

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

AMERICAN CIVIL LIBERTIES
UNION FOUNDATION,
AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF SOUTH CAROLINA

Plaintiffs

v.

SPARTANBURG COUNTY; CHUCK
WRIGHT, in his official capacity as the
Spartanburg County Sheriff; and ALLEN
FREEMAN, in his official capacity as
administrator of the Spartanburg Detention
Center,

Defendants.

Case No. 7:17-cv-01145-TMC

**PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

INTRODUCTION

This case challenges the constitutionality of Defendant Spartanburg County's policy, practice, and custom of preventing civil rights organizations and their cooperating attorneys from exercising their First Amendment right to speak in person with inmates incarcerated in the Spartanburg County Detention Center ("Detention Center"). Plaintiffs American Civil Liberties Union Foundation ("ACLU") and American Civil Liberties Union Foundation of South Carolina ("ACLU-SC") are investigating the violation of constitutional rights of people incarcerated in the Detention Center. Defendants Sheriff Chuck Wright and Major Allen Freeman jointly operate the Detention Center and serve as Defendant Spartanburg County's final policymakers concerning the Detention Center's policies, practices, and customs for attorney visits with inmates. Defendants enforce an unconstitutional policy, practice, and custom of prohibiting Plaintiffs from speaking in person with Detention Center inmates. As a result, Plaintiffs are

unable to inform Detention Center inmates of their rights, learn of constitutional violations the inmates have suffered, or determine whether inmates have viable legal claims.

Plaintiffs seek a preliminary injunction prohibiting Defendants from denying Plaintiffs and their cooperating attorneys the ability to speak in person with Detention Center inmates. Plaintiffs are likely to prevail on their constitutional claims and without interim relief, Plaintiffs will continue to suffer the irreparable harm of being denied the right to speak to inmates about their civil rights, learn of violations the inmates have suffered, and determine whether inmates have viable legal claims. Because Plaintiffs are willing to accommodate any reasonable restrictions on the date and time of in-person attorney meetings with Detention Center inmates, the government's interests will be amply protected. Accordingly, the Court should grant Plaintiffs' motion for a preliminary injunction in Plaintiffs' favor.

BACKGROUND

A. Plaintiffs ACLU and ACLU-SC have been investigating constitutional violations related to South Carolina's summary courts for more than two years.

Plaintiff ACLU is a nationwide civil rights organization whose mission is to protect and defend the constitutional rights and civil liberties of everyone in this country, including the least popular members of our society. Plaintiff ACLU-SC is the South Carolina affiliate of the ACLU. Both organizations work in courts, legislatures, and communities to advocate for civil rights and civil liberties for all.

For more than two years, the ACLU and ACLU-SC have been investigating constitutional violations related to proceedings in South Carolina summary courts. The term "summary courts" is used to collectively describe municipal and magistrate courts in South Carolina, which have jurisdiction to preside over low-level misdemeanor charges such as traffic offenses, simple drug offenses, and shoplifting offenses. While these charges are minor, the

potential consequences for accused persons are substantial, particularly when their constitutional rights are violated.

In 2016, the ACLU, ACLU-SC, and the National Association of Criminal Defense Lawyers (“NACDL”) published a report detailing deficiencies in South Carolina’s summary court system, resulting constitutional violations, and the consequences for indigent people. *See* Diane DePietropaolo Price et al., Summary Injustice: A Look at Constitutional Deficiencies in South Carolina’s Summary Courts (2016), https://www.aclu.org/sites/default/files/field_document/summaryinjustice2016_nacdl_aclu.pdf. Subsequently, NACDL published a follow-up report presenting additional findings concerning South Carolina’s summary courts. *See* Alisa Smith et al., Rush to Judgment: How South Carolina’s Summary Courts Fail to Protect Constitutional Rights (2017), <https://www.nacdl.org/RushToJudgement/>. The reports found, among other things, that indigent people in South Carolina’s summary courts routinely proceed without being informed of their constitutional right to a public defender or a jury trial; without being assessed for flight risk and danger to the community before having to pay a money bond in order to secure pretrial release; and without being questioned about their financial circumstances before being jailed for nonpayment of court-imposed fines and fees. As set forth in both reports, these constitutional violations cause a large number of indigent people to be incarcerated in South Carolina’s county jails. Price et al., *supra* at 7; *see also* Smith et al., *supra* at 6–7.

B. Plaintiffs are investigating alleged violations of the constitutional rights of inmates currently detained in the Spartanburg County Detention Center.

Following up on the findings of the summary courts reports, the ACLU and ACLU-SC have been jointly investigating alleged violations of the constitutional rights of indigent people incarcerated in county jails throughout South Carolina, including the Spartanburg County Detention Center. The ACLU and ACLU-SC are working on the investigation with attorneys

Toby Marshall and Eric Nusser of Terrell Marshall Law Group PLLC (“Terrell Marshall”). Mr. Marshall and Mr. Nusser act as ACLU and ACLU-SC cooperating attorneys in the course of investigating alleged violations of the constitutional rights of incarcerated indigent people, including through interviews of inmates incarcerated in the Detention Center.

C. Defendants denied the ACLU and ACLU-SC access to speak with inmates inside the Detention Center pursuant to a stated policy.

Spartanburg County has a written policy, published on the Detention Center’s website, providing that all professional visits, including those by attorneys, “should be scheduled in advance through the Director’s Office.” Declaration of Nusrat J. Choudhury (“Choudhury Decl.”) ¶ 2 & Ex. A. On December 1, 2016, Nusrat Choudhury, a senior staff attorney at the ACLU, called and emailed Major Neal Urch, then director of the Detention Center, to request permission for the ACLU, ACLU-SC, and attorneys working with both organizations to conduct interviews with inmates. *Id.* ¶¶ 3–4. Major Urch directed Ms. Choudhury to submit the request to Defendant Freeman and instructed Ms. Choudhury to identify the specific inmates with whom meetings were sought. *Id.* ¶ 3.

On December 2, 2016, attorney Candy M. Kern-Fuller of the Upstate Law Group, who was working with the ACLU and ACLU-SC at the time, left a message on Defendant Freeman’s office phone and sent an email to Defendant Freeman requesting permission on behalf of herself and Linda Moon, an ACLU legal fellow, to meet with twenty-seven Detention Center inmates. Declaration of Candy M. Kern-Fuller (“Kern-Fuller Decl.”) ¶¶ 3–4 & Ex. A. The email identified each inmate by name and requested permission for Ms. Kern-Fuller and Ms. Moon to meet with the inmates during specific dates and times over a four-day period. *Id.* All dates and times were in compliance with the published policies for professional visitors. *Id.*; *see also* Choudhury Decl. Ex. A.

Within an hour, Defendant Freeman responded by email:

The only visit allowed would be those of Attorneys th[at] represent Inmates in criminal, civil or family court proceedings. Our public defender has representation in the facility daily Monday-Friday. We do not allow any visitation inside our facility otherwise. My question [sic] do you represent the below in any of the proceedings I listed?

Kern-Fuller Decl. Ex. A.

On December 7, 2016, Ms. Choudhury sent a letter (“Demand Letter”) to Defendant Freeman again requesting permission for the ACLU and ACLU-SC to meet with Detention Center inmates concerning civil rights issues. Choudhury Decl. ¶¶ 5–7 & Exs. C–D. Ms. Choudhury specifically requested that such permission be granted to attorneys from the ACLU, Upstate Law Group, and Terrell Marshall. *Id.* Ms. Choudhury also notified Defendant Freeman that the Detention Center’s policy of limiting visits with inmates to “attorneys already representing the inmates in criminal, civil, or family court proceedings” is contrary to rights protected by the United States Constitution. *Id.* The ACLU did not receive any response to the letter from Defendant Freeman. *Id.* ¶¶ 5–6.

On December 9, 2016, Ms. Choudhury forwarded the Demand Letter to Defendant Wright, the Spartanburg County Sheriff and final policymaker concerning the Detention Center’s policies and practices. *Id.* ¶¶ 7, 9–10 & Exs. D, F. That same day, Sheriff Wright sent an email denying Ms. Choudhury’s request for the ACLU and ACLU-SC to meet with inmates in the Detention Center. *Id.* ¶¶ 9–10 & Ex. F. Sheriff Wright’s response stated in full: “We are speaking with our Attorneys and I am saying no to your requests at this time. Should the Attorneys say anything different, Your request are denied [sic].” *Id.* There have been no communications from Sheriff Wright or the County’s attorneys following up on the Sheriff’s email of December 9, 2016. *Id.* ¶ 11.

D. Defendants initially allowed Mr. Marshall and Mr. Nusser to speak with inmates inside the Detention Center.

On December 12 and 13, 2016, Mr. Marshall, Mr. Nusser, and Howard E. Sutter III, an attorney with Upstate Law Group, visited the Spartanburg County Detention Center in order to interview inmates on behalf of the ACLU and ACLU-SC. Declaration of Toby J. Marshall (“Marshall Decl.”) ¶¶ 3, 8. When they arrived each of those days, Mr. Marshall, Mr. Nusser, and Mr. Sutter provided the officer at the front desk with a list of inmates they sought to interview. *Id.* ¶¶ 4, 8–9. The officer identified the locations of the inmates, all of whom were housed either on-site at the Detention Center or off-site in a facility called the Annex 2, but made no inquiry as to whether Mr. Marshall, Mr. Nusser, or Mr. Sutter represented the inmates. *Id.* ¶¶ 4–6, 9. The officer looked at the driver’s licenses and bar cards of Mr. Marshall, Mr. Nusser, and Mr. Sutter, issued them name tags, and allowed them to enter the Detention Center. *Id.* ¶¶ 5, 8. Mr. Marshall, Mr. Nusser, and Mr. Sutter met with female inmates inside a room in the booking area. *Id.* ¶¶ 7, 10. Mr. Marshall and Mr. Nusser also met with male defendants in various pods throughout the Detention Center. *Id.* ¶ 11.

