

Case No. 14-15271

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

Nick Mangiaracina,
Plaintiff-Appellant,

v.

Joseph M. Arpaio, named as Sheriff Joe Arpaio, in his official capacity; et al.,
Defendants-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Brief of Amici Curiae National Association of Criminal Defense Lawyers,
Arizona Attorneys for Criminal Justice, Prison Law Office,
American Civil Liberties Union, and ACLU of Arizona in Support of
Plaintiff-Appellant Nick Mangiaracina; and in Support of Reversal

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CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1, the Amici Curiae further described below state that they are nonprofit organizations with no parent corporations and in which no person or entity owns stock.

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IDENTITY AND INTEREST OF AMICI

Amici Curiae, described below, have a direct interest in the issues before this Court, and both parties in interest have consented to the filing of this brief.¹

The **National Association of Criminal Defense Lawyers (“NACDL”)** was founded in 1958 and is dedicated to advancing the proper, efficient, and just administration of justice. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. It has a nationwide membership of approximately 10,000, and up to 40,000 including affiliate members. NACDL members are private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. The American Bar Association recognizes NACDL as an affiliated organization and awards it representation in its House of Delegates. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system.

¹ Pursuant to Fed. R. App. P. 29(c)(5), the undersigned counsel hereby certifies that no counsel for a party authored this brief in whole or in part, and no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than Amici, or their counsel, made a monetary contribution to fund this brief’s preparation or submission.

As required by Circuit Rule 25-5(f), the undersigned attests that she obtained concurrence in the filing of this brief by all other counsel of record for Amici.

NACDL's Arizona affiliate is **Arizona Attorneys for Criminal Justice ("AACJ")**. AACJ was founded in 1986 to give a voice to the rights of the criminally accused and to attorneys who defend the accused. AACJ is a statewide non-profit organization of criminal defense lawyers, law students, and associated professionals dedicated to protecting the rights of the accused in the courts and in the legislature, promoting excellence in the practice of criminal law through education, training and mutual assistance, and fostering public awareness of citizens' rights, the criminal justice system, and the role of the defense lawyer.

The **Prison Law Office ("PLO")** is a non-profit public interest law firm founded in 1978 that provides representation in class action impact litigation that seeks to improve prisoners' conditions of confinement, and also provides extensive self-help information to prisoners who seek to vindicate their legal rights. The PLO has appeared before this Court in numerous cases involving prisoners' rights, both as direct counsel and as amicus curiae. The PLO necessarily relies overwhelmingly on prison and jail mail systems in carrying out its advocacy and communicating with incarcerated persons in prisons, jails, and juvenile halls in California and Arizona. Relevant to the instant appeal, the PLO represents a certified class of more than 33,000 Arizona state prisoners in *Parsons v. Ryan*, 289 F.R.D. 513 (D. Ariz. 2013), *aff'd* 754 F.3d 657 (9th Cir. 2014), a case involving health care and conditions of confinement in the Arizona Department of Corrections. Class

members are frequently housed temporarily in Maricopa County Jail (“MCJ”) facilities, and the PLO has a direct interest in being able to confidentially communicate with its clients regarding the *Parsons* litigation.

The **American Civil Liberties Union (“ACLU”)** is a nationwide, non-profit, non-partisan organization with over 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and this nation’s civil rights laws. The **ACLU of Arizona** is its Arizona affiliate. Throughout its 95-year history, the ACLU has been deeply involved in protecting the rights of prisoners, and in 1972 created the National Prison Project to further this work. The ACLU has appeared before this Court in numerous cases involving the rights of prisoners, both as direct counsel and as amicus curiae. With the PLO, the ACLU and ACLU of Arizona are class counsel in *Parsons v. Ryan*. Moreover, with regard to the jail legal mail system at the heart of this appeal, prisoners at the MCJ must have unimpeded and confidential communication with the ACLU and the ACLU of Arizona, both of which are class counsel in *Graves v. Arpaio*, 48 F.Supp.3d 1318 (D. Ariz. 2014), a challenge to conditions of confinement in the MCJ system. The ACLU has a direct interest in being able to exchange confidential legal correspondence with members of the class it represents.

