot
4 rely on legal correspondence as a substitute for telephone and in-person
5 communication.

6 111. Defendants do not allow detained noncitizens to access the Internet,
7 which precludes detained noncitizens from corresponding with counsel over email.

8 112. Defendants GEO and OCSD screen detained noncitizens' incoming and
9 outgoing legal mail in a manner that significantly delays, and at times obstructs,
10 delivery. Upon information and belief, Defendants' screening and sorting process can
11 delay the delivery of legal mail by weeks. These interruptions and delays in written
12 legal mail hinder detained noncitizens' ability to find counsel and gather evidence in
13 support of their legal cases, and put detained noncitizens at risk of missing court-
14 mandated filing deadlines. Due to the unpredictability of legal mail, attorneys,
15 including Attorney Plaintiffs, cannot rely on legal mail for any time-sensitive
16 communication or documents that require a prompt signature from a noncitizen
17 detainee to meet a filing deadline. Further, many discussions related to providing legal
18 advice about intricate or complex aspects of detained noncitizens' legal cases and
19 preparing detained noncitizens to testify in court can only be communicated
20 effectively orally.

21 113. Upon information and belief, Defendant OCSD also regularly opens
22 detained noncitizens' incoming legal mail at Theo Lacy outside of detained
23 noncitizens' presence, causing detained noncitizens to fear that detention facility staff
24 read or tamper with their legal mail and will retaliate against them for the information
25 contained therein. Upon information and belief, this practice violates both Defendant
26 ICE's Immigration and Detention standards, *see* PBNDs 5.1.V.F.2, as well as
27 Defendant OCSD's own written policies.

28

1 **IV. Defendants Have Not Addressed Problems with Telephones, Attorney**
2 **Visitation, and Mail Despite Grievances From Detained Noncitizens.**

3 114. Upon information and belief, while detained noncitizens have filed
4 numerous grievances with Defendants ICE, GEO, and OCSD about problems with
5 telephone access, attorney visitation, and legal mail, Defendants frequently reject or
6 ignore their written complaints. Many grievances go unreported. Upon information
7 and belief, numerous detained noncitizens fear that guards will take adverse actions
8 against them for filing a grievance, such as searching their cells and tearing up legal
9 papers, assigning a more dangerous detainee to share their cell in an effort to instigate
10 a fight, or engaging in staff abuse or misconduct.

11 115. In March of 2018, detained noncitizens within Theo Lacy's I-Module
12 sent a complaint letter to the DHS Office of Inspector General raising concerns about
13 telephone access. In this letter, which is attached as Exhibit C, detained noncitizens
14 alleged the following:

15 Theres [*sic*] a memorandum posted on the wall by ICE case workers
16 saying that detainees will have access to the telephones 24 hours a day
17 except during count or facility program. **THIS IS NOT THE CASE.**
18 Often times not even during business hours. We are only allowed access
19 during our dayroom for 2 hours a day, which rotates. When we ask for
20 permission to access the phones (even to make attorney phone calls we
21 are told to wait until it's our dayroom). A lot of us are pro per, fighting
22 asylum cases and need to reach witnesses in different countries and
23 different time zones, which is why 24 [*sic*] access is critical for our cases.

24 In this same letter, detained noncitizens also complained that their request forms and
25 message slips are rarely, if ever, answered, and expressed concern regarding
26 retaliation. In the words of detained noncitizens within the I-Mod, "The Theo Lacy
27 Sheriff's Dept. are notorious for taking adverse repercussions on ICE detainees by
28 harassing & taking peoples personal property or destroying pictures, or by abusing
their authority when searching the cells as intimidation tactics, if and when an ICE
detainee has griped or openly exposed the department for their malicious/abusive
misconduct toward ICE detainees." *Id.*

1 116. Upon information and belief, on October 4, 2018, detained noncitizens in
2 six sections of the I-Module at Theo Lacy sent an additional letter to the U.S.
3 Department of Justice Office of the Inspector General, which is attached as Exhibit D,
4 in which they raised several of these concerns again, including that they are:

5 1. Confined for 21 hrs. a day with two hours of dayroom and one hours of
6 recreational yard. (Confined that is, in a 6' x 10' cell).

7 2. Phone access is limited to dayroom time with no free phone calls allowed
8 regardless of indigent status

9 ...

10 6. Sometimes our outgoing legal mail doesn't reach its destination; we can only
11 speculate that such is been tampered with.

12 ...

13 12. Request slips of any sort and grievances are ignored more than often
14 without any apparent reason.

15 ...

16 13. If a complaint is submitted regarding an excess of authority, intimidation, or
17 harassment by a deputy, repression is often effected with searches and write ups
18 of any sort.

19 ...

20 15. Sometimes our visitations also are cut short. Privacy to visitation wether
21 [*sic*] is legal or public is never enforced; phone calls are always monitored
22 regardless if they are legal or public.

23 117. Upon information and belief, Defendants' refusal to respond to detained
24 noncitizens' grievances about telephone access, attorney visitation, and mail, and to
25 fix the underlying problems chills detained noncitizens' willingness and ability to
26 communicate with attorneys and other individuals outside of the detention facility, as
27 is necessary for detained noncitizens to fight their legal cases.

28 118. Likewise, Defendants' refusal to fix these underlying problems chills the
speech of attorneys, including Attorney Plaintiffs, by limiting the information that
attorneys can communicate with their detained clients over the telephone, through
legal mail, and in-person without violating attorney-client confidentiality.

