



ACLU RESEARCH REPORT

No Fighting Chance

ICE's Denial of Access to Counsel in U.S. Immigration Detention Centers

ACLU

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Acknowledgements

This report is dedicated to the tens of thousands of people who are held in U.S. immigration detention centers each day.

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Executive Summary

Each day, U.S. Immigration and Customs Enforcement (ICE) locks up tens of thousands of people in approximately 185 detention facilities nationwide.¹ The immigration detention system is fundamentally flawed, causes needless suffering, and is marked by widespread abuse. Separated from their families and the outside world, detained immigrants often face insurmountable barriers to successfully challenging their detention and deportation, and to bringing to light and holding ICE and its private contractors accountable for abuse.

Immigrants have a constitutional right to due process and the right to counsel in immigration court, although courts have not yet recognized a right to government-appointed counsel as there is in the criminal legal system.² Detained immigrants, however, face monumental barriers in finding and communicating with attorneys. These barriers have rendered detained immigrants' right to counsel essentially meaningless.

This report provides the first comprehensive study of the denial of access to counsel in U.S. immigration detention centers nationwide.³ This report attempts to address a glaring lack of information about access to counsel in immigration detention in light of ICE's failure to conduct even the most basic data collection or oversight on the issue. As ICE has admitted to Congress, the agency "does not track . . . the number of facilities that do not meet ICE standards for attorney/ client communications."⁴ Unfortunately, this is no surprise, as facility inspection reports for ICE detention facilities reveal that this is not a routine area of inquiry for agency officials.⁵ As our research shows, ICE has failed to make publicly available basic and accurate information describing how an attorney can reach a detained client, further raising barriers to representation.



Caroline Detention Facility, Bowling Green, Virginia

Lack of access to counsel can have devastating effects on detained immigrants. As an earlier study found, detained immigrants who are represented by counsel are over *10 times* more likely to win their immigration

cases than those without an attorney.⁶ Detained people without counsel are also more likely to be held in detention for longer periods. For example, many detained immigrants may request a custody hearing to request release from an immigration judge. According to the earlier study, detained immigrants with representation are almost *seven times as likely to be released from custody* than those without counsel.⁷

Despite the importance of legal representation, to date, in Fiscal Year 2022, over three out of four (78.7 percent) detained people in deportation (“removal”) proceedings did not have counsel.⁸ Meanwhile, even for the limited numbers of immigrants able to secure attorneys, ICE actively impedes detained people from accessing the most basic modes of communication necessary for effective attorney-client communication. More often than not, detained immigrants are unable to make free, confidential outgoing phone calls to counsel. At many detention centers, attorneys cannot even schedule telephone calls with or leave messages for detained clients.

Detained immigrants also face significant challenges sending and receiving legal mail and lack access to email or electronic messaging to communicate with counsel and to timely sign essential court documents. In addition, many detention facilities lack confidential meeting spaces for in-person attorney-client visits, and detention facilities frequently deny or delay attorney visits for arbitrary reasons. Moreover, in the past five years, ICE has aggressively expanded immigration detention in geographically isolated areas, particularly in rural parts of Louisiana and Texas, making it even more difficult for detained people to secure counsel in the first place.⁹

Ultimately, barriers to access to counsel increase the likelihood of prolonged detention and deportation in violation of detained immigrants’ constitutional rights and heighten the risks that they will face serious, avoidable injuries or death while detained or after deportation.¹⁰

Detained immigrants who are represented by counsel are over 10 times more likely to win their immigration cases.

— Eagly & Shafer, 2015

Summary of Data and Methods

As of September 2021, during the start of our research collection, ICE publicly listed 199 detention facilities in the country.¹¹ Our data analysis began in January 2022, at which point we considered 192 of these facilities due to list duplication, facility closure, or because certain facilities did not appear on ICE’s January 6, 2022, list. Out of the remaining 192 facilities, this report examines conditions at 173 facilities.

Our research team made calls to each detention facility identified by ICE to inquire about attorney access.¹² We obtained information for 148 facilities through these calls. Unfortunately, at over 40 facilities (20 percent) called by our research team, we were unable to obtain information because no one answered the phone at the number made publicly available by ICE or the number on the facility’s website, even after two or more attempts during regular business hours, or because the facility staff were unable or unwilling to answer questions from our research team. Although ICE has touted its efforts to “provide additional information on its public website regarding legal access accommodations at facilities and information for legal representatives,”¹³ ICE’s failure to provide a working, responsive facility phone number at these detention facilities is a prime example of the many types of challenges that attorneys, and the general public, face when attempting to communicate with people in ICE custody.

This study is also based on survey responses submitted by 89 immigration attorneys and legal

representatives about their experiences representing clients at 58 detention centers nationwide.

Summary of Findings

Key findings from our study include:

- **Failure to Ensure Access to Legal Telephone Calls.** Our study found pervasive issues with access to legal telephone calls in ICE detention:

- At over 40, or 20 percent, of the detention facilities called by our researchers in our study, *no one ever picked up the phone or operators refused to answer basic questions about attorney access.* This took place even after multiple calls during regular business hours to the facility phone number made publicly available by ICE or the facility itself.
- At least 58 ICE detention facilities do not allow attorneys to schedule phone calls with a detained client at a certain date and time when the facility will make the detained client available for the call, preventing both routine and time-sensitive communications necessary to representation. Moreover, the ability to schedule an attorney-client call in detention does not guarantee that it will

take place: At ICE detention facilities where attorneys reported they can schedule calls with detained clients, survey respondents reported that scheduled calls were not consistently honored at almost half (approximately 46 percent) of the identified facilities.

- Legal calls are prohibitively expensive for detained immigrants. With only limited exceptions, detained immigrants must pay to make outgoing phone calls to counsel at the majority—approximately 85 percent—of the detention facilities for which we received responses. At some facilities, detained immigrants are charged \$0.21 per minute,¹⁴ and sometimes up to \$0.40 per minute.¹⁵ These rates are especially burdensome given that many detained immigrants are indigent and the only opportunity to earn money is the “Voluntary Work Program,” where detained people earn \$1 per day performing work to maintain the detention facility.¹⁶
- Attorney calls with detained clients are plagued by poor-quality audio. Attorney surveys for over half of the 58 facilities for which we received responses reported experiencing poor audio quality on legal calls with detained clients.

- **Failure to Provide Access to Legal Video-Teleconferencing.** It is unclear how many ICE detention facilities actually provide legal video-teleconferencing (such as by Zoom or Skype). Of the 68 detention facilities that reported availability of legal videoconferencing, only 12 of these facilities had information available on ICE’s website. Moreover, of those 68 facilities, we were unable to verify the existence of legal videoconferencing at 23 of those facilities, and ICE’s website had no information at all about 33 of those facilities. Notably, four of the 15 facilities that ICE has designated as having Virtual Attorney Visitation programs were unaware of the existence of the program upon inquiry by phone.¹⁷

Immigrants must pay to make outgoing phone calls to counsel at approximately 85 percent of surveyed detention facilities.

- **Unreasonable Barriers to Establishing Contact with Clients.** Approximately 68 percent (38 of 56) of the facilities for which we received a response for this question have required attorneys at some point to provide an alien number (A-Number) to communicate with detained immigrants, even though ICE’s detention standards clearly state that detention facilities may *not* require legal service providers to submit a detainee’s A-Number as a condition of visitation.¹⁸ This condition is problematic because attorneys who contact a client or potential client for the first time are not likely to know the individual’s A-Number.
- **Delays in Legal Mail.** Attorneys reported that at 11 facilities delayed deliveries of legal mail had caused them to continuously request extensions for deadlines from the court, to miss key filing deadlines, or that they had observed pro se detained immigrants missing deadlines because of difficulties with the mail system.
- **No Email or Electronic Messaging Available.** Very few ICE detention facilities provide any sort of electronic mail or messaging access to detained people. Of the 173 facilities for which we have information,¹⁹ fewer than one in four (24.3 percent) facilities provided some sort of electronic mail or messaging access to detained people. Where electronic mail or messaging is available, it is run by private prison corporations, may be prohibitively expensive, and is not confidential.
- **No In-Person Legal Visits.** Eleven ICE detention facilities reported that they do not allow any in-person legal visits at all, despite ICE’s claim that “in-person contact visits remain available at the request of the legal representative” in light of the COVID-19 pandemic.²⁰ Although nine facilities reported suspending in-person legal visits because of the pandemic, two did not and merely stated that in-person visits were not allowed or had been “suspended indefinitely.”²¹
- **Arbitrary Delays or Denials for In-Person Legal Visits.** Attorneys at nearly half (20 out of 42) of facilities for which we received attorney

survey responses on this question reported arbitrary delays or denial of access to their clients at the facility. In-person client visits were denied or delayed because of failures by facility employees to accurately keep track of detained clients, inadequate staffing, or arbitrary and shifting attorney dress codes. Moreover, at several facilities, pandemic-related quarantine procedures prevented attorneys from being able to visit their clients.²²

- **Lack of Contact Visits.** Over a third of facilities do not allow for “contact” visits or have any in-person visits between attorneys and detained clients. Contact visits are important to ensure clear communication, to support language interpretation, and are the preferred method of in-person legal visitation.
- **Lack of Confidential Settings for In-Person Legal Visits.** Attorney respondents at several facilities reported that in-person visits do not take place in confidential settings, impeding clients’ ability to share sensitive details important to their cases and destroying the attorney-client privilege.
- **Prohibitions on Computers and Phones for Legal Visits.** About half (56 percent) of ICE detention facilities for which we could gather information allow attorneys to bring laptops for legal visits; only 21 percent of ICE detention facilities for which we have information allow attorneys to bring cellphones into legal visits.

By documenting attorneys’ challenges communicating with their clients in ICE detention, this report highlights key barriers faced by detained immigrants in accessing counsel.

Summary of Recommendations

To the U.S. Department of Homeland Security:

- Phase out the immigration detention system. Invest in community-based social services as alternatives to detention, and avoid surveillance of immigrants as an alternative to detention.

- Ensure timely access to private, confidential, free legal phone calls of unlimited duration and adequate quality for immigrants in detention at all facilities, without needing to schedule in advance.
- Ensure that attorneys are able to schedule calls with detained immigrants in advance by making sure detained individuals are able to speak to their attorneys (and interpreters) at prearranged times at all facilities.
- Provide private, confidential, free video teleconferencing (VTC) for legal visits to all people in immigration detention.
- Provide timely, confidential, free access to legal paperwork at all facilities, including the ability to exchange documents electronically in a confidential manner.
- Ensure access to private, confidential in-person visitation with lawyers, paralegals, and interpreters at all facilities.
- Ensure that the processes for attorney access are clear, accurate, available to all detained people in a language they understand, and publicly posted, including near the telephones and VTC consoles at all facilities.
- Ensure proper oversight of access to counsel at all ICE detention facilities. Ensure that comprehensive facility inspections audit access to counsel and implement meaningful consequences for facilities that fail to provide access to counsel.
- Ensure accurate, comprehensive, and publicly accessible information regarding attorney communication with detained people on ICE and detention facility websites.
- and unmonitored phone calls to counsel; ensure that every detention facility allows legal representatives to schedule free, confidential, and unmonitored telephone and video teleconferencing calls with detained people; ensure prompt and confidential access and exchange of legal documents via fax and email; and ensure that all facilities permit attorneys to bring computers and cellphones to attorney-client meetings.
- Conduct robust oversight of ICE's failure to ensure access to counsel in ICE detention facilities.
- Request that the DHS Office of Inspector General (OIG) and Office for Civil Rights and Civil Liberties (CRCL) investigate and issue recommendations regarding the conditions documented in this report.
- Request that the office of the Citizenship and Immigration Services ombudsman quickly and effectively resolves access to counsel problems as they arise at all ICE detention facilities.
- Require that ICE collect and publicly report data regarding access to counsel, including availability of free, confidential phone lines, video teleconferencing, timely access to legal paperwork, and legal visitation.

