

Congress of the United States
Washington, DC 20515

November 3, 2022

The Honorable Alejandro Mayorkas
Secretary of Homeland Security
U.S. Department of Homeland Security
3801 Nebraska Ave. NW
Washington, DC 20016

Mr. Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement
500 12th St., SW
Washington, DC 20536

Dear Secretary Mayorkas and Acting Director Johnson:

We write to express deep concern over Immigration and Customs Enforcement's (ICE) failure to ensure that immigrants can access their legal representation in detention.¹ Although immigrants do not currently have a right to government-appointed counsel, all immigrants who are detained in Immigration and Customs Enforcement (ICE) custody have a constitutional right to due process, including the ability to access legal representation.²

Recent reports, however, have detailed ICE's systematic failure to ensure that people in ICE detention have the ability to find and communicate with attorneys, directly refuting ICE's reporting to Congress on access to counsel issues in FY 21.³ These reports describe how ICE detention facilities nationwide have impeded even the most basic modes of access to counsel, including telephone calls, video-teleconferencing (VTC), legal mail, and in-person legal visits.

As advocates have reported nationwide, detained immigrants are significantly restricted from making free, confidential, and private phone calls to counsel. Instead, phone calls are often cost-prohibitive, and telephones for detained people are almost always located in public areas, and are often in disrepair. At least 58 ICE detention facilities do not allow attorneys to schedule phone calls with detained clients in advance, raising even greater challenges to access interpretation or mental health evaluators.⁴ ICE's Virtual Attorney Visitation (VAV) program, which provides VTC legal calls, is active in less than 10 percent of facilities nationwide, and even where it is in place, suffers from significant restrictions on usage.⁵ Attorneys nationwide report delays in legal mail at detention facilities, hampering their ability to timely meet court deadlines, particularly because most detention facilities lack ways to exchange documents by email or fax.⁶ ICE has

¹ Syracuse University, Transitional Records Access Clearinghouse (TRAC) Immigration, State and County Details on Deportation Proceedings in Immigration Court (through February 2022), <https://trac.syr.edu/phptools/immigration/nta/>.

² *Reno v. Flores*, 507 U.S. 292, 306 (1993) (recognizing due process rights of immigrant detainees); see also 8 U.S.C. § 1362

³ ACLU, *No Fighting Chance: ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers* (2022), <https://www.aclu.org/report/no-fighting-chance-ices-denial-access-counsel-us-immigration-detention-centers> [hereinafter *No Fighting Chance*]. See also Memorandum from National Immigrant Justice Center, American Immigration Council, ACLU of Southern California, and SPLC, to House and Senate Appropriations Subcommittees, *Concerns Re: Veracity of ICE's February "Access to Due Process" Report* (Mar. 22, 2022), <https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2022-03/NGO-Rebuttal-to-ICE-Legal-Access-Report-March-22-2022.pdf>; Coalition Letter to Hon. Alejandro Mayorkas, Oct. 29, 2021, <https://www.aclu.org/letter/coalition-letter-dhs-and-ice-access-counsel-immigration-detention>.

⁴ *No Fighting Chance*, at 7.

⁵ NIJC, et al., *Concerns Re: Veracity of ICE's February "Access to Due Process" Report*, at 11.

⁶ *No Fighting Chance*, at 8.

also undermined attorney-client access by failing to provide confidential, private meeting rooms at detention centers, by providing too few visitation rooms, prohibiting the use of laptops, cell phones, and printers in legal visits, and by enacting unreasonable and arbitrary restrictions on attorney visits, including time, date, and attire restrictions.⁷

The ability to contact counsel is even more critical considering the lack of language access in ICE detention. Noncitizens with limited English proficiency (LEP) make up the vast majority of people in removal proceedings and detention.⁸ Pursuant to Executive Order 13166 and various agency Language Access Plans, DHS and ICE must provide adequate language assistance for LEP noncitizens to meaningfully participate in federally conducted activities like the removal process and immigration detention. Yet, as reflected in Office of Civil Rights and Civil Liberties (CRCL) reports, there are consistent and serious language access issues in detention, including the failure to provide interpreters or language lines for LEP noncitizens during intake screenings, orientation, medical exams, and in the law library.⁹ This includes at Torrance County Detention Facility, the site of the most recent tragic death in ICE detention, where advocates describe Haitian Creole and Wolof speakers being required to sign documents they do not understand or being unable to speak to medical providers due to language barriers.¹⁰ ICE's failure to provide meaningful language access therefore exacerbates the structural issues that detained immigrants face in communicating with others and exercising their legal rights.

