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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 GUSTAVO RODRIGUEZ CASTILLO,)
11 GABRIELA M. LOPEZ, IMMIGRANT)
12 DEFENDERS LAW CENTER,)

13 Plaintiffs-Petitioners,)

14 v.)

15 KIRSTJEN NIELSEN, Secretary,)
16 Department of Homeland Security,)
17 THOMAS HOMAN, Acting Director,)
18 Immigration and Customs Enforcement,)
19 DAVID MARIN, Field Office Director,)
20 Los Angeles Field Office of ICE,)
21 JEFFERSON BEAUREGARD)
22 SESSIONS, U.S. Attorney General,)
23 HUGH J. HURWITZ, Acting Director,)
24 Federal Bureau of Prisons, DAVID)
25 SHINN, Warden, FCI Victorville)
26 Medium I/II, in their official capacity)
27 only,)

28 Defendants-Respondents.)

Case No. 5:18-CV-001317

COMPLAINT

INTRODUCTION

1
2 1. The federal government is currently imprisoning several hundred individuals
3 incommunicado at the FCI Victorville Medium Security Prison. Beginning a week
4 ago, the government transferred these individuals—who are being detained under
5 color of the immigration laws—to the Victorville prison from other parts of the
6 country. The federal government has refused to allow attorneys to visit or contact the
7 detainees or, it appears, permit the detainees to contact an attorney.

8 2. Because the federal government has denied all attorney access to immigration
9 detainees at the Victorville prison, the immigrants may face summary deportation
10 without much-needed legal assistance. In addition, detainees may have no way to
11 contact their children and other family members from whom they have been forcibly
12 separated as result of the federal government’s newly-instituted “zero-tolerance”
13 policies.

14 3. The federal government’s unlawful denial of attorney access to imprisoned
15 immigrants at the Victorville prison contravenes our most basic values. “There is a
16 well established tradition against holding prisoners incommunicado in the United
17 States. It would be hard to find an American who thought people could be picked up
18 by a policeman and held incommunicado, without the opportunity to let anyone know
19 where they were, and without the opportunity for anyone on the outside looking for
20 them to confirm where they were.” *Halvorsen v. Baird*, 146 F.3d 680, 688–89 (9th
21 Cir. 1998).

22 4. Fundamental principles of constitutional law forbid the government from
23 holding prisoners incommunicado, without permitting them an opportunity to
24 communicate with attorneys. In addition, the federal government’s standard operating
25 rules governing individuals imprisoned for immigration proceedings also forbid the
26 government from barring attorneys at the prison’s doors when they seek to represent
27 their clients or provide legal assistance.

PARTIES

1
2 5. Plaintiff Gustavo Rodriguez Castillo is a native of Venezuela who is detained at
3 Victorville prison pending immigration proceedings. On or about May 30, 2018, Mr.
4 Rodriguez Castillo was apprehended by immigration agents and requested protection
5 under U.S. asylum laws. Mr. Rodriguez Castillo was subsequently found to have a
6 “credible fear” of persecution or torture in Venezuela and was referred to the
7 immigration courts for a hearing on his claims to protection. Mr. Rodriguez Castillo
8 has retained Gabriela Lopez to represent him in his immigration case.

9 6. Plaintiff Gabriela Lopez is an attorney licensed to practice law in the state of
10 the California. Ms. Lopez was retained to represent Mr. Rodriguez Castillo in his
11 immigration case. On June 14, 2018, Ms. Lopez learned that Mr. Rodriguez Castillo
12 was transferred to the Victorville prison. Since that date, Ms. Lopez has repeatedly
13 contacted Victorville prison and ICE officials, but has been denied all access to Mr.
14 Rodriguez Castillo.

15 7. Plaintiff Immigrant Defenders Law Center (“Imm Def”) is a nonprofit
16 organization that provides free legal services to noncitizens in Southern California.
17 Imm Def seeks to provide “know your rights” trainings to immigration detainees at
18 the Victorville prison about the immigration system and detainees’ rights. In addition,
19 some of the Victorville detainees have, through their family members, asked attorneys
20 from Imm Def to represent them. Attorneys from Imm Def have been turned away
21 from the Victorville prison when they attempted to visit immigrants at the facility and,
22 despite following the prescribed procedures for visitation, have not been cleared to
23 visit the facility.

