

**MEMORANDUM**

**To:** Anthony Tangeman, Deputy Executive Associate Commissioner, Office of Detention and Removal, Immigration and Naturalization Service

**From:** American Bar Association Delegation to San Pedro Service Processing Center Facility<sup>1</sup>

**Re:** United States Immigration and Customs Enforcement (ICE) Implementation of Detention Standards at the San Pedro Service Processing Facility

**Date:** August 1, 2003

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**I. Introduction**

This memorandum summarizes and evaluates information gathered at the San Pedro Service Processing Center Facility in San Pedro, California (“San Pedro SPC”), through a tour of the facility, discussions with Officer In Charge [b6, b7C] Acting Officer In Charge [b6, b7C] [b6, b7C] Chief of Detention [b6, b7C] and ICE Officer [b6, b7C] observations by delegation staff, and interviews of detainees on the July 10, 2003, visit and on a follow-up visit on July 25, 2003.

The former Immigration and Naturalization Service promulgated the “*INS Detention Standards*” in November 2000 (most recently revised on February 11, 2002) to insure the “safe, secure and humane treatment of individuals detained by the INS.” The thirty-six *Standards* contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures and food service. These standards apply to Service Processing Centers (“SPC”), Contract Detention Facilities (“CDF”), and the state and local government centers used by ICE through Intergovernmental Service Agreements (“IGSA”). The *Standards* went into effect on January 1, 2001, for all SPCs and on December 31, 2002, for all CDFs, and state and local facilities. The *Standards* constitute a “floor” and not a “ceiling” for treatment of detainees. In other words, they are meant to establish the minimum requirements that the BCIS must adhere to in its facilities. Each Field Office or Officer in Charge (“OIC”) may, in his or her discretion, promulgate policies and practices affording detainees more enhanced rights and protections than those provided in the *Standards*.

Overall, the delegation felt that the staff of San Pedro SPC is taking steps toward the implementation of the *Standards*. However, the delegates noted the following fundamental problems during the course of the visit:

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1 The delegation was comprised of Latham & Watkins associates – [b6] [b6] and [b6] [b6] – and the following Latham & Watkins summer associates – [b6] [b6] and [b6] [b6] [b6]

- Inadequate private facilities for attorneys not yet retained by detainees to meet privately with detainees. Only detainees with a G-28 on file can access the private rooms where attorneys and detainees can meet without physical barriers. Other attorneys, such as the members of this delegation, are required to communicate with detainees in a small phone booth with a plexi-glass barrier.
- Generally there were insufficient private meeting facilities for counsel and other visitors. There were only five small phone booths and three private attorney visitation rooms. Neither the phone booths nor the visitation rooms are soundproof.
- Inadequacy of library visitation hours and procedures for visiting the library.

## II. The San Pedro Facility

San Pedro SPC is a Service Processing Center located on Terminal Island in San Pedro, California, approximately 20 miles south of Downtown Los Angeles. Access to the facility is reasonably easy, as it is located a short distance from the 110 Harbor freeway.

San Pedro SPC houses between 300 and 400 detainees from various nations at any given time.<sup>2</sup> The detainee population at the facility is approximately 80% male and 20% female. Because San Pedro SPC is a Processing Center, most detainees do not stay longer than two to three months.<sup>3</sup> The average stay is 22 days. The shortest amount of time a detainee has spent at San Pedro SPC was one day and the longest was three years. Almost all of the detainees arrive from Los Angeles County state and federal prisons. The remaining detainees are collected from street operations carried out in Los Angeles.

San Pedro SPC is a secure facility, surrounded by fences with heavy wiring. It is located across from a federal correctional institution, but the two facilities do not share recreation or other facilities. San Pedro SPC consists of three levels. The first and second levels house the male detainees, and the third level houses the female detainees. Among the sexes, there are divisions between criminal and non-criminal (immigration violation only) detainees. The facility consists of seven pods of which five are for men and two are for women.<sup>4</sup>

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2 A general count of the population is conducted daily. On the July 25<sup>th</sup>, 2003, visit, there were 406 detainees. Forty-six were non-criminal female detainees and 52 were criminal detainees. The rest of the population were male detainees (both criminal and non-criminal). When the population exceeds capacity at San Pedro SPC, the detainees are sent to a facility in Santa Ana, which is an IGSA (Ms. [b6] interview with Officer in Charge, [b6, b7C] July 25, 2003.)

3 Ms. [b6] interview with medical personnel, July 10, 2003.

4 A pod consists of a dormitory, bathroom, and eating/socializing area. Detainees spend the majority of their time in their respective pods, except for recreation time, library time or work time. Detainees must always be escorted outside of the pod. Detainees with criminal records are housed separately from those detainees with immigration-only violations. (Ms. [b6] interview with Officer [b6, b7C] July 10, 2003.)

The detainees' schedules are highly regulated. The detainees never leave the pod unless escorted by a guard.<sup>5</sup> The detainees leave the pod for the mandatory one-hour recreation (on weekdays), for the library, for haircuts, for religious visits with the chaplain, and for work duty, if they work in the laundry, kitchen or other area of the facility. During all other times, the detainees remain in the pod. There is also a basement level of the facility which houses administrative units, such as the medical center, processing center, and kitchen.

### III. Observation Of Implementation Of Legal Access Standards

The remainder of this memorandum focuses on portions of the *Standards* relating particularly to areas of legal access, as well as general concerns raised based on observations during the delegation's tour. The stated goal in promulgating these *Standards* was: To insure the "safe, secure, and humane treatment" of the detainees. In particular, the memorandum focuses on San Pedro SPC's *Standards* concerning access to counsel and legal rights, including the following: (1) Visitation; (2) Telephone Access; (3) Legal Materials; and (4) Group Rights Presentations. The memorandum also addresses other concerns observed during the course of the visit including: Access to Recreation, Access to Medical Care and Religious Issues.

#### A. Visitation

Permissible visitors at San Pedro SPC include attorneys, legal representatives, friends, family and media. Contact visits are only permitted between attorneys retained by the detainees who have also filed the required G-28 form. All other visitors must communicate with detainees via phone.

##### 1. Visitation by Attorneys

###### a. Visitation Times

According to the *Standards*, legal visitation should be allowed seven (7) days a week for a minimum of eight (8) hours on weekdays, and four (4) hours on weekends. Legal visitations should not be terminated for meals or routine official counts. Procedures should be in place to permit the detainee to receive a meal, or recreation, after the interview.

Our tour guide, Officer [REDACTED] b6, b7C indicated that detainees are free to meet with their retained attorneys whenever they desire. There are three private attorney meeting rooms where the detainees are able to have contact visits. The guide informed us that meetings are not interrupted for meals or for counts. The head of the kitchen confirmed that hot meals are kept for detainees in attorney meetings for up to two hours after the designated lunch hour. If the meeting lasts longer, the detainee will receive a boxed lunch in his or her pod.

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5 Men must always be escorted by at least two security guards, and women must always be escorted by at least one security guard. (Ms. [REDACTED] b6 interview with Officer [REDACTED] b6, b7C, July 10, 2003).