On December 13, 2016, Mr. Marshall and Mr. Nusser visited the Annex 2. *Id.* ¶ 12. Mr. Marshall and Mr. Nusser informed the officer at the front desk that they wished to speak with a number of inmates. *Id.* The officer reviewed the driver’s licenses and bar cards of Mr. Marshall and Mr. Nusser and then allowed them to enter the Annex 2 to meet inmates without restriction. *Id.* ¶¶ 12–14. The officer made no inquiry as to whether Mr. Marshall and Mr. Nusser represented the inmates with whom they were visiting. *Id.* ¶ 13.

The procedure for entering both the Detention Center and the Annex 2 was swift and routine, and the burden on the time of the guards and staff was negligible. *Id.* ¶¶ 6, 9–13. Mr.

Marshall and Mr. Nusser were allowed to navigate the jails without escort, and nobody voiced any concern to them regarding their presence. *Id.* ¶ 14.

E. Defendants later denied Mr. Marshall and Mr. Nusser access to speak with inmates inside the Detention Center pursuant to a stated policy.

On January 31, 2017, Mr. Marshall, Mr. Nusser, and Ryan Fowler, an ACLU-SC legal intern, traveled to the Detention Center for additional meetings with inmates. *Id.* ¶ 15. Like before, Mr. Marshall, Mr. Nusser, and Mr. Fowler gave the officer at the front desk the names of the inmates with whom they wished to speak. *Id.* The officer identified each inmate's location, reviewed the driver's licenses and bar cards of Mr. Marshall and Mr. Nusser, reviewed the driver's license and student identification card of Mr. Fowler, printed name tags for the three men, and allowed them to enter the Detention Center. *Id.* ¶¶ 15–16. The officer made no inquiry as to whether the attorneys represented the inmates with whom they were visiting. *Id.* ¶ 17.

Because the lobby of the Detention Center was undergoing renovations, Mr. Marshall, Mr. Nusser, and Mr. Fowler were not required to pass through a metal detector as had been the case during previous visits. *Id.* ¶¶ 5, 18. A hand-held metal detector wand was sitting on the front desk, but the officer did not use it or any other security device to screen the men. *Id.* ¶ 18. The officer also did not pat them down or in any other way check to see whether they were carrying any items that might cause a security threat. *Id.*

Once inside the Detention Center, Mr. Marshall, Mr. Nusser, and Mr. Fowler met with Officer T. Wilson, who made a copy of their inmate list. *Id.* ¶ 19. At that time, Officer Wilson made no inquiry as to whether the attorneys represented the inmates with whom they were there to speak. *Id.* Officer Wilson arranged to have the first inmate on the list brought to a room in the booking area where Mr. Marshall and Mr. Nusser had met with inmates during previous visits. *Id.*

Approximately five minutes into the meeting, Officer Wilson opened the door and interrupted the conversation. *Id.* ¶ 20. Officer Wilson asked the attorneys about the purpose of their meetings and also asked whether they represented the listed inmates. *Id.* Mr. Marshall and Mr. Nusser explained that they were interviewing inmates in regard to alleged violations of constitutional rights and informed Officer Wilson that they did not represent any of the inmates at that time. *Id.* Officer Wilson told Mr. Marshall, Mr. Nusser, and Mr. Fowler that because they did not represent any of the inmates on their list, they would have to leave the Detention Center. *Id.* ¶ 21. Officer Wilson stated that Spartanburg County has a policy prohibiting attorneys from speaking with inmates the attorneys do not already represent. *Id.*

When Mr. Marshall attempted to discuss the matter further, Officer Wilson said the attorneys would have to speak with Defendant Freeman, the director of the Detention Center. *Id.* ¶ 22. Officer Wilson then escorted Mr. Marshall, Mr. Nusser, and Mr. Fowler out of the booking area, across the facility, and into Major Freeman's office. *Id.* ¶ 23. Major Freeman told them the Detention Center has a policy prohibiting attorneys from speaking with inmates in person unless the attorneys first demonstrate they have a pre-existing attorney-client relationship with those inmates. *Id.* Mr. Marshall informed Major Freeman that Mr. Nusser, Mr. Fowler, and he were all working with the ACLU to investigate matters concerning inmates' constitutional rights and that Mr. Fowler was a legal intern with the ACLU-SC. *Id.* ¶ 24. Mr. Marshall attempted to discuss Defendants' policy with Major Freeman, asserting there was a constitutional right to speak with inmates. *Id.* Major Freeman insisted he would only deviate from the policy at the direction of Sheriff Wright. *Id.* ¶ 25. Until then, he said, Mr. Marshall, Mr. Nusser, and Mr. Fowler were prohibited from speaking with inmates and would have to leave the premises. *Id.*

After the meeting with Major Freeman, Officer Wilson escorted Mr. Marshall, Mr. Nusser, and Mr. Fowler out of the Detention Center. *Id.* ¶ 26.

Because of Defendants' policy, practice, and custom of prohibiting attorneys from visiting inmates they do not already represent, Plaintiffs have been unable to meet and engage in confidential, in-person communications with inmates at the Spartanburg County Detention Center. *Id.* ¶ 27; Choudhury Decl. ¶ 12.

AUTHORITY AND ARGUMENT

A. The Court should grant preliminary injunctive relief allowing Plaintiffs access to speak with inmates inside the Detention Center.

Preliminary injunctions provide relief to a party seeking to enjoin another from committing an irreparable injury prior to a final determination by a trial on the merits. *See* Fed. R. Civ. P. 65. To secure preliminary injunctive relief, Plaintiffs must establish: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm absent preliminary injunctive relief; (3) that the balance of equities tips in favor of providing preliminary injunctive relief; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). As discussed below, Plaintiffs satisfy all four of these elements and are thus entitled to preliminary injunctive relief. Accordingly, after providing Defendants notice and the opportunity to be heard at a hearing, this Court should enter a preliminary injunction prohibiting Defendants from denying Plaintiffs access to speak in person with any inmate housed at the Spartanburg County Detention Center.

1. Plaintiffs have established a likelihood of success on the merits.

A district court "has no discretion to deny relief by preliminary injunction to a person who clearly establishes by undisputed evidence that he is being denied a constitutional right." *Henry v. Greenville Airport Comm'n*, 284 F.2d 631, 633 (4th Cir. 1960); *see also Am. Civil*

Liberties Union Fund of Michigan v. Livingston Cty., 796 F.3d 636, 642 (6th Cir. 2015), *cert. denied sub nom. Livingston Cty., Mich. v. Am. Civil Liberties Union Fund of Michigan*, 136 S. Ct. 1246 (2016) (“[T]he crucial inquiry is usually whether the plaintiff has demonstrated a likelihood of success on the merits . . . because the public’s interest and any potential harm to the parties or others largely depend on the constitutionality of the [government action].”) (internal quotations omitted). “While plaintiffs seeking preliminary injunctions must demonstrate that they are likely to succeed on the merits, they ‘need not show a certainty of success.’” *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 247 (4th Cir. 2014) (quoting *Pashby v. Delia*, 709 F.3d 307, 321 (4th Cir. 2013)).

For the reasons that follow, Plaintiffs demonstrate that they have a likelihood of success on the merits of their claims.

2. Plaintiffs have a First Amendment right to speak in person with inmates regarding their legal rights and to recruit inmates for the purpose of challenging unconstitutional practices.

The United States Supreme Court has long held that the First Amendment’s guarantee of the freedom of expression and association protects the right of a non-profit, public interest organization to “solicit prospective litigants . . . for the purpose of furthering the civil-rights objectives of the organization and its members.” *In re Primus*, 436 U.S. 412, 423–24 (1978) (discussing *NAACP v. Button*, 371 U.S. 415, 428–30 (1963)). Almost forty years ago, in a case concerning the ACLU-SC, the Supreme Court recognized that an organization’s engagement “in litigation as a vehicle for effective political expression and association, as well as a means of communicating useful information to the public” falls firmly within the protection of the First Amendment. *In re Primus*, 436 U.S. at 431. Indeed, the Court acknowledged that the

effectiveness of using litigation to “advance[e] the cause of civil liberties often depends on the ability to make legal assistance available to suitable litigants.” *Id.* It also held that the First Amendment “require[s] a measure of protection for advocating lawful means of vindicating legal rights, including advis[ing] another that his legal rights have been infringed and refer[ring] him to a particular attorney or group of attorneys . . . for assistance.” *Id.* at 432 (internal citations and quotation marks omitted).

Furthermore, “an attorney must be able to communicate with an inmate in confidence before litigation and before establishment of a formal attorney-client privilege in order to offer legal advice or determine whether an actionable claim exists.” *Livingston Cty.*, 796 F.3d at 645. “[T]he right to obtain legal advice . . . applies . . . to legal representation intended to advocate a political or social belief.” *Denius v. Dunlap*, 209 F.3d 944, 954 (7th Cir. 2000) (citing *Button*, 371 U.S. at 419–20). Inmates similarly have substantive rights under the United States Constitution, including a right to “unimpaired, confidential communication with an attorney [as] an integral component of the judicial process.” *Livingston Cty.*, 796 F.3d at 643. This right “is not limited to those already represented by an attorney of record, but extends equally to prisoners seeking any form of legal advice or assistance.” *Ruiz v. Estelle*, 503 F. Supp. 1265, 1372 (S.D. Tex. 1980), *aff’d in part, rev’d in part*, 679 F.2d 1115 (5th Cir. 1982), *amended in part, vacated in part*, 688 F.2d 266 (5th Cir. 1982) (citing *Nolan v. Scafati*, 430 F.2d 548 (1st Cir. 1970)).