1 **V. Defendants’ Restrictions on Legal Communication Harm Plaintiffs.**

2 119. All of Defendants’ restrictions hinder detained noncitizens’ ability to
3 find, retain, and communicate with counsel, and deprive attorneys, including Plaintiff
4 Attorneys, of their ability to provide effective assistance to their detained clients.
5 These restrictions also unlawfully restrict unrepresented detained noncitizens in
6 preparing their defenses to removal and in initiating other lawsuits.

7 **A. Defendants’ Restrictions Impede Detained Noncitizens’ Ability to**
8 **Find and Retain Counsel.**

9 120. Defendants’ numerous restrictions on communication make it extremely
10 difficult for detained noncitizens to find and retain attorneys in a timely fashion, if
11 they are able to reach any attorneys at all. Detained noncitizens must call numerous
12 attorneys and legal organizations in an effort to obtain free or low-cost legal
13 representation. During these telephone calls, detained noncitizens need to explain to
14 an attorney—who frequently does not speak the same language as them—the basis of
15 their legal case, whether they have the means to pay for legal counsel, the procedural
16 posture of their case, whether they have any relatives who live in the area, and what
17 other documents they need or want to get to fight their case. For detained noncitizens
18 seeking pro bono representation, detained noncitizens also need to persuade a lawyer
19 that the detained noncitizens will be easy to work with, that their case has merit, and
20 that taking on their case will not be too burdensome. For detained noncitizens seeking
21 legal counsel for non-immigration matters, Defendants’ restrictions on communication
22 frequently prevent detained noncitizens from even finding contact information for
23 prospective counsel.

24 121. Defendants’ numerous restrictions on communication, which prevent
25 detained noncitizens from accessing free, confidential telephone calls during business
26 hours, leaving telephone messages for attorneys who are unable to answer the phone,
27 and receiving messages from interested attorneys, effectively delays or prevents
28 detained noncitizens from having these crucial conversations and obtaining counsel.

1 122. If detained noncitizens are unable to obtain counsel, they are much less
 2 likely to prevail in their legal cases. Studies indicate that represented noncitizens are
 3 much more likely to apply for relief from deportation and to obtain the relief they
 4 seek.¹⁶ Based on data collected by TRAC this year, from January to July of 2018,
 5 approximately 27% of represented noncitizens detained at Theo Lacy and Musick
 6 have obtained relief from removal.¹⁷ In contrast, only 5% of unrepresented noncitizens
 7 detained at Theo Lacy and Musick have obtained relief.¹⁸ Similarly, at Adelanto,
 8 approximately 28% of represented detainees have obtained relief this year, whereas
 9 only about 6.5% of those who are unrepresented have obtained relief.¹⁹ Detained
 10 noncitizens with legal representation are also seven times more likely to be released
 11 on bond when represented,²⁰ and noncitizens represented by counsel who are released
 12 from detention are nearly five and a half times more likely to have a successful case
 13 outcome than their detained counterparts.²¹

14 123. Detained noncitizens who are unable to obtain counsel are also less likely
 15 to prevail in their legal cases outside of the removal process. Studies indicate that
 16 indigent individuals who obtain counsel are, on average, more likely to prevail than
 17 their unrepresented counterparts.²² In contrast, litigants who are unrepresented and
 18 lack legal training frequently do an inadequate job of representing themselves in civil
 19 cases, which results in their being deprived of their full rights.²³ Incarceration only
 20

21 ¹⁶ See Ingrid Eagly & Steven Shafer, Access to Counsel in Immigration Court at 3,
 22 https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

23 ¹⁷ See TRAC, Details on Deportation Proceedings in Immigration Court,
<http://trac.syr.edu/phptools/immigration/nta/> (last visited Dec. 14, 2018).

24 ¹⁸ *Id.*

¹⁹ *Id.*

25 ²⁰ See Ingrid Eagly & Steven Shafer, A National Study of Access to Counsel in Immigration
 Court, 164 U. Penn. L. Rev. 1, 70 (2015).

26 ²¹ See Ingrid Eagly & Steven Shafer, Access to Counsel in Immigration Court at 19.

27 ²² See, e.g., Rebecca L. Sandefur, *The Impact of Counsel: An Analysis of Empirical Evidence*, 9
 Seattle J. for Soc. Just. 51, 69 (2010).

28 ²³ N.H. Citizens Comm'n on the State Courts, Report and Recommendations 10–11 (June 1,
 2006), http://www.courts.state.nh.us/press/2006/cc_report.pdf (unrepresented individuals typically
 do an inadequate job of self-representation, resulting in compromised justice).

1 exacerbates these challenges.

2 124. Defendants' communication restrictions not only inhibit detained
3 noncitizens' ability to retain counsel, they also reduce the total number of detained
4 noncitizens that attorneys, including Plaintiff Attorneys, can represent. Defendants'
5 restrictions make it far more difficult for an attorney to represent a detained noncitizen
6 client than a non-detained client, who can be reached via telephone or email and can
7 come into an attorney's office rather than requiring an attorney to travel for long
8 periods to meet with clients at detention facilities.

9 125. For example, Plaintiff Imm Def 's primary office is located in downtown
10 Los Angeles. Due to Defendants' restrictions on telephone access and long delays in
11 sending and receiving legal mail, Imm Def attorneys generally need to travel to meet
12 their clients in-person. From their Los Angeles office, it generally takes attorneys
13 approximately 1 hour and 30 minutes to drive to Adelanto, 1 hour and 20 minutes to
14 drive to Musick, and 50 minutes to drive to Theo Lacy.