The detainees interviewed on July 10, 2003, were aware of the visitation hours. Two of the detainees stated that they only had had one contact with their attorney at the facility.<sup>6</sup> They did not have any problems accessing their attorneys. Another detainee stated that she also did not have problems with attorney visitation.<sup>7</sup> She did state, however, that she was patted down after an attorney visit, but added that she is patted down any time she is moved within the facility.<sup>8</sup> A fourth detainee stated that he had never visited with an attorney during his detention because he chose not to retain a new attorney after his former attorney dropped his case.<sup>9</sup> A fifth detainee noted that although he called and requested representation, the government refused to grant his request for legal counsel.<sup>10</sup>

b. *Attorney Access*

The *Standards* provide that attorneys without bar cards must be granted access if they show other available documentation to demonstrate bar membership. An attorney or an accredited representative should not have to submit a G-28 for a pre-representation interview. In addition, upon presentation of a letter of authorization from a supervising attorney, legal assistants, law students, law graduates, and non-attorneys with appropriate identification should be allowed entry. Mental and medical health professionals and interpreters, with appropriate identification, should also be allowed entry.

Officer [b6, b7C] indicated that attorneys need not submit a G-28 form in order to interview or talk to a detainee. However, he did state that only attorneys with a G-28 on file could communicate with their detainee client in the private attorney visitation rooms. Other attorneys would be required to use the phone booths to communicate with any detainees.<sup>11</sup> A legal assistant for a detainee's lawyer may also use the private visitation rooms. In order to do so, the legal assistant must have a letter on the lawyer's letterhead indicating that they are the representative and the lawyer must also have a G-28 form on file.

c. *Security Concerns*

The *Standards* provide that, in ICE owned-and-operated SPC facilities, detainees should not be strip searched after legal visitation, unless there is reasonable suspicion that a detainee is concealing contraband.

At San Pedro SPC, according to Officer [b6, b7C], detainees are not strip searched after a legal visitation. [b6, b7C] did state that the detainees may be subject to pat

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<sup>6</sup> Ms. [b6] interview with Detainee 3, July 10, 2003; Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>7</sup> Ms. [b6] interview with Detainee 4, July 25, 2003.

<sup>8</sup> Ms. [b6] interview with Detainee 4, July 25, 2003

<sup>9</sup> Ms. [b6] interview with Detainee 1, July 10, 2003.

<sup>10</sup> Ms. [b6] interview with Detainee 6, July 25, 2003.

<sup>11</sup> Ms. [b6] interview with Officer [b6, b7C] July 10, 2003.

down searches after a legal visit.<sup>12</sup> However, one of the detainees who consulted an attorney during his detention stated that he was not subject to any type of search afterwards.<sup>13</sup>

d. *Access to Contact Information for Legal Services*

The *Standards* provide that information lists with pro bono and non-governmental agency information should be provided in the detainee's language, updated, posted clearly, and accompanied by instructions on how to contact such agencies.

One of the detainees indicated that while information regarding legal services is posted, the information is useless because the organizations listed are of no help. The organizations either do not answer phone calls or inform detainees that they cannot be of any assistance.<sup>14</sup> Another detainee expressed major concern regarding the pro bono legal services. She said that although she has her own lawyer, many of the other female detainees have problems obtaining help from lawyers. She said that the list of pro bono representation was outdated in that the numbers were incorrect or the people listed no longer practice law.<sup>15</sup> Yet another detainee stated that he had never called any of the legal services.<sup>16</sup>

e. *Visitation Conditions*

The *Standards* provide that facilities should allow detainees to meet privately with their current, or prospective, legal representatives and legal assistants, and to meet with their consular officials.

At San Pedro SPC, only attorneys representing a detainee and who have a G-28 form on file may use the private attorney visitation rooms. The rooms were fairly well-lit and consisted of a table and two or three plastic chairs. There are only three such rooms in the entire facility. With a population of at least 300 detainees, the number of rooms seems inadequate to accommodate all detainees' needs. However, there is no set requirement regarding the number of visitation rooms a facility must provide. In response to our concern, Officer [b6, b7C] stated that he had never encountered a situation where a detainee needed to use one of the attorney rooms and was unable to because it was occupied. We noted that a normal tone of conversation in the private attorney room with the door closed could easily be heard in the hallway outside. Because a guard always stands outside the rooms during a visit, the confidentiality of the conversation could be breached.

None of the detainees interviewed expressed difficulties in accessing a room for attorney visits. One detainee did note that throughout his visit with the attorney, a guard stood outside in the hallway area.<sup>17</sup> However, none of the detainees we interviewed had had

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<sup>12</sup> Ms. [b6] interview with Officer [b6, b7C] July 10, 2003.

<sup>13</sup> Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>14</sup> Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>15</sup> Ms. [b6] interview with Detainee 4, July 25, 2003.

<sup>16</sup> Ms. [b6] interview with Detainee 1, July 10, 2003.

<sup>17</sup> Ms. [b6] interview with Detainee 2, July 10, 2003.

significant contact with their attorneys. Therefore, it is difficult to ascertain whether the lack of rooms does, in fact, negatively impact access to legal representation.

Other attorneys conducting pre-representation interviews or other non-representation communications meet with detainees in one of five (5) small booths provided in the visitation area. The visitation area is cramped, dimly lit, and dilapidated. The visitor and detainee communicate by way of a phone in the booth. Some of the phones were very old and had pieces missing from them, although they worked. The booths have a thick pane of Plexiglas between the visitors and the detainees, but sound could easily be heard despite the Plexiglas. In addition, conversations were audible through the receivers of adjacent booths. This area is also apparently where multiple family members can visit one detainee, although this would be difficult. We could hardly fit two attorneys in one booth.

## 2. Visitation by Family, Friends and the Media

### a. *Visitation Times and Duration*

The *Standards* provide that Facilities should permit authorized persons to visit detainees within secure and operational constraints. To maintain detainee morale and family relationships, INS encourages visits from family and friends. Additionally, facilities should permit members of the media and non-governmental organizations to have access to non-classified and non-confidential information about the facility's operation. The *Standards* provide that visiting hours should be clearly posted and permitted during set hours on weekends and holidays. Special arrangements should be available for family members who are unable to visit during regular visiting hours. Visits should last at least 30 minutes.

Visits by family and friends at the San Pedro SPC are always non-contact visits. The visitation hours were clearly posted in an area near the phone booths and are as follows: Tuesdays and Thursdays from 6 pm to 9 pm, and Saturdays, Sundays, and Holidays from 8 am to 11 am, 1 pm to 4 pm, and 6 pm to 9 pm. Two of the detainees confirmed that these were indeed the hours of visitation.<sup>18</sup> Any family or friend can visit the detainees, including children.<sup>19</sup> Three detainees interviewed stated that their family members or friends had visited them.<sup>20</sup> All three indicated visits lasted approximately 30 minutes, depending upon the number of visitors. One detainee stated that he could only visit with his wife for 15 minutes if other detainees were waiting for their turn and 30 minutes if no one was waiting.<sup>21</sup> One of the detainees had a family member detained in the same facility and housed in the same pod.<sup>22</sup>

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<sup>18</sup> Ms. [b6] interview with Detainee 1, July 10, 2003, Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>19</sup> Ms. [b6] interview with Detainee 3, July 10, 2003, Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>20</sup> Ms. [b6] interview with Detainee 1, July 10, 2003, Ms. [b6] interview with Detainee 3, July 10, 2003, Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>21</sup> Ms. [b6] interview with Detainee 3, July 10, 2003.

