

FIRM / AFFILIATE OFFICES

Boston	New York
Brussels	Northern Virginia
Chicago	Orange County
Frankfurt	Paris
Hamburg	San Diego
Hong Kong	San Francisco
London	Shanghai
Los Angeles	Silicon Valley
Milan	Singapore
Moscow	Tokyo
New Jersey	Washington, D.C.

MEMORANDUM

August 30, 2005

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

From: American Bar Association Delegation to Ozaukee County Jail¹

Copies to: (b)(6) Associate Director, ABA Commission on Immigration

Subject: Report on Observational Tour of Ozaukee County Jail

This memorandum summarizes and evaluates information gathered at Ozaukee County Jail (“OCJ”) in Port Washington, Wisconsin, during the Delegation’s August 5, 2005 visit to the facility. The information was gathered via observation of the facility by the Delegation, interviews of six detainees, and discussions with OCJ and Immigration and Customs Enforcement (“ICE”) personnel.

I. ICE DETENTION STANDARDS

In November 2000, the Immigration and Naturalization Service (INS),² promulgated the “INS Detention Standards” (the “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 *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 minimum requirements to which ICE must adhere in its facilities. Each Field Office or Officer-in-Charge has discretion to

¹ The delegation was comprised of attorneys and summer associates from Latham & Watkins LLP, including (b)(6) (b)(6) the “Delegation”).

² 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”).

promulgate policies and practices affording ICE detainees more enhanced rights and protections, beyond those provided for by the *Standards*.

II. INTRODUCTION

A. The Delegation's August 5, 2005 Visit to OCJ

On August 5, 2005, the Delegation visited OCJ to conduct an observational tour. The Delegation was assisted in that effort by ICE Deportation Officer/Jail Liaison Officer (b)(6), (b)(7)c as well as several OCJ personnel, particularly Sergeant (b)(6), (b)(7)c and Deputy (b)(6), (b)(7)c Officer (b)(6), (b)(7)c and OCJ personnel were cordial and helpful, and the Delegation sincerely appreciates the accommodation.

The Delegation bases its report on observations of the facility, perusal of the materials provided to us, discussions with the aforementioned ICE and OCJ personnel and interviews with six detainees housed in OCJ. In many instances, the detainees' 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 OCJ 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.

B. General Information about OCJ

OCJ is located in Port Washington, Wisconsin, just north of Milwaukee. The facility is located on the same grounds as other buildings in the Ozaukee County Justice Building complex. OCJ is a relatively small facility, housing approximately 200-250 individuals at any given time.³ The Delegation did not determine how many detainees were currently being housed at OCJ. OCJ does not currently house female detainees.⁴ OCJ houses immigration detainees from all over the world, but the greatest proportion is from Mexico.⁵

III. OBSERVATIONS OF IMPLEMENTATION OF LEGAL ACCESS STANDARDS

A. Legal Access/Visitation

1. Visitation By Attorneys

The *Standards* require facilities to allow detainees to meet privately with their current or prospective legal representatives and legal assistants and to meet with their consular officials

³ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

⁴ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

⁵ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

seven days a week, including holidays.⁶ The *Standards* also provide that legal visitations should be permitted for a minimum of eight hours during business days, and a minimum of four hours on weekends and holidays. Attorney visits are not to be terminated for head counts or meals, and in such cases where a detainee misses a meal while meeting with his attorney, he shall receive a meal or snack after the visit.⁷ In addition, each facility should allow legal service providers to telephone the facility in advance to determine whether a particular individual is detained at the facility, but not require attorneys to make appointments to visit with their clients.⁸

Prior to each visit, all legal service providers and assistants are required to present proper identification. State bar cards are the preferred form of identification, but attorneys who are members of state bars that do not provide a bar card will be required to present other available documentation demonstrating bar membership.⁹ If standard operating procedures require strip searches for detainees after every contact visit, the facility must provide detainees an option for non-contact visits with legal representatives in an environment that allows for confidentiality.¹⁰

OCJ has substantially implemented this section of the *Standards*. According to the *Ozaukee County Jail Rules & Regulations and Resident Information Booklet* (the “OCJ Inmate Handbook” or the “Handbook”), attorneys are not restricted to the normal hours of visitation.¹¹ Attorneys are allowed to visit daily from 8:30 a.m. to 11:00 a.m., 1:00 p.m. to 4:00 p.m. and 6:00 p.m. to 9:00 p.m.¹² Attorneys are allowed to visit during meal times, and if a legal visitation proceeds through a scheduled meal, detainees receive a tray or a snack meal after the visit, in accordance with the *Standards*.¹³ Attorneys are not allowed to visit when a lock-down is instituted, which is contrary to the *Standards*.¹⁴ An attorney “may put in a request to override regular visitation hours,”¹⁵ but it is unclear what special circumstances would be required for such an exception to be made.

In order for an attorney to visit a detainee at OCJ, he or she must present proper credentials.¹⁶ Normally, an attorney is asked to present a bar card and driver’s license, but

⁶ Detention Operations Manual, Detainee Services, Standard 17, Sections III.I & K.

⁷ Detention Operations Manual, Detainee Services, Standard 17, Section III.I

⁸ Detention Operations Manual, Detainee Services, Standard 17, Section III.I

⁹ Detention Operations Manual, Detainee Services, Standard 17, Section III.I

¹⁰ Detention Operations Manual, Detainee Services, Standard 17, Section III.I.

¹¹ OCJ Inmate Handbook, at 9.

¹² OCJ Inmate Handbook, at 9. It appears that “daily” includes weekends, but it is not clear from the text of the Handbook.

¹³ Notes of Delegation member [REDACTED] on conversation with Sergeant [REDACTED]

¹⁴ Notes of Delegation member [REDACTED] on conversation with Sergeant [REDACTED]

¹⁵ Notes of Delegation member [REDACTED] on conversation with Sergeant [REDACTED]

¹⁶ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

exceptions can be made for those lawyers without valid bar cards.¹⁷ The attorney may visit a client without prior notice to the facility (*i.e.*, the attorney need not arrange for the visit in advance), but an attorney can also call ahead to determine if a detainee is at the facility before they come to visit. Any person who can prove they work for the law firm (including interpreters and assistants) can accompany a lawyer during their visit with a detainee.¹⁸

There are five attorney visitation booths at the facility. The booths appear to provide for privacy and confidentiality. However, if a detainee or an attorney hits the panic button in any of the booths, all conversations in the room will be recorded and an officer will immediately come to the premises.¹⁹

All attorney visitation areas allow for contact visits. Unlike the booths used for family visits, the attorney booths do not have Plexiglas dividers to separate the detainees from their attorneys.²⁰ Also, detainees are not subject to strip searches after attorney visits; they are subject only to “pat down” searches, in accordance with the *Standards*.²¹

2. Visitation by Family and Friends

To maintain detainee morale and family relationships, the *Standards* encourage visitation with family and friends.²² To that end, the *Standards* require that all detention facilities allow visitation and establish written visitation procedures.²³ The *Standards* require a minimum of 30 minutes per visitation, under normal conditions, and encourage more generous limits when possible.²⁴ The *Standards* require that visits be permitted on weekends and holidays.²⁵ To the extent possible, the *Standards* encourage establishing 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. The facility must allow visitation by immediate family members, and other relatives, friends, and associates.²⁶ Finally, the facility’s visiting area shall be appropriately furnished and as comfortable and pleasant as practicable.²⁷

¹⁷ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

¹⁸ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

¹⁹ Notes of Delegation member (b)(6) on observation from tour. (b)(6), (b)(7)c

²⁰ Notes of Delegation member [REDACTED] on observation from tour.

²¹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

²² Detention Operations Manual, Detainee Services, Standard 17, Sections I & III.H.1.

²³ Detention Operations Manual, Detainee Services, Standard 17, Section III.H.

²⁴ Detention Operations Manual, Detainee Services, Standard 17, Section III.H.1.

²⁵ Detention Operations Manual, Detainee Services, Standard 17, Section III.H.1.

²⁶ Detention Operations Manual, Detainee Services, Standard 17, Section III.H.2.

²⁷ Detention Operations Manual, Detainee Services, Standard 17, Section III.G.

OCJ partially implements this section of the *Standards*. OCJ provides for family and friend visitation, and provides written visitation procedures to the detainees through the OCJ Inmate Handbook, as well as through posters on the walls near the phones.²⁸ Minors are allowed to visit the facility, but only if accompanied by a parent or a legal guardian.²⁹ According to the OCJ Inmate Handbook, all inmates are allowed two visits per week, each lasting up to 30-minutes, but the two 30-minute visitations may be combined into a one-hour session.³⁰

However, one detainee described the structure for arranging visitation as “confusing.”³¹ He said that, first, the detainee has to provide information about his visitor and then the visitor must call and request a visit.³² He confirmed that visits can last up to an hour per visitor, but the visitor can only request a 1/2 hour at a time, so they have to hang up and call back to schedule a full hour visit.³³ Making visitation procedure “confusing” for detainees and their visitors does not encourage visitation as the *Standards* suggest.

In addition, general visitation (as opposed to visits by professionals) is restricted to certain days of the week (Tuesday, Wednesday and Thursday) and visitation times are limited to 9:00-11:00 a.m., 1:00-3:00 p.m. and 7:00-9:00 p.m.³⁴ The allowable general visitation hours at OCJ do not implement the *Standards* as OCJ does not allow visitation on the weekends.

General visits are held in a room adjacent to the lobby which is divided by Plexiglas partitions into 8-10 visitation booths, with thick walls of Plexiglas separating detainees from their visitors.³⁵ There is no other furniture. Detainees and visitors may speak to each other only via the telephone handsets provided in each booth and there are no contact visits allowed.³⁶

The OCJ Inmate Handbook also states that appointments for visits should be made 24 hours in advance.³⁷ Visitors arriving 15 minutes after the beginning of their scheduled visitation time may not be allowed to visit.³⁸ If a detainee’s visitor does not show for a scheduled visit, the

²⁸ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7) and observation.

²⁹ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7)

³⁰ OCJ Inmate Handbook, at 13; Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7)

³¹ Notes of Delegation member (b)(6) on interview of (b)(6) According to the five other detainees interviewed, none had had any visitors, so they could not corroborate or dispute (b)(6)

³² Notes of Delegation member (b)(6) on interview of (b)(6)

³³ Notes of Delegation member (b)(6) on interview of (b)(6)

³⁴ OCJ Inmate Handbook, at 13.

³⁵ Notes of Delegation member (b)(6) on observations during tour.

³⁶ Notes of Delegation member (b)(6) on observations during tour.

³⁷ OCJ Inmate Handbook, at 12.

