

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

SOUTHERN POVERTY LAW CENTER,

Plaintiff,

v.

U.S. DEPARTMENT OF HOMELAND
SECURITY, *et al.*,

Defendants.

Civil Action No. 18-0760 (CKK)

**SETTLEMENT AGREEMENT ON PLAINTIFF’S MOTION FOR PRELIMINARY
INJUNCTION REGARDING THE LASALLE ICE PROCESSING CENTER**

A. INTRODUCTION AND PROCEDURAL PROVISIONS

1. This Settlement Agreement (“Agreement”) is entered into by Plaintiff and all Defendants in this lawsuit (collectively, “Parties” and individually a “Party”). Plaintiff is the Southern Poverty Law Center (“SPLC”) and Defendants are United States Department of Homeland Security; U.S. Immigration and Customs Enforcement (“ICE”); Kirstjen Nielsen, Secretary of Homeland Security; Ronald D. Vitiello,¹ Deputy Director and Senior Official Performing the Duties of Director, ICE; Matthew Albence, Enforcement and Removal Operations (“ERO”) Executive Associate Director and Senior Official Performing the Duties of the Deputy Director, ICE; Nathalie R. Asher, Acting Executive Director, ERO, ICE; Tae Johnson, Assistant Director for Custody Management; and David Rivera, Field Office Director, New Orleans Field Office, ERO, ICE. All individual Defendants are being sued in their respective official capacities.

¹ Under Federal Rule of Civil Procedure 25(d), Mr. Vitiello is substituted for Mr. Thomas Homan as a co-defendant named in the complaint.

2. On April 4, 2018, SPLC filed this action pursuant to 28 U.S.C. § 1331 on behalf of itself and its clients, who, in relevant part, are being detained at the LaSalle ICE Processing Center (“LaSalle”) in Jena, Louisiana, the Irwin County Detention Center in Ocilla, Georgia (“Irwin”) and the Stewart Detention Center in Lumpkin, Georgia (“Stewart”). SPLC alleges, *inter alia*, that Defendants’ policies, practices, and omissions at the three facilities create unconstitutional barriers for detainees to access and communicate with attorneys in violation of their Fifth Amendment right to access courts, right to counsel, and right to a full and fair hearing. Defendants deny the allegations in the Complaint.

3. On May 4, 2018, SPLC filed a Motion for Preliminary Injunction (“Motion”) [Dkt 32] against Defendants to require Defendants to immediately cease certain actions and take certain remedial measures at LaSalle pending final disposition of the action. Defendants deny the allegations in Plaintiff’s Motion.

4. On May 24, 2018, the Parties filed a joint motion [Dkt 37] to refer the case to mediation to resolve Plaintiff’s request for additional legal visitation meeting space at LaSalle and Plaintiff’s request for accommodations to facilitate remote interpretation services during in-person legal meetings at the facility. On May 30, 2018, the District Court granted in part and denied in part the Parties’ joint motion, referred the two issues to mediation for resolution, and held Plaintiff’s Motion in abeyance pending resolution of mediation (“May 30 Minute Order”).

5. On July 26, 2018, the Parties filed a Joint Status Report with the District Court [Dkt 46], informing the District Court that they had negotiated a full resolution of Plaintiff’s Motion in accordance with the terms provided in the Draft Settlement Term Sheet—LaSalle Facility Only (“Term Sheet”), and intended to reduce the Term Sheet into a final Agreement to be filed with the District Court by August 27, 2018. On July 26, 2018, the District Court entered a Minute Order

directing the Parties to file the final Agreement with the Court on or before August 27, 2018. By Minute Order, dated August 24, 2018, the Court extended the deadline for the parties to file the Agreement until September 5, 2018.

6. As contemplated by the Term Sheet and the May 30 Minute Order, the Parties desire to set forth in this Agreement their agreements and understandings to settle only the issues in the Motion relating to LaSalle.