<sup>22</sup> Ms. [b6] interview with Detainee 4, July 25, 2003

Two detainees stated that visitors were able to leave a maximum of \$50 for the detainees and that access to the money was easy.<sup>23</sup> The *Standards* require, and Officer [REDACTED] confirmed, that if a visitor leaves more than \$50, the facility must hold on to the remainder and distribute it to the detainee when the detainee's money drops below \$50.<sup>24</sup> However, one detainee complained that if a visitor attempted to leave more than \$50, the officers at the facility refused to retain the extra amount over \$50.<sup>25</sup> Instead, the visitor was told to mail in the extra amount. Visitors are not allowed to give detainees any other items.<sup>26</sup>

b. *Visitation by the Media*

In light of September 11<sup>th</sup> and heightened security concerns, all media visits, except for visits by the local media, must be approved through INS headquarters. Local media visits are approved by the public relations office of the San Pedro facility.<sup>27</sup>

There have been no media visits in the past year because headquarters is unwilling to grant visits.<sup>28</sup> However, a typical media visit would be set up in one of the private attorney visitation rooms or in the conference room and would include a person who takes notes. If the media wishes to take photographs, arrangements are made beforehand. During the visit, the media must follow the exact procedures that they and the facility mutually agreed upon prior to the visit.

Although media visits have been limited, Officer [REDACTED] did indicate that the facility allows frequent tours of the facility by students from law schools and universities and other interested individuals.

**B. Telephone Access**

The *Standards* provide that “[f]acilities holding INS detainees shall permit them to have reasonable and equitable access to telephones.”<sup>29</sup> In particular, facilities shall have at least one telephone for every 25 detainees held, shall inform detainees in writing if telephones are monitored and how to make an unmonitored call to a court or legal representative, and shall allow detainees to make direct (rather than collect) calls to consular and immigration officials, state and federal courts, legal service providers, government offices, and family in the case of emergency.

San Pedro SPC appears to have adequate telephones for use by the detainees. There are three telephones in the recreation yard in addition to the six telephones in each

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<sup>23</sup> Ms. [REDACTED] interview with Detainee 1, July 10, 2003, Ms. [REDACTED] interview with Detainee 2, July 10, 2003.

<sup>24</sup> Ms. [REDACTED] interview with Officer [REDACTED], July 10, 2003.

<sup>25</sup> Ms. [REDACTED] interview with Detainee 2, July 10, 2003.

<sup>26</sup> Ms. [REDACTED] interview with Detainee 3, July 10, 2003.

<sup>27</sup> Ms. [REDACTED] interview with Officer in Charge, [REDACTED] July 25, 2003.

<sup>28</sup> Id.

<sup>29</sup> *INS Detention Standard: Telephone*, at 1.

dormitory pod (the pods house a maximum of seventy detainees). Detainees report that that telephones are often busy but there generally is not a long wait for the phones. Detainees also say that phones are in good repair and are not often out of order; officers at the facility say that detainees quickly report when a telephone is not functioning. Phone cards are available and easily purchased by the detainees. One detainee said that he was able to talk for approximately 25 minutes using a five dollar card, but his calls were to Ventura County and not long-distance.<sup>30</sup> Detainees are also allowed to make collect calls. Additionally, there is an answering service for when people outside of the facility place calls to the detainees. Such messages are delivered to the detainees throughout the day.

There are two significant problems with the San Pedro telephone system. The first is that there is no sense of privacy amongst the detainees. Detainees articulated their belief that their calls are recorded and that there is no way to make private calls; they are thus guarded about what they discuss on the telephone.<sup>31</sup> The detainees in the segregated population can only use phones that can be monitored by staff. While Officer [b6, b7C] claims that the staff does not monitor such calls, this monitoring mechanism could breach attorney-client privilege.<sup>32</sup> The second issue is the lack of current contacts for legal services. There is a list in the library that names ten legal services that the detainees may call for free, but the resources are out of date.<sup>33</sup>

### C. Legal Materials

#### 1. Legal Materials

The *Standards* require the ICE facility library to maintain the legal materials listed in Attachment A-2 of the *Access to Legal Materials* chapter of the *Detention Operations Manual*. These materials must be updated regularly and supplemented with timely information regarding significant regulatory and statutory changes affecting the detention and deportation of aliens. A current list of available texts and materials should be posted in the library. To ensure these requirements are met, the facility must designate an employee with responsibility for inspecting and maintaining the library materials in good order.

When asked if there is a librarian in charge of updating and maintaining the material, Officer [b6, b7C] informed us that the Recreation Specialist is currently in charge of the materials which are updated whenever new material is sent by the publishing company.<sup>34</sup> He said that while they used to get complaints of lost or stolen material, those complaints have

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<sup>30</sup> Ms. [b6] interview with Detainee 1, July 10, 2003.

<sup>31</sup> Interview with Detainees 2, 3, and 4. Detainee 4 also feels that the calls must be monitored because the guards know more about the progress of her case than she can otherwise explain. Detainee 2 reported that guards do not make a habit of eavesdropping on telephone conversations, though there is no way to make a private phone call to an attorney. Detainee 3 refrains from calling his attorney from the facility.

<sup>32</sup> Interview with Officer [b6, b7C]

<sup>33</sup> Interview with Detainee 4. She said that in the course of helping other detainees with their cases, many of the numbers given were either old and out of service or belonged to lawyers who did not work on immigration matters. Detainee 2 also reported that the services listed were of no help.

<sup>34</sup> Interview of Officer [b6, b7C], Officer [b6, b7C], and Officer [b6, b7C] July 25, 2003. Officer [b6, b7C] told Ms. [b6] that the facility is in the process of trying to hire a new librarian.



stopped. When they discover missing material, the staff usually copies the exact material from the CD-ROM on the computer and inserts it into the book.<sup>35</sup>

A list of the legal materials was posted in the library and a checklist of the materials is completed daily. The legal collection included the following materials.

- Bender's on Immigration & Naturalization Act Service (CD-ROM)
- Bender's Immigration Regulation Service (1 & 2), Plus Supplement (CD-ROM)
- Bender's Immigration Case Reporter (1, 2, 22)
- Bender's Immigration Bulletin (1, 2, 3, 4, 5, 6, 7) (CD-ROM)
- Administrative Decisions Under the Immigration and Nationality Laws (Vol. 1 to Vol. 22)
- Title 28 USCA Federal Rules of Appellate Procedure & Supreme Court (28A and 28B)
- Title 8 USCA Aliens & Nationality (1 to 1226, 1227 to 1350, 1351 to end)
- Supplement Agreement "Carecen vs. Reno"
- Constitution of the United States of America
- Black's Law Dictionary 7<sup>th</sup> Edition
- Criminal procedure 2<sup>nd</sup> Edition by Lafave Israel
- Rights of Prisoners 3<sup>rd</sup> Edition by Mushlin (1, 2, 3)
- Federal Habeas Corpus, Practice & Procedure 4<sup>th</sup> Edition (1 & 2)
- Immigration Law and Defense by National Lawyers Guild 2003 (1 & 2)
- Immigration Law and Crimes by National Lawyers Guild 2002
- Daily Journal – Daily Appellate Report (1, 6, 7)
- Immigration briefing by West Group (2001 & 2002) (CD-ROM)
- Guide for Immigration Advocates, 1992

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<sup>35</sup> Id.

