

September 7, 2007

MEMORANDUM

To: John P. Torres, Director, Office of Detention and Removal, Immigration and Customs Enforcement

From: American Bar Association Delegation to the Berks County Prison

Copy to: [REDACTED] ABA Commission on Immigration

Subject: Report on Observational Tour of the Berks County Prison, Leesport, Pennsylvania

This memorandum summarizes and evaluates information gathered at the Berks County Prison (“BCP” or “the facility”) in Leesport, Pennsylvania, during the delegation’s July 24, 2007 visit to the facility. The delegation included [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] from Akin Gump Strauss Hauer & Feld, LLP. The information was gathered via observation of the facility by the delegation, and discussions with BCP and Immigration and Customs Enforcement (“ICE”) personnel.

I. ICE DETENTION STANDARDS

In November 2000, the Immigration and Naturalization Service (INS),¹ promulgated the “INS Detention Standards” to ensure the “safe, secure and humane treatment” of immigration detainees. The thirty-nine standards contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures. These standards apply to ICE-operated detention centers and other facilities that house immigration detainees pursuant to a contract or intergovernmental service agreement (“IGSA”).

The Detention Standards (the “Standards”) went into effect at ICE-operated detention facilities on January 1, 2001. ICE intended to phase in the Standards at all of its contract and IGSA facilities by December 31, 2002. The Standards constitute a floor rather than a ceiling for the treatment of immigration detainees. In other words, they are designed to establish the minimum requirements to which ICE must adhere in its facilities. Each Field Office or Officer-in-Charge has discretion to promulgate policies and practices affording ICE detainees more enhanced rights and protections, beyond those provided for by the Standards.

¹ Effective March 1, 2003, the INS ceased to exist as an agency of the Department of Justice. The INS’ immigration enforcement functions were transferred to Immigration and Customs Enforcement (“ICE”), a division of the newly-created Department of Homeland Security (“DHS”).

II. INTRODUCTION

A. The Delegation's Visit, July 24, 2007

On Tuesday, July 24, 2007, the members of our delegation met with several members of BCP's staff and a representative from the ICE office in Leesport, Pennsylvania. Jail representative Sergeant [b6, b7C] BCP Officer [b6, b7C] ICE Supervisory Detention and Deportation Officer [b6, b7C], and ICE Officer [b6, b7C] led our delegation on a tour of the facilities and participated in post-tour follow-up discussions. The delegation appreciates the cooperation of these individuals; they were direct and accommodating during our tour of the facility.

Our report is based on discussions we had with the above-mentioned BCP staff and ICE representatives, as well as observations of the facility. Unfortunately, the delegation was unable to interview detainees during its visit, so the information in this report relies solely on information provided by officials and on delegation observations.

B. General Information About the Berks County Prison Detention Facility

The Berks County Prison is a general purpose jail located in Leesport, Pennsylvania, and in addition to housing inmates, also houses federal immigration detainees according to an intergovernmental service agreement ("IGSA") with ICE. BCP is a municipal division of Berks County. BCP is managed by Warden [b6, b7C]³ and is monitored by oversight by the Prison Board.⁴ BCP is inspected by the Pennsylvania Department of Corrections, Office of County Inspection & Services which conducts annual audits and inspections related to Commonwealth and Federal rules and standards.⁵

According to the Pennsylvania Department of Corrections Statistics, BCP has the capacity to hold over 1,314 individuals in hard cell beds.⁶ BCP had at the time of the visit had a population of 1,259 inmates, thirty-three of whom were immigration detainees.⁷ BCP houses

² The delegation also spoke to Officer [b6, b7C] who was on duty during a tour of Housing Unit H accommodations.

³ The County of Berks, PA Prison Official Website at <http://www.co.berks.pa.us/prison/site/default.asp>.

⁴ The County of Berks, PA Prison Official Website, Prison Board at <http://www.co.berks.pa.us/prison/cwp/view.asp?a=1954&Q=475982&prisonPNavCtr=|&TNID=31215#31215>.

⁵ Pennsylvania Department of Corrections, Office of County Inspection Services at <http://www.cor.state.pa.us/county/site/default.asp>.

⁶ Pennsylvania Department of Corrections, Office of County Inspection Services, 2006 County Statistics at <http://www.cor.state.pa.us/portal/lib/county/countystatistics.pdf>.

⁷ Observations and notes of delegation members [b6] and [b6, b7C], on conversation with Sgt. [b6, b7C] and ICE Officer [b6, b7C].

mostly men, but does house a small number of women.⁸ At the time of our visit, the facility personnel estimated that 114 women were housed there, of whom two were immigration detainees.⁹ Sgt. [b6, b7C] told the delegation that the facility housed immigration detainees from many different countries and regions, including many regions of Africa, including the Ivory Coast, Latin American countries, and Poland.¹⁰

Immigrant detainees are commingled in the general prison population based upon respective BCP classifications for low, medium, and high risk.¹¹ All of the present immigrant detainees, with the exception of one being removed to Poland the day of the delegation's tour, had previously been held on criminal charges and/or violations apart from immigration violations.¹² ICE and BCP personnel indicated that approximately ninety-five percent (95%) of the immigration detainees at BCP are held on criminal charges and/or violations apart from immigration violations prior to being transferred to ICE custody at BCP.¹³ According to ICE and BCP personnel, BCP has been reducing the number of beds available to ICE for immigrant detainees due to additional needs of Berks County.¹⁴ Specifically, ICE personnel indicated that approximately ten years ago approximately 300 immigration detainees were housed at BCP.¹⁵ However, individuals held for alleged immigration violations only are held under the same conditions and in the same facilities as those held on criminal charges.

III. LEGAL ACCESS STANDARDS

A. Visitation

1. Visitation by Attorneys

The Standards require that facilities permit legal visitation seven days per week.¹⁶ Attorneys should have access to their clients eight hours per day during the week and four hours

⁸ Observations and notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C] and ICE Officer [b6, b7C].

⁹ Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C] and ICE Officer [b6, b7C].

¹⁰ Observations and notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C] and ICE Officer [b6, b7C].

¹¹ Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C] and ICE Officer [b6, b7C].

¹² Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C], ICE Officer [b6, b7C], and ICE Officer [b6, b7C].

¹³ Notes of delegation member [b6], on conversation with ICE Officer [b6, b7C].

¹⁴ Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C] and ICE Officer [b6, b7C].

¹⁵ Notes of delegation member [b6], on conversation with ICE Officer [b6, b7C].

¹⁶ Detention Operations Manual, Detainee Services, Standard 17, Section III.I.2.

per day during the weekend.¹⁷ The visits must be private and private consultation rooms should be available.¹⁸ Visits should not be interrupted for head counts or meals, and a meal should be provided to a detainee should an attorney visit occur during a regular scheduled meal time.¹⁹ If standard procedure requires a strip-search following all contact attorney visits, the facility should provide an option for non-contact visits with legal representation in an environment that allows for confidentiality.²⁰ The facility must provide written notification of the visitation rules and hours in the detainee handbook, and post the rules where detainees can easily see them.²¹

BCP does not meet this section of the Standards: no specific information is provided to detainees regarding attorney visitation. One room available for attorney visitation does not provide an environment that allows for confidentiality; however, a private room is available on request. At BCP, no attorney-specific visiting hours were posted on the walls.²² The Inmate Handbook also does not include any special regulations or information regarding visitation by legal representatives.²³ However, attorneys may call and make specific arrangements for meeting detainees aside from regular visiting hours.²⁴

Attorney visits may be held in either the “multipurpose room” or a private room next to the Sergeant’s office.²⁵ The multipurpose room is a gymnasium. Four tables in close proximity for conferences were set up temporarily on the playing surface of the floor next to the main entrance.²⁶ There is little distance between each table, and privacy would appear to be of some concern because persons seated at one table could potentially overhear discussions at another table.²⁷ Detainee-attorney meetings are very infrequent with the detainee population down from a high of several hundred several years ago to less than thirty-five presently.²⁸ In the past four months, only one detainee-attorney visit has taken place.²⁹

¹⁷ Detention Operations Manual, Detainee Services, Standard 17, Section III.I.2.

¹⁸ Detention Operations Manual, Detainee Services, Standard 17, Section III.I.9.

¹⁹ Detention Operations Manual, Detainee Services, Standard 17, Sections III.I.2 & I.9.

²⁰ Detention Operations Manual, Detainee Services, Standard 17, Section III.I.11.

²¹ Detention Operations Manual, Detainee Services, Standard 17, Section III.B.

²² Observations of delegation member [REDACTED]

²³ Observations of delegation member [REDACTED]

²⁴ Notes of delegation member [REDACTED], on conversation with Sgt. [REDACTED] see also Section III.B.3 (Telephone access to Legal Representatives).

²⁵ Notes of delegation member [REDACTED], on conversation with Sgt. [REDACTED].

²⁶ Observations of delegation member [REDACTED]

²⁷ Observations of delegation member [REDACTED]

²⁸ Notes of [REDACTED], on conversation with ICE Officer [REDACTED].

²⁹ Notes of [REDACTED], on conversation with ICE Officer [REDACTED].