To Congress:

- Dramatically reduce funding for immigration detention and enforcement.
- Pass legislation requiring the Department of Homeland Security (DHS) to ensure that detained people are provided free, confidential,

Findings

Although immigrants have the right to be represented by lawyers in immigration proceedings, they must pay for their own lawyers or find counsel willing to represent them pro bono. People in immigration detention are highly unlikely to have legal representation: At the time of this writing, over three out of four, or 79 percent, of detained people in removal proceedings did not have counsel this fiscal year.²³

Legal representation can make a clear difference in the outcome of a case: As one study reported, detained immigrants who are represented by counsel were *10 times* more likely to win relief.²⁴ Detained people with counsel are also more likely to be released from detention, and more quickly. For example, detained immigrants with representation are almost *seven times* as likely to be released from custody than those without counsel.²⁵

Effective attorney-client communication is essential to competent representation. Immigration law is a highly complex area of law: As one federal court observed, “with only a small degree of hyperbole, the immigration laws have been termed ‘second only to the Internal Revenue Code in complexity.’”²⁶ Attorneys must build a strong rapport with clients; discuss highly personal and often traumatic facts; draft lengthy declarations; explain complex legal strategies; gather evidence, often from international sources; and more. This work may be further complicated by the need for language interpretation, an inefficient and disorganized immigration court system, and extraordinarily tight timelines.

“It is incredibly difficult to gain clients’ trust and discuss their trauma and fears when guards are walking back and forth and looking in the windows.... It creates an atmosphere of hostility and fear.”

—Attorney with clients at Adelanto ICE Processing Center in California²⁷

ICE detention facilities nationwide, however, have systematically restricted the most basic modes of communication that detained people need to connect with their lawyers and the outside world. In many cases, detained immigrants cannot find counsel because ICE facilities make it so difficult to find and get in touch with attorneys in the first place.

Geographic Isolation Heightens Challenges to Finding Counsel and for Counsel to Provide Representation.

ICE has exacerbated the access-to-counsel crisis by placing immigration detention facilities in

geographically isolated locations. Each day, ICE locks up tens of thousands of people in a network of approximately 185 county jails, private prisons, and other carceral facilities, most often in geographically isolated locations far from metropolitan areas where most attorneys are located. For example, some detention facilities, particularly those located in Louisiana and other Southern states, have only one immigration attorney within a 100-mile radius for every 200 people detained at a facility.²⁸ When immigration attorneys and legal service providers need to travel for several hours to reach a detention facility, this raises costs and reduces their capacity to provide legal representation. As a paralegal with experience at Pine Prairie ICE Processing Center in Louisiana explained: “Our office is 3 hours from Pine Prairie, so we need to have alternate means of contacting clients besides visits. Thirty minutes per day [via video teleconferencing], only on weekdays and only until noon is not enough, since this is (especially during the pandemic) our primary means of interviewing and developing a person’s case.”²⁹

ICE’s Barriers Deter Attorneys from Providing Representation to Detained People. By design and neglect, ICE has created unreasonable barriers to effective legal representation of immigrants in detention. These barriers can render it impossible to provide effective counsel and can deter attorneys, including pro bono counsel, from taking on further representation. This is especially important because detained immigrants do not have a right to government-appointed counsel; if they cannot hire a lawyer or find one who will work pro bono, their only option is to tackle the complexities of their detention and immigration cases without legal representation.

As an attorney with clients at the Imperial Regional Detention Facility in California expressed, “I work for a non-profit organization where we handle a high volume of cases; of course inability to see my clients or contact my clients negatively impacts my representation; and I waste my attorney time to overcome all these obstacles and meet the court deadline.”³⁰ At the Tarrant County Detention Facility in New Mexico, an attorney explained that “the difficulties scheduling phone calls

seriously reduce our capacity to take cases on for rep[resentation].”³¹ An attorney who practices at Glades County Detention Center in Florida noted that “we would like to represent future clients detained at Glades, but would be unable to do so given communication difficulties.”³²

As a paralegal with experience at the Krome North Service Processing Center in Florida remarked, “it took weeks to get in touch with our potential client and at no point did we have a confidential conversation with the person.... We weren’t able to have a conversation about the case closure due to major issues with the phones and tablets. We had to send an explanation through a message on GettingOut [(a telephone communication app

“It took weeks to get in touch with our potential client and at no point did we have a confidential conversation with the person.”

— Paralegal with clients at the Krome North Service Processing Center, Florida

owned by GTL, a private prison telecommunications company)], which we have no way of knowing for sure that he received. It’s so horrible.”³³

Several attorneys described how limitations on access to counsel impede communication necessary to build their clients’ cases. An attorney at Folkston ICE Processing Center in Georgia explained, “the communication challenges slow down the ability to understand a client’s case.... Cases at Folkston take 2–3 times more time to work on because of this.”³⁴ At Yuba County Jail in California, an attorney remarked that “[these limitations] delay[] the case by impacting

ability to gather documentary evidence in a timely matter and adds to difficulty in establishing attorney/client relationship.”³⁵ According to an attorney at the Caroline Detention Facility in Virginia, “everything is just so slow. There are times we are right up against a filing deadline or an appeal deadline, and it is so hard to have an impromptu, meaningful conversation with our clients. We make do with what we have, but the logistics often make our job much harder.”³⁶

Access to Counsel Challenges Have Directly Contributed to Negative Outcomes in Immigration Cases.

Attorneys also described how ICE’s barriers to counsel directly contributed to negative outcomes in their clients’ cases. As an attorney who practices at Orange County Jail in New York commented, “the most frequent impact is not being able to review evidence with a client—whether it’s DHS’s evidence against them or whether it’s evidence in support of the application for relief.”³⁷ Another attorney at Orange County Jail noted that these limitations have “severely impacted our ability to understand client histories, prepare documents, timely prepare filings, and conduct all essential aspects of the case.”³⁸ At Farmville Detention Facility in Virginia, an attorney commented that “lack of private calls (in case involving threats by fellow detainees against client) prevented me from presenting the most accurate information to the court.”³⁹ An attorney at Bluebonnet Detention Center in Texas described, “I had to prepare a client detained in Bluebonnet for an IJ [(immigration judge)] review. We only ha[d] 30 minutes and met two times. He called me from [a] phone in [the] detention center. [The] IJ denied his case. Sustained the negative CFI [(credible fear interview)]. I think my client was nervous, and I did not have an opportunity to prepare him more.”⁴⁰ At Karnes County Residential Center in Texas, an attorney noted that “clients have been un-prepared for their CFI/RFI [(credible fear interview/reasonable fear interview)], and any subsequent review by an immigration judge. Clients with meritorious claims have been deported.”⁴¹

ICE Has Failed to Provide Accurate and Publicly Available Information About How to Contact Clients in Detention. Even before representing a client, the lack of accurate and transparent information about communicating with detained clients complicates attorneys’ ability to work with clients. As an attorney at Adelanto Detention Center in California noted, “The lack of transparency of policies is also an issue[] because it is time consuming to keep calling and waiting for someone to explain the policies and procedures. There is also no publication on updates on policies and different implementations of accessing clients.”⁴² Similarly, at Glades County Detention Center in Florida, an attorney commented that “it was hard figuring out how counsel could even get in touch because none of the information was readily available on their website. The information that they do have available is out of date.”⁴³

Inadequate Telephone Access

The remote nature of detention facilities and recent COVID-19 pandemic restrictions have increased the importance of telephone and video teleconferencing communication between attorneys and detained clients. Although ICE claims that it has enhanced detained people’s remote access to legal service providers,⁴⁴ our study identified systematic failures to ensure the basic arrangements needed to facilitate attorney-client communication over the telephone.

Our study found pervasive issues with legal telephone access in detention:

- At over 40, or 20 percent, of the detention facilities called by our researchers in our study, *no one ever picked up the phone or operators refused to answer basic questions about attorney access.* This took place even after multiple calls during regular business hours to the facility phone number made publicly available by ICE or the facility itself. Notably, ICE’s website for individual facilities often did not even include a direct phone number to the facility, but instead, a phone number for ICE’s local field office.



- Attorneys face significant hurdles in contacting detained clients over the phone. **At least 58 ICE detention facilities nationwide do not allow attorneys to schedule phone calls** with a detained client at a certain date and time when the facility will make the detained client available for the call, which is essential to any law practice.
- At ICE detention facilities where attorneys reported they can schedule legal calls with detained clients, survey respondents reported that scheduled calls were not honored or not

consistently honored at almost half (approximately 48.6 percent) of the facilities identified.

- Attorney calls with detained clients are plagued by poor-quality audio. **Survey respondents at over half of the 58 facilities for which we received attorney survey responses reported experiencing poor audio quality on legal calls with detained clients.**
- Legal calls are prohibitively expensive for detained immigrants. **Detained immigrants must pay to make outgoing phone calls to counsel at the majority—approximately 85 percent—of detention facilities** for which we received responses.

Inability to Schedule Phone Calls with Detained Clients

The ability to schedule phone calls with detained clients is essential to legal representation. Attorneys must be sure they are available and can be reached by their clients as they juggle court appearances and other meetings. Attorneys must be able to plan ahead to ensure that they can gather necessary information, review filings, and prepare for scheduled court hearings, all while balancing the needs of multiple clients. However, a shocking number of ICE detention facilities have no way for attorneys to schedule a time to talk on the phone with detained clients. Our

“There are also a limited number of phones that actually function... And when we could get on the phone and had a somewhat stable connection, the conversations are not fully confidential because the facility doesn’t provide private spaces for confidential, legal calls.”

— Paralegal at Krome North Service Processing Center, Florida

research indicates that at least 58 detention facilities do not allow attorneys to schedule confidential legal calls with clients.⁴⁵

At the detention facilities where attorneys cannot schedule phone calls with clients as defined above, we examined whether it is because: (a) the facility will only give a message to the client to call the attorney; (b) the facility will transfer an incoming attorney call to connect with the client over the phone; (c) there are no phone calls, but there are video calls with counsel; or (d) there is no system in place for phone (or video) calls at all.

As shown in Table 1, of the 58 facilities which do not permit attorneys to schedule phone calls with clients, 34 facilities had some type of message system by which attorneys could request that their detained clients call them, without any assurance that the call would take place; seven facilities allowed an attorney to connect with the client over the phone; eight facilities allowed no phone calls (but permitted some sort of video call); four facilities did not permit phone or video calls at all; and five facilities had an unclear response.

At facilities where scheduled phone calls are unavailable, attorneys with detained clients must hope that the client will call back at some point when the attorney is also available. This lack of predictability makes it virtually impossible to ensure

competent representation. As one attorney at El Paso ICE Processing Center in Texas reported, “sometimes staff members and volunteers receive the call at the time requested. Other times we receive the call minutes or even days later. When asked about the delay, the clients often tell us that they do not receive the message until days after we sent the request. The response we sometimes get from ICE re calls not happening is that it is up to [the] client to contact us and that they (ICE) cannot force the client to give us a call.”⁴⁶

Attorneys with detained clients described the challenges in communicating with clients without the ability to schedule calls, particularly at detention facilities that are geographically isolated. As an attorney with clients at Seneca County Jail in Ohio, where video calls and email are also not available, reported: “The jail is too far away to make frequent visits and [the facility] doesn’t have a process for calling clients.”⁴⁷ Another attorney with clients at the Robert A. Deyton Detention Facility in Georgia, where no calls can be scheduled, expressed that “the only way to communicate with clients is through in-person visits; [the] facility is located far away.”⁴⁸

Other facilities have created byzantine systems to schedule a phone call. At the Calhoun County Correctional Center in Michigan, a facility employee explained that “you can physically come to the facility to schedule a call, or the client can call the attorney, but the attorney cannot call the client.”⁴⁹ We learned from an employee at the Salt Lake County Metro Jail in Utah that the facility accepts “no incoming calls unless it’s 15 min[utes] prior to [the immigration court] hearing, then sometimes [the attorney] can call for video arraignments/hearing.”⁵⁰

Attorneys also reported lengthy lapses in the availability of scheduled calls. As one attorney with clients at the Farmville Detention Facility in Virginia reported, “from June 2020 until July 2021 it was not possible to schedule private phone calls. Now this has been restarted, but it meant that [we had] no private phone calls for a year.”⁵¹

TABLE 1
Options at Facilities That Do Not Permit Attorneys to Schedule Phone Calls with Clients

	Number of facilities	Percentage
Message system	34	58.6%
Transfer incoming attorney call	7	12.1%
Video, not phone, calls	8	13.8%
No phone or video calls	4	6.9%
Unclear	5	8.6%
Total	58	

Even When ICE Detention Facilities Schedule Legal Calls, They Are Not Honored

At ICE detention facilities where attorneys reported that they can schedule calls with detained clients, survey respondents reported that scheduled calls were not consistently honored at almost half the identified facilities (see Figure 1). In response to the

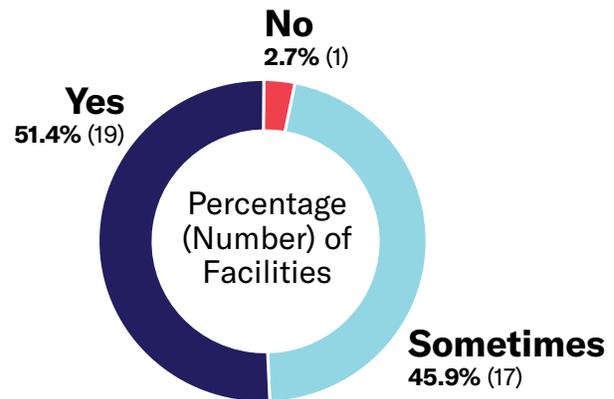
“You can physically come to the facility to schedule a call, or the client can call the attorney, but the attorney cannot call the client.”

