

MORRISON & FOERSTER LLP

MEMORANDUM

TO: [REDACTED], Esq.

FROM: American Bar Association Delegation to  
Kern County Jail<sup>1</sup>

DATE: October 17, 2002

FILE: 80182-6

RE: INS Compliance with Detention Standards at the Lerdo, California Facility

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This memorandum summarizes information gathered at the Immigration and Naturalization Service (INS) facility located at Kern County Jail, Lerdo, California (Bakersfield) ("Lerdo Facility"), through interviews of detainees, observation by delegation staff, and discussions with INS and Lerdo Facility personnel on August 13, 2002.

The Lerdo Facility is a county detention facility used by the INS through an Intergovernmental Service Agreement ("IGSA"). As an IGSA facility, the Lerdo Facility's required compliance with *INS Detention Standards*<sup>2</sup> is somewhat limited. While Service Processing Centers ("SPCs") and Contract Detention Facilities ("CDFs") are required to comply with all standards and procedures listed in the *INS Detention Standards*, IGSA facilities are only required to fully comply with those parts of the standards made explicitly applicable to them.<sup>3</sup> As to procedures that are mandatory only for SPCs and CDFs, IGSA facilities "may adopt, adapt or establish alternatives to, the procedures specified for SPCs/CDFs, provided they meet or exceed the objective represented by each standard."<sup>4</sup> Keeping this context in mind, this memorandum discusses the Lerdo Facility's compliance with the *INS Detention Standards*, with particular focus on the following standards: (1) Detainee Handbooks; (2) Visitor Access; (3) Telephone Access; (4) Legal Materials; (5) Group Rights Presentations; (6) Recreation; (7) Medical Issues;

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<sup>1</sup> The delegation was comprised of Morrison & Foerster associates [REDACTED] and [REDACTED], and 2002 summer associates [REDACTED], [REDACTED], and [REDACTED]. [REDACTED], a Director of Public Affairs with the INS, was also present during the tour.

<sup>2</sup> The *INS Detention Standards* are contained in the INS Detention Operations Manual, which may be found at <<http://www.ins.gov/graphics/lawsregs/guidance.htm>> (visited 8/7/02). All *INS Detention Standards* cited hereafter were obtained from this website.

<sup>3</sup> See individual *INS Detention Standards*. IGSA facilities must comply with all standards and procedures *other than* those procedures listed in italics.

<sup>4</sup> Id.

(8) Religious Issues; and (9) Disciplinary Issues.<sup>5</sup> Unless otherwise noted, the mentioned *INS Detention Standards (Standards)* apply with full force to IGSA facilities.

**I. General Information.**

As of the time of our visit, on August 13, 2002, the Lerdo Facility housed 184 INS detainees<sup>6</sup> from various nations. Of these, 175 were male and nine were female. We were told that all but two of the INS detainees were criminal aliens. The detainees originated mostly from China, Vietnam and various Spanish-speaking countries. The average length of stay was represented to us as three months, but many detainees reported staying there much longer.<sup>7</sup> Due to the Lerdo Facility's distance from immigration courts, the detainees at this facility are supposed to be awaiting their "travel documents" after receiving final judicial and/or administrative orders.<sup>8</sup>

The female detainees are housed with county inmates. The male detainees, however, are housed with other male federal inmates in a housing unit that is separate from the housing units containing county inmates. The federal male housing unit is comprised of six "pods," each of which houses approximately 30 inmates/detainees.

The INS presence at the Lerdo Facility is minimal. There is no daily presence, and there are no regularly scheduled INS staff visits. The only procedure available for detainees to contact the INS is through a request slip that is to be filled out and given to a guard. The INS has an office for the purpose of meeting with detainees who request a meeting, but detainees complained that their requests for a meeting and/or information were routinely ignored.<sup>9</sup>

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<sup>5</sup> Except where otherwise indicated, the information contained in this memorandum was obtained during interviews with the following members of the Kern County Sheriff's Department: Commander [REDACTED], Senior Detention Officer [REDACTED], and [REDACTED], a member of the facility's Compliance Unit.

<sup>6</sup> The facility had a total population of 1166.

<sup>7</sup> [REDACTED] reported that although he was supposed to be detained for only 90 days, he has been at the facility for about eight months without receiving any new information from the INS regarding his status. [REDACTED] reported having received deportation papers in October of 1999, yet remained detained as of our visit. Moreover, [REDACTED] reported being detained since August of 2001, and [REDACTED] and [REDACTED] reported being detained since November of 2001.

<sup>8</sup> Source: [REDACTED]. It should be noted that many detainees did not seem to know their status, so it was impossible to confirm whether their hearings had been completed.

<sup>9</sup> [REDACTED] and [REDACTED] interviews.

**II. Detainee Handbook.**

The *Standards* require that each facility "develop a detainee handbook,"<sup>10</sup> which must be "written in English and translated into Spanish and, if appropriate, into the next most-prevalent language(s) among the facility's detainees."<sup>11</sup>

The Lerdo Facility detainees do not receive a comprehensive handbook upon their arrival at the facility. Instead, they receive an "Inmate Orientation" pamphlet,<sup>12</sup> which is also posted in the indoor recreation area of their housing unit. This pamphlet is only available in English, although we were told that a Spanish version is in development. We were also told that an "orientation" video is shown to the detainees upon their arrival and that the same video is played in the housing area televisions every morning -- although one detainee reported the video is only shown "once in a while."<sup>13</sup>

While the use of a video is helpful, especially if it thoroughly describes the detainee's rights and the facility's rules and procedures, the *Standards* explicitly provide that "the comprehensiveness of the video has no bearing on the development, production, or distribution of the detainee handbook."<sup>14</sup> The Lerdo Facility's failure to provide detainees with a comprehensive handbook creates the risk that they may violate rules that are not contained or adequately described in the "Inmate Orientation" pamphlet, as well as creating a situation where the detainees are not aware of their rights.

**III. Visitation and Access to Legal Representatives.**

**A. Visitation by Attorneys and Professionals.**

The *Standards* provide that facilities "shall allow detainees to meet privately with their current or prospective legal representatives and legal assistants, and also with their consular officials."<sup>15</sup>

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<sup>10</sup> Detention Operations Manual, Detainee Services: Detainee Handbook, Section III.A. A copy of the sample handbook provided by the Detention Operations Manual, which is to, at a minimum, "provide IGSA facilities with useful guidance," is attached hereto as Exhibit A.

<sup>11</sup> Detention Operations Manual, Detainee Services: Detainee Handbook, Section III.E. The handbook must, among other things: (a) describe individual programs and services and associated rules, (b) specify the rules, regulations, policies, and procedures with which every detainee must comply, (c) list detainee rights and responsibilities, and (d) list and classify prohibited actions/behavior, along with disciplinary procedures.

<sup>12</sup> This pamphlet is attached hereto as Exhibit B. It should be noted that some of the detainees we interviewed stated that they never received a copy of the pamphlet upon their arrival at the Lerdo Facility. Interviews with [REDACTED], [REDACTED] and [REDACTED].

<sup>13</sup> [REDACTED] interview.

<sup>14</sup> Detention Operations Manual, Detainee Services: Detainee Handbook, Section III.F.

<sup>15</sup> Detention Operations Manual, Detainee Services: Visitation, Section I.

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Regarding access to counsel, the “Inmate Orientation” pamphlet provides: “Attorneys and their legal representatives shall have unlimited visitation. Every effort will be made to allow Attorney visits at any time and in a timely manner.”<sup>16</sup> According to Lerdo Facility personnel, attorneys and legal professionals are allowed to visit 24 hours a day, seven days a week.

If an attorney calls ahead to determine if a detainee is at the Lerdo Facility, whichever staff member answers the phone can provide the answer by looking up the information for a specific detainee. The INS is also supposed to have access to this information, but the Lerdo Facility personnel agreed that it would be faster to locate a detainee through the facility’s information system.

Attorneys are required to present bar admission cards and pass a metal detector test to gain access to the facility. If the attorney does not bring his or her “bar card,” the visit is considered a “public visit” and treated in the same manner as a visit by a family member or friend.<sup>17</sup> Other “legal professionals” such as law students, law graduates, accredited representatives, legal assistants, interpreters, psychologists, medical service providers, and experts may also make legal visits to the detainees. These “legal professionals” must present photo identification and a letter of authorization from a supervising attorney to gain entry to the facility.

There is one contact attorney booth and one paper slot attorney/legal professional booth per housing unit. While these are enclosed booths providing for privacy of conversation, the booths are clearly visible from the officer control center. The Lerdo Facility personnel informed us that while it is standard procedure to strip search a detainee after attorney/legal professional visits,<sup>18</sup> the strip search is really discretionary depending on the circumstances. If detainees wish to avoid a strip search, they may opt for a non-contact visit. In this regard, the *INS Detention Standards* provide that where standard procedures require strip searches after contact visits with legal representatives (as is the case at the Lerdo Facility), the facility “must provide an option for non-contact visits with legal representatives in an environment that allows confidentiality.”<sup>19</sup> The only non-contact visit facilities we observed were the areas for standard family and friend visitation, which do not allow for any assurance of confidentiality absent exclusion of all other detainee visitation while the legal visit is occurring (see below). Thus, unless Lerdo Facility

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<sup>16</sup> See Exhibit B.

<sup>17</sup> See *infra*, pages 5 to 6 for our discussion of family and friend visitation.

<sup>18</sup> It is worth noting that while the *INS Detention Standards* permit for this to be the standard procedure for IGSA facilities, SPCs and CDFs “should normally subject detainees returning from legal visitation to pat-down searches. Officers may, however, strip-search a detainee reasonably suspected of concealing contraband of any kind.” Detention Operations Manual, Detainee Services: Visitation, Section III.I.11.

<sup>19</sup> Id.

personnel allow the exclusive use of this area for non-contact legal visits, the facility is not in compliance with this *Standard*.<sup>20</sup>

The Lerdo Facility also appears to be in violation of the *Standards* governing notification of consular protection. The *Standards* state that "[a]ccording to international agreements, detainees must be advised of their right to consular access" and that detainees must be "notified of and afforded the right to contact and receive visits from their consular officers," which visits are to be handled the same way as legal visits.<sup>21</sup> There is no notice of this right in the "Inmate Orientation" pamphlet,<sup>22</sup> nor was this information in any posted sign.

Other than with respect to the last two issues discussed, the Lerdo Facility appears to be in compliance with the *Standards* governing legal and professional visitation.

