



## Guide to Legal Access in Immigration Detention

### Table of Contents

I. Introduction .....	2
II. Legal Access: Performance-Based National Detention Standards.....	2
III. Legal Access: Statutory Basis.....	7
IV. Legal Access: Legal Causes of Action and Constitutional Right.....	8
V. Step-by-Step Guide to Gaining Access to Immigration Detention Centers .....	12
VI. How to Engage Stakeholders.....	15
VII. Conclusion.....	26
Template: Access Letter .....	27
Template: Legal Rights Intake.....	29

# Guide to Legal Access in Immigration Detention

## I. Introduction

[Acacia Center for Justice](#) (Acacia), [Robert F. Kennedy Human Rights](#) (RFKHR), and [ACLU of Louisiana](#) (ACLU-LA) provide this Guide for practitioners, community organizations, and Legal Service Providers (LSPs) on how to obtain and maintain access at immigration detention centers in order to provide know your rights presentations and individual counseling programs. The first section of the guide outlines the legal framework with suggested arguments when advocating for access with Immigration and Customs Enforcement (ICE), ICE Enforcement and Removal Operations (ERO) and other stakeholders. The second section of the guide highlights a real-life access scenario and best practices.

We recommend approaching this guide and access negotiations by recognizing that the law is a key foundation, and yet, what often ensures access to detention is stakeholder relationships. Providers should understand the legal citations and references to the law and tailor requests in alignment. However, developing and maintaining stakeholder relationships are also key as detention facilities have broad discretion in approving and scheduling legal presentations and other access.

This guide will focus on legal arguments and best practices for creating and maintaining physical and virtual and telephonic access, and how to distribute materials within immigration detention facilities.

## II. Legal Access: Performance-Based National Detention Standards

ICE oversees and maintains the immigration detention system and ensures detention facilities are compliant with the Performance-Based National Detention Standards (PBNDS). ICE contracts via an Intergovernmental Services Agreement (IGSA) with facilities that detain immigrants. Detention centers are either “dedicated,” meaning facilities that exclusively detain immigrants, or “non-dedicated,” meaning state or county detention centers where there are U.S. citizens and other individuals facing criminal charges as well as noncitizens held by ICE. This could mean that immigrants are held either in a separate section of the detention center or in the same dormitories as individuals in criminal custody. Regardless of whether detention centers are operated directly by ICE or through private contractors, all immigration detention centers “must comply with one of several sets of detention standards which describe a facility’s immigration detention responsibilities, explain what services a facility must provide, and identify what a facility must do to ensure a safe and secure detention environment for staff and immigrants in ICE detention.”<sup>1</sup>

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<sup>1</sup> ICE, *Detention Management*, retrieved Jan. 31, 2025, from <https://www.ice.gov/detain/detention-management>

Different versions of the PBNDS apply to different facilities; however, all facilities are regulated by a version of the PBNDS.

Legal service providers seeking to gain or improve legal access should always begin their advocacy by citing the PBNDS. ICE and the facility staff are likely to have some familiarity with the PBNDS and understand that it governs conditions at the detention facility.

### **A. Which PBNDS Standards Apply?**

When ICE was formed, the agency operated its detention system under a set of [National Detention Standards \(NDS\) first issued in September 2000](#). NDS established consistent conditions of confinement, program operations, and management expectations within the agency's detention system.<sup>2</sup>

Additional sets of detention standards were issued in subsequent years. The 2011 version was specifically updated to “increase access to legal services.”<sup>3</sup> The most current and commonly referenced version is the [NDS 2019](#). To determine which facility follows which issue year of the PBNDS, please reference the “Last Inspection Standard” found on “facilities” tab on the [FY2025 Detention Statistics data sheet](#) found on ICE’s Detention Management website.<sup>4</sup> For example, the PBNDS 2011 (rev. 2016) applies to the Adelanto, Eloy, Otay Mesa, Pine Prairie, and Caroline detention centers, whereas the NDS 2019 applies to facilities such as Seneca, Orange County Jails (Florida and New York), and Nevada Southern Detention Center.<sup>5</sup>

### **B. PBNDS Legal Access Arguments – 2011 (rev. 2016)**

#### **i. Know Your Rights (KYRs): Including Communication & Materials Access Requirements**

Sections 5.6, which covers telephone access; 6.3 which covers “Law Libraries and Legal Material”; and 6.4 which covers “Legal Rights Group Presentations,” all contain language that might prove useful in ensuring access to detention facilities for LSPs providing orientation services, often referred to as Know Your Rights presentations (KYRs). The PBNDS 2011 contains strong “shall” language, making clear that ICE is required to provide for a certain level of legal access. However, providers should carefully read each section as there are provisions that could be interpreted to restrict entry; LSPs should be proactive and anticipate any potential attempts to limit access. For example, the PBNDS 2011 (rev. 2016) provides that KYR presentations must be “[c]onsistent with the security and orderly operation of each facility.”<sup>6</sup> In an effort to avoid delay or denial of access, providers can affirmatively assure officials, at the time of first request for access for legal presentations,

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<sup>2</sup> The [Family Residential Standards 2020](#) applied to families in immigration detention. Part 6.4 Legal Rights Group Presentations (2020) mirrors Part 6.4 of the PBNDS.

<sup>3</sup> ICE, *2011 Operations Manual Performance-Based National Detention Standards* (hereinafter “PBNDS”), retrieved Feb. 13, 2025, from <https://www.ice.gov/detain/detention-management/2011>

<sup>4</sup> ICE, FY2025 Detention Statistics, retrieved Feb. 20, 2025, from [FY25\\_detentionStats02142025.xlsx](#)

<sup>5</sup> *Id.*

<sup>6</sup> *Id.* 6.4.I

that they are aware of and committed to compliance with requirements for the secure and orderly operation of the facility.

Nevertheless, there is strong language throughout, and legal service providers should make a request to access facilities highlighting the supportive language in the PBNDS 2011 (or applicable standard) including:

*Provisions supporting KYR Presentations:*

- 6.4.II.1 – Immigrants in detention “shall have access to group presentations on United States immigration law and procedures and all other relevant issues related to the immigration court, appeals and removal processes, including a [noncitizen]’s legal rights.”
- 6.4.II.2 – “Persons and organizations requesting to make such group presentations shall be able to obtain clear information about how to become authorized to provide legal rights group presentations, including regularly scheduled presentations.
- 6.4.II.5 – Immigrants in detention “shall be able to communicate and correspond with representatives from the legal groups that make presentations at the facilities.”
- 6.4.II.6 – Immigrants in detention “shall have access to information and materials provided by legal groups. Organizations shall be permitted to distribute information in response to specific legal inquiries.”
- 6.4.V.E – “[F]acility staff shall prominently display the informational posters provided by the presenter in housing units at least 48 hours before the scheduled presentation, and . . . shall provide a sign-up sheet at least 48 hours in advance of a presentation.”

*Provisions supporting legal access more broadly:*

- 5.6.II.6 – “Telephone access procedures shall foster legal access and confidential communications with attorneys.”
- 5.6.II.7 – Immigrants in detention “shall be able to make free calls to the ICE/ERO-provided list of free legal service providers for the purpose of obtaining initial legal representation, to consular officials, to the Department of Homeland Security (DHS) Office of the Inspector General (OIG), and to the ICE Office of Professional Responsibility (OPR) Joint Intake Center (JIC).”
- 5.6.II.7 – Immigrants in detention “who are representing themselves pro se, shall be permitted free calls on an as-needed basis to family or other individuals assisting with the [individual’s] immigration proceedings.”
- 6.3.II.6 – Immigrants in detention “shall have access to courts and counsel.”
- 6.3.II.7 – Immigrants in detention “shall be able to have confidential contact with attorneys and their authorized representatives in person, on the telephone and through correspondence.”

