

KIRKLAND & ELLIS LLP
MEMORANDUM

TO: Anthony Tangeman, Director, Office of Detention and Removal, Department of Homeland Security

FROM: American Bar Association Delegation to St. Mary's County Detention Center

DATE: September 17, 2003

RE: Report on Observations during a General Tour of St. Mary's County Detention Center in Leonardtown, Maryland

I. Introduction

This memorandum summarizes and evaluates facts and findings gathered at St. Mary's County Detention Center in Leonardtown, Maryland (the "Facility"). The information was gathered in the course of an observational tour of the Facility by the delegation,¹ including interviews with six detainees and discussions with several senior Correctional Officers and other managerial Facility staff, all of which took place on June 27, 2003.

In November 2000, the Immigration and Naturalization Service ("INS") collaborated with the American Bar Association to issue the Detention Operations Manual containing a complete set of INS Detention Standards (the "Standards") for implementation at all immigration direct and contract facilities.² The thirty-six Standards, which took effect in January 2001, establish comprehensive and uniform policies and procedures for the "safe, secure and humane treatment of foreign nationals in INS custody." The Standards encompass "a range of issues including access to legal services, religious services, medical care, and recreation."³ Implementation of the Standards was to have been completed by January 2003 and is mandatory for all BICE Service Processing Centers ("SPCs"), Contract Detention Facilities ("CDFs"), and state and local government facilities ("IGSA facilities") that house BICE detainees for more than 72 hours.

¹ The delegation was comprised of Kirkland & Ellis LLP attorneys [REDACTED] [REDACTED] [REDACTED] and [REDACTED].

² On March 1, 2003, the INS was absorbed into the Department of Homeland Security ("DHS"). The Standards remain in force under DHS. The immigration functions were divided among three bureaus within DHS: the Bureau of Citizenship and Immigration Services ("BCIS"), the Bureau of Immigration and Customs Enforcement ("BICE"), and the Bureau of Customs and Border Protection. Implementation of the Standards is under the direct purview of BICE, which is responsible for detaining aliens who enter the United States illegally or otherwise violate immigration laws and who are not otherwise released on bond or personal recognizance pending disposition of their cases.

³ Attorney Guide (Introduction) at 2.

This memorandum discusses the extent to which the Facility has implemented the Standards, with particular focus on the four legal access Standards, Visitation, Access to Legal Material, and Telephone Access, as well as observations on relating to the following Standards Admission and Release, Classification System, Recreation, Medical Care, Religious Practices, Food Service, and Detainee Grievance Procedures,

II. Facility Location and Detainee Population

The Facility is situated in Leonardtown, Maryland; a rural community located about 55 miles south of Washington, D.C. The Facility's BICE detainee capacity was 32 as of June 27, 2003.⁴ The BICE detainee population at the Facility on the date of our visit was 23 among a total inmate population of approximately 240. African and Caribbean countries of origin are the most represented by the Facility's detainee population. The Facility currently houses men only. There is no housing by nationality. The Facility began taking in detainees for short-term confinement in mid-2002; therefore, the Facility staff has only been operating under the Standards for about one year.

All of the detainees at the Facility are criminal aliens who have served out their sentences and are post-final order. Detainees arrive at the Facility from a number of sources, primarily after serving sentences in state or federal correctional facilities in Maryland. None of the detainees at the Facility are asylum seekers.⁵ The average length of stay is four to five months, with most detainees being deported and others being released on their own recognizance.

III. Facility Staff and Care of Detainees

There is a written policy about the use of force in the Supplement; however, the detainees do not know the policy. The use of force policy is different for detainees from what it is for regular inmates. All use of force incidents are documented and reviewed by a supervisor, then by the deputy director, then by Lieutenant Commander [REDACTED] b6, b7C. We were told that the K-9 unit's attack dogs and the pro-restraint chair are never used on detainees.

Lieutenant Commander [REDACTED] b6, b7C stated that the Facility staff views the Standards as a "floor," and he maintained that he tries to exceed those Standards in his care of the detainees.⁶ In his words, the staff is "in charge of the care, custody, and control" of the detainees. Lieutenant [REDACTED] b6, b7C added that there are three items that detainees care most about:

⁴ Subsequent to our visit, Lieutenant [REDACTED] b6, b7C clarified that the total BICE detainee capacity at the Facility is 48, of which 32 beds are designated for minimum security detainees (Level One), eight beds are designated for medium security detainees (Level Two), and another eight beds are designated for maximum security detainees (Level Three). *See also* Section III of this memorandum.

