

1 AHILAN T. ARULANANTHAM (SBN 237841)
2 aarulanantham@aclusocal.org
3 SAMEER AHMED (SBN 319609)
4 sahed@aclusocal.org
5 EVA BITRAN (SBN 302081)
6 ebitran@aclusocal.org
7 ACLU FOUNDATION OF SOUTHERN CALIFORNIA
8 1313 West 8th Street
9 Los Angeles, California 90017
10 Telephone: (213) 977-5211
11 Facsimile: (213) 417-2211

12 *Attorneys for Plaintiffs*

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 UBALDO ARROYO, JORGE POROJ
16 SAC, ATEMNKENG BECKY
17 NJUALEM, SERGIO JONATHAN
18 MORENO, ELIESER DAVID BLEA,
19 SANTIAGO GUEVARA-MELGAR,
20 BASHIR ABDI WABARE, TANYI
21 FERICK AWUNGDEU, NGUANYI
22 ATABONG QUEENIDA, and
23 ASMEROM ZEMEDE ENABI on
24 behalf of themselves and all others
25 similarly situated, PUBLIC LAW
26 CENTER, and PUBLIC COUNSEL,

27 Plaintiffs-Petitioners,

28 v.

19 UNITED STATES DEPARTMENT OF
20 HOMELAND SECURITY; KEVIN K.
21 MCALEENAN, Acting Secretary of
22 Homeland Security; UNITED STATES
23 IMMIGRATION AND CUSTOMS
24 ENFORCEMENT; RONALD D.
25 VITIELLO, Acting Director,
26 Immigration and Customs Enforcement;
27 THOMAS GILES, Acting Field Office
28 Director, Los Angeles Field Office of
ICE; JENNIFER HERRERA, Assistant
Field Office Director, Orange County
Detained Program, Los Angeles Field
Office of ICE; LUKE SOUTH, Captain,
Orange County Sheriff's Department,
Theo Lacy Facility; and LISA VON
NORDHEIM, Captain, Orange County

Case No. 8:19-cv-0815

**VERIFIED PETITION FOR WRIT
OF HABEAS CORPUS AND
COMPLAINT FOR INJUNCTIVE
AND DECLARATORY RELIEF**

1 Sheriff's Department, James A. Musick
2 Facility,

3 Defendants-Respondents.

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INTRODUCTION

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2 1. Plaintiffs are a group of immigrants imprisoned by U.S. Immigration and
3 Customs Enforcement (“ICE”) in two Orange County jails, and attorneys who
4 represent immigrants incarcerated at those facilities. The Orange County jails recently
5 ended their contract with ICE. In response, ICE stated that “instead of being housed
6 close to family members or local attorneys” it would now transfer the immigrants to
7 locations far away from their attorneys and families. Unsurprisingly, transferring these
8 immigrants hundreds or thousands of miles away will make it exceedingly difficult for
9 the immigrants to maintain their legal representation or otherwise access the courts.
10 Transfers outside of Southern California are also unnecessary; ICE has legal authority
11 to release many of these individuals, and can transfer the rest to a large facility within
12 the Southern California area, at Adelanto.

13 2. The decision to transfer the immigrant Plaintiffs outside the Southern
14 California region violates federal statutory and constitutional law. The Constitution
15 does not permit the government to effectively sever the attorney-client relationship by
16 transferring individuals hundreds or thousands of miles away from their attorneys
17 while their cases remain pending. *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549,
18 566 (9th Cir. 1990) (affirming injunction restricting immigrants’ transfers because
19 they “interfere[d] with established attorney-client relationships”). The same is true for
20 unrepresented people in the deportation system, who rely on family members to
21 perform many tasks that attorneys would otherwise perform. Even existing federal
22 policy permits transfers of such individuals only where “necessary.” *See* ICE
23 Transfers Policy No. 11022.1. Here there is no necessity, as the individuals in
24 question could be released or, where that alternative is unavailable, transferred to
25 Adelanto — a large facility within the Southern California region. Thus, Defendants
26 have arbitrarily disregarded their own Transfers Policy.

27 3. Therefore, Plaintiffs ask this Court to prevent ICE from effectuating its
28 decision to transfer immigrants confined at the Orange County jails to locations

1 outside of Southern California if those immigrants already have attorneys or if they
2 have immediate family within the Southern California region (defined as the ICE Los
3 Angeles Field Office’s Area of Responsibility (“AOR” or “SoCal region”).

4 4. There are two sets of Plaintiffs in this case. Plaintiffs Ubaldo Arroyo,
5 Jorge Poroj Sac, Atemnkeng Becky Njuaem, Sergio Jonathan Moreno, Elieser David
6 Blea, Santiago Guevara-Melgar, Bashir Abdi Wabare, Tanyi Ferick Awungdeu,
7 Nguanyi Atabong Queenida, and Asmerom Zemedede Enabi (the “Individual Plaintiffs”)
8 bring their claims for themselves and for a class of similarly situated individuals. The
9 Individual Plaintiffs seek to represent a class of all immigrants who are 1) imprisoned
10 at the James A. Musick Facility (“Musick”) or the Theo Lacy Facility (“Theo Lacy”)
11 (collectively, the “Orange County Jails”); and 2) have attorneys or immediate family
12 within the SoCal region.

13 5. Plaintiffs Public Law Center and Public Counsel (collectively the
14 “Attorney Plaintiffs”) are non-profit legal organizations whose attorneys have clients
15 imprisoned at the Orange County Jails who will be transferred outside the SoCal
16 region. They face significant obstacles that materially undermine their ability to
17 provide legal advice and effective assistance to their clients because of Defendants’
18 decision to transfer their clients.

19 JURISDICTION AND VENUE

20 6. Jurisdiction is proper and relief available pursuant to 28 U.S.C. 1331
21 (federal question), 28 U.S.C. 1361, 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. 2201
22 and 2202; 28 U.S.C. 1651; 28 U.S.C. 1343; and 5 U.S.C. 702-706. A substantial,
23 actual, and continuing controversy exists between the parties.

24 7. Venue is proper in the Central District of California under 28 U.S.C.
25 1391, because at least one federal Defendant is in this District, the Individual
26 Plaintiffs are imprisoned in this District, Plaintiffs Public Law Center and Public
27 Counsel reside in this District, and a substantial part of the events giving rise to the
28 claims in this action took place in this District. Venue is also proper under 28 U.S.C.

1 2243 because the immediate custodians of all the Individual Plaintiffs reside in this
2 District.

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4 **PARTIES**

5 ***Plaintiffs***

6 8. Plaintiff Ubaldo Arroyo is currently imprisoned at Musick. He was
7 arrested by ICE on or about February 23, 2019 and sent to Musick. He has lived in
8 Orange County, California, almost his entire life. His immediate family live in
9 Anaheim, California, including his mother and six siblings, five of whom are U.S.
10 citizens. His mother has helped prepare his case, including by getting documents for
11 his case, such as medical records, school records, birth certificates of his siblings, and
12 letters of support. She and other members of his family would not be able to call him
13 frequently or visit him if he were transferred to a facility far away. He is currently
14 represented pro bono in his removal proceedings by Monica Glicken and Precious
15 Odum from Attorney Plaintiff Public Law Center, located in Santa Ana, California.
16 His defenses to removal include a motion to withdraw pleadings and a motion to
17 suppress.

18 9. If Mr. Arroyo were transferred from Musick, he would like his attorneys
19 to continue to represent him. If he were transferred far away and his attorneys could
20 not represent him, he would be unable to pay for another lawyer to represent him. He
21 often needs to meet with his attorneys for hours at a time. Many of the issues he needs
22 to talk about are very sensitive, including about his family and other issues that he
23 only feels comfortable talking about when personally with his attorneys in a
24 confidential setting. He would not feel comfortable discussing these issues with his
25 attorneys over the phone or by mail. He does not want to be transferred outside of the
26 Southern California area because he will not be able to meet with his attorneys and his
27 family in person on a regular basis, if ever.