15 126. Upon information and belief, if wait times were significantly reduced and
16 telephonic communications improved (in terms of access and quality of the call), each
17 Imm Def attorney could significantly increase the number of detained noncitizens they
18 represent.

19 127. Similarly, most immigration attorneys who are members of Plaintiff
20 AILA Southern California Chapter have their offices in the greater Los Angeles area,
21 between one and two hours away from Adelanto, Theo Lacy, or Musick. Given that
22 many attorneys are required to travel for four hours round trip just to reach Adelanto,
23 Defendants' communication policies can cost an attorney to lose an entire work day
24 simply by trying to meet with one client.

25 128. Because of Defendants' barriers to communication, Plaintiff Attorneys
26 and other lawyers are unable to represent as many immigration detainees at Adelanto,
27 Theo Lacy, and Musick as they might otherwise be willing and able to, which further
28 restricts and denies detained noncitizens of their right to be represented by counsel.

1 **B. Defendants’ Restrictions Stifle Communication between Detained**
2 **Noncitizens and Attorneys, Including Attorney Plaintiffs, and Hinder**
3 **Effective Legal Assistance.**

4 129. Defendants’ restrictions on communication also interfere with detained
5 noncitizens’ right to effective assistance of counsel, and Attorney Plaintiffs’ right to
6 provide legal advice to clients.

7 130. Defendants’ restrictions on communication inhibit all aspects of attorney-
8 client communication necessary for representation in immigration proceedings
9 including: (1) conducting an initial assessment of a client’s legal claims and eligibility
10 for relief such as asylum; (2) interviewing a client to obtain a lengthy, personal
11 declaration that often details traumatic facts about physical, sexual, and other
12 violence; (3) counseling a client as to her legal options and developments in her case;
13 (4) obtaining signatures on release forms when seeking client records from outside
14 agencies; and (5) preparing a client to testify in court, including to face cross-
15 examination by an experienced ICE attorney. These conversations are often intricate
16 and complex, and necessitate hours-long discussions with clients, often through
17 interpreters. Defendants’ restrictions on communication hinder detained noncitizens
18 and their attorneys, including Attorney Plaintiffs, from having these critical
19 exchanges.

20 131. Defendants further impede these vital attorney-client exchanges by
21 limiting the means by which detained noncitizens and attorneys, including Attorney
22 Plaintiffs, can communicate confidentially. Without the means of communicating
23 confidentially with a client via telephone or in-person, a lawyer cannot fully assess
24 whether a noncitizen detainee has a basis for contesting removability or is eligible for
25 immigration relief. To determine whether a client is eligible for asylum, for instance, a
26 lawyer must build sufficient trust and rapport to explore highly sensitive topics, such
27 as whether a client is a victim of physical or sexual assault, whether a person has been
28 diagnosed with a chronic or infectious medical condition, and whether a person has
fled persecution because of his or her sexual orientation or gender identity. Likewise,

1 in order to show an immigration judge why a client should be released on bond or
2 deserves cancellation of removal, an attorney must frequently explore, often over
3 several hours, a number of sensitive personal matters with the detained noncitizens.
4 These conversations may include, for example, the harm that a client's young U.S.
5 citizen children or elderly parents may face should the client be deported, what efforts
6 a client has made toward rehabilitation following a criminal conviction, whether a
7 client is in recovery from substance abuse, and what efforts a client has made to assist
8 with governmental investigations after being a victim of a crime. Should an attorney
9 need to include this information in a written declaration or prepare a client for
10 testifying in an adversarial proceeding, as is required for most forms of immigration
11 relief, the conversations can often take several hours and require multiple visits in
12 order to solicit the relevant information and counsel a client. Upon information and
13 belief, Attorney Plaintiff Imm Def generally anticipates that each attorney needs
14 between five and ten individual meetings preparing a client for a merits hearing,
15 which amounts to approximately 20-40 hours, not including wait times and travel.

16 132. Without a confidential setting where clients feel safe, detained
17 noncitizens are less willing to share private information about their cases, which
18 undermines attorneys' ability to provide clients with legal advice and to represent
19 them effectively in court. Similarly, without a way of ensuring attorney-client
20 confidentiality during in-person meetings, attorneys are limited in the types of
21 questions that they can ask and the feedback that they can provide to detained
22 noncitizens.

23 133. Defendants' restrictions on telephone access and attorney visitation also
24 harm detained noncitizens' ability to communicate with lawyers assisting them with
25 civil rights actions and other cases beyond their individual removal proceedings.²⁴ For

26 _____
27 ²⁴ See, e.g., *Rodriguez v. Marin*, Case Nos. 13-56706 & 13-56755 (9th Cir. 2018) (challenging
28 the government's practice of detaining immigration facing deportation proceedings for month or
years without due process); *Hernandez v. Sessions*, Case No. 16-620 (C.D. Cal., filed April 6, 2016)

1 example, detained noncitizens seeking to challenge indefinite detention must be able
2 to explain sensitive information to their lawyers related to why their home countries
3 might not be willing to issue travel documents. Similarly, detained noncitizens who
4 seek to challenge their mistreatment within the detention facilities—such as staff
5 abuse, inadequate medical or mental health care, a deprivation of religious liberties, or
6 denial of reasonable accommodations for disabilities—must have the means of
7 confidentially communicating their mistreatment to attorneys without fear of
8 retaliation.²⁵ Defendants’ policies also harm detained noncitizens who require
9 attorney-client communication with criminal defense attorneys relating to a
10 simultaneous criminal prosecution or to post-conviction relief applications.

