

MEMORANDUM

August 1, 2003

To: [Redacted] b6
From: [Redacted] b6
[Redacted] b6 Summer Associate
[Redacted] b6 Summer Associate
[Redacted] b6

File no: 502130-0005
Copies to: Andrea Siemens, ABA Commission on Immigration Policy, Practice and Pro Bono
Subject: Review of ICE Detention Standards at Middlesex County Jail in New Jersey

I. Introduction

This memorandum summarizes this delegation’s review of the Middlesex County Jail (“Middlesex facility”) in Middlesex, New Jersey, where detainees of the Department of Homeland Security (“DHS”) Immigration and Customs Enforcement (“ICE”) are held in custody.¹ The information and analyses contained herein are based on observations by the delegation,² a guided tour of the facility, interviews with DHS and facility officials, and interviews with DHS detainees in the facility.

The Immigration and Naturalization Service (“INS”) promulgated the *INS Detention Standards* (the “Standards”) in November 2000 to insure the “safe, secure and humane treatment of individuals detained by the INS.” The *Standards* went into effect on January 1, 2001 and were to have been implemented at each facility housing DHS detainees by January 2003. The standards set the minimum requirements for DHS treatment of its detainees, but each field office or officer in charge of a facility may enhance the rights and protections offered the detainees.

¹ On March 1, 2003, the responsibility for the enforcement of immigration laws were transferred from the Immigration and Naturalization Service to the United States Immigration and Customs Enforcement in the Department of Homeland Security.

² The delegation was comprised of members of the New York office of Latham & Watkins LLP- [Redacted] b6, [Redacted] b6, Litigation Partner; [Redacted] b6, Litigation Associate; [Redacted] b6 Associate; [Redacted] b6 Summer Associate; and [Redacted] b6, Summer Associate.

The delegation met with, and interviewed the following officials during its visit on July 24, 2003:

[REDACTED]
Sgt. [REDACTED]
[REDACTED]
[REDACTED]

Director, Rehabilitation Services (Middlesex)
Corrections Officer (Middlesex)
Supervisory Deportation Officer (ICE)
Enforcement Officer (ICE)

The Middlesex facility is located within a minimum- and medium-security county jail in central New Jersey, about a one and a half hour's drive from New York City. The general inmate population at the facility is approximately 1,300 adult inmates, comprised of about 90 percent men and 10 percent women.³ Inmates in the facility's general population are persons who are serving a sentence of less than one year or those with longer sentences awaiting transfer to another facility.⁴ Some of the Middlesex inmates are also persons awaiting trial.

The Middlesex County Jail began accepting DHS detainees in January 2002. Since then, the facility has received detainees "on a regular basis."⁵ On the day of our visit, officials approximated that nearly 215 detainees were in the facility. The detainees represented a wide range of countries including Jamaica, the Dominican Republic, Cuba, Mexico, and various African, Asian and Middle Eastern countries.⁶ Officials estimated that detainees had spent anywhere from two days to 18 months in the facility.⁷ The facility has received female detainees in the past, but none were present during our visit. The facility does not receive juvenile detainees. At least 60 percent to 70 percent of the DHS detainees at Middlesex had been the subject of criminal prosecution before becoming a DHS inmate.⁸

The Middlesex facility has two separate housing units reserved for DHS detainees. The first, the H-Unit, is the most permissive and unrestrictive housing unit in the entire facility.⁹ With beds for 130 persons, the unit is set up as an open dormitory instead of individual or shared cells. There is a large communal living area with tables and a few televisions. Sleeping quarters are stacked in three tiers just off the living areas, with groups of four bunk beds exposed to the living area. Bathroom and shower facilities are on each of the three tiers. The entire area is an open space. There are no doors or even doorways to block one area from the next. Within the H-Unit is a self-contained outdoor recreation area and a weight room.

³ Interviews with Ms. [REDACTED] and Sgt. [REDACTED]

⁴ Interview with Sgt. [REDACTED]

⁵ Interviews with Ms. [REDACTED] and Sgt. [REDACTED]

⁶ Officials acknowledged that language is frequently a barrier when communicating with detainees. Although the facility seemed well-equipped to communicate with Spanish-speaking detainees, it relied on Language Line for communication in any other language. Language Line is a telephone translation service, where an operator can translate from the detainee's language to English in order to facilitate communication within the facility.

⁷ Interviews with Ms. [REDACTED], Sgt. [REDACTED], Mr. [REDACTED] and Mr. [REDACTED]. Officials specifically stated that some of the original detainees received in January 2002 were still present.

