

1 GAY C. GRUNFELD – 121944
VAN SWEARINGEN – 259809
2 ERIC MONEK ANDERSON – 320934
HANNAH M. CHARTOFF – 324529
3 BEN HOLSTON – 341439
ROSEN BIEN
4 GALVAN & GRUNFELD LLP
101 Mission Street, Sixth Floor
5 San Francisco, California 94105-1738
Telephone: (415) 433-6830
6 Facsimile: (415) 433-7104
ggrunfeld@rbgg.com
7 vswearingen@rbgg.com
eanderson@rbgg.com
8 hchartoff@rbgg.com
bholston@rbgg.com

9 AARON J. FISCHER – 247391
10 LAW OFFICE OF
AARON J. FISCHER
11 1400 Shattuck Square Suite 12 - #344
Berkeley, California 94709
12 Telephone: (510) 806-7366
Facsimile: (510) 694-6314
13 ajf@aaronfischerlaw.com

14 Attorneys for Plaintiffs and the
Certified Class and Subclasses

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA

18 DARRYL DUNSMORE, ANDREE
ANDRADE, ERNEST ARCHULETA,
19 JAMES CLARK, ANTHONY EDWARDS,
LISA LANDERS, REANNA LEVY,
20 JOSUE LOPEZ, CHRISTOPHER
NELSON, CHRISTOPHER NORWOOD,
21 JESSE OLIVARES, GUSTAVO
SEPULVEDA, MICHAEL TAYLOR, and
22 LAURA ZOERNER, on behalf of
themselves and all others similarly situated,
23 Plaintiffs,

24 v.
25 SAN DIEGO COUNTY SHERIFF'S
DEPARTMENT, COUNTY OF SAN
DIEGO, SAN DIEGO COUNTY
26 PROBATION DEPARTMENT, and DOES
1 to 20, inclusive,
27 Defendants.

CHRISTOPHER M. YOUNG – 163319
ISABELLA NEAL – 328323
OLIVER KIEFER – 332830
DLA PIPER LLP (US)
4365 Executive Drive, Suite 1100
San Diego, California 92121-2133
Telephone: (858) 677-1400
Facsimile: (858) 677-1401
christopher.young@dlapiper.com
isabella.neal@dlapiper.com
oliver.kiefer@dlapiper.com

Case No. 3:20-cv-00406-AJB-DDL

**EXPERT REPORT OF
KAREN L. SNELL**

Judge: Hon. Anthony J. Battaglia
Magistrate: Hon. David D. Leshner

Trial Date: None Set

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1 I, Karen L. Snell, declare:

2 1. I have been retained as an expert by the Plaintiffs in this action. I have
3 personal knowledge of the facts set forth herein, and if called as a witness, I could
4 and would competently so testify.

5 **BACKGROUND AND QUALIFICATIONS**

6 2. I am an attorney admitted to practice in California.

7 3. I received my J.D. from Stanford Law School and my B.A. in
8 Philosophy from Stanford University.

9 4. I have specialized in the practice of criminal defense law and civil
10 rights law in federal and California courts for the past forty years. I have
11 represented numerous criminal defendants and civil rights litigants at the trial and
12 appellate levels, and I have represented parolees and probationers in parole and
13 parole revocation proceedings. In the course of my work, I have visited scores of
14 incarcerated people in county, state, and federal facilities in California, Arizona,
15 Colorado, and Michigan.

16 5. Since 2003, I have been a solo practitioner in the fields of criminal
17 defense, international extradition defense, and civil rights litigation. For the
18 preceding seven years, I served as founding and named partner in the law firm of
19 Clarence & Snell LLP (now Clarence & Dyer LLP), where I represented criminal
20 defendants and civil rights plaintiffs and defendants in federal and California courts.
21 I was previously an Assistant Federal Public Defender in the United States District
22 Court for the Northern District of California, where I tried cases, handled Ninth
23 Circuit and U.S. Supreme Court appeals, and was charged with supervising and
24 training other attorneys. For two years before that, I was of counsel to the San
25 Francisco firm Riordan & Rosenthal, where I worked on death penalty appeals and
26 other criminal appeals, tried criminal cases, and represented life incarcerated
27 persons before the Parole Board. For five years before that, I was an associate in the
28 litigation department of Morrison & Foerster, where I worked on civil and criminal

1 matters, including criminal trials and appeals. My curriculum vitae is attached
2 hereto as Exhibit A.

3 6. During my career, I have been an active member of various
4 professional organizations including, but not limited to, the American College of
5 Trial Lawyers (fellow), National Association of Criminal Defense Attorneys,
6 California Attorneys for Criminal Justice, Founder and Board Member of San
7 Francisco Women Lawyers Alliance, and Chairman of the Board of Directors of the
8 Habeas Corpus Resource Center. I have written and spoken on criminal defense and
9 civil rights issues at conferences organized by the Criminal Justice Act Panel for the
10 Northern District of California, National Association of Criminal Defense
11 Attorneys, California Attorneys for Criminal Justice, California Public Defenders
12 Office, and others. I have taught in trial practice programs at Stanford Law School,
13 Boalt Hall School of Law, University of California Law San Francisco School of
14 Law, University of San Francisco Law School, and Cardozo Law School and as a
15 faculty member for the National Trial Advocacy Institute and other programs. I
16 have also served as an Advisor and the General Counsel for the Institute for
17 International Criminal Investigations, a non-profit organization dedicated to training
18 investigators for war crimes tribunals and truth commissions.

19 7. I was retained as an expert in *L.H., et al. v. Schwarzenegger, et al.*, No.
20 2:06-CV-02042-LKK-GGH (E.D. Cal.), and *Valdivia v. Schwarzenegger*, No. Civ.
21 S-94-0671 (E.D. Cal.). I have not provided expert testimony in any case in the past
22 four years.

23 8. I was retained by Plaintiffs' attorneys to be prepared to render opinions
24 regarding Plaintiffs' Eighth Claim for Relief, Denial of Access to Counsel and the
25 Courts in violation of the Sixth and Fourteenth Amendments of the U.S.
26 Constitution and Article I, Sections 7 and 15 of the California Constitution.

27 9. Prior to commencement of my work, I received and acknowledged the
28 Stipulated Protective Orders signed in this case governing the confidentiality of

1 specific documents and information.

2 10. I received compensation at a rate of \$500 per hour, plus reimbursement
3 of travel expenses.

4 11. The information and opinions contained in this report are based on
5 evidence, documentation, and/or observations available to me. I reserve the right to
6 modify or expand these opinions should additional information become available to
7 me.

8 **SUMMARY OF OPINIONS**

9 12. The San Diego Sheriff's Department impedes attorney-client visits by
10 forcing attorneys to endure unjustified delays and by failing to provide visiting
11 rooms with the requisite degree of privacy.

12 13. The San Diego Sheriff's Department impedes attorney-client
13 communication by failing to provide incarcerated people with access to telephones
14 that allow them to have confidential communications with their attorneys.

15 14. The San Diego Sheriff's Department further impedes attorney-client
16 communication by failing to inform incarcerated people that their attorneys have
17 called the jail and requested a call back and by failing to allow incarcerated people
18 to return their attorneys' calls within a reasonable amount of time.

19 15. The San Diego Sheriff's Department interferes with communications
20 by mail between incarcerated people and their attorneys by opening and reading
21 mail outside the presence of incarcerated people.

22 16. The San Diego Sheriff's Department impedes confidential mail
23 communication between incarcerated people and their attorneys by failing to send
24 and deliver mail promptly and reliably.

25 17. The San Diego Sheriff's Department fails to provide the means for
26 incarcerated people to view electronic discovery and thereby interferes with their
27 ability to participate in their defense. This problem is particularly harmful to pro per
28 defendants' ability to defend themselves.

1 18. The San Diego Sheriff’s Department fails to provide pro per
2 incarcerated people with adequate assistance from persons trained in the law and
3 fails to provide them with adequate access to legal resources to prepare their
4 defenses in their criminal cases or to file and litigate civil claims regarding the
5 conditions of their confinement.

6 19. The San Diego Sheriff’s Department interferes with pro per
7 incarcerated people’s access to the courts by making it impossible for incarcerated
8 people to participate in telephonic hearings, resulting in the dismissal of cases, and
9 imposing bureaucratic hurdles that make it impossible for incarcerated people to
10 comply with court deadlines.

11 **FACTS AND DATA RELIED ON IN FORMING OPINIONS**

12 20. In forming my opinions, I reviewed the Third Amended Complaint in
13 this case, in which Plaintiffs allege, among other things, that the Sheriff’s
14 Department’s “practices systematically impede and interfere with” attorney-client
15 communication, including by failing to facilitate confidential phone calls; failing to
16 provide adequate meeting space for attorneys, such that sometimes attorneys are
17 unable to meet with their clients in person; and opening mail from attorneys outside
18 the presence of incarcerated people. Dkt. 231 at ¶¶ 409–20. Plaintiffs also allege
19 that the Sheriff’s Department interferes with and lacks adequate policies and
20 procedures for providing legal materials to incarcerated people who are representing
21 themselves in litigation—whether in their criminal case or in civil rights cases. *Id.*
22 at ¶¶ 421–24. For example, Plaintiffs allege that Darryl Dunsmore, who was in the
23 Jail for resentencing, had his legal materials “confiscated” by the Jail, and that he
24 was denied pro per privileges. *Id.* at ¶¶ 422–23.

25 21. In forming my opinions, I relied on the California Rules of Professional
26 Conduct (“Rules of Professional Conduct”), my background and experience as a
27 criminal defense and civil rights lawyer, visits to the “professional visit area” of
28 each of the seven San Diego County jails and the downtown courthouse at 1100

1 Union Street, interviews with thirteen incarcerated people, at least one from each
2 facility, and with five criminal defense lawyers representing people who are
3 incarcerated in San Diego County jails, the Declaration of Hannah Chartoff,
4 included herewith, and documents provided to me by Plaintiffs’ counsel, which are
5 listed in Exhibit B to this declaration.

6 **STANDARDS GOVERNING ACCESS TO COUNSEL**

7 **I. DUTIES OF CRIMINAL DEFENSE ATTORNEYS**

8 **A. CRIMINAL DEFENSE ATTORNEYS HAVE A DUTY TO**
9 **COMMUNICATE WITH THEIR CLIENTS**

10 22. Communication between attorneys and their clients is an essential
11 component of any attorney-client relationship. This is particularly true for attorneys
12 representing criminal defendants.

13 23. Criminal defense attorneys generally meet their clients for the first time
14 shortly after the client has been arrested—meaning that the client is under extreme
15 stress, confounded by their situation, and worried about the future. The criminal
16 defense attorney’s job is to explain the charges and let the client know that she is
17 qualified to guide them through what is inherently a scary, stressful situation. Face-
18 to-face communication is the only effective way to have this conversation and begin
19 to build a relationship of trust between attorney and client.

20 24. Criminal defense attorneys are also charged, early in the attorney-client
21 relationship, with helping the client move for a reduction in bail, which involves
22 asking a series of sensitive questions. Under California law, bail cannot be denied
23 based on financial wherewithal, and the client is entitled to an individualized
24 analysis of his finances by a magistrate within three days. The court must consider
25 “the protection of the public as well as the victim, the seriousness of the charged
26 offense, the arrestee’s previous criminal record and history of compliance with court
27 orders, and the likelihood that the arrestee will appear at future court proceedings.”

28 *In re Humphrey*, 11 Cal. 5th 135, 152 (2021). Therefore, within three days, a

1 criminal defense attorney needs to find out her client's net worth, ties to the
2 community, and other facts that will convince the court he will appear at future
3 court proceedings. The ability to speak to the client in a timely manner is essential
4 to this task. Critically, a criminal defense attorney's willingness to fight for bail
5 often sets the tone for the attorney-client relationship going forward. In other
6 words, an attorney's ability to meet with the client and gather personal information
7 from him in the earliest days of his incarceration often lays the foundation of trust
8 that is essential to the representation going forward.

9 25. Attorney-client communication is also critical after the bail motion.
10 Once the criminal defense attorney has reviewed the discovery and researched any
11 potential defenses to the charges, it is her duty to convey this information to the
12 client and to elicit from the client information that might advance the defense.
13 Motions to suppress evidence based on *Miranda* violations and unlawful search and
14 seizure begin with the client's description of what happened during and after his
15 arrest. Facts known to the client that might amount to a technical, partial, or
16 absolute defense must be elicited. This is essential information that is also sensitive
17 and likely not available through other sources. Gathering it therefore requires
18 careful questioning in a private setting.

19 26. After these conversations, the criminal defense attorney will have a
20 good idea of whether the case is headed to trial, and it is her duty to convey
21 impressions and consult with the client as to how he wishes to proceed. While some
22 tactical decisions in litigation are for the lawyer to make, others must be made *by the*
23 *client* after consultation with their lawyer, including the plea to be entered, whether
24 to waive jury trial, and whether the client will testify. Without the ability to
25 communicate, attorneys may be unable to learn underlying facts from the client, to
26 provide the client with counsel on potential courses of action and legal
27 ramifications, to gain the client's trust so that he is willing to listen to the attorney's
28 advice, or to learn from the client how he wants to proceed in the litigation and plan

1 accordingly.

2 27. Attorneys’ legal ethical standards recognize the importance of client
3 communication. The commentary to the American Bar Association (“ABA”) Model
4 Rules of Professional Conduct explains that “[r]easonable communication between
5 the lawyer and the client is necessary for the client effectively to participate in the
6 representation.” ABA Model Rules of Professional Conduct, Rule 1.4,
7 Comment (1). To ensure this, California law requires that a lawyer “consult with
8 the client about” the case and “inform[.]” the client “about significant
9 developments,” among other communications. *See also* Rule 1.2.

10 28. In some circumstances, attorneys are explicitly required to
11 communicate case updates to their clients “promptly.” Rules of Professional
12 Conduct, Rule 1.4.1. Rule 1.4.1, Communication of Settlement Offers, makes clear
13 that plea offers and settlement offers are among the things that an attorney must
14 “promptly” communicate:

15 A lawyer shall promptly communicate to the lawyer’s client: (1) all
16 terms and conditions of a proposed plea bargain or other dispositive
17 offer made to the client in a criminal matter; and (2) all amounts, terms,
and conditions of any written offer of settlement made to the client in
all other matters.

18 *Id.*

19 29. The duty of communication is particularly critical in the context of a
20 criminal defendant’s relationship with her lawyer, given that—unlike in a civil
21 case—the client’s right to an attorney is enshrined in the U.S. Constitution. The
22 Sixth Amendment guarantees: “In all criminal prosecutions, the accused shall enjoy
23 the right to ... have the assistance of counsel for his defense.” U.S. Const., Amend.
24 VI; *see also* Cal. Const. Art. I § 15. As the Supreme Court has recognized: “The
25 special value of the right to the assistance of counsel explains why ‘[i]t has long
26 been recognized that the right to counsel is the right to the effective assistance of
27 counsel.’” *United States v. Cronin*, 466 U.S. 648, 654 (1984) (quoting *McMann v.*
28 *Richardson*, 397 U.S. 759, 771 n.14 (1970)). “Unless the accused receives the

1 effective assistance of counsel, ‘a serious risk of injustice infects the trial itself.’”
2 *Id.* at 656 (quoting *Cuyler v. Sullivan*, 446 U.S. 335, 343 (1980)). “‘Of all the rights
3 that an accused person has, the right to be represented by counsel is by far the most
4 pervasive, for it affects his ability to assert any other rights he may have.’” *Id.*
5 (quoting Schaefer, *Federalism and State Criminal Procedure*, 70 Harv. L. Rev. 1, 8
6 (1956)).

7 30. Criminal defense attorneys represent clients in some of the most
8 difficult circumstances of their lives. The outcome of a criminal case—including
9 what evidence is developed and the client’s decision to take a plea deal or go to
10 trial—has direct impacts on the client’s liberty, their family, and their future. The
11 difficult circumstances that surround a criminal defense attorney’s work make the
12 development of an in-person relationship with the client even more critical. In-
13 person visits are the most basic way to foster this relationship.

14 31. Absent a relationship built through listening to the client, promptly
15 conveying information and reliably visiting the client, the client will have no reason
16 to trust the attorney’s advice. As San Diego criminal defense attorney Brian White
17 informed me during my investigation of this case, “If you are trying to persuade
18 someone to give up part of their life, you must build up trust.” Without trust, a
19 criminal defendant cannot be expected to follow his attorney’s advice, including but
20 not limited to advice to accept a plea bargain. This results in unnecessary
21 continuances, jammed court calendars, and a backlog of cases awaiting trial, where
22 the defendant is likely to fare worse than he would have, had he followed his
23 attorney’s advice.

24 **B. CRIMINAL DEFENSE ATTORNEYS HAVE A DUTY TO**
25 **PROTECT THEIR CLIENTS’ CONFIDENCES**

26 32. In addition to the duty of communication, attorneys also have a duty to
27 maintain the confidentiality of their communications with their clients. As
28 California law and attorney professional ethics standards state: It is the duty of the

1 attorney to “maintain inviolate the confidence, and at every peril to himself or
2 herself to preserve the secrets, of his or her client.” Cal. Bus. & Prof. Code § 6068;
3 *see also* Rules of Professional Conduct, Rule 1.6.

4 33. Confidentiality is particularly important when the client is an
5 incarcerated criminal defendant. As described above, criminal defense attorneys are
6 required to gather sensitive information from clients, including names and addresses
7 of family members and potential witnesses; to have hard conversations with the
8 client about the evidence and how to proceed, including whether to cooperate with
9 the prosecution; and, when preparing the client for trial, to ask the client hard
10 questions the client would face on cross examination.

11 34. All of those communications—including the substance of what both the
12 client and the attorney says—might place the client in danger if overheard by jail
13 staff or other incarcerated people. If the client is considering cooperating with the
14 prosecution, he would need to discuss with his attorney what information he could
15 provide, which similarly could place him at risk of violence and retaliation. If the
16 charge is for a sex crime or is gang-related, mere knowledge of the specific charges
17 poses a risk. Personal information about the client’s mental health or trauma he
18 experienced could also pose a risk that the client will be a target for violence within
19 the jail. Incarcerated criminal defendants must be able to communicate with their
20 attorneys about these topics confidentially to avoid those risks.

21 35. Full disclosure between client and attorney is only possible if the client
22 is assured that his communications with his attorney will remain private absent his
23 consent. Legal assistance, the Supreme Court has explained, ““can only be safely
24 and readily availed of when free from the consequences or the apprehension of
25 disclosure.”” *Id.* (quoting *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888)). Without
26 the client communicating all relevant information to his lawyer, there can be no
27 functioning of the attorney-client relationship and, thus, no functioning of the entire
28 system of justice, as the U.S. Supreme Court has recognized. *See Upjohn Co. v.*

1 *United States*, 449 U.S. 383, 389 (1981).

2 36. The importance of confidentiality in attorney-client communications is
3 further codified in statutes establishing a privilege over attorney-client
4 communications. In California, a client has the privilege “to refuse to disclose, and
5 to prevent another from disclosing, a confidential communication between client
6 and lawyer.” Cal. Evid. Code § 952. “Confidential communication” is defined as:
7 information transmitted between a client and his or her lawyer in the
8 course of that relationship and in confidence by a means which, so far
9 as the client is aware, discloses the information to no third persons
10 other than those who are present to further the interest of the client in
11 the consultation or those to whom disclosure is reasonably necessary
for the transmission of the information or the accomplishment of the
purpose for which the lawyer is consulted, and includes a legal opinion
formed and the advice given by the lawyer in the course of that
relationship.

12 Cal. Evid. Code § 952.

13 37. California Evidence Code section 912(a) provides that the attorney-
14 client privilege is waived “if any holder of the privilege, without coercion, has
15 disclosed a significant part of the communication or has consented to disclosure
16 made by anyone.” Cal. Evid. Code § 912(a). An attorney, therefore, must take
17 further care to ensure that any communications with their clients are not disclosed to
18 anyone, including to those who might overhear conversations between attorney and
19 client.

20 38. For those reasons, the ability to have confidential communications
21 between attorney and client is critical to the functioning of the justice system.

