

# MEMORANDUM

October 13, 2005

**To:** John P. Torres, Acting Director, Office of Detention and Removal,  
Immigration and Customs Enforcement

**From:** American Bar Association Delegation to the Kenosha County Detention  
Facility<sup>1</sup>

**Copies to:** (b)(6) ABA Commission on Immigration

**Subject:** Report on Observational Tour of the Kenosha County Detention Facility,  
Kenosha, Wisconsin

This memorandum summarizes and evaluates information gathered at the Kenosha County Detention Facility (“KCDF” or “the Facility”) in Kenosha, Wisconsin, during the delegation’s September 13, 2005 visit to the Facility. The information was gathered via observation of the Facility by the delegation, interviews with four detainees and discussions with KCDF and Immigration and Customs Enforcement (“ICE”) personnel.

## I. ICE DETENTION STANDARDS

In November 2000, the Immigration and Naturalization Service (INS),<sup>2</sup> promulgated the “*INS Detention Standards*” to ensure the “safe, secure and humane treatment” of immigration detainees. The thirty-eight 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-operated detention centers and other facilities that house immigration detainees pursuant to a contract or intergovernmental service agreement (“IGSA”).

The *Detention Standards* (the “*Standards*”) went into effect at ICE-operated detention facilities on January 1, 2001. ICE intended to phase-in the *Standards* at all of its contract and IGSA facilities by December 31, 2002. The *Standards* constitute a “floor” rather than a “ceiling” for the treatment of immigration detainees. In other words, they are designed to establish the

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<sup>1</sup> The delegation was comprised of attorneys and paralegals from the Chicago office of Holland & Knight LLP, including (b)(6) Seeley.

<sup>2</sup> Effective March 1, 2003, the INS ceased to exist as an agency of the Department of Justice. The INS’ immigration enforcement functions were transferred to Immigration and Customs Enforcement (“ICE”), a division of the newly-created Department of Homeland Security (“DHS”).

minimum requirements to which ICE must adhere in its facilities. Each Field Office or Officer-in-Charge has discretion to promulgate policies and practices affording ICE detainees more enhanced rights and protections, beyond those provided for by the *Standards*.

## II. INTRODUCTION

### **The Delegation's Visit, September 13, 2005.**

On September 13, 2005, the members of our delegation met with several members of KCDF's staff and a representative from the ICE office in Kenosha, Wisconsin. KCDF Administration Corporal (b)(6), (b)(7)c and ICE Jail Liaison Officer (b)(6), (b)(7)c led our delegation on a tour of the Facility and participated in post-tour follow-up discussions. The delegation also met with other facility personnel along the tour. The delegation appreciates the cooperation of these individuals. They were direct and accommodating during our tour of the Facility and in response to requests for additional information.

Our report is based on the discussions we had with these Facility and ICE employees, observations of the Facility and interviews with four immigration detainees ((b)(6), (b)(7)c from the Congo, (b)(6), (b)(7)c (b)(6), (b)(7)c from Thailand, (b)(6), (b)(7)c from Bosnia and (b)(6), (b)(7)c (b)(6) from Cuba). In many instances, the detainee reports were compatible with statements made by Facility personnel and/or our observations. In such cases, the delegation was able to more accurately determine whether Facility policy and procedures successfully implemented the *Standards*. However, in certain instances, the detainees' reports conflicted with statements made by Facility personnel. Where we were unable to verify the conflicting reports, the delegation was unable to conclusively determine *Standards* implementation.

### **General Information About the Kenosha Detention Facility.**

The Kenosha Detention Facility houses federal immigration detainees according to an intergovernmental service agreement ("IGSA") with ICE. According to the Facility personnel, the Facility has the capacity to hold over 600 individuals, with a current population of 402, 73 of whom were immigration detainees.

The Facility houses mostly males. At the time of our visit Facility personnel estimated that 20-25 women, including 4 female immigration detainees, were housed there.

Further, Facility personnel said that the Facility housed immigration detainees from many different countries, but the majority were from Mexico. Detainees also come from Latin and South America, Africa, Europe and Asia.

It is unclear exactly how many of the immigration detainees housed at the Facility have criminal records. Detainee (b)(6), (b)(7)c stated he did not have any criminal background. Detainee (b)(6), (b)(7)c indicated that she had been arrested and charged with a crime (drug conspiracy), but that the case against her was eventually dropped by the prosecutor and she was at the Facility only for immigration proceedings. Detainee (b)(6), (b)(7) stated he had a criminal record, had served his sentence and was at the Facility only for immigration proceedings. Detainee (b)(6), (b)(7)c stated he had been transferred to the Facility immediately after the conclusion of a hearing on a criminal proceeding.

### III. IMPLEMENTATION OF LEGAL ACCESS STANDARDS

#### A. Legal Access/Visitation

##### 1. Visitation by Attorneys

The *Standards* suggest that facilities permit legal visitation seven days per week.<sup>3</sup> Attorneys should have access to their clients eight hours per day during the week and four hours per day during the weekend.<sup>4</sup> The facility must provide written notification of visitation rules and hours in the detainee handbook.<sup>5</sup> The visits must be private, and should not be interrupted for head counts.<sup>6</sup> Facilities should establish a procedure by which attorneys may call to determine whether a detainee is housed in a particular facility.<sup>7</sup> Detention centers should permit visits from attorneys, other legal representatives, legal assistants, and interpreters.<sup>8</sup>

**It appears the Facility has implemented most of this section of the *Standards*.**

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<sup>3</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.I.2.

<sup>4</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.I.2.

<sup>5</sup> Detention Operations Manual, Detainee Services, Standard 17, Sections III.B & III.I.2.

<sup>6</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.I.9.

<sup>7</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.I.6.

<sup>8</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.I.3.

There is no information regarding legal visitation, including rules and hours for legal visits, in the Inmate Handbook.<sup>9</sup> Attorneys may visit detainees seven days per week, from 8:00 a.m. – 11:00 a.m., 1:00 p.m. – 4:00 p.m., and evenings.<sup>10</sup> Visits may not begin during mealtime but if a visit has already begun, the Facility will "try to be reasonable" and allow the visit to continue through mealtime if needed. The detainee will receive a meal tray in the multi-purpose room or a bag meal after the visit.<sup>11</sup> Attorneys can call ahead and speak with Administration Corporal (b)(6), (b)(7)c to determine whether a detainee is at the Facility.<sup>12</sup> Lawyers, law students, law graduates, accredited representatives, legal assistants and interpreters are all allowed to visit under attorney visitation rules, as long as anyone who is not an attorney is verified by the detainee's attorney.<sup>13</sup> Attorneys are required to present bar I.D. cards, and are given a one-time pass without a bar card if they only have a driver's license and are confirmed by their law firm by telephone.<sup>14</sup>

There are 10 attorney visitation rooms available, which we observed.<sup>15</sup> All visits are "contact" and detainees are subject to a pat-down search after visits.<sup>16</sup> Facility staff are able to visually observe attorney-detainee visits in the conference rooms through the conference room windows; there is no audio overhear ability.<sup>17</sup>

Independent medical service providers and experts are allowed to visit if they are pre-approved.<sup>18</sup> Interpreters are allowed to visit and interpret for attorneys if they are requested and verified by the detainee's attorney.<sup>19</sup>

Detainee (b)(6), (b)(7)c does not know what visiting hours are as he does not receive any visitors. His lawyer came to the Facility once. Once an attorney

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<sup>9</sup> Kenosha County Detention Center Inmate Handbook.

