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August 24, 2015

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Re: Unlawful Denial of Attorney Visits at the Adelanto Detention Facility

Dear Sirs and Madam:

The undersigned counsel represent Ms. Christina Fialho, Co-Executive Director of Community Initiatives for Visiting Immigrants in Confinement (CIVIC). As you are no doubt aware, among CIVIC's missions is to build and strengthen visitation programs for individuals subject to immigration detention. CIVIC's members participate in broad-based initiatives designed to advocate for this cause, such as lawful attendance at vigils outside detention facilities, including the Adelanto Detention Facility ("the facility"). Ms. Fialho is also an attorney and advocates on behalf of those subject to detention at the facility.

Over the last two years, the GEO Group and ICE have established an unlawful pattern and practice of denying attorney access to clients detained at the facility in retaliation for the attorneys' participation in lawful, peaceful protests outside of the facility—in contravention of the First Amendment's guarantee that "debate on public issues should be uninhibited, robust, and

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wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). This conduct appears to be part of a nation-wide pattern of such illegal denials, because, as the Los Angeles Times reported just a few weeks ago, attorneys have been denied access to their clients at detention facilities run by both GEO and Corrections Corporation of America in retaliation for public advocacy.<sup>1</sup> The article also raised allegations that staff at these facilities have retaliated against detainees who sought legal advice from counsel.

Two similar, recent incidents at the facility are particularly illustrative of GEO and ICE’s retaliatory conduct against Ms. Fialho. On August 6, 2013, Ms. Fialho participated in a lawful, peaceful vigil on public property outside of the facility. Immediately after the conclusion of the vigil, she crossed the street to the facility to visit a prospective client. Ms. Fialho was told to wait, and a GEO officer came to question her. During this colloquy, Ms. Fialho was explicitly asked whether she had participated in the vigil that day. When she answered in the affirmative, the GEO officer told her that her request to visit a prospective client was being denied. When Ms. Fialho reiterated the fact that she was an attorney and the purpose of her visit was legal consultation with a prospective client, the GEO officer requested and received her State of California Attorney Bar card and her driver’s license, which he then took with him inside the facility.

When the GEO officer returned after approximately 20 minutes, he informed Ms. Fialho that she would not be permitted access to meet with the prospective client. The purported reason offered for the denial by the GEO officer at this time was that Ms. Fialho did not have a G-28 on file. The justification was pretextual. Under ICE regulations, detainees are permitted to meet with prospective legal counsel with or without a G-28.<sup>2</sup> The GEO officer claimed that the decision to deny Ms. Fialho access was made by ICE, not by GEO. Before she left the facility, Ms. Fialho contacted an ICE officer, who affirmed the decision to deny the visit was because Ms. Fialho did not have a G-28 on file and because another attorney had a G-28 on file for the prospective client. Ms. Fialho then asked this ICE officer for permission to visit a different

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<sup>1</sup> <http://www.latimes.com/nation/la-na-immigrant-family-detention-20150727-story.html#page=1>.

<sup>2</sup> Specifically, Section 5.7(V)(J) of ICE’s Performance-Based National Detention Standards Operations Manual (“PBNDS”) (2011)—to which GEO Group has contracted to comply—provides that, “[t]o meet with a detainee, a legal service provider’s representative need not complete a Form G-28...at the ‘pre-representation’ stage” and that “[a]ttorneys representing detainees on legal matters unrelated to immigration are not required to complete a Form G-28.” PBNDS §§ 5.7(V)(J)(7)-(8).

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prospective client, who did not have a G-28 on file. The ICE officer did not respond with any committal answer—sarcastically remarking, “You can try”—and then abruptly left and went inside the facility.

Not long after, deputies from the San Bernardino Sherriff’s Department arrived at the facility to question Ms. Fialho. The deputies informed Ms. Fialho that GEO officers had requested their assistance, claiming that she had failed to follow proper procedures in attempting to visit detainees and requesting that she be arrested and/or removed from the facility. Enclosed is the incident report from the Sheriffs’ office, confirming that GEO officers called the Sheriffs to remove Ms. Fialho and failed to report (among other things) that Ms. Fialho was a licensed attorney attempting to visit prospective clients. The report also confirms that, after the Sheriffs arrived on the scene, GEO personnel falsely represented that Ms. Fialho did not “have the right credentials to visit the detainee’s [sic].” Ms. Fialho requested that the Sheriffs document the incident with the report. Prevented from meeting with her clients, Ms. Fialho left the facility.