* * *

A constitutionally deficient legal mail system does serious harm to the rights of prisoners and pre-trial detainees, rights that Amici work to protect. Prisoners rely upon legal mail not only to communicate with their criminal defense or appellate attorneys, including NACDL and AACJ members; but also to alert attorneys at civil rights organizations such as the ACLU and PLO about unhealthy, dangerous, and unconstitutional conditions of confinement. Amici have an abiding interest in ensuring the right of every prisoner to communicate fully and confidentially with his or her lawyer. Moreover, Amici's First Amendment rights are infringed, and their ability to comply with their ethical obligations is compromised, when jail and prison personnel interfere with their confidential legal correspondence with incarcerated clients.

INTRODUCTION

As legal organizations that represent incarcerated persons, Amici are familiar with the challenges attorneys face in communicating with prisoner-clients. Visits and phone calls are extremely limited, and email is nonexistent.² The best and often the only method of confidential communication is via the legal mail system of the institution housing the prisoner. Prison “[r]egulations and practices

² Federal prisoners have access to email through a program called CorrLinks, but no Arizona county jail system nor the Arizona Department of Corrections has such a program. In any event, the system for federal prisoners is monitored and not confidential.

that unjustifiably obstruct the availability of professional representation or other aspects of the right of access to the courts are invalid.” *Procunier v. Martinez*, 416 U.S. 396, 419 (1974), *overruled in part on other grounds by Thornburgh v. Abbott*, 490 U.S. 401 (1989). These legal mail systems are critical to a prisoner’s constitutional rights to free speech, to legal counsel, and access to the courts. *Nordstrom v. Ryan*, 762 F.3d 903, 909 (9th Cir. 2014). Interference with prisoners’ communications with attorneys also violates the lawyers’ First Amendment rights, as these are communications in which “the interests of both parties are inextricably meshed.” *Procunier*, 416 U.S. at 408-09.

Plaintiff alleges that MCJ staff opened his legal mail outside his presence, including *nine* separate letters sent to or from attorneys providing him legal advice regarding ongoing cases in federal and state court. SER 26-27. He alleges that an officer told him there is “no law against” opening legal mail outside the prisoner’s presence, (SER 26), a response that suggests Plaintiff is not the only MCJ prisoner whose legal mail is being improperly opened. He alleges that as a result, he and his attorneys “are afraid to communicate by mail, which is hard as I have . . . so much paperwork to go back and forth.”³ SER 26.

³ Mr. Mangiaracina alleges that four incoming letters from attorneys, and five outgoing letters to attorneys, were opened. SER 26-27; Replacement Opening Brief of Appellant (Doc. 25) at 2-5. When a prisoner’s incoming legal mail is opened outside of his presence, there is no prophylactic guarantee that it is only
continued next page...

Plaintiff's allegations, which must be taken as true at this stage of the litigation, describe actions by MCJ that violate the First Amendment rights of attorneys. The actions alleged also violate lawyers' affirmative duties under legal ethics and professional responsibility rules to protect the sanctity of the lawyer-client relationship. Defendants' actions place lawyers in the untenable and irreconcilable position of being unable to meet both their ethical duty to protect confidentiality and to communicate openly, and their obligation to provide competent and diligent representation.

ARGUMENT

I. MCJ Staff Opening Legal Mail Between Plaintiff and Attorneys Outside His Presence Violates the First Amendment Rights of the Attorneys.

MCJ employees' interference with Mr. Mangiaracina's legal mail to and from attorneys violates the First Amendment rights of the attorneys, and the rights of any other lawyers or legal organizations (including Amici) that may correspond

(continued...)

being opened to inspect for contraband, and not also read. *See Wolff v. McDonnell*, 418 U.S. 539, 577 (1974) ("...the inmate's presence insures that prison officials will not read the mail."). This Court has followed *Wolff's* rule that legal mail may be opened and inspected for contraband (but not read) only in the presence of the prisoner. *Nordstrom v. Ryan*, 762 F.3d 903, 908-09 (9th Cir. 2014).

