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June 20, 2023

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**RE: Complaint Regarding Telephone Access and Access to Counsel at the
Pike County Correctional Facility**

Dear Civil Rights Officer Wadhia, Inspector General Cuffari, and Acting Ombudsman Gersten:

The University of Pennsylvania Carey Law School Transnational Legal Clinic submits this complaint on behalf of the Capital Area Immigrant Rights (CAIR) Coalition, the Pennsylvania Immigration Resource Center (PIRC), HIAS Pennsylvania, Nationalities Service Center, and their noncitizen clients detained at the Pike County Correctional Facility regarding telephone access and access to counsel issues. Pike County Correctional Facility (herein “Pike County”) is a county jail in Pennsylvania that holds individuals detained by Immigration and Customs Enforcement (ICE) pursuant to an Intergovernmental Service Agreement (IGSA), in addition to individuals in criminal custody.¹ As part of this agreement, Pike County is required to

¹ Although individuals held by ICE are placed under civil detention, and not criminal detention, many facilities operating under IGSA's, including the Pike County Correctional Facility, are also county jails used for criminal detention. See Detention Centers, IMMIGRATION CUSTOMS AND ENFORCEMENT, <https://www.ice.gov/detention-facilities?state=All&office=&name=county&page=0>. The U.S. Immigration and Customs Enforcement (ICE) Office of Professional Responsibility (OPR) Office of Detention Oversight (ODO) conducted their last compliance

comply with ICE’s 2011 “Performance-Based National Detention Standards” (revised 2016) (“PBNDS”) regarding detention conditions for noncitizens in ICE custody at their facility.²

The Pike County facility is grievously out of compliance with ICE’s PBNDS standards relating to phone access and access to counsel. This complaint centers on the testimony of seven individuals, two of whom are currently detained in Pike County in the custody of ICE, and five attorneys who represent individuals detained by ICE in Pike County. These testimonies reveal a pattern of systemic failures of Pike County staff, and their ICE counterparts, to comply with the PBNDS as well as policies outlined in the Pike County Facility Handbook, including: (1) failure to provide adequate procedure to schedule legal calls with clients in detention, (2) failure to provide functioning telephones, (3) failure to provide a private and confidential setting for legal calls, (4) improper monitoring of legal calls, (5) failure to provide individuals in detention with equitable access to telephone communication, (6) improperly charging individuals in detention for legal calls, and (7) failure to provide the required time allotment for legal calls.

As a result, individuals detained at Pike County experience reduced access to legal counsel, which interferes with their ability to adequately prepare for their appearances in immigration court. These systemic failures raise significant concerns regarding the ability of individuals detained at Pike County to fully exercise their Fifth Amendment and statutory rights to counsel. Because of the unresponsiveness of the facility regarding these issues, OCRCL, OIG, and OIDO must act to investigate and remedy these issues through specific changes to the policies of the Pike County facility as well as directed oversight to ensure Pike County complies with the PBNDS and does not violate the rights of individuals detained by ICE.

I. PIKE COUNTY SYSTEMATICALLY DENIES ACCESS TO MEANINGFUL LEGAL TELEPHONE CALLS

Section 5.6 of the 2011 PBNDS outlines the responsibilities of facilities like Pike County in providing telephone access to those in ICE custody. PBNDS § 5.6(II) states, “Detainees *shall* have reasonable and equitable access to reasonably priced telephone services.”³ The PBNDS also makes explicit the special status of legal phone calls: “Detainees and their legal counsel *shall* be able to communicate effectively with each other.”⁴ These standards establish that phone calls to counsel, being a key part of a detained person’s ability to prepare for trial and ensure respect of civil rights, are an integral function of any non-dedicated facility. PBNDS § 5.6(V)(C) also mandates that facilities clearly detail their telephone access rules in a facility handbook, and that the facility post those rules in a visible location.⁵

In some cases, the Pike County Inmate/Detainee Handbook is directly out of compliance with ICE’s PBNDS.⁶ In other cases, the handbook facially complies, but the facility fails to

inspection of the Pike County Correctional Facility in July 2022. See https://www.ice.gov/doclib/foia/odo-compliance-inspections/pikeCoCorrFacLordsValleyPA_July19-21_2022.pdf.

² Performance-Based National Detention Standards (PBNDS) 2011, U.S. Immigration and Customs Enforcement, (Revised 2016), <https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf>.

³ PBNDS § 5.6(II) (emphasis added).

⁴ PBNDS § 5.6(II) (emphasis added).

⁵ PBNDS § 5.6(V)(C).