³⁸ OCJ Inmate Handbook, at 12.

detainee loses that visitation appointment for the week.³⁹ In addition, detainees are required to keep a visitors list of no more than eight names and register all visitors before they arrive.⁴⁰ Only persons on this list, with the exception of attorneys and clergy, may visit the detainee.⁴¹ Detainees may revise their visitors list to include other individuals but they must first make space on their list by removing persons already listed.⁴² Visitors who are not included on the list will not be admitted to the facility.⁴³ The Delegation is concerned that these restrictive policies may not reflect the *Standards*' goal of "maintaining detainee morale and family relationships" by "encourag[ing] visits from family and friends."⁴⁴

B. Telephone Access

1. General Requirements

The *Standards* require that facilities provide detainees with reasonable and equitable use of telephones during waking hours.⁴⁵ The facility must post telephone access rules and detainees must be given these rules when they arrive.⁴⁶ Facilities must provide at least one telephone for every 25 detainees.⁴⁷

OCJ has apparently partially implemented this section of the *Standards*. Telephones are available for use anytime during the non-lockdown hours from 9:00 a.m. to 10:30 p.m.⁴⁸ According to OCJ personnel, the phones are always available for use during these hours.⁴⁹ The phones are located in each OCJ housing unit for immigration detainees.⁵⁰ Each unit houses no more than 24 people. At least two phones are available in each housing unit, in accordance with

³⁹ OCJ Inmate Handbook, at 12.

⁴⁰ Notes of Delegation member (b)(6), on conversation with Deputy (b)(6) (Note: this information is not included in the OCJ Inmate Handbook.)

⁴¹ Notes of Delegation member (b)(6), on conversation with Deputy (b)(6), (b)(7)

⁴² Notes of Delegation member (b)(6), on conversation with Deputy (b)(6)

⁴³ OCJ Inmate Handbook, at 12.

⁴⁴ Detention Operations Manual, Detainee Services, Standard 17, Section I.

⁴⁵ Detention Operations Manual, Detainee Services, Standard 16, Section III.A.

⁴⁶ Detention Operations Manual, Detainee Services, Standard 16, Section III.B.

⁴⁷ Detention Operations Manual, Detainee Services, Standard 16, Section III.C.

⁴⁸ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6)

⁴⁹ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7)c

⁵⁰ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6)

the *Standards*.⁵¹ According to OCJ personnel, instructions regarding usage of phones are posted next to the phones in both English and Spanish.⁵²

The Delegation is concerned about the detainees’ opportunities to contact attorneys and free legal service providers. The Delegation was not permitted inside the housing unit to verify the existence of the phone usage instructions or whether the phones were in proper working order. Furthermore, detainees complained that they did not know how to use the phones.⁵³ Again, because for many detainees the phone is the only way for them to contact their attorneys, pro-bono organizations, consulates, or family, these issues cause the Delegation concern.

Even though the *Standards* state that telephones should be available for use during waking hours, two detainees stated that phone calls to attorneys are restricted to Tuesdays and Fridays from the hours of 11 a.m. to 2 p.m.⁵⁴ Since the delegation was not permitted to view the phones or telephone instructions, it was unable to determine the source of this restriction or to verify that legal service providers could be called at these times or any time. The OCJ Inmate Handbook does not state anything about restricting phone calls to attorneys in any way. **Given the importance of phone access to attorneys by detainees, especially in light of the distance of OCJ from Chicago and even Milwaukee, the Delegation is very concerned that OCJ is not implementing this vital section of the *Standards*.**

2. Direct and Collect Calls

The *Standards* require that even if telephone service is limited to collect calls, the facility must permit detainees to make direct calls to a number of organizations, including the local immigration court, the Board of Immigration Appeals, Federal and State courts, consular officials, legal service providers, and relevant government offices.⁵⁵ Detainees must also be able to make direct calls for personal or family emergencies when a “compelling need (to be interpreted liberally)” arises.⁵⁶ The facility shall not require indigent detainees to pay for the types of calls listed above if they are local calls, nor for non-local calls if there is a compelling need.⁵⁷ All detainees must be able to make calls to the ICE-approved list of free legal service providers and consulates at no charge to the detainee or the receiving party.⁵⁸

⁵¹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]
⁵² Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]
⁵³ Notes of Delegation member [REDACTED] on interviews of detainees [REDACTED]
⁵⁴ Notes of Delegation member [REDACTED] on interviews of detainees [REDACTED] These detainees do not currently have attorneys.

⁵⁵ Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

⁵⁶ Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

⁵⁷ Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

⁵⁸ Detention Operations Manual, Detainee Services, Standard 16, Section III.E.

The Delegation is concerned about OCJ's implementation of this section of the Standards. Due to certain rules and procedures at OCJ, making or receiving phone calls is difficult.⁵⁹ OCJ recently implemented a calling card system over the last month.⁶⁰ While the detainees are allowed to purchase a calling card, for many the calling cards are prohibitively expensive.⁶¹ For instance, the Delegation was told that a 13-minute call costs \$15.00, with the first minute costing approximately \$5.00.⁶² The high price of calling cards was corroborated by other detainees.⁶³

As to collect calls, the person receiving the collect call needs to make payment arrangements before the call can go through (rather than allowing the call to proceed and billing the recipient of the collect call later).⁶⁴ Furthermore, detainees cannot call collect from every phone.⁶⁵

Finally, detainees cannot receive phone calls since the phones do not accept incoming calls.⁶⁶ Coupled with the fact that detainees cannot make international calls, even with a calling card, this prevents detainees from speaking to family living overseas.⁶⁷ Thus, OCJ's phone system severely impedes detainees from making and receiving calls. The Delegation, therefore, is concerned that OCJ has not adequately implemented this section of the *Standards*.

OCJ has apparently implemented the Standards regarding free and direct calls. OCJ personnel stated that detainees are able to make free direct calls to consular officials and legal service providers.⁶⁸ One detainee confirmed that the phones could be used to make free direct calls to the consular officials.⁶⁹ Another detainee stated that he could make free calls to pro bono attorneys.⁷⁰ However, the Delegation could not confirm whether detainees could make free calls to any other individuals or entities listed in the *Standards*, including Federal, State and Immigration courts.

⁵⁹ Notes of Delegation member (b)(6), on interview of detainee (b)(6)

⁶⁰ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

⁶¹ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

⁶² Notes of Delegation member (b)(6) on interview of detainee (b)(6)

⁶³ Notes of Delegation members (b)(6), on interviews of detainees (b)(6) respectively.

⁶⁴ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

⁶⁵ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

⁶⁶ OCJ Inmate Handbook, at p. 12.

⁶⁷ Notes of Delegation members (b)(6) and (b)(6) on interviews of detainees (b)(6) and (b)(6) respectively.

⁶⁸ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7) Notes of Delegation member (b)(6) (b)(6), on interview of detainee (b)(6)

⁶⁹ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

⁷⁰ Notes of Delegation member (b)(6), on interview of detainee (b)(6)

The Delegation is concerned with the instructions OCJ detainees receive for phone usage. While OCJ personnel state that directions for telephone usage are posted at each telephone as required by the *Standards*,⁷¹ several detainees complained that the phone system was extremely complicated and difficult to use.⁷² The Delegation was not permitted into the cells to see if adequate instructions were posted.

3. Privacy for Telephone Calls on Legal Matters

The *Standards* require that telephone calls on legal matters be given privacy from other detainees, officers, staff and from electronic monitoring, absent a court order.⁷³

The Delegation is concerned that OCJ may not have implemented this portion of the *Standards*. As a general rule, all calls placed at the facility are monitored and recorded.⁷⁴ If a detainee is making a call to his attorney, he may request to have his call not monitored or recorded.⁷⁵ However, the request would have to be put in at least 48 hours before the call was made.⁷⁶ This option is not in the OCJ Inmate Handbook, and the Delegation was not able to assess if this policy was communicated on the postings next to the phones. Additionally, detainees do not always know when they will need to speak to their attorneys.⁷⁷ Thus, while a procedure is in place to allow detainees to make unmonitored calls, the number of detainees who are actually able to take advantage of the procedure is questionable.

4. Incoming Calls and Messages

The *Standards* require facilities to take and deliver messages to detainees as promptly as possible.⁷⁸ If the facility receives an emergency telephone call for a detainee, the facility is required to obtain the caller's name and telephone number and permit the detainee to "return the emergency call as soon as reasonably possible."⁷⁹ Moreover, the facility must enable indigent detainees to return emergency calls for free.⁸⁰

⁷¹ OCJ Inmate Handbook, at p. 12.

⁷² Notes of Delegation member (b)(6), on interviews of detainees (b)(6) Notes of Delegation member (b)(6) on interview of (b)(6)

⁷³ Detention Operations Manual, Detainee Services, Standard 16, Section III.J.

⁷⁴ OCJ Inmate Handbook, at p.12.

⁷⁵ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7)c

⁷⁶ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7)c

⁷⁷ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

⁷⁸ Detention Operations Manual, Detainee Services, Standard 16, Section III.I.

⁷⁹ Detention Operations Manual, Detainee Services, Standard 16, Section III.I.

⁸⁰ Detention Operations Manual, Detainee Services, Standard 16, Section III.I.

OCJ has substantially implemented this section. As a general matter, OCJ personnel do not take messages for detainees.⁸¹ However, there are two important exceptions to this rule. If a detainee’s attorney calls the facility, OCJ personnel will take and deliver the message after they verify that the caller actually is an attorney.⁸² Also, if a family member calls with an emergency, a message will be delivered to the detainee after OCJ personnel confirm that an actual emergency exists.⁸³ It was unclear how OCJ personnel make such a confirmation. One detainee confirmed that OCJ personnel delivered a message to him when a family member called with an emergency.⁸⁴ The Delegation does not know whether OCJ allows indigent detainees to return these calls free of charge.

C. Access to Legal Materials

1. Material Identified in the *Standards*

The *Standards* provide that all facilities “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.”⁸⁵

As detailed below, OCJ has implemented some sections of the *Standards* regarding access to legal materials. However, OCJ has not implemented other sections of these *Standards* and, on the whole, fails to provide immigration detainees with the requisite access to legal materials.

2. Law Library

The *Standards* provide that all facilities “shall provide a law library in a designated room with sufficient space to facilitate detainees’ legal research and writing.”⁸⁶ “The law library shall be large enough to provide reasonable access to all detainees who request its use.”⁸⁷ The library “shall contain a sufficient number of tables and chairs in a well-lit room, reasonably isolated from noisy areas.”⁸⁸

OCJ has partially implemented this section of the *Standards*. While the Delegation was not allowed to enter the law library because it was in use, a door window allowed the

⁸¹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]
⁸² Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED] (b)(6), (b)(7)c
⁸³ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]
⁸⁴ Notes of Delegation member [REDACTED] on interview of detainee [REDACTED] (b)(6)

⁸⁵ Detention Operations Manual, Detainee Services, Standard 1, Section I.

⁸⁶ Detention Operations Manual, Detainee Services, Standard 1, Section III.A.

⁸⁷ Detention Operations Manual, Detainee Services, Standard 1, Section III.A.

⁸⁸ Detention Operations Manual, Detainee Services, Standard 1, Section III.A.

