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10 **UNITED STATES DISTRICT COURT**
 11 **CENTRAL DISTRICT OF CALIFORNIA**

12 **FREEDOM FOR IMMIGRANTS,**

Case No. 2:19-cv-10424

13 *Plaintiff,*

**COMPLAINT FOR INJUNCTIVE
 AND DECLARATORY RELIEF**

14 vs.

15
 16 U.S. DEPARTMENT OF HOMELAND
 17 SECURITY (“DHS”); CHAD F. WOLF,
 18 acting in his official capacity as Acting
 19 Secretary of DHS; U.S. IMMIGRATION
 20 & CUSTOMS ENFORCEMENT
 21 (“ICE”); MATTHEW T. ALBENCE,
 22 acting in his official capacity as Acting
 Director for ICE; and DEREK N.
 BENNER, acting in his official capacity
 as Acting Deputy Director for ICE,

23 *Defendants.*

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INTRODUCTION

1. In 2013, Plaintiff Freedom for Immigrants (“FFI”) created a free and confidential National Immigration Detention Hotline (the “Hotline”) for persons in immigration detention to report abuse, find resources, and bridge the divide between detained persons and their family and loved ones. FFI’s Hotline was desperately needed. FFI received between 600 and 14,500 calls per month from persons in immigration detention around the country, who called the Hotline at no cost. The Hotline enabled FFI to monitor conditions in detention facilities and advocate on behalf of detained immigrants through legal action, political advocacy, and media coverage. Detained immigrants used the Hotline to report instances of abuse and mistreatment at detention facilities around the country operating under the control and oversight of Defendant U.S. Immigration & Customs Enforcement (“ICE”). As a result of reports received via the Hotline, FFI was been able to draw attention to the physical and verbal abuse of detained persons, as well as ICE’s failure to ensure the provision of necessary medical treatments.

2. *Orange is the New Black* (“OITNB”), a popular Netflix show about life in U.S. prisons and immigration detention, prominently featured FFI’s Hotline in Season 7 as a lifeline for those in detention. After Season 7’s national premiere in July 2019, dozens of media outlets covered FFI’s work, and FFI spoke out about the medical neglect, labor exploitation, and sexual abuse happening in detention facilities.

3. On the show, one *OITNB* character, Gloria Mendoza, provides another character potentially facing deportation, Maritza Ramos, with a four-digit telephone extension so she can contact FFI’s Hotline for help. Presciently, Gloria warns Maritza that, “You gotta be careful though. Apparently as soon as Big Brother figures out you’re using the hotline, they shut it down.”

4. In the most perverse form of art imitating life imitating art, ICE did just as Gloria Mendoza warned: it prohibited persons in detention from free access to the

1 Hotline. ICE’s action occurred within two weeks of *OITNB*’s Season 7 premiere.
2 This action was only the latest in a long history of retaliation against FFI for FFI’s
3 speech and advocacy against inhumane, illegal, and immoral treatment of persons in
4 immigration detention.

5 5. ICE’s shutdown of the Hotline violates FFI’s First Amendment rights to
6 be free from retaliation for engaging in protected speech, and to speak freely to, and
7 associate with, persons in immigration detention. The shutdown also violates the
8 First Amendment rights of detained immigrants, who, without the Hotline, either are
9 unable to contact FFI at all or can only do so by paying exorbitant fees, as calls can
10 cost upwards of \$1 a minute.

11 6. Just as the First Amendment protects the right to speak, so too does it
12 guarantee that one will not be punished for exercising that right. Frustrated as ICE
13 may be that FFI is providing resources to immigrants and shining a light on
14 otherwise hidden actions, Defendants may not punish FFI (or the immigrants they
15 assist) for doing so.

16 7. FFI seeks injunctive and declaratory relief to vindicate its First
17 Amendment rights, and the First Amendment rights of persons in immigration
18 detention, by declaring ICE’s actions unconstitutional and reinstating the Hotline so
19 that its vital work monitoring conditions in detention facilities and assisting detained
20 immigrants may continue.

21 **JURISDICTION AND VENUE**

22 8. This Court has subject matter jurisdiction under 28 U.S.C. § 1331
23 because Plaintiff’s claims arise under the laws and Constitution of the United States,
24 including the First Amendment. This Court has authority to grant declaratory relief
25 under 28 U.S.C. § 2201.