⁶ Pike County Correctional Facility Inmate/Detainee Handbook, 1995, Revision #27, April 2023.

adhere to its own standards. As a result, Pike County provides persons in ICE detention with inequitable access to telephones or denies access altogether. These inequities prevent persons in ICE detention from meaningfully and regularly exercising their right to consult with counsel.

A. Attorneys Cannot Call or Leave Messages for Clients at Pike County

Pike County fails to comply with ICE standards, and its own handbook, which require the facility to deliver attorney phone messages to individuals in detention. PBNDS § 5.6(V)(J) states, “[t]he facility shall take and deliver telephone messages to detainees as promptly as possible.”⁷ The Pike County Handbook implements this requirement with identical language: “[i]f any inmate/detainee receives an incoming telephone call, the telephone call will be given to the Shift Commander. [. . .] The Shift Commander will verify the validity of the call, and then forward the message to the inmate/detainee.”⁸ The handbook envisions additional procedures for attorneys and clients to speak at any time, stating “[a]n inmate/detainee may be contacted by the Housing Unit Officer and told to ‘call your attorney’”. This means that your attorney will accept a collect call and is awaiting your return call.”⁹ Assuming there is no reason for the facility to deny this call, this procedure purports to guarantee access to legal counsel.

Testimony of persons detained at Pike County and their attorneys indicate what the handbook describes does not exist in practice:

- None of the attorneys interviewed could identify any Shift Commander at the facility nor could they identify what number to call to talk to a Shift Commander. This leaves attorneys with no clear direction for delivering messages to clients.
- Attorney #1 reports that she used to be able to leave voicemails with ICE, and that ICE occasionally passed on those messages to her clients detained at Pike County. However, in September 2022, the frequency of success in getting messages to her client declined sharply. Attorney #1 has resorted to calling all Pike County staff members whose contact information she could find since there was nobody identified as the designated contact. Attorney #1 reports messages left with front desk staff of the facility have a 50% success rate in getting through to her clients.
- Attorney #2 also reports that it is difficult to reach any staff at the facility, and that she has no confidence that the facility will deliver the messages she leaves to her clients. Despite living several hours away from the facility, Attorney #2 has needed to make six unscheduled trips to Pike County to meet with clients or else risk that she could not conduct necessary trial preparation.
- Attorney #3 indicates it is rare for anyone to answer the phone number provided for her to call at Pike County, and that it is extremely hard to speak with any staff members during business hours. According to this attorney, the best method to contact the facility is to call on a Saturday and speak with an ICE officer specifically.

⁷ PBNDS § 5.6(V)(J).

⁸ Pike County Correctional Facility Inmate/Detainee Handbook § 12.k.

⁹ Pike County Correctional Facility Inmate/Detainee Handbook § 16.e.

- Attorney #4 reports that, even after leaving messages with facility staff on the facility mainline, her clients frequently report not receiving any sort of message from her.
- Attorney #5 reports that she used to call the ICE office to pass on messages, but eventually ICE stopped answering her phone calls. Clients frequently contact her upset that she did not contact them because nobody delivered her messages.
- All detained persons interviewed report frequent instances where their attorneys attempted to contact them, but they never received these messages. Detained Person #2 specified that his attorney has to contact his family to deliver a message to him.

Multiple attorneys reported that the only way to communicate by phone with clients was to have a standing weekly appointment and hope that their clients would call. Because of this, it is impossible for attorneys to communicate to their clients any emergent circumstances that require immediate attention. Moreover, the inability to ask clients to call at specific times or dates forced all attorneys interviewed to have less frequent contact with clients than they wished. All attorneys interviewed expressed frustration that they needed to curtail their case preparation because the inability to pass messages made arranging phone calls a burden. This artificially restricts access to legal calls and materially prejudices their immigration cases.

Although PBNDS § 5.6(V)(J) does not require Pike County to maintain any specific procedure for delivering messages, it does envision some procedure. Attorney #3 compared her experience with a non-dedicated facility in Virginia, which keeps a formal schedule of attorney calls with slots where attorneys can sign up to receive calls from their clients at specified times, provided there is enough notice to the facility. When those times arrive, Attorney #3 either receives a call from her clients, or a call from facility staff indicating that her client declined the opportunity. Through this system, Attorney #3 could guarantee consistent and frequent communication with her clients, speaking with them whenever she needed, and at whatever interval best prepared them for their cases. Pike County's lack of procedure, by contrast, makes simple attorney-client communication a difficult and time-consuming process.

