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31 January 2016

**Re: Concerns regarding Access to Counsel Issues at the El Paso Processing Center**

Dear Madams and Sirs:

We write to express our serious concern regarding policies and practices at the Immigration and Customs Enforcement (ICE) El Paso Processing Center (hereafter, "EPC") that hinder detainees' access to counsel, as well as policies and practices implemented by the Executive Office for Immigration Review ("EOIR") and the Office of the Chief Counsel ("OCC") in the El Paso sector. This letter is sent by members of the Borderland Immigration Council, a coalition of nonprofit legal organizations, private immigration law practitioners, community organizations, and concerned members of the community, along with non-profit and legal organizations concerned with the immigration justice system.

This letter highlights the egregious policies and practices that impede attorneys' ability to provide legal services to effectively represent clients at EPC, in violation of detainees' due process right to counsel in immigration proceedings.<sup>1</sup> Based on these findings, we recommend measures - which should be implemented in short order - to rectify this situation.

The El Paso Processing Center has capacity to hold 840 immigrants in detention on any given day, and can be expanded to hold 1,100 people. The facility is government owned but operated by Global Precision Systems ("GPS"). It is one of four such detention and processing centers in the El Paso Sector; others are the Otero County Processing Center, located 30 miles from El Paso, West Texas Detention Center in Sierra Blanca, located 90 miles southeast of El Paso, and the recently converted Cibola Processing Center. Together, these processing and detention centers have bed space for an additional 3,250 immigrant detainees.

Individual and family unit apprehensions on the southwest border increased significantly during the last months of FY 2016, as did apprehensions of asylum-seekers.<sup>2</sup> In addition to greater numbers of apprehensions and asylum petitions, immigrant detention in the El Paso sector is on the rise, including the recent opening of Cibola and the use of federal prison facilities at Sierra Blanca to house more immigrant detainees. As such, the due process violations laid out in this letter most likely affect not only those detained at EPC, but the thousands of immigrant detainees in the El Paso sector.

The impediments to attorney access to clients and due process detailed in this letter were collected through an investigation spanning four months, from September to December 2016. The investigation was conducted by researchers at the Hope Border Institute, in collaboration with the Borderlands Immigration Council and member organizations and attorneys. The barriers to due process and access to counsel - outlined in greater detail in Section I - identified at EPC are:

- Burdensome and inexplicable wait times for attorney-client meetings
- Unreasonable restrictions and impediments to confidential attorney-client meetings at EPC
- Direct and indirect barriers to accessing experts and interpreters for case preparation
- Lack of Access to Necessary Client Documentation prior to Hearings
- Inexplicable Restrictions on Access to Courtrooms
- Restriction on access to and lack of clear guidelines on technology in detention center
- Execution of Deportation Orders without Attorney Notification
- Policies and arbitrary practices that negatively affect attorneys' ability to represent clients

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<sup>1</sup> Dakane v US Attorney General

<sup>2</sup> See, Statement by Secretary Johnson On Southwest Border Security. 10 Nov 2016.

These barriers to due process at the El Paso Processing Center are widespread and systematic. EPC and GPS should immediately implement measures to improve and ensure detainees' access to counsel. These corrective measures - detailed in Section II - include:

- Maximum access and flexibility for legal teams to meet and speak with detained persons and advise or represent them, and confidentiality of attorney-client conversations.
- Communication with represented individuals regarding their case only through attorneys of record
- Timely access to experts.
- Notification of impending deportation date at least 48 hours prior to removal
- Elimination of the investigative disparity between immigration attorneys and the government
- Equal treatment of government and private attorneys as officers of the court.
- Establishment of clear, consistent policies regarding use of technology and access to food and beverages.
- Ensuring that all detainees are able to participate meaningfully in their proceedings by facilitating language access.

Members of the Borderlands Immigration Council, along with other signatories to this letter, are willing to work with DHS officials in the El Paso sector to address and rectify these due process barriers and violations. We request that DHS officials create and disseminate a timeline and implementation plan for these recommendations. All people have a fundamental right to justice.

Thank you in advance for your consideration. Should these recommendations not be implemented, we reserve the right to take other actions as deemed necessary and appropriate. Please contact Theodora Simon of the Hope Border Institute at [tsimon@hopeborder.org](mailto:tsimon@hopeborder.org) or 915-872-8400 with any questions.

Sincerely,

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## **I. Access to Counsel Issues at the El Paso Processing Center**

A recent study found that access to counsel is scarce and uneven across the United States, with rates of representation far worse for immigrants held in detention than non-detained immigrants, and that immigrants with representation fare better at every stage of the court process, from custody hearings through the outcome of relief decisions.<sup>3</sup> Although representation of detained immigrants at EPC is greater than the national average, attorneys who attempt to provide representation at the El Paso Processing Center report a wide variety of challenges and barriers in accessing clients and in preparing and presenting their cases.

