

Attorney General Andrea Campbell
Civil Rights Division
Office of the Massachusetts Attorney General
1 Ashburton Pl.
Boston, MA 02108

March 9, 2023

Re: Request for Investigation into Civil Rights Violations as to Individuals Detained at Plymouth County Correctional Facility

Dear Attorney General Campbell,

People detained at the Plymouth County Correctional Facility (“Plymouth”) are being deprived of their civil rights. Certain conditions of detention at Plymouth are in clear violation of Massachusetts state laws as well as incorporated federal laws. As a result, the undersigned law school clinics, immigrants’ rights organizations, and legal services providers, which work alongside immigrants detained in U.S. Immigration and Customs Enforcement (“ICE”) custody in New England, as well as individuals and families impacted by ICE detention in Plymouth, file this civil rights complaint. We request that the Civil Rights Division of the Office of the Massachusetts Attorney General (the “Office”) open an investigation into the conditions at Plymouth.

Although advocates have documented a wide range of civil rights violations at Plymouth, this complaint focuses on the following deficiencies at Plymouth that deprive individuals of their civil rights: (i) barriers to attorney-client communications; (ii) obstacles to individuals’ communications with others, including family, friends, and potential attorneys; and (iii) insufficient language access for non-English speakers.¹

I. Introduction

Pursuant to an inter-governmental service agreement between Plymouth and ICE, ICE detains immigrants at Plymouth while they await immigration proceedings with life-altering consequences.² It is crucial that individuals facing such grave legal proceedings maintain the rights afforded to them by law, including the right to speak with attorneys, connect with family and friends outside the prison’s walls, and receive information in a language they understand. The current abuses of the law and deficient conditions at Plymouth constitute civil rights violations on each of these fronts and should be investigated.

¹ Other violations at Plymouth include lack of heat, substandard medical care, mistreatment during medical transport, limited access to nutritional foods, ineffective administrative grievance process, and more. All civil rights violations, even those that fall outside the scope of this complaint letter, should be investigated.

² See *Detention Management*, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, <https://www.ice.gov/detain/detention-management>.

We ask that the Office exercise its discretion to investigate Plymouth, as Plymouth must follow Massachusetts state laws because it is a Massachusetts state-run facility. The Massachusetts State Constitution and Bill of Rights, Massachusetts Civil Rights Act, and Massachusetts Code of Regulations, therefore, afford people detained at Plymouth various substantive and procedural protections. Plymouth violates each of these Massachusetts state laws and, in doing so, denies individuals detained at Plymouth essential substantive and procedural protections.

This complaint will first enumerate the specific conditions at Plymouth that violate Massachusetts state laws and, by incorporation, federal laws. Second, the complaint will enumerate legal support for these claims. Lastly, it will propose remedies, starting with the Office's investigation of Plymouth, to correct the ongoing state and federal law violations at Plymouth.

II. Communication-Related Conditions at Plymouth Prevent Meaningful Access to Attorneys, the Courts, and the Outside World

This complaint focuses specifically on Plymouth's communication protocols, including phone access, video-calling access, mail access, in-person visit access, and access to information in languages other than English, that violate the law.³ Plymouth's own internal policies state: "[i]nmates at Plymouth County Correctional Facility have access to: (1) [t]he courts (2) [t]heir attorneys and attorneys' authorized representatives..." and more, including friends and family.⁴ In practice, however, individuals detained in Plymouth do not have meaningful access to counsel or anyone else in the outside world.

Individuals in ICE custody at Plymouth are generally in concurrent immigration proceedings, where they face the possibility of being deported. In many cases, deportation may mean persecution, harm, or even death. In order to navigate those proceedings, immigrants must be able to communicate with attorneys and others outside of the facility, as well as understand and navigate programs inside of the facility. Their ability to do so is entirely dependent on the protocols in place at Plymouth.

At present, Plymouth's severe restrictions on phone calls, videoconferencing calls, mail, and in-person visits, as well as lack of access to information in languages other than English, cause individuals detained at Plymouth extreme difficulty in reaching anyone outside the prison's walls and, specifically, in preparing for their immigration cases.

A. Phone Access

Plymouth prohibits incoming telephone calls to people detained, pre-scheduled calls with people detained, and leaving voicemail messages for people detained. The only way for a person

³ The violations discussed herein are based on Plymouth's own written policies, surveys and interviews we conducted, and based on our own experiences as attorneys and community organizations working with individuals in ICE custody at Plymouth.

⁴ Plymouth County Sheriff's Department, Internal Policy 490 at 2.

detained at Plymouth to have a phone call is by making an outgoing call from inside the facility. Plymouth severely restricts when people detained can make these outgoing calls and limits to whom calls can be made at all. Plymouth essentially denies all international calls. No calls made from Plymouth are confidential.

First, Plymouth prohibits all incoming calls to the facility. Unlike many other facilities holding people in ICE custody, Plymouth does not allow attorneys and others to make incoming calls to people detained at the facility, even at a designated or pre-scheduled time.⁵ Attorneys and others are also not able to leave voicemail messages for people inside of Plymouth.

Second, the only way for an attorney or another individual to speak to someone detained in Plymouth on the phone is to wait for that individual to call during their recreation time. The recreation time blocks can change at the discretion of Plymouth, making it difficult to plan for such a call or be available to answer one. Additionally, some individuals need to skip meals to make calls. Because people detained in Plymouth cannot let their attorneys, families, and friends know when they will be calling, it is extremely difficult to ultimately connect with anyone outside of the facility by phone. One immigration attorney who has clients detained at facilities across the United States reported that Plymouth is by far the worst facility to arrange phone calls with their clients. As for family, some people detained at Plymouth have been deported without ever being able to speak with their families.