Notably, the PBNDS rules governing legal access are separate and distinct from Legal Orientation Program (LOP) provisions. LOP is funded by the Executive Office for

Immigration Review (EOIR) to provide orientation to immigrants detained by ICE. Through meetings with EOIR and negotiations with each facility, each legal service provider separately negotiates its LOP access and service provisions with each facility. EOIR and ICE/ERO “may establish separate program operation plans for an LOP at each detention site.”<sup>7</sup> The approval of materials for LOP is also separate from approval under the PBNDS. The Field Office Director (FOD) oversees all approval for unpublished materials. EOIR has already approved a series of documents for LOPs which are available on Acacia’s website, here: [Legal Guides - Acacia Center for Justice](#).

Separately from LOP, PBNDS 2011 (rev. 2016) also provides law library and materials access.<sup>8</sup> Outside persons and organizations “may submit published or unpublished legal material for inclusion in a facility’s law library.”<sup>9</sup>

## ii. “Small Group Legal Meetings” & Legal Visitation

In addition to KYRs, there are other forms of legal access that providers can request under the PBNDS. The PBNDS 2011 (rev. 2016) permits group legal meetings with “two or more [immigrants in detention] ... [which] may occur for various purposes (e.g., pre-representational, representational, removal-related).”<sup>10</sup>

Furthermore, “[l]egal visitation” in the PBNDS 2011 (rev. 2016) includes meetings with “current or prospective legal representatives and their legal assistants.”<sup>11</sup> This can include visits for individuals identified by other detained immigrants for whom the provider may not have the A-Number as long as the provider has “enough identifying information about such individual such as first and last name, date of birth, or other information sufficient to identify an individual in custody.”<sup>12</sup> Neither ICE nor the facility can require a G-28 for these purposes, as these are considered “pre-representation” meetings.<sup>13</sup> Procedurally, most personnel at the front entry of detention centers are trained to request G-28s, so LSPs should be prepared to communicate in advance their intention to enter for these purposes and cite to the PBNDS which indicates that a “DHS Form G-28 is not required for legal representatives representing detained [noncitizens] on non-immigration related legal matters or for pre-representational meetings.”<sup>14</sup>

Although new policies since Jan. 20, 2025, have attempted to eliminate the right to legal counsel in expedited removal hearings, the PBNDS 2011 still highlights the right to “Consultation Visits for [Noncitizens] Subject to Expedited Removal.”<sup>15</sup> Immigrants detained by ICE who are subject to expedited removal and who have been referred to an asylum officer are entitled to consult with persons of the [immigrant]’s choosing, both prior to the interview and while the asylum officer’s decision is under review, but consult during

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<sup>7</sup> *Id.* 6.4.V.D

<sup>8</sup> *Id.* 6.3

<sup>9</sup> *Id.* 6.3

<sup>10</sup> *Id.* 5.7.J.12.

<sup>11</sup> *Id.* 5.7.J.1

<sup>12</sup> *Id.* 5.7.J.5

<sup>13</sup> *Id.* 5.7.J.7

<sup>14</sup> ICE, *Attorney Information and Resources*, retrieved Feb. 13, 2025, from <https://www.ice.gov/detain/attorney-information-resources>

<sup>15</sup> *Id.* 5.7.K

the interview may be limited.<sup>16</sup> Those providing the consultations “might include, but are not limited to, attorneys and other legal representatives, prospective legal representatives, legal assistants, and members of non-governmental organizations (NGOs).”<sup>17</sup> Furthermore, visitors are not required to file a form G-28 to participate in a consultation visit or provide consultation even if the visitor is an attorney or legal representative.<sup>18</sup>

### iii. Telephonic Access Under the PBNDS 2011 (rev. 2016)

For immigrants and providers, telephonic access to detained immigrants is just as critical as physical access. Section 5.6.I covers noncitizen access to telephones: “detention standard ensures that [immigrants] may maintain ties with their families and others in the community, legal representatives, consulates, courts and government agencies by providing them reasonable and equitable access to telephone services.” As noted above, noncitizens must be allowed free calls to the pro bono legal service providers listed on the EOIR pro bono provider list and consular officials, among other watchdog agencies.<sup>19</sup> Furthermore, pro se individuals must have access to free calls to call family and other individuals helping to prepare their immigration cases, such as declarants, witnesses, and family who can facilitate the collection of evidence.<sup>20</sup>

According to ICE’s own standards, detained immigrants must be able to communicate and correspond with legal service providers.<sup>21</sup> ICE/ERO must provide each facility the official list of local free legal service providers, updated quarterly by local staff EOIR, so that “[noncitizen]s shall be able to communicate and correspond with representatives from the legal groups that make presentations at the facilities.”<sup>22</sup> The detention center “shall promptly and prominently post the current list in [cell block, housing unit, or area where immigrants are detained] and other appropriate areas.”<sup>23</sup> LSPs on the current list “may write the facility administrator to request the posting and/or general circulation of a sign-up sheet.”<sup>24</sup> The facility administrator, whether it be the warden or other staff designated, “shall then notify [detained immigrants] of the availability of the sign-up sheet and according to established procedures, ensure coordination with the pro bono organization.”<sup>25</sup>

Providers have successfully interpreted these provisions with facilities to mean that noncitizens should have access to free hotlines as well. Providers set up stakeholder calls with the detention centers and phone companies operating therein for a free (usually four-digit access code) hotline from the detention center to the LSP’s office.

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<sup>16</sup> *Id.* See Also CFR 208.30(d)(4) (indicating opportunity to consult before the interview); but see 8 U.S.C. § 1225(b)(1) (omitting inclusion of attorney except in section (c) for written statement).

<sup>17</sup> PBNDS 2011 (rev. 2016) 5.7.V.K.3.

<sup>18</sup> USCIS, *Credible Fear Procedures Manual*, Secs. III.D.1.b; 1.a. (rev. May 10, 2023), retrieved Jan. 31, 2025, from:

<https://www.uscis.gov/sites/default/files/document/guides/CredibleFearProceduresManual.pdf>

<sup>19</sup> PBNDS 5.6.II

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* 6.4.II.5

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* 5.7.V.J (13.)

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

### C. National Detention Standards 2019 (NDS 2019)

The NDS 2019 very closely mirrors the language of the PBNDS 2011 (rev. 2016). However, there are some small but helpful distinctions. The NDS 2019 states that “[f]acilities *shall* [emphasis added] permit authorized persons to make presentations to groups of [immigrants in detention]s for the purpose of informing them of U.S. immigration law and procedures, consistent with the security and orderly operation of each facility.”<sup>26</sup> Another notable difference between the NDS 2019 and PBNDS 2011, is that ICE/ERO “*encourages* such presentations, which instruct [noncitizen]s about the immigration system and their rights and options within it.”<sup>27</sup> Moreover, the NDS 2019 provides that the facility “*shall* [emphasis added] permit presenters to meet with small groups of [immigrants in detention]s to discuss their cases following a group presentation” and “ICE/ERO and facility staff shall not be present during these meetings.”<sup>28</sup>

### III. Legal Access: Statutory Basis

The Immigration and Nationality Act (INA) repeatedly articulates the noncitizen’s right to counsel at no expense to the government when appearing before the immigration court. However, the statutory language falls short of guaranteeing detained noncitizens’ access to legal information through a law library or orientation program.<sup>29</sup> As a result, LSPs providing orientation services will need to rely on the applicable detention standards and case law to argue for the right to legal access.

INA section 242B(b)(2) requires the attorney general to “provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent [noncitizens] in proceedings under section 242.”<sup>30</sup> Providers should ensure that they are included on these lists so that individuals who would like to seek a consultation or legal orientation are able to contact them.

Providers can also reference the statutory right to counsel to gain access for the purpose of conducting pro bono consultations. Providers may also seek to combine these pro bono consultations with one-on-one or small-group KYR presentations.

There are limited time-based protections for securing counsel within the statute, though the Board of Immigration Appeals (BIA) has a more generous interpretation of this language. The Immigration Act of 1990 provides noncitizens a minimum of 14 days to secure counsel [emphasis added] after receipt of the charging document (i.e. “the order to

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<sup>26</sup> ICE, *2019 National Detention Standards for Non-Dedicated Facilities*, 6.4 Legal Rights Group Presentations, retrieved Jan. 31, 2025, from <https://www.ice.gov/detain/detention-management/2019>, at 6.4.I. (emphasis added)

<sup>27</sup> *Id.* (emphasis added)

<sup>28</sup> *Id.* 6.4.I.G

<sup>29</sup> INA Section 240(b)(4)(A) [1229a(b)(4)(A)] (stating, “the [noncitizen] shall have the privilege of being represented, at no expense to the Government, by counsel of the noncitizen’s choosing who is authorized to practice in such proceedings.” INA Section 292 reaffirms the noncitizens’ right to counsel by stating, “the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel, authorized to practice in such proceedings, as he shall choose.”).

