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March 1, 2021

Secretary Alejandro Mayorkas

U.S. Department of Homeland Security

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

Acting Director Tae D. Johnson

U.S. Immigration and Customs Enforcement

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

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

Dear Secretary Mayorkas and Acting Director Johnson:

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

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

Legal calls in detention must be free of cost

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

Legal calls must be unmonitored and confidential

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

ICE must facilitate phone access, including by scheduling legal calls

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

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

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

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

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

These challenges have been the subject of ongoing litigation

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

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

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

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

Sincerely,

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

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