

March 16, 2003

To: Anthony S. Tangeman, Deputy Executive Associate Commissioner
Office of Detention and Removal

From: American Bar Association Delegation To the Franklin County Jail and House of Corrections

Subject: Franklin County Jail and House of Corrections, Greenfield, Massachusetts, with INS Detention Standards

I. Introduction

This memorandum summarizes and evaluates information gathered at the Franklin County Jail and House of Correction, Greenfield, Massachusetts (“Greenfield facility”), through interviews of detainees, observation by delegation participants, and discussions with Immigration and Naturalization Service (INS) and Greenfield facility personnel on the January 14, 2002 visit.

The INS promulgated the “*INS Detention Standards*” in November 2000 to insure the “safe, secure and humane treatment of individuals detained by the INS.”¹ The thirty-six *Standards* contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures and food service. These standards apply to INS Service Processing Centers (“S.P.C.”), Contract Detention Facilities (“C.D.F.”), and state and local government facilities used by the INS through Intergovernmental Service Agreements (“I.G.S.A.”). The Detention Standards went into effect at INS S.P.C.s on January 1, 2001. The INS *Standards* constitute a “floor” not a “ceiling” for treatment of INS detainees. In other words, they are meant to establish the minimal requirements that INS must adhere to in its facilities. Each District Office or Officer in Charge ("OIC") may, in his or her discretion, promulgate policies and practices affording INS detainees more enhanced rights and protections than those provided for by the *Standards*.

This memorandum discusses the implementation of the *Detention Standards* of *INS Detention Operations Manual*. The memo focuses on select portions of the *Standards* of particular importance to the American Bar Association (“ABA”) Commission on Immigration Policy, Practice and Pro Bono in purpose of evaluating INS’ stated goal to insure the “safe, secure, and humane treatment” of INS detainees. In particular, this memo focuses on INS facility compliance with the following *Standards* of the *Detention Operations Manual*: (1) Visitation, (2) Telephone Access; (3) Legal Materials; and (4) Group Rights Presentations.

¹ INS Detention Operation Manual Standards, <http://www.ins.usdoj.gov/graphics/lawsregs/visit.pdf>.

II. The Greenfield Facility

The Greenfield facility is an I.G.S.A. detention facility currently housing 28 INS detainees from various nations. The facility holds a maximum of 40 INS detainees.² The facility is located in an old brick building in the remote county of Franklin, Massachusetts, making outsider access to the facility logistically difficult. Detainees held at this facility are all considered to be level three, which means it is medium security due to detainee's criminal background.³ As the facility is located approximately three hours from Boston where the INS Intake and Processing Center is located, most detainees at this facility are long-term detainees, meaning detainees are at the facility for an average of nine months.⁴

III. Observation of Implementation of Legal Access Standards

A. Visitation

The *Standards* provide that facilities should allow detainees to meet privately with their current or prospective legal representatives and legal assistants and to meet with their consular officials.⁵ The policy concerning legal service visitation is also outlined in the Inmate Handbook.⁶ The *Standards* provide that facilities should permit authorized persons to visit detainees within security and operational constraints. To maintain detainee morale and family relationships, INS encourages visits from family and friends. Additionally, facilities should permit members of the media and non-governmental organizations to have access to non-classified and non-confidential information about the facility's operation.

1. Legal Visitation

Attorneys are allowed to visit seven days a week at the Greenfield facility. The delegation observed an attorney in a meeting room with a client. The attorney visitation hours were from 8:00 a.m. to 10:00 p.m. daily.⁷ A detainee will not be forced to conclude an attorney-detainee interview for routine scheduled events such as lunch. If an attorney visitation runs into the scheduled lunch hour, the detainee will be delivered his or her lunch. In addition, legal visitations will not be interrupted for routine counts. Detainees are not strip searched after an attorney visit.⁸ There is no option for a non-contact visit.⁹ There are three meeting/visitation rooms at the Greenfield facility but only one is private. Only one room has the ability to be completely private because it has clear soundproof surroundings.¹⁰ The other two rooms are just regular small rooms. These rooms are subject to certain security measures that might make the visitation less private. All rooms allow for open contact visits. There is potential conflict in

² Ms. [REDACTED] b6 notes.

³ Id.

⁴ Conversation with INS officer [REDACTED] b6, b7C

⁵ INS Detention Operation Manual Standards, Standard 1.

⁶ The Greenfield Facility does not have a Detainee Handbook, only an Inmate Handbook.

⁷ Mr. [REDACTED] b6 notes.

⁸ Mr. [REDACTED] b6 notes.

