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**Commission on Immigration****MEMORANDUM**

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

FROM: [REDACTED] Associate Director, ABA Commission on Immigration; 202-662-[REDACTED]

RE: Report on Observational Tour of the Suffolk County House of Corrections, Boston, Massachusetts

DATE: May 5, 2006

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The attached Report on the ABA delegation's Observational Tour of the Suffolk County House of Corrections, Boston, Massachusetts raises retaliation concerns at a level that the ABA has not encountered in the nearly five years that we have been visiting detention facilities pursuant to our Detention Standards Implementation Initiative.

Section III.F of the Report below describes the difficulty that our volunteer attorneys had in identifying detainees who would agree to meet with the delegation. The volunteer attorneys sent 40 to 50 letters to detainees at the facility, and called numerous attorneys and agencies in the Boston area to ask whether their clients would meet with delegation members during their visit. Of the detainees contacted by mail, only one responded, and only one represented detainee agreed to meet with the delegation. The attorneys reported that their clients would not meet with the delegation because they feared retaliation as a result. The two detainees who responded were removed before the delegation took place. On the day of the delegation's visit, an officer at the facility chose two detainees to meet with the delegation. As the Report states, both detainees were agitated and emotional during their interviews. One of them shook so badly that he held his hands together to try to control his shaking.

We understand that the Department of Homeland Security is currently investigating conditions at the Suffolk County House of Corrections. We hope you will consider forwarding this Report to those who are conducting the investigation. Thank you for your attention to this matter.

**MEMORANDUM**

**DATE** March 24, 2006

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

**CC** [REDACTED], ABA Commission on Immigration

**FROM** American Bar Association Delegation to the Suffolk County House of Corrections

**RE** Report on Observational Tour of the Suffolk County House of Corrections, Boston, Massachusetts

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This memorandum summarizes information gathered at the Suffolk County House of Corrections (the "Facility") in Boston, Massachusetts, during the delegation's February 24, 2006 visit to the Facility.<sup>1</sup> The information was gathered via observation of the Facility by the delegation, interviews of two detainees, and discussions with Facility and Immigration and Customs Enforcement ("ICE") personnel.

**I. ICE Detention Standards**

In November 2000, the Immigration and Naturalization Service ("INS"),<sup>2</sup> promulgated the "INS Detention Standards" to ensure the "safe, secure and humane treatment" of immigration detainees. The thirty-eight standards contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures and food service. These standards apply to ICE-operated detention centers and other facilities that house immigration detainees pursuant to a contract or intergovernmental service agreement ("IGSA").

The *Detention Standards* (the "*Standards*") went into effect at ICE-operated detention facilities on January 1, 2001. ICE intended to phase in the *Standards* at all of its contract and IGSA facilities. The *Standards* are designed to establish the minimum requirements to which ICE must adhere in its facilities. Each Field Officer or Officer-In-Charge has discretion to promulgate policies and practices affording ICE detainees more enhanced rights and protections, beyond those provided for by the *Standards*.

**II. Introduction**

**A. The Delegation's Visit, February 24, 2006**

On Friday, February 24, 2006, the members of our delegation collectively met with one member of the Facility's staff, Lt. [REDACTED] and two representatives from the ICE office in Boston,

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<sup>1</sup> The delegation was comprised of attorneys from the Boston office of Dechert LLP, including [REDACTED], [REDACTED] and [REDACTED] (the "Delegates"). In addition, the following Dechert LLP attorneys participated in the research and pre-tour preparation for this project: [REDACTED], [REDACTED] and [REDACTED].

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.

Massachusetts, Agent [REDACTED] b6, b7C and Supervising Agent [REDACTED] b6, b7C. All three of these individuals were at the Facility to greet us, and prior to our tour, sat down and discussed with us implementation of the various *Standards* at the Facility. Following our conversation, Lt. [REDACTED] b6, b7C and Agent [REDACTED] b6, b7C escorted us on a tour of the Facility. The delegation appreciates the cooperation of these individuals and the time they spent with us. They were responsive to our questions and requests for additional information.

Our report is based on the discussions we had with these individuals, interviews with two detainees (collectively, the “Detainees”) at the Facility, our tour of three of the four floors of the Facility, and our own observations during the tour. The first detainee we interviewed was [REDACTED] b6, b7C. He is from El Salvador and has been at the Facility since June 10, 2005. The other detainee we interviewed, also a male, prefers to remain nameless for purposes of this report. We will refer to him as “Detainee #2” since he was the second detainee we interviewed. He is from Haiti and has been at the Facility since November 2005. Both of the Detainees are classified as Class II/Class III, discussed below. In several instances, the responses of the Detainees conflicted with those of Facility personnel.

## B. General Information About the Facility

The Facility is an IGSA facility. As of the date of our visit, it housed about 216 male and 30 female detainees.<sup>3</sup> The majority of the detainees come from Central and Latin America and the Caribbean Islands.<sup>4</sup> The per diem paid to the Facility by ICE per detainee is roughly \$89-99.<sup>5</sup>

The Facility constitutes the “in-processing” and “out-processing” hub for the other immigration detention facilities in the area. As a result, all detainees in Massachusetts must pass through the Facility as incoming detainees, exiting detainees, or on their way to another facility.<sup>6</sup> Detainees may stay from one week to many months.<sup>7</sup>

The Facility is comprised of four floors, with approximately 75 detainees and two housing officers on each floor.<sup>8</sup> We saw the first three floors of the Facility, but did not see the fourth floor, which houses the female detainees and pre-sentence inmates who will eventually be housed at the regular prison.<sup>9</sup> Each of the three floors we saw was identical to the others, except that the first floor also had administrative offices near the front of the building.<sup>10</sup> Each has a large common room in the center (the “breakroom”); an enclosed glass-paned medium-sized room to the right (the “breakfast room”), which is used for seminars and religious services; a small, enclosed glass-paned room to the left that is used as a

<sup>3</sup> Based on headcount posted behind the front desk of the first floor at the Facility.

<sup>4</sup> Interview with Agents [REDACTED] b6, b7C and [REDACTED] b6, b7C and Lt. [REDACTED] b6, b7C.

<sup>5</sup> Interview with Agents [REDACTED] b6, b7C and [REDACTED] b6, b7C and Lt. [REDACTED] b6, b7C.

<sup>6</sup> Interview with Agents [REDACTED] b6, b7C and [REDACTED] b6, b7C and Lt. [REDACTED] b6, b7C.

<sup>7</sup> Interview with Agents [REDACTED] b6, b7C and [REDACTED] b6, b7C and Lt. [REDACTED] b6, b7C and interviews with Mr. [REDACTED] b6, b7C and Detainee #2.

(Note that Agents [REDACTED] b6, b7C and [REDACTED] b6, b7C and Lt. [REDACTED] b6, b7C stated that a detainee will generally be at the Facility from one week to a month, but based on the fact that Mr. [REDACTED] b6, b7C has been at the Facility since June 2005, and Detainee #2 has been at the Facility since November 2005, we determined that a detainee’s stay can actually be much longer.)

<sup>8</sup> Interview with Lt. [REDACTED] b6, b7C and Agents [REDACTED] b6, b7C and [REDACTED] b6, b7C.

<sup>9</sup> Interview with Lt. [REDACTED] b6, b7C and Agents [REDACTED] b6, b7C and [REDACTED] b6, b7C, and observations of the Delegates.

<sup>10</sup> Observations of the Delegates.

library (the “library”); twelve six-man units; and one three-man unit for older or disabled detainees.<sup>11</sup> The length of either side of the breakroom, breakfast room and library are lined with windows, providing ample natural light.<sup>12</sup>

Each of floors 1-3 is categorized as either a “Class I” or a “Classes II and III” floor, depending upon whether the floor houses Class I, or Classes II and III detainees.<sup>13</sup> Class I detainees are those who have committed no or relatively minor offenses and who are non-violent. Class I detainees are not supposed to be integrated with Classes II or III detainees.<sup>14</sup> Class II detainees may be guilty of intermediate-level crimes, such as drug possession or vehicular theft, and Class III detainees are those detainees who have committed serious offenses and who are deemed to be the most likely to be violent.<sup>15</sup> Class I detainees are housed on the second floor, and Classes II and III detainees are integrated and housed on the first and third floors.<sup>16</sup> The detainees have a yard outside that can be used for recreation, weather permitting.<sup>17</sup> According to the Detainees, outdoor recreation time varies from several hours per day to none at all, depending on the particular floor officer assigned to the detainees.<sup>18</sup>

It is our understanding that the floor officers of the Facility are also the corrections officers at the prison next door. Therefore, for purposes of this memorandum, we mean “floor officers” to be synonymous with “corrections officers.”