<sup>10</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>11</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>12</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>13</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>14</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>15</sup> Notes of delegation member (b)(6) (b)(6), (b)(7)c

<sup>16</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>17</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>18</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>19</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

from the Midwest Immigrant & Human Rights Center (“MIHRC”) came to visit and was turned away; the Facility told him it was too late in the day. Normally his visiting time is continuous and not interrupted for lunch. He had never had a visit go through lunchtime, except ours, and they brought him lunch after we left. They do not strip search after a lawyer visit.

Detainee (b)(6), (b)(7)c indicated that she understood that she was only allowed visitors, including legal visitation, on Sunday from 1:00-3:00 p.m. and Monday from 6:00-8:00 p.m. It is unclear, however, whether she understood the difference between legal and family/friend visits. Nonetheless, she stated that she has never had any problems with her attorney visiting her.<sup>20</sup>

Detainee (b)(6), (b)(7)c stated he has been able to contact his attorney, and has received certain documents sent by his counsel.<sup>21</sup>

Detainee (b)(6), (b)(7) stated he has not spoken with an attorney, but then said he talked to an attorney not involved in his case. He did not indicate any issues with respect to access to an attorney.<sup>22</sup>

## 2. Visitation by Family and Friends

The *Standards* suggest that facilities establish written visitation hours and procedures, and make them available to the public.<sup>23</sup> This includes procedures for handling incoming money for detainees.<sup>24</sup> The visiting area is to be “appropriately furnished and arranged... as comfortable and pleasant as practicable.”<sup>25</sup> Visiting hours shall be set on Saturdays, Sundays, and holidays, and the *Standards* encourage facilities to accommodate visitors at other times when they are facing a particular hardship.<sup>26</sup> Visits should be at least 30 minutes and longer when possible.<sup>27</sup> If a facility does not provide for visits from minors, the ICE should arrange for visits with children or

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<sup>20</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>21</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>22</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>23</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.A & B.

<sup>24</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.D.

<sup>25</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.G.

<sup>26</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.H.1.

<sup>27</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.H.1.

stepchildren within the detainee's first 30 days at the facility, with continuing monthly visits.<sup>28</sup> Visits should be granted to detainees in both disciplinary and administrative segregation unless a detainee violates the visitation rules or threatens the security of the visitation room.<sup>29</sup>

**The Facility has implemented some of this section of the Standards.**

Facility personnel told us that the visiting schedule was posted in the lobby; they were to provide us with a copy of the schedule when we finished our tour, but did not do so.<sup>30</sup> The Facility Inmate Handbook states that "[g]eneral visiting will be conducted at regular intervals during the week" and the "dormitory officer will post the time." It also states that a "standard visit will be 30 minutes" and "[d]uration and frequency of visits may be limited to accommodate inmate populations." The Handbook provides for visits by minors if they are accompanied by a parent or legal guardian. "Inmates serving disciplinary time do not receive general visiting privileges."<sup>31</sup> Cash, certified checks or money orders received by mail will be placed in an inmate account and the inmate will receive a receipt. Personal checks shall be considered "legal contraband" and will be placed in the inmate's stored personal property.<sup>32</sup>

Detainee (b)(6), (b)(7)c has no family members or friends in the country to visit him. As far as he knows family and attorneys are allowed to visit. He does not know if children are allowed visitation. He is not sure how long visiting time lasts, but thinks it is 30 minutes, except for lawyer visits.<sup>33</sup>

Detainee (b)(6), (b)(7)c has no family or friends in the area of the Facility, and appears to have no family or friends in the United States.<sup>34</sup>

Detainee (b)(6), (b)(7)c does not know how to contact his family and has not had any visits from them.<sup>35</sup>

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<sup>28</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.H.2.

<sup>29</sup> Detention Operations Manual, Detainee Services, Standard 17, Section III.H.5.

<sup>30</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>31</sup> Kenosha County Detention Center Inmate Handbook, p. 3.

<sup>32</sup> Kenosha County Detention Center Inmate Handbook, p. 1.

<sup>33</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>34</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

Detainee (b)(6), (b)(7)(c) has been unable to contact family members; they are in Florida which has made communication difficult.<sup>36</sup>

### 3. Telephone Access

#### General Requirements

The *Standards* suggest that facilities provide detainees with reasonable and equitable access to telephones during established facility waking hours.<sup>37</sup> In order to meet this requirement, facilities must provide at least one telephone for every 25 detainees.<sup>38</sup>

**The Facility has implemented most of this section of the *Standards*.**

There are 6 to 8 telephones in each housing unit, which exceeds the ratio of at least one telephone for every 25 detainees.<sup>39</sup> The telephones are available during waking hours whenever the detainees are in the housing unit.<sup>40</sup> The Handbook states that "[t]elephone privileges will begin after the dormitory has passed daily inspection" and the "length of phone calls may be controlled to provide equal access to all inmates."<sup>41</sup>

Detainee (b)(6), (b)(7)(c) stated that the telephones are available from 9:00 a.m. to 10:00 p.m., and that he was never furnished with notice of telephone privileges in writing.<sup>42</sup>

Detainee (b)(6), (b)(7)(c) stated that no Facility personnel explained to her how to use the telephone system. Thus, she was unable to use it until

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<sup>35</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)(c)

<sup>36</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)(c)

<sup>37</sup> Detention Operations Manual, Detainee Services, Standard 16, Sections I & III.A.

<sup>38</sup> Detention Operations Manual, Detainee Services, Standard 16, Section III.C.

<sup>39</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)(c) and observation.

<sup>40</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)(c)

<sup>41</sup> Kenosha County Detention Center Inmate Handbook, p. 2.

<sup>42</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)(c)

approximately two months into her detention when another detainee explained the system to her.<sup>43</sup>

Detainee (b)(6), (b)(7)c stated he had adequate access to the telephones but had difficulty in contacting family members due to the lack of access to out-of-state telephone directory services, and he did not know who to ask for telephone numbers.<sup>44</sup>

Detainee (b)(6), (b)(7)c likewise stated he had adequate access to the telephones but had difficulty in contacting family members due to the lack of access to out-of-state telephone directory services.<sup>45</sup>

### Direct vs. Collect Calls

The *Standards* allow facilities to generally restrict calls to collect calls;<sup>46</sup> however, the facility must permit detainees to make direct calls to the local immigration court and the Board of Immigration Appeals, federal and local courts, consular officials, legal service providers, government offices, and to family members in case of emergency.<sup>47</sup> The facility shall not require indigent detainees to pay for these types of calls if local, nor for non-local calls if there is a compelling need.<sup>48</sup> In addition, the facility should allow all detainees to make calls to the ICE list of free legal service providers and consulates at no charge to the detainee or the receiving party.<sup>49</sup> The *Standards* suggest that the facility ensure privacy for detainees' telephone calls regarding legal matters.<sup>50</sup>

### **The Facility has implemented some of this section of the *Standards*.**

Detainees can make direct, collect and free pre-programmed telephone calls.<sup>51</sup> Detainees can make direct calls to the local immigration court and

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<sup>43</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>44</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>45</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>46</sup> Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

<sup>47</sup> Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

<sup>48</sup> Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

<sup>49</sup> Detention Operations Manual, Detainee Services, Standard 16,

<sup>50</sup> Detention Operations Manual, Detainee Services, Standard 16, Section J.