Detainees may continue a legal visit through counts and/or meals.³⁰ A meal will be held for a detainee who misses meal time in the housing unit for a legal visit.³¹

Attorney visits are contact visits in both locations; no physical barrier is present between the attorney and the detainee.³² Detainees are subject only to a pat down search upon return to the housing unit following a legal visit.³³

2. Visitation by Family and Friends

To maintain detainee morale and family relationships, the Standards encourage visits from family and friends.³⁴ The Standards require that facilities establish written visitation hours and procedures, post them where detainees can see them, and make them available to the public.³⁵ The visiting area is to be “appropriately furnished and arranged, and as comfortable and pleasant as practicable.”³⁶ Visiting hours shall be set on Saturdays, Sundays, and holidays, and the Standards encourage facilities to accommodate visitors at other times when they are facing a particular hardship.³⁷ Visits should be at least 30 minutes long and longer when possible.³⁸ Visits should be granted to detainees in both disciplinary and administrative segregation unless a detainee violates the visitation rules or threatens the security of the visitation room.³⁹

BCP substantially meets this section of the Standards. The visitation schedule is posted in the regular housing units and the “Quarantine” intake housing unit.⁴⁰ The schedule is also available to the public through BCP’s web site.⁴¹ However, the information in the on-line brochure conflicts with the information provided by the postings and by Sgt. [b6, b7C]. According to the publicly available brochure, each housing unit is assigned three days a week for visitation

³⁰ Notes of delegation member [b6], on conversation with Sgt. [b6, b7C].

³¹ Notes of delegation member [b6], on conversation with Sgt. [b6, b7C].

³² Observations of delegation member [b6].

³³ Notes of delegation member [b6], on conversation with Sgt. [b6, b7C].

³⁴ Detention Operations Manual, Detainee Services, Standard 17, Section I.

³⁵ Detention Operations Manual, Detainee Services, Standard 17, Sections III.A & B.

³⁶ Detention Operations Manual, Detainee Services, Standard 17, Section III.G.

³⁷ Detention Operations Manual, Detainee Services, Standard 17, Section III.H.1.

³⁸ Detention Operations Manual, Detainee Services, Standard 17, Section III.H.1.

³⁹ Detention Operations Manual, Detainee Services, Standard 17, Section III.H.5.

⁴⁰ Observations of delegation member [b6].

⁴¹ “Friends and Family Guidelines”, URL:
http://www.co.berks.pa.us/prison/lib/prison/visitation/visitation_family_friends.pdf.

(including Saturday) for twelve hours each day.⁴² According to Sgt. [b6, b7C] and the posted hours, each housing unit is assigned two days a week for visitation for at least eight hours each day.⁴³

A detainee receives a minimum of one-half hour per visit, but a visit may be many hours depending on how many visitors are present that day.⁴⁴ All visits are non-contact and are done on a first-come, first-served basis.⁴⁵ Four simultaneous visits may take place per unit, and since detainees are housed with the general prison population, they are subject to the same rules as general inmates insofar as time for visits.⁴⁶

Each housing unit has a visiting room with a Plexiglas divider and four seats for detainees.⁴⁷ Newer facilities permit direct conversations to take place through waist-level screens that have further barriers within to prevent passage of contraband.⁴⁸ We were not able to test the sound passage qualities of these screens. Older units require each party to use telephone handsets.⁴⁹ Visitation privileges are not restricted unless ordered by the disciplinary board for a visitation-related offense.⁵⁰ Visits during disciplinary segregation must then be scheduled through the housing unit counselor.⁵¹

The visitation area was not appropriately furnished for detainee visitation due to the Plexiglas dividers, inadequate partitions, and noise. The one room visited in the first cell block had four seats separated by cinder brick partitions no more than one foot deep.⁵² The walls and floors were brick or concrete, making them sound reflective.⁵³

A detainee is only allowed visitors listed on his or her visitation list.⁵⁴ Up to eight names may be listed at one time.⁵⁵ A detainee is free to add or delete names from the list at any time.⁵⁶

⁴² Friends and Family Guidelines.

⁴³ Observations of delegation member [b6] of housing unit postings; and notes of delegation member [b6] on conversation with Sgt. [b6, b7C].

⁴⁴ Notes of delegation member [b6], on conversation with Sgt. [b6, b7C].

⁴⁵ Observations of delegation member [b6]; and notes of delegation member [b6], on conversation with Sgt. [b6, b7C].

⁴⁶ Notes of delegation member [b6], on conversations with Sgt. [b6, b7C] and ICE Officer [b6, b7C].

⁴⁷ Observations of delegation members [b6] and [b6].

⁴⁸ Observations of delegation member [b6].

⁴⁹ Observations of delegation member [b6].

⁵⁰ BCP Inmate Handbook, Sept. 2005, Section 6.3.

⁵¹ BCP Inmate Handbook, Sept. 2005, Section 6.3.

⁵² Observations of delegation member [b6].

⁵³ Observations of delegation member [b6].

⁵⁴ BCP Inmate Handbook, Sept. 2005, Section 2.7; and notes of delegation member [b6], on conversation with Sgt. [b6, b7C].

All visitors must show ID upon entry and must be on the approved visitor list to have access to the detainee.⁵⁷

B. Telephone Access

1. General Requirements

The Standards require that facilities provide detainees with reasonable and equitable access to telephones during established facility waking hours.⁵⁸ In order to meet this requirement, facilities must provide at least one telephone for every 25 detainees.⁵⁹ The Standards also require that telephone access rules be provided in writing to each detainee upon admittance, and that the rules be posted where detainees may easily see them.⁶⁰

BCP substantially meets this section of the Standards, although access times are sometimes very limited. Each housing unit has its own set of eight phones, which is more than one phone per ten to fifteen detainees.⁶¹ However, the telephones are accessible only during open dayroom recreation periods which are generally 9:00 a.m. – 11:00 a.m., 2:15 p.m. – 4:15 p.m., and 7:00 p.m. – 9:00 p.m., seven days a week.⁶² Furthermore, inmates get no more than two of these periods per day, and even these periods may be halved in bad weather.⁶³

Telephone usage rules and instructions regarding usage of the phones are posted in each housing unit dayroom in both English and Spanish.⁶⁴ Similarly, the phone numbers of local consulates are programmed into a speed dial list which is posted in each housing unit in the facility.⁶⁵

2. Direct Calls and Free Calls

⁵⁵ BCP Inmate Handbook, Sept. 2005, Section 2.7.

⁵⁶ Notes of delegation member [redacted] on conversation with Sgt. [redacted]

⁵⁷ Notes of delegation member [redacted] on conversation with Sgt. [redacted]

⁵⁸ Detention Operations Manual, Detainee Services, Standard 16, Sections I & III.A.

⁵⁹ Detention Operations Manual, Detainee Services, Standard 16, Section III.C.

⁶⁰ Detention Operations Manual, Detainee Services, Standard 16, Section III.B.

⁶¹ Observations of delegation members [redacted] and [redacted].

⁶² BCP Inmate Handbook, p. 12; and notes of delegation members [redacted] and [redacted], on conversations with Sgt. [redacted] and Officer [redacted].

⁶³ Observations of delegation members [redacted] and [redacted]; and notes of delegation members [redacted] and [redacted], on conversation with Sgt. [redacted].

⁶⁴ Observations of delegation members [redacted] and [redacted].

⁶⁵ Observations of delegation members [redacted] and [redacted].

The Standards allow facilities to generally restrict calls to collect calls;⁶⁶ however, the facility must permit detainees to make direct calls to the local immigration court and the Board of Immigration Appeals, federal and local courts, consular officials, legal service providers, government offices, and to family members in case of emergency.⁶⁷ The facility shall not require indigent detainees to pay for these types of calls if local, nor for non-local calls if there is a compelling need.⁶⁸ In addition, the facility “shall enable all detainees to make calls to the [ICE]-provided list of free legal service providers and consulates at no charge to the detainee or the receiving party.”⁶⁹

BCP appears to meet this section of the Standards. Detainees are able to make calls to legal service providers or to consulates at no charge.⁷⁰ The delegation observed notification in each of the housing unit dayrooms, where the inmates can access the phones, which detailed the procedure to place calls to consulates, immigration courts, ICE, and free legal service providers.⁷¹ The phone system requires a prisoner to have a BCP “Personal Identification Number” in order to dial out.⁷² Immigrant detainees must also use their respective Alien number (“A number”) to be able to access the free calls provided by ICE mentioned above.⁷³ ICE Officer Szalczynk provided the delegation with the Personal Identification Number and A number of an actual immigrant detainee so that the delegation could place test calls.⁷⁴ The delegation called the Australian Consulate using an actual inmate’s Alien number in order to test the ability to dial out under actual conditions. The call went straight through.⁷⁵

3. Telephone Access to Legal Representatives

The Standards provide that the facility shall not restrict the number of calls a detainee places to his/her legal representatives, nor limit the duration of such calls by automatic cutoff, unless necessary for security purposes or to maintain orderly and fair access to telephones.⁷⁶ If time limits are necessary, they shall be no shorter than 20 minutes.⁷⁷ The Standards require that

⁶⁶ Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

⁶⁷ Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

⁶⁸ Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

⁶⁹ Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

⁷⁰ Notes of delegation members on conversation with Sgt. [b6, b7C]

⁷¹ Observations of delegation members [b6] and [b6]

⁷² Notes of delegation members on conversation with Sgt. [b6, b7C]

⁷³ Notes of delegation members on conversation with Sgt. [b6, b7C]

⁷⁴ Observations and notes of delegation member [b6]

⁷⁵ Observations of delegation member [b6]

⁷⁶ Detention Operations Manual, Detainee Services, Standard 16, Section F.