26 9. Venue is proper in this District under 28 U.S.C. § 1391. A substantial
27 part of the events giving rise to this action occurred in this District, as Plaintiff
28 manages the Hotline out of its offices in Santa Monica, California.

PARTIES

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2 10. Plaintiff FFI, formerly known as Community Initiatives for Visiting
3 Immigrants in Confinement (“CIVIC”), is a community-based 501(c)(3) non-profit
4 organization based in California. FFI runs the Hotline and supports a national
5 network of visitation programs in immigration detention facilities. It is also
6 organized to disseminate ideas through the permissible, non-violent exercise of the
7 rights of free speech guaranteed to it by the First Amendment to the United States
8 Constitution.

9 11. Defendant U.S. Department of Homeland Security (“DHS”) is a
10 department of the executive branch of the United States government that is tasked
11 with, among other things, administering and enforcing the federal immigration laws.

12 12. Defendant Chad F. Wolf is the Acting Secretary of DHS. He is sued in
13 his official capacity.

14 13. Defendant ICE is the sub-agency of DHS that operates and oversees
15 immigration detention facilities.

16 14. Defendant Matthew T. Albence is the Acting Director for ICE. He is
17 sued in his official capacity.

18 15. Defendant Derek N. Benner is the Acting Deputy Director for ICE. He
19 is sued in his official capacity.

20 **FACTUAL ALLEGATIONS**

21 16. The United States immigration detention system detains upwards of
22 50,000 men and women in more than 200 detention facilities daily.¹ For Fiscal Year
23 2018, ICE booked-in 396,448 persons into immigration detention, an increase of
24 22.5% over the previous year’s 323,591 newly detained immigrants.² Sixty percent
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26 ¹ ICE provides recent statistics on the number of immigrants who are detained. *See*
27 *Detention Management*, ICE, <https://www.ice.gov/detention-management>. For
example, as of November 9, 2019, a total of 47,260 immigrants were detained, and as
of November 30, 2019, 44,860 immigrants were detained.

28 ² *See Fiscal Year 2018 ICE Enforcement and Removal Operations Report*, ICE,

1 of those people are held in privately-run prison facilities, run by private prison
2 companies such as GEO Group and Corrections Corporation of America/CoreCIVIC
3 (“CCA/CoreCIVIC”).³ ICE also detains immigrants in local jails and correctional
4 facilities run by local law enforcement.

5 17. Founded in 2012, FFI is a non-partisan, non-profit organization
6 dedicated to ending the isolation of persons held in immigration detention and
7 monitoring human rights abuses in detention facilities. FFI monitors conditions in
8 detention facilities through a free national telephone Hotline and a nationwide
9 network of visitation programs. Through person-to-person connections between
10 persons in immigration detention and FFI’s coalition of volunteers and members, FFI
11 strives to transform state and community responses to migration so that immigrants
12 are treated with dignity and are ensured the protections they are afforded under the
13 Constitution and the law.

14 18. FFI monitors detention conditions and gathers detained immigrants’
15 information and stories through the Hotline and its national network of visitation
16 programs. This on-the-ground monitoring enables FFI to report abuse of persons in
17 immigration detention and to shed light on detention conditions, including through
18 legal action, political advocacy, and, significantly, media coverage.

19 **FFI’s Prior Advocacy and ICE’s Retaliatory Responses**

20 19. FFI established and coordinates a national visitation program network
21 with visitation programs in 69 detention facilities across 26 states. FFI both runs its
22 own visitation programs and administers others in concert with local members of its
23 network, such as Friends of Miami Dade Detainees (“FOMDD”) and Friends of
24 Adelanto Detainees. Through FFI’s network, over 4,500 visitor-volunteers meet
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26 <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf>.

27 ³ See Livia Luan, *Profiting from Enforcement: The Role of Private Prisons in U.S.*
28 *Immigration Detention*, Migration Policy Institute (May 2, 2018),
<https://www.migrationpolicy.org/article/profitting-enforcement-role-private-prisons-us-immigration-detention>.

1 with immigrants in detention, usually on a weekly basis. These visitors are often the
2 only consistent community connection for persons in ICE custody, most of whom do
3 not have friends or family nearby. (In some instances, as has been well-reported,
4 their families have been forcibly separated from them.) Visitation programs can
5 lessen the emotional toll of confinement for persons in immigration detention by
6 providing sustained community support.