⁵ Notably, one detainee told us that he was seeking asylum. Interview with [REDACTED] b6, b7C June 27, 2003. Another detainee indicated that he already was a U.S. citizen, but BCIS appealed the decision granting his citizenship. Interview with [REDACTED] b6, b7C June 27, 2003.

⁶ Two detainees indicated that the Facility was the "best place" in which they have been detained within the BICE system. [REDACTED] b6, b7C interview; [REDACTED] b6, b7C interview.

food, communications, and property. The staff strives to fulfill these needs, and staff members endeavor to show that they genuinely care about the detainees.

IV. Observations of Implementation of Legal Access Standards

A. Visitation

(1) Visitation by Attorneys

a. Visitation Hours

According to the Standards, a facility shall permit legal visitation seven days a week for a minimum of eight hours on regular business days and four hours on weekends and holidays. On regular business days, legal visitation may proceed through a scheduled meal period, in which case the detainee shall receive a tray or sack meal after the visit.⁷

Neither the Inmate Guidebook nor the Supplement has any specified limitation on legal visitation hours. Attorneys are permitted to visit their clients in the Facility “at any time within reason by first checking with the Shift Supervisor.”⁸ The Facility maintains a legal visitation log to record all legal visitors. From our interviews with detainees, it does not appear that the detainees have any issue with legal visitation hours.

Lieutenant [REDACTED] b6, b7C indicated that the Facility would keep and reheat a meal for a detainee who misses the scheduled meal period due to legal visitation.

b. Identification of Legal Representatives

Pursuant to the Standards, attorneys without state bar cards can present other available documentation demonstrating bar membership and legal assistants may present a letter of authorization from their supervising attorneys to gain legal visitation with detainees.⁹

The Form G-28 (Notice of Appearance) is not required as a prerequisite for legal visitations. Interpreters and medical professionals can also visit the detainees upon presentation of appropriate identification. Mr. [REDACTED] b6, b7C, the BICE representative, indicated that BICE is also able to provide interpretation through its New York office, which has access to interpretation services on short notice.

c. Search after Legal Visitation

The Standards require that written procedures will govern detainee searches and that such procedures will be included in the detainee handbook upon admission to the facility. In addition, general-population search procedures applicable to IGSA facilities will also apply to BICE detainees. For Service Processing Centers (SPCs) and Contract Detention Facilities

⁷ Standards (Visitation) at 7.

⁸ Inmate Guidebook at 16, Section VIII,6.

⁹ Standards (Visitation) at 7-8.

(CDFs), the Standards provide that detainees returning from legal visitation be subject to pat-down searches. Strip searches are permitted for detainees reasonably suspected of concealing contraband.¹⁰

The Inmate Guidebook contains written procedures for searches and shakedowns.¹¹ It provides that a search may be conducted “any time a Correctional Officer has a reasonable basis for conducting one.” This standard provides the Facility staff with a great deal of discretion and could be subject to abuse.

During our visit, the detainees we interviewed were subject to pat-down searches (or “frisk searches” in the parlance of the Inmate Guidebook). Lieutenant [b6, b7C] confirmed that detainees who have contact visits with outsiders are generally subject to pat-down searches. Strip searches are used only when the detainee is suspected of possessing contraband.

d. Contact Information for Legal Services

The Standards require the Facility to post an official list of *pro bono* legal organizations in detainee housing units and other appropriate areas.¹² While we did not enter the housing units, Lieutenant [b6, b7C] indicated where a current list of *pro bono* legal organizations is posted. From our interviews with the detainees, it appears that the detainees are generally aware of some legal organizations available to help them. However, several prisoners indicated that *pro bono* legal help was not available or was not abundant enough for all detainees to take advantage of such help.¹³ Other detainees complained that certain legal organizations’ services are not readily accessible, probably because of high demand, and asked us for recommendations. One prisoner was helped to some extent by Catholic Charities Services.¹⁴

e. Visitation Room

The Standards require the provision of a private consultation room for meetings between a detainee and his legal representative, without auditory supervision from the Facility staff. Facility staff may, however, observe the meeting visually to the extent necessary to maintain security.¹⁵

The Facility has one small private meeting room for legal visitation purposes. The room size is about 5 feet by 5 feet, and is furnished with two chairs and a small table. The room would be cramped if the attorney coming to the meeting needs to bring an additional person. The meeting room allows for visual privacy as the attorney inside the meeting room can draw down an inside curtain to block the view from the outside.

¹⁰ Standards (Visitation) at 10.

¹¹ Inmate Guidebook at 4, Section III,B.

¹² Standards (Visitation) at 11.

¹³ [b6, b7C] interview; [b6, b7C] interview.

¹⁴ [b6, b7C] interview.

¹⁵ Standards (Visitation) at 9.

