

## **ADVISORY: Current Practice under *Lyon v. ICE* Settlement Agreement – May 2018**

In *Lyon et al. v. ICE et al.*, N.D. Cal. Case No. 3:13-cv-05878 (EMC), ICE agreed to implement significant changes to allow immigration detainees at the four immigration detention facilities housing immigrants with proceedings in the San Francisco Immigration Court to contact lawyers and others as needed to advance their defenses and affirmative applications for benefits at issue in their removal proceedings. ICE's obligation to implement the telephone access provisions of the settlement agreement became effective on November 18, 2017. This advisory is to provide immigration attorneys and advocates an update on implementation of the *Lyon* settlement agreement and tips on how to communicate with clients in detention at Mesa Verde Detention Center ("Mesa Verde"), Rio Cosumnes Correctional Center ("RCCC"), Contra Costa/West County Detention Center ("CoCo"), and the Yuba County Jail ("Yuba").

This advisory will cover:

- How to have your telephone number added to the speed dial numbers that can receive direct, unmonitored calls from Mesa Verde, RCCC, and Yuba, free for attorneys that have *any* pro bono practice;
- Current practices for legal calls at CoCo;
- How to request private, unmonitored calls with detainees at each of the facilities (even if not on the speed dial list);
- How to send messages to detainees at each of the facilities; and
- A summary of phone options that should be available to detainees, with tips for detainees to access free, direct, and private legal calls; and
- Suggestions for troubleshooting and reporting problems obtaining telephone access under the *Lyon* settlement.

A complete copy of the settlement agreement is available here:

<https://www.aclunc.org/sites/default/files/2016.06.10%20Agreement%20-%20For%20Execution%20and%20Revised.pdf>.

An annotated copy of ICE's Standard Operating Procedures implementing the *Lyon* settlement is attached as Appendix A for your reference.

**Attorneys can receive direct, unmonitored calls from housing unit phones and phone booths.**

Do you want detainees to be able to call you easily on an unmonitored line, dial extensions, and leave you voicemail messages?

Email [SF.ClientCall@ice.dhs.gov](mailto:SF.ClientCall@ice.dhs.gov) and ask that your number be added to the no-positive acceptance database. Your number will *not* be posted in the facility.

If you *ever* provide pro bono representation in immigration court, ask that your number be added to the free call platform. Detainees at all four facilities will be able to call you directly from the housing unit phones during waking hours.

If you do not provide pro bono representation, you can be added to the no-positive acceptance database, but you or your client will have to pay for the call. At Mesa Verde, RCCC, and Yuba, detainees can make direct, unrecorded, and paid calls to you from the housing unit phones.

Detainees can also call you from private phone booths. At Mesa Verde, RCCC, and Yuba, detainees who have your designated speed dial will be able to call you from the phone booths. If they are in a housing unit without a phone booth or are in administrative segregation, they can request access to a phone booth, which must be accommodated within two hours.

West County Detention Facility (CoCo) also has phone booths but a detainee is not able to dial directly from the phone booth. Detainees must be provided assistance from deputies to place unmonitored, direct calls to attorneys from phone booths in the pods.



## How to Navigate Communication Options at the Four Facilities

At all four facilities, attorneys and detainees can request legal calls. Mesa Verde, Yuba, and Contra Costa have private rooms where detainees can take the calls. RCCC has installed a phone booth in the library for this purpose.

Attorneys can request to schedule a call at a particular time. Attorneys should specify that the call should be scheduled in a private room and include the name of the facility where the detainee is housed. If you need more than 30 minutes, be sure to request a specific time period for your call. Attorneys need not have a G-28 on file to request a call with a detainee.

Detainees can request private phone room calls with attorneys for particularly lengthy or sensitive calls, or calls to attorneys that are not on the pro bono or no-positive acceptance databases. Detainees can also request phone room calls to individuals and offices they need to contact to get information or support for their immigration cases.

Lawyers and others can also send or leave non-confidential messages for detainees. Messages must be delivered within 24 hours. If a message is marked as emergency (non-attorney) or urgent for attorney messages, the message must be delivered as soon possible but not later than six-waking hours.