B. DEFINITIONS OF TERMS IN THIS AGREEMENT

7. “Attorney Consultation Room” means the room at LaSalle located just past the entrance lobby typically used for legal in-person visits at the time of the filing of the Term Sheet.

8. “Confidential” and “confidentiality” mean private. In reference to any type of communication described herein (including but not limited to legal in-person visits, legal telephone calls, Skype visits or correspondence), “confidential” and “confidentiality” mean privacy sufficient to ensure that unintended recipients of the communication cannot discern the communication or any information contained therein.

9. “Contractors” refers to Defendants’ service providers, currently the LaSalle Economic Development District, with which it contracts to manage the LaSalle facility, and its sub-contractor, currently The GEO Group, Inc.

10. “Game Room” means the space which housed the former game room at LaSalle.

11. “Force Majeure” means any cause or event beyond the reasonable control of the Defendants that is not caused by or attributable in whole or in part to the negligence or lack of reasonable foresight of Defendants or their Contractors, and which by the exercise of due diligence could not have been avoided or overcome, and which delays Defendants in complying with a completion date set in this Agreement. Such causes or events include the following types of events: war, invasion, riot, terrorism, act of vandalism, rebellion or other hostilities, epidemic,

catastrophic weather or other natural disaster, fire, explosion, unanticipated strike, lockout, walkout, or an unavoidable and unforeseeable labor condition or security threat.

12. A “legal in-person visit” means an in-person visit conducted by a lawyer or his/her agent, including but not limited to paralegals, legal assistants, and legal volunteers.

13. A “legal telephone call” means a telephone call conducted by an attorney or his/her agent, including but not limited to paralegals, legal assistants, and legal volunteers.

14. “Pre-Hearing Room” means the room at LaSalle that, at the time of the filing of the Term Sheet, was available in the foyer for legal in-person visitation prior to court hearings.

15. “Skype Room” means the room described in Paragraph 22 of this Agreement.

16. “Soundproof” means preventing, or constructed of material that prevents, the passage of sound, including but not limited to confidential communications.

17. “2011 Performance-Based National Detention Standards” or “PBNDS” means the 2011 detention standards promulgated by ICE, including its 2016 Revisions in effect at the time of the filing of the Term Sheet.

C. TERMS OF SETTLEMENT

18. The Parties will continue to comply with the following terms and conditions for LaSalle that were agreed upon before mediation commenced:

(a) Confidential legal telephone calls will not be limited to less than two hours;

(b) Defendants will not prevent or intentionally interrupt legal in-person visits or legal telephone calls and will act in accordance with the standards set forth in the PBNDS. Defendants further will require the same of its Contractors.

(c) Plaintiff will request legal in-person visits and legal telephone calls the day before, or, at the latest, the morning of, the scheduled visit or call; and

(d) Defendants will ensure wait times for legal in-person visits are less than 30 minutes upon arrival at LaSalle, provided requisite advance notice of the visits was given.

19. Defendants will ensure the existing Attorney Consultation Room at LaSalle is remodeled and reconfigured so that upon completion, the room will contain three separate, enclosed, soundproof rooms, each approximately four feet by four feet by six feet. Each soundproof room will contain a confidential three-way telephone line to access outside telephonic interpretation services without interference or static; and a new, improved communication system or technology for communication between the attorney side and detainee side of each enclosed space. The Parties agree that reasonable charges will apply for use of the telephone lines to communicate with interpreters, except for telephone calls to toll-free telephone numbers. Defendants agree that construction will be performed between 7 p.m. and 7 a.m. weekdays and/or on weekends in a manner to minimize any disruption of confidential in-person legal visits or confidentiality of communications to ensure that the Attorney Consultation Room may be used at all times during regular legal visitation hours.

20. Construction to renovate and remodel the Attorney Consultation Room will be completed by January 22, 2019. If by January 22, 2019, the changes identified in ¶ 19 above have not been completed, Defendants will provide two additional private, confidential spaces, each with a telephone line, to enable Plaintiff to conduct legal in-person visits with its clients without restraints.