From September through December 2016, researchers at the Hope Border Institute conducted 20 in-depth interviews with 25 attorneys, paralegals and accredited representatives who represent individuals in immigration proceedings in the El Paso sector. The following findings are a result of this qualitative investigation. The cases and quotes presented serve to exemplify these serious concerns, and have all taken place since December 2015, when Corey Price came to El Paso as the ICE Field Office Director.

### *A. Burdensome and inexplicable wait times for attorney-client meetings;*

Nearly all attorneys, paralegals, and accredited representatives interviewed over the course of this investigation reported unduly burdensome wait times to meet with their clients at the El Paso Processing Center. For many, this meant facing wait times of up to two hours. Across the board, attorneys report being forced to plan their working days around count and meal times at the detention center, and even when they do so, guards at the EPC are often slow to respond and bring clients to meet with attorneys. This increases the cost - to clients and attorneys - of providing legal representation to detained clients.

*"If you have enough time to go to lunch - and have a sit-down meal - that's too long to wait."*

### *B. Restrictions and impediments to confidential attorney-client meetings at EPC*

With only one exception, all legal teams interviewed reported that their conversations with clients are not confidential, regardless of whether these conversations occur in closed rooms or window booths; detention center guards, other detainees, and other attorneys are privy to private and sensitive information discussed. This is not only distracting and makes interviewing more difficult, but presents a serious burden to asylum cases. Representatives reported numerous cases where asylum seekers were afraid to share information with their attorney in the EPC's non-confidential environment, which impedes preparation of the asylum claim. In one such case, a young woman seeking asylum based on persecution from organized crime was unable to share the name of the person who had threatened and attacked her out of fear that someone would overhear, and her attorney was then unable to do background research to present evidence in court. Despite conducting meetings and interviews at a whisper, the client was unable to say her persecutor's name because she knew that other detainees and guards could hear her.

With one exception, all interviewees stated that they were regularly denied access to private contact rooms to interview their clients or prepare for cases, to the extreme detriment of their clients' health and preparation of their case. Knowledge that others may overhear them recount these often traumatic experiences adds to the pain and suffering of those held in detention. In the words of one attorney, this happens "every time we go." Contact rooms frequently remain empty despite attorney requests to use them, under the assertion that they are reserved for deportation officers and USCIS asylum interviews.

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<sup>3</sup> Early, Ingrid and Steven Shafer. "Access to Counsel in Immigration Court." American Immigration Council Special Report. September 2016.

When denied private contact rooms, attorneys and clients are forced to use window phone booths. This is a new practice at EPC: attorneys state that, in years past, they “almost never had to use the booth with the phone,” but “almost always had access to the contact room.”

*“You can hear guards yelling to each other or at detainees, you can hear guards talking to one another, laughing. If you can hear them, they can hear you.”*

Representatives report that the phones at window booths are frequently malfunctioning, making conversations between clients and attorneys difficult to sustain. The malfunctioning phone booths force attorneys and clients in some cases to yell to be heard, making for an uncomfortable and unprofessional environment and adding to the lack of confidentiality in these conversations. This situation is aggravated when an interpreter is needed. Finally, when a client needs to read, review, or sign paperwork or documentation, the papers do not fit through the small slot under the window. This forces attorneys to crumple up or tear apart case files in order to shove them through the slots.

*“You need to be able to collect evidence and corroborate claims. You have to do research, pull police records, look for news articles to back up asylum cases; you can’t do this without names and identities.”*

On the rare occasions EPC officials grant attorneys access to contact rooms, these rooms are inappropriately furnished and create undignified conditions for attorney-client meetings. Numerous attorneys recounted perching awkwardly on “locker room benches” attempting to review lengthy legal documents placed on the bench between themselves and the client. Others recount sitting on the floor or kneeling, in order to use the bench as a table. Female attorneys expressed the added difficulty of sitting next to and in close proximity to male clients, especially in a professional relationship and when men come from more conservative countries where such proximity is inappropriate.

#### *C. Direct and indirect barriers to accessing experts and interpreters for case preparation*

Attorneys face lengthy wait times for background checks for experts witnesses to enter the detention center. Lengthy wait times to meet with clients has led to multiple reported occasions of experts being unable to participate in cases, including experts who were offering their services pro-bono for asylum-seekers and experts being unwilling to return to the detention center to attempt to meet with the client on a second occasion. Further, the slowness of the background check process creates barriers for clients whose cases depend on psychological evaluations. This also compounds the cost of utilizing such experts, and becomes prohibitive.