In accordance with these longstanding precedents, the ACLU and ACLU-SC have a well-established First Amendment right to speak in person to Detention Center inmates to advise them of their constitutional rights and to recruit potential plaintiffs for civil rights lawsuits. Such meetings further the expressive and associational mission of the organizations to protect and defend individual rights and liberties guaranteed by the U.S. Constitution, including the rights

and liberties of jail inmates. To this end, the ACLU and ACLU-SC have spent two years investigating and exposing violations of the constitutional rights of indigent defendants with criminal cases in South Carolina summary courts. *See Price et al., supra; see also Smith et al., supra.* The groups have published a report detailing these violations, but there is no indication that the public is adequately aware of the problem or that the identified violations have been adequately addressed. The ACLU and ACLU-SC therefore seek to speak in person and confidentially with indigent people incarcerated in the Detention Center by order of South Carolina summary courts to advise them of their rights, learn of constitutional violations the inmates have suffered, and determine whether the inmates have viable legal claims. *See Livingston Cty.*, 796 F.3d at 645 (recognizing need for confidential attorney-inmate communications “before litigation and before establishment of a formal attorney-client privilege in order to offer legal advice or determine whether an actionable claim exists”). Inmates, however, are unlikely to initiate contact with the ACLU or ACLU-SC because they typically have little-to-no understanding of the types of claims handled by these organizations. This effectively prevents Plaintiffs from establishing a pre-existing representational relationship that complies with Defendants’ policy, practice, and custom of permitting attorney visits only when such a relationship exists.

For these reasons, Plaintiffs’ efforts to meet in person with Detention Center inmates falls squarely within the core First Amendment protection for organizations seeking to advance civil rights and civil liberties by communicating with potential clients regarding litigation “as a vehicle for effective political expression and association, as well as a means of communicating useful information to the public.” *In re Primus* 436 U.S. at 431.

3. Plaintiffs will suffer irreparable harm in the absence of preliminary injunctive relief.

The second factor in obtaining preliminary injunctive relief is for the movants to demonstrate they are likely to suffer an irreparable harm absent preliminary injunctive relief. *Winter*, 555 U.S. at 20. The United States Supreme Court has held that the “loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Elrod v. Burns*, 427 U.S. 347, 373–74 (1976) (holding irreparable harm element was satisfied where employer threatened to terminate employees because of their political associations). Indeed, “even minimal infringement upon First Amendment values constitutes irreparable injury sufficient to justify injunctive relief.” *Livingston Cty.*, 796 F.3d at 649; *see also Bery v. City of New York*, 97 F.3d 689, 694 (2d Cir. 1996) (quoting 11A Charles A. Wright, Arthur R. Miller & Mary Kane, *Federal Practice and Procedure* § 2948.1 (2d ed. 1995) (holding when “an alleged deprivation of a constitutional right is involved, most courts hold that no further showing of irreparable injury is necessary”)). This is especially true where the plaintiff “cannot be made whole through the imposition of money damages.” *See Howard v. United States*, 864 F. Supp. 1019, 1029 (D. Colo. 1994) (citing *Patton v. Dole*, 806 F.2d 24, 28 (2d Cir. 1986) (holding injunction proper where money damages constitute inadequate recompense)).

The Fourth Circuit has held that “in the context of an alleged violation of First Amendment rights, a plaintiff’s claimed irreparable harm is inseparably linked to the likelihood of success on the merits of plaintiff’s First Amendment claim.” *Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184, 190–91 (4th Cir. 2013) (internal citations and quotation marks omitted). Therefore, where a plaintiff has demonstrated a likelihood of success on a First Amendment claim, “the Fourth Circuit has generally found irreparable injury [exists].” *Tepeyac v. Montgomery Cty.*, 779 F. Supp. 2d 456, 471 (D. Md. 2011), *aff’d in part, rev’d in part*, 683 F.3d

591 (4th Cir. 2012), *on reh'g en banc sub nom. Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184 (4th Cir. 2013), and *aff'd sub nom. Centro Tepeyac v. Montgomery Cty.*, 722 F.3d 184 (4th Cir. 2013) (citing *Newsom ex rel. Newsom v. Albemarle Cnty. Sch. Bd.*, 354 F.3d 249, 261 (4th Cir. 2003)). Courts in the District of South Carolina have also recently ruled that the deprivation of a constitutional right is sufficient to show irreparable harm in the absence of injunctive relief. *See Field v. McMaster*, 663 F. Supp. 2d 449, 453 (2009) (holding irreparable harm showing is satisfied where parties demonstrate “they would be deprived of a constitutional right if the court did not grant them injunctive relief”).

In this case, Plaintiffs are seeking to exercise a well-established First Amendment right to communicate with inmates in order to further their “civil-rights objectives” and to potentially pursue litigation challenging the violation of civil rights and civil liberties “as a vehicle for effective political expression and association” *In re Primus* 436 U.S. at 423–24, 431. Defendants have implemented and enforced a policy, practice, and custom that prohibits Plaintiffs from exercising that constitutional right by refusing to allow them to speak with inmates inside the Spartanburg County Detention Center simply because they have no pre-existing attorney-client relationship with the inmates. Preliminary injunctive relief is especially appropriate here because Defendants’ denial of Plaintiffs’ constitutional rights creates an irreparable harm that cannot be remedied through the imposition of money damages. This Court should grant Plaintiffs’ request for preliminary injunctive relief because Plaintiffs will suffer irreparable harm in the absence of such relief.

4. The balance of equities tips in Plaintiffs’ favor as preliminary relief would not substantially injure the government.

When considering a request for preliminary injunction, courts “must balance the competing claims of injury and must consider the effect on each party of the granting or

withholding of the requested relief.” *Winter*, 555 U.S. at 24. Where a preliminary injunction seeks to enjoin an alleged First Amendment violation, the Fourth Circuit has held that both the “balance of equities” and “public interest” factors under *Winter* will be “established” in the moving party’s favor. *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002) (affirming district court’s order of preliminary injunction to enjoin statute alleged to violate First Amendment). Additionally, the government will be “in no way harmed by the issuance of a preliminary injunction which prevents [it] from enforcing restrictions likely to be found unconstitutional. If anything, the system is improved by such an injunction.” *Id.* (internal quotations omitted).

When the “plaintiff is claiming the loss of a constitutional right, courts commonly rule that even a temporary loss outweighs any harm to defendant and that a preliminary injunction should issue.” 11A Charles A. Wright, Arthur R. Miller & Mary Kane, *Federal Practice and Procedure* § 2948.2 (3d ed. 2017); *see also Allen, Allen, Allen & Allen v. Williams*, 254 F. Supp. 2d 614 (E.D. Va. 2003) (granting preliminary injunction to law firm where hardship to firm of initiating disciplinary proceedings outweighed state bar association’s interest in disciplinary action over advertisement potentially protected by First Amendment); *Livingston Cty.*, 23 F. Supp. 3d at 843 (granting preliminary injunction to ACLU of Michigan where jail refused to accept and distribute legal mail in denial of ACLU’s First Amendment rights); *Farnam v. Walker*, 593 F. Supp. 2d 1000, 1016 (C.D. Ill. 2009) (finding harm that may result from erroneously granting preliminary injunction regarding prisoner’s Eighth Amendment claim was slight compared to potential harm from erroneously denying it). Courts have further ruled that where an inmate’s First Amendment right is in jeopardy, the balance of equities tips in favor of the inmate if allowing the exercise of the right “will have a *de minimis* impact” on the prison’s

budget, and security will not be adversely impacted. *Beerheide v. Zavaras*, 997 F. Supp. 1405, 1411 (D. Colo. 1998) (granting preliminary injunction to inmates of Orthodox Jewish faith where prison’s denial of kosher meals violated their constitutional right to free exercise).

Plaintiffs’ First Amendment right to speak with inmates inside the Detention Center outweighs any hardship—including financial burdens—that preliminary injunctive relief would cause Defendants. The Detention Center already has a well-defined, efficient mechanism for allowing attorneys into the facilities to speak to inmates whom they represent. Plaintiffs’ entry into the facility will be no different than these routine meetings, which take place inside one of a number of vacant rooms designated for attorneys to meet with inmates and do not require the time or resources of guards or other staff members. On the other hand, the hardship placed on Plaintiffs by Defendants’ denial of their constitutional rights is clear. Without the ability to speak in person with inmates to inform them of their constitutional rights and assess their circumstances, Plaintiffs cannot exercise their well-established First Amendment right to “make legal assistance available to suitable litigants” and change unconstitutional policies through effective litigation. *In re Primus*, 436 U.S. at 431.

This Court should grant Plaintiffs’ request for preliminary injunctive relief because the hardship created by denying Plaintiffs’ constitutional rights outweighs any negligible effect Plaintiffs’ presence inside the Detention Center may have on Defendants’ resources, financial or otherwise.

5. The public interest would be furthered by prohibiting Defendants from denying Plaintiffs access to speak in person with Detention Center inmates.