<sup>30</sup> 4 *Immigration Law Service 2d*, PSD Immigration & Nationality Act § 239.

show cause”).<sup>31</sup> Section 242B(b)(1) of the INA states, “In order that [an immigrant] be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 242, the hearing date shall not be scheduled earlier than 14 days after the service of the order to show cause.”<sup>32</sup>

Also worth noting is the language requiring the attorney general to preserve access to counsel for noncitizens subject to mandatory detention, which states that “[w]ith respect to [a noncitizen] convicted of an aggravated felony who is taken into custody by the attorney general pursuant to section 236(c), the attorney general shall, to the maximum extent practicable, detain any such felon at a facility at which other such [noncitizen]s are detained... in the selection of such facility, the Attorney General shall make reasonable efforts to ensure that the [noncitizen]’s access to counsel and right to counsel under section 292 are not impaired.”<sup>33</sup> As more and more people become subject to mandatory detention, the right to counsel becomes paramount. The access to counsel model is useful for LSPs that employ a combined KYR and pro bono intake approach and can leverage their access through use of limited consultations or pro bono attorneys.

## **IV. Legal Access: Legal Causes of Action and Constitutional Right**

If initial outreach and PBNDS references prove ineffective, then legal service providers may want to cite legal causes of action and the constitutional right to legal access in further advocacy with detention facilities with the understanding that threatening or bringing litigation will likely damage stakeholder relationships with the facility.

### **A. Failure to Comply with the PBNDS Violates the Administrative Procedures Act (APA)**

When ICE does not allow legal service providers adequate access to detained individuals in violation of the PBNDS, providers challenges should include allegations of a violation of the APA on the grounds that the failure to follow the PBNDS is arbitrary and capricious.

An agency’s failure to comply with its own regulations violates the APA. Under the APA, reviewing courts must “hold unlawful and set aside agency action, findings, and conclusions found to be...arbitrary [or] capricious.”<sup>34</sup> It is arbitrary and capricious for agencies to depart from prior policy without explanation or “simply disregard rules that are still on the books.”<sup>35</sup>

Importantly for advocates, APA claims have been successful in requiring ICE to allow a legal service provider access to a facility to conduct a KYR. In *Innovation Law Lab v.*

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<sup>31</sup> Public Law 101-649 (Act of Nov. 29, 1990); 8 U.S.C. § 1101 et. seq.

<sup>32</sup> 8 U.S.C. § 1229(b)(1).

<sup>33</sup> INA § 236(c); 8 U.S.C. § 1226(c). This language was added to the INA as part of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996, Pub.L. No. 104-208, 110 Stat. 3009-546.

<sup>34</sup> 5 U.S.C. 706(2)(A).

<sup>35</sup> *F.C.C. v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009).



*Nielsen*,<sup>36</sup> a legal service provider serving immigrants in detention alleged violations of the APA based on ICE’s failure to comply with the PBNDS concerning access to legal counsel. The court concluded that the Plaintiffs’ “evidence demonstrates compellingly that [ICE violated] the APA by ‘simply disregard[ing] rules that are still on the books.’”<sup>37</sup> The court granted an injunction requiring defendants to (a) provide adequate attorney visitation and telephone access for immigrants in detention; (b) permit Innovation Law Lab to conduct KYRs for those in detention; and (c) not proceed with interviews, cases, or deportations until after an detained individual has had a full and fair opportunity to meaningfully consult with an attorney and attend KYRs training conducted by Law Lab.<sup>38</sup> Providers challenging a denial of access for the purposes of providing KYR services should consider citing this case to support the argument that access to KYR services in contradiction to the PBNDS is a clear violation of the APA.

Similarly, in *Torres v. United States Dep’t of Homeland Sec.*, Plaintiffs claimed that the Department of Homeland Security violated the APA by failing to follow their own rules in the PBNDS regarding visitation and communication with attorneys. The court found that “because [Plaintiffs] point to conditions at [the facility] falling well below the PBNDS minimum, they state an APA violation.”<sup>39</sup>

## **B. Failure to Comply with the PBNDS Violates Due Process**

Courts have also found that when ICE and the immigration courts fail to comply with their own rules, including the PBNDS, it constitutes a violation of an individual’s right to due process. It is a “long-settled principle that rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency.”<sup>40</sup> Hence, when an individual is not provided the “Legal Services List” by ICE, and the immigration judge also fails to explain the availability of free legal resources, as required by regulation,<sup>41</sup> a noncitizen is harmed, and a showing of prejudice is not required.<sup>42</sup> This principle applies ‘beyond formal regulations’ and covers materials such as agency guidance or policy documents.<sup>43</sup>

In *Gayle v. Meade*,<sup>44</sup> the district court found that ICE violated the Petitioner’s due process clause protections when ICE failed to follow CDC guidelines for the prevention and control of infectious and communicable diseases as required by PBNDS 2011. The court found that “the Due Process Clause [was] implicated here because Petitioners [were] relying on ICE and [ICE’s stated reliance upon] the CDC’s regulations promulgated for their guidance or benefit during this pandemic. It is easily conceivable that in failing to comply with its own

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<sup>36</sup> 342 F. Supp. 3d 1067 (D. Or. 2018).

<sup>37</sup> *Id.* at 1080.

<sup>38</sup> *Id.* at 1082-83.

<sup>39</sup> 411 F. Supp. 3d 1036, 1068 (C.D. Cal. 2019).

<sup>40</sup> *Leslie v. Att’y Gen. of U.S.*, 611 F.3d 171, 175 (3d Cir. 2010) (citing *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260 (1954)).

<sup>41</sup> 8 C.F.R. § 1240.10(a)(2)-(3).

<sup>42</sup> *Id.* at 182.

<sup>43</sup> *Alcaraz v. INS*, 384 F.3d 1150, 1162 (9th Cir. 2004).

<sup>44</sup> No. 20-21553-CIV, 2020 WL 2086482, at \*6 (S.D. Fla. Apr. 30, 2020), order clarified, No. 20-21553-CIV, 2020 WL 2203576 (S.D. Fla. May 2, 2020).

guidelines, ICE caused Petitioners to suffer substantially because of their violations.”<sup>45</sup> Even where regulations “allow flexibility . . . ICE is still expected to follow its own regulations.”<sup>46</sup>

### C. Interference with Access to Counsel as a Due Process Violation

Even though noncitizens in removal proceedings do not have a Sixth Amendment right to counsel at the government’s expense, the Due Process Clause of the Fifth Amendment guarantees noncitizens the right to counsel at their own expense.<sup>47</sup> The below cases can be used to argue that the right to counsel under the due process clause applies in the context of legal orientation programs at detention facilities.

In *Innovation Law Lab*, the court found that denying meaningful access to a free hotline; in addition to denying attorneys access to detention facilities to perform KYR presentations; along with “conflicting and nearly-impossible-to-follow instructions on the availability of legal visiting hours,” among other denials, had the “cumulative effect of denying [individuals in detention] constitutionally sufficient access to legal assistance” in violation of the due process clause of the Fifth Amendment.<sup>48</sup>

In *Torres*,<sup>49</sup> the court found a cumulative set of circumstances including restrictions on telephone access, difficulty in accessing legal mail, and interferences with in-person meetings to be “tantamount to the denial of counsel.”<sup>50</sup> Although the holding did not center on rights of KYR presenters — but rather on the rights of unrepresented individuals to seek what they need to gather evidence or contact support, or to access counsel — it is through that lens the decision arguably supports KYR access. Because the holding applied to both represented and unrepresented individuals, LSPs seeking access to detention facilities to provide orientation services can argue that *Torres* stands for the proposition that their access for such programs should not be restricted.