7 20. ICE has repeatedly interfered with FFI's network of visitation programs
8 in a retaliatory manner. On at least seven different occasions, ICE has terminated or
9 suspended visitation programs in FFI's national network without warning or
10 legitimate reason. Indeed, the only plausible explanation for ICE's actions is that
11 ICE sought to punish FFI (and in turn the immigrants that it assists) for FFI's
12 criticism of ICE and other officials involved in detention.

13 21. For example, in July 2013, FFI's co-founder, Christina Fialho, penned
14 an FFI blog post and two articles in *The Huffington Post*, each of which was critical
15 of immigration detention and ICE's poor administration of a deteriorating system.⁴
16 The second article, entitled "Who is Overseeing Immigration Detention?", brought to
17 light the mistreatment and verbal abuse of gay and transgender persons in
18 immigration detention at the Santa Ana City Jail in Southern California. Fialho
19 recounted her interviews with transgender persons who guards told to "use their male
20 voice" and "act male" on an almost daily basis and who had experienced months-
21 long delays to receive medication for hormone therapy, in violation of ICE's own
22 detention standards. Within 48 hours of publication, without explanation, ICE's Los
23 Angeles field office told organizations in FFI's visitation network that their visitation
24 programs at the Santa Ana City Jail, James Musick Facility, and Adelanto Detention
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26 ⁴ See Christina Fialho, *Detained U.S. Veteran on Hunger Strike at Eloy Detention*
27 *Center*, *The Huffington Post* (July 8, 2013), [https://www.huffpost.com/entry/john-](https://www.huffpost.com/entry/john-ferron-hunger-strike_b_3544687)
28 [ferron-hunger-strike_b_3544687](https://www.huffpost.com/entry/john-ferron-hunger-strike_b_3544687); Christina Fialho, *Who is Overseeing Immigration*
Detention?, *The Huffington Post* (July 22, 2013), [https://www.huffpost.com/entry/](https://www.huffpost.com/entry/who-is-overseeing-immigration-detention_b_3632009)
[who-is-overseeing-immigration-detention_b_3632009](https://www.huffpost.com/entry/who-is-overseeing-immigration-detention_b_3632009).

1 Facility (“Adelanto”) were suspended until further notice. When volunteers from
2 FFI’s network subsequently attempted to visit detained immigrants at Adelanto on
3 July 26, 2013, they discovered that ICE also had created a blacklist of persons
4 prohibited from visiting individuals at the facility that included FFI-affiliated
5 volunteers.

6 22. In FFI’s conversations with ICE about ICE’s suspension of FFI’s
7 visitation programs at Santa Ana City Jail, James Musick Facility, and Adelanto, Mr.
8 Andrew Lorenzen-Strait, then-Deputy Assistant Director for Custody Programs and
9 Community Outreach for ICE, informed FFI that ICE had shut down the visitation
10 programs because of FFI’s public statements criticizing ICE and immigration
11 detention. Incredibly, Lorenzen-Strait asked FFI to take down the “Who is
12 Overseeing Immigration Detention?” article published by *The Huffington Post*.
13 ICE’s own words revealed its retaliatory motive.

14 23. A similar pattern has played out many times since. ICE has completely
15 terminated or crippled FFI-affiliated visitation programs at Otay Detention Center in
16 San Diego, California, Broward Transitional Center in Pompano Beach, Florida,
17 Etowah County Detention Center in Gadsden, Alabama (“Etowah”), West County
18 Detention Facility in Richmond, California, and T. Don Hutto Residential Center in
19 Taylor, Texas. These shutdowns, like the shutdown described above, occurred
20 shortly after FFI and its members raised their voices to shed light on the abuses and
21 conditions in detention facilities. For example, on November 5, 2019, ICE
22 suspended the FFI-affiliated visitation program at Etowah less than 48 hours after a
23 peaceful protest outside the facility that included FFI members and volunteers. A
24 facility administrator specifically cited the protests outside the jail as the reason for
25 the suspension.

26 24. ICE has even taken retaliatory action against FFI after FFI filed formal
27 complaints. For example, on July 14, 2015, FFI filed an official complaint against
28 ICE with the Department of Homeland Security’s Office of Civil Rights and Civil

1 Liberties (“CRCL”) on behalf of detained immigrants at Etowah. The complaint
2 alleged systemic and severe abuses, including physical assaults of detained
3 immigrants to coerce them to sign removal documents and violations of medical and
4 mental health care standards. Less than two weeks later, on July 27, 2015, ICE and
5 the Etowah County Sheriff’s Department terminated FFI’s visitation program at
6 Etowah. In late September 2015, after protests and media coverage of the shutdown,
7 the Etowah County Sheriff finally notified FFI that they could again begin visiting
8 detained immigrants at Etowah.