24 8. Defendant Kirstjen Nielsen is the Secretary of the U.S. Department of
25 Homeland Security (“DHS”), an agency of the United States. Secretary Nielsen is
26 ultimately responsible for the actions of Immigration and Customs Enforcement and
27 Customs and Border Protection. She is the legal custodian of immigration detainees
28 incarcerated at the Victorville prison. She is named in her official capacity.

1 9. Defendant Thomas Homan is the Acting Director of U.S. Immigration and
2 Customs Enforcement (“ICE”), a component of DHS. ICE is responsible for
3 apprehension, detention, and removal of noncitizens from the United States. He is the
4 legal custodian of immigration detainees incarcerated at the Victorville prison.
5 Director Homan is named in his official capacity.

6 10. Defendant David Marin is the Field Office Director for the Los Angeles Field
7 Office of ICE. Director Marin is responsible for the enforcement of the immigration
8 laws within this district, and for ensuring that ICE officials follow the agency’s
9 policies and procedures. He is the legal custodian of immigration detainees
10 incarcerated at the Victorville prison. He is named in his official capacity.

11 11. Defendant Jefferson Beauregard Sessions is the Attorney General of the United
12 States and the most senior official in the U.S. Department of Justice (“DOJ”). The
13 Attorney General is ultimately responsible for the actions of the Federal Bureau of
14 Prisons (“BOP”). He is the legal custodian of immigration detainees incarcerated at
15 the Victorville prison. He is named in his official capacity.

16 12. Defendant David Shinn is the Warden of the FCI Victorville Medium Security
17 Prison in Victorville, California. He is the legal custodian of immigration detainees
18 incarcerated at the Victorville prison. He is named in his official capacity.

19 **JURISDICTION AND VENUE**

20 13. Jurisdiction is proper under 28 U.S.C. §§ 1331, 1361, 1651, 2241; the
21 Suspension Clause, U.S. Const. art. I, § 2; and 5 U.S.C. § 702.

22 14. Plaintiffs seek declaratory and injunctive relief pursuant to 28 U.S.C. § 1331, 5
23 U.S.C. § 706, 28 U.S.C. § 2241, and the Declaratory Judgment Act, 28 U.S.C. §§
24 2201 and 2202. A substantial, actual, and continuing controversy exists between the
25 parties.

26 15. The federal government has waived its sovereign immunity for suits seeking
27 injunctive relief against constitutional violations. 5 U.S.C. § 702. *Presbyterian Church*
28 *v. United States*, 870 F.2d 518, 524 (9th Cir. 1989).

1 16. Venue is proper in the Central District of California under 28 U.S.C. § 1391
2 because at least one federal Defendant is in this District, Plaintiff Rodriguez Castillo is
3 detained in this District, Plaintiff Imm Def resides in this District, and a substantial
4 part of the events giving rise to the claims in this action took place in this District.
5 Venue is proper under 28 U.S.C. 2243 because the warden of the facility at issue
6 resides in this district.

7 **FACTUAL ALLEGATIONS**

8 17. The FCI Victorville Medium Security Prison is a “medium security federal
9 correctional institution” that typically houses prisoners serving sentences for criminal
10 convictions.¹

11 18. The federal government recently announced that it would incarcerate
12 individuals in civil immigration proceedings at the Victorville prison. ICE officials
13 indicated that they intend to incarcerate approximately 1,000 immigration detainees at
14 the prison. Officials claim that the additional detention space is needed because of the
15 federal government’s recently instituted “zero-tolerance” policies, under which the
16 government intends to prosecute all misdemeanor illegal entry violations and to
17 forcibly separate immigrants subject to prosecution from their children and other
18 family members.²

19 19. On June 12, 2018, the federal government began transferring immigration
20 detainees to the Victorville prison from other parts of the country. On information and
21 belief, at least several hundred noncitizens are currently incarcerated at the Victorville
22 prison pending immigration proceedings.

23 20. A substantial number of the Victorville immigration detainees were likely
24 apprehended at or near the border and are seeking protection under the asylum laws.
25 They are incarcerated pending an initial screening known as a “credible fear”
26 interview and, if found to have a “credible fear,” pending immigration court

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28 ¹ <https://www.bop.gov/locations/institutions/vvm/>

² <http://www.latimes.com/local/lanow/la-me-ln-victorville-ice-detention-20180607-story.html>

1 proceedings. *See* 8 C.F.R. § 208.30. Plaintiff Rodriguez Castillo is one such
2 individual. He was apprehended on or about May 30, 2018, and requested asylum. He
3 subsequently was found to have a “credible fear” of persecution or torture in his native
4 Venezuela and has been referred for a hearing on his asylum claims.