28 10. Plaintiff Jorge Poroj Sac is currently imprisoned at Theo Lacy. He has

1 been imprisoned at Theo Lacy since October 9, 2018. He was born in Guatemala and
2 decided to come to the United States as a teenager after suffering significant abuse by
3 his father. In 2015, he was approved for Special Immigrant Juvenile Status and
4 received his lawful permanent residence. He was subsequently placed in removal
5 proceedings due to a criminal conviction. He has many family members in Los
6 Angeles, California, including his mother, two younger brothers, and many aunts,
7 uncles, and cousins. His mother and aunt have provided significant help with his case,
8 including by finding an attorney to submit an appeal to the Board of Immigration
9 Appeals (“BIA”), submitting declarations in support of his release from immigration
10 prison, and being his sponsor for bond. His family would not be able to call him
11 frequently or visit him if he were transferred to a facility far away. He has been
12 represented by the Matian Firm, located in Los Angeles, California, and the UC Irvine
13 School of Law Immigrant Rights Clinic. His BIA appeal was dismissed on April 17,
14 2019, and he plans to meet with his attorneys to file a petition for review to the Ninth
15 Circuit. The UC Irvine School of Law Immigrant Rights Clinic is also representing
16 him in criminal court on his motion for post-conviction relief. His next hearing is at
17 the East Los Angeles Superior Courthouse in Los Angeles, California, on May 9,
18 2019.

19 11. If Mr. Poroj Sac were transferred from Theo Lacy, he would like his
20 attorneys to continue to represent him. If he were transferred far away and his
21 attorneys could not represent him, he would be unable to pay for another lawyer to
22 represent him. He often needs to meet with his attorneys for hours at a time. Many of
23 the issues he needs to talk about are very sensitive, including about his past abuse,
24 mental health, and criminal history that he only feels comfortable talking with his
25 attorneys in person in a confidential setting. He would not feel comfortable discussing
26 these issues with his attorneys over the phone or by mail. He does not want to be
27 transferred outside of the Southern California area because he will not be able to meet
28 with his attorneys and his family in person on a regular basis, if ever.

1 12. Plaintiff Atemnkeng Becky Njuaem is currently imprisoned at Musick.
2 She entered the United States on or about February 3, 2019 at the San Ysidro Point of
3 Entry and was placed into an ICE prison. She is seeking asylum in the United States
4 because she has been persecuted by the Francophone government of Cameroon due to
5 her support for Anglophone independence. She is currently represented pro bono by
6 Elizabeth Guthrie of Catholic Charities of Orange County located in Santa Ana,
7 California, in her removal proceedings.

8 13. If she were transferred from Musick, Ms. Njuaem would like her
9 attorney to continue to represent her. If she were transferred far away and her attorney
10 could not represent her, she would be unable to pay for another lawyer to represent
11 her. She often needs to meet with her attorney for hours at a time. Many of the issues
12 she needs to talk about are very sensitive, including about past abuse, trauma, medical
13 conditions, her family, and other issues that she only feels comfortable talking with
14 her attorney in person in a confidential setting. She would not feel comfortable
15 discussing these issues with her attorney over the phone or by mail. She does not want
16 to be transferred outside of the Southern California area because she will not be able
17 to meet with her attorney in person on a regular basis, if ever.

18 14. Plaintiff Sergio Jonathan Moreno is currently imprisoned at Musick. On
19 November 16, 2017, he was arrested by ICE and sent to Theo Lacy. About two weeks
20 later, he was transferred to Musick and has been imprisoned there ever since. He has
21 lived in Los Angeles County, California, almost his entire life. His immediate family
22 all live in El Monte, California, including his U.S. citizen wife, U.S. citizen daughter,
23 U.S. citizen brother, and Lawful Permanent Resident mother. His mother and wife
24 have helped prepare for his case by talking with his attorneys and getting documents
25 for his case, such as medical records, immigration documents, his marriage certificate,
26 birth certificate for his daughter, letters of support from family and friends, his
27 education records, his tax returns, his paystubs, and his criminal history documents.
28 His family would not be able to call him frequently or visit him if he were transferred

1 to a facility far away. He is currently represented pro bono by attorneys from
2 Newmeyer & Dillon LLP, located in Newport Beach, California, and Public Law
3 Center, located in Santa Ana, California, in his immigration proceedings, which are
4 currently on review at the Ninth Circuit.

5 15. If Mr. Moreno were transferred from Musick, he would like his attorneys
6 to continue to represent him. If he were transferred far away and his attorneys could
7 not represent him, he would be unable to pay for another lawyer to represent him. He
8 often needs to meet with his attorneys for hours at a time. Many of the issues he needs
9 to talk about are very sensitive, including about his family, criminal history, and other
10 issues that he only feels comfortable talking with his attorneys in person in a
11 confidential setting. He would not feel comfortable discussing these issues with his
12 attorneys over the phone or by mail. He does not want to be transferred outside of the
13 Southern California area because he will not be able to meet with his attorneys and his
14 family in person on a regular basis, if ever.

15 16. Plaintiff Elieser David Blea is currently imprisoned at Musick. He was
16 arrested by ICE on or about November 5, 2018 and sent to Musick. His immediate
17 family live in Thousand Oaks, California, including his wife and seven children, five
18 of whom are U.S. citizens. His wife, with the assistance of their local church, Houses
19 of Light in Northridge, California, has helped him obtain evidence for his immigration
20 case, such as records supporting his relief applications, letters of support from family
21 members, community groups, and religious institutions, and has helped identify and
22 speak with potential witnesses. His family would not be able to call him frequently or
23 visit him if he were transferred to a facility far away. In addition to another form of
24 relief, Mr. Blea is seeking asylum and related relief and has a fear of persecution in
25 part because drug dealers killed his sister in Guatemala. On March 28, 2019, an
26 immigration judge denied him asylum but granted him voluntary departure. He plans
27 to appeal the immigration judge's decision, and his family has been meeting with
28 lawyers in the Southern California area to try to find him an attorney to take his

1 appeal. While his family is trying to find legal representation for him, they would face
2 an even lower chance of being able to do so if he were transferred far away. He does
3 not want to be transferred outside of the Southern California area because he will not
4 be able to meet with his family in person on a regular basis, if ever.

5 17. Plaintiff Santiago Guevara-Melgar is currently imprisoned at Musick. He
6 is a native and citizen of Honduras. He arrived in the United States around November
7 17, 2018 and has been imprisoned since his arrival. He is seeking asylum and has a
8 fear of persecution because gangs in Honduras were threatening him and his family. In
9 May 2019, he will be eligible for a *Rodriguez* bond hearing. He is currently
10 represented by Colleen Cowgill of Catholic Charities of Orange County located in
11 Santa Ana, California, in his bond proceedings.

12 18. If Mr. Guevara-Melgar were transferred from Musick, he would like his
13 attorney to continue to represent him. If he were transferred far away and his attorney
14 could not represent him, he would be unable to pay for another lawyer to represent
15 him. He often needs to meet with his attorney for hours at a time. He needs to meet
16 with his attorney in person to prepare for his bond hearing by presenting evidence and
17 testimony that he is neither a flight risk or danger to the community. Many of the
18 issues he needs to talk about are very sensitive, including about past abuse, trauma,
19 medical conditions, his family, and other issues that he only feels comfortable talking
20 about with his attorney in person in a confidential setting. He would not feel
21 comfortable discussing these issues with his attorney over the phone or by mail. He
22 does not want to be transferred outside of the Southern California area because he will
23 not be able to meet with his attorney in person on a regular basis, if ever.