Delegation to view the facilities.⁸⁹ OCJ does provide a law library in a designated well-lit room that is reasonably isolated from noisy areas, in accordance with the *Standards*.⁹⁰ The designated room, however, is very small with only enough space, table and chairs for use by one detainee at a time.⁹¹ OCJ staff also restricts library use to no more than one detainee at a time.⁹²

3. Equipment

According to the *Standards*, a law library “shall provide an adequate number of typewriters and/or computers, writing implements, paper, and office supplies to enable detainees to prepare documents for legal proceedings.”⁹³

OCJ has partially implemented this section of the *Standards*. While only the single computer was visible from the Delegation’s vantage point, detainees are able to request writing materials.⁹⁴ OCJ provides indigent detainees with paper and pencils once every thirty days.⁹⁵ While these items are not free of charge, detainees are allowed to run a negative balance on an account that does not need to be repaid if the detainee remains indigent.⁹⁶ Detainees are also able to request photocopying, though they must pay for it.⁹⁷ Given the indigent state of many of the detainees, the Delegation worries that OCJ policies may inhibit the detainees’ ability to conduct effective legal research.

4. Holdings, Materials from Outside Persons or Organizations, Updating Legal Materials and Replacing Materials

The *Standards* provide that the law library shall contain the materials listed in Attachment A to the *Standards*, and “The facility shall post a list of its holdings in the law library.”⁹⁸ The *Standards* also provide that “[o]utside persons and organizations may submit published or unpublished legal material for inclusion in a facility’s law library.”⁹⁹ The *Standards* provide that the ICE Office of General Counsel (OGC) “will be asked to review the contents of

⁸⁹ Notes of Delegation member [REDACTED] on observations from the tour.

⁹⁰ Notes of Delegation member [REDACTED] on observations from the tour.

⁹¹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED].

⁹² Notes of Delegation member [REDACTED] on observations from the tour.

⁹³ Detention Operations Manual, Detainee Services, Standard 1, Section III.B.

⁹⁴ Notes of Delegation member [REDACTED], on conversation with Deputy [REDACTED].

⁹⁵ OCJ Inmate Handbook, at 7.

⁹⁶ OCJ Inmate Handbook, at 7.

⁹⁷ Notes of Delegation member [REDACTED] on interview of detainee [REDACTED] OCJ Inmate Handbook, at 7.

⁹⁸ Detention Operations Manual, Detainee Services, Standard 1, Section III.C.

⁹⁹ Detention Operations Manual, Detainee Services, Standard 1, Section III.D.

Attachment A at least annually, and update the list as needed.”¹⁰⁰ The *Standards* provide that “[d]amaged or stolen materials shall be promptly replaced.”¹⁰¹

OCJ has not implemented this section of the *Standards*. None of the materials listed in Attachment A is available in the OCJ library.¹⁰² The only books contained in the OCJ library are five books on state law.¹⁰³ Detainees are apparently able to do some legal research on the computer using several programs.¹⁰⁴ While the Delegation was not allowed access to confirm, OCJ claims computer access to all state and federal cases is available.¹⁰⁵ Also, a printer did not appear to be available, greatly limiting the usefulness of electronic research.¹⁰⁶

5. Hours of Access

The *Standards* provide 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.”¹⁰⁷ “Each detainee shall be permitted to use the law library for a minimum of five (5) hours per week” and detainees may not be forced to forgo required recreation time to use the library.¹⁰⁸

It is unclear whether OCJ has implemented this section of the *Standards*. OCJ personnel told us that detainees may access the library daily and are not limited in the amount of time they may use the facility.¹⁰⁹ Detainees are not required to choose between library time and recreation time.¹¹⁰ A detainee’s access to the library may, however, still be limited by another detainee’s use of the single-person facility.¹¹¹ Also, and more importantly, the Delegation learned from every detainee interviewed that they had no idea about the procedure regarding access to the law library and had never been there.¹¹² Coupled with the fact that there is no information on the law library in the OCJ Inmate Handbook, the Delegation was unable to determine whether this section is being implemented.

¹⁰⁰ Detention Operations Manual, Detainee Services, Standard 1, Section III.E.

¹⁰¹ Detention Operations Manual, Detainee Services, Standard 1, Section III.F.

¹⁰² Notes of Delegation member Brandon Anderson, on observations from tour.

¹⁰³ Notes of Delegation member [REDACTED], on observations from tour.

¹⁰⁴ Notes of Delegation member [REDACTED], on conversation with Deputy [REDACTED]

¹⁰⁵ Notes of Delegation member [REDACTED], on conversation with Deputy [REDACTED]

¹⁰⁶ Notes of Delegation member [REDACTED], on observations from tour.

¹⁰⁷ Detention Operations Manual, Detainee Services, Standard 1, Section III.G.

¹⁰⁸ Detention Operations Manual, Detainee Services, Standard 1, Section III.G.

¹⁰⁹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

¹¹⁰ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

¹¹¹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

¹¹² Notes of all Delegation members, on interviews of all detainees.

6. Assistance from Other Detainees and Assistance to Illiterate and Non-English Speaking Detainees

The *Standards* provide that all facilities “shall permit detainees to assist other detainees in researching and preparing legal documents upon request, except when such assistance poses a security risk.”¹¹³ The *Standards* provide that “[u]nrepresented 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.”¹¹⁴

OCJ has not implemented this section of the *Standards*. Implementation of this standard is greatly hindered by the OCJ policy that only one person may use the law library at a time, and the only immigration resources that are apparently available are only available on the computer. This means that detainees are not able to help one another with electronic legal research.

7. Personal Legal Materials

The *Standards* provide that all facilities “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.”¹¹⁵

OCJ has substantially implemented this section of the *Standards*. The detainees are allowed to keep legal documents with them in their cell.¹¹⁶ However, all personal property kept in a detainee’s cell, including legal paperwork, must fit completely into a large commissary bag.¹¹⁷ The ability to keep legal documents was corroborated through detainee interviews.¹¹⁸

8. Envelopes and Stamps for Legal Documents

The *Standards* provide that all facilities must “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.”¹¹⁹

¹¹³ Detention Operations Manual, Detainee Services, Standard 1, Section III.K.

¹¹⁴ Detention Operations Manual, Detainee Services, Standard 1, Section III.L.

¹¹⁵ Detention Operations Manual, Detainee Services, Standard 1, Section III.M.

¹¹⁶ OCJ Inmate Handbook, at 11.

¹¹⁷ OCJ Inmate Handbook, at 11.

¹¹⁸ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

¹¹⁹ Detention Operations Manual, Detainee Services, Standard 1, Section III.O.

OCJ has implemented this section of the *Standards*. As discussed in greater detail in the Correspondence section below, indigent detainees are able to request envelopes and stamps free of charge.¹²⁰

9. Notice to Detainees

The *Standards* provide that “the detainee handbook or equivalent, shall provide detainees with the rules and procedures governing access to legal materials, including the following information: (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 to the law library; (4) the procedure for requesting additional time in the law library (beyond the 5 hours per week minimum); (5) 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.”¹²¹ Facilities must post these policies and procedures in the law library along with a list of the law library’s holdings.¹²²

OCJ has not implemented this section of the *Standards*. OCJ fails to implement the *Standards* because the OCJ Inmate Handbook does not provide detainees with any rules and procedures governing access to legal materials. The Delegation also did not observe a posted notice of the rules in the law library.¹²³ To the extent that the library does contain useful materials, notice is crucial to its utilization by detainees. None of the detainees interviewed had used the law library, nor did they know the procedure for doing so.¹²⁴ This indicates that OCJ’s lack of implementation of the *Standards* has a substantial impact on detainees’ utilization of legal materials.

D. Correspondence and Other Mail

The *Standards* require 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.”¹²⁵ General correspondence 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.¹²⁶ Special correspondence—which includes all written communication to or from attorneys, legal representatives, judges, courts, government officials, and the news media—is treated differently.¹²⁷ Incoming special correspondence can be

¹²⁰ OCJ Inmate Handbook, at 10.

¹²¹ Detention Operations Manual, Detainee Services, Standard 1, Section III.Q.

¹²² Detention Operations Manual, Detainee Services, Standard 1, Section III.Q.

¹²³ Notes of Delegation member (b)(6) on observations from tour.

¹²⁴ Notes of all Delegation members, on interviews with all detainees.

¹²⁵ Detention Operations Manual, Detainee Services, Standard 3, Section I.

¹²⁶ Detention Operations Manual, Detainee Services, Standard 3, Sections III.B. & E.

¹²⁷ Detention Operations Manual, Detainee Services, Standard 3, Sections III.B., E. & F.

inspected for contraband only in the presence of the detainee, but it can never be read or copied.¹²⁸ Outgoing special correspondence cannot be opened, inspected, or read.¹²⁹ The *Standards* further provide that each detainee will be able to send at least five pieces of special correspondence and three pieces of general correspondence at the government's expense each week.¹³⁰

OCJ has partially implemented this section of the *Standards*. The OCJ Inmate Handbook states that outgoing mail will be collected throughout the day and delivered to the U.S. Post Office the following day, except Sundays and holidays.¹³¹ While there are no limits on the amount of incoming and outgoing mail, both are inspected for security purposes.¹³² It appears that detainees are normally present for the inspection, which is a requirement of the *Standards*.¹³³ One detainee, however, noted that he had attempted to send materials to his attorney which had been inexplicably opened by OCJ personnel and returned to him, a clear failure by OCJ to implement the *Standards* as they pertain to special correspondence.¹³⁴

OCJ provides each indigent detainee with 3 stamps and 3 envelopes for personal use each week.¹³⁵ OCJ has revised its policy to implement the *Standards* since the visit last year when the facility provided materials for only two letters per week.¹³⁶ When used for legal correspondence, the detainee must gain approval from the shift supervisor before additional materials will be given beyond weekly allotment.¹³⁷

E. Group Rights Presentations

According to the *Standards*, detainee facilities are required to “permit authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law and procedures.”¹³⁸ While the facilities are not required to arrange for presentations,¹³⁹ those presentations requested in writing¹⁴⁰ will be scheduled during normal

¹²⁸ Detention Operations Manual, Detainee Services, Standard 3, Sections III.B. & E.

¹²⁹ Detention Operations Manual, Detainee Services, Standard 3, Sections III.B. & F.

¹³⁰ Detention Operations Manual, Detainee Services, Standard 3, Sections III.I.

¹³¹ OCJ Inmate Handbook, at 11.

¹³² OCJ Inmate Handbook, at 11.

¹³³ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

¹³⁴ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

¹³⁵ OCJ Inmate Handbook, at 10.

¹³⁶ 2004 ABA Delegation to OCJ “Report on observations during a general tour of the Ozaukee County Jail facility” (the “2004 OCJ Report”)

¹³⁷ OCJ Inmate Handbook, at 10.

¹³⁸ Detention Operations Manual, Detainee Services, Standard 9, Section I.