- Interim Decisions (Vol. 1: 2526-3340, 3341-3417; Vol 2: 3407-3433; Vol. 3: 3434-3483)
- Interpreter Releases (1,2,3,4,5,6) (CD-ROM)
- Lawyer's Committee Handbook on Representing Asylum Applicants
- Federal Immigration laws & Regulations 2003
- California Penal Code, 2002 Desktop Edition
- California Vehicle Code, 2003 Desktop Edition
- Federal Criminal Code and Rule, 2003
- Legal Research and Writing, 5<sup>th</sup> edition
- Legal Research in a Nutshell
- Spanish/English Dictionary
- Spanish/English Law Dictionary
- Human Rights Watch World Report 2002
- Country Report on Human Rights Practices 2002 (Vol. 1 & 2)
- Amnesty International Report 2000
- Title 28, United States Code Annotated, Rules, Appellate Procedure, U.S. Court of Appeals (Vol. 1: Circuits 1<sup>st</sup>-6<sup>th</sup>; Vol. 2: Circuits 7<sup>th</sup> – 9<sup>th</sup>; DC)
- UHNCR Handbook on Procedures & Criteria for Determining Refugee Status, Reedited Jan. 1992
- Considerations for Asylum Officer Adjudicating Asylum claims from Woman
- Illegal Immigration Reforms & Immigrant Responsibility Act of 1996; Special Supplement 1996
- Code of Federal, Title 8, Aliens & Nationality; Immigration Laws & Regulations, 2002
- Immigration and Naturalization Service Basic Law Manual (1000 pgs outdated 1995)

- Directory of Nonprofit Agencies that Assist Persons in Immigration Matters.
- Detainee Handbook
- Phone Books (Los, Angeles, Los Angeles County, Long Beach, San Pedro & South bay)
- Criminal Procedure, Constitutional Limitations 6<sup>th</sup> edition.

The detainee handbook is distributed to the detainees when they first arrive and is available in English, Spanish and Chinese. Most of the other books were fiction and magazines. Officer [b6, b7C] indicated that detainees could request material using request forms if they need legal sources that are not available in the library.<sup>36</sup> If a detainee requests material, which Officer [b6, b7C] reported has not happened for about 2 years, the request is sent to the Legal Department which determines whether the material is appropriate.<sup>37</sup>

We asked various officers and detainees about assistance using the legal material. During our tour, our group noticed that the facility employees present in the library were for security purposes and were unable to provide detainees with assistance with the material. Officers [b6, b7C] and [b6, b7C] confirmed that there is no assistance with the material. They explained that detainees had never asked for legal assistance, and even joked that the detainees knew more about the process and regulations than the officers.<sup>38</sup>

In fact, Officer [b6, b7C] reported that detainees seek help from other detainees for translation of the written material and for legal advice. Officer [b6, b7C] also mentioned that detainees compensate detainees offering help. Officers [b6, b7C] and [b6, b7C] admitted that while this is against the policy of the detention facility, it cannot be easily be regulated in the facility.<sup>39</sup>

## 2. Access to the Library, Equipment and Holdings

The *Standards* mandate that each facility devise a flexible schedule to permit all detainees' use of the law library for a minimum of five hours per week. These five hours cannot cause a detainee to miss a meal, recreation time or other planned activity.

Officer [b6, b7C] stated that detainees visit the library in groups of about 10 detainees. Both Officer [b6, b7C] and Detainee 3 reported that detainees are allowed to use the library for one hour each day, that the timing varies each day, and that library time does not cut into recreation time. They both also indicated that detainees with upcoming court dates are permitted to access the library more often.<sup>40</sup> In fact, Officer [b6, b7C] indicated that when a

<sup>36</sup> Interview of Officer [b6, b7C] July 10, 2003.

<sup>37</sup> Ms. [b6] interview of Officer [b6, b7C] Officer [b6, b7C] and Officer [b6, b7C], July 25, 2003.

<sup>38</sup> Id.

<sup>39</sup> Id.

<sup>40</sup> Interview with Officer [b6, b7C] July 10, 2003. Ms. [b6] interview with Detainee 3, July 10, 2003.

detainee is busy preparing for a court appearance or a filing, he may request for extra time in the library. However, because recreation is mandatory, he is not released from his recreation time. Also, Detainee 2 noted that while detainees do not have to choose between recreation and library time, sometimes the library hours coincide with recreation time, in which case the detainee will be pulled from recreation and taken to the library.<sup>41</sup>

Detainee 2 also revealed that while the materials are helpful, he has only been to the library once because the detainees fight over who gets to go to the library. Detainee 2 also thinks that the time and number limit (10 detainees at a time and one hour a day) is inadequate. Detainee 2 complains that there are no pens to fill out the forms. Only pencils are available which can pose problems when photocopying.<sup>42</sup> Detainee 6 indicated that the officers on duty in the library sometimes lend pens to the detainees.<sup>43</sup>

Detainee 4 finds the legal materials lacking. She is particularly disappointed with the lack of Internet access. She claims that she can access Board of Immigration Appeals decisions on the computers, but feels that they are not up-to-date or helpful.<sup>44</sup>

The information regarding access rights to all detainees for 5 hours per week is inconsistent with the fact that Officer [b6, b7C] told our delegation that there are between 300 and 400 detainees at the facility.<sup>45</sup> Disregarding the additional limitations precluding commingling among the male and female detainees, criminal and non-criminal detainees, and the segregated and non-segregated detainees, there is still insufficient time in the week for the library visitations. Assuming 300 detainees taken in groups of 10, the library would have to accommodate 30 groups of 10 detainees for one hour every day, which is extremely difficult to schedule. Questions linger about whether voluntary participation discourages use. This issue might explain why Detainee 2 has only been to the library once.<sup>46</sup>

Segregated populations within the facility are not normally allowed to visit the library.<sup>47</sup> Instead, materials are brought to disciplinary segregated detainees upon request. Those in protective custody are sent to the library only if there is a specific request to visit and the staff and library have time to accommodate the request.<sup>48</sup> Officer [b6, b7C] indicated that requested legal material plus an assortment of other material are brought through the restricted area on a cart and distributed to segregated populations according to their interest. When these

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41 Ms. [b6] interview with Detainee 2, July 10, 2003.

42 Id.

43 Ms. [b6] interview with Detainee 6, July 25, 2003.

44 Ms. [b6] interview with Detainee 4, July 25, 2003.

45 Ms. [b6] interview with Officer [b6, b7C] July 10, 2003.

46 Ms. [b6] interview with Detainee 2, July 10, 2003.

47 Ms. [b6] interview of Officer [b6, b7C] July 25, 2003.

48 Id.

legal materials are on the cart in the restricted access part of the facility, they are unavailable to the remainder of the detainee population in the library.<sup>49</sup>

### 3. Library Conditions

The *Standards* mandate that the San Pedro SPC maintain a law library that is well lighted, reasonably quiet and large enough to support legal research and writing. It must also contain an adequate number of tables and chairs to accommodate all detainees who wish to use the facility. Finally, the library should provide one typewriter or computer per five detainees, as well as sufficient writing materials and texts to enable detainees to conduct research and prepare legal documents.