⁷⁷ Detention Operations Manual, Detainee Services, Standard 16, Section F.

the facility ensure privacy for detainees' telephone calls regarding legal matters, and that calls shall not be electronically monitored absent a court order.⁷⁸

BCP appears to meet this section of the Standards. Detainees are only able to make private telephone calls by special request, because the phones where detainees make outgoing calls are all located in the public dayrooms with no privacy safeguards.⁷⁹ The telephones are hung from one of the dayroom walls out in the open.⁸⁰ In the dayrooms visited, the phones were hung in adjoining pairs with a few feet of separation.⁸¹ According to Sgt. [b6, b7C] phone conversations made on the outgoing phones are not recorded or monitored.⁸² Telephone calls at BCP are supposed to be automatically disconnected after 20 minutes, but according to BCP personnel, the phones no longer automatically shut-off.⁸³

There are opportunities at BCP for detainees to have private phone calls with attorneys, if the calls are initiated by the attorney representing the detainee and are scheduled in advance.⁸⁴ The attorney teleconferences are held in BCP common interview offices,⁸⁵ the delegation did not learn whether privacy is provided.

4. Incoming Calls and Messages

The Standards require that facilities take and deliver messages from attorneys and emergency incoming telephone calls to detainees as promptly as possible.⁸⁶ If the facility receives an emergency telephone call for a detainee, the Standards suggest that the facility obtain the caller's name and number and permit the detainee to return the emergency call as soon as possible.⁸⁷

BCP appears to meet this section of the Standards. Incoming phone calls and messages are accepted at BCP.⁸⁸ According to ICE Officer [b6, b7C], ICE comes to BCP at least

⁷⁸ Detention Operations Manual, Detainee Services, Standard 16, Section J.

⁷⁹ Observations of delegation members [b6] and [b6].

⁸⁰ Observations of delegation members [b6] and [b6].

⁸¹ Observations of delegation members [b6] and [b6]; and notes of delegation members [b6] and [b6] on conversation with Sgt. [b6, b7C] and Officer [b6, b7C].

⁸² Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C] and Officer [b6, b7C].

⁸³ Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C] and Officer [b6, b7C].

⁸⁴ Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C].

⁸⁵ Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C].

⁸⁶ Detention Operations Manual, Detainee Services, Standard 16, Section III.I.

⁸⁷ Detention Operations Manual, Detainee Services, Standard 16, Section III.I.

⁸⁸ Notes of delegation members [b6] and [b6], on conversation with Officer [b6, b7C].

weekly and will provide immigrant detainees with messages that ICE has received from legal counsel.⁸⁹

5. Telephone Privileges in Special Management Unit

The Standards provide that detainees in the Special Management Unit (“SMU”) for disciplinary reasons shall be permitted to make direct and/or free calls, except under compelling security conditions.⁹⁰

BCP does not meet this section of the Standards. Detainees at BCP placed in the SMU for disciplinary reasons do not have access to the telephones.⁹¹

C. Access to Library and Legal Material

All facilities with detainees “shall permit detainees access to a law library, and provide legal materials, facilities, equipment and document copying privileges, and the opportunity to prepare legal documents.”⁹²

1. Library Access

The Standards suggest that each facility shall have a flexible schedule for law library use that permits all detainees, regardless of housing or classification, to use the law library on a regular basis.⁹³ Each detainee shall be permitted to use the law library for a minimum of five hours per week.⁹⁴ Detainees housed in segregation units shall have the same law library access as the general population, absent compelling security concerns.⁹⁵

BCP does not fully meet this section of the Standards; detainees in segregation do not have access to the library. BCP permits all detainees except those in segregation to use the law library during designated periods which alternate with recreation time periods.⁹⁶ If the designated time period is not sufficient, detainees may request additional law library time by filing a request.⁹⁷ Detainees in segregation do not have access to the law library.⁹⁸

⁸⁹ Notes of delegation members [REDACTED] and [REDACTED]

⁹⁰ Detention Operations Manual, Detainee Services, Standard 16, Section III.G.

⁹¹ Notes of delegation members [REDACTED] and [REDACTED], on conversation with Sgt. [REDACTED]

⁹² Detention Operations Manual, Detainee Services, Standard 1, Section I.

⁹³ Detention Operations Manual, Detainee Services, Standard 1, Section III.G.

⁹⁴ Detention Operations Manual, Detainee Services, Standard 1, Section III.G.

⁹⁵ Detention Operations Manual, Detainee Services, Standard 1, Section III.M.

⁹⁶ BCP Inmate Handbook, Sept. 2005, p. 11.

⁹⁷ Notes of delegation members [REDACTED] and [REDACTED], on conversation with ICE Officer [REDACTED]

2. Library Conditions

The Standards require that a facility provide a law library with sufficient space to facilitate detainees' legal research and writing.⁹⁹ Furthermore, it must be large enough "to provide reasonable access to all detainees who request its use. It shall contain a sufficient number of tables and chairs in a well-lit room, reasonably isolated from noisy areas."¹⁰⁰

BCP meets this section of the Standards. BCP provides a law library which is well lit, has ample space, and is well-isolated from noise and foot traffic.¹⁰¹ The library provides access to one computer, and contains three other tables and chairs in addition to those housing the computer.¹⁰² Additionally, the one library visited was located in an enclosed room away from the cell blocks and was free of distractions and noise.¹⁰³

3. Materials Identified in the Detention Standards

The Standards require that all facility law libraries contain the materials listed in Attachment A to the chapter on *Access to Legal Materials*.¹⁰⁴ These materials must be updated regularly, and information must be added on significant regulatory and statutory changes regarding detention and deportation of aliens in a timely manner.¹⁰⁵ Damaged or stolen materials must be promptly replaced.¹⁰⁶

BCP does not fully meet this section of the Standards; legal materials are not available in hard copy. BCP provides its detainees with access to legal materials on computer, but most legal materials listed in Attachment A are unavailable in hard copy.¹⁰⁷ Only one computer with LexisNexis research access is available within one of the wings in addition to the library.¹⁰⁸ No other legal materials were available.¹⁰⁹

⁹⁸ Notes of delegation, on conversation with Sgt. [b6, b7C]

⁹⁹ Detention Operations Manual, Detainee Services, Standard 1, Section III.A.

¹⁰⁰ Detention Operations Manual, Detainee Services, Standard 1, Section III.A.

¹⁰¹ Observations of delegation members [b6] and [b6].

¹⁰² Observations of delegation members [b6] and [b6].

¹⁰³ Observations of delegation members [b6] and [b6].

¹⁰⁴ Detention Operations Manual, Detainee Services, Standard 1, Section III.C.

¹⁰⁵ Detention Operations Manual, Detainee Services, Standard 1, Section III.E.

¹⁰⁶ Detention Operations Manual, Detainee Services, Standard 1, Section III.F.

¹⁰⁷ Notes of delegation members [b6] and [b6], on conversation with ICE Officer [b6, b7C]

¹⁰⁸ Observations of delegation members [b6] and [b6]

¹⁰⁹ Observations and conversation between ICE Officer [b6, b7C] and delegation members [b6] and [b6] confirm that immigration legal materials were not available in the library.

4. Library Equipment and Supplies

The Standards require that facility law libraries provide an adequate number of typewriters and/or computers, writing implements, paper, and office supplies to enable detainees to prepare documents for legal proceedings.¹¹⁰ Staff must inspect at least weekly to ensure equipment is in working order and to stock sufficient supplies.¹¹¹ In addition, indigent detainees must be provided free envelopes and stamps for legal mail.¹¹²

BCP substantially meets this section of the Standards, although only one computer is provided, which may not be sufficient. A single computer was provided,¹¹³ which may not be sufficient, particularly since most required legal materials are not available in hard copy. Writing supplies are provided upon request, and indigent detainees are provided free envelopes and stamps by ICE personnel.¹¹⁴

5. Photocopies

The Standards provide that each facility shall ensure that detainees can obtain photocopies of legal materials, when such copies are reasonable and necessary for legal proceedings involving the detainee.¹¹⁵ Enough copies must be provided so that a detainee can fulfill court procedural rules and retain a copy for his records.¹¹⁶

BCP meets this section of the Standards. Detainees at BCP may make copies of all “legal, professional, and religious documents.”¹¹⁷ The law librarian is to assist in obtaining photocopies, and guidelines for obtaining photocopies are posted on each wing.¹¹⁸ The law librarians appear to be trustees.

6. Assistance From Other Detainees

¹¹⁰ Detention Operations Manual, Detainee Services, Standard 1, Section III.B.

¹¹¹ Detention Operations Manual, Detainee Services, Standard 1, Section III.B.

¹¹² Detention Operations Manual, Detainee Services, Standard 1, Section III.N.