9 25. The vast majority of times that ICE has retaliated by shutting down
10 FFI’s speech or access, ICE later reversed course, but only after further protest and
11 media attention. Even then, ICE has attempted to condition the reinstatement of
12 visitation programs on FFI’s relinquishment of its First Amendment rights. For
13 example, ICE has attempted to condition restoration of FFI’s visitation programs on
14 restrictive confidentiality agreements that would force FFI volunteers to indemnify
15 ICE from any liability “arising” out of the volunteers’ work—language that would
16 chill volunteers’ ability to raise concerns about the conditions they encountered
17 inside the detention facility.

18 **ICE’s Retaliatory Shutdown of the Hotline**

19 26. In 2013, FFI and FOMDD, a member of FFI’s visitation network, made
20 a formal proposal to ICE’s national office requesting a telephone extension on ICE’s
21 national platform. In December 2013, ICE provided FFI the telephone extension
22 number *9233# that operates as FFI’s national Hotline. Since then, the Hotline has
23 operated as a free and confidential phone line that persons in immigration detention
24 can use to contact FFI from any of the more than 200 detention facilities around the
25 country, all of which, on information and belief, operate under ICE’s oversight and
26 authority. The Hotline received between 600 and 14,500 calls per month, and FFI
27 saw a massive uptick in calls following the 2016 presidential election, receiving over
28 11,000 calls and 10,000 calls in January and February 2017, respectively.

1 27. FFI provides the Hotline number to persons in immigration detention
2 through its network of visitation programs, as well as through legal service providers
3 in areas without such programs. Using dedicated, trained volunteers to answer
4 Hotline calls, detained immigrants who reach the Hotline can report abuse and
5 mistreatment and file complaints with CRCL, which in turn enables FFI to monitor
6 detention conditions. FFI also directly supports individuals in detention through an
7 individualized case management and support system. (FFI does not itself provide
8 legal advice or representation through the Hotline.)

9 28. The Hotline also helps detained persons reconnect with their loved ones.
10 For example, Luis, a 57-year-old father from Central America, traveled to the
11 California border with his wife and three children seeking asylum. ICE separated
12 Luis from his family and detained him in Northern California. He called the Hotline
13 uncertain of his own future and worried for his family’s wellbeing. Around that
14 time, Luis’s wife also reached out to FFI to seek the organization’s assistance. Using
15 this information, FFI was able to let Luis and his wife know of each other’s
16 whereabouts. FFI then raised funds to pay Luis’s bond to release him from detention
17 and for airfare to Texas to reunite him with his family. FFI also connected Luis’s
18 family with a volunteer host family that provided them with a place to live. Without
19 the Hotline, this family may not have found each other in the sprawling and fractured
20 immigration detention system.

21 29. Importantly, the Hotline allows FFI to stay in contact with immigrants
22 no matter where they are detained. Detained immigrants are often transferred from
23 facility to facility, making the free and nationwide Hotline an essential tool to
24 maintain contact with people throughout the course of their detention.

25 30. In November 2018, less than a week after FFI filed a letter with ICE and
26 CRCL regarding the imposition of restrictions on a visitation program, ICE restricted
27 free access to the national Hotline to seven detention facilities in Florida. In an email
28 on November 19, 2018, Peter Meitzner, Contract Support to Custody Management

1 Division for ICE, told FFI that the restriction was due to a “recently completed pro
2 bono system audit.” FFI and its members made multiple entreaties to ICE to restore
3 the nationwide Hotline. This restriction also prompted 15 members of Congress to
4 send ICE’s Deputy Director a letter expressing their concern about ICE’s restriction
5 of the Hotline.⁵

6 31. On December 4, 2018, Julie Plavsic, a Senior Policy Advisor for ICE,
7 sent an email stating that the Hotline had been restored at one additional facility in
8 Florida and that the Hotline “will be considered for inclusion on lists outside of
9 Florida on a case by case basis.” Plavsic stated that a request for such inclusion
10 could be made with “the name (and/or Alien ID) of the detainee, and the requesting
11 facility.” Given that the Hotline’s effectiveness is closely tied to maintaining the
12 confidentiality of its callers, FFI refused to provide the identifying information that
13 ICE demanded (nor was it justifiable for ICE to request FFI to identify detained
14 immigrants who sought the Hotline’s assistance). On December 6, 2018, a follow-up
15 email was sent to Plavsic again requesting that ICE restore the Hotline nationwide,
16 this time offering a list of detention facilities from which FFI had received calls as
17 proof of the Hotline’s national reach. ICE did not respond to the request, and the
18 Hotline remained restricted at every other detention facility except the eight ICE
19 selected in Florida.