In *Americans for Immigrant Justice v. U.S. Dep’t of Homeland Sec.*,<sup>51</sup> the U.S. District Court for the District of Columbia addressed the issue of legal service providers’ access to noncitizens in detention. The Plaintiffs, organizations offering legal assistance to detained individuals, argued that the facility’s visitation policies hindered effective attorney-client communication, thereby violating the First and Fifth Amendments, as well as the Administrative Procedure Act. The court granted a preliminary injunction, concluding that the detention center’s lack of private rooms, and lack of VTC beyond the use of tablets”

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<sup>45</sup> *Id.* at 6.

<sup>46</sup> *Id.*

<sup>47</sup> See, e.g., *Tawadrus v. Ashcroft*, 364 F.3d 1099, 1103 (9th Cir. 2004) (“Although there is no *Sixth Amendment* right to counsel in an immigration hearing, Congress has recognized it among the rights stemming from the *Fifth Amendment* guarantee of due process that adhere to individuals that are subject to removal hearings.”)

<sup>48</sup> *Innovation Law Lab*, at 1080–81.

<sup>49</sup> 411 F. Supp. 3d 1036 at 1060.

<sup>50</sup> *Id.*

<sup>51</sup> *Americans for Immigrant Justice v. U.S. Dep’t of Homeland Sec.*, No. CV 22-3118 (CKK), 2023 WL 1438376, at \*4 (D.D.C. Feb. 1, 2023).

constituted a restriction on attorney-client communications.<sup>52</sup> However, the case was severed, only leaving FIRRP's claims with respect to access centered around representation as prevailing.<sup>53</sup>

Providers can argue that *Americans for Immigrant Justice* suggests, in connection with representation, that noncitizens should have access to private visitation rooms, Video Tele-Conferencing (VTC), and other telephonic access for attorney-client communications. This case should also apply to situations where phone calls occur in a space so devoid of confidentiality as to render meaningless attorney-client privilege. Although this case involved organizations offering representation, providers can argue that the rationale should also apply if they are providing legal advice or making a limited appearance in the case.

Persuasively, although not binding authority, in *Immigrant Defs. L. Ctr. v. Mayorkas*, the district court for the Central District of California found that “the INA mandates that asylum seekers have meaningful access to counsel, including the right to contact counsel and the time, space, and ability to consult with counsel safely and confidentially.”<sup>54</sup> In this case, attorney-client consultations were limited to an “illusory one-hour window before a scheduled hearing,”<sup>55</sup> lawyers were forced to meet with clients in nonconfidential settings, and unrepresented noncitizens were prohibited from approaching legal representatives present in the immigration court to discuss possible representation.<sup>56</sup> The court found that this amounted to an interference with the right to counsel.

LSPs may have success arguing that under *Immigrant Defs L. Ctr.* detention facilities must allow one-on-one consultations and provide a confidential space for such meetings. Moreover, given the court's holding that unrepresented individuals have the right to contact counsel, LSPs that provide pro bono referrals can argue that they should be permitted to meet with unrepresented individuals to make such a referral.

For LSPs that are unable to communicate with their clients due to ICE transferring the individual to another facility, *Orantes Hernandez v. Thornburgh* is instructive. In this case the Ninth Circuit<sup>57</sup> When ICE's transfers of immigrants to other facilities impedes communication, LSPs should consider citing this case for continued ability to communicate with those individuals. Although this case is specific to Salvadorans, under the injunction, DHS may not transfer unrepresented Salvadorans out of the district where they were first apprehended for 7 days.<sup>58</sup> This is a key argument for LSPs conducting KYRs who wish to

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<sup>52</sup> *Americans for Immigrant Just.*, 2023 WL 1438376 at \*16.

<sup>53</sup> *Id.* See also *Advocacy Program - Florence Project*, retrieved Feb. 27, 2025, from <https://firrp.org/what/advocacy/> (indicating that FIRRPP won an injunction against ICE that required “ICE to build-out additional private telephone and/or visitation spaces for attorneys to be able to have confidential communications with their clients at FCC.”).

<sup>54</sup> *Immigrant Defs. L. Ctr. v. Mayorkas*, No. CV209893JGBSHKX, 2023 WL 3149243, at \*28 (C.D. Cal. Mar. 15, 2023).

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Orantes Hernandez v. Thornburgh*, 919 F.2d 549 (9th Cir. 1990).

<sup>58</sup> *Id.*

maintain communication before transfer, and to reach people before they leave their area of service. LSPs have successfully prevailed on halting transfers of Salvadorans in the past with DHS based on *Orantes*.

Furthermore, for those Salvadorans who have counsel, they must be returned to the district of venue in order to consult with counsel.<sup>59</sup> This could be particularly helpful in an instance where an individual receives an initial consultation and the provider has not yet entered an appearance or submitted a limited appearance, or when pro bono counsel is clearing conflicts and plans to initiate representation in the future. This case can also be helpful when advocating to share KYR and other written legal information with individuals in detention.<sup>60</sup> Finally, this case may also be cited to support the proposition that failure to provide adequate, up-to-date pro bono attorney contact lists to individuals in immigration detention can<sup>61</sup> For more, see [Orantes-injunction-facts-2011-03-rev2020-11-05-1.pdf](#).

## V. Step-by-Step Guide to Gaining Access to Immigration Detention Centers

In 2021, Robert F. Kennedy Human Rights and the ACLU of Louisiana (ACLU-LA) began visiting Louisiana detention centers to provide legal rights presentations and materials to people in detention<sup>62</sup> Although this is just one of many models, it serves as a useful step-by-step guide.

Today, that initiative has expanded to include additional partner organizations and monthly detention centers visits. Using lessons learned from this successful partnership, this section provides a chronological breakdown of how to create, implement, and maintain a legal rights initiative at an immigration detention center.

### Phase 1: Develop a Legal Rights Initiative (LRI) Strategy

#### 1. Identify the Need

- Assess the specific legal needs of people in detention at the detention center in question.
  - i. RFKHR and the ACLU-LA identified a high number of pro se habeas corpus petitions being filed in Louisiana detention centers, many of which were dismissed. This highlighted the need for clearer guidance to help people in detention access federal courts.
- Research past reporting or case law to identify legal barriers faced by people in detention.
  - i. RFKHR and the ACLU-LA recognized that prolonged detention during immigration cases was a major issue, making habeas corpus petitions a critical tool.

#### 2. Form Key Partnerships

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<sup>59</sup> *Id.*

<sup>60</sup> *Id.* at 566.

<sup>61</sup> *Id.* at 565.

<sup>62</sup> This effort by RFJHR is one of many models for gaining access to immigration detention centers.

- Engage with local and national LSPs, pro bono practices at law firms, law school clinics, and community-based organizations.
    - i. RFKHR and the ACLU-LA have collaborated with the Southern Poverty Law Center (SPLC), National Immigration Project, Immigration Services and Legal Advocacy (ISLA), Home is Here, Louisiana Advocates for Immigrants in Detention, Cornell Law School, and others.
  - Consult legal experts on immigration and federal court procedures.
    - i. Legal experts can provide input on the development of pro se materials, ensuring their accuracy and effectiveness.
3. Develop Pro Se Legal Materials
- Create self-help guides tailored to people in detention.
    - i. RFKHR and the ACLU-LA partnered with a law firm's pro bono practice to draft legal rights presentation materials and a pro se packet focusing on federal court procedures, particularly how to file a writ of habeas corpus.
  - Ensure the materials are clear, accessible, and legally sound.
    - i. The pro se packet was designed to address the common reasons pro se habeas petitions were being dismissed, improving people's chances of successfully accessing the courts.

#### Phase 2: Secure Approval for Legal Materials and Access

4. Seek Approval from DHS/ICE
- Submit pro se materials to DHS/ICE for review and approval.
    - i. RFKHR and the ACLU-LA sought ICE approval in 2022 for their legal materials, as required to distribute them inside detention centers.
  - Follow up regularly to push for approval.
    - i. After submission, RFKHR and the ACLU-LA engaged in continued dialogue with detention officials to ensure approval.
5. Build a Justification for Access
- Use legal standards (such as PBNDS/NDS) to justify access.
    - i. RFKHR and the ACLU-LA relied on the PBNDS/NDS provisions on legal rights access, which exist separately from the Legal Orientation Program (LOP).
  - If access is denied, consider potential legal challenges.
    - i. Legal experts and pro bono law practices can help develop potential legal challenges for access.