22 **II. STANDARDS FOR ACCESS TO COUNSEL AT DETENTION**
23 **FACILITIES**

24 39. Because the confidentiality of attorney-client communications is
25 critical to the functioning of the justice system, multiple sources recognize that the
26 responsibility for facilitating those conversations when the client is incarcerated lies
27 not only with attorneys, but also with correctional authorities. While this report will
28 later discuss the San Diego Sheriff’s Department’s policies and procedures

1 pertaining to attorney-client communication, this section sets forth the mandate and
2 standards for correctional facilities to facilitate confidential communications
3 between incarcerated people and their attorneys, as recognized by California
4 statutes, the American Bar Association, and the U.S. Department of Justice.

5 40. California law sets minimum standards for local detention facilities.
6 *See* Cal. Code Regs. tit. 15 § 1068. In particular, Title 15 requires facilities to
7 develop written policies and procedures to ensure incarcerated people have access to
8 the court and to legal counsel. It specifies that such access shall consist of
9 “confidential consultation with attorneys.” *Id.* It provides that “[a]ttorney visits
10 shall be conducted in a confidential area specified by the institution/facility.” *Id.* at
11 § 3178. It provides that “[c]onversations between an inmate and an attorney and/or
12 attorney representative shall not be listened to or monitored except for that visual
13 observation by staff which is necessary for the safety and security of the
14 institution/facility.” *Id.* at § 3178(m).

15 41. Title 15 also provides that incarcerated people are entitled to “unlimited
16 mail” and that jail staff “shall not review inmate correspondence” to or from state
17 and federal courts and any member of the State Bar. *Id.* at § 1068. It provides that
18 jail authorities may open and inspect such mail ,only to search for contraband, cash,
19 checks, or money orders and in the presence of the inmate.” *Id.* at § 1063. Lastly, it
20 states that “[s]taff may open and inspect but shall not read any part of written or
21 printed materials without the expressed consent of the attorney/attorney
22 representative and inmate.” *Id.* at § 3178(n)(2).

23 42. The American Bar Association’s Treatment of Prisoners Standards are
24 consistent with California law regarding incarcerated person access to counsel and
25 the courts. The ABA Standard stresses correctional authorities’ affirmative duty to
26 “enable” and “implement” and “facilitate” “a prisoner’s confidential contact and
27 communication with counsel.” ABA, Treatment of Prisoners Standards, 23-9.4. It
28 requires that counsel should be allowed to meet with a incarcerated person in a

1 setting where their conversation cannot be overheard by staff or other incarcerated
2 persons. It requires that meetings or conversations between counsel and a
3 incarcerated person not be audio recorded by correctional authorities.

4 43. The ABA’s Standard for attorney meetings with incarcerated persons is
5 specific in spelling out the facility’s obligations. *Id.* at Standard 23-9.4(c)(ii). It
6 provides that “counsel should be allowed to have direct contact with a incarcerated
7 person who is a client, prospective client, or witness, and should not be required to
8 communicate with such a incarcerated person through a glass or other barrier.” *Id.*
9 It provides that during a meeting with a incarcerated person, “counsel should be
10 allowed to pass previously searched papers to and from the prisoner without
11 intermediate handling of those papers by correctional authorities.” *Id.* It explicitly
12 instructs correctional authorities not to read letters or other documents sent or passed
13 between counsel and a incarcerated person. *Id.* at Standard 23-9.4(c)(i)(A).

14 44. The ABA’s Standard regarding telephone calls states that “correctional
15 officials should implement procedures to enable confidential telephonic contact
16 between counsel and a prisoner who is a client, prospective client, or witness,
17 subject to reasonable regulations, and should not monitor or record properly placed
18 telephone conversations between counsel and such a prisoner.” *Id.* at Standard 23-
19 9.4(c)(iii)(A).

20 45. In its Report and Recommendations Concerning Access to Counsel at
21 the Federal Bureau of Prisons’ (“BOP”) Pretrial Facilities, a U.S. Department of
22 Justice (“DOJ”) Advisory Group identified problems with access in BOP pretrial
23 detention facilities and recommended ways to address them. *See* U.S. Dep’t of
24 Justice, Report and Recommendations (hereinafter “DOJ Recommendations”),
25 July 20, 2023. The Advisory Group included representatives from the Attorney
26 General’s Office for Access to Justice, BOP, the National Institute of Corrections
27 and the United States Marshals Service. The Advisory Group found “areas of
28 concern that warrant immediate attention” and identified reforms that can make an

1 immediate difference in promoting access to counsel, as well as “opportunities for
2 long-term change.”

3 46. For example, the advisory group found that BOP had national and local
4 policies in place but should find better ways to communicate them to staff and
5 stakeholders, including attorneys and incarcerated people. *See id.* at 3. It
6 recommended that the BOP establish a new Legal Access Adviser position within
7 the BOP’s Office of General Counsel and consolidate key legal access duties under
8 one full time position in each pretrial facility. *Id.* at 4.

9 47. It found that attorneys faced challenges with wait times and
10 inconsistent processes for in-person appointments which can complicate the
11 attorney-client relationship and discourage individuals detained pretrial from
12 seeking in-person visits with their counsel. It recommended that BOP update its
13 policy to permit walk-in legal visits at all pretrial facilities; explore opportunities for
14 providing scheduled in person legal visits; and consider additional protocols to
15 minimize delays when attorneys are waiting for the limited private meeting spaces
16 available for legal visits. *Id.* It also recommended that BOP should issue guidance
17 to standardize rules for legal visits involving non-attorney staff and expand the
18 availability of virtual meetings to supplement in person legal visits.

19 48. The DOJ Advisory Group recommended that BOP look into enclosing
20 phones for incarcerated persons to call their attorneys in a confidential booth setting.
21 *Id.* It also recommended that BOP consider procuring and implementing scheduling
22 software that would facilitate the arrangement of reliable call times with minimal
23 staff resources. *Id.*

24 49. Regarding legal mail, the Advisory Group recommended adopting
25 protocols for photocopying suspicious or improperly labeled mail, rather than
26 simply opening it outside the presence of the addressee, discarding it, or returning it
27 to sender. *Id.* It also recommended that BOP explore the possibility of a free,
28 confidential e-mail system for attorney communication with detained clients. *Id.*

1 at 36.

2 50. The Advisory Group heard repeated concerns that pretrial detainees do
3 not have adequate access to the discovery in their cases. It recognized that to mount
4 an effective defense, a defendant should have a meaningful opportunity to review
5 the discovery produced in his or her case. It recommended that the BOP enhance
6 and update its e-discovery technology, including through improvements to its
7 electronic hardware and software, so that it could accommodate the various formats
8 of electronic discovery. *Id.* at 40-41.

9 51. Finally, it recommended that BOP set up mechanisms to monitor and
10 promote compliance with its policies.

11 **SUMMARY OF VISITS TO SAN DIEGO JAIL**
12 **PROFESSIONAL VISITING AREAS**

13 52. As noted above, this report is based in part on my visits to the
14 “professional visiting areas” of each of the seven San Diego County jail facilities
15 conducted in March 2024. Below is a brief summary of those visits, as well as a
16 description of the professional visiting areas.

17 **A. San Diego Central Jail**

18 53. San Diego Central Jail, located at 1173 Front Street, San Diego, CA.
19 92101, housed 838 incarcerated people on average in June 2024, according to the
20 Sheriff’s Department’s Daily Population Report.¹ According to the Sheriff’s
21 Department’s website, Central Jail was opened in 1998. Central Jail’s population
22 “consists primarily of special handling incarcerated persons”—*i.e.*, “those with
23 serious medical challenges, those under psychiatric care, incarcerated individuals
24 representing themselves in court, as well as defendants facing high profile trials”—
25 as well as “newly booked incarcerated persons awaiting transfer to other facilities[.]”
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28 ¹ See Jail Population Statistics (June 2024), San Diego Cnty.,
<https://www.sdsheriff.gov/resources/jail-population-data>.

1 and pre-arraignment incarcerated persons.”² Central Jail is also the facility where
2 the County places the majority of its male population who need wheelchairs. *See*
3 *Classification Matrix for Medical & Psychiatric Housing, MSD Policy NSG.C.12,*
4 *SD_000331.* The fact that the incarcerated population at Central Jail comprises a
5 substantial number of people awaiting trial or currently in trial makes attorney
6 accessibility to this facility particularly important.

7 54. According to the San Diego Sheriff’s Department’s website, “[t]he
8 state-of-the-art facility makes extensive use of touch-screen controls and video
9 surveillance.”³ The facility is staffed by just over 200 sworn employees and nearly
10 200 professional staff members. It has 11 floors, six of which house incarcerated
11 people. Each of those floors has its own limited number of professional visiting
12 rooms, consisting of one enclosed booth and three open carrels.

13 55. Attorneys check in at a window on the ground floor where they are
14 required to provide a driver’s license, bar card, their client’s name, and their client’s
15 booking number. They are then told whether there is a professional visiting space
16 available. If no visiting space is available in their client’s housing unit, the attorney
17 waits. There are no chairs in the lobby or restroom. There is no place to sit or work.
18 There is no WiFi, and waits of up to three hours were reported by attorneys and
19 incarcerated people I interviewed.⁴

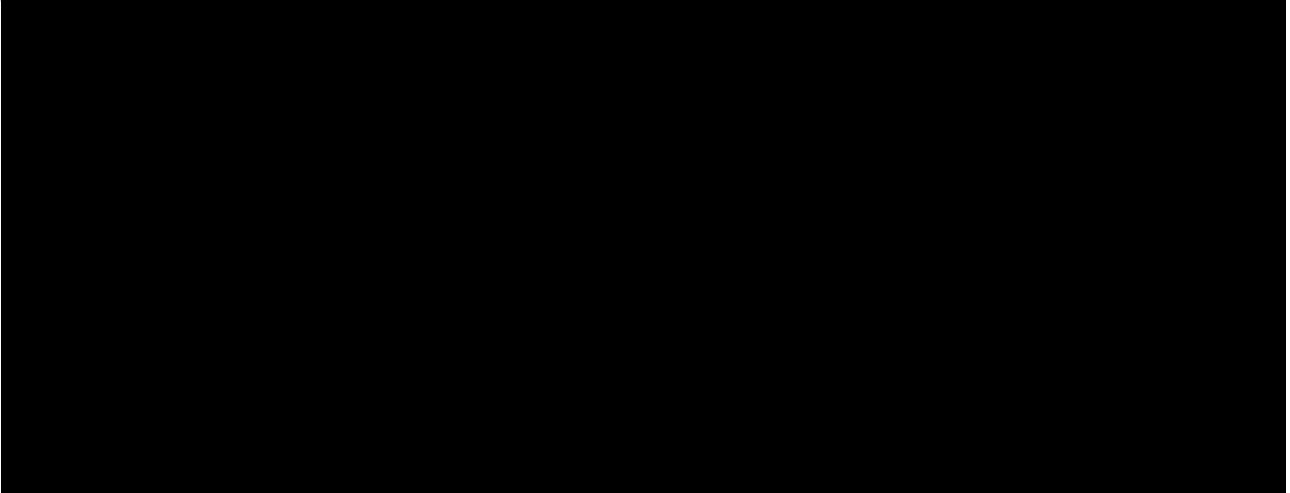
20 56. When space is available, the attorney’s bags are thoroughly searched by
21 deputies. The attorney is directed to take an elevator to the floor where the client is
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24 ² San Diego Cnty., Sheriff’s Department, Detention Facilities, San Diego Central
25 Jail, <https://www.sdsheriff.gov/Home/Components/FacilityDirectory/FacilityDirectory/58/109>

26 ³ San Diego Cnty, Sheriff’s Dept., Visiting
27 <https://www.sdsheriff.gov/Home/Components/FacilityDirectory/FacilityDirectory/58/126>

28 ⁴ Because Public Defenders are County employees and are part of the Public Safety Group, they have WiFi at the jail facilities. Private counsel do not.

1 housed.



10 **Figure 1**

11 57. Figure 1, a floor plan of the fourth floor mezzanine, shows the
12 attorney's path of travel from the elevator to the visiting room (path noted in red).
13 Central Jail – Fourth Floor Mezzanine, SD_000437 (excerpted). The attorney gets
14 off the elevator, then walks through a corridor to the sallyport (highlighted in pink
15 on Figure 1). In the corridor, there is an intercom button the attorney must push to
16 request that the sallyport be opened. The sallyport doors are unlocked by someone
17 (presumably a Sheriff's Department deputy) who is not visible to the attorney
18 attempting entry.

19 58. Once the door to the sallyport is unlocked and the attorney has entered
20 the sallyport, there is a second intercom button to push to have a deputy unlock the
21 door into the professional visiting area.

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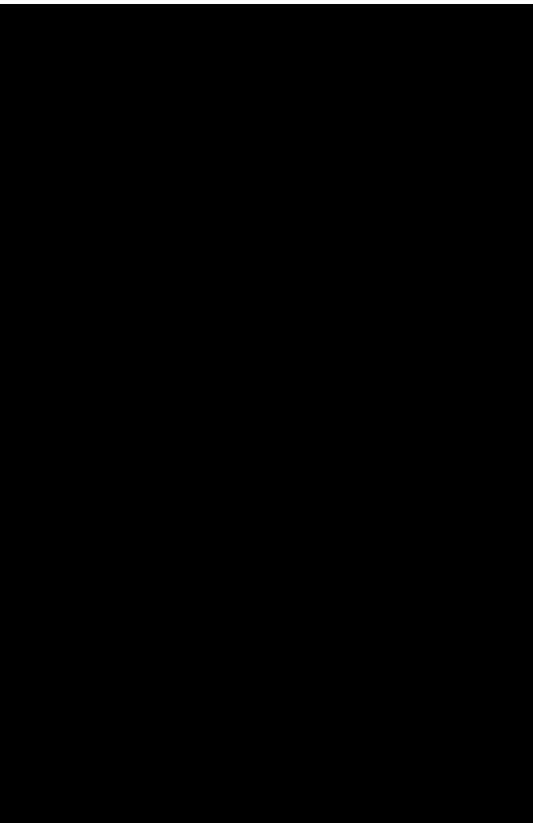


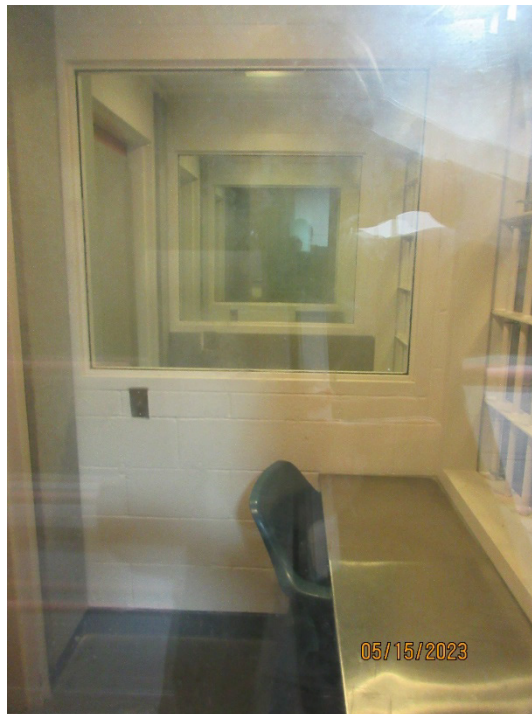
Figure 2

59. Figure 2 (another, more magnified display of the Fourth Floor) shows the layout of the professional visiting area. *Id.* (excerpted). The door from the sallyport opens into a narrow room, with three library-like carrels to the right (carrels are noted in orange in Figure 2, while the attorney’s path of travel is again noted in red). Each carrel is open to the rest of the room, has a single chair, and faces a metal counter. Above the metal counter are bars covered by plexiglass. Below the metal counter is a solid wall. The chairs are separated by dividers that are approximately three feet wide. Because each carrel is open to the rest of the room, there is no way that visitors in these carrels can avoid hearing one another speak in a normal voice. The attorney and her client can also clearly view any other incarcerated person and their attorney from the carrel.

60. On the other side of the plexiglass and bars, incarcerated people sit in individual cubicles, with a chair and metal counter, facing the professional visitor carrels. I understand that the plexiglass between attorney and client was added in

1 response to Covid.

2 61. The dividers between the incarcerated people have glass or plexiglass
3 windows, allowing them to see as well as hear other incarcerated people during their
4 professional visits. Figure 3 shows the inside of the incarcerated person visiting
5 space, where the bars (visible on the right side of the picture) separate the
6 incarcerated person from their professional visitor. Image of Visiting Space,
7 (SD_1579607).⁵



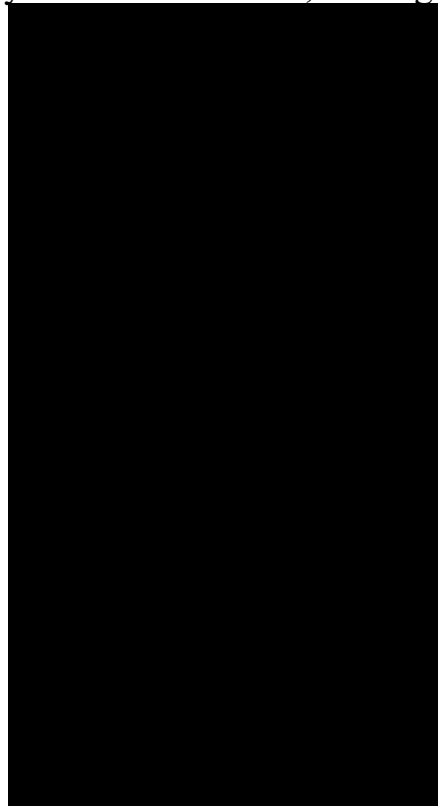
20 **Figure 3**

21 62. To avoid being overheard, attorneys and clients would need to whisper.
22 But to be heard through the plexiglass, especially when there are others talking in
23 the visiting area, they need to raise their voices above normal. Reportedly, when an
24 incarcerated person is left in the visiting area after his visitor has departed, which
25 frequently happens, he can hear everything other incarcerated persons and their
26

27 ⁵ I understand that the date appearing on the lower right of this photograph, as well
28 as others in this report, are incorrect. All photographs in this report were taken
during Plaintiffs' counsel's January and February 2024 inspections of the Jail.

1 attorneys are saying.

2 63. At the end of the professional visiting area—after the three carrels—is
3 a single enclosed booth (highlighted in yellow on Figure 4, which is also an excerpt
4 of SD_000437 and shows the attorney path of travel in red). The professional
5 visitor who uses this space—a defense attorney, a law enforcement officer, a
6 probation officer, etc.—must walk within inches of the other professional visitors
7 and can not help but hear what they are saying. Inside the booth with the door
8 closed, a visitor can hear voices in the carrel area clearly. From the carrels, I could
9 hear what was being said inside the booth. The booth reportedly had soundproofing
10 panels at one time, but they have been torn off, leaving behind globs of beige putty.



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Figure 4

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25 64. In each carrel there is a small (approximately 1” x 12”) vertical slit on
26 the left side of the plexiglass intended for exchanging papers. A bar runs
27 horizontally through the slit, however, so papers must be folded to fit through, and
28 only a handful of pages can be passed at a time. This makes it impossible for an

1 attorney to go over discovery—which can be hundreds of pages—with the client in
2 a meaningful way.

3 65. There is an intercom in the hallway immediately to the left as one
4 enters the professional visiting area. The intercom must be engaged for a
5 professional visitor to exit the visiting area. Because there is space for four
6 professional visitors at a time, the button is pushed fairly often, as one or another of
7 them gets ready to leave. A guard spoke to us through the intercom before we had
8 pushed the button, causing me to believe that deputies could overhear our
9 conversation in the professional visiting area. The attorneys I interviewed reported
10 having similar experiences.

11 66. After leaving the visiting room, the attorney reenters the sallyport. One
12 attorney reported waiting an hour for a deputy to buzz him out. An immigration
13 lawyer was reportedly left in the sallyport for four hours, sued the Department, and
14 won a cash settlement. *See Erubey Lopez v. County of San Diego, Claim for Injuries*
15 *and Release of Claims, DUNSMORE 0262500 – 0262504.*

16 67. In addition to its lack of confidentiality, the visiting area I visited was
17 filthy in March 2024. There was overflowing trash, what appeared to be blood on
18 the metal shelf in front of an incarcerated person waiting to be moved back to his
19 cell, and smears of bodily fluids on the plexiglass I was required to look through
20 while interviewing incarcerated people. Figure 5 (a photo from an inspection by
21 Plaintiffs’ counsel in May 2024) similarly shows food waste in the visiting area
22 (Figure 5, SD_1579611).