11 **C. Defendants’ Barriers to Communication Hinder Unrepresented**
12 **Detained Noncitizens from Presenting their Immigration Cases.**

13 134. Defendants’ telephone, in-person visitation, and mail policies unlawfully
14 restrict the ability of unrepresented detained noncitizens to prepare their cases against
15 removal.

16 135. At an early stage of removal proceedings, many detained noncitizens
17 may apply for a bond redetermination hearing before an immigration judge. 8 C.F.R. §
18 1003.19. If a detained noncitizen is able to obtain release on bond, his chances of
19 prevailing in his removal case dramatically increase. Unrepresented noncitizens who
20 are released are more than three times as likely to have a successful case outcome than
21 unrepresented detained noncitizens.²⁶

22
23 (challenging the federal government’s practice of setting unreasonably high bonds, without
24 consideration of noncitizens’ financial resources or ability to pay).

25 ²⁵ See, e.g., *Rivera Martinez, et al. v. The Geo Group, Inc., et al.*, Case No. 18-1125 (C.D. Cal.,
26 filed May 25, 2018) (an action for damages and declaratory relief based on 42 U.S.C. §1983, due to
27 alleged abuse by Adelanto staff against immigration detainees who engaged in a hunger strike to
28 protest inhumane conditions at Adelanto); see also *Teneng v. Trump*, Case No. 18-1609 (C.D. Cal.,
filed Aug. 1, 2018) (a class action lawsuit challenging unlawful conditions for immigration detainees
at FCI-Victorville, many of whom have since been transferred to Adelanto).

²⁶ Ingrid Eagly & Steven Shafer, Access to Counsel in Immigration Court at 19, Figure 9,
https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

1 136. To prevail at a bond redetermination hearing, the legal standard
2 governing release requires the detained noncitizen to demonstrate that he has strong
3 family and community ties, has been rehabilitated from any convictions, and is likely
4 to prevail in proceedings. *Matter of Guerra*, 24 I. & N. Dec. 37 (BIA 2006). To
5 prepare his case, a detained noncitizen must gather supporting evidence, including by
6 calling family members to obtain letters of support, former employers for letters
7 confirming employment, his children’s schools for records indicating he has been a
8 supportive parent (and documenting any challenges the children face), courts to obtain
9 prior criminal records, and churches and other community groups for letters of
10 support. Defendants’ telephone restrictions prevent unrepresented detained
11 noncitizens from making these critically necessary calls.

12 137. If a detained noncitizen is unable to obtain release on bond, Defendants’
13 communication policies unlawfully restrict his ability to research and prepare his
14 defense to removal. To ascertain whether he can challenge DHS’s charges of
15 removability, or determine whether he is eligible for relief from removal, the detained
16 noncitizen needs to make telephone calls and send out letters, such as to obtain
17 criminal records or pro se materials from nonprofit organizations. But Defendants’
18 policies hamper these communications, resulting in detained noncitizens’ inability to
19 make otherwise viable challenges to removal.

20 138. Defendants’ communication policies have a devastating impact on those
21 detained noncitizens who apply for discretionary relief from removal. To win their
22 cases, detained noncitizens must make numerous phone calls—to police departments,
23 prior employers, churches, hospitals, friends, families, and schools—so that they can
24 obtain supporting evidence, including criminal records, medical records, academic
25 records, employment records, affidavits about family and community ties, educational
26 challenges for children, photographs, and letters of support. Defendants’ telephone
27 policies unlawfully restrict unrepresented detained noncitizens from making these
28 critical calls. Detained noncitizens also need to be able to send out letters in order to

1 obtain materials in support of their case, but are less likely to do so if they believe that
2 detention facility staff, such as those who work for Defendant OCSD, are going to
3 read their legal mail.

4 139. Defendants' communication restrictions additionally harm those detained
5 noncitizens who apply for asylum or other persecution-based relief. *See* 8 U.S.C. §
6 1158; 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 208.18. These detained noncitizens must
7 make international calls to document the persecution they endured abroad. These
8 include telephone calls to human rights organizations abroad, family members and
9 friends abroad, experts abroad, and potentially even hospitals, schools, and prior
10 employers abroad. Defendants' policies restrict detained noncitizens' ability to
11 conduct calls necessary to obtain witness affidavits and declarations from these
12 sources. Defendants' policies also effectively prevent detained noncitizens from
13 making the telephone calls necessary to collect country conditions evidence—reports
14 showing that a detained noncitizens' persecution is substantiated by non-
15 governmental, academic, and governmental reports about a country of origin.

16 140. Defendants' communication policies further harm those detained
17 noncitizens who lose their cases before an immigration judge, and appeal to the Board
18 of Immigration Appeals (the appellate administrative body) or a federal court of
19 appeals. These detained noncitizens require the ability to communicate through
20 telephone and legal mail with nonprofits who can assist them with legal research,
21 provide sample pleadings, and pro-se materials. Defendants' policies and procedures
22 related to telephones, and Defendant OCSD's policies relating to legal mail, mean that
23 detained noncitizens cannot obtain these materials, without which they cannot prevail
24 in their appeals.