### Phase 3: Conduct Initial Legal Rights Visits

#### 6. Schedule and Conduct a First Visit

- Coordinate logistics with detention facility officials.
  - i. RFKHR and the ACLU-LA gained approval to conduct its first legal rights initiative visit in April 2022.
- Approach the first visit as a fact-finding mission, in addition to providing a legal rights presentation.
  - i. The initial visit from RFKHR and the ACLU-LA allowed them to assess conditions and determine what legal information people in detention most needed.

#### 7. Evaluate Findings and Expand Efforts

- After the visit, refine the approach based on observations.
  - i. Following the April 2022 visit, RFKHR and the ACLU-LA determined that a more comprehensive, ongoing presence was necessary.
- Develop a plan for ongoing visits.
  - i. By July 2022, RFKHR and the ACLU-LA established a regular schedule of legal rights presentations in Louisiana detention centers.

### Phase 4: Establish a Recurring Presence and Expand Partnerships

#### 8. Create a Regular Schedule of Legal Rights Presentations

- Work towards consistent and recurring visits.
  - i. RFKHR and the ACLU-LA have continued legal rights presentations in Louisiana since mid-2022, with additional partners joining over time.
- Expand partnerships.
  - i. More organizations, including law schools, became involved in supporting the initiative.

#### 9. Monitor Compliance and Advocate for Continued Access

- Document any facility non-compliance with PBNDS/NDS provisions.
  - i. RFKHR and the ACLU-LA monitored detention conditions and used their visits to gather information on the treatment of noncitizens and their access to legal resources. With this information, we were able to produce [a longform report on the state of human rights](#) in Louisiana immigration detention.
- Stay prepared for policy changes.
  - i. RFKHR and the ACLU-LA recognized the need to anticipate future changes to detention standards and prepare for potential legal challenges.

#### 10. Develop a Long-Term Strategy for Legal Access

- If national standards (PBNDS/NDS) are rescinded, consider constitutional challenges.
  - i. RFKHR and the ACLU-LA prepared for these changes by partnering with a pro bono law firm to develop possible legal challenges to access restrictions.
- Provide guidance to other organizations.
  - i. RFKHR used a similar approach at the Buffalo Federal Detention Facility in Batavia, New York, where it partnered with Prisoners' Legal Services, Cornell Law School, and Justice for Migrant Families to launch legal rights presentations in October 2022.

## VI. How to Engage Stakeholders

Maintaining productive working relationships with local ICE and detention center leadership is a key component to maintaining access to immigration detention centers through legal rights initiatives. This section gives tips on how to create and maintain those relationships.

1. Establish Clear Communication from the Start
  - Reach out to ICE and detention facility leadership early in the process to introduce your organization and explain your legal rights initiative.
    - i. Consider asking for introductions or names and contact information of decisionmakers from local legal services providers or community organizations with professional relationships with detention center officials.
  - Clearly articulate your goals, emphasizing how your work aligns with existing detention standards (such as PBNDS/NDS) that support legal rights access.
2. Use Official Policies to Justify Access
  - Reference relevant policies, such as the PBNDS/NDS provisions on legal rights presentations, to demonstrate that your initiative is consistent with existing regulations.
  - If facility officials are hesitant, calmly reinforce that legal rights access is a standard component of detention operations and not discretionary.
3. Build Relationships Through Consistency and Professionalism
  - Be reliable in your communication and follow through on commitments.
  - When conducting visits, ensure that all representatives of your organization act professionally and adhere to facility rules to maintain credibility.
4. Be Prepared for Bureaucratic Challenges
  - Expect delays in obtaining approvals and remain persistent but respectful in follow-ups.
  - If necessary, escalate concerns through formal channels while maintaining a cooperative approach.
5. Frame the Initiative as a Benefit, Not a Burden

- Emphasize how legal rights presentations can help ensure order and reduce confusion among people in detention, ultimately benefiting facility operations.
  - If facility leadership expresses concerns about resource constraints, offer to coordinate logistics in a way that minimizes their administrative burden.
6. Foster Ongoing Dialogue and Adaptability
- Regularly check in with facility leadership to address any concerns and reinforce the value of your work.
  - If rules or leadership change, be prepared to reintroduce your organization and adapt to new expectations.
7. Document and Address Compliance Issues Diplomatically
- Keep records of all agreements, approvals, and any obstacles encountered.
  - If access is restricted without justification, attempt to resolve the issue directly before considering legal or advocacy-based escalation.
8. Expand Your Network to Strengthen Legitimacy
- Collaborate with other local legal service providers, advocacy groups, and academic institutions to reinforce your credibility and demonstrate broad institutional support.
  - Engaging respected legal partners can also create additional pressure if ICE or facility leadership attempts to block access.
9. Prepare for Leadership Turnover
- Detention facilities often experience leadership changes. Establish relationships with multiple points of contact to avoid setbacks when personnel transitions occur.
  - Maintain documentation of prior approvals so new leadership can easily review and continue existing agreements.
10. Anticipate and Plan for Policy Changes
- If detention standards such as PBNDS/NDS are rescinded or revised, be prepared to pivot to constitutional arguments or alternative legal strategies to maintain access.
  - Stay informed on broader detention policies and be proactive in adapting your approach accordingly.

By following these strategies, organizations can build productive, long-term relationships with detention center officials, ensuring continued access for legal rights initiatives while safeguarding the rights of people in detention.



## VII. Best Practices

In December 2024, Acacia surveyed over 20 organizations that provide KYRs or LOP in detention centers. These organizations included both abolitionist and reformist approaches, or a hybrid approach to strategizing legal access around longer-term advocacy strategies. Their best practices are below:

### A. Best Practices: Understanding Motivations of Stakeholders

Identifying stakeholders who will support access and ascertaining their motivation is key to working with stakeholders to obtain or maintain access. Often, stakeholders are pro-immigrant or believe simply in due process rights. Additionally, detention stakeholders might support access because they want to have smooth-running facilities. One detention stakeholder told a provider that their services “keep the population calm” — that having access to attorneys quells nervousness and unknowns that can create anxiety and lead to greater conflict in the detention setting.

Explaining to stakeholders that KYRs support the efficiency of courts and providing anecdotes of what happens when there are no KYRs is helpful to gain access. For example, someone who does not understand why they are in detention or know the difference between the facility and court personnel will inevitably spend time asking these non-legal questions to a judge or asking legal questions of detention center staff. This wastes time at both agencies and leaves the impacted person feeling confused and frustrated. Most detention stakeholders should see the baseline utility in KYRs and legal access if for no other reason but efficiency.

LSPs provide this critical bridge to smoothly support all people involved in these processes. LSPs who have a tight assessment of why stakeholders buy in can prepare for meetings on access with examples of how the LSP will help to meet those goals by being present inside detention centers.

### B. Best Practices: Transparency and the KYR Script

Providers flagged that even if initial access is obtained, LSPs must educate stakeholders on the scope of services, space requirements, and the difference between ICE detention and post-conviction incarcerated populations. Many detention personnel who arrive at immigration detention work have had previous experience in detention centers for pre-order criminal processes. Therefore, LSPs should prepare stakeholders on the differences between civil and criminal detention, particularly when facilities are non-dedicated.

New stakeholders who have had prior experience in criminal detention should be familiar with religious study spaces and Alcoholics Anonymous groups that frequent criminal detention centers and should help ease the entry for immigration KYR providers. Sharing the script for KYRs often puts detention stakeholders at ease.

Often, KYRs cover not only defenses to removal but also requests for deportation and voluntary departure. Some LSPs suggest demonstrating the short form of the KYR or giving them a script to put detention stakeholders at ease about the information communicated. Once detention staff have transparency, they can often be more amenable to granting access.