Failure to implement PBNDS § 5.6(V)(J) and Sections 12.k and 16.e of the Pike County Handbook puts the facility in violation of its own rules, and the rules ICE establishes to protect the rights of individuals in immigration detention. This complaint asks OCRCL, OIG, and OIDO to investigate these failings and mandate that Pike County implement a system by which attorneys can schedule and make confidential legal and/or video calls to clients detained in Pike County. Further, OCRCL, OIG, and OIG should mandate Pike County promptly (within two hours) and reliably deliver attorney messages and call-back requests, either by implementing Pike County Handbook Sections 12.k and 16.E, or another procedure designed to fulfill the facility's obligation under PBNDS § 5.6.

B. Pike County Does Not Maintain a Functioning Phone System

Pike County's phone system fails to provide the basic functionality required by ICE. PBNDS § 5.6(V)(A) requires: "Each facility shall maintain detainee telephones in proper working order. Designated facility staff shall inspect the telephones daily, promptly report out of

order telephones to the repair service so that required repairs are completed quickly.”¹⁰ As described in interviews, individuals detained at Pike County use both stationary telephones as well as tablets enabled with Wi-Fi calling to make phone calls. However, testimony from attorneys and those detained indicates that Pike County experiences significant problems maintaining its telecommunication and internet infrastructure.

- Detained Person #1 states that the facility loses internet connectivity “two to three times a month,” which prevents detained persons from placing any calls, and that these outages have impacted scheduled calls with his attorney for the purpose of preparation for trial.
- Detained Person #2 states that he refuses to use the dedicated telephones to contact his attorney because phone calls suffer from audio issues that make it difficult to hear, including low quality audio and frequent interruptions that make it difficult to understand people talking.
- Interviews with attorneys reveal that the facility does not communicate outages or service problems when they occur. As a result, clients are unable to call at scheduled times and the facility takes no responsibility for these missed connections.

Functioning telephones are a basic requirement to ensure adequate access to counsel in ICE-affiliated facilities. As explained in the prior section, Pike County’s failure to implement any procedure to leave messages with clients and request clients call their attorneys forces individuals detained there to call their attorneys at specific pre-planned times. That phone systems are unreliable and occasionally broken constitutes a severe second hurdle to attorney-client communication. Attorneys and detained persons interviewed expressed frustration that clients often miss legal calls due to nonfunctioning phones and internet outages, making adhering to a schedule for legal calls impossible. Taken together, this corroborates the broader complaint that Pike County systematically denies individuals in detention access to counsel.

As a remedy, we ask OCRCL, OIG, and OIDO to investigate the state of telephone and internet infrastructure in the Pike County facility and mandate Pike County upgrade and maintain telephone and internet connections to ensure reasonable sound quality and uninterrupted connectivity.

C. Legal Calls Are Not Private at Pike County

Pike County violates the PBNDS by failing to provide a private and confidential environment for legal phone calls. PBNDS § 5.6(V)(F) mandates that “[f]or detainee telephone calls regarding legal matters, each facility shall ensure privacy by providing a reasonable number of telephones on which detainees can make such calls without being overheard by staff or other detainees.”¹¹ This standard also makes it the responsibility of facility staff to arrange for private legal calls when asked.¹² The PBNDS does not mandate a specific way this must be accomplished, but suggests measures including installing privacy panels, placing telephones

¹⁰ PBNDS § 5.6(V)(A)(3).

¹¹ PBNDS § 5.6(V)(F).

¹² *Id.*

where conversations cannot be heard, or allowing detained persons to use an office telephone.¹³ The Pike County Handbook’s implementation of this appears to be a single line, in which the facility requests that “[w]hen someone is on the telephone, respect their privacy, stay an arm’s length away.”¹⁴ This, plainly, is not an effective implementation of the PBNDS.

- Detained persons interviewed report each housing unit has four phones, near each other, and located centrally in housing unit common spaces where other people are likely to overhear calls. Pike County’s request that detained persons stay at least an arm’s length away from people on the telephone is entirely inadequate, and the facility provides no specialized telephone for confidential legal phone calls.
- All detained persons and attorneys complained that ambient noise of the room from where detained persons place calls distracted from the conversation, which confirms that phones are in public areas where privacy and confidentiality are unlikely.
- Attorney #1 reported that the facility, on occasion, allowed her client to use an office telephone to call her, but that only occurred in the context of her client not being able to access a housing unit phone at a designated time. No detained persons interviewed understood their right to request a private phone call to discuss their legal cases, and the handbook provided by Pike County fails to inform detained persons of this right.
- All attorneys reported needing to make in-person visits to the facility to discuss confidential matters with their clients. Attorney #5 indicated she risked COVID exposure to meet in person with her client because there was no other way to have a private conversation.
- Detained Persons #1 and #2 both reported that preparation for their cases required discussing gang violence in their countries of origin, including information they feared would put them at risk of harm. All detained persons expressed concern that some individuals in their housing units had gang affiliations. All detained persons interviewed reported that they refused to discuss information vital to their immigration case with their attorneys by phone because they did not feel such information would be confidential.