25 141. At each stage of the removal process, Defendants' restrictions on
26 communication harm unrepresented detained noncitizens' ability to prepare their cases
27 and defend themselves against deportation. Detained noncitizens who lose their cases
28 as a result of Defendants' communication policies face permanent separation from

1 family and friends and, at times, exposure to violence, torture, and even death.

2 **D. Defendants' Barriers to Communication Hinder Unrepresented**
3 **Detained Noncitizens from Obtaining Other Forms of Statutory**
4 **Relief from Removal and From Litigating Other Civil Cases.**

5 142. Defendants' barriers to communication also hinder detained noncitizens
6 from obtaining other forms of statutory relief from removal, which are granted by
7 USCIS, the component of the Department of Homeland Security that administers
8 immigration benefits. For instance, detained noncitizens who have suffered substantial
9 mental or physical abuse as a result of being the victim of a qualifying crime may
10 apply for a U-Visa. *See generally* 8 U.S.C.

11 § 1101(a)(15)(U)(i). The grant of a U-Visa results in termination of removal
12 proceedings and allows the crime victim to remain in the United States. However, a
13 respondent cannot pursue a U-Visa without a certification by a law enforcement
14 agency corroborating the applicant's helpfulness in the investigation and/or
15 prosecution of the crime. *See* 8 U.S.C. § 1184(p). This means that the respondent must
16 convince a law enforcement agency to complete a detailed certification form that
17 describes the applicant's cooperation. *See* U.S. Citizenship and Immigration Services,
18 *Form I-918* (Feb. 2, 2017), [https://www.uscis.gov/sites/default/files/files/form/i-](https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf)
19 [918supb.pdf](https://www.uscis.gov/sites/default/files/files/form/i-918supb.pdf). Of course, a detained noncitizen cannot obtain the completed form
20 without being able to communicate with the agency in order to request it.

21 143. Furthermore, Defendants' policies unlawfully restrict the ability of
22 unrepresented detained noncitizens to bring other civil lawsuits, such as petitions for
23 habeas corpus and actions brought pursuant to *Bivens v. Six Unknown Named Agents*,
24 403 U.S. 388 (1971), and to seek post-conviction relief. Because pro se detainees are
25 generally unfamiliar with state and federal court legal procedures and legal mail can
26 be unreasonably slow, unreliable, and, in certain circumstances, subject to government
27 intrusion or interference, detained noncitizens need to be able to communicate with
28 state and federal courts by telephone to answer questions regarding legal procedures,
the filing of various forms, whether there has been activity in a case, and the

1 procedural requirements for various motions. Unrepresented detained noncitizens also
2 need to be able to use telephones to contact governmental and nongovernmental
3 agencies, police departments, medical facilities, and other administrative entities in
4 order to gather evidence in support of their lawsuits and/or efforts to obtain post-
5 conviction relief. Without the ability to make telephone calls, detained noncitizens are
6 significantly hindered in their ability to fully protect their legal rights.

7 **VI. Defendants' Policies and Procedures Related to Legal Communication are**
8 **Unnecessarily Restrictive and Punitive.**

9 144. Upon information and belief, Defendants OCSD and ICE's restrictions
10 on telephone access at Theo Lacy and Musick are similar, if not identical, to
11 restrictions imposed on pre-trial detainees and convicted prisoners, even though
12 detained noncitizens are not being held for punitive reasons. The telephone service
13 provider is the same for both detained noncitizens and County prisoners, and the rules
14 governing telephone access are virtually the same. *See, e.g.*, Orange County Jail Rules
15 Policy 1600.3(c), attached as Exhibit E (prohibiting county prisoners from receiving
16 telephone calls; limiting the spaces where telephones may be used; requiring county
17 prisoners to make collect calls to a receiving party; and monitoring and recording all
18 collect housing phones).

19 145. Upon information and belief, Defendant OCSD's policies and procedures
20 regarding attorney-client visitation at Theo Lacy and Musick are even more
21 burdensome for detained noncitizens than for pre-trial detainees and convicted
22 prisoners. Upon information and belief, at these facilities, Defendant OCSD provides
23 county prisoners with more private rooms where clients can have contact visits with
24 their attorneys. Attorneys can also call these jails to reserve the private attorney
25 visitation rooms prior to arrival at the jail; no such arrangements are regularly made
26 for immigration detainees' attorneys.

27 146. At Adelanto, Defendants GEO and ICE's restrictions on communication
28

1 are similar to those imposed upon pre-trial detainees and convicted prisoners.²⁷

2 147. Upon information and belief, Defendants' restrictions on telephone, mail,
3 and legal visitation are unnecessarily restrictive and punitive. Defendant ICE's own
4 Detention Standards represent just one example of less restrictive legal
5 communication policies and practices that Defendants could implement.

6
7 **CLASS ALLEGATIONS**

8 148. Plaintiffs bring this action on behalf of themselves and all others who are
9 similarly situated, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1), and
10 23(b)(2), and in compliance with Local Rule 23-2.

11 149. Plaintiffs seek to represent a class (the "Civil Detainee Class") defined as
12 follows:

13 All immigration detainees who are now, or in the future will be, detained
14 at detention facilities in Southern California that are owned and operated
by the OCSD and/or GEO.