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Figure 5

B. George Bailey Detention Facility

68. George Bailey Detention Center, located at 446 Alta Rd., 5300, San Diego, CA. 92158, is a maximum security facility and the largest of San Diego’s seven jails. It is designed to house 1220 men; in June 2024 it held 1205 people on average.⁶ It is the facility where the incarcerated people facing the most serious charges are housed, unless they use a wheelchair or have serious mental illness. The more serious the charges, the more time an attorney is likely to spend with their client. Because of the potential punishment, defendants are reluctant to plead guilty. These cases are more likely to involve pretrial motions to suppress evidence and statements, pretrial hearings and trial. Interviewing the client for bail motions, motions to suppress, and motions for discovery is critical and needs to happen in a confidential setting and a timely fashion.

69. It takes approximately 30 to 45 minutes to drive to George Bailey from downtown San Diego. George Bailey has six housing units and a medical area.

⁶ See Jail Population Statistics (June 2024), San Diego Cnty. <https://www.sdsheriff.gov/resources/jail-population-data>.

1 Attorneys can only visit their clients in the one visiting room associated with the
2 client's housing unit. There is also a video visiting room, shown in Figure 6
3 (SD_661392) below, which is identical to the professional visiting room attorneys
4 are allowed to use except that there is a camera in one corner and there is no
5 plexiglass shield between the attorney's side of the table and the client's. While
6 George Bailey's policy and procedure states that "[i]f available, the video visit room
7 can be utilized for professional contact visits," George Bailey Detention Facility
8 Green Sheet, No. P.15.G, May 17, 2023, SD_116028, in practice, this is not always
9 the case. Interviews with attorneys; emails between George Bailey Staff, Feb 3,
10 2022, SD_661389-661391. Attorneys report that they have been allowed to use the
11 video visit room rarely. According to Public Defender Abe Genser, public
12 defenders must make appointments to use the video room, and it is regularly booked
13 up. But private attorneys told me they have been required to wait to see their
14 clients, even when the video room is not in use.



Figure 6

1 70. Captain Johns, who testified as the Sheriff's Department's Rule
2 30(b)(6) witness, did not know how many incarcerated people were in a George
3 Bailey housing unit, but agreed it could be 200. Johns Depo. at 14:13-15.
4 Approximately two hundred men facing the most serious charges share one
5 professional visiting room.

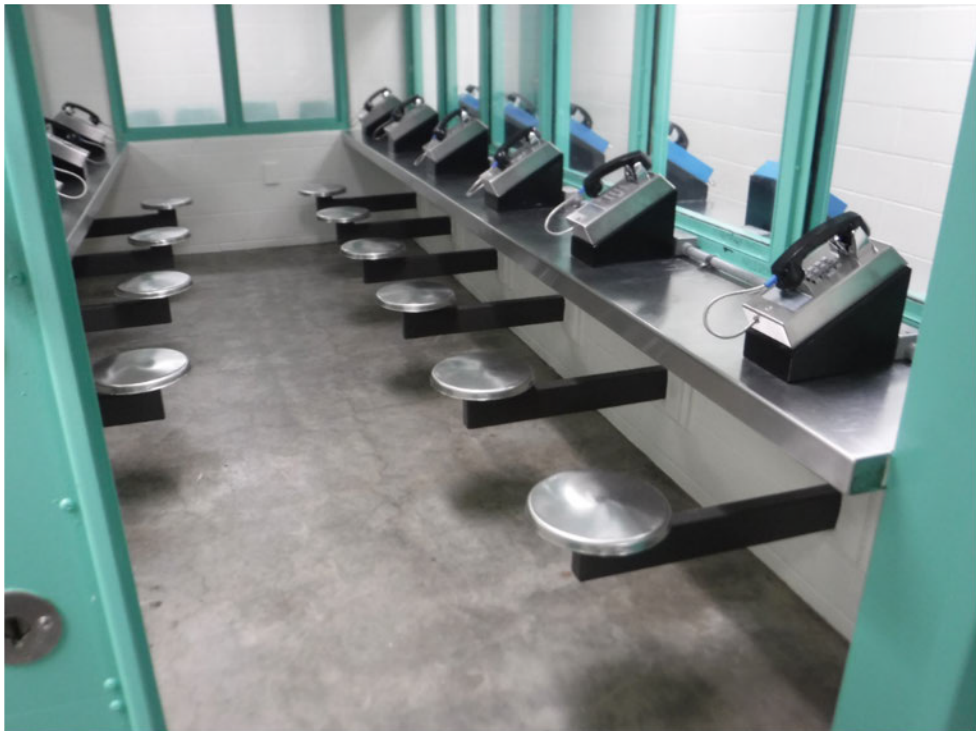
6 71. The Department's procedure states that "The professional contact visit
7 will be limited to a reasonable length of time. The amount of time allotted will be
8 based on facility operations and security needs and may not be arbitrary or
9 capricious in the application. The complexity of the case and individual case
10 situations may also be considered." SDSD Manual, No. P.15, SD_065657. In
11 practice, professional visits have no time limits. If an expert is there to conduct a
12 forensic examination, for example, the next visitor may have to wait three hours
13 before the room is free. Defense attorneys interviewed said that if you want to visit
14 a client at George Bailey, you must budget half a day. Every attorney I interviewed
15 said there have been times they had to leave without seeing their client because of
16 the length of the wait. Incarcerated people reported expecting their attorneys to visit
17 because they said they would, then having them not show up, resulting in frustration
18 and distrust. Such disappointments are extremely harmful to the attorney-client
19 relationship.

20 72. On the day I visited George Bailey, we were told we were second in
21 line, and we ended up having to wait two hours. There is no WiFi. Although there
22 are restroom and chairs, there are no tables allowing an attorney to work.

23 73. When the room became available, our bags were searched, and we were
24 directed to follow a colored stripe painted on the floor to the correct housing unit.
25 At the end of a long hallway, we were instructed to push an intercom button to have
26 a deputy open the door to the visiting area, which we did.

27 74. The door opens into a vestibule leading to the professional visiting area
28 on one side and the social visiting area on the other. The social visiting area, shown

1 in Figure 7 below, is an open room with twelve telephones for twelve visitors to
2 converse with twelve incarcerated people, who are on the other side of a U-shaped
3 plexiglass wall. Image of Social Visiting Area, SD_742792. When it is full, the
4 noise level is high and reportedly makes it difficult to hear in the professional
5 visiting room. As incarcerated people are brought to the social visiting room, they
6 can see who is in the professional visiting rooms, which makes some clients in the
7 professional visiting area extremely uncomfortable, given the danger they might be
8 in if other incarcerated people suspected that they were sharing certain information
9 with their attorneys.



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22 **Figure 7**

23 75. Captain Johns testified that, to his knowledge, the Sheriff's Department
24 has never tested or evaluated whether visits can be overheard by other incarcerated
25 people at George Bailey. Johns Depo. at 79:17.

26 76. The professional visiting room is approximately 6' by 10.' The room is
27 bifurcated by a metal table, as shown in Figure 8 (SD_742801) and Figure 9
28 (SD_742802) below. There is a door on one side of the table for attorneys to enter

1 and a door on the other side for incarcerated people to enter. There is a plexiglass
2 shield welded to the table between the incarcerated person and attorney. *Id.* The
3 incarcerated person is handcuffed to the table. *Id.* There is a one-way mirror behind
4 the incarcerated person through which the guards can look into the visiting area and,
5 presumably, see what the attorney and client are working on without being seen. *Id.*



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18 **Figure 8**

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Figure 9

77. There is a separate visiting room for incarcerated people in the medical unit. When I visited, the door behind the incarcerated person was kept open throughout the interview. The incarcerated person was handcuffed to the table. The room has glass windows looking out toward the front desk. The jail personnel in the front office could look in on our meeting. In fact, they had to keep an eye on the meeting as there was no functioning intercom and we were told to signal them when we wanted to be let out. Captain Johns acknowledged that it has been known for years that the intercom systems at Vista and George Bailey need to be replaced. *Id.* at 97:21-98:25.

C. Rock Mountain Detention Facility

78. Rock Mountain Detention Facility, located at 446 Alto Road, Ste. 5400, San Diego, CA 92158, housed 166 sentenced male incarcerated people in June 2024.⁷ It is located close to George Bailey and likewise takes 30 to 45 minutes to

⁷ Jail Population Statistics (June 2024), San Diego Cnty.,

1 reach by car from downtown San Diego.

2 79. Currently, Rock Mountain is only partially open, with one housing unit
3 in operation. Rock Mountain's professional visiting rooms are similar to George
4 Bailey's. The one open housing unit has two professional visiting rooms, one of
5 which is reserved for video visits. Presumably, the other housing units under
6 construction will be the same.

7 80. The first time I attempted to visit an incarcerated person at Rock
8 Mountain, we were told that the professional visiting room was in use and the video
9 room was booked for a video visit. We left and returned approximately two hours
10 later. The room was still unavailable, and the video room was in use. Sometime
11 later we were told the room had become available, but we did not have enough time
12 to get in and out of the facility before another appointment and left without meeting
13 with the incarcerated person.

14 81. The following day we returned. On this occasion, we were allowed to
15 use the video room for a professional visit. After our bags were searched, we
16 climbed a stairway then walked down a long hall with signage directing us to the
17 particular housing unit.

18 82. The video visiting room has glass windows, so attorney-client
19 communications are visible to detention personnel and other visitors and
20 incarcerated people. We stood outside the room until a deputy arrived with the
21 incarcerated person and unlocked the door. During this time, we could hear voices
22 coming from the other professional visiting room.

23 83. Plexiglass separates the attorney from the incarcerated, but unlike
24 George Bailey where it is possible to pass papers around the shield, at Rock
25 Mountain the shield is wall to wall, meaning there is no open air between the
26 attorney and client. Papers can only be passed through a narrow slit. The
27

28 <https://www.sdsheriff.gov/resources/jail-population-data>.

1 incarcerated person’s right hand was handcuffed to the table. As at George Bailey,
2 there is a one-way mirror behind the incarcerated person separating the visiting area
3 from a guards station, making it possible for guards to observe the meeting without
4 being seen.

5 **D. East Mesa Reentry Facility**

6 84. East Mesa Reentry Facility, located at 446 Alta Road, Ste. 5200, San
7 Diego, CA 92158, houses 153 male incarcerated people as of June 2024.⁸ Its rated
8 capacity is 760. It is a medium security facility. Its “mission” is “to operate the
9 reentry services for the Sheriff’s Department.”⁹

10 85. East Mesa is across the parking lot from George Bailey, and likewise
11 takes 30 to 45 minutes to reach by car from downtown San Diego. After our
12 identification was checked we waited 10 to 15 minutes before being led through the
13 guards’ break room and to a visiting room with a plexiglass shield and a small slot
14 for exchanging papers. As shown in Figure 10 below, the incarcerated person, a
15 trustee, was chained to the floor. Image of Meeting Room, SD_745190.

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25 ⁸ Jail Population Statistics (June 2024), San Diego Cnty.,
<https://www.sdsheriff.gov/resources/jail-population-data>.

26 ⁹ San Diego Cnty., Sheriff’s Department, Detention Facilities, East Mesa Reentry
27 Facility,
28 <https://www.sdsheriff.gov/Home/Components/FacilityDirectory/FacilityDirectory/102/109>.

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Figure 10

E. Vista Detention Facility

86. Vista Detention Facility, located at 325 S. Melrose Dr., #200, Vista, CA 92081, has the capacity to house 825 incarcerated people. In June 2024, it housed 711 people, on average.¹⁰

87. The population at Vista consists “primarily of incarcerated people awaiting court proceedings for North County cases.”¹¹ In addition, according to the Sheriffs’ Department website, Vista houses incarcerated people “with medical

¹⁰ Jail Population Statistics (June 2024), San Diego Cnty., <https://www.sdsheriff.gov/resources/jail-population-data>.

¹¹ San Diego Cnty. Sheriff’s Dept., Detention Facilities, Vista Detention Facility, <https://www.sdsheriff.gov/Home/Components/FacilityDirectory/FacilityDirectory/60/>.

1 challenges, those under psychiatric care, an administrative separation unit, [and]
2 defendants facing high-publicity trials.”¹² It also has a Veterans module.

3 88. It takes approximately 45 minutes to an hour to reach Vista from
4 downtown San Diego. At Vista, one room is designated for video visits, one for
5 incarcerated people in protective custody, and four for professional visits with
6 incarcerated people who are not in protective custody. The four “regular”
7 professional visiting rooms—one of which is shown in Figure 11 below—are in a
8 row, each with walls of plexiglass, making it possible for a person in one room to
9 see into all of the other rooms. Image of Professional Visiting Room, SD_743361.
10 One criminal defense lawyer described the professional visiting area as “a
11 fishbowl.”



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Figure 11

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25 89. Behind the incarcerated people, there is a plexiglass window into a
26 guards’ booth. Attorneys I interviewed reported that these booths are not
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28 ¹² *Id.*

1 soundproof. Captain Johns testified that, to his knowledge, the Sheriff's Department
2 has never tested or evaluated whether sound can transmit between one professional
3 visiting room at Vista and another. Johns Depo. at 78:6-9.

4 90. Incarcerated persons in Protective Custody generally visit their
5 attorneys in a triangular room with windows on two sides and cinderblock walls.
6 That triangular visiting room is shown in Figure 12. Triangular Visiting Room,
7 SD_743727.



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20 **Figure 12**

21 91. The incarcerated person I visited was in Protective Custody. He was
22 seated on a stool against the wall. One hand was handcuffed to the wall. The chain
23 was very short; four to five inches. It would not have been possible to cuff his other
24 hand, given the length of chain and the placement of the stool. The chain was too
25 short and the table too small to allow him to take notes without contorting his body
26 into an uncomfortable and unsustainable position.

27 92. Cinderblock and glass walls cause voices to echo. It was very hard on
28 my ears. It was hard to hear what the incarcerated person was saying.

1 93. There is no functioning intercom for attorneys to communicate with jail
2 staff. Instead, attorneys are instructed to signal to the guards in the office across the
3 hall when they are ready to leave. Again, this means guards are required to watch
4 the meeting. Neither visitor nor incarcerated person has an emergency alarm.

5 94. After the professional visitor leaves, the deputies are responsible for
6 taking the incarcerated person back to his housing unit. On March 17, 2023, an
7 incarcerated person was left in a Professional Visit Room at Vista for six hours,
8 during which time he was not provided with water, food, or a bathroom break.
9 When deputies removed the incarcerated person, “it resulted in the use of force.”
10 Peace Officer Records, IA Case 2022-049.1, SD_548198. The incident was referred
11 to Internal Affairs. The status is unknown. This incident—and others like it—
12 dissuade incarcerated people from going to visits with their lawyers, further
13 impeding attorney client communications.

14 95. Vista is unique in that it allows attorneys to make an appointment.
15 Even with an appointment, however, an attorney must wait. The day I visited we
16 had an appointment but still had to wait 30 minutes. We asked while waiting if we
17 could see another incarcerated person after we completed our first visit. We were
18 told we could not until four hours later. Notably, I observed that the professional
19 visiting rooms were all empty as we were leaving, but because the additional
20 incarcerated person we requested to speak with was in protective custody, we were
21 told we would have to wait four hours. The person we visited told us that he had
22 occasionally met with his attorney in this area, despite the fact he is in protective
23 custody. This suggests there are exceptions to the rule and that these regular visiting
24 rooms could be made more available for visits with clients in protective custody.

25 **F. South Bay Detention Facility**

26 96. South Bay Detention Facility, located at 500 Third Avenue, Chula
27 Vista, CA 91910, housed 350 incarcerated people on average in June 2024,
28

1 including incarcerated people charged with sex crimes.¹³ South Bay is about a 20 to
2 40 minute drive from downtown.

3 97. Sex crimes, often sexual abuse of a minor, are a category of cases
4 involving sensitive information and severe consequences to an incarcerated
5 defendant's well-being, should they be disclosed to other incarcerated people.
6 People who are charged with sex crimes, particularly those involving children, are at
7 risk from other incarcerated persons when in the general population.¹⁴ A lack of
8 privacy in the visiting area is particularly problematic under these circumstances.

9 98. South Bay has four professional visiting rooms; two on one side of a
10 short hallway, two on the other. At the time of my visit, I understood that one room
11 was reserved for Public Defender video calls and another was reserved for
12 Probation. The rooms are separated by plexiglass windows and it is easy to see
13 from one room into the others. From a short distance away, deputies are also
14 looking in.

15 99. If the rooms attorneys are allowed to use are occupied, the attorney
16 must wait. In January 2022, an attorney complained of waiting more than two
17 hours, when only one of the professional visiting rooms was in use. *See* Email to E.
18 Frierson from M. Carter, January 7, 2022, SD_661329. A deputy explained that
19 from the start of Covid, they had been using only one professional visit room, "due
20 to cross contamination and because the rooms are close in proximity." Email to R.
21 Williams from K. Buchanan, January 7, 2022, SD_661330.

22 100. The individual rooms are small with a narrow table between the
23 incarcerated person and attorney, bifurcated by a plexiglass shield. I could hear
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26 ¹³ Jail Population Statistics (June 2024), San Diego Cnty.,
<https://www.sdsheriff.gov/resources/jail-population-data>.

27 ¹⁴ *See generally* Zoukis Consulting group, "Sex Offenders in Prison | Surviving
28 Prison as a Sex Offender," <https://federalcriminaldefenseattorney.com/prison-life/special-tactics/how-sex-offenders-survive>.

1 voices from all three of the nearby rooms. I could see and hear the speaker on the
2 video screen. It appeared possible that the two way video camera was transmitting
3 sound from other rooms in the visiting area.¹⁵ Anyone walking by or standing in an
4 adjoining room could see the documents being reviewed with the client.

5 101. Captain Johns testified that, to his knowledge, the Sheriff's Department
6 has never tested or evaluated whether sound can transmit between one professional
7 visiting room at South Bay and another. Johns Depo. at 78:14-15.

8 102. There is an intercom the attorney must engage to be let out.

9 **G. Las Colinas Detention and Reentry Facility**

10 103. Las Colinas Detention and Reentry Facility, located at 451 Riverview
11 Parkway, Santee, CA. 92071, housed 513 female incarcerated people on average in
12 June 2024.¹⁶ It has a rated capacity of 1,208 incarcerated people.

13 104. It takes approximately half an hour to reach Las Colinas from
14 downtown San Diego. On the day I visited, we arrived about 2 p.m. and were
15 admitted to a visiting room 20 minutes later. The first incarcerated person we
16 requested arrived approximately ten minutes after that.

17 105. The facility appeared clean. The visiting room is larger than the rooms
18 at the other jails; about 8' x 10,' and includes chairs on either side of a table. The
19 visiting room has a camera and possibly other recording equipment in the ceiling, as
20 shown in Figure 13. Las Colinas Visiting Room, SD_744683. Attorneys reported
21 that this causes them to question the confidentiality of their client meetings.
22 Although enclosed, the visiting area is not soundproof as we could hear others
23 talking while waiting for the incarcerated person. There is a button to push to alert a
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25 _____
26 ¹⁵ When asked whether video visits are recorded by the Department, Captain Jesse
27 Johns, the person most knowledgeable about attorney visits, testified he did not
28 know. Johns Depo.at 50:5.

¹⁶ See Jail Population Statistics (June 2024), San Diego Cnty.,
<https://www.sdsheriff.gov/resources/jail-population-data>.

1 guard to come let you out. Here, as at all of the other facilities, the incarcerated
2 person, though a trustee, was handcuffed to the table.



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15 **Figure 13**

16 106. When we were shown into the room the door was propped open. When
17 the incarcerated person was shown in through a door on the other side of the room,
18 it too was propped open. At our request, the doors were closed.