<p style="text-align: center;"><b>MESA VERDE</b></p> <p>To request a call with detainee, email: <a href="mailto:SFRClient.Message@ice.dhs.gov">SFRClient.Message@ice.dhs.gov</a> or <a href="mailto:BKL-MV-LYON@ICE.DHS.GOV">BKL-MV-LYON@ICE.DHS.GOV</a>. You can also call (661) 203-7709.</p> <p>To get a message to a detainee, call (661) 859-1028.</p>	<p style="text-align: center;"><b>WEST COUNTY DETENTION FACILITY (COCO)</b></p> <p>To request a call with detainee, email: <a href="mailto:SFRClient.Message@ice.dhs.gov">SFRClient.Message@ice.dhs.gov</a></p> <p>To get a message to a detainee, email <a href="mailto:ice-detainees@so.cccounty.us">ice-detainees@so.cccounty.us</a> with your message.</p>
<p style="text-align: center;"><b>RIO COSUMNES CORRECTION CENTER (SACRAMENTO)</b></p> <p>To request a call with detainee, email: <a href="mailto:SFRClient.Message@ice.dhs.gov">SFRClient.Message@ice.dhs.gov</a></p> <p>To get a message to a detainee, use the email platform available on the Sheriff's website: <a href="http://www.sacsheriff.com/inmate_information">www.sacsheriff.com/inmate_information</a>. Search for the detainee in the detainee information system and click on "Email this inmate" link.</p>	<p style="text-align: center;"><b>YUBA COUNTY JAIL</b></p> <p>To request a call with detainee, email: <a href="mailto:SFRClient.Message@ice.dhs.gov">SFRClient.Message@ice.dhs.gov</a> (Note: ongoing settlement violation at Yuba—phone room calls require positive assistance, so please be near your phone to accept the call. Also, automatic 20 minute cut-off, but detainees can call right back.)</p> <p>To get a message to a detainee, call (530) 749-7740.</p>

## A Few Additional Details

The *Lyon* Settlement is very detailed. Here are a few additional points that we hope will be helpful to detainees and their advocates:

- Expanded free direct calling to state and local government offices: Detainees can call certain government agencies directly and for free, including major police departments, county public defenders', and district attorneys' offices, through the pro bono platform. These calls can be made through the housing unit phones or phone booths, except that at CoCo detainees need deputies to dial calls made from the phone booths.
- Three-way calls: Detainees and attorneys can request three-way legal calls if they need an interpreter during the call.
- International calls: Detainees can request international legal calls to obtain records for their case.
- Language assistance: There should be written notices in ten languages posted near the housing unit phones in each facility instructing detainees to ask a facilitator for interpretation of telephone access instructions and assistance accessing telephones.
- Indigency: If a detainee cannot afford to pay for phone calls (must have less than \$15 on his or her commissary account for 10 consecutive days at time of request), ICE will provide extra phone room access or phone credit.
- Class Counsel can monitor compliance by (1) requesting telephone serviceability worksheets and grievances ("kites") detainees submit to ICE related to telephone access at a particular facility six times each year, and (2) conducting facilitated interviews with detainees at each facility once a year. The facilities will show a video regarding rights to telephone access under the *Lyon* settlement to all new detainees.

### Troubleshooting – Please Help Us Enforce the Settlement

Please contact the ACLU Foundation of Northern California if you or detainees you are in touch with are having trouble making full use of communications options required by *Lyon*.

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As of May 2018, we are trying to reach out to detainees to better understand how the settlement is being implemented. Please let us know if you have any suggestions.

**The most effective and important way for detainees to report problems with phone access is to submit complaint forms (“kites”) to ICE directly. Please spread the word to your clients and other detainees to report all communications problems through the ICE kite box in or near their housing units.**

We are aware of several problems in the facilities and we need your help identifying others and confirming facts related to the following:

#### *Mesa Verde*

- Attorneys have not been provided legal calls with detained clients at the designated time
- Attorneys have scheduled calls with detainees but the facility does not inform the attorney that the detainee is no longer housed there. The Facilitator does not verify the detainee’s presence until the actual date of the call.
- Attorneys are unable to speak to clients on the day of a court hearing unless they request it in advance

#### *Contra Costa*

- Deputies do not consistently allow phone access during non-free time hours
- Detainees have reported that deputies will not allow them to make legal calls to anyone other than an attorney
- Attorney requests to schedule calls lead to detainee receiving message, but not necessarily being brought to phone room
- Untimely delivery of messages

#### *RCCC*

- Detainees have difficulty navigating speed dial system
- Phone booths in housing unit are not sufficiently soundproof and TV blaring makes sensitive conversations difficult
- Attorney requests to schedule calls lead to detainee receiving message, but not necessarily being brought to phone room
- Untimely delivery of messages

#### *Yuba County*

- Facilitator does not assist detainees with legal phone calls. For example, detainees are told they have a legal call scheduled by an attorney but are not provided with the phone number to call

- Private phone room calls require positive acceptance and cut off automatically after 20 minutes.
- Not all deputies regularly accept phone requests.
- Many housing units lack phone booths and some of the phone booths lack phones.