### **III. Implementation of the Legal Access *ICE Detention Standards***

#### **A. Visitation**

##### **1. Visitation by Attorneys**

The *Standards* suggest that facilities permit legal visitation seven days a week for a minimum of eight hours on weekdays and four hours on the weekends.<sup>19</sup> The *Standards* also indicate that legal visitations should not be terminated for meals or routine official counts, and that procedures should be in place to allow the detainee to receive a meal after the interview.<sup>20</sup> In addition, an attorney or legal representative should be provided with a private room for a meeting with visual, but no audio observation.<sup>21</sup> In ICE owned and operated service processing centers and contract detention centers, detainees should not be strip searched after a legal visitation unless there is reasonable suspicion that the detainee is concealing contraband.<sup>22</sup> In IGSA facilities, if strip searches are required after a contact visit,

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<sup>11</sup> Interview with Lt. [REDACTED] and Agents [REDACTED] and [REDACTED], and observations of the Delegates.

<sup>12</sup> Observations of the Delegates.

<sup>13</sup> Interview with Lt. [REDACTED].

<sup>14</sup> Interview with Lt. [REDACTED].

<sup>15</sup> Interview with Lt. [REDACTED].

<sup>16</sup> Interview with Lt. [REDACTED].

<sup>17</sup> Interview with Lt. [REDACTED].

<sup>18</sup> Interviews with Mr. [REDACTED] and Detainee #2.

<sup>19</sup> Detention Operation Manual, Detainee Services, Standard 17, Section III.I.2.

<sup>20</sup> Detention Operation Manual, Detainee Services, Standard 17, Section III.I.2.

<sup>21</sup> Detention Operation Manual, Detainee Services, Standard 17, Section III.I.9.

<sup>22</sup> Detention Operation Manual, Detainee Services, Standard 17, Section III.I.11.

there should be an alternative procedure available to allow for a non-contact visit.<sup>23</sup> Detainees in segregation may not be denied visitation rights.<sup>24</sup>

**The Detainee Guide and facility staff indicate that important aspects of this Standard are being met; however, the detainees raised concerns with other aspects.** According to Lt. [b6, b7C] attorneys may visit detainees seven days per week, “anytime” “within reason.”<sup>25</sup> Interpreters and law students accompanied by attorneys may visit “anytime” as well.<sup>26</sup> According to the *Suffolk County Sheriff’s Department ICE Detainee Guide* (“Detainee Guide”) (attached), “attorneys and/or their authorized representatives may visit at any time between 8:00 a.m. and 8:30 p.m.”<sup>27</sup>

Attorneys and detainees meet in “lawyers rooms,” which are contact rooms with visual, but not audio, monitoring.<sup>28</sup> Mr. [b6, b7C] stated that confidentiality is not a problem with attorney visits, as a private room is given.<sup>29</sup> Regarding strip searches, Lt. [b6, b7C] stated that he was not sure if detainees are strip searched following family visits, but that detainees are not strip searched after attorney visits.<sup>30</sup> Both Detainees we interviewed, however, stated that they are always strip searched after visits, including attorney visits.<sup>31</sup> According to both Lt. [b6, b7C] and the Detainees, however, the Facility only offers contact rooms for visitation.<sup>32</sup>

Detainee #2 stated that there are no visitation privileges for detainees in segregation, and that when his attorney came to visit him while he was in segregation he was not allowed to see him.<sup>33</sup>

## 2. Visitation by Family and Friends

The *Standards* state that immediate family members, relatives and associates may visit detainees, and that no limitation should be imposed on the number of visitors per detainee.<sup>34</sup> The *Standards* suggest that written procedures should be in place regarding non-attorney visitation, for matters such as hours of visitation, handling money, and searches.<sup>35</sup>

**These provisions of the Standard are being met.** According to the Detainee Guide, detainees are allowed one visit by family and friends per day, limited to one hour.<sup>36</sup> Mr. [b6, b7C] stated that visitation time with family and friends is always cut short by Facility personnel, and that detainees are typically given only a half an hour before a corrections officer enters the room and ends the visit.<sup>37</sup>

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<sup>23</sup> Detention Operation Manual, Detainee Services, Standard 17, Section III.I.2.

<sup>24</sup> Detention Operation Manual, Detainee Services, Standard 17, Section III.H.5 and III.I.12.

<sup>25</sup> Interview with Lt. [b6, b7C].

<sup>26</sup> Interview with Lt. [b6, b7C].

<sup>27</sup> *Suffolk County Sheriff’s Department ICE Detainee Guide* (“Detainee Guide”), p. 9.

<sup>28</sup> Interview with Lt. [b6, b7C].

<sup>29</sup> Interview with Mr. [b6, b7C].

<sup>30</sup> Interview with Lt. [b6, b7C].

<sup>31</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>32</sup> Interviews with Lt. [b6, b7C], Mr. [b6, b7C] and Detainee #2.

<sup>33</sup> Based on Detainee #2’s personal experience while in the Administrative Segregation Unit at the Facility.

<sup>34</sup> Detention Operation Manual, Detainee Services, Standard 17, Section III.H.

<sup>35</sup> Detention Operation Manual, Detainee Services, Standard 17, Section III.A.

<sup>36</sup> Detainee Guide, p. 9.

<sup>37</sup> Interview with Mr. [b6, b7C].

## B. Telephone Access

The *Standards* require that facilities provide detainees with adequate telephone access during waking hours.<sup>38</sup> This includes providing one working phone per 25 detainees at all ICE detention facilities.<sup>39</sup> There are approximately five blue phones on each floor (see section on “Pre-programmed Phones” below).<sup>40</sup> Given that there are about 75 detainees per floor,<sup>41</sup> the requisite ratio of phones to detainees is exceeded.

### 1. Outgoing Calls

**These provisions of the *Standard* are not fully being met, particularly with respect to lack of notice of electronic monitoring and limited access to a non-monitored phone.** The *Standards* state that detainees must have the ability to make free telephone calls to consular offices, legal aid service providers, local courts and government offices and, in personal emergencies, family members.<sup>42</sup> The Facility has several blue phones (mentioned above), which are pre-programmed with the phone numbers of legal aid service providers, consulates, and certain other legal and government offices, enabling free calls to these offices.<sup>43</sup> Instructions are posted on a cork board about ten feet away from the nearest blue phone, but they are only in English, even though the majority of detainees speak only Spanish.<sup>44</sup> We did not test these phones to see if they actually place the calls dialed.<sup>45</sup>

The *Standards* require that detainees should be able to discuss their legal cases over the phone in a private environment without interruptions or being cut off.<sup>46</sup> The blue phones are bolted to one wall of the breakroom of every floor, directly opposite the floor officers’ front desk, therefore, the ability to have a private conversation may be difficult.<sup>47</sup> In addition, according to the *Standards*, detainee legal calls should not be electronically monitored without a court order, and if the facility monitors phone calls, notice of monitoring must be displayed at each monitored phone along with the procedures for requesting an unmonitored call to a legal representative.<sup>48</sup> According to Lt. [b6, b7C], each of the blue phones are electronically monitored.<sup>49</sup> We did not observe a notice alerting detainees to this fact either by the

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<sup>38</sup> Detention Operation Manual, Detainee Services, Standard 16, Section I.

<sup>39</sup> Detention Operation Manual, Detainee Services, Standard 16, Section III.C.

<sup>40</sup> Observation of delegate [b6].

<sup>41</sup> Interview with Lt. [b6, b7C].

<sup>42</sup> Detention Operation Manual, Detainee Services, Standard 16, Section III.E.

<sup>43</sup> Observations of the Delegates.

<sup>44</sup> Observation of delegate [b6].

<sup>45</sup> According to a sample test in February 2006 conducted by [b6] of the PAIR Project and [b6] of CLINIC, two immigration attorneys who visit the Facility frequently, the pre-programmed phones at the Facility **do not work**. Their experience was that once the call is placed to a legal aid service provider, the legal aid provider hears, “This is a free call,” and then the line goes dead. When testing from the Facility, the person making the call hears that the call has not been “accepted.” See attached letter from Ms. [b6] addressed to [b6, b7C] [b6, b7C], the ICE field officer for Boston, regarding telephone access at the Facility.

Detention Operation Manual, Detainee Services, Standard 16, Section III.E and III.F.

<sup>47</sup> Observation of delegate [b6].

<sup>48</sup> Detention Operation Manual, Detainee Services, Standard 16, Section III.K.