21. Defendants will ensure the Game Room at LaSalle is remodeled and reconfigured to have four to six separate confidential telephone banks for legal telephone calls. Defendants represent that construction and installation of telephone lines at each telephone bank was completed on August 25, 2018. Upon completion, the telephone banks will comply with §

5.6(V)(F)(2) of the PBNDS to ensure privacy and confidentiality during legal telephone calls. Defendants further will convey information to Plaintiff about the former Game Room to ensure that the legal telephone calls in this room are confidential. Plaintiff and/or their agent(s) may contact outside interpretation services while on these legal telephone calls.

22. Defendants will ensure one room, referred to as the Skype Room, with at least one computer setup, is dedicated for confidential legal visitation by video using Skype or video teleconference (“VTC”) software with no less than a two-hour time limit and the same scheduling for telephone calls that is referenced in Paragraph 18(c) above. An SPLC attorney and/or his or her agent(s) may contact outside interpretation services while on these Skype/VTC calls. Defendants represent that they and their Contractors made the Skype Room available for use on August 25, 2018. The Skype Room will comply with § 5.6(V)(F)(2) of the PBNDS to ensure privacy and confidentiality during legal calls. Defendants will convey information to Plaintiff about the Skype Room to ensure the legal phone calls in this room are confidential. Defendants and their Contractors are authorized to keep track of the occurrences of these visits in the Skype Room for security purposes.

23. Defendants will ensure that their Contractors make the existing Pre-Hearing Room, which is located in the foyer that is not in the secure “hard-side” area of LaSalle, available for legal in-person visits, provided that:

- (a) Detainees/clients will be held in full restraints; and
- (b) Priority use of the Pre-Hearing Room will be for pre-hearing meetings on dates scheduled for immigration removal proceedings; *i.e.*, prehearing consultations between attorneys (or their agents) and clients having their removal proceedings scheduled on those dates will

preempt any other visits between attorneys and their detainee clients until such consultations have been completed.

24. The Parties stipulate that Plaintiff will not use the Pre-Hearing Room for legal in-person visits because its detainee clients will be in full restraints. Defendants will not require, and will not permit their Contractors to require, Plaintiff to use the Pre-Hearing Room when Plaintiff is scheduled for legal in-person visits. The Parties agree that Defendants' offer to Plaintiff to make the Pre-Hearing Room available for attorney-client visits while its clients are in full restraints does not fulfill Defendants' obligation to provide a confidential meeting space within 30 minutes.

25. The Parties agree that before LaSalle is remodeled and reconfigured in accordance with Paragraphs 19 through 22 above, Defendants will ensure that their Contractors provide no less than two confidential meeting spaces, at least one in the existing Attorney Consultation Room and the other in the existing Pre-Hearing Room, for legal in-person visits, subject to Paragraph 24 above. Defendants' offer to Plaintiff to utilize this Pre-Hearing Room does not fulfill Defendants' obligation to provide a confidential meeting space within 30 minutes for the reasons described in Paragraph 24.

26. From the date of execution and filing of this Agreement with the District Court, Defendants will ensure that the above meeting spaces are confidential and that their Contractors do not schedule multiple simultaneous legal in-person visits in the existing Attorney Consultation Room during Plaintiff's scheduled legal in-person visits notwithstanding the June 2018 construction of new partitions in this room.

27. While the existing Attorney Consultation Room is being renovated, Defendants will require their Contractors to prioritize installation of a dedicated telephone line in this room to enable Plaintiff to communicate with its interpreters to the fullest extent possible during

construction. The Parties agree that Defendants and their Contractors will neither record nor monitor this telephone line and Plaintiff may initiate confidential telephone calls to its interpreters when using this telephone line.

D. ALTERNATIVE DISPUTE RESOLUTION

28. In the event a dispute arises concerning the terms or implementation of this Agreement, either Party may send a written communication via email to the other Party's counsel (a "Notice of Non-Compliance") setting forth the disputed issue. If such a dispute arises, the Parties will promptly meet and confer in a good faith effort to informally resolve their dispute.