24 19. Plaintiff Bashir Abdi Wabare is currently imprisoned at Theo Lacy. He is
25 a native and citizen of Somalia. He arrived in the United States around December 14,
26 2018 and has been imprisoned since his arrival. He is seeking asylum and has a fear of
27 persecution because he is a member of the Darod tribe, and his family members have
28 been killed by members of the Hawiye tribe. He is currently represented by Colleen

1 Cowgill of Catholic Charities of Orange County located in Santa Ana, California, in
2 his removal proceedings.

3 20. If Mr. Wabare were transferred from Theo Lacy, he would like his
4 attorney to continue to represent him. If he were transferred far away and his attorney
5 could not represent him, he would be unable to pay for another lawyer to represent
6 him. He often needs to meet with his attorney for hours at a time. Many of the issues
7 he needs to talk about are very sensitive, including about past abuse, trauma, medical
8 conditions, his family, and other issues that he only feels comfortable talking about
9 with his attorney in person in a confidential setting. He would not feel comfortable
10 discussing these issues with his attorney over the phone or by mail. He does not want
11 to be transferred outside of the Southern California area because he will not be able to
12 meet with his attorney in person on a regular basis, if ever.

13 21. Plaintiff Tanyi Ferick Awungdeu is currently imprisoned at Musick. He
14 entered the United States on or about December 12, 2018 at the San Ysidro Point of
15 Entry and was placed into an ICE prison. He is seeking asylum in the United States
16 because he has been persecuted by the Francophone government of Cameroon due to
17 his support for Anglophone independence. He is currently represented pro bono by
18 Elizabeth Guthrie of Catholic Charities of Orange County located in Santa Ana,
19 California, in his removal proceedings.

20 22. If Mr. Awungdeu were transferred from Musick, he would like his
21 attorney to continue to represent him. If he were transferred far away and his attorney
22 could not represent him, he would be unable to pay for another lawyer to represent
23 him. He often needs to meet with his attorney for hours at a time. Many of the issues
24 he needs to talk about are very sensitive, including about past abuse, trauma, medical
25 conditions, his family, and other issues that he only feels comfortable talking with his
26 attorney in person in a confidential setting. He would not feel comfortable discussing
27 these issues with his attorney over the phone or by mail. He does not want to be
28 transferred outside of the Southern California area because he will not be able to meet

1 with his attorney in person on a regular basis, if ever.

2 23. Plaintiff Nguanyi Atabong Queenida is currently imprisoned at Musick.
3 She entered the United States on or about February 2, 2019 at the San Ysidro Point of
4 Entry and was placed into an ICE prison. She is seeking asylum in the United States
5 because she has been persecuted by the Francophone government of Cameroon due to
6 her support for Anglophone independence. She is currently represented pro bono by
7 Beverly Huff of Catholic Charities of Orange County located in Santa Ana, California,
8 in her removal proceedings.

9 24. If she were transferred from Musick, Ms. Queenida would like her
10 attorney to continue to represent her. If she were transferred far away and her attorney
11 could not represent her, she would be unable to pay for another lawyer to represent
12 her. She often needs to meet with her attorney for hours at a time. Many of the issues
13 she needs to talk about are very sensitive, including about past abuse, trauma, medical
14 conditions, her family, and other issues that she only feels comfortable talking with
15 her attorney in person in a confidential setting. She would not feel comfortable
16 discussing these issues with her attorney over the phone or by mail. She does not want
17 to be transferred outside of the Southern California area because she will not be able
18 to meet with her attorney in person on a regular basis, if ever.

19 25. Plaintiff Asmerom Zemedede Enabi is currently imprisoned at Musick. He
20 entered the United States on or about January 25, 2019 at the Calexico Point of Entry
21 and was placed into an ICE prison. He is an asylum seeker from Eritrea who is fleeing
22 severe political persecution. He is currently represented pro bono by Judy London
23 from Public Counsel and by Savir Punia and Shamar Toms-Anthony, pro bono
24 attorneys with Drinker Biddle & Reath LLP, in his removal proceedings. Both law
25 offices are located in Los Angeles, California. If he is transferred from Musick, he
26 would like his attorney to continue to represent him.

27 26. If Mr. Erabi were transferred far away and his attorney could not
28 represent him, he would be unable to pay for another lawyer to represent him. He

1 often needs to meet with his attorney for hours at a time. Many of the issues he needs
2 to talk about are very sensitive, including about past torture, that he only feels
3 comfortable talking with his attorney in person in a confidential setting. He would not
4 feel comfortable discussing these issues with his attorney over the phone or by mail.
5 He does not want to be transferred outside of the Southern California area because he
6 will not be able to meet with his attorney in person on a regular basis, if ever.

7 27. Plaintiff Public Law Center is a 501(c)(3) nonprofit whose mission is to
8 provide access to justice for low-income and vulnerable residents of Orange County,
9 including immigrants, by providing them free civil legal services, including:
10 counseling, individual representation, community education, and strategic litigation
11 and advocacy to challenge societal injustices. Public Law Center provides a range of
12 services that include the following areas of law: housing, bankruptcy, consumer,
13 family law, health, and immigration. Public Law Center's main office is located in
14 Santa Ana, California. Last year, Public Law Center staff and volunteers provided
15 over 65,000 hours of free legal services in handling over 4,500 cases benefiting low-
16 income children, adults and seniors. Public Law Center's Immigration Unit assists
17 low-income immigrants in filing for various forms of immigration relief, engages in
18 broader based impact litigation, and provides community education on immigration
19 issues. Over the past year, Public Law Center has represented 25 imprisoned
20 individuals in their immigration matters, 20 of whom have been imprisoned at Musick
21 and Theo Lacy.

22 28. Public Law Center currently has a total of five clients imprisoned at the
23 Orange County Jails with open immigration cases. Public Law Center attorneys
24 require multiple in-person visits to provide effective legal assistance to their clients
25 imprisoned at the Orange County Jails. In addition to concerns related to
26 confidentiality and the length of visits, Public Law Center attorneys must visit their
27 clients in person due to restrictions on telephone access and long delays in sending
28 and receiving legal mail.

1 29. As a nonprofit legal organization with limited resources, Public Law
2 Center and the attorneys who work for it do not have the capacity or resources to
3 travel to immigration prison facilities outside of the Southern California area to
4 conduct in-person meetings with their clients. If Public Law Center's clients were
5 transferred outside of the Southern California region, Public Law Center attorneys
6 would not be able to meet with them in person. Instead, Public Law Center attorneys
7 would have to divert their resources from serving other needy clients in an attempt to
8 advocate for the transfer of their clients back to Southern California, including by
9 sending letters and making phone calls to ICE. If Public Law Center could not bring
10 their clients back to Southern California, Public Law Center would expend resources
11 assisting them in trying to find lawyers elsewhere.

12 30. If Public Law Center's clients imprisoned at the Orange County Jails
13 were transferred far away, Public Law Center would suffer financial harm. For
14 example, Public Law Center was awarded a grant from the California Department of
15 Social Services to complete 20 bond hearings and 8 full-scope removal defense cases
16 for imprisoned individuals by the end of 2019, representing a total of \$82,000 in grant
17 funds. If Public Law Center's clients were transferred out of the Southern California
18 region and Public Law Center could not bring them back, Public Law Center would
19 have to stop representing those clients due to the exorbitant travel costs and time that
20 would be required. If Public Law Center could not perform under the grant, it would
21 have to absorb the loss of the planned income, and would likely have to terminate the
22 employment of at least one full-time staff member as a result. Furthermore, Public
23 Law Center's failure to perform in this calendar year would also be taken into account
24 by funders in future year's grant awards, as well, likely leading to a further loss of
25 grant income. Public Law Center's existence as a non-profit and its continued capacity
26 to serve low-income individuals in Orange County and the surrounding areas would
27 be compromised by such events.