Furthermore, because of the communication conditions at Plymouth, people detained are unable to connect with many legal and community organizations by phone. Therefore, *pro se* individuals detained in Plymouth have difficulty reaching these organizations to obtain counsel in the first instance. Plymouth only allows detained individuals to call phone numbers on their list of approved numbers. Individuals are only permitted to make changes to their list of phone numbers four times per year. Some people detained at Plymouth report successfully calling legal organizations only approximately 30 percent of the time. People detained at Plymouth have also missed filing deadlines in their cases because they were unable to call attorneys in time. Even when individuals can connect with their attorneys over the phone, the Securus Technologies, Inc. (“Securus”) system, which is provided through a contract between Plymouth and Securus, does not permit them to call a third party, like an interpreter, therefore preventing people from speaking with attorneys who do not speak their same language.⁶ Phone calls are also cut off periodically after approximately 30 minutes.

Third, free phone calls are limited, including calls to attorneys, and including for indigent persons. Although Plymouth claims that it provides free phone minutes to individuals each month, many individuals are unable to access the free minutes. According to Plymouth’s contract with Securus, domestic calls cost 14 cents per minute plus applicable taxes.⁷ This is even true for calls with attorneys.⁸ There are also additional charges and processing fees to make calls, including a total of \$5.95 for each call for individuals without a Securus Advance Account, and a \$3.00

⁵ For a short period during the COVID-19 pandemic, Plymouth permitted attorneys to schedule times to call their clients. Therefore, Plymouth has the capability to schedule such calls, but they currently refuse to do so.

⁶ Contract between Securus Technologies, Inc. and Plymouth County Sheriff’s Department.

⁷ *Id.* at 28.

⁸ *Id.*

processing fee each time a Securus Advance Account is funded. Because ICE detains individuals at Plymouth that previously resided hundreds of miles away in states such as New Jersey, their attorneys and families are unable to make frequent visits to Plymouth to help them prepare for hearings, and such communication must be done over the phone. Preparing for hearings over the phone, which requires dozens of hours, is prohibitively costly for many people detained.

Fourth, people detained in Plymouth are prevented from communicating with individuals who do not reside in the United States. Although Plymouth's contract with Securus indicates that international calls cost 50 cents per minute,⁹ Plymouth staff have not allowed international calls. Individuals are also not allowed to use free minutes for international calls. At least one person was prevented from contacting an attorney located overseas when Plymouth staff prohibited them from adding that attorney's phone number to their approved call list. Plymouth staff stated that the person could not make international calls.

Finally, phone calls at Plymouth, even to attorneys, are not conducted in confidential spaces. People detained are only permitted to use the telephones in the dayroom of their housing units. These telephones are within clear auditory range of other people detained and guards. People detained at Plymouth regularly express discomfort discussing essential facets of their immigration cases knowing that others will be able to hear them speaking about persecution, family, and high-risk confidential information. There is no private location or dedicated phones for attorney calls.

B. Videoconferencing Access (via JurisLink)

Plymouth contracts with JurisLink, Inc. ("JurisLink") to provide videoconferencing between people detained and attorneys.¹⁰ Non-lawyers cannot use JurisLink, and Plymouth provides no videoconferencing option for them. Even for attorneys, videoconferencing at Plymouth is essentially not an option due to its prohibitive cost. Though video calls, unlike phone calls, can be scheduled by attorneys in advance, video calls cost a minimum of \$69.99 for a 30-minute call outside of a 35-mile radius from Plymouth.¹¹ Most, if not all, immigration attorneys with clients at Plymouth are located over 35 miles from the facility. To be clear, this means videocalls cost a baseline of \$69.99 for 30 minutes, \$139.98 for 60 minutes, and \$209.97 for 90 minutes.¹² This is an extreme expense, far too expensive for most people detained or attorneys to use regularly. Immigration cases for individuals in removal proceedings typically require dozens of hours of meetings with clients, if not more, which would cost thousands of dollars per case. Meanwhile, six other Houses of Correction in Massachusetts – Berkshire, Franklin, Hamden, Hampshire, Middlesex, and Worcester – offer free Zoom for attorney-client communications. Other immigration detention facilities across the United States also offer free Zoom and other videoconferencing options for attorney-client communications.

Finally, upon information and belief, Plymouth overrode the Massachusetts standards for competitive procurement to contract with JurisLink, allowing JurisLink to charge these extremely high fees. A "Competitive Procurement Exception Explanation Form" executed by

⁹ *Id.*

¹⁰ Contract between JurisLink, Inc. and Plymouth County Sheriff's Department.

¹¹ *Pricing*, JURISLINK, <https://jurislink.com/pricing>.

¹² *Id.*

JurisLink in April 2020 indicates no effort was made to examine alternatives to JurisLink because “only one practicable source exists,” that is, “JurisLink, Inc. is the only vendor which meets the needs of attorney/client privacy.”¹³ That is incorrect, given that other Houses of Correction and immigration detention facilities use free videoconferencing options that meet the needs of attorney-client privacy. This contract gives JurisLink a blank check to charge enormous fees directly to counsel.

Without access to affordable and confidential calls – either phone or video – individuals detained at Plymouth are effectively unable to access, much less work effectively with, counsel for their immigration proceedings.

C. Mail Access

In addition to phone and video call issues, Plymouth also limits people’s ability to send and receive mail in a reasonable time frame.

Plymouth does not provide a scale to weigh outgoing mail, so people detained there are resigned to guess how much postage is required. Because Plymouth limits how many stamps a person can purchase at a time, people detained in Plymouth do not want to spend extra stamps on postage that does not require it. However, if a person detained at Plymouth underestimates how much postage is required, they risk their mail being returned and further delayed. Plymouth also unnecessarily delays sending outgoing mail. It can take more than three weeks for attorneys of people detained to receive mail from their clients at Plymouth, even if the person detained sent the mail via overnight courier. One individual detained reported difficulty getting stamps in a timely manner, since he could only purchase stamps once per week.