The facility does provide an alternative to the stationary housing unit phones in the form of tablet computers, which allow detained persons to place voice calls from any location within their housing block. Although these tablets may provide a more confidential environment for phone calls, the result still falls well short of complying with PBNDS § 5.6(V)(F).

- Detained persons interviewed indicated that the most confidential location to place calls on the tablets is in their cells. However, “more confidential” does not mean fully confidential. Detained Person #1 reported that people walking outside of his cell could potentially overhear his conversation from the common space. Detained Person #2 reported concerns that his cellmates, who he did not feel comfortable asking to leave the cell, would overhear his phone conversations. This is especially concerning considering that detained persons and individuals in criminal custody at Pike County are cohabitated.

¹³ *Id.*

¹⁴ Pike County Correctional Facility Inmate/Detainee Handbook § 12.d.

Neither Detained Person #1 nor #2 considered tablet calls to be confidential or private even under ideal circumstances.

- Attorneys expressed similar concerns over the lack of confidentiality or effectiveness of tablet calls. Attorney #2 reported that she had attempted to use the tablets in the past, but that the connection was even less reliable than the phone system. Attorney #3 indicated that she preferred tablet calls but still experienced background noise, indicating that the call was not occurring in private.
- Other attorneys were confused or misinformed about the status of tablets in the facility. Attorney #1 understood that tablets existed in the facility, but believed tablets could only place video calls. Attorney #5 also knew of the tablets but believed they were only for entertainment. Attorney #4 was unaware the tablets existed.

There are no means by which a detained person can ensure the privacy and confidentiality of their legal calls at Pike County. This poses a significant threat to the security of detained persons who need to discuss sensitive information to prepare their cases while individuals who would harm them can overhear their conversations. As a result, interviewed attorneys report that they are unable to timely and effectively prepare clients for trial because they must discuss sensitive issues in person. Attorneys report they have had to request continuances in a number of cases because they simply were unable to communicate with their clients, resulting in prolonged cases and prolonged detention. This is especially relevant to Pike County, which is located several hours away from the nearest metropolitan area. Detained persons seeking representation can often only find pro bono counsel with non-profit organizations located far from the facility. Frequent in-person visits are burdensome to the time and finances of these attorneys and organizations. As result, the lack of phone access directly limits the ability of detained persons to access that counsel.

To remedy this, we ask that OCRCL, OIG, and OIDO mandate that Pike County ensure confidential legal and/or video calls by providing private spaces for detained persons from which to place legal calls. OCRCL, OIG, and OIDO should further direct that Pike County revise the facility handbook with language that complies with PBNDS § 5.6(V)(F), including explicit instructions for how detained persons can request arrangements for a confidential legal call.

D. Pike County May Monitor Legal Calls

Interviews with both attorneys and detained persons revealed that Pike County may violate the PBNDS by recording and monitoring legal phone calls. PBNDS § 5.6(V)(F) mandates: “Absent a court order, staff may not monitor phone calls made in reference to legal matters.”¹⁵ The Pike County Handbook implements this by instructing detained persons to complete an “Inmate/Detainee Telephone Authorization Form” upon arrival listing the number of their attorney or by submitting a request using a kiosk in the housing unit or in writing.¹⁶ Correct implementation of these procedures presumably ensures that legal phone calls are not monitored

¹⁵ PBNDS § 5.6(V)(F); *see also* PBNDS § 5.6(B) (“A detainee’s call to a court, a legal representative, DHS OIG, DHS Civil Rights and Civil Liberties (CRCL) or for the purposes of obtaining legal representation, may not be electronically monitored without a court order.”).

¹⁶ Pike County Correctional Facility Inmate/Detainee Handbook § 12.h.

by the facility. But interviews with detained persons and attorneys raised significant questions that demand further investigation.

- Detained Person #1 did not recall ever receiving a form to list legal phone numbers but was aware of the kiosk located in the communal area of the housing units. Detained Person # 2, a monolingual Spanish speaker, was entirely unaware of any procedure to request legal calls be exempt from the default recording.
- All attorneys and detained persons report that, no matter how they make calls, an automated message stating that the facility was recording the call plays at the beginning of each call. Attorneys expressed confusion and frustration with this. Attorneys #1 and #2 stated a belief that the facility monitored their calls and lacked confidence that the facility honored requests to keep legal calls private. Attorneys #3 and #5 received assurances from the facility that they do not monitor legal calls but expressed doubt in that assurance given that the automated messages continued.