¹¹³ Observations of delegation members [b6] and [b6].

¹¹⁴ Notes of delegation members [b6] and [b6], on conversation with ICE Officer [b6, b7C]

¹¹⁵ Detention Operations Manual, Detainee Services, Standard 1, Section III.J.

¹¹⁶ Detention Operations Manual, Detainee Services, Standard 1, Section III.J.

¹¹⁷ BCP Inmate Handbook, Sept. 2005, p. 11. All non-indigent detainees may make copies of all “legal, professional and religious documents” at a modest cost. Notes of delegation, on conversation with ICE Officers [b6, b7C] and [b6, b7C]

¹¹⁸ BCP Inmate Handbook, Sept. 2005, p. 11.

The Standards require that each facility permit detainees to assist other detainees in researching and preparing legal documents upon request, except when such assistance poses a security risk.¹¹⁹

BCP appears to meet this section of the Standards. Detainees are allowed to at least confer with others detainees during their library period, which is limited the people in their cell block.¹²⁰ Additionally, BCP personnel emphasized that detainees often help each other on research and writing issues in and outside of the library, and are provided with extra library time or time to confer when filing deadlines are pending.¹²¹

7. Notice to Detainees

The Standards require that the detainee handbook provide detainees with the rules and procedures governing access to legal materials.¹²²

BCP meets this section of the Standards. The Handbook briefly outlines the procedures for accessing the library and requesting materials.¹²³ Specifically, the Handbook provides information related to checking legal research materials out of the law library, access to research materials from the law library when a detainee is not eligible to go to the library in person, required behavior in the library and consequences for unacceptable behavior in the law library.¹²⁴

D. Group Rights Presentations

The Standards provide that facilities holding ICE detainees “shall permit authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law and procedures, consistent with the security and orderly operation of each facility.”¹²⁵ Informational posters are to be prominently displayed in the housing units at least forty-eight hours in advance of a scheduled presentation.¹²⁶ While the presentations are open to all detainees, the facility “may limit the number of detainees at a single session.”¹²⁷ “The facility shall select and provide an environment conducive to the presentation, consistent with

¹¹⁹ Detention Operations Manual, Detainee Services, Standard 1, Section III.K.

¹²⁰ Notes of delegation members [REDACTED] and [REDACTED], on conversation with ICE Officer [REDACTED].

¹²¹ Notes of delegation members [REDACTED] and [REDACTED], on conversation with ICE Officer [REDACTED].

¹²² Detention Operations Manual, Detainee Services, Standard 1, Section III.K.

¹²³ BCP Inmate Handbook, Sept. 2005, p. 11.

¹²⁴ BCP Inmate Handbook, Sept. 2005, p. 11.

¹²⁵ Detention Operations Manual, Detainee Services, Standard 9, Section I.

¹²⁶ Detention Operations Manual, Detainee Services, Standard 9, Section III.C.

¹²⁷ Detention Operations Manual, Detainee Services, Standard 9, Section III.C.

security.”¹²⁸ In addition, detainees shall have regular opportunities to view an “INS-approved videotaped presentation on legal rights.”¹²⁹

BCP does not fully meet this section of the Standards: there is no videotaped presentation on legal rights. According to BCP personnel, there are no restrictions on group rights presentations.¹³⁰ However, none are scheduled.¹³¹ If requested by either inmates or outside agencies, BCP personnel said group presentations would be permitted following approval.¹³² ICE personnel indicated that it is their understanding that no group has requested the opportunity to conduct a group rights presentation at BCP.¹³³

The “Know Your Rights” video is not presented.¹³⁴

IV. Other Provisions of the ICE Detention Standards

A. Correspondence and Other Mail

The Standards require that detainees be allowed to send and receive correspondence in a timely manner, subject to limitations required for safety, security, and orderly operation of the facility.¹³⁵ General correspondence shall normally be opened and inspected for contraband in the presence of the detainee, but may be opened and even read outside the presence of the detainee if security reasons exist for doing so.¹³⁶ Special correspondence—which includes all written communication to or from attorneys, legal representatives, judges, courts, government officials, and the news media—is treated differently.¹³⁷ Incoming special correspondence can be inspected for contraband only in the presence of the detainee, but it can never be read or copied.¹³⁸ Outgoing special correspondence may not be opened, inspected, or read.¹³⁹

The detainee handbook must specify how to address correspondence, the definition of special correspondence and how it should be labeled, and the procedure for purchasing postage

¹²⁸ Detention Operations Manual, Detainee Services, Standard 9, Section III.E.

¹²⁹ Detention Operations Manual, Detainee Services, Standard 9, Section III.I.

¹³⁰ Notes of delegation, on conversation with Sgt. [REDACTED] b6, b7C

¹³¹ Notes of delegation members [REDACTED] and [REDACTED], on conversation with ICE Officer [REDACTED]

¹³² Notes of delegation members [REDACTED] b6 and [REDACTED] b6, on conversation with ICE Officer [REDACTED] b6, b7C

¹³³ Notes of delegation members [REDACTED] and [REDACTED], on conversation with ICE Officer [REDACTED]

¹³⁴ Notes of delegation members [REDACTED] and [REDACTED], on conversation with ICE Officer [REDACTED]

¹³⁵ Detention Operations Manual, Detainee Services, Standard 3, Section I.

¹³⁶ Detention Operations Manual, Detainee Services, Standard 3, Sections III.B & E.

¹³⁷ Detention Operations Manual, Detainee Services, Standard 3, III.B, E, & F.

¹³⁸ Detention Operations Manual, Detainee Services, Standard 3, III.B & E.

¹³⁹ Detention Operations Manual, Detainee Services, Standard 3, Sections III.B & F.

and rules for providing indigent detainees free postage.¹⁴⁰ The Standards also require that facilities provide indigent detainees with free envelopes and stamps for mail related to a legal matter, including correspondence to a legal representative, potential representative, or any court; indigent detainees must be permitted to mail at least five pieces of special correspondence and three pieces of general mail per week.¹⁴¹ Finally, the Standards require that facilities notify detainees of specific information regarding correspondence policies.¹⁴²

It is unclear whether BCP fully meets this section of the Standards: the information in the handbook regarding postage for indigent detainees conflicts with information provided by ICE. All mail but legal mail is opened and inspected for contraband, but is not read.¹⁴³ Legal mail is also opened and inspected, but this is done in the presence of the detainee.¹⁴⁴ Mail is delivered typically the day after its arrival.¹⁴⁵ Outgoing mail is typically sent the same day the detainee submits it.¹⁴⁶ The handbook outlines how to address correspondence, and defines the term “legal mail” as mail to elected officials, attorneys, and officers of the court.¹⁴⁷ The correspondence procedures and limitations are also available to the public.¹⁴⁸

According to Officer [b6, b7C], indigent detainees are provided free envelopes and stamps by ICE personnel.¹⁴⁹ However, according to the handbook, indigent “INS detainees” do not receive the inmates’ “privilege” of being permitted to send up to five pieces of legal mail in excess of the first class postage allowance per month.¹⁵⁰ Detainee mail specific to immigration is placed into the “Immigration” box located in the housing unit.¹⁵¹ ICE mails this correspondence for the detainees, or it is mailed upon request.¹⁵²

B. Detainee Handbook

¹⁴⁰ Detention Operations Manual, Detainee Services, Standard 3, Section III.B.

¹⁴¹ Detention Operations Manual, Detainee Services, Standard 3, Section III.I and Standard 1, Section III.N.

¹⁴² Detention Operations Manual, Detainee Services, Standard 3, Section III.B.

¹⁴³ Notes of delegation member [b6], on conversation with Sgt. [b6, b7C]

¹⁴⁴ BCP Inmate Handbook, Sept. 2005, Section 2.9.1; and notes of delegation member [b6], on conversation with Sgt. [b6, b7C]

¹⁴⁵ Notes of delegation member [b6], on conversation with Sgt. [b6, b7C]

¹⁴⁶ Notes of delegation member [b6], on conversation with Sgt. [b6, b7C]

¹⁴⁷ BCP Inmate Handbook, Sept. 2005, Section 2.9.

¹⁴⁸ Friends and Family Guidelines.

¹⁴⁹ Notes of delegation members [b6] and [b6], on conversation with ICE Officer [b6, b7C]

¹⁵⁰ BCP Inmate Handbook, Sept. 2005, Section 2.9.2.