None of the facilities have adequate instructions for using the phone systems and many detainees continue to be unaware how to access phones under the *Lyon* settlement.

If you speak to detainees that are experiencing these or other phone access problems, please share their contact information with the ACLU Foundation of Northern California.

# Appendix

## A



## LYON SETTLEMENT PHONE ACCESS PROCEDURES

**PURPOSE:** This is an announcement of new policies and procedures in response to the Lyon Settlement Agreement. If a current facility policy conflicts with any of the below listed procedures, these new procedures will supersede those and must be followed to ensure compliance. The following applies to all ICE detainees housed at this facility:

### Lyon Agreement Compliant Phone Policy and Procedures:

#### **1. Adding Free and Private Numbers to ICE Legal Phones**

- a. The free telephone platform has been expanded to include numbers for certain government agencies and offices and pro-bono attorneys (this list is maintained by ICE and its contractor Talton Communications). Detainees must be able to make free calls to these numbers without positive acceptance and without being recorded or monitored
- b. ICE Legal Phones must be enabled to allow paid calls to attorney phone numbers without positive acceptance and without being recorded or monitored.
- c. Adding and removing attorney phone numbers.
  - i. Pro-bono attorneys may request to be added to free call platforms.
  - ii. Paid attorneys may request to be added to the no-positive acceptance database.
  - iii. Both paid and pro bono attorneys may request to add, or remove, their numbers by emailing ICE at [SF.ClientCall@ice.dhs.gov](mailto:SF.ClientCall@ice.dhs.gov).
  - iv. All requests will be vetted by ICE, and routed to Talton or the local phone service provider at the facility, for inclusion in the appropriate platform or database
  - v. Detainees may also request that an attorney be added to the appropriate platform or database by notifying their ICE Deportation Officer. ICE will first confirm with the attorney that they wish to be added to the list before the request is routed.
- d. Platforms and databases will be updated weekly by ICE and may include toll-free or regular numbers.

This should include anyone who provides pro bono representation even if not in every case.

#### **2. Extending and Eliminating Automatic Cut-Offs**

- a. Pro-bono platform time limit will be extended to 60-minutes.
- b. ICE Legal Phone time limit will be extended to 40-minutes.
- c. Exceptions - Based on demonstrated circumstantial need, the facility may impose shorter limits, but must still guarantee a minimum of 20-minutes per call.

#### **3. Phone Booths in Housing Units**

- a. Phone booths must provide sufficient privacy to prevent conversations from being overheard.
- b. In periods of high demand, ICE detainees should have priority for use of the phone booths.
- c. Access shall be granted during waking hours, other than during count or lockdowns.

Lockdowns must be security-incident specific and not include general free time limitations

This should only be in practical circumstances, not as a regular practice



#### 4. Physical Access to ICE Legal Phones

- a. ICE Legal phones will be available for detainees at the following locations:
  - 7A – 2 phone booths located on the second-floor central terrace. Phone room located on housing unit interview room.
  - 7B - 2 phone booths located on the second-floor central terrace. 1 phone booth located on the bottom floor adjacent to the courtyard glass wall. Phone room located on housing unit interview room.
  - 8A - 2 phone booths located on the second-floor central terrace. 1 phone booth located on the bottom floor adjacent to the courtyard glass wall. Phone room located on housing unit interview room.
- b. Detainees are to have full access to phones, including phone booths, during waking hours (other than during count or lockdowns).
  - i. If detainees require assistance in accessing phones, staff should assist detainees within 2 hours, or by end of business day if request is made after 3:00 p.m.
  - ii. The facility will establish a process for detainees to notify the facilitator as needed to assist with calls.
  - iii. Delays in such assistance will in all circumstances be documented and reported to ICE.
  - iv. Access shall be allowed regardless of housing location (including, but not limited to administrative segregation).

Lockdowns must be security-incident specific and not include general free time limitations.

#### 5. Phone Rooms

- a. The Phone Room is available for detainees to make legal calls to attorneys or non-attorneys for particularly sensitive or lengthy legal consultations.
  - i. Calls will be confidential, free, direct, unrecorded and unmonitored
  - ii. For non-attorney legal calls, the detainee must first try to contact the intended recipient from the phone booth phones.
- b. Requests for legal calls should ordinarily be accommodated within 8 facility waking hours of request, and after no more than 24 hours.
  - i. Further delays may be justified but must be documented and reported to ICE.
- c. Detainees shall be allowed 30 minutes to make calls in the phone room.
  - i. More time may be requested.
  - ii. Facility reserves the right to limit call durations to as low as 20 minutes during high demand.
- d. The facility shall supply a request form to detainees to indicate the following:
  - i. amount of time requested, if more than 30 minutes is needed
  - ii. the name and number of the individual, agency or organization the detainee wishes to contact.
- e. Attorneys may also request to schedule a legal call in the phone room through the on-site facilitator
  - i. Advance coordination of call is only required with attorney-initiated calls.