<sup>49</sup> Interview with Lt. [b6, b7C].

phones themselves or on the cork board in the breakroom, and the Detainee Guide is silent on this topic.<sup>50</sup> The Detainees were nonetheless aware of the monitoring.<sup>51</sup>

There is one free, non-electronically monitored phone at the Facility for the detainees' use.<sup>52</sup> This phone is a normal corded landline phone located in one of the administrative offices on the first floor of the Facility.<sup>53</sup> According to Lt. [b6, b7C] this telephone is for use by indigent detainees and detainees who wish to have a private phone conversation with their attorney.<sup>54</sup> Lt. [b6, b7C] stated that Officer [b6, b7C], one of the corrections officers at the Facility, unplugs the phone as necessary and brings it to any detainee who calls for it for one of those two purposes.<sup>55</sup>

When we asked how the detainees know when Officer [b6, b7C] will be coming to their floor with the phone, Lt. [b6, b7C] stated that each detainee has access to a button or buzzer that he can press when he wishes to use the phone, which Officer [b6, b7C] will hear and accordingly will bring the phone upstairs to the detainee.<sup>56</sup> When we asked how often Officer [b6, b7C] brings the phone, Lt. [b6, b7C] stated that he often goes "all day long" or "whenever" a detainee needs it.<sup>57</sup> Lt. [b6, b7C] also stated that the longest a detainee may have to wait for use of the phone after requesting it is "a few minutes."<sup>58</sup> However, when we interviewed the Detainees, each stated that Officer [b6, b7C] makes a visit with the phone once per month to each floor during a breaktime, whereupon detainees wishing to use the phone must form a line. Access is solely on a first-come, first-served basis.<sup>59</sup> The Detainees also stated that Officer [b6, b7C] departs with the phone whenever "he feels like it," sometimes after "twenty minutes," and that many detainees never get a chance to use the phone before he leaves and have to wait until the following month.<sup>60</sup>

While the Detainees did not have knowledge as to whether the free phone is electronically monitored, they stated that for calls with family or friends, Officer [b6, b7C] stands close by and monitors phone conversations, but for attorney calls, he gives them privacy.<sup>61</sup> According to Lt. [b6, b7C], if a detainee wishes to speak to his attorney, Officer [b6, b7C] will dial the attorney's phone number, and then let the detainee step into a private room, such as the library, where he can have a private conversation with visual monitoring.<sup>62</sup> Earlier, in a conversation with Lt. [b6, b7C] about whether telephone calls on the free phone were monitored, Lt. [b6, b7C] stated that the free phone is not electronically monitored.<sup>63</sup>

## 2. Incoming Calls and Messages

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<sup>50</sup> Observations of delegate [b6] and Detainee Guide.

<sup>51</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>52</sup> Interview with Lt. [b6, b7C] and Agents [b6, b7C] and [b6, b7C].

<sup>53</sup> Observations of the Delegates and interview with Lt. [b6, b7C].

<sup>54</sup> Interview with Lt. [b6, b7C].

<sup>55</sup> Interview with Lt. [b6, b7C].

<sup>56</sup> Interview with Lt. [b6, b7C].

<sup>57</sup> Interview with Lt. [b6, b7C].

<sup>58</sup> Interview with Lt. [b6, b7C].

<sup>59</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>60</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>61</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>62</sup> Interview with Lt. [b6, b7C].

<sup>63</sup> Interview with Lt. [b6, b7C].

The *Standards* state that telephone messages for a detainee should be taken by detention facility personnel and promptly delivered to the detainee.<sup>64</sup> If the facility receives an emergency telephone call for a detainee, the *Standards* suggest that the facility obtain the caller's name and number and permit the detainee to return the emergency call as soon as possible.<sup>65</sup>

**These provisions of the *Standards* are not fully being met.** As a general rule, Facility personnel will not take messages from incoming calls for detainees, including from attorneys.<sup>66</sup> The only exception is in the event of a family emergency.<sup>67</sup> Lt. [b6, b7C] stated that the Facility used to take messages for detainees, but stopped because detainees and/or their families abused the message policy.<sup>68</sup> Facility personnel now limit message taking solely to emergencies, and will verify the emergency, such as by contacting the hospital where the family member is being treated, before relaying it to the detainee.<sup>69</sup>

### C. Legal Materials

According to the *Standards*, all facilities with detainees "shall permit detainees access to a law library, and provide legal materials, facilities, equipment and document copying privileges, and the opportunity to prepare legal documents."<sup>70</sup>

Each floor of the Facility has a library, which is a small, windowed room with a door, about ten feet by seven feet, to the left of the breakroom.<sup>71</sup> Each library has two tables, a few chairs, one computer containing Lexis-Nexis legal research software, and several reading books.<sup>72</sup> There are no legal texts or hard copy legal resources.<sup>73</sup>

#### 1. Library Access Hours and Space

In regard to library access and space, the *Standards* state that detainees should have access to the library for at least five hours per week, and that the library should provide enough space for legal research and writing and sufficient tables and chairs.<sup>74</sup> Detainees at the Facility have over five hours of breaktime each day,<sup>75</sup> during which they may use the library for as long as they like. In addition, because each library is an enclosed room with a door, detainees can be free of noise and distractions.<sup>76</sup> Even though

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

<sup>65</sup> Detention Operation Manual, Detainee Services, Standard 16, Section III.I.

<sup>66</sup> Interviews with Lt. [b6, b7C] and Agents [b6, b7C] and [b6, b7C].

<sup>67</sup> Detainee Guide, p. 9.

<sup>68</sup> Interview with Lt. [b6, b7C].

<sup>69</sup> Interview with Lt. [b6, b7C].

<sup>70</sup> Detention Operation Manual, Detainee Services, Standard 1, Section I.

<sup>71</sup> Observations of the Delegates.

<sup>72</sup> Observations of the Delegates.

<sup>73</sup> Observations of the Delegates; interview with Lt. [b6, b7C].

<sup>74</sup> Detention Operation Manual, Detainee Services, Standard 1, Section III.G.

<sup>75</sup> Based on notes of Detainee #2 dated February 4, 2006 (forwarded under separate cover), and delegate [b6] [b6] notes from interviews of Mr. [b6, b7C] and Detainee #2. The Detainees stated that breaktime means only to be released from their units into the breakroom; outdoor recreation time is at the discretion of the floor officers, who may or may not take the detainees of their floor outside on any given day.

<sup>76</sup> Observations of the Delegates.

the library is small, based on our interviews with the Detainees and our observation that none of the detainees on break when we visited were using the library, size and space does not seem to be an issue.<sup>77</sup>

## 2. Library Legal Updates, Holdings, and Equipment

The *Standards* state that library materials should be updated and replaced when outdated and that detainees should be granted access to typewriters and/or computers.<sup>78</sup>

**This Standard is not fully being met.** Facility personnel upload updates to the Lexis-Nexis software as they receive them, which is about every 60 days.<sup>79</sup> At the time of our visit, the three computers we inspected (one on each floor) all worked and successfully loaded Lexis-Nexis.<sup>80</sup> The *Standards* also state, however, that the library should contain all thirty of the legal materials listed in Attachment A of Detainee Services, Standard 1, which includes, among other items, a copy of the United States Constitution, a copy of the United States Code and Regulations on Title 8, Aliens and Nationality, translation dictionaries, and self-help materials.<sup>81</sup> The library does not contain physical copies of these materials.<sup>82</sup> They may be included in the Lexis-Nexis software, although we did not verify this. The computers do not have printer access; detainees must take notes of their on-screen legal research.<sup>83</sup> When we brought the lack of printers to the attention of Lt. [b6, b7C] he indicated that he would check into getting hard disks for the detainees so that they could save their documents on disk and give them to officers for printing.<sup>84</sup> Apparently, there used to be a typewriter at the Facility, but it no longer works.<sup>85</sup> Another issue brought to light was that the computers often crash and need to be repaired, which can take months.<sup>86</sup> When this happens, the detainees cannot access Lexis-Nexis and therefore cannot obtain the materials they need.<sup>87</sup>

## 3. Photocopying

The *Standards* state that facilities must make copies of detainees' legal documents as required for court filings.<sup>88</sup> Facility personnel stated that they are responsive to requests from detainees to photocopy materials and the Detainees concurred.<sup>89</sup>

## D. Group Presentations on Legal Rights

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<sup>77</sup> Observations of the Delegates.

<sup>78</sup> Detention Operation Manual, Detainee Services, Standard 1, Standard III.F.

<sup>79</sup> Interview with Lt. [b6, b7C].

<sup>80</sup> Observations of the Delegates.

<sup>81</sup> Detention Operation Manual, Detainee Services, Standard 1, Attachment A.

<sup>82</sup> Observations of [b6] and interview with Lt. [b6, b7C].

<sup>83</sup> Interviews with Mr. [b6, b7C] and Detainee #2 (confirmed by Lt. [b6, b7C] in follow-up question during the tour).

<sup>84</sup> Conversation with Lt. [b6, b7C].

<sup>85</sup> Interviews with Lt. [b6, b7C], Mr. [b6, b7C] and Detainee #2.

<sup>86</sup> Interviews with Lt. [b6, b7C], Mr. [b6, b7C] and Detainee #2.

<sup>87</sup> Interview with Lt. [b6, b7C].

<sup>88</sup> Detention Operation Manual, Detainee Services, Standard 1, Section III.J.

<sup>89</sup> Interviews with Lt. [b6, b7C] and Agent [b6, b7C], Mr. [b6, b7C] and Detainee #2.