28 31. Plaintiff Public Counsel is the nation's largest pro bono law firm. Public

1 Counsel’s mission is to protect the legal rights of disadvantaged children; represent
2 immigrants who have been the victims of torture, persecution, domestic violence,
3 trafficking, and other crimes; and foster economic justice by providing individuals and
4 institutions in underserved communities with access to quality legal representation.
5 The goal of Public Counsel’s Immigrants’ Rights Project (“IRP”) is to protect the due
6 process rights of immigrants by providing them with free, high-quality legal
7 representation and other legal services, including the provision of detailed legal
8 information. To fulfill that goal, IRP staff provides representation and more limited
9 forms of legal assistance to individuals seeking asylum, survivors of crime and human
10 trafficking, immigrant children and families, deported veterans, and people in
11 immigration prisons. Public Counsel’s main office is located in Los Angeles,
12 California. Public Counsel staff provide legal services at the Orange County Jails and
13 the Adelanto Detention Facility.

14 32. At Musick, IRP staff conduct a monthly legal orientation program for
15 those new to the immigration prison system and provide legal consults to those who
16 lack representation. At Theo Lacy, IRP staff provide orientations on an individual
17 basis as capacity permits.

18 33. IRP staff also provide direct representation to imprisoned immigrants.
19 They match imprisoned asylum seekers, victims of violence and long-time lawful
20 permanent residents with volunteer attorneys willing to help them fight for permanent
21 safety and stability in the United States. At Musick, Public Counsel currently
22 represents two individuals seeking a parole redetermination and one individual in
23 removal proceedings. Public Counsel also has recently provided legal orientations to
24 several immigrants imprisoned at Musick with deep ties to Southern California. These
25 include individuals who have lived for decades in the region, and who have U.S.-
26 citizen children. Public Counsel attorneys require multiple in-person visits to provide
27 effective legal assistance to their clients imprisoned at the Orange County Jails. In
28 addition to concerns related to confidentiality and the length of visits, Public Counsel

1 attorneys must visit their clients in person due to restrictions on telephone access and
2 long delays in sending and receiving legal mail.

3 34. As a nonprofit legal organization with limited resources, Public Counsel
4 and the attorneys who work for it do not have the capacity or resources to travel to
5 immigration prison facilities outside of Los Angeles, Orange, and San Bernardino
6 counties to conduct in-person meetings with their clients. If Public Counsel’s clients
7 were transferred outside of the Southern California region, Public Counsel attorneys
8 would not be able to meet with them in person. Instead, Public Counsel attorneys
9 would have to divert their resources from serving other needy clients in an attempt to
10 transfer their clients back to Southern California, including by sending letters and
11 making phone calls to ICE. If Public Counsel could not bring their clients back to
12 Southern California, Public Counsel would expend resources assisting them in trying
13 to find lawyers elsewhere.

14 ***Defendants***

15 35. Defendant United States Department of Homeland Security (“DHS”) is a
16 department of the executive branch of the United States government that is tasked
17 with, among other things, administering and enforcing the federal immigration laws.

18 36. Defendant Immigration and Customs Enforcement (“ICE”) is the agency
19 within DHS that is specifically responsible for managing all aspects of the
20 immigration enforcement process, including its vast network of immigration prisons.
21 ICE is responsible for apprehension, incarceration, and removal of noncitizens from
22 the United States.

23 37. Defendant Kevin K. McAleenan is the Acting Secretary of DHS.
24 Secretary McAleenan is ultimately responsible for the actions of ICE. He is a legal
25 custodian of the Individual Plaintiffs and immigrants incarcerated at the Orange
26 County Jails. Secretary McAleenan is named in his official capacity.

27 38. Defendant Ronald D. Vitiello is the Acting Director of ICE, a component
28 of DHS. He is a legal custodian of the Individual Plaintiffs and immigrants

1 incarcerated at the Orange County Jails. Director Vitiello is named in his official
2 capacity.

3 39. Defendant Thomas Giles is the Acting Field Office Director for the Los
4 Angeles Field Office of ICE. Director Giles is responsible for the enforcement of the
5 immigration laws within this district, and for ensuring that ICE officials follow the
6 agency's policies and procedures. He is a legal custodian of the Individual Plaintiffs
7 and immigrants incarcerated at the Orange County Jails. He is named in his official
8 capacity.

9 40. Defendant Jennifer Herrera is the Assistant Field Office Director
10 ("AFOD") for the Orange County Detained Program of the Los Angeles Field Office
11 of ICE. AFOD Herrera is a legal custodian of the Individual Plaintiffs and immigrants
12 incarcerated at the Orange County Jails. She is named in her official capacity.

13 41. Defendant Luke South is a Captain with the Orange County Sheriff's
14 Department in charge of custody operations and is the warden at the Theo Lacy
15 Facility. Captain South is a legal custodian of the Individual Plaintiffs and immigrants
16 incarcerated at the Theo Lacy Facility. He is named in his official capacity.

17 42. Defendant Lisa Von Nordheim is a Captain with the Orange County
18 Sheriff's Department in charge of custody operations and is the warden at the James
19 A. Musick Facility. Captain Von Nordheim is a legal custodian of the Individual
20 Plaintiffs and immigrants incarcerated at the James A. Musick Facility. She is named
21 in her official capacity.

22
23 **FACTUAL ALLEGATIONS**

24 **OCSD Ends Their Contract With ICE To Jail Immigrants At The Orange**
25 **County Jails**

26 43. For several years, Defendant ICE has contracted with OCSD to jail up to
27 958 immigrants, including the Individual Plaintiffs, in the Orange County Jails,
28

1 pending a decision on whether they should be removed from the United States.¹ In
2 cells not holding immigrants at the Orange County Jails, OCSD incarcerates pretrial
3 detainees, individuals convicted of misdemeanor crimes, and individuals convicted of
4 felonies who are awaiting transfer to state prison.

5 44. On March 27, 2019, OCSD notified Defendant ICE that OCSD is
6 terminating its contract to jail the immigrants at the Orange County Jails. Orange
7 County Sheriff-Coroner Don Barnes stated, “Jail operations at the James A. Musick
8 Facility will be temporarily suspended and our agreement with the Federal
9 Government to house Immigration and Customs Enforcement (ICE) detainees will be
10 ended.”² The contract requires ICE to remove the immigrants from the Orange County
11 Jails within 120 days.

12 45. That same day, OCSD stated in a press release that “those individuals
13 housed on behalf of ICE [in the Orange County Jails] will most likely be transferred
14 outside of California, separating them from family members who reside within this
15 state.”³ An ICE spokeswoman corroborated that statement, explaining on that same
16 day that “instead of being housed close to family members or local attorneys, ICE will
17 have to depend on its national system of detention bed space to place those detainees
18 in locations farther away reducing the opportunities for in-person family visitation and
19 attorney coordination.”⁴

20 46. On March 28, 2019, upon learning of these developments, counsel for
21 Plaintiffs emailed Defendant Herrera to request that ICE either release all individuals
22

23 ¹ See California Department of Justice, *Immigration Detention in California* (February 2019),
24 <https://oag.ca.gov/sites/all/files/agweb/pdfs/publications/immigration-detention-2019.pdf>, at i
25 (“While the public and private facilities control their day-to-day operations, the federal government
26 decides who is detained and in which detention facility.”).

25 ² OCSD, *OCSD announces changes to jail operations to increase custody mental health services*
(Mar. 27, 2019).

26 ³ *Id.*

27 ⁴ Roxana Kopetman, *Sheriff to stop holding ICE detainees in Orange County jails*, O.C. Register
28 (Mar. 27, 2019), <https://www.ocregister.com/2019/03/27/orange-county-sheriff-announces-early-end-to-ice-detainee-contract-and-temporary-closure-of-musick-jail-to-focus-on-mental-health-treatment-in-jails/>.

1 imprisoned at the Orange County Jails, or, at the very least, transfer them to the
2 Adelanto Detention Facility or some other facility within the Central District of
3 California.

4 47. Counsel for Plaintiffs also requested that Defendant Herrera provide
5 counsel with both the approximate dates that ICE plans to begin transferring
6 individuals out of the Orange County Jails, and the names of the facilities to which
7 ICE intends to transfer them.