(2) Visitation by Family and Friends

a. Visitation Hours and Time Limits

The Standards specify that the facility shall permit visits during set hours on weekends and holidays and make special accommodations for visitors for whom it is a hardship to visit during those set hours. The permitted visitation time shall be for a minimum of 30 minutes.¹⁶

Visitation hours are listed in the Inmate Guidebook and in the Supplement.¹⁷ For BICE detainees, visitation by family and friends is allowed on Sunday afternoon from 3 p.m. to 5 p.m. This schedule was confirmed by detainee Afeta who stated that he was told the only day for visitation was Sunday.¹⁸ Pursuant to the Inmate Guidebook, visits are limited to 10 minutes per visitor, however, the Supplement clearly states that detainees shall be afforded 30 minutes per visitor visitation. Lieutenant [REDACTED] confirmed that the Supplement rule is followed for detainees and that each visit is in actuality permitted to last at least 30 minutes. She added that special visits can be arranged for visitors who cannot come during the set visitation hours.

The Inmate Guidebook provides that the second full week of each month is designated as Special Visitation Week, during which an inmate may elect to have visits from two of his minor children.

B. Telephone Access

The Standards provide that detainees shall be able to make free calls through pre-programmed technology (or upon request) to consular offices, free legal service providers, local courts and government offices, and to family members during times of family emergency. To make a free call, the detainee must ask a Corrections Officer for assistance and the access should be provided within eight waking hours.¹⁹ Additionally, detainees at a BICE detention facility should have access to telephones during waking hours and there should be one telephone per 25 detainees.²⁰ The standard is relaxed somewhat for facilities used through Intergovernmental Service Agreements, but requires “similar access or INS should prepare to install the necessary technology to facilitate preprogrammed calls.”

The telephones at the Facility were not equipped with pre-programmed technology; however, we were informed by Mr. [REDACTED] that such steps were being actively pursued through Verizon PCS and that the Facility would be the first in Maryland to obtain the system. Reportedly, any detainee who requests a free call -- whether to a consulate, free legal service providers, local courts or government offices, or in personal emergencies (a standard which Mr. [REDACTED] indicated was liberally applied) -- is given the opportunity to do so in the

¹⁶ *Id.* at 4.

¹⁷ Inmate Guidebook at 15, Section VIII, A; Supplement at 2.

¹⁸ [REDACTED] interview.

¹⁹ Standards (Telephone Access) at 2.

²⁰ *Id.* at 1.

BICE office as soon as someone from BICE is able to be there. In this regard, BICE personnel are accessible at the Facility once a week, typically on Saturdays, for ten hours per day. In addition, a detainee's indigent status is not taken into account in allowing free telephone calls. There is no designated system in place for scheduling free phone calls, and the policy is merely carried out in practice. No system is in place to write a report if a call is not made within eight waking hours, although Lieutenant [b6, b7C] claimed that this would not happen as the call is afforded before eight hours elapses in all cases. Two of the six detainees we interviewed reportedly have never asked to make a free call at the Facility.²¹ The number of phones at the Facility appeared to be adequate. Calls could be placed collect or using debit cards that can be purchased. There are no restrictions such as time limits per call on the phones that are located in the pods, and they are available from 6:00 a.m. until 11:00 p.m.

According to the Standards, detainees should be able to discuss their legal cases over the phone in a private environment without interruption or cut-offs.²² According to Lieutenant [b6, b7C], there is no monitoring of phone calls. However, partitions or other mechanisms of privacy were not afforded. Lieutenant [b6, b7C] claimed that if a detainee demanded privacy it could be provided in the BICE office; however, at least two detainees did not seem to be aware of such a possibility.²³ They did not find this to be a problem, however, and seemed reasonably comfortable with the privacy level in the Facility.

The Standards state that the Facility should receive and deliver phone messages promptly.²⁴ Although Lieutenant [b6, b7C] claimed that phone messages were delivered when received, neither detainee [b6, b7C] nor detainee [b6, b7C] believed that it was possible for them to receive a telephone message. The Standards also provide that the detainees should be able to contact their other detained family members without cost.²⁵ Lieutenant [b6, b7C] stated that these circumstances have never existed at the Facility.

The Standards also require that a list of *pro bono* agencies should be posted by each phone along with multilingual instructions on how to operate the phone.²⁶ We could see nothing posted by the phones, and according to Mr. [b6, b7C] and Mr. [b6, b7C] no such postings existed. Detainee Daly reaffirmed this observation when commenting to us that the Facility staff only recently installed the telephone numbers required by the Standards in preparation for our visit.²⁷ We could not gain access to the phone area because it was part of the space occupied by the detainees. But Mr. [b6, b7C] and Mr. [b6, b7C] confirmed that they have never had any trouble or difficulty using the telephone system. According to Lieutenant [b6, b7C] the telephones are inspected daily to ensure working order, and any technical problems are immediately attended to.