20 32. On July 26, 2019, Season 7 of *Orange is the New Black* (“*OITNB*”)
21 premiered on Netflix. In its first six seasons, *OITNB* focused on the lives of women
22 in U.S. prisons. In Season 7, the show established new storylines centered around
23 women in ICE custody, depicting the dire circumstances of persons in detention and
24 the challenges they face in seeking assistance from those outside the detention
25

26 ⁵ See Attachment A to Letter from C. Fialho and C. Galaz Re: Notice to Cease &
27 Desist Notice to Cease & Desist for Blocking Freedom for Immigrants’ ICE Pro
28 Bono Telephone Extension From Being Accessed Nationwide (Aug. 22, 2019),
https://static1.squarespace.com/static/5a33042eb078691c386e7bce/t/5d5ee9fac5f736000164e460/1566501374013/FFI_Letter.pdf.

1 facility's walls. One of the season's lead characters, Maritza Ramos, is an immigrant
2 woman in detention. FFI worked with the creators and producers of *OITNB* to help
3 depict life in detention and to promote the Hotline on the show. As such, the show
4 referenced FFI by name, highlighted its work helping persons in detention, and
5 prominently featured the FFI Hotline. The show makes clear that the Hotline is a
6 four-digit extension that persons in detention can call for free, and characters are
7 even shown accessing FFI's website to contact the Hotline.

8 33. *OITNB* focused national attention on FFI's work, resulting in dozens of
9 media outlets mentioning FFI and covering its work on behalf of detained
10 immigrants, including *People Magazine*, *Salon.com*, *Vanity Fair*, *Vulture*, *The Hill*,
11 and *Los Angeles Magazine*. FFI used this attention to further the conversation
12 around the abuses and conditions in immigration detention. For example, FFI staff
13 published an op-ed in *InStyle* highlighting the plight of a detained immigrant at Otay
14 in limbo waiting for his prescription medication, as well as the high rates of sexual
15 assault and allegations of forced labor violations at that detention facility. *OITNB*
16 executive producer Carolina Paiz also published an op-ed on *Buzzfeed* about her visit
17 to Adelanto with FFI, describing the inhumanity of immigration detention.

18 34. Within two weeks of *OITNB*'s premiere, on August 7, 2019, FFI
19 stopped receiving calls on the Hotline from the eight facilities where ICE had not yet
20 censored the Hotline. FFI and FOMDD contacted ICE seeking an explanation. On
21 August 15, 2019, Felicia Johnson, a Contracting Officer's Representative for ICE,
22 responded by email, copying Meitzner:

23 The current ICE Detainee Telephone Service (DTS) provider is Talton
24 Communications. Under Talton's contract with ICE, they have agreed to
25 add Executive Office for Immigration Review (EOIR) approved pro
26 bono attorney/organization telephone numbers to the pro bono platform
27 and to delete those numbers that no longer appear on the EOIR
28 approved list. This standardized process maintains the integrity of the
DTS platform which is meant to provide detainees with pro bono phone
access to vetted and legitimate pro bono legal assistance, while keeping
paid calls at reasonable rates as specified in the contract.

1
2 If a pro bono legal entity is not on the EOIR approved list, they may
3 follow the instructions at the following Department of Justice (DOJ)
4 link to be vetted and added to the EOIR list:
5 <https://www.justice.gov/eoir/list-probono-legal-service-providers>. Once
6 the pro bono legal entity is included on the EOIR list and Talton is
7 notified, they will be added to the DTS pro bono system. Note that the
8 EOIR list is updated quarterly and pro bono providers must re-apply
9 every three years. Entities no longer appearing on the EOIR list shall be
10 removed from the DTS pro bono system.