⁸ Interview with Ms. [REDACTED]

⁹ Interviews with Ms. [REDACTED] and Sgt. [REDACTED]

The second housing area, the A-Unit, is smaller and can house only 96 persons. This is a more restrictive area, comprised of three levels, each with a common open area and adjacent cells forming an enclosed circle. Two men sleep in each cell. The men are locked in the cells at night.

Meals and medication are delivered to each housing unit, which minimizes the movement of detainees, who do not mix with inmates in the general population or with detainees from the other housing units.

In addition to observations on the implementation of the legal access standards: Visitation; Telephone Access; Group Rights Presentations; and Legal Materials, the delegation also made general observations in the following categories: Correspondence; Funds and Personal Property; Grievance Procedures; Detainee Handbook; Access to Medical Care; Recreation; Religious Issues; Discipline; Special Management Unit; and Voluntary Work Programs.

II. Observations of Implementation of Legal Access Standards

A. Visitation

Detainees at the Middlesex facility are permitted a full range of visitors: family members, friends, attorneys and legal representatives, members of the media and consular officials.

i. Visitation by Attorneys

The *Standards* require that attorneys be permitted to visit detainees every day of the week, for a minimum of eight (8) hours during each weekday and four (4) hours on weekend days. Legal visits should encompass a heightened level of privacy, by which the detainee and his lawyer may be visually observed, but not overheard. Furthermore, the *Standards* dictate that a detainee not be routinely subjected to strip searches after each visit with his attorney; instead, strip searches should only take place upon reasonable suspicion that the detainee possesses contraband. Finally, attorneys should be able to verify clients' whereabouts in the DHS system (including Middlesex) 24-hours a day.

The Middlesex facility appears to be implementing the *Standards* set forth for legal visits. According to Middlesex officials, attorney visits are accommodated seven days a week, generally prompted by a phone call from a lawyer (though lawyers are permitted to visit detainees without calling ahead). [REDACTED] Deportation Officer for ICE, stated that attorneys regularly receive information from the DHS about where their clients are being detained, though he indicated that processing delays often mean that lawyers know the detainees' whereabouts before DHS offices contact them.¹⁰

¹⁰ Interview with Mr. [REDACTED]

Although most visitors meet with detainees in a large communal visiting room, attorneys are also allowed to meet with clients in private rooms separate from the main visiting room.¹¹ One such room, a glass-enclosed conference room, is located within the H-Unit housing area. This room, like the general visiting room and a set of “no-contact” phone booth rooms, is observable by sight, but facility personnel cannot listen to the conversation taking place inside. Facility officers referred to other conference rooms within the facility as also being available for legal visits.¹² Detainees are allowed to exchange papers with their lawyers during these visits, and detainees frequently retain these papers along with their personal belongings in the housing unit (see Section VII, below). Detainees usually receive a “pat down” search after these visits; strip searches are rare.¹³

ii. Visitation by Friends, Family and the Media

The *Standards* provide that visitation should be permitted during fixed periods on weekends and holidays, and that such hours shall be clearly posted for detainees to see. If a visiting family member is unable to attend regular weekend hours, special accommodations shall be made to permit that person to visit during another period of time. All family members, friends and associates (in addition to other categories of visitors addressed elsewhere) should be permitted visitation with DHS detainees.¹⁴

The *Standards* further provide that detainees’ visits should last at least 30 minutes, and that no limitation on the number of visitors per detainee is allowed. Detainees in segregation should not be denied visitation, and if a detainee is forced into restraints because of safety concerns his visits should be denied rather than allowing visitation to take place while he is restrained. Accommodations shall be made to permit detainees’ minor children to visit. According to DHS guidelines, contact visits “shall be allowed and accommodated.”¹⁵

Visitation by family and friends at the Middlesex facility is permitted up to four days a week. The schedule allows for each detainee to receive visitation for up to 13 hours per week, as such:

Wednesdays	1 pm – 4 pm 6:30 pm – 8:30 pm	Open A-L Only
Thursdays	1 pm – 4 pm 6:30 pm – 8:30 pm	Open M-Z Only
Fridays	1 pm – 4 pm	Open

¹¹ Interview with Ms. [b6, b7C] and Sgt. [b6, b7C]

¹² Interview with Ms. [b6, b7C]

¹³ Interview with Sgt. [b6, b7C]

¹⁴ ABA, INS DETENTION STANDARDS: VOLUNTEER ATTORNEY GUIDE, p. 13-14.

