

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN POVERTY LAW CENTER,

*Plaintiff,*

v.

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## **I. Introduction**

The COVID-19 pandemic has changed nearly every aspect of life in the United States, and that includes forcing unprecedented changes on the legal system. Instead of meeting in person, attorneys now consult with clients over the phone or via video-conference ( VTC ). Deposition and trial testimony are taken by VTC, and judges conduct trials in courtrooms empty except for the judge and a video monitor. These actions preserve access to courts and counsel as COVID-19 has made it too dangerous for client consultations, attorney meetings, and judicial proceedings to occur in person.

refused to make accommodations to ensure safe, constitutionally sufficient, and reliable access to counsel during this pandemic.

seeks a temporary restraining order requiring Defendants to remove barriers that unreasonably limit access to counsel during the COVID-19 pandemic at four detention facilities.

Defendants, the Department of Homeland Security ( DHS ), Immigrations and Customs Enforcements ( ICE ), and various DHS and ICE officials, are responsible for the approximately 30,000 immigrants detained in the United States on any given day, including those served by

Southeast Immigrant Freedom Initiative ( SIFI ) at four detention facilities in the rural Southeastern United States.<sup>1</sup> SPLC initiated this litigation over two years ago to challenge the

immigrants. SPLC alleged that Defendants failed to ensure constitutionally sufficient access to confidential legal access to

COVID-19 has foreseeably exacerbated these failures even as to consult with counsel via telephone or VTC has exponentially increased. While non-detained immigration courts have halted proceedings, detained courts have not, and the current continued removal proceedings and the terror of being trapped in prisons as COVID

SPLC seeks narrow relief. It does *not* seek any modifications to the public health measures at the facilities related to COVID-19, the release of any detained person, or the reinstatement of unprotected in-person visitation at the facility. Rather, SPLC requests common-sense accommodations to ensure constitutionally sufficient access to counsel, including increasing the number of VTC consoles, facilitating the scheduling of VTC calls, enjoining limitations on the number and duration of VTC calls, requiring Defendants to make all legal telephone calls from detained persons free of charge, ensuring that detained immigrants can exchange confidential documents with counsel electronically, and mandating that Defendants disinfect the shared telephone and VTC rooms and provide detained persons with personal protective equipment to ensure that they can communicate with counsel without risking exposure to the virus.

As detailed below, SPLC is likely to succeed on the merits of its claims that Defendants are violating Fifth Amendment rights to access counsel and to substantive due process. These constitutional violations constitute irreparable harm never more so than now in the face of COVID-19, as clients without access to counsel can neither adequately fight their removal cases from detention nor seek release from detention to avoid COVID-19 infection. The of COVID

**II.**

the failure to provide a method to facilitate remote confidential document exchange (e.g., via e-communications are properly disinfected.<sup>2</sup> These issues are described in greater detail below.

SPLC now seeks emergency relief because, although the circumstances for individuals detained at the Facilities and their attorneys have deteriorated significantly in light of the COVID-19 pandemic, Defendants continue to refuse to remediate barriers to legal communications during the pandemic. As of the date of filing, 3.5 million individuals have been infected worldwide, including 1.15 million people in the United States, of whom 61,000 have died. World Health Org., *Situation Report 106* (May 5, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200505covid-19-sitrep-106.pdf?sfvrsn=47090f63\\_2](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200505covid-19-sitrep-106.pdf?sfvrsn=47090f63_2).

There are significant outbreaks in Louisiana and Georgia (the states where the Facilities are located) and within detention centers themselves. Ctrs. for Disease Control & Prevention, *Cases in the U.S.*, <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html> (last visited May 6, 2020); Rivera Decl. ¶ 14. The Centers for Disease Control published an Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and



pandemic and is now even worse. As Dora Schriro, a national expert on detention management and the founding d explains, at a time when detained immigrants need their lawyers most, that the individuals in its custody have crucially needed access to lawyers during the COVID-19

Schriro Decl. ¶ 17. SIFI has brought these failures to the attention of Defendants, most recently with a letter

with detained clients



any remedy. To the contrary, Defendants have imposed additional restrictions on remote legal visitation access to crucially needed legal counsel.