19 **OPINIONS**

20 **I. THE SAN DIEGO SHERIFF’S DEPARTMENT IMPEDES**
21 **ATTORNEY-CLIENT COMMUNICATION**

22 107. Plaintiffs alleged in the Third Amended Complaint that the Sheriff’s
23 Department’s practices “systematically impeded and interfere with” attorney-client
24 communications, in particular by not providing adequate means for such
25 communication in-person, by telephone, or by mail. Dkt. 231 at ¶¶ 409–20. Based
26 on my review of documents, interviews, and my visits to the Jail, I agree.

27 108. It is my opinion that the means provided by the San Diego County
28 Sheriff’s Department for attorneys to meet and communicate with their incarcerated

1 clients are insufficient to ensure that confidential attorney-client consultations can
2 occur. As one San Diego Assistant Public Defender Abe Genser reported, “there is
3 no way to have a truly privileged conversation” with an incarcerated client in the
4 County of San Diego. In fact, in my opinion, the Sheriff’s Department’s policies,
5 procedures, and practices actively impede attorney-client communications.

6 109. In theory, there are five means through which attorneys can
7 communicate with their clients incarcerated in San Diego County Jails: in-person
8 visiting, telephone calls, legal mail, video calls, and email. Video calls are not
9 available to private counsel. Brown Depo. at 10:12-16; interviews with attorneys.
10 Emails are not confidential as a matter of policy.¹⁷ This report therefore focuses on
11 in-person visiting, telephone calls, and legal mail—the only means through which
12 all attorneys can hope to communicate confidentially with their incarcerated clients.

13 110. However, as explained below, none of those means is reliable. Each
14 one suffers from extreme delays—if an attorney can communicate with their client
15 at all—and all are rife with breaches of confidentiality.

16 111. The San Diego Sheriff’s Department does not have any oversight
17 policy or practice in place that ensures that attorneys can communicate
18 confidentially with their incarcerated clients. Jesse Johns, Captain of the Central
19 Jail—designated by defendants as the person most knowledgeable about the
20 Sheriff’s Department’s policies, procedures, and practices relating to the
21 incarcerated persons access to their counsel and courts, including legal mail,
22 confidential phones calls, attorney callbacks, professional visiting spaces, legal
23 forms, library access, and those issues in sections 8A and B of the Complaint, *see*
24

25 ¹⁷ The Sheriff’s Department Manual of Policies and Procedures explicitly states that
26 “email messages received via the incarcerated persons email system are not
27 considered confidential/legal mail.” Manual of Policies and Procedures, No. P.3,
28 March 11, 2022, SD 065038; *see also* San Diego County Sheriff’s Department –
Public Information Plan re: Email (SD 602327) (“There is no expectation of privacy
for e-mail messages; therefore, this system should not be used for legal or
confidential mail, or any other privileged communications.”).

1 Johns Depo. at 8:13-21—evidenced the Department’s lack of oversight of
2 incarcerated people’s access to the courts and counsel. He testified that the Sheriff’s
3 Department is aware that attorneys and other professionals can overhear each
4 other’s conversations in visiting rooms. *Id.* at 75:25-76:3. He testified that the
5 Sheriff has never tested whether incarcerated people in the visiting area can hear one
6 another’s communications with their lawyers. *Id.* at 76:22-77:5. Christina Ralph,
7 then-Commander of Operations, testified, “I have heard of delays with ... attorneys
8 wanting to meet clients,” and offered excuses. Ralph Depo. at 40:13-14 (“there are
9 a number of different incidents that can delay” those visits, including “just the
10 enormity of what’s happening business-wise with the facilities.”). Neither Captain
11 Johns nor then-Commander Ralph described any efforts to address these concerns.
12 *See* Ralph Depo. at 41:11. As defense attorney Melissa Bobrow put it, “there
13 appears to be some level of resentment against defense attorneys.”

14 112. The Sheriff’s Department’s lack of attention to its responsibility to
15 ensure that attorney-client communications can happen reliably and confidentially
16 was also evidenced by all the things Defendants’ person most knowledgeable about
17 incarcerated persons’ access to their counsel and courts did not know. For example,
18 Captain Jesse Johns was unaware that Vista has a telephone reservation system for
19 attorney visits. Johns Depo. at 12:11-18. He did not know how many professional
20 visiting rooms there are at George Bailey per house. *Id.* at 14:16-18. He was
21 unfamiliar with the Green Sheet policies of jails where he had not personally been
22 assigned. *Id.* at 15:9-20. He did not know whether, at George Bailey, incarcerated
23 people are able to use the professional visiting areas in houses in which they do not
24 live. *Id.* at 16:7-10. He knew that the time an attorney arrives at the jail is logged
25 into the jail’s computer system, but did not know if any other times, *e.g.*, when the
26 visit begins, are entered with respect to attorney visits. *Id.* at 17:17-19. He did not
27 know if every facility and every professional room has intercom capabilities. *Id.* at
28 21:13-22:3. Other critical information that Captain Johns—the person most

1 knowledgeable about the Department’s provision of access to the courts and
2 counsel—did not know is highlighted in the relevant sections below.

3 113. As will be shown, none of the ways private attorneys have to
4 communicate with their clients in the San Diego County Jails—in-person visits,
5 telephone calls, and legal mail—permits them to communicate reliably and
6 confidentially, thereby depriving incarcerated persons of the effective assistance of
7 their criminal defense counsel. The Sheriff’s Department’s failure in policy and
8 practice either to provide such a reliable, confidential means of communication or to
9 enact an oversight mechanism to ensure such communication can occur falls short of
10 its affirmative duty to do so.

11 **A. In-Person Visits**

12 114. Plaintiffs alleged in the Third Amended Complaint that the Sheriff’s
13 Department does not provide adequate, confidential in-person visiting opportunities
14 for incarcerated people to meet with their attorneys. Dkt. 231 at ¶ 415. Based on
15 my review of documents, interviews, and my visits to the Jail, I agree.

16 115. The San Diego Sheriff’s Department’s Detention Services Bureau –
17 Manual of Policies and Procedures (“SDSD Manual”) states generally that it is the
18 Department’s policy to “ensure incarcerated person(s) have access to courts and
19 legal counsel including . . . confidential consultation with attorneys.” SDSD
20 Manual, No. N.5, May 13, 2022, SD_065001. Section N.5 does not provide any
21 additional detail regarding in-person attorney-client consultations, nor does it
22 provide any detail about how the Department will ensure that incarcerated people’s
23 communications with their attorneys are confidential.

24 116. SDSD Manual Section P.15 describes the Policy and Procedure for in-
25 person visiting by “professionals,” including attorneys. SDSD Manual, No. P.15,
26 May 4, 2022, SD_065056. According to the “Policy” portion of Section P.15,
27 “[p]rofessional contact visits with incarcerated persons are permitted when such
28 visits are necessary to the administration of justice.” *Id.* Section P.15 further states

1 that such visits “will be limited to a reasonable length of time ... based on facility
2 operations and security needs and may not be arbitrary or capricious in the
3 application.” *Id.* at SD_065057. The “Procedures” outlined in Section P.15 include
4 only: security guidelines, how to handle property brought into detention facilities,
5 and a definition of “authorized personnel.” *Id.* at SD_065063. Like Section N.5,
6 there is no discussion about how the Department will ensure that incarcerated
7 people’s communications with their attorneys are confidential.

8 117. Section P.15’s definition of “authorized personnel” outlines who
9 qualifies as a “professional,” such that they may use the professional visiting areas.
10 *Id.* That list includes not just attorneys, but law enforcement officers, investigators,
11 probation officers and parole officers, immigration and customs enforcement agents,
12 grand jury members, military personnel, County Department of Health and Human
13 Services Employees, medical, psychiatric and mental health professionals, lab
14 technicians, polygraph operators, individuals working for an attorney who have a
15 “Letter of Authorization,” diplomatic and consular officials, clergy, and “other
16 authorized professionals.” *Id.* at SD_065056-60.

17 118. Each of the seven facilities is physically different, and most have their
18 own additional procedures (“Green Sheets”) for professional visits, which will be
19 discussed in more detail below. Like Sections N.5 and P.15, none of these Green
20 Sheets address how to ensure that incarcerated people’s conversations with their
21 attorneys will be private—except to say that they will take place in the “professional
22 visit area.” *See id.* at SD_065057.

23 119. According to the Sheriff’s Department’s “Public Information Plan” for
24 the Detention Services Bureau, professional “[v]isit rooms are available on a first-
25 come first-served basis.”¹⁸ They cannot be scheduled on-line at any facility, and
26

27 ¹⁸ San Diego Sheriff’s Department, Public Information Plan, Updated December
28 2023, available at <https://www.sdsheiff.gov/home/showpublisheddocument/7719/6383944022620700>

1 only one of the seven jail facilities, Vista, has a telephone reservation system. In
2 contrast, “[s]ocial in-person visit reservations can be scheduled online. The San
3 Diego Sheriff’s eVisit System may be accessed through the Who’s in Jail website.”¹⁹
4 Telephone requests for social visit reservations are also accepted.²⁰ That Vista
5 Detention Facility accepts scheduled attorney visits and all facilities accept
6 scheduled social visits suggests that the Sheriff’s Department has the technical
7 capacity to schedule attorney visits.

8 120. The Sheriff’s Department’s policy on in-person attorney-client visits is
9 flawed on its face, because, by its text, it permits Sheriff’s Department staff to deny
10 incarcerated people in-person visits with their attorneys if, in a staff member’s
11 opinion, the visit is not “necessary to the administration of justice” or if the
12 attorney’s visit time is not “reasonable.” *See* SDDS Manual, No. P.15, May 4,
13 2022, SD_065056. Such discretion—especially when attorney visits are lumped in
14 with other professionals and no specific direction regarding attorney visits is
15 provided—is inappropriate and insufficient to safeguard the rights of incarcerated
16 people.

17 121. In practice, the San Diego County jails simply do not have enough
18 professional visiting rooms to meet the needs of the County’s incarcerated
19 population. The lack of sufficient space for attorney-client meetings is exacerbated
20 by the fact that the professional visiting areas are used not only by attorneys, but
21 also by law enforcement officers, investigators, probation and parole officers,
22 immigration and customs enforcement agents, clergy, forensic examiners and
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25 ¹⁹ *See* Visiting, San Diego Cnty. Sheriff’s Department
26 <https://www.sdsheeriff.gov/bureaus/detention-services-bureau/visiting>.

27 ²⁰ *See id.* The Sheriff’s Department’s policy on social visiting allows contact social
28 visiting with children only for female incarcerated people. Men are denied access to
contact visiting with their children. This policy discriminates on the basis of gender.

1 everyone else listed under “Authorized Personnel” in SDDS Manual Section P.15.
2 *See id.* at SD_065058. (A forensic psychiatric exam, for one, can take three hours.)

3 122. Due to the lack of sufficient professional visiting space, the defense
4 attorneys I interviewed reported that they routinely face unpredictable, substantial
5 waits to meet with their clients—often as long as three hours. All of those attorneys
6 described instances in which they had to leave the Jail facility without seeing their
7 client because of the length of the delay.

8 123. According to Rule 30(b)(6) testimony on behalf of the Sheriff’s
9 Department, the Department is aware of long wait times for attorneys to visit with
10 their clients. Johns Depo. at 18:20-24. The Department is aware of attorneys
11 waiting several hours to see a client, then leaving the jail in frustration. *Id.* at 19:8-
12 21. Indeed, one attorney who waited several hours before leaving Central Jail in
13 frustration formally complained to the Captain of the Jail. The Captain “believed
14 staffing and poor communication played a role.” Email to S. Manning from K.
15 Bibel, October 26, 2023, SD_659605.

16 124. Another attorney complained to the Sheriff’s Department about the
17 wait at South Bay Detention Center. Email to E. Frierson from M. Carter,
18 January 7, 2022, SD_661329. She had gone to advise her client of what was to
19 happen in court the next day. Only one of the four rooms was in use, yet she was
20 told she would have to wait. She asked to use a social visiting room but was denied.
21 The deputy drafting the memo about this incident explained that this was because of
22 the Department previously was found to have recorded attorney-client meetings in
23 that area. *Id.* at SD_661330. The attorney waited more than two hours before she
24 was able to meet with her client.

25 125. Despite its knowledge of these problems, the Sheriff’s Department does
26 not appear to be taking any remedial measures to minimize the delays in attorney-
27
28

1 client visiting times. *See* Ralph Depo 40:25-41:12.²¹

2 126. Delays are also caused by the Department’s faulty intercom system. At
3 some facilities, such as South Bay and Vista, attorneys are required to bang on the
4 window, or wait to catch a Deputy’s eye, to be let out of the visiting room because
5 the intercoms are not operable. As described below, the Department has known that
6 its intercom systems are “obsolete” and in need of replacement since no later than
7 June 2022. This issue is not just a matter of convenience. It is a matter of safety.
8 Intercoms are the only way attorneys and incarcerated people who need help from
9 jail staff can summon them quickly. While money has been allocated to begin the
10 intercom replacement project, “It just hasn’t started yet,” according to Christina
11 Ralph, the Commander of the Detention Bureau’s Operations. Ralph I Depo. at
12 103:22-104:5. And she has no timeline for when it will. *Id.* at 104:6-7.

13 127. The defense attorneys I interviewed carry caseloads of 30 to 50 cases.
14 This means they are required to appear in court almost every day, leaving less than
15 20 half days a month to meet with clients, draft pleadings, and prepare for hearings
16 and trials. It is not feasible to do all of this work and visit clients if each visit takes
17 half a day. All interviewees agreed that delays getting into and out of the
18 Department’s facilities impairs their ability to effectively represent their clients.

19 128. Attorneys face obstacles meeting with their clients in addition to
20 delays. Interpreters are required to communicate with many criminal defense and
21 civil rights clients. Not all criminal defense lawyers are bilingual, and Spanish is
22 not the only language that needs translation. The Department’s Security Guidelines
23 provide that a professional visitor’s “[c]learance shall entail checking the reason and
24

25 ²¹ The Public Defenders’ Office reportedly has a rule that attorneys will visit clients
26 in person before the client’s first court appearance after their appointment as
27 counsel. If they do not, they must document why. I was informed that this rule is
28 often broken and that the reason documented is that attorneys cannot do the work
they need to do to prepare for the preliminary hearing if they are going to be stuck at
jail for half a day waiting to see their client.

1 authority for entry and verifying the visitor's identity by photographic identification
2 and a professional identification card." SDSD Manual, No. P.15, SD_065056. But
3 then, regarding interpreters, the Guideline provides:

4 INTERPRETERS: All interpreters must be accompanied
5 by an attorney, law enforcement officer, probation officer
6 or other justice or medical personnel. If not accompanied
7 by a law enforcement officer, the interpreter must be a
8 county employee, a licensed court interpreter or
9 designated as an interpreter by court order.

8 SD_065059. In California, there is no such thing as a licensed interpreter.

9 California requires certification for its court interpreters for fifteen specific

10 languages (Arabic, Armenian (Eastern), Armenian (Western)*, Cantonese, Farsi
11 (Persian), Filipino (Tagalog), Japanese*, Khmer, Korean, Mandarin, Portuguese,
12 Punjabi (India), Russian, Spanish, and Vietnamese.) and registration for others.²²

13 The Department's rule, if uniformly applied, would prevent every professional
14 visitor other than law enforcement officers from employing the services of an
15 interpreter to communicate with an incarcerated person.

16 129. I am informed staff discretion was exercised to prevent a sign language
17 interpreter from accompanying a member of the plaintiffs' legal team into a
18 confidential attorney visit in November, 2023, at Central Jail. Jail staff claimed the
19 interpreter must provide a license to enter; the interpreter had a National Interpreter
20 certificate, but that would not do. According to the Department, the interpreter
21 would have been allowed in if accompanied by an attorney instead of a law clerk.
22 Email exchange between G. Grunfeld and E. Pappy, November 10, 2023. None of
23 this makes sense; the rule specifically allows law students and law clerks to enter as
24 professional visitors, with a letter from the supervising attorney. *See* SDSD Manual,
25

26 _____
27 ²² California Courts. Language Access Services. Become a Court Interpreter.
28 <https://languageaccess.courts.ca.gov/court-interpreters-resources/becoming-court-interpreter>: Orientation Manual for Aspiring Interpreters, United States District Court, Southern District of California, p. 21.

1 No. P.15, SD_065059. Because the law clerk could not communicate with the client
2 without the interpreter, the meeting could not take place.

3 130. Once an attorney gets in to see her client, she is faced with a
4 professional visiting area that is not confidential.

5 131. For one thing, professional visiting areas throughout the Jail facilities
6 are equipped with two-way microphones. Captain Jesse Johns explained that when
7 a visitor pushes the intercom button, it sends a signal to the control deputies, and
8 once a control deputy touches the touchscreen alert on their panel, it opens up the
9 line of communication. Johns Depo. at 23:9-17. When the deputy releases his
10 button, he can hear “everything that’s on the other side coming [his] way.” Johns
11 Depo. at 92:20-23. The line remains opens until the deputy responds to the next
12 alert or silences the intercom. *Id.* at 23:21-24:6. The people in the visiting room—
13 *i.e.*, the attorney and her incarcerated client—have no way of knowing whether or
14 not sound continues to be transmitted from the professional visiting room to the
15 control room. *Id.* at 26:15-28:8. Although Captain Johns testified that training
16 officers instruct deputies to turn off the line of communication after they respond to
17 the professional visitor’s request, he admitted that this is not written down
18 anywhere. *Id.* at 28:9-30:20. This is true for all jails that have touchscreen
19 capabilities, which includes Central, George Bailey, Las Colinas, and possibly
20 others. In sum, throughout the professional visiting areas, there are microphones
21 connecting those rooms to Sheriff’s deputies, and attorneys have no way of knowing
22 whether the microphones are on when they meet with clients. And, according to
23 Captain Johns, there is no documented training instructing deputies not to listen to
24 attorney-client conversations. *Id.* at 29:23-30:21.

25 132. Another concern about confidentiality arose in 2021, when it emerged
26 that the Sheriff’s Department recorded dozens of privileged attorney-client
27 conversations between December 2020 and May 2021 and between August 2021
28 and October 2021. All of these recordings were available to the district attorney’s

1 office, and at least one was used at a trial.²³ The Department said the problem was
2 with Securas Technologies, the company that provides communication services in
3 the County’s jails. The Department said it was not able to simply disable the
4 recording after it learned of it, but instead had to involve Securas. It is unclear
5 when, if ever, the recording stopped. Captain Jesse Johns testified that the
6 Department is “in the process of transitioning” from Securas to a new company.
7 Johns Depo. at 36:13-17.

8 133. In addition to the possible breaches of confidentiality by microphone
9 and recording, many of the professional visiting areas are not soundproofed,
10 meaning attorney-client conversations can be overheard by other incarcerated
11 people or professional visitors, as explained in more detail below.

12 134. The following subsections describe the additional, specific flaws with
13 in-person visiting at each of the jail facilities.²⁴

14 **1. San Diego Central Jail.**

15 135. SDSD Detention Services Bureau-San Diego Central Jail Green Sheet,
16 No. P.15.C.1, on “Professional Contact Visits” explains that “professional visits will
17 be conducted in the professional visit area of each housing unit.”²⁵ Those visiting
18

19 _____
20 ²³ Jeff McDonald, “Sheriff’s deputies recorded jail conversations between inmates
21 and their lawyers,” San Diego Union-Tribune, November 6, 2021,
<https://www.sandiegouniontribune.com/2021/11/06/sheriffs-deputies-recorded-jail-conversations-between-inmates-and-their-lawyers>.

22 ²⁴ Of the seven jail facilities, East Mesa was the only one in which the wait time was
23 minimal and the visiting space seemed to be truly confidential. Notably, East Mesa
24 houses the fewest number of incarcerated people, and all of its residents have
already been sentenced, suggesting they are relatively less likely to require meetings
with their criminal defense counsel.

25 ²⁵ See Central Jail Green Sheet, Green Sheet P.15.C.1 also references an “Interview
26 Room located on the 9th Floor.” No criminal defense attorney I interviewed
27 reported being taken to a separate professional visiting room or of hearing of such a
28 room. In addition, when I visited Central Jail, we asked if there was a separate
visiting room with more space, so that the client we were interviewing could look at
documents. We were told that the only visiting rooms for professional visits were
the ones described above.

