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MEMORANDUM

August 16, 2004

To: Director, Office of Detention and Removal, Immigration and Customs Enforcement
From: American Bar Association Delegation to Lerdo Detention Center Facility in Kern County, California¹
File no:
Copies to: [redacted] ABA Commission on Immigration Policy, Practice and Pro Bono
Subject: Report on Lerdo Detention Center Facility Tour Observations

I. Introduction

This memorandum summarizes information gathered during an observational tour of the Lerdo Pre-Trial Facility of the Lerdo Detention Center Facility (the “Lerdo Facility” or the “Facility”) in Kern County, California on July 22, 2004. The purpose of the tour was to assess the Facility’s implementation of the *INS Detention Center Standards* (the “Standards”), which apply to federal immigration detainees. The information summarized herein was collected via observation, interviews with Facility personnel and Immigration and Customs Enforcement officers (“ICE,” formerly the Immigration and Naturalization Service, or “INS”), and an interview with an immigration detainee held at the Facility.

A. ICE Detention Standards

The INS promulgated the *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 ICE Service Processing Centers (“SPCs”), Contract Detention Facilities (“CDFs”) and state and local government facilities like the Lerdo Facility that contract with the ICE through Intergovernmental Services Agreements (“IGSAs”) to hold ICE detainees. The *Standards* went into effect at INS SPCs on January 1, 2001, with a deadline for implementation at each facility by January 2003. The *Standards* establish guidelines for the minimal operational requirements for facilities in their

¹ The delegation consisted of Latham & Watkins LLP partner [redacted] associates [redacted] and [redacted] and summer associates [redacted] and [redacted] and [redacted]

treatment of ICE detainees. Each Field Office or Officer in Charge (“OIC”) of a facility may, in his or her discretion, promulgate policies and practices affording ICE detainees more enhanced rights and protections than those provided for by the *Standards*.

B. The American Bar Association’s July 22, 2004 Delegation to the Lerdo Facility: Purpose and Process

In cooperation with ICE, the ABA sent a delegation to Lerdo Facility on July 22, 2004 to assess the Facility’s implementation of the *Standards*. The ABA delegation toured the Facility in the company of Facility Commander [REDACTED]; Federal Contract Liaison of the Sheriff’s Department [REDACTED]; Facility Administrative Sergeant [REDACTED] (collectively known as “Facility Personnel”); and Deportation Officers [REDACTED], [REDACTED] and [REDACTED] of ICE, Bakersfield (collectively known as “Deportation Officers” or “ICE Officers”). The tour concluded with a group question and answer session and an interview with Mr. [REDACTED] an ICE detainee held at the Facility.

The purpose of this memorandum is to summarize the delegation’s observations regarding the Facility’s implementation of the *Standards* and identify ways in which the conditions of detention for ICE detainees might be further improved.² The memorandum begins with a general overview of the Lerdo Facility and goes on to discuss implementation of the *Standards* on visitation rights; telephone access; access to legal materials; availability of group rights presentations; recreation, access to medical care and religious resources; and miscellaneous aspects of the Facility.

II. The Lerdo Detention Center Facility

The Lerdo Facility is located in Kern County, California, a few miles north of Bakersfield. The Facility is a county jail that contracts with ICE through an IGSA to clothe, house and maintain ICE immigration detainees for a per diem fee of \$63 each.

The July 22, 2004 delegation toured Lerdo’s Pre-Trial Facility. The delegation was told that the Pre-Trial Facility was identical to the Max/Med Facility, which the delegation did not visit.³ OICs indicated both facilities house ICE detainees. The Pre-Trial Facility is a “new generation” detention facility. Six housing pods completed in 1987 and a seventh pod completed in 1989 make up the facility. Each pod has six housing units with 32 inmates per unit. The cells sleep two inmates each and are on two floors. The first floor cells open directly into a main room which contains the TV, telephones, and a general seating area.⁴ The second floor cells

² The delegation would like to note that the Facility is moving toward implementation of the Standards and has made considerable progress since the last ABA delegation’s visit, in the summer of 2002.

³ The Lerdo Max/Med Facility opened in 1978. In addition to being the maximum security facility for the Kern County Detentions system, Lerdo Max/Med entered into an agreement with the United States to house federal detainees and inmates in 1991. The U.S. Marshall’s Service, Bureau of Prisons and the ICE utilize the Max/Med facility. Kern County Detentions webpage <http://www.co.kern.ca.us/sheriff/detent.htm>. Viewed on August 2, 2004.

⁴ The telephones are outgoing only and do not accept incoming calls. Officer [REDACTED] explained that all inmates in a housing unit must agree to a proposed television schedule for the week which they hand to the officer

open onto a balcony which overlooks the main room. Inmates have access to this area from 3:00 a.m. to 11:00 p.m. daily and eat all meals in the main area.⁵ Each cell has an intercom through which detainees may communicate with the pod control officer. The Facility is designed for keyless operation, and most of the security doors are electronically opened by the pod control officer above. The pod officer is separated from the prisoners by electric doors and shatter proof glass. Deputies and correctional officers have no direct control over the opening of security doors and work on the ground level where the inmates are housed.⁶

A. ICE Detainee Population

The Lerdo Facility has a capacity of 1,232, and holds both county and federal inmates. On July 22, 2004, the population count was 1,115, including approximately 276 women and 270 federal inmates.⁷ Approximately 113 of these inmates were ICE detainees: 100 men and 13 women.⁸ These detainees are for the most part “final order” detainees, often awaiting travel documents before being sent out of the country. According to ICE personnel, none of the ICE detainees are currently being held solely on immigration charges; in other words, all ICE detainees are being held on criminal charges.⁹ The Deportation Officers noted that the ICE population, particularly those detained for non-criminal charges, had decreased recently due to the implementation of the Intensive Supervision Detention Program, under which eligible detainees are released into the community and monitored through tracking devices. This program commenced approximately three weeks prior to our visit and was part of a one year pilot program.

Officer [b6, b7C] indicated that at any given time the ICE population includes a variety of nationalities including Lebanese, Ethiopian, Nicaraguan, British, Mexican, Asian, Cuban, Vietnamese, Laotian, Indian, and nationals from countries formerly comprising the Soviet Union.

on duty. The officers control the channels from the control center. The officers use television viewing as a behavioral tool.

⁵ If a detainee is away during mealtime, a meal will be saved for him/her. According to the Facility Personnel, meals are served as follows:

- 3:30 am: wake-up call
- 4:00 am: hot breakfast is served
- 9:30 am: a sack lunch is served
- 3:30 pm: hot dinner is served

The Facility Personnel were somewhat uncomfortable when discussing this schedule, but explained the reasoning was because many inmates and detainees had to be at court hearings at 9:00 am and the Facility needed to have them fed and clothed and ready to go on time. Note that the Facility Handbook states a schedule half an hour earlier than the above schedule.

⁶ The Kern County Detentions webpage <http://www.co.kern.ca.us/sheriff/detent.htm>. Viewed on August 2, 2004.

⁷ Sergeant [b6, b7C]

⁸ Deportation Officer [b6, b7C] ICE detainee population has a minimum capacity of 112 and a maximum capacity of 224.

⁹ Deportation Officer [b6, b7C]

Responsibility for ICE detainees is split between the Lerdo Facility and ICE, Bakersfield. According to the ICE Officers, new policies require that ICE review detainees' files within 90 days of detention. ICE Officials try not to hold detainees at the Facility past the 90-day review if they can be released into the community.¹⁰ Release depends on a myriad of factors including: the likelihood of obtaining travel documents, criminal history, parole status, ability to integrate into the community, whether the detainee has a place to live (e.g. family members in the area), and whether the detainee has employment prospects.

B. The Facility's Detainee Handbook

The *Standards* contemplate that all facilities that hold ICE detainees, including IGSA facilities, will develop a detainee handbook to provide to ICE detainees as part of the orientation process. The *Standards* state:

Every OIC will develop a site-specific detainee handbook to serve as an overview of, and guide to, the detention policies, rules, and procedures in effect at the facility. The handbook will also describe the services, programs, and opportunities available through various sources, including the facility, INS, private organizations, etc. Every detainee will receive a copy of this handbook upon admission to the facility.¹¹

The *Standards* require that the detainee handbook conform to the format laid out in the *Standards*, customized as necessary for each facility.¹² According to the Facility Personnel, detainees are given a detainee handbook (the "*Handbook*"¹³) when they arrive. In addition, a video entitled "Know Your Rights," which is tailored to ICE detainees, is played every morning in each of the pods.¹⁴ The delegation notes, however, that the *Handbook* is not tailored to ICE

¹⁰ Deportation Officer [b6, b7C] Deportation Officer [b6, b7C] indicated some detainees will never be removed, for example, when ICE cannot determine the detainee's nationality or when the detainee's home country will not grant return travel documentation. The longest detainee stay he could remember was a Chinese national who was detained for seven years because he was "difficult" and acted aggressively toward the Chinese consulate, who, in turn, refused to grant him travel documents.

Deportation Officer [b6, b7C] mentioned that detainees from Mexico are often released within one day and returned to Mexico.