The *Standards* state that attorneys and non-profit organizations have the right to conduct legal rights presentation in detention facilities, and that at least one hour of uninterrupted rights presentation should be granted.<sup>90</sup>

**This Standard is being met.** [REDACTED] b6 of the PAIR Project in Boston has been known to come to the Facility about once or twice a month to hold a legal rights presentation for the detainees on a particular floor.<sup>91</sup> She uses the breakfast room of a given floor,<sup>92</sup> which is approximately fifteen feet wide by thirty feet long and glass-paned, providing privacy but enabling visual observation.<sup>93</sup>

The Detainees stated that presenters come during breaktime and detainees must form a line to enter the room.<sup>94</sup> The corrections officers only allow a certain number of detainees to attend the presentations, on a first come, first served basis.<sup>95</sup> The Detainees stated that they have never seen a videotape of their legal rights, but rather, the presentations are always oral.<sup>96</sup>

#### IV. Other Provisions of the *ICE Detention Standards*

##### A. Correspondence

The *Standards* provide that detention facility personnel “shall open and inspect incoming general correspondence and other mail (including packages and publications) for contraband in the presence of the detainee.”<sup>97</sup> Random opening and reading of general mail is permitted if a security concern exists.<sup>98</sup> Incoming special correspondence, which includes all written communication to or from attorneys, legal representatives, judges, courts, government officials, and the news media, may be inspected for contraband only in the presence of the detainee, but it can never be read or copied.<sup>99</sup> Outgoing special correspondence may not be opened, inspected or read.<sup>100</sup> The *Standards* also require that facilities provide detainees with writing paper, writing implements and envelopes at no cost.<sup>101</sup> In addition, facilities must provide indigent detainees with free stamps for mail related to legal matters.<sup>102</sup>

**The detainees raise concerns with special correspondence, both outgoing and incoming, being opened and read, in violation of the *Standards*.** At the Facility, meter-stamped envelopes are provided to indigent detainees for legal correspondence, and ample writing implements and envelopes are provided to all.<sup>103</sup> In addition, the Facility seems to process incoming and outgoing mail within a reasonable time.<sup>104</sup>

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<sup>90</sup> Detention Operation Manual, Detainee Services, Standard 9, Section I and Section III.E.

<sup>91</sup> Lt. [REDACTED] b6, b7C and Agent [REDACTED] b6, b7C stated that Ms. [REDACTED] b6 comes; the Detainees echoed that “someone” comes and holds presentations, but could not recall the presenter’s name.

<sup>92</sup> Interview with Lt. [REDACTED] b6, b7C and Agent [REDACTED] b6, b7C confirmed in interviews with the Detainees.

<sup>93</sup> The Delegates’ observations.

<sup>94</sup> Interviews with Mr. [REDACTED] b6, b7C and Detainee #2.

<sup>95</sup> Interview with Mr. [REDACTED] b6, b7C

<sup>96</sup> Interviews with Mr. [REDACTED] b6, b7C and Detainee #2.

<sup>97</sup> Detention Operation Manual, Detainee Services, Standard 3, Section III.E.1.

<sup>98</sup> Detention Operation Manual, Detainee Services, Standard 3, Section III.E.1.

<sup>99</sup> Detention Operation Manual, Detainee Services, Standard 3, Section III.E.2.

<sup>100</sup> Detention Operation Manual, Detainee Services, Standard 3, Section III.F.2.

<sup>101</sup> Detention Operation Manual, Detainee Services, Standard 3, Section III.J.

<sup>102</sup> Detention Operation Manual, Detainee Services, Standard 3, Section III.I.

<sup>103</sup> Interview with Lt. [REDACTED] b6, b7C and Agent [REDACTED] b6, b7C ; Mr. [REDACTED] b6, b7C separately stated that the Facility provides paper and

In regard to opening and reading mail, the Facility's Detainee Guide states that all incoming mail is opened and searched for contraband, unless the mail is marked "Attorney Client Confidential" or "Privileged Correspondence," is from the courts, or constitutes other privileged correspondence.<sup>105</sup> If privileged, then the mail will be opened in the detainee's presence.<sup>106</sup> The Detainees stated that it has been their experience that all incoming and outgoing mail is opened and read, including legal correspondence.<sup>107</sup>

## B. Access to Medical and Dental Care

The *Standards* require that all detainees have access to medical services that promote detainee health and general well-being.<sup>108</sup> At the Facility, if a detainee claims to have physical ailments, he will be referred to a physician for the next day.<sup>109</sup> If the medical unit is not equipped to treat the detainee, an authorization form will be faxed within one business day to ICE Headquarters for a specialist.<sup>110</sup> Referrals for specialists, including dental, during a detainee's stay at the Facility operate in the same manner.<sup>111</sup> In addition, the *Standards* state that, at a minimum, facilities with more than 200 detainees should have medical personnel available five days per week, and that it should take no longer than 72 hours for a detainee to see a health care specialist upon request.<sup>112</sup>

**While facility staff indicated that medical staff are available, detainees raised concerns about medical care.** Lt. [b6, b7C] stated that medical staff is in the medical unit 24 hours per day, 7 days per week, and that dental staff are available three times per week.<sup>113</sup> In addition, Lt. [b6, b7C] stated that psychologists and/or psychiatrists are accessible and available to the detainees.<sup>114</sup> However, the Detainees stated that it had been their experiences that medical, dental, and mental health professionals are not available, unless the detainee is in dire pain.<sup>115</sup> Even then, it is not quite clear from the Detainees' responses how accessible health care is to detainees, given Detainee #2's account in his letter (attached) of a "Mr. [b6, b7C]" housed with him who allegedly died from lack of medical care.<sup>116</sup> According to the account of Detainee #2, Mr. [b6, b7C] was coughing blood when he arrived, and detainees notified facility staff of his illness, but staff was "not willing to listen."

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writing implements for the detainees.

<sup>104</sup> Based on delegate [b6] experiences in mailing correspondence to detainees at the Facility through this project, and interview with Lt. [b6, b7C].

<sup>105</sup> Detainee Guide, p. 9.

<sup>106</sup> Detainee Guide, p. 9.

<sup>107</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>108</sup> Detention Operation Manual, Health Services, Standard 2, Section I.

<sup>109</sup> Interview with Lt. [b6, b7C].

<sup>110</sup> Interview with Agents [b6, b7C] and [b6, b7C].

<sup>111</sup> Interview with Agents [b6, b7C] and [b6, b7C].

<sup>112</sup> Detention Operation Manual, Health Services, Standard 2, Section III.F.

<sup>113</sup> Interview with Lt. [b6, b7C]; see also Detainee Guide, p. 10.

<sup>114</sup> Interview with Lt. [b6, b7C].

<sup>115</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>116</sup> See letter dated February 4, 2006, signed by Detainee #2 and five other detainees.

In regard to medication, the Detainee Guide states that medication is distributed via a “medication line” in each housing unit every morning and evening.<sup>117</sup> Mr. [b6, b7C] confirmed this, stating that a nurse comes to each floor twice a day to distribute medication.<sup>118</sup>

The Detainee Guide states that if a detainee wishes to be seen at “sick call,” he must fill out a sick call request slip with the reason and submit it to the nurse during the evening medication line.<sup>119</sup> When we asked Mr. [b6, b7C] about medical care, he stated that it has been his experience that if he writes out a medical slip for a headache, for example, he never hears back, and that the malady must be “very serious.”<sup>120</sup> He added that, “If you complain, they tell you, ‘Go back to your units.’”<sup>121</sup> Detainee #2 separately expressed problems with access to medical care and that some detainees are very sick in the Facility and are ignored.<sup>122</sup>

### C. Hunger Strikes

The *Standards* state that detention facilities should have specific procedures in place to have qualified medical staff available for detainees on hunger strike and to monitor the hunger striker.<sup>123</sup> At the Facility, if personnel become aware of a hunger striker, they are supposed to make a note of it and forward it with the detainee’s information to the medical unit, which then is supposed to monitor the detainee in conjunction with ICE.<sup>124</sup> In regard to social workers, psychologists, or psychiatrists at the Facility, Detainee #2 stated that he is not aware of any of these professionals being at the Facility and said that because there is no social worker for a hunger striker to speak to, if someone does claim to be on a hunger strike, the corrections officers threaten them with going to “the hole” (*i.e.*, the “Administrative Segregation Unit,” described below) unless they eat.<sup>125</sup>

### D. Detainee Classification

The *Standards* require that detention facilities use a classification system and physically separate detainees into different categories.<sup>126</sup> A detainee’s classification is to be determined on “objective” criteria, including criminal offenses, escape attempts, institutional disciplinary history and violent incidents.<sup>127</sup> Detainees with no or minimal criminal records should be separated from those with serious criminal records.<sup>128</sup> Detainees with a history of assaultive or combative behavior are not to be housed with non-assaultive detainees.<sup>129</sup>

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<sup>117</sup> Detainee Guide, p. 10.

<sup>118</sup> Interview with Mr. [b6, b7C].

<sup>119</sup> Detainee Guide, p. 10.

<sup>120</sup> Interview with Mr. [b6, b7C].

<sup>121</sup> Interview with Mr. [b6, b7C].

<sup>122</sup> Interview with Detainee #2 and letter by Detainee #2 dated February 4, 2006.