<sup>51</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

the board of Immigration Appeals, federal and local courts, consulates, legal service providers, government agencies, and to family members in case of emergency.<sup>52</sup> The pre-programmed telephone numbers are to consulates and legal service providers.<sup>53</sup> We tested the pre-programmed telephone system, which worked.<sup>54</sup> Instructions for the telephones pertaining to the free pre-programmed calls are posted on the board in the housing room.<sup>55</sup> Because it is a large list, however, the type is very small and difficult to read with the exception of a separate large sign listing the toll-free telephone number for the Mexican Consulate.<sup>56</sup> The Facility does put instruction stickers on the telephones from time-to-time but the inmates remove them.<sup>57</sup>

The telephones record all calls; for legal calls, the attorney or detainee can provide the attorney's telephone number to the Facility and the system will not record calls to and from that number.<sup>58</sup> At the beginning of the telephone call, there is a recorded message explaining the recording procedure.<sup>59</sup> When we tested the pre-programmed telephone number for one of the consulates, however, we did not hear any such message.<sup>60</sup> The telephones are also located in the center of the housing area and are not particularly private; conversations could be overheard by other detainees or inmates, as well as Facility staff.<sup>61</sup>

Detainee (b)(6), (b)(7)c stated that it is very difficult to reach his lawyer by telephone because detainees must call collect. His lawyer is at Sidley and Austin, which does not accept his collect calls. Detainee (b)(6), (b)(7)c must call MIHRC, which will accept his collect call, to relay a message to his lawyer. Thus it may take days to get a message through. He knows how to use the pre-programmed telephone numbers, but does not have use for them. A

<sup>52</sup> Notes of delegation members (b)(6) on conversation with Administration Corporal (b)(6), (b)(7) and observation.

<sup>53</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c and observation.

<sup>54</sup> Notes of delegation member (b)(6), (b)(7)c on observation.

<sup>55</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c and observation.

<sup>56</sup> Notes of delegation member (b)(6), (b)(7)c on observation.

<sup>57</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>58</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>59</sup> Notes of delegation member (b)(6), (b)(7)c on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>60</sup> Notes of delegation member (b)(6), (b)(7)c on observation.

<sup>61</sup> Notes of delegation member (b)(6), (b)(7)c on observation.

prisoner showed him how to use them. He was never furnished a notice of telephone privileges in writing. He does not know if legal telephone calls are private, but he does know it is a complicated telephone system so it is possible.<sup>62</sup>

### **Incoming Calls and Messages**

The *Standards* suggest that facilities take and deliver messages from attorneys and emergency incoming telephone calls to detainees as promptly as possible.<sup>63</sup> If the facility receives an emergency telephone call for a detainee, the *Standards* suggest that the facility obtain the caller's name and number and permit the detainee to return the emergency call as soon as possible.<sup>64</sup>

#### **The Facility has implemented some of this portion of the *Standards*.**

The Facility generally does not take telephone messages from attorneys or others because it does not have anyone available to write down the messages.<sup>65</sup> The Facility delivers facsimiles from attorneys to detainees.<sup>66</sup> Telephone calls from attorneys go to Administration Corporal (b)(6), (b)(7)c, who will get the detainee if it is an emergency.<sup>67</sup> Non-attorney emergency telephone calls are investigated by Facility staff, and if they determine it is an emergency, they will deliver a message to the detainee.<sup>68</sup>

Detainee (b)(6), (b)(7)c stated that nobody delivers telephone messages but someone does tell him if his lawyer has called the administrative office for him. He has received facsimiles from his attorney.<sup>69</sup>

Detainee (b)(6) stated that her attorney generally did not attempt to contact her by telephone, even when responding to her voice-mail

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<sup>62</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>63</sup> Detention Operations Manual, Detainee Services, Standard 16, Section III.I.

<sup>64</sup> Detention Operations Manual, Detainee Services, Standard 16, Section III.I.

<sup>65</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>66</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>67</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>68</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>69</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

messages. Instead, she generally received communication from her attorney via facsimile. With respect to receipt of such facsimile communications, Detainee (b)(6), (b)(7)c stated that she generally received such facsimiles the day after they were sent.<sup>70</sup>

### **Telephone Privileges in Special Management Unit**

The *Standards* provide that detainees in the Special Management Unit (“SMU”) for disciplinary reasons shall be permitted to make direct and/or free calls, except under compelling security conditions.<sup>71</sup>

**It is unclear whether the Facility has implemented this section of the Standards.**

We did not receive any information about this issue from our interviews with Facility and ICE personnel, or the detainees. The Facility Inmate Handbook provides for a loss of "Privileges" for both Minor and Major violations.<sup>72</sup> While the Handbook does not define "Privileges," the Handbook section on telephones refers to "telephone privileges" implying that detainees could lose telephone privileges if they were being disciplined.<sup>73</sup>

#### **B. Access to Legal Materials**

All facilities with detainees “shall permit detainees access to a law library, and provide legal materials, facilities, equipment and document copying privileges, and the opportunity to prepare legal documents.”<sup>74</sup>

**The Facility has not implemented most of the sections of the Standards regarding access to legal materials.**

#### **1. Access to the Library**

The *Standards* suggest that each facility shall have a flexible schedule for law library use that permits all detainees, regardless of housing or classification, to use the law library on a regular basis.<sup>75</sup> Additionally, each

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<sup>70</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>71</sup> Detention Operations Manual, Detainee Services, Standard 16, Section III.G.

<sup>72</sup> Kenosha County Detention Center Inmate Handbook, Appendix: Inmate Rules/Discipline, Minor Rule Violations and Major Rule Violations.

<sup>73</sup> Kenosha County Detention Center Inmate Handbook, p. 2.

<sup>74</sup> Detention Operations Manual, Detainee Services, Standard 1, Section I.

<sup>75</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.G.

detainee shall be permitted to use the law library for a minimum of five hours per week.<sup>76</sup>

**The Facility has not implemented most of this section of the *Standards*.**

The Facility does not have a permanent law library. Instead, the Facility has one computer that apparently contains various legal materials. Facility representatives stated that, upon request, they will bring that one computer into a room (typically a multi-purpose room) and allow the requesting detainee to use the computer in that room.<sup>77</sup>

Detainee (b)(6), (b)(7)c confirmed this general procedure. However, she further stated that, despite multiple requests, she has only been allowed to use the computer on one occasion for a period of some 3 hours. She further stated that she was denied access to the computer on several occasions because the Facility did not have any spare personnel who could be posted in or near the multi-purpose room when she wanted to use the computer.<sup>78</sup>

Detainee (b)(6), (b)(7)c does not know whether there is a legal library or legal materials available; he thinks there might be. He has been given a French-English dictionary. He thinks it is necessary to pay for the computer, and does not really know the process to be able to use the computer. He does not know that there are legal materials on the computer and does not know what the computer is for.<sup>79</sup>

Detainee (b)(6), (b)(7)c stated he did not know about the computerized library or his ability to use it.<sup>80</sup>

Detainee (b)(6), (b)(7) stated he was not aware of the availability of the computer or the legal materials available on the computer. He has not had access to the computer and has not requested access.<sup>81</sup>

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<sup>76</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.G.