¹⁵¹ Observations of delegation member [b6] and notes of delegation member [b6], on conversation with ICE Officer [b6, b7C]

¹⁵² Notes of delegation member [b6], on conversation with ICE Officer [b6, b7C]

The Standards require that every Officer in Charge develop a site-specific detainee handbook to serve as an overview of detention policies, rules, and procedures.¹⁵³ Every detainee should receive a copy of the handbook upon admission to the facility.¹⁵⁴ The handbook will be written in English and translated into Spanish and other prevalent languages as appropriate.¹⁵⁵ The handbook must include visitation hours and rules.¹⁵⁶ The handbook must notify detainees of the facility correspondence policy.¹⁵⁷ The grievance section of the handbook must provide notice of the opportunity to file both formal and informal grievances and the procedures for filing grievances and appeals.¹⁵⁸ The handbook must provide notice of the facility's rules of conduct and the sanctions imposed.¹⁵⁹ It must advise detainees of rights including the right to protection from abuse, right to freedom from discrimination, and right to pursue a grievance.¹⁶⁰ The handbook must also state that detainees have the opportunity to submit written questions, requests, or concerns to ICE staff and the procedures for doing so.¹⁶¹ The Officer in Charge will provide a copy of the handbook to every staff member who has contact with detainees.¹⁶²

BCP does not meet this section of the Standards. The Handbook is the same handbook provided to BCP inmates, and does not mention that written questions, requests, or concerns may be submitted directly to ICE personnel, or include a procedure for contacting ICE personnel. Detainees are provided with a copy of a Berks County Prison – Inmate Handbook (Handbook), which is the same handbook provided to county inmates.¹⁶³ English and Spanish versions of the Handbook were provided to the delegation during the tour.¹⁶⁴ The Handbook does not provide specific visitation hours, but indicates that inmates are permitted two visits of at least 30 minutes in duration each week, and provides extensive regulations related to approval of visitors.¹⁶⁵ The Handbook provides guidelines for facility correspondence including incoming and outgoing mail, restrictions on mail and inspection of mail.¹⁶⁶ The Handbook notifies detainees of the opportunity to file normal and “emergency” or

¹⁵³ Detention Operations Manual, Detainee Services, Standard 6, Section I.

¹⁵⁴ Detention Operations Manual, Detainee Services, Standard 6, Section I.

¹⁵⁵ Detention Operations Manual, Detainee Services, Standard 6, Section III.E.

¹⁵⁶ Detention Operations Manual, Detainee Services, Standard 17, Section III.B.

¹⁵⁷ Detention Operations Manual, Detainee Services, Standard 3, Section III.B.

¹⁵⁸ Detention Operations Manual, Detainee Services, Standard 5, Section III.G.

¹⁵⁹ Detention Operations Manual, Security and Control, Standard 5, Section III.A.5.

¹⁶⁰ Detention Operations Manual, Security and Control, Standard 5, Section III.A.5.

¹⁶¹ Detention Operations Manual, Detainee Services, Standard 15, Section III.B.3.

¹⁶² Detention Operations Manual, Detainee Services, Standard 6, Section III.H.

¹⁶³ Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C]

¹⁶⁴ Observations of delegation.

¹⁶⁵ BCP Inmate Handbook, Sept. 2005, p. 6.

¹⁶⁶ BCP Inmate Handbook, Sept. 2005, pp. 7-9.

“sensitive” grievances, but not specifically “formal” and “informal” grievances, and provides explanation of a grievance appeals process.¹⁶⁷ The Handbook indicates that a “Constituent Services Officer” receives and answers all grievances.¹⁶⁸ BCP personnel indicated that grievances for detainees are typically handled by BCP staff and ICE personnel become involved if and when the BCP response is unsatisfactory to the detainee.¹⁶⁹

The Handbook provides notice to detainees of the facility’s rules and regulations and disciplinary procedures for misconduct.¹⁷⁰ The Handbook indicates that detainees have the right to “be addressed respectfully by staff,” “be free from corporal punishment, deliberate personal injury, deliberate property damage, harassment, or use of excessive force by staff,” “have access to a grievance system” and have additional rights and privileges.¹⁷¹ The Handbook does not state that detainees have the opportunity to submit written questions, requests, or concerns to ICE staff or the procedures for doing so.¹⁷²

C. Recreation

The Standards require that all detainees have access to recreational programs and activities, under conditions of security and safety.¹⁷³ Detainees should be housed in facilities with outdoor recreation.¹⁷⁴ If a facility only provides indoor recreation, detainees must have access for at least one hour per day, including exposure to natural light.¹⁷⁵ Detainees should have access to “fixed and movable equipment,” including opportunities for cardiovascular exercise, and games and television in dayrooms.¹⁷⁶ Under no circumstances will a facility require detainees to forego law library privileges for recreation privileges.¹⁷⁷

¹⁶⁷ BCP Inmate Handbook, Sept. 2005, pp. 32-34.

¹⁶⁸ BCP Inmate Handbook, Sept. 2005, pp. 32-34.

¹⁶⁹ Notes of delegation members [b6] and [b6], on conversation with ICE Officer [b6, b7C] and ICE Officer [b6, b7C].

¹⁷⁰ BCP Inmate Handbook, Sept. 2005, pp. 23-31 and throughout Handbook.

¹⁷¹ BCP Inmate Handbook, Sept. 2005, pp. 2 & 3.

¹⁷² Observations of delegation members [b6] and [b6].

¹⁷³ Detention Operations Manual, Detainee Services, Standard 13, Section I.

¹⁷⁴ Detention Operations Manual, Detainee Services, Standard 13, Section III.A, which also provides that “all new or renegotiated contracts and IGSA’s will stipulate that INS detainees have access to an outdoor recreation area.”

¹⁷⁵ Detention Operations Manual, Detainee Services, Standard 13, Section III.B.

¹⁷⁶ Detention Operations Manual, Detainee Services, Standard 13, Section III.G.

¹⁷⁷ Detention Operations Manual, Detainee Services, Standard 13, Section III.B.

BCP appears to meet this section of the Standards. BCP has a common area for indoor recreation, and an outdoor recreation fenced area is shared by pairs of housing units.¹⁷⁸ Only some of the indoor recreation areas in the housing units the delegation visited had windows to the outside.¹⁷⁹ There is a basketball hoop outside, and the delegation observed detainees playing basketball during the tour of housing unit H.¹⁸⁰ The indoor recreation room is a dayroom, where detainees can watch television and use an exercise bench, without weights.¹⁸¹ Detainees have access to natural sunlight either in their individual cells or in the dayroom.¹⁸² The dayroom provides only minimal equipment for muscular exercise.¹⁸³

The detainees are permitted to use the recreation facilities generally twice a day, seven days per week.¹⁸⁴ The periods are from 9:00 a.m. – 11:00 a.m., 2:15 p.m. – 4:15 p.m., and 7:00 p.m. – 9:00 p.m..¹⁸⁵ The athletic facilities are the cell block dayroom and the outdoor area.¹⁸⁶ Weather determines if the detainees are permitted access to outdoor recreation.¹⁸⁷ During inclement weather, the detainees in some of the housing units have shorter recreation periods, since the dayrooms are shared between two housing units.¹⁸⁸ It is unknown if inmates are furnished with cold weather clothing for outdoor use. The dayrooms are shared on an alternating basis by halves of each housing unit (cell block).¹⁸⁹ When the outdoor area is available, it is accessible to all inmates of the housing unit.¹⁹⁰

¹⁷⁸ Notes of delegation members [REDACTED] b6 and [REDACTED] b6 on conversation with Sgt. [REDACTED] b6, b7C

¹⁷⁹ Observations and notes of delegation members [REDACTED] b6 and [REDACTED] b6 during tour of housing units H and A. Housing unit H did not have windows.

¹⁸⁰ Observations of delegation members [REDACTED] b6 and [REDACTED] b6.

¹⁸¹ Notes of delegation members [REDACTED] b6 and [REDACTED] b6 on conversation with Sgt. [REDACTED] b6, b7C

¹⁸² Notes of delegation members [REDACTED] b6 and [REDACTED] b6 on conversation with Sgt. [REDACTED] b6, b7C

¹⁸³ Observations of delegation members [REDACTED] b6 and [REDACTED] b6.

¹⁸⁴ Notes of delegation members [REDACTED] b6 and [REDACTED] b6, on conversation with Sgt. [REDACTED] b6, b7C and Officer [REDACTED] b6, b7C

¹⁸⁵ Notes of delegation members [REDACTED] b6 and [REDACTED] b6 on conversation with Sgt. [REDACTED] (b), (6), (b), (7) and Officer [REDACTED] b6, b7C

¹⁸⁶ Notes of delegation members [REDACTED] b6 and [REDACTED] b6, on conversation with Sgt. [REDACTED] b6, b7C and Officer [REDACTED] b6, b7C

¹⁸⁷ Notes of delegation members [REDACTED] b6 and [REDACTED] b6 on conversation with Sgt. [REDACTED] b6, b7C about housing unit A.