¹³⁹ Detention Operations Manual, Detainee Services, Standard 9, Section III.B.

legal visiting hours, excluding weekends and holidays and may be conducted daily.¹⁴¹ Group rights presentations must be open to all detainees except for those detainees who would pose a security risk.¹⁴² If segregation prevents a detainee from attending such a presentation, alternative arrangements will be made upon the presenter's and the detainee's request.¹⁴³ In the event that a detainee facility limits the number of detainees present at a single session, the presenter may conduct multiple presentations after contacting the facility and determining how many sessions are needed.¹⁴⁴ Lawyers, legal representatives, and legal assistants/paralegals may conduct group rights presentations.¹⁴⁵ All facility entrants are required to present an official form of picture identification.¹⁴⁶ Detainee facilities must provide an "environment conducive to the presentation" which must last at least one hour, although the facility may grant an extension.¹⁴⁷ Following any such presentation, presenters may meet with small groups of detainees for individual counseling during which no ICE or facility staff is to be present.¹⁴⁸ At the request of outside organizations, the facility must also play ICE-approved videotaped presentations on legal rights.¹⁴⁹

OCJ appears to have implemented this section of the *Standards*. According to Officer (b)(6), (b)(7)c the Midwest Immigrant and Human Rights Center ("MIHRC") conducts presentations on group rights twice a year, once in the summer and once in either January or February.¹⁵⁰ Several detainees corroborated this information.¹⁵¹ The OCJ Inmate Handbook permits daily "professional visits" including attorney visits from 8:30 a.m. to 11:00 a.m., 1:00

¹⁴⁰ Detention Operations Manual, Detainee Services, Standard 9, Section III.A.

¹⁴¹ Detention Operations Manual, Detainee Services, Standard 9, Section III.B.

¹⁴² Detention Operations Manual, Detainee Services, Standard 9, Section III.C.

¹⁴³ Detention Operations Manual, Detainee Services, Standard 9, Section III.C.

¹⁴⁴ Detention Operations Manual, Detainee Services, Standard 9, Section III.C.

¹⁴⁵ Detention Operations Manual, Detainee Services, Standard 9, Section III.A.

¹⁴⁶ Detention Operations Manual, Detainee Services, Standard 9, Section III.D.

¹⁴⁷ Detention Operations Manual, Detainee Services, Standard 9, Section III.E.

¹⁴⁸ Detention Operations Manual, Detainee Services, Standard 9, Section III.G.

¹⁴⁹ Detention Operations Manual, Detainee Services, Standard 9, Section III.I.

¹⁵⁰ Notes of Delegation member (b)(6) on conversation with Officer (b)(6), (b)(7)c

¹⁵¹ Notes of Delegation members (b)(6) and (b)(6), on interviews of (b)(6) (b)(6) respectively. (b)(6) d attended a group rights presentation although (b)(6) nonprofit org (b)(6) nducted the presentation. (b)(6) told the Delegation that during his stay, one group of attorneys has come to make a presentation. The Delegation believes this presentation was made by MIHRC as (b)(6) had a written copy of his "legal rights" appearing to be from that organization. Finally, (b)(6) believed that MIHRC gave the "helpful" group rights presentation that he attended. He read the booklet given out by MIHRC and also informed us that he filled out paperwork through MIHRC after learning about a law which may help him fight against his deportation. But Delegation member (b)(6) noted that another detainee, (b)(6) reported having not seen a group rights presentation.

p.m. to 4:00 p.m., and 6:00 p.m. to 9:00 p.m.¹⁵² The number of detainees in each presentation is limited due to OCJ's physical structure as it only accommodates a small number of detainees in each dorm or tier. However, according to Officer (b)(6), (b)(7)c presenters are permitted to visit each housing unit and come prepared to make multiple presentations.¹⁵³ Officer (b)(6), (b)(7)c also informed us that group rights presentations occur during breakfast or during lunch and thus detainees are not required to miss meals.¹⁵⁴ All of these policies implement the *Standards*.

It appears that OCJ dorms or tiers, which host group rights presentations, are well-lit and conducive to presentations. Officer (b)(6), (b)(7)c informed us that presenters are permitted to meet with small groups of detainees to conduct "intake interviews" regarding individual detainees.¹⁵⁵

According to OCJ, ICE-approved videotaped presentations are played often at OCJ as well.¹⁵⁶ Specifically, the "Know Your Rights" video plays at least two to three times a week in Spanish and English. The detainees we interviewed corroborated that the "Know Your Rights" video plays often, but some had never actually watched it.¹⁵⁷ It should be noted, however, that nothing on Group Rights Presentations or videos is included in the OCJ Inmate Handbook.

However, it is not clear from speaking with OCJ and ICE personnel that presenters will gain access to detainees in disciplinary segregation. Officer (b)(6), (b)(7)c could not confirm that OCJ would facilitate alternative arrangements.¹⁵⁸ Last year's ABA delegation to OCJ could not confirm that OCJ would facilitate alternative arrangements for detainees in disciplinary segregation, because "they haven't crossed that bridge yet."¹⁵⁹

IV. OTHER GENERAL OBSERVATIONS UNRELATED TO THE LEGAL ACCESS STANDARDS

A. Medical Treatment

¹⁵² OCJ Inmate Handbook, at 8-9, 13.

¹⁵³ Notes of Delegation member (b)(6) on conversation with Officer (b)(6), (b)(7)c

¹⁵⁴ Notes of Delegation member (b)(6) on conversation with Officer (b)(6), (b)(7)c

¹⁵⁵ Notes of Delegation member (b)(6) on conversation with Officer (b)(6), (b)(7)c

¹⁵⁶ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

¹⁵⁷ Notes of Delegation members (b)(6), (b)(6), on interviews of (b)(6) and (b)(6) respectively. Messrs. (b)(6) had seen the video and reported that it is played often, perhaps daily. Messrs. (b)(6), however, had never seen the video.

¹⁵⁸ Notes of Delegation member (b)(6) on conversation with Officer (b)(6), (b)(7)c

¹⁵⁹ 2004 OCJ Report, at 16.

The *Standards* require that all detainees have “access to medical services that promote detainee health and general well-being.”¹⁶⁰ Each facility is required to have regularly scheduled times, known as sick call, when medical personnel are available to see detainees who have requested medical services.¹⁶¹ Facilities must have a written plan dictating 24-hour emergency medical care procedures when no medical personnel are on duty, or when outside medical service is required.¹⁶²

OCJ has not fully implemented this section of the *Standards*. In some respects, the medical services provisions in the OCJ Inmate Handbook implement the *Standards*. For example, the OCJ Inmate Handbook provides for “medical treatment” for all incarcerated inmates.¹⁶³ Under the OCJ Inmate Handbook provisions, detainees must fill out a written “Medical Request” form with brief descriptions of their medical problems in order to obtain non-emergency health care.¹⁶⁴ The nursing staff will review all requests during business hours, Monday through Friday.¹⁶⁵ The Handbook further provides that in the case of a medical emergency, it is the inmate’s responsibility to notify a deputy immediately.¹⁶⁶ However, while the *Standards* require regularly scheduled sick call, the OCJ Inmate Handbook provides that “[s]ick call will be done as needed.”¹⁶⁷ OCJ personnel confirmed this deviation from the *Standards*, informing the Delegation that medical personnel are available upon request, but not at regularly scheduled times.¹⁶⁸

The Handbook requires small fees for any consultation with medical professionals (including the nurse),¹⁶⁹ but the Delegation was told by OCJ personnel that immigration detainees are not actually charged for such services.¹⁷⁰ According to OCJ, detainees are aware that they do not have to pay for medical services.¹⁷¹ Detainee interviews corroborated this.¹⁷²

¹⁶⁰ Detention Operations Manual, Health Services, Standard 2, Section I.

¹⁶¹ Detention Operations Manual, Health Services, Standard 2, Section III.F.

¹⁶² Detention Operations Manual, Health Services, Standard 2, Sections III.A., D., & G.

¹⁶³ OCJ Inmate Handbook, at 15.

¹⁶⁴ OCJ Inmate Handbook, at 15.

¹⁶⁵ OCJ Inmate Handbook, at 15.

¹⁶⁶ OCJ Inmate Handbook, at 15.

¹⁶⁷ OCJ Inmate Handbook, at 15.

¹⁶⁸ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6)

¹⁶⁹ OCJ Inmate Handbook, at 15.

¹⁷⁰ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

¹⁷¹ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6)

¹⁷² Notes of Delegation members (b)(6) on interviews of (b)(6) (b)(6) respectively. (b)(6) said that he was not charged for medical services, that he and other detainees were aware that medical services were free of charge, and that in general, he was able to get whatever he needed for medical purposes. (b)(6) said that he received good medical care at OCJ and free medication. Delegation

The OCJ Inmate Handbook does not mention a written plan for 24-hour emergency medical services, despite the requirement set forth in the *Standards*. Furthermore, OCJ indicated that there is no formal plan or procedure in place for emergency medical services. When asked what, if any, protocol OCJ had in place for these situations, OCJ personnel informed the Delegation that “[w]e do what anybody would do – we just call 911. That’s our procedure.”¹⁷³ OCJ has not implemented this portion of the *Standards*.

It is unclear whether OCJ maintains a formal arrangement with a nearby facility for services not available at OCJ, but OCJ indicated that a hospital, approximately 10-15 minutes away, is available for such services and for emergency treatment.¹⁷⁴ OCJ maintains two nurses on call for 16 hours per day (one nurse carries a 24-hour pager), and one doctor comes in once a week or sooner as needed.¹⁷⁵

For mental health issues, the Delegation was informed that psychiatric counselors are available either upon referral by a nurse or other OCJ personnel, or upon request by detainees.¹⁷⁶ OCJ personnel told the Delegation that OCJ officers are always on the lookout for detainees who appear to be depressed or in need of counseling, and that the officers will take it upon themselves to request a mental health counselor on behalf of the detainee.¹⁷⁷ However, the Delegation is concerned that there is no qualified mental health counselor on site.¹⁷⁸ The Delegation believes that such a counselor would be very helpful in diagnosing and treating detainees with potential mental health issues.¹⁷⁹

Finally, all detainees are required to be screened at processing for medical and other health-related issues, including TB and any suicidal tendencies.¹⁸⁰ For any inmate or detainee with TB or any communicable disease, OCJ provides an isolated pressure cell to prevent spreading.¹⁸¹

member (b)(6), however, notes that detainee (b)(6) appeared ill to her and seemed to require better medical attention than he is currently receiving.

¹⁷³ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6)

¹⁷⁴ Notes of Delegation member (b)(6) on conversations with Deputy (b)(6)

¹⁷⁵ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

¹⁷⁶ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

¹⁷⁷ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

¹⁷⁸ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

¹⁷⁹ Notes of Delegation members (b)(6) on interviews of a detainee who preferred to remain anonymous, detainee (b)(6) respectively. The anonymous detainee seemed particularly depressed throughout his interview, but did not discuss any mental health resources available to him at OCJ. (b)(6) told the Delegation that he went through a period of depression, but he did not comment further on mental health concerns at OCJ. Finally, as noted above (b)(6) appeared ill to the Delegation, but appeared to not currently be receiving appropriate medical attention.