1 areas, described in detail above, are subject both to lengthy delays and lack of
2 confidentiality.

3 136. Attorneys attempting to meet with clients at the Central Jail face delays
4 at multiple stages of the process, including both entering and exiting the
5 professional visiting area. First, an attorney must wait in the lobby for a
6 professional visiting space to be available. As noted above, there are no chairs in
7 the lobby, nor is there any WiFi, which would enable an attorney to continue her
8 work while she waits. Nor is there any restroom available to attorneys in this
9 facility. Second, once the attorney is told there is a visiting room available, the
10 attorney must wait to get buzzed through a sallyport to enter the professional
11 visiting area, which requires a Sheriff's deputy located remotely to open two doors.
12 While they wait to be buzzed into the sallyport, there are similarly no chairs—there
13 is only an empty hallway. Attorneys have reported waiting close to half an hour for
14 the door to the sallyport to open. Third, after the attorney completes the interview,
15 she must press the intercom button to inform deputies that the visit is complete, then
16 wait to be buzzed out of the sallyport again. Attorneys have reported waiting an
17 hour or more to be released through the sallyport.

18 137. Such delays at Central Jail are not new. In 2013, an attorney sued the
19 County of San Diego after he was locked in a Central Jail visiting room for hours.
20 The County settled the claim for \$4,000. DUNSMORE 0262500.

21 138. Yet, the delays persist. The attorneys I interviewed reported that the
22 routine delays both entering and exiting the professional visiting area at Central Jail
23 at times dissuade them from visiting clients there. For example, an attorney
24 reported that he cannot visit clients past a certain point in the mid-afternoon, for fear
25 that he would face the hour-long delay leaving the professional visiting area and
26 miss daycare pickup. Similarly, despite the proximity between Central Jail and the
27 downtown courthouse, defense attorneys cannot reliably plan to visit clients before
28 an afternoon court appearance, for fear that they would miss a hearing while locked

1 in the professional visiting area.

2 139. Class counsel in this case has also reported to me that they had to wait
3 many hours to interview their clients. In 2023, they sent a letter to attorneys for the
4 County requesting to discuss ways to streamline and expedite attorney visits. This
5 request was immediately rejected by emailed response.

6 140. Attorneys' difficulty in getting in and out of the professional visit areas
7 for client meetings is further complicated by the fact that Central Jail does not allow
8 attorneys to begin professional visits at certain time periods during the day. For
9 example, during my visit to Central Jail, I was told that we would not be allowed to
10 start a client meeting between 11:00 a.m. and noon because deputies would be
11 eating lunch at that time.

12 141. The professional visiting areas are also not confidential. As explained
13 above, the visiting rooms are equipped with two-way microphones, which do not
14 indicate to the incarcerated people or their attorneys whether they are transmitting
15 sound to deputies.

16 142. In addition, on each floor, only one of the four spots for professional
17 visitors has a door that closes. The other three visiting areas are connected, with no
18 wall separating the professional visitors from each other. During my visits with
19 incarcerated people at the Central Jail, I was able to overhear the conversations of
20 other attorneys meeting with their clients at the same time—even when I was in the
21 so-called “private” visiting room that was separated from the other three visiting
22 areas by a door.

23 143. During his deposition, Captain Johns testified that the Sheriff's
24 Department is aware that attorneys and other professionals can overhear the
25 conversations of other professionals in the professional visiting area at Central Jail.
26 Johns Depo. at 75:21-76:23. As noted above, the list of “professionals” authorized
27 to use the professional visiting area/room includes law enforcement officers,
28 probation officers, and others whose interests are not aligned with those of the

1 client. In essence, Captain Johns has admitted that the Sheriff’s Department knows
2 it is not ensuring that incarcerated people can have privileged communications with
3 their attorneys at the Central Jail.

4 **2. George Bailey Detention Facility.**

5 144. As explained by the George Bailey Detention Facility Green Sheet No.
6 P.15.G (“Professional Contact Visits):

7 There are two professional visit rooms in each of the six
8 main housing units. An additional professional visit room
9 is located in the medical visiting area. One of the rooms in
10 each house is designated for video conferencing, which is
11 considered a professional visit. If available, this room can
12 be utilized for professional contact visits; however,
13 priority will be given to scheduled video conferences. . . .

14 145. As noted above, there are approximately 1,200 people incarcerated at
15 the George Bailey Detention Facility, across “six main housing units,” plus the
16 medical area. Thus, there are at most two professional visiting rooms available for
17 each housing unit of approximately 200 incarcerated people. Of those two
18 professional visiting rooms, only one is consistently available for in-person visiting.
19 The other “is designated for video conferencing.” Although the Green Sheet
20 indicates that the visiting room that is “designated for video conferencing . . . *can* be
21 utilized for professional conduct visits,” it does not routinely happen. *Id.* (emphasis
22 added). As noted above, public defenders must make appointments to use the video
23 room, and it is regularly booked up.

24 146. The criminal defense attorneys I interviewed explained that they were
25 sometimes, but not always, allowed to conduct an in-person interview in the video
26 conferencing room, when no video conference was ongoing. Documents produced
27 by the Sheriff’s Department establish the same, including an email in which Tonya
28 Benjamin, then the Administrative Lieutenant at George Bailey, reported that staff
“would *sometimes* use the VCON [video conferencing] room” for in person
meetings. Email from T. Benjamin, February 3, 2022, SD_660644 (emphasis
added).

1 147. As a result of the limited number of professional visiting areas—which,
2 as noted above, are used not only by attorneys, but also by other professionals—
3 attorneys report multi-hour delays in attempting to meet with their clients. For
4 example, Plaintiffs’ counsel in this litigation reported waiting over three and half
5 hours to meet with incarcerated clients at George Bailey. The criminal defense
6 attorneys I interviewed reported multi-hour delays being so consistent at George
7 Bailey that they find it essentially impossible to visit clients in-person during regular
8 business hours. Instead, they exclusively go to George Bailey on the weekend, in
9 the early morning, or in the evening.

10 148. I similarly experienced delays when attempting to meet with
11 incarcerated people during my March 2024 visit to George Bailey. We initially
12 asked to meet with an incarcerated person in medical housing at approximately 9:15
13 a.m. We were told that the one professional visiting room for people housed in
14 medical was full, but were able to meet with incarcerated people in other housing
15 units instead. By the time we finished those meetings, it was approximately 10:50
16 a.m., and we returned to the lobby to wait for the medical housing professional
17 visiting area. We waited until approximately 1:00 p.m., when we were finally called
18 to visit the client in medical housing. Therefore, we were not able to meet with the
19 client in medical housing for well over three and a half hours after originally
20 requesting to see him. Although we were able to meet with other clients in other
21 housing units for some of that time, over two hours of the time we were just sitting
22 and waiting, in a professional visiting room with no WiFi and very minimal
23 telephone service.

24 149. When our visit in the medical professional visiting area was completed,
25 we were locked in the visiting room. Although we pressed the intercom button and
26 banged on the door of the visiting room, it took several minutes before staff noticed,
27 and we were released from the visiting area.

28 150. In addition to the concerns with delay, the attorney visiting rooms at

1 George Bailey also suffer from limited confidentiality. The concerns with two-way
2 microphones described above also exist at George Bailey. In addition, as noted
3 above, incarcerated people walking into the social visiting room pass by a window
4 directly into the attorney visiting area. And there is a one way mirror allowing
5 guards to see into the visiting area without being seen.

6 **3. Rock Mountain Detention Facility.**

7 151. As noted above, the layout of Rock Mountain is similar to that of
8 George Bailey. It is therefore subject to the same constraints regarding the
9 availability of professional visiting rooms. As of June 2024, 166 people were
10 incarcerated there on average, and there were only two visiting rooms, one of which
11 was used for video conferencing.

12 152. I am not aware of any Green Sheets regarding operations at Rock
13 Mountain, and none are posted online.

14 153. The first time I attempted to visit Rock Mountain, both professional
15 visiting rooms were in use. One of the rooms opened approximately an hour and
16 twenty minutes after we requested the interview. However, because of another
17 appointment, we were unable to wait to complete the interview that day. Instead,
18 we left and were required to come back the next day.

19 **4. Vista Detention Facility.**

20 154. As noted above, Vista is the only one of the San Diego Jail facilities
21 that accepts phone reservations for attorney-client meetings. According to Vista
22 Detention Facility Green Sheet No. P.15.V (“Professional Contact Visits”), “[t]here
23 are six rooms which are designated for confidential communication between inmates
24 and professional visitors.” Four, which are downstairs, are directly adjacent to each
25 other and are separated only by walls of plexiglass; two are upstairs, for use by
26 protective custody and some other incarcerated people. Attorney-client meetings in
27 either meeting space suffer from failures of confidentiality and reliability.

28 155. Despite the existence of Vista’s reservation system, attorney-client

1 meetings still suffer from delays, which can be unpredictable. For example, the day
2 that I went to Vista, our scheduled client meeting did not start until 30 minutes after
3 the appointment start time.

4 156. In addition, attorneys who are unable to make an advance
5 appointment—*e.g.*, because there is an urgent reason that they need to meet with the
6 client—face substantial delays. For example, during the same visit to Vista, we
7 requested to meet with another client, who we did not have an appointment to see.
8 We were told that we would need to wait two and a half hours to see him.

9 157. In certain visiting rooms at Vista, attorneys experience extreme delays
10 in exiting the visiting room—similar to the experience at Central Jail described
11 above. Attorneys I interviewed described needing to bang on the windows to get the
12 attention of deputies and being forced to wait 20 minutes or more until a deputy
13 happened to be walking by to be allowed to exit.

14 158. In addition to the delays described above, the downstairs Vista visiting
15 rooms—which are adjacent to each other—suffer from a lack of confidentiality.
16 Those rooms are separated by walls that are half plexiglass, and incarcerated people
17 visiting in the rooms can clearly see each other meeting with their attorneys or other
18 professional visitors. One attorney reported her client was fearful and unable to
19 proceed with their meeting while another incarcerated person, whose attorney had
20 departed, remained in a nearby booth.

21 159. And, even if the rooms were soundproof, the existence of substantial
22 plexiglass means that incarcerated people who communicated via sign language can
23 be “overheard.”

24 **5. South Bay Detention Facility.**

25 160. Although South Bay Detention Facility has a Green Sheet governing
26 professional visiting, it states only that “incarcerated individual Professional Visits
27 will be conducted in compliance with the guidelines set forth in Detention Policy
28 and Procedure, Section P. 15” and provides minimal guidance about movements of

1 people in protective custody. South Bay Green Sheet, No. P.15.S, September 6,
2 2023, SD_0116353.

3 161. In June 2022, a power spike to the building “took out the memory of
4 the Alphacom main control intercom.” Email from C. Murphy to S. Roberts, July 8,
5 2022, SD_704059. Two weeks later Chris Murphy, Electronic Security, wrote that
6 due to the equipment’s antiquated nature, it was no longer serviceable, and it was
7 time to upgrade the system. *See* Email from C. Murphy to M. McArdle at al.,
8 July 8, 2022, SD_704058. Two weeks after that, Lieutenant Kelly Buchanan wrote:

9 I wanted to see if there is an update on this. Our intercoms are not
10 consistently working and none of our professional visit room ones are
11 working at all. This is a huge liability. Yesterday we had an IP
12 defecate in a pro-visit room because the call box did not work for him
13 to notify anyone that he needed out. This is unacceptable.
Additionally, two weeks ago, an attorney was stuck in the room with an
IP for almost an hour because she had no way to communicate the visit
was over. ... [I]t was known these intercoms have been down for
almost a month.

14 Email from K. Buchanan to Staff, July 21, 2022, SD_704056-704057. On July 22,
15 Darren (Scott) Bennett writes, “Yes, the system is not repairable. This has been a
16 known issue to be coming for sometime by all, just like Vista and GB (“George
17 Bailey”).” Email from S. Bennett to Staff, July 22, 2022, SD_704054. On July 31
18 the Lieutenant was told that “repairing the obsolete system is not going to happen.
19 This could take from a few weeks, to several months to devise a plan, figure out
20 how to fund and more importantly, get a procurement method in place.” *Id.* at
21 SD_704056. During my visits there were several rooms with intercoms that did not
22 appear to be working.

23 162. Attorney visits at South Bay suffer from lack of confidentiality for
24 many of the same reasons highlighted above. As in Vista, each of the professional
25 visiting rooms is separated from another professional visiting room by only a wall of
26 plexiglass, which is not soundproof. Incarcerated people I interviewed reported that
27 they could easily overhear conversations going on in other professional visiting
28 areas while meeting with their attorneys.

1 163. In addition, the South Bay visiting rooms also include the two-way
2 microphones described above, and therefore suffer from the same concerns about
3 deputies being able to hear attorney-client conversations.

4 **6. Las Colinas Detention and Reentry Facility.**

5 164. The visiting rooms at the Las Colinas Detention and Reentry Facility
6 suffer from the same confidentiality concerns about two-way microphones raised
7 above. In addition, each of the visiting rooms is equipped with a very visible
8 camera, the functioning of which is unclear.

9 165. And, although the wait times at Las Colinas are currently manageable,
10 it is worth noting that that facility houses less than half its rated capacity at present.
11 It is not clear that wait times would be similarly short if Las Colinas were at full
12 capacity.

13 **7. County Courthouses**

14 166. Nor is the lack of reliable, confidential visiting space for attorney-client
15 meetings at the San Diego County Jails made up for by appropriate visiting space at
16 the County’s courthouses. Despite its policy that “all efforts shall be made to ensure
17 attorney/client confidentiality,” San Diego County Sheriff’s Department, Court
18 Services Bureau, Policies and Procedures Manual, No. E.9, the facilities for attorney
19 visits with incarcerated clients at the San Diego County courthouses are not
20 confidential.

21 a. At San Diego County Central Courthouse, located at 1100 Union
22 Street, San Diego, which opened in late 2017, there is a door on the east side of each
23 courtroom that leads to an area where attorneys can speak to clients who are in
24 custody before their court appearances. The area consists of a hallway with three
25 carrels and one closed room. Each carrel has a stool, a counter and a glass window.
26 The incarcerated people are on the other side of the glass in open carrels of their
27 own. Attorneys must talk to their clients on a phone and must raise their voices to
28 be heard. The incarcerated people’s wrists are cuffed to a waist chain, with two

1 links between the cuff and the waist chain, requiring them to contort their bodies to
2 use the phone. Everyone can hear what each other is saying, even in the closed
3 room. As one attorney put it and all whom I interviewed agreed, “It is absolutely
4 not confidential.”

5 b. At the East County Courthouse, located at 250 East Main Street,
6 El Cajon, an incarcerated person must talk to her lawyer while sitting on a bench,
7 handcuffed to the wall, in a hallway with deputies walking back and forth. Multiple
8 incarcerated persons and attorneys can hear one another.

9 c. At the North County Courthouse, located at 325 South Melrose
10 Drive, Vista, an attorney must go into the holding tank to talk to their client. There
11 are other incarcerated people in there and may be other attorneys as well. It is noisy.
12 There is one private room but it is only for clients charged with sex offenses.

13 d. At the South County Courthouse, located at 500 Third Avenue,
14 Chula Vista, attorneys can sometimes have a private room, but other times they are
15 required to speak to the client in a holding cell with three or four other people
16 present.

17 167. Because the courthouses do not have facilities for private consultations,
18 clients are forced to waive the attorney client privilege and talk to their attorney in
19 front of other incarcerated people or request a continuance, prolonging their time in
20 jail and potentially forfeiting their chance to accept a plea deal that had been offered
21 for a day.

22 168. In summary, it is my opinion that the Sheriff’s Department—by policy
23 and practice—impedes attorney-client visits by forcing attorneys to endure
24 unjustified delays and failing to provide professional visiting rooms with the
25 requisite degree of privacy. In several facilities, conversations in the professional
26 visiting areas can be overheard by other incarcerated people and professional
27 visitors, making the visits non-confidential. Notably, these professional visiting
28 areas are not only used by other defense attorneys, but also by probation officers and

1 other law enforcement officials. Therefore, on the rare chance an attorney has the
2 opportunity even to meet with their client in-person—in light of the delays noted
3 above—the client and the attorney understand they can be overheard, impeding their
4 communications and undermining the privilege.

5 169. Moreover, the Sheriff’s Department is aware of these problems, but has
6 failed to undertake any remedial measures to correct them.

7 170. These unjustified delays and denial of confidential spaces limit
8 attorneys’ ability to fulfill their duties of communication and confidentially to their
9 clients. Such impairment of attorneys’ duties threatens the entire system of justice.
10 The Sheriff’s Department’s failures in this regard mean that it falls short of its duties
11 to facilitate attorney-client communications.

12 **B. Telephone Calls**

13 171. Confidential legal telephone calls are an important alternative to in
14 person visits when time-sensitive legal issues arise, or when attorneys are
15 geographically distant from their clients. In San Diego, it is not uncommon for
16 defense attorneys to have clients housed at several different County jails. Defense
17 lawyers I interviewed had clients from Vista to South Bay, Central to George
18 Bailey, and sometimes all of the above. For the reasons stated above, driving from
19 one Jail to another then waiting to get in is time consuming, sometimes prohibitively
20 so. When a minor issue can be addressed in an attorney-client telephone call, it is in
21 the interest of all of the stakeholders to facilitate the call.

22 172. The Sheriff’s Department’s policies and procedures for attorney-client
23 telephone calls fails to address this need. It is neither reliable nor confidential. As
24 explained in more detail below, the Jail does not provide a functioning system for
25 attorneys to schedule phone calls with their incarcerated clients or otherwise to
26 request and receive a call from their clients. In addition, incarcerated people’s
27 phone calls with their attorneys are never confidential, because they take place in the
28 dayroom or the yard, where the incarcerated person is surrounded by other people,

1 recording devices, and cameras.

2 **1. Failure to Complete Requested Call Backs**

3 173. Plaintiffs alleged in the Third Amended Complaint that the Sheriff’s
4 Department fails to inform incarcerated people that their attorneys have requested
5 callbacks and, as a result, “[a]ttorneys repeatedly place calls for their incarcerated
6 clients that are never returned.” Dkt. 231 at ¶¶ 411–12. Based on my review of
7 documents, interviews, and my visits to the Jail, I agree.

8 174. Some of the Department’s detention facilities have written procedures
9 for how staff are to handle calls from attorneys requesting a “callback” from their
10 clients. Pursuant to the written procedures, when an attorney requests a call back,
11 the Jail is to notify the appropriate housing floor or send an attorney call back slip to
12 the designated control Deputy. The “Deputy shall make an entry into the
13 [incarcerated person’s] history in JIMS [the Jail Information Management System],
14 documenting the delivery of the call back request to the individual. The log shall
15 include if the incarcerated person was provided the opportunity to complete the call
16 back, or the reason the incarcerated person’s call back could not be completed, e.g.
17 facility wide lockdown etc. *See, e.g.*, Central Jail Green Sheet No. N.5.C.1,
18 SD_116501; George Bailey Green Sheet No N.5.G, SD_116030; Las Colinas No.
19 N.5.L, SD_116211. As far as I am aware, East Mesa, Rock Mountain, Vista, and
20 South Bay do not have relevant Green Sheets.

21 175. As the Central and Las Colinas Procedure provides, callbacks are only
22 logged when a deputy receives a callback request and delivers it to the incarcerated
23 person. In other words, as Captain Johns confirmed, callback requests that are not
24 delivered to the incarcerated person are not logged. *See* Johns Depo. at 40:2-4
25 (Sheriff’s Department logs only “the attorney callbacks that are given to”
26 incarcerated people). There is currently no tracking mechanism for attorney
27 callback compliance. *Id.* at 40:11-13.

28 176. These policies are insufficient on their face to ensure that incarcerated

1 people are able to communicate with their attorneys. As an initial matter, four of the
2 Jail’s seven facilities do not appear to have explicit policies setting forth the attorney
3 callback procedure. The lack of any explicit policy requiring attorney callbacks to
4 be passed along to incarcerated people, completed, and logged affords deputies too
5 much discretion (*i.e.*, to not communicate the callback requests or not allow an
6 incarcerated person to make the call).