¹⁸⁸ Notes of delegation members [REDACTED] b6 and [REDACTED] b6, on conversation with Sgt. [REDACTED] b6, b7C

¹⁸⁹ Notes of delegation members [REDACTED] b6 and [REDACTED] b6 on conversation with Sgt. [REDACTED] b6, b7C and Officer [REDACTED] b6, b7C

¹⁹⁰ Notes of delegation members [REDACTED] b6 and [REDACTED] b6 on conversation with Sgt. [REDACTED] b6, b7C and Officer [REDACTED] b6, b7C

There is also a common multi-purpose room at BCP that is occasionally used for intra-BCP sports tournaments, and otherwise is used as a meeting area for detainees and their attorneys or other legal service providers.¹⁹¹

D. Access to Medical Care

The Standards require that all detainees have access to medical services that promote detainee health and general well-being.¹⁹² Each facility is required to have regularly scheduled times, known as sick call, when medical personnel are available to see detainees who have requested medical services.¹⁹³ For a facility of over 200 detainees, there must be sick call five days per week.¹⁹⁴ Facilities must also have procedures in place to provide emergency medical care for detainees who require it.¹⁹⁵ With respect to emergency care, the Standards state that in a situation in which a detention officer is uncertain whether a detainee requires emergency medical care, the officer should immediately contact a health care provider or an on-duty supervisor.¹⁹⁶ If a detainee is diagnosed as having a medical or psychiatric condition requiring special attention (e.g., special diet), the medical care provider is required to notify the Officer in Charge in writing.¹⁹⁷

The Standards require that detainees have an initial dental screening exam within 14 days of the detainee's arrival, and require the facility to provide emergency dental treatment and repair of prosthetic appliances.¹⁹⁸

BCP does not fully meet this section of the Standards; BCP does not have regular sick calls. All detainees at BCP are screened for medical issues upon their initial processing, which takes place on the day of or shortly after they arrive at the facility.¹⁹⁹ Each detainee is questioned regarding prior health history, current health, medical history, suicide risk, mental health, drug and/or alcohol dependence, TB, dental health, and STD/communicable diseases.²⁰⁰ If flags are raised the individual is referred to medical for attention.²⁰¹ HIV is not routinely

¹⁹¹ Notes of delegation members [REDACTED] and [REDACTED], on conversation with Sgt. [REDACTED].

¹⁹² Detention Operations Manual, Health Services, Standard 2, Section I.

¹⁹³ Detention Operations Manual, Health Services, Standard 2, Section III.F.

¹⁹⁴ Detention Operations Manual, Health Services, Standard 2, Section I.

¹⁹⁵ Detention Operations Manual, Health Services, Standard 2, Section III.A, D, and G.

¹⁹⁶ Detention Operations Manual, Health Services, Standard 2, Section III.H.

¹⁹⁷ Detention Operations Manual, Health Services, Standard 2, Section III.J.

¹⁹⁸ Detention Operations Manual, Health Services, Standard 2, Section III.E.

¹⁹⁹ Notes of delegation, on conversation with ICE Officer [REDACTED], Sgt. [REDACTED] and ICE Officer [REDACTED].

²⁰⁰ Notes of delegation, on conversation with ICE Officer [REDACTED], Sgt. [REDACTED] and ICE Officer [REDACTED].

²⁰¹ Notes of delegation, on conversation with ICE Officer [REDACTED], Sgt. [REDACTED] and ICE Officer [REDACTED].

checked.²⁰² Those who are initially flagged as having some mental health issue, including suicidal tendencies, may be kept separately and monitored closely by the staff.²⁰³

BCP does not have regular sick calls, as required by the Standards.²⁰⁴ However, on-site medical facilities are available to all inmates who need them.²⁰⁵ The delegation observed two dental stations, and was informed that BCP provides dental screenings.²⁰⁶ The delegation did not speak with members of the medical staff.

E. Detainee Classification System

The Standards require that detention facilities use a classification system and physically separate detainees into different categories.²⁰⁷ Detainees must be assigned to the least restrictive housing unit consistent with facility safety and security.²⁰⁸ A detainee's classification is to be determined on "objective" criteria, including criminal offenses, escape attempts, institutional disciplinary history, violent incidents, etc.²⁰⁹ Opinions, unconfirmed and unverified information, and physical characteristics and appearance are not to be taken into account.²¹⁰ Classification is required in order to separate detainees with no or minimal criminal records from inmates with serious criminal records.²¹¹ Detainees with a history of assaultive or combative behavior are not to be housed with non-assaultive detainees.²¹²

All facility classification systems shall allow classification levels to be re-determined and include procedures by which new arrivals can appeal their classification levels.²¹³ Finally, the detainee handbook's section on classification must include (1) an explanation of the classification levels, with the conditions and restrictions applicable to each, and (2) the procedures by which a detainee may appeal his classification.²¹⁴

²⁰² Notes of delegation, on conversation with ICE Officer [REDACTED], Sgt. [REDACTED] and ICE Officer [REDACTED].
²⁰³ Notes of delegation, on conversation with ICE Officer [REDACTED], Sgt. [REDACTED] and ICE Officer [REDACTED].
²⁰⁴ Notes of delegation, on conversation with ICE Officer [REDACTED] b6, b7C, Sgt. [REDACTED] b6, b7C and ICE Officer [REDACTED] b6, b7C.
²⁰⁵ Notes of delegation, on conversation with ICE Officer [REDACTED], Sgt. [REDACTED] and ICE Officer [REDACTED].
²⁰⁶ Notes of delegation, on conversation with ICE Officer [REDACTED], Sgt. [REDACTED] and ICE Officer [REDACTED].

²⁰⁷ Detention Operations Manual, Detainee Services, Standard 4, Section I.

²⁰⁸ Detention Operations Manual, Detainee Services, Standard 4, Section III.F.

²⁰⁹ Detention Operations Manual, Detainee Services, Standard 4, Section III.D.

²¹⁰ Detention Operations Manual, Detainee Services, Standard 4, Section III.D.

²¹¹ Detention Operations Manual, Detainee Services, Standard 4, Sections III.A & E.

²¹² Detention Operations Manual, Detainee Services, Standard 4, Section III.F.

²¹³ Detention Operations Manual, Detainee Services, Standard 4, Sections III.G & H.

²¹⁴ Detention Operations Manual, Detainee Services, Standard 4, Section III.I.

BCP generally meets this section of the Standards; however, the Handbook does not explain the procedure for appealing a classification. All detainees and inmates are classified when they first arrive at the facility.²¹⁵ Within the first ten days, further classification occurs.²¹⁶ Classification is determined after the detainee or inmate has been quarantined from other detainees and inmates for up to ten days.²¹⁷ Immigrant detainees are commingled in the general prison population based upon respective BCP classifications for low, medium, and high risk.²¹⁸ The Handbook explains the classification levels and the conditions and restrictions associated with each, but it does not explain the procedure for appealing a classification.²¹⁹

F. Detainee Grievance Procedures

The Standards require that every facility develop and implement standard procedures for handling detainee grievances and encourage that the facility initially seek to resolve grievances informally before having to engage in a more formalized procedure.²²⁰ Translating assistance for both formal and informal grievances must be provided upon request.²²¹ All grievances must receive supervisory review, include guarantees against reprisal, and allow for appeals.²²²

BCP appears to meet this section of the Standards. According to BCP Sgt. [b6, b7C] if a detainee has a grievance that cannot be resolved immediately, informally, he or she will ask an officer for an "Inmate Communication Form."²²³ Upon completing and signing the form, the detainee will put the form in a "Grievance" mail-box provided in the housing unit dayroom.²²⁴ The grievance forms are taken to the on-duty Lieutenant who either directs the grievances to the Chief Deputy Warden or to one of the four Sergeants who are on duty.²²⁵ The Chief Deputy Warden may act if the grievance appears to be an abuse of the grievance process or if she determines that a particular response is necessary to address the grievance that supersedes the

²¹⁵ BCP Inmate Handbook, Sept. 2005, p. 2 and pp. 19-22; notes of delegation members on conversation with Sgt. [b6, b7C]

²¹⁶ BCP Inmate Handbook, Sept. 2005, p. 2 and pp. 19-22; notes of delegation members on conversation with Sgt. [b6, b7C]

²¹⁷ BCP Inmate Handbook, Sept. 2005, p. 2 and pp. 19-22; notes of delegation members on conversation with Sgt. [b6, b7C].

²¹⁸ Notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C] and ICE Officer [b6, b7C].

²¹⁹ BCP Inmate Handbook, Sept. 2005, pp. 19-22.

²²⁰ Detention Operations Manual, Detainee Services, Standard 5, Sections I & III.A.

²²¹ Detention Operations Manual, Detainee Services, Standard 5, Sections III.A.1 & 2.

²²² Detention Operations Manual, Detainee Services, Standard 5, Sections I & III.C & D.