21 [b6, b7C] interview; [b6, b7C] interview.

22 Standards (Telephone Access) at 3.

23 [b6, b7C] interview; [b6, b7C] interview.

24 Standards (Telephone Access) at 4.

25 *Id.*

26 Attorney Guide (Telephone Access) at 13.

27 [b6, b7C] interview.

C. Legal Materials, Library Conditions and Correspondence

The Standards set forth minimum requirements for all law library facilities at INS detention centers. These requirements list particular books, facilities and equipment that must be provided, and establish guidelines for replacing materials, allowing for access of the materials and general office supplies. Upon review of the Facility's library, it is apparent that the Facility adheres to some of these requirements but falls short on others.

(1) Legal Materials

The Facility's book holdings fell short of the guidelines set forth in the Standards. Of the legal reference materials listed in Attachment A of the Standards,²⁸ the following items were not found on the shelves:

- Constitution of the United States of America; Analysis and Interpretation
- Bender's Immigration and Nationality Act Service
- Bender's INS Regulations Service
- Immigration Law and Defense
- Immigration Law and Crimes
- Guide for Immigration Advocates
- Country Reports on Human Rights Practices
- Human Rights Watch - World Report
- UNHCR Handbook on Procedures and Criteria for Determining Refugee Status
- Considerations for Asylum Officers Adjudicating Asylum Claims From Women
- Immigration and Naturalization Service Basic Law Manual
- Lawyer's Committee Handbook on Representing Asylum Applicants
- Rights of Prisoners
- Federal Civil Judicial Procedure and Rules
- United States Code, Title 28, Rules, Appellate Procedure Pamphlets I + II
- Federal Criminal Code and Rules
- Criminal Procedure
- Legal Research in a Nutshell
- Legal Research & Writing: Some Starting Points
- Black's Law Dictionary
- Spanish-English Law Dictionary
- Directory of Nonprofit Agencies that Assist Persons in Immigration Matters

In addition, two detainees that we interviewed reported that the law library materials on the shelves are not updated.²⁹

(2) Library Conditions

²⁸ Standards (Access to Legal Material), Attachment A.

²⁹ b6, b7C interview; b6, b7C interview.

The Facility permits access to the library from morning until lock-down six days per week, with limited hours on Sunday. No inmates have reported problems with being denied access to the library upon request. Additionally, Facility staff assist inmates with their photocopying and mailing needs, and provide computer disks for inmates to store their computer files. In this regard, the Supplement states that photocopies up to ten pages per request will be afforded and that bulk photocopy needs will be addressed through BICE. Notably, one detainee told us that there is never a librarian on duty to assist detainees.³⁰ He reported that indigent detainees are allowed to make free photocopies.³¹

There were two computers in the library, and the Facility staff reported having 12 new computers on order. Detainees typically use the library computers to prepare letters rather than to conduct research, and there are no time restrictions placed on their computer access. One detainee complained, however, that the computers are old, the printers do not work, and Lexis does not permit research of BCIS cases.³² A typewriter was also available, and writing materials and implements are available upon request.

In contrast to the lack of appropriate reference materials, the library is well-lit and located in a quiet area off a hallway that appeared to be centrally located. At least two large round tables were present in the library, with seating for no less than 15 people. Detainees who are bilingual have mentioned past experiences in assisting other detainees who speak their native language but lack the English proficiency to make use of the law library.

(3) Correspondence

The Standards require that all incoming correspondence be distributed to detainees within 24 hours of receipt by the Facility and that all outgoing correspondence be delivered to the postal service no later than the day after it is received by Facility staff or placed by the detainee in a designated mail depository, excluding weekends and holidays.³³

Lieutenant b6, b7C indicated that all incoming special correspondence will be delivered to detainees immediately after processing and all other incoming correspondence will be delivered to detainees no later than the day following their receipt by the Facility. In our interview with detainees, however, we heard complaints about delays in delivering incoming and outgoing special correspondence.

The Standards allow outgoing correspondence to be inspected and/or read if the addressee is another detainee or if there is reason to believe the item might present a threat to the Facility's secure or orderly operation, endanger the recipient or the public, or facilitate criminal activity.³⁴ The Inmate Guidebook states that outgoing mail, other than privileged outgoing mail,

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ Standards (Correspondence and Other Mail) at 3.