However, since "[t]he implications of outgoing correspondence for prison security are of a categorically lesser magnitude than the implications of incoming materials," regulations for outgoing mail – even non-legal mail – must be less intrusive than those for incoming mail." *Thornburgh v. Abbott*, 490 U.S. 401, 413 (1989); *Nordstrom*, 762 F.3d at 914 (same).

with him or other MCJ prisoners. In *NAACP v. Button*, 371 U.S. 415, 429 (1963), the Supreme Court held that the NAACP's activities in advising persons of their legal rights with respect to racial segregation, and soliciting prospective litigants "as a means for achieving the lawful objectives of equality" were protected by the First Amendment freedoms of expression and association. The Court subsequently extended *Button* to apply to an attorney who solicited a potential litigant for representation by the ACLU, observing that "[f]or the ACLU, as for the NAACP, 'litigation is not a technique of resolving private differences'; it is 'a form of political expression' and 'political association.'" *In re Primus*, 436 U.S. 412, 428 (1978) (quoting *Button*).

The First Amendment rights of attorneys and legal organizations require the invalidation of prison and jail policies or actions that unreasonably impede communications between attorneys and incarcerated persons. *See, e.g., Sturm v. Clark*, 835 F.2d 1009, 1015 (3d Cir. 1987) (attorney stated First Amendment claim when her access to prisoner clients was restricted because she publicized staff misconduct); *Abel v. Miller*, 824 F.2d 1522, 1534 (7th Cir. 1987) (federal prison could not ban attorneys from prisoners' rights organization in retaliation for the group's exercise of its First Amendment rights to criticize and litigate against the institution); *Jean v. Nelson*, 711 F.2d 1455, 1508-09 (11th Cir. 1983) (attorneys for Haitian Refugee Center had a right to inform Haitians detained by Immigration and

Naturalization Service of their legal rights), *on rehearing*, 727 F.2d 957 (11th Cir. 1984), *rev'd on other grounds*, 472 U.S. 846 (1985); *Cruz v. Beto*, 603 F.2d 1178, 1180-81, 1186 (5th Cir. 1979) (affirming judgment that the arbitrary barring of an attorney from communicating with clients by mail or in person violated her First and Fourteenth Amendment rights); *Haitian Ctr. Council, Inc. v. Sale*, 823 F.Supp. 1028, 1040 (E.D.N.Y. 1993) (denial of legal advocacy group's access to Haitian detainees at Guantanamo Bay violates the group's speech and associational rights).

Similar to the interference with attorney communications described above, the alleged actions of MCJ staff opening Plaintiff's legal mail outside his presence, in contradiction to the standard for handling legal mail set forth in *Wolff* and *Nordstrom*, violate the First Amendment rights of the attorneys with whom he was corresponding. Defendants, who are government officials, are unreasonably interfering with the attorneys' right of free speech, and can offer no explanation as to how these acts are "reasonably related to legitimate penological interests." *Turner v. Safley*, 482 U.S. 78, 89-91 (1987).⁴

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⁴ In *Al-Amin v. Smith*, 511 F.3d 1317, 1333-1335 (11th Cir. 2008), the Eleventh Circuit held that the prison's failure to abide by *Wolff* standards for opening legal mail in a prisoner's presence did not satisfy the *Turner* test, and that the failure to adhere to *Wolff* violated the prisoners' constitutional rights. *Accord Jones v. Brown*, 461 F.3d 353, 359 (3d Cir. 2006) (same).

II. The Alleged Actions of MCJ Staff Prevent Attorneys From Complying With Their Ethical Duty of Confidentiality.

Both the Arizona Rules and the ABA Model Rules of Professional Conduct require that attorneys ensure the confidentiality of information relating to the representation of a client.⁵ Ariz. R. Prof'l Conduct Ethical R. ("E.R.") 1.6; ABA Model R. Prof'l. Conduct R. 1.6. The actions alleged by Plaintiff are entirely inconsistent with the Supreme Court's vigilant protection of the confidentiality of attorney-client communications and prevent the attorneys with whom Plaintiff corresponds from complying with their ethical duty to maintain the confidentiality of all lawyer-client communications. "[E]ven in a jail, or perhaps especially there, the relationships which the law has endowed with particularized confidentiality must continue to receive unceasing protection." *Lanza v. New York*, 370 U.S. 139, 143-44 (1962). *See also Nordstrom*, 762 F.3d at 910 ("In American criminal law, the right to privately confer with counsel is nearly sacrosanct.").