Deportation Officer [b6, b7C] mentioned that some detainees who do not obtain travel documents eventually will be released into the community. Factors taken into consideration upon making this decision include: likelihood of obtaining travel documents (the less likely a detainee is to obtain travel documents, the more likely he or she will be released), the community itself, the detainee's criminal history, and the requirements of the Department of Corrections with regards to parole (if another agency will be monitoring the detainee, the greater the likelihood of release).

¹¹ Detention Operations Manual, Detainee Handbook, Section I, "Policy", updated September 20, 2000.

¹² Id. at Section III, "Standards and Procedures," Part A.

¹³ See Exhibit A.

¹⁴ [b6, b7C] the detainee whom we interviewed, confirmed the "Know Your Rights" video was played every morning in his housing unit, but claimed he did not receive a Detainee Handbook upon his arrival at the Lerdo Facility.

detainees and does not include most of the material required by the *Standards*.¹⁵ Rather, it is the handbook given to the general Facility population. Facility Personnel and ICE Officers cited budget constraints and the fact that detainees are shown the “Know Your Rights” video each morning as the reason no separate detainee handbooks are given to incoming detainees. The *Standards*, however, state, “The facility’s orientation video may embellish or supplement the information provided in the handbook, at the OIC’s discretion. However, the comprehensiveness of the video has no bearing on the development, production, or distribution of the detainee handbook.”¹⁶

III. Observations regarding Standards Pertaining to Legal Access

A. Visitation

1. Notification

The *Standards* provide that the “facility shall provide written notification of visitation rules and hours in the detainee handbook, or equivalent, given each detainee upon admittance. The facility shall also post these rules and hours where detainees can easily see them.”¹⁷

The Lerdo Facility provides written visiting procedures in its *Handbook*, which states:

Visiting regulations will be posted in a place accessible to the inmates and to the public. Anyone not following these regulations may lose their visitation privileges. All visitors shall register at the reception counter, with valid identification. Inmates are allowed (2) thirty minute visits per week. Visiting hours are:

- 12:00 Noon to 2:30 PM
- 6:00 PM to 8:30 PM¹⁸

The visiting week will begin on Sunday and end on Saturday.

Inmates with the last name beginning with “A” through “F” will visit on Tuesdays and Fridays.

Inmates with the last name beginning with “G” through “M” will visit on Wednesdays and Saturdays.

Inmates with the last name beginning with “N” through “Z” will visit on Thursdays and Sundays.¹⁹

¹⁵ The handbook lists general inmate rights and responsibilities, but not those tailored to ICE detainees. Nor is it as detailed as the form handbook in the *Standards*. For example, the current *Handbook* does not contain an introduction explaining the ICE mission and purpose, classification, living conditions, evacuation drills, official counts, smoking policy, finances, religious services, inspections of persons and property, in-dorm recreation facilities information, contraband, unauthorized property, legal file, detention file, or a rights and responsibilities section. Moreover, the Initial Admission information is included in Appendix A to the *Handbook*, however, this information is on a separate sheet of paper and it is not clear that it is always handed out in conjunction with the *Handbook*.

¹⁶ Detention Operations Manual, Detainee Handbook, Section III, “Standards and Procedures,” Part E.

¹⁷ Detention Operations Manual, Detainee Services: Visitation, Section III.B.

¹⁸ However, the handbook hours may be outdated. Sergeant [b6, b7C] stated that the visiting hours were from 10:00 AM to 12:30 PM and 6:00 PM to 8:30 PM.

Sergeant [b6, b7C] specified that visitation schedules are posted in the day rooms of each housing unit, but only in English and Spanish.²⁰

The *Standards* further require each facility to make the schedule and procedures available to the public, both in written form and telephonically.²¹ We were able to obtain the visitation schedule by calling the Lerdo Facility phone number. We also note that the visiting schedule, including the specific visiting days, was available at the Kern County website.²²

2. *Visitors' Log*

The *Standards* provide that the Facility must maintain a log of all general visitors, and a separate log of legal visitors.²³

In the main lobby, the Lerdo Facility checks the ID of each person who visits the Facility and secures information as to who the visitor is there to visit and the visitor's relationship to the person visited. It is unclear whether the lobby personnel logs this information, but visitors do not complete paper logs of their visits. Once checked in, visitors then wait in the lobby until their names are called.

3. *Incoming Property and Money for Detainees*

The *Standards* require the Facility to have written procedures regarding incoming property and money for detainees.²⁴ Facility Personnel did not provide us with written procedures and the *Handbook* does not address this topic.²⁵ However, Facility Personnel stated that visitors may leave money for a detainee by depositing money orders at the lobby for the detainee's account. A receipt is given to both the depositor and detainee. Facility Personnel stated that no personal property, other than money, may be given to a detainee or to an officer to pass onto the detainee. Rather, any such items must be mailed into the Facility. All items

¹⁹ See Exhibit A.

²⁰ Sergeant [b6, b7C] further stated that she believes persons speaking other languages find out visitation information by speaking with others in the facility; however, we note that persons in administrative segregation or disciplinary segregation would have little or no opportunity to intermingle with others.

Detainee Mr. [b6, b7C] stated in an interview that he was aware that a close friend of his had come to visit twice and was turned away both times. Mr. [b6, b7C] was not aware of the days and hours in which he was allowed visitors.

²¹ Detention Operations Manual, Detainee Services: Visitation, Section III.B.

²² The website schedule is consistent with the one in the Handbook, and is available at <http://www.co.kern.ca.us/sheriff/detent.htm>. However, Detainee Mr. [b6, b7C] informed us that he was unaware of his visiting schedule until others told him of it.

²³ Detention Operations Manual, Detainee Services: Visitation, Section III.C.

²⁴ Id. at Section III.D.

²⁵ The *Handbook* does specify that "Commissary items such as food, stationary supplies and hygiene items may be purchased weekly from money in your account. If you have no money, a personal care package will be provided to you." Handbook, at Commissary.

mailed in are inspected by Facility Personnel to determine whether a detainee may keep such item in his or her cell.²⁶ If an item cannot be kept in the cell, Facility Personnel noted that such items are kept in storage with their other personal items until the detainee leaves the Facility.

4. Visiting Room Conditions

The *Standards* provide:

The facility's visiting area shall be appropriately furnished and arranged, and as comfortable and pleasant as practicable. The visiting room officer shall ensure that all visits are conducted in a quiet, orderly, and dignified manner. The OIC shall provide adequate supervision of the visiting rooms.

The particular housing unit we visited at the Lerdo Facility has five "booths" in one room for non-legal visitation. Facility Personnel informed us that each of the housing unit has the same set up, and therefore each unit contained the same number and layout of visiting booths. The booths are arranged in a line, separated only by a Plexiglas panel that protrudes out from the dividing wall approximately eight to ten inches. The Plexiglas dividing wall extends to the ceiling and separates visitors from detainees and inmates. Visitors and detainees communicate using phone handsets.

B. Visits by Family and Friends

As described above, the Lerdo Facility has established a visitation schedule. In addition to requiring a visitation schedule, the *Standards* encourage, to the extent practicable, the Facility to establish visiting hours for each detainee on both days of the weekend, and to try to accommodate visitors who can only visit on a specific weekend day.²⁷ According to the *Handbook*, the Lerdo Facility does not designate a weekend day to all visitors because visitors of detainees with last names beginning with "A" through "F" are designated visits only on Tuesdays and Fridays.²⁸

In addition, the *Standards* encourage, when possible, more generous time limits than the thirty minute-minimum, especially for family members traveling significant distances to visit.²⁹ Facility Personnel stated that they make exceptions to the designated visiting days and extend the maximum length of each visit to one hour for visitors who provide documentation to the Facility that they have traveled a distance greater than one hundred miles for the visit. Facility Personnel noted that the Facility Chaplain considers any other exceptions on a case-by-case basis.³⁰

²⁶ For example, Sergeant [b6, b7C] informed us that detainees were not allowed to have photographs in their cells. However, attorneys can provide legal paperwork during visits. See *infra* Section III.C.6.

²⁷ *Detention Operations Manual*, Detainee Services: Visitation, Section III.H(1).

²⁸ See *Handbook*, at Visiting.

²⁹ *Detention Operations Manual*, Detainee Services: Visitation, Section III.H(1).

³⁰ Two adults and two minors total are permitted per visit; however, Officer [b6, b7C] noted that there was at least one situation when greater than the maximum number of persons were permitted in one visit.

In the event a detainee is detained at the Lerdo Facility along with other members of his/her family, there are no visitation rights among the family members detained. No attempt is made to place families in the same housing unit as persons are placed wherever a bed is available at the time of admission.³¹ Facility Personnel stated that the only communication available between or among such family members is by mail.³²

The *Standards* state that all visitors are subject to a personal search which may include a pat-down search as well as a visual inspection.³³ Sergeant [b6, b7C] stated that Facility staff does not conduct any type of search of any persons after either a legal or a non-legal visit unless an officer believes he/she saw something suspicious.

The Lerdo Facility does not permit non-attorney or legal representative visitors to pass any item to a detainee during a visit. Any items for the detainee must be mailed to the Facility, and are subject to the restrictions on what detainees may possess at the Facility.