7 177. Notably, although one of Plaintiffs’ attorneys attempted to request call
8 backs (through a paralegal) from incarcerated people at East Mesa in the week
9 before our visit, Plaintiffs’ office was unable to reach anyone at East Mesa by
10 phone, despite repeated attempts. The lack of any policy governing callbacks
11 suggests that there is not an organized system in place for attorneys to request
12 callbacks at that facility.

13 178. The failure of the Jail’s tracking of attorney callbacks is supported by a
14 review of the callback log Defendants produced. *See* Callback Log, 2023,
15 SD_727548. This log includes 2,459 entries, which are dated from August 25, 2023
16 to November 28, 2023. The entries span multiple jail facilities and are not limited to
17 callback requests, but also include “pro contact visits,” *e.g.*, 8/25/23 11:00 a.m.
18 entry, 11/27/2023 6:49 a.m. entry, and “social phones,” *e.g.*, 9/15/23 11:11 a.m.
19 entry. Even assuming that all 2,459 entries represent a callback request, that
20 averages fewer than 40 callback requests per week day.²⁶ That number seems
21 unrealistically low for an average daily population of 3,971 people in 2023, many of
22 whom have active cases underway.²⁷ Moreover, the callback log produced at
23 SD_727548 includes only four callback requests over that period from Plaintiffs’
24 counsel in this action, which is not consistent with Plaintiffs’ counsel’s recollection
25

26 ²⁶ There are approximately 64 non-holiday weekdays between August 25 and
November 28.

27 ²⁷ *See* Jail Population Statistics (June 2024), San Diego Cnty.,
28 <https://www.sdsheriff.gov/resources/jail-population-data>

1 of the same time period. Exhibit C, Declaration of Hannah Chartoff.

2 179. Critically, the Sheriff’s Department is aware that there are incidents in
3 which attorney callbacks have not been completed. Johns Depo. at 40:14-16. Yet, it
4 fails to provide Green Sheets for some facilities and fails to revise the vague Green
5 Sheets for others. *See id.* at 40:25-41:3 (“Q: An other than individual talks with –
6 and/or training with deputies, is there anything else being done to address [failure to
7 complete callbacks]? A: No.”).

8 180. In practice, the Sheriff’s Department’s callback system rarely functions
9 as intended. Attorneys I interviewed referred to the callback system as a “joke” and
10 “a crap shoot.” They reported only a 10-20% chance that a client will get the
11 message. One of the plaintiffs alleges his attorney placed one dozen callback
12 requests and none of them was communicated to him. Another alleges his attorney
13 placed six calls that were not communicated to him.

14 181. Anthony Edwards, one of the named Plaintiffs in this litigation, further
15 testified: “There was actually one time where the attorney call[ed] for me ... and
16 the deputy told me ‘oh, I forgot to give it to you.’ He had the message. But he just
17 forgot to give it to me. That happened ... quite a few times.” Edwards Depo at
18 164:11-13. Similarly, Plaintiff Jesse Olivares testified that he was not always
19 “notified of attorney callbacks.” Olivares Depo. at 151:5-14.

20 182. The week before I visited the jails, one of Plaintiffs’ attorneys had her
21 assistant request callbacks from the incarcerated people we were planning to visit
22 for three days in a row. When we met with the incarcerated people, we learned that
23 most of them had received no more than one of the three callback requests, and
24 generally not the first one. All of the incarcerated people and lawyers interviewed
25 reported call back requests that were made to the jails but were not passed on by jail
26 staff to the client.

27 183. The Sheriff’s Department—through their attorneys—essentially
28 confirmed that their attorney callback system is inadequate to accommodate a

1 sufficient number of calls between incarcerated people and attorneys as of June
2 2024. In late May, I understand that Plaintiffs’ counsel was investigating a situation
3 in a particular housing unit of Central Jail and as a result placed approximately 20
4 call back requests for individuals in that module. In response, Defendants, through
5 their counsel, asserted that Plaintiffs’ counsel was “intentionally interfering” with
6 Jail operations and threatened to restrict Plaintiffs’ counsel’s ability to place
7 callback requests to only five individuals in the Jail per day. Email from E. Pappy
8 to G. Grunfeld et al., June 10, 2024 (“Please be advised that only 5 [attorney
9 callbacks] will be processed per day as you are intentionally interfering with
10 operations, ability process these requests along with all of the other call backs
11 requests they get, and other IP’s ability access phones during available time for their
12 own attorney call backs relating to their pending criminal matters.”). I understand
13 that, during a June 18, 2024, meet and confer about this issue, Defendants’ counsel
14 stated that it was difficult for the Jail to accommodate multiple callback requests at
15 Central Jail in a single day. Given that there are approximately 900 people
16 incarcerated at Central Jail, many of whom are currently in trial or are preparing for
17 trial, the fact that only a small fraction of them per day can speak to their attorneys
18 is extremely concerning.

19 **2. Failure to Allow Adequate Access to Phones**

20 184. Plaintiffs alleged in the Third Amended Complaint that the Sheriff’s
21 Department denies incarcerated people access to phones to call their attorneys, *e.g.*,
22 by “refus[ing] to release [them] from [their] cells” when attorneys have requested a
23 callback. Dkt. 231 at ¶ 412. Based on my review of documents, interviews, and my
24 visits to the Jail, I agree.

25 185. In addition to the problems with communicating attorney callback
26 requests to incarcerated people, the Sheriff’s Department further limits incarcerated
27 people’s phone access by forcing them to wait until their time in the dayroom to
28 return the call. This means that the attorney does not get a return call within a

1 reasonable amount of time, maximizing the chance that attorney and client will not
2 connect, and ensures that the call will not be private. While there are some
3 exceptions, as discussed below, they are rare and the Department's policies and
4 procedures do not encourage them.

5 186. It is Sheriff's Department written policy that, "[a]ll incarcerated people
6 have the availability of unlimited collect telephone use for communication with their
7 attorneys." SDSD Manual, No. N.5, May 13, 2022, SD_065001. It is Sheriff's
8 Department procedure that "telephones will be located in areas accessible to
9 incarcerated persons during dayroom or recreation time when they are allowed
10 outside of their assigned calls or dorm living units." SDSD Manual, No. P.2,
11 May 4, 2022, SD_065036. These policies do not provide any direction regarding
12 how an incarcerated person can have a confidential conversation with his attorney
13 when the rest of the module is in dayroom.

14 187. In addition, the telephones incarcerated people are given access to in
15 order to call their attorneys are only available during the limited time incarcerated
16 people are allowed to use the dayroom. Different housing units have different
17 dayroom schedules. According to the incarcerated people I interviewed at Central
18 Jail, for example, incarcerated people are in the dayroom from 7 a.m. to 11 a.m. and
19 1 p.m. to 4:30 p.m., but the schedule changes and the jail is sometimes locked down.
20 Let us assume criminal defense attorneys get to the office at 8:30 a.m. or 9:00 a.m.
21 The criminal calendar at the downtown Courthouse is called at 10:00 a.m. (which
22 means the attorney must leave the office by 9:30 a.m. and will return around 11:30
23 a.m.) and at 1:30 p.m. (which means the attorney must leave the office at 1:00 p.m.
24 and will return around 3:00 p.m. or later). And then there is lunch. Attorneys are
25 only available by phone for a fraction of the time incarcerated people have access to
26 a phone. If attorneys and clients had the ability to schedule a call in a private
27 setting, this problem would disappear.

28 188. The only time an incarcerated person can have a confidential phone call

1 with their attorney is when, miraculously, (1) the attorney places a callback request
2 that is delivered to the incarcerated client; (2) when the dayroom is not currently
3 being used by other people; and (3) the deputy on duty exercises his or her
4 discretion to let the incarcerated person out of his or her cell to return the call.
5 There is no policy encouraging deputies to make this accommodation and it
6 reportedly happens very rarely. And, even then, the incarcerated person is still
7 speaking on the phone with his attorney from the dayroom, and may or may not be
8 overheard by recording devices or people who are nearby.

9 189. Another problem is that when an incarcerated person calls and their
10 attorney is unavailable, they are unable to leave a message for the attorney. The
11 Sheriff's Department's phone system disconnects unless a person answers the
12 phone. Like many criminal defense attorneys I know, San Diego criminal defense
13 attorney Melissa Bobrow is a solo practitioner who does not have a receptionist or
14 an answering service. Instead, she relies on the voicemail feature of her mobile
15 phone. Because an incarcerated person cannot leave a message on voicemail, and
16 all calls from the jails come from the same phone number, she does not know which
17 client has called.

18 3. Lack of Confidentiality

19 190. Plaintiffs alleged in the Third Amended Complaint that the Sheriff's
20 Department "often fails to protect the confidential attorney-client relationship" when
21 incarcerated people speak to their attorneys on the phone. Dkt. 231 at ¶ 414. Based
22 on my review of documents, interviews, and my visits to the Jail, I agree.

23 191. Sheriff's Department policy and practice denies incarcerated people
24 access to confidential phone calls with their attorneys. The Sheriff's Department
25 breaches its duty to provide confidentiality in two ways: first, by failing to provide
26 any confidential space for the incarcerated person to be in while he is on the phone
27 with his attorney, and second, by failing to implement a system that ensures that
28 phone calls with attorneys are not recorded.

1 192. As explained above, the phones available for use by incarcerated
2 people are in the middle of the dayroom. *See* SDDS Manual, No. P.2, May 4, 2022,
3 SD_065036; *see also* Johns Depo. at 42:2-4 (confirming that callback requests are
4 completed in the dayroom). By placing the telephones in that public area and
5 setting aside no private room or enclosed soundproof booth where incarcerated
6 people can speak to their attorneys, the Sheriff’s Department ensures that
7 incarcerated people cannot have confidential calls with their attorneys.

8 193. Indeed, a sign posted near the phones warns: “The phones in this area
9 may be monitored or recorded. You have no expectation of privacy when speaking
10 on the telephones in this area.” East Mesa Signage, April 16, 2024, SD_744942.



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20 194. Incarcerated people hardly have to be told this, given that the multiple
21 phones in the housing unit are located very close together, and there are always
22 other incarcerated people using the telephones or in line waiting to use a telephone
23 during their limited time in the dayroom. Photographs of the telephones
24 incarcerated people must use to call their attorneys are below.

25 ///

26 ///

27 ///

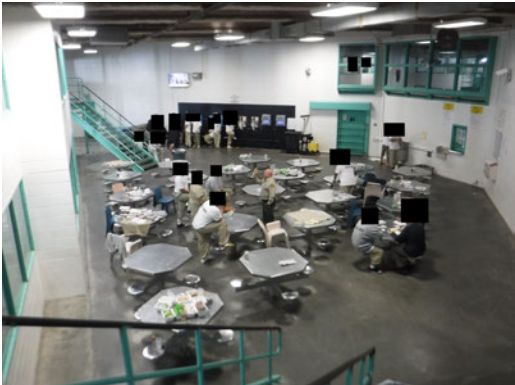
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195. In Central Jail: (SD_1525891)



196. In George Bailey: (SD_745556, SD_743040, SD_745560)



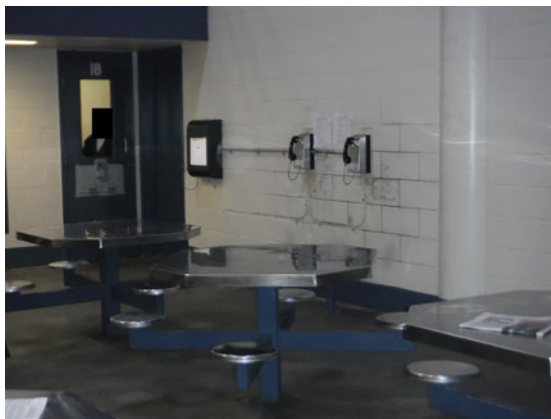
197. In East Mesa: (SD_745221, SD_744962, SD_744943)



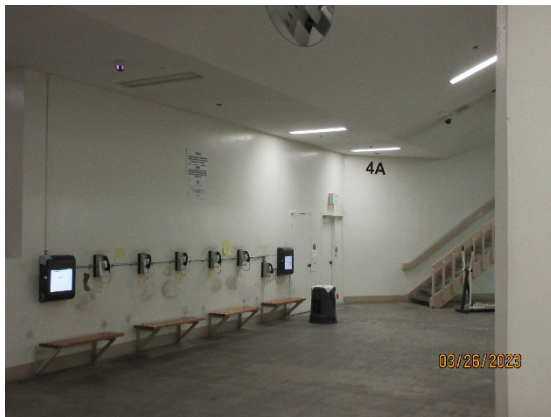
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198. In Vista: (SD_745574, SD_743634)²⁸

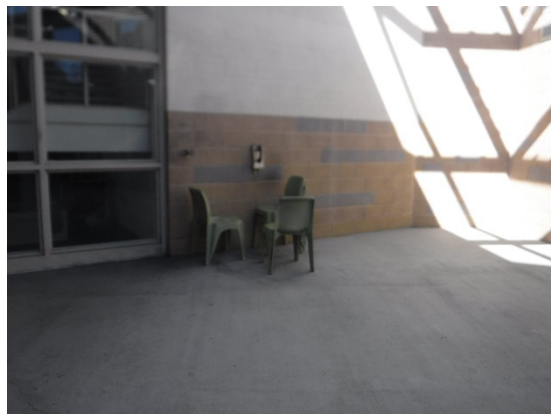


199. In South Bay: (SD_1525981, SD_1525995)



²⁸ I understand from Plaintiffs' counsel that there are telephone booths in the booking area at Vista, which incarcerated people can use to contact counsel while going through booking. However, it is my understanding that those phones are not used by incarcerated people once they have been moved into the housing units at Vista.

1 200. And in Las Colinas: (SD_744461, SD_744410)



9 201. As these photographs show, some housing units have phones lined up
10 along a wall within a few feet of one another. Other housing units have kiosks with
11 four phones or six phones on each side, one or two of which are video phones. The
12 dayrooms—including the areas around the phones—are regularly filled with both
13 guards and other incarcerated people. There are tables and chairs nearby. I am
14 informed by class counsel who have inspected the jails that there is often a
15 television blaring, meaning that anyone speaking on the phone must raise his or her
16 voice to be heard. There is a video camera visible near some of the phones. *See,*
17 *e.g., South Bay Facility Photo (SD_1525995).*

18 202. As the incarcerated people I interviewed expressed, they know that
19 when they talk on the phone, “all the other inmates can hear you. There is no
20 confidentiality.” “Everyone can hear each other.”

21 203. Yet Captain Johns testified that, despite knowing that callback requests
22 are completed in the dayroom, at times with other incarcerated people next to them,
23 the Sheriff’s Department has never considered providing a confidential space to
24 incarcerated people to complete their attorney callbacks. Johns Depo. at 42:2-13.

25 204. The Sheriff’s Department should implement procedures to enable
26 confidential telephonic contact between counsel and a incarcerated person who is a
27 client, prospective client, or witness, and should not monitor or record properly
28 placed telephone conversations between counsel and such a incarcerated person.

1 205. Other confidentiality concerns arose from the Sheriff’s Department’s
2 chosen phone provider and their policy regarding recording incarcerated person
3 phone calls. The Department’s policy, “Monitoring Telephone Calls/Visits/Mail,”
4 makes clear that unless and until an attorney’s number has been entered into the “Do
5 Not Record” database, an incarcerated person’s calls with his attorney will be
6 recorded:

7 All telephone calls made by incarcerated persons will be recorded
8 unless the call is made to a number that has been verified by the
9 Detention Investigations Unit (DIU) as registered to an attorney,
10 physician or religious advisor; and entered into the “Do Not Record”
11 database of telephone numbers. All in-person and video social visits,
with the exception of contact visits, will be recorded using the
incarcerated person telephone system. Incarcerated person telephone
calls, social visits, emails, and U.S. mail will be provided to law
enforcement personnel upon request.

12 SDDS Manual, No. P.17, May 4, 2022, SD_065061. As previously noted,
13 recordings of telephone calls were provided to the District Attorney and used against
14 incarcerated people in 2021. *See supra*.

15 206. Even if that practice has been discontinued, the Jail’s policy means that
16 any call the incarcerated person makes to a lawyer before the lawyer is retained and
17 added to the “Do Not Record” list will be recorded. Additionally, incarcerated
18 people described difficulties having their private counsel added to the “Do Not
19 Record” list. One incarcerated person reported that he has been trying for months to
20 have the New York lawyer he hired to help him retain his medical license added to
21 the list. Since the Department has not added him, their calls are being recorded.
22 Another incarcerated person reported that it took at least six months for his private
23 attorney to be added to the Do Not Record list. Given that unless and until an
24 attorney’s number is added, the recorded calls with his or her client “will be
25 provided to law enforcement personnel upon request,” these delays are
26 unacceptable.

27 207. A number of problems arose from the Department’s recent shift in
28 telephone providers. I understand that the current provider is Smart

1 Communications, a Florida company, and it is a Florida area code that appears when
2 an incarcerated person calls someone. Attorneys I interviewed reported that lawyers
3 representing incarcerated people had to be re-authorized before their calls with their
4 clients were not recorded. For several weeks, when incarcerated people called their
5 lawyers, they heard a notice that by continuing they were consenting to having the
6 call recorded.

7 208. One of the incarcerated people I interviewed reported that when he
8 attempted to return Plaintiffs' attorney's callback request, he was not able to
9 connect. He called back several times. In other cases, it was reported that phone
10 lines had been crossed. One attorney reported hearing an incarcerated person who
11 was not his client speaking to someone else on another line. Others reported that
12 calls are frequently rejected, calls get cut off, they can hear the caller, but the caller
13 cannot hear them; it sometimes sounds like the person you call is shouting and the
14 voice quality is bad. It is hoped that the system can be fixed, but to my knowledge
15 that has not happened yet.

16 * * * *

17 209. In sum, the lack of confidentiality, incarcerated persons' difficulty
18 connecting with their attorneys given the limited hours they have access to phones,
19 and the jail's failure to deliver attorney callback requests render telephones an
20 inadequate way for attorneys to communicate with their clients in the San Diego
21 County jails.

22 **C. Legal Mail**

23 210. The Sheriff's Department's final means of attorney-client
24 communication, legal mail, is neither reliably timely nor confidential. Plaintiffs
25 alleged in the Third Amended Complaint that the Sheriff's Department interferes
26 with incarcerated people's legal mail. Dkt. 231 at ¶¶ 418–19. Based on my review
27 of documents, interviews, and my visits to the Jail, I agree.

28 211. The SDSD Manual, No. P.3, Incarcerated Person Mail, provides that all

1 correspondence, except for confidential/legal mail “is subject to being scanned,
2 copied and read.” *Id.* at SD_065037. As for confidential legal mail,

- 3 1. Incarcerated persons may correspond confidentially with the
4 state and federal courts [and] any member of the State Bar. . .
- 5 2. Attorneys are required to take measures to safeguard the
6 confidentiality of communications with their clients. For
7 attorney mail, it shall be the sender’s responsibility to identify
8 confidential/legal mail on the front of the envelope with the
9 words “legal mail,” “confidential mail,” or another similar
10 descriptor.
- 11 3. *All incoming U.S. mail within the purview of confidential/legal*
12 *mail shall be opened and inspected for contraband in the*
13 *presence of the individual it is addressed to. Absent any security*
14 *concerns, the mail shall then be given directly to the individual.*
- 15 4. Upon receipt of incoming U.S. mail, Detentions Processing
16 Division (DPD) staff will sort through the mail and remove any
17 items identified as confidential or legal mail. DPD staff will
18 verify the individual is in custody by utilizing the master card or
19 booking summary screens and forward the confidential/legal
20 mail as outlined in facility-specific green sheets. All other mail
will be routed to the MPC for processing.
- 21 5. Electronic email messages received via the incarcerated persons
email system are not considered confidential/legal mail.
- 22 6. *Incarcerated persons will seal outgoing mail that comes within*
23 *the purview of confidential/legal mail in the presence of a deputy*
24 *after the deputy has inspected the envelope to ensure there is no*
25 *contraband in it. Under no circumstances will a deputy accept a*
26 *piece of sealed confidential/legal mail from an incarcerated*
27 *person. If there is reasonable suspicion as to the confidentiality*
28 *of the sealed outgoing mail, the deputy should contact the watch*
commander for a determination on a course of action.

