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MEMORANDUM
December 1, 2003

To: Anthony Tangeman, Deputy Executive Associate Commissioner, Office of Detention and Removal, Bureau of Citizenship and Immigration Services
From: American Bar Association Delegation to Hudson County Jail (IGSA) in New Jersey¹
File no: 502130.0012
Copies to: [redacted] ABA Commission on Immigration Policy, Practice and Pro Bono
Subject: ABA Detention Center Review Project – Hudson County Jail Delegation

I. Introduction

This memorandum evaluates and summarizes facts gathered and findings regarding the Hudson County Jail, an Intergovernmental Service Agreement facility in Kearney, New Jersey. The information was gathered via observation of the facility by the delegation and interviews with detainees and facility staff on August 21, 2003.²

The Immigration and Naturalization Service (INS) promulgated the “*INS Detention Standards*” in November 2000 to insure the “safe, secure and humane treatment of individuals detained by the INS.” The thirty-six *Standards* contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures and food service. These standards apply to Service Processing Centers (“SPCs”), Contract Detention Facilities (“CDF”), and state and local government facilities used through Intergovernmental Service Agreements (“IGSA”). The Detention Standards went into effect on January 1, 2001, and were to have been implemented at each facility by January 2003. The *Standards* constitute a “floor” not a “ceiling” for treatment of detainees. In other words,

¹ The delegation was composed of Latham & Watkins attorneys [redacted] and [redacted]

² The delegation was initially informed that our visit would be limited to approximately one hour, despite discussions with BICE personnel to the effect that the visit would take several hours. After negotiation, it was agreed that the delegation would return later in the afternoon to continue the visit. The delegation was on-site for between two to three hours total.

they are meant to establish the minimal requirements that BICE must adhere to in the operation of its facilities. Each Field Office or Officer in Charge (“OIC”) of a facility may, in his or her discretion, promulgate policies and practices affording detainees more rights and protections than those provided for by the *Standards*.

Overall, the delegation felt that the facility had made a substantial effort to implement the *Standards*. However, the following problems were noted by the delegates during the course of our visit:

- The law library lacks several of the required materials; and
- The facility’s policies regarding delivery of telephone messages, posting of required telephone numbers for legal assistance, and communication with other detained family members do not comport with the requirements of the *Standards*.

II. General

The facility has a capacity of approximately 1800 and currently houses approximately 1750. Of these, at the date of our visit, 211 were ICE detainees, including eleven female detainees. The delegation was informed that the detainees were from “all over,” with most coming from “Hispanic countries.” When pressed for the representation of particular countries, the officers could not or would not provide more information. It is not known what percentage were criminal detainees, as Sgt. [REDACTED] b6, b7C the facility’s U.S. Federal / ICE Liaison, stated that he preferred not to know what charges had been levied against detainees. He also could not comment on the average length of stay, stating that was “up to the INS.”

The ICE male detainees are housed separately, in “A Pod.”³ These men have two tiers and share a section with federal marshal inmates. Each tier houses approximately 50 people. The female ICE detainees are housed with other inmates in “B Pod.” Sgt. Rivera said there were no problems in the women’s tier, and in fact it was the “best” place to be.

III. Observations of Implementation of Legal Access Standards

A. Visitation By Attorneys

1. Hours of Access

³ A new pod – E – is being built, which will have 512 beds for ICE and federal marshal inmates. The projected completion date is mid-2005.

According to the *Standards*, legal visitation should be allowed seven days a week for a minimum of eight hours on weekdays and four hours on the weekends. Hudson County Jail facilitates this standard by permitting attorneys access to their clients 24 hours a day, seven days a week. If the attorney is joined by support staff, they may also visit the inmate, but the support staff cannot visit an inmate without the attorney present. Sgt. [b6, b7C] indicated that attorneys should call ahead to inform whomever is on staff of the attorney's arrival. Generally, attorneys are only permitted to bring paper and a writing implement into the visitation room. Attorneys who wish to use special equipment, such as laptop computers or books, must get special permission from the District Director. During our visit, the delegation observed an attorney using a laptop during her interview with an inmate.