11 Non-EOIR approved providers have the option to create a prepaid
12 account to allow contact with the detainee(s) they are representing until
13 such time that the provider is included on the EOIR approved list. If you
14 have any further questions please feel free to contact (me) the
15 Contracting Officer's Representative (COR), Ms. Felicia Johnson at
16 Felicia.A.Johnson@ice.dhs.gov.

17 35. At no point in time prior to Ms. Johnson's email had ICE ever indicated
18 that FFI was required to appear on the EOIR-approved list in order to obtain or retain
19 a telephone extension. Nor has FFI ever appeared on that list—not in 2013 when
20 ICE granted the telephone extension or in the years thereafter when ICE maintained
21 the Hotline. Moreover, upon information and belief, at least one organization not
22 appearing on the EOIR list continues to operate an ICE-granted telephone extension.

23 36. On information and belief, each of the Defendants participated in the
24 decision to shut down the Hotline and/or took action to shut down the Hotline.

25 37. On August 22, 2019, FFI sent ICE, Matthew T. Albence, Derek N.
26 Benner, Johnson, and Meitzner a cease-and-desist letter explaining why ICE's
27 stance, as communicated in Ms. Johnson's August 15, 2019 email, could not be
28 reconciled with the agency's prior actions or statements. FFI demanded that ICE
reinststate FFI's telephone extension. Later, on August 22, 2019, Ms. Johnson replied
that ICE was "looking into th[e] matter" and would "respond shortly."

38. Rather than respond to FFI, however, ICE attacked the organization in
the press. On August 26, 2019, *The Washington Post* published an article entitled

1 “‘Orange Is the New Black’ highlighted an immigrant hotline. Then ICE shut it
2 down.”⁶ In that article, in contrast to Ms. Johnson’s e-mail, ICE spokesman Bryan
3 Cox stated that FFI’s telephone extension had been terminated because the “group
4 engaged in prohibited conduct” by permitting three-way calls and call forwarding.
5 Mr. Cox neither detailed the specific rules that FFI purportedly violated nor provided
6 any evidence in support of his accusations.

7 39. The Hotline remains shutdown and tens of thousands of persons in
8 detention remain unable to access a critical resource. As a way to mitigate these
9 harms, but in no way address them fully, FFI has deposited money into phone
10 accounts so that detained immigrants can continue to reach FFI. Because phone calls
11 can cost a detained person, who often does not have financial resources accessible in
12 detention, upwards of \$1 a minute, maintaining these accounts has come at
13 significant financial cost to the organization, not to mention the time required to
14 monitor the status of the accounts. Managing these accounts has hindered FFI’s
15 ability to perform its mission. Unfortunately, because FFI has been unable to fund
16 each phone account, FFI has lost contact with many detained immigrants. The
17 Hotline shutdown thus interferes with FFI’s work monitoring the abuses and
18 conditions at detention facilities.

19 40. ICE’s censorship of the Hotline also interferes with detained
20 immigrants’ efforts to report abuse, seek assistance, and reconnect with their loved
21 ones.

22 41. ICE’s shutdown of the Hotline has deprived FFI and detained
23 immigrants of their confidential method of communicating with each other. Prior to
24 the shutdown, ICE never indicated to FFI that Hotline calls would be monitored, and
25 FFI never received any warning that any Hotline call was being monitored. But, on
26

27 ⁶ Meagan Flynn, ‘Orange Is the New Black’ highlighted an immigrant hotline. Then
28 ICE shut it down., The Washington Post (August 26, 2019), <https://www.washingtonpost.com/nation/2019/08/26/oitnb-ice-immigrant-hotline/>.

1 information and belief, since the shutdown, the paid phone accounts FFI must now
2 use to speak with detained immigrants are monitored; FFI hears a pre-recorded
3 message on each call indicating that the call is monitored and recorded. FFI believes
4 that the lack of confidentiality will deter detained immigrants from reporting abuse
5 and seeking help, and FFI is concerned that its efforts on behalf of detained
6 immigrants who call FFI may lead to even further retaliation by ICE.

7 42. ICE's shutdown of the Hotline is the culmination of a years-long pattern
8 of retaliatory harassment and interference. ICE has repeatedly targeted FFI for its
9 protected First Amendment speech and impeded FFI's work to support and advocate
10 for detained immigrants across the country. Without an order from this Court, ICE's
11 violation of FFI's free speech rights will go unaddressed and FFI's work monitoring
12 our nation's detention facilities will continue to be impeded or obstructed. ICE's
13 unconstitutional conduct harms not only FFI, but also immigrants, whose ability to
14 contact FFI is hindered, and the public at large, who remain in the dark about what is
15 happening inside our nation's detention facilities.