If a client fears interference with or disclosure of confidential communications, "the client would be reluctant to confide in his lawyer and it

⁵ The Supreme Court recognizes that ABA standards "may be valuable measures of the prevailing professional norms of effective representation" *Padilla v. Kentucky*, 559 U.S. 356, 367 (2010). Arizona has incorporated the ABA Model Rules of Professional Conduct into its state rules. Under the District of Arizona's Local Rules of Civil Procedure, the Arizona Rules of Professional Conduct apply to attorneys authorized to practice before the district court. D. Ariz. Loc. R. Civ. Proc. 83.2(e).

would be difficult to obtain fully informed legal advice.” *Fisher v. United States*, 425 U.S. 391, 403 (1976). Prisoners are especially vulnerable in this regard because they are entirely dependent upon the institution to transmit mail to and from their attorneys. If a prisoner knows staff may read letters to or from counsel, she may not be completely candid with her lawyers. *Nordstrom*, 762 F.3d at 910 (“It takes no stretch of imagination to see how an inmate would be reluctant to confide in his lawyer about the facts of the crime, perhaps other crimes, possible plea bargains, and the intimate details of his own life and his family members’ lives, if he knows that a guard is going to be privy to them, too.”). This is especially true in cases involving mitigation defenses, or individual or class action challenges to medical or mental health care, or other conditions of confinement.

The interference with Plaintiff’s incoming and outgoing legal mail compromises the lawyers’ ability to communicate fully and confidentially with him, regardless of whether any information is actually used by an adversary: it is the tangible risk of the use of the confidential information and the resulting chilling effect, rather than its actual use by a third party, that triggers the breach of confidentiality. *See Nordstrom*, 762 F.3d at 911 (it is irrelevant if the harm alleged “is not that tainted evidence was used against him[,] but that his right to privately confer with counsel has been chilled. This is a plausible consequence of the intentional reading of his confidential legal mail.”).

III. The Interference With Plaintiff's Legal Mail Results in Lawyers Violating Their Duties of Competent and Diligent Representation.

The Arizona Rules require lawyers to act with thoroughness and preparation as is reasonably necessary for representation of a client (E.R. 1.1), and to “act with reasonable diligence and promptness in representing a client.” E.R. 1.3. Relevant to the interests of Amici who represent prisoners in class action litigation, attorneys appointed to represent a class “must be willing and able to vigorously prosecute the action.” 7A Fed. Prac. & Proc. Civ. § 1769.1 (3d ed. 2013).

The State Bar of Arizona issued a detailed opinion in 1987 regarding ethical obligations of public defenders who had learned their confidential meetings with incarcerated children in the “Quiet Rooms” of a juvenile detention facility were being monitored by facility staff, and explained how the attorneys’ knowledge of this breach created a conflict with the lawyers’ obligation to zealously represent their clients. State Bar of Ariz. Ethics Op. No. 87-19 (1987), *available at* http://www.azbar.org/Media/_Ethics/87-19.pdf. After learning of this intrusion into confidential attorney-client communications, the attorneys notified the Presiding Judge of the Juvenile Court, and discontinued meeting with their clients, with the intention of resuming meetings when the monitoring ceased. *Id.* at 1. The question posed for an ethics opinion was whether the lawyers had “any further ethical duties beyond notifying the Presiding Judge of the monitoring and discontinuing client conferences until privacy is assured?” *Id.*

The State Bar opined that “[b]ecause the inquiring attorney is aware of the monitoring, any further conferences with clients prior to a guarantee of their confidentiality would violate ER 1.6(a)” but noted that at the same time, the failure to communicate with clients “would prejudice the interests of the client.” *Id.* at 2. Therefore, given that the attorneys were stuck between a rock and a hard place with these conflicting ethical duties due to the detention facility’s actions, the attorneys would have to do more than simply notify the court: the attorneys “ha[ve] an affirmative duty to push the Presiding Judge and Detention Facility personnel for a truly confidential area to confer with clients, to the extent of petitioning the court for such protection.” *Id.*