— Facility employee at Calhoun County Correctional Center, Michigan

question of whether scheduled legal calls are honored, responses for 17 facilities noted that scheduled calls were only “sometimes” honored, and one noted that scheduled calls were “not honored.”

Attorneys commented on the frustration and serious disruption caused to effective representation as a result of detention facilities’ failure to honor scheduled calls. An attorney at the Montgomery Processing Center in Texas explained that “sometimes, calls come in several hours after they’re scheduled, or it gets to be the end of the day and the call hasn’t happened. Usually there is follow-up from the facility about this but sometimes the calls just get cancelled.”⁵² At another Texas facility, Port Isabel ICE Service Processing Center, an attorney noted that “I can’t count how many phone call[] request[s] I made that were never honored; maybe two times it worked, otherwise, I couldn’t reach my client and he didn’t always have money to call me.”⁵³

FIGURE 1
Are Scheduled Legal Calls Honored? (of the 37 Facilities That Allow Scheduled Calls)



At other facilities, attorneys described easily resolvable issues that have caused scheduled calls with their clients to be delayed or cancelled. For example, at Plymouth County Correctional Facility in Massachusetts, an attorney noted that “the Juris Link kiosk (a legal videoconferencing system owned by a private prison telecommunications company) is almost always down.”⁵⁴ At some facilities, whether scheduled calls would be honored depended on arbitrary and random factors such as the specific facility staff members responsible for facilitating the call on any given day. At Tarrant County Detention Facility in New Mexico, an attorney remarked that “it really just depends on what is going on and the scheduler’s mood and how many people are detained.”⁵⁵ At GEO–Aurora ICE Processing Center in Colorado, an attorney explained “it depends on if the officers are aware that the request was made and if the cell phone used for legal calls is charged.”⁵⁶ Similarly, at Orange County Jail in New York, an attorney noted that “Sometimes requests go unanswered. Whether a given video or telephonic call occurs depends on the technology working (which it frequently isn’t) or whether the client is produced (which they frequently aren’t).”⁵⁷

As one attorney with clients at Adelanto ICE Processing Center in California shared, inconsistencies in scheduled calls being honored can have devastating effects on their clients: “Sometimes the facility staff inform me that my client cannot

make the call for an unspecified reason. Sometimes they do not inform me that my client cannot make the call, and I find out when I call the main line to check what happened to my [appointment]. In one occasion, the staff would not confirm whether or not my client was still detained at their facility and could not tell me his whereabouts. A few days later I found out he was in the process of being removed. I had to call every number I knew in order to try to get an answer but everyone who I called refused to give me information or would not answer their phones. DOs [deportation officers] never answered their phones in my experience. I also was not allowed to have the DOs' email addresses."⁵⁸

Detained Immigrants Face High Costs to Call Counsel

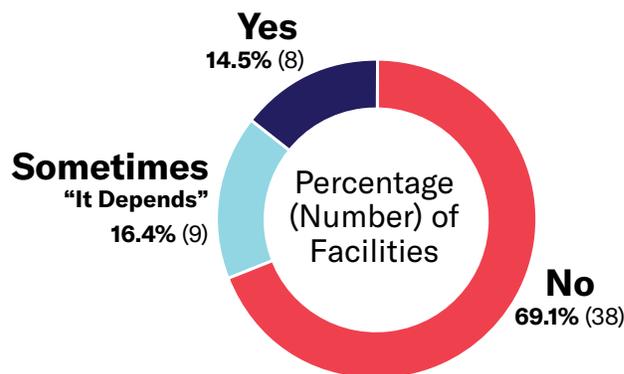
The cost of telephone calls for people in carceral and detention facilities is prohibitively high. This is by design: ICE detention facility operators commonly contract with private prison telecommunications companies to provide phone services to people in detention. These private corporations have lengthy

“I can’t count how many phone calls request[s] I made that were never honored; maybe two times it worked, otherwise, I couldn’t reach my client and he didn’t always have money to call me.”

— Attorney at Port Isabel ICE Service Processing Center

histories of predatory business practices, where rates for telephone calls may run as high as \$25 for a 15-minute call.⁵⁹ According to our research, detained immigrants must pay to make outgoing phone calls to counsel at nearly 85 percent of the detention facilities for which we were able to obtain this information (see Figure 2).⁶⁰ At some facilities, the rates charged to detained immigrants range from \$0.21,⁶¹ and sometimes up to \$0.40 per minute.⁶² These rates are especially burdensome given that many detained immigrants are indigent and can make only \$1 per day under ICE’s “Voluntary Work Program,”⁶³ and because in many facilities, detained immigrants must use the money in their accounts for basic food and hygiene items purchasable through the prison/jail commissary. ICE’s failure to ensure that detained people have access to free legal telephone calls effectively denies many people access to counsel.

FIGURE 2
Can Detained Immigrants Make Outgoing Calls for Free?



Unclear/unknown (not part of denominator)⁶⁴ 112x

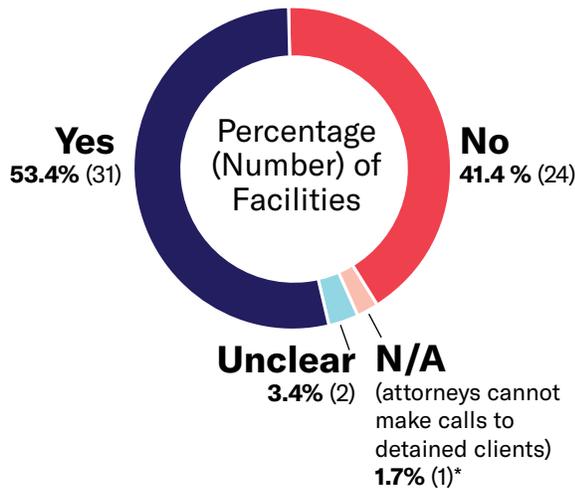
N/A (because the facility does not permit detained immigrants to make outgoing calls) 6

Poor Quality Audio on Legal Calls with Detained Clients

Attorneys have long noted the poor sound quality of legal calls with detained clients. **Respondents at over half (31) of the 58 facilities for which we received attorney surveys on this question reported experiencing poor audio quality on legal calls with detained clients (see Figure 3).**

FIGURE 3

Do Attorneys Experience Problems with Audio on Calls with Detained Clients?



* Robert A. Dayton Detention Facility, GA.

Attorneys reported problems with audio quality ranging from inability to hear clients because of the location of the telephones, to technical issues with telephone service. A paralegal at Krome North Service Processing Center in Florida noted “the connection is really bad sometimes. Last time, we were able to hear our potential client but he couldn’t hear us at all, so we had to just end the call.”⁶⁵ An attorney at the Buffalo (Batavia) Service Processing Center in New York reported that “when a client is in quarantine, they are provided a cell phone covered in plastic, which makes it difficult to understand what they are saying.”⁶⁶ At the Tacoma Northwest ICE Processing Center in Washington, an attorney explained “audio problems are frequent and extremely frustrating.... Some days we have audio problems, sometimes we don’t; neither ICE, GEO, OPLA [(ICE Office of the Principal Legal Advisor)], or Talton [(private prison telecommunications corporation)] have been responsive to complaints about this ongoing issue. There is sometimes static on the line, or it sounds like [the] client is far away.”⁶⁷

In particular, attorneys with clients in Texas detention facilities noted significant audio and phone quality issues. At Port Isabel ICE Service Processing Center in Texas, an attorney expressed that “the sound was barely audible; unless it was the DO [deportation

officer] calling me directly to talk to my client, I could barely understand what my client was saying; it sounded far away, echoes, noise in the background.”⁶⁸ At another Texas facility, South Texas ICE Processing Center, attorneys described “crackling noises and poor audio[,] barely able to understand conversation. Client has to hang up and call again,”⁶⁹ and “the audio can be terrible on the calls. Lots of in and out or static; sometimes low or deep voice; sometimes echo. When I visit clients who are medically restricted, they have to use the officer’s phone while I use the phone in the attorney visitation room and the calls are perfect.”⁷⁰ As another attorney at South Texas ICE Processing Center commented, “the phone lines are horrible! They have a lot of static and you can barely hear the client, you have to tell them to yell into the phone which is bad because they are not able to have a somewhat quiet conversation with you with all the other detainees in the room with them. Also, if it rains at Pearsall [(city

“[T]he phone lines are horrible! They have a lot of static and you can barely hear the client, you have to tell them to yell into the phone which is bad because they are not able to have a somewhat quiet conversation with you with all the other detainees in the room with them.”

— Attorney at the South Texas ICE Processing Center

where facility is located)], all of the phonelines are down for HOURS!! It is ridiculous!!”⁷¹ At El Valle Detention Facility, an attorney remarked “the call quality is AWFUL to the point that I sometimes cannot understand the client. The line is scratchy and cuts out. Sometimes it’s better but more often than not the quality is poor.”⁷²

Lack of Access to Legal Video Calls

Videoconference calls, where a detained client and attorney can communicate on a platform like Zoom or Skype, are essential attorney-client communication, particularly during the COVID-19 pandemic. Face-to-face meetings are critical to developing attorney-client relationships and can be irreplaceable for effective communication with clients who have certain disabilities.

Attorneys noted the specific need for videoconference calls in light of other barriers to access, clients with disabilities, and the COVID-19 pandemic. Attorneys also noted that court hearings are often conducted via video, demonstrating the facility’s ability to integrate this technology. As one attorney at Farmville Detention Facility in Virginia noted, “the facility is able to schedule videoconferencing for medical purposes and for court appearances. . . . If VTC technology works just fine, then it doesn’t make sense that attorneys cannot have access to it. During COVID, this created the situation where we would see our clients for the first time at their court hearings, since we could not visit clients personally. This is especially difficult for mentally incompetent clients.”⁷³ At Montgomery ICE Processing Center in Texas, an attorney reported that the “lack of adequate videoconferencing has severely impaired my cases. I was representing a gentleman with severe hearing problems but who could communicate okay if he saw my face. However, as representation was beginning the pandemic started. At that point I couldn’t visit in person and certainly couldn’t visit without a mask on. The facility was unable to facilitate a confidential videoconference that would permit me to speak with my client.”⁷⁴

ICE has touted its Virtual Attorney Visitation program, which enables legal representatives to meet with clients virtually by using video technology in private rooms for remote legal visits. However, ICE has reported that this legal videoconferencing program is available only at 18 facilities nationwide.⁷⁵ Notably, four of the facilities that ICE has designated as having Virtual Attorney Visitation programs were unaware of the existence of the program upon inquiry by phone.⁷⁶

As shown in Table 2, our research indicates that of the 173 facilities for which we have information, 74 facilities, or 43 percent of facilities, had no legal videoconferencing program. Sixty-eight detention facilities, or 39 percent, reported that legal videoconferencing calls are available.⁷⁷ It was unclear whether a videoconferencing program existed at 31, or at 18 percent of facilities.

ICE has stated that its Virtual Attorney Visitation program is available at only fifteen facilities nationwide. Notably, two of the facilities that ICE has designated as having this program were unaware of the existence of the program upon inquiry by phone.

However, for the 68 facilities that claimed to have a legal videoconferencing program, we found that only 12 had information about a legal videoconferencing program available on ICE’s website.⁷⁸ We were unable to independently verify whether a legal videoconferencing program existed at the majority of these facilities. ICE’s website listed no information about the existence of legal videoconferencing at 23 of these facilities.⁷⁹ ICE’s website had no information at all about an additional 33 facilities. To the extent that legal videoconferencing is available at these facilities, basic information about accessing the program and scheduling calls is clearly unavailable to the public and attorneys who wish to practice there.