16 **CLAIMS FOR RELIEF**

17 **COUNT 1**

18 **Violation of the First Amendment – Retaliation**

19 **(Against All Defendants)**

20 43. FFI repeats and realleges the preceding paragraphs as if fully set forth in
21 this Count.

22 44. FFI has engaged in speech protected by the First Amendment to the
23 United States Constitution, including criticizing U.S. immigration detention, helping
24 detained immigrants report and rectify abuses and poor conditions in immigration
25 detention, mobilizing public sentiment towards demanding accountability by ICE,
26 and urging government officials to change the immigration detention system.

27 45. Defendants have taken prohibited adverse actions against FFI, namely,
28 geographically restricting and then shutting down FFI's Hotline. Because the

1 Hotline is the only way for FFI to maintain contact with many detained immigrants,
2 is FFI's only method of speaking confidentially with detained immigrants, and is
3 critical to FFI's work monitoring abuse against those immigrants, Defendants'
4 shutdown of the Hotline would chill a person of ordinary firmness from continuing to
5 engage in the protected activity.

6 46. Defendants' adverse actions were motivated by their desire to retaliate
7 against FFI for engaging in protected speech and were intended to chill FFI's
8 protected speech. Defendants shut down the Hotline immediately after *OITNB*
9 publicized FFI's work and FFI spoke out critically about immigration detention
10 through national media outlets. Defendants had no legitimate reason to shut down
11 the Hotline. Before August 2019, Defendants had never conditioned FFI's use of the
12 telephone extension on its appearance on the EOIR-approved pro bono list, and upon
13 information and belief, other organizations continue to operate telephone extensions
14 though they do not appear on that list. Thus, to the extent there is any procedure or
15 policy in place, Defendants have engaged in selective and retaliatory enforcement.
16 This conduct fits squarely within a pattern of retaliatory conduct carried out by ICE
17 against FFI for more than half a dozen years.

18 47. Further, ICE's explanation for shutting down the Hotline has changed
19 over time, thereby suggesting that ICE's explanations are insincere and pretextual.

20 48. ICE's conduct constitutes unreasonable and unconstitutional
21 interference with and infringement of FFI's exercise of its rights of free speech and
22 free association under the First Amendment to the United States Constitution.

23 49. Defendants' actions have caused and will continue to cause FFI
24 irreparable injuries, including interfering with and infringing FFI's First Amendment
25 rights, frustrating FFI's mission, and causing FFI to divert significant resources to
26 engage with detained immigrants.

27 50. As a result, this Court should declare that Defendants' actions targeting
28 FFI based on its protected speech violated the First Amendment to the United States

1 Constitution, and enter a preliminary and permanent injunction reinstating the
2 Hotline and enjoining Defendants from further interference with FFI's First
3 Amendment rights.

4 **COUNT 2**

5 **Violation of the First Amendment – Freedom of Speech and Freedom of**
6 **Association**
7 **(Against All Defendants)**

8 51. FFI repeats and realleges the preceding paragraphs as if fully set forth in
9 this Count.

10 52. FFI has engaged and continues to engage in protected speech and
11 conduct, including, but not limited to, FFI's activism and advocacy on behalf of
12 detained immigrants through legal action, political advocacy, and media coverage.
13 FFI's advocacy depends on access to detained immigrants, who provide on-the-
14 ground information regarding abuses and conditions in immigration detention. FFI
15 has and continues to associate with detained immigrants to discuss and receive
16 information on conditions in detention facilities. FFI continues its efforts to
17 encourage greater numbers of detained immigrants to contact FFI and advocate for
18 their rights.

19 53. Defendants' decision to shut down FFI's Hotline because of its
20 protected speech abridges FFI's ability to engage in protected speech, has
21 significantly impeded FFI's ability to advocate its viewpoints, and has chilled FFI's
22 right to speak freely under the First Amendment. Defendants' shutdown of FFI's
23 Hotline also directly and substantially interferes with FFI's right to associate with
24 detained immigrants and has chilled FFI's freedom of association by obstructing
25 FFI's access to detained immigrants and depriving them of a confidential method of
26 communication with detained immigrants.