<sup>77</sup> Notes of delegation members (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>78</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>79</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>80</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>81</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

## 2. Library Conditions

The *Standards* suggest that a facility provide a law library with sufficient space to facilitate detainees' legal research and writing.<sup>82</sup> Furthermore, it must be large enough "to provide reasonable access to all detainees who request its use. It shall contain a sufficient number of tables and chairs in a well-lit room, reasonably isolated from noisy areas."<sup>83</sup>

**The Facility has not implemented this section of the *Standards*.**

As the Facility has no specific law library, it is impossible to assess the physical conditions of the "law library." Furthermore, as the Facility uses several rooms (mainly multi-purpose rooms) as the law library by bringing a computer into those rooms, it is impossible to properly assess whether any such room meets the suggested standards. Furthermore, as the Facility has only one computer, it is undisputed that the Facility cannot provide access to more than one detainee at a time. Thus, if more than one detainee requests to use the computer at the same time, one detainee will be prevented from accessing the computer. In such situations, Facility personnel indicated that they would prioritize the requesting detainees' need for the computer (*e.g.*, giving priority to a detainee with an upcoming filing deadline, etc.).<sup>84</sup>

## 3. Materials Identified in the *Detention Standards*

The *Standards* state that all facility law libraries should contain the materials listed in Attachment A to the chapter on *Access to Legal Materials*.<sup>85</sup> These materials must be updated regularly, and information must be added on significant regulatory and statutory changes regarding detention and deportation of aliens in a timely manner.<sup>86</sup> Damaged or stolen materials must be promptly replaced.<sup>87</sup>

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<sup>82</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.A.

<sup>83</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.A.

<sup>84</sup> Notes of delegation members (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>85</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.C.

<sup>86</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.E.

<sup>87</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.F.

**We cannot assess whether the Facility has implemented this section of the *Standards*.**

The Facility claims that Attachment A was withdrawn or otherwise removed as an applicable standard by the Federal government. According to Facility representatives, this change occurred because it was too costly to maintain updated written copies of all of the materials listed on Attachment A. Instead, as previously noted, certain materials apparently are provided on a computer via CD-ROM. Facility representatives stated that the CD-ROM materials are updated quarterly. We requested a list of all of the materials that were available on the CD-ROM/computer system. That request, however, was denied, and we were unable to turn the computer on or determine what materials may be available on it. Thus, we do not know what materials are being provided to detainees.<sup>88</sup>

Facility personnel stated that the library materials are only accessible through use of the computers because of detainee destruction of the library texts.<sup>89</sup>

#### **4. Computer Access, Equipment and Holdings**

The *Standards* suggest that facility law libraries provide an adequate number of typewriters and/or computers, writing implements, paper, and office supplies to enable detainees to prepare documents for legal proceedings.<sup>90</sup>

**The Facility has not implemented this section of the *Standards*.**

Detainee (b)(6), (b)(7)c stated he does not have access to a typewriter, pens, paper or other supplies without paying for them, although he sometimes asks to borrow a pen.<sup>91</sup>

Detainee (b)(6), (b)(7)c stated that the Facility does not provide any computers or typewriters for preparing documents for legal proceedings. She

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<sup>88</sup> Notes of delegation members (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>89</sup> Notes of delegation members (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>90</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.B.

<sup>91</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

was specifically told that the “law library computer” could not be used to prepare such documents. To prepare handwritten materials, she needs to purchase her own writing implements, paper, etc., and if she does not have sufficient funds to make such purchases, she cannot prepare any written materials.<sup>92</sup>

## 5. Assistance From Other Detainees

The *Standards* suggest that each facility permit detainees to assist other detainees in researching and preparing legal documents upon request, except when such assistance poses a security risk.<sup>93</sup>

**It appears the Facility has not implemented some of this section of the *Standards*.**

It was unclear from our inspection whether the Facility permits detainees to assist other detainees in researching and preparing legal documents. However, it appears that only one detainee is allowed to use the “law library” computer and be in the room where that computer is housed at any particular moment. Thus, it would appear that it would be, at a minimum, more difficult for a detainee to assist another detainee in researching a legal issue than if detainees could work on such research at the same time and in the same place.<sup>94</sup>

## 6. Photocopies

The *Standards* provide that each facility shall ensure that detainees can obtain photocopies of legal materials, when such copies are reasonable and necessary for legal proceedings involving the detainee.<sup>95</sup> Enough copies must be provided so that a detainee can fulfill court procedural rules and retain a copy for his or her records.<sup>96</sup> Facility personnel may not read a document that on its face is clearly related to a legal proceeding involving the detainee.<sup>97</sup>

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<sup>92</sup> Notes of delegation members [REDACTED] (b)(6) on conversation with Detainee [REDACTED] (b)(6), (b)(7)c

<sup>93</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.K.

<sup>94</sup> Notes of delegation members [REDACTED] (b)(6)

<sup>95</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.J.

<sup>96</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.J.

<sup>97</sup> Detention Operations Manual, Detainee Services, Standard 1, Section III.J.

**It is unclear whether the Facility has implemented this section of the *Standards*.**

According to Administration Corporal (b)(6), (b)(7)c, photocopies are made for detainees upon request. Detainees are charged \$0.25 per page, but if the detainee is indigent, copies are made for free. There is no specific limit on the number of copies that will be made, either for charge or for free. A rule of reasonableness will apply: as long as the request is reasonable, free copies will be provided. The request procedure is to ask the Dorm Officer or other officer to have copies made. The Facility has an accountant on staff full time who has access to all of the detainees' account information and can determine whether a detainee is indigent. Detainees are allowed to keep their legal material in their foot locker.<sup>98</sup>

Detainee (b)(6), (b)(7)c stated that photocopying legal materials is not free, even if the detainee is indigent. However, he thinks it is free to send something to an attorney. He is allowed to keep his legal materials with him.<sup>99</sup>

Detainee (b)(6), (b)(7)c stated she could obtain copies only if she paid for them. She was told that if she had "no money in the bank, no copies" would be made. Her account was completely depleted the week before the interview (meaning sometime during the week of September 5, 2005). She did agree that she was allowed to keep her legal materials in her foot locker and that she had enough room to keep those materials.<sup>100</sup>

Detainees (b)(6), (b)(7)c stated they have not attempted to make any photocopies.<sup>101</sup>

## **7. Correspondence and Other Mail**

The *Standards* suggest that detainees be allowed to send and receive correspondence in a timely manner, subject to limitations required for safety, security, and orderly operation of the facility.<sup>102</sup> General correspondence

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<sup>98</sup> Notes of delegation members (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

<sup>99</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>100</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>101</sup> Notes of delegation members (b)(6) on conversations with Detainees (b)(6), (b)(7)c (b)(6), (b)(7)c

<sup>102</sup> Detention Operations Manual, Detainee Services, Standard 3, Section III.A.

shall normally be opened and inspected for contraband in the presence of the detainee, but may be opened and even read outside the presence of the detainee if security reasons exist for doing so.<sup>103</sup> Special correspondence—which includes all written communication to or from attorneys, legal representatives, judges, courts, government officials, and the news media—is treated differently.<sup>104</sup> Incoming special correspondence can be inspected for contraband only in the presence of the detainee, but it can never be read or copied.<sup>105</sup> Outgoing special correspondence cannot be opened, inspected, or read.<sup>106</sup> The *Standards* also suggest that facilities provide indigent detainees with free envelopes and stamps for mail related to a legal matter, including correspondence to a legal representative, potential representative, or any court.<sup>107</sup> Finally, the *Standards* suggest that facilities notify detainees of specific information regarding correspondence policies.<sup>108</sup>

**It is unclear whether the Facility has implemented this section of the *Standards*.**

The Facility Inmate Handbook states that Facility officers "will scan and inspect all non-privileged, incoming and outgoing correspondence," "[a]ll outgoing mail will be presented to the dormitory officer in an unsealed condition," and "[o]utgoing and incoming mail will be scanned for unauthorized content and inspected for contraband."<sup>109</sup> "Privileged" and "non-privileged" mail are not defined in the Handbook. Facility representatives indicated that Facility personnel are not to read incoming legal correspondence.<sup>110</sup> According to Facility personnel, envelopes and stamps are provided on a reasonable basis to indigent detainees.<sup>111</sup>

Detainee (b)(6), (b)(7)c stated that if a detainee is indigent, the Facility will provide free envelopes but no stamps. The Facility once faxed something to his attorney for free. To send a facsimile, a detainee prepares a written

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<sup>103</sup> Detention Operations Manual, Detainee Services, Standard 3, Sections III.B. & E.