1. Visits for Administrative and Disciplinary Segregation Detainees

The *Standards* provide generally that a “detainee shall ordinarily retain visiting privileges while in administrative or disciplinary segregation status.”³⁴

Facility Personnel stated that disciplinary actions at the Lerdo Facility may restrict non-legal visitation, but do not restrict legal visitation. Detainees may be denied non-legal visitation for a period of thirty days as a form of punishment. Legal visitation for detainees that are in administrative segregation or disciplinary segregation are not restricted per se, but detainees in segregation are only permitted one hour per day outside of their cells to perform any personal activities such as showering, using the phone, and going to the law library. Sergeant [b6, b7C] noted that Facility staff attempts to give a detainee in segregation his/her one hour outside of the cell when his/her attorney visits.³⁵

C. Visits by Legal Representatives and Legal Assistants

1. Hours

³¹ Male and female detainees are automatically separated into different housing units.

³² The *Handbook* states: “In order for an inmate to write another inmate, they must submit a request slip with the name and booking number of the person they want to write. All requests are processed for eligibility. Codefendants are not allowed to write each other until they have been sentenced.” *Handbook*, at Inmate-to-Inmate Mail.

³³ *Detention Operations Manual*, Detainee Services: Visitation, Section III.H(3).

³⁴ *Detention Operations Manual*, Detainee Services: Visitation, Section III.H(5).

³⁵ Additionally, Sergeant [b6, b7C] stated that if an incident requiring a full facility lockdown occurred, then attorneys would not be permitted to enter the facility at that time and their visit would be delayed.

The *Standards* provide that the Facility must permit legal visitation seven days a week, including holidays, for a minimum of eight hours per day on regular business days and a minimum of four hours per day on weekends and holidays.³⁶

Facility Personnel stated that the Lerdo Facility permits legal visitation at any time seven days a week³⁷ Facility Personnel further noted that there is no time limitation on attorney visits, and the consultation may last as long as needed. The *Handbook* states:

Attorneys and their representatives shall have unlimited visitation. Every effort will be made to allow Attorney visits at any time and in a timely manner. Denial of Attorney visits will only occur when there are special circumstances that warrant the denial. Attorneys shall register the date and time of the visit with the visiting clerk. Visiting begins at 0530hrs.³⁸

The *Standards* further state that legal visitations may proceed through a scheduled meal period on regular business days, and in such cases the detainee should receive a tray or sack meal after the visit.³⁹ Facility Personnel stated that the Lerdo Facility follows this policy.

2. *Identification of Legal Representation and Assistants*

The *Standards* provide that all legal service providers and assistants must provide identification, preferably state bar cards, prior to each visit.⁴⁰ Legal representatives and assistants should not be asked to state the legal subject matter of their meeting.⁴¹

Facility Personnel stated that legal visitors present their state bar cards to gain entry to the Lerdo Facility.

3. *Identification of Detainee To Be Visited and Call-Ahead Inquiries*

The *Standards* state that the “facility may not require legal service providers to submit a detainee’s A-number as a condition of visiting” and it should “make a good-faith effort to locate a detainee if provided with other information about the detainee.”⁴² Further, “[e]ach facility shall establish a written procedure to allow legal service providers and legal assistants to telephone the facility in advance of a visit to determine whether a particular individual is

³⁶ *Id.* at Section III.I(2).

³⁷ Facility Personnel also noted that in the event of a facility-wide lockdown for security or other reasons, no visits by anyone, including attorneys are permitted; such visits would be delayed until the lockdown is over. Sergeant b6, b7C stated that no such facility-wide lockdowns have occurred for several years.

³⁸ *Handbook*, at Access to Counsel.

³⁹ *Detention Operations Manual*, Detainee Services: Visitation, Section III.I(2).

⁴⁰ *Detention Operations Manual*, Detainee Services: Visitation, Section III.I(4).

⁴¹ *Id.*

⁴² *Id.* at Section III.I(5).

detained in that facility. The request must be made to the on-site ICE staff or, where there is no resident staff, to the ICE office with jurisdiction over the facility.”⁴³

Facility Personnel stated that no pre-arrangement or call-ahead is needed for attorneys to visit detainees at the Lerdo Facility. The Lerdo Facility’s policy for detainee identification for attorneys deviates in that, per Facility Personnel, attorneys may call the Facility and speak to any staff person to determine whether a specific detainee is located at the Lerdo Facility. Officer [REDACTED] stated that attorneys may also call ICE directly to obtain a detainee’s location.

4. *Pre-Representation Meetings*

The Standards provide that during regular hours of legal visitation, the Facility shall permit detainees to meet with prospective legal representatives or legal assistants. The Facility shall document such “pre-representation meetings” in the logbook for legal visitation.

Facility Personnel noted pre-representation visits are permitted. However, Facility Personnel stated that almost all of the detainees detained at Lerdo are passing through as they already have “final orders” as to their immigration status.

5. *Private Meeting Room and Interruption for Head Counts*

The Standards provide that legal visitation should be confidential and not subject to auditory supervision.⁴⁴ The Lerdo Facility provides two legal visitation rooms per housing unit. Each room is fully enclosed except for a window in the door. According to Sergeant [REDACTED] the rooms used to have intercom devices that permitted auditory supervision, but those devices have been deactivated. We did not observe any listening device in the room we used for a detainee interview and it appeared private.⁴⁵ The legal visitation room door shuts fully and automatically locks once shut.

6. *Materials Provided to Detainees by Legal Representatives*

The Standards require that the Facility’s procedures for legal visitation provide for the exchange of documents between detainee and legal representative even when contact visitation rooms are unavailable.⁴⁶ Further, the document(s) or other written material provided to a detainee must be inspected, but not read.⁴⁷

In each housing unit at the Lerdo Facility, there are two legal visitation rooms. One of the rooms is a contact room that has a 2’ x 1’ opening that the attorney can choose to open or

⁴³ *Id.* at Section III.I(6).

⁴⁴ *Id.* at Section III.I(9).

⁴⁵ There is an intercom button on the attorney side of the room that we used to request the door to be unlocked by depressing the button.

⁴⁶ Detention Operations Manual, Detainee Services: Visitation, Section III.I(10).

⁴⁷ *Id.*

shut and lock at his/her discretion. The other room does not provide contact, but has a slot to permit the exchange of documents. Other than the openings described, the detainee and attorney are separated by a heavy gauge metal mesh. Since there are only two legal visitation rooms per housing unit, when there are more than two groups of legal visitors, Facility Personnel noted that the practice is to have the other attorneys wait until one of the rooms is available before visiting their clients.

Attorneys and legal representatives are permitted to give documents directly to the detainee during visits; however, the officer in charge will perform a visual check of the documents to make sure that prohibited documents such as photographs, or other prohibited materials, are not being provided to detainees. Detainees are then permitted to keep those documents.

7. Pro Bono List and Detainee Sign-Up

The *Standards* state, “INS shall provide the facility with the official list of pro bono legal organizations, which is updated quarterly by the Executive Office for Immigration Review. The facility shall promptly and prominently post the current list in detainee housing units and other appropriate areas.”⁴⁸

Sergeant [b6, b7C] stated that ICE provides a listing of pro bono attorneys to the Facility, which is posted at each unit. The unit we toured contained a listing of pro bono calls that can be made by INS detainees.⁴⁹ This listing includes pro bono legal service providers in the area, as well as the number for reaching the consulate office of various countries.⁵⁰

8. Other Special Visits

According to Sergeant [b6, b7C], no independent medical service providers may come to the Facility to provide medical services for a detainee. Instead, arrangements are made to send detainees who want or need to use medical providers, other than those available at the Facility, out to such other medical Facility along with a guard.

IV. Telephone Access

A. Detainee Access to Telephones, Detainee Notification

⁴⁸ Id. at Section III.I(14).

⁴⁹ See infra Section IV.B.

⁵⁰ The list is provided in English. Detainee Mr. [b6, b7C] noted he was not aware of such listing being available and, in his opinion, there is very little immigration information provided in the unit he has spent much of his time in as there are only one or two detainees in that unit. We further noted that the list provided to us by Facility Personnel did not include a consulate listing for Lebanon (Mr. [b6, b7C] tated home country).

The *Standards* provide that the facility “shall provide detainees with reasonable and equitable access to telephones during established facility waking hours.”⁵¹ The facility shall not limit the number or duration of calls to detainee legal representatives, unless necessary for security purposes or for purposes of maintaining orderly access.⁵² The facility may restrict the number and duration of other types of telephone calls for the following reasons only: (a) availability, (b) orderly operation of the facility, and (c) emergencies.⁵³ Furthermore, upon admittance, the facility shall provide telephone access rules in writing to detainees and also “post these rules where detainees may easily see them.”⁵⁴ In addition, there should be at least one telephone for detainee use for every 25 detainees held.⁵⁵

The Lerdo Facility has implemented these provisions of the *Standards*. Detainees at the Lerdo Facility have access to telephones during the hours when they have access to the common meal areas where the telephones are located. The hours of access are generally 3:30 am to 11:00 pm.⁵⁶

The Lerdo Facility notifies detainees of the telephone access rules upon admittance in the *Handbook*. The *Handbook* provides:

PHONE CALLS

No incoming calls are allowed. Outgoing collect calls may be made by following instructions on the telephone. Phone calling cards may be purchased through the commissary. Phone calls are recorded.