### C. Best Practices: Scope of Physical Space for KYRs

Detention centers are vast and have varying spaces, sometimes including, but not limited to:

- “Dormitories”
- Cell Blocks
- Law Libraries
- VTC Rooms
- Courtrooms
- Indoor Recreational Rooms
- Kitchen
- Laundry
- Medical Units
- Segregation/Special Housing Units (SHU)
- Cafeteria
- Outdoor Recreation
- Chapels
- Barber Room
- Intake & Processing

All these spaces can serve as creative areas to conduct KYRs or small group presentations. In one example, one LSP served a detention center where construction at the facility expanded Special Housing Units and additional recreational rooms. The LSP, after years in this detention center, then successfully negotiated access to those newer spaces, as a continuance of their preexisting services and mission to reach everyone in removal proceedings before their next Master Calendar Hearing. Additionally, the LSP was able to negotiate presentations in the “Indoor Recreation Room” for presentations and for playing third-language group presentations.

### D. Best Practices: Understanding the Hierarchy of Agreements

LSPs have experienced a range of changes to access throughout their relationships with detention centers. Some experienced a swift discontinuation of access when they lost contractual obligations. Other LSPs relied on agreements beyond their contractual role as LOP providers. In fact, many LOP providers set up facility access prior to even having an LOP at their site. The survey indicates that the following agreements framed access for KYR providers:

#### i. Handshake Agreements

Providers have had the spoken agreement from detention centers that have granted access, either because they see the benefit of having providers present to answer questions or because they are indicating their compliance with the PBNDS. Some providers reported the “handshake agreement” occurred over the phone or via a stakeholder meeting, and afterwards the LSP entered the facility.

It is best practice for providers to obtain written agreement, including via email, of the LSP’s schedule and scope of access. If the facility cannot put the agreement in writing, the LSP can memorialize the phone conversation or stakeholder meeting afterward, and should save the sent email in a safe location for future reference.

### **ii. Written Agreement**

Providers indicated that they have obtained and stored email agreements with detention center decisionmakers to ensure their access. Such agreements were secured even during a moment in 2018 when the attorney general paused access for LOP providers, and LOP providers had to default to the PBNDS or cultivated relationships to maintain access.

### **iii. Assumption of the Right**

Some providers have reported that having a “business as usual” approach to stakeholder relationships has helped to maintain access in detention centers even when the external national policy practices fluctuate. One provider observed that one detention center just “rolled with it” and did not question access upon explanation that they would still be providing services under the PBNDS that allowed for separately funded legal-orientation services after their LOP contract had been “paused.”

## **E. Best Practices: Digital & Other Forms of Communication**

Advocates should consider all forms of communication when addressing access to detention centers and inquire at the facility. Key digital access options include:

- Video Tele-Conferencing (VTC): A monitored system, often controlled by ICE, used by EOIR for remote hearings. This requires coordination with ICE and detailed facilitation to ensure proper access. There could be concerns with confidentiality in utilizing this method.
- Talton Tablets: Available at select facilities, these tablets offer pro se materials and a “raise hand” feature to contact detention personnel or pro bono services. They also support video visitation at some locations.
- Phone Access/Hotline: Each detention center provides a hotline or a free, four-digit phone line for people in detention to contact pro bono legal services. Legal service providers can arrange for these hotlines to be programmed into facility phones, with approval from ICE and in coordination with detention center staff.

## **F. Best Practices: Educate EOIR on the Value of KYRs**

Most providers reported that local EOIR staff has been a helpful ally in ensuring access to legal orientation programs or other KYR programs. Immigration judges and other EOIR staff have also pushed for accommodation for legal orientation providers.

Providers encourage taking advantage of every opportunity possible to educate immigration judges and local EOIR staff on the positive impact of legal orientation programs. For example, one provider occasionally served as friend of the court and used that opportunity to explain the LOP or KYR program to judges and staff.

Many providers reported that EOIR is an especially helpful ally when they recognize the substantial impact legal orientation programs have on court efficiency. For immigration judges eager to keep their docket moving, emphasizing how access to KYRs or legal orientation makes courtroom proceedings run more efficiently can engage these judges in efforts to connect individuals in detention with those services.

For example, some providers report sharing their detention visit schedules with immigration judges, who then explain to detained individuals appearing pro se in their court how they can access these programs. Another provider found that a court administrator was a helpful moderator in disputes with ICE regarding access, space, and additional time for legal orientations. One provider reported that an immigration judge reached out directly to detention facility staff to explain the importance of allowing the provider to enter the facility with phones and scanners.

### **G. Best Practices: Reputation Among Detention Stakeholders**

LSPs often serve multiple detention centers within a region, as the expertise is niche. Generally, a reputation within that region supports LSP access to a new detention center based on word-of-mouth recognition and reputation for transparency. Often LSPs inform detention centers when they are out of compliance with the PBNDS or other detention standards, which allows detention centers time to correct and avoid lawsuits. In one example, one provider with a long-enduring reputation in Arizona contemplated access to a new facility: La Palma Correctional Center, in approximately 2018. La Palma is run by the same company, CoreCivic, as Eloy, where this provider has been conducting KYRs since before 2003. La Palma stakeholders indicated that the provider's word-of-mouth reputation was sufficient to ensure access at the new facility.

### **H. Best Practices: Presence at Detention Center Staff Transition**

#### **Meetings**

Changes in ICE or detention center leadership or other personnel should signal to providers that they need to connect with incoming staff preemptively. If they have a productive relationship with the current warden, they should research the reputation of the incoming warden. They should not assume that the goodwill or relationship of one warden will easily transfer to another, although it could help. Conversely, if an LSP has had a challenging relationship with one warden, a new warden might present a new opportunity for engagement.

It is incumbent upon LSPs to set up relationships early with new personnel and not rely entirely on prior history. However, they should save prior agreements or memorialize prior meetings with the outgoing leadership so that they have proof of agreement when engaging with new leadership. To ensure access, LSPs should preemptively set up conversations with incoming staff, try to attend transition meetings, or offer to set up a transition meeting. LSPs should think strategically about whether it makes sense to have the outgoing warden or other personnel present in a transition meeting.

Even when providers have long-standing relationships in one facility, personnel and space may change. For providers who maintain or gain general access, detention centers may still limit space access for KYRs. One provider noted that although they have a "well-established presence" in one detention center, they have lost access to Special Housing Units ("SHU") when there has been a change in personnel or wardens.

## I. Best Practices: Shared Understanding of Detention Staffing Models

LSPs who understand detention staffing models can be successful at negotiating space and time.

Detention centers set staffing schedules and work hours as employers. Sometimes barriers to access exist because the detention center is short staffed or because required rotations restrict their ability to escort LSPs to certain areas of the facility. LSPs often hold brainstorming sessions with detention staff to present and collaborate on solutions to these restrictions. However, LSPs should continue to document by email any conversations or results of such collaborations, as these could be useful in the future if those collaborations do not fully address their legal access needs. That is, LSPs should document agreements in case the olive branch approach does not pan out and they need to resort to litigation. Vigilance is key to being as transparent as possible with stakeholders, while also ensuring advocates continue to prioritize the requests and rights of impacted individuals. Even though a detention center is short staffed, they still have an obligation to comply with the PBNDS 2011 or NDS 2019.

Many LSPs can provide examples of some of the best stakeholder relationships; however, even the most transparent and effective stakeholder relationships will sometimes come to crossroads. It is incumbent upon LSPs to define those terms for themselves and with impacted people's guidance. At certain points, sometimes the courts can only resolve specific conflicts. In these cases, litigation or other mechanisms might be the only alternative forward.

## J. Best Practices: Congressional Relationships

Both state and federal lawmakers can access information either generally for detention-related concerns or specifically for individual immigrants impacted by ICE. LSPs conducting legal rights presentations can play an important role in engaging these legislators by generating valuable data to inform policy advocacy and public campaigns for systemic issues and individual cases.