<sup>104</sup> Detention Operations Manual, Detainee Services, Standard 3, Sections III.B., E. & F.

<sup>105</sup> Detention Operations Manual, Detainee Services, Standard 3, Sections III.B. & E.

<sup>106</sup> Detention Operations Manual, Detainee Services, Standard 3, Sections III.B. & F.

<sup>107</sup> Detention Operations Manual, Detainee Services, Standard 3, Section III.N.

<sup>108</sup> Detention Operations Manual, Detainee Services, Standard 3, Section III.B.

<sup>109</sup> Kenosha County Detention Center Inmate Handbook, pp. 1-2 (emphasis in original).

<sup>110</sup> Notes of delegation members (b)(6), (b)(7)c on conversation with Administration  
Corporal (b)(6)

<sup>111</sup> Notes of delegation members (b)(6), (b)(7)c on conversation with Administration  
Corporal (b)(6), (b)(7)c

request to the C.O. ("commanding officer") who then handles it. He does not know if there is a limit on the number of facsimiles a detainee can send.<sup>112</sup>

Detainee (b)(6), (b)(7)c stated she could obtain envelopes and stamps only if she paid for them. She was told that if she had no money in the bank she could not get envelopes or stamps. She generally receives facsimiles from her attorney the day after they are sent.<sup>113</sup>

## 8. Group Rights Presentations

The *Standards* provide that facilities holding ICE detainees "shall permit authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law and procedures, consistent with the security and orderly operation of the IGSA facility."<sup>114</sup> Informational posters are to be prominently displayed in the housing units at least forty-eight hours in advance of a scheduled presentation.<sup>115</sup> While the presentations are open to all detainees, the facility "may limit the number of detainees at a single session."<sup>116</sup> "The facility shall select and provide an environment conducive to the presentation, consistent with security."<sup>117</sup> In addition, detainees shall have regular opportunities to view an "INS-approved videotaped presentation on legal rights."<sup>118</sup>

**It appears the Facility has implemented this section of the *Standards*.**

According to Facility personnel, group presentation are allowed and occur, which include a video entitled "Know Your Rights."<sup>119</sup>

Detainee (b)(6), (b)(7)c stated MIHRC came to the Facility once and gave a presentation on immigration rights, which he attended. He also spoke with

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<sup>112</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>113</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>114</sup> Detention Operations Manual, Detainee Services, Standard 9, Section I.

<sup>115</sup> Detention Operations Manual, Detainee Services, Standard 9, Section III.C.

<sup>116</sup> Detention Operations Manual, Detainee Services, Standard 9, Section III.C.

<sup>117</sup> Detention Operations Manual, Detainee Services, Standard 9, Section III.E.

<sup>118</sup> Detention Operations Manual, Detainee Services, Standard 9, Section III.I.

<sup>119</sup> Notes of delegation members (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

an attorney from MIHRC after the presentation. He has not seen the video "Know Your Rights."<sup>120</sup>

Detainee (b)(6), (b)(7)c stated that group presentations do occur.<sup>121</sup>

#### IV. OTHER PROVISIONS OF THE *ICE DETENTION STANDARDS*

##### A. Recreation

The *Standards* suggest that all detainees have access to recreation "under conditions of security and safety."<sup>122</sup> Detainees should be housed in facilities with outdoor recreation.<sup>123</sup> If a facility only provides indoor recreation, detainees must have access for at least one hour per day, including exposure to natural light.<sup>124</sup> Detainees should have access to "fixed and movable equipment," including opportunities for cardiovascular exercise, and games and television in dayrooms.<sup>125</sup>

**The Facility has not implemented some of this section of the *Standards*.**

The Facility Inmate Handbook states that "[o]utdoor exercise is available, weather permitting, on a rotating basis by living unit."<sup>126</sup> The Facility provides male detainees with outdoor recreation, but female detainees are not allowed any outdoor recreation. Apparently, this is due to the fact that the outdoor recreation areas are housed in-between the male dormitories, which have visual access to those outdoor recreation areas. Facility personnel stated that they could not prevent visual access to those areas to allow outdoor female recreation.<sup>127</sup> However, based on the physical layout of the Facility, it would not appear overly difficult to temporarily cut-

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<sup>120</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>121</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>122</sup> Detention Operations Manual, Detainee Services, Standard 13, Section I.

<sup>123</sup> Detention Operations Manual, Detainee Services, Standard 13, Section III.A.

<sup>124</sup> Detention Operations Manual, Detainee Services, Standard 13, Section III.B.

<sup>125</sup> Detention Operations Manual, Detainee Services, Standard 13, Section III.G.

<sup>126</sup> Kenosha County Detention Center Inmate Handbook, pp. 3-4.

<sup>127</sup> Notes of delegation members (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c

off such visual access (e.g., by temporary screening, etc.) to allow female detainees access to outdoor recreation.<sup>128</sup>

The housing areas are equipped with books, magazines and television.<sup>129</sup>

## **B. Access to Medical Care**

The *Standards* suggest that all detainees have access to medical services that promote detainee health and general well-being.<sup>130</sup> Each facility is suggested to have regularly scheduled times, known as sick call, when medical personnel are available to see detainees who have requested medical services.<sup>131</sup> For a facility of over 200 detainees, a minimum of five days per week is suggested.<sup>132</sup> Facilities must also have procedures in place to provide emergency medical care for detainees who require it.<sup>133</sup> With respect to emergency care, the *Standards* state that in a situation in which a detention officer is uncertain whether a detainee requires emergency medical care, the officer should immediately contact a health care provider or an on-duty supervisor.<sup>134</sup> If a detainee is diagnosed as having a medical or psychiatric condition requiring special attention (e.g., special diet), the medical care provider is required to notify the Officer-in-Charge in writing.<sup>135</sup>

### **The Facility has implemented some of this section of the *Standards*.**

All detainees must fill out a medical request form to get medical attention. Initial assessment is performed by on-site nurses provided through an agency, the Kenosha Visiting Nurses. At least one nurse is at the Facility sixteen (16) hours a day, seven (7) days a week. A physician visits the facility once a week. A psychologist visits the Facility three (3) times per week. According to the nursing staff, they will administer nonprescription drugs to detainees as warranted. If the nursing staff determines that a

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<sup>128</sup> Notes of delegation members (b)(6) on observation.

<sup>129</sup> Notes of delegation member (b)(6) on observation.

<sup>130</sup> Detention Operations Manual, Health Services, Standard 2, Section I.

<sup>131</sup> Detention Operations Manual, Health Services, Standard 2, Section I.

<sup>132</sup> Detention Operations Manual, Health Services, Standard 2, Section I.

<sup>133</sup> Detention Operations Manual, Health Services, Standard 2, Section III.A, D. and G.

<sup>134</sup> Detention Operations Manual, Health Services, Standard 2, Section III.H.