Incoming mail is also delayed and sometimes opened. Plymouth will not provide incoming legal mail to people detained in its custody unless Plymouth staff can verify the sender is, in fact, an attorney. When an attorney sends a client legal mail, Plymouth staff holds the mail until they can reach the sender to confirm their attorney status. In certain circumstances, Plymouth may need to open the legal mail to identify the sender’s contact information. If Plymouth cannot reach the sender, Plymouth will reject the legal mail.

This policy also demonstrates that legal mail at Plymouth is not confidential. Individuals detained at Plymouth have received legal mail that, in addition to being severely delayed, has previously been opened by Plymouth staff. Legal mail is already not a sufficient alternative to robust, confidential phone or video calls; when legal mail is delayed and opened, it is even less functional as an alternate means of communication.

Pursuant to Plymouth’s contract with Securus, incoming mail from non-lawyers has to be sent through the Securus Digital Mail Center located in Missouri – not to Plymouth in Massachusetts. The center scans the mail and sends an electronic copy to Plymouth. Often the scanned mail is hardly legible or distorted from the original. Individuals also have difficulty accessing scanned mail because Plymouth has very few computers to access the mail and the

¹³ Contract between JurisLink, Inc. and Plymouth County Sheriff’s Department at 14.

computers are frequently not working and not repaired after requested by detained individuals. Even when Plymouth staff prints a copy of the scanned mail for individuals, the mail is often delayed and difficult to read. Timely processing of incoming and outgoing mail is particularly important because Plymouth does not allow for the exchange of documents during in-person visits.

D. In-Person Visits

In-person visits are not a sufficient alternative to phone, videoconferencing, or mail access to people detained in Plymouth. The vast majority of immigration attorneys with clients in Plymouth – as well as the individuals’ families and friends – are located far from the facility and need regular phone and video access to prepare the individuals for high-stakes immigration hearings. Furthermore, visiting people detained in Plymouth is difficult and time-consuming.

For attorney visits, individuals detained at Plymouth can decide whether the visit is a “contact” or “non-contact” visit. They must complete an “ICE Detainee Consent to Contact Visit Form,” which states that if they “choose to receive the Contact Visit [they] will be required to submit to a Strip Search at the completion of the Contact Visit.” This is in violation of ICE’s own standards which state that “detainees shall not be subjected to a strip search after a visit by ... an attorney...[u]nless there is a specific and articulable suspicion that contraband has been transferred to a detainee.”¹⁴

If the person chooses to have a “non-contact” visit with an attorney, they are placed in a room with dividers of plexiglass between the person detained and the attorney. Communicating through the plexiglass divider requires talking through a corded phone. The phone has such poor auditory quality that it is often difficult to hear one another. Moreover, it is extremely difficult to use a language interpreter in the “non-contact” visit rooms. This makes it very difficult to convey critical information necessary for preparing clients for full and fair immigration hearings.

E. Language Access

Individuals detained at Plymouth who speak languages other than English are regularly denied their right to communicate with both Plymouth staff and the outside world.

Plymouth regularly has in its custody individuals from across the world who speak such languages as Arabic, Haitian Creole, Portuguese, Russian, Swahili, and Turkish, among others. Plymouth guards do not speak these languages, and only one Plymouth guard speaks Spanish. Plymouth’s written policy claims that it will “provide access to Telephonic Interpreter Services when a language barrier exists between inmates and staff which may inhibit the normal processes of the Department in providing services in a consistent manner.”¹⁵ Telephonic Interpreter Services is an on-demand telephone interpretation service through which the facility is supposed to call an interpreter to translate between the Plymouth staff member and the person detained. In reality, Plymouth regularly fails to use the Telephonic Interpreter Services or any other means of

¹⁴ ICE, 2011 PBNDS, Sec. 2.10 at 121.

¹⁵ Plymouth County Sheriff’s Department, Internal Policy 482 at 9.

interpretation with individuals who do not speak English. Plymouth’s law library also does not provide resources for people detained there who do not read English.

Because Plymouth regularly fails to use any interpretation services, people detained who do not speak English are not able to communicate with Plymouth staff, receive and respond to orders, or navigate medical care or other programs at Plymouth. One individual who could not read English was not able to get vaccinated in a timely manner because he was unable to fill out the medical form. People detained in Plymouth who cannot speak English also have difficulty with buying commissary items, making calls, and sending mail. Sometimes, people detained in Plymouth can ask other individuals who speak their language and English to interpret for them. However, the individual serving as an interpreter is often not fluent in one of the languages being interpreted. If there is no one else there who speaks their language and English, they are completely unable to communicate.

Because Plymouth staff give orders in English, people detained in Plymouth who do not speak English are less likely to be able to respond to orders. Therefore, people who do not understand or speak English have been improperly disciplined and sent to administrative segregation for not following orders from Plymouth staff that they do not, in fact, understand at all. Furthermore, interpreters are often not provided during medical appointments, medical transport, and discussion of post-operation instructions. Therefore, access to appropriate and timely medical assessment, treatment, pain relief, and medications are often delayed or ignored due to language barriers. Moreover, one detained individual mentioned that even simple written administrative requests submitted in Spanish get rejected and returned with the response that the request must be submitted in English.

III. Conditions at Plymouth Violate Massachusetts State Law

The current conditions at Plymouth violate the Massachusetts State Constitution and Bill of Rights, the Massachusetts Civil Rights Act, and the Code of Massachusetts Regulations (“CMR”).¹⁶

A. Massachusetts State Constitution and Bill of Rights

Plymouth is violating at least Article XII (Full and Fair Hearing), Article XVI (Freedom of Speech), Article CVI (Equal Protection), and Article X (Due Process) of the Massachusetts State Constitution and Bill of Rights.