²²³ Notes of delegation members [b6] and [b6] on conversation with Sgt. [b6, b7C]

²²⁴ BCP Inmate Communication Form; and notes of delegation members [b6] and [b6], on conversation with Sgt. [b6, b7C]

²²⁵ Notes of delegation member [b6] on conversation with Sgt. [b6, b7C]

normal grievance process.²²⁶ If the officer cannot resolve the detainee’s grievance, the officer must go to the supervisor.²²⁷ The supervisor must respond to the grievance in writing within fifteen days, unless an investigation is needed.²²⁸ BCP maintains hard copy records of grievances for a number of years, and also records grievances electronically.²²⁹ The detainee keeps a copy of the grievance when filing it—since the grievance form is a three-piece carbon form.²³⁰

Grievances by immigrant detainees are only directed to ICE if the detainee notes an immigration specific issue on the Inmate Communication form.²³¹ BCP and ICE personnel noted that immigrant specific grievances are rare in recent history since there are so few immigrant detainees and most grievances filed are similar to those of other BCP inmates.²³²

The BCP Inmate Handbook provides that inmates should “first attempt to settle any dispute or complaint on an informal basis with BCP Detention Facility Staff.”²³³ Only after the dispute cannot be resolved on an informal basis may an inmate request a grievance form from the staff.²³⁴ The BCP Inmate Handbook does not provide notice of the availability of assistance in preparing a grievance, although BCP personnel informed us that assistance would be provided if necessary.²³⁵ The BCP Inmate Handbook explains the procedures for resolving a grievance and the levels of appeal.²³⁶ The BCP Inmate Handbook states that the grievance process is “available to express complaints without the fear of reprisal or punitive disciplinary action.”²³⁷

G. Disciplinary Policy

The Standards state that facility authorities “will impose disciplinary sanctions on any detainee whose behavior is not in compliance with facility rules and procedures” in order “to

²²⁶ Notes of delegation member [redacted] on conversation with Sgt. [redacted]

²²⁷ Notes of delegation members [redacted] and [redacted] on conversation with Sgt. [redacted]

²²⁸ Notes of delegation members [redacted] and [redacted] on conversation with Sgt. [redacted]

²²⁹ Notes of delegation members [redacted] and [redacted] on conversation with Sgt. [redacted]

²³⁰ BCP Inmate Communication Form; and notes of delegation members [redacted] and [redacted] on conversation with Sgt. [redacted]

²³¹ Notes of delegation members [redacted] and [redacted], on conversation with Sgt. [redacted] and ICE Officer [redacted]

²³² Notes of delegation members [redacted] and [redacted], on conversation with Sgt. [redacted] and ICE Officer [redacted]

²³³ BCP Inmate Handbook, Sept. 2005, pp. 31-34.

²³⁴ BCP Inmate Handbook, Sept. 2005, pp. 31-34.

²³⁵ Notes of delegation members [redacted] and [redacted] on conversation with Sgt. [redacted]

²³⁶ BCP Inmate Handbook, Sept. 2005, pp. 31-34.

²³⁷ BCP Inmate Handbook, Sept. 2005, p. 32.

provide a safe and orderly living environment.”²³⁸ Each facility holding ICE detainees must have a detainee disciplinary system which has “progressive levels of reviews, appeals, procedures, and documentation procedures.”²³⁹ The disciplinary policy must clearly define detainee rights and responsibilities, and any disciplinary action taken must not be capricious or retaliatory.²⁴⁰

The Detainee Handbook must notify detainees of the disciplinary process, the prohibited acts and disciplinary severity scale, and the procedure for appeals.²⁴¹ The handbook must also notify detainees of specific rights, including the right to protection from abuse, harassment, and discrimination, the right to pursue a grievance, and the right to due process, including prompt resolution of a disciplinary matter.²⁴²

The BCP substantially meets this section of the Standards, although the Handbook does not advise detainees of their rights to protection from abuse, harassment, or discrimination. When a rules violation occurs, a written report is filed.²⁴³ If the violation is considered minor, then an officer will talk with the detainee and come up with a punishment based on the minor violation.²⁴⁴

The Handbook does notify the detainees of the disciplinary process, the prohibited acts and disciplinary severity scale, and the appeal procedure of disciplinary findings.²⁴⁵ In addition, the Handbook notifies detainees of the facility’s rules of conduct and the sanctions imposed for the violation of these rules.²⁴⁶ However, the Handbook does not advise the detainees of their “right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage, and harassment” or their “right of freedom from discrimination based on race, religion, national origin, sex, handicap, or political beliefs.”²⁴⁷

H. Staff-Detainee Communication/ICE Presence at the Facility

The Standards require that procedures be in place “to allow for formal and informal contact between key facility staff and ICE staff and ICE detainees and to permit detainees to

²³⁸ Detention Operations Manual, Security and Control, Standard 5, Section I.

²³⁹ Detention Operations Manual, Security and Control, Standard 5, Section III.A.1.

²⁴⁰ Detention Operations Manual, Security and Control, Standard 5, Section III.A.1 & A.2.

²⁴¹ Detention Operations Manual, Security and Control, Standard 5, Section III.L.

²⁴² Detention Operations Manual, Security and Control, Standard 5, Section III.A.5.

²⁴³ Notes of delegation member [REDACTED] on conversation with Sgt. [REDACTED].

²⁴⁴ Notes of delegation member [REDACTED] on conversation with Sgt. [REDACTED].

²⁴⁵ BCP Inmate Handbook, Sept. 2005, Sections 7 & 8.

²⁴⁶ BCP Inmate Handbook, Sept. 2005, Section 8.

²⁴⁷ Detention Operations Manual, Security and Control, Standard 5, Sections III.A.5.a & b.

make written requests to ICE staff and receive an answer in an acceptable time frame.”²⁴⁸ The Standards suggest that both weekly visits be conducted by ICE personnel and that “regular unannounced (not scheduled) visits” be conducted by the ICE OIC, the Assistant OIC, and designated department heads.²⁴⁹ Unannounced visits to the facility’s housing areas must be conducted on a regular basis.²⁵⁰ The purpose of such visits is to monitor housing conditions, interview detainees, review records, and answer questions for detainees who do not comprehend the immigration removal process.²⁵¹ The Standards also require that detainees “have the opportunity to submit written questions, requests, or concerns to ICE staff,” which “shall be delivered to ICE staff by authorized personnel (not detainees) without reading, altering, or delay.”²⁵² All facilities that house ICE detainees must have “written procedures to route detainee requests to the appropriate ICE official” and must assist detainees “who are disabled, illiterate, or know little or no English.”²⁵³ Moreover, the Standards suggest that detainee requests be forwarded to the appropriate ICE office within 72 hours and “answered as soon as possible or practicable, but not later than 72 hours from receiving the request.”²⁵⁴

BCP appears to meet this section of the Standards. An ICE officer makes weekly, unannounced visits to the BCP.²⁵⁵ Each week, he comes at a different time.²⁵⁶ The ICE officer will also come whenever he is requested.²⁵⁷ The BCP provides specific immigration forms for the detainees to fill out if they want to speak to someone from ICE.²⁵⁸ Detainees can request forms from the Officer on Duty for communication with ICE.²⁵⁹ It was unclear to the delegation whether BCP has written procedures for this, but the officers suggested that the detainees were aware of this option and that the officers knew how to and were diligent in processing the requests.²⁶⁰

I. Religious Practices

²⁴⁸ Detention Operations Manual, Detainee Services, Standard 15, Section I.

²⁴⁹ Detention Operations Manual, Detainee Services, Standard 15, Section III.A.

²⁵⁰ Detention Operations Manual, Detainee Services, Standard 15, Section III.A.1.

²⁵¹ Detention Operations Manual, Detainee Services, Standard 15, Section III.A.

²⁵² Detention Operations Manual, Detainee Services, Standard 15, Section III.B.

²⁵³ Detention Operations Manual, Detainee Services, Standard 15, Section III.B.

²⁵⁴ Detention Operations Manual, Detainee Services, Standard 15, Section III.B.1.

²⁵⁵ Notes of delegation, on conversation with ICE Officer [REDACTED] and Sgt. [REDACTED].

²⁵⁶ Notes of delegation, on conversation with ICE Officer [REDACTED] and Sgt. [REDACTED].

²⁵⁷ Notes of delegation, on conversation with ICE Officer [REDACTED] and Sgt. [REDACTED].

²⁵⁸ Notes of delegation, on conversation with ICE Officer [REDACTED] and Sgt. [REDACTED] (a Detainee Written Request Form is attached).

²⁵⁹ Notes of delegation, on conversation with ICE Officer [REDACTED] and Sgt. [REDACTED].

²⁶⁰ Notes of delegation, on conversation with ICE Officer [REDACTED] and Sgt. [REDACTED].

The Standards require that detainees of different religious beliefs be provided with reasonable and equitable opportunities to participate in the practices of their respective faiths.²⁶¹ According to the Standards, these opportunities will exist for all equally, regardless of the number of practitioners of a given religion, whether the religion is ‘mainstream,’ whether the religion is ‘Western’ or ‘Eastern,’ or other such factors.”²⁶² “Opportunities will be constrained only by concerns about safety, security, the orderly operation of the facility, or extraordinary costs associated with a specific practice.”²⁶³ Moreover, a facility’s staff shall make “all reasonable efforts to accommodate” special food services required by a detainee’s particular religion.²⁶⁴ Detainees in confinement must also be permitted to participate in religious practices, consistent with the safety, security, and orderly operation of the facility.²⁶⁵

BCP appears to meet this section of the Standards. Detainees are permitted to keep a certain number of personal items in their cells, which may include a Bible, Koran, rosary, religious medallions, or other similar articles.²⁶⁶ The prison chaplain keeps a library of various religious materials available to detainees.²⁶⁷ In addition, several religious organizations regularly visit the prison to lead worship, including a Christian fellowship group and a Muslim prayer group.²⁶⁸ Regular masses and Juma (Muslim Friday prayer) services are also held.²⁶⁹ Any detainee wishing to participate may sign up.²⁷⁰ Detainees are limited to attending only one service per week.²⁷¹ Religious dietary needs of detainees are also accommodated. Specially prepared meals catering to religious practice are brought to detainees approximately one-half hour prior to the arrival of the food carts in the housing units.²⁷²

J. Voluntary Work Program

The Standards suggest that all facilities with work programs provide an opportunity for physically and mentally capable detainees to “work and earn money.”²⁷³ Participation must be

²⁶¹ Detention Operations Manual, Detainee Services, Standard 14, Section I.