ACCESS TO TELEPHONE

Inmates not in disciplinary segregation will be allowed reasonable access to collect call only telephones. This access is in addition to the telephone access required under Section 851.5 of the Penal Code. **This inmate right may be suspended as a result of discipline.** Inmates may also be prevented from using the telephone during certain hours of the day such as emergency incidents or when necessary to maintain security of the facility.⁵⁷

Access rules are not posted next to the telephones, perhaps because the number and duration of calls are not specifically limited.

⁵¹ Detention Operations Manual, Detainee Services: Telephone Access, Section III.A.

⁵² Id. at Section III.F. In case time limits are necessary, calls to legal representatives shall be no shorter than 20 minutes. Id.

⁵³ Id.

⁵⁴ Id. at Section III.B.

⁵⁵ Id. at Section III.C.

⁵⁶ Detainees in Special Management Units do not have access during these hours. See infra Section IV.C.

⁵⁷ Emphasis in the original. See discussion of detainee access to telephones while in Special Management Unit, infra Section IV.C.

Each housing unit has a maximum capacity of thirty-two and there are two telephones per unit. Thus there are a sufficient number of telephones for the detainee population. Aside from cost, there appears to be no other limitations on telephone access. In addition, Facility Personnel informed us that maintenance problems are taken care of promptly because regular inmates and detainees make these problems known to the staff as soon as they become evident.⁵⁸

B. Direct Calls and Free Calls

The *Standards* require that even if telephone service is limited to collect calls, “the facility shall permit the detainee to make direct calls” to various courts, consular officials, legal service providers, government offices for the purpose of obtaining documents relevant to the immigration case, and in a personal or family emergency.⁵⁹ Indigent detainees should be able to make free local calls to the organizations listed above, and free long distance calls if there is compelling need.⁶⁰ In addition, the facility shall enable detainees to call a list of ICE-provided free legal service providers and consulates at no charge to the detainee or the receiving party.⁶¹

The Lerdo Facility allows both collect and debit card calling. The instructions for placing these calls are posted next to the telephones in English and Spanish. Debit cards are sold every Tuesday and give detainees the ability to make direct calls. The collect call fee schedule is posted (written in pencil) next to the telephones and is as follows:

Long Distance CA	\$3.75/first minute
	75 cents/minute
	\$9.75/10 minutes
	\$44.40/hour

Shuts off automatically after 1 hour. If the caller incurs \$50 in one day, that number is blocked until the charge is paid off. No cell telephone numbers can be reached via collect calls.

The posting does not provide the fee for long distance calls outside of California.

The Lerdo Facility does not have a procedure in place for indigent detainees to make free calls regarding their legal representation, whether local or long distance. Sergeant [REDACTED] informed us that this situation does not arise often, and in one case, she led the indigent detainee to a telephone where he/she was able to make the free call. The Lerdo Facility should have procedures in place for handling requests from indigent detainees. If such procedures were in place, the detainees would probably utilize them at greater frequency.

⁵⁸ “The facility shall maintain detainee telephones in proper working order” and facility staff shall “inspect the telephones regularly.” Detention Operations Manual, Detainee Services: Telephone Access, Section III.D. At the Lerdo Facility, the staff appears to rely solely on complaints from the regular inmates and detainees to assess the working condition of the telephones.

⁵⁹ Id. at Section III.E.

⁶⁰ Id.

⁶¹ Id.

In the housing unit we visited, an ICE-provided list of free legal service providers' and consulates' direct dial numbers is posted next to the telephones.⁶² The list is only in English, and includes mostly consulates, a number of courts, and a few free legal service providers. The directions to using the free direct dial numbers are also only in English.⁶³ The directions indicate that the caller could choose to use a variety of languages such as Chinese and Vietnamese, but the recorded operator only gave English and Spanish as options.

C. Incoming Calls

The *Standards* provide that the facility "shall take and deliver telephone messages to detainees as promptly as possible."⁶⁴ Emergency telephone calls shall be delivered to detainees "as soon as possible" and detainees shall be permitted to return the emergency call "as soon as reasonably possible within the constraints of security and safety."⁶⁵

The Lerdo Facility will deliver messages of attorney calls,⁶⁶ but not calls from families. The guard will read attorney messages over the loud speaker in the housing unit. In emergency situations, incoming calls will be referred to the Chaplain first, who will then speak with the detainee.

D. Privacy for Telephone Calls on Legal Matters

The *Standards* state that detainee telephone calls regarding legal matters should be made from telephones where "detainees can make such calls without being overheard by officers, other staff or other detainees."⁶⁷ Furthermore, detainee calls regarding legal matters shall not be electronically monitored absent a court order, and the facility "shall inform detainees to contact an officer if they have difficulty making a confidential call relation to a legal proceeding."⁶⁸

Detainees cannot make private calls at the Lerdo Facility. Telephones are placed in the common meal area where other detainees or inmates can overhear the conversation. There are no privacy panels. Aside from these phones, there are no other telephones available to detainees for making calls. ICE Officers stated that they have not had a request for making a private

⁶² Detainee Mr. [b6, b7C] stated that this list does not exist in his pod, where he is one of very few detainees. Since detainees are spread across all the units, the list should be available in every pod.

According to Facility Personnel, this list is handed to detainees when they are admitted into the facility. Detainee Mr. [b6, b7C] reported that he never received the list.

⁶³ We attempted to call an organization from the ICE-provided list of free legal service providers and consulates, but we did not have an alien registration number, which was necessary to complete the call.

⁶⁴ Detention Operations Manual, Detainee Services: Telephone Access, Section III.I.

⁶⁵ Id.

⁶⁶ One attorney we spoke to confirmed that he is able to leave a message with the Lerdo Facility to have his clients call him back.

⁶⁷ Detention Operations Manual, Detainee Services: Telephone Access, Section III.J.

⁶⁸ Id.

telephone call, but they could bring the detainee down to the ICE office in Bakersfield to make such calls if necessary.

The Call Access Monitoring system records all calls in the Lerdo Facility, but the Lerdo Facility does not generally monitor calls. Attorneys may ask to be put on a list where their telephone numbers are blocked from recording.⁶⁹ Also, Facility Personnel informed us that detainees can state their name in the beginning of a call and request that the call not be monitored because it is a legal call.⁷⁰ It is not clear if attorneys or detainees are aware of the procedures for requesting confidential/unrecorded calls.⁷¹

F. Monitoring of Detainee Telephone Calls

The *Standards* require that the Facility have a written policy on the monitoring of telephone calls, and if the calls are monitored, “the facility shall notify the detainee in the detainee handbook.”⁷² In addition, the facility shall place a notice at each monitored telephone stating that calls are subject to monitoring, and the procedure for getting an unmonitored call if the call is for a legal purpose.⁷³

The Lerdo Facility’s *Handbook* notifies detainees that all calls are recorded.⁷⁴ Each detainee is supposed to sign a separate “Notice of Telephone Monitoring Policy.” This notice is in both English and Spanish:

It is the policy of the Kern County Sheriff’s Department to randomly monitor and/or record for security reasons all of the inmate telephone lines within the jails. To insure confidentiality, the telephone numbers of attorneys with offices in Kern County will be blocked from monitoring/recording. In order to place a confidential call to an attorney with an office in another county or to a licensed physician or to a religious advisor you must submit an Inmate Request Form 48 hours in advance of the call.

I understand that if I choose to use the inmate telephone in any of the Kern County Sheriff’s Department jail facilities, I am doing so with full knowledge that all numbers dialed and conversations may be monitored and/or recorded without further notice. By using the telephone, you agree to the monitoring and recording.⁷⁵

⁶⁹ One attorney we spoke with stated that he is informed that the call is being recorded at the beginning of each call, but does not know how to request to have the recording turned off.

⁷⁰ This procedure is not mentioned in the separate “Notice of Telephone Monitoring Policy.” See *infra* Section IV.G.

⁷¹ See *infra* Section IV.G.

⁷² *Detention Operations Manual*, Detainee Services: Telephone Access, Section III.K.

⁷³ *Id.*

⁷⁴ See *supra* Section IV.A.

⁷⁵ A copy of the “Notice of Telephone Monitoring Policy” is enclosed herein as Exhibit B.

While the Lerdo Facility is supposed to block calls with attorneys in the county, attorneys from outside the county may not be aware of how to request confidential calls. It is unclear whether detainees recall or understand how to place a request for confidential calls. A better practice would be to place the procedure for requesting confidential calls next to the telephones and also in the *Handbook*.

V. Access to Legal Material

A. Law Library

The *Standards* state that the Facility must permit detainees access to a law library, and provide legal materials, facilities, equipment and document copying privileges, and the opportunity to prepare legal documents.⁷⁶ The law library must be “in a designated room with sufficient space to facilitate detainees’ legal research and writing.”⁷⁷ In addition, the library must be well-lit, reasonably isolated from noisy areas, large enough to provide reasonable access to all detainees who request its use, and must contain a sufficient number of tables and chairs.⁷⁸

The Lerdo Facility provides a designated room that is well-lit and reasonably isolated from noisy areas. The library includes four tables with approximately three chairs each. It is difficult to ascertain whether all detainees who request law library use are being provided with reasonable access without more information from detainees than we were able to obtain. However, it appears that the library may not provide adequate space and equipment to meet the *Standards* because it contains only four tables, one typewriter, and two computers. At the time of our visit, the Lerdo Facility held 113 ICE detainees and had a total population of 1,115.