The Fourth Circuit has held that where an alleged First Amendment violation is the subject of a preliminary injunction, “upholding constitutional rights surely serves the public interest.” *Giovani Carandola*, 303 F.3d at 521 (citation omitted); *see also Newsom*, 354 F.3d at

261 (“[W]e believe that the public interest is better served by following binding Supreme Court precedent and protecting the core First Amendment right of political expression.”) (internal citation omitted). Moreover, “[w]hen a constitutional violation is likely . . . the public interest militates in favor of injunctive relief because it is always in the public interest to prevent violation of a party’s constitutional rights.” *Miller*, 622 F.3d at 540 (internal quotations omitted). Indeed, “the public as a whole has a significant interest in ensuring . . . protection of First Amendment liberties.” *Dayton Area Visually Impaired Persons, Inc. v. Fisher*, 70 F.3d 1474, 1490 (6th Cir. 1995) (granting preliminary injunction to halt enforcement of portions of state statutes “that are of questionable constitutionality”).

Almost four decades have passed since the United States Supreme Court recognized that the First Amendment affords non-profit organizations like the Plaintiffs a right to further their expressive and associational mission to inform people of their constitutional rights, change unconstitutional policies through litigation and other means, improve conditions for disadvantaged persons, and further the cause of social justice. *See In re Primus*, 436 U.S. 412. Plaintiffs seek to exercise precisely this right by speaking in person with Detention Center inmates. These visits are integral to Plaintiffs’ ability to inform Detention Center inmates of their civil rights and civil liberties, and to investigate and ultimately challenge the violation of constitutional rights of indigent people jailed following prosecution in South Carolina summary courts—an issue that Plaintiffs have already identified as one of serious public concern. Defendants’ enforcement of a policy, practice, and custom denying Plaintiffs access to speak with inmates inside the Detention Center deprives Plaintiffs of their core First Amendment rights. Prohibiting Defendants from continuing to do so is in the best interest of the public. Accordingly, this Court should grant preliminary injunctive relief.

CONCLUSION

As part of their mission to advance civil rights and civil liberties, the ACLU and ACLU-SC are investigating constitutional violations occurring in South Carolina summary courts and seek to challenge the policies and practices that cause such violations. In an exercise of their core First Amendment rights to expression and association, the organizations seek to speak in person with indigent people incarcerated in the Spartanburg County Detention Center to advise them of their rights, learn of constitutional violations they have suffered, and determine whether they have viable legal claims. Defendants are enforcing a policy, practice, and custom that arbitrarily and unconstitutionally denies Plaintiffs these First Amendment freedoms.

Because Plaintiffs have established a likelihood of success on the merits and will suffer irreparable harm without immediate injunctive relief, Plaintiffs respectfully ask this Court to enter a preliminary injunction enjoining Defendants' policy, practice, and custom of prohibiting Plaintiffs from speaking in person with inmates incarcerated in the Spartanburg County Detention Center.

Respectfully submitted,

WYCHE, P.A.

s/Rita Bolt Barker

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ATTORNEYS FOR PLAINTIFFS

Dated: May 3, 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

<p>AMERICAN CIVIL LIBERTIES UNION FOUNDATION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTH CAROLINA</p> <p>Plaintiffs</p> <p>v.</p> <p>SPARTANBURG COUNTY; CHUCK WRIGHT, in his official capacity as the Spartanburg County Sheriff; and ALLEN FREEMAN, in his official capacity as administrator of the Spartanburg Detention Center,</p> <p>Defendants.</p>	<p>Case No.</p> <p>.</p>
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**DECLARATION OF NUSRAT J. CHOUDHURY IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Nusrat J. Choudhury, declare as follows:

1. I am a senior staff attorney with the Racial Justice Program of the American Civil Liberties Union Foundation ("ACLU") and licensed to practice law in the State of New York. I make this declaration based on personal knowledge, and I am competent to testify regarding the following facts.

2. Attached hereto as Exhibit 1 is a true and correct copy of the Spartanburg County Detention Center's written policy concerning Inmate Contact and Visitation as it appeared on the website of the Spartanburg County Sheriff's Office on April 13, 2017.

3. On December 1, 2016, I called and emailed Major Neal Urch to request permission for the ACLU, American Civil Liberties Union Foundation of South Carolina (“ACLU-SC”), and attorneys working with both organizations to conduct interviews with inmates. Major Urch returned my phone call. He told me to submit the request to then-Captain Allen Freeman and to identify the specific inmates with whom we wished to have meetings.

4. Attached hereto as Exhibit 2 is a true and correct copy of the email I sent to Major Urch on December 1, 2016.

5. On December 7, 2016, I sent a letter via email to Captain Freeman requesting permission for the ACLU and ACLU-SC to meet with Detention Center inmates concerning civil rights issues. I specifically requested permission for lawyers of the ACLU, ACLU-SC, Upstate Law Group, LLC, and Terrell Marshall Law Group PLLC to conduct these meetings on behalf of the ACLU and ACLU-SC. I received an automated out-of-office message in reply, but did not receive any other response.

6. Attached hereto as Exhibit 3 is a true and correct copy of the email I sent to Captain Freeman on December 7, 2016.

7. Attached hereto as Exhibit 4 is a true and correct copy of the letter that I attached to the December 7, 2016 email to Captain Freeman, requesting permission to conduct attorney visits at the Spartanburg County Detention Center.

8. Attached hereto as Exhibit 5 is a true and correct copy of the automatic out-of-office reply I received from Captain Freeman on December 7, 2016 in response to my letter.

9. On December 9, 2016, I forwarded the December 7, 2016 letter (Exhibit 4) to Sheriff Wright via email. Later that day, Sheriff Wright replied, stating that he was denying my request for visitation.

10. Attached hereto as Exhibit 6 is a true and correct copy of the email I sent to Sheriff Wright on December 9, 2016, and his reply denying visitation.

11. Plaintiffs have not received any communications from Sheriff Wright or the County's attorneys following up on the Sheriff's email of December 9, 2016.

12. Based on Sheriff Wright's statements regarding Spartanburg County's policy, I have not attempted to enter the Detention Center.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed in New York, New York, on the 18th day of April, 2017.

By: Nusrat J. Choudhury

Nusrat J. Choudhury, NYSBA #4538302

EXHIBIT 1

4/14/2017

Inmate Contact - Visitation Policy : Spartanburg Sheriff

Sheriff Chuck Wright
 8045 Howard St.
 Spartanburg, SC 29303



SPARTANBURG COUNTY SHERIFF'S OFFICE

Inmate Contact - Visitation Policy

While the courts have indicated that there may be some limited right to visitation, such right can be restricted or denied based on legitimate government interests related to the safe, orderly, and secure operation of the facility; to prevent continued criminal activities; or other similar concerns. In such cases where visitation has been restricted and/or denied, alternative means of communicating with family and friends may be established via correspondence through the U.S. Mail and/or via the use of the inmate telephone system as may be appropriate.

Generally, an inmate detained in the Spartanburg County Detention Facility (jail) is granted one (1) hour of visitation per week, unless such privilege has been restricted as noted above. To provide the inmate with an opportunity to visit with friends and relatives as well as maintain a safe and secure environment, each inmate housing unit will be assigned a specific day of the week for visitation. Each assigned visitation day will rotate weekly so the same housing unit will not be restricted to just one particular day of the week. An officer will come to each inmate's housing unit on Saturday and Sunday of each week with a list of available time slots. Each inmate will be asked to select one (1) time slot from the available slots with the understanding that due to limited visiting facilities; the number of inmates housed in the facility; and other factors, that there will be times that a particular time slot that an inmate desires may not always be available. Note: Inmates who enter the facility after the list has been completed and/or during the week will have to wait to the next weekend, before they are eligible to schedule visits unless otherwise permitted within this policy. Once an inmate has selected one (1) slot that he/she desires for their assigned visitation day, he/she will then be responsible for notifying their friends/relatives of their assigned day and their chosen time. Note: after the inmate has selected their time slot for their visitation day, this information will not be given to the public due to security reasons.

II. VISITATION RULES

A. Times selected for visits. Except in cases where an inmate has some form of mental disability and comprehension, facility staff will not inform visitors of such scheduled visits. The reason for this policy is as follows:

1. The inmate needs to assume responsibility since he/she best knows how to contact family and friends and what times best suits their individual schedules.

2. In the past, conflicts have developed between girlfriends and wives; parents and spouses; and others over visits. The potential for such conflict is reduced when the inmate makes the notification of who he/she wishes to visit.

B. Visitors must be present at the jail at least thirty (30) minutes prior to the scheduled visit to sign-in. Visitors arriving late will not be permitted to visit.

C. All visitors, with the exception of small children, must have and present a picture identification (i.e. a driver's license or state identification card).

D. All visitors are expected to act in an orderly manner and that they are to dress appropriately. All visitors are to be dressed appropriately, including wearing appropriate footwear. Visitors who appear without shoes and/or dressed inappropriately will be prohibited from visiting. Inappropriate attire is defined as (but not limited to) the following: Clothing exposing breasts; cleavage; buttocks or genitalia; shorts, skirts, or dresses shorter than mid thigh; bare midriffs; sheer (see-through) clothing and/or clothing that allows undergarments to be seen or exposed; any other clothing of an inappropriate nature. Male and female visitors found deliberately exposing his/her chest; breasts; or genitalia to others, will at a minimum be removed from the visiting area with all future visits denied; and where appropriate, criminal charges will be sought and prosecuted to the fullest extent of the law.

E. Visitors who appear under the influence; act in a disorderly manner; verbally or physically threaten officers and staff; attempt to furnish contraband; attempt to rescue a prisoner(s) and/or aid in an escape; carry a firearm and/or a concealed pistol; willfully damage jail fixtures; or commit violations of the criminal codes of the State of South Carolina while on jail property are subject to arrest and prosecution for such violations.

F. Visits by children are limited as follows:

1. Visitation by children is limited to immediate family i.e. sons; daughters; grandchildren; brothers; and sisters. Nieces; nephews; and others are not permitted.