8 48. On April 8, 2019, Marty Ryan, Acting Chief Counsel for ICE's Office of
9 the Principal Legal Advisor in Los Angeles, California, responded to Plaintiffs'
10 counsel's e-mail. Mr. Ryan's response did not provide the information requested by
11 Plaintiffs' counsel. Instead, the e-mail stated that "ICE is reviewing case information
12 for the ICE detainees housed at the James A. Musick and Theo Lacy Facilities.
13 Transfers of ICE detainees are made on a case-by-case basis in accordance with
14 applicable law and ICE policy."

15 49. On April 18, 2019, ICE Deportation Officer Bell told attorney Daniela
16 Hernandez Chong Cuy, who works for Immigrant Defenders Law Center, that
17 immigrants incarcerated at Theo Lacy who were not *Franco-Gonzalez* class members⁵
18 will be transferred to detention centers in the San Francisco, California area, Florida,
19 and other states.

20 50. To date, ICE has failed to provide Plaintiffs' counsel any further
21 information regarding when ICE plans to begin transferring individuals out of the
22 Orange County Jails and to what facilities they will be transferred.

23 **ICE's Transfer Policy**

24 51. ICE Transfers Policy No. 11022.1 states: "Unless a transfer is deemed
25

26 ⁵ *Franco-Gonzalez* class members are immigration detainees with serious mental disorders who
27 may be incompetent to represent themselves and entitled to counsel provided for by the Government.
28 See *Franco-Gonzalez v. Holder*, No. CV-10-02211 DMG (DTBx), 2014 WL 5475097 (C.D. Cal.
Oct. 29, 2014). Upon information and belief, after Officer Bell made that statement, ICE transferred
all *Franco* class members previously confined in the Orange County Jails to Adelanto.

1 necessary by a [Field Office Director] or his or her designee ..., ICE Supervisory
2 Immigration Officer(s) will not transfer a detainee when there is documentation to
3 support the following: a) Immediate family within the AOR; b) An attorney of record
4 (Form G-28, *Notice of Entry of Appearance as Attorney or Accredited Representative*
5 on file) within the AOR; c) Pending or on-going removal proceedings, where
6 notification of such proceedings has been given, within the AOR; or d) Been granted
7 bond or has been scheduled for a bond hearing.”⁶

8 52. The policy adds that “[t]he Immigration Officer will conduct a review to
9 determine whether any of these factors exist. Before a transfer is made in a case where
10 one or more of these factors exist, the transfer must be approved at the Assistant Field
11 Office Director level or higher, and the reasons for the transfer must be documented in
12 the detainee’s A-File.... ICE Supervisory Immigration Officers will conduct a
13 thorough review of the most current information available to make all detainee
14 transfer determinations.”⁷

15 53. The Orange County Jails are part of the ICE Los Angeles Field Office’s
16 AOR. That AOR consists of the Los Angeles Metropolitan Area (Counties of Los
17 Angeles, Orange, Riverside, San Bernardino) and the Central Coast (Counties of
18 Ventura, Santa Barbara and San Luis Obispo).⁸

19 54. ICE Transfers Policy No. 11022.1 defines “immediate family” as:
20 “mothers, fathers, step-parents, foster parents, brothers, sisters, stepbrothers,
21 stepsisters, biological and adopted children, stepchildren, foster children, and spouses,
22 including common-law marriage or civil unions and cohabitating domestic
23 partnerships legally recognized by a state or other governmental entity (e.g. District of
24 Columbia, Puerto Rico, Guam).”⁹

26 ⁶ ICE Transfers Policy No. 11022.1 (Jan. 4, 2012).

27 ⁷ *Id.*

28 ⁸ U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations Field
Offices, <https://www.ice.gov/contact/ero>.

⁹ ICE Transfers Policy No. 11022.1 (Jan. 4, 2012).

1 55. As the statements of ICE and OCSD make clear, ICE has already made
2 the determination to transfer immigrants at the Orange County Jails to jurisdictions far
3 away from their attorneys and immediate families. In violation of ICE Transfers
4 Policy No. 11022.1, ICE made this determination before: (1) any ICE Field Office
5 Director or their designee has deemed any transfer from the Orange County Jails
6 “necessary;” (2) any Immigration Officer has conducted a review to determine
7 whether any of the factors generally prohibiting transfer exist; (3) obtaining the
8 approval at the Assistant Field Office Director level or higher; (4) documenting the
9 reasons for the transfer in the immigrant’s A-File; and (5) any ICE Supervisory
10 Immigration Officers conducted a thorough review of the most current information
11 available about each immigrant.

12 56. It is not “necessary” to transfer immigrants imprisoned at the Orange
13 County Jails to ICE facilities outside of the ICE Los Angeles Field Office’s AOR. ICE
14 has legal authority to release many of the immigrants imprisoned at the Orange
15 County Jails, including at least most of the Plaintiffs, on parole or bond. And ICE
16 could transfer the immigrants with local attorneys and family members to the
17 Adelanto Detention Facility in Adelanto, California.

18 57. ICE Transfers Policy No. 11022.1 also requires ICE to notify the
19 immigrants’ attorneys when they are transferred. The policy states: “If a detainee has
20 an attorney of record (Form G-28 on file), the sending field office will ... [n]otify the
21 attorney that the detainee is being transferred and include the reason for the transfer
22 and the name, location, and telephone number of the new facility as soon as
23 practicable on the day of the transfer, but in no circumstances later than twenty four
24 (24) hours after the transfer occurs.”¹⁰

25 58. Upon information and belief, ICE frequently fails to inform attorneys
26 when their clients have been transferred from the Orange County Jails.

27
28 ¹⁰ *Id.*

1 **Defendants’ Transfer Decision Interferes With The Immigrants’ Right To**
2 **Effective Assistance Of Counsel And Their Attorneys’ Right To Provide Legal**
3 **Advice**

4 59. Defendants’ decision to transfer the immigrants imprisoned in the Orange
5 County Jails outside of the SoCal region also interferes with the right of the
6 immigrants, including the Individual Plaintiffs, to effective assistance of counsel, and
7 the Attorney Plaintiffs’ right to provide legal advice to their clients.

8 60. For the Individual Plaintiffs and other immigrants with attorneys located
9 within the SoCal region, their attorneys do not have the capacity or the resources to
10 travel to immigration prison facilities in jurisdictions outside of the SoCal region to
11 conduct any in-person meetings with the immigrants.

12 61. Many immigrants, including the Individual Plaintiffs, are unable to afford
13 to retain counsel in the jurisdictions where they will be transferred.

14 62. In-person meetings between immigrants and their attorneys are necessary
15 for all aspects of representation in immigration proceedings including: (1) conducting
16 an initial assessment of clients’ legal claims and eligibility for relief such as asylum;
17 (2) interviewing clients to obtain a lengthy personal declaration that often details
18 traumatic facts about physical, sexual, and other violence; (3) counseling clients as to
19 their legal options and developments in their case; (4) obtaining signatures on release
20 forms when seeking client records from outside agencies; and (5) preparing clients to
21 testify in court, including to face cross-examination by an experienced ICE attorney.
22 These conversations are often intricate and complex, and necessitate hours-long
23 discussions with clients, often through interpreters. Defendants’ transfer decision,
24 therefore, inhibits these crucial attorney-client communications.