⁹ Id.

¹⁰ Conversation with Deputy Superintendent [REDACTED] b6, b7C

scheduling the one private room.¹¹ Legal assistants are permitted to visit the detainees unaccompanied by their supervising attorney. Interpreters are also allowed to visit but must be accompanied by an attorney.¹²

2. Visitation by Family, Friends and the Media

The Inmate Handbook indicates that family visitation hours are Thursday's and Saturdays from 1:00 p.m. to 4:00 p.m. Although, there were no signs posted anywhere in the Greenfield facility announcing detainee visiting hours, all detainees interviewed were aware of visitation hours.¹³ Each detainee is allowed to have up to five visitors each visit, although larger groups can be accommodated if pre-requested. If the regular visiting hours are a hardship for family members, arrangements can be made for other suitable visiting hours. The visiting room's layout is a large hall composed of floor mats and chairs. Visitors sit across from detainees allowing for a contact and open visit.

B. Telephone Access

The *Standards* provide that facilities shall permit detainees to have reasonable and equitable access to telephones. The calls to attorneys and legal services shall be free and no less than 20 minutes.¹⁴

Three telephones are located in the housing block holding the INS detainees and are generally available throughout the day. There is only one housing block holding detainees. However, the phones are available only for collect calls made from the facility. There are no phones or procedures to make free calls to anyone. This creates a problem for the detainees because the fees for collect calls are so high and attorneys and legal services providers do not want to accept these calls.¹⁵ The result is that the only way the attorneys can communicate with the detainees is through calling the facility and leaving a message or by letter. The facility has a contract with Evercom to provide telephone access to inmates and detainees. Calls from attorneys and/or family members are relayed through the Superintendent's office.¹⁶ It is uncertain if all calls are actually delivered and if they are delivered on a timely basis.¹⁷ Where family members may be abroad, and therefore not subject to United States collect calling,¹⁸ arrangements may be made between the family member and Evercom to place such calls.¹⁹

¹¹ Mr. [REDACTED] b6 [REDACTED] notes.

¹² Id.

¹³ The detainees interviewed were [REDACTED] b6, b7C [REDACTED] from Sri Lanka, [REDACTED] b6, b7C [REDACTED] from Ukraine, [REDACTED] b6, b7C [REDACTED] from Brazil and [REDACTED] b6, b7C [REDACTED] from Cuba.

¹⁴ INS Detention Operation Manual Standards, Standard 2.

¹⁵ Interviews with detainees.

¹⁶ Conversation with Deputy Superintendent.

¹⁷ The Deputy Superintendent made a few comments of the nature that they do the best they can but he tries to accept messages only in cases of emergency. He did not say explicitly that he does not take other messages, however he did say that he tries to limit this way of communication.

¹⁸ Conversation with Deputy Superintendent. These arrangements do not seem to be very useful and not widely used at all. It is still very expense for people living in other countries and the process of calling Evercom's customer service and requesting that this be done seems to be inefficient and difficult.

There is a 15-minute limit on all calls.¹⁹ The detainees are not provided a notice of telephone privileges, nor are they provided a list of free legal services, court telephone numbers, or consular telephone numbers.²⁰ Incidentally, the facility does not notify consulates when detainees arrive.²¹ However, as this is an IGSA facility, INS may notify the consulates upon intake of the detainees.²² The Facility has no plan to implement a phone system in accordance with the *Standards*.²³

C. Legal Materials

The *Standards* mandate the designation of a law library in each INS facility.²⁴ Each library must be large enough to facilitate detainee research and writing in a well lit and reasonably quiet area. In addition to size, each library facility must have an adequate number of tables and chairs, in order to provide access to all detainees who request to use the library. It must also provide materials, equipment and library holdings sufficient to enable detainees to research and prepare legal documents.

The law library at the Greenfield Facility meets most of the requirements set out by the *Standards*. The library is small and very cold and is unable to accommodate the current number of detainees.²⁵ The *Standards* require all law libraries to hold the legal materials contained in Attachment A-2 of the *Access to Legal Materials* chapter of the *Detention Operations Manual*.²⁶ 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. In addition, the *Standards* require that the facility post a list of holdings in the law library and designate an employee with responsibility for updating the materials, inspecting them weekly and maintaining them in good order.²⁷

The library is missing a few materials on the list but most of the materials are present. However, some of these materials have not been updated since 1994 and some since 1999 or 2000. The facility is currently transitioning from hard copies of publications to having them available on the internet but is encountering some problems. Presently detainees are not able to access current legal materials. It is not clear if this problem is internal or external. Once the Internet is accessible, the facility plans on having all legal materials available online. Currently, there is no updated immigration law, including the USA Patriot Act and all of the recent changes

¹⁹ Conversation with Deputy Superintendent. Apparently this is monitored by Evercom, since after 15 minutes the phone call is automatically ended.