¹⁸⁰ Notes of Delegation member (b)(6), on conversation with Sergeant (b)(6), (b)(7)c

¹⁸¹ Notes of Delegation member (b)(6), on conversation with Sergeant (b)(6), (b)(7)c

B. Detainee Classification

The *Standards* require that detention facilities use a classification system and physically separate detainees into different categories, housing detainees based on their classification level.¹⁸² IGSA facilities, such as OCJ, “may continue using the systems established locally, if the classification criteria are objective and all procedures meet [ICE] requirements.”¹⁸³ A detainee’s initial classification is to be made on “objective” information from the detainee’s file, including current offenses, past offenses, escapes, institutional disciplinary history, violent incidents, etc.¹⁸⁴ Opinions, unconfirmed and unverified information, physical characteristics and appearance are not to be taken into account.¹⁸⁵ Classification is required in order to separate detainees with no or small criminal records from inmates with serious criminal records and to reduce non-criminal and nonviolent detainees’ exposure to physical and psychological damage.¹⁸⁶

Additionally, all facility classification systems shall ensure that classification levels are predetermined, but that a detainee may be reclassified at any time by appealing his/her classification level.¹⁸⁷ 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 classification.¹⁸⁸

OCJ has not implemented this section of the *Standards*. OCJ’s detainees are classified at the initial processing at Broadview (the ICE location used for all Chicagoland detention facilities).¹⁸⁹ There, the detainees are segregated into low risk (level 1), medium risk (level 2) and high risk (level 3) inmates depending on their criminal record and behavior at the other facilities where they may have been held prior to arrival at Broadview.¹⁹⁰ Once the detainees are taken to OCJ, they are separated into different living quarters depending on their classification level. At the current time, it appears as though all immigration detainees at OCJ are being held together in medium risk living quarters, though not all may fit this classification level.¹⁹¹ One detainee told a Delegation member that when he first arrived at OCJ he was held with regular inmates.¹⁹² OCJ personnel confirmed to the Delegation that when detainee quarters are full,

¹⁸² Detention Operations Manual, Detainee Services, Standard 4, Section III.A.

¹⁸³ Detention Operations Manual, Detainee Services, Standard 4, Section III.A.

¹⁸⁴ Detention Operations Manual, Detainee Services, Standard 4, Section III.D.

¹⁸⁵ Detention Operations Manual, Detainee Services, Standard 4, Section III.D.

¹⁸⁶ Detention Operations Manual, Detainee Services, Standard 4, Sections III.F.

¹⁸⁷ Detention Operations Manual, Detainee Services, Standard 4, Section III.G and III.H.

¹⁸⁸ Detention Operations Manual, Detainee Services, Standard 4, Section III.I.

¹⁸⁹ Notes of Delegation member [REDACTED], on conversation with Sergeant [REDACTED] (b)(6), (b)(7)c

¹⁹⁰ Notes of Delegation member [REDACTED] (b)(6), on conversations with Sergeant [REDACTED]

¹⁹¹ Notes of Delegation member [REDACTED] (b)(6), on conversation with Deputy [REDACTED] b6,b7c and observation.

¹⁹² Notes of Delegation member [REDACTED] n interview of [REDACTED] (b)(6)

detainees are held with the regular inmates.¹⁹³ This policy does not implement the *Standards*, as detainees are to be held only with other detainees according to their classification level. In addition, all inmates and detainees are provided with the same orange uniform.

In addition, OCJ fails to allow detainees to appeal their classification level. Once a detainee has received a particular classification, they have no recourse to appeal, rather “they can only move up to a greater classification due to poor behavior, but they can never move down in classification.”¹⁹⁴ This practice is contrary to the *Standards*. Furthermore, OCJ fails to explain the classification system in the OCJ Inmate Handbook. This has important implications for detainees who might claim they were improperly classified at Broadview, as they appear to have no recourse to appeal such action.

C. Detainee Grievance Procedures

The *Standards* require that detainee facilities develop and implement procedures to address detainee grievances designed to process, investigate, and respond to grievances in a reasonable time limit.¹⁹⁵ In addition, there should be a grievance committee to review and respond to formal complaints as well as procedures applicable to emergency grievances.¹⁹⁶ Each facility must also provide detainees with a procedure for informal resolution of oral grievances which may be made to “any staff member at any time within five days of the event” causing the grievance.¹⁹⁷ Translation assistance shall also be provided upon request.¹⁹⁸

In addition, each facility must permit a detainee to submit a formal, written complaint to the facility’s grievance committee.¹⁹⁹ The detainee may ask for assistance from another detainee or facility staff in filing a grievance.²⁰⁰ Illiterate, disabled, or non-English speaking detainees must also receive additional assistance upon request.²⁰¹ Upon admittance, each detainee should receive a copy of the detainee handbook or its equivalent in which the grievance section should provide: 1) notice of opportunity to file a grievance, both informal and formal, 2) procedures for filing a grievance and appeal, 3) notice of the availability of assistance in preparing a grievance, 4) procedures for resolving a grievance or appeal, and 5) procedures for contacting INS to appeal the decision of the OIC of an IGSA facility.²⁰²

¹⁹³ Notes of Delegation member [REDACTED] on conversations with Sergeant [REDACTED]

¹⁹⁴ Notes of Delegation member [REDACTED] on conversations with Sergeant [REDACTED]

¹⁹⁵ Detention Operations Manual, Detainee Services, Standard 5, Section I.

¹⁹⁶ Detention Operations Manual, Detainee Services, Standard 5, Section I.

¹⁹⁷ Detention Operations Manual, Detainee Services, Standard 5, Section III.A.1.

¹⁹⁸ Detention Operations Manual, Detainee Services, Standard 5, Section III.A.1.

¹⁹⁹ Detention Operations Manual, Detainee Services, Standard 5, Section III.A.2.

²⁰⁰ Detention Operations Manual, Detainee Services, Standard 5, Section III.A.2.

²⁰¹ Detention Operations Manual, Detainee Services, Standard 5, Section III.A.2.

²⁰² Detention Operations Manual, Detainee Services, Standard 5, Section III.G.

OCJ has not implemented some portions of this section of the *Standards*. According to the OCJ Inmate Handbook, a detainee is encouraged to resolve a grievance informally by talking to a duty deputy before filing a written grievance.²⁰³ If an oral complaint cannot be accomplished, the Handbook provides minimum instructions for filing a written, formal complaint or a “Grievance Form.”²⁰⁴ (An example of the grievance form is not included in the Handbook.) The Handbook implements the *Standards* by notifying detainees of their rights to file informal and formal grievances, albeit with the minimum instructions listed in both the English and Spanish versions. Finally, if translation assistance is needed in filing a grievance, OCJ personnel mentioned the availability of the AT&T translation services which the Delegation could not confirm worked properly.²⁰⁵

OCJ fails to implement much of this section, however. First, the OCJ Inmate Handbook does not list the required grievance and appeal procedures as they pertain to detainees, as opposed to inmates. For example, the *Standards* allow for a detainee to make oral, informal complaints to any staff member and for a detainee to submit a formal, written complaint to a grievance committee set up to review and respond to such complaints. However, the OCJ Inmate Handbook only permits oral complaints to the duty deputy on hand. Second, it is also unclear whether OCJ has a grievance committee in place. Likewise, there are no Handbook instructions directing detainees to file their formal complaints with a grievance committee and there are no instructions regarding procedures applicable to emergency grievances. Finally, the Handbook also fails to notify detainees of the availability of assistance in preparing a grievance, the process of filing an appeal, and the procedures for contacting ICE to appeal the decision of the Jail Administrator.

It should be noted that according to Officer (b)(6), (b)(7)c, a detainee can also file a grievance with ICE by using an ICE request form.²⁰ However, the procedure for filing a grievance through ICE is not described in the Handbook as the booklet is designed solely for incarcerated inmates. OCJ personnel informed us that they “sometimes” attach an OCJ grievance form to the back of an ICE form and then direct the complaint to ICE, but we were not told under what circumstances they do so.²⁰⁷ Some detainees interviewed by the Delegation corroborated this information, while others called these representations into question.²⁰⁸

²⁰³ OCJ Inmate Handbook, at 6.

²⁰⁴ OCJ Inmate Handbook, at 6.

²⁰⁵ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

²⁰⁶ Notes of Delegation member (b)(6) on conversation with Officer (b)(6), (b)(7)c. The Delegation did not obtain a copy of such a form.

²⁰⁷ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

²⁰⁸ Notes of Delegation members (b)(6) on interviews of (b)(6) and a detainee who preferred to remain anonymous, respectively. (b)(6) had seen both the OCJ grievance form and the ICE grievance form and (b)(6) informed us that his questions to ICE were usually answered within two to three days. However, (b)(6) did not know how to file a grievance even though he had

D. Disciplinary Policy

The *Standards* permit facility staff to “impose disciplinary sanctions on any detainee whose behavior is not in compliance with facility rules and procedures.”²⁰⁹ However, these disciplinary actions “may not be capricious or retaliatory.”²¹⁰ The detainee disciplinary system must have “progressive levels of reviews, appeals, procedures, and documentation procedures.”²¹¹ Moreover, the detainee handbook or equivalent must notify detainees of the facility’s rules of conduct, the prohibited acts and disciplinary severity scale, and the procedure for appealing disciplinary findings.²¹² In addition, the detainee handbook should advise detainees of their right “to protection from personal abuse, corporal punishment, unnecessary or excessive use of force,” right to due process, and right of freedom from discrimination.²¹³

Because OCJ holds detainees under an IGSA, the facility is permitted to adopt alternatives to the bulk of specific disciplinary requirements laid out for Service Processing Centers and Contract Detention Facilities.²¹⁴ Nevertheless, the *Standards* require the disciplinary policy and procedures to “clearly define detainee rights and responsibilities”; no sanctions such as “corporal punishment; deviations from normal food service; 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” will be permitted.²¹⁵

OCJ has not fully implemented this section of the *Standards*. The OCJ Inmate Handbook describes a long list of prohibited acts under the heading “Jail Rules and Regulations.”²¹⁶ Again, however, the Handbook is not specific to detainees so it is unclear if the same rules apply to detainees. The section titled “Violation of Jail Rules” suggests that there is a graduated scale of punishment for minor versus major offenses.²¹⁷ All violations will result in a written report of the incident but minor violations will result in a verbal warning, a written warning (citation) or loss of privileges to include the canteen, telephone use, visitation,

read the Handbook, and the anonymous detainee suggested that OCJ was not responsive to his grievances because they treated him like a criminal.

²⁰⁹ Detention Operations Manual, Security and Control, Standard 5, Section I.

²¹⁰ Detention Operations Manual, Security and Control, Standard 5, Section III.A.

²¹¹ Detention Operations Manual, Security and Control, Standard 5, Section III.A.

²¹² Detention Operations Manual, Security and Control, Standard 5, Sections III.A and L.

²¹³ Detention Operations Manual, Security and Control, Standard 5, Section III.A.

²¹⁴ Detention Operations Manual, Security and Control, Standard 5, Section II.

²¹⁵ Detention Operations Manual, Security and Control, Standard 5, Section III.A.

²¹⁶ OCJ Inmate Handbook, at 2-4.