³⁴ *Id.* at 4.

is subject to screening.³⁵ Lieutenant [b6, b7C] stated that outgoing mail is generally inspected for contraband only and will not be read. Detainee [b6, b7C], however, claimed that his outgoing letter complaining about a particular Facility staff member was read by another staff member, who then refused to send out the letter for the detainee. Detainee [b6, b7C] declared that due to his complaints about the Facility staff and his pending civil suit against the Facility, his mail is being read by the Facility staff in retaliation.³⁶

D. Group Rights Presentations

The Standards provide that facilities shall permit authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law. All facilities must cooperate fully with authorized persons seeking to make such presentations.³⁷

Detainee [b6, b7C] informed us that he has never attended a group rights presentation,³⁸ and according to Facility staff, no organizations have requested to make presentations. There was no indication, however, that there would be any Facility staff resistance to a group rights presentation.

The Facility possesses the “Know Your Rights” video, made available by the Department of Justice in Spanish and English, and Facility staff indicated that this video is shown to detainees as part of the standard orientation program.

V. Other General Observations Unrelated to the Legal Access Standards

A. Admissions and Classification

Upon arrival, all detainees receive an insert detailing the policies and procedures specific to them, in addition to the inmate guidebook that all inmates receive.³⁹ However, the Facility staff told us that a copy of the insert was not available to review.⁴⁰

New arrivals are strip-searched in a private area behind a door adjacent to the processing room. The staff performs an inventory of each new detainee’s possessions, and the detainee receives a copy of this inventory. Within the first week of their arrival, all detainees are shown an instructional video about various procedures at the Facility. The orientation video is only available in English. However, interpreters are available, usually within 20 minutes of a

³⁵ Inmate Guidebook at 19, Section VIII,C,11.

³⁶ Interview with [b6, b7C] June 27, 2003.

³⁷ Standards (Group Presentations on Legal Rights) at 1.

³⁸ [b6, b7C] interview.

³⁹ Office of the Sheriff, St. Mary’s County, Maryland, Corrections Division, Inmate Guidebook (April 1, 2003) (“Inmate Guidebook”). The Inmate Guidebook is supplemented by Office of the Sheriff, St. Mary’s County, Memorandum No. 02-1243 to Corrections Personnel, dated September 11, 2002 (the “Supplement”). Both the Inmate Guidebook and the Supplement are attached hereto at Attachment A.

⁴⁰ One detainee stated that there are only two detainee handbooks per hallway. Interview with [b6, b7C] June 27, 2003.

request. The Standards require that the video be in English and Spanish, with the opportunity for a translator.⁴¹

According to the Inmate Guidebook, inmates are classified by the Classification Committee within one week of admission to the Facility, and reviews are done “periodically.” Upon arrival, detainees are classified from Level One to Level Three, with Level Three being the most dangerous detainees. Level One and Level Two detainees may be housed together, but Level Three detainees are housed by themselves.⁴² Detainee classification is principally based on criminal history and recent disciplinary actions. This classification system prohibits any consideration of issues of facility management or other factors external to the detainee classification system in determining a detainee’s classification level.⁴³ Note, however, that the Inmate Guidebook suggests that facility management issues may influence classification decisions by stating that inmates will be “separated by gender, legal status or for *other management reasons*.”⁴⁴ The staff was adamant about the issue of separating detainees from criminal inmates, as confirmed by [REDACTED] b6, b7C Lieutenant Commander at the Facility, who stated, “There is absolutely no exposure to other inmates.”

Detainees are re-classified at a minimum every year. However, detainees may request a re-classification, and they often do so; the Classification Committee, which includes mental health professionals, meets weekly for these determinations. This re-classification goes beyond the Standards, which provide that only new arrivals can appeal their classification levels under procedures contained in the Facility’s classification system.⁴⁵ We did not see any such appeal procedures in the Inmate Guidebook, and in fact the Inmate Guidebook states that inmates have no right to present complaints or grievances regarding classification.⁴⁶ If that is the operating policy, it was not surprising for us to hear from Facility staff that classification protests rarely, if ever, succeed.

B. Accommodations

Detainees are housed in U-shaped “pods.” Each pod contains one television, one phone, and a common area with tables, chairs, and board games. The common area is surrounded by five cells. There are two detainees per cell. At the Facility, there are two wings that house detainees: the C wing, which has one pod, and the E wing, which is a two-tiered structure with two pods.

The Standards require that detainees be allowed to keep small religious items, religious and secular reading materials, legal documents, ten 5x7 pictures, prescription glasses,

⁴¹ *Id.* at 7.

⁴² On rare occasions, detainees are placed in administrative segregation, such as when a detainee contracts tuberculosis.

⁴³ Standards (Classification System) at 1-2; 4-6.

⁴⁴ Inmate Guidebook at 3, Section II, E (emphasis added).