5 21. Other detainees at the Victorville prison were likely apprehended in the interior
6 of the country, and are incarcerated pending immigration court proceedings at which
7 they can litigate defenses to removal or request relief from removal under the
8 immigration laws.

9 22. Since their incarceration at Victorville, immigration detainees have been denied
10 the ability to visit, consult with, or contact an attorney. In turn, attorneys seeking to
11 meet with their clients at the Victorville prison or to meet and screen immigrants for
12 potential legal representation have been denied any access to the Victorville prison.

13 **Attorney Gabriela Lopez Denied Access to Her Client Mr. Rodriguez Castillo**

14 23. Since June 6, 2018, Attorney Gabriela M. Lopez has been diligently trying to
15 locate her client, Gustavo Rodriguez Castillo, and to set up a call and arrange a visit to
16 meet with him.

17 24. Mr. Rodriguez Castillo is a native of Venezuela. He was apprehended by
18 immigration authorities on approximately May 30, 2018 and requested asylum.
19 Shortly after his apprehension, Mr. Rodriguez Castillo’s aunt—who resides in San
20 Leandro, California—retained Attorney Lopez to represent Mr. Rodriguez Castillo in
21 his immigration case.

22 25. Since May 30, 2018, Mr. Rodriguez Castillo has been transferred numerous
23 times. No one in his family has heard or had any contact from him since June 6, 2018.
24 On Thursday, June 14, 2018, Attorney Lopez was able to locate him at the Victorville
25 prison.

26 26. Attorney Lopez called Victorville numerous times on Thursday, June 14, 2018
27 and Friday, June 15, 2018, with no answer. She then tried multiple ICE offices, who
28 each directed her to call Victorville prison; again, she received no response.

1 27. On Monday, June 18, 2018, Attorney Lopez found information online that the
2 Adelanto Detention Facility and ICE office would serve as the point of contact for
3 ICE detainees. She called and spoke to ICE Officer Linares at the Adelanto Detention
4 Facility. He was able to provide the BOP number for Mr. Rodriguez Castillo. Officer
5 Linares, who is Mr. Rodriguez Castillo's immigration officer, indicated that he would
6 be visiting the Victorville prison on June 19, 2018. He told Attorney Lopez that he
7 was new to the case and to the facility and did not know the process. He indicated
8 that at this point, he did not believe that ICE was doing parole or bonds for those who
9 had been detained; any such requests would have to go through the courts. He did not
10 know when a hearing might be scheduled, or whether and when the detainees might
11 be transferred to the Adelanto Detention Facility.

12 28. Officer Linares instructed Attorney Lopez that any inquiries and requests to
13 speak with Mr. Rodriguez Castillo had to be directed to the BOP at Victorville. She
14 informed Officer Linares she had been calling the number that appears on the BOP
15 website for Victorville but that it either just rang or went to voicemail, and no one
16 called back. She asked for another number and Officer Linares told her that he had the
17 same number. She called that number, but the phone rang once again without answer.

18 29. Since she was unable to reach Victorville by phone, Attorney Lopez conducted
19 some online research and located an email address for the facility and sent an email
20 requesting a call with her client. She received a phone call shortly thereafter from Mr.
21 Jess Pino, Public Information Officer at the Bureau of Prisons.

22 30. Mr. Pino stated that ICE – not the BOP – would be handling calls and visits to
23 Victorville prison, in direct contradiction to what Officer Linares had said. Mr. Pino
24 shared the following: the BOP does not have a practice established for visitors; the
25 BOP does not have visiting forms yet; and, at this point, the BOP anticipates allowing
26 visits for immediate family members only. Mr. Pino indicated that the BOP had been
27 working with ICE on protocols for calls and visits, but he had no sense of what those
28 protocols would be.

1 31. Mr. Pino also indicated that Attorney Lopez would need to fill in an attorney
2 visitation form, once they were available. Mr. Pino also said that, in addition to Form
3 G-28 (which is the notice of appearance form used by immigration attorneys), she
4 might also need to fill out additional paperwork (which Mr. Pino did not describe) to
5 speak to her client. Mr. Pino said it was unclear how long that process would take, as
6 it was a new situation for BOP and for ICE. When Attorney Lopez asked Mr. Pino to
7 arrange a call with her client, he responded that she would have to contact ICE to set
8 up a call.