Plymouth’s restrictions of outgoing calls, ban on incoming calls, exorbitant rates for video calls, and lack of confidentiality deprive people detained of their rights. Under Article XII: “every subject shall have a right to produce all proofs, that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his council

¹⁶ Massachusetts case law supports interpreting the definition of “inmate” in the Massachusetts Code of Regulations as applying to all persons incarcerated in state facilities. *See, e.g., Dexter v. Superintendent, Massachusetts Corr. Inst., Concord*, 36 N.E.3d 1280, 1282 (2015) (covering “all ... incarcerated at state correctional institution” including “pretrial” detainees and “transient inmates” in the definition).

at his election.”¹⁷ People detained in Plymouth can only “produce all proofs” in their immigration cases if they are able to communicate effectively and frequently with their attorneys, or, in the case of *pro se* individuals, with their families and friends who may hold important documents outside of the facility or are needed to submit affidavits or appear as witnesses. Plymouth’s communication conditions as outlined above prevent people detained in Plymouth from adequately preparing to be “fully heard” in their immigration cases.¹⁸

In the case of *pro se* individuals, Plymouth’s severe limitations on outgoing calls and complete ban on international calls plainly violate *pro se* individuals’ right to a full and fair hearing. *Pro se* individuals rely on family and friends outside of the facility to obtain essential documents and evidence from the United States and abroad, such as birth certificates, tax returns, medical records, and records documenting employment, education, and police activity. Families and friends also help collect evidence regarding asylum eligibility, such as evidence regarding the political situation in a person’s home country or statements from witnesses regarding persecution. In this way, contact with family and friends provides much more than emotional support; it is an essential component of a person’s right to a fair hearing. As stated above, in some cases, people detained at Plymouth have been deported without ever being able to speak with their families while in detention.

In the case of represented individuals, Plymouth’s policies again prevent meaningful access to counsel and deprive people detained there of their right to a full and fair hearing. In the first instance, the restrictions on outgoing calls coupled with Plymouth’s intermittent blocking of legal organizations make it extremely difficult for a person detained to obtain counsel. In at least one case, someone transferred to Plymouth was unable to make outgoing phone calls to legal organizations on the pro bono list for weeks after arrival, could not find an attorney in time, and missed the deadline to file a brief for his petition for review. Furthermore, if a person at Plymouth is able to obtain counsel, they then face challenges in confidentially communicating with their counsel. Plymouth’s complete lack of confidential call spaces – that is, having all calls within the earshot of guards or other people detained there – means people detained in Plymouth cannot reasonably prepare their case telephonically. Nor is legal mail an option, as mail is delayed and at times opened outside the presence of the person detained. Even when an individual is represented by counsel, Plymouth’s conditions amount to a denial of that individual’s Article XII right to a full and fair hearing. The Plymouth communication conditions also violate Article XVI’s guarantee that “[t]he right of free speech shall not be abridged.”¹⁹ Individuals in detention have the constitutional right under both aforementioned Articles of the Massachusetts State Constitution to communicate with family, friends, and counsel outside.

¹⁷ MASS. CONST. art. XII.

¹⁸ See *Cacicio v. Sec’y of Pub. Safety*, 665 N.E.2d 85, 91 (1996) (“The constitutional right of access to the courts requires correctional officials ‘to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law.’”) (citing *Harris v. Commissioner of Correction*, 567 N.E.2d 906 (1991)).

¹⁹ MASS. CONST. art. XVI. See *Cacicio v. Sec’y of Pub. Safety*, 665 N.E.2d 85, 89-92(1996) (discussing inmates’ freedom of speech rights protected by the Federal and Massachusetts State Constitutions); *Commonwealth v. Odgren*, 130 N.E.3d 677, 694 (2019).

These communications are critical to keep in contact with family, friends, and counsel and to build their cases.

Furthermore, Plymouth's conditions of confinement violate Article CVI's promise that "[a]ll people are born free and equal and have certain natural, essential and unalienable rights[,] among which may be reckoned the right of enjoying and defending their lives and liberties."²⁰ Specifically, Article CVI guarantees that, "[e]quality under the law shall not be denied or abridged because of sex, race, color, creed or national origin."²¹ In contrast, Plymouth does not provide interpretive services to limited English proficient ("LEP") individuals in its custody, does not have translated works in the law library, and does not translate guard demands despite enforcing them via administrative segregation. The differential treatment of LEP individuals within Plymouth amounts to discrimination on the basis of national origin.

Finally, Plymouth conditions deprive people detained there of due process of the law, which requires their rights be fully realized, especially when their liberty is rescinded.²² Specifically, Article X promises that "[e]ach individual of the society has a right to be protected by it in the enjoyment of his life, liberty and property, according to standing laws" and "no part of the property of any individual, can, with justice, be taken from him, or applied to public uses without his own consent, or that of the representative body of the people."²³ People detained have a strong due process and liberty interest in seeking release from detention and in avoiding prolonged detention.²⁴ Without the ability to communicate with their attorneys and others to assist with their immigration cases, people in ICE custody at Plymouth are more likely to be deported to countries where they face persecution or death. This is a clear and significant risk to their liberty and lives. Moreover, the conditions of confinement in Plymouth are clearly not "according to standing law," as they violate not only the provisions of the Massachusetts State Constitution discussed above but also the Massachusetts Civil Rights Act and Code of Massachusetts Regulations discussed below.