In the instant case, because the lawyers communicating with Plaintiff now know that legal mail to or from him has been opened outside his presence, they have been placed in the same double bind identified by the State Bar: the attorneys cannot meet the duty to provide competent and diligent representation without sacrificing the privileged and confidential nature of communications; but if they stop or limit communication to ensure confidentiality, they will not provide competent and diligent representation. *Cf.* Ethics Op. 87-19 at 2. If the lawyers are to ensure a confidential exchange of information or documents relevant to his cases, they must meet with him personally each time they want to do so. A policy that requires lawyers to meet with incarcerated clients in person for any attorney-

client interaction “impose[s] a substantial burden on the right of access to the courts.” *Procunier*, 416 U.S. at 420.⁶

In light of Defendants’ alleged acts, Plaintiff’s attorneys cannot comply fully with the ethical duties and professional responsibility mandates to which they are subject. The Arizona Rules require that as a prophylactic measure, attorneys must withdraw from any representation that violates or will violate the Rules. E.R. 1.16(a)(1). So long as MCJ staff continue to open Plaintiff’s incoming and outgoing legal mail outside his presence, and unless his attorneys can conduct all of their business with him in person to prevent a breach of confidentiality, the lawyers must withdraw from representing him. This result is not limited to current

⁶ Telephone calls, even if confidential, are not an equivalent alternative to written letters. According to MCJ’s Rules and Regulations for Inmates (8/21/14), the Inmate Telephone System will not accept *any* incoming calls. Ex. 1 at 35. Therefore, an attorney cannot pick up the phone and call her client the same way she can quickly write and mail a letter to her client. MCJ’s Inmate Telephone System is set up to only permit outgoing collect calls made by prisoners, and “recognizes attorneys registered with the Arizona State Bar Association.” *Id.* at 34, 36. The attorney’s phone number must be researched and confirmed to be a valid legal telephone number in order to be placed on a list of approved legal phone numbers, so that calls to that number will be processed as a legal call and not recorded. *Id.* at 36. This collect call requirement, even for legal calls, imposes a financial cost on the attorney far greater than the cost of postage. In any event, telephone calls are obviously not an equivalent substitute for expansive written communications and the necessary exchange of documents relevant to the representation.

This Court appointed Harry Williams of Seattle to represent Plaintiff, and undoubtedly did not expect that Mr. Williams would travel to Phoenix every time he needed to exchange confidential information and documents with his client.

counsel; any attorney who represents Plaintiff in any matter will encounter the same ethical conflict if the confidentiality of the communications is compromised.

IV. The Opening of Plaintiff's Legal Mail Impairs Lawyers' Duty to Communicate and Keep Their Client Reasonably Informed

Attorneys must keep their clients “reasonably informed” throughout representation. E.R. 1.4(a)(3). The Restatement (Third) of the Law Governing Lawyers requires attorneys to provide their clients documents relevant to the representation, which again requires lawyers to communicate with their clients, normally in writing. *Id.* § 46(2)-(3). The ABA Standards for Criminal Defense Function state that “[d]efense counsel should keep the client informed of the developments in the case and the progress of preparing the defense” ABA Stand. Crim. Def. Function § 4-3.8(a), *available at* <http://goo.gl/V1jiJu>. The comments to the standards state:

Nothing is more fundamental to the lawyer-client relationship than the establishment of trust and confidence. Without it, the client may withhold essential information from the lawyer. Thus, important evidence may not be obtained, valuable defenses neglected, and perhaps most significant, defense counsel may not be forewarned of evidence that may be presented by the prosecution. [...]

It is fundamental that the communication between client and lawyer be untrammelled. **The reading by prison officials of correspondence between prisoners and their lawyers inhibits communication and impairs the attorney-client relationship...**

Id. § 4-3.1, Comments, at 149-151 (emphasis added). For example, if Plaintiff wants his attorney to present a mitigation defense, he may need to discuss facts that

he believes helpful, but that may also be incidentally incriminating. If his ability to speak freely is cut off, the lawyer cannot bring to light critical case information.⁷

CONCLUSION

This Court should reverse the District Court's dismissal of Plaintiff's Third Amended Complaint, which gave the green light to MCJ officials to continue to open his legal mail outside his presence. The alleged practice is a direct intrusion into the attorney-client relationship and prevents lawyers from complying with numerous affirmative rules of professional responsibility, and additionally violates their First Amendment rights.