Failure to exempt legal calls from monitoring violates both PBNDS § 5.6(V)(F) and PBNDS § 5.6(B). Although there is no direct evidence of this violation, only the facility itself has the means to confirm or refute this concern. The systemic neglect and malfeasance detailed in this complaint prevents attorneys from trusting the facility's assurances that they exempt attorney calls from monitoring despite all outward appearance.

To remedy this, we ask that OCRCL, OIG, and OIDO open an investigation to determine if the facility monitors legal calls and take appropriate action based on the conclusions of that investigation. Further, we ask OCRCL, OIG, and OIDO to direct Pike County to provide individuals with limited English proficiency detailed instructions, in their own language, for how detained persons can list their attorney's information to exempt calls from monitoring.

E. Pike County Fails to Ensure Equitable Access to Telephones and Tablets

Access to counsel necessitates access to telephones, and Pike County denies detained persons equal access to counsel by not ensuring equal access to phone calls in the facility. PBNDS § 5.6(V)(A) obligates, "To ensure sufficient access, each facility shall provide at least one operable telephone for every 25 detainees."¹⁷ Between the housing unit phones and the tablets, the Pike County facility may meet the numerical requirement on paper. However, when tablets become the only semi-secure method for attorney-client communication, detained persons lack sufficient access to phones as mandated by the PBNDS. The PBNDS's numerical requirement envisions telephones as being both stationary and public. Tablets, being portable and concealable, create several problems that Pike County fails to address.

- Detained Person #1 reported that the facility does not control the distribution of tablets among detained persons but allows detained persons to determine who controls tablets amongst themselves. According to Detained Person #1, an informal system has developed among detained persons to allocate tablets among racial groups within housing units.

¹⁷ PBNDS § 5.6(V)(A) (noting facilities operate "at the optimal level when at least one telephone is provided for every ten (10) detainees.").

Detained Person #1 also noted that it is common for detained persons to argue or even fight over tablets with other detained persons or individuals in criminal custody. Detained persons who do not assert control over the tablets are unlikely to receive them.

- Detained Person #2 reported that because he is unable to assert himself against others to physically take tablets, he must ask a guard to take the tablet from another detained person. If the guard on duty is not willing to assist, as is sometimes the case, Detained Person #2 simply cannot get one, and must wait until another guard arrives to ask again. Detained Person #2 reported that he missed several meetings with his attorney because he could not obtain a tablet to call and did not feel comfortable using the stationary phones to discuss confidential information.
- Attorney #1 stated an understanding that individuals detained in Pike County for criminal offenses control access to the tablets, and that detained persons in civil immigration detention need some kind of connection to individuals in criminal custody to access tablets at all. Attorney #1 also stated that one of her clients, held in protective custody due to a mental disability, is often unable to access a tablet at their scheduled meeting times.

The absence of any system to ensure equal access to the facility’s resources produces inequity. Considering the lack of privacy with the stationary telephones, unregulated tablet distribution results in detained persons being unable to make confidential legal calls to their attorneys unless they are both willing and able to assert themselves. This dynamic puts detained persons in danger and results in the most vulnerable individuals being least able to speak with their counsel. This inequity also potentially violates Pike County’s affirmative obligations to ensure disabled individuals have equal access to services, programs and activities under Section 504 of the Rehabilitation Act of 1973, Title II of the Americans with Disabilities Act, and PBNDS § 5.6(V)(G).¹⁸

To remedy this, we ask OCRCL, OIG, and OIDO to investigate Pike County’s ad hoc tablet distribution system and direct changes that will ensure equitable access.

F. Pike County Improperly Charges for Legal Calls

Pike County charges detained persons for legal calls in flagrant violation of ICE’s standards. PBNDS § 5.6(V)(E) mandates that facilities “shall permit detainees to make direct or free calls” to certain agencies and individuals, including legal representatives, and “legal service providers or organizations listed on the ICE/ERO free legal service provider list.”¹⁹ Legal calls, protected by both the Constitution and the PBNDS, are exempt from all charges that normally apply to phone calls by detained persons. Nonetheless:

¹⁸ Rehabilitation Act of 1973, 29 U.S.C. § 794; Americans with Disabilities Act, 42 U.S.C. §§ 12131–34; PBNDS § 5.6(V)(G).

¹⁹ PBNDS § 5.6(V)(E). All complainants are listed on the Executive Office for Immigration Review (EOIR), Office of Policy, Office of Legal Access Programs (OLAP) “List of Pro Bono Legal Service Providers.” *See* <https://www.justice.gov/eoir/list-pro-bono-legal-service-providers>.