Given the ubiquity, ease, and low cost of video teleconferencing, ICE’s failure to ensure universal use of this technology for legal visits in detention makes little sense.

TABLE 2
Is there Access to Free, Confidential Legal Videoconferencing Calls at the Facility?

	Number of facilities	Percentage
Yes	68 (but only 12 had information available on ICE website)	39.3%
No	74	42.8%
Unknown	31	17.9%
Total	173	

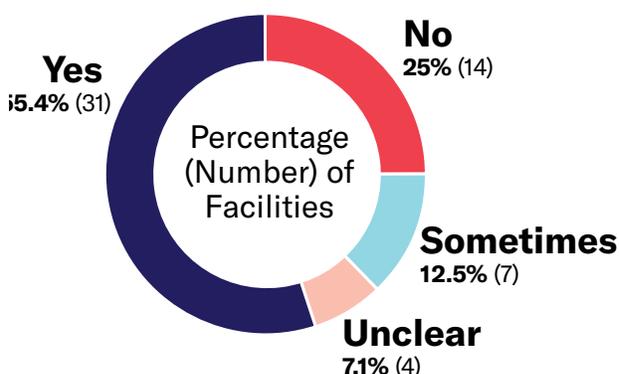
Even at the facilities where videoconferencing is available, attorneys have reported serious problems in the technology. At Pine Prairie ICE Processing Center in Louisiana, a paralegal noted that “VTC often has issues—won’t connect, or no video, or bad sound;” and “VTC is in a cubicle in a public space, calls are not in an enclosure of any kind.”⁸⁰ At other facilities, attorneys reported additional challenges with accommodations for interpreters. For example, at South Texas Detention Center in Texas, an attorney noted that “they offer VTC but it is hit or miss.”⁸¹

Requiring A-Numbers for Attorneys to Communicate with People in Immigration Detention

All immigrants in ICE detention are assigned an “alien registration number” (A-Number). All versions of ICE’s detention standards clearly state that detention facilities may *not* require legal service providers to submit a detainee’s A-Number as a condition of visitation.⁸² This protection is particularly important because oftentimes, an attorney may only have a detained person’s name and not necessarily an A-Number, especially when initially making contact after a referral, or may be providing representation for matters unrelated to immigration.

Unfortunately, our survey found that 55 percent (31 of 56) of the facilities for which we received a response to this question have required attorneys at some point to submit a detainee’s A-Number to communicate with detained immigrants (see Figure 4).⁸³ This requirement is not only unnecessary, as detention facilities can easily identify detained people by name, but requiring attorneys to know a detained immigrant’s A-Number in order to schedule a call or otherwise communicate with the client serves as a significant barrier to access to counsel, especially to retaining an attorney.

FIGURE 4
Does the Facility Require an A-Number for Legal Communication?



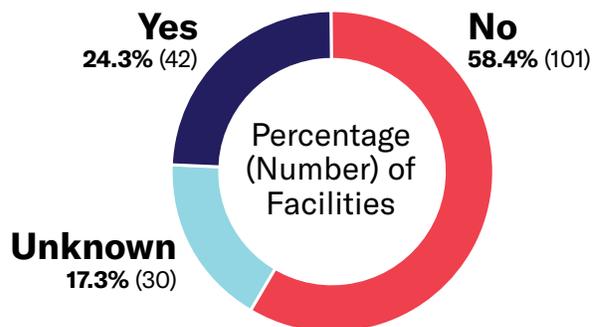
Lack of Electronic Mail and Messaging

Electronic mail or messaging is a critical way for people in detention to maintain contact with the outside world. It can also serve a crucial role in allowing detained immigrants and their attorneys to exchange, review, and sign legal documents. To the extent that electronic mail or messaging systems are available to people in detention, messages are not confidential and subject to surveillance. Messages are also extremely costly, with character limits (often under 1,500) for each message, often costing 25 to 50 cents per message. Detention facilities that offer electronic messaging typically do so through private prison telecommunications corporations such as Securus Technologies, Inc. with messaging systems called Getting Out.⁸⁴

Very few ICE detention facilities provide any sort of electronic mail or messaging access to detained people (see Figure 5). Of the 173 facilities for which we have information, fewer than one in four (24.3 percent) provided some sort of electronic mail or messaging access to detained people. Over half, approximately 58 percent, of the 173 facilities do not provide any electronic mail or messaging access of any kind, and it was unclear at the remaining facilities whether these forms of communication are available.

In some facilities, particularly those that have failed to establish reliable channels of attorney-client communication, these for-profit electronic messaging systems may be the only way for attorneys to contact detained clients. As an attorney who represents clients at the Buffalo (Batavia) Service Processing Center in New York noted, an attorney “need[s] to set up a Getting Out account, otherwise there is no way to send them messages.”⁸⁵

FIGURE 5
Do Detainees Have Email or Electronic Message Access?



One paralegal with clients at the Krome North Service Processing Center in Florida described the many barriers posed in facilities that depend on electronic messaging as the sole method of attorney-client communication: “They expect you to schedule calls through GettingOut, which raises a number of issues. First, if it’s a new client who doesn’t yet have a GettingOut account, it’s a nightmare just to get on the phone with them in order to explain that they should make an account and add you as a contact. Without having them as a contact on GettingOut, you also can’t deposit any funds to their account. Since there’s no system for free legal calls, if they don’t have the funds to call you, then you just can’t get in touch with them. Once you’re finally set up on GettingOut, the only call-scheduling mechanism is for video calls through the app, which are not confidential.... even after all of this, the phone connection is so horrible that we had to resort to messaging (when possible, since the messages are not confidential) instead of talking on the phone. There are also a limited number of phones that actually function, so apparently there are long wait times to get access to a phone. And when we could get on the phone and had a somewhat stable connection, the conversations are not fully confidential because the facility doesn’t provide private spaces for confidential, legal calls. These calls are also cut off after 10 min[utes].”⁸⁶

Attorneys at the Eloy Detention Center in Arizona similarly reported that “text messages are never confidential on the app, so this is obviously a



Detained immigrants at the Eloy Detention Center law library in Eloy, Arizona.

potentially fraught system. Other than that, detained individuals can attempt to initiate a call when they have the opportunity and access to a tablet. It is not clear to us if there is a mechanism other than leaving a message for an attorney to initiate a call.”⁸⁷

These private corporations have also profited from the migration of basic facility services such as commissary or internal facility communications, such as grievance forms or requests for medical care, to electronic platforms, which may be inaccessible to detained people without literacy or computer skills.⁸⁸

Failure to Ensure Timely Delivery of Legal Mail

Especially in the absence of confidential email and electronic messaging capabilities, people in immigration detention rely on postal mail to receive and return important legal documents. This includes attorney-client retainer agreements, client declarations, evidentiary materials, and legal forms, many of which are often time-sensitive. Failure to timely deliver legal mail can result in missing important court filing deadlines and cause clients to remain unlawfully in detention for longer

periods and/or adversely affect the outcomes in their immigration cases. Notably, the immigration courts do not follow the “mailbox” rule, where a court treats a document as “filed” at the moment it is placed in the mail.⁸⁹ Instead, documents are not considered “filed” until received by the Immigration Court.⁹⁰

For detention facilities that are geographically isolated, the postal service may not even be able to guarantee overnight or expeditious mail delivery. An attorney who practices at Geauga County Safety Center in Ohio expressed that “because the mail is slow, we rely on driving to the facility to have in-person meetings, which takes much longer and results in more time out of the office/wasted on driving.”⁹¹ At El Valle Detention Facility in Texas, an attorney noted that “doing everything through the mail is very slow and sometimes documents nearly don’t arrive in time.”⁹²

At approximately 19 percent, or 11 out of the 58 facilities for which we received attorney survey responses, attorneys reported that they or their client missed a filing deadline due to difficulties with legal mail. As an attorney with clients at Orange County Jail in New York explained, “I have not been able to receive signed documents in a timely manner during the pandemic. I know that I have had to describe on the record [in immigration court] mailing issues for unsigned documents and applications.”⁹³ Attorneys also reported the need to request court extensions or continuances because of ICE’s failure to ensure timely delivery of legal mail to detained clients. According to attorneys who practice at Florence Detention Center, Eloy Detention Center, and La Palma Correctional Center (all located in Arizona): “A lot of time people need to request a continuance, prolonging their detention because of the long time required to receive mail from us, and from them to the court also. Time and cost of mailing, as well as the multiple-step process of requesting envelopes and stamps using the commissary machines, sending requests for officers to make the needed copies (as currently, individuals do not have direct access to the library), waiting for copies to be ready, receive the supplies, and preparing the envelopes to the different agencies (court, DHS, counsel, etc.).”⁹⁴ At Florence

Correctional Center, attorneys described that “in at least one case a pro se individual’s BIA [Board of Immigration Appeals] brief was delayed by several days between being placed in the outgoing mail box and actually mailed to the BIA. As a result, the BIA deemed that this individual had not timely filed their brief on appeal and summarily dismissed the appeal.”⁹⁵

At some facilities, attorneys reported legal mail being confiscated for unclear or unnecessary reasons. At Imperial Regional Detention Facility in California, an attorney stated that his legal mail is confiscated “anytime evidence is sent.”⁹⁶ According to an attorney with clients at Adelanto ICE Processing Center in California, the facility “did not provide any answer” as to why their legal mail was confiscated, and their “stamped self-addressed envelope [] was also thrown out.”⁹⁷ At the Worcester County Detention Center and

Dorchester County Detention Center in Maryland, attorneys reported that legal mail is confiscated if there are “staples, paper clips, color ink, color paper, ... photos or drawings (in color).”⁹⁸ At Otero ICE Processing Center in New Mexico, an attorney reported that their legal mail was confiscated because their clients “weren’t allowed to receive photos,” which may prove to be critical evidence in legal proceedings.⁹⁹

Barriers to In-Person Attorney Visits

In-person visitation is a crucial method of communication for attorneys and clients in ICE detention. In addition to the greater likelihood of developing a strong attorney-client relationship through meetings in person, in-person visits also enable attorneys to share and obtain necessary legal documents and have conversations that may otherwise be infeasible or unsuitable through other means of communication. For example, clients may be significantly more comfortable sharing details regarding persecution and trauma they have experienced – information that is critical to their immigration cases – when talking with their attorneys in person rather than over the phone or through videoconference. As with other methods of legal communication, the importance of in-person visitation is enhanced when other methods of communication available at ICE detention facilities are unreliable.

Despite the importance of in-person legal visitation, access to in-person visits varies significantly in ICE detention facilities across the country. The data summarized below demonstrates this inconsistency and the harm it has caused to people in ICE detention.¹⁰⁰

Most significantly, 11 ICE detention facilities do not allow any in-person legal visits at all, despite ICE’s claim that “in-person contact visits remain available at the request of the legal representative.”¹⁰¹ Those facilities are:

“A pro se individual’s BIA brief was delayed by several days between being placed in the outgoing mailbox and actually mailed to the BIA. As a result, the BIA deemed that this individual had not timely filed their brief on appeal and summarily dismissed the appeal.”

— Attorney at Florence Correctional Center, Arizona

1. Elizabeth Contract Detention Facility, New Jersey
2. Oldham County Jail, Kentucky
3. Pinellas County Jail, Florida
4. Rio Grande County Jail, Colorado
5. Santa Cruz County Jail, Arizona
6. Sebastian County Detention Center, Arkansas
7. Cumberland County Jail, Maine
8. Frederick County Detention Center, Maryland
9. Freeborn County Adult Detention Center, Minnesota
10. Monroe County Detention-Dorm, Michigan
11. Sherburne County Jail, Minnesota

Of these 11 facilities, nine stated they are not permitting in-person legal visits due to the COVID-19 pandemic. However, facility staff at Frederick County Detention Center in Maryland responded “suspended indefinitely” in response to questions regarding in-person visits by our research team. Similarly, at Monroe County Detention-Dorm in Michigan, facility staff responded “none—that’s why they have video calls,” in response to what the hours for in-person legal visits are, and further indicated “no in-person visits” when asked about know-your-rights presentations for detainees.

ICE Detention Facilities Arbitrarily Deny or Delay Attorneys Access to Clients for In-Person Visits

At nearly half of the 44 facilities (45.5 percent) for which we received attorney survey responses, attorneys reported arbitrary delays or denial of access to their client at the facility.