When we visited the library there were two or three detainees on the computers and the typewriter. The room was a good size and there were sufficient chairs and tables for the detainees to do work on. In addition, as Detainee 6 indicated, the detainees have access to paper and pencils, but not pens. He added that detainees could borrow pens from the library security if they need one.<sup>50</sup>

There was a ratio of one typewriter or computer for every five detainees that would be visiting the library on a given shift. CD-ROMs with legal material are loaded onto the computers.<sup>51</sup> These are duplicates of materials already offered in printed form. In addition, the detainees can perform word processing functions on the computers but are unable to save their work.<sup>52</sup>

### 4. Photocopies and Mail

Officers [b6, b7C] and [b6, b7C] assured our delegation that photocopies and mail were available free of charge unless detainees were abusing the privilege. They offered the example of a detainee who is fighting his case for whom they recently made 57 copies of some documents and mailed out 3 boxes of correspondence.<sup>53</sup>

Detainee 2 also reported that making photocopies is free, but the amount copied during a given visit to the library depends on the officer. The detainees have to give the materials to be copied to the officer, who then makes the copies for the detainees.<sup>54</sup> There is no copy machine in the library.

Detainee 2 also reported that a detainee can mail a letter by going to the library and asking for an envelope. They are provided with stamps and envelopes free of charge and

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<sup>49</sup> Id.

<sup>50</sup> Ms. [b6] interview with Detainee 6, July 25, 2003.

<sup>51</sup> Ms. [b6] interview of Officer [b6, b7C] July 25, 2003.

<sup>52</sup> Id.

<sup>53</sup> Ms. [b6] interview of Officers [b6, b7C] and [b6] July 25, 2003.

<sup>54</sup> Ms. [b6] interview with Detainee 2, July 10, 2003.

then the mailroom mails it.<sup>55</sup> Officer [b6, b7C] confirmed that detainees are furnished with stamps and envelopes if they cannot afford them.<sup>56</sup> Detainee 2 noted that problems arise from the fact that in order to request an envelope, the detainee must go to the library and only 10 detainees can go for one hour a day.<sup>57</sup>

#### 5. Assistance for Illiterate and Non-English Speakers

The *Standards* provide that detainees who are not proficient in English or who need other assistance in preparing legal documents should have the opportunity to seek such assistance from other detainees or *pro bono* counsel.

In response to an inquiry about whether detainees are permitted to help each other, Officer [b6, b7C] replied that while they are allowed to help each other, it does not happen frequently.<sup>58</sup> On the other hand, Officer [b6, b7C] reported that detainees seek help from other detainees for translation of the written material and for legal advice.<sup>59</sup>

Officers [b6, b7C] and [b6, b7C] confirmed Officer [b6, b7C] assertion that all of San Pedro SPC's legal material is in English. They also indicated that if the detainee required translations they could request them through their lawyers. They did not recall any recent requests for interpretation of legal materials, but assured us that if interpretation services were requested, detainees would be accommodated. They explained that in addition to requesting help from literate English-speaking detainees, most detainees learned some measure of English while incarcerated in criminal detention facilities. Again, Officers [b6, b7C] and [b6, b7C] suspected that detainees charge each other for translation assistance.<sup>60</sup>

#### 6. Notaries, Certified Mail, and Miscellaneous Needs Associated with Legal Matters

The *Standards* require that "the facility shall provide assistance to any unrepresented detainee who requests a notary public, certified mail or other such services to pursue a legal matter" if the detainee is unable to meet the need through family members or community organizations.<sup>61</sup>

Officers [b6, b7C] and [b6, b7C] proudly confirmed that they make arrangements for notaries public to visit the facility for those detainees that request provisions. When asked

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<sup>55</sup> Id.

<sup>56</sup> Interview with Officer [b6, b7C] July 10, 2003.

<sup>57</sup> Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>58</sup> Ms. [b6] interview with Officer [b6, b7C] July 10, 2003.

<sup>59</sup> Ms. [b6] interview of Officers [b6, b7C] and [b6, b7C] July 25, 2003. Detainee 4 also said that she had helped other female detainees work on their cases, particularly those with limited English skills. Ms. [b6] interview with Detainee 4, July 25, 2003.

<sup>60</sup> Id.

<sup>61</sup> Detention Operations Manual, Section 1(P) "Notaries, Certified Mail, and Miscellaneous Needs Associated with Legal Matters."

whether this service is provided free of charge, the surprised officers responded, “well, *we* don’t pay for it.” The officers explained that the detainees’ lawyer or relatives usually pay for the expense. Certified mail is provided to the detainees, though it was not apparent whether this service was free.<sup>62</sup>

#### D. Group Rights Presentations

The *Standards* provide that facilities shall permit authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law, and procedures consistent with the security and orderly operation of the detention facility. All facilities must cooperate fully with authorized persons seeking to make such presentations.

According to Officer [b6, b7C] quite some time had passed since the last Group Rights Presentation.<sup>63</sup> He stated that organizations were welcome to give presentations, but that recently no organizations had expressed an interest to do so. During the tour of the library, Officer [b6, b7C] indicated that the “Know Your Rights” video is played once a day, as well as during processing when detainees first arrive at the San Pedro SPC.

In contrast, on our subsequent July 25<sup>th</sup> visit, Officers [b6, b7C] [b6, b7C] and [b6, b7C] all stated that Group Rights Presentations are conducted every Tuesday. The presentations are conducted in the courtroom. There was some uncertainty as to which organizations make the presentations, but Officer [b6, b7C] stated that it is always Catholic Charities. We were further informed that the number of detainees attending these presentations varies depending upon the interest level. There are up to two presentations on Tuesdays and twenty detainees can attend per presentation. The presentations last between one hour and one and a half hours. New detainees are given preference in attending the presentations, but all detainees not in segregation may sign up to attend.<sup>64</sup>

Officer [b6, b7C] confirmed that the presentations do not infringe on legal visitation rights, meals, recreation, or other activities. The organization provides the facility with a list of materials that will be distributed or discussed in the presentation, and Officer [b6, b7C] stated that objections have not been made to these materials. As the regulations provide, posters are placed in the pods forty-eight hours in advance in order to announce presentations.

Despite the assertions by Officers [b6, b7C] [b6, b7C] and [b6, b7C], none of the detainees we interviewed had ever heard of Group Rights Presentations, let alone attended one.<sup>65</sup> Three of the detainees interviewed indicated that they had seen the “Know Your Rights” video and that it

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<sup>62</sup> Ms. [b6] interview of Officers [b6, b7C] and [b6, b7C] July 25, 2003.

<sup>63</sup> Ms. [b6] interview with Officer [b6, b7C] July 10, 2003.

<sup>64</sup> Detainees in segregation are not usually allowed to attend Group Rights Presentations because they may pose a security risk or may be at risk for harm themselves. If a detainee in segregation wants to attend a presentation, the determination is made on a case-by-case basis.

<sup>65</sup> Ms. [b6] interview with Detainee 1, July 10, 2003 and Detainee 4, Ms. [b6] interview with Detainee 3, July 10, 2003 and Detainee 6, Ms. [b6] interview with Detainee 2, July 10, 2003 and Detainee 5.

is played often or everyday.<sup>66</sup> Another detainee also confirmed that the “Know Your Rights” vide was played every morning, though she stated it was only played in Spanish.<sup>67</sup>

#### IV. Other General Observations Unrelated To The Legal Access Standards

##### A. Recreation

The *Standards* require generally that “all facilities shall provide INS detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”<sup>68</sup> In addition, the *Standards* provide that “[e]very effort shall be made to place a detainee in a facility that provides outdoor recreation. If a facility does not have an outdoor area, a large recreation room with exercise equipment and access to sunlight will be provided.”<sup>69</sup> Where outdoor recreation is available, each detainee must have access to at least one hour per day of recreation, five days a week, weather permitting.<sup>70</sup>

Detainees should recreate with other detainees of the same classification.<sup>71</sup> Recreation should be available to detainees held in segregation as well on the same terms, although such detainees may not recreate with the general population, nor in certain instances, with other detainees held in segregation.