B. The Massachusetts Civil Rights Act

Under the Massachusetts Civil Rights Act, no person "shall by force or threat of force, willfully injure, intimidate or interfere with, or attempt to injure, intimidate or interfere with, or oppress or threaten any other person in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the commonwealth or by the constitution or laws of

²⁰ MASS. CONST. amend. CVI.

²¹ *Id.* See *Commonwealth v. Roman*, 179 N.E.3d 1091, 1097 (2022) (explaining that courts' review of an equal protection claim under the Massachusetts Constitution is the same as or more protective of individual liberty than the U.S. Constitution).

²² See *Brangan v. Commonwealth*, 80 N.E.3d 949, 961 (2017) (explaining that "detention encroaches on that fundamental right insofar as it subjects a defendant to governmental restraint without having received the full measure of due process").

²³ MASS. CONST. art. X.

²⁴ See *Walsh v. Commonwealth*, 151 N.E.3d 840, 854 (2020) (describing that liberty and freedom from physical restraint are fundamental rights protected by Article X of the Massachusetts Constitution and that government restraints on liberty through detention must survive strict scrutiny).

the United States.”²⁵ In sharp contrast to this provision, Plymouth interferes with the rights of the people detained there, including the right to a full and fair hearing, the right to non-discrimination, and the right to due process of the law.

As it currently stands, obstacles to accessing and communicating with counsel and other outside contacts from within Plymouth greatly increases the risk of wrongful outcomes, delayed relief, and other significant and grave errors in the immigration proceedings of people detained. Without the ability to communicate with their lawyers and others, people who are detained will not be able to obtain evidence and adequately prepare for bond hearings, and, therefore, are more likely to be detained throughout their immigration proceedings. Eliminating the foregoing barriers to communication and language access is necessary to ensure detained individuals’ free exercise or enjoyment of their rights under the Massachusetts State Constitution, Massachusetts Bill of Rights, and the Massachusetts Civil Rights Act.

C. Code of Massachusetts Regulations

1. Phones

Plymouth unlawfully restricts access to phone calls in violation of various subsections of 103 CMR § 482, which governs telephone access and use in state-run correctional facilities.

Plymouth fails to provide people detained with a sufficient number of authorized telephone numbers, to which they can make unlimited calls without monitoring, in clear violation of 103 CMR § 482.06(3)(c), which stipulates that “[i]nmates may be allowed a total of 15 telephone numbers authorized for use in conjunction with the inmate’s PIN. Five of these numbers shall be reserved for attorney telephone numbers.”²⁶ Furthermore, Plymouth blocks people’s ability to make any international calls at all, violating 103 CMR § 482.06(5), stating people detained should “be allowed to call five international numbers in addition to the ten personal numbers that can be called collect/debit.”²⁷ As enumerated above, Plymouth either does not approve international numbers or makes international calls prohibitively expensive.

Plymouth also fails to provide confidential calls as required under 103 CMR § 482.07(1), which states: “telephone calls to pre-authorized attorney telephone numbers ... shall not be subject to telephone monitoring or recording.”²⁸ Phone calls in Plymouth must be made within auditory range of the guards in the day room. Access to confidential communication is critically necessary for lawyers to be able to provide effective assistance to the people detained.

²⁵ MASS. GEN. LAWS ch. 12, §§11H-J (2022) (“Massachusetts Civil Rights Act”). See *Larocque v. Turco*, 2020 WL 2198032 at 14 (Mass. Super. Feb. 28, 2020) (finding that inmates demonstrated a likelihood of showing that the Correctional Center interfered with their constitutionally guaranteed rights to assistance of counsel and meaningful access to the courts under the Massachusetts Civil Rights Act); *Murphy v. Bristol Cnty. Sheriff’s Off.*, 170 N.E.3d 348 (2021) (examining whether pretrial detainee held at the Bristol County House of Correction was deprived of constitutionally guaranteed rights under the Massachusetts Civil Rights Act).

²⁶ 103 MASS. CODE REGS. § 482.06(3)(c) (2022).

²⁷ 103 MASS. CODE REGS. § 482.06(5) (2022).

²⁸ 103 MASS. CODE REGS. § 482.07(1) (2022). See *Cacicio v. Sec’y of Pub. Safety*, 665 N.E.2d 85, 88 (1996) (explaining that, pursuant to 103 CMR § 482, inmate calls made to attorneys should not be monitored).

Finally, because of Plymouth’s various phone restrictions – including that people detained at Plymouth are only permitted to make phone calls during their recreation time, calls routinely cut off after 30 minutes, and people detained cannot receive or schedule calls – Plymouth violates 103 CMR § 948.10(1), which demands reasonable access to public telephones including “specific hours of telephone availability; length of calls; any limitations on phone calls; and responsibility for payment for call.”²⁹

2. Videoconferencing (JurisLink)

Plymouth’s current arrangement with JurisLink violates Massachusetts’ competitive procurement standards as enumerated in 801 § CMR 21.06: “[a]ll acquisitions of Commodities or Services, or both, must be competitively procured unless the acquisition qualifies as an exception[.]”³⁰ The same regulation further requires that “[a] Procuring Department shall be responsible for conducting a Procurement for single or multiple Contracts for Commodities or Services, or both, in accordance with 801 CMR § 21.00 and policies and procedures issued by ANF, OSD and CTR.”³¹ The JurisLink program is prohibitively expensive for people detained at Plymouth and astronomically more expensive than free videoconferencing platforms like Zoom and Skype used by other Houses of Corrections in Massachusetts and at other detention facilities across the country.

3. Mail

Plymouth unlawfully restricts access to mail in violation of 103 CMR § 481, which governs inmate mail, and 103 CMR § 948, which governs county correctional facilities mail and communication.