15 150. The proposed class satisfies the requirements of Rule 23(a)(1) because it
16 is so numerous that joinder of all members is impracticable. At any given time, ICE
17 detains a combined total of more than 2,000 noncitizens pending their removal
18 proceedings in the three detention facilities: Adelanto, Theo Lacy, and Musick.
19 Adelanto has a capacity to hold approximately 1,950 immigrants. Musick has capacity
20 to hold approximately 250 detained noncitizens. Theo Lacy can hold approximately
21 500 detained noncitizens. Moreover, thousands of additional noncitizens will be
22 subject to Defendants' policies, practices, and omissions in the future, as Defendants
23 continue to detain additional noncitizens at the immigration detention facilities daily.

24 151. Joinder is also impracticable because of the inherently transitory state of

25
26 ²⁷ See, e.g., DHS Office of the Inspector General, *Management Alert—Issues Requiring Action at*
27 *the Adelanto ICE Processing Center in Adelanto, CA*, OIG-18-86 at 9 (Sept. 27, 2018),
28 <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-86-Sep18.pdf> ("Although this
form of civil custody should be non-punitive, some of the center conditions and detainee treatment
we identified during our visit and outlined in this management alert are similar to those one may see
in criminal custody.")

1 the proposed class. Plaintiffs and class members are detained pending removal
2 proceedings and are frequently released from custody, transferred to other detention
3 centers in separate regions of the country, or deported from the United States.

4 152. The Plaintiff Class members are identifiable using records maintained in
5 the ordinary course of business by ICE.

6 153. The proposed class meets the commonality requirements of Federal Rule
7 of Civil Procedure 23(a)(2) because all class members are subject to Defendants'
8 common policies or practices with respect to the use of and access to in-person
9 visitation, telephones, and mail.

10 154. Moreover, there are numerous questions of law and fact common to the
11 proposed class. Such questions include, but are not limited to:

- 12 a. whether Defendants' policies and practices violate the ICE Detention
13 Standards promulgated by ICE and the Immigration and Nationality
14 Act with respect to legal visitation, legal mail, and telephone access;
- 15 b. whether Defendants' policies, practices, and omissions in denying and
16 restricting access to legal visitation, telephones, and legal mail violate
17 Plaintiffs' right to effective communication with counsel under the
18 Fifth Amendment Due Process Clause;
- 19 c. whether Defendants' policies, practices, and omissions in denying and
20 restricting access to legal visitation, telephones, and legal mail violate
21 Plaintiffs' right to a fair hearing and to gather and present evidence,
22 under the Fifth Amendment Due Process Clause;
- 23 d. whether the conditions at Adelanto, Theo Lacy, and Musick as they
24 relate to communication are similar to or more restrictive than for pre-
25 trial detainees or persons convicted of criminal offenses;
- 26 e. whether the conditions at Adelanto, Theo Lacy, and Musick as they
27 relate to communication are unnecessarily restrictive and/or punitive;
28 and

1 f. whether Defendants’ policies, practices, and omission in denying and
2 restricting access to legal visitation, telephones, and legal mail violate
3 detained noncitizens’ First Amendment rights to freedom of speech
4 and the petition clause.

5 155. The proposed class meets the typicality requirement of Federal Rule of
6 Civil Procedure 23(a)(3) because the claims of the representative Plaintiffs are typical
7 of the claims of the class as a whole. Plaintiffs Torres, Tenghe, and Nsinano and
8 proposed class members are all individuals who are detained at one of the detention
9 facilities owned and operated by Defendants GEO and OCSD and are subject to
10 Defendants’ access and use policies for legal visitation, telephones, and legal mail.
11 Plaintiffs Torres, Tenghe, Nsinano, and the proposed class also share the same legal
12 claims, which challenge the legality of these access and use policies, practices, and
13 omissions under the INA, the Due Process Clause, the First Amendment, and the
14 Administrative Procedures Act.

15 156. The proposed class meets the adequacy requirements of Federal Rule of
16 Civil Procedure 23(a)(4). Plaintiffs seek the same relief as the other members of the
17 class—namely, a declaration that Defendants’ policies and practices violate the INA,
18 the Fifth Amendment Due Process Clause, the First Amendment, the Administrative
19 Procedures Act and an order enjoining Defendants from enforcing unconstitutional
20 policies restricting detained noncitizens’ communication with respect to legal visits,
21 telephones, and legal mail. Plaintiffs also have no interests that are adverse to the class
22 as a whole.

23 157. Additionally, the proposed class is represented by counsel from the
24 Stanford Law School Immigrants’ Rights Clinic, the American Civil Liberties Union
25 Foundation of Southern California, and the law firm of Sidley Austin, LLP. Counsel
26 have extensive experience litigating class action lawsuits and other complex cases in
27 federal court, including civil rights lawsuits on behalf of immigration detainees.

28 158. Finally, the proposed class satisfies Federal Rule of Civil Procedure

1 23(b)(2) because Defendants have acted on grounds generally applicable to the whole
2 class by subjecting the entire class to its policies, practices, actions, and omissions that
3 form the basis of this complaint. All policies are required to be monitored by a central
4 figure, Defendant ICE, and Defendant ICE is charged with promulgating,
5 disseminating, and enforcing its standard policies applicable to the class as a whole.
6 The injunctive and declaratory relief sought is appropriate and will apply to all
7 members of the class.

8 159. In the alternative, the class also qualifies for certification under Rules
9 23(b)(1)(A) and 23(b)(1)(B) of the Federal Rules of Civil Procedure.