Accredited representatives and clergy with pre-clearance have been denied access to detainees at ECP. Finally, attorneys need access to interpretation to effectively represent their clients. Prohibition on technology (see *F*) and impediments to in-person interpretation are prohibitive.

These issues have led to clients abandoning valid asylum claims or having stays of removal denied -- not based on the facts of their cases, but because of an inability to access experts and effective representation.

#### *D. Lack of Access to Necessary Client Documentation prior to Hearings*

Because there is no discovery process, attorneys are often prevented from obtaining necessary case files and documents to prepare and present their case. When one attorney requested a copy of her client’s credible fear screening, she was told that no one in the courtroom had a copy. Another attorney stated that she was repeatedly told, in court, to FOIA her client’s documents. Clients cannot present a defense if they do not have access to their own immigration record.

#### *E. Inexplicable Restrictions on Access to Courtrooms*

Nearly all attorneys reported difficulties in accessing the courtroom prior to a client's hearing, despite being at the court prior to the scheduled time. Many attorneys reported that they had to ask guards multiple times to be allowed into the courtroom. While defense attorneys beg to be let into the courtroom, government attorneys have already set up and are engaged in conversation with Judges. Attorneys reported numerous instances of being admonished by presiding judges for tardiness, although they were on time for hearings but unable to enter the courtroom. When hearings are rescheduled because of this practice, detention is prolonged.

In addition to not having access to the courtroom, defense attorneys face other disadvantages: while government attorneys have access to a suite of technology and equipment, including computers, internet, and printers, defense attorneys are not allowed any of these things. This puts them at a serious disadvantage in not being able to access files, statutes, and precedents while in court.

*"We don't have internet ... all the codes, laws, policies you need to have them, and the only alternative is to haul in a stack of books with you. This is inherently unfair when government attorneys do have internet access."*

#### *F. Restriction on access to and lack of clear guidelines on technology in detention center*

There are no clear regulations regarding use of technology during attorney-client meetings, and legal teams report frequent and arbitrary denial of cell phone use upon arrival at the EPC. There is a large population of non-English, non-Spanish speaking detainees at the El Paso Processing Center, and attorneys need access to telephonic interpreters to interview their clients and prepare cases. Attorneys seek various mechanisms to use personal cell phones for interpretation, including emailing ICE for written permission, while private security guards may then choose to allow or deny cell phones seemingly at their whim.

Furthermore, if attorneys are able to use cell phones for interpretation, they then report being interrupted by guards during interviews, when the guards question attorneys about use of the cell phone despite express written permission. This is incredibly disruptive to attorneys and clients in preparation, and is disconcerting for clients who are attempting to share harrowing personal experiences that are the basis for asylum claims.

#### *G. Execution of Deportation Orders without Attorney Notification*

*"I have NEVER been advised ahead of time that our client is going to be removed. We get [a notification] in the mail days later, but we get a call from the client from Mexico before then. We have never, ever been advised ahead of time." (emphasis in original)*

Prior to December 2015, interviewees report that clients and attorneys would receive notification of a deportation up to a week prior to the deportation date; since that time, numerous instances are documented of attorneys receiving written notices *after* the client has already been deported. Failure to notify attorneys of impending deportation dates not only prevents attorneys from filing appeals, but in numerous cases has put the lives of asylum-seekers and those who are deported at risk.

In one case, an asylum seeker was deported without notification to his attorney or his family; upon deportation, he was robbed and was forced to walk over an hour without shoes to Juarez. His life had been threatened, and although his wife and daughter would have met him at the border upon his deportation, his life was put in danger because ICE failed to notify anyone of his removal.

In a number of egregious circumstances, ICE officers went so far as to misinform detainees that they attorneys had been notified of deportation orders and had approved of those actions, leaving clients to believe that they had no recourse.

#### *H. Policies and arbitrary practices that negatively affect attorneys' ability to represent clients*

In addition to the systematic and serious impediments to due process already detailed, the legal community recounts many small ways in which DHS agencies and officers and private security contractors denigrate them and make their daily work more difficult.

- Legal teams are denied water in the courtroom.
- Despite available parking spaces in front of the detention center, legal teams are made to park hundreds of meters away when - as is often the case - the limited number of spaces reserved for "visitors" are full; in inclement weather or prior to hearings, when they carry boxes of case files, this simple inconvenience becomes a serious burden.
- Sexual harassment of female attorneys by detention center guards.
- Attorneys all recounted experiences of having verbal or written agreements with ICE, which were then refused by detention center guards, or vice versa, including permission to use a telephone for interpretation.
- Attorneys consistently stated that to get anything done, they rely on building positive personal relationships with one guard or another, or are reduced to "pitching a fit" to access their clients, utilize contact rooms, or enter with a cell phone.
- Lack of written rules and policies and lack of clarity about these leaves attorneys guessing

*"While on their own, none of these things seem like a big deal, all put together, it's a huge burden ..."*

This "burden" for attorneys translates into serious, concerning barriers to due process for those asylum-seekers and immigrants deprived of their most basic freedoms while held in detention for months on end at the El Paso Processing Center.