In May of 2015, a similar sequence of retaliatory conduct occurred as the result of the lawful exercise of First Amendment rights. On May 18, 2015, Deputy Sheriff Ruben Perez from the San Bernardino County Sheriff’s Department’s Public Affairs Division contacted Ms. Fialho regarding a vigil planned for May 19, 2015 outside of the facility. Deputy Perez represented that he would serve as a liaison between GEO, ICE, and CIVIC to ensure that CIVIC’s and Ms. Fialho’s constitutional rights would be protected during the vigil. The vigil proceeded on May 19 in a lawful, peaceful manner. When the vigil concluded, Ms. Fialho crossed the street with others wishing to visit detainees and approached the East Building of the facility. Deputy Perez met the party at the gates, where Ms. Fialho informed him that she wished to provide legal counsel to existing and prospective clients. Ms. Fialho confirmed three times with Deputy Perez that he had advised both ICE and GEO that the purpose of her visit was to provide legal representation to clients detained at the facility. Nevertheless, Ms. Fialho was denied access, depriving her clients of access to legal representation. As Ms. Fialho prepared to leave the facility, she encountered other attorneys whom she knew but who had not participated in the vigil; all of them had been permitted to visit with clients.

Although Deputy Perez had told Ms. Fialho that she was being denied access at both the East and West Buildings, Ms. Fialho decided to make a final attempt to visit her clients by approaching the West Building. A Deputy from the San Bernardino Sheriff’s Office said he would pass along her request. At that moment, a GEO staff member arrived and informed Ms. Fialho that she would be permitted to visit her client if, but only if, the other CIVIC members and accompanying families left. After the CIVIC members and families who had participated in

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the vigil began to leave, Ms. Fialho prepared to enter the building and asked the GEO staff member if she could ask her a question. The GEO staff member refused to respond to Ms. Fialho and instructed her to either enter the building or leave. When Ms. Fialho began to explain that her question related to the purpose of her visit, namely to provide legal counsel to a client, the GEO staff member responded by shutting the door to the facility and locking it in Ms. Fialho's face. As a result, Ms. Fialho was again forced to leave without being able to provide legal counsel. The conduct that occurred at the East Building during this incident was captured on video by crews from Pivot TV and Telemundo 52; the conduct that occurred at the West Building was captured on video by a CIVIC member who informed all present that the recording was taking place.

The two incidents described above reflect a troubling pattern of retaliation against CIVIC members and others for exercising First Amendment rights in connection with the Adelanto Detention Facility and other such facilities across the country. Indeed, as reported by the Los Angeles Times,<sup>3</sup> the 2013 incident was apparently precipitated by a series of articles authored by Ms. Fialho and published by the Huffington Post between June 6 and July 22, 2013, strongly criticizing ICE and GEO for mistreatment of people in immigration detention. GEO and ICE responded to Ms. Fialho's articles by suspending visitation programs at three detention facilities in Southern California. On multiple occasions, CIVIC members have attempted to visit detainees at the conclusion of lawful, peaceful vigils on public property and been denied access in obvious retaliation for their expressive activities. Indeed, the staff at the Adelanto Detention Facility have a regular practice of denying visitation by attorneys and community members without offering any explanation and without citation to any applicable ICE regulation.<sup>4</sup>

GEO staff also routinely film protesters, despite the fact that the protesters are on public property and have requested that GEO staff stop filming, in an apparent attempt to intimidate protesters through fear of future retaliation. GEO and ICE have also retaliated against detainees who advocate for the rights of themselves and others. For example, Mr. Carlos Hidalgo was first punished with solitary confinement, and then transferred out of the facility, in apparent retaliation for expressing his support for other detainees by filing grievances.

