

**Congress of the United States**  
**Washington, DC 20515**

November 3, 2022

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

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

Dear Secretary Mayorkas and Acting Director Johnson:

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

Recent reports, however, have detailed ICE's systematic failure to ensure that people in ICE detention have the ability to find and communicate with attorneys, directly refuting ICE's reporting to Congress on access to counsel issues in FY 21.<sup>3</sup> These reports describe how ICE detention facilities nationwide have impeded even the most basic modes of access to counsel, including telephone calls, video-teleconferencing (VTC), legal mail, and in-person legal visits.

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

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<sup>1</sup> 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/>.

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

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

<sup>4</sup> *No Fighting Chance*, at 7.

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

<sup>6</sup> *No Fighting Chance*, at 8.

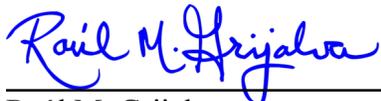


enable attorneys to schedule free, private, confidential legal telephone calls and video-teleconferencing calls with detained immigrants in advance.

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

Thank you for your consideration and cooperation on this matter.

Sincerely,



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Raúl M. Grijalva  
Member of Congress



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James P. McGovern  
Member of Congress



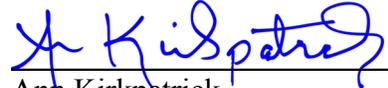
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Rashida Tlaib  
Member of Congress



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Sheila Jackson Lee  
Member of Congress



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Member of Congress



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Bonnie Watson Coleman  
Member of Congress



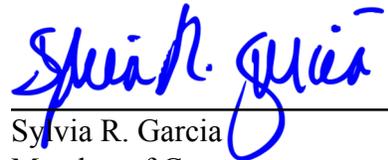
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Eleanor Holmes Norton  
Member of Congress



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Juan Vargas  
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Sylvia R. Garcia  
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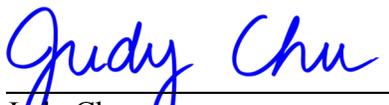
  
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Member of Congress

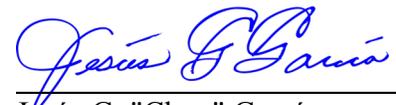
  
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Member of Congress

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Tony Cárdenas  
Member of Congress

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Frederica S. Wilson  
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*Hank Johnson*

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Henry C. "Hank" Johnson, Jr.  
Member of Congress

*Jason Crow*

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Jason Crow  
Member of Congress