²¹⁷ OCJ Inmate Handbook, at 5.

recreation or disciplinary action of up to 24 hours.²¹⁸ The following section titled “Due Process Hearing” suggests that more serious violations, as well as multiple or repeat offenses will be treated differently than minor violations in that a Conduct Report will be filed.²¹⁹

Because the Handbook does not distinguish between offenses considered minor and those considered major, detainees do not have adequate notice of the disciplinary severity scale. According to OCJ, officer discretion determines whether a verbal assault is more severe than sitting on a table.²²⁰ Officer discretion also determines whether a detainee ends up in lockdown because a supervisor may simply request such punishment.²²¹ Moreover, the Handbook does not set forth any time limits on disciplinary action resulting from major offenses. The Handbook also fails to notify detainees of their rights to be free from physical abuse such as corporal punishment and from discrimination.²²² Consequently, the OCJ Inmate Handbook does not “clearly define detainee rights and responsibilities” as the *Standards* require.

However, the Handbook does provide detainees with an opportunity for a disciplinary hearing in front of an “impartial Supervisor” where the detainee will be entitled to question material witnesses, albeit without a right to legal counsel.²²³ The Handbook also notifies detainees of their “right to appeal any decision for disciplinary action in writing to the Jail Administrator within 24 hours of the hearing and to the Sheriff within 48 hours of receiving the Jail Administrator’s Response.”²²⁴

In regards to punishment, OCJ personnel informed the Delegation that a serious violation could result in punishment ranging from a minimum of 24 hours in lockdown to a maximum of five days.²²⁵ Detainees we interviewed were disturbed, however, by the lack of clear rules on what “offenses” garner what punishment.²²⁶

E. Staff-Detainee Communication

²¹⁸ OCJ Inmate Handbook, at 5.

²¹⁹ OCJ Inmate Handbook, at 5.

²²⁰ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

²²¹ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

²²² Detention Operations Manual, Security and Control, Standard 5, Section III.A.

²²³ OCJ Inmate Handbook, at 5.

²²⁴ OCJ Inmate Handbook, at 5.

²²⁵ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

²²⁶ Notes of Delegation members (b)(6) on interviews of (b)(6) (b)(6) respectively. (b)(6) noted that he received 24 hours in lockdown for swearing at an officer. (b)(6) observed that a detainee who fights with an officer or someone else, or talks back to an officer, would receive 24 hours in lockdown, whereas a detainee who sits on a table will get a verbal warning because “the guards don’t take such things seriously.” (b)(6) said, however, that detainees receive 24 hours in lockdown for doing “nothing” because the guards treated them like dogs. (b)(6) said he had been placed in lockdown twice and bemoaned the fact that detainees have no one to tell or complain to if an officer treats them poorly. Our interviews revealed that detainees are not clear on what constitutes a minor versus a major offense.

The *Standards* require procedures to 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.”²²⁷ The *Standards* require ICE detainees to have the opportunity to have formal and informal access and interaction with key facility staff members on a regular basis.²²⁸ ICE personnel must make weekly scheduled visits with the detainees.²²⁹ The ICE OIC, the Assistant OIC, and designated department heads must also make “regular unannounced (not scheduled) visits” to the facility’s living and activity areas to observe living and working conditions.²³⁰ The *Standards* also require that detainees “have the opportunity to submit written questions, requests, or concerns to ICE staff.”²³¹ All facilities that house ICE detainees must have “written procedures to route detainee requests to the appropriate ICE official,” and must deliver them “without reading, altering, or delay.”²³² The facility must assist detainees “who are disabled, illiterate, or know little or no English.”²³³ Moreover, the *Standards* require 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.”²³⁴

1. ICE Visits, Generally

OCJ appears to have partially implemented this portion of the *Standards*. According to OCJ personnel, an ICE officer visits OCJ once a week.²³⁵ The ICE officer’s visits are always on Fridays.²³⁶ During his visit, the ICE official meets with detainees and asks them questions pertaining to deportation proceedings, housing conditions, and the detainees’ overall well-being.²³⁷ The ICE official also answers any questions the detainees may have at that time.²³⁸ OCJ personnel are always present when the ICE official speaks with the detainees.²³⁹ If asked to leave, however, OCJ personnel will allow the ICE official and the detainee to speak in private.²⁴⁰

²²⁷ Detention Operations Manual, Detainee Services, Standard 15, Section I.

²²⁸ Detention Operations Manual, Detainee Services, Standard 15, Section III.A.

²²⁹ Detention Operations Manual, Detainee Services, Standard 15, Section III.A.

²³⁰ Detention Operations Manual, Detainee Services, Standard 15, Section III.A.

²³¹ Detention Operations Manual, Detainee Services, Standard 15, Section III.B.

²³² Detention Operations Manual, Detainee Services, Standard 15, Section III.B.

²³³ Detention Operations Manual, Detainee Services, Standard 15, Section III.B.

²³⁴ Detention Operations Manual, Detainee Services, Standard 15, Section III.B.

²³⁵ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED] (b)(6), (b)(7)

²³⁶ Notes of Delegation member [REDACTED] on interview of detainee [REDACTED]

²³⁷ Notes of Delegation member [REDACTED] on interview of detainee [REDACTED] (b)(6)

²³⁸ Notes of Delegation member [REDACTED] (b)(6) on interview of detainee [REDACTED]

²³⁹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

²⁴⁰ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED] (b)(6), (b)(7)c

The Delegation is concerned that ICE officials do not appear to be making unannounced visits as required by the *Standards*.

2. Detainees' Access to ICE Officials

OCJ has not implemented this portion of the *Standards*. Detainees have the option of submitting written questions, requests, or concerns to ICE staff.²⁴¹ OCJ personnel read all request slips before sending the slip to ICE staff.²⁴² According to OCJ personnel, this is done for security purposes. If necessary, OCJ personnel will assist detainees who have trouble filling out the slips.²⁴³ OCJ personnel sometimes answer the question for the detainee before sending the slip out to ICE.²⁴⁴ All slips come back within 2 or 3 days.²⁴⁵ However, if the request is time sensitive, then a response may come sooner.²⁴⁶ While OCJ has a procedure in place for detainees to communicate with ICE officials, it was unclear to the Delegation exactly how or when this option is communicated to the detainees.²⁴⁷ Some detainees expressed frustration at the lack of access to ICE officials.²⁴⁸ The main complaint was that with the heavy workload of these officials, it was difficult for detainees, particularly those without attorneys, to stay properly informed of their immigration status.²⁴⁹

F. Voluntary Work Programs

The *Standards* require all facilities with a work program to “provide detainees the opportunity to work and earn money.”²⁵⁰ Detainees who are physically and mentally able to work must be provided the opportunity to participate in any voluntary work program.²⁵¹ The goal of the voluntary work program is to reduce inactivity-induced idleness and disciplinary-code violations.²⁵² Facilities cannot deny “work opportunities based on non-merit factors, such as social group, race, religion, sex, physical or mental handicaps, or national origin.”²⁵³ If

²⁴¹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]
²⁴² Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]
²⁴³ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED] (b)(6), (b)(7)c
²⁴⁴ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]
²⁴⁵ Notes of Delegation member [REDACTED] on interview of detainee [REDACTED] (b)(6)
²⁴⁶ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED] (b)(6), (b)(7)c
²⁴⁷ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]
²⁴⁸ Notes of Delegation member [REDACTED], on interviews of [REDACTED] (b)(6) and a detainee who preferred to remain anonymous.
²⁴⁹ Notes of Delegation member [REDACTED] (b)(6) on interviews of [REDACTED] (b)(6) and a detainee who preferred to remain anonymous.

²⁵⁰ Detention Operations Manual, Detainee Services, Standard 18, Section I.

²⁵¹ Detention Operations Manual, Detainee Services, Standard 18, Section III.A.

²⁵² Detention Operations Manual, Detainee Services, Standard 18, Section III.B.

²⁵³ Detention Operations Manual, Detainee Services, Standard 18, Section III.F.

temporary jobs arise, detainees may volunteer for these positions.²⁵⁴ The *Standards* state that detainees must receive monetary compensation for work completed in accordance with the facility's standard policy.²⁵⁵

OCJ has not implemented this section of the *Standards*. OCJ has a voluntary work program called the "Porter Program."²⁵⁶ Porters are not paid for their services.²⁵⁷ Instead, they receive time off their sentences or jail privileges (*e.g.*, more time outside).²⁵⁸ OCJ officials do not allow immigration detainees to participate in the "Porter Program" or any other type of work program.²⁵⁹ According to OCJ personnel, detainees may serve as interpreters on a voluntary basis whenever the need arises.²⁶⁰ Detainees who serve as interpreters are not paid or rewarded with any privileges.²⁶¹ The Delegation spoke to no detainees who stated that they had worked as interpreters.

Some detainees with whom the Delegation spoke expressed a desire to work so that they could earn privileges and combat boredom.²⁶² OCJ has not implemented this section of the *Standards*.

G. Religious Practices

The *Standards* provide that detainees shall have the opportunity to engage in essential practices of their religious faith (including group-activities) that are consistent with the safety, security, and orderly operation of the facility.²⁶³ If requested by a detainee, the chaplain or designee shall arrange for visits by a clergy person or representative of the detainee's faith.²⁶⁴ Furthermore, detainees shall have access to personal religious property, consistent with safety and security concerns.²⁶⁵ Finally, the food service department will implement all reasonable procedures for accommodating detainees' religious dietary requirements.²⁶⁶

²⁵⁴ Detention Operations Manual, Detainee Services, Standard 18, Section III.D.

²⁵⁵ Detention Operations Manual, Detainee Services, Standard 18, Section III.K.

²⁵⁶ OCJ Inmate Handbook, at 19.

²⁵⁷ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

²⁵⁸ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

²⁵⁹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED] (b)(6), (b)(7)c

²⁶⁰ Notes of Delegation member [REDACTED] (b)(6) on conversation with Deputy [REDACTED]

²⁶¹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

²⁶² Notes of Delegation member [REDACTED] a, on interviews of [REDACTED] (b)(6) and a detainee who preferred to remain anonymous.

²⁶³ Detention Operations Manual, Detainee Services, Standard 14, Section III.A. & H.

²⁶⁴ Detention Operations Manual, Detainee Services, Standard 14, Section III.J.

²⁶⁵ Detention Operations Manual, Detainee Services, Standard 14, Section III.K.

²⁶⁶ Detention Operations Manual, Detainee Services, Standard 14, Section III.M.