- Every detained person interviewed reported that the facility does not charge for calls to pro bono legal hotlines but does charge for calls to attorneys themselves. All detained persons reported that their attorneys were covering the costs of their legal calls.
- Detained Person #2 acknowledged that he received a free minute allotment from ICE due to a directive issued during COVID,²⁰ but also stated that those minutes did not always cover his needs. Conscious that his attorney paid for his legal calls out of pocket after his free minutes ran out, he reported talking to his family less frequently so that he could use more free minutes to speak with his attorney.
- Attorneys reported creating an ad-hoc system in which clients call a free legal hotline belonging to a non-profit organization and then volunteer operators attempt to route the call to the attorneys. The hotline is nationwide and built for the purpose of intakes and inquiries, and as such, does not always work.
- Attorneys #1 and #3 reported that they relied on their non-profit organization employer to put money into the commissary accounts of their clients so they could make legal calls. Attorney #5 reported putting in her own money, and asking her friends and family for money so she could pay to speak with her client.

The Pike County facility is either unaware of PBNDS § 5.6(V)(E)'s requirement or is flagrantly violating ICE's mandate that legal calls must be free. In practice, this has put an unconscionable burden on lawyers and non-profits, who must often pay for access to their clients to provide adequate representation.

OCRCL, OIG, and OIDO urgently must compel Pike County's compliance with PBNDS § 5.6(V)(E). Additionally, we ask that OCRCL, OIG, and OIDO open an investigation into the amount of money improperly collected by the facility and their contractors in the process of this violation, and issue guidance on how detained individuals, attorneys, and organizations forced to make these payments can recover their funds.

G. Call Duration at Pike County Is Shorter Than Allowed By the PBNDS

Pike County phone calls, in addition to being unreliable, are improperly short. PBNDS § 5.6(V)(F) mandates that if there are any limits on phone duration or automatic cut-off times, they "shall be no shorter than 20 minutes."²¹ The Pike County Handbook describes a thirty-minute limit on phone calls.²² However, interviews reveal this policy is not implemented in practice.

- Every detained person and attorney interviewed complained that the facility automatic cut-off time for phone calls was too short, requiring clients to repeatedly call back after each cut-off to continue legal conversations. Some, like Attorney #2, estimated that phone calls disconnect automatically after ten minutes. Most agreed that the disconnect time was somewhere near fifteen minutes, and certainly not twenty minutes.

²⁰ ICE Guidance on COVID-19, ICE (Accessed May 5, 2023), <https://www.ice.gov/coronavirus>.

²¹ PBNDS § 5.6(V)(F).

²² Pike County Correctional Facility Inmate/Detainee Handbook § 12.d.

- Attorney #1 uses a telephonic interpreter to speak with clients and expressed specific frustration with the short duration of phone calls. When accounting for the time needed to dial in a telephonic interpreter and translate statements back and forth, conversations with her clients end up being only a few minutes long before automatically disconnecting.

Interviews indicate this occurs on every call, meaning this is not likely an issue with the facility’s infrastructure, but a facility policy. The short duration of calls makes it difficult for attorneys to counsel their clients and prepare for trial, as constant starts and stops break the flow of conversation, and testimony is incredibly difficult to simulate with multiple interruptions. These disruptions interfere with a detained person’s right to meaningfully consult with their counsel and significantly prejudices their cases.

As a remedy, we ask OCRCL, OIG, and OIDO to investigate the automatic cut-off of legal calls, and to direct the facility to allow calls to continue until the 30-minute time limit identified in the Pike County Handbook, or the 20-minute duration required by ICE.

II. PIKE COUNTY VIOLATES THE CONSTITUTIONAL AND STATUTORY RIGHTS OF DETAINED PERSONS IN ICE CUSTODY

Noncitizens in detention and removal proceedings have both a constitutional and statutory right to obtain and consult with counsel.²³ But simply obtaining counsel is not enough; detained persons can only meaningfully exercise their rights if they can regularly and consistently consult with their counsel and prepare for their hearings. PBNDS § 5.6(V)(F) explicitly states it is the obligation of facilities to ensure ICE civil detention does not unreasonably limit detained persons’ ability to make legal calls to their chosen representatives.²⁴ The remainder of Section 5.6 provides policies and procedures designed to protect detained persons’ rights to communicate with their counsel via telephone.