9 32. Since Mr. Rodriguez Castillo was detained on or about May 30, 2018, he has
10 had no contact with counsel and has not communicated with his family since June 6,
11 2018.

12 33. Attorney Lopez and Mr. Rodriguez Castillo's family have been directed back
13 and forth between ICE and the BOP, with each claiming that the other is responsible
14 for arranging calls, visits and providing any information and updates. Neither ICE nor
15 the BOP appears any process or policy for attorney visitation or communication to be
16 followed for immigration detainees in Victorville prison, and as a result, the
17 government has denied all access to immigration detainees at Victorville prison.

18 **Attorneys from Immigrant Defenders Law Center Denied Access to Conduct**
19 **Screening Interviews.**

20 34. Attorneys from Immigrant Defenders Law Center ("Imm Def") have also been
21 denied access to Victorville prison.

22 35. Imm Def is a legal services organization that provides pro bono representation
23 to immigrants and "know your rights" trainings to immigrants in detention. Imm Def
24 is the recipient of funding from the city and county of Los Angeles, and the state of
25 California, to represent individuals in removal proceedings if they meet certain
26 qualifications. Attorneys from Imm Def seek access to Victorville to screen potential
27 clients for representation and to conduct "know your rights" presentations for the
28 detainees who lack counsel.

1 36. Imm Def routinely conducts screenings for clients and “know your rights”
2 presentations at Southern California detention centers. Under well-established
3 policies at these immigration detention facilities, Imm Def attorneys may request an
4 attorney consultation by visiting the detention facility and requesting access. Under
5 these well-established policies, no prior notice or clearance is required for an attorney
6 visit.

7 37. On June 11, 2018, after learning that hundreds of immigrants had been
8 transferred to Victorville prison, legal services attorneys at Imm Def called Victorville
9 prison several times to determine the rules for visits to the immigrants held there.

10 38. On June 12, 2018, Lindsay Toczykowski, an attorney and Imm Def’s Executive
11 Director, drove from Los Angeles, California to the Victorville prison. She arrived at
12 around 10 AM. A guard at the front entrance, after hearing that Attorney Toczykowski
13 was an attorney who wanted to meet with immigration detainees, directed her to
14 Pod/Building 2.

15 39. Attorney Toczykowski informed the front desk officer that she was an attorney
16 and identified several immigration detainees with whom she intended to conduct
17 attorney consultations. The front desk officer said he was not sure what the process
18 would be for attorney visitation with immigration detainees because the facility had
19 not yet been set up for visitation.

20 40. The front desk officer called several people before anyone was able to provide
21 any response on what to do and how to proceed. The last person he called – Octavia
22 Brown – came out and spoke with Attorney Toczykowski. Ms. Brown did not have a
23 card and did not share her title, though she appeared to be a supervisor.

24 41. After Attorney Toczykowski explained the reason for her visit, Ms. Brown
25 responded that there was no way that an attorney could meet with anyone, as the
26 facility was not set up for visits. Ms. Brown explained that the facility had no space
27 for attorneys to meet with clients and ICE had not authorized any visits.

1 42. In response to a request for clarification from Attorney Toczyłowski, Ms.
2 Brown reiterated that an attorney could not meet with immigration detainees without
3 prior clearance and an appointment. Ms. Brown said she would need to speak with
4 ICE about Attorney Toczyłowski's request. When asked if anyone from ICE was
5 present at the facility, Ms. Brown informed Attorney Toczyłowski that she had missed
6 the ICE representative by 10 minutes, and that no one from ICE would be back that
7 day.

8 43. Attorney Toczyłowski then asked for an assurance that no one would be
9 deported or appear before a judge before they had the opportunity to meet with
10 counsel who could potentially provide legal representation. Ms. Brown then
11 responded that "no one is seeing a judge because they haven't even set up the video
12 thing yet." She told Attorney Toczyłowski that she would personally give the
13 information to ICE and that she thought they would get back to her immediately. Ms.
14 Brown also said that Attorney Toczyłowski need not worry that immigration detainees
15 would be removed or appear before a judge because Victorville prison was still
16 "processing people through medical."