### **B. Visitation by Family and Friends.**

The *Standards* provide that facilities "shall permit authorized persons to visit detainees, within security and operational constraints. To maintain detainee morale and family relationships, the INS encourages visits from family and friends."<sup>23</sup> Furthermore, to better inform the public about INS detention operations, facilities shall permit representatives of the news media and non-governmental organizations to have access to non-classified and non-confidential information about their operation."<sup>24</sup> Each facility must "establish a visiting schedule based on detainee population and the demand for visits."<sup>25</sup> Friends and family visits "shall be permitted during set hours on Saturdays, Sundays and holidays," although "some or all detainees may be limited to visiting on Saturday or on Sunday" in order to "accommodate the volume of visitors."<sup>26</sup> The minimum time limit for a visit shall be thirty minutes under normal conditions, but the "INS encourages more generous time limits when possible, especially for family members travelling significant distances to visit."<sup>27</sup>

The Lerdo Facility appears to comply with the minimum *Standards* governing visitation by friends and family, except perhaps with respect to visitation among family members housed at the same facility and the *Standards*' requirement that all detainees be allowed to receive visitors

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<sup>20</sup> It appears that no one in our delegation inquired as to whether the Lerdo Facility staff allows exclusive use of the non-contact visiting area for legal visitation.

<sup>21</sup> Detention Operations Manual, Detainee Services: Visitation, Section III.K.

<sup>22</sup> See Exhibit B.

<sup>23</sup> Id. at Section I.

<sup>24</sup> Id.

<sup>25</sup> Id. at Section III.H.1.

<sup>26</sup> Id.

<sup>27</sup> Id.

at least one day (Saturday or Sunday) each weekend. Regarding public visiting hours, the Lerdo Facility "Inmate Orientation" pamphlet provides:

Visiting is from 12:00 P.M. to 2:30 P.M. and from 6:00 P.M. to 8:30 P.M.. Inmates are allowed (2) thirty minute visits per week. The visiting week will begin on Saturday and end on Friday. Inmates with the last name beginning with "A" through "F" will visit on *Tuesdays* and *Fridays*. Inmates with the last name beginning with "G" through "M" will visit on *Wednesdays* and *Saturdays*. Inmates with the last name beginning with "N" through "Z" will visit *Thursdays* and *Sundays*. (emphasis added)<sup>28</sup>

We were told, however, that if normal visiting hours are a hardship for family members, a request for special visiting arrangements can be coordinated through the shift supervisor. It is unclear whether the detainees are aware of this option.<sup>29</sup>

Any member of the general public is allowed to visit a detainee, including immediate family, other relatives, friends and associates. However, the maximum number of people allowed per visit is two adults and two minors,<sup>30</sup> although "babies don't count." Family members detained in the Lerdo Facility are not typically allowed to visit each other -- only in "very rare occurrences" such as where a detainee has extreme mental health problems or when a death is involved will the staff allow a supervised visit for immediate family members detained at the Lerdo Facility.

In the visiting room, detainees are separated from visitors by a clear window, and they communicate via telephone. Visitors are separated from other visitors by short partitions (approximately 12 inches wide), but the close proximity of the seats (they are spaced approximately four feet apart) and lack of full partitioning precludes any privacy of conversation. Private and/or contact personal visits are not permitted at the Lerdo Facility.

### C. Incoming Property and Money for Detainees.

The *Standards* provide that each "facility shall have written procedures regarding incoming property and money for detainees. ... The visitor will receive a receipt for all money or property left at the facility."<sup>31</sup> At SPCs and CDFs, detainees may receive "minimal amounts of personal property," including small religious items, soft cover reading materials, up to 10

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<sup>28</sup> See Exhibit B.

<sup>29</sup> This "policy" is not disclosed in the "Inmate Orientation" pamphlet, see Exhibit B, nor the informational pamphlet given to visitors of the Lerdo Facility (a copy of which is attached hereto as Exhibit C). Furthermore, detainees are apparently not verbally informed of this option. See July 21, 2002 Letter from b6, b7C *et. al.*, attached hereto as Exhibit D, at paragraph 13.

<sup>30</sup> Minors must be accompanied by an adult.

<sup>31</sup> Detention Operations Manual, Detainee Services: Visitation, Section III.D.

pictures no larger than 5"x7", correspondence, and wedding rings.<sup>32</sup> All facilities must allow detainees to receive "legal documents and papers" and a "[p]ersonal address book or pages."<sup>33</sup>

At the Lerdo Facility, visitors can leave money for a detainee's account, and money orders may also be wired directly to the facility. However, it does not appear that any items other than legal documents or basic correspondence (from anyone other than another Lerdo Facility detainee/inmate)<sup>34</sup> may be sent to detainees or left by visitors, even though the visitor information pamphlet states that individuals may bring books or periodicals to inmates with the approval of the "facility manager."<sup>35</sup> Our discussion of personal items, *infra*, details our concerns with respect to the personal items allowed to be kept by detainees.<sup>36</sup>

#### IV. Telephone Access.

The *Standards* provide that facilities shall permit detainees to "have reasonable and equitable access to telephones."<sup>37</sup> Facilities "shall provide telephone access rules in writing to each detainee upon admittance, and shall post these rules where detainees may easily see them."<sup>38</sup>

The number of phones (two per pod), are adequate in number.<sup>39</sup> The detainees report that these are sufficient and that they normally do not have to wait in line to use the phones. However, the inmates are not sufficiently informed of the telephone access rules and procedures. The "Inmate Orientation" pamphlet given to detainees at the Lerdo Facility merely states that detainees "not on disciplinary isolation will be allowed reasonable access to collect call only telephones."<sup>40</sup> Furthermore, the only information posted by the phones is a list of the cost to make calls, and a number to call if family members encounter problems with calls.

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<sup>32</sup> Id.

<sup>33</sup> Id.

<sup>34</sup> The "Inmate Orientation" pamphlet, which is attached hereto as Exhibit B, provides:

To ensure the maintenance of important ties with families, friends, attorneys and the community, inmates are allowed to send or receive an unlimited amount of mail to or from any person, except other inmates of the Kern County Sheriff, including magazines, periodicals & newspapers directly from the publisher. This does not include pornographic materials...

<sup>35</sup> See Exhibit C.

<sup>36</sup> See pages 33 to 35.

<sup>37</sup> Detention Operations Manual, Detainee Services: Telephone Access, Section I.

<sup>38</sup> Id. at Section III.B.

<sup>39</sup> There are approximately 30 detainees housed in each pod, and the INS requires at least one telephone for every 25 detainees. See id. at Section III.C.

<sup>40</sup> See Exhibit B.

**A. Direct Calls and Free Calls.**

The *Standards* provide that "[e]ven if telephone access is generally limited to collect calls, the facility shall permit the detainee to make direct calls" related to their legal status, legal proceedings, or personal or family emergencies.<sup>41</sup> Furthermore, every facility "shall enable all detainees to make calls to the INS-provided list of free legal service providers and consulates at no charge to the detainee or the receiving party."<sup>42</sup> Moreover, while detainees in SPCs and CDFs are the only ones that must be allowed to make "direct calls by use of debit card," the "INS encourages and will work with IGSA facilities toward adopting similar procedures."<sup>43</sup>

When a Lerdo Facility detainee picks up the phone to make a call, an automated voice prompts him or her to choose instructions in English or Spanish. The option to choose Spanish, however, is spoken only in English. Voice-prompted instructions are not available in any other language. The only sign posted near the phones was a chart explaining the cost of phone calls, either using a pre-paid debit card or calling collect:

<u>Phone Rates</u>	<u>Pre-Paid</u>	<u>Collect</u>
Local (0-12 minutes)		
1 <sup>st</sup> minute	2.42	2.59
10 minute call	3.14	3.40
Local Toll		
1 <sup>st</sup> minute	2.47	2.64
10 minute call	3.64	3.90
Long Distance (within CA)		
1 <sup>st</sup> minute	3.35	3.59
10 minute call	8.30	8.90
Long Distance (outside CA)		
1 <sup>st</sup> minute	4.24	4.54
10 minute call	9.19	9.85
International		
1 <sup>st</sup> minute	1.60	N/A
10 minute call	16.00	N/A

The sign is posted above each phone, in English only. The sign also indicates that inmate families and friends with blocked numbers or billing problems should call (800) 844-6591.<sup>44</sup>

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<sup>41</sup> See Detention Operations Manual, Detainee Services: Telephone Access, Section III.E.

<sup>42</sup> Id.

<sup>43</sup> Id.

<sup>44</sup> When we tried dialing this toll-free number from the facility's phone, we discovered the system would not connect a collect call to an "800" number.

Despite the unavailability of collect rates for international calls, we were told that these are available.<sup>45</sup>

Despite the listing of prices for pre-paid calls, we were informed that the Lerdo Facility stopped selling pre-paid debit phone cards at the end of 2001. Thus, detainees may not call any phone number that is answered by an answering machine or automated service, or at which the person answering refuses to accept a collect call. The Lerdo Facility personnel explained that they discontinued the pre-paid debit card program because the cards were not profitable enough for the commissary. Detainees reported to us that they now keep their phone calls short or do not call their families because the collect calls cost too much<sup>46</sup> or certain family members won't accept collect calls.<sup>47</sup>

The Lerdo Facility staff members we spoke with were not familiar with the telephone guidelines for pre-programmed technology. We were told that the detainees were given a list of pro bono legal service providers<sup>48</sup> upon their arrival at the Lerdo Facility, but several detainees we spoke with stated they had never seen the list before.<sup>49</sup> The Lerdo Facility has a pre-programmed speed dial system for the pro bono services on the list, but there are no signs indicating how to call these toll free numbers. In fact, neither Commander [b6, b7C] nor the other officers we spoke with knew how to dial the free pro bono numbers. After making some phone calls, Commander [b6, b7C] found out how to dial the numbers (which requires a series of access codes and a pre-programmed speed dial code not included in the list of pro bono legal service providers) and assured us that the facility would post these pro bono dialing instructions next to the phones as soon as possible. He reported that signs posted next to the phones get torn down, however, such that he did not know how to post signs in a way that would not result in the detainees/inmates tearing them down.

Once we had the access codes, our attempt to dial a pre-programmed pro bono service was successful; however, the pro bono service was answered by an answering machine and would not accept the call. The pre-programmed call seemed to operate much like a collect call.