25 63. Defendants’ transfer decision further impedes these vital attorney-client
26 exchanges by limiting the means by which the immigrants and their attorneys,
27 including the Attorney Plaintiffs, can communicate confidentially. Without the means
28 of communicating confidentially with a client in-person, a lawyer cannot fully assess

1 whether an immigrant has a basis for contesting removability or is eligible for
2 immigration relief. To determine whether a client is eligible for asylum, for instance, a
3 lawyer must build sufficient trust and rapport to explore highly sensitive topics, such
4 as whether a client is a victim of physical or sexual assault, whether a person has been
5 diagnosed with a chronic or infectious medical condition, and/or whether a person has
6 fled persecution because of his or her sexual orientation or gender identity. Likewise,
7 in order to show an immigration judge why a client should be released on bond or
8 deserves cancellation of removal, an attorney must frequently explore, often over
9 several hours, a number of sensitive personal matters with the client. These
10 conversations may include, for example, the harm that a client's young U.S.-citizen
11 children or elderly parents may face should the client be deported, what efforts a client
12 has made toward rehabilitation following a criminal conviction, whether a client is in
13 recovery from substance abuse, and what efforts a client has made to assist with
14 governmental investigations after being a victim of a crime. Should an attorney need
15 to include this information in a written declaration or prepare a client for testifying in
16 an adversarial proceeding, as is required for most forms of immigration relief, the
17 conversations can often take several hours and require multiple in-person visits in
18 order to solicit the relevant information and counsel a client.

19 64. Attorney Plaintiffs Public Counsel and Public Law Center generally
20 anticipate that each attorney needs between four to ten in-person individual meetings
21 preparing a client for a merits hearing.

22 65. Due to restrictions on telephone access and long delays in sending and
23 receiving legal mail at immigration prison facilities, including the Orange County
24 Jails, Public Counsel and Public Law Center attorneys generally need to travel to meet
25 their clients in-person. Those restrictions include failing to provide inmates with free
26 calls, even to attorneys; requiring that a live person answer a call and have a pre-
27 established account in order for the call to connect; charging prohibitively expensive
28 rates; limiting the times during which telephones can be used; failing to allow

1 incoming calls; not providing space for confidential calls; monitoring and recording
2 conversations; and screening legal mail in a manner that significantly delays delivery.
3 *See Torres v. DHS*, No. 5:18-cv-02604-JGB-SHK (C.D. Cal. Filed Dec. 14, 2018),
4 Complaint ¶¶ 93-119, 133-136, Exs. A & B; *Orantes-Hernandez v. Thornburgh*, 919
5 F.2d 549, 566 (9th Cir. 1990) (“[D]etainee access to telephones at eight detention
6 centers was severely limited due to time restrictions, the number of functioning
7 telephones and restrictive INS procedures.”); *Lyon v. ICE*, 171 F. Supp. 3d 961, 983
8 (N.D. Cal. 2016) (describing “the nature and breadth of the systemic phone
9 restrictions” at ICE facilities and “their potential impact upon detainees’ ability to
10 communicate with counsel”).

11 66. Without in-person confidential meetings with their attorneys, imprisoned
12 immigrants are less willing to share private information about their cases, which
13 undermines their attorneys’ ability to provide their clients with legal advice and to
14 represent them effectively in court.

15 67. Defendants’ transfer decision also harms the immigrants’ ability to
16 communicate with lawyers assisting them with cases beyond their individual removal
17 proceedings. For example, imprisoned immigrants often require local attorneys to
18 assist them in participating in family court, probate court, or child welfare proceedings
19 (*see generally* ICE Detained Parents Directive, <https://www.ice.gov/parental-interest>);
20 participating in state court proceedings to establish a conservatorship for individuals
21 who are gravely disabled; and participating in state court proceedings to obtain post-
22 conviction relief. Many imprisoned immigrants also need to communicate with local
23 criminal defense attorneys to discuss issues relating to a simultaneous criminal
24 prosecution and post-conviction relief applications.

25 **Defendants’ Transfer Decision Separates Immigrants From Their Families, Who**
26 **Provide Them Much-Needed Support**

27 68. Defendants’ decision to transfer immigrants from the Orange County
28 Jails to jurisdictions far away from their families also causes significant harm to the

1 immigrants. Family members of many immigrants, including the Individual Plaintiffs,
2 do not have the resources to travel to immigration prison facilities to visit their loved
3 ones outside of the SoCal region.

4 69. In addition to providing crucial emotional support, family members play
5 important roles at each stage of the removal process.

6 70. Family members play a critical role at an early stage of removal
7 proceedings, when many imprisoned immigrants may apply for release on bond or
8 parole with ICE and, if denied, for a bond redetermination hearing before an
9 immigration judge. 8 C.F.R. § 1003.19. To qualify for release on bond, the legal
10 standard governing release counsels consideration of the extent of any family and
11 community ties, evidence of rehabilitation from any convictions, and whether the
12 immigrant is likely to prevail in their deportation cases, among other factors. *Matter of*
13 *Guerra*, 24 I. & N. Dec. 37 (BIA 2006). To prepare their cases, immigrants must
14 gather supporting evidence on these and other issues, including letters of support from
15 family members, community groups, and religious institutions, letters confirming
16 employment, children's school records, prior criminal records, and churches and other
17 community groups for letters of support. Immigrants who have family nearby often
18 rely on those family members to collect this evidence.

19 71. To successfully apply for relief from removal, immigrants also rely on
20 family members to obtain the same types of evidence, as well as evidence on other
21 issues such as reports about conditions in the country of origin.

22 72. Immigrants' family members also serve as testifying witnesses in
23 Immigration Court and help immigrants find other potential witnesses to testify.

24 73. All of this assistance is especially important for immigrants who cannot
25 afford an attorney or retain pro bono counsel.

26 74. Without the ability to visit in person with their loved ones, the family
27 members' ability to provide such support is severely restricted. Phone calls to and
28 from prison facilities are prohibitively expensive for many immigrants' families,

1 including those of the Individual Plaintiffs.

2 75. Family members are also crucial to help pro se immigrants find and
3 retain attorneys in a timely fashion. Because imprisonment makes it exceedingly
4 difficult for immigrants to retain counsel themselves, family members meet with both
5 private attorneys and non-profit legal organizations at their offices to discuss the
6 immigrants' cases and obtain counsel for them. The ability of family members
7 residing in the SoCal region to find attorneys for immigrants transferred outside that
8 area is severely restricted, both because it is harder for family members to make
9 contact with attorneys in remote jurisdictions and because there are usually fewer
10 attorneys able to take cases in remote locations.

11 76. If imprisoned immigrants are unable to obtain counsel, they are much
12 less likely to prevail in their legal cases. Studies indicate that represented individuals
13 are much more likely to apply for relief from deportation and to obtain the relief they
14 seek.¹¹ Based on government data analyzed by the Transactional Records Access
15 Clearinghouse at Syracuse University in 2018, from January to July of 2018,
16 approximately 27% of represented immigrants at the Orange County Jails have
17 obtained relief from removal.¹² In contrast, only 5% of unrepresented immigrants at
18 the Orange County Jails have obtained relief.¹³ Imprisoned immigrants with legal
19 representation are also seven times more likely to be released on bond when
20 represented,¹⁴ and immigrants represented by counsel who are released from prison
21 are nearly five and a half times more likely to have a successful case outcome than
22 their imprisoned counterparts.¹⁵

23
24 ¹¹ See Ingrid Eagly & Steven Shafer, Access to Counsel in Immigration Court at 3,
25 https://www.americanimmigrationcouncil.org/sites/default/files/research/access_to_counsel_in_immigration_court.pdf.

26 ¹² See TRAC, Details on Deportation Proceedings in Immigration Court,
<http://trac.syr.edu/phptools/immigration/nta/> (last visited Dec. 14, 2018).

27 ¹³ *Id.*

28 ¹⁴ See Ingrid Eagly & Steven Shafer, A National Study of Access to Counsel in Immigration Court, 164 U. Penn. L. Rev. 1, 70 (2015).

¹⁵ See Ingrid Eagly & Steven Shafer, Access to Counsel in Immigration Court at 19.

1 77. Defendants' transfer decision therefore undermines the ability of
2 immigrants with local family members to find counsel or assist them in defending
3 themselves against deportation pro se. Immigrants who will lose their cases as a result
4 of Defendants' transfer decision face permanent separation from family and friends
5 and, at times, exposure to violence, torture, and even death.