17 44. Attorney Toczyłowski provided Ms. Brown with a list of the detainees with
18 whom she had intended to meet, along with her business card. Ms. Brown indicated
19 that she would give the list directly to ICE, and ICE would be in contact shortly. She
20 also told Attorney Toczyłowski to submit a formal request that included a copy of her
21 REAL ID-compliant identification, bar card, and the visitation request on
22 organizational letterhead. Attorney Toczyłowski asked if there was a chance that,
23 when she provided that information, she might be able to visit with immigration
24 detainees later that day. Ms. Brown said no, and that ICE would be in touch.

25 45. When Attorney Toczyłowski returned to her car, a big pickup truck pulled up
26 next to the car in the visitor parking area and the man in the truck started yelling: "Are
27 you the lady that just tried to go inside?" Attorney Toczyłowski responded: "Yes. Is
28 there a problem?" He responded: "You need to leave the premises immediately."

1 Attorney Toczykowski asked again if there was a problem, and he once again
2 responded “you need to leave the premises immediately.” The pickup truck followed
3 her car closely to the front entrance.

4 46. As she approached the front entrance, the guard indicated that she should stop.
5 He then asked “Are you the lady who just tried to enter? Did my officer catch you
6 before you left?” As they were talking, an additional guard walked up and stood
7 behind the front entrance guard. When Attorney Toczykowski again asked if there was
8 a problem, the front entrance guard said that he might be speaking out of turn, but
9 Attorney Toczykowski needed to have an appointment before she came back there. He
10 stated that she could not visit people unless she had been added to their approved visit
11 list. When she responded that the process he described would not work for Imm Def
12 attorneys or others seeking to provide legal representation to immigrants, as they
13 typically do not have a prior relationship with the immigration detainees they come to
14 assist, he simply reiterated that she was not cleared for a visit and that she needed to
15 respect the rules for visitation, whatever those were. Attorney Toczykowski felt
16 intimidated by all of the security presence and threatened because of the manner in
17 which the man in the pickup truck demanded that she leave the premises.

18 47. On Thursday, June 14, 2018, Attorney Toczykowski submitted the documents
19 that Ms. Brown requested by fax to Victorville prison. Attorney Toczykowski
20 requested a visit with a specified list of immigration detainees (with BOP numbers
21 included) on Monday, June 18, 2018. As of June 19, 2018, Imm Def has received no
22 response to their request.

23 48. Imm Def was refused access to the Victorville prison despite repeated attempts
24 to determine the process for meeting with the immigrants imprisoned there, and
25 despite Imm Def attorneys having followed the procedures normally in place for
26 visitation. The government has provided no procedure by which attorneys can meet
27 with or contact immigrants held at Victorville prison.

28

1 **Immigrant Detainees Are Harmed By Denial of Access to Counsel.**

2 49. The government’s denial of attorney access to the Victorville prison causes
3 serious irreparable harm to the immigration detainees incarcerated there. Unlike in
4 criminal proceedings, individuals in immigration proceedings are not generally
5 entitled to appointed counsel if they cannot afford one. *See generally CJLG v.*
6 *Sessions*, 880 F.3d 1122, 1128 (9th Cir. 2018). Because attorneys are not
7 automatically provided by the government, immigration detainees seeking
8 representation must contact a private attorney to retain them or rely on a patchwork of
9 legal service providers who provide “know your rights” trainings and, in some cases,
10 pro bono representation. By denying attorney access, the federal government has
11 effectively prevented detainees from retaining counsel or obtaining any legal
12 assistance. In addition, the government’s practices prevent retained counsel from
13 consulting with their clients, preparing for hearings or simply communicating with
14 clients about the status of their cases.

15 50. The assistance of an attorney is essential for noncitizens navigating the
16 notoriously complex immigration system. The immigration laws “have been termed
17 second only to the Internal Revenue Code in complexity.” *Castro-O’Ryan v. INS*, 847
18 F.2d 1307, 1312 (9th Cir. 1987) (internal quotation marks omitted); *see also Baltazar-*
19 *Alcazar v. INS*, 386 F.3d 940, 948 (9th Cir. 2004) (emphasizing the complexity of
20 immigration laws and noting that lawyers may be the only ones capable of navigating
21 through it).

22 51. Legal assistance is particularly critical for noncitizens at the outset of their
23 cases, who must make important decisions about what claims or defenses to pursue.
24 For noncitizens seeking asylum, “credible fear” interviews may be conducted within
25 days of apprehension. A denial of “credible fear” may result in the noncitizen’s
26 immediate deportation to the country where they believe they will be persecuted,
27 tortured or worse. *See* 8 U.S.C. 1225(b)(1)(B)(iii). For such individuals, the assistance
28 of counsel may mean the difference between life and death.