Pike County is woefully out of compliance with the PBNDS, and as a result, violates the constitutional and statutory rights of detained persons. Every attorney interviewed commented that Pike County’s inability to provide adequate telephone access to clients makes representing individuals detained in the facility incredibly difficult. Attorneys and detained persons expressed

²³ See *Reno v. Flores*, 507 U.S. 292, 306 (1993) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”); *Leslie v. Attorney General*, 611 F.3d 171, 181 (3d Cir. 2010) (“although the Fifth Amendment does not mandate government-appointed counsel for [noncitizens] at removal proceedings, it indisputably affords [a noncitizen] the right to counsel of his or her own choice at his or her own expense.”); *United States v. Charleswell*, 456 F.3d 347, 360 (3d Cir. 2006) (describing a noncitizen’s right to counsel at their own expense in formal removal proceedings as “so fundamental to the proceeding’s fairness” that a denial of this right could “rise to the level of fundamental unfairness.”) Congress also established a statutory right to counsel. See INA § 292, 8 U.S.C. § 8 U.S. Code § 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.”).

²⁴ PBNDS § 5.6 (V)(F)(1) (“A facility may neither restrict the number of calls a detainee places to his/her legal representatives, nor limit the duration of such calls by rule or automatic cut-off, unless necessary for security purposes or to maintain orderly and fair access to telephones. [. . .]. A facility may place reasonable restrictions on the hours, frequency and duration of such direct and/or free calls but may not otherwise limit a detainee’s attempt to obtain legal representation.”).

a lack of confidence that an attorney could communicate with their client about any emergent issues that arise. All the people interviewed described phone access as inconsistent, expensive, and subject to the whims of facility staff. This is the daily reality of civil detention in Pike County. When Pike County restricts phone access by negligence or malfeasance without a compelling government interest, it violates the Fifth Amendment and statutory rights of detained persons. This complaint asks OCRCL, OIG, and OIDO to investigate these violations and take appropriate action to rectify the situation.

III. THE SYSTEMIC INADEQUACY OF STAFFING AT PIKE COUNTY MAKES INFORMAL RESOLUTION OF THESE ISSUES IMPOSSIBLE

The attorneys interviewed have made concerted efforts to inform Pike County of these ongoing issues and to work on solutions. In every instance, the facility staff proved either unable or unwilling to engage with attorneys and non-profits over these concerns. OCRCL, OIG, and OIDO must insert themselves into this situation to compel the necessary change.

A. Pike County's Staffing Practices Prevent It From Complying with Its Contractual Obligations

Attorneys interviewed stated that Pike County staff often cite short staffing as the reason the facility cannot comply with the PBNDS requirements.

- All attorneys stated a belief that the facility's lack of staff was, in part, responsible for the inability to deliver messages to clients, as required by PBNDS § 5.6(V)(C).
- The facility's inadequate staffing prevents attorneys from having regular communications with clients with disabilities. Attorney #2 relayed a story about a client who could not access a phone due to a mental health issue, but facility staff told the client that the facility did not have enough staff to provide aid.²⁵ In that case, Attorney #2 needed to come in person to speak with her client. Attorney #3 reported that she is only able to speak with her disabled client because other detained persons help him place calls, not facility staff.
- The effects of understaffing extend beyond the access to counsel issue. Attorney #1 reports an incident where the facility caused the cancellation of her client's immigration hearing specifically because the facility did not have the staff to escort her client to the video conference room within the facility. The detained person in question spent an additional month in detention awaiting a rescheduled hearing.

²⁵ Facilities must enable detained persons with disabilities to use phones on equal terms with reasonable accommodations under PBNDS § 5.6(V)(G), Section 504 of Rehabilitation Act of 1973, 29 U.S.C. § 794, and Title II of the Americans with Disabilities Act, 42 U.S.C. §§ 12131–34. This includes the provision of assistance or accessible telephones if necessary. Although this complaint does not allege a specific discriminatory violation, it is only because the denial to phone access at Pike County is so far out of compliance with PBNDS § 5.6 generally that it is impossible to determine whether the facility prevents disabled detained persons from accessing phone calls due to discrimination, or simple negligence and malfeasance that applies to all detained persons.

Because Pike County is a non-dedicated facility, OCRCL, OIG, and OIDO do not have oversight over its hiring practices. However, Pike County's inability to properly staff the facility prevents it from complying with the PBNDS and the obligations it assumes when it contracts with ICE. Consequently, Pike County's staffing shortage relates to conditions in DHS-affiliated facilities, and therefore OCRCL, OIG, and OIDO have a mandate to examine this issue.