6
7 **CLASS ALLEGATIONS**

8 78. The Individual Plaintiffs bring this action on behalf of themselves and all
9 others similarly situated, pursuant to Federal Rules of Civil Procedure 23(a), 23(b)(1),
10 and 23(b)(2), and in compliance with Local Rule 23-2.

11 79. The Individual Plaintiffs seek to represent a class defined as follows:

12 All immigrants imprisoned at the James A. Musick Facility and the Theo
13 Lacy Facility and who have attorneys or immediate family members
within the ICE SoCal region.

14 80. Plaintiffs further propose two sub-classes as defined as follows:

15 **Sub-Class 1:** All immigrants imprisoned at the James A. Musick Facility and
16 the Theo Lacy Facility and who have attorneys within the ICE SoCal region.

17 **Sub-Class 2:** All immigrants imprisoned at the James A. Musick Facility and
18 the Theo Lacy Facility and who have immediate family members within the
19 ICE SoCal region.

20 81. The proposed class and sub-classes satisfy the requirements of Rule
21 23(a)(1) because they are so numerous that joinder of all members is impracticable.
22 ICE's contract with OCSD allows OCSD to hold up to 958 immigrants at the Orange
23 County Jails. Approximately 545 immigrants are currently imprisoned at the Orange
24 County Jails. Upon information and belief, far more than 40 of those individuals have
25 attorneys in the SoCal region, and far more than 40 of those individuals have
26 immediate family members in the SoCal region.

27 82. Nationally, 14% of imprisoned immigrants have attorneys in their
28

1 removal proceedings.¹⁶ Based on having met many immigrants held at the Orange
2 County Jails for a long period of time, Attorney Plaintiffs estimate that about 10 to
3 20% of immigrants imprisoned at the Orange County Jails have attorneys. Applying
4 those percentages to the Orange County Jails, well over 40 immigrants currently
5 imprisoned there have attorneys and would be members of the Proposed Class and
6 Sub-class One.

7 83. Based on having met many immigrants held at the Orange County Jails
8 for a long period of time, Attorney Plaintiffs estimate that more than half of
9 immigrants imprisoned at the Orange County Jails have immediate family members in
10 the SoCal region. Applying that percentage, several hundred immigrants currently
11 imprisoned there would be members of the Proposed Class and Sub-class Two.

12 84. The Plaintiff class members are identifiable using records maintained in
13 the ordinary course of business by ICE.

14 85. The proposed class meets the commonality requirements of Federal Rule
15 of Civil Procedure 23(a)(2) because all class members are subject to Defendants'
16 decision to transfer immigrants from the Orange County Jails to facilities outside of
17 the SoCal region.

18 86. Moreover, there are numerous questions of law and fact common to the
19 proposed class. Such questions include, but are not limited to:

- 20 a. whether Defendants' transfer decision interferes with the represented
21 Plaintiffs' established attorney-client relationship with their counsel in
22 violation of the Fifth Amendment's Due Process Clause and the INA;
- 23 b. whether Defendants' transfer decision violates the represented
24 Plaintiffs' right of access to courts under the Fifth Amendment's Due
25 Process Clause and the First Amendment;
- 26 c. whether Defendants' transfer decision violates the unrepresented
27

28 ¹⁶ See Ingrid Eagly & Steven Shafer, Access to Counsel in Immigration Court 4 (Sept. 2016).

1 Plaintiffs' right to a fair hearing and to gather and present evidence,
2 under the Fifth Amendment's Due Process Clause and the INA; and
3 d. whether Defendants' transfer decision violates ICE Transfers Policy
4 No. 11022.1;

5 87. The proposed class meets the typicality requirement of Federal Rule of
6 Civil Procedure 23(a)(3) because the claims of the representative Plaintiffs are typical
7 of the claims of the class as a whole. The Individual Plaintiffs and proposed class
8 members are all individuals incarcerated at the Orange County Jails and subject to
9 Defendants' transfer decision. The Individual Plaintiffs and the proposed class also
10 share the same legal claims, which challenge the legality of Defendants' transfer
11 decision under the INA, the Fifth Amendment's Due Process Clause, the First
12 Amendment, and the APA.

13 88. The proposed class meets the adequacy requirements of Federal Rule of
14 Civil Procedure 23(a)(4). Plaintiffs seek the same relief as the other members of the
15 class—namely, (1) a declaration that Defendants' transfer decision violates the INA,
16 the Fifth Amendment's Due Process Clause, the First Amendment, and the APA, and
17 (2) an order enjoining Defendants from transferring Plaintiffs to facilities outside of
18 the SoCal region.

19 89. Additionally, the proposed class is represented by counsel from the
20 American Civil Liberties Union Foundation of Southern California. Counsel has
21 extensive experience litigating class action lawsuits and other complex cases in
22 federal court, including civil rights lawsuits on behalf of imprisoned immigrants.

23 90. Finally, the proposed class satisfies Federal Rule of Civil Procedure
24 23(b)(2) because Defendants have acted on grounds generally applicable to the whole
25 class by subjecting the entire class to the transfer decision that forms the basis of this
26 complaint. Defendant ICE is required to monitor all policies and procedures related to
27 the class, and is charged with promulgating, disseminating, and enforcing its policies
28 and procedures applicable to the class as a whole. The injunctive and declaratory relief

1 sought is appropriate and will apply to all members of the class.

2 91. In the alternative, the class also qualifies for certification under Rules
3 23(b)(1)(A) and 23(b)(1)(B) of the Federal Rules of Civil Procedure.

4
5 **CLAIMS FOR RELIEF**

6 **FIRST CLAIM FOR RELIEF**
7 **Violation of the Immigration and Nationality Act**
8 **(by All Plaintiffs)**

9 92. Plaintiffs repeat and incorporate by reference all allegations above as
10 though set forth fully herein.

11 93. The INA guarantees individuals in removal proceedings the right to
12 counsel of their choosing. 8 U.S.C. 1229a(b)(4)(A); 8 U.S.C. 1362; *Biwot v. Gonzales*,
13 403 F.3d 1094, 1098 (9th Cir. 2005).

14 94. The INA also provides that immigrants shall have a reasonable
15 opportunity to present evidence on their own behalf. 8 U.S.C. 1229a(b)(4)(B).

16 95. Defendants' conduct has violated and continues to violate Plaintiffs'
17 statutory right to counsel by preventing them from finding, retaining, and
18 communicating effectively with legal representatives.

19 96. Defendants' conduct also violates Plaintiffs' statutory right to present
20 evidence by restricting their ability to collect evidence and communicate with
21 potential witnesses and experts, as is necessary for them to meaningfully prepare and
22 present their legal cases.

23 97. The Individual Plaintiffs, Attorney Plaintiffs, and the proposed class have
24 suffered and will suffer injury as a proximate result of Defendants' violation of
25 8 U.S.C. 1229a(b)(4)(A), 8 U.S.C. 1229a(b)(4)(B), and 8 U.S.C. 1362.

26 **SECOND CLAIM FOR RELIEF**
27 **Violation of the Due Process Clause**
28 **of the Fifth Amendment of the United States Constitution**
(by All Plaintiffs)

98. Plaintiffs repeat and incorporate by reference all allegations above as

1 though set forth fully herein.

2 99. The Due Process Clause of the Fifth Amendment guarantees immigrants
3 the right to be represented by counsel of their choice in their removal proceedings.
4 *See, e.g., Baltazar-Alcazar v. INS*, 386 F.3d 940, 944 (9th Cir. 2004). This due process
5 right includes the right to effective assistance of counsel. *See Ahmed v. Mukasey*, 548
6 F.3d 768, 771 (9th Cir. 2008); *see also Ardestani v. INS*, 502 U.S. 129, 138 (1991)
7 (“We are mindful that the complexity of immigration procedures, and the enormity of
8 the interests at stake, make legal representation in deportation proceedings especially
9 important.”). This right also necessarily entails the “right to consult with counsel.”
10 *Orantes-Hernandez v. Thornburgh*, 919 F.2d 549, 564 (9th Cir. 1990). A
11 “constitutional deprivation” of the “[F]ifth [A]mendment right to receive due process
12 in deportation proceedings” occurs when the government interferes with “an
13 established, on-going attorney-client relationship.” *Comm. of Cent. Am. Refugees v.*
14 *INS*, 795 F.2d 1434, 1439 (9th Cir. 1986).