OCJ appears to partially implement this section of the *Standards*. According to the OCJ Inmate Handbook, regular religious services are led by a chaplain at OCJ every Sunday night and are non-denominational.²⁶⁷ Every inmate is allowed to attend, but if space is limited, the inmate may not be able to attend every week.²⁶⁸ Again, the Handbook is not tailored to detainees. One detainee commented that he was allowed to attend church once every two weeks.²⁶⁹ The facility also provides the opportunity to participate in bible study once a week for four consecutive weeks.²⁷⁰ According to the Handbook, if a detainee wishes a personal visit from the clergy, OCJ will attempt to honor that request with either a religious leader or lay person from the community.²⁷¹

Detainees may keep religious books (e.g., a bible) in their possession.²⁷² However, only Spanish and English bibles are provided and no other religious materials appear to be available.²⁷³ Further, while the *Standards* provide that detainees shall be able to engage in the essential practice of their faith, detainees may not wear any religious apparel, including head-coverings of any form.²⁷⁴

OCJ informed us that they accommodate special diets required by some religions.²⁷⁵ The OCJ Inmate Handbook provides that: “religious diets will be provided, after the health services staff obtains verification.”²⁷⁶ This appears to implement the *Standards*, however, the Delegation is concerned with OCJ staff skepticism of religious diet requests.²⁷⁷ One OCJ officer commented that he knew all about the dietary restrictions of other religions and that he was able to tell if a detainee really required the requested diet.²⁷⁸ This attitude towards special diet requests does not seem to be in the spirit of the *Standards* and may be a cause for concern.

H. Hunger Strikes

²⁶⁷ OCJ Inmate Handbook, at 19.

²⁶⁸ OCJ Inmate Handbook, at 19.

²⁶⁹ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

²⁷⁰ OCJ Inmate Handbook, at 20.

²⁷¹ OCJ Inmate Handbook, at 20.

²⁷² Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6)

²⁷³ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

²⁷⁴ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

²⁷⁵ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6)

²⁷⁶ OCJ Inmate Handbook, at 18.

²⁷⁷ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

²⁷⁸ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

The *Standards* require that facilities do everything within their means to monitor and protect the health and welfare of a hunger-striking detainee.²⁷⁹ The *Standards* further mandate that procedures for identifying and referring to medical staff a detainee suspected or known to be on hunger strike shall include an assessment of whether the detainee’s action is reasoned and deliberate or the manifestation of a mental illness.²⁸⁰ This assessment is to be performed by qualified medical personnel.²⁸¹ Medical staff must monitor the health of a hunger-striking detainee.²⁸² The *Standards* give medical personnel some degree of discretion in judging how to best deal with hunger-striking detainees, though this discretion must fall within the ambit of accepted medical practice.²⁸³

The Delegation is concerned that OCJ has not fully implemented this section of the *Standards*. The OCJ Inmate Handbook makes no mention of procedures for dealing with hunger-striking detainees. The Delegation was told that nurses go to see detainees on hunger strike at least once a day.²⁸⁴ Hunger-striking detainees are kept in isolation at OCJ.²⁸⁵ Upon entering the facility, the Delegation saw a detainee who, according to OCJ personnel, was on hunger-strike.²⁸⁶ It appeared from observations of that detainee and conversations with OCJ personnel that the facility has at least some procedure in place to deal with such situations.²⁸⁷

However, the Delegation was told that this detainee had demanded a Kosher diet in accordance with his religious beliefs – a requirement OCJ personnel determined was fabricated or “made up.”²⁸⁸ OCJ personnel told the Delegation that the detainee was Muslim, and therefore he had no reason to demand a Kosher diet. It was unclear whether this information was the basis for placing this detainee in isolation, or if the detainee had announced his intention to hunger-strike. In any event, the Delegation is concerned that there was no mention of an assessment of the detainee’s action by qualified medical personnel, as required by the *Standards*.²⁸⁹

I. Dental Treatment

²⁷⁹ Detention Operations Manual, Health Services, Standard 1, Section I.

²⁸⁰ Detention Operations Manual, Health Services, Standard 1, Section III.A.

²⁸¹ Detention Operations Manual, Health Services, Standard 1, Section III.A.

²⁸² Detention Operations Manual, Health Services, Standard 1, Section III.B.

²⁸³ Detention Operations Manual, Health Services, Standard 1, Section III.F.

²⁸⁴ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

²⁸⁵ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7)c

²⁸⁶ Notes of Delegation member [REDACTED] on conversation with Sergeant [REDACTED]

²⁸⁷ The Delegation saw a hunger-striking detainee in the medical/observation cell at the facility. The cell had a toilet, a sink and a bed. The outer wall was a glass window so that OCJ personnel could observe the detainee.

²⁸⁸ Notes of Delegation member [REDACTED] on conversation with Sergeant [REDACTED]

²⁸⁹ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

The *Standards* require an initial dental screening exam within 14 days of the detainee's arrival and that the facility provide a number of services, including emergency dental treatment and repair of prosthetic appliances.²⁹⁰ 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."²⁹¹

OCJ has partially implemented this section of the *Standards*. The facility now has dental services available, where no such services were available at the date of last year's visit.²⁹² OCJ personnel informed the Delegation that the facility has contracted with a new dentist, who comes in every six weeks.²⁹³ The Delegation is concerned that the dentist's schedule means that some detainees will not receive the required initial examination within fourteen days of arrival to OCJ. OCJ personnel informed the Delegation that most of the dental work required and performed at OCJ consists of extractions, which fall under the category of routine dental treatment.²⁹⁴ The Delegation was not able to ascertain whether the facility offers routine dental checkups for long-term detainees.

J. Special Management Concerns

The *Standards* require each facility to establish a Special Management Unit ("SMU") that will isolate certain detainees from the population.²⁹⁵ The SMU must have two sections – one for detainees in Administrative Segregation (non-punitive) and the other for detainees who are being segregated for disciplinary reasons.²⁹⁶ Detainees in administrative segregation are to receive the same general privileges as detainees in the general population.²⁹⁷ These detainees are allotted three nutritionally adequate meals per day and they have the opportunity to shower and shave at least three times per week.²⁹⁸ Security risks notwithstanding, detainees in administrative segregation generally have the same privileges as other detainees.²⁹⁹

A detainee may be placed in disciplinary segregation only by order of the Institutional Disciplinary Committee, after a hearing in which the detainee is found to have committed a

²⁹⁰ Detention Operations Manual, Health Services, Standard 2, Section III.E.

²⁹¹ Detention Operations Manual, Health Services, Standard 2, Section III.E.

²⁹² 2004 OCJ Report, at 22-23.

²⁹³ Notes of Delegation member (b)(6) on conversation with Nurse (b)(6).

²⁹⁴ Notes of Delegation member (b)(6) on conversation with Nurse (b)(6); Detention Operation Manual, Health Services, Standard 2, Section III.E.

²⁹⁵ Detention Operations Manual, Security and Control, Standard 13, Section I.

²⁹⁶ Detention Operations Manual, Security and Control, Standard 13, Section I.

²⁹⁷ Detention Operations Manual, Security and Control, Standard 13, Section III.D.1.

²⁹⁸ Detention Operations Manual, Security and Control, Standard 13, Section III.D.5,6.

²⁹⁹ Detention Operations Manual, Security and Control, Standard 13, Section III.D.1-20.

prohibited act.³⁰⁰ Violations associated with a single incident can result in a maximum of 60 days in disciplinary segregation.³⁰¹ Detainees in disciplinary segregation generally have fewer privileges than those in administrative segregation, though they are afforded the same meal schedule and hygiene opportunities as detainees in the general population.³⁰²

The Delegation could not observe the extent to which OCJ has implemented these sections of the *Standards*. The OCJ Inmate Handbook states that isolation is one available form of punishment for an inmate who violates jail rules, but provides no further details and nothing pertaining directly to detainees.³⁰³ According to OCJ personnel, the facility provides all segregated detainees with one hour total per day to eat three meals and tend to their hygienic needs.³⁰⁴

However, the Delegation made a specific request to OCJ to see one of the isolation cells, but was denied access. It would have been helpful for the Delegation to have seen the cells because while some detainees with whom we spoke had been placed in lockdown for various reasons, we did not obtain from them any information regarding the conditions they faced.³⁰⁵ Thus, we were unable to corroborate whether OCJ implements the *Standards* with regards to conditions for detainees.

K. Recreation

The *Standards* require that all facilities “provide INS detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”³⁰⁶ Every effort shall be made to place a detainee in a facility that provides outdoor recreation.³⁰⁷ Such facilities shall permit detainees access to outdoor recreation “for at least one hour daily, at a reasonable time of day, five days a week, weather permitting.”³⁰⁸ Detainees utilizing the outdoor recreation area shall have “access to drinking water and toilet facilities.”³⁰⁹ “All facilities shall provide recreational opportunities for detainees with disabilities.”³¹⁰ All facilities shall have an individual responsible for “the development and

³⁰⁰ Detention Operations Manual, Security and Control, Standard 14, Section III.A.

³⁰¹ Detention Operations Manual, Security and Control, Standard 13, Section III.A.

³⁰² Detention Operations Manual, Security and Control, Standard 13, Section III.D.2,10,11.

³⁰³ OCJ Inmate Handbook, at 5.

³⁰⁴ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)c

³⁰⁵ See footnote 225, *supra*.

³⁰⁶ Detention Operations Manual, Detainee Services, Standard 13, Section I.

³⁰⁷ Detention Operations Manual, Detainee Services, Standard 13, Section III.A.1.

³⁰⁸ Detention Operations Manual, Detainee Services, Standard 13, Section III.B.1.

³⁰⁹ Detention Operations Manual, Detainee Services, Standard 13, Section III.G.4.

³¹⁰ Detention Operations Manual, Detainee Services, Standard 13, Section III.A.4.

oversight of the recreation program” and for assessing the needs and interests of the detainees.³¹¹ The *Standards* provide a comprehensive list of required program content.³¹² Detainees housed in the facility’s special management unit shall “recreate apart from the general population.”³¹³ Such detainees shall be allowed at least one hour of recreation per day, at least five days per week, and will only lose those privileges for reasons detailed in the *Standards*.³¹⁴

OCJ partially implements the *Standards* regarding recreation. OCJ adequately implements the *Standards* for recreation in several areas. First, detainees appear to be given one hour of outdoor recreation five days a week, weather permitting, though this requirement is not spelled out in the OCJ Inmate Handbook.³¹⁵ Second, none of the detainees we interviewed said that they need to ever forego other rights or privileges in order to have recreation time.³¹⁶ Third, the facility meets some of the “program content” requirements, including that each tier has a Bowflex machine, the indoor recreation area has two old Stairmasters, and television, ping-pong (for a fee) and other indoor recreation opportunities are available.³¹⁷ Finally, OCJ personnel told us that detainees housed in administrative segregation retain the same recreation privileges, though we were not able to corroborate that through detainee interviews, and there is nothing relevant contained in the OCJ Inmate Handbook.³¹⁸

OCJ fails, however, to implement the *Standards* in other areas. OCJ does not have an individual to develop and oversee the recreation program and to assess the needs of the detainees.³¹⁹ Perhaps as a result, some interviewed detainees complained about the quality of the recreational offerings, noting that the minimal offerings made them feel like criminal inmates, rather than ICE detainees.³²⁰ Further, while the *Standards* give the facility discretion to tailor recreational offerings to suit the particular facility, the quality of the outdoor recreation area is pretty low. The area is quite small, does not allow for activities of any kind (no balls or other sporting goods are allowed outside) and is inaccessible for potentially several months out of the year during winter weather.³²¹ In addition, when outdoor recreation becomes impossible,

³¹¹ Detention Operations Manual, Detainee Services, Standard 13, Section III.F.