¹⁵ *Id.*

Saturdays	9 am – 11 am	A-F Only
	1 pm – 4 pm	G-L Only
Sundays	9 am – 11 am	M-R Only
	1 pm – 4 pm	S-Z Only

As observed during our visit, this schedule is posted in each housing area.

Visitation at the facility can take one of two forms. First, visits can take place in a large visiting room in which detainees and visitors sit on opposite sides of a long table with a foot-high wooden barrier between them to prevent any touching. Physical contact during these visits is strictly prohibited. Not even an embrace, kiss or handshake is permitted.¹⁶ Up to three visitors are allowed to meet with a detainee at one time. According to facility officials, these visits can last up to one hour.¹⁷

Visits may also take place in small cubicles separate from the general visiting area. In these rooms, a detainee sits at a counter opposite his visitor, separated entirely by a plexiglass pane. The detainee and visitor speak through a telephone. These rooms are called the “phone booths” and permit no contact. Detainees relegated to segregation are allowed only this type of visitation.¹⁸ Minor children are permitted to visit with detainees.

The Middlesex facility has implemented some of the *Standards* for visitation during detention. For instance, the hours and frequency of visitation are within permissible range and are clearly conveyed to detainees in their housing units. Procedures for allowing children to visit, and for visitation during a detainee’s period in segregation are also consistent with the *Standards*. Yet, there are some areas where the facility’s visitation policy falls short of the *Standards*.

First, the *Standards* clearly state that “[c]ontact visits should be allowed and accommodated.” Instead, contact visits at the Middlesex facility are absolutely prohibited. Visitors and detainees in the general visiting room are not permitted to kiss or shake hands at any time. Visits are conducted across a plywood barrier that extends both above and below the table where the visitor and detainee sit across from each other. Visitors in the phone booth rooms are further separated, with a plexiglass window prohibiting any contact with the detainee.

Second, the Middlesex facility has several rules that limit visits from family and friends in ways not mandated by the *Standards*. Detainees must submit a list of four potential visitors to

¹⁶ Interview with Sgt. [b6, b7C] This is also in contravention of the published Inmate Guidelines given to inmates and INS detainees upon entering the Middlesex facility, which state, “you may briefly kiss or shake hands with your visitors.”

¹⁷ This statement was made by Sgt. [b6, b7C] during the delegation’s visit. Sgt. [b6, b7C] at first was somewhat confused as to the time limit, ultimately assuring us that it was one hour. Facility guidelines, as published in its inmate handbook, indicate that visits are only to last 30 minutes.

¹⁸ Interview with Sgt. [b6, b7C]

facility officials prior to visiting hours.¹⁹ Visitors who are not listed will not be given time with the detainee. Facility officials stated that this list may be revised at any time, but one detainee alleged that he was not able to alter his list.²⁰ This contradiction seems to be indicative of an overall lack of definitive information regarding treatment of DHS detainees. Because the Middlesex facility does not have any printed materials that specifically relate to rules in DHS units, many inmates either were unfamiliar with or confused about various rules and procedures. In addition, facility officials strictly limit each visitation to three visitors for each detainee at one time.²¹ This conflicts with the *Standards* which proscribe any “limitation on the number of visitors per detainee.” At least two detainees said during our interviews that family members who were not on their visitors list were turned away. Apparently, lawyers or other legal representatives do not have to be listed in order to see an inmate. DHS officials did indicate that lawyers may be asked to present a G-28 form for identification purposes.²²

iii. Visitation by the News Media

The *Standards* require that detainees be permitted to meet with members of the news media while detained. Media representatives must request a visit in writing, and the DHS must promptly respond to such requests. Furthermore, permission for media visits must not be unreasonably withheld, and DHS officials must not interfere with the interview once granted. Detainees must give written consent to a media interview before it will be allowed.²³

The Inmate Guidelines²⁴ distributed by the facility to detainees contains no information about media visits,²⁵ although officials suggest that media visits are accommodated, though predicated on the detainee’s express consent.²⁶

B. Telephone Access

The *Standards* require that detainees be allowed to make *free* phone calls to various parties, including consulates, legal aid services, courts and government offices, and to family members in the case of personal emergencies. Detainees must request permission to make these calls from a facility official, and the request must be accommodated within eight waking hours. Additionally, DHS facilities are required to provide access to at least one telephone for every 25

¹⁹ Interviews with Mr. [b6, b7C], various detainees.

²⁰ Interview with detainee.

²¹ Interviews with Ms. [b6, b7C] Sgt. [b6, b7C] and various detainees.

²² Interview with Mr. [b6, b7C]

²³ For rules regarding media visits, see ABA, INS DETENTION STANDARDS: VOLUNTEER ATTORNEY GUIDE 14.