B. Equipment

The *Standards* state that the law library must provide “an adequate number of typewriters and/or computers, writing implements, paper, and office supplies to enable detainees to prepare documents for legal proceedings.”⁷⁹ The Lerdo Facility has one typewriter, two computers, and the librarian provides office supplies to the detainees.

The *Standards* further require that the Facility designate an employee with the responsibility of inspecting the equipment at least weekly, ensuring that it is in good working order, and stocking sufficient supplies.⁸⁰ We found the typewriter and computers at the Lerdo Facility to be in working order. When our delegation walked by the law library, we observed a

⁷⁶ Detention Operations Manual, Detainee Services: Access to Legal Material, Section I.

⁷⁷ Id. at Section III.A.

⁷⁸ Id.

⁷⁹ Id. at Section III.B.

⁸⁰ Detention Operations Manual, Detainee Services: Access to Legal Material, Section III.B.

detainee or inmate using the typewriter. A detention facility officer stated that the equipment is inspected regularly.⁸¹

C. Holdings and Materials from Outside Persons or Organizations

The *Standards* require that the law library contain the materials listed in Attachment A of the *Access to Legal Materials* chapter of the *Detention Operations Manual*.⁸² The *Standards* require the Facility to post a list of its holdings in the law library.⁸³

The Lerdo Facility has many of the materials required by the *Standards*, but our delegation was unable to find the following publications:⁸⁴

1. *United States Code, Title 8, Aliens and Nationality* (#2 on the list), the updated annual pocket parts were missing;
2. *Immigration and Naturalization Service Basic Law Manual* (#14 on the list);
3. *United States Code, Title 28, Rules, Appellate Procedure Pamphlets I+II* (#19 on the list);
4. *Legal Research in a Nutshell* (#22);
5. *Legal Research & Writing: Some Starting Points* (#23 on the list);
6. *Other Translation Dictionaries Depending on the Most Common Languages Spoken by the Detainee Population* (#27 on the list);
7. *Detainee Handbook and Detainee Orientation Materials* (#28 on the list);
8. *Self-Help Materials* (#29 on the list).

Some of the materials listed on Attachment A, or equivalent publications, were available on the LexisNexis CD service on the two computers. For example, *Diccionario Terminas Juridicas*, an equivalent of the Spanish-English Law Dictionary listed as number twenty-five on Attachment A, was available in electronic format.

When asked whether outside persons and organizations may submit published or unpublished legal materials for inclusion in the law library, Facility Personnel stated that this had never occurred. Facility Personnel stated that if a detainee requests court forms or documents,

⁸¹ The officer stated, when asked how frequently equipment and legal materials were inspected, that they are inspected daily.

⁸² A copy of Attachment A is attached as Exhibit C.

⁸³ Detention Operations Manual, Detainee Services: Access to Legal Material, Section III.C.

⁸⁴ The Lerdo Facility's regular librarian was out with a broken leg at the time of our visit. The Facility may in fact have some of the publications our delegation was unable to locate without her assistance.

the librarian has been instructed to provide the detainee with the relevant court's address and to advise the detainee to write to the court for the desired information. We did not see a posted list of the required materials or a general listing of the library's holdings, and Sergeant [b6, b7C] stated that she did not know whether there was a list posted. The library does not have the Florence Project's "Know Your Rights" packets. Officer [b6, b7C] stated that they do not distribute the packets due to budgetary constraints; there are approximately thirty new people entering the Facility each day. The library does not have materials in languages other than English and Spanish.

D. Updating Legal Materials and Replacing Materials

The *Standards* provide that the Facility must designate an employee with the responsibility of updating legal materials, inspecting them weekly, maintaining them in good condition, and replacing them promptly as needed.⁸⁵ Facility Personnel stated that the librarian has this responsibility and checks materials daily. According to Officer [b6, b7C] the two computers are updated with materials from CD-ROMs. Deportation officers load updated CD-ROMs onto the computers about every six weeks.

E. Hours of Access

The *Standards* state that the "facility shall devise a flexible schedule to permit all detainees, regardless of housing or classification, to use the law library on a regular basis."⁸⁶ Further, the *Standards* provide that each detainee shall be permitted to use the law library for a minimum of five hours per week and detainees should not be forced to forgo their minimal recreation time to use the law library.⁸⁷

The law library at the Lerdo Facility is open from 8 am to 12 midnight. Requests to use the law library must be made on a request slip. Facility Personnel stated that the librarian devises the schedule according to the number of requests she receives and by taking into consideration the intermingling of differently classified detainees and inmates. Facility Personnel stated that detainees may use the law library up to twice per week for two hours per visit. This amount of access does not meet the *Standards'* prescribed amount of five hours. Sergeant Holtz stated that detainees are not forced to forgo their minimal recreation time to use the law library. She estimated that it takes a detainee an average of four days from the first request to get access to the law library, but the length of time varies and could be more.

F. Supervision

The *Standards* provide that the "facility shall develop procedures that effectively prevent detainees from damaging, destroying or removing equipment, materials or supplies from the law

⁸⁵ *Id.* at Section III.E.

⁸⁶ *Id.* at Section III.G.

⁸⁷ *Id.*

library.”⁸⁸ In addition, the *Standards* encourage facilities to monitor detainees’ use of legal materials to prevent vandalism.⁸⁹

The Lerdo Facility has a librarian on staff who monitors use of the law library. Although the regular librarian was absent during our visit, a librarian in training was working at the librarian’s desk and another member of the Facility staff was present in the law library as well. The equipment and legal materials are in good condition.

G. Requests for Additional Legal Material

The *Standards* provide that “[d]etainees who require additional legal material not available in the facility law library shall make a written request to the employee responsible for maintaining and updating library materials.”⁹⁰ Further, the facility shall inform the INS contact person of the request as quickly as possible.⁹¹

An ICE Officer stated that detainees cannot or do not generally request legal material not held by the law library. However, the ICE Officer indicated that for detainees who ask for forms to file with a court, the librarian will provide a court address to which the detainee may write requesting sample forms.

H. Photocopying Legal Documents

The *Standards* state that the “facility shall ensure the detainees can obtain photocopies of legal material, when such copies are reasonable and necessary for a legal proceeding involving the detainee.”⁹² Additionally, the *Standards* provide that requests for photocopies of legal material should only be denied if:

1. the document(s) might pose a risk to the security and orderly operation of the detention facility;
2. there are other legitimate security reasons;
3. copying would constitute a violation of any law or regulation; or
4. the request is clearly abusive or excessive.⁹³

Further, facility staff shall inspect documents to ensure that they comply with these rules, but they may not read a document that on its face is clearly related to a legal proceeding involving the detainee.⁹⁴

⁸⁸ Detention Operations Manual, Detainee Services: Access to Legal Material, Section III.H.

⁸⁹ Id.

⁹⁰ Id. at Section III.I.

⁹¹ Id.

⁹² Id. at Section III.J.

⁹³ Id.

The Lerdo Facility librarian makes the photocopies requested by detainees usually on the spot or within a couple days of the request. The cost is ten cents per copy unless the detainee is considered indigent, in which case the photocopies are free. A detainee is considered indigent when he/she has three dollars or less in his/her account. Requests for photocopies are not limited in number or denied unless the documents requested for photocopying do not relate to the requesting detainee's legal proceeding. The policy and cost is the same for detainees who wish to print from the computers.

I. Assistance from Other Detainees

The *Standards* provide that the “facility shall permit detainees to assist other detainees in researching and preparing legal documents upon request, except when such assistance poses a security risk.”⁹⁵

Facility Personnel stated that detainees at the Lerdo Facility are permitted to assist other detainees in researching and preparing legal documents.

J. Assistance to Illiterate and Non-English Speaking Detainees

The *Standards* require that “unrepresented illiterate or non-English speaking detainees who wish to pursue a legal claim related to their immigration proceedings or detention and indicate difficulty with the legal materials must be provided with more than access to a set of English-language law books.”⁹⁶ Facilities must establish procedures to meet this obligation, such as by obtaining assistance from detainees with appropriate language abilities, and by assisting in contacting pro bono legal-assistance organizations from the ICE-provided list.⁹⁷ If such methods do not work for a particular non-English speaking or illiterate detainee, then the facility must contact ICE to determine appropriate action.⁹⁸

The Lerdo Facility law library contains books almost exclusively in English, with only a small number in Spanish. Facility Personnel did not know of procedures to assist unrepresented illiterate or non-English speaking detainees in pursuing legal claims related to their immigration proceedings or detentions. We asked Officer [b6, b7C] and Officer [b6, b7C] what happens to detainees who wish to use the computer in the law library but do not know how and they stated that detainees could request assistance from ICE. However, when we asked if a detainee had ever asked them for assistance, they stated that this had never occurred.⁹⁹

⁹⁴ *Id.*

⁹⁵ *Id.* at Section III.K.

⁹⁶ *Id.* at Section III.L.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ A copy of a LexisNexis DC Quick Reference Guide provided to us by Sergeant [b6, b7C] is attached as Exhibit D.