1 **CLAIMS FOR RELIEF**

2 **First Claim**

3 **Violation of the Administrative Procedure Act**

4 52. All of the foregoing allegations are repeated and realleged as though fully set
5 forth herein.

6 53. The Detention Standards governing immigration detainees provide that “each
7 facility shall permit legal visitation seven days a week, including holidays, for a
8 minimum of eight hours per day on regular business days . . . and a minimum of four
9 hours per day on weekends and holidays.” ICE Performance Based Detention
10 Standards 2011 5.7.J.2.³

11 54. Similarly, the Bureau of Prisons’ standards governing inmates who are not
12 serving a criminal sentence require attorney visits to be available all seven days of
13 each week. “The Warden shall provide the opportunity for pretrial inmate-attorney
14 visits on a seven-days-a-week basis. Attorney visits for pretrial inmates may be
15 conducted at times other than established visiting hours with the approval of the
16 Warden or designee.” BOP Policy re Pretrial Detainees, 7331.04. *See also id.* at 5
17 (classifying ICE detainees as “pretrial” for purposes of the BOP regulations).

18 55. An agency’s unexplained failure to follow its own rules constitutes “arbitrary,
19 capricious” conduct in violation of the Administrative Procedures Act. 5 U.S.C.
20 706(2)(A); *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *FCC*
21 *v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

22 56. In addition, the agency’s failure to comply with the attorney access
23 requirements of the Constitution and 8 U.S.C. 1229a(b)(4)(A) is not “in accordance
24 with law.” 5 U.S.C. 706(2)(A).

25 //

26 //

27 //

28 _____
³ See <https://www.ice.gov/detention-standards/2011>

1 **Second Claim**

2 **Violation of the Immigration and Nationality Act**

3 57. All of the foregoing allegations are repeated and realleged as though fully set
4 forth herein.

5 58. The Immigration and Nationality Act guarantees noncitizens in removal
6 proceedings the right to counsel of their choosing at no expense to the government.
7 8 U.S.C. § 1229a(b)(4)(A); *Biwot v. Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005).
8 This right necessarily entails the right to consult with an attorney in advance of any
9 hearing. *Rios-Berrios v. INS*, 776 F.2d 859, 862 (9th Cir. 1985).

10 59. Defendants’ acts of preventing attorneys from meeting with their clients
11 violates 8 U.S.C. 1229a(b)(4)(A).

12 **Third Claim**

13 **Violation of the Due Process Clause of the Fifth Amendment**
14 **to the United States Constitution**

15 60. All of the foregoing allegations are repeated and realleged as though fully set
16 forth herein.

17 61. The Due Process Clause of the Fifth Amendment guarantees noncitizen
18 detainees the right of access to the courts; the government may not unjustifiably
19 obstruct that access. *See Prokunier v. Martinez*, 416 U.S. 396 (1974); *Biwot v.*
20 *Gonzales*, 403 F.3d 1094, 1098 (9th Cir. 2005).

21 62. This protection includes rights related to retaining and communicating with
22 attorneys: Detainees must be afforded “reasonable time to locate counsel,” and
23 counsel must be “permit[ted] . . . to prepare for the hearing.” *Rios-Berrios v. INS*, 776
24 F.2d 859, 862 (9th Cir. 1985). Impediments to communication after transfer to a
25 remote facility can constitute a “constitutional deprivation” where they obstruct an
26 “established on-going attorney-client relationship.” *Comm. of Cent. Am. Refugees v.*
27 *INS*, 795 F.2d 1434, 1439 (9th Cir. 1986).

1 63. The Fifth Amendment further prohibits the government from barring an
2 attorney from meeting an incarcerated client, even where the client is imprisoned
3 merely for a few hours. *See generally Edwards v. Arizona*, 451 U.S. 477, 482 (1981)
4 (person subjected to custodial interrogation has the right to be represented by
5 counsel); *Halvorsen v. Baird*, 146 F.3d 680, 689 (9th Cir. 1998) (six-hour
6 confinement “cannot be held too short, as a matter of law,” to entitle a civil detainee
7 the right to communicate).