## **II. Request for Corrective Measures to Ensure Justice and Fairness**

Given the extent, gravity, and systemic nature of these barriers to access to counsel and violations of due process, ICE, EOIR, and OCC in the El Paso sector should immediately implement the following corrective measures at the El Paso Processing Center and throughout the El Paso Sector to improve and guarantee detainees' access to counsel:

1. **Detention facilities should allow legal teams maximum access and flexibility in meeting and speaking with detained persons *and* advising or representing them, and ensure confidentiality of attorney-client communications.** This includes attorneys, accredited representatives, law students, paralegals, interpreters and experts. Implementation of this includes:
  - Improving prompt access to legal visits by ensuring wait times for attorneys and representatives on record to meet with clients at EPC are less than 30 minutes. These meetings should be prioritized;
  - Allowing attorneys of record to schedule meetings with clients in advance, as is the practice at other detention centers. These meetings should not be interrupted or impeded by count;
  - Ensuring confidentiality in attorney-client visits by: rescinding practice of reserving contact rooms with tables solely for ICE officers; creating additional confidential rooms for legal visits which are appropriately furnished with a table for drafting, signing, and reviewing documents; and directing detention center guards to respect confidential communications; and

- Promptly replacing faulty telephones to allow effective communication with detainees. Defective equipment should be replaced in a timely manner.

2. All individuals with representation should have **full access to their attorneys of record** in all communication regarding their case, and **communication regarding case-related issues** should be conducted only through their attorney of record. Implementation of this includes:

- Ensuring that any individual with representation, detained or non-detained, is not asked or pressured to sign any document without the presence of their attorney of record, including but not limited to deportation orders; and,
- Sending written decisions, including but not limited to, denials of stays of removal and denials of parole requests, to attorneys of record, not their clients.

3. EPC should ensure **timely access to experts** (including psychological experts and others) by:

- Instituting procedures for the transportation of ICE detainees to expert evaluations;
- Allowing attorneys of record to schedule appointments at the detention center with experts and their clients, respecting the scheduled time of such appointments;
- Providing appropriate space for these interviews to take place, including interview rooms with tables, and allowing experts to utilize necessary technology and equipment to conduct these interviews; and
- Allowing such interviews to take place without the presence of the attorney of record; and,
- Expediting background check procedures for experts.

4. EPC should provide **48 hour notice of impending deportation dates** to attorneys of record before deportation orders are executed.

- Postmarking a notice that will not reasonably arrive 48 hours prior to the deportation date does not constitute notification; and
- Deportation Officers should confirm attorneys of record have received notification prior to deportation.

5. EOIR and OCC should implement policies and procedures that **eliminate the investigative disparity** between immigration attorneys/respondents and the government by:

- Implementing an open file discovery process in which immigration attorneys have full access to the government's entire file on their client;
- Creating a simple form by which attorneys or the immigration respondent to **request access and copies of any and all documentation in their case files**, including NTAs;
- Ensuring that disclosure of all documents is both complete and timely so that attorneys or respondents have adequate time to examine the evidence and prepare a defense; and
- Providing detainees and attorneys of record **with documents that will be presented** in court at least 48 hours prior to scheduled hearings.

6. EPC and EOIR should establish **clear, consistent policies regarding use of technology and access to food and beverages** in client meetings and in the courtroom.

- Legal teams should be permitted to bring and easily access cell phones, laptops, and wireless internet connections in designated spaces while meeting with detainees; and
- Legal teams should be permitted food and beverages while in the facility, including client meetings and the courtroom.

7. **Conditions must be created in which government and private attorneys are treated equally as officers of the court**, including:



- Enactment and public posting of policies requiring that guards escort attorneys of record into the courtroom promptly and ensures that immigration attorneys have full access to the courtroom at any time the government's representative are present;
- Access to reasonable parking; and
- Equal access to technology, internet, and personal needs for attorneys in the courtroom. Any privilege that government attorneys have, private attorneys should also have access to. This includes computers, wireless internet, and water and coffee.

8. EPC and EOIR should ensure that all respondents are able to **participate meaningfully in their proceedings** by **facilitating language access** during communication with attorneys and officers of the court by:

- Providing qualified, in-person interpreters during all master calendar, bond, and merits hearings;
- Allowing attorneys to utilize cell phones and other technology necessary for interpretation during all attorney-client meetings in an uninterrupted manner; and
- Allowing in-person interpreters full access to detainees along with legal teams.