## B. Telephone Privileges in the Special Management Unit.

The *Standards* provide that facilities "shall permit detainees in the Special Management Unit for disciplinary reasons to make direct and/or free calls" as allowed for other detainees, "except under compelling security conditions," which conditions "shall be documented."<sup>50</sup>

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<sup>45</sup> Lerdo Facility staff also reported they are "planning" to post information on international collect calling.

<sup>46</sup> [b6, b7C], [b6, b7C], [b6, b7C], [b6, b7C], [b6, b7C], [b6, b7C] and [b6, b7C]  
[b6, b7C]

<sup>47</sup> [b6, b7C] interview.

<sup>48</sup> The copy given to us is attached hereto as Exhibit E.

<sup>49</sup> [b6, b7C], [b6, b7C], and [b6, b7C] interviews.

<sup>50</sup> Detention Operations Manual, Detainee Services: Telephone Access, Section III.G.

Furthermore, even when calls are restricted, detainees in disciplinary segregation must be allowed calls regarding legal matters, consular/embassy calls, and calls regarding family emergencies.<sup>51</sup>

The "Inmate Orientation" pamphlet given to detainees at the Lerdo Facility states that detainees "*not on disciplinary isolation* will be allowed reasonable access to collect call only telephones" (emphasis added).<sup>52</sup> Thus, it appears that the Lerdo Facility is not in compliance with the above *Standard*.

### C. Incoming Calls.

The *INS Detention Standards* provide that facilities "shall take and deliver telephone messages to detainees as promptly as possible."<sup>53</sup> When facility staff receives an emergency telephone call for a detainee, the caller's name and telephone number will be obtained and given to the detainee as soon as possible."<sup>54</sup>

The Lerdo Facility staff will take phone messages from attorneys and deliver them to detainees, though they report that attorneys call infrequently. On average, the staff takes less than one message per month from an attorney to a detainee. Although it is in violation of the first sentence quoted above, which mandates that "telephone messages" be delivered to detainees without distinguishing between attorney/emergency messages and messages left by other individuals, we were specifically told that the Lerdo Facility staff will not take messages from anyone other than an attorney unless the call is an emergency telephone call related to a death or a severely injured family member who has little chances of surviving (in which case a message is taken and referred immediately to the Chaplain, who will in turn notify the detainee).

### D. Call Monitoring.

The *Standards* require that each facility "have a written policy on the monitoring of detainee telephone calls. If telephone calls are monitored, the facility shall notify detainees in the detainee handbook or equivalent provided upon admission. It shall also place a notice at each monitored telephone stating: (1) that detainee calls are subject to monitoring; and (2) the procedure for obtaining an unmonitored call to a court, legal representative, or for the purposes of obtaining legal representation."<sup>55</sup>

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<sup>51</sup> Detention Operations Manual, Security and Control: Special Management Unit (Disciplinary Segregation), Section III.D.19.

<sup>52</sup> See Exhibit B.

<sup>53</sup> In SPCs and CDFs, "messages shall be delivered to detainees no less than three times a day." Detention Operations Manual, Detainee Services: Telephone Access, Section III.I.

<sup>54</sup> Id.

<sup>55</sup> Id. at Section III.K.

Although Lerdo Facility staff told us that detainee calls are "normally recorded but not monitored," there is no statement complying with the above standard in the "Inmate Orientation" pamphlet.<sup>56</sup> Additionally, while calls to and from attorneys on a pre-approved list are not recorded at all, such is also not disclosed. To add an attorney's phone number to the list, the attorney must contact inmate services or PCS, the facility's telephone service provider.

#### **E. Privacy for Calls.**

The *Standards* require that facilities "ensure for detainees' telephone calls regarding legal matters. For this purpose, the facility shall provide a reasonable number of telephones on which detainees can make such calls without being overheard by officers, other staff or other detainees. Facility staff shall not electronically monitor detainee telephone calls on their legal matters, absent a court order."<sup>57</sup> Furthermore, "[a] detainee's call to a court, a legal representative, or for the purposes of obtaining legal representation will not be aurally monitored absent a court order."<sup>58</sup>

The only telephones available to detainees are located next to each other on one wall of the indoor recreation area. The location of the phones does not permit a detainee to talk privately with someone. A detainee must speak at a fairly loud volume for the person on the other end of the line to hear him or her clearly. Some detainees reported that they wish they had privacy when they spoke on the phone.<sup>59</sup>

Furthermore, as previously mentioned, telephone calls on legal matters are routinely recorded at the Lerdo Facility unless the phone number called is on a special attorney list. The existence of this list is not disclosed in the "Inmate Orientation" pamphlet,<sup>60</sup> the informational pamphlet given to visitors,<sup>61</sup> nor any posted signs. Thus, only detainees lucky enough to have an attorney that somehow knows of the existence of this list will have their legal calls excluded from recording.

#### **F. Inter-facility Telephone Calls.**

The *Standards* provide that "[u]pon a detainee's request, the facility shall make special arrangements permitting the detainee to speak by telephone with an immediate family member detained in another facility."<sup>62</sup>

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<sup>56</sup> See Exhibit B.

<sup>57</sup> Detention Operations Manual, Detainee Services: Telephone Access, Section III.J.

<sup>58</sup> Id. at Section III.K.

<sup>59</sup> [REDACTED], [REDACTED], [REDACTED] and [REDACTED] interviews.

<sup>60</sup> See Exhibit B.

<sup>61</sup> See Exhibit C.

<sup>62</sup> Detention Operations Manual, Detainee Services: Telephone Access, Section III.H.

We did not explore this issue during our visit. However, we believe that the Lerdo Facility is not in compliance with this standard due to: (1) the Lerdo Facility personnel's lack of knowledge of the telephone *Standards*; (2) the fact that this issue is not addressed in the "Inmate Orientation" pamphlet; and (3) the facility's general unwillingness to expand telephone access beyond collect-calling.

**V. Legal Materials / Library.**

The *Standards* require each INS facility to designate and maintain a law library.<sup>63</sup> The library must be spacious enough to accommodate detainee legal research and writing, well-lit, and reasonably quiet.<sup>64</sup> Each library also must have an adequate number of tables and chairs, in order to allow timely access to every detainee who requests to use the library. The library also must provide detainees with materials and equipment sufficient to enable them to perform legal research and prepare legal documents.<sup>65</sup>

The Lerdo Facility designates and maintains a law library. It is well-lit and fairly spacious, however, it is missing a number of required legal materials and the detainees we interviewed indicated that it usually takes two weeks for them to obtain access to the law library after submitting a request. As detailed below, the Lerdo Facility law library appears to meet some, but not all, of the minimum standards set forth in the *Standards*.

**A. Materials Identified in Attachment A-2 of the Standards.**

The *Standards* mandate that law libraries hold the legal materials contained in Attachment A-2<sup>66</sup> of the *Access to Legal Materials* chapter of the *Detention Operations Manual*. These materials are required to be updated regularly, and significant regulatory and statutory changes regarding detention and deportation of aliens must be included in a timely manner. Facilities are also required to post a list of holdings in the law library and designate an employee that is responsible for updating the materials, inspecting them on a weekly basis and maintaining them in good order.<sup>67</sup>

The Lerdo Facility has a full-time librarian who works Monday through Friday, 8:00 a.m. to 4:00 p.m., and a part-time librarian who works Monday through Friday, 4:00 p.m. to 12:00 a.m.. The library is missing a number of required materials. Specifically, the library is missing the following documents:

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<sup>63</sup> See Detention Operations Manual, Detainee Services: Access to Legal Materials, Section I.

<sup>64</sup> Id. at Section III.A.

<sup>65</sup> Id. at Section III.A.-B.

<sup>66</sup> A copy of Attachment A-2 is enclosed herewith as Exhibit F.

<sup>67</sup> See Detention Operations Manual, Detainee Services: Access to Legal Materials, Section III.C., E., F.

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1. *Immigration Law and Crimes*, National Immigration Project of the National Lawyer's Guild (#8 on the list);
2. *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status* (#12 on the list);
3. *Considerations For Asylum Officers Adjudicating Asylum Claims From Women*, Immigration and Naturalization Service Memorandum dated May 26, 1995 (#13 on the list);
4. *Immigration and Naturalization Service Basic Law Manual*, Immigration and Naturalization Service Three Ring Binder (#14 on the list);
5. *Lawyer's Committee Handbook on Representing Asylum Applicants*, Lawyer's Committee for Human Rights (#15 on the list);
6. *Directory of Nonprofit Agencies that Assist Persons in Immigration Matters*, National Immigration Law Center Booklet (#26 on the list);
7. *Other Translation Dictionaries Depending on the Most Common Languages Spoken by the Detainee Population* (#27 on the list);
8. *Detainee Handbook and Detainee Orientation Materials* (#28 on the list); and
9. *Self-Help Materials*, provided by outside organizations (#29 on the list).

In addition to the library missing the foregoing materials, some of the library's materials are not up to date. Upon discussing this with the full-time librarian, it was clear that she was aware that some of the materials were not current; however, she appeared to be waiting for the updates to arrive. [REDACTED] b6 provided her with a copy of the publisher information included in Attachment C to the *Access to Legal Materials* chapter of the *Detention Operations Manual*, and told her that it would be a good idea to contact the relevant publishers to request updated information and materials. The librarian does appear to update the library's materials when she receives updates or other new materials (i.e., she replaces old text in the library's current materials with updates, new chapters, new notes from the authors, etc.). The librarian indicated that she does this and instructs the part-time librarian to do the same when necessary.

If a detainee requests additional materials, the librarian tries to accommodate such a request, but she occasionally refers the detainee directly to the INS. If a detainee requests certain court forms or documents, the librarian provides the detainee with the relevant court's address and advises the detainee to write to the court. The library does not have a copy of the list of required materials posted or a general list of its holdings posted, and there are no Florence Project's "Know Your Rights" packets in the library. Some of the detainees that we interviewed indicated that an "English to Vietnamese" dictionary, as well as similar dictionaries for various

Chinese dialects, would be very helpful to them while engaging in legal research and writing,<sup>68</sup> and we would like to see such dictionaries added to the library's holdings.

**B. Library Conditions, Computer Access, Equipment & Materials.**

The Lerdo Facility's library is well-lit, fairly spacious and has three large tables with approximately 10 chairs. It appears to be fairly isolated from noise and a place where detainees could engage in legal research and writing. Further, the library is clean and the books are well organized. The librarian indicated that detainees may work together on legal research and writing projects, and the detainees indicated that they are allowed to keep their legal documents with them at all times.