²⁴ See Section VIII, below.

²⁵ See MIDDLESEX COUNTY DEPARTMENT OF ADULT CORRECTIONS, CORRECTION CENTER INMATE GUIDELINES 2, revised September 2000.

²⁶ Interview with Mr. [b6, b7C]

detainees to use to make collect calls. Use of these phones should incorporate multilingual instruction, at least 20 minutes of uninterrupted conversation and “reasonable rates.” In addition, a list of pro bono agencies must be posted by each phone. Finally, detainees must be allowed to discuss their cases with their lawyers “in a private environment without interruption or cut-offs.”

Telephone access at the Middlesex facility is a serious problem. Although there are enough telephones installed to satisfy the *Standards* (six phones in the H-Unit for 130 detainees; four phones in the A-Unit for 96 detainees), their use is extremely cost-prohibitive. Collect calls through these telephones cost about \$0.75 per minute, with a \$2 connection charge for calls within New Jersey and a nearly \$5 connection charge for calls outside New Jersey. The most frequent complaint from the detainees whom the delegation interviewed was the high cost of telephone calls. Many families will refuse to accept the calls made by their loved ones because the cost is too high. Also, several of the detainees interviewed claimed that their phone calls were automatically disconnected after 20 minutes or whenever they spoke about conditions in the facility, implying that calls are monitored.

The Middlesex facility also lacks adequate resources for facilitating the free phone calls mandated by the *Standards*. Currently, free phone calls cannot be made from the public telephones in each housing unit. Instead, the social worker assigned to the DHS detainees must facilitate each phone call by bringing each detainee into her private office and dialing their calls using a calling code. The social worker, however, visits the facility for a short amount of time each week.²⁷ Many detainees request her help in making phone calls during her visit, but only a handful are able to make the calls given the logistical constraints.²⁸ We were advised that the facility had plans to arrange to have the telephones at the DHS units linked to an “800” line that would permit free telephone calls. There was no indication when this plan would be implemented.

Generally speaking, the detainees find it nearly impossible to make free phone calls from the Middlesex facility. In addition to the social worker’s limited availability, a detainee may not be able to reach the other party when he finally has an opportunity to make a free call. Although detainees should not have to resort to making collect calls to lawyers and DHS officials, those who do claimed that these efforts were often equally fruitless. Most lawyers will not pay for collect calls, and government and pro bono agencies often have policies of not accepting collect calls.²⁹

C. Group Presentations on Legal Rights

The *Standards* provide that lawyers and non-profit legal services organizations must have access to DHS detainees in order to provide group presentations on detainees’ legal rights.

²⁷ Furthermore, during the delegation’s visit, we were told that the social worker was on vacation and would be absent for several weeks. No arrangements were made for a temporary replacement of these services.

²⁸ Interviews with detainees.

²⁹ Interviews with detainees.

These presenters should request permission in advance, and should receive at least one hour of uninterrupted time in which to make the presentation. Similarly, presenters can request to have a private meeting with up to 3 detainees to discuss their cases. According to the *Standards*, an informational poster alerting detainees to the presentation should be in place 48 hours in advance of the presentation. Other information, like agency-provided rights videos, should be made available to detainees upon request.

According to facility officials, non-profit groups are regularly allowed to make presentations to detainees, although those groups often give only 24 hours or less of notice to the facility.³⁰ The presentations are made within the self-contained housing units, thus issues of notice and sign-up information are less relevant because the detainees are well aware of presentations and can access them without difficulty.

In speaking with detainees, however, the delegation learned that rights presentations at the facility are infrequent. According to some, there are no presentations per se, but just days in which legal aid lawyers visit the housing unit and offer to speak with individual detainees about their cases.³¹

D. Access to Legal Materials

The *Standards* dictate specific requirements for each detention facility with respect to access to legal materials. At a minimum, the *Standards* require that detainees have access to a law library for a minimum of one hour a day, seven days a week.³² The law library must have adequate space to accommodate the detainees' writing and research, and one typewriter or computer should be available for every 5 detainees. Facilities must provide for detainees to make copies of legal documents as required for court filings and must provide envelopes and stamps free of charge to indigent detainees corresponding with lawyers or courts. Finally, the DHS promulgated a list of legal materials that every DHS law library should contain.