##### 1. Access to Recreation

During the weekdays, there is a mandatory one-hour period designated for recreation, and that time varies daily according to Detainee 3.<sup>72</sup> According to Officer [REDACTED] b6, b7C there is also optional recreation on the weekends. Detainees 1 and 2 confirmed that recreation time lasts for 1 hour or 1 hour and 15 minutes per day and is mandatory during the weekdays and voluntary on weekends.<sup>73</sup> Detainee 2 wishes that it were voluntary at all times, because he was working on the female pod renovation and would rather rest afterward.<sup>74</sup>

Officers [REDACTED] b6, b7C and [REDACTED] b6, b7C noted that the recreation area is not used when it rains because it is outdoors. It seems that detainees do not recreate on rainy days.<sup>75</sup>

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<sup>66</sup> Ms. [REDACTED] b6 interview with Detainee 1, July 10, 2003, Ms. [REDACTED] b6 interview with Detainee 3, July 10, 2003, Ms. [REDACTED] b6 interview with Detainee 2, July 10, 2003.

<sup>67</sup> Ms. [REDACTED] b6 interview with Detainee 4, July 25, 2003.

<sup>68</sup> Detention Operations Manual at Section 27, I.

<sup>69</sup> Id. at III.A.1.

<sup>70</sup> Id. at III.B.1.

<sup>71</sup> Id.

<sup>72</sup> Id.

<sup>73</sup> Ms. [REDACTED] b6 interview with Detainee 1, July 10, 2003, Ms. [REDACTED] b6 interview with Detainee 2, July 10, 2003.

<sup>74</sup> Ms. [REDACTED] b6 interview with Detainee 2, July 10, 2003.

<sup>75</sup> Ms. [REDACTED] b6 interview of Officers [REDACTED] b6, b7C and [REDACTED] b6, b7C July 25, 2003.



The men and women use the recreation area separately. Officer [b6, b7C] reported prior difficulties arising from the fact that the male pod previously overlooked the yard where female detainees were recreating. They managed to remove the disturbance by changing pods.<sup>76</sup>

In addition, the blue-suited detainees are not permitted to recreate or commingle with orange-suited or red-suited detainees, though orange-suited and red-suited detainees may recreate with one another.<sup>77</sup>

## 2. Recreation Specialist

The Recreation Specialist at San Pedro SPC is in charge of assuring that the library materials are in good order and organizing recreation for the detainees. While Officers [b6, b7C] and [b6, b7C] both denied that the facility provided indoor recreation, Officer [b6, b7C] indicated that the Recreation Specialist is also in charge of organizing indoor games such as cards, chess, and hackysack.

### B. Access to Medical Care

The *Standards* set forth a broad policy that “detainees ... have access to medical services that promote detainee health and general well-being.”<sup>78</sup> The *Standards* require that detainees be provided with an initial medical screening and have access to primary care, and emergency care.<sup>79</sup> Although emergency dental care is required, “[r]outine dental treatment may be provided to detainees for whom dental treatment is inaccessible for prolonged periods because of detention for over six months.”<sup>80</sup>

## 1. The Health Care Facility

The medical facility has its own restricted-access area as well as an additionally restricted-access pharmacy. In addition, the medical records are kept apart from other files in a secure, limited-access area. Copies of health records are kept in detainee files as well. All medication dispensed to detainees is also recorded. There is an exception for all reports regarding mental health, which are not kept in the detainee’s “A” file.<sup>81</sup>

## 2. Health Care Services for Detainees

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<sup>76</sup> Ms. [b6] interview of Officer [b6, b7C] July 10, 2003.

<sup>77</sup> See, *infra*, Section IV.D.

<sup>78</sup> Detention Operations Manual at Section 24, I.

<sup>79</sup> Id. at III.A.

<sup>80</sup> Id. at III.E.2.

<sup>81</sup> Id. An “A” file is the legal file maintained by INS for each detainee. Contents include detainee’s passport, driver’s license, other identification cards; immigration history (prior record); and all documents and transactions relating to the detainee’s immigration case

The HSA indicated that the facility's practice is to screen all detainees for tuberculosis in Los Angeles before arriving at San Pedro SPC. This is a standard procedure and the screening is performed using a chest X-ray. Detainees are also checked for other infectious diseases. The HSA also confirmed that all detainees, including those in Special Management Units receive medical care.<sup>82</sup>

To request medical attention, detainees fill out Call Slips. The HSA claimed that the detainees are seen by a nurse, not a doctor, within 48 hours. The Officer in Charge grants detainee requests unless the detainee was already seen that day. In this case, the Call Slip is deemed outdated or frivolous. The Call Slips are available in English and Spanish and the staff provides them upon request.<sup>83</sup>

Detainee 2 shared his experience with the Call Slip procedure. He reported that when he has needed medical attention and puts in a Sick Call Slip, it takes a couple of days, and sometimes even a whole week, for the medical staff to respond. He indicated that because he works in the camp for renovating the female pod, his boss can pull strings and get him in earlier.<sup>84</sup>

Detainee 1 reported that he has requested medical care on more than one occasion and was satisfied with the process. He indicated that after filling out a Call Slip, he would receive an appointment the following day, unless it was a weekend, in which case he was seen on the following Monday.<sup>85</sup>

Detainee 3 confirmed that the Call Slips are provided in Spanish.<sup>86</sup>

For emergency use, first aid kits are located on each floor of the detention center and all the officers are trained un first aid and CPR. The HSA reported that the only medication that the officers are trained to administer is Tylenol.<sup>87</sup> Detainee 3 is a diabetic and has gout. He reported that either a doctor or nurse, but not an officer, comes by regularly to administer his medication for gout.<sup>88</sup>

Officer [b6, b7C] indicated that segregated populations do not follow the same procedure for requesting medical visits. Instead, medical staff will go to the restricted area to personally observe the detainees.<sup>89</sup>

### 3. Procedure and Policy

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82 Id.

83 Id.

84 Ms. [b6] interview with Detainee 2, July 10, 2003.

85 Ms. [b6] interview with Detainee 1, July 10, 2003.

86 Ms. [b6] interview with Detainee 3, July 10, 2003.

87 Id.

88 Ms. [b6] interview with Detainee 3, July 10, 2003.

89 Ms. [b6] interview of Officer [b6, b7C] July 25, 2003.

The I-819 is used to notify the Officer in Charge of detainees with special medical needs.<sup>90</sup> Detainees must sign and date consent forms before medical treatment is administered.<sup>91</sup>

The HSA was not familiar with the I-813 form to authorize the release of confidential medication records to outside sources. Rather, she reported the facility uses a FOIA form which is a written request from the detainee. A copy is made and kept in the detainee's A file and the requests may take 1-2 weeks to process. The HSA indicated that she personally helps detainees fill out these forms and forwards them to the health care provider.<sup>92</sup>

For transfer or release, the Officer in Charge consults with the medical staff for medical clearance. Some detainees' records are flagged for consultation with medical staff before release or transfer. A sealed (not labeled) copy of the medical records is transferred.<sup>93</sup>

### C. Religious Issues

According to the *Standards*, detainees of different religious beliefs will be provided reasonable and equitable opportunities to participate in the practices of their respective faiths. These opportunities should exist for all equally, regardless of the number of practitioners of a given religion, whether the religion is "mainstream," whether the religion is "Western" or "Eastern," or other such factors. Opportunities are to be constrained only by concerns about safety, security, the orderly operation of the facility, or extraordinary costs associated with a specific practice. Detainees should also be allowed to keep religious items on their person and wear items in observance of their respective religion.