The library only has two working typewriters. This appears to be an inadequate number of typewriters, because the *INS Detention Standards Implementation Initiative Volunteer Attorney Guide* indicates that there should be one typewriter for every five detainees.<sup>69</sup> (At the time of our visit, the Lerdo Facility had two typewriters and 184 detainees.) Writing instruments, paper and office supplies appear to be available to detainees, however, the detainees do not have access to any computers.

**C. Photocopies and Mail.**

The librarian indicated that each detainee may request as many photocopies as he or she wishes. If a detainee wishes to make copies, he or she must simply fill out a request form and hand it to the librarian on duty at the time. If the detainee is indigent, the librarian indicated that photocopies are free; however, a detainee who has money must pay five cents per photocopy. When asked whether a detainee could make unlimited copies, the librarian responded that she had never received such a request; however, once she made 1,000 copies for a detainee for court filing purposes. There is no indication that the librarian reviews the detainees' confidential legal or related information or materials.

If a detainee is indigent, the librarian stated that such a detainee is provided with free envelopes and stamps for legal-related correspondence. A detainee may request envelopes and/or stamps from the librarian or other staff (e.g., the guards). A detainee is considered indigent if he or she has \$3.00 or less in his or her personal account, and this determination is made by the clerical/administrative staff.

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<sup>68</sup> [REDACTED], and [REDACTED] interviews.

<sup>69</sup> See *INS Detention Standards Implementation Initiative Volunteer Attorney Guide*, Attachment C, page 10.

**D. Access to the Library.**

The *Standards* require that each facility have a flexible schedule to allow all detainees' use of the law library for a minimum of five hours per week.<sup>70</sup> Use of the law library cannot result in a detainee missing a meal, recreation time or any other planned activity.<sup>71</sup>

Library hours at the Lerdo Facility are Monday through Friday, 8:00 a.m. to 12:00 a.m. (midnight). Although most detainees that we interviewed indicated that they have never missed a meal, recreation time or other planned activity due to their use of the law library,<sup>72</sup> they indicated that it takes approximately two weeks for them to get access to the library after submitting a request to do so.<sup>73</sup> This clearly presents a problem. The librarian indicated that the Lerdo Facility's policy is to allow each detainee to spend two hours in the law library twice per week. However, the librarian confessed that due to a deluge in requests to use the library, this "doesn't always happen." We were not made aware of any written procedure or general practice with respect to requesting additional time to use the Lerdo Facility library even though the *INS Detention Standards* require that the detainee handbook or equivalent contain notice of such procedures.<sup>74</sup>

**E. Notaries, Certified Mail and Miscellaneous Needs Associated with Legal Matters.**

The *Standards* state that "[t]he facility shall provide assistance to any unrepresented detainee who requests a notary public, certified mail or other such services to pursue a legal matter", if the detainee is unable to meet the need through family members or community organizations.<sup>75</sup> We did not have sufficient time to inquire as to this topic and were not made aware of issues pertaining to this topic.

**VI. Group Rights Presentations.**

The *Standards* state that facilities shall, consistent with the security and orderly operation of the facility, "permit authorized persons to make presentations to groups of detainees for the purposes of informing them of U.S. immigration law and procedures."<sup>76</sup> Furthermore, facilities

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<sup>70</sup> Detention Operations Manual, Detainee Services: Access to Legal Materials, Section III.G.

<sup>71</sup> See id.

<sup>72</sup> It is worth noting, however, that two detainees, [b6, b7C] and [b6, b7C], did report having to forego recreation time in order to get library time.

<sup>73</sup> [b6, b7C], [b6, b7C], [b6, b7C], and [b6, b7C] interviews.

<sup>74</sup> See Detention Operations Manual, Detainee Services: Access to Legal Materials, Section III.Q (listing the various notices required to be given to detainees respecting access to legal materials). Most of the other notices required under this *Standard* are also not given at the Lerdo Facility.

<sup>75</sup> Id. at Section III.P. See also id. at Section III.L. for the requirements relating to assistance for illiterate and non-English speaking detainees.

<sup>76</sup> Detention Operations Manual, Detainee Services: Group Presentations on Legal Rights, Section I.

"shall play INS-approved videotaped presentations on legal rights, at the request of outside organizations."<sup>77</sup>

The facility personnel indicated that group rights presentations do not take place at the Lerdo Facility, but that they would consider any request to perform such a presentation. They stated they are not opposed to group rights presentations in principle, and indicated that they would allow such presentations as long as the subject matter was appropriate and reasonable. For instance, they indicated that they would likely not allow a person to perform a group rights presentation if it would likely result in inciting violence among the inmates. No facility personnel had heard of the "Know Your Rights" video created by the Florence Project and distributed by the INS. They did indicate, however, that if they were provided with such a video they would review it and allow the detainees to watch it if appropriate in content.

## **VII. Recreation.**

The *Standards* provide that "[r]ecreational activities shall be based on the facility's size and location. With the [officer in charge's] approval, recreational activities may include limited-contact sports, such as soccer, basketball, volleyball, table games, and may extend to competitions between units."<sup>78</sup> The *Standards* further provide that each facility "shall have an individual responsible for the development and oversight of the recreation program."<sup>79</sup> SPCs and CDFs are required to have "Recreation Specialists" (individuals with special training in implementation and oversight of recreation programs) in charge of the development and oversight of the recreation program.<sup>80</sup>

At the Lerdo Facility, the housing officer of each housing unit oversees the recreational activities. There is no Recreation Specialist.

### **A. Outdoor Recreation.**

The *Standards* provide that "[i]f outdoor recreation is available at the facility, each detainee shall have access for at least one hour daily, at a reasonable time of day, five days a week, weather permitting."<sup>81</sup>

The Lerdo Facility's "Inmate Orientation" pamphlet states:

Inmates who are not under disciplinary isolation and who do not pose a security risk to the facility staff or other inmates will be allowed a minimum of three hours of outdoor exercise and recreation each week, according to a facility schedule.

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<sup>77</sup> *Id.* at Section III.I.

<sup>78</sup> *Detention Operations Manual*, Detainee Services: Recreation, Section III.G.

<sup>79</sup> *Id.* at Section III.F.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at Section III.B.

Inmates housed in the infirmary, who have been medically cleared, will be allowed access to the exercise yard.<sup>82</sup>

Despite the above *Standard*, we were told by Lerdo Facility staff that subject to weather conditions, outdoor recreation is provided to each detainee only twice a week for 1.5 to 2 hours each session. Moreover, detainees reported receiving even less outdoor recreation: one reported receiving outdoor recreation only once a week;<sup>83</sup> another said it is given once a week "if at all;"<sup>84</sup> another reported that the amount of recreation depends on the officer;<sup>85</sup> and others complained of receiving only four hours of recreation in 11 days.<sup>86</sup>

The Lerdo Facility's exercise yard is a small, screened area approximately the size of a basketball court. The available activities are basketball and handball. One detainee reported that detainees have to go barefoot when outdoors, which prevents them from engaging in serious physical activity and often results in burnt feet due to the hot temperatures.<sup>87</sup>

## B. Indoor Recreation.

The *Standards* state that "[d]ayrooms in general-population housing units will offer board games, television, and other sedentary activities."<sup>88</sup>

Detainees at the Lerdo Facility are allowed to participate in indoor recreation in the common area of their housing pod from 4:00 a.m. to 10:00 p.m. The available sedentary activities include boardgames (Monopoly, Chess, Checkers, and Sorry), playing cards,<sup>89</sup> dominoes, and watching television. English language newspapers are also provided.<sup>90</sup> However, some detainees reported being denied access to newspapers and television when officers wish to control and/or punish detainees.<sup>91</sup>

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<sup>82</sup> See Exhibit B.

<sup>83</sup> [REDACTED] interview.

<sup>84</sup> [REDACTED] interview.

<sup>85</sup> [REDACTED] interview.

<sup>86</sup> See July 21, 2002 Letter from [REDACTED] *et. al.*, attached hereto as Exhibit D, at paragraph 16.

<sup>87</sup> [REDACTED] interview.

<sup>88</sup> Detention Operations Manual, Detainee Services: Recreation, Section III.G.

<sup>89</sup> Detainees reported having to purchase their own playing cards, and complained that board games often can't be played due to missing pieces. [REDACTED] and [REDACTED] interviews.

<sup>90</sup> [REDACTED] interview.

<sup>91</sup> These detainees also reported being allowed to watch the news and read the newspaper only when the officers are in a "good mood." See July 21, 2002 Letter from [REDACTED] *et. al.*, attached hereto as Exhibit D, at paragraph 18.

In addition, the Lerdo Facility visitor information pamphlet states that detainees "will be allowed access to books and periodicals from the facility library," which are distributed every Saturday.<sup>92</sup> Several detainees reported that the few pleasure books available are extremely old.<sup>93</sup> Detainee morale at the facility would probably improve if more reading materials were made available, especially materials in Spanish and various Asian languages.

**C. Segregation.**

The *Standards* provide that "[d]etainees in the [Special Management Unit] shall be offered at least one hour of recreation per day, scheduled at a reasonable time, at least five days a week. This privilege shall be waived only if the detainee's recreational activity would unreasonably endanger safety or security."<sup>94</sup>

We were told that the detainees in segregation at the Lerdo Facility receive one hour of outdoor recreation two times a week, and one hour of indoor recreation each day. However, detainees reported that recreation is not regular for those in segregation: one detainee living in segregation at the time of our visit reported being denied recreation when he asked for it,<sup>95</sup> another reported not receiving any recreation time during the five days he once spent in segregation,<sup>96</sup> and yet another reported not receiving any outdoor recreation during the 10 days he once spent in segregation.<sup>97</sup> Thus, there is reason for concern regarding compliance with the above *Standard*.

**D. Classes.**

We were told that the only classes offered at the Lerdo Facility are English as a second language ("ESL") and alcohol and drug rehabilitation classes. These classes are offered once per week for several hours. INS detainees and other inmates attend together. The ESL class can accommodate up to 25 students, and the substance abuse class can accommodate up to 35 males and 35 females. We were told that all courses had available space at the time of our visit, although detainees/inmates with court orders to attend are given priority with respect to the substance abuse class should there be a waiting list. It should be noted, however, that several detainees reported that the Lerdo Facility no longer allows INS detainees to attend ESL courses. They were apparently told that only county inmates may attend.<sup>98</sup>

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<sup>92</sup> See Exhibit C.

<sup>93</sup> [REDACTED] and [REDACTED] interviews.

<sup>94</sup> Detention Operations Manual, Detainee Services: Recreation, Section III.H.

<sup>95</sup> [REDACTED] interview.