The Middlesex facility has a law library that serves both the general inmate population and the DHS detainees. Although the delegation did not have the opportunity to confirm every title, the library appeared to satisfy *Standards* for its collection of legal materials. Furthermore, the facility employs a full-time law librarian who assists detainees in finding legal materials and pulling cases via Westlaw's online research service.³³ This research is free of charge to

³⁰ Interviews with Ms. [b6, b7C] and Sgt. [b6, b7C]

³¹ Interviews with detainees.

³² A separate, earlier, INS standard requires that detainees enjoy only 5 hours of library time per week. See INS Detention Standards: Access to Legal Materials, available at <http://www.immigration.gov/graphics/lawregs/legal.pdf>.

³³ Interviews with Ms. [b6, b7C] and detainees.

detainees, although we received conflicting information about whether indigent detainees can make free copies.³⁴

Detainees at the Middlesex facility have the opportunity to use one of three typewriters in the law library; there is also one typewriter and one computer in the H-Unit and one computer for research purposes in the A-Unit. Detainees are able to help each other prepare filings, especially those who are not proficient in English.

The only major problem with the detainees' access to legal materials was the infrequency of authorized visits to the law library. While facility officials implied that library access was available daily, detainees reported that visits for each of the two DHS housing units are only scheduled for one hour, two to three times per week.³⁵ Furthermore, only ten detainees are allowed to visit the library during this scheduled visit, and are accommodated on a first come-first served basis.³⁶ This is contrary to the *Standards* and was a source of frustration for a number of the detainees we interviewed.

VI. Other General Observations Unrelated to the Legal Access Standards

A. Correspondence and Other Mail

The *Standards* govern the treatment of detainees' incoming and outgoing mail. DHS facilities are required to provide detainees with unlimited paper and envelopes for personal correspondence. They are also required to provide stamps free of charge, sufficient to permit three pieces of general correspondence and five pieces of legal mail each week.

Both incoming and outgoing mail is subject to inspection at DHS detention centers. Incoming general correspondence and packages are searched for contraband and can be read at random. Incoming legal mail and other special correspondence can be inspected for contraband, but cannot be read. Outgoing legal mail cannot be inspected. All incoming mail must be distributed within 24 hours and outgoing mail must be sent out within 24 hours.³⁷

Officials at the Middlesex facility seem to be accommodating these *Standards*. Paper, pens and envelopes are readily accessed by detainees and seem to be in no short supply. Incoming general mail is inspected in a mail room designed for the entire facility and delivered

³⁴ According to interviews with detainees, the librarian charges \$0.10 per copy. Although the *INS Standards* say that facilities "must make copies of detainees' legal documents as required for court filings," they do not specifically address whether indigent detainees should receive these copies free of charge. Detainees told the delegation that the librarian does give free copies to some detainees who explain their indigence, but that others similarly situated are unable to receive free copies.

³⁵ Interviews with detainees.

³⁶ Interviews with detainees.

³⁷ *Id.*

to the detainees within 24 hours of receipt.³⁸ Each detainee is allotted complimentary postage sufficient for three pieces of personal mail and five pieces of legal mail.³⁹ Detainees interviewed by the delegation did not report problems with either sending or receiving mail.

B. Detainee Grievance Procedures

The *Standards* provide that each facility must develop standard operating procedures for addressing grievances and must *guarantee* against reprisals. A formal procedure should be in place for a detainee to present his concern to any staff member at any time. Furthermore, a detainee should be given the opportunity to present his grievance informally before a facility official within five days of the incident giving rise to the grievance. Translation assistance should be given to non-English speaking detainees seeking to file grievances.⁴⁰

Grievance procedures at the Middlesex appear to follow two paths. Complaints may either be lodged with the Middlesex facility management or with local DHS officials. Neither of these forms of redress are outlined clearly for detainees. The Inmate Guidelines state that “all grievances and problems should be presented through the chain of command.”⁴¹ Inmates are instructed to discuss a problem with their counselor or officer, sergeant or lieutenant, and may subsequently present the issue to the Warden in writing.⁴²

Detainees and facility officials told the delegation that detainees are instructed to write their grievances on a piece of paper and place them in the appropriate box in the housing units. Although there may be a formal procedure for responses to such complaints, one detainee claimed to have filed –12 to 15 complaints and had only received a handful of replies.⁴³ One inmate alleged that he handed a written grievance concerning a shirt lost in the laundry to cellblock guard. The guard, in turn, tore up the grievance in front of the inmate and discarded it. The inmate complained to the warden, and eventually got a new shirt. Other detainees reported that they experienced reprisals after making complaints.

C. Detainee Handbook

The *Standards* provide for handbooks to “be distributed to each detainee upon their admission to any facility in which they will be detained for more than 72 hours.” Handbooks should be available in languages other than English or translators should be available to help

³⁸ Interview with Ms. [REDACTED].