<sup>123</sup> Detention Operation Manual, Health Services, Standard 1, Sections III.A and III.B.

<sup>124</sup> Interview with Lt. [b6, b7C] and Agents [b6, b7C] and [b6, b7C].

<sup>125</sup> Interview with Detainee #2.

<sup>126</sup> Detention Operation Manual, Detainee Services, Standard 4, Section 1.

<sup>127</sup> Detention Operation Manual, Detainee Services, Standard 4, Section III.D.

<sup>128</sup> Detention Operation Manual, Detainee Services, Standard 4, Section III.A and III.E.

<sup>129</sup> Detention Operation Manual, Detainee Services, Standard 4, Section III.F.

**This Standard is not being met.** As described at the beginning of this memorandum, the Facility uses three classifications for detainees: Class I, Class II and Class III.<sup>130</sup> Class I includes non-criminal and non-violent detainees, or detainees who have committed minor offenses.<sup>131</sup> Class II comprises of those guilty of intermediate-level criminal offenses, such as drug-related crimes or automobile theft.<sup>132</sup> Class III comprises the more serious criminal offenders and/or violent/dangerous detainees.<sup>133</sup> Class I is segregated from Classes II and III, and Classes II and III are commingled and housed together, such that, for instance, potentially non-assaultive drug offenders (Class II) are commingled with murderers (Class III), in violation of the *Standards*.<sup>134</sup>

### E. Disciplinary Policy

The *Standards* require that rules of conduct and discipline be posted in English, Spanish, and/or other languages spoken by significant numbers of detainees.<sup>135</sup> Disciplinary action may not be capricious or retaliatory.<sup>136</sup> Further, a detention facility should not allow corporal punishment, deviation from normal food or deprivation of clothing, bedding, personal hygiene products, physical exercise, access to legal and family visitation, telephone access, correspondence or access to law libraries.<sup>137</sup> Punishment may range from loss of certain privileges to segregation for up to, but no more than, 60 days.<sup>138</sup> Incident reports must be taken and investigated within 24 hours of the incident.<sup>139</sup> Detainees have the right to a copy of the incident report, to have an initial hearing before the Unit Disciplinary Committee (“UDC”), to remain silent at any stage of the disciplinary process, to attend the entire UDC hearing, to waive the right to appear at the hearing, to present statements on his/her own behalf, to appeal the UDC’s decision through an appeal process, and to have a staff representative assist in preparing a defense.<sup>140</sup>

**The Facility has disciplinary procedures,<sup>141</sup> but it is not clear whether they are being carried out and/or fairly applied.** The Detainee Guide states that there is a disciplinary board, comprised of an impartial hearing officer, an impartial corrections officer, and a non-uniformed staff member.<sup>142</sup> The Detainee Guide details the potential penalties that can occur pursuant to a guilty finding, including room restrictions, extra work details, and disciplinary confinement.<sup>143</sup> In addition, there is an appeals process by which detainees can appeal the decision of the disciplinary board to the Superintendent of the Facility within seven days following the disciplinary board’s written decision.<sup>144</sup> However, in our interview of Detainee #2, he stated that his hearing pursuant to an incident described

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<sup>130</sup> Interview with Lt. [REDACTED]

<sup>131</sup> Interview with Lt. [REDACTED]

<sup>132</sup> Interview with Lt. [REDACTED]

<sup>133</sup> Interview with Lt. [REDACTED]

<sup>134</sup> Interviews with Lt. [REDACTED] Agent [REDACTED], Mr. [REDACTED] and Detainee #2.

<sup>135</sup> Detention Operation Manual, Security and Control, Standard 5, Section III.A.5.

<sup>136</sup> Detention Operation Manual, Security and Control, Standard 5, Section III.A.2.

<sup>137</sup> Detention Operation Manual, Security and Control, Standard 5, Section III.A.3.

<sup>138</sup> Detention Operation Manual, Security and Control, Standard 14, Section III.A.

<sup>139</sup> Detention Operation Manual, Security and Control, Standard 5, Section III.B.

<sup>140</sup> Detention Operation Manual, Security and Control, Standard 5, Section III.B-E.

<sup>141</sup> Detainee Guide, p. 4.

<sup>142</sup> Detainee Guide, p. 4.

<sup>143</sup> Detainee Guide, p. 5.

<sup>144</sup> Detainee Guide, p. 6.

below was an unfair process, and that the disciplinary board sided with the corrections officers, notwithstanding the exculpatory evidence he brought before them.<sup>145</sup>

## F. Grievance and Disciplinary Procedures

The *Standards* state that each detention facility must develop standard operating procedures that address detainee grievances including emergency grievances and must guarantee against any reprisals.<sup>146</sup> Detainees must be allowed to submit a formal, written grievance.<sup>147</sup> Assistance in filing a formal grievance must be given to illiterate, disabled, or non-English speaking detainees.<sup>148</sup> An informal procedure should also be in place for a detainee to present orally his or her concern to any staff member within five days of the event.<sup>149</sup> In addition, all grievances must receive supervisory review, including guarantees against reprisal, and allow for appeals.<sup>150</sup>

**The delegation has serious concerns regarding detainees' fear of retaliation, and the Detainee Guide and facility staff's discouragement of the use of formal, written grievances.** While the Facility has a formal and informal grievance policy, the Facility discourages detainees from utilizing the formal policy's procedures by mandating that any grievances must first be brought "informally" to an officer.<sup>151</sup> Lt. [b6, b7C] stated that personnel prefer not to use forms and try to "address" grievances before they are documented, and the Detainee Guide states that "all inmates must attempt to resolve issues informally before filing a written grievance."<sup>152</sup> Mr. [b6, b7C] and Detainee #2 indicated that the corrections officers "address" their grievances by threatening them with going to "the hole," and other forms of punishment.<sup>153</sup>

Under the formal grievance policy (summarized in the Detainee Guide), a detainee must file a written complaint concerning an incident, a condition of confinement, or the application of any department policy or procedure, for which redress is sought.<sup>154</sup> The detainee may also bring a serious issue to the attention of the Superintendent of the Facility or the Suffolk County Sheriff.<sup>155</sup> When we spoke to Lt. [b6, b7C] about the formal grievance policy and asked him if there was a form, he said there was and that he would get one for us later. At the end of our tour, when we followed-up with him about obtaining a copy of the form, he stated that actually, Facility personnel try to "address" grievances before they are formalized.<sup>156</sup> We never received a copy of the form.

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<sup>145</sup> Interview with Detainee #2; see also his February 4, 2006 letter in which he transcribed a copy of the Disciplinary Report.

<sup>146</sup> Detention Operations Manual, Detention Services, Standard 5, Section I.

<sup>147</sup> Detention Operations Manual, Detention Services, Standard 5, Section III.A.2.

<sup>148</sup> Detention Operations Manual, Detention Services, Standard 5, Section III.A.2.

<sup>149</sup> Detention Operations Manual, Detention Services, Standard 5, Section III.A.1.

<sup>150</sup> Detention Operations Manual, Detention Services, Standard 5, Sections I. and III.C.

<sup>151</sup> Interview with Lt. [b6, b7C] and Detainee Guide, p. 11.

<sup>152</sup> Interview with Lt. [b6, b7C] and Detainee Guide, p. 11.

<sup>153</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>154</sup> Detainee Guide, p. 11.

<sup>155</sup> Detainee Guide, p. 11.

<sup>156</sup> Interview with Lt. [b6, b7C] and conversations with him during and following the tour.

Separately, each of the Detainees stated that while there are forms, the Detainees feel that they never get read because nothing ever comes of written complaints except for retaliation.<sup>157</sup> When we asked what they meant by retaliation, Mr. [b6, b7C] stated that “they lock you up for anything – in the hole,” or “step on your food,” “steal from your canteen,” “write you up.”<sup>158</sup> When we asked how long a detainee could be placed in “the hole,” Mr. [b6, b7C] stated that it could be anywhere from a few to thirty days.<sup>159</sup>

When we asked Detainee #2 about his experience with the grievance policy, he gave us a detailed account of a situation for which he alleges he was wrongfully blamed.<sup>160</sup> He told us that in early February 2006, during dinnertime, a fellow detainee sought to bring his leftover dinner back to his unit, to reheat for later. According to Detainee #2, the officers working that shift insisted that the detainee throw the food away. Detainee #2 said he and a third detainee then shouted to the officer that that would constitute “wasting food” and that they wanted to see the captain. Detainee #2 told us that while they were all walking back to their units, a fourth detainee shouted to one of the officers, “You prick!” At that point, according to Detainee #2, all of the detainees were told to step into their units, and because Detainee #2 had previously made the comment about wasting food, the officers believed him to be the person who shouted at them. Detainee #2 told us that several officers then entered his cell, pushed him around, threw all of his canteen food on the floor and stomped on it, and then, following what he described as an unfair disciplinary hearing, locked him in “the hole” for four days. He said he felt he was treated “like an animal” and that the corrections officers frequently push around detainees, steal canteen items, or throw their food on the floor and step on it. When we asked about his hearing, he said that he felt it was unfair because it was his word against the corrections officers’, and in the end, the hearing officers have a tendency to side with the corrections officers.<sup>161</sup>

Retaliation by Facility personnel is a common fear of the detainees. Prior to our tour, with the help of [b6] of the PAIR Project, we distributed about 40-50 letters with waivers to specific detainees at the Facility, explaining that we would be touring the Facility in the near future and inquiring as to whether they may be interested in speaking to us about their experiences at the Facility for purposes of this report.<sup>162</sup> Only one waiver was returned to us.<sup>163</sup> We called numerous immigration attorneys and agencies in the Boston area and asked if they had any clients at the Facility who would speak to us when we toured the Facility, and while the attorneys and agencies were all receptive to helping us, when they checked with their clients, all but one refused.<sup>164</sup> The attorneys told us it was because their clients were afraid of retaliation. Neither of those two identified detainees was still at the

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<sup>157</sup> Interviews with Mr. [b6, b7C] and Detainee #2.