Pursuant to 103 CMR §§ 481.07(1)-(2) and 103 CMR § 948.03, outgoing mail should be collected and incoming mail shall be distributed on a regular schedule.³² Plymouth, however, delays access to incoming mail by calling attorneys to confirm their identity before passing the mail along, or by simply rejecting the mail altogether. Plymouth’s policies and practices related to mail render it a prohibitively slow form of communication for people detained trying to gather evidence and prepare for their hearings.

People detained at Plymouth sometimes receive legal mail which has already been opened, which clearly violates 103 CMR § 481.11(3) and 103 CMR § 948.06(2). Pursuant to 103 CMR § 481.11(3), incoming privileged mail “shall not be opened by a DOC employee except in the presence of the addressee inmate.”³³ 103 CMR § 948.06(2) states that privileged mail can only be opened in the presence of the addressed inmate “for the sole purpose of ascertaining that its

²⁹ 103 MASS. CODE REGS. § 948.10(1) (2022).

³⁰ 801 MASS. CODE REGS. § 21.06 (2022).

³¹ *Id.*

³² 103 MASS. CODE REGS. §§ 481.07(1)-(2), 948.03 (2022).

³³ 103 MASS. CODE REGS. § 481.11 (2022).

contents are free from contraband.”³⁴ Plymouth’s mail practices are in clear violation of these subsections of the CMR as well as Plymouth’s own policies regarding mail access.³⁵

4. Language Access

Plymouth’s failure to provide sufficient interpretive services to people of LEP violates 103 CMR § 900.07, a provision requiring non-discriminatory treatment. Under 103 CMR § 900.07, “[n]o person confined at any county correctional facility shall be denied the equal protection of the law nor shall be subject to discriminatory treatment on the basis of race, religion, creed, sex, sexual orientation, handicap or national origin.”³⁶ As explained above, people detained at Plymouth who are denied access to interpretive services are being subjected to discriminatory treatment on the basis of national origin. Plymouth does not provide adequate translation services for non-English-speaking people to communicate with their attorneys, medical professionals, or Plymouth staff. Due to this lack of services, people detained routinely have to translate for one another.³⁷

Pursuant to 103 CMR § 903.01, it is the Commissioner’s duty to ensure compliance with 103 CMR § 900.07, which the Commissioner has not done.³⁸ Therefore, the Commissioner as well as Plymouth are in violation of the CMR.

5. County Correctional Facilities: Legal Rights

Plymouth’s current conditions violate 103 CMR § 934.01, which broadly requires the protection of inmates’ rights, including “access to the courts,” “access to attorneys and authorized representatives,” and “a program designed to assist inmates in the preparation and filing of legal papers,” among others.³⁹

In accordance with this regulation, Plymouth should provide the following, at a minimum, in order to ensure that individuals’ rights are protected: access to attorneys, equal opportunity to access programs available to individuals detained in Plymouth, and a program that assists individuals with preparing and filing legal papers, which includes a law library and access to counsel.⁴⁰ As explained above, none of these rights are currently being realized in Plymouth. Plymouth’s restrictions on telephone access, complete lack of confidential calls, block on international calls and intermittent block on calls to legal organizations, delays in mail delivery, opening of confidential mail, and failure to provide services to LEP individuals in its custody are all ways in which Plymouth clearly violates 103 CMR §§ 934.01(1)-(3).

³⁴ 103 MASS. CODE REGS. § 948.06(2) (2022).

³⁵ See Plymouth County Sheriff’s Department, Internal Policy 481.

³⁶ 103 MASS. CODE REGS. § 900.07 (2022).

³⁷ Massachusetts already recognizes how important language access and inclusion is for Limited English Proficient (“LEP”) individuals. See, e.g., MASS. GEN. LAWS ch. 111, § 25J (2022) (requiring “competent interpreter services” for LEP individuals in acute-care hospitals). Two bills currently under review in the House, H. 3199 and H. 4872, would expand LEP individuals’ language access even further. See H. 3199, 192nd Gen. Ct. of Mass. (Mass. 2022); H. 4872, 192nd Gen. Ct. of Mass. (Mass. 2022).

³⁸ 103 MASS. CODE REGS. § 903.01 (2022).

³⁹ 103 MASS. CODE REGS. § 934.01 (2022).

⁴⁰ See *id.*; *Cacicio v. Sec’y of Pub. Safety*, 665 N.E.2d 85, 88-89 (1996).

IV. Conditions at Plymouth Violate Federal Law

In addition to Plymouth's conditions violating state law, they also violate federal law. Through the incorporation doctrine, certain violations of the federal Constitution and laws are made applicable to the states through the Due Process Clause of the Fourteenth Amendment and 42 U.S.C. § 1983.⁴¹ There are numerous federal law violations detailed below.

First, Plymouth's attorney-client call restrictions violate people detained in Plymouth's statutory and constitutional rights to counsel. Under 8 U.S.C. § 1229a(b)(4)(A), noncitizens "have the privilege of being represented, at no expense to the Government," by counsel of their choosing pursuant to the Fifth Amendment.⁴² Plymouth's attorney-client contact restrictions – on phone, videoconferencing, mail, and in-person access – essentially deny the right to counsel for people detained there, with potentially grave effects on the outcome of the proceedings.

Second, Plymouth's general conditions violate the statutory and constitutional rights to a full and fair hearing of the people detained there. Under 8 U.S.C. § 1229a(b)(4)(B), people detained have the right to a "reasonable opportunity" to present evidence. They also have the constitutional right, under the First Amendment, to "communicate with persons outside prison walls."⁴³ For *pro se* individuals, communications with family, friends, and potential attorneys are a critical way to gather information necessary for a full and fair hearing. Plymouth's communication restrictions violate all of these rights.

Third, Plymouth violates counsel's constitutional right to communicate with a client. Legal services providers have a First Amendment right "to speak with someone if they may need legal assistance."⁴⁴ Plymouth's attorney-client call restrictions and barriers to meaningful in-person visits violate this right.