2. Access (Attorneys and Legal Representatives)

According to the *Standards*, attorneys without Bar cards must be granted access if they show other available documentation. Mental and medical health professionals and interpreters with appropriate identification should be allowed entry. Hudson County Jail permits attorneys to enter the facility with any form of valid identification.

Mental and medical professionals and interpreters may also enter the jail, but according to Sgt. [b6, b7C] the jail has seven in-house physicians and there is rarely a need to seek off-site medical assistance. Sgt. [b6, b7C] noted, however, that, if necessary, off-site medical staff could visit the jail also.

3. Privacy

According to the *Standards*, an attorney or legal representative must be provided with a private room to conduct a meeting with possible visual, but no audio, observation. Attorneys, legal representatives, law students and legal assistants should be able to provide the detainee with paper documents, and the detainee should have the right to retain or have reasonable access to them.

There are at least six attorney visitation rooms that permit open contact between attorney and client. These rooms are quiet and adequately sized for use by two or three persons. In accordance with the Detention Standards, there was visual monitoring, but no audio monitoring. Attorneys who desire a non-contact visit are certainly permitted to do so, but Sgt. Rivera remarked attorneys never request non-contact visitation. However, after any type of contact visit, detainees are strip searched.

Visitation at Hudson County is continuous, even if a count or meal break coincides with the visit. If meals are served during an attorney visit, Sgt. [b6, b7C] explained that

detainees will have their meal brought to them. As described by non-ICE inmate [REDACTED] b6, b7C however, meals missed due to an attorney visit are saved for the inmate to permit him/her to eat it later.⁴ In addition, attorneys are permitted to bring an interpreter if necessary. While the staff does not provide interpreters, staff are permitted to offer informal assistance if necessary.

4. Strip Searches

Hudson County Jail is an IGSA facility. As such, Hudson County is permitted, in accordance with the *Standards*, to strip search detainees after a contact visit as a matter of course. According to Sgt. [REDACTED] b6, b7C detainees or attorneys are permitted to request a non-contact visit in order to avoid the mandatory strip search, but according to Sgt. [REDACTED] b6, b7C this option is hardly ever requested. In contrast, an anonymous detainee interviewed by the delegation noted that non-contact visits are only permitted from Monday through Thursday. However, this detainee claims to have not had any visitors.⁵ This same anonymous detainee noted that families often have to wait a long time before actually meeting with their detained family members.⁶

5. Detainee Information

According to the *Standards*, only legal representatives can contact the facility to find out if a detainee is detained at that particular facility. Hudson County permits these types of inquiries. In fact, attorneys seeking to visit detainees outside of normal business hours are encouraged to call and announce their visit.

B. Visitation By Family & Friends

1. Hours

According to the *Standards*, visiting hours should be clearly posted and permitted during set hours on weekends and holidays. Moreover, special arrangements should be available for family members who are unable to visit during regular visiting hours. Visits should be for at least 30 minutes in duration. According to Sgt. [REDACTED] b6, b7C the visitation schedule is posted in the cell blocks and in the Inmate Handbook.

Visitation is permitted for one hour on weekdays from 9am-12pm; 1pm-3pm; and 6pm – 9pm. If normal visiting hours are a hardship for family members, special arrangements can be made. They are dealt with on an individualized basis, normally through a social worker.

⁴ See Notes of Interview with [REDACTED] b6, b7C (Facility staff inadvertently referred Mr. [REDACTED] b6, b7C to delegation members, despite the delegation's request to speak with detainees rather than federal inmates.)