Respectfully submitted,

Dated: May 29, 2015

PRISON LAW OFFICE

/s/ Corene Kendrick

Corene Kendrick

⁷ The Arizona Rules also divide and delegate decision-making authority between lawyers and clients. A lawyer must "abide by a client's decisions concerning the objectives of representation" and "shall consult with the client as to the means by which they are to be pursued. . . . In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify." E.R. 1.2(a). The interference with Plaintiff's legal mail inhibits him from communicating such foundational objectives or dispositive decisions. Plaintiff is thus unable to communicate decisions about his representation and court strategy.

CERTIFICATE OF COMPLIANCE PURSUANT TO FEDERAL RULE OF APPELLATE PROCEDURE 32(A)(7)(C) AND CIRCUIT RULE 32-1

Pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C) and Ninth Circuit Rule 32-1, I certify that that attached brief is proportionately spaced, has a typeface of 14 points and contains a total of 3,747 words in the brief, including footnotes.

/s/ Corene Kendrick _____

Corene Kendrick
PRISON LAW OFFICE

Attorney for Amici

Dated: May 29, 2015

CERTIFICATE OF SERVICE

U.S. Court of Appeals Docket Number: 14-15271

I hereby certify that on May 29, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Corene Kendrick

Corene Kendrick
PRISON LAW OFFICE

Attorney for Amici

Dated: May 29, 2015

Exhibit 1

Maricopa County Rules and Regulations for Inmates Effective Rev. 08/21/2014

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If you see a program you want to attend, fill out an *Inmate Request Form* requesting the class. You will be notified when you have been added to the class or to the waiting list if the class is full. If you abuse any program or do not follow the rules you may be dismissed from that program and your participation in other programs may be restricted as well.

Section 23

JUVENILE EDUCATION

All juvenile inmates without a high school diploma or GED are required to attend school. This may be in addition to other scheduled programs and may include inmates who are on restriction. An inmate's school setting may be based on classification, behavior, and/or academic level.

Other than legal visits, you will not be allowed to receive visits during your scheduled class time. You are not allowed to take any items to class unless directed to do so by education staff.

Section 24

SPECIAL EDUCATION

Special education services, as defined in the *Individual Disabilities Education Act*, are offered to all eligible inmates up to the age of 22. An *Inmate Request Form* may be submitted for additional information. Inmates on restriction or lockdown may attend classes. If your classification prevents you from attending class you will be provided with education packets.

Section 25

INMATE TELEPHONE SYSTEM

A: CHARGE-A-CALL TELEPHONE/LEGAL

Use of the Inmate Telephone System is one of your privileges. The normal schedule for using this privilege for regular collect calls (Charge-a-Call) begins at 8:30 a.m. and ends at 10:00 p.m. each day. The jail command staff may adjust the hours available to you because of circumstances that affect jail order or security.

The normal schedule for placing legal calls begins at 8:00 a.m. and ends at 5:00 p.m. during normal business hours. **The Inmate Telephone System does not process legal telephone calls made after 5:00 p.m.**

1. Two types of telephone calls are made on the Inmate Telephone System.
 - A. **Regular Collect Calls (Charge-a-Call)**: You dial the telephone number and the person receiving the call is charged. The person you call is advised that they will be charged before the call is connected. **All regular collect calls will be recorded and monitored.** At the beginning of the call you will hear, "(telephone company name) has a collect call from (your name)."
 1. **Collect** - Your called party is billed by their telephone service provider for all calls you make from the Inmate Telephone System to their residential telephone number in the United States, Canada, some Caribbean countries, and Mexico.