The head of the kitchen facilities informed us that religious diets are observed. He stated the policy for requesting a special diet is to have the chaplain determine and confirm the detainee's religious convictions. The chaplain then sends the request to the kitchen. He also told us that special accommodations are made for detainees during fasting times, such as Ramadan.<sup>94</sup>

During the delegation's July 25<sup>th</sup> visit, Officer [b6, b7C] stated that although detainees do not have access to seek spiritual or religious guidance outside the detention facility, they can request the clergyman, Father [b6] to accommodate them within the facility. Father [b6] will then try to arrange for volunteers from the community to visit detainees.

Officer [b6, b7C] stated that Muslims are allowed to keep a small prayer mat for religious purposes and that they are allowed to pray five times a day. He said that Muslims are also allowed a non-hardback copy of the Koran. Women may cover their heads for religious reasons and are allowed to keep a head scarf in order to do so. However, the scarf must be white

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<sup>90</sup> Ms. [b6] interview of HSA, July 10, 2003.

<sup>91</sup> Id.

<sup>92</sup> Id.

<sup>93</sup> Id.

<sup>94</sup> Ms. [b6] interview with head of kitchen facility, July 10, 2003.

and must not cover the face for security reasons.<sup>95</sup> Despite permitting these religious accommodations, it is not necessarily possible for detainees to pray five times a day, possibly because of abuse from fellow detainees or officers if the detainee actually does choose to pray. Detainees are not given a private room in which to pray. One detainee regretted the lack of facilities for worship and stated that he prays in his pod.<sup>96</sup>

Interviews with the detainees indicated that most of them are not religious. A detainee stated that to see the chaplain, detainees have to put in a request slip. He said it can take up to two weeks to see the chaplain. He has never attempted to access outside religious counseling.<sup>97</sup> He said that although he has no religious dietary needs, he is a vegetarian. In this regard, he said the kitchen has failed to accommodate his needs. According to this detainee, the kitchen serves whatever it feels like serving and if he receives a tray with meat and complains about it, the kitchen simply tells him to take the meat off. The same detainee also had a religious book confiscated because the book had a hardback cover.<sup>98</sup>

A third detainee stated that she is Catholic. She did confirm that there is a chaplain on site and that two other chaplains come on Wednesdays. She stated that the chaplains can be requested by slip, but that there is not always a response. For example, she complained that the facility did not provide a chaplain on Good Friday. She is allowed to keep her Bible and other religious literature.<sup>99</sup>

#### D. Detainee Classification

Among the sexes, there are divisions between criminal and non-criminal (immigration violation only) detainees. The criminal detainees are further divided into two categories. The criminals who committed an aggravated felony are distinguished by their red clothing and the criminals who committed a simple crime are distinguished by their orange clothing. The non-criminal detainees are outfitted in blue uniforms.<sup>100</sup>

Criminal detainees are housed in one pod, separate from non-criminal detainees, and the detainees are fed pod by pod. The criminals and non-criminals never mix. The facility has seven pods. Two are for women. The non-criminal women were temporarily relocated to a different detention center in Santa Ana until recently because their pod was under construction. Each pod contains three sections – one for sleeping, one for restroom/hygiene, and one for eating/socializing. As of Friday, July 25, the detention center housed about 280 males. 37 were non-criminal (blue-suited) and about 250 were criminal (orange and red-suited) detainees.<sup>101</sup>

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<sup>95</sup> Id.

<sup>96</sup> Ms. [b6] interview with Detainee 3, July 10, 2003.

<sup>97</sup> Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>98</sup> Ms. [b6] interview with Detainee 2, July 10, 2003.

<sup>99</sup> Ms. [b6] interview with Detainee 4, July 25, 2003.

<sup>100</sup> Ms. [b6] interview of Officers [b6, b7C] [b6, b7C] and [b6, b7C], July 25, 2003.

<sup>101</sup> Id.

When we asked Officers [b6, b7C] and [b6, b7C] to describe the differences in treatment between the red-suited detainees and the orange-suited detainees, they were hard pressed to come up with any differences at all. When Ms. [b6] suggested that perhaps the color system helped officers to quickly identify more threatening detainees and thus helped the officers protect the detainee population, the officers agreed.<sup>102</sup>

However, later (and in private) Officer [b6, b7C] admitted that even the blue-suited, non-criminal detainees are basically treated the same as the criminal detainees. He pointed out that regardless of their criminal history, all detainees are incarcerated in the same facility under mostly the same circumstances and policies. He indicated that the classification system is probably more useful in contracted municipal facilities where detainees in different levels of security are segregated completely and are allowed to roam freely within their separate areas of the facility. In contrast, because San Pedro SPC is a completely controlled movement facility, the different classifications are more of a formality than a useful security tool.<sup>103</sup>

Detainees are classified upon arrival as a part of the intake process, according to Officers [b6, b7C]. The First-Line Supervisor reviews every classification decision. The resources that the officer references in making the classification decision include the following: work-folder, A-file, rap sheet (previous arrests and convictions), and previous disciplinary events at other detention facilities. Officer [b6, b7C] noted that this is often not enough, especially in the case where a detainee violated criminal laws in other countries. He denied that their staff uses opinions and unsubstantiated or unconfirmed reports.<sup>104</sup>

The A-file does not include the original paperwork supporting the classification; rather, the detention folder contains the original paperwork, while the A-file contains a copy.<sup>105</sup>

According to Officer [b6, b7C] a detainee's classification level affects, but does not determine, his or her work assignment. A detainee must request a work assignment. Then, an officer reviews the detainee's criminal history and looks at the specific nature of the crimes the detainee committed in relation to the position he or she seeks. Officer [b6, b7C] explained that a detainee convicted of assault with a knife would not be given kitchen duty. In addition, the facility takes into account the detainee's physical health in assigning work.<sup>106</sup>

Officer [b6, b7C] also explained that every detainee is considered for reassessment for reclassification every 30 days. For the detainees, another way to change classification is to appeal the decision. For instance, if a conviction is expunged, the detainee can appeal and offer proof to the reviewing officer. Second-line officers have the authority to review and reduce a

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102 Id.