27 54. Defendants' selective enforcement of the regulations relating to the
28 provision of telephone extensions and its decision to shut down FFI's Hotline targets

1 speech based on its content, does not serve a compelling state interest, and is not
2 narrowly tailored.

3 55. Upon information and belief, Defendants shut down FFI's telephone
4 extension because of the group's protected speech. This impermissibly targets
5 private speech based on the viewpoint of the speaker.

6 56. Defendants' termination of FFI's telephone extension does not serve a
7 compelling state interest unrelated to the expression of ideas and is not the least-
8 restrictive means of regulating communication with detained immigrants.

9 57. The conduct outlined above constitutes unreasonable and
10 unconstitutional interference with and infringement of FFI's exercise of its rights of
11 free speech and free association under the First Amendment to the United States
12 Constitution.

13 58. Defendants' actions have caused and will continue to cause FFI
14 irreparable injuries, including interfering with and infringing FFI's First Amendment
15 rights, frustrating FFI's mission, and causing FFI to divert significant resources to
16 engage with detained immigrants.

17 **COUNT 3**

18 **Violation of the First Amendment – Freedom of Speech and Freedom of** 19 **Association**

20 **(Against All Defendants on Behalf of Detained Immigrants)**

21 59. FFI repeats and realleges the preceding paragraphs as if fully set forth in
22 this Count.

23 60. Detained immigrants have the Hotline to engage in protected speech and
24 conduct, including, but not limited to, reporting abuse and mistreatment suffered in
25 detention facilities.

26 61. Detained immigrants depend on their association with FFI to engage in
27 this protected speech, as FFI is often the only resource for them to report abuse at no
28 cost to a non-governmental organization.

1 62. Defendants' decision to shut down FFI's Hotline because of detained
2 immigrants' protected speech abridges the detained immigrants' ability to engage in
3 protected speech and to receive speech from FFI, has significantly impeded their
4 ability to advocate on their own behalf, and has chilled their right to speak freely
5 under the First Amendment. Defendants' shutdown of FFI's Hotline also directly
6 and substantially interferes with detained immigrants' right to associate with FFI and
7 has chilled detained immigrants' freedom of association by obstructing their access
8 to FFI and depriving them of a confidential method of communication to report
9 abuse and seek help.

10 63. Defendants' selective enforcement of the regulations relating to the
11 provision of telephone extensions and its decision to shut down FFI's Hotline targets
12 speech based on its content, does not serve a compelling state interest, and is not
13 narrowly tailored.

14 64. Upon information and belief, Defendants shut down FFI's telephone
15 extension because of detained immigrants' protected speech in conversations with
16 FFI, including speech exposing the mistreatment and abuse of detained immigrants.
17 This impermissibly targets private speech based on the viewpoint of the speaker.

18 65. Defendants' termination of FFI's telephone extension does not serve a
19 compelling state interest unrelated to the expression of ideas and is not the least-
20 restrictive means of regulating communication between detained immigrants and
21 FFI.

22 66. The conduct outlined above constitutes unreasonable and
23 unconstitutional interference with and infringement of detained immigrants' exercise
24 of their rights of free speech and free association under the First Amendment to the
25 United States Constitution.

26 67. Defendants' actions have caused and will continue to cause detained
27 immigrants irreparable injuries, including interfering with and infringing their First
28

1 Amendment rights, frustrating their ability to report abuse and find loved ones, and
2 causing them to incur significant personal expense to contact FFI from detention.

3 68. FFI, which has developed a close relationship with thousands of
4 detained immigrants through its visitation programs and the Hotline, brings this
5 claim on behalf of detained immigrants, who face significant physical, financial, and
6 institutional barriers, including a fear of retaliation and risk of deportation, to
7 asserting their own rights.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, FFI respectfully requests that the Court enter judgment in its
10 favor and:

- 11 a. Enter a preliminary and permanent injunction enjoining and restraining ICE
12 and its officers from further interference with FFI's and detained
13 immigrants' exercise of their First Amendment rights;
- 14 b. Enter a preliminary and permanent injunction reinstating FFI's national
15 Hotline;
- 16 c. Declare that Defendants' retaliation against FFI based on its protected
17 speech violated the First Amendment;
- 18 d. Award FFI attorneys' fees and costs of suit as permitted by law; and
- 19 e. Order such further relief as the Court may deem just and proper.

20
21 Dated: December 10, 2019

HUESTON HENNIGAN LLP

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23
24 By: 

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Freedom for Immigrants