This should be based on particular circumstances and not a general policy

Send an email to  
SFRClient.Message@ice.dhs.gov.  
If you need more than 30 minutes,  
be sure to request a specific time  
period for your call.



- f. Facilities may do on-the-spot vetting to verify the identity of the call recipient. The officer shall not reveal the detainee's custody status or location as part of the vetting.
  - i. Advance vetting shall be limited to internet searches only.
- g. The detainee will be permitted to leave a voicemail if the intended recipient does not answer the phone. Detainees shall also be permitted to navigate an automated voicemail tree to reach the intended recipient, including making additional attempts if they are unsuccessful the first time.

Practical Tip: Indicate urgency on message and call facility to alert them if you sent the message through the email system.

## 6. Messaging

- a. Legally-related, non-confidential messages shall be received primarily through an email-based system and must be delivered within 24-hours.
- b. Emergency messages and urgent attorney messages shall be delivered as soon as possible, and no later than six-waking hours.

## 7. On-Site Facilitators

- a. One or more telephone access facilitators shall be designated for each facility to ensure compliance with all phone access issues available on the ICE Legal Phones in the phone booths and phone room.
- b. The facilitator(s) will be on duty Monday-Friday during normal business hours. A back-up facilitator shall accommodate calls outside of normal business hours.
- c. The facilitators may be assigned to limited other duties as long as such duties do not prevent them from facilitating detainee requests for legal calls in a timely manner.
- d. Attorneys may request legal calls with detainees through an on-site facilitator.

## 8. Accommodations for Indigent Detainees

- a. The Settlement Agreement defines a detainee as indigent when they have had \$15 or less on their commissary accounts for the previous 10 days.
- b. Indigence shall be determined at the time of the initial call request, and each subsequent request for additional time.
- c. ICE shall provide accommodations to indigent detainees by either allowing extra access to phone rooms or by providing phone credit in a minimum of 30-minute increments per request.

## 9. International Calling

- a. Access shall be provided to detainees during waking hours.
  - i. Request must be accommodated within 72 hours.
  - ii. Requests made outside facility business hours shall be accommodated if possible.
- b. How to facilitate international calls:
  - i. If possible, legal calls will be made available through a Phone Room.
  - ii. If possible, free legal calls will be available for indigent detainees.
  - iii. If international calls are not available through ICE Legal phones or Phone Rooms, the facility shall accommodate requests through other means, such as visiting ICE agent cell phones.

## 10. Three Way Calling

1. For Yuba and Mesa Verde, you can call the main line and request that a message be delivered to detainee.

2. For RCCC, you can use the email platform available on the Sheriff's website.

3. For CoCo, email [ice-detainees@so.cccounty.us](mailto:ice-detainees@so.cccounty.us) with your message.



- a. Upon request and based upon a stated need, such as needing an interpreter to join a call, ICE will facilitate three-way calls in the Facility (preferably) or at the nearest ICE field office.
- b.

**11. Notice to Detainees of Telephone Options**

- a. Instruction sheets shall be posted in at least English and Spanish, explaining all telephone access options.
  - i. This must provide clear, step-by-step instructions on how to access and use the telephones and calling platforms available to detainees.
  - ii. The instructions must also explain how to request additional telephone access.
  - iii. Detainees must also be informed that they should contact ICE or the facility if they have difficulty making a legal call.
- b. A detainee video explaining telephone access issues shall be shown weekly to ensure all newly housed detainees are able to view it.

**12. Accommodations for Language Minorities**

- a. Facilities shall provide interpretation of telephone materials and instructions, through the use a language line if necessary, if detainee is unable to read English or Spanish.
- b. ICE will provide, and the facility must post, instructions directing detainees to ask the facilitator or housing unit officer for interpretation and assistance accessing phones.
  - i. These instructions shall be posted in the ten most commonly used languages by detainees according to the San Francisco Immigration Court.
  - ii. A speed dial code for the ACLU of Northern California shall be included on this notice to report problems accessing telephones.

U.S. Immigration and Customs Enforcement  
Enforcement and Removal Operations  
Custody Programs

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Appendix – Email Inbox Process Flow Chart