10
11 **CLAIMS FOR RELIEF**

12 **FIRST CLAIM FOR RELIEF**
13 **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**
14 **(BY DETAINED NONCITIZENS)**

15 160. Plaintiffs repeat and incorporate by reference all allegations contained in
16 paragraphs 1 through 159 as though set forth fully herein.

17 161. The Immigration and Nationality Act guarantees noncitizens in removal
18 proceedings the right to counsel of their choosing at no expense to the government.
19 8 U.S.C. § 1229a(b)(4)(A); 8 U.S.C. § 1362; *Biwot v. Gonzales*, 403 F.3d 1094, 1098
(9th Cir. 2005).

20 162. The Immigration and Nationality Act also provides that detained
21 noncitizens shall have a reasonable opportunity to present evidence on their own
22 behalf. 8 U.S.C. § 1229a(b)(4)(B).

23 163. Defendants' conduct has violated and continues to violate detained
24 noncitizens' statutory right to counsel by preventing detained noncitizens from
25 finding, retaining, and communicating effectively with legal representatives.

26 164. Defendants' conduct also violates detained noncitizens' statutory right to
27 present evidence by preventing unrepresented detained noncitizens from collecting
28 evidence and communicating with potential witnesses, and experts, as is necessary for

1 detained noncitizens to meaningfully prepare and present their legal cases.

2 165. Individual Plaintiffs and detained noncitizens of the proposed class have
3 suffered and will suffer injury as a proximate result of Defendants' violation of their
4 statutory rights under 8 U.S.C. § 1229a(b)(4)(A), 8 U.S.C. § 1229a(b)(4)(B), and
5 8 U.S.C. § 1362.

6 **SECOND CLAIM FOR RELIEF**
7 **Violation of the Due Process Clause**
8 **of the Fifth Amendment of the United States Constitution**
9 **(by Detained Noncitizens)**

10 166. Plaintiffs repeat and incorporate by reference all allegations contained in
11 paragraphs 1 through 165 as though set forth fully herein.

12 167. The Due Process Clause of the Fifth Amendment guarantees detained
13 noncitizens the right to a full and fair hearing in their removal cases. *See, e.g.,*
14 *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

15 168. The Due Process Clause of the Fifth Amendment also guarantees
16 detained noncitizens the right to be represented by counsel of their choice at no
17 expense to the government. *Baltazar-Alcazar v. I.N.S.*, 386 F.3d 940, 944 (9th Cir.
18 2004); *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004); *Orantes-*
19 *Hernandez v. Thornburgh*, 919 F.2d 549, 554, 565 (9th Cir. 1990). This due process
20 right includes the right to effective assistance of counsel. *See Ahmed v. Mukasey*, 548
21 F.3d 768, 771 (9th Cir. 2008); *Ray v. Gonzales*, 439 F.3d 582, 587 (9th Cir. 2006)
22 (“this Circuit has long recognized that an alien’s due process right to obtain counsel in
23 immigration matters also includes a right to *competent representation* from a retained
24 attorney.”); *see also Ardestani v. INS*, 502 U.S. 129, 138 (1991) (“We are mindful that
25 the complexity of immigration procedures, and the enormity of the interests at stake,
26 make legal representation in deportation proceedings especially important.”).

27 169. Defendants' conduct has violated and continues to violate detained
28 noncitizens' Fifth Amendment rights by preventing detained noncitizens from finding,
retaining, and communicating effectively with counsel.

1 170. Defendants' conduct also violates detained noncitizens' Fifth
2 Amendment rights by preventing unrepresented detained noncitizens from collecting
3 evidence and communicating with potential witnesses and experts, as is necessary for
4 unrepresented detained noncitizens to meaningfully prepare and present their legal
5 cases.

6 171. Individual Plaintiffs and detained noncitizens of the proposed class have
7 suffered and will suffer injury as a proximate result of Defendants' violation of their
8 right to a full and fair hearing, their right to be represented by counsel of their choice
9 at no expense to the government, and their right to competent counsel under the Due
10 Process Clause of the Fifth Amendment.

11 **THIRD CLAIM FOR RELIEF**
12 **Violation of the Due Process Clause of the**
13 **Fifth Amendment of the United States Constitution**
14 **(by Detained Noncitizens)**

15 172. Plaintiffs repeat and incorporate by reference all allegations contained in
16 paragraphs 1 through 171 as though set forth fully herein.

17 173. Defendants' restrictions on telephone access, legal visits, and legal mail
18 at Adelanto, Theo Lacy, and Musick are punitive in violation of the Due Process
19 Clause.

20 174. Defendants' telephone, legal visit, and legal mail restrictions: (1) impose
21 conditions identical to, similar to, or more restrictive than those in which pre-trial
22 detainees and individuals convicted of criminal offenses within the same or
23 comparable facilities are held; (2) are not reasonably related to legitimate government
24 objectives and/or are excessive in relation to those objectives; and (3) are employed to
25 achieve objectives that could be accomplished in alternative and less harsh methods.

26 175. Individual Plaintiffs and detained noncitizens of the proposed class have
27 suffered and will suffer injury as a proximate result of Defendants' violation of their
28 right to be free from unlawful punishment under the Due Process Clause of the Fifth
Amendment.

1 791 F.2d 744, 747 (9th Cir. 1986) (“Courts have recognized detainees’ and prisoners’
2 first amendment right to telephone access.”)