K. Personal Legal Materials

The *Standards* provide the “facility shall permit detainees to retain all personal legal material upon admittance to the general population or segregation, unless such material creates a safety, security, and-or sanitation hazard.”¹⁰⁰ The facility may require detainees with a large amount of legal material to store some of this material in a personal property storage area, with access permitted within twenty-four hours of receipt of detainee request.¹⁰¹

The Lerdo Facility permits a detainee to retain all personal legal material upon admittance to the general population or segregation, unless such material exceeds one square foot because Facility Personnel consider such an amount to be a fire hazard in the assigned cell space. If a detainee has legal material greater in volume than one square foot, the Facility staff places the excess in storage. A detainee may submit a request slip to access his or her materials in storage. Facility Personnel stated that detainees have only rarely had more than one square foot of personal legal material.

L. Law Library Access for Detainees in Special Management Units

The *Standards* mandate that “[d]etainees housed in Administrative Segregation or Disciplinary Segregation units shall have the same law library access as the general population, unless compelling security concerns require limitations. . . . Denial of access to the law library must be supported by compelling security concerns, must be for the shortest period required by security, and must be fully documented in the special management housing logbook.”¹⁰²

Facility Personnel stated that detainees in Administrative Segregation have the same access to the law library, but it is based on availability because they must go by themselves.¹⁰³

M. Envelopes and Stamps for Legal Documents

The *Standards* provide that the “facility will provide indigent detainees with free envelopes and stamps for mail related to a legal matter, including correspondence to a legal representative, potential legal representative, or any court.”¹⁰⁴

¹⁰⁰ Detention Operations Manual, Detainee Services: Access to Legal Material, Section III.K.

¹⁰¹ Id.

¹⁰² Id. at Section III.M.

¹⁰³ Thus, based on the size of the law library in relation to the size of the facility population, we believe detainee access could be significantly limited and less than access available to the general population, depending on the number of detainees and inmates housed in administrative segregation or disciplinary segregation, and the number who request use of the law library.

Detainee Mr. [b6, b7C] stated that he requested access to the law library twice and his requests were not responded to with access. He was generally aware that there is a law library in the facility and that it has a typewriter, but he believes he has no access to the computers. Additionally, he knows that there is a librarian at the law library, but he is not aware that any translation assistance is available.

¹⁰⁴ Detention Operations Manual, Detainee Services: Access to Legal Material, Section III.N.

The Lerdo Facility provides indigent detainees with free stationary and postage for legal mailings in response to requests made by request slip. Non-indigent detainees can purchase stamps and envelopes from the commissary. The Handbook states: “All inmates are entitled to send and receive legal mail. Legal mail is not read and is searched in the presence of the inmate. If an inmate does not have money, they will be provided stationary and postage for any legitimate legal mailings.”¹⁰⁵

N. Notice to Detainees

The *Standards* require that the detainee handbook or equivalent explain the rules and procedures governing access to legal materials, including (1) that a law library is available for detainee use, (2) the scheduled hours of access to the law library, (3) the procedure for requesting access and additional time, (4) the procedure for requesting legal reference materials not maintained in the law library, and (6) the procedure for notifying a designated employee that library material is missing or damaged.¹⁰⁶

The *Handbook*, however, only states: “All inmates will be afforded reasonable access to the Law Library. Requests are to be given to the Housing Unit floor officers.”¹⁰⁷ The *Handbook* does not provide detainees with notice regarding the procedure for requesting additional time, legal reference materials not maintained in the law library, or for notifying a designated employee that library materials are missing or damaged.

VI. Group Presentations on Legal Rights

A. Policy Regarding Presentations

The *Standards* state, “If attorneys or other legal representatives make no requests, or INS does not approve the requests, the facility is not required to arrange presentations.”¹⁰⁸ Facility Personnel stated that there have been no requests to make presentations and they have not had any live presentations at the Lerdo Facility.

B. Videotaped Presentations

The *Standards* state that the “facility shall play INS-approved videotaped presentations on legal rights at the request of outside organizations. . . . The facility shall provide regular opportunities for detainees in the general population to view the videotape. The facility shall provide at least one opportunity to view the videotape to detainees in administrative or

¹⁰⁵ Handbook, at Inmate Services: Legal Mail.

¹⁰⁶ Detention Operations Manual, Detainee Services: Access to Legal Materials, Section III.Q.

¹⁰⁷ Handbook, at Inmate Services: Law Library.

¹⁰⁸ Detention Operations Manual, Detainee Services: Group Presentation of Legal Rights, Section III.B.

disciplinary segregation, unless precluded by security concerns regarding a particular detainee.”¹⁰⁹

Facility Personnel stated that the officer in the control room of each pod operates the “Know Your Rights” video which is played daily in each housing unit after breakfast.¹¹⁰ Detainees and inmates cannot turn it off.¹¹¹

VII. Additional General Observations

A. Recreation

The *Standards* state, “All facilities shall provide INS detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”¹¹² Each pod in the Lerdo Facility has one outdoor space which consists of a basketball court surrounded by high walls and fenced “roof.” One cannot see outside the Facility from this outdoor area. Facility Personnel indicated that weight training is not available for recreation.

The *Standards* go on to require that each detainee shall have access for at least one hour daily, at a reasonable time of day, five days a week, weather permitting.¹¹³ For non-segregated detainees, according to Facility Personnel, outdoor recreation is allowed for one hour per day, [seven] days per week. The *Handbook*, however, states that inmates will be allowed a minimum of only three hours of outdoor recreation a week. Facility Personnel noted that many inmates turn down recreation time because of the weather.

The *Standards* also state, “Dayrooms in general-population housing units will offer board games, television, and other sedentary activities.”¹¹⁴ Each Housing unit of 32 inmates shares a cement indoor recreation room which contains a television, two telephones, and a general seating area. The indoor recreation rooms are open to detainees from 3:00 a.m. to 11:00 p.m. Facility Personnel stated that board games are available to detainees on a daily basis, but these were not seen by our delegation. Facility Personnel indicated that the television schedule is used as a behavioral tool.¹¹⁵

¹⁰⁹ *Id.* at Section III.I.

¹¹⁰ *See supra* Section II.B.

¹¹¹ Mr. [b6, b7C] stated that he had not heard of or seen the “Know Your Rights” video. He has been held in administrative segregation for the majority of his detention at the Lerdo Facility.

¹¹² *Detention Operations Manual*, Recreation, Section I.

¹¹³ *Id.* at Section III.A.1.

¹¹⁴ *Id.* at Part G: Program Content, No. 3.

¹¹⁵ The *Standards* allow the OIC to restrict such recreational activities at their discretion. *Id.* at Nos. 6 and 10.

Administrative segregation detainees are allowed one hour per day in the recreation room in their housing unit, and one hour per day in the recreation yard.¹¹⁶ Time for recreation can be difficult to coordinate as in both cases the detainee must be isolated from all other inmates—no other detainees or inmates are allowed in the recreation room or in the recreation yard when a detainee under administrative segregation is present.

B. Classes

The Lerdo Facility offers various classes between noon and 3:00 p.m. in English only. The *Handbook* describes the alcohol and substance abuse and parenting classes offered at the Facility. Detainees may fill out a request slip and hand it to the officer in charge to attend the following classes:¹¹⁷

- Substance abuse classes are offered one time per week.
- Parenting classes are offered separately to men and women.
- English as a Second Language (“ESL”) classes are not currently offered.

According to Facility Personnel, detainees under administrative segregation are not allowed to attend classes because they must be segregated from other inmates at all times.

C. Access to Medical Care

During the week one physician and six nurses are on duty during the day and four nurses are on duty for the night shift. On average, the Medical Facility sees thirty to fifty patients per day. Ideal staffing on the weekend includes five nurses but no physicians. Emergencies are always taken to the local community hospital.¹¹⁸ No independent medical providers may enter the Lerdo Facility to provide medical services, however, arrangements may be made to send detainees, accompanied by a guard, offsite if they want to see an independent medical provider. Federal inmates, including ICE detainees, are not attended by the same physicians who provide medical care to the Facility’s county inmates.

The Lerdo Facility includes an on-site pharmacy. According to Medical Personnel there are no co-pays for medication. Medication rounds are made in the housing units four times per day: two regular rounds and two special rounds for those patients on more frequent dosing schedules.¹¹⁹ Detainees are not allowed to keep their medication in their cells, with the exception of inhalers to treat asthma.

¹¹⁶ Mr. [b6, b7C], who is in administrative segregation, stated he had never been outside in the 17 to 18 months he had been detained, but was allowed out of his cell and in the indoor recreation room for one hour per day. He indicated the day room had a TV only.

¹¹⁷ Mr. [b6, b7C] was not aware of any classes being offered.

¹¹⁸ ICE has contracts with the Sheriff’s Department as well as the Kern County Medical Center to provide medical services to detainees.

¹¹⁹ Special rounds occur once in the middle of the night and once in the middle of the afternoon.

All detainees are screened upon intake and any medical issues requiring immediate care are referred to a physician. Sick Call Slips are handed out each night.¹²⁰ A nurse will triage the requests. Detainees are usually able to see a physician the same day or the next day. Conditions requiring urgent care may be seen immediately.

Detainees do not have co-pays for medical services nor do they have limitations on the number of times they can be seen.

D. Access to Mental Health Care¹²¹

The Lerdo Facility provides mental health services on-site via a contracted county agency.¹²² Detainees may be seen at the Lerdo Facility mental health services offices, or may go to the Kern County Medical Center.