2. **Prepaid** – When your called party is unable to be billed by their telephone service provider for collect calls you make to a residential number or cell phone, the Inmate Telephone Provider offers a program that allows your family and friends to set up a pre-paid account to receive your calls in the United States, Canada, and some Caribbean countries.
3. **International Calling Card** - You are able to purchase a pre-paid International Calling Card through the Inmate Canteen to contact family and friends **outside of the United States, Canada, and some Caribbean countries.**

B. **Legal Calls:** The Inmate Telephone System recognizes attorneys registered with the Arizona State Bar Association. At the beginning of the call you will hear, “(telephone company name) has a legal call from (your name),” or, “(telephone company name) has a legal collect call from (your name).” **Legal calls are not recorded.**

Note: If you dial the telephone number to your legal counsel and the recording states that, “this call will be recorded or monitored,” hang up. It is your responsibility to complete an Inmate Request Form explaining that the call was not processed as a legal call. The phone number will be researched and if it is confirmed that the telephone number represents a valid legal telephone number, the Inmate Telephone System will be updated to include the new legal counsel’s telephone number. **Your telephone call will then be processed as a legal call and will not be recorded or monitored.**

1. **Pro-Per Witness Calls:** Pro Per status is recognized only by court order and witness calls will not be processed until the information has been verified by detention staff. You must submit an *Inmate Request Form* to the jail commander and Inmate Legal Services listing the witnesses that you intend to contact. You must receive prior approval before the calls are processed. When you are granted Pro Per status, you will be given an additional set of rules that must be followed.
2. **Access to a Telecommunications Device for the Deaf (TDD) Portable Unit:** If you require the use of a TDD Portable Unit, it will be made available. The calls require detention officer assistance. Submit an *Inmate Request Form* that explains your need. Include the name, title, and telephone number of the person you need to contact. If a supervisor approves it, you will be allowed a call on a special telephone. The call will be processed through the Arizona Relay Service.
3. **Special Situation Calls:** If you are experiencing problems using the Inmate Telephone System due to equipment failure, or the system will not process your legal or regular call, you may submit an *Inmate Request Form* explaining the need for a special call. Include the name and telephone number of the person you need to contact. If a supervisor approves it, you will be allowed a call on a special telephone. A special call will not be authorized because the number has been blocked.
4. **Telephone Equipment Problems:** If you are having problems using the Inmate Telephone System, you must submit an *Inmate Request Form* explaining your complaint in detail. Once verified, detention personnel will submit a request for repair to the vendor. Most repairs will be completed within **48** hours, excluding weekends and holidays, after the vendor has received the request.

5. Rules for Use of the Inmate Telephone System:

- A. You may not make telephone calls during headcount, mealtime, or when the nurse is dispensing medications.
- B. You will not interfere with another inmate's telephone privilege. All inmates are permitted equal access to the telephones.
- C. You are not allowed to request your called party to make third party or conference calls. You will be disconnected from your call and disciplinary action may be taken against you. You may also lose the ability to call that telephone number.
- D. You are not allowed to make Directory Assistance calls, 1-800, 1-888, or 1-900 calls. Exceptions will only be made for a telephone call made through a TDD machine for the hearing impaired.
- E. If you want to call "**SILENT WITNESS**," you may do so by dialing in your booking number (IPIN) followed by 0-480-948-6377. There is no charge for the call.
- F. When attempting to gain access to the telephone, failure to use any name, other than your given name as booked, or IPIN, will result in suspension of privileges.
- G. Do not request that the person you are talking to call you back. **The Inmate Telephone System will not accept incoming calls.**
- H. Misuse of the telephone or attempts to gain access by using a name or booking number other than your own will result in suspension of phone privileges.

B: TELEPHONE INSTRUCTIONS**1. Establishing Identification into the Inmate Telephone System:**

- A. **Intake:** While you are in Intake, you are not required to establish identification to make a telephone call on the Inmate Telephone System.
- B. **All other Jails (the first time a call is made):** After arriving at your assigned facility, it will be necessary to establish your identification before calls will be processed. **The system will walk you through the steps:**
 - Pick up the handset and listen for a dial tone.
 - Enter your 7 digit Inmate Booking Number, including the alpha character represented by a number (IPIN). **Does not apply to calls made from Intake.**

Booking Number Examples:	A123456	Enter:	2123456
	D123456		3123456
	P123456		7123456

- Enter the number you wish to call in the following format: 0 + area code + phone number. This process also applies to international calls. **All telephone numbers, including local, require entry of the area code before the phone number.**
- The system will prompt you to select your language preference (English or Spanish). Press the appropriate button for your selection.
- The system prompts, “At the tone state your name.” Your voice is recorded permanently and used to identify you on all subsequent calls, legal and personal. **Be sure to speak your entire name after the system prompts you with a dial tone.**
- The call will then be processed.
- Wait for the called party to answer and accept the call.