15 100. The Due Process Clause of the Fifth Amendment also protects “the right
16 of access to courts.” *Christopher v. Harbury*, 536 U.S. 403, 415 n.12 (2002). The right
17 to access the courts includes the right “to send and receive communications to and
18 from . . . lawyers.” *Hatfield v. Bailleaux*, 290 F.2d 632, 637 (9th Cir.1961). An
19 imprisoned individual’s “right of access to the courts includes contact visitation with
20 his counsel.” *Ching v. Lewis*, 895 F.2d 608, 610 (9th Cir. 1990).

21 101. The Due Process Clause of the Fifth Amendment also guarantees
22 immigrants the right to a full and fair hearing in their removal cases. *See, e.g.,*
23 *Colmenar v. INS*, 210 F.3d 967, 971 (9th Cir. 2000).

24 102. Defendants’ conduct has violated Plaintiffs’ Fifth Amendment rights by
25 interfering with an established attorney-client relationship and restricting their ability
26 to find, retain, and communicate effectively with counsel.

27 103. Defendants’ conduct also violates Plaintiffs’ Fifth Amendment rights by
28 preventing them from having in-person meetings with their attorneys.

1 104. Defendants' conduct also violates Plaintiffs' Fifth Amendment rights by
2 restricting their ability to collect evidence and communicate with potential witnesses
3 and experts, as is necessary for them to meaningfully prepare and present their legal
4 cases.

5 105. The Individual Plaintiffs, Attorney Plaintiffs, and the proposed class have
6 suffered and will continue to suffer injuries as a proximate result of Defendants'
7 violation of the Due Process Clause of the Fifth Amendment.

8 **THIRD CLAIM FOR RELIEF**
9 **Violation of the First Amendment of the United States Constitution**
10 **(by the Attorney Plaintiffs)**

11 106. Plaintiffs repeat and incorporate by reference all allegations above as
12 though set forth fully herein.

13 107. The First Amendment protects the Attorney Plaintiffs' right to represent
14 their clients, including by providing legal advice and making well-grounded
15 arguments, because those activities are modes of speech, expression, and association.
16 *See, e.g., Holder v. Humanitarian Law Project*, 561 U.S. 1, 27-28, 38 (2010); *Legal*
17 *Services Corp. v. Velazquez*, 531 U.S. 533 (2001); *In re Primus*, 436 U.S. 412 (1978);
18 *Nat'l Ass'n for Advancement of Colored People v. Button*, 371 U.S. 415, 429 (1963).

19 108. Defendants' transfer decision restricts the Attorney Plaintiffs' ability to
20 speak and meet with their immigrant clients imprisoned at the Orange County Jails,
21 and in so doing impedes the Attorney Plaintiffs' ability to provide legal advice and
22 effective assistance.

23 109. By depriving the Attorney Plaintiffs of the means of communicating with
24 their clients, Defendants have violated and continue to violate the Attorney Plaintiffs'
25 rights under the First Amendment.

26 110. The Attorney Plaintiffs have suffered and will suffer injury as a
27 proximate result of Defendants' violation of their First Amendment right to freedom
28 of speech, expression, and association.

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**FOURTH CLAIM FOR RELIEF
Violation of the First Amendment of the United States Constitution
(by the Immigrant Plaintiffs)**

111. Plaintiffs repeat and incorporate by reference all allegations above as though set forth fully herein.

112. The First Amendment protects the right to hire and consult with an attorney. *Mothershed v. Justices of Supreme Court*, 410 F.3d 602, 611 (2005), as amended on denial of reh’g (9th Cir. July 21, 2005). The government may not unreasonably restrict this right. *Id.*

113. Under the First Amendment, imprisoned individuals also “have the constitutional right to petition the Government for redress of their grievances, which includes a reasonable right of access to the courts.” *Hudson v. Palmer*, 468 U.S. 517, 523 (1984); see also *Silva v. Di Vittorio*, 658 F.3d 1090, 1101-02 (9th Cir. 2011) (“Under the First Amendment, a prisoner has both a right to meaningful access to the courts and a broader right to petition the government for a redress of his grievances.”).

114. By depriving the Individual Plaintiffs and the proposed class of the means of hiring and consulting with attorneys, Defendants have violated and continue to violate the immigrants’ rights under the First Amendment.

115. The Individual Plaintiffs and the proposed class have suffered and will suffer injury as a proximate result of Defendants’ violation of their rights under the First Amendment.

**FIFTH CLAIM FOR RELIEF
Violation of the Administrative Procedure Act
(by All Plaintiffs)**

116. Plaintiffs repeat and incorporate by reference all allegations contained above as though set forth fully herein.

117. ICE Transfers Policy No. 11022.1 provides specific requirements related to the transfer of immigrants outside of an ICE Field Office’s Area of Responsibility. Defendants’ transfer decision violates ICE Transfers Policy No. 11022.1.

118. An agency’s unexplained failure to follow its own rules constitutes

1 “arbitrary” and “capricious” conduct in violation of the Administrative Procedure Act.
2 5 U.S.C. § 706(2)(A); *United States ex. rel. Accardi v. Shaughnessy*, 347 U.S. 260
3 (1954); *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

4 119. The Individual Plaintiffs, the Attorney Plaintiffs, and the proposed class
5 have suffered and will suffer injury as a proximate result of Defendants’ violation of
6 the Administrative Procedures Act.

7
8 **PRAYER FOR RELIEF**

9 WHEREFORE, Plaintiffs respectfully ask this Court to take jurisdiction over
10 this actual controversy and:

11 A. Certify the proposed Class and Sub-classes as indicated above, appoint
12 the Individual Plaintiffs to serve as representatives of the Class, and appoint
13 undersigned counsel to represent the Class;

14 B. Declare that the actions and practices of Defendants as described above
15 constitute violations of federal regulatory, statutory, and constitutional law, and
16 therefore that Defendants have failed to act “in accordance with law,” 5 U.S.C.
17 706(2)(A), by failing to comply with the 8 U.S.C. 1229a(b)(4), and 8 U.S.C. 1362,
18 and the First and Fifth Amendments to the United States Constitution;

19 C. Enjoin Defendants, their subordinates, agents, employees, and all others
20 acting in concert with them from subjecting Plaintiffs to the unlawful acts and
21 omissions described herein, and issue an injunction sufficient to remedy the violations
22 of the Plaintiffs’ and the proposed class’ rights, including ordering Defendants to
23 undertake the following:

- 24 1. Defendants must refrain from transferring immigrants currently
25 held at the Theo Lacy and James A. Musick Facilities to facilities
26 outside the ICE Los Angeles Field Office’s Area of Responsibility
if those individuals have attorneys or immediate families within
the ICE Los Angeles Field Office’s Area of Responsibility;
- 27 2. If Defendants choose to comply with this Order by transferring
28 immigrants to the Adelanto Detention Facility, Defendants must
not transfer any immigrant held at the Adelanto Detention Facility

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to a facility outside the ICE Los Angeles Field Office’s Area of Responsibility if that individual has an attorney or immediate family within the ICE Los Angeles Field Office’s Area of Responsibility; and

3. Nothing in this Order shall be understood to prohibit Defendants from releasing on bond or parole any immigrant in any facility.

D. Grant Plaintiffs reasonable attorney’s fees and costs;

E. Grant such other relief that the Court deems just and appropriate.

DATED: May 2, 2019

Respectfully submitted,

ACLU Foundation of Southern California

By: /s/ Sameer Ahmed

Sameer Ahmed