The reasons that facilities delayed or denied attorneys access to in-person visits are often

arbitrary, seemingly designed to harass, and unrelated to any reasonable facility concern.

In some instances, attorneys were arbitrarily denied or delayed in-client visits because of failures by facility employees to accurately keep track of detained clients. For example, at the Robert A. Deyton Detention Center in Georgia, an attorney described how the facility told him his client was not there when he arrived after a nearly two-hour drive for a prescheduled in-person visit, only to get an email the following day informing him that his client in fact was at the facility and asking him to come back. At El Paso Processing Center in Texas, an attorney reported that she was “denied access to a client because they had just been transferred from a different immigration detention center the day before and they had not been processed yet and they were in ‘regular clothing.’” The attorney was told to come back the following day.¹⁰²

Attorneys have been arbitrarily denied or delayed in visiting their clients because of inadequate staffing or meeting space. For example, at Otero Processing Center in New Mexico, one of the largest ICE detention facilities in the country, an attorney explained “I’ve arrived and found that no one is at the front desk. I called through the intercom and someone was sent after waiting for about one hour.”¹⁰³ At Folkston Processing Center in Georgia, an attorney shared that “the last time I went, they didn’t have enough staffing to run the front desk and process me.”¹⁰⁴ Similarly, at the Aurora Contract Detention Facility in Colorado, one attorney reported that “there is often lack of staff to get client and bring attorney back to see them, so delays are common.”¹⁰⁵ Furthermore, at many ICE detention facilities, attorneys reported that a lack of attorney-client meeting spaces has caused arbitrary denials and delays, including at Imperial Regional Detention Facility in California and Orange County Jail in New York.

In other instances, the stated reasons for denial or delay were based on the attire of the attorney, especially the attire of female attorneys. As one paralegal with clients at Pine Prairie ICE Processing Center in Louisiana described it, “some staff

“The metal detector in the security screening area is set so high that it alarms when women wear underwire bras... numerous staff members experience significant delays in accessing clients and court, as well as be subjected to invasive pat-down or wand screening procedures, or turned away from the facility as a result of wearing a bra to the facility.”

— Attorneys at Eloy Detention Center, Arizona

have very strict, unpublished, and ever-changing rules about appropriate clothing (necklines, skirt length) and delay entry until we cover up to their satisfaction.”¹⁰⁶ A visitor advocate with clients at the Adelanto ICE Processing Center in California, reported that “they changed the policy you could not wear leggings; you had to be wearing pants *with pockets in them* so I was denied visitation.”¹⁰⁷ Other examples include the Florence Correctional Center in Arizona, where “one source of delay in the facilities is arbitrary enforcement of security rules, for instance telling attorneys who are wearing yellow shirts that they cannot enter because the detained individuals wear yellow (of an entirely different shade). The ‘no yellow’ rule is inconsistently and arbitrarily applied.”¹⁰⁸ An attorney with clients at Eloy Detention Center in Arizona noted that “one issue that comes up surprisingly regularly is that the metal detector in the security screening area is set so high that it alarms when women wear underwire bras. We have had numerous staff members experience significant delays in accessing clients and court, as well as be subjected to invasive pat-down or wand screening procedures, or turned away from the facility as a result of wearing a bra to the facility.”¹⁰⁹

These denials and delays demonstrate the costs of inadequate access to in-person visits. When attorneys need to visit their clients in-person for time-sensitive legal matters, particularly in locations far from metropolitan areas where most attorneys are located, denials or delays can cause severe harm to clients’

cases and impede detained people’s access to legal representation to which they are constitutionally entitled.

Requirement to Schedule In-Person Visits in Advance

Requiring attorneys or legal representatives to schedule in-person visits in advance limits attorneys from being able to make immediate, time-sensitive visits as might be necessary depending on the status of their clients’ cases. Although the option to schedule an in-person visit in advance may be helpful to attorneys, requiring them to do so prevents attorneys from performing urgent in-person meetings when necessary. Requiring a scheduled appointment to visit in person also creates significant hurdles for attorneys who may be traveling several hours to meet with clients at remote detention facilities. This is because if their scheduled visitation time is missed, they may be turned away, as discussed in some of the examples in the preceding section.

Of the 173 detention facilities for which we have data, **over 40 percent** require attorneys to schedule visits in advance (see Table 3).

TABLE 3

Must Attorneys Schedule Legal Visits in Advance?

	Number of facilities	Percentage
Yes	76	43.9%
No	55	31.8%
Sometimes	6	3.5%
Unclear/unknown	25	14.5%
N/A (not accepting in-person visits)	11	6.4%
Total	173	

At certain detention facilities, attorneys are required to provide several days advance notice in order to visit in person. For example, at Caroline Detention Facility in Virginia, attorneys are required to provide five business days of advance notice.¹¹⁰ At El Paso ICE Service Processing Center, an attorney noted that it is not necessary to schedule an in-person visit in advance “if there is no language interpretation need, but if you do need interpretation you have to email the AFOD [(acting field office director)] to ask for permission to take in your phone at least 3 days in advance of the in person visit.”¹¹¹ At Orange County Jail in New York, an attorney explained “it is not clear if they do or not. They say that advance notice helps but there’s no way to schedule it and they do not honor any schedules they circulate as it is.”¹¹²

Lack of Attorney-Client Contact Visits

In-person attorney visits may be held in a variety of settings in ICE detention. In some facilities, attorney visits are “contact” visits, which allow attorneys and clients to sit together at the same table, so they are able to review documents together, speak directly in person, and shake hands. Contact visits are important to ensure clear communication and to support language interpretation, and are the preferred method of in-person legal visitation.

“Noncontact visits” occur where a facility requires an attorney and client to be separated, usually by a plexiglass wall, where they must speak to each other through a phone or hole in the wall. Noncontact visits impose significant barriers between counsel and detained clients. Oftentimes, the phone may not work, or it may be difficult to hear one another through the plexiglass wall. Documents may be difficult to review and exchange for signature, sometimes requiring an officer to take the document from one side of the barrier to another, raising confidentiality concerns, and increasing the length of a visit. As an attorney at Adelanto Detention Center in California noted, “non-contact visits feel particularly impersonal and it’s often difficult to understand clients over the prison phones.”¹¹³

Our research revealed that a significant number of detention facilities do not allow for contact visits between attorneys and detained clients. Some facilities have temporarily adopted noncontact visits due to the COVID-19 pandemic, but others have never allowed for contact visits. Of the 173 facilities for which we have information, **over a third of facilities only permit noncontact visits or do not allow in-person visits.**

TABLE 4

How Do In-Person Legal Visits Take Place?

Type Of Visitation	Number of Facilities	Percentage
Contact visits	45	26.0%
Mixed (both contact and noncontact visit options)¹¹⁴	47	27.2%
Noncontact visits	50	28.9%
N/A (no in-person visits)	11	6.4%
Unknown	20	11.6%
Total	173	

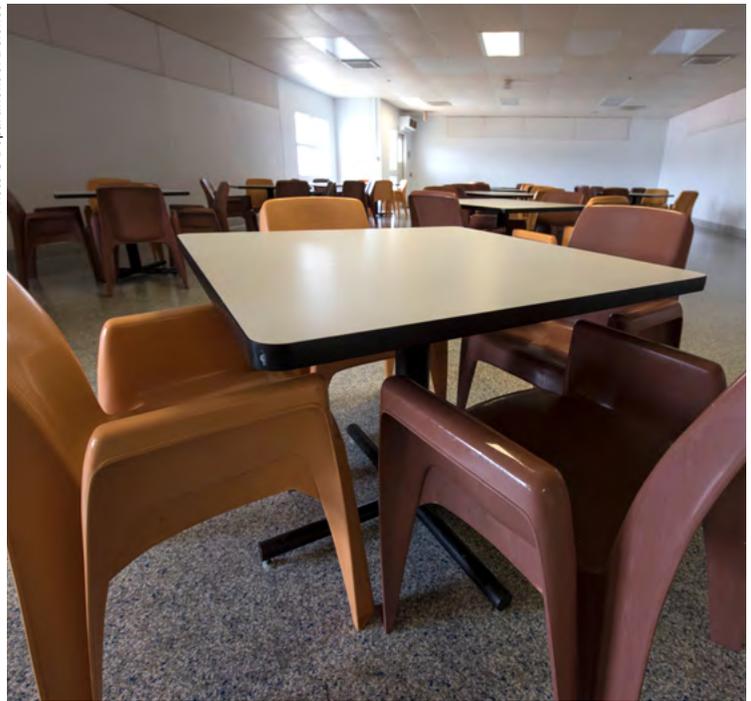
Lack of Confidential Legal Visits

Confidential attorney-client communication is the bedrock of legal representation. However, attorneys

noted the impossibility of conducting confidential conversations with clients during in-person legal visits at several facilities. For example, at Pine Prairie ICE Processing Center in Louisiana, an attorney explained that “they used to have in-person visits in cubicles in the public meeting room, but now those cubicles are reserved for VTCs, so meetings take place at a table in the middle of the room.” The attorney further noted that “the in-person meeting situation is terrible—it’s impossible to do good intakes in a public space, where people feel inhibited.”¹¹⁵ A paralegal with clients at Pine Prairie echoed this concern, noting that “they’re using pandemic restrictions to make it impossible to have confidential discussions (requiring that we sit six feet apart in a public room, leaving the doors open, bringing staff, visitors, and detainees through the room during legal visits, etc.). Seems punitive or intended to deter people from scheduling these meetings. We’ve brought these concerns to the warden and been ignored.”¹¹⁶

Lack of confidential in-person meeting spaces is especially problematic when the facility also fails to provide confidential legal phone calls or other means of communication with clients. For example, at Orange County Jail in New York, an attorney explained: “There is no way to ensure that a phone call is confidential. My best option is to appear in person and request to use the parole room. A parole room is a room enclosed by four glass walls. But these walls are thin and others can listen to my conversations. Therefore, my client and I have to speak softly.”¹¹⁷ At the Robert A. Deyton facility in Georgia, where in-person visitation is the only option for attorneys to communicate with clients, an attorney reported that “there’s one attorney visit room with a desk and glass wall separating attorney and client.” “Because the audio connection [on the headsets used during in-person visits] is often poor, I have to yell, and there is [a] waiting room near [the attorney-client] desk so guards and others nearby can overhear because need to talk loudly. Clients have told me they don’t feel like they can communicate confidentially because they think the call is being recorded”¹¹⁸ The lack of a confidential in-person meeting space or confidential phone-call access is also challenging for

Photo © Department of Defense



Caroline Detention Facility, Bowling Green, Virginia

detained immigrants who identify as LGBTQ+ and are unable to disclose their gender identity or sexual orientation to their attorney—which may be crucial to

“There is no way to ensure that a phone call is confidential. My best option is to appear in person and request to use the parole room ... enclosed by four glass walls. But these walls are thin and others can listen to my conversations.”

– Attorney at Orange County Jail, New York

their asylum case—because they will be vulnerable to harassment in detention if they are overheard.

Other limitations on in-person visits have also made representation even more challenging. At South Texas Detention Center in Texas, an attorney reported “we have not been in person ... because you are required to be in full PPE [personal protective equipment] and it is highly discouraged. And they have only two rooms for legal visits.”¹¹⁹

Restrictive Policies for Attorney Laptops and Phones

Attorneys frequently need to prepare documents, review electronic files and evidence, and use telephonic interpretation when meeting with clients. For this reason, attorney use of laptops and cellphones in legal visits, with prior facility authorization and clearance, is a common and widespread practice in jails and prisons. These tools allow attorneys to more quickly prepare pleadings, keep track of documents, and more importantly, communicate with clients where interpretation is needed.

Our research, however, shows that only about half, or 57 percent, of ICE detention facilities for which we could gather information allow attorneys to bring laptops for legal visits (see Table 5). ICE detention facilities that are used exclusively to detain people in ICE custody, as opposed to ICE detention facilities that are county jails also holding people in criminal custody, had more restrictive policies for attorney laptops. Only 34 percent of ICE detention facilities wholly dedicated to holding people in ICE custody allowed attorneys to bring laptops in for legal visits, in contrast to 64 percent of detention facilities that also hold people in criminal custody.

TABLE 5
Are Laptops Allowed for Attorney Visits?