⁵ See Notes of Interview with [REDACTED] b6, b7C

⁶ *Id.*

There is no limitation on the type of family that can visit a detainee, but if another immediate family member happens to also be incarcerated at Hudson County, there is no provision for permitting them to visit each other. One detainee reported that the names of visitors must be included on a list in advance of their visit and changes to the list are permitted only every few months. As a result, visitors who could not be listed may be precluded from visiting.

2. Restrictions on Visitors

The *Standards* impose no limitation on the number of persons who can visit a detainee. At Hudson County Jail, immediate family, relatives, friends and associates may visit. However, only two minors may visit any detainee per visit. Contact visits are allowed and accommodated at Hudson, but as indicated previously, detainees are strip searched after contact visits.

If a visitor wishes to give a detainee money, the *Standards* provide that this should be permitted and that the money should be given to a designated staff member, who should provide the donor with a receipt. If a visitor wishes to leave money for a detainee, this must be done by United States Postal Service Money Order. The receipt on the money order serves as the depositor's receipt, and the inmate is given a receipt that the money has been placed in his commissary account.

C. Telephone Access

The *Standards* provide that facilities shall permit detainees to have reasonable and equitable access to telephones.

The delegation was informed that all phones for detainees are contained in the housing tiers. (There are pay phones in at least one hallway, but they are only for use by employees.) Each tier has 6 phones. As each tier houses approximately fifty people, overall it appears that Hudson has a sufficient number of phones available. The delegation was not permitted on the tier itself, so it could not be verified that the phones were in working order, although we were told that all did work. Sgt. [b6, b7C] stated that, if a phone did not work, it would be "written up" and Verizon would be brought in to immediately fix it. One interviewee commented that the length of time it took for a phone to be fixed depended greatly on the officer on duty. Another noted that the phones are often broken and would "cut out" during calls or fail to work entirely.

From the housing tier phones, detainees can make collect and calling card calls. However, the prepaid calling cards for sale in the commissary are only for international calls,⁷

⁷ Sgt. [b6, b7C] stated that a private vendor is currently trying to negotiate a contract with ICE to let inmates call foreign countries directly through a third party.

and according to an interviewee, one card costs \$27.50 and provides only 15 minutes of calling time. Another interviewee stated that collect calls cost \$5.00 for the first minute and \$0.90+ for each minute thereafter. Calls can be made from after the count (approximately 8:00 or 8:30 a.m.) until 10:00 p.m.

The delegation determined that there are several problems with regard to telephone access at Hudson. First, there was nothing posted on the walls next to the telephone, although the *Standards* state that “[I]sts of *pro bono* agencies should be posted by each phone along with multilingual instructions on how to operate the phone.” The delegation was told by Sgt. Rivera that instructions for using the phone were provided in the detainees’ handbook, which, he said, is given to detainees when they first enter the facility and is available in English or Spanish.⁸ One detainee indicated he had received a handbook in Spanish, his native language, but another stated that he had not received any written materials when he arrived at the facility.

The *Standards* require that detainees be able to call their attorneys without charge and discuss their legal cases on the phone “in a private environment.” At Hudson, detainees must make a request in writing to call their attorneys and then place that request in a box on the tier. A social worker picks up these requests only once a day, and then brings one detainee at a time to the social worker’s office to log and place the call. The call is free and not monitored (Sgt. [b6, b7C] stated that no calls at Hudson were monitored), but the social worker remains in the room during the call. Sgt. [b6, b7C] informed us that it is facility policy that an inmate is never allowed to be in a room by himself or herself. (One inmate appeared to be in the laundry room by himself during our tour, however.) There is no time limit for calls to attorneys, although Sgt. [b6, b7C] noted that “we don’t expect them to talk for an hour.” Also, the calls are not interrupted, even for a “count.” If a detainee wants to talk to an attorney more than once a day, Sgt. [b6, b7C] said that is to “be worked out” among the attorney, the social worker, and the detainee.