Fourth, the conditions at Plymouth violate ICE's own standards in the Performance-Based National Detention Standards 2011, rev. 2016 ("PBNDS").⁴⁵ The PBNDS requires that

⁴¹ See, e.g., *Duncan v. State of La.*, 391 U.S. 145 (1968). For additional information on the incorporation doctrine, see *Incorporation Doctrine*, THE CORNELL LAW SCH. LEGAL INFO. INST., https://www.law.cornell.edu/wex/incorporation_doctrine (noting that "[i]ncorporation applies both substantively and procedurally").

⁴² See, e.g., *Hernandez Lara v. Barr*, 962 F.3d 45, 54 (1st Cir. 2020) (stating that the "statutory right to counsel is a fundamental procedural protection worthy of particular vigilance"); *Sanchez v. Sessions*, 894 F.3d 858, 862 (7th Cir. 2018) (noting that although noncitizens do not have a Sixth Amendment right to counsel, they do have "a Fifth Amendment due process right to a fair hearing" which can be curtailed if counsel is "precluded [] from reasonably presenting" an applicant's case).

⁴³ *Valdez v. Rosenbaum*, 302 F.3d 1039, 1048 (9th Cir. 2002); *accord Roy v. Stanley*, 110 F. App'x 139, 141 (1st Cir. 2004).

⁴⁴ *Torres v. DHS*, 411 F. Supp. 3d 1036, 1066 (C.D. Cal. 2019).

⁴⁵ U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, PERFORMANCE-BASED NATIONAL DETENTION STANDARDS, (2011, rev. 2016) ("PBNDS"). The National Detention Standards (NDS) 2019 is a separate set of standards issued by ICE that incorporates some aspects of the PBNDS. Plymouth must meet the standards outlined in both the PBNDS and the NDS 2019. This letter specifically focuses on PBNDS violations. For more information, see the FAQs on the ICE website at <https://www.ice.gov/detain/detention-management/2019>.

people detained have “reasonable and equitable access to telephones,”⁴⁶ free and direct calls to legal counsel and immediate family,⁴⁷ unrestricted number of calls to legal representatives with few exceptions,⁴⁸ and telephone access within 24 hours of a request.⁴⁹ Additionally, the PBNDS requires that individuals detained are able to receive incoming mail within one business day of receipt by facility,⁵⁰ send unlimited outgoing mail at their own expense,⁵¹ and send an unlimited amount of legal mail if indigent.⁵² Relatedly, the PBNDS states that legal mail can only be opened in the presence of the person detained and cannot be read by the facility.⁵³ Finally, the PBNDS requires that individuals detained with limited English proficiency receive communication assistance from the facility, including professional interpretation and translation services to provide meaningful access to programs and activities.⁵⁴ Plymouth’s flawed call restrictions, mail practices, and language access resources violate each of these PBNDS access standards.

Fifth, Plymouth violates the Department of Homeland Security’s (“DHS”) Language Access Guidance and Title VI of the Civil Rights Act of 1964.⁵⁵ The DHS’ Language Access Guidance clearly states: “Non-federal recipients of financial assistance from the Department have an obligation to take reasonable steps to provide meaningful access to persons with [limited English proficiency], as required by the Title VI of the Civil Rights Act of 1964 and the Departments’ implementing regulations.”⁵⁶ The current barriers to accessing telephonic interpretation at Plymouth are in clear violation of this Title VI requirement, given Plymouth’s receipt of DHS funds.⁵⁷

Finally, this letter reiterates specific complaints made by former organizations and individuals. Recent complaints against Plymouth were summarized in a memorandum from the DHS Office of Civil Rights and Civil Liberties to ICE dated January 5, 2022.⁵⁸ The complaints against Plymouth reported (1) limited access to attorneys, (2) violations of confidentiality in communications between attorneys and clients, (3) delayed or prevented receipt of legal mail, (4) hindered ability to send outgoing mail, (5) restricted access to phones, (6) blocked numbers to civil rights organizations, (7) a failure to provide international call options, (8) prohibitively high fees for call options, (9) denial of adequate access to family members without reason, and (10)

⁴⁶ *Id.* at 387.

⁴⁷ *Id.* at 388.

⁴⁸ *Id.* at 389.

⁴⁹ *Id.* at 388.

⁵⁰ *Id.* at 359.

⁵¹ *Id.* at 358.

⁵² *Id.*

⁵³ *Id.* at 359-60.

⁵⁴ *Id.* at 20.

⁵⁵ 76 FED. REG. 21,755 (Apr. 18, 2011).

⁵⁶ *Id.*

⁵⁷ *See, e.g., Alexander v. Sandoval*, 532 U.S. 275, 280–81 (2001); *United States v. Maricopa County*, 915 F.Supp.2d 1073, 1079-81 (D. Ariz. 2012); *Almendares v. Palmer*, 284 F.Supp.2d 799, 807–08 (N.D. Ohio 2003).

⁵⁸ A January 5, 2022 memo from the DHS Office for Civil Rights and Civil Liberties to ICE summarizes recent complaints made against Plymouth. *See* Memorandum from Dana Salvano-Dunn, DHS-CRCL, to Tae D. Johnson, ICE (Jan. 5, 2022), *available at* https://www.dhs.gov/sites/default/files/2022-08/2022.01.05%20CRCL%20Retention%20Memo%20to%20ICE%20-%20Plymouth%20Facility%20PCCF%20-%20Redacted_508.pdf.

lack of adequate language translational and interpretation services, among others. The numerous complaints by other organizations and individuals about Plymouth corroborate the federal and state law violations described in this letter.