**C. ICE has imposed additional restrictions on remote legal visitation.**

-in-place orders across the states, and the recorded COVID-19 outbreaks at the Facilities has effectively conduct in-person legal visitation. Rivera Decl. ¶ 20; Williams Decl. ¶ 10. As the number of assistance inside of these Facilities has become even more urgent, SPLC has been forced to rely on Defendants increasingly restrictive, inconsistent, and unreliable policies for video- also had to rely on communicating through non-confidential, collect calls with clients at these Facilities.

**1. Video-conference access restrictions.**

-existing barriers to VTC access the more effective means of attorney-client communication compared to telephones have worsened



minutes, and are sometimes even shorter than that due to the time it takes to move quarantined and non-quarantined individuals separately. Rivera Decl. ¶ 8.; López Decl. ¶ 8. At Stewart and





SIFI -not-monitor list, but Defendants have refused to provide written confirmation and verbally confirmed that they were able to do this at only three of the facilities: Stewart, LaSalle, and Pine Prairie. Rivera Decl. ¶ 44-45; Williams Decl. ¶¶ 13-14. At Irwin, Defendants told SIFI that they cannot place them on a do-not-monitor list. Rather, SIFI would have to reach out to each vendor. SIFI made this request via email but, as of May 5th, still have not received a response. Rivera Decl. ¶ 45.

Although SIFI staff should be placed on the do-not-monitor list, it is important to note that these collect calls do not guarantee confidential attorney-client communications. Clients at the Facilities make these calls from the same telephones that they use to call the SIFI hotline as well as their loved ones. They are made in the open space, in close proximity to the individuals from their unit and are shared by many other individuals. Williams Decl. ¶ 13; Rivera Decl. ¶ 46.

Furthermore, calls made from these shared telephones raise similar safety concerns to calls made from the VTC rooms. Individuals are already unable to socially distance in their units, and using the shared phones puts them at a higher risk for contracting the virus. Venters Decl. ¶¶ 11, 36. When detained clients are waiting in line to use the shared telephones, they are often extremely close to one another and, because they also lack protective equipment, they are exposing themselves to the virus. Venters Decl. ¶ 36. Additionally, clients indicate that the facilities still fail to provide them with adequate hygienic products. They have not seen anyone wipe down the telephones - neither detained individuals who clean the units, nor the detention staff. Sanchez-Martinez Decl. ¶¶ 7, 12. At Stewart, a SIFI client is in a unit with ninety-two people in total with only seven working telephones. At Irwin, another SIFI client has been in a



Rivera Decl. ¶ 12. Allowing attorneys to use the fax machines to transmit documents to clients for their signature would greatly improve access, especially with the restrictions on in-person visitation and delays in mail. For example, in trying to obtain a LaSalle, a SIFI attorney was told by the deportation officer that the over the phone





*Martinez*, 416 U.S. 396, 419 (1974), *overruled on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989). Accordingly, when Defendants impose unreasonable restrictions or conditions on legal communication

Amendment. *See, e.g., Innovation Law Lab v. Nielsen*, 310 F. Supp. 3d 1150, 1162 (D. Or. 2018)

ens far

from where potential or existing counsel was located, limited attorney visitation hours, and the

*Arroyo v. U.S.*

*Frøgh v. J. qo grpf "UgeQ* No. 8:19-CV-815, 2019 WL 2912848, \*17 18 (C.D. Cal. June 20, 2019) (granting preliminary injunctive relief because



*See* CDC Interim Guidance at 13 14 (detailing the need to expand virtual communications and clean electronic surfaces regularly). And even where VTC and phone use is successful,

o their attorneys and risking infection with COVID-19 *or* foregoing a legal call (and any hope of release) to avoid transmission. Rivera Decl. ¶¶ 36, 47; Venters Decl. ¶¶ 14, 32 36.