<sup>96</sup> [REDACTED] interview.

<sup>97</sup> [REDACTED] interview.

<sup>98</sup> [REDACTED], [REDACTED] and [REDACTED] interviews.

**VIII. Medical Issues.**

**A. General.**

**1. Screening.**

The *Standards* provide that each “facility will provide its detainee population with initial medical screening, cost-effective primary medical care, and emergency care.”<sup>99</sup> All new arrivals “shall receive initial medical and mental health screening immediately upon their arrival” and “shall receive TB screening.”<sup>100</sup> A “health appraisal and physical examination” must be conducted, and “[a]n initial dental screening should be performed,” within fourteen (14) days of arrival.<sup>101</sup>

The Lerdo Facility does provide an initial medical screening upon arrival at the facility, including a Tuberculosis screening. However, no formal dental or suicide screening is completed at that time.

**2. Records.**

The *Standards* provide that medical records be kept confidential and separate from detainee records.<sup>102</sup> At the Lerdo Facility, medical records are kept confidential and separate. Only medical professionals are permitted to review them.

**3. Medication.**

The *Standards* provide that “[d]istribution of medication will be according to specific instructions and procedures established by the health care provider.”<sup>103</sup> At the Lerdo Facility, medication is distributed by a nurse.

**4. Sick Calls.**

The *Standards* provide that “[a]ll 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...”<sup>104</sup>

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<sup>99</sup> Detention Operations Manual, Health Services: Medical Care, Section III.A.

<sup>100</sup> Id. at Section III.D.

<sup>101</sup> Id. at Section III.D.-E.

<sup>102</sup> Id. at Section III.B.

<sup>103</sup> Id. at Section III.I.

<sup>104</sup> Id. at Section III.F.

According to a nurse at the facility, five to six nurses are on-call each day. She indicated that when a detainee completes a sick call slip,<sup>105</sup> a nurse will contact him usually the next day. If necessary, the detainee will see the doctor a few days after that. The doctor is available Tuesday to Friday, from 8:00 a.m. until he has finished seeing the day's scheduled patients. We were also told the maximum wait for a doctor is one week, and that if a detainee presents an emergency, he or she will be taken care of immediately.

Several detainees reported that it is difficult to see a nurse or doctor: one reported that he must always fill out two sick call requests before he is permitted to see a nurse;<sup>106</sup> another reported that he was told that federal inmates and INS detainees get “no dental,” and complained that his requests for dental care for a toothache he has had for a long period of time were rejected;<sup>107</sup> another reported twice having to wait two days to be seen for food poisoning,<sup>108</sup> and yet another reported it took the intervention of an attorney for him to receive adequate care for throat problems.<sup>109</sup> Moreover, one detainee reported that the lack of consistent availability of interpreters can make adequate communication with the medical staff impossible.<sup>110</sup>

## 5. HIV/AIDS.

With respect to the management of HIV infection among detainees, the *Standards* provide that “[c]linical evaluation will determine the medical need for isolation.”<sup>111</sup> For SPCs and CDFs, “[United States Public Health Service] will not recommend to INS that the detainee be separated from the general population... unless clinical evaluation reveals a medical need for isolation.”<sup>112</sup> At the Lerdo Facility, detainees with HIV or AIDS are not placed in isolation. The staff noted that many of the population in general (inmates and detainees) have HIV and are treated no differently than those who do not.

### B. Terminal Illness, Advance Directives, and Death.

With regard to terminal illness, the *INS Detention Standards* provide that the facility will “arrange the transfer of chronically, critically, or terminally ill detainees to appropriate off-site

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<sup>105</sup> A sample sick call request form, which we took as we toured a housing pod, is attached hereto as Exhibit G.

<sup>106</sup> [REDACTED] interview.

<sup>107</sup> [REDACTED] interview.

<sup>108</sup> [REDACTED] interview.

<sup>109</sup> [REDACTED] interview.

<sup>110</sup> [REDACTED] interview.

<sup>111</sup> Detention Operations Manual, Health Services: Medical Care, Section III.K.

<sup>112</sup> Id.

medical facilities.”<sup>113</sup> According to the staff at the Lerdo Facility, this is the procedure that they follow as well.

With regard to advance directives, the standard is that the facility shall have procedures for implementing living wills, advance directives and Do Not Resuscitate orders.<sup>114</sup> The nurse at the Lerdo Facility said that they do not have any Do Not Resuscitate Orders and implied that they rarely, if ever, do.

With respect to the death of a detainee at the facility, the *Standards* provide that “[t]he facility shall follow written procedures when notifying INS officials, immediate family members, and consulate offices of a detainee’s death.”<sup>115</sup> Commander [b6, b7C] stated that at the Lerdo Facility, the body of a deceased is brought to the coroner’s and that the family of the victim is notified. He said that two deaths had occurred in the past few months, one of which was from suicide.

### C. Hunger Strikes.

The *INS Detention Standards* state that “[m]edical staff shall monitor the health of a detainee on a hunger strike.”<sup>116</sup> With regard to SPCs and CDFs, “[s]taff will consider any detainee refusing food for 72 hours to be on a hunger strike and will refer him/her to the medical department for evaluation and possible treatment.”<sup>117</sup>

According to the detainees at the Lerdo Facility, hunger strikes do happen, but they usually do not last even 24 hours. Therefore, the 72 hour mark seems to seldom, if ever, be reached, so the facility seems to generally be under no obligation to follow the standards set out for monitoring detainees on hunger strikes.

However, a guard provided details about events when a detainee is on a hunger strike. According to him, the detainee is monitored immediately. His weight and vital signs are checked. He may be placed in isolation if necessary. All other food from the commissary is removed from the detainee’s room and the detainee’s food and liquid intake is monitored. The guard said that hunger strikes occur occasionally, though not necessarily lasting longer than 72 hours.

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<sup>113</sup> Detention Operations Manual, Health Services: Terminal Illness, Advanced Directives and Death, Section III.A.

<sup>114</sup> Id. at Section III.B.-C.

<sup>115</sup> Id. at Section III.E.

<sup>116</sup> Detention Operations Manual, Health Services: Hunger Strikes, Section III.B.

<sup>117</sup> Id. at Section III.A.

**D. Suicide Prevention and Intervention.**

The *Standards* provide that “[a]ll staff will receive training, during orientation and periodically, in the following: recognizing signs of suicidal thinking, including suspect behavior, facility referral procedures; suicide-prevention techniques; and responding to an in-progress suicide attempt.”<sup>118</sup>

The *Standards* further provide that “[i]f danger to life or property appears imminent, the medical staff has the authority, with written documentation, to segregate the detainee from the general population... The detainee may be placed in a special isolation room... Observation of imminently suicidal detainees by medical or detention staff shall occur no less than every 15 minutes... In IGSA facilities, the [officer in charge] shall report to INS any detainee clinically diagnosed as suicidal or requiring special housing for suicide risk.”<sup>119</sup>

According to [REDACTED] b6, the supervising mental health clinician at the Lerdo Facility, staff has not been and is not formally trained in suicide prevention. However, she discussed a training program through the American Suicide Association that she and another colleague are preparing and hope to implement shortly. Ms. [REDACTED] b6 said that staff complete a Lethality Risk Assessment on detainees they suspect may be suicidal. If a detainee is found to be suicidal, he is placed in isolation for a minimum of one day. The average amount of time a detainee would spend in isolation is 24 to 48 hours. A detainee on suicide watch is observed at least twice every 30 minutes. After a detainee’s release from isolation, he is placed on a post-suicide watch for 72 hours. Ms. [REDACTED] b6 said that because her staff receive 35 to 50 requests a day, they are usually only able to provide crisis intervention. She did not mention reporting suicidal detainees to INS.

**IX. Religious Issues.**

The *Standards* provide that “[d]etainees shall have the opportunity to engage in practices of their religious faith that are deemed essential by the faith’s judicatory, consistent with the safety, security, and the orderly operation of the facility.”<sup>120</sup>

**A. Services.**

**1. Group Services.**

The *Standards* provide that “[d]etainees will have the opportunity to engage in-group [sic] religious activities, consistent with the safe, secure, and orderly operation of the facility.”<sup>121</sup>

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<sup>118</sup> Detention Operations Manual, Health Services: Suicide Prevention and Intervention, Section III.A.

<sup>119</sup> Id. at Section III.C.

<sup>120</sup> Detention Operations Manual, Detainee Services: Religious Practices, Section III.A.

<sup>121</sup> Id. at Section III.H.

Non-denominational religious services are held every Sunday at the Lerdo Facility. Generally, all detainees except those in segregation may attend. There are no other services available to the detainees, although we were told that other religious presentations organized through the chaplain “may be allowed” in the future. No program is posted for these services, but a “church list” is passed around every Sunday for signing by those who wish to attend the services. Any detainee who signs up and is “clear to go” (i.e., has no gang affiliations or other risk potential) is free to attend. These procedures satisfy the requirements provided by the *Standards*.

## 2. Individual Services.

The *Standards* provide that “[i]f requested by a detainee, the chaplain or designee shall facilitate arrangements for pastoral visits by a clergyperson or representative of the detainee's faith.”<sup>122</sup> The Lerdo Facility chaplain is available for spiritual one-on-one counseling with detainees, including those in segregation. We were told that other religious counseling with specific faith representatives may be arranged through the chaplain; however, one detainee reported never receiving an answer when he requested such counseling.<sup>123</sup> Privacy for individual services is provided for by treating the visit as a “professional” visit.<sup>124</sup>

The Lerdo Facility's official procedures for individual services, if actually followed, satisfy the requirements provided by the *Standards*.

### B. Religious Property.

The *Standards* provide that “[d]etainees shall have access to personal religious property, consistent with facility security.”<sup>125</sup> With respect to SPCs and CDFs, the *Standards* provide, in part:

A detainee ordinarily shall be allowed to wear or use personal religious items during religious services, ceremonies, and meetings in the chapel, unless the [officer in charge] determines that the wearing or use of such items would threaten facility security, safety, or good order. Upon request of the detainee, the [officer in charge] may allow the wearing or use of certain religious items throughout the facility, consistent with considerations of security, safety, or good order... Religious headwear, notably kufis, yarmulkes, turbans, crowns, and headbands, as well as scarves and headwraps for orthodox Muslim and Jewish women, is permitted in all areas of the facility, subject to the normal considerations of security and good order, including inspection by staff.<sup>126</sup>

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<sup>122</sup> *Id.* at Section III.J.