<sup>158</sup> Interview with Mr. [b6, b7C].

<sup>159</sup> Interview with Mr. [b6, b7C].

<sup>160</sup> While we were interviewing Mr. [b6, b7C], Detainee #2 was escorted back to his unit by the officers, as breaktime had just ended. While in his unit, Detainee #2 retrieved an eight-page letter (attached), dated February 4, 2006, signed by six detainees, detailing the incident he then proceeded to describe for us.

<sup>161</sup> Interview with Detainee #2; see also his attached letter dated February 4, 2006, where he hand-copied the Disciplinary Report documenting the incident described above.

<sup>162</sup> Ms. [b6] of the PAIR Project distributed about 20 letters and waivers to detainees at the Facility on our behalf, and we mailed about 27.

<sup>163</sup> By the time we toured the Facility, this detainee had been deported.

<sup>164</sup> The one detainee from whom we obtained a signed waiver via his attorney was also deported by the time we toured the Facility.

facility on the date of our tour, so Agent [b6, b7C] chose two English-speaking detainees from a group of detainees on break while we were in the middle of our tour. He chose them by asking detainees, first as a group, and then individually, whether they spoke English. When detainees responded that they did, he asked if they would be willing to speak with us. The two chosen Detainees whom we interviewed both became emotional and agitated during their interviews, and Detainee #2 trembled so badly throughout the interview that he had to hold his hands together to try to control his shaking,<sup>165</sup> for which he apologized and told us it was because he was “really nervous.”<sup>166</sup> When asked why he was nervous, Detainee #2 said he was afraid of getting into trouble or being sent to “the hole” for speaking with us.<sup>167</sup>

### G. Special Management Unit

According to the *Standards*, each facility must have a Special Management Unit (SMU) that can isolate certain detainees from the general population.<sup>168</sup> Each SMU is required to have two sections: (1) administrative segregation, and (2) disciplinary segregation.<sup>169</sup> Administrative segregation is defined as a non-punitive form of segregation that isolates a detainee from others when the detainee’s continued presence in the general population would pose a threat to himself, staff, or others.<sup>170</sup> Detainees in administrative segregation should have the same general privileges as the detainees in the general population, including legal and family visitation, telephone, access to legal rights presentations, and library usage and recreation.<sup>171</sup> Disciplinary segregation is only for detainees whose behavior does not comply with the rules and regulations of the facility.<sup>172</sup> A detainee in disciplinary segregation should nonetheless have access to recreation, personal hygiene material (including access to shave and shower at least three times per week), a law library, legal rights presentations, telephones, correspondence, and legal and family visitation.<sup>173</sup> All facilities should implement procedures for reviewing disciplinary segregation orders.<sup>174</sup>

**This Standard is not fully being met.** The Facility utilizes two types of segregation from the general population: (1) administrative segregation and (2) protective custody.<sup>175</sup> The Facility uses “administrative” segregation, commonly referred to as “the hole,” for disciplining detainees. The Protective Custody Unit is used when the detainee’s safety is at risk.<sup>176</sup> During our interviews, we focused on the “administrative” segregation component. When we asked Lt. [b6, b7C] and Agent [b6, b7C] what rights detainees in administrative segregation have, they answered that they have the “same” rights as detainees in the general population.<sup>177</sup> We took this to mean visitation, recreation and legal rights.

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<sup>165</sup> Observations by the Delegates of the Detainees during our interviews with them.

<sup>166</sup> Interview with Detainee #2.

<sup>167</sup> Interview with Detainee #2.

<sup>168</sup> Detention Operation Manual, Security and Control, Standard 13, Section I.

<sup>169</sup> Detention Operation Manual, Security and Control, Standard 13, Section I.

<sup>170</sup> Detention Operation Manual, Security and Control, Standard 13, Section III.A.

<sup>171</sup> Detention Operation Manual, Security and Control, Standard 13, Section III.D.1.

<sup>172</sup> Detention Operation Manual, Security and Control, Standard 14, Section III.A.

<sup>173</sup> Detention Operation Manual, Security and Control, Standard 14, Section III.D.

<sup>174</sup> Detention Operation Manual, Security and Control, Standard 13, Section III.C.

<sup>175</sup> Detainee Guide, p. 12.

<sup>176</sup> Detainee Guide, p. 12.

<sup>177</sup> Interviews with Lt. [b6, b7C] and Agent [b6, b7C].

However, Detainee #2 told us that at one point while he was there, his attorney came to see him, but that Facility personnel denied visitation rights.<sup>178</sup>

Detainee #2 described the hole as a “cold” and “nasty” place, and said that even the showers are cold.<sup>179</sup> Both of the Detainees seemed to be under the impression that a detainee could be sent to the hole for just about anything.<sup>180</sup> We asked about procedures for going to the hole, and they stated that while it is true that paperwork must be completed documenting the reasons for confinement, the officers can write “anything” to justify sending someone there.<sup>181</sup>

## H. Staff-Detainee Communication

The *Standards* state that a detention facility must implement procedures for formal and informal contact between detainees and ICE staff, including procedures to permit detainees to make written requests to ICE staff and to receive a response within an acceptable timeframe.<sup>182</sup> In addition, detention facilities should provide each detainee with a detainee handbook, which must state that detainees may submit written questions, requests or concerns to ICE staff and indicate the procedures for doing so, including the availability of assistance in preparing the request.<sup>183</sup>

**This Standard is being met.** The Facility provides detainees with the Detainee Guide, which includes the requisite disclosure specified by the *Standards*.<sup>184</sup> According to the Detainee Guide, detainees may communicate with ICE staff via a Request and Reply form, which they may obtain from their unit officer.<sup>185</sup> In addition, ICE agents appear to have a strong presence at the Facility, thereby facilitating any informal communications between detainees and ICE staff.<sup>186</sup> ICE agents occupy a satellite office from the downtown Boston location that is adjacent to the Facility and seem to spend a great deal of time during the week at the Facility.<sup>187</sup>

## I. Religious Practices

The *Standards* require that at IGSA facilities, attempts to participate in religious services be encouraged.<sup>188</sup> Detainees have the right to engage in group religious activities, and each facility should designate a space for religious services without regard to whether such services are mainstream or non-mainstream.<sup>189</sup> Schedules for religious services should be clearly posted on bulletin boards.<sup>190</sup> In addition, religious books and literature should be permitted in accordance with the facility’s policies on incoming publications.<sup>191</sup>

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<sup>178</sup> Interview with Detainee #2.

<sup>179</sup> Interview with Detainee #2.

<sup>180</sup> Interviews with Mr. [REDACTED] and Detainee #2.

<sup>181</sup> Interviews with Mr. [REDACTED] and Detainee #2.

<sup>182</sup> Detention Operation Manual, Detainee Services, Standard 15, Section I.

<sup>183</sup> Detention Operation Manual, Detainee Services, Standard 15, Section III.B.3.

<sup>184</sup> Interviews with Lt. [REDACTED] and the Detainees.

<sup>185</sup> Detainee Guide, p.12.

<sup>186</sup> Observations of delegate [REDACTED]

<sup>187</sup> Interview with Agent [REDACTED]

<sup>188</sup> Detention Operation Manual, Detainee Services, Standard 14, Section III.B.3.

<sup>189</sup> Detention Operation Manual, Detainee Services, Standard 15, Section I. and III.E.

<sup>190</sup> Detention Operation Manual, Detainee Services, Standard 15, Section III.E.

<sup>191</sup> Detention Operation Manual, Detainee Services, Standard 15, Sections I. and II.