According to the ICE Officers, ICE detainees arrive at the Lerdo Facility accompanied by their past medical histories because ICE will not accept custody of a detainee from another Facility without obtaining his or her medical history.¹²³

Detainees are referred to mental health services in one of three ways. They may be referred by the facility where they were previously detained; they may self-refer, or they may be referred by Facility staff or corrections officers. Mr. [b6] said that many referrals come from officers on duty who notify the mental health clinic if they think a detainee “is not doing well.”

Mr. [b6] noted that mental health care services have improved on account of the Facility’s recently installed “Language Line,” which allows a detainee and a Facility employee to conference call a translator.¹²⁴ According to Facility Personnel, the “Language Line” phones have been placed throughout the Lerdo Facility and are available for any Lerdo Facility employee to use in case of a crisis.

E. Religious Resources¹²⁵

The *Standards* on Religious Practices state that:

¹²⁰ A sick call slip is attached as Exhibit E.

¹²¹ All information in the Mental Health Care section was obtained from a discussion with Ray Rios, the counselor on-site during our facility tour.

¹²² The county agency is contracted through a “Memorandum of Understanding.”

¹²³ Deportation Officer [b6, b7C]. Mr. [b6], on the other hand, mentioned that many inmates come to the facility without past medical history and therefore the mental health staff has to “reinvent the wheel” when it comes to treatment.

¹²⁴ The Language Line has been made available through an Inmate Services contract. For more information visit www.language.com.

¹²⁵ All information contained in this section is based on an interview with the chaplain on duty during our tour.

Detainees of different religious beliefs will be provided reasonable and equitable opportunities to participate in the practices of their respective faiths. These opportunities will exist for all equally, regardless of the number of practitioners of a given religion, whether the religion is ‘mainstream,’ whether the religion is ‘Western’ or ‘Eastern,’ or other such factors. Opportunities will be constrained only by concerns about safety, security, the orderly operation of the facility, or extraordinary costs associated with a specific practice.¹²⁶

The Chaplain’s Office at the Lerdo Facility has two full time chaplains, and a chaplain is on-site seven days a week. When on duty, a chaplain carries a two-way radio and may be contacted at any time. At least one chaplain is on call 24-hours per day. The Chaplain’s Office offers spiritual reading materials and will respond to detainee’s requests for materials on specific religions.¹²⁷ All reading materials are donated from community religious organizations.

The Chaplain’s Office at the Lerdo Facility offers thirteen services per week in the same classroom where classes are held.¹²⁸ While the theme is non-denominational and inter-denominational, the services are Christian-based.

Detainees may request to see a chaplain through a request slip, which may be obtained from the officer on duty. The officer puts the slip in the Chaplains’ mailbox at the Lerdo Facility. The Chaplain will respond as soon as possible to the request.

The Lerdo Facility allows visits and services by community clergy members from different denominations.¹²⁹ The Chaplain will contact community religious groups when interest in specific spiritual guidance is requested.¹³⁰ The community groups then evaluate the interest and their own resources and determine whether or not to come to the Lerdo Facility. In addition, the clergy member must meet the Department of Detentions criteria before an on-site visit may take place.¹³¹

Detainees are allowed to keep religious reading material in their cells as long as it does not violate the general reading materials policy.¹³² Detainees are not allowed to keep prayer rugs

¹²⁶ Detention Operations Manual, Religious Practices, Section I.

¹²⁷ For example, the chaplain on duty during our tour indicated an increased interest among the inmate population for material on Islam. He had Korans available for inmates a [redacted] inees and was in the process of contacting a local imam to make regular visits to the Lerdo Facility. Mr. [redacted] however, stated he had made a request for an Armenian Bible and received no response from the Chaplain’s office.

¹²⁸ Mr. [redacted] was not aware of any religious support or services being offered at the Facility.

¹²⁹ Mr. [redacted] was not aware of community clergy offering services at the Facility.

¹³⁰ Detainees may request religious services through the white slips which may be obtained from officers on duty.

¹³¹ The Chaplain noted that few such visits have taken place in the past few years because of the lack of participation by inmates.

¹³² The general reading materials policy includes all reading materials (e.g. legal reading materials, religious reading materials, magazines, letters, etc.). Detainees are allowed paper up to one-foot-square in their cells. Sergeant [redacted] noted the need to reduce the risk of a fire hazards as the reasoning behind this policy.

in their cells or wear religious head gear. Facility Personnel cited Facility security as the basis for the latter rule. The *Standards* require that detainees have access to personal religious property such as prayer rugs and head gear, consistent with facility security.¹³³

Handling of requests for special diets also falls under the Chaplain's purview. According to the *Standards*

The INS requires all facilities to provide detainees requesting a religious diet reasonable and equitable opportunity to observe their religious dietary practice within the constraints of budget limitations and the security and orderly running of the facility through a common fare menu. The detainee will provide a written statement articulating the religious motivation for participation in the common fare program. Detainees whose religious beliefs require adherence to particular dietary laws will be referred to the Chaplain.¹³⁴

The Lerdo Facility meets this standard. At the Facility detainees may request special diets for religious reasons by submitting a request slip to the Chaplain's office.¹³⁵ The Chaplain will then meet with the detainee to determine if the request is valid on religious grounds and the detainee is entitled to the religious diet.¹³⁶ The Chaplain will also check with medical staff to make sure the requested religious diet meets nutritional standards. Once a request is approved, the information is faxed or called in to the kitchen. The kitchen maintains a log confirming that the detainee received the special meal.

F. Classification

The *Standards* provide that IGSA facilities may continue using the classification systems they have established so long as the classification criteria are objective and all procedures meet ICE requirements.¹³⁷

The *Standards* state that a classification system ensures that "[a]ll detainees are classified upon arrival, before being admitted into the general population," and further that "[d]etainees shall be assigned housing, offered recreational activities, assigned work (at the detainee's request), and provided food service according to their classification levels."¹³⁸ The *Standards* specify that in SPCs and CDFs, staff will assign detainees to color-coded uniforms and

¹³³ Detention Operations Manual, Religious Practices, Section III.K.

¹³⁴ Detention Operations Manual, Food Service, Section III.E.1.

¹³⁵ Special diet requests based on medical reasons are handled before religious-based requests.

¹³⁶ Detainees may not request diet changes simply because they do not like the food. All of the meals at the Lerdo Facility are pork-free, and vegetarian diets are provided for Hindus and Buddhists. Muslim meals were referred to as "common fare" (all red meat is removed).

¹³⁷ Detention Operations Manual, Detainee Classification System, Section III.A.

¹³⁸ Id.

wristbands, of which there are three different colors corresponding to varying levels of threat the individual is deemed to pose.¹³⁹

In addition, the *Standards* require that the detainee handbook includes an “explanation of the classification levels, with the conditions and restrictions applicable to each” and the “procedures by which a detainee may appeal his/her classification.”¹⁴⁰

The Lerdo Facility puts all detainees through a classification process upon arrival. According to Facility Personnel, a classification officer interviews each inmate at the time of booking and determines the individual’s prior history, whether he/she is gang affiliated or has prior criminal convictions, and so on. ICE detainees go through the same classification process and are segregated according to whether they have criminal status. According to Facility Personnel, a determination of criminal status requires something other than, or in addition to, an immigration violation. For example, a detainee who had illegal entry charges but no specific criminal charges or criminal background would be classified as non-criminal. Most ICE detainees at the Lerdo Facility are deemed criminal. On the day of our visit, all 100 male and 13 female detainees had been assigned criminal status.

The Facility uses different colored wristbands to classify inmates and detainees. Facility Personnel explained the color classification as follows: white wristbands signify general population, orange wristbands signify staff-assaultive behavior, yellow wristbands signify a high profile inmate, blue wristbands signify protective custody, red wristbands signify a high security risk, and gray wristbands signify civil inmates.

The *Handbook* does not explain the classification system, nor does it explain the procedures by which a detainee may appeal his/her classification.

The Facility has recently started a one-year pilot program whereby eligible inmates and detainees are released from custody and monitored with an electronic tracking device. The ICE Officers explained that detainees classified as non-criminal are generally released through this program.

G. Voluntary Work Programs

The *Standards* provide that “[e]very facility with a work program will provide detainees the opportunity to work and earn money,”¹⁴¹ and “[d]etainees who are physically and mentally able to work will be provided the opportunity to participate in any voluntary work program.”¹⁴²

¹³⁹ *Id.*

¹⁴⁰ *Id.* at Section III.I.

¹⁴¹ *Id.* at Voluntary Work Program, Section I.

¹⁴² *Id.* at Section III.A.

Facility Personnel stated that detainees, except those in administrative and disciplinary segregation, are permitted to participate in voluntary work programs at the Lerdo Facility.¹⁴³ Specifically, four inmates or detainees per squad are permitted to assist with distributing meals. The process for volunteering is an informal process of speaking with the officer on duty. Detainees are not paid for their work.

H. Grievance and Disciplinary Procedures

The *Standards* require that facilities holding ICE detainees have a detainee disciplinary system with “progressive levels of reviews, appeals, procedures, and documentation procedures” which “shall clearly define detainee rights and responsibilities.”¹⁴⁴ The detainee handbook, or equivalent, must provide notice of the facility’s rules of conduct and of the sanctions imposed for violations of the rules.¹⁴⁵ In addition, the detainee handbook must advise detainees of their rights, including:

- a. the right to protection from personal abuse, corporal punishment, unnecessary or excessive use of force, personal injury, disease, property damage, and harassment;
- b. the right of freedom from discrimination based on race, religion, national origin, sex, handicap, or political beliefs;
- c. the right to pursue a grievance in accordance with written procedures;
- d. the right to correspond with persons or organizations, consistent with safety, security, and the orderly operation of the facility; and
- e. the right to due process, including the prompt resolution of a disciplinary matter (in accordance with the rules, procedures, and sanctions provided in the handbook).