<sup>123</sup> [REDACTED] interview.

<sup>124</sup> See *supra*, pages 2 to 5.

<sup>125</sup> Detention Operations Manual, Detainee Services: Religious Practices, Section III.K.

<sup>126</sup> *Id.*

The detainees at the Lerdo Facility are not allowed to keep any religious items with their personal belongings, nor may they wear religious dress and/or hairstyles.<sup>127</sup>

**C. Dietary Requirements.**

The *Standards* state that "the food service department will implement procedures for accommodating, within reason, the detainees' religious dietary requirements."<sup>128</sup> Lerdo Facility staff said they accommodate the dietary requirements of members of different faiths. However, two Buddhist detainees reported that their requests for a vegetarian diet were denied,<sup>129</sup> and another stated that religious diets are only available to those who follow the Muslim or Jewish faiths.<sup>130</sup>

**X. Discipline and Segregation.**

**A. 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."<sup>131</sup> The facility's disciplinary policies and procedures "shall clearly define detainee rights and responsibilities."<sup>132</sup> The detainee handbook must "provide notice of the facility's rules of conduct, and of the sanctions imposed for violations of the rules."<sup>133</sup> Additionally, the "detainee handbook, or equivalent, shall notify detainees of" (1) the disciplinary process, (2) the prohibited acts and disciplinary severity scale, and (3) the procedure for appealing disciplinary findings.<sup>134</sup>

The Lerdo Facility's "Inmate Orientation" pamphlet lists general rules of conduct.<sup>135</sup> However, these rules are not organized in an easy to understand way, and there is no indication of the "disciplinary severity scale" or the punishment that detainees will receive for violations of the different rules.

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<sup>127</sup> [REDACTED] b6, b7C and [REDACTED] b6, b7C [REDACTED] b6, b7C interviews.

<sup>128</sup> *Id.* at Section III.M.

<sup>129</sup> [REDACTED] b6, b7C and [REDACTED] b6, b7C interviews.

<sup>130</sup> [REDACTED] b6, b7C interview.

<sup>131</sup> Detention Operations Manual, Security and Control: Disciplinary Policy, Section I.

<sup>132</sup> *Id.* at Section III.A.1.

<sup>133</sup> *Id.* at Section III.A.5.

<sup>134</sup> *Id.* at Section III.L.

<sup>135</sup> See Exhibit B.

It is the pamphlet given to *visitors* of the Lerdo Facility that provides a glimpse of the forms of discipline. Under the title “Plan for Inmate Discipline,” the pamphlet states that disciplinary hearings “will be conducted in accordance with the guidelines established by the California Code of Regulations, Title 15; Detention Bureau Policies and Procedures; and Lerdo Pre-Trial Policies and Procedures.”<sup>136</sup> Under the title “Forms of Discipline,” the pamphlet provides:

Any security staff member may initiate disciplinary action against an inmate for violation of facility rules. Disciplinary action will take one of the following forms, depending on the severity of the misconduct, and the inmate’s past violations:

Oral reprimand  
Loss of privileges  
Transfer to a higher level of security  
Loss of “good time” or “work time” credit  
Disciplinary isolation  
Disciplinary Diet<sup>137</sup>

Under the title “Rules and Disciplinary Penalties,” the visitor pamphlet states:

Facility rule violations and resultant penalties are categorized as:

- **Minor rule violations**
  - Oral reprimand
  - Loss of privileges
  - Up to two days of disciplinary isolation
  - Transfer to a higher level of security
- **Serious rule violations**
  - Oral reprimand
  - Loss of privileges
  - Up to five days of disciplinary isolation
  - Transfer to a higher level of security
  - Loss of up to 10 days “good time” credit
  - Loss of privileges [sic]

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<sup>136</sup> See Exhibit C.

<sup>137</sup> See Exhibit C. It is unclear what constitutes a “Disciplinary Diet.” However, it should be noted that the *Standards* provide that detainees in disciplinary segregation “shall receive their meals according to the schedule used by the general population. Detainees in segregation will be provided nutritionally adequate meals, ordinarily from the menu served to the general population... Food shall not be used as punishment.” Detention Operations Manual, Security and Control: Special Management Unit (Disciplinary Segregation), Section III.D.10. Furthermore, detainees in administrative segregation “shall receive three nutritionally adequate meals per day, from the menu served to the general population... Under no circumstances shall food be used as punishment.” Detention Operations Manual, Security and Control: Special Management Unit (Administrative Segregation), Section III.D.5. Also worth noting is that [REDACTED] a detainee housed in segregation at the time of our visit, reported that he had not had a hot meal in seven (7) months.

- **Major rule violations**
  - Up to 10 days of disciplinary isolation
  - Transfer to a higher level of security
  - Loss of 30, and up to all “good time” credit days
  - Loss of unearned work time
  - Disciplinary diet
  - Prosecution<sup>138</sup>

It is unclear which rule violations fall under which category. There is, however, a statement in this pamphlet that “[a]ll discipline will be as consistent as possible and will be in compliance with Title 15, Section 1083.”<sup>139</sup>

In conclusion, the Lerdo Facility is in violation of the *Standards* because of the lack of clear disclosure to detainees of "the facility's rules of conduct" and "the sanctions imposed for violations," including the "disciplinary severity scale," and because of the lack of notification to detainees of the "disciplinary process" and "the procedure for appealing disciplinary findings."

## **B. Segregation.**

The *Standards* state that each facility “will establish a Special Management Unit that will isolate certain detainees from the general population” either for administrative reasons (administrative segregation) or disciplinary reasons (disciplinary segregation).<sup>140</sup> Administrative segregation status “is a non-punitive status in which restricted conditions of confinement are required only to ensure the safety of detainees or others, the protection of property, or the security or orderly running of the facility.”<sup>141</sup> These detainees “shall receive the same general privileges as detainees in the general population, consistent with available resources and security considerations.”<sup>142</sup> Disciplinary segregation is for detainees “whose behavior does not comply with facility rules and regulations.”<sup>143</sup> Detainees may be placed in disciplinary segregation “only by order of the Institutional Disciplinary Committee, after a hearing in which the detainee has been found to have committed a prohibited act” and “alternative dispositions would inadequately regulate the detainee’s behavior.”<sup>144</sup>

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<sup>138</sup> See Exhibit C.

<sup>139</sup> See id.

<sup>140</sup> Detention Operations Manual, Security and Control: Special Management Unit (Administrative Segregation), Section I; Special Management Unit (Disciplinary Segregation), Section I.

<sup>141</sup> Detention Operations Manual, Security and Control: Special Management Unit (Administrative Segregation), Section III.A.

<sup>142</sup> Id. at Section III.D.

<sup>143</sup> Detention Operations Manual, Security and Control: Special Management Unit (Disciplinary Segregation), Section III.A.

<sup>144</sup> Id.

The *Standards* further provide that the conditions of disciplinary confinement “will depend on the amount of supervision required to control the individual and safeguard other detainees and staff.”<sup>145</sup> Detainees in disciplinary segregation generally should have access to the law library, personal legal material, two soft-bound non-legal books, and three showers a week.<sup>146</sup> “Recreation shall be provided to detainees in disciplinary segregation in accordance with the ‘Recreation’ standard... absent compelling security or safety reasons documented by the [officer in charge].”<sup>147</sup> Furthermore, facilities “shall follow the ‘Visitation’ standard in setting visitation rules for detainees in disciplinary segregation” and give these detainees “the same correspondence privileges as detainees in the general population.”<sup>148</sup> Telephone access may be restricted to calls regarding legal matters, consular/embassy calls, and calls regarding family emergencies,<sup>149</sup> although these restrictions must be placed only where there are “compelling security conditions,” which “shall be documented.”<sup>150</sup> There are also rules and procedures regarding the length of time detainees remain in both types of segregation.<sup>151</sup>

The Lerdo Facility staff stated that a detainee is placed in administrative segregation for safety and security reasons. If a detainee is combative he or she is placed in disciplinary segregation. A detainee may also be placed in segregation if he or she has a disease such as tuberculosis or hepatitis.

It is unclear whether the facility follows the above-mentioned procedural requirements when it places detainees in disciplinary segregation, but statements made by several detainees raised some concerns. Two of the detainees we interviewed referred to disciplinary segregation as “the hole.” When [REDACTED] asked the facility personnel what was meant by “the hole” they said that they did not know. One detainee stated he had been taken out of the INS pod and placed in solitary confinement, which he called “the hole,” for 50 days after he failed to follow an order to get down on the floor.<sup>152</sup> Another detainee indicated that for the five days he had once spent in “the hole,” he was only let out of the cell to shower, and did not get any recreation time.<sup>153</sup> Moreover, detainees reported that segregation is sometimes used as a means to silence

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<sup>145</sup> *Id.* at Section III.D.1.

<sup>146</sup> See Detention Operations Manual, Security and Control: Special Management Unit (Disciplinary Segregation), Section III.D.

<sup>147</sup> *Id.* at Section III.D.13.

<sup>148</sup> *Id.* at Section III.D.17-18.

<sup>149</sup> *Id.* at Section III.D.19.

<sup>150</sup> Detention Operations Manual, Detainee Services: Telephone Access, Section III.G.

<sup>151</sup> See Detention Operations Manual, Security and Control: Special Management Unit (Administrative Segregation), Section III.C; Special Management Unit (Disciplinary Segregation), Section III.A, C.

<sup>152</sup> [REDACTED] interview.

<sup>153</sup> [REDACTED] interview.

individuals who may have witnessed abuses of inmates by the facility's guards.<sup>154</sup> Based on these statements and our understanding of the Lerdo Facility's policies, we believe there may be problems with the amount of recreation given to segregated detainees.<sup>155</sup> In addition, there may be problems with the amount of time inmates spend in disciplinary segregation as well as the reasons the inmates are put in segregation.