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ MIDDLESEX COUNTY DEPARTMENT OF ADULT CORRECTIONS, CORRECTION CENTER INMATE GUIDELINES.

⁴² *Id.*

⁴³ [REDACTED] interview. Similarly, another detainee indicated that his request for a change to vegetarian diet was not addressed for several weeks, after which he received only a form letter stating that his request was being considered. To date his request has not been fulfilled. Ms. [REDACTED] notes.

read the detainee handbook. The purpose of the handbook is to acclimate a detainee to his or her new institution and to serve as a ready reference for standard operating procedures at the facility. The *Standards* include a sample format to which “every detention handbook will conform.”⁴⁴

Although the Middlesex facility began receiving DHS detainees in January 2002, the facility’s Inmate Guidelines handbook was last revised September 2000. In addition, the book applies to the general inmate population and does not specifically address the issues that pertain to DHS detainees, or the distinction between their status and that of inmates in the general population. According to [REDACTED] b6, b7C Director of Rehabilitative Services at Middlesex, a new edition of the handbook will be issued as early as 2004 and that edition should include a section regarding DHS detainees. The “Correction Center Inmate Guidelines” handbook is printed in both English and Spanish though the delegation was only provided with an English version.

Most significantly, at least one detainee interviewed asserted that he never received a handbook.⁴⁵ At Middlesex, a detainee is supposed to confirm receipt of a handbook by signing for it upon admission.

D. Access to Medical Care

The *Standards* state a broad policy that detainees shall have access to health care facilities and shall receive “an initial medical screening, primary medical care, routine dental-check-ups, and emergency care.” The Middlesex facility has a dedicated medical wing separate from the housing units, which is used by the general inmate population as well as DHS detainees. The medical unit has ten beds for medical observation where patients are monitored by nurses and guards every 15 minutes. Mental health care services are also provided onsite in the medical unit.

i. General Access to Health Care

The Inmate Guidelines state that “nursing staff will be on duty seven days a week” and a doctor will visit the institution regularly to meet individual needs.⁴⁶ Detainees receive a physical examination when they are admitted to the institution.⁴⁷ If a detainee has a medical problem, he “can submit a request to see a Member of the Medical department.”⁴⁸ A nurse makes medication rounds three or four times a day. During this time, the nurse dispenses any regularly administered medication; she may also accept forms on which detainees request to see the doctor. One detainee complained that medical needs are not always addressed in a timely

⁴⁴ <<http://www.immigration.gov/graphics/lawsregs/handbk.pdf>>.

⁴⁵ [REDACTED] b6, b7C interview.

⁴⁶ MIDDLESEX COUNTY DEPARTMENT OF ADULT CORRECTIONS, CORRECTION CENTER INMATE GUIDELINES 16.

⁴⁷ *Id.*

⁴⁸ *Id.*

manner. He claimed that detainees must submit formal written requests to see the doctor if they have simple problems such as a headache.⁴⁹ Three to four days may pass before a detainee sees a doctor or nurse who can dispense the medicine (nurses making rounds are only administering previously-prescribed medicine).⁵⁰ By this time the headache has passed. Although aspirin is available for purchase from the commissary, this delayed response raises questions about the adequacy of access to health care at the facility.

In emergency medical situations, the Middlesex detainees must inform their unit officer. All urgent illnesses should be reported immediately to an officer or staff member.⁵¹ If the complaint is thought to be legitimate, an emergency medical team will rush to the detainee's location.

The facility charges a \$10.00 co-payment for medical or dental services.⁵² Medical services are not denied for lack of a co-payment but a detainee's commissary account is charged for the payment. If money is later deposited in the account, the negative balance is adjusted.⁵³ The intake physical exam and mental health screening, follow-up visits requested by medical staff, laboratory work and x-rays, and public health medical services do not require co-payments.⁵⁴

ii. Dental Treatment

The Middlesex facility has the capacity to provide dental care and, according to officials, a dentist comes to the facility on a regular basis. The Inmate Handbook notes that "dental facilities are available especially for emergencies and extractions." One detainee reported that no routine dental care was available.⁵⁵

iii. Privacy and Consent

The *Standards* provide that "signed and dated consent forms should be obtained from a detainee before medical examination or treatment unless in emergency circumstances." At Middlesex, inmates sign general consent forms for all medical care when they are admitted to the facility.

The *Standards* also state that a translation service should be provided for detainees seeking medical attention. Officers in the medical unit were familiar with the Language Line service but there was no telephone for that purpose in the treatment rooms of the medical unit. If

⁴⁹ Inmate interview.