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<sup>3</sup> <http://articles.latimes.com/2013/aug/20/local/la-me-immigrant-detention-20130820>

<sup>4</sup> This conduct occurs despite the fact that ICE's regulations specifically contemplate that "detainees shall be able to maintain morale and ties through visitation with their families, the community, legal representatives and consular officials." PBNDS § 5.7(I) (2011).

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The First Amendment absolutely proscribes GEO and ICE’s practice of retaliating against individuals who engage in freedom of expression in a lawful, peaceful manner. “[A]bove all else, the First Amendment means that government has no power to restrict expression because of its message, its ideas, its subject matter, or its content.” *Police Dep’t of City of Chicago v. Mosley*, 408 U.S. 92, 95 (1972). Accordingly, “[i]t is axiomatic” that state actors such as ICE and GEO “may not regulate speech based on its substantive content or the message it conveys.” *Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 828 (1995). And “[w]hen the [state actor] targets not subject matter, but particular views taken by speakers on a subject, the violation of the First Amendment is all the more blatant.” *Id.* at 829. Therefore, “[t]he [state actor] must abstain from regulating speech when the specific motivating ideology or the opinion or perspective of the speaker is the rationale for the restriction.” *Id.*

Furthermore, the lot across the street from the facility where Ms. Fialho and other CIVIC members have conducted vigils falls precisely into the category of “streets and parks which ‘have immemorially been held in trust for the use of the public, and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions.’” *Perry Educ. Ass’n v. Perry Local Educators’ Ass’n*, 460 U.S. 37, 45 (1983) (quoting *Hague v. CIO*, 307 U.S. 496, 515 (1939)). Even if GEO and ICE may place reasonable “time, place, or manner” restrictions on visitation at the facility by family or community members, those restrictions can only be “justified without reference to the content of the regulated speech.” *R.A.V. v. City of St. Paul, Minn.*, 505 U.S. 377, 391 (1992) (quoting *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989)). “The First Amendment does not permit [a state actor] to impose special prohibitions on those speakers who express views on disfavored subjects,” *R.A.V.*, 505 U.S. at 391. Simply put, neither GEO nor ICE may deny access on “time, place, or manner” grounds simply because Ms. Fialho or another person has participated in a lawful, peaceful vigil in a public space or expressed views with which they disagree.

As a result, there is no possible “time, place or manner” justification for GEO and ICE’s retaliatory conduct. As noted above, GEO and ICE have either unabashedly acknowledged that they were retaliating against individuals such as Ms. Fialho because of their viewpoint or offered pretextual justifications equivalent to outright admissions of viewpoint discrimination. In each of the instances described above, Ms. Fialho’s participation in lawful, peaceful vigils resulted in her being denied access to prospective and current clients. In fact, GEO and/or ICE has denied Ms. Fialho access precisely and explicitly because she has participated in such vigils. No legitimate purpose could be served by asking whether a person participated in a lawful and peaceful vigil as a condition of access; instead, the intent clearly is to effect unlawful viewpoint discrimination.

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GEO and ICE's conduct concerning denials of attorney access to clients at the Adelanto Detention Facility and others clearly violates the First Amendment's prohibition on content and viewpoint discrimination. Accordingly, both ICE and GEO must confirm in writing that they will cease and desist from denying access to attorneys and others in retaliation for participation in lawful, peaceful protests and vigils. Attorneys who attempt to visit their clients (or prospective clients) following presentation of satisfactory credentials must be permitted access to their detainee clients under the same terms and conditions as other attorneys. ICE and GEO must also confirm in writing that they will clarify their policies to reflect that attorneys and other visitors to Adelanto and all other detention facilities cannot be denied access in retaliation for any expression protected by the First Amendment, including peaceful demonstrations. Absent adequate and prompt confirmation no later than September 24, 2015, we are prepared to pursue all appropriate avenues of legal redress to protect Ms. Fialho's rights and the rights of others in the community.

Very truly yours,

Michael Kaufman  
ACLU of Southern California

Aimee G. Mackay  
SIDLEY AUSTIN LLP

Also on behalf of:  
ACLU of Southern California

Encl.

CC:

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