29. In the event that the dispute set forth in the Notice of Non-Compliance cannot be resolved informally within two business days, then counsel for either Party may submit the dispute to the assigned D.C. Circuit Mediators, Ms. Carolyn Lerner and Mr. Robert Fisher (hereinafter, the "Mediators"), to mediate the dispute. If no resolution can be achieved within 15 calendar days of submission to the Mediators or the Mediators agree that the parties have reached a stalemate, whichever is sooner, either Party may immediately move to enforce the Agreement in the District Court.

The Notice of Non-Compliance will be served on Plaintiff via email to:

Jamila Johnson
201 St. Charles Avenue, Suite 2000
New Orleans, Louisiana 70170
Jamila.Johnson@splcenter.org

And on Defendants via email to:

Jon Kaplan
Associate Legal Advisor
District Court Litigation Division
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
500 12th Street, S.W., Room 9060
Washington, D.C. 20536

Jonathan.L.Kaplan@ice.dhs.gov

With Copy to:

Daniel P. Schaefer
Assistant United States Attorney
555 4th Street, N.W.
Washington, D.C. 20530
Daniel.Schaefer@usdoj.gov

30. The Parties are both committed to resolving any disputes that may arise concerning the terms or implementation of the Agreement through the Alternative Dispute Resolution process described above in Paragraphs 28 to 29 (the “ADR Process”). If, however, Plaintiff asserts that its client(s) will likely suffer an imminent and irreparable harm, injury, or loss due to Defendants’ violation of this Agreement and the ADR Process is neither feasible nor practicable, Plaintiff will send Defendants’ counsel a Notice of Non-Compliance. Plaintiff’s Notice of Non-Compliance will alert Defendants’ counsel that this is an emergency situation that requires immediate attention and that Plaintiff is invoking Paragraph 30 of the Agreement. The Parties will promptly meet and confer in a good faith effort to informally resolve their dispute. If no resolution can be achieved by the close of business (5:00 p.m. Eastern Daylight/Standard Time) of the next business day after the sending of the Notice of Non-Compliance, Plaintiff may make an immediate application for relief to the Court. In exercising this provision, Plaintiff must specify facts in an affidavit or declaration filed simultaneously with its application to the Court showing the likelihood of certain imminent and irreparable harm, injury, or loss that will result if the violation alleged is not remedied. Plaintiff must also specify, in writing, discrete steps taken to notify Defendants about the alleged violation, Defendants’ response, if any, and the reason(s) why no further efforts could reasonably be made to resolve the issue through the ADR Process.

E. DISPOSITION OF MOTION FOR PRELIMINARY INJUNCTION AND OTHER INJUNCTIVE RELIEF

31. This Agreement fully resolves the Motion for Preliminary Injunction filed May 4, 2018 [Dkt 32], but does not resolve Plaintiff's claims on the merits with respect to LaSalle, including but not limited to, Plaintiff's position that this Agreement does not meet Defendants' obligations to provide contact visitation, which Defendants dispute. This Agreement shall not be construed as a presumption, concession, agreement, or stipulation by Plaintiff that the accommodations made by Defendants pursuant to this Agreement are sufficient to satisfy Defendants' constitutional, statutory, regulatory, and/or administrative responsibilities.

32. Plaintiff will withdraw its Motion for Preliminary Injunction the same day that this Agreement is fully executed and filed with the Court.

33. Plaintiff is not prohibited from seeking injunctive relief in connection with issues at the Irwin and Stewart detention facilities. Plaintiff agrees that it will not seek any further injunctive relief in connection with any other issues at LaSalle within the scope of the above-referenced action unless the Parties are unsuccessful in resolving the merits of the litigation.