	Number of facilities	Percentage
Yes ¹²⁰	98	56.6%
No	34	19.6%
Unknown	30	17.3%
N/A (no in-person visits)	11	6.4%
Total	173	

The percentage of ICE detention facilities that allow attorneys to bring cell phones into legal visits is even lower (see Table 6). Our research showed that 21 percent of ICE detention facilities in our sample allow attorneys to bring cellphones into legal visits. These restrictions present further barriers to effective and efficient attorney-client communication, particularly where use of an interpreter is needed—a common occurrence in immigration cases.

TABLE 6
Are Cellphones Allowed for Legal Visits?

	Number of facilities	Percentage
Yes	37	21.4%
No	58	33.5%
Unknown	67	38.7%
N/A (no in-person visits)	11	6.4%
Total	173	

Conclusions and Recommendations

Lack of access to counsel violates the rights of people in immigration detention and severely impedes their access to justice. In order to ensure improved access to counsel, we provide the following recommendations.

To the U.S. Department of Homeland Security:

- Phase out the immigration detention system. Invest in community-based social services as alternatives to detention and avoid surveillance of immigrants as an alternative to detention.
- Ensure proper oversight of access to counsel at all ICE detention facilities. Ensure that comprehensive facility inspections audit access to counsel and implement meaningful consequences for facilities that fail to provide access to counsel.

Ensure Private, Confidential, Free, and Scheduled Access to Legal Communication and Visits in Immigration Detention.

- At all facilities, ensure that all attorney-client communication is private, confidential, unmonitored, and free for all parties.
- Ensure that private spaces are provided for telephone and video calls and in-person visits. “Private” means that the detained person is in an enclosed space where nobody else can hear the conversation. Privacy panels (side partitions) do not provide privacy. Telephone and video calls from open housing units are not private.

- Ensure that all legal telephone and VTC calls are on unmonitored and confidential lines or software, regardless of who initiates the call.
- Ensure that all legal telephone and VTC calls are free, regardless of whether the detained client is indigent, and that calls are not limited to a subset of legal service providers and are not limited in duration.
- Ensure that all facilities permit scheduled telephone and VTC calls to attorneys and any individuals whom detained immigrants need to contact for purposes of their legal cases. Ensure that detained immigrants are able to speak to attorneys and legal representatives at prearranged times, in private locations, on free and unmonitored telephone lines.
- Ensure that detained immigrants in segregation (medical, disciplinary, or administrative) have equal access to legal telephone and VTC calls, and in-person legal visits. Attorney access may not be limited in retaliation or as punishment.
- Ensure that no A-Number or Form G-28, Notice of Entry of Appearance as Attorney, is required to arrange a legal telephone or VTC call or in-person visit.
- Ensure that all legal telephone and VTC calls allow the inclusion of a third-party line to allow for interpretation. Allow for international legal calls upon request.

Legal Telephone Calls

- Calls should be scheduled and facilitated in a clear, transparent, and responsive manner. A request to schedule a call should be honored if made 24 hours in advance (and with less notice, if urgent).
 - If the facility requires that a phone number be designated “legal” to be unrecorded and/or unmonitored, ensure that the process to designate a legal line allows for quick approval (within 24 hours), and information on the process to designate a phone number as “legal” is clear and direct, publicly distributed, and applicable to all individuals providing legal representation, including non-attorneys.
- Ensure sufficient telephone lines and space for confidential legal calls for all detained people such that legal representatives can schedule legal calls within 24 hours of request, and that such calls are not capped at less than two hours.
- Ensure that detained people can make telephone calls within 24 hours of admission to a facility.
- Provide telephone access for legal calls 24 hours a day/seven days a week.
- Ensure that attorney messages are promptly (within two hours) delivered to detained individuals.
- Remove the positive-acceptance requirement so detained immigrants can leave a voicemail message. A positive-acceptance requirement means a person must answer the phone in order for the caller to complete a call. When a person does not answer the phone but is instead directed to a phone tree or voicemail, the call automatically disconnects.

- Maintain phones in working order, including reasonable sound quality. ICE must fix broken phones within 48 hours.

Legal Video Teleconferencing Calls (VTC)

- Provide confidential VTC hardware and software with the capability to include an interpreter in a multiparty legal call.
- Ensure that there are sufficient VTC consoles available to guarantee availability for confidential calls such that legal representatives can schedule videoconferencing calls within 24 hours of request, and that such calls are not capped at less than two hours.
- Ensure that confidential VTC legal calls are available 24 hours a day/seven days a week.
- At facilities where VTC calls take place via tablet, ensure that there are sufficient tablets with multiparty video call and email capabilities such that legal representatives can schedule confidential legal video calls within 24 hours of request, and that such calls are not capped at less than two hours. Ensure that those tablets function properly and have adequate connectivity. Ensure that all legal VTC calls made on a tablet can occur in a confidential, private space.

Ensure timely, confidential, free access to critical documents and legal paperwork.

- Ensure that people in detention may retain all legal paperwork in their housing unit. Legal paperwork includes any paperwork related to immigration matters, criminal matters, civil matters, and any other paperwork relating to a legal or court process.
- Ensure that mail for detained people is timely processed and distributed. Mail marked as legal should be provided to the detained person within 24 hours of receipt by the facility.

- Ensure that mail from detained people is mailed the same day so long as the person provides it to facility staff before a clearly posted mail time, Monday through Saturday.
- Ensure that ICE/officers open legal mail only in the detained individual’s presence.
- Ensure that detained people do not need to pay to send out legal mail, regardless of indigency metrics.
- Allow detained individuals access to email and fax for legal communication. Provide the necessary technology to review, sign, and return legal documents by email and fax.
- Ensure that detained people in segregation or isolation (medical, administrative, or disciplinary) have equal access to legal paperwork. Attorney access may not be limited in retaliation or as punishment.
- Post on the ICE webpage for each facility clear, up-to-date instructions for obtaining a copy of a detained person’s medical records and disciplinary file. Standardize this process to the extent possible across all facilities.

Ensure access to private, confidential in-person visitation with lawyers, paralegals, legal representatives, and interpreters.

- Ensure that all legal visits occur in visitation rooms that are enclosed and soundproof.
- Ensure that legal visitation rooms are of sufficient size to hold multiple people and wheelchairs. Ensure that there is no limit on the number of people who may attend a legal visit so long as those people can fit in a legal visitation room.
- Ensure that there are sufficient enclosed and soundproof legal visitation rooms to guarantee that legal representatives can schedule in-person visits within 24 hours of request, and that such visits are not capped at less than two hours.
- Ensure that legal visitation is allowed at any time during weekdays and on weekends, at least between 7 a.m. and 8 p.m.
- Ensure that attorneys with appointments do not wait more than 20 minutes between arrival at the facility and meeting their clients in a private legal visitation room, inclusive of check-in time, time spent waiting to go to the attorney room, and time waiting for the client to be brought to the visit.
- Make count and shift-change schedules available upon request.
- Ensure that all legal visits are “contact visits” unless either the detained person or the legal representative requests a no-contact visit.
- Ensure that any visual monitoring of in-person legal visits does not interfere with the privacy and confidentiality of the visit.
- Permit access and adequate space for know-your-rights presentations in addition to individual visits.
- Ensure that non-attorney legal representatives, including paralegals, law students, and BIA-accredited representatives, are allowed in-person access equal to attorneys.
- Ensure that interpreters accompanying attorneys and legal representatives have in-person access equal to attorneys for the purpose of legal consultations.
- Ensure that the process for approval to allow a medical or mental health expert evaluator and interpreter to enter the facility is simple and publicly posted and results in an approval (or denial) within 24 hours.
- After an initial approval to enter a facility, ensure that an interpreter may enter the facility along with a legal representative without needing to seek advance permission. An interpreter will not be required to submit interpreter credentials to obtain approval to enter the facility.

- Provide free, confidential telephone interpreter services for all in-person legal visits in addition to in-person interpreter access. Equip all legal visitation rooms with a phone and an outside line and a speaker phone.
- Allow any legal representative, interpreter, or evaluator to bring a laptop and telephone into and to use them in visitation rooms.

Ensure that the processes for attorney access are clear, accurate, available to all detained people in a language they understand, and publicly posted, including near the telephones and VTC consoles.

- Ensure that ICE provides people they detain a copy of the ICE National Detainee Handbook and the handbook of the facility where the person will be held at the moment Form I-286, Notice of Custody Determination is completed.
- Publicly post in all dorm rooms and include in every detainee handbook instructions for (a) arranging a legal visit by videoconference and (b) arranging a free, private, confidential legal call. These instructions should be simple, easily understood, accurate and up-to-date, and at a minimum, translated into the following 10 languages: Spanish, Mandarin, Portuguese, Haitian Creole, Hindi, Urdu, Arabic, French, Swahili, and Tagalog.
- Provide interpretation services for detained people who do not speak any of the 10 languages listed above.
- Ensure that these instructions are orally communicated in a language the detained person can understand where the person cannot see or read. Include the name and contact information for a staff member or ICE officer responsible for assisting detained people with attorney access.
- Post on the ICE website for each facility accurate and up-to-date instructions for arranging (a) a legal visit by videoconference consistent with the recommendations listed above, (b) a legal call consistent with the demands listed above, (c) an

in-person legal visit consistent with the demands listed above, (d) instructions for sending legal mail, and (e) instructions for sending and receiving secure legal messages by email or fax. Standardize these processes across all facilities.

- Create and publicly post on the ICE facility webpage a process for timely updating the local list of free legal service providers available to people detained in each facility.

To Congress:

- Dramatically reduce funding for immigration detention and enforcement.
- Pass legislation requiring that DHS ensures that every detention facility allow legal representatives to schedule free, confidential, and unmonitored telephone and video teleconferencing calls with detained people; ensure prompt and confidential access and exchange of legal documents via fax and email; and ensure that all facilities permit attorneys to bring computers and cell phones to attorney-client meetings.
- Conduct robust oversight of ICE's failure to ensure access to counsel in ICE detention facilities.
- Request that the DHS Office of Inspector General (OIG) and Office of Civil Rights and Civil Liberties (CRCL) investigate and issue recommendations regarding the conditions documented in this report.
- Request that the office of the Citizenship and Immigration Services ombudsman quickly and effectively resolves access-to-counsel problems as they arise at all ICE detention facilities.
- Require that ICE collect and publicly report data regarding access to counsel, including availability of free, confidential phone lines, video teleconferencing, timely access to legal paperwork, and legal visitation.

Methodology

We used two methods to obtain information regarding access to counsel at ICE detention facilities in the United States: (1) informational interviews via phone calls to ICE detention facilities and (2) a survey of immigration attorneys and legal representatives.

Data collection for both methods was conducted between September and December 2021. The full research team for this project (“research team”), consisting of two staff attorneys, one legal fellow, three interns, and eight law student volunteers in ACLU’s National Prison Project (NPP), participated in data collection. Data coding and analysis were led by the authors of this report and supported by additional NPP staff.

We began data collection using ICE’s publicly available list of its detention centers, as published on September 13, 2021 (199 immigrant detention facilities).¹²¹ Our data analysis began in January 2022, at which point we cross-referenced the September list with the most recent ICE list (January 6, 2022) so to only include facilities actively holding ICE detainees in the analysis. Seven facilities were removed from the list on account of: duplication (3), facilities no longer housing ICE detainees (2), or facilities that had appeared on ICE’s September 2021 list but did not appear on the January 2022 version (2). This resulted in a final list of 192 facilities included in the sampling frame for the study.¹²²

Facility Phone Call Method

Outreach

In order to determine the parameters of access to counsel at each facility, our research team attempted to conduct information interviews by phone with all immigrant detention facilities identified by ICE. (see above for sampling frame).

Our research team called each detention facility at the phone number made publicly available by ICE on its website. In instances where that phone number did not work, our research team also contacted the phone number made publicly available on the facility’s website. Facilities were called during regular business hours (9 a.m. to 5 p.m.) on weekdays in the appropriate time zone. Researchers followed a script and attempted at least two calls to each facility.

Phone Interview Script

When researchers reached someone at the facility, they informed the facility employee that they were calling to ask questions about how attorneys can get in touch with clients at the facility. In some instances, the person who answered the phone was responsible for handling general requests; in other instances, the researcher was transferred to another facility employee identified as the person who handles attorney-client communications. The script consisted of a series of 20 informational questions regarding access to counsel at the ICE detention facility.

- **Attorney phone calls:** If the facility allowed attorney phone calls with people in detention,

interviewers asked follow-up questions related to facility policies, procedures, and practices regarding scheduling, cost and time limits, of attorney calls.