Plymouth's current practices violate both state and federal law, with extreme consequences for people detained there who cannot access counsel, cannot communicate with friends and family, and cannot prepare for hearings. These violations require immediate attention and remedies.

V. Proposed Remedies

We respectfully request that the Office exercises its discretion to open an investigation into the civil rights violations at Plymouth. There is an urgent need to take action and address the ongoing civil rights violations occurring at Plymouth. Currently, people detained at Plymouth are deprived of their civil rights, blocking their access to counsel and the outside world, as they face proceedings that could result in persecution or death. The administrative grievance processes made available to individuals detained at Plymouth are futile without a third-party adjudicator. The same staff members mentioned in complaints are responsible for reviewing the complaints. Moreover, the detainees are subjected to retaliation. Complainants urge that the Office instruct Plymouth to implement the following remedies in response to the ongoing civil rights violations at Plymouth. All of the remedies should be implemented in a consistent, reliable, and nondiscriminatory manner.

- A. **Ability to communicate with attorneys and family members:** In order to comply with Massachusetts state law and federal law, Plymouth must establish sufficient communication services. All legal communications – phone, videoconferencing, mail, and in-person – should be completely private, unrecorded, unmonitored, reliable, and free.⁵⁹ With regards to confidential attorney-client communications, Plymouth must provide private, confidential spaces for phone calls. Legal services providers should be able to schedule calls in advance, and Plymouth must give them enough time on the call to discuss their case. Furthermore, Plymouth should implement a process by which attorneys can call the facility and request that their client call them. Both those who already have secured counsel and those who are seeking counsel should be able to receive and return these messages from legal services providers. Communicating with family members should be affordable for people detained. Plymouth must not breach attorney-client confidentiality. Phone access should be made available during a wider range of times, especially to accommodate international calls.
- B. **Phones:** In order to comply with Massachusetts state law and federal law, Plymouth must provide sufficient time during the day and evening to make outgoing telephone

⁵⁹ Other ICE detention centers have been able to provide for confidential calls between attorneys and detained clients, to allow detainees to schedule phone calls in advance, and to extend the length of phone calls. *See, e.g., Lyon v. ICE*, No 3:13-cv-5878 (N.D. Cal.) (explaining that as part of the settlement agreement, ICE would provide private phone rooms where detainees could make confidential calls to attorneys at no cost and would either extend or eliminate the automatic cut-off time for phone calls). Just as it was feasible for the other ICE detention centers, it is feasible for Plymouth to implement these changes to their phone procedures.

calls; the ability to call telephone numbers without the need for authorization; and, if authorization is required, a sufficient number of authorized telephone numbers to which detained people can make unlimited calls in a timely fashion, which must include attorney numbers and international numbers. As stated above, Plymouth must provide truly confidential spaces from which people detained there can make private legal calls without anyone overhearing, as well as the option for attorneys to pre-schedule confidential legal calls.

- C. **Videoconferencing:** In order to comply with Massachusetts state law and federal law, Plymouth should provide people detained with affordable and regular access to videoconferencing services. Plymouth should end its contract with JurisLink, as the current contract violates Massachusetts state laws on competitive procurement. Plymouth should implement a free or affordable videoconferencing option, such as Skype or Zoom, which other facilities have already done, and make videoconferencing available to non-lawyers, including families and friends of people detained.
- D. **Mail:** In order to comply with Massachusetts state law and federal law, Plymouth must ensure that legal and nonlegal mail is collected and delivered in a timely and legible manner. Plymouth must allow individuals detained to weigh and accurately stamp their correspondence, as well as provide sufficient stamps to do so. Legal mail should only be opened in the presence of the person detained, and Plymouth should ensure that the legal mail is kept confidential and is only read by the person detained. Packaging, sending, and receiving mail should be affordable for people detained.
- E. **In-Person visits:** In order to comply with Massachusetts state law and federal law, Plymouth must allow individuals the ability to have contact visits with their attorneys without receiving a strip search afterwards. Non-contact visits must use reliable technology that allows the visitor and person detained to hear one another and converse freely, and Plymouth must allow the use of an interpreter. In-person visits must not be used as an alternative to phone, video, or mail access.
- F. **Language Access:** In order to comply with Massachusetts state law and federal law, Plymouth must provide sufficient interpretive services. These services should be provided as formal translation services, rather than people detained translating for one another. Plymouth should provide LEP people with interpreters to interact with attorneys, medical professionals, and Plymouth staff. Plymouth must also provide a cost-effective and functional means of accessing remote interpretation services for attorney phone calls and visits. Similarly, medical and mental health services should be provided in multiple languages, or an interpreter should be made available.

VI. Conclusion

The conditions of confinement at Plymouth clearly violate Massachusetts state law and federal law and deny people detained of their rights to a full and fair hearing, equal protection, and meaningful access to counsel, among others. For someone detained, contact with the outside

world is much more than a privilege or luxury; it is the only way a person can prepare for a hearing from inside the prison's walls. Severe restrictions on phone calls, video calls, mail, in-person visits, and information in languages other than English mean that individuals in ICE custody face deportation without being able to access help from the outside.

We respectfully request that the Office exercise its discretion to open an investigation into the Plymouth County Correctional Facility and implement the remedies stated above.

If you have any questions regarding this Complaint, please contact Sameer Ahmed, Clinical Instructor at the Harvard Immigration and Refugee Clinical Program, at sahmed@law.harvard.edu or (617) 384-0088.

Sincerely,

Boston Immigration Justice Accompaniment Network

Prisoners' Legal Services of Massachusetts

Massachusetts Law Reform Institute

Massachusetts Immigrant & Refugee Advocacy Coalition

American Friends Service Committee Immigrant Rights Program

New Haven Legal Assistance Association

Harvard Immigration and Refugee Clinical Program