2. Only two children are permitted to visit without prior approval at any given time.

3. Children count as one of the two approved visitors per visiting slot.

4. Children must be accompanied by a parent or legal guardian, and such person is to be responsible for staying with the child/children and ensuring that appropriate levels of supervision and behavior are maintained.

5. Such visits shall not be in violation of court orders, and all court orders will be enforced.

6. For the purposes of this policy a child is anyone under eighteen (18) years of age.

G. All Visitors are subject to search. Generally, all visitors to the facility will be required to pass through an electro-magnetic metal detector and/or have a hand held metal detector passed over their person to detect any hidden weapons in their possession. In the event that the detector(s) is broken or not available, an officer of the same sex, except under limited and exigent circumstances, will conduct a "pat-down" search of the visitor's person. All metal objects; keys; knives; nail files; and other objects that can readily be used as a weapon are prohibited from

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Inmate Contact - Visitation Policy : Spartanburg Sheriff

entering the facility. In the event that such items are discovered, the visitor will be requested to return the items to his/her vehicle where they are to be secured. Lockers are available in which to store car keys and other small items. As a rule, strip searches are not authorized for visitors, except as follows:

1. During a search using the metal detector and/or pat-down search, a weapon is discovered. Based on probable suspicion/belief that other weapons may exist, a strip search may be conducted in conjunction with an arrest.

2. During the initial pat-down search, it is discovered that a person has illegal drugs in his/her possession, then based on probable suspicion/belief that other drugs may exist, a strip search may be conducted in conjunction with an arrest.

3. In conjunction with a search warrant based on probable cause as issued by the court.

4. If drugs and/or weapons are detected in handbags; briefcases; and/or in other items carried by the visitor(s), then a strip search based on probable suspicion/belief that other such items may exist may be conducted in conjunction with an arrest.

5. If a visitor is caught in the act of "dropping off" drugs or weapons to an inmate, then a strip search may be conducted in conjunction with an arrest based on probable suspicion/belief that other items may exist.

6. Should a visitor refuse to submit to a search whether by passing through the metal detector and/or a physical "pat-down" search, such refusal shall be sufficient grounds to terminate their visitation privilege, and such privilege shall not be restored unless the visitor appeals to the Director and/or his designee and provides sufficient reason as to why his/her privileges shall not be suspended permanently. The decision of the Director in such cases is final.

H. The following shall be basis for termination and/or refusal for visits:

1. Security concerns
2. Failure to produce identification
3. Disruptive/disorderly behavior
4. Not on the inmate's approved visitor's list
5. Being under the influence of alcohol or drugs, including prescription medications
6. Refusal to submit to a search
7. Use of profanity
8. Lack of available space
9. Failure to conform to the required dress standards
10. Violation of existing court orders

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Inmate Contact - Visitation Policy : Spartanburg Sheriff

11. Visitor found to be in violation of the state's criminal laws
12. Visitor arrived late
13. Failure to cooperate and/or abide by the officer's instructions
14. Visitation has been cancelled due to overriding facility concerns
15. Inmate to be visited has had his visitation privileges suspended

16. Inmate to be visited is acting inappropriately either prior to and/or during the scheduled visit requiring it to be terminated

17. The inmate is unavailable due to court appearance; unscheduled medical appointment; and/or other valid reason

18. Other matters related to the secure and orderly operation of the facility

I. Visitors are reminded that those persons found in violation of applicable local; state; and/or federal criminal laws are subject to arrest, and will be prosecuted to the fullest extent of the law.

J. Visitors are generally not permitted to leave anything for an inmate except money in the form of cash during the scheduled visit. The exceptions to this rule are as follows:

1. Upon prior approval, an inmate may have his/her clothing exchanged for another set of clean clothing, provided such clothing has not been seized as evidence in a crime. However, no exchange will take place sooner than 48 hours from the time of the individual's entry into the jail. If an inmate is in transient between facilities and clothing is not needed for a jury trial, such clothing will not be exchanged.

2. Clothing may be brought to the jail (Annex I-the court holding facility) for the inmate to wear on the day of court, provided the inmate is scheduled for a "jury trial," and the court has so advised the jail. Inmates making initial appearance for bond; motion hearings; and/or to enter pleas shall wear clothing as issued by the jail.

3. Family members may drop off medications for the inmate's use provided:

a. The medication is in a prescription bottle and has been prescribed by a regular physician for the inmate.

b. The medication can be identified by the medical staff.

c. The prescription is currently valid; has not been abused or misused; and confirmation has been obtained by the prescribing physician.

d. The jail physician and the pharmacist has reviewed and approved the continued use of the medication.

e. Use of the medication, if approved, will not adversely affect the inmate's health due to his current physical condition.

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Inmate Contact - Visitation Policy : Spartanburg Sheriff

f. Medications not approved will be returned to the family per applicable South Carolina State Law.

g. Family members **may not** leave cigarettes; food; drinks; books; postage stamps; writing materials; and/ or other items. All such items are available for sale at the jail's canteen. Books; Bibles; various religious materials; and magazines are available in the jail's library and/ or may be ordered through the mail or parcel delivery from **the publisher**.

h. In addition to the cash noted above, family and friends may also send money to an inmate via the U.S. Mail in the form of a postal money order and/or government check. **Do not send cash through the mail.** Monies not sent by U.S. Postal Money Orders and/or government checks will be returned to sender.

III. Scheduled Visiting Times

Males - Monday through Friday

Mornings

0730-0830 (8:30-9:30 am)

0840-0940 (8:40-9:40 am)

0950-1050 (9:50-10:50 am)

1100-1200 (11:00 am-12:00 pm)

Afternoons

1300-1400 (1:00-2:00 pm)

1410-1510 (2:10-3:10 pm)

1520-1620 (3:20-4:20 pm)

Evenings

1630-1730 (4:30-5:30 pm)

1910-2010 (7:10-8:10 pm)

2020-2120 (8:20-9:20 pm)

2130-2230 (9:30-10:30 pm)

Females -Saturday and Sunday

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Inmate Contact - Visitation Policy : Spartanburg Sheriff

Mornings

0730-0830 (7:30-8:30 am)

0840-0940 (8:40-9:40 am)

0950-1050 (9:50-10:50 am)

1100-1200 (11:00 am-12:00 pm)

Afternoons

1300-1400 (1:00-2:00 pm)

1410-1510 (2:10-3:10 pm)

1520-1620 (3:20-4:20 pm)

Evenings

1630-1730 (4:30-5:30 pm)

1910-2010 (7:10-8:10 pm)

2020-2120 (8:20-9:20 pm)

2130-2230 (9:30-10:30 pm)

IV. Professional Visitors

Visits by law enforcement officers; and/or other professional visitors will be permitted at any reasonable time between 8:00 am and 10:00 pm Monday through Friday based on the availability of visiting space; whether the inmate is physically available; the visit does not interfere with scheduled medical appointments; court appearances; and/or other scheduled activities or unless there are overriding reasons not to permit such visits based on safety; security; and/or other legitimate concerns. To assist the facility in making sure that visiting space is available and to help eliminate any unnecessary delays and/or trips to the facility by the visitor, it is requested that all such visits should be scheduled in advance through the Director's Office. The facility reserves the right to restrict such visits to non-contact visits as determined to be appropriate by the jail staff. Professional visitors who may have family members present in the facility are requested not to abuse their privilege as a professional visitor and attempt to circumvent the normal visitation policy by using their special status. Persons found in violation will have such privilege/status suspended.

VI. Requests For Inmates to Visit Hospitalized Relatives

Frequently, requests are made to allow inmates to visit hospitalized family members. As a general rule, such requests are not honored, except under very limited circumstances. While the jail staff attempts to be empathetic to inmates and their families, the jail has a greater duty to the citizens

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Inmate Contact - Visitation Policy : Spartanburg Sheriff

and public that they serve. As with any transport outside the confines of the jail, there are inherent risks. The risks include the potential for escape by the inmate; the possibility that someone will attack the inmate; the possibility that someone will attack the escorting officer(s); the possibility that citizens/bystanders may be indirectly exposed to inappropriate behavior and/or possible injury should an incident occur; the potential for disruptions to the hospital staff and other patients; increased stress to the patient being visited; etc. As a result, visits to the hospital are restricted to situations where the potential death of an immediate family member is imminent, with the following stipulations:

A. Security is the overriding factor, and thus, even though a family member may be critically ill, such visit can be denied to ensure public safety.

B. Such visits are scheduled only with the approval of the attending physician and hospital staff.

C. All such visits are unannounced and scheduled only as officers and staff are available.

D. Inmates will be dressed in orange transport clothing and in full restraints. Restraints will not be removed nor civilian attire approved.

E. Such visits, if approved by the Director, will be limited to no more than fifteen (15) minutes.

F. Immediate family members are defined as follows: Spouse; children; parents; grandparents; brothers; and sisters only without exception.

VII. Requests to Visit Hospitalized Inmates

From time to time, it may become necessary to hospitalize individuals detained in the jail. Should such event become necessary, an officer and/or officers will be assigned to the inmate in an effort to prevent and/or deter the potential for escape; to prevent someone from injuring the inmate while under the jail's care; and to protect the public. As a general rule, hospitalized inmates are not permitted visits in an effort to protect the public's safety and to reduce the potential for disruption to the hospital and its patients. However, if the inmate's condition is critical, arrangements may be made through the Director's Office for limited numbers of the inmate's immediate family members to visit him/her at scheduled times as coordinated by the jail and hospital staff. Should such visits be approved, family members are reminded that the inmate is still in the custody of the jail and under the control of the officer(s) assigned to the hospital, and as such, the "walls of the jail have simply moved to the hospital." As a result, family members may not bring food; money; and/or any other items to the inmate, no exceptions. Visits are to be limited to only fifteen (15) minutes and then only as scheduled. Family members may not stay in the room nor congregate outside in the hallway. Failure to cooperate with the officers and the established schedule will result in all future visits being terminated and where appropriate, criminal charges filed.