⁴⁵ Standards (Classification System) at 6.

⁴⁶ Inmate Guidebook at 21, Section IX, E.

dentures, address books, and a wedding ring.⁴⁷ According to Corrections Coordinator, [REDACTED], [REDACTED], detainees are allowed to keep their watches, rings, hats, religious items (such as Bibles, rosaries, and the Koran), and any legal documents. Each detainee also gets a floppy disk which he can use in the library computers to store documents. Detainees may request additional disks if necessary. Two detainees, Mr. [REDACTED] and Mr. [REDACTED] confirmed that legal documents can be retained in their possession.⁴⁸ Mr. [REDACTED] added that books can be retained, such as the Bible or the Koran. Both claimed that nothing else would be permitted, including clothing or jewelry, although Mr. [REDACTED] noted that he could wear a cross or similar religious attire.

Work programs are not available to BICE detainees at the Facility, although they are available to the Facility's inmate population at large.

C. Recreation

The Standards provide that “[e]very effort shall be made to place a detainee in a Facility that provides outdoor recreation.”⁴⁹ In addition, the Standards require that if a Facility provides outdoor recreation, each detainee must have access for at least one hour daily, five days a week, weather permitting.⁵⁰

Lieutenant [REDACTED] confirmed that the Facility provides outdoor recreation and that detainees are allowed exercise five times per week for one hour per day. The outdoor recreation area consisted of a basketball court in an inner courtyard of the Facility. This basketball courtyard was made of concrete with wire meshing covering the courtyard. Despite the wire meshing, detainees are able to enjoy access to natural sunlight. There is an indoor recreation area with a basketball court which can also accommodate other sports, such as volleyball. In reviewing the Inmate Guidebook for the Facility, it is noted that each inmate/detainee is allowed exercise only three days a week for one hour per day,⁵¹ which contradicts Lieutenant [REDACTED] statement regarding the five days a week schedule. The Inmate Guidebook goes on to state that inmates are allowed to “perform additional exercises in their cells or dayroom area, so long as such activity does not interfere with the activities of other inmates.”⁵²

In addition to the “outdoor” recreation area, there are indoor recreational activities such as books and board games, as well as television viewing in the dayrooms.

Lieutenant [REDACTED] confirmed that recreation is available to detainees in segregation and isolation on the same terms as the general detainee population, but that segregation detainees can only recreate among themselves and not with other detainees.

⁴⁷ Standards (Funds and Personal Property) at 3.

⁴⁸ Interviews with [REDACTED] and [REDACTED] June 27, 2003.

⁴⁹ Standards (Recreation) at 1.

⁵⁰ *Id.* at 2.

⁵¹ Inmate Guidebook at 22, Section IX,I.

⁵² *Id.*

Notably, the Inmate Guidebook is less definitive about the recreation schedule for detainees held in segregation and isolation, stating vaguely that such inmates will be afforded use of the recreation facilities on a schedule “dictated by their particular situations.”⁵³

Facility staff have been directed to *monitor* detainees in recreation areas during recreation, as opposed to the continuous supervision of regular inmates during recreation.⁵⁴

D. Medical Care

The Standards require that every Facility must provide its detainee population with an initial medical screening, cost-effective primary medical care, and emergency care.⁵⁵ In addition, every Facility “will employ, at a minimum, a medical staff large enough to perform basic exams and treatments for all detainees.”⁵⁶

(1) General Access to Health Care

The Facility, with a medical staff of 10, conducts a screening of each inmate within 24 hours of incarceration. This screening is designed to identify an inmate’s physical condition and to protect other inmates from communicable diseases.⁵⁷ It is unclear whether this initial screening entails a mental health screening.

The Facility affords non-emergency routine medical care to general population detainees through a sick call sign-up procedure offered two days per week. For facilities with fewer than 50 detainees, such as the Facility, which has capacity for 32 detainees and which housed 23 detainees on June 27, 2003, the date of our visit, the Standards require that sick calls be offered a minimum of 1 day per week.⁵⁸ However, detainee [b6, b7C] asserted that medical care is only given in an emergency, adding that he visited a doctor two days prior to our visit solely because it would look good for our upcoming visit.⁵⁹ Inmates must pay a medical fee of \$4.00 for each visit. However, no inmate is denied treatment based on his ability to pay.⁶⁰ According to Facility staff, inmates may be taken to local doctors outside the Facility. In such cases, inmates are transported in leg shackles and waist chains with handcuffs. If necessary, inmates requiring emergency treatment are taken to the Emergency Room of St. Mary’s Hospital.⁶¹ Lieutenant [b6, b7C] confirmed that medical staff are on call 24 hours a day for emergencies.