Public policy outputs from regular detention center visits can include reports and briefings on detention conditions; trends observed during visits; or testimonies of people in detention shared with media and advocacy networks. For example, RFKHR and ACLU-LA used their on-the-ground observations to produce a [comprehensive report on systemic human rights abuses](#) occurring in Louisiana detention centers.<sup>63</sup> That report paved the way for briefings and meetings with congressional offices and DHS officials, in which they advocated for increasing access to legal resources for people in detention and ending the use of immigration detention.

Other engagements with policymakers can include:

### i. Broad Congressional Advocacy

Experiences of providers leveraging congressional pressure points include these examples from our survey:

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<sup>63</sup> ACLU. (August 2024). *Inside the Black Hole*. <https://www.endthegainonpain.org/report>

- One LSP has reported that congressional delegations and sometimes state agencies can reach out to secure information for KYR groups.
- Another LSP reported that during the 2018 LOP “pause,” access to county jails remained uninterrupted in large part due to key congressional advocacy.

Two factors that can support LSP access are continual dialogue with congressional offices in a detention center’s area, or alternatively, when a jail detains a number of a member’s constituents, can support LSP access. Often, congressional representatives will conduct visits to detention centers to ensure conditions standards. In other examples, they can push back against administration policies, such as when Representative Don Beyer in 2018 conducted a visit with separated fathers during Zero Tolerance and shortly after the LOP Pause inside a detention center.<sup>64</sup>

Sometimes congressional liaisons can put pressure on counties to shut down detention centers if there are persistent and chronic human rights concerns in the district. For example, Senator Jon Ossoff of Georgia called for a bipartisan investigation into Irwin County detention center in 2022, which eventually contributed to the detention center being shut down.<sup>2</sup> However, sometimes congressional representatives’ visits to detention centers can result in lackluster follow-up. For example, LSPs reported some congressional delegations have returned only to report back that “conditions are clean,” often ignoring the systemic issues with mass detention and cruel detention of parents far away from their children.

Oftentimes, connecting a congressional liaison or lawmaker to the general concerns over detention access by linking them to a specific individual who is impacted by detention will compel them to act. As such, specific and general congressional advocacy may be employed in combination.

## ii. Specific Congressional Advocacy

Congressional liaisons can support delayed case processing, help navigate issues with federal agencies, find information, or resolve other issues. Sometimes congressional lawmakers can apply pressure on ICE for an individual’s release from detention.

By establishing relationships with people in detention, legal service providers can identify strong cases for further legal action, including:

- Habeas corpus petitions for individuals facing prolonged or indefinite detention.
- Requests for parole for people who qualify for release but face administrative barriers.

To request a congressional liaison for a specific individual’s case, most lawmakers have designated staff to address individual immigration case concerns. A privacy release form is generally required, even if the requestor is the attorney of record.

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<sup>64</sup> Rep. Don Beyer visits immigrant fathers separated from children at Maryland detention facility, June 20, 2018, retrieved Feb. 2, 2025, <https://beyer.house.gov/news/documentsingle.aspx?DocumentID=935>

Please [review an example here](#) of a Privacy Release form for Congressional Inquiry, and below:

### PRIVACY RELEASE and CONSTITUENT INFORMATION FORM

My office is happy to help in your interactions with agencies and offices of the federal government. Casework is available to all Marylanders and covers a variety of issues. My office inquires about pending cases from passport applications to social security and veterans' benefits. While my office cannot file, adjudicate, or appeal your case, we will work to ensure the federal government is responsive to your concerns.

Due to the Constitution's separation of powers, and Senate ethics rules, I am not permitted to assist in judicial or court matters, including child custody/support, divorce, criminal trials, lawsuits or imprisonment.

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The Privacy Act of 1974, Title 5, U.S. Code Section 552a, provides that as of September 27, 1975, disclosure of information of a personal or confidential nature of an individual will no longer be released to third parties without written consent of the individual concerned. Therefore, I hereby grant Senator Chris Van Hollen and his staff my written permission to intercede on my behalf. I also duly authorize that any information that is contained in my records and necessary to provide a substantive response may be disclosed to the Office of Senator Van Hollen.

\* What is the general topic of your case? (Please choose only one)

- Active Duty Military    Education    Federal Grants    Healthcare    Immigration or Visa    Labor and Employment    Passport  
 Post Office/USPS    Small Business    Social Security    IRS/Federal Taxes    Veteran    Other

Your Information

\* Prefix   \* First Name   Middle Name   \* Last Name  
           
\* Address Line 1

Finally, the American Immigration Lawyers Association (AILA) also has congressional advocacy committees to support AILA members with outreach to their, state, senate, and house lawmakers (see section L, *infra*).

## K. Best Practices: Ombudsman Offices

Individuals who are detained may report concerns regarding access to legal services if an LSP is unsuccessful in facilitating routine KYR presentations. Several watchdog organizations are available to assist, including:

Federal watchdog organizations are available to assist people in detention in reporting concerns regarding restricted access to legal rights, including:

- legal assistance (e.g., barriers to attorney access, lack of language interpretation, lack of law library access);
- medical care (e.g., lack of adequate healthcare, delayed treatment, or denial of prescribed medications); and
- facility conditions (e.g., inadequate food, unhygienic facilities, extreme temperatures, abusive or discriminatory treatment).

### i. Office of Inspector General (OIG)

The role and effectiveness of the OIG remain unclear at the time of publication. However, for additional information, please refer to the [Practitioner Hub - Acacia Center for Justice Mental Health Manual, Chapter 8: Detentions](#).

## **ii. Office of Immigration Detention Ombudsman (OIDO)**

The OIDO addresses a wide range of issues, including:

- access to medications and medical treatments, especially for people unable to procure adequate care due to language barriers;
- safe release and transfers;
- visitation rights; and
- phone access.

If an LSP builds social capital within a detention center and can communicate with immigrants in detention through representation or other channels, they can share OIDO's complaint system with them. This complaint system is available at over 500 locations, including CBP sites, Field Office locations, and detention centers.

Complaint submission methods include:

1. Electronic Filing: Through the myOIDO portal, which is publicly accessible online, as well as via Talton tablets at any ICE or CBP facility nationwide
2. OIDO Case Intake Form (DHS Form 405): Available on the DHS website, submissions can be made via email, U.S. mail, or directly to a facility's case manager<sup>6</sup>

## **iii. DHS Office for Civil Rights and Civil Liberties (CRCL) Complaints**

While OIDO typically addresses specific individual concerns, the CRCL focuses on systemic issues.<sup>7</sup> However, both agencies collaborate to identify individual concerns that may be indicative of broader systemic problems. Common CRCL complaints include:

- failure to provide adequate procedures for scheduling legal calls with detained clients;
- failure to provide functional equipment, such as telephones;
- failure to ensure fair access to tables or regulate table distribution;
- failure to arrange a phone interpreter for indigenous languages; and
- improper charging for legally mandated services, such as telephone calls.

Complaints can be submitted individually or as a group, using the following methods:

1. Online Portal: Complaints can be submitted anonymously and in any language. The portal supports nine languages as of this writing and allows users to upload attachments. If the complainant does not speak or read an accommodated language, OCRCL can access interpreters and translators to facilitate communication.
2. Fillable PDF Form: Available in 16 languages (including English, Arabic, Bengali, Chinese, French, Haitian Creole, Portuguese, Punjabi, Spanish, and others), the form can be submitted via email or fax. If there are technology access issues when assisting clients, this is considered non-compliance with Section 508 of the Rehabilitation Act, and a Technology Access Issue Reporting Form should be filed.



3. Cover Letter or Detailed Description: It is recommended that representatives submit a cover letter (similar to a brief) along with their complaint via the portal, email, fax, or postal mail. Written consent from the individual is required if filing on their behalf, which may include a G-28 or another written document outlining consent.

Providers have reported that pro se individuals and clients are “an incredible wealth of information and knowledge and we’ve often helped folks file complaints where access is denied or unduly delayed.” One LSP indicated that they have also used word of mouth to ensure access to “help others reach [them], asking detained individuals about trends during [KYRs].” LSPs that establish a consistent presence in detention centers may also be able to identify and document patterns of recurring issues over extended periods of time, in line with CRCL’s focus on systemic issues.