²⁰ Mr. [REDACTED] b6 notes. INS officer explained that since this is a IGSA facility, detainees receive information regarding legal services during the booking procedures in the INS District Offices.

²¹ Mr. [REDACTED] b6 notes.

²² Mr. [REDACTED] b6 notes.

²³ According to Deputy Superintendent, changing the phone plan to accommodate detainees is a high cost and he expressed a lot of doubt.

²⁴ INS Detention Operation Manual Standards, Standard 4.

²⁵ However, many detainees expressed that they can go to the library anytime and there is not a lot of crowding, however this appears to be because many do not use the library. The problem would be if there was ever a group rights presentation, which many detainees say has not ever happened.

²⁶ Id.

²⁷ Id.

in this field of law.²⁸ There is no instruction given on how to use the library. The two computers and typewriters available can be accessed anytime by detainees in order to write their legal documents. In the Library, there is no photocopy machine available. All copies have to be made through the Deputy Superintendent by the submission of a request slip and are generally free depending on the regularity of the copying, the size and if it is legal materials.

The *Standards* mandate that each facility devise a flexible schedule in order to permit all detainees' use of the law library for a minimum of five hours per week. These five hours cannot cause a detainee to miss a meal, recreation time or any other planned activity. The Greenfield facility allows detainees to go to the library anytime during the day from 6 a.m. until 9 p.m.. All a detainee has to do is ask an officer and he will be allowed to go the library.²⁹ However, some of the detainees interviewed said that they only had three hours per day.³⁰

The *Standards* mandate that an adequate number of typewriters and/or computers, carbon paper, writing implements, writing tablets and non-toxic liquid paper be available for use by the detainees.³¹ The law library has two computers and a typewriter and does not conform to the *Standards* since it requires that a computer or typewriter be provided per five detainees.³² Detainees are provided with free paper.³³ A detainee has indirect access to photocopying equipment via an officer.³⁴ The process, although relatively simple is arbitrary and some of the detainees interviewed allege that they have been ignored when requesting copies of legal materials. It is questionable whether the Greenfield facility law library provides its detainees with access to the equipment necessary to draft and produce legal documents. Some detainees interviewed stated that it really depends on the officer on duty.

D. Group Rights Presentations

The *Standards* provide that facilities 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 a detention facility. All facilities must cooperate fully with authorized persons seeking to make such presentations. The area for a group rights presentation is the library, which is too small to hold all of the detainees at one time since the library comfortably holds only about twenty detainees.³⁵ Moreover, detainees interviewed indicated that they were not aware that any had been offered.³⁶

²⁸ Ms. [REDACTED] b6 notes.

²⁹ Conversation with Deputy Superintendent.

³⁰ Interview with [REDACTED] b6, b7C

³¹ INS Detention Operation Manual Standards, Standard 4.

³² Id.

³³ Usually detainees are provided with whatever amount of paper requested. Conversation with Deputy Superintendent.

³⁴ Interviews with detainees.

³⁵ Conversation with Deputy Superintendent.

³⁶ Interviews with detainees. The detainees interviewed stated that they don't sign up for group presentations because they don't usually know about them until it is all booked. They also stated that these presentations seem to all be for the inmates in the jail and access is usually given to the inmates first. The presentations are on a regular basis and it is not clear who organizes these presentations.

IV. Other General Observations Unrelated to the Legal Access Standards

A. Recreation

The *Standards* require that “all facilities shall provide INS detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”³⁷ Every effort is to be made to provide outdoor recreation facilities, but lacking such, the recreation room should be large, with exercise equipment and having access to sunlight. The Greenfield facility’s recreation areas consist of two areas: one indoor and one “outdoor.” The indoor recreation area consisted of the library as well as the gym. The gym has some fitness equipment as well as a reasonable open area with a basketball hoop. The extent of a detainee’s access to the outdoors is limited to a caged-in room with a mesh-wire ceiling exposing the sky and allowing fresh air. The fencing is present for security reasons. The outdoor recreation area is limited to spring, summer and fall and is weather permitting.³⁸

- Detainees at the Greenfield facility are allowed one hour per day to recreate
- Different training classes are offered everyday in English.³⁹ However, all detainees interviewed made evident that although they are aware of the classes, these classes, with the one exception of Alcoholics Anonymous, are not accessible to Immigration detainees.⁴⁰