34. This Agreement and any litigation proceedings taken pursuant to it:

(a) Shall not be offered or received against any Party as evidence of, or construed as or deemed to be evidence of, any presumption, concession, admission, or stipulation by any of the Parties of the truth of any fact or the validity of any claim that had been or could have been asserted in the action or in any litigation, or the deficiency of any defense that has been or could have been asserted in the action, or any liability, negligence, fault, or wrongdoing of Defendants; or any admission by Defendants of any violations of, or failure to comply with, the Constitution, statutes, regulations, or PBNDS; and

(b) Shall not be offered or received against Defendants as evidence of a presumption, concession, admission, or stipulation of any liability, negligence, fault, or wrongdoing as against the Parties to this Agreement, in any other civil, criminal, or administrative action or proceeding, other than in proceedings to enforce this Agreement or to assert a violation of, or non-compliance with, the terms of this Agreement.

F. ATTORNEYS' FEES AND COSTS

35. Plaintiff will not seek attorneys' fees or costs for time spent preparing the Motion, the mediation pursuant to Dkt 38, or activities associated with the Motion.

G. ADMISSION OF LIABILITY

36. This Agreement is a voluntary resolution of the Motion and does not constitute and will not be construed or interpreted as an admission of any wrongdoing or liability by any Party.

H. FORCE MAJEURE DELAYS

37. Any Defendant(s) seeking to be excused from compliance with completion dates set forth in this Agreement due to the occurrence of a Force Majeure event must notify Plaintiff by email as soon as reasonably possible (but in all events no later than three business days) after the occurrence of the Force Majeure event, specifying the nature and extent of the Force Majeure event, the anticipated duration of such Party's inability to fully perform hereunder as a result of such Force Majeure event, and the efforts such party is undertaking to mitigate the impact of the Force Majeure event. A Party whose performance hereunder is impacted by a Force Majeure event must undertake diligent efforts to minimize the impact of such Force Majeure event on its performance. Performance hereunder shall not be excused for delays to the extent they have occurred regardless of a Force Majeure event.

I. MODIFICATION OF AGREEMENT

38. This Agreement constitutes the entire agreement among the Parties as to the Motion, and supersedes all prior agreements, including, but not limited to, the Term Sheet, representations, warranties, statements, promises, covenants, and understandings, whether oral or written, express or implied, with respect to this Agreement.

39. This Agreement is an integrated agreement at the time of authorization and may not be altered, amended, waived, modified or otherwise changed in any respect except in writing duly executed by authorized representatives of each Party.

J. JOINTLY PREPARED

40. This Agreement has been prepared jointly by the Parties with the advice of their attorneys. No ambiguity in the language of this Agreement shall be construed against any Party.

K. MUTUAL EXCLUSIVITY OF PROVISIONS

41. If any provision of this Agreement is declared invalid, illegal, or unenforceable in any respect, the remaining portions therein shall remain in full force and effect, unaffected and unimpaired.

M. GOVERNING LAW

42. This Agreement shall be governed by and construed in accordance with the laws of the District of Columbia.

N. TITLES AND HEADINGS

43. Titles and headings to Articles and Sections herein are inserted for convenience and reference only, and are not intended to be part of, or to affect the application, interpretation, or meaning of, this Agreement.

O. SUNSET PROVISION

44. This Agreement will remain in effect until the case is resolved on the merits, including any appellate proceedings.

P. COUNTERPARTS

45. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

Q. MISCELLANEOUS PROVISIONS

46. The Parties and each of their undersigned representatives hereby warrant and represent that their respective undersigned representatives have full and complete authority to execute this Agreement on behalf of each Party signatory hereto and to bind each Party to the terms of this Agreement.

47. This Agreement shall be binding on all agents, assignees, employees, principals, successors, and those entities, including, but not limited to, Defendants and their Contractors and Plaintiff to the full extent authorized by law. Defendants are responsible for ensuring that its Contractors comply with the Agreement.

R. EFFECTIVE DATE

48. This Agreement shall be effective upon execution by all Parties. The date the last Party executes the Agreement shall be deemed its effective date.

[Signatures begin on next page]

Dated: September 5, 2018

Respectfully submitted,

By: /s/ Jamila Johnson
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