Hudson’s procedure for taking and delivering messages falls short of the *Standards*’ dictate that the “facility should receive and deliver phone messages for a detainee promptly.” At Hudson, there are no procedures for delivering messages of any sort, including messages to or from attorneys. This was confirmed by the interviewees. In such a situation, the only exception is if there is an emergency, such as a death in a detainee’s family. Then officers will contact the appropriate religious personnel, and that person will deliver the message to the detainee. If the detainee has a personal emergency, however, the only way for the detainee to get that information to family members is by making a collect call. (Sgt. [b6, b7C] indicated that the

⁸ The delegation requested a copy of the handbook in all available languages. Sgt. [b6, b7C] said he would take the request to County Counsel for permission to send copies to us. To date, we have not received the handbook.

officers “don’t get involved in personal matters.”) The *Standards* state that detainees should be able to call family members if there is a personal emergency.

Detainees are permitted to call consulates and their attorneys for free. However, the consulate numbers are not available, as required by the *Standards*. ICE provides the facility with a consulate list, which the social worker gives out as appropriate. The numbers for clerks of various courts, attorney complaints, public advocates, and consulates are posted in the library, although the listings were undated and seemed fairly old. If other family members are detained, there is no contact unless they share the same tier. No phone calls to detained family members are permitted, in contravention of the *Standards*’ requirement that “[d]etainees should be able to contact their other detained family members without cost.”

C. Legal Materials

The *Standards* mandate that the Hudson facility shall establish and maintain a law library. The library must be adequately lighted, reasonably quiet, and large enough to support legal research and writing. It must also contain an adequate number of tables and chairs to accommodate all detainees who wish to use the facility, and must provide a flexible schedule in order to permit all detainees use of the law library for a minimum of five hours per week. Finally, the library should provide one typewriter or computer per five detainees, as well as sufficient writing materials and texts to enable detainees to conduct research and prepare legal documents.

A. Materials

Of the texts and periodicals contained on the “List of Legal Reference Materials for Detention Facilities,” the library at the Hudson County Jail contained many of the publications listed. Nonetheless, many volumes were outdated.

Of the thirty publications listed, the facility carried seventeen.⁹ Of the seventeen texts, only two were 2003 editions. These publications included: *Immigration Law and Defenses* and *Federal Civil Procedure and Rules*. In addition to the texts contained on “List of Legal Reference Materials for Detention Facilities,” the library carries a plethora of other legal texts and research tools that are not listed, but which should be noted: Federal Practice Digests, New Jersey Reporters, Federal Reporters, New Jersey Digests, Supreme Court Reporters and a current New Jersey Lawyers’ Diary. While these other legal texts are located in the main library and readily accessible to detainees, the immigration texts are located behind the reference desk. A detainee must specifically request a particular immigration text in order to review it. The walls of the library contain various postings, including attorney reference numbers and legal research tips.

Officer [REDACTED] b6, b7C is the officer who generally supervises the library. She is responsible for updating the materials. Officer [REDACTED] b6, b7C updates/checks the materials when updates/pocket parts are sent to her from the publishers of the texts. She receives updates twice a month, but only for certain texts. If a detainee requests a text that the library does not carry, that detainee must speak to a social worker in an attempt to obtain the material. This procedure may or may not result in the detainee receiving the requested text. One of the detainees stated that if the library does not carry a requested publication, the librarians do not provide any assistance in obtaining the text.

The detainees interviewed acknowledged that they are aware of the legal materials in the library. Although one detainee stated that he has not experienced any problems when using the library’s materials, another detainee commented that the materials are accessible only “if you know what you’re looking for.”