³¹² Detention Operations Manual, Detainee Services, Standard 13, Section III.G.

³¹³ Detention Operations Manual, Detainee Services, Standard 13, Section III.H.

³¹⁴ Detention Operations Manual, Detainee Services, Standard 13, Section III.H.

³¹⁵ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7) and interview of detainee (b)(6) (b)(6)

³¹⁶ Notes of Delegation member (b)(6) on interview of detainee (b)(6)

³¹⁷ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7) and observation; Notes of interview of detainee (b)(6)

³¹⁸ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7)

³¹⁹ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6) and observation

³²⁰ Notes of Delegation members (b)(6) and (b)(6) on interviews of detainees (b)(6) and a detainee who preferred to remain anonymous, respectively.

³²¹ Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7) and observation

inmates are limited to use of the indoor recreation room for one hour per day, only three days per week, in contrast to the *Standards*' required five days per week.³²²

L. Funds and Personal Property

The *Standards* require that each facility control and safeguard detainees' personal property, including through "the secure storage of funds, valuables, baggage and other personal property; a procedure for documentation and receipting of surrendered property; and the initial and regularly scheduled inventories of all funds, valuables and other property."³²³ Each facility is required to have "policies and procedures to account for and safeguard detainee property at time of admission," including a "written standard procedure for inventory and receipt of detainee funds and valuables" and a "written procedure for inventory and receipt of detainee baggage and personal property (other than funds and valuables)."³²⁴ The facility shall also have a "written procedure for inventory and audit of detainee funds, valuables and personal property," as well as a "written procedure for returning funds, valuables, and personal property to a detainee being transferred or released."³²⁵ Further, each facility shall have a written policy and procedure for dealing with detainee property abandoned or reported missing or damaged.³²⁶ Finally, the detainee handbook shall notify detainees of the general policies and procedures concerning personal property, including several enumerated policies and procedures.³²⁷

OCJ fails to implement the bulk of the *Standards* regarding funds and personal property. The OCJ Inmate Handbook fails to list any of the items required under the *Standards*. Under the *Standards*, a detainee handbook must notify detainees of facility policies and procedures concerning personal property, including:

- Which items they may retain in their possession;
- That, upon request, they will be provided an ICE-certified copy of any identity document (passport, birth certificate, etc.) placed in their A-files;
- The rules for storing or mailing property not allowed in their possession;
- The procedure for claiming property upon release, transfer or removal; and
- The procedure for filing a claim for lost or damaged property.³²⁸

The OCJ Inmate Handbook does not mention any of this. The only mention of personal property is (a) that all personal property of inmates is secured upon admission and will be

³²² OCJ Handbook, at 10; Notes of Delegation member (b)(6) on conversation with Deputy (b)(6), (b)(7)c

³²³ Detention Operations Manual, Detainee Services, Standard 8, Section I.

³²⁴ Detention Operations Manual, Detainee Services, Standard 8, Section III.C & E.

³²⁵ Detention Operations Manual, Detainee Services, Standard 8, Section III.F & G.

³²⁶ Detention Operations Manual, Detainee Services, Standard 8, Section III.H & I.

³²⁷ Detention Operations Manual, Detainee Services, Standard 8, Section III.J.

³²⁸ Detention Operations Manual, Detainee Services, Standard 8, Section III.J.

released upon a showing of need and approval by a jail supervisor³²⁹ and (b) that books, magazines and mail kept in a cell is subject to certain restrictions.³³⁰ Again, the failure to provide for a separate detainee handbook means that almost nothing required by the *Standards* is touched upon in the OCJ Inmate Handbook, leaving detainees with no written record of OCJ’s policies and procedures.

OCJ personnel, however, orally advised us that they had adequate measures in place to safeguard and inventory detainee property. We were told that all personal property is inventoried upon admission and that the required forms are filled out electronically and saved on the OCJ hard drive.³³¹ All personal property is properly stored, and cash and other valuables are kept in a secure storage closet, access to which is limited to certain OCJ personnel.³³² In accordance with the *Standards*, detainees must verify that their goods have been properly inventoried and then they receive a copy of their signed receipt.³³³ Any property abandoned by transferred or released detainees is shipped daily to the ICE facility at Broadview.³³⁴ All of these policies or procedures appear to implement either the letter or the spirit of the *Standards*. Without written policies and procedures it is difficult to verify implementation of the *Standards* and impossible for the detainees to be aware of their rights and the facility’s duties.

The detainees told us that between being picked up initially and arriving at OCJ, much, and in some instances all, of their personal property had been taken or misplaced.³³⁵ Since these detainees arrived at OCJ with no possessions, they do not blame OCJ for the loss of their personal property. Rather, they believe that OCJ has not properly responded to their requests to try to obtain their property from the prior facilities at which they were detained.³³⁶

M. Detainee Handbook

The *Standards* require that every detention facility develop a site-specific handbook to provide to detainees upon admission to the facility.³³⁷ The purpose of the handbook is to provide an overview of, and guide to, “the detention policies, rules and procedures in effect at the facility,” as well as “the services, programs, and opportunities available through various sources,

³²⁹ OCJ Handbook, at 8.

³³⁰ OCJ Handbook, at 11.

³³¹ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

³³² Notes of Delegation member [REDACTED] on conversation with Sergeant [REDACTED]

(b)(6), (b)(7)c

³³³ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

³³⁴ Notes of Delegation member [REDACTED] on conversation with Deputy [REDACTED]

(b)(6)

³³⁵ Notes of Delegation member [REDACTED] on interviews of detainee [REDACTED] and a detainee who preferred to remain anonymous.

(b)(6)

³³⁶ Notes of Delegation member [REDACTED] on interviews of detainee [REDACTED] and a detainee who preferred to remain anonymous.

³³⁷ Detention Operations Manual, Detainee Services, Standard 6, Section I.

including the facility, [ICE], private organizations, etc.”³³⁸ The site-specific handbook must conform to the example provided in the *Standards*, but should be customized to suit the particular facility.³³⁹ The handbook must be “written in English and translated into Spanish, and, if appropriate, into the next most-prevalent language(s) among the facility’s detainees.”³⁴⁰ The facility must provide the handbook along with appropriate training to all detention center personnel who have contact with the detainees.³⁴¹ Finally, a facility may show an orientation video to supplement, but not supplant, the information in its handbook.³⁴²

OCJ partially implements the *Standards* regarding a site-specific handbook. OCJ implements the *Standards* on a number of fronts. First, OCJ provides a copy of the OCJ Inmate Handbook to each detainee upon admission and to all personnel.³⁴³ Second, the OCJ Inmate Handbook is available in both English and Spanish, and there is not another language prevalent enough at the facility to warrant a separate translation.³⁴⁴ Finally, OCJ shows a brief non-detainee specific orientation video several times a week that purportedly supplements the OCJ Inmate Handbook, but the Delegation was not offered the opportunity to view the video.³⁴⁵

However, the OCJ Inmate Handbook fails to implement the *Standards* because it is not tailored specifically to detainees or even mention ICE detainees. While the specific provisions of the OCJ Inmate Handbook that fail to implement the *Standards* are discussed throughout this Report and will not be repeated here, the OCJ Inmate Handbook also fails to implement the *Standards* by omitting, among many other things, the following required information:

- A detainee-specific introduction or mission/purpose statement to explain to the detainees why they are receiving the handbook and what it means to them;
- A list of detainee-specific rights and responsibilities;
- The classification process or appeal procedure in place at OCJ;
- Any discussion of any volunteer work program for detainees in place at OCJ, since OCJ does not allow its detainees to participate in any such program;
- The schedule and procedure for the Law Library or the library in general;
- The schedule and sign-up procedures for Group Legal Rights Presentations; and
- Any discussion of creation or retention of detainee legal files or detention files.³⁴⁶

³³⁸ Detention Operations Manual, Detainee Services, Standard 6, Section I.

³³⁹ Detention Operations Manual, Detainee Services, Standard 6, Section III.A.

³⁴⁰ Detention Operations Manual, Detainee Services, Standard 6, Section III.E.

³⁴¹ Detention Operations Manual, Detainee Services, Standard 6, Section III.G.

³⁴² Detention Operations Manual, Detainee Services, Standard 6, Section III.F.

³⁴³ Notes of Delegation member ██████████ on conversation with Sergeant ██████████

³⁴⁴ Notes of Delegation member (b)(6) on conversation with Sergeant (b)(6), (b)(7)

³⁴⁵ Notes of Delegation member ██████████ on conversation with Sergeant ██████████

³⁴⁶ OCJ Handbook, at passim.

The failure to include this information, coupled with the inclusion of numerous policies and procedures applicable only to inmates and certain sub-classes of inmates, could tend to confuse detainees.

V. RECOMMENDATIONS

While OCJ has implemented some sections of the *Standards*, the Delegation is concerned that it has not yet implemented others. While all of the sections not yet implemented are discussed in detail above, the following are recommendations to ensure that the most important sections of the *Standards* are fully implemented:

- OCJ should create a detainee-specific handbook that includes, at a minimum, all of the information required by the *Standards*. At the very least, OCJ should revise the current OCJ Inmate Handbook to contain all of the required detainee-specific information. One of the oft-repeated concerns expressed by detainees with regards to all facets of their stay at OCJ was that policies and procedures that affected them specifically, as opposed to inmates or prison population generally, were contained neither in the Handbook nor anywhere else in writing;
- OCJ should ensure that all detainees are given proper instructions on phone usage and that they are able to purchase affordable calling cards;
- OCJ should ensure that phone calls to attorneys, the most important phone call a detainee can make, are not restricted during waking hours, and never recorded or monitored (absent a court order);
- OCJ should provide detainees with the same opportunities that inmates have to work;
- OCJ's law library should provide access to all of the legal materials listed in the *Standards* and ensure that detainees have sufficient access to computers, printers, functioning typewriters and other equipment and assistance necessary to their legal matters;
- OCJ personnel should not read any legal mail sent to or from detainees;
- OCJ should provide detainees with a clear, written policy regarding filing and appealing grievances either with OCJ or ICE;
- OCJ should provide detainees with a clear, written policy, free from officer discretion, defining what constitutes major, as opposed to minor, offenses, and what the punishment is to detainees for committing either type of offense;
- OCJ should publish a formal procedure for assessing and monitoring hunger-striking detainees. Most importantly, this formal procedure should ensure that qualified medical personnel assess the actions of a detainee on hunger-strike in order to determine whether it is reasonable or the result of mental illness;
- OCJ should hire a mental health counselor. Our observations of detainees showed that it might not be sufficient to rely on the assessment of jail personnel who are not trained to assess, diagnose and/or treat such illnesses;

- OCJ should hire or train an individual to develop and oversee a recreation program that meets the *Standards*' requirements for program content and is consistent with the goals and capacity of the facility;
- OCJ should provide detainees with a formal, written policy regarding how personal property is to be catalogued, stored and returned to the detainee, including the procedure for requesting the return of goods that detainees believe were taken or misplaced during their journey to OCJ.