VIII. Requests for Inmates to Attend Funerals - Family Visitation

A. Occasionally, requests are made for inmates to attend funerals. Due to the following, all such requests are denied:

1. Safety and security concerns related to the inmate; the officers; and the public.
2. Potential for escape.

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3. Potential for officers to be injured.

4. Potential for injury to members of the public.

5. Prior to stopping the practice of escorting inmates to funerals in the mid to late 90's, situations developed whereby family members attempted to physically separate the officer and inmate from each other; attempted to intimidate the officer into allowing the inmate to sit with the family; inmates physically fell to the floor and refused to get up; inmates although allowed to dress in civilian clothing were required to wear restraints, but upon arriving at the services, refused to get out of the car, demanding that the restraints be removed as well, resulting in a disruption of the services; inmate attempted to "climb" into the casket with the deceased; officers have been "cursed" and racial epithets used; etc.

6. Transporting officers in other jurisdictions have been seriously injured and killed performing such duties.

B. However, in the event of such death, the facility will attempt to accommodate the family's period of grief as follows:

1. Family members may come to the jail and notify the inmate as to the family member's death. Such notification will be permitted to take place as privately as possible within the facility's capabilities. However, such notification as with all other visitation is non-contact in nature.

2. Providing there are no overriding security issues, the inmate will be permitted to view the deceased family member's body under escort by officers of the facility under the following conditions:

a. The deceased individual has to be an immediate family member: Spouse; child; parent; grandparent; or grandchild. Aunts, uncles, cousins, and/or other family members are not considered immediate family members for this policy.

b. The time of the viewing will be coordinated with the mortuary staff when other family members are not present.

c. The inmate will be dressed in orange transport clothing and fully restrained.

d. The viewing will be limited to no more than fifteen (15) minutes or less as circumstances dictate.

e. Such accommodation is restricted only to local inmates and their families. Inmates will not be transported outside of Spartanburg County for this purpose.

f. Ministers may visit the inmate at the facility to help comfort him/her in his/her time of need.

g. The Director reserves the right to not authorize such visits/viewing based on security issues and/or availability of staff and other resources.

IX. Visits With Other Inmates

Inmates housed in the facility are not permitted to visit other inmates outside of their own

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Inmate Contact - Visitation Policy : Spartanburg Sheriff

respective housing units for safety and security purposes. This same rule applies to inmates who are on home detention and/or those individuals out on bond who have co-defendants still housed in the facility.

X. Visits for Court Returns

From time to time, inmates are returned from the South Carolina Department of Corrections and/or other facilities to appear in court. As a general rule, such inmates will not be permitted visits during their stay in the jail and will be returned to their place of origin as soon as possible, unless such inmate is to be housed in the jail for an extended period of time. In such event, the inmate may schedule visits the same as any other inmate so housed, unless such privilege has been suspended.

XI. Policy Subject to Change

As with any policy or directive, the visitation rules are subject to change without notice, and the Director and his staff reserves the right to change; amend; delete; or otherwise modify as needs and circumstances change. Should any part of this policy be determined by a court of competent jurisdiction to be invalid, such determination does not invalidate other sections of the policy unless so stated by the court.

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EXHIBIT 2

From: Nusrat Jahan Choudhury
To: "nurch@spartanburgcounty.org"
Cc: sdunn@aclusc.org; Linda Moon
Subject: Spartanburg Detention Center
Date: Thursday, December 01, 2016 4:31:52 PM

Major Urch, I hope you are well. My name is Nusrat Choudhury. I am an attorney with the American Civil Liberties Union. I work closely with Susan Dunn, the Legal Director of the ACLU of South Carolina.

I am writing to request permission for myself and Linda Moon, ACLU legal fellow, to interview certain inmates in the Spartanburg Detention Center on Monday 12/5, Tuesday 12/6, and Friday 12/9. We understand that attorney visits are to be scheduled in advance.

Please let us know if we can provide any information. Thank you for your assistance.

Nusrat J. Choudhury
Senior Staff Attorney
Racial Justice Program
American Civil Liberties Union
125 Broad St., New York, NY 10004
| 212-519-7876 | nchoudhury@aclu.org
www.aclu.org  



Because Freedom Can't Protect Itself

This email is intended only for the named recipient(s) above, and may contain information that is confidential and/or privileged. If you are not the intended recipient, please advise the sender immediately by reply email and delete this message and any attachments without retaining a copy.



EXHIBIT 3

From: [Nusrat Jahan Choudhury](#)
To: ["AFreeman@spartanburgcounty.org"](#)
Cc: ["Susan Dunn"](#); ["Candy M. Kern-Fuller, Esq.";](#) [Toby Marshall \(tmarshall@terrellmarshall.com\)](#); [Eric Nusser \(eric@terrellmarshall.com\)](#); ["sarah@upstatelawgroup.com"](#); [Linda Moon](#)
Subject: Request for Attorney Visitation at Spartanburg Detention Center
Date: Wednesday, December 07, 2016 10:01:14 PM
Attachments: [Spartanburg Demand Letter 12072016.pdf](#)

Captain Freeman, I hope this message finds you well. Attached is a letter following-up on the request of the ACLU of South Carolina and ACLU for permission to conduct attorney visits concerning civil rights issues with inmates presently incarcerated in the Spartanburg County Detention Facility.

We look forward to your prompt response.

Best,
Nusrat

Nusrat J. Choudhury
Senior Staff Attorney
Racial Justice Program
American Civil Liberties Union
125 Broad St., New York, NY 10004
| 212-519-7876 | nchoudhury@aclu.org
www.aclu.org  



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EXHIBIT 4



VIA E-MAIL

December 7, 2016

Captain Allen Freeman
Spartanburg Detention Center
8045 Howard St.
Spartanburg, SC 29303
afreeman@spartanburgcounty.org

Dear Captain Freeman,

**AMERICAN CIVIL
LIBERTIES UNION
FOUNDATION**
NATIONAL OFFICE
125 BROAD STREET, 18TH FL.
NEW YORK, NY 10004-2400
T/212.549.2500
F/212.549.2654
WWW.ACLU.ORG

**OFFICERS AND
DIRECTORS**
SUSAN N. HERMAN
PRESIDENT

ANTHONY D. ROMERO
EXECUTIVE DIRECTOR

ROB REMAR
TREASURER

We are attorneys with the American Civil Liberties Union (“ACLU”) and the ACLU of South Carolina. The ACLU is the nation’s oldest civil liberties organization and has defended the rights of individuals for over 90 years. The ACLU of South Carolina is the South Carolina affiliate of the ACLU. We write to request permission to conduct attorney meetings with individuals in your facility concerning civil rights issues. Denying access for these visits would abridge core constitutional rights.

On December 1, 2016, Nusrat Choudhury of the ACLU emailed Major Neal Urch to request permission for Ms. Choudhury and Linda Moon, ACLU Legal Fellow, to conduct attorney interviews with specified inmates. Ms. Choudhury was notified that the request should be directed to you. On December 2, 2016, Candy Kern-Fuller of Upstate Law Group emailed you to request interviews with the same inmates on December 5, 6, and 7, 2016. Ms. Kern-Fuller offered a variety of times on these dates.

On December 2, 2016, you responded by email:

The only visit allowed would be those of Attorneys the represent Inmates in criminal, civil or family court proceedings. Our public defender has representation in the facility daily Monday-Friday. We do

not allow any visitation inside our facility otherwise. My question do you represent the below in any of the proceedings I listed?

See Exhibit A.

Your position that only attorneys already representing the inmates in criminal, civil, or family court proceedings are permitted for visitation is contrary to U.S. constitutional law.

The U.S. Supreme Court has held that the Due Process Clause of the Fourteenth Amendment requires that inmates be provided with “a reasonable opportunity to seek and receive the assistance of attorneys.” *Procunier v. Martinez*, 416 U.S. 396, 419 (1974). Thus, “[r]egulations and practices that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid.” *Id.* The Supreme Court has further held that this interviewing privilege must be extended to law students, paralegals, and other professionals employed by attorneys, and such individuals cannot be denied access to inmates only because they are not members of the bar. *Id.*

We request access to conduct attorney visits with the individuals on Ms. Kern-Fuller’s list. As indicated in Ms. Kern-Fuller’s email to you, we remain flexible and would be glad to accommodate appropriate hours for attorney visits on any of the following dates. Should access be granted on Thursday, December 8, 2016, or Friday, December 9, 2016, interviews will be conducted by Ms. Kern-Fuller, Ms. Moon, and Ms. Sarah Gable. Should access be granted on Monday, December 12, 2016, and Tuesday, December 13, 2016, interviews shall be conducted by Ms. Kern-Fuller, Ms. Gable, Mr. Toby Marshall, and Mr. Eric Nusser.

We look forward to your prompt response.