ICE has failed as an agency to exercise even the most basic oversight or data collection regarding immigrants' access to counsel in detention. ICE's most recent report to Congress, *Access to Due Process*, itself admitted that "ICE ERO does not track the number of legal visits that were denied or not facilitated and/or the number of facilities that do not meet ICE standards for attorney/client communications."¹¹

In light of these concerns, we urge you to consider the following recommendations:

1. Ensure all ICE detention facilities provide free, private, confidential, and unmonitored legal phone calls without limits on duration to detained immigrants to contact and communicate with counsel and that there are no limits on the ability to have interpreters on the line during those attorney calls. ICE should also ensure all ICE detention facilities

⁷ *Id.* at 22-27.

⁸ Less than 10 percent of people whose proceedings were initiated in 2022 and are detained proceed in English. TRAC Immigration, New Deportation Proceedings Filed in Immigration Court (last visited Sept. 29, 2022), <https://trac.syr.edu/phptools/immigration/ntanew/> (select "2022" under "Fiscal Year NTA Dated," select "Detained" under "Custody" and "English" under "Language").

⁹ *See, e.g.*, U.S. Dept. of Homeland Sec., Office for Civil Rights and Civil Liberties, Corrections Expert's Report on Adelanto Correctional Facility, at 7, 13 (Nov. 16, 2017), [shorturl.at/dyARY](https://www.dhs.gov/sites/default/files/publications/171116mainreport.pdf); U.S. Dept. of Homeland Sec., Office for Civil Rights and Civil Liberties, Retention Memo to ICE-Henderson Detention Facility, at 2-3 (March 15, 2022), [shorturl.at/bdiqz](https://www.dhs.gov/sites/default/files/publications/220315hendersonmemo.pdf); U.S. Dept. of Homeland Sec., Office for Civil Rights and Civil Liberties, Retention Memo to ICE-Plymouth Facility, at 2, 4 (March 15, 2022), [shorturl.at/ckPU4](https://www.dhs.gov/sites/default/files/publications/220315plymouthmemo.pdf); U.S. Dept. of Homeland Sec., Office for Civil Rights and Civil Liberties, Recommendation Memo to ICE-Cibola County Correctional Center, at 3 (Mar. 5, 2020), [shorturl.at/loqRZ](https://www.dhs.gov/sites/default/files/publications/200305cibolamemo.pdf).

¹⁰ Letter to CRCL, OIG, EOIR and OIDO, at 3 (Nov. 23, 2021), [shorturl.at/bhmpt](https://www.dhs.gov/sites/default/files/publications/211123letter.pdf); U.S. Dept. of Homeland Sec., Office for Civil Rights and Civil Liberties, Retention Memo to ICE-Torrance Detention Facility, at 3 (May 25, 2022), [shorturl.at/blqr5](https://www.dhs.gov/sites/default/files/publications/220525torrancememo.pdf).

¹¹ DHS, ICE, *Access to Due Process: Fiscal Year 2021 Report to Congress*, Feb. 14, 2022, 2, <https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2022-03/ICE-Access-to-Due-Process.pdf>.

enable attorneys to schedule free, private, confidential legal telephone calls and video-teleconferencing calls with detained immigrants in advance.

2. Ensure all ICE detention facilities provide a mechanism for detained immigrants to exchange legal documents electronically in a timely, confidential, and free manner with counsel, including by email and fax.
3. Ensure all ICE detention facilities provide adequate spaces for private, confidential, in-person legal visits, without unreasonable and arbitrary restriction and delay, and that attorneys and staff may bring in laptops, printers, and cell phones to visits.
4. Ensure information regarding attorney communication is clear, up-to-date, and publicly available to attorneys and detained immigrants alike.
5. Ensure ICE exercises adequate oversight and collects meaningful data on immigrants' access to counsel in detention.
6. Ensure all ICE detention facilities provide timely and free interpretation and translation services for detained immigrants with limited English proficiency in accessing detention services and programs.

Thank you for your consideration and cooperation on this matter.

Sincerely,



Raúl M. Grijalva
Member of Congress



James P. McGovern
Member of Congress



Rashida Tlaib
Member of Congress



Sheila Jackson Lee
Member of Congress



Ann Kirkpatrick
Member of Congress



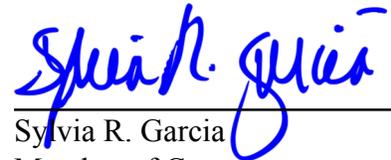
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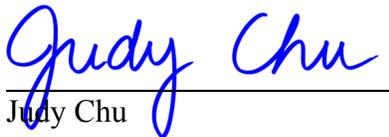
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