⁹ These publications included: *Constitution of the United States of America: Analysis and Interpretation*, *United States Code - Title 8*, *Code of Federal Regulations - Title 8*, *Benders Immigration and Nationality Act Service*, *Bender’s INS Regulation Service*, *Administrative Decisions Under Immigration & Nationality Laws (both bound volumes and the interim decisions)*, *Immigration Law and Defense*, *Immigration Law and Crimes*, *Federal Civil Judicial Procedure and Rules*, *United States Code - Title 28*, *Federal Criminal Code and Rules*, *Criminal Procedure (Hornbook)* (two copies), *Legal Research and Writing: Some Starting Points*; *Black’s Law Dictionary*, *Directory of Nonprofit Agencies that Assist Persons in Immigration Matters*, *Translation Dictionary* (Portuguese only) and *Self-Help Materials*. Generally, the texts are in good condition.

The library did not contain “*Florence Project’s ‘Know Your Rights’*” packets. This was confirmed by one of the detainees.

One of the detainees that we interviewed commented that the facility “can really improve” the library, noting that many texts are missing.

B. *Library Conditions*

The library is a designated room in the facility, sufficiently large to accommodate legal research and writing. The library is well lit and reasonably isolated from noisy areas. The library contains approximately six tables, twenty-one chairs and three small desks. The room is divided into two sections and a maximum of twenty detainees are permitted in the library at one time (ten per section). The room appears to accommodate the facility's maximum.

The library contains one operational computer, but no printer. Writing implements, paper, envelopes and other office supplies are provided free of charge and in unlimited amounts, however, a detainee must request the supplies, as they are located behind the reference desk. This was confirmed by one of the detainees.

The library is open weekdays from 9 a.m. to 3 p.m.¹⁰ The library is closed on weekends and holidays. The facility provides rotating schedules for detainees' library use depending on whether they are state, federal or ICE detainees. A detainee can use the facility one time per week. One of the detainees commented that this policy was recently changed from twice a week to once a week.

A detainee does not have to choose between recreation time and library time. This was confirmed by one of the detainees that we interviewed.

Detainees in isolation/segregation are not permitted to visit the library. They must specifically request a book, which is brought to them by an officer. The problem with this practice is that unless the isolated detainee knows what publication to request, he or she is unable to access library services.

C. *Photocopies and Mail*

The library has one photocopier. Detainees are permitted to make unlimited copies. Both detainees that we interviewed stated that they are not permitted to use the photocopier themselves; rather, a library staff member makes all copies for detainees upon request.

The facility provides free envelopes to all detainees and free stamps for all legal mail. Stamps are requested at the library and the facility mails the items for the detainees. One

¹⁰ The detainees that we interviewed stated that they were not aware of the library's hours of operation.

of the detainees stated that the facility pays for all legal mail and all correspondence mailed within the United States, however each detainee must pay for his or her own international mail.

D. Computer Access

As mentioned, the library contains one operational computer, which is equipped with a CD-ROM and immigration law materials. Detainees are permitted to save material on a diskette, but they are not permitted to bring the diskette back to their cell. Officer [REDACTED] is responsible for safekeeping detainees' diskettes. Also, as mentioned, the computer does not have an attached printer. Without printing capabilities it appears that a detainee is only permitted to view the immigration materials from the library's computer station.

Although Officer [REDACTED] stated that detainees are permitted to use the computer, one detainee explained that library staff and civilian legal assistants are the only individuals that are permitted to use the computer.

D. Group Rights Presentations

Several organizations provide group rights presentations at the facility. Sgt. [REDACTED] stated that an organization called Horizon and Amnesty International conduct various presentations. Another organization, possibly Amnesty International, also shows a video entitled "Know Your Rights."

IV. Other General Observations Unrelated to the Legal Access Standards

A. Recreation Issues

The facility provides outdoor recreation for inmates/detainees. In bad weather, the inmates have access to indoor facilities. Inmates/detainees generally exercise or play basketball and football. The facility does not permit weightlifting. Inmates/detainees receive one hour of recreation each day.

B. Education Classes

The facility offers a number of daily classes to inmates/detainees. These classes include GED, literacy, drug education and parenting.