Furthermore, there are definite problems with the access to telephones, visitation and library materials given to segregated detainees at the Lerdo Facility. Lerdo Facility staff informed us that while individuals in disciplinary segregation are not allowed personal visits, they are allowed attorney visits. This is in violation of the *Standards*, which clearly state that "[a]s a rule, a detainee retains visiting privileges while in disciplinary segregation."<sup>156</sup> As to access to library materials, the Lerdo Facility's visitor pamphlet states that "[d]isciplinary isolation inmates will be denied library privileges."<sup>157</sup> This also violates the *Standards*, which state that detainees in disciplinary segregation should have access to "legal and non-legal reading material."<sup>158</sup> The problems we discovered regarding telephone access are discussed above in the section entitled "Telephone Privileges in the Special Management Unit."<sup>159</sup>

### C. Lockdown.

Another area of concern is the use of "lockdown" to control detainees. During a lockdown, all detainees in a pod are confined to their cells, except for a brief period each day to shower. The detainees do not receive any recreation time and do not have the opportunity to make phone calls during lockdown. About one week prior to our visit the detainees had been placed on lockdown. Apparently there was a gang-related fight in one of the pods, after which all six pods in the federal male detainee/inmate housing unit were placed on lockdown. Five pods were let out of lockdown after one week, but the other remained in lockdown for another 10 days. The detainees reported that they had to go on a hunger strike and flood the pod's floor with water from their sinks in order to induce the release.<sup>160</sup>

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<sup>154</sup> See July 21, 2002 Letter from [REDACTED] *et. al.*, attached hereto as Exhibit D, at paragraph 15.

<sup>155</sup> See also our discussion of recreation for detainees in disciplinary segregation, *supra*, at page 18.

<sup>156</sup> Detention Operations Manual, Security and Control: Special Management Unit (Disciplinary Segregation), Section III.D.17.

<sup>157</sup> See Exhibit C.

<sup>158</sup> Detention Operations Manual, Security and Control: Special Management Unit (Disciplinary Segregation), Section III.D.15.

<sup>159</sup> See *supra*, pages 9 to 10.

<sup>160</sup> [REDACTED] interview.

**D. Use of Force.**

The *Standards* state that “[t]he use of force is authorized only after all reasonable efforts to resolve a situation have failed.”<sup>161</sup> When necessary, only “reasonable force and/or restraints to prevent [a detainee] from harming self, others, and/or property” should be used.<sup>162</sup>

During our interviews with detainees at the Lerdo Facility, several interviewees reported that some of the Lerdo Facility guards are physically abusive toward the detainees.<sup>163</sup> One detainee indicated that he had been physically assaulted by the guards. He claimed that after he did not comply with an order to get down on the ground, he was rushed by the guards with electric shields and was kicked in the back of the head once he was on the ground. After the incident, he was denied medical attention that he requested. The incident resulted in his placement in “the hole” for 50 days.<sup>164</sup> Another detainee refused to answer any of our questions, stating concern that he would receive physical retaliation should the guards find out that he had spoken to us.<sup>165</sup> Finally, another detainee reported that the guards threaten to withhold food if the detainees do not comply with orders, although he also stated that food had never actually been withheld.<sup>166</sup>

**XI. Other Issues.**

**A. Voluntary Work Program.**

The *Standards* state that “[e]very facility with a work program will provide detainees with the opportunity to work and earn money” and that “[d]etainees who are physically and mentally able to perform work will be provided the opportunity to participate in any voluntary work program.”<sup>167</sup> Despite the fact that the Lerdo Facility has a work program, the detainees were not allowed to participate in such program. The Lerdo Facility staff told us that they were under the belief that detainees were not allowed to work until two days before our visit. They stated they plan to allow detainees to participate in the work program in the near future.

**B. Non-Medical Emergency Escorted Trips.**

The *Standards* provide that the “District Director (DD) may, on a case-by-case basis, allow a detainee’s visit to a critically ill member of his/her immediate family. The DD may

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<sup>161</sup> See Detention Operations Manual, Security and Control: Use of Force, Section I.

<sup>162</sup> Id. at Section III.A.

<sup>163</sup> [b6, b7C] [b6, b7C] [b6, b7C] and [b6, b7C] interviews.

<sup>164</sup> [b6, b7C] interview.

<sup>165</sup> This detainee refused to allow release of his name to the ABA.

<sup>166</sup> [b6, b7C] interview.

<sup>167</sup> Detention Operations Manual, Detainee Services: Voluntary Work Program, Section I.

allow a detainee to attend an immediate-family member's funeral."<sup>168</sup> Neither b6 b6 of the INS nor the Lerdo Facility staff were aware of the option to allow non-medical emergency escorted trips. Ms. b6 stated that she did not believe there was such a standard.

### C. Detainee Grievance Process.

The *Standards* state that each facility must have procedures to address detainee grievances and provide for “reasonable time limits for: (i) processing, investigating and responding to grievances, (ii) convening a grievance committee to review formal complaints; and (iii) providing written responses to detainees who filed formal grievances, including the basis for the decision.”<sup>169</sup> Facilities “shall implement procedures for addressing detainee appeals,” under which the detainee must be allowed to appeal the decision of the grievance committee to the officer in charge.<sup>170</sup> Furthermore, facilities must document detainee grievances,<sup>171</sup> and the detainee handbook must provide notice of: (1) the opportunity to file a grievance, (2) the procedures for filing a grievance and appeal, including the availability of assistance in preparing a grievance, (3) the procedures for resolving a grievance or appeal, including the right to have the grievance referred to higher levels, (4) the procedures for contacting the INS to appeal the decision of the officer in charge of an IGSA facility, (5) the policy prohibiting staff from harassing, disciplining, punishing or otherwise retaliating against any detainee for filing a grievance, and (6) the opportunity to file a complaint about officer misconduct directly with the Justice Department.<sup>172</sup>

With respect to grievances, the Lerdo Facility's "Inmate Orientation" pamphlet provides:

Staff will attempt to resolve verbal inmate complaints at the lowest possible level. Any inmate may submit a written grievance relating to any condition of confinement. All written grievances will be acted upon. Grievances involving medical issues will be referred to the Medical Staff. All written grievances will be responded to within seven days, if possible.<sup>173</sup> Inmates may submit a written appeal regarding the outcome of the grievance to the level of authority one step above the officer resolving the grievance. Grievances written on conditions

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<sup>168</sup> Detention Operations Manual, Detainee Services: Non-Medical Emergency Escorted Trips, Section III.A.

<sup>169</sup> Detention Operations Manual, Detainee Services: Detainee Grievance Procedures, Section I.

<sup>170</sup> Id. at Section III.C.

<sup>171</sup> Id. at Section III.E.

<sup>172</sup> Id. at Section III.G.

<sup>173</sup> In contrast, the Lerdo Facility's visitor information pamphlet's grievances section states that “[a]ll written [inmate] grievances will be responded to within (48) hours, if possible.” See Exhibit C.

occurring outside the inmate's normal housing facility will be forwarded to the [sic].<sup>174</sup>

While the Lerdo Facility has disclosed grievance procedures, these clearly do not conform to the above *Standards*. Furthermore, the grievance forms<sup>175</sup> are not readily available to the detainees.<sup>176</sup> If a detainee wants a grievance form, he or she must request one from the floor officer, which is something detainees are often hesitant to do. If a form is actually submitted by the detainee, it appears that they do not always receive an answer from the facility personnel.<sup>177</sup> Several detainees also reported that they are afraid to file grievances because officers will take away their privileges if they do.<sup>178</sup>

#### D. Accommodations.

The housing facilities appeared to be generally clean. However, we were concerned with the failure to follow the *Standards* governing issuance and exchange of clothing, bedding and towels.

The *Standards* state that "[d]etainees shall be provided with clean clothing, linen and towels on a regular basis to ensure proper hygiene. Socks and undergarments will be exchanged daily, outer garments at least twice weekly and sheets, towels, and pillowcases at least weekly. More frequent exchanges of outer garments may be appropriate, especially in hot and humid climates."<sup>179</sup> Furthermore, in SPCs and CDFs, detainees are to be issued one mattress, one blanket, one pillow, two sheets, one pillowcase, one towel, and blankets as needed.<sup>180</sup>

Detainees at the Lerdo Facility are not provided with a pillow and pillowcase. They are, however, given two shirts, two pairs of pants, two pairs of socks, and a pair of shoes. The Lerdo

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<sup>174</sup> See Exhibit B. The visitor information pamphlet prints what apparently should be the end of this sentence. That pamphlet's description of the inmate grievance procedure ends with the following sentence: "Grievances written on conditions occurring outside the inmate's normal housing facility will be forwarded to the appropriate authority where the grievance occurred." See Exhibit C.

<sup>175</sup> The forms are written in English and Spanish, and are attached hereto as Exhibit H.

<sup>176</sup> See July 21, 2002 Letter from [REDACTED] *et. al.*, attached hereto as Exhibit D, at paragraph 12.

<sup>177</sup> See *id.* Also, [REDACTED] reported having a completed grievance form torn up in front of him by an officer who used profane and abusive language. [REDACTED] also reported not receiving responses to the two grievances he has filed, and reported another form being torn up in front of him by a guard. [REDACTED] reported filing about 10 grievances and not receiving a response to any of them. Finally, [REDACTED] reported that his May 31, 2002 grievance had not been answered as of the time of our visit, and stated that the INS had not responded to his sending them a copy of the grievance and complaining about the lack of response by the Lerdo Facility.

<sup>178</sup> [REDACTED] and [REDACTED] interviews.

<sup>179</sup> Detention Operations Manual, Detainee Services: Issuance and Exchange of Clothing, Bedding, and Towels, Section III.E.

<sup>180</sup> *Id.* at III.C.

Facility staff stated that undergarments, sheets and towels are exchanged twice a week, outer garments once a week, and blankets every three months. However, many detainees stated that clothing and bed linens were generally exchanged only once a week, except for blankets.<sup>181</sup> One detainee who has been at the facility for over a year stated that his blanket has never been exchanged.<sup>182</sup> Furthermore, some detainees reported that their sheets had not been exchanged in 11 days,<sup>183</sup> another reported exchanges every two weeks,<sup>184</sup> another reported sometimes going without a laundry exchange for three to four weeks,<sup>185</sup> another reported he once went without a sheet exchange for three weeks,<sup>186</sup> and yet another reported going without a clothing exchange for one month while housed in "max."<sup>187</sup> It is also worth noting that one detainee reported being denied alternative footwear when he was unable to wear the issued sandals due to a foot injury.<sup>188</sup>

### E. Correspondence and Other Mail.

The *Standards* state that every facility "shall notify detainees of its policy on correspondence and other mail through the detainee handbook or equivalent provided to each detainee upon admittance," and provides a detailed list of the minimum information that must be disclosed in such policy.<sup>189</sup> Among the items that must be included in the notification are: (1) the address of the facility and instructions on how to address envelopes; (2) the procedure for sending outgoing mail and instructions on how to address such mail; (3) the definition of special correspondence and a statement that such correspondence will be opened in the detainee's presence and may be inspected for contraband, but not read; (4) a statement that packages may not be sent or received without advance arrangements approved by the officer in charge, (5) the procedure for obtaining approval for the receipt of packages; (6) a description of mail that may be rejected by the facility and which the detainee may not keep in his or her possession; and (7) how to obtain writing implements, paper, envelopes and postage.<sup>190</sup> The facility must also

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<sup>181</sup> [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED], and [REDACTED] interviews.