- **Attorney videoconference calls:** Facilities were asked if detainees had access to videoconference calls with their attorneys. If so, researchers asked a series of follow-up questions related to facility policies, procedures, and practices regarding scheduling, cost and time limits of these calls.
- **Postal service mail and email to/from attorneys:** Researchers asked facilities whether attorneys can send mail to clients and how clients can send mail to attorneys. They also asked similar questions about email access.
- **In-person visits:** Facilities were asked about the requirements, time limits, and restrictions on in-person attorney visits.
- **Know-your-rights presentations:** Researchers asked about the availability of legal know-your-rights presentations regarding immigration proceedings to detained people at the facility.

Following each phone call, the researcher entered the responses to each item on a phone call data form.

Attorney Survey Method

Outreach

Our research team conducted a survey of immigration attorneys and legal representatives (heretofore “attorneys”) across the country regarding their experiences communicating with detained clients in ICE detention facilities. The survey was fielded from September through December 2021. Immigration attorneys and legal representatives were invited to complete the survey through announcements on advocacy coalition calls and email invitations on organizational networks and listservs, including those organized by the ACLU, the American

Immigration Lawyers Association, the Detention Watch Network, National Immigrant Justice Center, and the American Immigration Council. Reminders were sent through the same channels and targeted outreach was conducted to obtain survey responses from attorneys at facilities for which we had not yet received responses. Respondents were informed that the information they shared in the survey responses would be used for this report. No respondents were compensated for participation in the survey. Individual responses were kept confidential and neither respondents’ names nor identifying characteristics were included in data analysis or in this report.

Survey Instrument

The 119-item survey instrument included both open- and close-ended questions regarding access-to-counsel conditions at ICE detention facilities. Respondents were asked to complete a separate survey for each facility at which they represented clients. In addition to asking for the facility name and confirming that the respondent had represented clients at this facility, the survey assessed seven main domains:

- **Attorney-initiated phone calls:** whether and how attorneys can request to speak with detained clients, whether attorneys can schedule phone calls, whether scheduled calls are honored, the cost, time-limits, and confidentiality of calls.
- **Outgoing client calls:** whether detained clients can make free, confidential outgoing calls to and leave messages with counsel.
- **Legal videoconferencing:** whether there is access to legal videoconferencing calls with clients detained at the facility, and if so, whether they are free, private, confidential, time-limited, and can include interpreters/third parties.
- **Legal mail:** processing, privacy, confiscation, and timely delivery of legal mail.
- **Email and/or electronic messages:** whether detained clients are able to send and receive legal

communications by email or electronic messages, and whether they are private and confidential.

- **In-person legal visits:** procedures for scheduling in-person legal visits, denials and delays, confidentiality, availability of contact visits, time limits, and use of technology during in-person legal visits.
- **Legal orientation/know-your-rights resources:** attorney awareness of any legal orientation/know-your-rights programs at the facility.

The survey also provided attorneys with opportunities to discuss how, if at all, any limitations on access to counsel may have impacted their ability to represent their clients or their clients’ cases.

Study Sample

Of the 192 facilities in our study, we obtained information on 173 (90.1 percent) of the facilities using our two methods (see Table 7). The remaining 19 facilities were not able to be reached through our phone calls, and none of the survey respondents had practiced at these facilities.¹²³

The vast majority of data collected on the 173 facilities was through phone call interviews (85.5% of facilities). Eighty-nine surveys were completed for 58 facilities in total.

Data Coding and Analysis

Data from the survey responses and phone call data forms for each of the 173 facilities in the study sample were entered into a master spreadsheet. Composite variables were then created based on key concepts of interest. Using all available data, composite variables were coded, generally as “yes,” “no,” “sometimes,” or “unclear” for each facility. Generally, with conflicting data, the variable was coded as “unclear.” If a facility had no data for a given variable, it was left blank. For example, if both phone call data and survey data for a facility was available, they both were reviewed and a determination was made. Instances where there was conflicting information for a facility, i.e., where survey data and phone call data conflicted, or where there were discrepancies between survey responses for a facility, were generally coded as “unclear,” although in some categories, the facility response took precedence, particularly around the formal availability of communication options, or policies around laptops/cellphones in attorney visits. In cases of multiple survey responses for a given facility, discrepancies regarding in-person contact visitation, i.e., where one respondent reported “contact” whereas another reported “noncontact,” the composite variable was coded as “mixed.”

To generate percentages of facilities that were coded as “yes,” “no”, or “unclear” for any given composite variable, responses were summed across facility and divided by the total number of facilities that had a code for that variable. In addition to being analyzed and coded, some of the qualitative responses to survey items were identified as illustrative of key findings and incorporated into the body of this report.

TABLE 7
Facilities in Study Sample (173) by Data Collection Method

	Number of Facilities	Percentage
Attorney surveys (only surveys)	58 (25)	33.5% (14.5%)
Facility phone calls (only calls)	148 (115)	85.5% (66.4%)
Both methods	33	19.0%
Either method (total sample)	173	

Limitations

This research, like all research, has some limitations to be aware of. This study is limited in its reach, as we were not able to collect any information on 19 of the facilities identified by ICE as actively holding immigrant detainees, and thus our findings may not apply to those facilities. It may be that those facilities differ from facilities we were able to obtain information on in some relevant ways.

Nevertheless, this study is the first nationwide assessment of access to counsel for immigrants detained in ICE custody and as such, provides critical information on over 90 percent of detention facilities online at the time of the research period for policymakers, advocates, and legal professionals. The findings from this study are particularly valuable because the government agency responsible (ICE) has publicly stated that it does not collect data on immigrant detainee access to counsel or on facilities' policies, procedures, or practices.¹²⁴ For this reason, this meant we had to rely solely on information provided by the person responding to questions on the phone at the facility and/or attorneys who submitted surveys. Due to this lack of government or any other published data, we are unable to independently verify the accuracy of the information provided.

Though our reliance on two distinct methods (attorney surveys and facility phone interviews) allowed us to increase both the scope and the depth of data we collected, it also introduced some variation and potential bias in our assessment of the facilities. The vast majority of facilities were assessed based on either the information provided by the facility representative (phone calls) or the information provided by attorneys (surveys), but not both. It may be that the source and/or the method influence the accuracy or completeness of the information, so that some facilities have more favorable or more accurate codes than others. In addition, because the data that was collected needed to be analyzed and interpreted on a case-by-case basis, this may have introduced some inconsistency or potential for error. Thus, it is important not to compare facilities to each other, but

rather to use this study's findings to obtain an overall snapshot of the current practices and limitations related to detainees' access to legal representatives.

Endnotes

- 1 U.S. Department of Homeland Security (DHS), Immigration and Customs Enforcement (ICE), Enforcement Removal Operations (ERO), Custody Management Division, “Authorized Dedicated Facility List,” March 7, 2022, <https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx>.
- 2 See, e.g., *Reno v. Flores*, 507 U.S. 292, 306 (1993) (recognizing due process rights of immigrant detainees); see also 8 U.S.C. § 1362 (“In any removal proceedings before an immigration judge and in any appeal proceedings before the Attorney General from any such removal proceedings, the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”). Federal courts have “characterized [immigrants’] right to counsel of choice as ‘fundamental,’” concluding that the “right must be respected in substance as well as in name.” *Baires v. I.N.S.*, 856 F.2d 89, 91 n.2 (9th Cir. 1988); see also *Biwot v. Gonzales*, 403 F.3d 1094, 1098–99 (9th Cir. 2005) (“To infuse the critical right to counsel with meaning, we have held that [immigration judges] must provide aliens with reasonable time to locate counsel and permit counsel to prepare for the hearing.”).
- 3 We use the term “access to counsel” to denote the ability of detained people to communicate with attorneys and avail themselves of legal remedies in court. We do not use this term to refer to the right to appointed counsel, universal representation, or government-provided counsel.
- 4 DHS, ICE, *Access to Due Process: Fiscal Year 2021 Report to Congress*, February 14, 2022, 2, <https://immigrantjustice.org/sites/default/files/content-type/commentary-item/documents/2022-03/ICE-Access-to-Due-Process.pdf>.
- 5 See, e.g., The Nakamoto Group, Inc., “Cover Letter Inspection of Eloy Detention Center (AZ),” February 3, 2022, https://www.ice.gov/doclib/facilityInspections/eloyDetCtr_CL_02-03-2022.pdf. See also American Civil Liberty Union (ACLU), *ICE’s Detention Inspection Program Is Systemically Flawed and Has Not Improved* (2022), https://www.aclu.org/sites/default/files/field_document/detention_inspection_accountability_white_paper_0.pdf. Although some ICE detention inspection reports evaluated issues such as “access to telephones” where the facility has been the subject of access-to-counsel litigation, virtually every ICE detention inspection report reviewed by the ACLU failed to specifically examine access-to-counsel conditions (for example, access to telephone calls with counsel).
- 6 Ingrid V. Eagly and Steven Shafer, “A National Study of Access to Counsel in Immigration Court,” *University of Pennsylvania Law Review*, 164, no. 1 (December 2015): 50.
- 7 Eagly and Shafer, “National Study,” 70.
- 8 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/> (field selections: Immigration Court State: All; Custody: Detained; Represented: Not Represented).
- 9 ACLU, Human Rights Watch, and National Immigrant Justice Center (NIJC), *Justice Free Zones: U.S. Immigration Detention Under the Trump Administration* (2020), 20, <https://www.aclu.org/report/justice-free-zones-us-immigration-detention-under-trump-administration>.
- 10 See, e.g., Kevin Sieff, “When Death Awaits Deported Asylum Seekers,” *Washington Post*, December 26, 2018, <https://www.washingtonpost.com/graphics/2018/world/when-death-awaits-deported-asylum-seekers/>; and Sarah Stillman, “When Deportation is a Death Sentence,” *The New Yorker*, January. 15, 2018, <https://www.newyorker.com/magazine/2018/01/15/when-deportation-is-a-death-sentence>.
- 11 ICE periodically updates its list of detention facilities. As of March 7, 2022, when this report was drafted, ICE identified 185 detention facilities. The facilities in ICE’s January 6, 2022, list that are not identified in its March 7, 2022, list are: Bedford Municipal Detention Center, TX; Butler County Jail, OH; Douglas County Department of Corrections, NE; Essex County Correctional Facility, NJ; Eules City Jail, TX; Hardin County Jail, IA; Hudson County Correctional Center, NJ; Johnson County Corrections Center, TX; Morrow County Correctional Facility, OH; Northern Oregon Juvenile Detention, OR; Ogle County Jail, IL; Pulaski County Jail, IL; and Western Tennessee Detention Facility, TN. For the most recent list, see <https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx>.
- 12 The only facility identified by ICE in its January 6, 2022, list that our research team did not call is the Moshannon Valley Correctional Facility in Pennsylvania, a new facility that was added to ICE’s list after the close of our research period.
- 13 DHS, ICE, *Access to Due Process*, 5.
- 14 Call #104 to Lubbock County Detention Center, conducted on November 3, 2021; Call #51 to Calhoun County Correctional Center, conducted on October 14, 2021.
- 15 Attorney survey #68, September 30, 2021.
- 16 Jim Heaney, “Working for \$1 a Day,” *Investigative Post*, September 17, 2020, <https://www.investigativepost.org/2020/09/17/working-for-1-a-day/>.
- 17 These facilities include the El Valle Detention Center, TX; Houston Contract Detention Center, TX; Otay Mesa Detention Center, CA; and Port Isabel Detention Center, TX.
- 18 DHS, ICE, *2011 Operations Manual: ICE Performance-Based National Detention Standards* (rev. 2016), § 5.7.V.J.5 (“A facility may not require legal representatives and assistants to submit a detainee’s A-number as a condition of visiting.”); ICE, *2008 Operations Manual*, § 5.35.V.J.5 (same); ICE, *2019 National Detention Standards for Non-Dedicated Facilities*, C 5.5.II.G (“The facility shall not require legal service providers to submit a detainee’s A-Number as a condition of visiting”); ICE, *2000 National Detention Standards*, Visitation, § III.1.5 (same).
- 19 For this question, we collected data regarding 172 detention facilities. Information for 114 facilities was based on direct calls, 27 facilities based on attorney surveys, and 31 based on both direct calls and attorney surveys.
- 20 DHS, ICE, *Access to Due Process*, 2