C. **Re-establishing Identification:** If you need to re-record your name, you are required to submit an *Inmate Request Form* explaining the reason. Once verified, detention personnel will submit a request to the vendor so you can re-record your name.

2. Collect calls within the United States, Canada, and some Caribbean countries.

- A. Enter your 7 digit Inmate Booking Number, including the alpha character represented by a number (IPIN).
- B. Enter the number you wish to call in the following format: 0 + area code + phone number. **All telephone numbers, including local, require entry of the area code before the phone number.**

3. Collect calls to Mexico (Country Code 52).

- A. Enter your 7 digit Inmate Booking Number, including the alpha character represented by a number (IPIN).
- B. Dial 0-602-581-2768.
- C. You will be advised through the automatic attendant to dial 011, the country code, the city code, and the residential number. Example: 011-52-667-752000.
011- Mexico - Culiacan - Phone number.

4. International Telephone Card (Purchased through the Canteen).

- A. Enter your 7 digit Inmate Booking Number, including the alpha character represented by a number (IPIN).
- B. Dial 011, the country code, and the residential phone number, including the area code if required.
Examples: 011-502-53055500
011- Guatemala – phone #
011-963-932-067000
011-Syria-Area Code- Phone #

5. **Voice messages you may hear:** If you dial the telephone number and your call is not connected, you may hear the following recording depending on the circumstances:

- A. **Ring No Answer** – You will hear a ringing sound. The calls will timeout after **2 and 1/2** minutes.
- B. **All lines busy (Outbound circuits)** – You will hear a fast busy signal.
- C. **Call not accepted** -You will hear “Your call was not accepted”.
- D. **Number blocked by the called party** – You will hear, “This number has been blocked at the customer’s request”.
- E. **Number blocked by the telephone carrier** – You will hear a message that explains the reason the call was blocked by the telephone carrier.

Section 26

RECREATION

Detention personnel schedule times for recreation. Recreation may be restricted or canceled when the order and security of the jail is affected, when you are under disciplinary sanctions, or for inclement weather. You will be fully clothed when you go to and come from recreation.

The only items you may take to recreation are prescription eyeglasses, your ID bracelet, and water if authorized.

You will not be permitted to return to your housing area before recreation time ends, unless an emergency is involved.

You will take proper care of all athletic equipment and use it for the purpose intended and only in designated areas.

Section 27

RELIGIOUS SERVICES AND SPIRITUAL SERVICES

Religious activities are conducted regularly. You may ask for scriptures, religious items, and literature by submitting an *Inmate Request Form*. These items are donated and may not always be available. Softbound scriptures and books received from the Chaplain’s Office are stamped and must be returned to the Chaplain upon your release from MCSO. Scriptures and religious books **not** stamped for return to the Chaplain are generally property an inmate purchased. Scriptures, rosaries, and inspirational materials received from the Chaplain’s Office are donated for your use while incarcerated. You are asked to return scriptures, rosaries, and inspirational materials by attaching these items to an *Inmate Request Form* addressed to the Chaplain and give the items to the officer to forward to the Chaplain. **Do not throw scriptures away**. Donated items are for your use only and are not to be sent or given to family members.

If you want special religious items you must receive the approval of an MCSO Chaplain and the jail commander. Religious items, such as a rosary, **may not** be worn on clothing or the body. If religious items are worn or taken to court, the item will be confiscated.

When your religious scripture is not available from the Chaplain or directly from the publisher, you may send an *Inmate Request Form* to the commander of the Religious Services Section. In the written request you must explain why the publisher cannot mail the scripture. If approved and authorized by both the jail commander and the commander of the Religious Services Section, the scripture must be hand delivered as a new, unopened, soft bound scripture.