**This Standard is being met.** The Facility permits the assembly of detainees for religious purposes. For instance, every Sunday, the detainees hold Catholic services with a member of the clergy in the breakfast room.<sup>192</sup> We are not aware of other religious services taking place, but it is our understanding that Facility personnel would be willing to permit the practice of other religions, besides Catholicism, if the detainees expressed an interest.<sup>193</sup> During our tour, we noticed a Bible in one of the library rooms.<sup>194</sup> In addition, we observed a posting (only in English) for religious services on the bulletin board in the breakroom on one of the floors.<sup>195</sup>

#### K. Detainee Transfers

The *Standards* require that when transferring detainees, ICE take into consideration whether the detainee is represented before the immigration court, and the location of the attorney and the court.<sup>196</sup> In addition, the *Standards* require ICE to notify a detainee's legal representative of record that the detainee is being transferred.<sup>197</sup> Indigent detainees must be permitted to make a single domestic telephone call at government expense upon arrival at their final destination; non-indigent detainees must be permitted to make telephone calls, but at their own expense.<sup>198</sup> Records including the detainee's Alien File and health records must accompany the detainee.<sup>199</sup> A detainee's legal materials, cash, and small valuables must always accompany the detainee to the receiving facility, but larger items may be shipped.<sup>200</sup>

**It is unclear whether this Standard is being met.** According to Lt. [b6, b7C] bed space is always an issue at the Facility and is one reason for having to transfer a detainee from one detention facility to another.<sup>201</sup> Other reasons may include if the detainee has a particular issue with the Facility, such that his continued stay presents a threat to himself or others.<sup>202</sup> Lt. [b6, b7C] and Agent [b6, b7C] stated that it is up to the detainee being transferred to make the phone calls necessary to let people know where he is going, and that Facility personnel will not.<sup>203</sup> We are not clear if ICE, however, will make the requisite phone calls to the detainee's attorney regarding the transfer.<sup>204</sup>

#### L. Human Rights Issues

**The delegation has concerns with sanitary conditions at the facility.** The *Standards* provide for basic human rights, including the right to safe and sanitary facilities and the right to be free from

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<sup>192</sup> Interview with Lt. [b6, b7C]; reaffirmed in interviews with Mr. [b6, b7C] and Detainee #2.

<sup>193</sup> Interview with Lt. [b6, b7C].

<sup>194</sup> Observations of the Delegates.

<sup>195</sup> Observations of delegate [b6].

<sup>196</sup> Detention Operation Manual, Detainee Security and Control, Standard 4, Section I.

<sup>197</sup> Detention Operation Manual, Detainee Security and Control, Standard 4, Section III.A.

<sup>198</sup> Detention Operation Manual, Detainee Security and Control, Standard 4, Section III.G.

<sup>199</sup> Detention Operation Manual, Detainee Security and Control, Standard 4, Section III.D.1 and III.D.6.

<sup>200</sup> Detention Operation Manual, Detainee Security and Control, Standard 4, Section III.E.

<sup>201</sup> Interview with Lt. [b6, b7C].

<sup>202</sup> Interview with Lt. [b6, b7C].

<sup>203</sup> Interview with Lt. [b6, b7C] and Agent [b6, b7C].

<sup>204</sup> Although Agent [b6, b7C] was present throughout the interview with Lt. [b6, b7C] and was in the presence of Lt. [b6, b7C] answering questions about transfers, he did not say anything about ICE's role in the transfer process.

abuse.<sup>205</sup> Both of the Detainees stated that restroom use was a major problem at the Facility.<sup>206</sup> Both indicated that it is a problem first thing in the morning because one has to choose between eating breakfast and using the restroom, since the floor officers will not hold meals for detainees using the restroom facilities, and breakfast only runs from 7:30 a.m. to 8:00 a.m. before the detainees are in lockdown again.<sup>207</sup> The Detainees stated that while there is a buzzer or button in their unit for them to notify corrections officers on their floor if they need something, the officers often do not respond to their requests for hours, so using the restroom during the day while in lockdown is a problem as well.<sup>208</sup> Both Detainees described being treated like “animals” in the way they often have to use plastic bags in their units to relieve themselves.<sup>209</sup> In addition, the *Standards* state that “[o]fficers shall use as little force as necessary to gain control of the detainee.”<sup>210</sup> The Detainees described for us incidents of being pushed and shoved without cause by corrections officers and incidents of corrections officers stepping on their food and stealing canteen items.<sup>211</sup>

## V. Conclusion

The Facility has many policies and procedures in place that reflect the objectives and requirements of the *Standards*. Most notable are the many pre-programmed phones the Facility provides for calls to legal aid service providers, the Lexis-Nexis software on computers for legal research, and generous photocopying privileges. Based on our tour, interviews and observations, however, there are several issues that ICE and the Facility should assess and ameliorate, including the following:

- The rights of detainees in the Administrative Segregation Unit to attorney visitation.
- The adequacy of telephone access in light of the alleged difficulty accessing the non electronically-monitored phone.
- The adequacy of telephone instructions for the pre-programmed telephones, notices of telephone monitoring, and other postings, including those (if any) next to the telephones, and whether such postings should also be in Spanish, in light of the fact that most detainees at the Facility are from Spanish-speaking countries.
- Providing the option of using a non-contact room for detainee meetings with attorneys or their representatives.
- The adequacy of legal materials, and ability to print copies of the materials. The Facility should obtain the hard copy materials listed in Attachment A of the *Standards*, Detainee Services Standard 1, and should ensure that computers are fixed promptly to enable detainees to have meaningful access to them.
- The responsiveness to requests for health care.
- The opening and reading of mail, even special correspondence, whether incoming or outgoing.
- The accessibility of and time allotted for restroom use.

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<sup>205</sup> See, e.g., Detention Operation Manual, Detainee Services, Standard 10, Section I; Health Services, Standard 2, Section I; Security and Control, Standard 13, Sections I & III; Security and Control, Standard 17, Sections I & III.

<sup>206</sup> Interviews with Mr. [REDACTED] and Detainee #2.

<sup>207</sup> Interviews with Mr. [REDACTED] and Detainee #2.

<sup>208</sup> Interviews with Mr. [REDACTED] and Detainee #2; Lt. [REDACTED] had also mentioned a button/buzzer in each housing unit for the detainees to use to call to the corrections officers on their floor.

<sup>209</sup> Interviews with Mr. [REDACTED] and Detainee #2.

<sup>210</sup> Detention Operation Manual, Security and Control, Standard 17, Section I.

<sup>211</sup> Interviews with Mr. [REDACTED] and Detainee #2 (*see supra* p. 14); see also Detainee #2's February 4, 2006 letter.

- The detainee grievance and disciplinary policy, given that the informal policies appear to be superseding and replacing formal written policies, and in light of allegations of retaliation for filing grievances.

Facility Name: **Suffolk County House of Corrections, Boston, Massachusetts**

Date of Tour: **February 24, 2006**

Tour Participants: Dechert LLP attorneys [b6] [b6] and [b6] (with [b6] [b6] and [b6] [b6] for research and preparation)

*\*Standards are Detainee Services Standards unless otherwise indicated. Issues are listed in the order in which they appear in the Report.*

	<b>ICE Standard*</b>	<b>Delegation Observation</b>	<b>Source</b>	<b>ICE Response</b>
1.	<p>Standard 17, Visitation</p> <ul style="list-style-type: none"> <li>▪ III.I.11. If standard operating procedures require strip searches after every contact visit with a legal representative, the facility must provide an option for non-contact visits with legal representatives in an environment that allows confidentiality.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Facility staff indicated that detainees are not strip searched after attorney visits, but detainees reported that they are strip searched after attorney visits (p.4 ¶2). Contact visits with legal representatives are the only option.</li> </ul>	<p>Lt. [b6] [b7] Detainees and #2.</p>	
2.	<p>Standard 16, Telephone Access</p> <p>III.F. The facility shall not restrict the number of calls a detainee places to his/her legal representative, nor limit the duration of such calls by rule or automatic cut-off, unless necessary for security purposes or to maintain orderly and fair access to telephones. If time limits are necessary for such calls, they shall be no shorter than 20 minutes, and the detainee shall be allowed to continue the call if desired, at the first available opportunity. The facility may place reasonable restrictions on the hours, frequency and duration of the other direct and/or free calls listed above [i.e., “other” than calls to detainee’s legal representatives].</p>	<ul style="list-style-type: none"> <li>▪ There is one free, non-electronically monitored phone at the Facility (p.6 ¶2). Facility staff stated that it is available as needed, but detainees reported that it is only available once per month, on a first come, first served basis, so many detainees are unable to use it, and that staff may take the phone away after as short a time as 20 minutes (p.6 ¶3).</li> </ul>	<p>Lt. [b6] [b7] Detainees and #2.</p>	
3.	<p>Standard 16, Telephone Access</p> <ul style="list-style-type: none"> <li>▪ III.E. The facility shall not require indigent detainees to pay for [legal, court-related, consular, emergency calls] if they are local calls, nor for non-local calls if there is a compelling need. The facility shall enable all detainees to make calls to the INS-provided list of free legal service providers and consulates at no charge to the detainee or the receiving party.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The blue telephones are apparently pre-programmed with the phone numbers of legal service providers and consulates (p.5 ¶2), but there are allegedly problems with the pre-programming (p.5 fn.51).</li> </ul>	<p>Delegation observations; letter of legal service providers.</p>	
4.	<p>Standard 16, Telephone Access</p> <ul style="list-style-type: none"> <li>▪ III.I. The facility shall take and deliver telephone messages to detainees as promptly as possible. When facility staff receives an emergency telephone call for a detainee, the caller’s name and telephone number will be obtained and given to the detainee as soon as possible.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Facility personnel generally will not take messages, except in the event of a family emergency (p.7 ¶2).</li> </ul>	<p>Lt. [b6] [b7] Agents and [b6] [b7] Detainee Guide.</p>	