Sincerely,

Nusrat Choudhury
Senior Staff Attorney
Racial Justice Program
American Civil Liberties Union
nchoudhury@aclu.org

Susan Dunn
Legal Director
ACLU of South Carolina
P.O. Box 20998
Charleston, SC 29413-0998
p: 843-830-1571
sdunn@aclusc.org

cc:

Candy M. Kern-Fuller
candy@upstatelawgroup.com

Sarah Gable
sarah@upstatelawgroup.com

Toby Marshall
tmarshall@terrellmarshall.com

Eric Nusser
eric@terrellmarshall.com

Linda Moon
lmoon@aclu.org

Exhibit A

-----Original Message-----

From: Freeman, Allen [mailto:AFreeman@spartanburgcounty.org]
Sent: Friday, December 2, 2016 6:14 PM
To: candy@upstatelawgroup.com
Subject: Re: Professional visitation

The only visit allowed would be those of Attorneys the represent inmates in criminal, civil or family court proceedings. Our public defender has representation in the facility daily Monday-Friday. We do not allow any visitation inside our facility otherwise. My question do you represent the below in any of the proceedings I listed ?

Sent from my iPhone

On Dec 2, 2016, at 5:21 PM, Candy M. Kern-Fuller, Esq
<candy@upstatelawgroup.com<mailto:candy@upstatelawgroup.com>> wrote:

I understand that your office accommodates professional/attorney visits from 8:00 am and 10:00 pm Monday through Friday, but requests that all such visits be scheduled in advance through the Director's Office. I have left a message with your office and this email is a follow-up to that message.

Linda Moon and I would like to schedule visits with the following inmates on Monday, December 5, 2016, between the hours of 6:30 p.m. and 10 p.m.:

Roker, Krist

Waters, Johnny Sims

Dominick, Kenneth Anthony

Douglas, Jerome David

FW: Professional visitation - Linda Moon

12/7/16, 11:08 AM

Dupree, Jaquan Deandre

Mejia-Delgado, Jennifer Mejia

Cochran, Kelsey Blair

Oglesby-Wallace, Kaylin Lenise

Hardin, Damas Andrea

We would like to schedule visits with the following inmates on Tuesday,
December 7, 2016, between the hours of 9:00 a.m. ad 2:30 p.m.:

Norman, Robert Alexander

Young, Perry Lee

Jeter, Larry Floyd

Pagan, Jose Gonzalez

Foster, Raymond Quinn

Foster, Ryan Donovan

Fuller, Miranda Jeanette

Stevenson, Anthony Deontae

Foster, Jennifer Marie

Finally, we would like to schedule visits with the following inmates on
Wednesday, December 8, 2016, between the hours of 9:00 a.m. and 3:00 p.m.:

Meadows, Robert James

Fernanders, Tangenika Ailsa

Epps, Robin Nicole

Greene, Chesly Decota

Rions, Rachelle Lynn

Ferguson, Lakeith Cortez

Phillips, Kristin Marie

FW: Professional visitation - Linda Moon

12/7/16, 11:08 AM

Tinsley, Tyree Lewis

Waldrop, Melissa Renee

I would appreciate your confirming these appointments at your earliest convenience. Thank you, Candy Kern-Fuller, Esq.

Upstate Law Group, LLC

200 East Main Street

Easley, South Carolina 29640

(864) 855-3114 <tel:%28864%29%20855-3114>

(864) 855-3446 <tel:%28864%29%20855-3446> (facsimile)

** CERTIFIED MEDIATOR AND ARBITRATOR FOR OVER 15 YEARS **

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EXHIBIT 5

From: Freeman, Allen
To: Nusrat Jahan Choudhury
Subject: Automatic reply: Request for Attorney Visitation at Spartanburg Detention Center
Date: Wednesday, December 07, 2016 10:01:28 PM

I will be out of the office from 7-20 TO 7 24

EXHIBIT 6

From: [Wright, Chuck](#)
To: [Nusrat Jahan Choudhury](#)
Cc: [Susan Dunn](#); [Linda Moon](#); [candy@upstatelawgroup.com](#); [Sarah Gable](#); [Toby Marshall](#) ([tmarshall@terrellmarshall.com](#)); [Eric Nusser](#) ([eric@terrellmarshall.com](#))
Subject: Re: Request for Attorney Visitation at Spartanburg Detention Center
Date: Friday, December 09, 2016 12:29:15 PM

We are speaking with our Attorneys and I am saying no to your requests at this time.
Should the Attorneys say anything different, Your request are denied.

Sent from my iPhone

On Dec 9, 2016, at 9:29 AM, Nusrat Jahan Choudhury <nchoudhury@aclu.org<<mailto:nchoudhury@aclu.org>>> wrote:

Sheriff Wright, attached please find a request for permission from the ACLU of South Carolina and the ACLU for permission to conduct attorney visits in the Spartanburg Detention Facility. We first requested permission over one week ago, and were directed to correspond with Captain Freeman. We sent him the attached letter on Wednesday and received an Out of Office message.

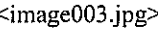
We understand that you are the chief decisionmaker for the facility, and respectfully forward the request for permission to conduct attorney interviews.

As explained in the attached, we are concerned that denial of attorney visits contravenes core constitutional rights.

We look forward to hearing from you soon.

Best
Nusrat

Nusrat J. Choudhury
Senior Staff Attorney
Racial Justice Program
American Civil Liberties Union
125 Broad St., New York, NY 10004
? 212-519-7876 ? nchoudhury@aclu.org<<mailto:nchoudhury@aclu.org>>
www.aclu.org<<http://www.aclu.org>> < <<http://www.facebook.com/aclu.nationwide>>
< <<http://www.twitter.com/ACLU>>

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Because Freedom Can't Protect Itself

This email is intended only for the named recipient(s) above, and may contain information that is confidential and/or privileged. If you are not the intended recipient, please advise the sender immediately by reply email and delete this message and any attachments without retaining a copy.

From: Nusrat Jahan Choudhury
Sent: Wednesday, December 7, 2016 10:01 PM
To: 'AFreeman@spartanburgcounty.org'<<mailto:AFreeman@spartanburgcounty.org>>
Cc: 'Susan Dunn'; 'Candy M. Kern-Fuller, Esq.'; Toby Marshall
(tmarshall@terrellmarshall.com<<mailto:tmarshall@terrellmarshall.com>>); Eric Nusser
(eric@terrellmarshall.com<<mailto:eric@terrellmarshall.com>>);
'sarah@upstatelawgroup.com'<<mailto:sarah@upstatelawgroup.com>>'; Linda Moon
Subject: Request for Attorney Visitation at Spartanburg Detention Center

Captain Freeman, I hope this message finds you well. Attached is a letter following-up on the request of the ACLU of South Carolina and ACLU for permission to conduct attorney visits concerning civil rights issues with inmates presently incarcerated in the Spartanburg County Detention Facility.

We look forward to your prompt response.

Best,
Nusrat

Nusrat J. Choudhury
Senior Staff Attorney
Racial Justice Program
American Civil Liberties Union
125 Broad St., New York, NY 10004
? 212-519-7876 ? nchoudhury@aclu.org<mailto:nchoudhury@aclu.org>
www.aclu.org<<http://www.aclu.org/>> <image001.gif><<http://www.facebook.com/aclu.nationwide>>
<image002.gif><<http://www.twitter.com/ACLU>>

<image003.jpg>
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<Spartanburg Demand Letter 12072016.pdf>

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

<p>AMERICAN CIVIL LIBERTIES UNION FOUNDATION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTH CAROLINA</p> <p>Plaintiffs</p> <p>v.</p> <p>SPARTANBURG COUNTY; CHUCK WRIGHT, in his official capacity as the Spartanburg County Sheriff; and ALLEN FREEMAN, in his official capacity as administrator of the Spartanburg Detention Center,</p> <p>Defendants.</p>	<p>Case No.</p>
---	-----------------

**DECLARATION OF CANDY M. KERN-FULLER IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Candy M. Kern-Fuller, declare as follows:

1. I am an attorney licensed in the State of South Carolina and founding partner at Upstate Law Group, LLC. I make this declaration based on personal knowledge, and I am competent to testify regarding the following facts.

2. My firm has been providing *pro bono* assistance to the American Civil Liberties Union Foundation ("ACLU") and American Civil Liberties Union Foundation of South Carolina ("ACLU-SC") for their investigation into potential constitutional violations suffered by people who are prosecuted in South Carolina summary courts. The primary goal of our work has been

to interview inmates in the state's county jails, including the Spartanburg County Detention Center.

3. On December 2, 2016, I left a message on then-Captain Allen Freeman's office phone and sent an email to him requesting permission for me and Linda Moon, an ACLU legal fellow, to meet with twenty-seven inmates inside the Detention Center. I offered times that we were available to meet with inmates on the following dates: December 5, 2016; December 7, 2016; and December 8, 2016.

4. Attached hereto as Exhibit A is a true and correct copy of the email I sent to Captain Freeman on December 2, 2016, requesting permission for attorney visitation, and Captain Freeman's reply.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed in Easley, South Carolina, on the 20th day of April, 2017.

By:


Candy M. Kern-Fuller, Federal Bar # 9149
UPSTATE LAW GROUP, LLC
200 East Main Street
Easley, South Carolina 29640
(864) 855-3114
(864) 855-3227 (Facsimile)
candy@upstatelawgroup.com

SWORN TO BEFORE ME
This 20th day of April, 2017



Notary Public for South Carolina

My Commission Expires; 3-3-2018

EXHIBIT A

-----Original Message-----

From: Freeman, Allen [<mailto:AFreeman@spartanburgcounty.org>]

Sent: Friday, December 2, 2016 6:14 PM

To: candy@upstatelawgroup.com

Subject: Re: Professional visitation

The only visit allowed would be those of Attorneys the represent Inmates in criminal, civil or family court proceedings. Our public defender has representation in the facility daily Monday-Friday. We do not allow any visitation inside our facility otherwise. My question do you represent the below in any of the proceedings I listed ?