Numerous courts have held that similar combinations of access barriers as those described herein deny timely and confidential remote legal communications

Most recently, a federal district court entered a temporary restraining order requiring Defendants to expand remote legal communications during the COVID-19 pandemic, holding remote legal communications at a detention facility in California during the pandemic most likely violated the Fifth Amendment. *See* Min. Order, *Torres*, No. 5:18-CV-2604 (ECF No. 144). In *Torres*, the court found that pre-existing access barriers almost identical to those complained of in this case lack of confidential phone calls,



relative to any justification that Defendants could conceivably proffer. As detention expert Dora Schriro explains, Defendants have failed to ensure that policies and practices concerning legal communications at the Facilities For  
example, ICE is failing to ensure that the Facilities comply with its own standards on confidential legal communications. Schriro Decl. ¶¶ 92-100. Likewise, ICE has failed to ensure that the Facilities provide expedient and reliable access to legal calls and video-conferencing services





**C.**

conducting legal calls without privacy in the communal day room to more timely consult with their attorneys. Rivera Decl. ¶¶ 36, 46-47; Williams Decl. ¶ 13. And in some cases, this has detention. Williams Decl. ¶ 19.

*Fed. Defs of New York, Inc. v. Fed. Bureau of Prisons*, 416 F. Supp. 3d 249, 251 (E.D.N.Y. 2019) (prison banned legal visitation outright). Denial of access to counsel and the courts that creates a risk of missed filing deadlines, ineffective relief applications or other motions, and hastily prepared oral presentations at hearings, also creates the threat of irreparable harm warranting emergency relief. Compounding this harm is the risk of contracting COVID-19 and sustaining severe illness, organ failure and even death. This risk increases with the duration of their detention, notwithstanding viable claims for release that they cannot file because of access, and this injury is irreparable. The stakes of immigration proceedings are simply too high to deny a respondent access to counsel.

*See Innovation Law Lab*

access to legal representation in the context of asylum applications are particularly concrete and

*Valentine v. Beyer*

than the inability to meet filing deadlines, potentially precluding litigation forever, is possible when the question of access to the courts is at issue. *Doe v. McAleenan*, 415 F. Supp. 3d 971,

harm of a non-reviewable erroneous decision that forces them to return to Mexico to face persecution. Petitioners emphasize the complexity of non-refoulement interviews that they as unsophisticated migrants in stressv-3(ti)4D0.r.024129(for)6(e)iing case





*id.* (V)(F)(1) (2). Defendants have the ultimate and non-delegable constitutional obligation to ensure that conditions in the facilities comply with constitutional, statutory, and regulatory mandates. Defendants also have the contractual authority to require this from their operators, and an extensive monitoring and compliance bureaucracy to ensure that it happens.<sup>4</sup> All this motion asks is that they finally, and immediately, fulfill those obligations and use their authority, which they have historically refused to do. Schriro Decl. ¶¶ 17-24.

**E. The Court should waive a security bond for this application.**

SPLC also requests that the Court exercise its broad discretion to waive any security bond issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damages sustained by any party amount of security required is a matter for the discretion of the trial court; it may elect to require

*Eckel v. TGI Franchising, Inc.*, No. 95-CV-1702, 1995 WL 748246, at \*12 n.10 (D.D.C. Dec. 8, 1995) (citation omitted).

requirement is particularly appropriate where a plaintiff alleges the infringement of a

*Complete Angler, LLC v. City of Clearwater, Fla.*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009). To impose a financial condition on the vindication of a

*Smith v. Bd. of Election Comm'rs for City of Chicago*, 591 F. Supp. 70, 72 (N.D. Ill. 1984).

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<sup>4</sup> See





**V. Conclusion**

For the reasons set forth above, SPLC respectfully requests this Court enter a Temporary Restraining Order requiring Defendants to immediately implement the requested remedies.

Dated: May 7, 2020

Respectfully submitted,

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