<sup>135</sup> Detention Operations Manual, Health Services, Standard 2, Section III.J.

condition warrants further attention, a physician will be notified and in the case of an emergency, the detainee will be taken to the hospital at the downtown Milwaukee jail. All procedures are posted inside the detainees' living area.<sup>136</sup>

Detainee (b)(6), (b)(7)c stated that to see the Facility nurse, a detainee presents a written request to the C.O. He has never been refused medical care. He has been given medical treatment for headaches and an ear infection. There was no French interpreter when he received medical care.<sup>137</sup>

Detainee (b)(6), (b)(7)c voiced several complaints with respect to access to medical care. Her two main complaints are as follows. First, her access to mineral oil to treat a skin condition was too restrictive. Initially she was given 3 units of mineral oil on a monthly basis. However, during one month she was provided with 4 units. After that month, the Facility limited her to 1 unit per month, which allegedly has caused her skin condition to continue. She made 5-6 requests to see a doctor about the mineral oil limitation, but each such request was denied. Second, in the downtown Kenosha facility, she had been given two mattresses to address certain back complaints she had. However, she stated that due to a run-in with a guard, she was no longer provided with the second mattress when she was moved to KCDF. She made 4-5 requests to see a doctor about this fact, but each such request was denied. It should be noted, though, that her back condition has apparently resolved itself.<sup>138</sup>

Detainee (b)(6), (b)(7)c complained about a hernia condition which has gone undiagnosed and untreated for several weeks. Based upon his comments, the delegation concluded that from a cultural standpoint he may not want to discuss physical ailments related to his groin area with a female nurse. However, he cannot see the physician without the nurse's prior examination.<sup>139</sup>

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<sup>136</sup> Notes of delegation members (b)(6) on conversation with Registered Nurse (b)(6)  
(b)(6)

<sup>137</sup> Notes of delegation members (b)(6) on conversation with Detainee  
(b)(6), (b)(7)c

<sup>138</sup> Notes of delegation members (b)(6) on conversation with Detainee  
(b)(6), (b)(7)c

<sup>139</sup> Notes of delegation members (b)(6) on conversation with Detainee  
(b)(6), (b)(7)c

### C. Access to Dental Care

The *Standards* suggest that detainees have an initial dental screening exam within 14 days of the detainee's arrival and require the facility to provide a number of services, including emergency dental treatment and repair of prosthetic appliances.<sup>140</sup> For detainees who are held in detention for over six months, routine dental treatment may be provided, including amalgam and composite restorations, prophylaxis, root canals, extractions, x-rays, the repair and adjustment of prosthetic appliances and other procedures required to maintain the detainee's health.<sup>141</sup>

**The Facility has not implemented some of this section of the *Standards*.**

Nurses perform initial dental assessments at the Facility. We were advised by the nursing staff that if a detainee is in pain they will prescribe non-prescription (aspirin or Tylenol) medication. Dental examinations are not performed by a licensed dentist. If an on-duty nurse determines an extraction is warranted, then the detainee will be taken to an off-site facility for tooth removal.<sup>142</sup>

Detainee (b)(6), (b)(7)c stated he has dental problems, but he was told by the nursing staff that only extractions are available to detainees.<sup>143</sup>

### D. Detainee Classification

The *Standards* suggest that detention facilities use a classification system and physically separate detainees in different categories.<sup>144</sup> A detainee's classification is to be determined on "objective" criteria, including criminal offenses, escape attempts, institutional disciplinary history, violent incidents, etc.<sup>145</sup> Opinions, unconfirmed and unverified information, and physical characteristics and appearance are not to be taken into account.<sup>146</sup> Classification is required in order to separate detainees with no or minimal

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<sup>140</sup> Detention Operations Manual, Health Services, Standard 2, Section III.E.

<sup>141</sup> Detention Operations Manual, Health Services, Standard 2, Section III.E.

<sup>142</sup> Notes of delegation members (b)(6) on conversation with Registered Nurse (b)(6) (b)(6)

<sup>143</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>144</sup> Detention Operations Manual, Detainee Services, Standard 4, Section I.

<sup>145</sup> Detention Operations Manual, Detainee Services, Standard 4, Section III.D.

<sup>146</sup> Detention Operations Manual, Detainee Services, Standard 4, Section III.D.

criminal records from inmates with serious criminal records.<sup>147</sup>

Additionally, all facility classification systems shall allow classification levels to be re-determined and include procedures by which new arrivals can appeal their classification levels.<sup>148</sup> Finally, the detainee handbook's section on classification must include (1) an explanation of the classification levels, with the conditions and restrictions applicable to each, and (2) the procedures by which a detainee may appeal his or her classification.<sup>149</sup>

**The Facility has not implemented some of this section of the *Standards*.**

The Facility classifies detainees into three groups that correspond to the ICE's classification of detainees. The top and bottom groups, representing the highest and lowest level of criminal record, disciplinary issues, flight risks, etc., are separated from each other and members of the middle group can be assigned to either of them.<sup>150</sup> The Facility's Inmate Handbook does not set out the Facility's classification system and there is no indication detainees are informed about procedures to change classification status.

Detainee (b)(6), (b)(7)c stated he is housed with criminals, and that there are a lot of criminals in the facility. He does not know if there are other methods of classification; he has not been classified by other methods, e.g., receiving medication, sexual orientation, etc.<sup>151</sup>

**E. Voluntary Work Program**

The *Standards* suggest that all facilities with work programs provide an opportunity for physically and mentally capable detainees to “work and earn money.”<sup>152</sup> Participation must be voluntary, and detainees may not work more than eight hours per day, and 40 hours per week.<sup>153</sup>

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<sup>147</sup> Detention Operations Manual, Detainee Services, Standard 4, Sections III.A & III.E.

<sup>148</sup> Detention Operations Manual, Detainee Services, Standard 4, Sections III.G. & H.

<sup>149</sup> Detention Operations Manual, Detainee Services, Standard 4, Section III.I.

<sup>150</sup> Notes of delegation member (b)(6) on conversation with Administration Corporal (b)(6), (b)(7)c and ICE Officer (b)(6), (b)(7)c

<sup>151</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6), (b)(7)c

<sup>152</sup> Detention Operations Manual, Detainee Services, Standard 37, Sections I & III.A.

<sup>153</sup> Detention Operations Manual, Detainee Services, Standard 37, Sections III.A. & H.

**The Facility has not implemented this section of the Standards.**

The Facility has work programs in the kitchen and laundry departments, but the workers are limited to inmates who have been sentenced on their criminal charges and the program is part of their sentence.<sup>154</sup>

## **F. Detainee Grievance Procedures**

The *Standards* suggest that every facility develop and implement standard procedures for handling detainee grievances and encourage the facility to initially seek to resolve grievances informally before having to engage in a more formalized procedure.<sup>155</sup> Translating assistance for both formal and informal grievances must be provided upon request.<sup>156</sup> The *Standards* also require that each facility establish a reasonable time limit for: (1) “processing, investigating, and responding to grievances;” (2) “convening a grievance committee to review formal complaints;” and (3) “providing written responses to detainees who filed formal grievances, including the basis for the decision.”<sup>157</sup> All grievances must receive supervisory review, include guarantees against reprisal, and allow for appeals.<sup>158</sup>

**The Facility has implemented some of this section of the Standards.**

The Facility Inmate Handbook states that "inmates will not be penalized for using the procedure except that lying about a staff member or service provider is a rules violation and will be treated accordingly," and the "grievance procedure will not be used for matters of discipline, which has a separate appeals process."<sup>159</sup>

The procedure is as follows. The inmate is to first speak with the dormitory officer or activity supervisor who "will attempt to correct any misconceptions about HOC ["House of Corrections"] procedures." If the issue cannot be "informally" resolved this way, the inmate may obtain an Inmate Grievance Form from the dormitory officer, which must be completed within

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<sup>154</sup> Notes of delegation member (b)(6), on conversations with Administration Corporal (b)(6), (b)(7)c Warehouse Clerk (b)(6) and Head of Food Service (b)(6)

<sup>155</sup> Detention Operations Manual, Detainee Services, Standard 5, Sections I. & III.A.