- 21 Those facilities are Frederick County Detention Center, MD, and Monroe County Detention-Dorm, MI.
- 22 Attorney survey #32, October 4, 2021.
- 23 TRAC Immigration, *State and County Details*.
- 24 Eagly and Shafer, “National Study,” 50.
- 25 Eagly and Shafer, “National Study,” 70.
- 26 *Castro-O’Ryan v. INS*, 847 F.2d 1307, 1312 (9th Cir. 1987) (citation omitted).
- 27 Attorney survey #27, September 30, 2021.
- 28 ACLU, Human Rights Watch, and NIJC, *Justice Free Zones*, 20–21.
- 29 Attorney survey #3, September 29, 2021.
- 30 Attorney survey #8, September 29, 2021.
- 31 Attorney survey #32, October 4, 2021.
- 32 Attorney survey #37, October 5, 2021.
- 33 Attorney survey #4, September 29, 2021.
- 34 Attorney survey #68.
- 35 Attorney survey #9, September 29, 2021.
- 36 Attorney survey #16, September 30, 2021.
- 37 Attorney survey #50, October 8, 2021.
- 38 Attorney survey #60, October 14, 2021.
- 39 Attorney survey #33, October 5, 2021.
- 40 Attorney survey #72, November 5, 2021.
- 41 Attorney survey #74, November 8, 2021.
- 42 Attorney survey #36, October 5, 2021.
- 43 Attorney survey #62, October 15, 2021. A “credible fear interview” and “reasonable fear interview” are interviews conducted by immigration officials of qualifying immigrants who express a desire to apply for asylum and are used to determine if their cases should be sent to immigration court for asylum proceedings. See DHS, Citizenship and Immigration Services, *Affirmative Asylum, Credible Fear, and Reasonable Fear*, March 2019, https://www.uscis.gov/sites/default/files/document/presentations/USCIS_OLIA_March_2019_Hill_Conference_Asylum_Overview.pdf.
- 44 DHS, ICE, *Access to Due Process*, 4.
- 45 Our survey asked: “Can you schedule phone calls with clients?” A “yes” response does not include the scenario where attorneys place a call to the facility, and the facility states that it will pass a message to the client to call the attorney at a specific time from their housing unit (typically on a paid, nonconfidential phone line). A “yes” response also does not include the scenario where attorneys can connect with detained clients immediately over the phone but cannot schedule a time in advance for a phone call. If calling the attorney is left up to the client, it is not a scheduled call for the purposes of this report.
- 46 Attorney survey #65, October 20, 2021.
- 47 Attorney survey #45, October 7, 2021.
- 48 Attorney survey #83, December 3, 2021.
- 49 Call #51.
- 50 Call #113 to Salt Lake County Metro Jail, conducted on November 5, 2021.
- 51 Attorney survey #33, October 5, 2021.
- 52 Attorney survey #17, September 30, 2021.
- 53 Attorney survey #19, submitted Sept. 30, 2021.
- 54 Attorney survey #14, September 30, 2021.
- 55 Attorney survey #32, October 4, 2021.
- 56 Attorney survey #77, November 14, 2021.
- 57 Attorney survey #60, October 14, 2021.
- 58 Attorney survey #36, October 5, 2021.
- 59 Garrett Hazelwood, “Securus Technologies Is Cashing in on Immigrant Detention,” *VICE*, June 12, 2020, <https://www.vice.com/en/article/pkypjz/securus-technologies-is-cashing-in-on-immigrant-detention>; Shannon Najmabadi, “Detained Migrant Parents Have to Pay to Call Their Family Members: Some Can’t Afford To,” *The Texas Tribune*, July 3, 2018, <https://www.texastribune.org/2018/07/03/separated-migrant-families-charged-phone-calls-ice/>; and Claudia Valenzuela, “ICE Makes It Almost Impossible for People to Make Phone Calls from Detention Centers, Even in a Pandemic,” American Immigration Council, August 27, 2020, <https://immigrationimpact.com/2020/08/27/ice-phone-calls/#.YjwE1OfMKUk>.
- 60 The data for this question is based on the attorney surveys and/or calls for 55 facilities.
- 61 Call #104 to Lubbock County Detention Center, conducted on November 3, 2021; and Call #51.
- 62 Attorney survey #68, September 30, 2021.
- 63 Heaney, “Working for \$1 a Day.”
- 64 This table does not include the facilities for which it was unclear whether detainees could make outgoing calls for free because this exact question was not asked in the calls our research team made to detention facilities. Due to the large number of facilities for which this data was unclear/unknown (112), this number was excluded from the denominator.
- 65 Attorney survey #4, September 29, 2021.
- 66 Attorney survey #13, September 30, 2021.
- 67 Attorney survey #82, November 19, 2021.

- 68 Attorney survey #19, September 30, 2021.
- 69 Attorney survey #23, September 30, 2021.
- 70 Attorney survey #40, October 6, 2021.
- 71 Attorney survey #53, October 8, 2021.
- 72 Attorney survey #41, October 6, 2021.
- 73 Attorney survey #33, October 5, 2021.
- 74 Attorney survey #17, September 30, 2021.
- 75 DHS, ICE, *Attorney Information and Resources*, <https://www.ice.gov/detain/attorney-information-resources> (last checked April. 23, 2022).
- 76 These facilities are the El Valle Detention Center, TX; Houston Contract Detention Center, TX; Mesa Verde Detention Center, CA; and Port Isabel Detention Center, TX.
- 77 We considered legal videoconferencing calls to be available if the facility stated that such calls were free and confidential.
- 78 To verify, we researched ICE's detention facility site at <https://www.ice.gov/detention-facilities> (last checked April 23, 2022) or searched for the facility name and "VAV" online.
- 79 Upon phone inquiry to facilities, 23 facilities stated that legal videoconferencing is available for attorneys, although ICE's website provided no information as to how to schedule those calls. *See generally* <https://www.ice.gov/detention-facilities>. For that reason, we could not independently verify if legal videoconferencing is, in fact, available at the following facilities: (1) Albany County Jail, NY; (2) Bergen County Jail, NJ; (3) Boone County Jail, KY; (4) Burnet County Jail, TX; (5) Butler County Jail, OH; (6) Calhoun County Correctional Center, MI; (7) Clay County Jail, IN; (8) Clinton County Correctional Facility, PA; (9) Clinton County Jail, NY; (10) Essex County Correctional Facility, NJ; (11) Hardin County Jail, IA; (12) Jack Harwell Detention Center, TX; (13) Joe Corley Processing Center, TX; (14) Karnes County Residential Center, TX; (15) Monroe County Detention-Dorm, MI; (16) Nevada Southern Detention Center, NV; (17) Orange County Jail, NY; (18) Pike County Correctional Facility, PA; (19) Sherburne County Jail, MN; (20) Suffolk County House of Corrections, MA; (21) Teller County Jail, CO; (22) West Texas Detention Facility, TX; and (23) Willacy County Regional Detention Facility, TX.
- 80 Attorney survey #3, September 29, 2021.
- 81 Attorney survey #53.
- 82 ICE, *Performance-Based National Detention Standards 2011*, § 5.7.V.J.5 ("A facility may not require legal representatives and assistants to submit a detainee's A number as a condition of visiting."); ICE, *2008 Operations Manual ICE Performance-Based National Detention Standards*, § 5.35.V.J.5 (same); ICE, *2019 National Detention Standards*, C 5.5.II.G ("The facility shall not require legal service providers to submit a detainee's A-number as a condition of visiting"); ICE, *2000 National Detention Standards*, Visitation, § III.I.5 (same).
- 83 The question posed was: "Do attorneys need to give the client's A-Number to communicate with detained immigrants?" Of the 174 facilities for which we have information, 59 attorney surveys and one call reported an answer to whether the client's A-Number is required to communicate with detained immigrants. Out of the 60 facilities, 33 require the client's A-Number, 15 do not, eight sometimes do, and four are unclear.
- 84 Stephen Rahe, "You've Got Mail: The Promise of Cyber Communication in Prisons and the Need for Regulation," Prison Policy Initiative, 2016, <https://www.prisonpolicy.org/messaging/report.html>.
- 85 Attorney survey #13, September 30, 2021.
- 86 Attorney survey #4, September 29, 2021.
- 87 Attorney survey # 86, September 29, 2021.
- 88 Attorney survey # 86.
- 89 *See Houston v. Lack*, 487 U.S. 266, 274 (1988).
- 90 U.S. Department of Justice, Executive Office for Immigration Review (EOIR), "EOIR Policy Manual," § II.3.1(a)(3), <https://www.justice.gov/eoir/eoir-policy-manual/ii/3/1>.
- 91 Attorney survey #22, September 30, 2021.
- 92 Attorney survey #41, October 6, 2021.
- 93 Attorney survey #47 October 8, 2021.
- 94 Attorney surveys # 85, 86, and 88, November 12, 2021.
- 95 Attorney survey #87, November 12, 2021.
- 96 Attorney survey #30, October 3, 2021.
- 97 Attorney survey #36, October 5, 2021.
- 98 Attorney surveys # 38 and 39, October 6, 2021.
- 99 Attorney survey #52, October 8, 2021.
- 100 We collected data regarding in-person legal visits for 174 detention facilities nationwide based on attorney surveys and calls made directly to facilities. Information for 115 facilities was based on direct calls, 28 facilities based on attorney surveys, and 31 based on both direct calls and attorney surveys.
- 101 DHS, ICE, *Access to Due Process*, 2.
- 102 Attorney survey #65.
- 103 Attorney survey #52, submitted Oct. 8, 2021.
- 104 Attorney survey #52, submitted Oct. 8, 2021.
- 105 Attorney survey #6, submitted Sept. 29, 2021.
- 106 Attorney survey #3, submitted Sept. 29, 2021.
- 107 Attorney survey #26, submitted Sept. 30, 2021 (emphasis added).
- 108 Attorney survey #88, submitted Nov. 12, 2021
- 109 Attorney survey #89, submitted Nov. 12, 2021.

- 110 Attorney survey #65.
- 111 Attorney survey #65.
- 112 Attorney survey #60.
- 113 Attorney survey #27, submitted September 30, 2021.
- 114 “Mixed” reflects responses where respondents confirmed that both contact and non-contact visits were available at the facility, as well as responses based on both direct calls and attorney surveys, and where one response indicated “contact” and the other reflected “noncontact.”
- 115 Attorney survey #41.
- 116 Attorney survey #3, September 29, 2021.
- 117 Attorney survey #55, October 12, 2021.
- 118 Attorney survey #69, November 3, 2021.
- 119 Attorney survey #53.
- 120 Facility responses to our direct calls to Adelanto, CA; Bluebonnet, TX; Farmville, VA; Natrona County, WY; Otero County, NM; and River, LA, and detention facilities stated that laptops were allowed for legal visits. We marked these facilities as “yes,” although attorney surveys stated “no.” We also indicated “yes” where facilities noted that security clearance or approval was required for laptop use.
- 121 DHS, ICE, ERO, Custody Management Division, “Authorized Dedicated Facility List,” September 13, 2021, and January 6, 2022 (on file with authors). ICE’s September 13, 2021 list and January 6, 2022, list are no longer publicly available on ICE’s website. For the most recent version of ICE’s list of detention facilities, see <https://www.ice.gov/doclib/facilityInspections/dedicatedNonDedicatedFacilityList.xlsx>.
- 122 ICE’s January 6, 2022, list included one facility that was not in ICE’s September 13, 2021, list: Moshannon Valley Correctional, PA. Because this facility was not on the list of facilities available (September 13 list) during our data collection period, it was not included in the study.
- 123 Those facilities are: (1) Abraxas Academy Detention Center, PA; (2) Bedford Municipal Detention Center, TX; (3) Carver County Juvenile Detention Center, MN; (4) Cascade County Jail, MT; (5) Central Texas Detention Facility, TX; (6) Dale G. Haile Detention Center, TX; (7) Dallas County Jail – Lew Sterrett Justice Center, TX; (8) Delaware County Jail (George W. Hill), PA; (9) Fayette County Detention Center, KY; (10) Johnson County Corrections Center, TX; (11) Karnes County Correctional Center, TX; (12) Lonoke Police Department, AR; (13) Montgomery City Jail, AL; (14) Northern Oregon Correctional Facility, OR; (15) Roanoke City Jail, VA; (16) South Texas Family Residential Center, TX; (17) Val Verde Correctional Facility, TX; (18) Western Tennessee Detention Facility, TN; and (19) Yakima County Department of Corrections, WA.
- 124 DHS, ICE, Access to Due Process, 2.