B. Medical Issues

The *Standards* provide that “All detainees shall have access to medical services that promote detainee health and general well being. Medical facilities in ...contract detention facilities will maintain current accreditation by the National Commission on Correctional Health Care.⁴¹ Each facility is also to have regularly scheduled times, known as sick call, when medical personnel will be available to see detainees who have requested medical services. For a facility of over 200 detainees, a minimum of five days per week is required.⁴² The INS policy with respect to emergency care states, “if a detainee requires emergency medical care, the officer will immediately take steps to contact a health care provider through established procedures.⁴³”

- All detainees interviewed agree that although they have not ever been denied health care, they are often ignored or the length of time waiting for care is inadequate⁴⁴.

³⁷ INS Detention Operations Manual Standards, Standard 27.

³⁸ Interviews with detainees.

³⁹ Detainees are not able to attend these classes because they are not for non English speakers or ESL speakers.

⁴⁰ Interview with [REDACTED] b6, b7C

⁴¹ INS Detention Operations Manual Standards, Standard 24.

⁴² Id.

⁴³ Id.

⁴⁴ Interviews with all four detainees. All stated that they are often ignored when they place a request to seek medical attention. [REDACTED] b6, b7C stated that he has been there for 6 months and his roommate has placed many requests and after a few months was finally seen by the doctor.

- Detainees are not screened for H.I.V. unless there are visible indicators or at their request. Detainees with H.I.V. are not segregated from the rest of the population unless it is medically necessary for the detainees' health or protection.⁴⁵

C. Religious Issues

The *Standards* provide that detainees of different religious beliefs will be provided reasonable and equitable opportunities to participate in the practices of their respective faiths. These opportunities must exist equally regardless of the number of practitioners of the religion or whether the religion is “mainstream” or not.⁴⁶

- Detainees have access to religious services and articles such as crosses and rugs, as required under the *Standards*.
- A detainee is not always able to get special dietary needs.⁴⁷ Muslims are not given pork and detainees with diabetes are given a special diet. However, vegetarians or other special need diets are not accommodated.⁴⁸ One of the detainees interviewed could not eat beef, due to his religious beliefs, which makes up a large percentage of meals served, and he was not provided with an alternative.⁴⁹ Other detainees confirmed this problem.⁵⁰

VI. General Observations

- Detainees are segregated upon arrival until orientation, which occurs every Wednesday morning.⁵¹ Therefore, a detainee may be segregated for as long as a week until they can undergo the orientation. During the orientation process detainees are informed of all of the rules of the facility and are given a tour.⁵²
- The facility does not provide any information to detainees about lawyers or free legal assistance.⁵³
- If a detainee has a grievance, he can get a grievance form from an officer, submit it to the grievance officer, who will make a decision.⁵⁴ This decision can be appealed to the superintendent in writing.⁵⁵ Some detainees report 24 hours lock down as a punishment for voicing a grievance.⁵⁶

⁴⁵ Interview with [REDACTED] b6, b7C, Deputy Superintendent.

⁴⁶ INS Detention Operations Manual Standards, Standard 28.

⁴⁷ Interview with [REDACTED] b6, b7C

⁴⁸ Id.

⁴⁹ Id.

⁵⁰ Interview with [REDACTED] b6, b7C

⁵¹ Conversation with Deputy Superintendent.

⁵² Id.

⁵³ Id. As explained earlier, this is given to detainees by the INS District Office before they arrive at the facility.

⁵⁴ This is all of the information available to us. Inmate Handbook, section 16 and from a conversation with the Deputy Superintendent.

⁵⁵ Ms. [REDACTED] b6 notes.

⁵⁶ Interview with [REDACTED] b6, b7C

- There is no daily INS presence on site but the Superintendent is in charge of all of the detainees. If a detainee requests to speak with an INS officer, the Superintendent makes a call and one will be sent out. Also, once every couple of weeks, an INS officer is present at the facility.⁵⁷

Conclusion

The most pertinent problem in the Greenfield Facility is the lack of legal resources available to detainees. The legal materials are outdated and detainees have no access to group rights presentations. Additionally, the phone system is problematic since detainees can only make collect calls. We are told that most attorneys and legal services do not want to accept these collect calls due to the unreasonably high prices. There are no posted lists of legal services or pro bono attorneys anywhere in the facility. Such lists should be posted and made available in different languages to detainees upon arrival at the facility. In addition, the Greenfield facility is located in a remote area hours away from Boston where most law schools and legal services can be found.

⁵⁷ Interview with Deputy Superintendent, [REDACTED] b6, b7C