<sup>156</sup> Detention Operations Manual, Detainee Services, Standard 5, Sections III.A.1. & 2.

<sup>157</sup> Detention Operations Manual, Detainee Services, Standard 5, Section I.

<sup>158</sup> Detention Operations Manual, Detainee Services, Standard 5, Sections I. & III.C.

<sup>159</sup> Kenosha County Detention Center Inmate Handbook, Appendix: Grievance Procedure.

seven days of the occurrence. The Forms are to be deposited in a mailbox located at the entrance to the dining area, which is emptied by a Shift Supervisor once each of the two daily shifts and given to the Assistant Superintendent or designee. The Assistant Superintendent will assign a supervisor to review and respond to each grievance. "Every effort will be made to return all grievances within 7 calendar days of receipt of the grievance by the reviewing officer," and a written response will be completed on the Inmate Grievance Response. Inmates have 72 hours from receipt of the Response to file an appeal using another Inmate Grievance Form. The Form is deposited in the same mailbox and picked up at the same time as the initial grievances. The Grievance Officer will forward the appeals to the Assistant Superintendent or designee, along with the original Form and any pertinent documentation. "Every effort" will be made to complete the appeal within 14 calendar days of its receipt, the response will be in writing and this is the final appeal.<sup>160</sup>

Detainee (b)(6), (b)(7)c stated that if a detainee has a grievance, it must be put in writing and given it to the C.O. He asked to change dorms because some inmates were bothering him, but the Facility did not allow him to do so. The Facility asked him to try to work out his problem with the other individual face to face. He indicated he would like to be housed with other Christians. He also indicated he did not want to be housed with criminals. He indicated that it is difficult to make a complaint because the detainees are dependent on the officers in charge. He was not subject to retaliation after he made his request.<sup>161</sup>

Detainee (b)(6), (b)(7)c stated that she had filed a written grievance against Officer 1338. That grievance was given to the Dorm Officer. She never received a response to the grievance. She was worried about retaliation for filing a grievance, with one guard telling her that, "we will get [her]" if she filed a grievance.<sup>162</sup>

## G. Religious Practices

The *Detention Standards* suggest that detainees of different religious beliefs be provided with reasonable and equitable opportunities to participate in the practices of their respective faiths.<sup>163</sup> According to the *Standards*,

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<sup>160</sup> Kenosha County Detention Center Inmate Handbook, Appendix: Grievance Procedure.

<sup>161</sup> Notes of delegation members (b)(6), on conversation with Detainee (b)(6), (b)(7)c

<sup>162</sup> Notes of delegation members (b)(6), on conversation with Detainee (b)(6), (b)(7)c

<sup>163</sup> Detention Operations Manual, Detainee Services, Standard 14, Section I.

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.”<sup>164</sup> Moreover, a facility’s staff shall make “all reasonable efforts to accommodate” special food services required by a detainee’s particular religion.<sup>165</sup> Detainees in confinement must also be permitted to participate in religious practices, consistent with the safety, security, and orderly operation of the facility.<sup>166</sup>

**The Facility has implemented at least some of this section of the *Standards*.**

The Facility’s Head of Food Services stated that the Facility provides religious-based diets upon request.<sup>167</sup>

## **H. Disciplinary Policy**

The *Standards* suggest that facility authorities “impose disciplinary sanctions on any detainee whose behavior is not in compliance with facility rules and procedures” in order “to provide a safe and orderly living environment.”<sup>168</sup> Each facility holding ICE detainees must have a detainee disciplinary system which has “progressive levels of reviews, appeals, procedures, and documentation procedures.”<sup>169</sup> Any disciplinary action taken must not be capricious or retaliatory and the following sanctions may not be imposed: “corporal punishment; deviations from normal food services; deprivation of clothing, bedding, or items of personal hygiene; deprivation of correspondence privileges; or deprivation of physical exercise unless such activity creates an unsafe condition.”<sup>170</sup> In addition, the *Standards* provide that all incident reports filed by officers must be investigated within twenty-

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<sup>164</sup> Detention Operations Manual, Detainee Services, Standard 14, Section I.

<sup>165</sup> Detention Operations Manual, Detainee Services, Standard 14, Section III.M.

<sup>166</sup> Detention Operations Manual, Detainee Services, Standard 14, Section III.O.

<sup>167</sup> Notes of delegation members (b)(6) on conversation with Head of Food Service (b)(6)

<sup>168</sup> Detention Operations Manual, Security and Control, Standard 5, Section I.

<sup>169</sup> Detention Operations Manual, Security and Control, Standard 5, Section III.A.1.

<sup>170</sup> Detention Operations Manual, Security and Control, Standard 5, Sections III.A.2 and III.A.3.

four hours of the incident.<sup>171</sup> An intermediate level of investigation or adjudication must be established to adjudicate low or moderate infractions.<sup>172</sup>

**It is unclear whether the Facility has implemented this section of the *Standards*.**

The Facility Inmate Handbook lists five categories of rules violations, which are classified as either "Minor Rule Violations" or "Major Rule Violations." Minor violations "do not present an immediate threat to the security of the HOC" and "[o]fficers are encouraged to resolve these violations informally but as instructively as possible." Minor violation sanctions include verbal reprimand (away from other inmates when possible), loss of privileges for up to 24 hours, restriction to the dormitory isolation room for no longer than 24 hours, extra work assignments and restriction of electronics. Loss of privileges is not defined. Therefore, it is unclear whether KCDF imposes any of the sanctions prohibited by the Standards, including: "deviations from normal food services; deprivation of clothing, bedding, or items of personal hygiene; deprivation of correspondence privileges; or deprivation of physical exercise."<sup>173</sup>

Verbal reprimands are to be documented on "Rotor Cards," and "Conduct Reports" are to be completed when "an inmate responds negatively to a verbal reprimand" or "has been reprimanded previously for the same violation," or the "officer is selecting an option other than a verbal reprimand." A Shift Supervisor is to review and sign the Conduct Report when s/he makes rounds. The Shift Supervisor reviews and signs the Conduct Report to determine whether the violation is Minor or Major. If it is Minor, the inmate is to receive a copy and another copy will be forwarded to the inmate's HOC file. If the violation is Major, additional documentation and a hearing process must be initiated, and the inmate does not receive a copy of the report.<sup>174</sup>

Major violations have sanctions including restriction of privileges for more than 24 hours, placement in segregation for more than 24 hours, loss of good time, or restriction of work release. Inmates charged with Major violations "will receive a hearing before the imposition of disciplinary measures, unless the inmate waives his/her right to such a hearing" and the "purpose of the hearing is to guarantee procedural due process to the alleged

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<sup>171</sup> Detention Operations Manual, Security and Control, Standard 5, Section III.B. and III.C.

<sup>172</sup> Detention Operations Manual, Security and Control, Standard 5, Section III.C.

<sup>173</sup> Detention Operations Manual, Security and Control, Standard 5, Sections III.A.2 and III.A.3.