⁵⁰ *Id.*

⁵¹ MIDDLESEX COUNTY DEPARTMENT OF ADULT CORRECTIONS, CORRECTION CENTER INMATE GUIDELINES 16.

⁵² MIDDLESEX COUNTY DEPARTMENT OF ADULT CORRECTIONS, CORRECTION CENTER INMATE GUIDELINES 16.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ [b6, b7C] interview.

a detainee needs to use the Language Line, he must sit in a filing office down the hall from the unit's treatment rooms.

iv. Hunger Strike

The *Standards* require that each detention center have procedures and staff qualified to address hunger strikes. Upon declaring a hunger strike, the facility officials must check the striker's mental and vital signs at least once every 24 hours. Furthermore, the facility "should do everything within [its] means to monitor and protect the health and welfare of detainees on hunger strike."

The medical unit at Middlesex can handle hunger strikers as recommended by the *Standards*. According to one official, a detainee who declares a hunger strike is monitored after he has missed nine consecutive meals. After some time passes, the detainee is moved from the housing unit to the medical unit where his vital signs can be monitored more frequently. Middlesex has not had significant problems with hunger strikers.⁵⁶

v. HIV

The *Standards* suggest that detainees exhibiting signs of HIV infection should not be removed from the general detainee population unless medically required.

It appears that the Middlesex facility has implemented this *Standard*. One detainee interviewed is HIV-positive and reported that he was not segregated, ostracized or otherwise harassed because of his condition.⁵⁷ In fact, he described an overall positive response among the housing unit detainees and facility officials.

HIV testing is only done by request or because of medical indications, but not as a general policy. In both cases, results are kept strictly confidential. The only public health test done on a routine basis is the tuberculosis test given during a medical intake exam.

Although there does not appear to be open stigmatization of HIV-positive detainees at the Middlesex facility, concerns remain nonetheless. The one HIV-positive detainee interviewed detailed serious health problems and a recurring frustration with getting his medical needs met while in detention.⁵⁸ This detainee waited three months to see an infectious disease specialist (the individual has both HIV and hepatitis, and has severe liver problems), despite repeated pleas to facility officials.⁵⁹ After he saw the specialist and scheduled return visits, the nurse administrator at the Middlesex facility interfered with them, contrary to the specialist's direct orders. Furthermore, the detainee indicated that he spends several days each month without

⁵⁶ Interview with Ms. [REDACTED] b6, b7C

⁵⁷ Interview with detainee.

⁵⁸ Interview with detainee.

⁵⁹ *Id.*

medication because the officials at Middlesex do not order his refills in sufficient time to avoid delay.⁶⁰

E. Disciplinary Procedures

The *Standards* specify that rules of conduct and disciplinary sanctions should be posted in English, Spanish, and/or other languages spoken by significant numbers of detainees. Although we were informed by the sergeant that the rules of conduct were posted in English in each cell block, we did not see these postings. Some of the documents that were posted in the cell blocks, (such as laundry schedules and visitation schedules) had handwritten translations in the margins, done by the inmates themselves.

The Inmate Guidelines describe the facility's disciplinary procedures. The booklet consists of an exhaustive list of "Inmate Prohibited Acts" divided into "major" and "minor" violations. For example:

- "Major" violations, such as killing, assaulting any person with a weapon, hostage taking, escape, and sexual assault, are referred formally to the Disciplinary Committee for a hearing.
- "Minor" violations, such as engaging in sexual acts with others, damaging government property, malingering, and failure to keep a scheduled appointment with medical, dental or other professional staff, may be handled informally through the "On-The-Spot Corrections" procedures listed in the book.

The Inmate Guidelines list two separate categories of punishment: 1) punishments resulting from a Disciplinary Committee hearing, and 2) punishments resulting from "on-the-spot corrections." Punishments resulting from a disciplinary hearing range anywhere from up to 15 days disciplinary detention, loss of commutation time / good subject time, loss of privileges for up to 30 days, restitution, etc. At the discretion of the Disciplinary Board, these punishments may be increased to 60 days, with or without extra conditions such as non-contact visits. Punishments resulting from "on-the-spot corrections" include verbal reprimand, loss of recreation privileges for up to five days, up to four hours of confinement in inmate's cell, extra work assignments for up to four hours, and a written warning.