Facility Personnel stated that the disciplinary policy can be found in the orientation video played daily in housing units, in the *Handbook*, and posted in housing units. The Lerdo Facility’s *Handbook* includes a section entitled “Inmate Discipline” that lists forms of discipline, a note on limitations on discipline, categories of rule violations and resultant penalties, disciplinary hearings, discipline appeal process, inmate grievance process, and loss of

¹⁴³ Facility Personnel explained that persons in administrative and disciplinary segregation are not permitted to participate in voluntary work because of the facility’s policy to keep such persons segregated from other inmates and detainees at all times. The *Handbook* states: “Facility jobs like laundry, kitchen, utility crew, etc. are available at the Pre-Trial Facility. These jobs are available to eligible inmates and help inmates serve their time more productively. A request slip should be submitted to your housing officer who will route it to the IL Coordinator.” *Handbook* at County Inmate Programs: Inmate Laborers.

¹⁴⁴ *Detention Operations Manual*, Disciplinary Policy, Section III.A(1).

¹⁴⁵ *Id.* at Section III.A.(5).

privileges.¹⁴⁶ Thus, disciplinary procedures and rules imposed on the detainees are the same as for criminal inmates. The *Handbook* states:

Disciplinary action will take one or a combination of the following forms, depending upon the severity of the misconduct and the inmate's past violations:

- Oral reprimand
- Loss of privileges
- Transfer to a higher level of security
- Loss of "good time" or "work time" credit
- Disciplinary isolation
- Disciplinary Diet¹⁴⁷

Next, the *Handbook* lists categories of violations, including "Minor Rule Violation," "Serious Rule Violation," and "Major Rule Violation," with examples of behavior that would be categorized as each, and a list of the resultant penalties for each category of violation.¹⁴⁸ Notably, the *Handbook* addresses inmates rather than detainees as it is entitled the "Inmate Orientation Handbook," and refers to "inmates" rather than "detainees."¹⁴⁹ The Handbook does not advise detainees of their rights, as required by the *Standards*.¹⁵⁰

The *Standards* require every facility to develop and implement standard operating procedures for addressing detainee grievances in a timely fashion.¹⁵¹ Further, the "OIC must allow the detainee to submit a formal, written grievance to the facility's grievance committee"¹⁵² and "[i]f the detainee does not accept the grievance committee's decision, he/she may appeal it to the OIC."¹⁵³ The detainee handbook, or equivalent, must provide notice of: (1) the opportunity to file a grievance, both informal and formal; (2) the procedures for filing a grievance and appeal, including notice that assistance is available for preparing a grievance; (3) the procedures for resolving a grievance or appeal, including notice of the right to have a grievance referred to a higher level of review; (4) the procedures for contacting ICE to appeal the decision of the OIC at the facility; (5) the policy prohibiting staff from harassing, disciplining, punishing or otherwise retaliating against any detainee for filing a grievance; and (6) the opportunity to file a complaint about an officer directly with the Department of Justice (DOJ).¹⁵⁴ Each facility must also implement procedures for identifying and handling emergency grievances.¹⁵⁵

¹⁴⁶ *Handbook* at Inmate Discipline.

¹⁴⁷ *Id.* at Inmate Discipline: Forms of Discipline.

¹⁴⁸ *Id.* at Inmate Discipline: Rules and Disciplinary Penalties.

¹⁴⁹ *Handbook*.

¹⁵⁰ *Id.*

¹⁵¹ *Detention Operations Manual*, Detainee Grievance Procedures, Section I.

¹⁵² *Id.* at Section III.A(2).

¹⁵³ *Id.* at Section III.C.

¹⁵⁴ *Id.* at Section III.G.

¹⁵⁵ *Id.* at Section III.B.

The *Handbook* provides the following information about the “Inmate Grievance Process” at the Lerdo Facility:

Inmates are entitled to file a written grievance about any issue of their incarceration, that they do not agree with or feel is a violation of the Sheriff’s Department policies. Grievances Regarding [sic] issues not related to their confinement will not be accepted. Group grievances will not be accepted. Grievances will be forwarded to the proper personnel to investigate the matter and give the inmate a written answer in a timely manner.¹⁵⁶

I. Immigration Court

The Lerdo Facility does not have an Immigration Court on the premises. The Facility sends detainees to the court location with the first available space and as the individual and his/her whole case is sent, the individual does not return to the Facility. Officer [b6, b7C] stated that all detainees at the Lerdo Facility have a final order and are waiting on an appeal or for travel documents. He further stated that detainees are generally sent to Arizona or San Francisco if they need to pursue legal proceedings. Detainees are transported by bus, or more commonly, by airplane. As a general rule all detainees except women and minors, unless they have cause, are shackled or handcuffed while in transit.

There are no pro bono legal services in the area according to Officer [b6, b7C] who suggested this was likely because the detainees do not usually stay at Lerdo Facility very long and there is not an Immigration Court in the area. Facility Personnel stated that detainees have access to a list of pro bono legal service providers mostly in San Francisco and Fresno.¹⁵⁷ Officer [b6, b7C] stated that habeas cases are handled by the federal public defenders in Fresno. According to our phone calls to the Sacramento and Fresno federal public defenders’ offices, the Sacramento office is the only office that ever handled Lerdo detainee habeas cases, and the Sacramento program has been discontinued.

J. ICE Presence

The *Standards* require procedures for formal and informal contact between key Facility staff and ICE staff and ICE detainees and further require that detainees be permitted to make written requests to ICE staff and receive a timely answer.¹⁵⁸ The *Standards* state that “procedures shall be in place to ensure and document that the ICE Officer in Charge (OIC), the Assistant Officer in Charge (AOIC) and designated department heads conduct regular

¹⁵⁶ Handbook at Inmate Discipline: Inmate Grievance Process.

¹⁵⁷ Detainee Mr. [b6, b7C] stated in an interview that he was not aware of pro bono legal services available to him. He reported that there were no lists of immigration information in the “C” unit where he had stayed. In his opinion, this was because there were only a couple of detainees in his unit.

¹⁵⁸ Detention Operations Manual, Staff-Detainee Communication, Section I.

unannounced (not scheduled) visits to the facility's living and activity areas. . . ."¹⁵⁹ The *Standards* also require scheduled weekly visits by facility or district deportation staff in the jurisdiction where the facility is located.¹⁶⁰ In addition, the facility must provide each detainee with a detainee handbook or equivalent that states "that the detainee has the opportunity to submit written questions, requests, or concerns to ICE staff and the procedures for doing so, including the availability of assistance in preparing the request."¹⁶¹

The Lerdo Facility does not have an on-site ICE presence. Officer [b6, b7C] stated that an ICE representative visits the Facility about three times per day and ICE makes unannounced visits once per week. He stated that the amount of visitation has increased over the past couple of years. A visit involves an ICE representative walking through the housing pods and asking people if they have questions. Officer [b6, b7C] also stated that he was aware that requests to speak with an ICE representative must be responded to within seventy-two hours. The request form is available in English and Spanish only. Officer [b6, b7C] stated that if a request form is filled out in a language other than English, they give it to someone to translate for them.

¹⁵⁹ *Id.* at Section III.A(1).

¹⁶⁰ *Id.* at Section III.A(2).

¹⁶¹ *Id.* at Section III.B(3).

Facility Name: Lerdo Detention Center Facility

Date of Tour: July 22, 2004

Tour participants: (b)(6) (Latham & Watkins)

ICE Standard	Tour Observation	Source	ICE Response
<p>Telephone Access</p> <ul style="list-style-type: none"> III.K “If telephone calls are monitored...[the facility] shall place a notice at each monitored telephone stating that calls are subject to monitoring and [stating] the procedure for obtaining an unmonitored call” 	<ul style="list-style-type: none"> The delegation observed that all calls, including legal calls, are recorded by the facility (p15, line 4) Neither detainees nor attorneys are aware of how to request unmonitored calls 	<ul style="list-style-type: none"> Facility Personnel stated that detainees can request that a legal call not be monitored and that attorneys may ask to be put on a list where their telephone numbers are blocked from recording. 	<p>Not noted in 2004 review.</p>
<p>Legal Materials</p> <ul style="list-style-type: none"> III.Q “These policies and procedures shall be posted in the law library along with a list of the law library’s holdings.” And III. C “The facility shall post a list of its holding in the law library” III.C “The law library shall contain the materials listed in attachment A” 	<ul style="list-style-type: none"> The delegation did not observe any posted list of holdings in the law library (p18, line 2) The library does not include the Florence Project’s “You’re your Rights” packets (p18, line 4) 	<ul style="list-style-type: none"> Delegation observations and conversation with Sergeant (b)(6), (b)(7) According to sta made by Officer (b)(6), (b)(7)c who stated that budgetary constraints were the cause 	<p>The 2004 report indicates that all materials are not present in the Law Library.</p>