B. Pike County Lacks Identifiable Leadership and Attempts to Resolve Issues Through Cooperation Have Failed

Pike County's lack of identifiable leadership makes it impossible to contact the proper staff members to discuss concerns about the facility. This contributes significantly to Pike County's continuing noncompliance with the PBNDS. Considering the level of noncompliance and the myriad informal and formal attempts to address these concerns, all attorneys interviewed stated a belief that they have exhausted all other remedies to initiate change.

- Although the Pike County Handbook specifically identifies Shift Commanders as individuals responsible for connecting detained persons to their attorneys,²⁶ as mentioned above, no attorneys interviewed could identify any Shift Commander or any other individual designated to receive attorney messages and call-back requests.
- Attorney #4 sought to speak directly with the acting director of the facility about the telephone access to counsel issues described in this complaint. The facility told her there was no acting director, and that the facility would not have an acting director anytime soon. When Attorney #4 pressed for details, her emails went unreturned.
- Attorney #4 also stated that her organization asked her to chair a stakeholder committee to address these issues, and she repeatedly requested a meeting with facility staff to discuss her organization's frustrations. Despite a promising initial reaction, she was never able to schedule a stakeholder meeting because the facility could not determine which staff would attend said meeting. The facility again stopped responding to emails.
- Many attorneys expressed they initially hoped they could resolve these problems through cooperation, but now all attorneys agree that they do not expect Pike County to engage with their concerns unless compelled.

The lack of any clear hierarchy prevents attorneys from speaking with authorities who make decisions that materially impact conditions for their clients. As a result, violations of the PBNDS are ongoing. In some instances, the facility's procedures facially comply with the PBNDS, but the facility identifies no individual responsible for overseeing those procedures. In other cases, the facility's policies themselves violate ICE's standards. Consequently, complainants have been unable to meaningfully engage with Pike County regarding compliance with the PBNDS or the facility handbook.

As a remedy, we ask that OCRCL, OIG, and OIDO investigate the lack of hierarchy, instruct Pike County to develop a list of occupied roles and job duties in the facility, and publicize a list of staff responsible for PBNDS compliance and information on how attorneys and

²⁶ Pike County Correctional Facility Inmate/Detainee Handbook § 12.k.

other stakeholders can contact them regarding access to counsel in the facility. If Pike County refuses to comply with its contractual obligations and continues to refuse to engage with stakeholders on these issues, complainants ask that OCRCL, OIG, and OIDO recommend that ICE terminate their contract.

IV. REQUEST FOR INVESTIGATION AND RECOMMENDATIONS

Complainants request OCRCL, OIG, and OIDO conduct a thorough investigation of the access to counsel issues at the Pike County Correctional Facility and recommend ICE affirmatively intervene to ensure access to legal phone calls, including by requiring Pike County:

1. Implement a system by which attorneys can schedule and make recurring confidential phone and/or video calls to their clients in Pike County.
2. Ensure attorney messages and call-back requests are promptly (within two hours) and reliably delivered to detained persons.
3. Maintain telephones, tablets, and internet connections in working order, and ensure reasonable sound quality and uninterrupted connectivity.
4. Ensure all legal telephone and/or video calls are private, unmonitored, and free.
5. Provide private spaces for detained persons from which to place legal phone and/or video calls. "Private" means that a detained person is in an enclosed space where no one else can hear the conversation. Panels, side partitions, and telephone and video calls from open housing units are not private.
6. Provide equitable access to tablets in the facility.
7. Ensure that detained persons are transported as needed for private legal phone and/or video calls.
8. Provide detained persons with limited English proficiency with detailed instructions in their own language for how to make confidential legal phone calls, including how to exempt legal calls from default monitoring.
9. Institute a procedure by which attorneys can confirm legal phone calls are not monitored.
10. Not charge for legal phone calls, such as by listing attorney numbers as privileged and exempting those from payment.
11. Determine the amount of money improperly charged for legal phone calls and refund detained persons, attorneys, and organizations for such payments.
12. Ensure legal phone calls do not have an automatic cut-off time shorter than 30 minutes, per the Pike County Handbook, or 20 minutes, per ICE's PBNDS.
13. Develop and publish a list of Pike County officers or staff responsible for PBNDS compliance and access to counsel issues, including contact information.

If Pike County remains unable and unwilling to comply with their contractual obligations and adhere to ICE standards for noncitizens detained by ICE in their facility, we ask that ICE move to terminate their contract with the Pike County Correctional Facility.

Thank you for your attention to this complaint.

Sincerely,

 Mengquan Zheng

Michael Pattis and Mengquan Zheng
Law Student Representatives

 

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On Behalf Of Complainants

Capitol Area Immigrants' Rights (CAIR) Coalition

Pennsylvania Immigration Resource Center (PIRC)

HIAS Pennsylvania

Nationalities Service Center