21 *Id.* at SD_065037-065038 (emphasis added).

22 212. In practice, several incarcerated people reported that deputies do not
23 follow this procedure. Incarcerated people—and even attorneys, when they dropped
24 off documents for a client—reported seeing deputies read legal mail. Several
25 incarcerated people reported that they had received legal mail that had been opened
26 outside their presence. One witness cited in the Complaint alleges he sent an
27 envelope containing documents to Plaintiffs’ counsel. Dkt. 231 at ¶ 418. It arrived
28 empty and opened.

1 213. As another example, Named Plaintiff Michael Taylor received legal
2 mail that had been opened outside his presence and submitted a grievance regarding
3 the issue, which was denied, and he further appealed. Taylor Grievance Report,
4 May, 17, 2022, SD_073941. The responses to the grievance and appeal are
5 contradictory. The initial grievance response states: “I spoke to the Deputy who
6 handed you the mail and he stated that the mail had already been opened prior to
7 him receiving it and that is the reason he handed it to you opened already.” *Id.* at
8 SD_073942. The appeal response, on the other hand, states: “[A]n interview with
9 the deputies working that night was conducted All three deputies remember the
10 grievant and his complaint. However, they did not open the mail item nor could
11 they recall the condition of the mail item when they distributed the mail.” *Id.* at
12 SD_073943.

13 214. This treatment of legal mail appears to be due in part to the ambiguity
14 of the term “inspect.” One Sergeant, concerned that his staff was not “inspecting”
15 legal mail closely enough, instructed them in an email not to interpret the term
16 narrowly:

17 Just wanted to remind everybody to search and inspect legal mail prior
18 to giving it to an incarcerated person. It’s ok to go through everything
19 and not just skim through the pages. You can take the papers out of the
envelope. You’re not “reading” it. You’re inspecting the contents for
drugs and contraband. ...

20 Email from B. Bourgeois to All Sworn Staff, March 23, 2023, SD_640255. Captain
21 Johns confirmed that this memo conforms with Department policy. Johns Depo. at
22 46:5-47:8.

23 215. “Skim” is defined in the Oxford American Dictionary as “to read
24 quickly, only noting the chief points.” The Sergeant’s instruction above to “not just
25 skim through the pages” is clearly an instruction to read them. Any argument that a
26 closer inspection is required to detect drugs is undermined by Captain Johns’
27 testimony that at the mail processing center they do not open legal mail but “they
28 have machines that basically detect narcotics to make sure that [legal mail is] safe to

1 open whenever it does get to its designation.” Johns Depo. at 43:19-21.

2 216. Further evidence that legal mail is not confidential is found in George
3 Bailey Detention Facility’s Green Sheet P.3.G, Inmate Mail, which draws no
4 distinction between confidential and regular mail, instructing deputies:

5 (B) At the beginning of the shift, the assigned night shift deputies will
6 pick up all the mail from their respective housing mail drawers. The
7 deputies will take the mail to the housing unit and sort it by module.
8 While sorting the mail, deputies will conduct a secondary screen for
9 drugs, sexually explicit material, and/or contraband.

10 ...

11 All outgoing mail should be collected nightly by the deputies assigned
12 to each housing unit. **The mail should be thoroughly screened and
13 inspected.**

14 George Bailey Green Sheet No. P.3.G, March, 10, 2023, SD_0116030 (emphasis
15 added).

16 217. In addition to the confidentiality concerns, legal mail at the Jails is
17 slow. Most of the incarcerated people and attorneys I interviewed who had sent or
18 received legal mail reported occasions when legal mail sent by an attorney was
19 never received by the incarcerated person. In the best cases, it took one to two
20 weeks for legal mail to travel one way. According to one interviewee, legal mail
21 from Plaintiffs’ attorneys’ firm took two weeks to reach him.

22 218. A draft memorandum from a Detention Captain to an Assistant Sheriff
23 dated October 30, 2023, offers one explanation for the delay. Draft Inter-
24 Departmental Correspondence from D. Patterson to T. Adams-Hydar, October 30,
25 2023, SD_655458-76. Detention Captain Dody Patterson, speaking on behalf of
26 several facility commanders, advocates for “mail distributed” and “mail collected”
27 to be restored to the Deputy Activity log’s drop-down menu in JIMS. She explains,
28 “facility commanders have expressed concern that the elimination of the listed area
activity log entries has resulted in the actions not being completed.” *Id.* at
SD_655459. She continues: “Anecdotally, it is believed that the removal of the area
Activity drop down options has resulted in the actions no longer being performed on

1 a consistent basis.” *Id.*

2 219. “Mail distributed” and “mail collected” were removed from the drop-
3 down menu of the JIMS Deputy Activity log in 2016. Email from Deputy Webster
4 to Assistant Sheriff Miller, February 18, 2016, SD_655467. Other items that were
5 removed at that time include “Visits,” “Attorney Call Back,” and “Law Library.” *Id.*
6 at SD_655469. The rationale for removing these tasks from the menu at that time
7 was that “deputies and supervisors alike have become increasingly more dependent
8 on the checklist and at times neglect any task not included on the checklist. . . . And
9 too often log entries are being made for events that did not happen or were not
10 scheduled for that day.” *Id.* Notwithstanding the concerns expressed in Plaintiffs’
11 complaint and noted by the Detention Captain above, I am aware of no effort to
12 restore “Visits,” “Attorney Call Back” and “Law Library” to the drop-down menu.
13 From the documents I have reviewed, it does not appear that any additions to the
14 drop-down menu, including those recommended for mail, have been authorized to
15 date.

16 220. Another explanation for the mail delivery problems is the Byzantine
17 process involved. Here is one example, the Green Sheet for East Mesa:

18 All incoming U.S. mail for EMRF (East Mesa Reentry Facility)
19 will be received, sorted, and forwarded to the Mail Processing Center
20 (MPC) located at the Las Colinas Detention and Re-Entry Facility
21 (LCDRF) for processing. The MPC will be responsible for printing all
22 incarcerated persons e-mails. [Redacted in produced copy.] and scan
all incoming mail (except for legal mail). Sheriff’s Transportation Unit
(STU) will be responsible for the pick-up and drop-off of the mail to
EMRF and LCDRF.

- 23 • Detentions Processing Division (DPD) will receive incoming
24 mail each day from CPC. After separating out legal mail,
25 incoming mail, periodicals, books, parcels, etc., the mail will be
26 placed in large PURPLE plastic bags and placed in the pick-
27 up/drop-off point in Processing Mail going to the MP must be
ready for pick up by the STU (first busses and last busses of the
day).
- DPD will place the sorted legal mail [Redacted in copy
produced.] for distribution by deputies.

28 East Mesa Green Sheet, P.3.M, January 23, 2022, SD_0115887; *see also* Las

1 Colinas Green Sheet, P.3.L, , July 7, 2023, SD_0116211; South Bay Green Sheet,
2 P.3.C, September 6, 2023, SD_0116352; Vista Green Sheet, June 7, 2023, P.3.V.

3 221. When asked how long it takes from receipt of legal mail by the jail to
4 ultimate delivery to the incarcerated person, Captain Johns responded, “To give you
5 an exact date, it wouldn’t be fair.” Johns Depo. at 44:12-15. While the mail
6 processing center logs the date it receives mail and the date it sends it out, the
7 Department does not track how long it takes for the mail to be delivered to the
8 incarcerated person. *Id.* at 44:21-45:7.

9 222. Attorneys I interviewed report little confidence that mail will arrive
10 promptly. I understand from Plaintiffs’ counsel that incarcerated people have
11 reported the same. Similarly, I understand from Plaintiffs’ counsel that mail sent to
12 the Jail and later returned as undeliverable to counsel’s office—*i.e.*, because the
13 recipient has been released from custody—can take a considerable amount of time.
14 And, in at least in one case, mail sent from the U.S. District Court for the Southern
15 District of California to a person incarcerated in the Jail was returned as
16 undeliverable. Dkt. 556.

17 223. The lack of confidentiality, unreliability, and lengthy delays render
18 legal mail an inadequate means for an attorney to communicate with her clients in
19 the San Diego County jails.

20 **D. Conclusion**

21 224. The San Diego Sheriff’s Department does not provide adequate rooms
22 for confidential meetings, telephones that afford privacy to the incarcerated person,
23 or mail that is confidential, reliable, and prompt. As a result, incarcerated people are
24 deprived of their right to fully disclose the facts to their lawyer “free from the
25 consequences or the apprehension of disclosure.” *Hunt v. Blackburn*, 128 U.S. at
26 470. Their lawyers are unable to perform their duties to communicate promptly
27 with their clients about developments in their cases and maintain the confidences of
28 their clients. The clients cannot see the evidence and therefore cannot participate in

1 their defense or make decisions that will impact their future. Under these
2 circumstances, it is impossible for attorneys to fulfill their duties to their clients and
3 effectively represent them.

4 **II. THE SHERIFF'S DEPARTMENT DENIES INCARCERATED**
5 **PEOPLE THE ABILITY TO REVIEW ELECTRONIC DISCOVERY**
6 **IN THEIR CRIMINAL CASES.**

7 225. As the 2023 DOJ report recognized, “a defendant should have a
8 meaningful opportunity to review the discovery produced in his or her case,”
9 including e-discovery. DOJ Recommendations at 37. The San Diego County Jail
10 does not provide the clients of private attorneys the same access to their e-discovery
11 as those of the public defender’s office because it does make WiFi available to all
12 attorneys. Additionally, incarcerated people who are not pro per in their criminal
13 case have no access to computers to review the electronic discovery.

14 226. At the San Diego Jail facilities, private attorneys do not have access to
15 WiFi. In addition, attorneys report that certain Jail facilities and locations within
16 those Jail facilities—*e.g.*, the George Bailey Detention Facility and the attorney
17 visiting area of the Vista Detention Facility—are places where cell phone service,
18 and therefore the ability to use cellular data to access the internet—is weak.

19 227. Since private attorneys do not have access to WiFi, they are sometimes
20 unable to show their clients electronic evidence at all if the file is too big to
21 download. Video evidence fits in this category, and it often constitutes the most
22 important evidence in the case. Denial of access to electronic discovery evidence in
23 a defendant’s case interferes with the defendant’s ability to participate in his
24 defense.

25 228. Even in situations where it is possible for the attorney to download
26 electronic evidence, such as video, the lack of privacy makes it impossible for
27 attorneys to show it to the client, especially in sensitive cases, as everyone in and
28 around the visiting area could see and hear it. Absent confidential visits, attorneys
cannot share the sensitive information that may be dispositive in their case.

1 **III. THE SAN DIEGO SHERIFF’S DEPARTMENT DENIES PRO PER**
2 **INCARCERATED PEOPLE ADEQUATE ASSISTANCE AND**
3 **IMPEDES THEIR RIGHT OF ACCESS TO THE COURTS**

4 **A. Pro Per In Current Criminal Case.**

5 229. Plaintiffs allege in the Third Amended Complaint that the Jail
6 “interfere[s] with incarcerated people’s legal materials” and fails to provide
7 sufficient legal materials to pro per litigants. Dkt. 231 at ¶¶ 422–24. Based on my
8 review of the documents and interviews, I agree.

9 230. While the number fluctuates, as of May 30, 2024, there were 18
10 incarcerated men representing themselves in the San Diego County Jails. Brown
11 Depo. at 12:7-11. All of them were housed at Central Jail. As Plaintiffs alleged in
12 the Third Amended Complaint, named plaintiff Michael Taylor attempted to
13 represent himself pro per, before he was denied prescription glasses and therefore
14 forced to abandon his pro per status. Dkt. 231 at ¶ 424.

15 231. The right to self-representation necessarily includes and is premised
16 upon the right of the defendant to prepare a defense. *Milton v. Marris*, 767 F.2d
17 1443, 1445 (9th Cir. 1985). Time to prepare and some access to materials and
18 witnesses are fundamental to a meaningful right of representation, which extend to
19 people who wish to represent themselves. *Id.*

20 232. The SDSD Manual provides that incarcerated people representing
21 themselves in a current criminal case are entitled to certain “privileges,” SDSD
22 Manual, No. N.7, May 13, 2022, SD_065005, including, as discussed in more detail
23 below, certain materials like paper, access to the legal research area of the Jail, and,
24 if approved, investigative support. As explained below, the Sheriff’s Department’s
25 policies are insufficient to provide an incarcerated person with what he needs to
26 defend himself in his criminal case.

27 233. Male incarcerated people who are pro per on current criminal matters
28 are generally housed at Central Jail. *Id.* at SD_065008. They “will generally be
given three hours per week of legal research area time, subject to reduction if

1 increases in the Pro Per incarcerated person population requires that the hours be
2 reduced in order to accommodate the increased population.” *Id.* Females housed at
3 Las Colinas “will be given a minimum of three hours per week access to the legal
4 research area.” *Id.* at SD_065009.

5 234. The policy that pro per people housed at Central Jail will “generally”
6 be given three hours per week of legal research time is vague on its face—and
7 therefore flawed. Indeed, the Sheriff’s Department’s own Rule 30(b)(6) deponents
8 gave conflicting testimony on this score. Deputy Brown testified that pro per
9 individuals are “required” to have a “minimum” of three hours per week of time in
10 the law library. Brown Depo. at 12:23. In contrast, Captain Johns testified that
11 there is no minimum number of hours that the Department guarantees to pro per
12 incarcerated people for legal research area time. Johns Depo. at 56:17-20. He
13 testified that this is because that minimum time might fluctuate, based on how many
14 people are considered to be pro per in the facility. *Id.* at 56:22-25. Additionally,
15 there might be security issues in the facility that might prohibit the Department from
16 being able to produce access to the law library area. *Id.* at 56:25-57:7. It could be
17 that people get less than three hours a week. *Id.* at 57:5-7. He testified that Central
18 Jail and Las Colinas are the only jails that have a legal research area. *Id.* at 58:20-
19 25. The law library at Central, where the 18 pro per males are housed, “is only
20 sized” for five individuals at any given time. Brown Depo. at 13:7-16. It is only
21 open from 7:00 a.m. to 3:00 p.m., Monday through Thursday. *Id.* at 13:17-19.

22 235. In addition to the flaws in the vague policy, in my opinion, even three
23 hours per week is an insufficient amount of time to prepare for a felony trial,
24 especially given the limitations of the legal research area. In the Central Jail legal
25 research area, there are four kiosks containing some legal research services. There
26 are also a handful of computers, which have Word and PowerPoint. These are the
27 computers a pro per incarcerated person must use to prepare a pleading. A pro per
28 incarcerated person reported to me that certain discovery can only be opened on Cell

1 Bright and only one of the computers has this program. He said that none of the
2 computers can open an Excel file, a format I would expect to appear frequently in
3 discovery documents in a criminal case. Nor can a pro per defendant print a case or
4 any other document while using the legal research area. Or copy text from a case
5 pulled up on the legal research kiosk and paste it into a Word document.
6 Incarcerated people instead need to conduct their legal research, handwrite whatever
7 quotation they want to include from the case law onto a piece of paper, then later
8 type that text into a Word document for use in their pleading. That technical hurdle
9 adds substantial time to the work process, making the already limited time in the
10 legal research area more precious. Three hours a week to do legal research, review
11 discovery, prepare pleadings, and get ready for trial is not enough. In my
12 experience, a bare minimum of 80 hours preparation is required for even a simple
13 felony trial. At the very least, a pro per defendant is forced to waive his Speedy
14 Trial right if he wants to have a fighting chance.

15 236. The Department’s rules provide that an incarcerated person who is
16 granted pro per status by court order in a current criminal case will, “at the
17 discretion of the correctional counselor,” be given, in reasonable quantities, pleading
18 paper, ruled legal pads, standard legal-size envelopes, golf pencils, erasers, one legal
19 size accordion file, and 9 x 12 manila envelopes (for prepared mailings only). *Id.* at
20 SD_065005-065006. Access to ball point pens will be provided through the
21 correctional counselor for signature purposes only. *Id.* “Any supplies that are in
22 addition to what is supplied by the Sheriff’s Department must be accompanied by a
23 court order” *Id.* Captain Jesse Johns testified that there are no standards that
24 govern how the correctional counselor determines the validity of an incarcerated
25 person’s request. Johns Depo. at 53:2-5. Deputy Sheriff Eric Stephen Brown, who
26 also testified as a Rule 30(b)(6) witness on behalf of the Sheriff’s Department,
27 explained that, when it comes to requests for supplies by pro per incarcerated
28 people, the policy simply “states . . . what they’re given.” Brown Depo. at 16:7-8.

1 237. The Pro Per Starter Kit informs incarcerated people that the Office of
2 Assigned Counsel (“OAC”), which is a unit within the Public Defender’s Office,
3 “has been appointed by the Court as a Legal Runner in your Pro Per case.” Pro Per
4 Starter Kit, February 8, 2019, p. 2. The pamphlet explains that OAC will not
5 provide legal advice or talk to the incarcerated person about the case and that
6 communications between the incarcerated person and OAC are not privileged. To
7 communicate with OAC, the incarcerated person must use the non-confidential
8 telephone in the day room, or submit a request to a member of the Department, the
9 Correctional Counselor in the law library, who will e-mail the request to OAC.
10 Brown Depo. at 17:4-18:1.

11 238. According to the pamphlet, an incarcerated person cannot hire an
12 investigator or other provider to work on his case. Pro Per Starter Kit at p. 6. “[I]f
13 appropriate, an investigator, mental health expert, and/or other expert witness can be
14 provided to [the incarcerated person] without cost.” However, the incarcerated
15 person must fill out an Ancillary Service Request (“ASR”) form including a
16 justification for the request, the names, addresses, phone numbers and other contact
17 information, and write a few sentences for each listed witness justifying why the
18 witnesses should be interviewed. “Need for trial,” or “need for my defense,” are not
19 sufficient. *Id.* at p. 5. If approved, the incarcerated person is told, “you can rest
20 assured that your investigator and/or other provider have been notified and the work
21 has commenced.” If necessary, OAC will prepare an “admit letter” to allow the
22 investigator, psychologist, and or other provider entry into the jail to meet with the
23 pro per individual. “Generally, however, ‘face time’ with your investigator is not
24 allowed.” Pro Per prisoners are instructed, “Please use ASR forms to communicate
25 with your investigator and/or providers.”

26 239. The Department’s Manual makes clear that if the incarcerated person is
27 approved to have a legal assistant, investigator, or other expert, and a jail visit is
28 necessary, that jail visit will be recorded and available to the District Attorney’s

1 Office. Visits between the incarcerated person and legal assistant “will be
2 conducted utilizing the social visit phone system.” SDDS Manual, No. N.7,
3 May 13, 2022, SD_065007. “All social visits . . . are recorded by the incarcerated
4 person telephone system.” SDDS Manual, No. P.17, May 4, 2022, SD_065062.
5 Recorded conversations will be available to law enforcement personnel upon
6 request. *Id.*

7 240. Similarly, pro per incarcerated people are instructed to “use the phones
8 in their housing areas to place calls concerning their cases.” *Id.* Unless special
9 accommodation is made for a call to a court or an attorney, the calls will be
10 recorded. All calls to witnesses, potential experts, the incarcerated person’s
11 investigator or aid will be recorded and made available, upon request, to law
12 enforcement.

13 241. Incarcerated people are given one flash drive and can save their work
14 on it, but the flash drive must be left with the Correctional Counselor and is
15 therefore not confidential. If they wish to submit discovery with a motion they can
16 submit it to the court on their flash drive, but they will not be given another one.
17 This means they will be unable to save future research, notes and drafts.

18 242. The lack of confidentiality impairs a pro per defendant’s ability to
19 mount a defense to the charges against him, as it gives the prosecution a front row
20 seat to observe the defendant’s case strategy.

21 243. In addition to the breach of confidentiality described above, there are
22 many delays built into the process. Discovery and pleadings from the prosecution
23 are sent to OAC. OAC forwards the documents to the person’s Correctional
24 Counselor. The Counselor passes them to the incarcerated person.