Although the Middlesex booklet outlines many types of prohibited conduct and corresponding punishments, it fails to adequately describe the realities of the disciplinary system at the Middlesex County correctional facility for DHS detainees. Through discussions with various guards and interviews with several detainees, we learned that the scope of actual "on-the-spot corrections" punishments extended far beyond the description in the book, and overlapped significantly with the punishments that should only result from a disciplinary committee hearing.

⁶⁰ *Id.*

Although the *Standards* specify that the disciplinary system should not allow for deprivation of physical exercise, Middlesex guards informed us that if inmates are not diligent in their duties to maintain a clean cellblock, the guard in charge of the cellblock can and will deny daily exercise to the entire cellblock. Furthermore, although the *Standards* specify that the disciplinary system should not allow for deprivation of personal hygiene projects, the inmates we interviewed overwhelmingly indicated that they had to share individual bars of soap with their cellmates, were limited to one roll of free toilet paper per week, and were not issued toothpaste but had to purchase it with their own money from the commissary. One inmate said that the soap and toilet paper policy had changed within two weeks of our visit allowing each inmate to have his own soap and more toilet paper.

One detainee alleged that he was put into disciplinary detention for 30 days because he refused to go into the exercise yard⁶¹ during the time he was scheduled to appear in court. After being placed in disciplinary detention, he was permitted to appear in court, but alleged that he was forced to leave his case file in his cell and therefore appeared without his documents. The Immigration Judge granted him an extension and he was then returned to disciplinary detention to serve out his 30 days. The detainee alleged that during this detention, his “one hour per day” of recreation outside of the disciplinary unit was given to him at 3 a.m. every day, that he was actually granted only 30 minutes of time outside of the unit, and that he was forced to shower during that time.

F. Recreation

The *Standards* require that detainees have daily recreation for at least one hour daily. Detainees should be placed in facilities that provide outdoor recreation. If the facility does not have an outdoor area, a large recreation room with exercise equipment and access to sunlight must be provided. Detainees must not be forced to choose between basic law library privileges and recreation time. In addition, detainees in segregation for disciplinary or administrative purposes should receive recreation separate from the general population for one hour each day as long as safety and security concerns do not conflict.

The Middlesex facility provides both outdoor and indoor recreation for detainees. Detainees in the less restrictive A-Block have free access to an adjoining outdoor recreation area, which is essentially a paved half basketball court. Detainees in this housing unit may use this area at will (weather and safety permitting). Detainees in the more secure H-Block have recreation time scheduled daily either indoors or outdoors depending on the weather. The entire housing unit must take recreation simultaneously and in the same place. The indoor facility consists of a room with free weights and weightlifting machines, and a half-court gymnasium with sufficient windows. According to facility personnel, detainees in segregation receive daily recreation time separate from the other inmates. Although the *Standards* state that detainees should not have to choose between recreation time and other privileges, one Middlesex detainee said that while in segregation he received only one-half an hour of recreation time, which was also the only time given to him to bathe.

⁶¹ See photocopy of Disciplinary Report – Inmates’ Copy, dated 5/9/03. Exhibit A.

G. Religious Practices

The *Standards* state that “detainees 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.” A chaplain or designated individual should be responsible for managing religious activities in the facility and should make arrangements to provide pastoral care and counseling even if religious service providers from outside the facility are requested. Representatives and volunteers from faith groups in the community can be brought in to the facility. Each facility should have a designated area for religious services and must permit detainees to participate in group religious observance. Schedules for the various services must be clearly posted. Detainees may keep specified religious items among their personal belongings and religious and dietary requirements should be accommodated.

According to facility officials, the majority of the DHS detainees at the Middlesex facility belong to either the Christian or Muslim religions, although other faiths and non-religious people do comprise part of the population. Facility officials said that most religious activities for detainees are led by representatives from local religious non-profit organizations. Detainees are able to participate in group religious services and one room in the A-Block appeared to be designated for that purpose. One detainee from the H-Block claimed that weekly group services are limited to ten participants each week. Detainees who do not make it on the list for a particular week are excluded.

V. Conclusion

Overall, the visit to the Middlesex facility revealed a mixed record with respect to implementation of the *INS Standards*. Although the facility has implemented them in many ways, the areas in which it falls short, namely phone and legal access and communication of rules to detainees, are arguably areas in which it is most critical to have complete implementation and accountability. A revised set of Inmate Guidelines that addresses issues specific to DHS detainees may be a step forward. But distribution and translation of this booklet is necessary. In addition, access to free phone calls to legal organizations and representatives was severely limited at Middlesex. The cost of making collect calls (the only method available to detainees to call friends and family) also prevents many detainees from exercising their rights to telephone communication.

EXHIBIT A