<sup>174</sup> Kenosha County Detention Center Inmate Handbook, Appendix: Inmate Rules/Discipline.

offender." An officer who observes a Major rule violation is to take "immediate action to correct the situation," and will notify the Shift Supervisor and complete a Conduct Report before the end of the officer's tour of duty, although a Shift Supervisor may grant additional time to complete and document any additional investigative information if circumstances require it. The Shift Supervisor will determine "when, or if, a Disciplinary Hearing will be conducted" and if a hearing is required, will complete a Notice of Disciplinary Hearing form and will forward the Conduct Report, Notice of Disciplinary Hearing and any other pertinent documents to the Assistant Superintendent or designee for assignment of a Hearing Officer.<sup>175</sup>

The Shift Supervisor determines whether the inmate should remain in the housing unit or placed in a more secure housing unit pending completion of the investigation or hearing. Inmates may be placed in Administrative housing when necessary for the safety of the inmate, of other inmates and/or of the jail staff and/or to ensure the "safe, secure and tranquil operation of the HOC." "Investigations for Major Rules violations should be completed no later than 72 hours from time of incident." The assigned Hearing Officer schedules the hearing and the inmate must be notified of the hearing at least 24 hours in advance. The Hearing Officer is to be of supervisory rank, and may not have personally observed, been part of or investigated the subject incident. The inmate has the right to be present, to make a statement and to present relevant evidence at the hearing, including to present any relevant witness whose testimony is not cumulative "unless the safety of any other witness or the security of the facility would be threatened if the witness testified" and the reason for the witness' absence is to be documented. "If the inmate refuses to attend the hearing or disrupts the hearing, the hearing may be conducted without the inmate being present." "The hearing officer may hear the testimony of a witness outside the presence of the accused inmate if there is a significant risk of bodily harm to the witness in testifying in front of the accused inmate" and the reason for the accused's absence is to be documented. "If the inmate has difficulty understanding the issues [s/]he has a right to a staff advocate to assist in understanding the charges and preparing a defense." The Hearing Officer will render a decision at the conclusion of the hearing based solely on the information presented at the hearing, and may take any of the following actions: (1) "[d]ismiss charges against the inmate when evidence supports that the inmate did not commit the violation," (2) "[i]mpose sanctions against the inmate" including concurring sanctions, and (3) "[s]uspend or reduce any sanctions pending completion of other conditions." The Hearing Officer will record the disposition on the Disciplinary Hearing Report, which the inmate will receive

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<sup>175</sup> Kenosha County Detention Center Inmate Handbook, Appendix: Inmate Rules/Discipline.

and which will include the appeal procedure. All documents associated with the incident and hearing are to be forwarded to the inmate's file.<sup>176</sup>

Inmates may appeal the decision to the Assistant Superintendent of the House of Corrections by completing an Inmate Review Form addressed to the Hearing Officer within 10 days of the decision. The Hearing Officer will attach all appropriate reports to the form and forward it to the Assistant Superintendent who will approve, modify or dismiss the sanctions against the inmate. A copy of that decision will be forwarded to the inmate within 10 days of receiving an appeal request.<sup>177</sup>

Only one of the detainees we interviewed had any information about the topic of discipline. Detainee (b)(6), (b)(7)c stated he knows about some of the disciplinary procedures used at the facility, such as putting the inmate in "the hall," taking away work privileges, taking away the shower. When he arrived, he saw the rules or instructions on a television. They are also posted on the wall. Detainee (b)(6), (b)(7)c indicated that the discipline meted out depends on the C.O. In addition, if it is the first time, and the detainee is not a troublemaker, the C.O. might be lenient.<sup>178</sup>

## I. Staff-Detainee Communication

The *Detention Standards* suggest procedures be in place “to allow for formal and informal contact between key facility staff and ICE staff and ICE detainees and to permit detainees to make written requests to ICE staff and receive an answer in an acceptable time frame.”<sup>179</sup> The *Standards* suggest that weekly visits be conducted by ICE personnel and that “regular unannounced (not scheduled) visits” be conducted by the ICE OIC, the Assistant OIC, and designated department heads.<sup>180</sup> The purpose of such visits is to monitor housing conditions, interview detainees, review records, and answer questions for detainees who do not comprehend the immigration removal process.<sup>181</sup> The *Standards* also suggest that detainees “have the opportunity to submit written questions, requests, or concerns to ICE staff.”<sup>182</sup> All facilities that house ICE detainees must have “written procedures to route detainee requests to the appropriate ICE official” and

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<sup>176</sup> Kenosha County Detention Center Inmate Handbook, Appendix: Inmate Rules/Discipline.

<sup>177</sup> Kenosha County Detention Center Inmate Handbook, Appendix: Inmate Rules/Discipline.

<sup>178</sup> Notes of delegation members (b)(6) on conversation with Detainee (b)(6)

<sup>179</sup> Detention Operations Manual, Detainee Services, Standard 15, Section I.

<sup>180</sup> Detention Operations Manual, Standard 15, Section III.A.

<sup>181</sup> Detention Operations Manual, Standard 15, Section III.A.

<sup>182</sup> Detention Operations Manual, Standard 15, Section III.B.

must assist detainees “who are disabled, illiterate, or know little or no English.”<sup>183</sup> Moreover, the *Standards* suggest that detainee requests be forwarded to the appropriate ICE office within 72 hours and “answered as soon as possible or practicable, but not later than 72 hours from receiving the request.”<sup>184</sup>

**The delegation could not determine whether the Facility has implemented this section of the *Standards*.**

The delegation observed several posted signs in the housing areas containing information about ICE office visits.<sup>185</sup> We did not receive any information about this section from our interviews with Facility and ICE personnel, there is no relevant information in the Facility Inmate Handbook, and the detainees we interviewed did not have information about the topic.

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<sup>183</sup> Detention Operations Manual, Standard 15, Section III.B.

<sup>184</sup> Detention Operations Manual, Standard 15, Section III.B.1.

<sup>185</sup> Notes of delegation member (b)(6) on observation.

## V. CONCLUSION

The Kenosha Detention Facility has implemented some of the *ICE Detention Standards* but has also failed to implement a number of sections.

A. To address the issue of legal access, the Facility should take several steps. All of the Facility's legal resources for detainees are housed in one computer. The Facility should inform detainees about the available computer and its legal resources, including the procedure for its use. The Facility should also provide more than one computer so that more than one detainee has access at a time, and that detainees can assist each other if needed. The Facility should provide a list of the legal materials available on the computer so that implementation of the Standards can be determined. The Facility should provide materials such as typewriters, pens and paper for detainees to use to prepare legal documents. Such materials should be free for indigent detainees. The Facility should inform detainees about telephone procedures, and provide printed instructions for the pre-programmed telephone numbers that are easier to access.

B. To address the issue of outside recreation for women, the Facility should look for a remedy to the issue instead of simply precluding women from the outside recreation area. If the Facility is concerned about male inmates' ability to observe female inmates while the women are in the outside recreation area, the Facility should address the issue of visibility by taking actions such as placing temporary screens on the windows.

C. One global issue that the Facility should address is that there is only one Facility Handbook outlining procedures for inmates, and it appears to have been created for criminal inmates instead of immigration detainees. This means that some detainee issues are not addressed at all (e.g., legal visitation, Special Management Unit for detainee discipline, transfers of detainees, etc.) and other issues are potentially being improperly handled because the inmate procedure is different than the detainee procedure (e.g., it is unclear whether detainees can lose telephone privileges to speak with their attorney for disciplinary reasons). The Facility should either create a separate handbook or an appendix to the existing handbook for procedures specific to detainees.