103 Ms. [b6] interview of Officer [b6, b7C] July 25, 2003.

104 Id.

105 Id.

106 Id.

classification level on appeal. At the most, an appeal may take three days. The appeal decision is also appealable.<sup>107</sup>

When asked about how the detention facility houses detainees according to classification, the officers had interesting information about a classification system that is not based on the detainee's criminal record. Specifically, Officers [b6, b7C] and [b6, b7C] indicated that housing decisions are sometimes based on gang affiliation, that is, whether a detainee belongs to a gang of Northern Californians called *norteños* or a gang of Southern Californians called *sureños*. Officers [b6, b7C] and [b6, b7C] indicated that placing gang members in protective custody without their request is necessary because gang members will not ask for protective custody for fear of losing face even if they are threatened by other detainees. They also indicated that the same problem with gangs exists for female detainees.<sup>108</sup>

Later, while Officer [b6, b7C] was showing the delegation the recreation room where religious gatherings can be held, he mentioned that the detention center engaged in a certain amount of racial segregation as well. Officer [b6, b7C] recalled a period of extremely heightened racial tensions and violence in the facility about four years ago. He indicated that since then, the tensions among the Asian, Latino, and black detainees motivated the staff to divide the pods along racial lines. Certain gangs have a "green light" to attack Asian detainees, so Asian detainees are housed in a separate pod from the rest of the population when possible.<sup>109</sup>

Our delegation was particularly curious about the fact that unofficial means of classification, such as gang affiliation and race, were actually more important and could possibly result in more disparate treatment than official means of classification for criminal and non-criminal activity. The delegation was unable to determine on what level the criminal/non-criminal distinction was useful.<sup>110</sup>

#### E. Special Management Unit (Administrative Segregation)

The Special Management Unit is described by the *Standards* as having two sections: one for administrative segregation and one for disciplinary segregation. Placement in administrative segregation is supposed to be "a non-punitive form of separation from the general population used when the continued presence of the detainee in the general population would pose a threat to self, staff, other detainees, property, or the security or orderly operation of the facility."<sup>111</sup>

San Pedro SPC allows detainees to go to administrative segregation for protective custody when they feel unsafe. Similarly, administrative segregation is used to protect the

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<sup>107</sup> Id.

<sup>108</sup> Ms. [b6] interview of Officers [b6, b7C] [b6, b7C] and [b6, b7C] July 25, 2003.

<sup>109</sup> Ms. [b6] interview of Officer [b6, b7C] July 25, 2003.

<sup>110</sup> In addition, if the facility makes unofficial classification decisions based on gang and racial affiliation, what other unmentioned classification systems are used? What kind of intentional or unintentional disparate treatment arises from gang and racial segregation in the detention facility?

<sup>111</sup> *INS Standard: Special Management Unit (Administrative Segregation)*, at 1.

general population from a particularly dangerous detainee. The detainees are kept in individual cells, rather than pods. San Pedro SPC averages about fifteen detainees in administrative segregation; the maximum capacity is twenty-five.

Detainees in administrative segregation retain the same privileges (such as recreation time) as those in general population, with the exception of limited television viewing. Library carts are brought to the detainees in administrative segregation, and if a particular book is requested, the facility will bring it to the detainee. Detainees in administrative segregation are visited every day by the medical staff. They are also allowed the same visitation schedule. (These privileges may be taken away as punishment for detainees who are in disciplinary segregation, but the officials interviewed were quite adamant about not punishing the administrative segregation detainees in such a fashion.) This is consistent with the *Standards*.

The status of detainees in administrative segregation is reevaluated on a continual basis. If a detainee is in administrative segregation for safety and security (of the facility), his status is reviewed after the first seven days, then at fifteen days, thirty days, sixty days, ninety days, and so on. If a detainee has requested protective custody and then decides that he wants to return to general population, he will be released at that time. This schedule varies somewhat from that laid out in the *Standards*, which mandates that a detainee's status be reviewed within the first 72 hours after the detainee is placed in administrative segregation, and once a week after that for the first month. After the first month, the detainee's status can be evaluated on a monthly basis.

#### F. Grievance and Disciplinary Procedures

The *Standards* provide that a facility must put into place procedures to address detainee grievances, and such procedures must establish a reasonable time limit for "processing, investigating, and responding to grievances; convening a grievance committee to review formal complaints; and providing written responses to detainees who filed formal grievances." The procedures must provide a guarantee against reprisals and have procedures for emergency grievances.

The staff said that the typical procedure for grievances was to review a written grievance, investigate, and inform the detainee of the decision. The staff indicated that the grievance had to be in writing so that it could be tracked and referred to the proper department. The grievances may be mailed if the detainee feels uncomfortable handing the grievance to a particular officer. If a detainee feels threatened by another detainee, he may go into protective custody at San Pedro SPC or another institution while the situation is being investigated. Such a detainee may also call the appropriate officer or have his family call if he is afraid to do so himself.

The officials made a distinction between complaints, which deal with conditions to which the detainees object (such as not being able to watch a specific television program), and grievances, which address fundamental violations of the detainees' rights. Complaints can be oral or written, but are usually addressed immediately. Grievances, on the other hand, usually require seven days to investigate and report back to the detainee. (The *Standards* dictate that the responsible officer or department head act on the grievance within five working days.) If a

detainee agrees with the resolution of his grievance, he signs the grievance to indicate such agreement. If the detainee wants to appeal, there is a toll-free number he can contact.<sup>112</sup> A group independent of the facility's administration will investigate the grievance on-site at that point.

Only one of the six detainees reported attempting to file grievances with the administration. Two detainees specifically said that they would not attempt to do so because they believed that such efforts would be pointless.<sup>113</sup> Detainee 4, who had filed grievances against guards in the facility, said that the process was an informal one, whereby she would orally notify a supervisor of her concern.<sup>114</sup> She said that she did not believe that there was any written form through which a detainee could file a grievance.<sup>115</sup> Detainee 4 felt that the supervisors would never admit to any wrongdoing by a fellow employee; rather, their response typically dealt with trying to prevent the objectionable behavior in the future. She did not indicate the behavior that had caused her to file grievances.

The issue here is twofold: the facility needs to inform the detainees how to file grievances, and it needs to ensure that the process is responsive and fair so that detainees will trust the system and utilize it when needed. Though the detainee handbook contains instructions for filing a written grievance, perhaps the detainees are not adequately aware of this procedure to utilize it. Obviously, the facility may not want to encourage detainees to file grievances, for fear of being inundated with trivial matters. It is more important, however, that the detainees feel some level of confidence in the system so that they are better able to protect their most fundamental rights, such as having access to private conversations with their attorneys or guaranteeing that they are not harassed by staff or other detainees.

## V. CONCLUSION

The staff at San Pedro SPC are taking steps to implement the *Standards* into the regular operating procedures. There is room for improvement, however, with respect to the visitation rooms for family and friends, the grievance procedures, informing detainees about Group Rights Presentations, and minimal religious services and rights. Overall, the facility seems to be satisfying the majority of the goals outlined in the *Standards*.

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<sup>112</sup> This may be the hotline set up by the Department of Justice for allegations of officer misconduct; it is referenced in the *Standards*.

<sup>113</sup> Ms. [b6] interview with Detainee 1, July 10, 2003, and Ms. [b6] interview with Detainee 2, July 10, 2003. The former reported wanting to file numerous grievances but did not feel that he would have received a satisfactory response; he was reluctant to say more for fear that anything he disclosed would be used to prevent his deportation, which was scheduled for the same day as the interview. Detainee 2 said that even in the case of an emergency, he would not bother with trying to contact a lieutenant.

<sup>114</sup> See above note. Detainee 2 indicated that the manner in which one would try to resolve a grievance is oral; he did not mention the formal grievance system at all, perhaps because he did not know about it.

<sup>115</sup> Detainee 4's issue may be classified as a complaint by the facility, rather than as a grievance. What is important to note is the fact that she was unaware that there was another process for dealing with such issues.