Sent from my iPhone

On Dec 2, 2016, at 5:21 PM, Candy M. Kern-Fuller, Esq.

candy@upstatelawgroup.com<<mailto:candy@upstatelawgroup.com>>> wrote:

I understand that your office accommodates professional/attorney visits from 8:00 am and 10:00 pm Monday through Friday, but requests that all such visits be scheduled in advance through the Director's Office. I have left a message with your office and this email is a follow-up to that message.

Linda Moon and I would like to schedule visits with the following inmates on Monday, December 5, 2016, between the hours of 6:30 p.m. and 10 p.m.:

Roker, Krist

Waters, Johnny Sims

Dominick, Kenneth Anthony

Douglas, Jerome David

Dupree, Jaquan Deandre

Mejia-Delgado, Jennifer Mejia

Cochran, Kelsey Blair

Oglesby-Wallace, Kaylin Lenise

Hardin, Damas Andrea

We would like to schedule visits with the following inmates on Tuesday, December 7, 2016, between the hours of 9:00 a.m. ad 2:30 p.m.:

Norman, Robert Alexander

Young, Perry Lee

Jeter, Larry Floyd

Pagan, Jose Gonzalez

Foster, Raymond Quinn

Foster, Ryan Donovan

Fuller, Miranda Jeanette

Stevenson, Anthony Deontae

Foster, Jennifer Marie

Finally, we would like to schedule visits with the following inmates on Wednesday, December 8, 2016, between the hours of 9:00 a.m. and 3:00 p.m.:

Meadows, Robert James

Fernanders, Tangenika Ailsa

Epps, Robin Nicole

Greene, Chesly Decota

Rions, Rachelle Lynn

Ferguson, Lakeith Cortez

Phillips, Kristin Marie

Tinsley, Tyree Lewis

Waldrop, Melissa Renee

I would appreciate your confirming these appointments at your earliest convenience. Thank you, Candy Kern-Fuller, Esq.

Upstate Law Group, LLC

200 East Main Street

Easley, South Carolina 29640

(864) 855-3114<tel:%28864%29%20855-3114>

(864) 855-3446<tel:%28864%29%20855-3446> (facsimile)

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Rions, Rachelle Lynn

Ferguson, Lakeith Cortez

Phillips, Kristin Marie

Tinsley, Tyree Lewis

Waldrop, Melissa Renee

I would appreciate your confirming these appointments at your earliest convenience. Thank you, Candy Kern-Fuller, Esq.

Upstate Law Group, LLC

200 East Main Street

Easley, South Carolina 29640

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
SPARTANBURG DIVISION

<p>AMERICAN CIVIL LIBERTIES UNION FOUNDATION, AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF SOUTH CAROLINA</p> <p>Plaintiffs</p> <p>v.</p> <p>SPARTANBURG COUNTY; CHUCK WRIGHT, in his official capacity as the Spartanburg County Sheriff; and ALLEN FREEMAN, in his official capacity as administrator of the Spartanburg Detention Center,</p> <p>Defendants.</p>	<p>Case No.</p>
---	-----------------

**DECLARATION OF TOBY J. MARSHALL IN SUPPORT OF
PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION**

I, Toby J. Marshall, declare as follows:

1. I am an attorney licensed in the State of Washington and a member of Terrell Marshall Law Group PLLC ("TMLG"). I make this declaration based on personal knowledge, and I am competent to testify regarding the following facts.

2. My firm has been providing assistance to the American Civil Liberties Union Foundation ("ACLU") and American Civil Liberties Union Foundation of South Carolina ("ACLU-SC") for their investigation into potential constitutional violations suffered by people who are prosecuted in South Carolina summary courts. The primary goal of our work has been

to interview inmates in the state's county jails, including the Spartanburg County Detention Center.

3. On December 12 and 13, 2016, I visited the Spartanburg County Detention Center with Eric Nusser, who is also an attorney at TMLG, and Howard E. Sutter III, an attorney with Upstate Law Group, LLC, to interview inmates on behalf of the ACLU and ACLU-SC.

4. During our first visit to the Detention Center on December 12, 2016, Mr. Nusser, Mr. Sutter, and I provided the officer at the front desk with a list of inmates we wanted to interview. The officer identified the locations of the inmates and told us that some were being housed on-site at the Detention Center while others were being housed off-site at the Annex 2.

5. The officer looked at our driver's licenses and bar cards, issued us name tags, and allowed us to enter the Detention Center. Mr. Nusser, Mr. Sutter, and I passed through a metal detector on our way into the secured area of the facility.

6. The officer did not ask Mr. Nusser, Mr. Sutter, or me whether we represented any of the inmates on our list. The exchange with the officer lasted approximately five minutes before we were granted access to the Detention Center.

7. After entering the Detention Center, Mr. Nusser, Mr. Sutter, and I met with female inmates inside a room in the booking area. Detention Center guards had informed us that female inmates were housed in a pod next to the booking area and could be brought to the booking area quickly. The officers arranged to have the female inmates come to the booking area to meet with us. The first inmate arrived within a few minutes.

8. On December 13, 2016, Mr. Nusser, Mr. Sutter, and I returned to the Detention Center to interview additional inmates. A different officer from the day before was sitting behind the front desk. We informed him that we wished to speak with the inmates on our list.

The officer identified the location of the inmates, then looked at our driver's licenses and bar cards, issued us name tags, and allowed us to enter the Detention Center.

9. The officer did not ask us whether we represented any of the inmates on our list. The exchange with the officer lasted approximately five minutes before we were granted access.

10. Mr. Nusser, Mr. Sutter, and I again met with female inmates inside a room in the booking area.

11. After speaking with the female inmates on our list, Mr. Sutter left the Detention Center and Mr. Nusser and I met with male inmates inside rooms in the pods where each inmate was housed. Mr. Nusser and I traveled between the booking area and three separate pods located in different parts of the Detention Center. We were not escorted by guards or jail staff nor questioned about our presence inside the Detention Center.

12. On December 13, 2016, Mr. Nusser and I also visited the Annex 2, an off-site facility housing additional Spartanburg County inmates. We informed the officer at the front desk that we wanted to speak to a number of inmates. The officer looked at our driver's licenses and bar cards and allowed us to enter the secured area of the facility.

13. The officer did not ask us whether we represented any of the inmates on our list. The exchange with the officer lasted approximately three minutes before we were granted access.

14. Once inside the Annex 2, Mr. Nusser and I spoke with the inmates inside a room that was located in a hall between the areas in which the inmates were housed. We were not escorted by guards or jail staff nor questioned about our presence inside the Annex 2.

15. On January 31, 2017, Mr. Nusser and I visited the Detention Center with Ryan Fowler, an ACLU-SC legal intern. We told the officer at the front desk that we wished to speak with the inmates on our list, and the officer identified each inmate's location.

16. The officer looked at the driver's licenses and bar registration cards Mr. Nusser and I presented. The officer also looked at Mr. Fowler's driver's license and student identification card. The officer printed out name tags for us and allowed us to enter the secured booking area of the Detention Center.

17. The officer did not ask us whether we represented any of the inmates on our list. The exchange with the officer lasted approximately five minutes before we were granted access.

18. The officer did not require us to pass through a metal detector. Although a hand-held metal detector was sitting on the front desk, the officer did not use it to screen us. The officer did not pat us down or in any other way check us for items that might create a security threat.

19. Inside the booking area, we met with Officer T. Wilson, who made a copy of our inmate list. Officer Wilson did not ask us at that time whether we represented the inmates on the list. He told us we could speak with inmates inside the room we had used previously and called for two or three inmates to come down to the booking area. The first inmate arrived within a few minutes.

20. Approximately five minutes into the first meeting, Officer Wilson opened the door and interrupted our conversation with the inmate. He asked us why we were talking with the inmates and whether we represented any of the inmates on the list. I explained to Officer Wilson that we were interviewing the inmates regarding alleged constitutional violations and that we did not represent any of the inmates at that time.

21. Officer Wilson responded that Mr. Nusser, Mr. Fowler, and I would have to leave the Detention Center because we did not represent any of the inmates on the list. Officer Wilson

said that Spartanburg County has a policy prohibiting attorneys from speaking with inmates the attorneys do not already represent.

22. I tried to discuss the matter further with Officer Wilson, but he said we would have to speak with Major Allen Freeman, the director of the Detention Center.

23. Officer Wilson escorted Mr. Nusser, Mr. Fowler, and I across the Detention Center to Major Freeman's office. Major Freeman introduced himself and told us it was the Detention Center's policy to prohibit attorneys from speaking with inmates in person unless the attorneys could show that they had a pre-existing attorney-client relationship with the inmates.

24. I told Major Freeman that Mr. Nusser, Mr. Fowler and I were all working with the ACLU to investigate matters concerning inmates' constitutional rights and that Mr. Fowler was a legal intern with the ACLU-SC. I told Major Freeman that we had a constitutional right to speak with inmates.

25. Major Freeman said that he would not deviate from the stated policy unless it was at the direction of Sheriff Chuck Wright. Major Freeman then said Mr. Nusser, Mr. Fowler, and I were prohibited from speaking with inmates and would have to leave the Detention Center.

26. Officer Wilson escorted Mr. Nusser, Mr. Fowler, and I out of the Detention Center.

27. Based on Major Freeman's statements regarding Spartanburg County's policy, Mr. Nusser, Mr. Fowler, and I have not returned to the Detention Center or Annex 2 since January 31, 2017.

I declare under penalty of perjury under the laws of the United States and the State of

SOUTH CAROLINA the foregoing is true and correct and that this declaration was executed in

Seattle, Washington, on the 20TH day of APRIL, 2017.

By: 
Toby J. Marshall, WSBA #32726