<sup>182</sup> [REDACTED] interview.

<sup>183</sup> See July 21, 2002 Letter from [REDACTED], attached hereto as Exhibit D, at paragraph 9.

<sup>184</sup> [REDACTED] interview. It is worth noting Mr. Hernandez was the only detainee we interviewed that was housed in segregation at the time of our visit.

<sup>185</sup> [REDACTED] interview.

<sup>186</sup> [REDACTED] interview.

<sup>187</sup> [REDACTED] interview.

<sup>188</sup> [REDACTED] interview.

<sup>189</sup> Detention Operations Manual, Detainee Services: Correspondence and Other Mail, Section III.B.

<sup>190</sup> Id.

"make all reasonable efforts to provide key information to detainees in languages spoken by any significant portion of the facility's population."<sup>191</sup>

The only related information provided to detainees at the Lerdo Facility is contained in the "Inmate Orientation" pamphlet. The pamphlet merely contains the address of the facility in addition to the following statement:

To ensure the maintenance of important ties with families, friends, attorneys and the community, inmates are allowed to send or receive an unlimited amount of mail to or from any person, except other inmates of the Kern County Sheriff, including publications directly from the publisher. This does not include pornographic materials. All mail must have the inmates [sic] return address. This includes housing location and booking number.<sup>192</sup>

## F. Personal Items and Contraband.

### 1. Personal Items.

The *Standards* provide that "[d]etainees may keep a reasonable amount of personal property in their possession, provided the property poses no threat to facility security. Detainees shall have the opportunity to store excess property with a third party or, with the [officer in charge's] permission, in the facility's personal property storage area... Each housing area will designate an area for storing detainees' personal property."<sup>193</sup> In SPCs and CDFs, detainees must be permitted to keep reasonable amounts of the following items, provided the item does not "pose a threat to the security or good order of the facility:" (1) small religious items; (2) softbound reading material and correspondence; (3) legal documents and papers; (4) prescription glasses;l (5) dentures; (6) a personal address book or pages; and (7) a wedding ring.<sup>194</sup>

The following is a list of the personal items allowed to be kept by detainees at the Lerdo Facility. It was copied from a list posted (in English only) in the indoor recreation area of a pod:

1. Drinks – 40 total
2. Pencils and erasers – 5 each
3. Tylenol, 2 pack – 5
4. Colored pencils
5. Spanish/English dictionary

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<sup>191</sup> Id.

<sup>192</sup> See Exhibit B.

<sup>193</sup> Detention Operations Manual, Detainee Services: Funds and Personal Property, Section III.B.

<sup>194</sup> Id.

6. Welfare Kit<sup>195</sup>
7. Envelopes – 30
8. Stamps – 30
9. Two books<sup>196</sup>
10. Two magazines<sup>197</sup>
11. One newspaper<sup>198</sup>
12. Two each:
  - a. Sketch pad
  - b. Writing pad
  - c. Legal pad
  - d. Pencil sharpener
  - e. Playing cards
  - f. Pinochle cards
  - g. Sweetener
  - h. Creamer
13. Snacks – 15 each
14. Candy – 15 each
15. Toiletries – 2 each

The sign also stated that if the detainees have any items not on this list, those items are considered contraband, and the detainees are subject to discipline.

Several of the detainees we spoke with complained that these items are insufficient. They stated that they are often hungry and that the food and toiletries they are allowed to purchase once per week do not last the whole week.<sup>199</sup> Detainees who had been at other INS facilities also wished that items available at those facilities -- such as instant rice, top ramen, and access to a microwave -- would be made available at the Lerdo Facility.<sup>200</sup> Of significant concern to us was the fact that detainees are not allowed to keep photographs<sup>201</sup> or religious

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<sup>195</sup> The “welfare kit” consists of a mini-pencil, toothbrush, toothpaste (0.6 oz.), razor, soap (1.5 oz.) and comb, and is provided weekly to indigent detainees free of charge. It is also provided to all detainees upon their arrival at the facility.

<sup>196</sup> Reading books can be obtained from a library service, but detainees complained that these books are extremely old and falling apart. Interview with [REDACTED].

<sup>197</sup> One detainee reported that these magazines may not contain photographs. He stated that if detainees are found with magazines with photographs, the magazines are confiscated. [REDACTED] interview.

<sup>198</sup> One detainee complained about only being allowed to keep English language newspapers. [REDACTED] interview.

<sup>199</sup> [REDACTED] and [REDACTED] interviews.

<sup>200</sup> [REDACTED] interview.

<sup>201</sup> [REDACTED], [REDACTED], [REDACTED] and [REDACTED] interviews.

items,<sup>202</sup> as absence of these is likely to contribute to the depression that detainees said was prevalent at the facility. Also of note is the absence from the above list of an explicit authorization to keep correspondence and legal papers.

## 2. Contraband.

The *Standards* provide that at SPCs and CDFs, the “[s]taff shall inventory, receipt, and store in a secure area with the detainee’s other (stored) personal property any soft contraband and/or hard contraband that is not illegal under criminal statutes possession,” unless such personal property exceeds storage capacity, in which case it is to be shipped to a third party of the detainee's choosing (at no cost for indigent detainees).<sup>203</sup>

We were explicitly told by Commander [b6, b7C] that soft contraband (i.e., items that aren’t illegal or hazardous such as extra bars of soap) would be stored in the detainee’s property bag for return upon a detainee’s release and that the facility has so much storage capacity that he couldn't imagine them not being able to store something for a detainee. However, posted with the above-mentioned list of personal items allowed to be kept by detainees was a statement that officers “will seize and destroy all contraband items, including excess commissary and altered items. Personal mail in excess of that stated may either be mailed to a friend or relative at the expense of the inmate or destroyed. An officer will not place any items into the property bag of an inmate.” While the above-quoted *Standard* is not mandatory for IGSA facilities, it would appear that the Lerdo Facility's posted procedure does not "meet or exceed the objective represented" by that standard, as is required of IGSA facilities by the *Standards*.<sup>204</sup>

## G. Food Service.

The *Standards* do not provide a minimum calorie requirement. With respect to satellite feeding, which is the type of feeding done at the Lerdo Facility, the *Standards* provide that “[f]oods shall be kept hot enough or cold enough to destroy or arrest the growth of infectious organisms... Thermal bags and carts, refrigerated carts, thermal compartment trays, etc. shall be used for satellite feeding...”<sup>205</sup>

We were told that the average calorie intake per detainee at the Lerdo Facility is 2800 calories per day. One detainee, however, complained that they were not given enough food, and stated that many detainees remain hungry every day and have lost significant body weight since arriving at the facility.<sup>206</sup> Perhaps the feeding schedule is a contributor to the detainees

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<sup>202</sup> [b6, b7C], [b6, b7C], [b6, b7C], [b6, b7C], [b6, b7C], [b6, b7C], [b6, b7C] and [b6, b7C]  
[b6, b7C] interviews.

<sup>203</sup> Detention Operations Manual, Security and Control: Contraband, Section III.B.

<sup>204</sup> See id. at Section II.

<sup>205</sup> Detention Operations Manual, Detainee Services: Food Service, Section III.G.1.

<sup>206</sup> [b6, b7C] interview.

remaining hungry at the end of the day, as we were told that breakfast is served around 3:00 a.m., lunch between 10:00 and 11:00 a.m., and dinner at 4:00 p.m.<sup>207</sup>

Finally, it should be noted that many detainees reported that by the time they get their food (which is prepared at a remote facility) it is too cold,<sup>208</sup> and others complained that their food is received “raw” and that the chlorine and rust in the water makes it taste bad.<sup>209</sup>

#### H. Marriage.

The *Standards* provide that “[w]hen a detainee in an IGSA facility submits a marriage request, INS shall be notified and consulted regarding approval or denial.”<sup>210</sup> When we asked about the Lerdo Facility’s marriage policy, we were told that the county does not allow marriages to take place at the facility, but that any request by a detainee would be referred to the INS. [REDACTED] b6 was not aware of the INS’s position on the issue. After making a phone call, Ms. [REDACTED] b6 stated that the INS district office would “consider” a marriage request made via a “request slip” or a letter to the INS, and that any denials would be made in writing. Such a procedure appears consistent with the *Standards*, but it is unclear whether the Lerdo Facility staff is aware that such procedure must be followed.

#### I. List of Pro Bono Legal Organizations.

The *Standards* state that the “INS shall provide the facility with the official list of *pro bono* legal organizations, which is updated quarterly by the Executive Office for Immigration Review. The facility shall promptly and prominently post the current list in detainee housing units and other appropriate areas.”<sup>211</sup> We did not see any such list posted during our tour of the Lerdo Facility.

#### J. Strip Searches.

The *Standards* require that detainees be given a copy of the facility’s detainee search procedures “in the detainee handbook or equivalent provided upon admission to the facility.”<sup>212</sup> Even though the Lerdo Facility performs strip searches after contact visitation, its “Inmate Orientation” pamphlet does not contain any reference to search procedures.<sup>213</sup>

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<sup>207</sup> [REDACTED] b6, b7C and [REDACTED] b6, b7C interviews.

<sup>208</sup> [REDACTED] b6, b7C [REDACTED] b6, b7C [REDACTED] b6, b7C and [REDACTED] b6, b7C interviews.

<sup>209</sup> See July 21, 2002 Letter from [REDACTED] b6, b7C *et. al.*, attached hereto as Exhibit D, at paragraphs 5-6. During an interview, [REDACTED] b6, b7C also reported that the water is undrinkable.

<sup>210</sup> Detention Operations Manual, Detainee Services: Visitation, Section III.I.14.

<sup>211</sup> Detention Operations Manual, Detainee Services: Marriage Requests, Section III.A.

<sup>212</sup> Detention Operations Manual, Detainee Services: Visitation, Section III.I.11.

<sup>213</sup> See Exhibit B.

**K. Request Form.**

The Lerdo Facility uses a standard form (printed in English and Spanish) for detainee requests other than the filing a grievance or requesting a sick call. For example, the request form is used to request access the library or to request a meeting with an INS representative. A sample form, which we grabbed as we toured a housing pod, is attached hereto as Exhibit I.

MORRISON & FOERSTER LLP

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