3 183. The First Amendment further protects the right to hire and consult with
4 an attorney. *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (2005), *as*
5 *amended on denial of reh’g* (9th Cir. July 21, 2005). The state may not unreasonably
6 restrict this right. *Id.*

7 184. By depriving detained noncitizens of the means of communicating with
8 the outside world and of hiring and consulting with attorneys, Defendants have
9 violated and continue to violate detained noncitizens’ rights under the First
10 Amendment.

11 185. Prisoners and detainees also have a First Amendment right, grounded in
12 the free speech clause, to receive sealed legal mail without government interference.
13 *Hayes v. Idaho Corr. Ctr.*, 849 F.3d 1204, 1208 (9th Cir. 2017). This protection
14 includes the right to “send and receive” mail, *Witherow v. Paff*, 52 F.3d 264, 265 (9th
15 Cir. 1995), and the right to have legal mail inspected and opened in the detainee’s
16 presence, *Hayes*, 849 F.3d at 1208. By depriving detained noncitizens from receiving
17 sealed legal mail without government interference, Defendant OCSD has violated and
18 continues to violate detained noncitizens’ First Amendment right to freedom of
19 speech.

20 186. The First Amendment also guarantees detained noncitizens the right to
21 petition the government for redress of grievances, including the right to file other civil
22 actions in court and the right to petition a federal agency for immigration benefits that,
23 if granted, would result in termination of their removal proceedings. *Silva v. Di*
24 *Vittorio*, 658 F.3d 1090, 1101–02 (9th Cir. 2011), *overruled on other grounds by*
25 *Richey v. Dahne*, 807 F.3d 1202, 1209 n.6 (9th Cir. 2015). Defendants have violated
26 detained noncitizens’ rights by denying and severely restricting the telephone access
27 and legal visits necessary to seek legal representation and obtain documents and
28 evidence in support of their civil rights complaints, petitions for habeas corpus, and/or

1 applications for immigration benefits.

2 187. Individual Plaintiffs and detained noncitizens of the proposed class have
3 suffered and will suffer injury as a proximate result of Defendants' violation of their
4 rights under the First Amendment.

5 **SIXTH CLAIM FOR RELIEF**
6 **Violation of the Administrative Procedure Act**
7 **(All Plaintiffs against Defendant ICE)**

8 188. Plaintiffs repeat and incorporate by reference all allegations contained in
9 paragraphs 1 through 187 as though set forth fully herein.

10 189. The ICE Performance-Based National Detention Standards ("PBNDS")
11 governing immigration detainees provide specific protections related to telephone
12 access, legal visits, and legal mail. *See* 2011 PBNDS 5.1, 5.6, 5.7,
13 <https://www.ice.gov/detention-standards/2011>; 2008 Operations Manual ICE
14 Performance-Based National Detention Standards Part 5 §§ 26, 31, & 32,
15 <https://www.ice.gov/detention-standards/2008>.

16 190. An agency's unexplained failure to follow its own rules constitutes
17 "arbitrary" and "capricious" conduct in violation of the Administrative Procedures
18 Act, 5 U.S.C.
19 § 706(2)(A); *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *FCC*
20 *v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

21 191. In addition, Defendant ICE is failing to act "in accordance with law," and
22 therefore violating the Administrative Procedures Act, 5 U.S.C. § 706(2)(A), by
23 failing to comply with the attorney access requirements of the Immigration and
24 Nationality Act, 8 U.S.C.
25 § 1229a(b)(4), and 8 U.S.C. § 1362, and First and Fifth Amendments to the United
26 States Constitution.

27 192. Individual Plaintiffs, Attorney Plaintiffs, detained noncitizens of the
28 proposed class have suffered and will suffer injury as a proximate result of
Defendants' violation of the Administrative Procedures Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully ask this Court to take jurisdiction over this actual controversy and:

A. Certify the Civil Detainee Class as proposed above, appoint the Individual Plaintiffs to serve as representatives of the Class, and appoint undersigned counsel to represent the Class;

B. Declare that the actions and practices of Defendants as described above constitute violations of federal regulatory, statutory, and constitutional law;

C. Enjoin Defendants, their subordinates, agents, employees, and all others acting in concert with them from subjecting Plaintiffs to the unlawful acts and omissions described herein, and issue an injunction sufficient to remedy the violations of the Individual Plaintiffs' and the proposed class' rights, including ordering Defendants to undertake the following:

1. provide detained noncitizens the ability to make private, unmonitored, unrecorded legal telephone calls, without being overheard by other immigration detainees or facility staff;
2. provide sufficient space and staffing for timely, confidential, and contact legal visits;
3. afford detained noncitizens sufficient time to complete legal calls, and establish a process by which detained noncitizens can make legal calls outside of free time;
4. implement an adequate process by which attorneys can reliably send messages to and schedule legal calls and visits with detained noncitizens;
5. provide reasonable accommodations for detained noncitizens who are indigent and cannot afford to make legal calls, including international calls;
6. ensure that telephone service providers are able to connect to all countries;
7. provide a cost-effective and functional process for detained noncitizens and attorneys to access remote interpretation services for legal telephone calls and attorney visits; and
8. refrain from opening legal mail outside of the presence of detained noncitizens.

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- D. Grant Plaintiffs reasonable attorney’s fees and costs;
- E. Grant such other relief that the Court deems just and appropriate.

DATED: December 14, 2018 Respectfully submitted,

IMMIGRANTS’ RIGHTS CLINIC
Mills Legal Clinic at Stanford Law School

By: /s/ Jennifer Stark
Jennifer Stark