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February 28, 2013

John Morton, Director
Gary Mead, Executive Associate Director
Andrew Lorenzen-Strait, Public Advocate
U.S. Immigration and Customs Enforcement
Enforcement and Removal Operations
500 12th St., SW
Washington, D.C. 20536

Re: Immigrant Detainee Access to Fair and Affordable Telephone Services

Dear Director Morton, Associate Director Mead, and Mr. Lorenzen-Strait :

We, the New Jersey Advocates for Immigrant Detainees (NJAID) and the NYU Immigrant Rights Clinic, write to express our concerns about immigrant detainee access to fair and affordable telephone services in Essex County, NJ, and nationwide. Together with other advocates, we have attended quarterly meetings with the Newark Immigration and Customs Enforcement (ICE) Field Office and Office of the Essex County Executive to address conditions at Essex County Correctional Facility (ECCF). It is our understanding that the Newark ICE Field Office has already raised the issue of detainee telephone service at ECCF with the appropriate officials within ICE Enforcement and Removal Operations in Washington, D.C. We are grateful for their efforts and write to provide you with further information about the issue—specifically, the County's violation of the telephone services contract in its Intergovernmental Service Agreement (IGSA) with ICE, and the impact of telephone policies in New Jersey and across the country. We respectfully request that you enforce the contract clause at issue, and that you include a similar provision in every IGSA and private detention service contract entered into by ICE.

1. Prohibitive Telephone Rates at ECCF

Over the last year and a half, we have received complaints and petitions from detainees at ECCF regarding the prohibitive cost of phone calls in the facilities. Upon investigation, we learned that the rates in ECCF, like other county jails that hold ICE detainees in New Jersey, were inflated due to the commission that the County receives on top of the typical rates for providing these services.

Detainee telephone service at ECCF are provided through State Contract No. 61618,¹ which exists between the State of New Jersey and Global Tel*Link (GTL). The State Contract provides

a menu of pricing options, one of which Essex County has selected to apply at ECCF. Under this scheme, detainees and their families pay a per-call surcharge in addition to expensive rates. A fifteen-minute intrastate call can cost as much as \$5.50, and a fifteen-minute call to neighboring New York City costs \$12.60. An international call of the same duration can cost up to \$17.85. Needless to say, these prices are gross inflations of the prevailing local rates charged to the general public. Verizon, the largest telephone service provider in the state, appears to charge no more than \$0.05 per minute for residential long distance service in Essex County.

Even taking into account additional services necessary for providing telephone services in a detention setting, such as security measures, the rates reflect an unreasonable markup over the actual cost of making phone calls from the facility. This is evidenced by the fact that telephone rates at federal prisons are much lower, without charging a per-call surcharge. In federal prisons, a fifteen-minute local call only costs \$0.90 (\$0.06/min.), and a long-distance call of the same duration costs \$3.45 (\$0.23/minute).²

2. Essex County's Violation of the Intergovernmental Service Agreement (IGSA) with ICE

As noted above, the underlying reason for such exorbitant rates at ECCF is that the County is entitled to a 54% commission from GTL, generating annual revenue of nearly \$1 million. This arrangement appears to be in violation of the IGSA between ICE and Essex County. Article 24(D) of the IGSA clearly states that the County "*shall not be entitled to any commissions, fees, or revenues generated by . . . the detainee telephones*" (emphasis added). We believe that this provision reflects ICE/ERO's recognition of the importance of telephone access for detainees and the need to ensure reasonable rates. The Office of the County Executive has denied our request for a reduction of telephone rates at ECCF, without offering an explanation for their violation of this provision.³ We thus urge you to exercise your authority to enforce this contract clause to provide fair and affordable telephone access at ECCF.

Additionally, the ban on commissions and revenues from detainee telephone service should be applied to all detention facilities. We specifically note the egregiousness of the rates at other New Jersey facilities. Monmouth County also provides telephone service under State Contract No. 61618 and receives 55% of the revenue generated by detainee telephones. Public records show that detainees and their families are subject to rates as high as \$7.75 for an intrastate call and \$15.10 for an interstate call. Bergen County, which provides telephone service under its own contract with a subsidiary of GTL, charges detainees up to \$7.50 for an intrastate call and \$13.95 for an interstate call, while collecting 60.5% of the revenue.

3. ICE Standards on Detainee Telephone Service

While a specific clause banning commissions may not exist in all detention service contracts, we understand that ICE policy mandates reasonable phone rates for all detainees. Under the 2008 Performance Based National Detention Standards (PBNDS), detainee telephone service must "be based on rates and surcharges commensurate with those charged to the general public".⁴ As explained above, the rates currently charged constitute an unreasonable markup from those charged to the general public, even after factoring in the costs associated with providing telephone services in a detention setting. The 2011 PBNDS further expand the obligation to

provide reasonable telephone access, stipulating that “[f]acilities shall strive to reduce telephone costs”.⁵ The above-discussed counties have done precisely the opposite by basing their telephone service options on commission rates, rather than looking to the reasonableness of the costs incurred by detainees.

ICE standards on detainee telephone service commendably recognize the importance of family and community contact. Regular contact with loved ones fosters the well being of detainees, in addition to helping detainees provide emotional support to their family members and smoothing their transition back to the community for those who are released.⁶ Moreover, because 84% of detainees are unrepresented, communication with family and community members often serves as the key medium for accessing the information and documents necessary for developing winning arguments.⁷ We further note that telephone access is particularly critical in light of the fact that visitation is difficult or impossible for many families. While several New Jersey jails have accommodated visiting programs for detainees without family who can visit, there is no established visiting program in ECCF. Fair telephone access is all the more critical.

4. Conclusion

In light of the above, we respectfully request that you ensure the provision of fair and affordable telephone rates in Essex County, NJ and nationwide by:

- (a) Implementing Article 24(D) of the IGSA between Essex County and ICE to ban the collection of commissions, fees, and revenues by the County;
- (b) Applying a similar provision to every IGSA and private detention service contract entered into by ICE; and
- (c) Informing us of the steps that your office intends to take in order to address the issue of prohibitive telephone rates charged to detainees.

Thank you again for your consideration, and we look forward to your response.

Sincerely,

New Jersey Advocates for Immigrant Detainees (NJAID)
NYU School of Law, Immigrant Rights Clinic

cc: John Tsoukaris, Field Office Director
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encl. Appendix: Letter from Essex County Department of Corrections Business Office to NJAID, dated Jan. 4, 2013.

¹ Available online at <http://www.state.nj.us/treasury/purchase/boa/contracts/t1934_05-x-32533.shtml> (last accessed Feb. 16, 2013).

² U.S. Government Accountability Office, Report No. GAO-11-893, *Inmate Phone Use* p.13 (Table 1), available at <<http://www.gao.gov/assets/330/322805.pdf>> (2011).

³ Appendix: Letter from Essex County Department of Corrections Business Office to NJAID, dated Jan. 4, 2013.

⁴ *Telephone Access*, 2008 PBNDS p.2.

⁵ *Telephone Access*, 2011 PBNDS p.304

⁶ N.Y.U. Immigrant Rights Clinic, *Locked Up But Not Forgotten* 1, 35, available at <<http://afsc.org/sites/afsc.civicactions.net/files/documents/LockedUpFINAL.pdf>> (2010) (hereinafter “*Locked Up*”).

⁷ *Locked Up*, at 23.