5.	<p>Standard 16, Telephone Access</p> <ul style="list-style-type: none"> <li>III.J. The facility shall ensure privacy for detainees' telephone calls regarding legal matters. For this purpose, the facility shall provide a reasonable number of telephones on which detainees can make such calls without being overheard by officers, other staff or other detainees. Facility staff shall not electronically monitor detainee telephone calls on their legal matters, absent a court order.</li> </ul>	<ul style="list-style-type: none"> <li>There is one free, non-electronically monitored phone at the Facility (p.6 ¶2). Facility staff stated that it is available as needed, but detainees reported that it is only available once per month, on a first come, first served basis, so many detainees are unable to use it (p.6 ¶3).</li> <li>The regular telephones (blue phones) are in a public area without privacy, and are electronically monitored (p.5 ¶3).</li> </ul>	<p>Lt. [REDACTED] Detainees and #2.</p> <p>Delegation observations, Lt. [REDACTED]</p>	
6.	<p>Standard 1, Access to Legal Material</p> <ul style="list-style-type: none"> <li>III.B. Equipment. The 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.</li> </ul>	<ul style="list-style-type: none"> <li>The library computers do not have printers, and there is no typewriter (p.8 ¶3).</li> <li>Lt. [REDACTED] indicated he would check into getting hard disks for detainees, so they could have documents printed (p.8 ¶3).</li> </ul>	<p>Lt. [REDACTED] and Detainees and #2.</p> <p>Lt. [REDACTED].</p>	
7.	<p>Standard 1, Access to Legal Material</p> <ul style="list-style-type: none"> <li>III.C. The law library shall contain the materials listed in Attachment A.</li> </ul>	<ul style="list-style-type: none"> <li>The library does not contain physical copies of the materials on Attachment A (p.8 ¶3).</li> </ul>	<p>Lt. [REDACTED] and delegation observations.</p>	
8.	<p>Standard 3, Correspondence and Other Mail</p> <ul style="list-style-type: none"> <li>III.F. Inspection of Outgoing Correspondence and Other Mail. Outgoing special correspondence will not be opened, inspected, or read.</li> </ul>	<ul style="list-style-type: none"> <li>Detainees stated that outgoing legal ("special") mail is opened and read (p.10 ¶2).</li> </ul>	<p>Detainees and #2.</p>	
9.	<p>Health Services Standard 2, Medical Care</p> <ul style="list-style-type: none"> <li>I. All detainees shall have access to medical services that promote detainee health and general well-being.</li> <li>III.A. Every facility will provide its detainee population with initial medical screening, cost-effective primary medical care, and emergency care.</li> <li>III.E. Dental Treatment. An initial dental screening exam should be performed within 14 days of the detainee's arrival.</li> </ul>	<ul style="list-style-type: none"> <li>Detainees stated that medical, dental, and mental health professionals are not available unless a detainee is in dire pain; otherwise, complaints are ignored (p.10 ¶4, p.11 ¶2).</li> <li>One detainee also stated that staff were not willing to listen to concerns of detainees regarding a detainee named Mr. [REDACTED] who subsequently died in detention (p.10 ¶4).</li> </ul>	<p>Detainees and #2.</p> <p>Detainee #2.</p>	
10.	<p>Standard 4, Detainee Classification System</p> <ul style="list-style-type: none"> <li>III.E.2. Level 2 Classification. ... May not include any detainee with a pattern or history of violent assaults, whether convicted or not.</li> <li>III.F. The classification system shall assign detainees to the least restrictive housing unit consistent with facility safety and security.</li> </ul>	<ul style="list-style-type: none"> <li>The facility houses Class II detainees (convicted of nonviolent crimes) with Class III detainees (a category that includes detainees who are violent or dangerous) (p.12 ¶1).</li> </ul>	<p>Lt. [REDACTED]</p>	

11.	<p>Standard 5, Detainee Grievance Procedures</p> <ul style="list-style-type: none"> <li>III.A.2. Formal/Written Grievance. The OIC must allow the detainee to submit a formal, written grievance to the facility’s grievance committee.</li> </ul>	<ul style="list-style-type: none"> <li>The Facility has formal grievance procedures, but effectively discourages detainees from using them, mandating that detainees first bring informal grievances. (p.13 ¶3).</li> </ul>	Lt. [redacted] e and Detainee Guide.
12.	<p>Standard 5, Detainee Grievance Procedures</p> <ul style="list-style-type: none"> <li>III.D. Retaliation. Staff will not harass, discipline, punish, or otherwise retaliate against a detainee lodging a complaint.</li> </ul>	<ul style="list-style-type: none"> <li>Detainees stated nothing comes of written complaints except for retaliation, including being locked up in “the hole,” having food stepped on or taken, and being “written up” (p.14 ¶¶1+2).</li> <li>According to local attorneys, several detainees did not agree to meet with the ABA delegation because they feared retaliation. The detainees who were selected by Agent [redacted] to meet with the delegation became agitated during their interviews; Detainee #2 trembled and explained he was nervous about getting in trouble or being sent to “the hole” for speaking with the delegation (p.14 ¶3).</li> </ul>	<p>Detainees [redacted] and #2.</p> <p>Delegation observations; Detainees [redacted] and #2.</p>
13.	<p>Security and Control Standard 5, Disciplinary Policy</p> <ul style="list-style-type: none"> <li>III.A.2. Disciplinary action may not be capricious or retaliatory.</li> </ul> <p>Security and Control Standards 13, Special Management Unit (Administrative Segregation)</p> <ul style="list-style-type: none"> <li>III.A. Administrative segregation is a non-punitive form of separation from the general population used when the continued presence of the detainee in the general population would post a threat to self, staff, other detainees, property, or the security or orderly operation of the facility.</li> </ul>	<ul style="list-style-type: none"> <li>Detainees believe a detainee can be sent to administrative segregation for almost any reason (p.14 ¶1, p.16 ¶2).</li> </ul>	Detainees [redacted] and #2
14.	<p>Security and Control Standard 5, Disciplinary Policy</p> <p>Security and Control Standards 17, Use of Force</p> <ul style="list-style-type: none"> <li>I. The use of force is authorized only after all reasonable efforts to resolve a situation have failed. Officers shall use as little force as necessary to gain control of the detainee; to protect and ensure the safety of detainees, staff, and others; to prevent serious property damage; and to ensure the security and orderly operation of the facility.</li> </ul>	<ul style="list-style-type: none"> <li>Detainees described incidents of being pushed and shoved without cause by corrections officers, and incidents of corrections officers stepping on their food and stealing canteen items (p.14 ¶¶1+2, p.18 ¶2).</li> </ul>	Detainees [redacted] and #2.

15.	<p>Security and Control Standards 13, Special Management Unit (Administrative Segregation)</p> <ul style="list-style-type: none"> <li>III.D. Conditions of Administrative Segregation. ...The quarters used for segregation shall be well ventilated, adequately lit, appropriately heated and maintained in a sanitary condition at all times.</li> </ul>	<ul style="list-style-type: none"> <li>Detainee described administrative segregation as a “cold” and “nasty” place, and said showers are cold (p.16 ¶2).</li> </ul>	Detainee #2.	
16.	<p>Security and Control Standards 13, Special Management Unit (Administrative Segregation)</p> <ul style="list-style-type: none"> <li>III.D.13. The facility shall follow the “Visitation” standard in setting visitation rules for detainees in administrative segregation. Ordinarily, a detainee retains visitation privileges while in administrative segregation. ... Detainees in administrative segregation may not be denied legal visitation, but reasonable security precautions will be taken where necessary.</li> </ul> <p>Standard 17, Visitation</p> <ul style="list-style-type: none"> <li>III.I.12. Detainees in either administrative or disciplinary segregation shall be allowed legal visitation.</li> </ul>	<ul style="list-style-type: none"> <li>Detainee said that his attorney came to see him once while he was in administrative segregation, but Facility staff denied visitation (p.16 ¶1).</li> </ul>	Detainee #2.	
17.	Human Rights--Sanitation concerns	<ul style="list-style-type: none"> <li>Detainees stated that using the restroom at night or during daytime lockdown was a major problem at the facility. Requests to use the restroom at these times are sometimes not responded to for hours, so detainees must use plastic bags to relieve themselves. The detainees described this as being treated like “animals” (p.18 ¶2).</li> </ul>	<p>Detainees [REDACTED] and #2.</p>	