⁵³ *Id.* at 22, Section IX,I,3

⁵⁴ Supplement at 2.

⁵⁵ Standards (Medical Care) at 1.

⁵⁶ *Id.*

⁵⁷ Inmate Guidebook at 7, Section V.

⁵⁸ Standards (Medical Care) at 5.

⁵⁹ [b6, b7C] interview.

⁶⁰ Inmate Guidebook at 9, Section V,C.

⁶¹ *Id.* at 7, Section V,B,2.

The Supplement provides that segregation detainees will be visited by medical staff three times weekly and that such visits will be documented. [b6, b7C] visits and daily documenting of visits of detainees in segregation will be made by the Shift Commander/Supervisor.

In addition, the Facility arranges for mental health providers to be available for on-site counseling of detainees. According to Lieutenant [b6] a psychologist is available twice a week and two psychiatrists are available once a week. They are on call 24 hours a day. Detainees desiring mental health services must complete a request and forward it to the mental health services unit.⁶² Despite these assurances, one detainee complained that he was not receiving adequate medical treatment from a mental health professional for his depression and insomnia and had not been provided any sleep medication during his two months of detention.⁶³

The Facility does not provide routine dental treatment, although emergency dental care is available for serious conditions.⁶⁴ Two detainees complained that their requests for dental care have not been granted.⁶⁵

E. Detainee Conduct and Discipline

(1) Administrative and Disciplinary Segregation

The Inmate Guidebook states that detainees shall be placed on administrative segregation when “no other viable alternative exists for non-punitive sanctions” to “protect the inmate, staff, public, and property.”⁶⁶ According to Facility staff, segregation for medical quarantine is used for tuberculosis and other communicable diseases.

According to the Supplement, segregated detainees are to be afforded law library access except when “security concerns” exist.⁶⁷ Segregated detainees ordinarily retain visitation privileges and are always allowed legal visitation. Facility staff report that BICE detainees are rarely segregated for disciplinary reasons. The classification of segregated detainees is reviewed every seven days.

(2) Disciplinary Policy

According to the Standards, rules of conduct and disciplinary sanctions should be posted in English, Spanish, and any other language spoken by a significant number of detainees,⁶⁸ but no such postings were in plain sight during the group visit to the Facility.

⁶² *Id.* at 28, Section XII,F.

⁶³ [b6, b7C] interview.

⁶⁴ Inmate Guidebook at 10, Section V,F.

⁶⁵ [b6, b7C] interview; [b6, b7C] interview.

⁶⁶ Inmate Guidebook at 27

⁶⁷ Supplement at 1.

⁶⁸ Standards (Disciplinary Policy) at 2.

Punishments under the Standards may range from withholding of privileges to disciplinary segregation, but time in segregation may generally not last more than 60 days. The detainee should not be held responsible for his conduct if medical personnel finds him mentally incompetent.

Pursuant to the Standards, Corrections Officers should prepare and submit incident reports, and these reports should be investigated within 24 hours. The investigating officer may not have been involved in the incident. Detainees are to be given a copy of the report at least 24 hours before the start of disciplinary proceedings, and are entitled to a hearing. Detainees have the right to assistance in preparing a defense, and may appeal disciplinary decisions.⁶⁹

According to the Inmate Guidebook, whenever an inmate commits a violation of the rules, the Corrections Officer shall submit a request for disciplinary action detailing the offense.⁷⁰ According to Facility staff, a supervisor reviews all forms. The matter is then either resolved informally, or heard by the Disciplinary Hearing Board. The incident reports must be filed by the Corrections Officers by the end of their shifts, and the detainee is given a copy within 24 hours, a procedure which complies with the Standards. Staff indicated that most complaints are resolved informally.

The Inmate Guidebook provides that an informal disposition shall only be used for Category III offenses, which include possession of unauthorized items, defacing county property, failure to maintain personal hygiene, use of abusive or obscene language or gestures, gambling, disobeying a written or verbal order from a staff member, and failure to keep doors, walls, ceilings, vents, bunks and/or windows free from signs, posters, pictures and writing.⁷¹ According to the Inmate Guidebook, detainees are not coerced into accepting an informal resolution, and may instead opt for a hearing by the Disciplinary Board.⁷²

According to Facility staff, the detainee is given a Disciplinary Board hearing within 96 hours. The Board includes a sergeant and two other officers. The Inmate Guidebook provides that the detainee will be given at least 24 hours' advance notice of the hearing, and may request witnesses to furnish testimony on the detainee's behalf. After the Board reaches a conclusion and determines sanctions, the detainee is provided with a copy of the decision, which is reviewed by the Commander within ten working days. The Commander has the authority to concur with the result, to reduce punitive sanctions, or to disagree with the result and return the matter to the Board for reconsideration. Once the sanctions expire, the detainee returns to his previous level of classification.