C. Medical Issues/Health Access

In order to receive medical attention, an inmate/detainee must make a request. Such a request puts him on “sick call.” The inmate/detainee is then seen by staff doctor. If the situation is an emergency, the facility contacts emergency medical services.

The facility has a number of doctors on staff. The doctors are county employees. The facility also employs eight counselors who are available 24 hours a day, 7 days each week. If a counselor deems an inmate/detainee unstable, he is sent to an outside facility for a psychiatric evaluation.

D. Religious Issues

The facility offers weekly religious services on site. The services are offered in a number of denominations including Catholic, Baptist, Pentecostal, Methodist and Muslim. Religious counseling is also available. The facility has an imam, a minister, and a deacon on staff from Monday through Friday and during weekend services.

The facility provides special diets. To receive a special diet an inmate/detainee must submit a request to the religious coordinator. Inmates/detainees may possess certain religious items including crucifixes and prayer rugs.

E. Detainee Classification

At the Hudson County Jail male BICE detainees are segregated from the general population and are therefore not subject to the classification system used for other prisoners. There is no sub-classification system for detainees, in part because BICE does not inform the Hudson County facility why the detainee is being held. Although detainees are held in a separate pod, they are co-mingled with other federal detainees.

Female detainees are mixed in with the general population apparently because there are not enough female detainees at the Hudson County facility to fill a pod.

F. Dietary Requirements

Detainees and other inmates may request special dietary accommodations for health or religious reasons. The detainee is required to fill out a form which is signed by a doctor or religious official and that information is provided to the kitchen staff who have a roster of detainees that require special meals.

G. Detainee Work Program

Detainees at the Hudson County Jail are not permitted to participate in any voluntary work programs.

H. Grievance and Disciplinary Procedures

Detainees who have complaints may file an Inmate Grievance Form. Forms are reviewed daily by an ombudsman who sends them to the appropriate officer or staff member to address.

The policy regarding disciplinary segregation is the same for detainees and other inmates. All disciplinary segregation is on a fifteen day in/one day out cycle regardless of the total number of days of the sentence. Inmates spend fifteen days segregated followed by one day “out” with the other detainees or inmates. They are in segregation for twenty-three hours per day and given one hour out for all other needs including showers, recreation and attorney visits.

Restraints are placed on detainees only if they present a danger to themselves or others. After an inmate has been restrained he is checked by a doctor and the restraints are removed one at a time.

Administrative segregation is used only instances in which an inmate will pose a security risk. According to Sgt. [REDACTED] detainees are segregated only if they are “known trouble-makers.”

Medical quarantine is used to isolate detainees who have a contagious illness. If, following a medical exam, an inmate is determined to be contagious, he will immediately be isolated.

I. BICE Presence

BICE inspects the Hudson County Jail on a yearly basis. Detention and Deportation officers are present at the Hudson County facility almost daily. Higher ranking officers may be brought in if necessary. A detainee who would like to contact BICE staff must fill out a form and give it to a social worker who will pass on the request to BICE. It is not clear whether detainees may also ask the correction officers to put them in contact with BICE.

J. Facility Management

The staff at the Hudson county jail appeared both knowledgeable and professional. The staff that works with detainees are trained as correction officers and receive no special training or instruction with regard to the detainees. According to Sgt. Rivera, very little has changed at the Hudson County Facility since the implementation of the INS Detention Standards. Following the implementation of the Standards detainees were separated from the

general population and given a few additional privileges, most notably additional visitation rights.

V. CONCLUSION

With two exceptions, the facility appears to have substantially implemented the *Standards*. Those exceptions are: (1) the facility's law library lacks several of the required materials; and (2) the facility's policies regarding delivery of telephone messages, posting of the required telephone numbers for legal assistance, and allowing detained family members to communicate do not comport with the *Standards*. Those issues aside, however, the delegation's review demonstrates that the Hudson County facility substantially comports with the *Standards*.