#### **L. Best Practices: American Immigration Lawyers Association (AILA)**

Another access point for many practitioners is AILA, a 16,000+ immigration attorney organization with chapters in every region of the country and many countries all over the world. Each chapter has liaisons for EOIR, ERO, CBP, and for various other immigration agencies. Each chapter organizes routine stakeholder meetings with these agencies, often including non-profit organizations and other allies in the meetings with a pre-negotiated agenda. AILA can support communication with agencies to discuss access points for KYR presentations and phone access as long as the advocate is an AILA member. However, a significant number of AILA attorneys are non-profit legal services attorneys and many AILA attorneys will support non-profit requests if they can tie it to the general mission of AILA. Generally finding out who is an AILA member with the power to elevate issues will be a toehold for KYR presentation advocates.

In addition to liaison roles, AILA chapters hold congressional liaison meetings as well as track patterns through surveying their members about persistent issues. If advocates have questions about a particular concern they are witnessing, a starting point is reaching out to AILA to see what, if anything, they have also observed.

#### **M. Best Practices: Consular Officers**

While consular officers may not have the leverage with detention facilities or ICE to assist providers with gaining access to a facility, they may be able to help share information and identify individuals in need of legal orientation services. Because international agreements and regulations,<sup>65</sup> as well as the PBNDS,<sup>66</sup> require ICE to inform detained individuals of their right to speak with a consular official, in the past when access to individuals in detention was temporarily limited, LSPs have found that consulates may provide an alternate avenue for identifying people in need of legal orientation services.

In another example, LSPs have coordinated with consulates and visited a detention center at the same time as the consular officer. This helped the LSP “form a close relationship with the consulate... provid[ing] more legitimacy and formality to the program,” thus

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<sup>65</sup> 8 C.F.R. § 236.1.

<sup>66</sup> PBNDS (2016) 5.6.V.E, 5.7.II.1.

leveraging that relationship to ensure facility access. If an LSP is having difficulty gaining referrals for access, the consulate might be a good first step to begin receiving referrals and invitations for intaking.

## **N. Best Practices: Strategic Engagement with Media**

Strategic engagement with media may be another tool for gaining and maintaining adequate access to individuals in detention. One provider reported that during the 2018 LOP program “pause” they found media to be “a strong tool to shame the administration” into reinstating the programs. Another provider has found that “bringing any kind of media attention to the issue” has proven successful in the past, saying attention from reporters and other outsiders “led to improved treatment and access.”

Other providers reported utilizing social media platforms such as Facebook and Instagram to raise awareness about the importance of legal orientation programs and KYRs.

## **O. Best Practices: Strengthening Coalitions**

Legal rights initiatives can serve as an entry point for broader collaborations in support of expanding access to legal services for people in detention. LSPs can:

- Partner with local law schools and legal clinics to expand legal resources for detained individuals
- Engage medical, mental health, and social service providers to address needs of detained or recently released people in a holistic manner
- Coordinate with local, regional, and national advocacy groups to align local findings with broader litigation and policy efforts

Community groups in many states and localities lead locally-grounded coalitions. The Louisiana legal rights initiative helped spur the creation of the [Southeast Dignity not Detention Coalition](#), a coalition of immigrants, advocates, lawyers, and boots-on-the-ground organizations who fight for the end of immigrant detention in the Southeast.

By integrating legal education with strategic advocacy, legal service providers and community organizations can maximize the impact of their on-site initiatives. Whether through litigation, policy reform, public awareness, or coalition-building, legal rights presentations provide a crucial foundation for broader efforts to defend the rights and dignity of people in detention.

## **VIII. Conclusion**

Detention access is about human relationships and reliance that the basic tenets of due process will hold. In seeking access, it is paramount to find and nurture stakeholder relationships while also building strong allies. Together, these alliances can influence and leverage access points that will ensure a lifeline to people impacted by ICE detention. LSPs form a vast network of knowledge and should rely on one another to troubleshoot challenges they encounter and to be experts in their own regions.

## Template: Access Letter

Template request for permission to give legal rights presentation in a detention center

[Date]

Via Email

AFOD [Name]

Immigration and Customs Enforcement

[Email]

FOD [Name]

Immigration and Customs Enforcement

[Email]

Dear Officers,

[Name of organization] requests approval to conduct a pro bono legal rights presentation at [detention center name], consistent with ICE's Performance-Based National Detention Standards [citation to relevant PBNDS year and provision].

Our organization is recognized by ICE as qualified to provide legal rights materials and we attach here pre-approved materials from DHS/ICE that will form the basis of our presentations, along with the approval email. [Name of organization], the current Legal Orientation Program (LOP) provider in [detention center name] facilities, has confirmed that LOP does not address information to be provided in the legal rights presentation our organization seeks to deliver.

We kindly request:

1. Use of common areas for group presentations.
2. Confidential meeting space for individual consultations.
3. Access to speakerphones or cell phones for interpreter services.

To ensure equitable access, we ask that facility staff, or our representatives accompanied by facility staff, be permitted to announce the presentations in each dorm, provide a sign-up sheet, and notify individuals in segregation.

## **Proposed Schedule and Staffing:**

- **[Date]** – [Name of facility]

Presentations will take place at [time] until [time], followed by a Q&A and 4 to 6 hours of confidential individual meetings. Presentations will be staffed by the following people:

- [Name of person], [Name of organization] (Attorney)
- [Name of person], [Name of organization] (Law Student)
- [Name of person], [Name of organization] (Project Coordinator & Interpreter)
- [Name of person], [Name of organization] (Legal Assistant & Interpreter)

We also kindly request the following information 3 to 5 days before each session:

- Number of immigration noncitizens and housing units (pods).
- Noncitizens' countries of origin.
- Gender breakdown of noncitizens.

Finally, for your reference, I attach the following documents:

1. Legal rights presentation outline
2. Informational posters in various languages
3. Language statement for presentation delivery
4. Presenter IDs, bar cards, and supervision letters

For any questions, please contact [Name of person] at [Phone number] or [Name of person] at [Phone number].

Thank you for your time and consideration.

Sincerely,  
[Name of organization]

# Template: Legal Rights Intake

## LEGAL RIGHTS PRESENTATION INTAKE SHEET

INTERVIEWER \_\_\_\_\_ DATE \_\_\_\_/\_\_\_\_/\_\_\_\_

Follow up needed?

### INDIVIDUAL IDENTIFYING INFORMATION

FULL NAME: \_\_\_\_\_ A#: \_\_\_\_\_

REPRESENTED BY AN ATTORNEY?  No  Yes, Contact: \_\_\_\_\_

PERCEIVED RACE  Black  White  Hispanic/Latino  Asian/Pacific Islander  Indigenous  Arab/MENA

COUNTRY OF BIRTH \_\_\_\_\_

BEST LANGUAGE \_\_\_\_\_ FLUENCY IN ENGLISH?  Yes  No

DOB \_\_\_\_/\_\_\_\_/\_\_\_\_

GENDER IDENTITY  Male  Female  Non-binary  Transgender

Other: \_\_\_\_\_

SEXUALITY:  Gay/Queer  Bisexual  Other: \_\_\_\_\_

DISABILITY STATUS  No  Yes \_\_\_\_\_

DATE OF LAST ENTRY INTO U.S. \_\_\_\_/\_\_\_\_/\_\_\_\_

DATE OF INITIAL DETENTION \_\_\_\_/\_\_\_\_/\_\_\_\_

DATE OF ARRIVAL TO CURRENT FACILITY \_\_\_\_/\_\_\_\_/\_\_\_\_

UNIT AT FACILITY \_\_\_\_\_

**NOTES ON CASE INFORMATION**

[Large empty light green box for notes on case information]

**OPTIONAL INFORMATION REGARDING ACCESS TO LEGAL RIGHTS**

Yes	No	Have you experienced the following access issues?
		Issues communicating with counsel
		Issues with communication with officials in best language
		Issues with communication with medical/mental health providers in best language
		Issues with access to law library materials in best language
		<i>[Insert additional issues noted in rows below to better tailor future legal rights presentations]</i>


**ADDITIONAL NOTES ON LEGAL RIGHTS ACCESS**

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