The inmate may appeal in writing to the Commander or to the Sheriff within two working days. The decision of the Sheriff is final.⁷³ The Inmate Guidebook indicates that

⁶⁹ *Id.* at 3-4.

⁷⁰ Inmate Guidebook at 27.

⁷¹ *Id.* at 26-27.

⁷² *Id.* at 27.

⁷³ *Id.*

sanctions correspond with three categories of offenses, with examples of punishments ranging from up to 30 days' punitive segregation (Category I) (which includes murder or attempted murder, theft, and bribery of staff), to up to 15 days' punitive segregation (Category II) (which includes fighting, possession of money, and being in an unauthorized area), to verbal or written reprimand (Category III) (which includes obscene language and failure to maintain personal hygiene).

Additionally, the Inmate Guidebook provides that Corrections Officers have the authority to "impose reasonable immediate sanctions(s) necessary to maintain a safe and secure environment."⁷⁴

(3) Grievance Procedure

The Standards provide that each facility must develop standard operating procedures that address detainee grievances including emergency grievances, and must guarantee against reprisals. An informal procedure for grievances should also be outlined, and assistance should be given to illiterate, disabled, on non-English speaking detainees to help them file formal grievance notices.⁷⁵

The Inmate Guidebook states that "[a]ll inmates have the right to present complaints or grievances regarding Detention Facility Policies, procedures, rules, regulations, and practices."⁷⁶ Legal issues, disciplinary procedures and classification are excepted.⁷⁷ Inmates with a grievance may submit an Inmate Grievance Form to a Correctional Officer. Grievances against a staff member may be placed in a sealed envelope and forwarded to the Commander. However, the Inmate Guidebook does not outline either an informal grievance process or an emergency grievance procedure, in contravention of the Standards.

According to the Inmate Guidebook, grievances are reviewed and investigated by the "appropriate" level of staff.⁷⁸ A Grievance Committee may be formed by the Assistant Commander. Within 15 working days, the detainee is to be advised of the findings and any action taken in response to the grievance. The detainee may then appeal the decision to the Commander within three working days. According to Facility staff, a grievance identified as sensitive by the detainee may be placed in a sealed envelope and forwarded directly to the Officer in Charge.

Detainee [REDACTED] b6, b7C indicated that he had filed numerous grievances, most of which were not addressed, and he currently has a lawsuit pending against the Facility for retaliation.⁷⁹ Mr. [REDACTED] b6, b7C said that after he filed the lawsuit, he received his outgoing legal mail marked

⁷⁴ *Id.*

⁷⁵ Standards (Detainee Grievance Procedures) at 1.

⁷⁶ Inmate Guidebook at 21.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ [REDACTED] b6, b7C interview.

“Return to Sender,” but that the mail did not have a postmark and did not leave the Facility according to the mail logs. He also stated that he was put on a “bland diet” that he did not want (and filed grievances over such diet) in retaliation for complaining about the food. He also complained that he requested a vegetarian diet on account of his Rastafarian beliefs, but complained that he continually receives a meat diet, as well as spoiled milk, particular sauces that he has identified to staff as causing him illness, and insufficient portions of food. He also reported that when he is served meat, the Facility staff have refused to replace the meals with a vegetarian tray.⁸⁰

VI. Conclusion

Facility staff have clearly endeavored to implement the Standards into the Facility’s operating procedures for the care and custody of BICE detainees, as evidenced by the Supplement issued to all Corrections personnel at the Facility. Although there is a detainee policy insert to the Inmate Guidebook that is purportedly given to all detainees upon arrival at the Facility, the delegation was not provided with a copy to review. Based on interviews with detainees, the delegation noted a lack of detainee awareness about their specific rights and procedures applicable to them as detainees as distinguished from the regular inmate population.

In many respects, the delegation observed evidence confirming that the Facility staff views the Standards as a “floor” only, with the staff’s treatment and accommodation of BICE detainees often surpassing what the Standards require. However, there is still progress to be made in fully implementing the Standards at the Facility. The delegation observed some noteworthy deficiencies in meeting the implementation of the Standards, particularly with respect to: (1) the inadequate or outdated reference materials in the law library and a lack of library assistance and multilingual support, and (2) limited detainee access to *pro bono* legal resources and Facility resources for contacting attorneys, legal organizations, and government agencies. In addition, based on a pattern of comments that surfaced in interviews with detainees, the delegation is concerned that there may be some degree of staff retaliation against detainees for filing grievances.

⁸⁰ *Id.*