8 64. These protections apply to prisoners held under color of the immigration laws.
9 *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 554, 565 (9th Cir. 1990)
10 (recognizing “aliens have a due process right to obtain counsel of their choice at their
11 own expense,” and affirming injunction against government practices “the cumulative
12 effect of which was to prevent aliens from contacting counsel and receiving any legal
13 advice,” including the practice of denying visits with counsel). *See also Lyon v. ICE*,
14 171 F. Supp. 3d 961 (N.D. Cal. 2016) (plaintiffs stated a claim and survived summary
15 judgment on access to courts and related due process claim based on insufficient
16 phone access to call attorneys); *cf. Halvorsen v. Baird*, 146 F.3d 680, 689 (9th Cir.
17 1998) (“That a person is committed civilly . . . cannot diminish his right not to be held
18 incommunicado.”).

19 65. Defendants’ acts of preventing attorneys from representing their imprisoned
20 clients violate the Fifth Amendment’s Due Process Clause.

21
22 **Fourth Claim**
23 **Violation of the First Amendment**
24 **to the United States Constitution**

25 66. All of the foregoing allegations are repeated and realleged as though fully set
26 forth herein.

27 67. Prisoners and detainees have the “obvious” right, arising under both the First
28 Amendment and the Due Process Clause, not to be held incommunicado by the state.
Halvorsen v. Baird, 146 F.3d 680, 688–89 (9th Cir. 1998). The First Amendment

1 guarantees prisoners and detainees the right to communicate with the outside world.
2 *Valdez v. Rosenbaum*, 302 F.3d 1039, 1048 (9th Cir. 2002). This protection
3 encompasses the right to make telephone calls, exchange correspondence, and receive
4 in-person visitors. *See id*; *Strandberg v. City of Helena*, 791 F.2d 744, 747 (9th Cir.
5 1986). Detention facilities may not in effect deprive those who are incarcerated of
6 telephone access altogether. *Johnson v. California*, 207 F.3d 650, 656 (9th Cir. 2000).
7 68. The First Amendment protects the right to hire and consult with an attorney.
8 *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (2005), *as amended on*
9 *denial of reh'g* (9th Cir. July 21, 2005). The state may not unreasonably restrict this
10 right. *Id.* Similarly, it protects an attorney's right to advise both retained clients and
11 prospective litigants. *See NAACP v. Button*, 371 U.S. 415, 428–429 (1963); *In re*
12 *Primus*, 436 U.S. 412, 414, 423–24 (1978).

13 69. By depriving the detained Plaintiffs of any means of communication with the
14 outside world, Defendants have violated and continue to violate the detained
15 Plaintiffs' rights under the First Amendment. And by denying the attorney Plaintiffs
16 access to detainees who have sought and would benefit from their counsel, Defendants
17 infringe on Ms. Lopez's and Imm Def attorneys' First Amendment rights.

18 19 **PRAYER FOR RELIEF**

20 Plaintiffs ask this Court to grant the following relief:

- 21 1. Take jurisdiction over this complaint and petition for writ of habeas corpus;
- 22 2. Declare that the actions and practices of Defendants described above constitute
23 violations of federal regulatory, statutory, and constitutional law;
- 24 3. Permanently enjoin Defendants and their directors, officers, agents, and
25 employees from preventing attorneys from visiting or communicating with
26 immigration detainees at FCI Victorville, except as permitted under the ICE 2011
27 Detention Standards;

- 1 4. Permanently enjoin Defendants and their directors, officers, agents, and
2 employees by requiring that Immigrant Defenders Law Center be permitted to conduct
3 “know your rights” trainings for all immigration detainees at FCI Victorville;
- 4 5. Permanently enjoin Defendants and their directors, officers, agents, and
5 employees from proceeding with their immigration cases or deporting them until they
6 have been provided an adequate opportunity to consult with an attorney or attend a
7 “know your rights” training by Immigrant Defenders Law Center;
- 8 6. Order Defendants to release Plaintiff Rodriguez Castillo and others imprisoned
9 with him at FCI Victorville Medium Security under color of the immigration laws
10 unless Defendants provide attorney access and permit Immigration Defenders Law
11 Center to conduct “know your rights” trainings for all detainees at the facility;
- 12 7. Grant an award of attorneys’ fees and costs; and
- 13 8. Grant such other relief as may be just and reasonable.

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15 Respectfully submitted,

16 ACLU FOUNDATION OF
17 SOUTHERN CALIFORNIA

18 Dated: June 19, 2018

19 /s/ Michael Kaufman
20 MICHAEL KAUFMAN
21 Counsel for Plaintiffs-Petitioners
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