²⁶² Detention Operations Manual, Detainee Services, Standard 14, Section I.

²⁶³ Detention Operations Manual, Detainee Services, Standard 14, Section I.

²⁶⁴ Detention Operations Manual, Detainee Services, Standard 14, Section III.M.

²⁶⁵ Detention Operations Manual, Detainee Services, Standard 14, Section III.O.

²⁶⁶ Observations of delegation member [REDACTED] of housing unit postings; and notes of delegation member [REDACTED] on conversation with Sgt. [REDACTED]

²⁶⁷ BCP Inmate Handbook, Sept. 2005, Section 5.3.

²⁶⁸ Notes of delegation member [REDACTED], on conversation with Sgt. [REDACTED]

²⁶⁹ Observations of delegation member [REDACTED] of housing unit postings.

²⁷⁰ Notes of delegation member [REDACTED], on conversation with Sgt. [REDACTED].

²⁷¹ BCP Inmate Handbook, Sept. 2005, Section 5.3.

²⁷² Notes of delegation member [REDACTED], on conversation with Sgt. [REDACTED]

²⁷³ Detention Operations Manual, Detainee Services, Standard 37, Sections I & III.A.

voluntary, and detainees may not work more than eight hours per day, and forty hours per week.²⁷⁴

BCP appears to meet this section of the Standards. Detainees are apparently provided an opportunity to work in the facility should they choose to do so.²⁷⁵ Detainees are permitted to participate in a work program within the prison, but it was noted that BCP did not have enough jobs to cover the number of detainees looking for work.²⁷⁶ Detainees may work in the laundry room and the kitchen, or serve as a translator, barber or maintenance worker.²⁷⁷ Detainees with physical or mental handicaps are afforded the opportunity to work.²⁷⁸ Detainees are compensated for their work.²⁷⁹

V. CONCLUSION

The Berks County Prison Detention Facility meets the requirements of many of the ICE Detention Standards but fails to meet several portions of the Standards.

BCP should post information specific to attorney visitation and make it available to detainees. BCP should insure that all attorney/detainee meetings are held in an area where confidentiality can be maintained.

In order to fully provide legal access for all detainees, detainees in segregation should be given access to telephones for legal calls, and access to the law library.

ICE should provide to BCP hard copies of immigration-specific materials for use in the library in units housing the detainees.

In order to make detainees fully aware of their rights, BCP should present the “Know Your Rights” video to all detainees. ICE should ensure that BCP has this video.

ICE should prepare a specific immigration detainee handbook or supplement for BCP that provides information specific to ICE detainees. Specifically, the immigration detainee handbook should indicate the detainee’s opportunity to submit written questions, requests or concerns to ICE staff and the procedures for doing so.

²⁷⁴ Detention Operations Manual, Detainee Services, Standard 37, Sections III.A & H.

²⁷⁵ Notes of delegation, on conversation with Sgt. [REDACTED]

²⁷⁶ Notes of delegation, on conversation with Sgt. [REDACTED] b6, b7C

²⁷⁷ Notes of delegation, on conversation with Sgt. [REDACTED]

²⁷⁸ Notes of the delegation, on conversation with Sgt. [REDACTED] b6, b7C

²⁷⁹ Notes of delegation, on conversation with Sgt. [REDACTED] b6, b7C

Facility Name: **BERKS COUNTY PRISON, Leesport, Pennsylvania**

Date of Tour: **July 24, 2007**

Tour Participants: Akin Gump Strauss Hauer & Feld, LLP attorneys [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED].

**Standards are Detainee Services Standards unless otherwise indicated. Standards excerpts are typed verbatim. Issues are generally listed in their order from the Report.*

Report comments in bold are priority issues for ICE-ABA discussion.

	ICE Standard*	Delegation Report	Source	ICE Response
1.	Standard 17, Visitation <ul style="list-style-type: none"> ▪ III.B. The facility shall provide written notification of visitation rules and hours in the detainee handbook, or equivalent The facility shall also post these rules and hours where detainees can easily see them. 	<ul style="list-style-type: none"> ▪ No attorney visiting hours were posted on the walls, and the Inmate Handbook does not include any special regulations or information regarding visits by legal representatives. (p.4 ¶2) 	Delegation observations; BCP Inmate Handbook	
2.	Standard 16, Telephone Access <ul style="list-style-type: none"> ▪ III.G. Staff shall permit detainees in the Special Management Unit for disciplinary reasons to make direct and/or free calls ... except under compelling security conditions. These conditions shall be documented.... Staff shall permit detainees in Special Management Unit for other than disciplinary reasons...to have telephone access similar to detainees in the general population Security and Control Standard 14 (Disciplinary Segregation) <ul style="list-style-type: none"> ▪ III.D.19. [D]etainees in disciplinary segregation shall be restricted to telephone calls for the following purposes: a. calls relating to the detainee’s immigration case or other legal matters ...; b. calls to consular/embassy officials; and c. family emergencies 	<ul style="list-style-type: none"> ▪ Detainees placed in the SMU for disciplinary reasons do not have access to telephones. (p.10 ¶3) 	Sgt. [REDACTED]	
3.	Standard 1, Access to Legal Material <ul style="list-style-type: none"> ▪ III.B. Equipment. The law library shall provide an adequate number of typewriters and/or computers, writing implements, paper and office supplies to enable detainees to prepare documents for legal proceedings. 	<ul style="list-style-type: none"> ▪ A single computer was provided, which may not be sufficient, particularly since most required legal materials are not available in hard copy. (p.12 ¶2) 	Delegation observations	
4.	Standard 1, Access to Legal Material <ul style="list-style-type: none"> ▪ III.C. The law library shall contain the materials listed in Attachment A. 	<ul style="list-style-type: none"> ▪ BCP provides its detainees with access to legal materials on computer, but most legal materials listed in Attachment A are unavailable in hard copy. (p.11 ¶4) 	Delegation observations	

5.	Standard 1, Access to Legal Material <ul style="list-style-type: none"> ▪ III.M. Detainees housed in ... Segregation units shall have the same law library access as the general population, unless compelling security concerns require limitations. 	<ul style="list-style-type: none"> ▪ Detainees in segregation do not have access to the law library. (p.10 ¶6) 	Sgt. [REDACTED]	
6.	Standard 9, Group Presentations on Legal Rights <ul style="list-style-type: none"> ▪ III.I. Videotaped presentations. The facility shall play [ICE]-approved videotaped presentations on legal rights, at the request of outside organizations. ... The facility shall provide regular opportunities for detainees in the general population to view the videotape. 	<ul style="list-style-type: none"> ▪ The “Know Your Rights” video is not presented. (p.14 ¶3) 	ICE Officer [REDACTED]	
7.	Standard 15, Staff-Detainee Communication <ul style="list-style-type: none"> ▪ III.B.3. Detainee Handbook. ... The handbook shall state that the detainee has the opportunity to submit written questions, requests, or concerns to ICE staff and the procedures for doing so ... 	<ul style="list-style-type: none"> ▪ The handbook does not state that detainees have the opportunity to submit written questions, requests, or concerns to ICE staff or the procedures for doing so. (p.17 ¶2) 	BCP Inmate Handbook	
8.	Health Services Standard 2, Medical Care <ul style="list-style-type: none"> ▪ III.F. Each facility will have a mechanism that allows detainees the opportunity to request health care services provided by a physician or other qualified medical officers in a clinical setting. All facilities must have a procedure in place to ensure that all request slips are received by the medical facility in a timely manner.... Each facility will have regularly scheduled times, known as sick call, when medical personnel will be available to see detainees who have requested medical services. 	<ul style="list-style-type: none"> ▪ BCP does not have regular sick calls. However, officials stated that on-site medical facilities are available to all who need them. (p.20 ¶2) 	Officer [REDACTED], Sgt. [REDACTED] and ICE Officer [REDACTED]	
9.	Standard 4, Detainee Classification System <ul style="list-style-type: none"> ▪ III.I. The detainee handbook’s section on classification will include the following: 1. An explanation of the classification levels with the conditions and restrictions applicable to each. 2. The procedures by which a detainee may appeal his/her classification. 	<ul style="list-style-type: none"> ▪ The handbook does not explain the procedure for appealing a classification. (p.21 ¶1) 	BCP Inmate Handbook	

10.	<p>Security and Control Standard 5, Disciplinary Policy</p> <ul style="list-style-type: none"> ▪ III.A.5. The detainee handbook or equivalent, issued to each detainee upon admittance, shall provide notice of the facility’s rules of conduct Among other things, the handbook shall advise detainees of the following: a. The right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage, and harassment; b. The right of freedom from discrimination based on race, religion, national origin, sex, handicap, or political beliefs;... 	<ul style="list-style-type: none"> ▪ The handbook does not advise detainees of their “right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage, and harassment” or their “right of freedom from discrimination based on race, religion, national origin, sex, handicap, or political beliefs.” (p.23 ¶4) 	BCP Inmate Handbook	
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