25 244. Frequently, discovery is provided in digital format. Incarcerated
26 persons are informed that the discovery can be viewed on the legal research area
27 computer during the time they are allowed to visit the legal research area. Thus, a
28 pro per incarcerated person’s three hours a week in the legal research area must be

1 divided between reviewing discovery, legal research, drafting pleadings and
2 preparing for trial. As a trial lawyer there is no doubt in my mind that this is not
3 enough time to prepare a defense.

4 245. To file a motion, the incarcerated person must send a “Written Request
5 to File Motion” form, along with the motion, to OAC at least five business days
6 before the motion cut-off-date.

7 246. Correctional counselors will print one copy of an incarcerated person’s
8 final legal work product from their flash drive when the pleading is ready to mail. If
9 an incarcerated person needs more than one copy, which they will, to serve the DA
10 and retain a copy for the file, the incarcerated person must submit an “ancillary
11 service request” to OAC. Or, the incarcerated person must write out the pleading
12 twice and serve one of these handwritten copies on the District Attorney, which is
13 likely to be the only option if service is to be accomplished in accordance with local
14 rules.

15 247. The delays built into this process pose a particular problem when seen
16 in the context of the local rules. Under San Diego Superior Court rules for criminal
17 matters,

18 1. All moving papers must be filed and served on the
19 opposing party at least 15 court days before the time
20 appointed for the hearing. 2. All papers opposing the
21 motion must be filed and served at least five court days
22 before the time appointed for the hearing. 3. All reply
papers must be filed and served at least two court days
before the time appointed for the hearing. 4. Proofs of
service of the moving papers must be filed no later than
five calendar days before the time appointed for hearing.

23 248. Pro per incarcerated people are “housed in regular housing that is
24 compatible with their classification status.” SDDS Manual, No. N.7, May 13, 2022,
25 SD_065009. This means they have cellmates who have access to their legal
26 materials when they leave their cells. A pro per incarcerated person I interviewed
27 reported that the Sheriff’s Department puts many different people through his cell.
28 While he is at the library or in court, cellmates can read his papers, then claim he

1 admitted X or Y. Based on this policy, his legal materials are not private, and he is
2 at risk of being falsely accused.

3 249. An incarcerated person’s pro per privileges can be revoked for
4 violations of the jail’s rules after a hearing by jail staff. SDSD Manual, No. N.8,
5 SD_065010. The Department’s Rules and Regulations of Incarcerated Persons
6 includes vague and subjective offenses such as failing to treat facility staff “in a civil
7 fashion,” taking part in “boisterous activity,” and possessing too much property that
8 can be grounds for discipline, and therefore revocation. SDSD Manual, No. O.3,
9 May 4, 2022, SD_065023. Revocation of pro per privileges is permanent. SDSD
10 Manual, No. N.8, SD_065010.

11 **B. Pro-Per In Conditions of Confinement Case.**

12 250. Plaintiffs, in the Third Amended Complaint, allege that the Jail fails to
13 provide sufficient resources to people representing themselves in civil cases about
14 conditions in the Jail. Dkt. 231 at ¶ 424. Based on my review of documents and
15 interviews, I agree.

16 251. Incarcerated people who are trying to represent themselves in other
17 lawsuits—including individual civil cases about the conditions of their
18 confinement—receive even less access to legal resources than incarcerated people
19 who are pro per in their criminal cases. Indeed, pursuant to the Department’s policy
20 and procedure, an incarcerated person who wishes to file a civil rights lawsuit
21 receives no resources whatsoever. SDSD Manual, No. N.6.

22 252. By its text, Section N.6, “Conditions of Confinement Status,” is granted
23 only after “[c]ounty counsel [] send[s] a copy of the first page of the court filing
24 which [] identif[ies] the plaintiff (incarcerated person). . . .” *Id.* In other words,
25 Conditions of Confinement Status is granted only once an incarcerated person has
26 already succeeded in filing a complaint, and the Jail has been served with the court
27 order by the County Counsel, as Deputy Brown appeared to confirm. Brown Depo.
28 at 19:25-20:1. Thus, the Sheriff’s Department does not provide any support to

1 incarcerated people who are trying to file, but have not yet filed, a complaint against
2 the Jail.

3 253. Even after they have been granted pro per status by a court, Conditions
4 of Confinement Status does not provide an incarcerated person the same
5 accommodation as those representing themselves in a current criminal case.
6 *Compare* SDDS Manual, No. N.6, May 13, 2022, SD_065002 (policy re: conditions
7 of confinement status), *with* SDDS Manual, No. N.7, SD_065005 (policy re: other
8 pro pers). For one, incarcerated people representing themselves in a civil case are
9 not allowed time in the legal research area. Instead, these litigants must rely on
10 requests through Legal Research Associates (“LRA”), a private company the
11 County contracts with to provide legal research to incarcerated people. As
12 explained below, that process is woefully insufficient, as it suffers from substantial
13 delays and limitations.

14 254. To access LRA, incarcerated people who have been granted Conditions
15 of Confinement status must submit an Incarcerated Persons Request Form to their
16 Correctional Counselor requesting an LRA Request Form. Correctional Counselors
17 shall provide the LRA request forms “as needed.” *Id.* at SD_065200. “The
18 counselor *may*: (A) Explain to the incarcerated person the availability, rules and
19 protocol for accessing the off-site legal research service; [and](B) Ensure the
20 appropriate and timely use of the off-site legal research service, include
21 documentation and delivery of responses.” *Id.* at SD_065205 (emphasis added).
22 The “may” in this rule is important. Deputy Sheriff Eric Brown, designated by the
23 Department as the person most knowledgeable about access to courts and counsel by
24 incarcerated people, testified that he is not aware of anything done by the Sheriff’s
25 Department to inform incarcerated people about this service. Brown Depo. at 26:5-
26 18.

27 255. Should they learn about the service nonetheless, incarcerated people
28 *without* Conditions of Confinement status are allowed to submit only one LRA

1 request per month; people with Conditions of Confinement status may submit two
2 requests per month. *See* SDDS Manual, No. N.6, SD_065002. In each request
3 form, incarcerated people can request at most five cases or questions. The results
4 incarcerated people receive are limited to 50 pages in total (25 double-sided pages).
5 Email from M. Aquinaldo to R. Cardenas et al., November 2, 2023, SD_1572825.
6 In other words, incarcerated people may not request six documents, each of which is
7 three pages in length, even though that would result in only 18 pages of documents.
8 Similarly, if they request a case that is 60 pages long, they will receive only the first
9 50 pages of the document. They would need to wait for the final 10 pages until
10 allowed to send a second request.

11 256. Documents obtained from the Department establish that these limits are
12 contractual. “The LRA contract would need to be amended to accommodate more
13 requests per month or total number of pages allowed. The contract is paid for out of
14 [a general fund].” *Id.*

15 257. Incarcerated people report that this process is subject to substantial
16 delays. It might take multiple days to receive the LRA form itself after submitting
17 an incarcerated person request for it. And, once they submit the LRA form, it can
18 take 30 days to receive the legal research requested. As an example, one
19 incarcerated person I interviewed in late March 2024 reported that he still had not
20 received a response to the LRA request he submitted in February 2024.

21 258. This slow and limited process is insufficient for a person attempting to
22 file a complaint in court about an injury they suffered in the Jail due to staff
23 misconduct or mistreatment, or constitutional or ADA violations. Imagine a person
24 without any formal legal training attempting to do such research on such a delayed
25 schedule. He would, in his first request, need to ask LRA to provide a list of statutes
26 under which he might be able to bring a claim. In his second request, a month or
27 more later (depending upon any delays in getting a response to his first request), he
28 would ask LRA to provide the text of the five most important of those statutes. In

1 his third request, he would need to ask for a list of cases analyzing whichever
2 statutes seemed most important (assuming there were not more statutes whose text
3 he was still waiting to read). In his fourth request, he would need to ask for the text
4 of some of those cases—again limited to only five cases or 50 pages. In other
5 words, this person would need to wait four months before receiving even a single
6 case to read. Such a legal research process is unreasonably burdensome and slow,
7 and may—considering the six-month Government Claims deadline and the two-year
8 statute of limitations potentially governing such claims—ultimately have the effect
9 of prohibiting that person from filing his complaint at all.

10 259. Even if a person is able to file a complaint and obtain Conditions of
11 Confinement status, the twice per month LRA request process is insufficient. For
12 example, consider someone who has filed a civil conditions of confinement
13 complaint, to which the County demurred or moved to dismiss. An incarcerated
14 person drafting an opposition to that document would likely want to read the cases
15 cited within the defendant’s motion, then do additional legal research on their own.
16 The five-item, fifty-page, twice-per-month limitation would make that near
17 impossible to do in a meaningful time frame. It might take the incarcerated person
18 three or four LRA requests (across two months) to even read all the cases cited in
19 the defendant’s briefing, plus the additional LRA requests the person would need to
20 conduct their own research to support an opposition.

21 260. Assuming the incarcerated person filed his conditions of confinement
22 in the Southern District of California, Rule 7.1(e), provides that hearings must be
23 noticed no less than 28 days before the hearing date, and opposition papers are
24 due 14 days before the hearing. With these deadlines, the Jail’s LRA system is
25 useless.

26 261. Incarcerated people I interviewed report that the video phones in
27 housing unit dayrooms appear to have a “law library” function, but it does not work,
28 *i.e.*, nothing happens when they click on the “law library” icon on the phone.

1 Indeed, Captain Johns testified that law library access is not available on the
2 videophones, and he does not know if the Sheriff’s Department is intending to make
3 it available. Johns Depo. at 64:8-22. The County has not provided tablets either,
4 despite issuing a Request for Proposal in early 2023. As a result, the insufficient
5 LRA process described above is incarcerated people’s only option to access legal
6 materials.

7 262. The Sheriff’s Department’s policy on Conditions of Confinement
8 status, No. N.6, also provides some minimal additional resources to incarcerated
9 people who are pro per in conditions of confinement cases. SD_065002. However,
10 the policy merely highlights how little the Jail does to provide incarcerated people
11 access to the courts.

12 263. Incarcerated people who are pro per in civil conditions of confinement
13 cases are entitled to purchase a ruled legal pad, standard size envelopes, golf pencils,
14 lead black, and erasers. *See id.* Indigent people with conditions of confinement pro
15 per status “may receive these supplies upon written request to the correctional
16 Counselor. . . . The correctional counselor will determine the validity of the request
17 and furnish the appropriate supplies.” Conditions of Confinement Notice,
18 SD_652078. Captain Johns could not explain why conditions of confinement
19 incarcerated people are entitled to fewer supplies than those who are pro per in
20 current criminal cases. Johns Depo. at 69:21-70:5.

21 264. “The correctional counselor will keep a log for each conditions of
22 confinement incarcerated person. The log will have a list of supplies furnished (if
23 determined to be indigent), LRA requests and responses, and special requests
24 approved.” SD_652078. Once again, the Department’s written policy provides the
25 opposing party direct access to the pro per plaintiff’s work product.

26 265. SDSD Manual Section T.1 also states that people on Conditions of
27 Confinement Status should receive from correctional counselors “‘reasonable
28 assistance,’ which consists of supporting an incarcerated person on how to operate

1 the electronic research kiosks and how to formulate queries for such research.”
2 SDSD Manual, May 18, 2022, SD_065200. However, because there are no
3 electronic research kiosks available to people on Conditions of Confinement Status,
4 this offer of “reasonable assistance” is meaningless. *Id.*

5 266. Another source of frustration for pro per litigants in the Jail’s failure
6 to make required Judicial Council forms available in a timely manner. Pro per
7 incarcerated people I interviewed reported that the California Judicial Council
8 requires that pro per incarcerated people use specific forms for various pleadings.
9 I understand that, in at least one case, a court clerk rejected a pro per litigants’
10 pleading because it was not on the proper form. An incarcerated person must
11 request the necessary form by submitting a written Inmate Request Form to his
12 Correctional Counselor. Incarcerated people report that it can take weeks to get a
13 copy of the requested form. One pro per incarcerated person interviewed reported
14 that the Sheriff’s Department will not give him the forms he needs, saying the
15 court can provide them. But the court does not provide them. Thus, he is stuck in
16 limbo.

17 267. Notably, Section N.6 does not provide pro per litigants in civil cases
18 any additional telephone privileges. *See id.* at SD_065002. The Manual provides
19 people on Conditions of Confinement Status “may use the phones in their housing
20 areas to place calls concerning their cases.” *Id.* The lack of confidentiality as well
21 as the limited availability of these phones is discussed above.

22 268. These litigants are “authorized to mail all correspondence necessary for
23 their lawsuit, at their own expense.” “Only that correspondence which meets the
24 confidential/legal mail definition will be handled as such.” *Id.* at SD_065003.
25 Indigent incarcerated people are required to submit their legal correspondence to the
26 correctional counselor who will affix the needed postage or mail it through county
27 messenger mail. *Id.* One incarcerated person alleges that the exhibits to his habeas
28 petition are languishing in the mail room. He alleges that he was not provided with

1 paid postage for legal mail to petition the courts.

2 269. The policy provides that cell or property searches of conditions of
3 confinement incarcerated person’s “legal” materials will be carried out in
4 compliance with DSB P&P section 1.41 regarding privileged communications. One
5 conditions of confinement pro per incarcerated person who has been subjected to
6 searches of his materials alleges that this has resulted in “staff [] actively attempting
7 to confiscate petitioner’s legal mail.” Pedro Rodriguez, filed August 7, 2023, Dkt.
8 379 at 4. Such seizures render pursuing a case virtually impossible.

9 270. An additional way in which the Department fails to provide access to
10 the courts is that its phone system does not allow incarcerated people to participate
11 in telephonic hearings. An incarcerated person I interviewed, who had obtained a
12 court order for the Department to produce him for a small claims court hearing, was
13 told to use the phone in the recreation yard for the hearing. He was unable to
14 participate, however, because when the clerk placed him on hold prior to his case
15 being called, he was disconnected. Because he did not appear, his case was
16 dismissed.

17 271. Relatedly, I understand from Plaintiffs’ counsel that incarcerated
18 people have been denied the opportunity to review the Third Amended Complaint in
19 this case, despite their requests to do so.

20 **C. Grievance Policy and Procedure.**

21 272. If a Correctional Counselor or other jail staff denies a pro per
22 incarcerated person’s request for assistance, the remedy is for the incarcerated
23 person to file a grievance. SDSD Manual, No. N.1, May 13, 2022, SD_064991.
24 The grievance process is slow and ineffective.

25 273. Incarcerated people “may submit written grievances directly to deputies
26 or other employees at any time when they are in a place, they have permission to be.
27 Absent exigent circumstances, any deputy or other staff member who is presented
28 with a written grievance will accept it.” *Id.* at SD_064992. The deputy or other

1 employee who initially receives a grievance will print their name, the date and time
2 on the form and give the second page of the form “immediately” to the incarcerated
3 person “as a signed receipt for the grievance.” *Id.*

4 274. “As an alternate means for submitting grievances, secured boxes may
5 be provided for incarcerated person(s) to deposit their grievances into.” *Id.* “A
6 sergeant or designee will collect grievances from the grievance boxes at least once
7 per shift.” *Id.* at SD_064993. Any grievance retrieved from one of these boxes
8 “will be signed by the sergeant or designee who collected it,” and the signed second
9 page of the J-22 form will be returned to the incarcerated person “as soon as
10 practical.” *Id.*

11 275. In practice, incarcerated people report that deputies are unwilling to
12 accept written grievances when they try to submit them directly, presumably
13 because the deputy or staff person who “receives” the grievance is primarily
14 responsible for resolving it. It is the Department’s Grievance policy that

15 [i]nformal resolution of an issue is both desirable and
16 recommended. Furthermore, written grievances can often
17 be resolved without the intervention of a supervisor, and
every effort should be made by a deputy or staff member
who receives a grievance to handle it at their level.

18 *Id.* at SD_064991. To avoid taking on this task, deputies tell the incarcerated people
19 to put their grievance in the grievance box. Based on my interviews, I understand
20 that incarcerated people do not want to put them in the box, because they will not
21 get a receipt proving they filed the grievance “immediately.” Instead, under the
22 Department’s rule, they will get it “as soon as practical,” which in some cases,
23 incarcerated people report, means never. They have no receipt and they get no
24 response, making it impossible to prove they have “completely exhaust[ed] the
25 Department’s internal grievance and administrative processes prior to filing any
26 complaint with any state board or federal court.” *Id.* at SD_064992.

27 276. The Department’s timeline for responding to grievances makes the
28 process useless as a remedy to a person involved in litigation. If the responding

1 deputy or staff member accepts the grievance, reads it, and decides that it alleges
2 that the incarcerated person has been prevented “effective
3 communication/participation in any court or administrative hearing,” the responding
4 deputy must respond within four calendar days. If the deputy or staff member
5 determines that it does not fall into this category, their response is due in seven days.
6 If the incarcerated person is not satisfied, he must appeal “in writing through
7 successive levels of command until a resolution is obtained, or until the facility
8 commander reviews the grievance.” *Id.* at SD_064994. The grievance review
9 officer has 10 calendar days to respond. *Id.* at SD_064995. The facility commander
10 then has 10 calendar days to respond. *Id.* The decision of the facility commander is
11 final. *Id.* Even if these timelines are timely met, approximately a month would pass
12 between the submission of a grievance and its resolution, potentially making it
13 impossible for the incarcerated person to obtain relief for issues being considered in
14 active litigation.

15 277. Additionally, the facility commander can determine that a person is a
16 “vexatious grievance writer” whose grievances may be denied without a hearing or
17 any right of appeal for 90 days. *Id.* at SD_064996.

18 An incarcerated person may be considered a vexatious
19 grievance writer if they have filed repetitive grievances
20 that are frivolous in nature or concern an established
21 policy or practice of the Sheriff’s Department that the
22 incarcerated person claims violate their rights, when no
23 good faith legal argument exists that the policy or practice
24 amounts to a violation of the incarcerated person’s
25 statutory or constitutional rights.

23 *Id.* If an incarcerated person files a grievance that the commander deems frivolous
24 during the 90-day period, the 90-day period shall be reset “and a new 90-day period
25 shall commence.” *Id.* at SD_064997. This means that an incarcerated person who
26 files a grievance against the Sheriff’s Department concerning “an established policy
27 or practice of the Sheriff’s Department that the incarcerated person claims violate
28 their rights” can have his grievance denied without a hearing and without the right to

1 appeal if the potential defendant Department believes the claim is brought in “bad
2 faith,” making it impossible to exhaust administrative remedies.

3 278. Another way the Sheriff’s Department deprives incarcerated people of
4 their right to have their grievances adjudicated is by deeming the matter “not a
5 grievance.” Inmate Grievance, January 31, 2023, SD_841287. The Inmate
6 Grievance of ██████████ is a case in point. On the proper form, ██████████
7 described his grievance as follows:

8 I would like to know why I’m not getting [adequate]
9 proper treatment – Medication when all my MediCal file is
10 in your hands. The denial of Lyrica and Tramadol is
causing me to think I’m being treated with cruel and
unusual punishment.

11 *Id.* (spelling corrected). He alleges that this is being done in retaliation for his
12 obtaining a doctor’s order that the Department provide him with a shower and new
13 clothes a few days before. *Id.* This fits squarely within the definition of a
14 grievance, which includes “incarcerated person complaints related to any aspect of
15 condition of confinement that directly and personally affect the incarcerated person
16 grievant, including . . . “Medical/Mental Health care.” SDSL Manual, No. N.1,
17 SD_064991.²⁹ Two weeks after ██████████ submitted his Inmate Grievance form,
18 a Deputy (whose name is not printed and whose signature is illegible) checked the
19 box on the Grievance form marked: “This submission is not a grievance.”
20 SD_841287. And that was that. According to Commander Ralph, “Grievances” not
21 being handled as a grievance are not logged anywhere. Ralph I Depo. at 222:1-24;
22 *see also* SDSL Manual No. N.1 (when “This is not a grievance” box checked, “[n]o
23 entry in JIMS is required”).

24 **D. Conclusion**

25 279. The San Diego Sheriff’s Department makes it next to impossible for an
26

27 _____
28 ²⁹ There is a more recent version of this policy available on the Sheriff’s Department
website, but this provision is unchanged.

1 testimony in this case.

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3 Dated: August 7, 2024

Karen L. Snell

Karen L. Snell

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