

April 29, 2004

To: Victor Cerda
Acting Deputy Executive Associate Commissioner
Office of Detention and Removal
Department of Homeland Security

From: American Bar Association Delegation To Downtown Bradenton Detention Facility¹

Subject: Report on Observations During A Tour of the Downtown Bradenton Detention Facility
In Bradenton, Florida

I. INTRODUCTION

This memorandum summarizes the observations made during a visit to the Downtown Bradenton Detention Facility (“BDF”) in Bradenton, Florida on April 5, 2004, and findings based on interviews with Immigration and Customs Enforcement (“ICE”)² and Manatee County Sheriffs Office (“MCSO”)³ personnel, as well as five detainees during our visit. It also contains information obtained from private and Non-Governmental Organization (“NGO”) attorneys who have represented detainees or had other reasons to visit BDF recently.

The Detention Standards (“Standards”) were promulgated in November 2000 to help

¹ The delegation was made up of the following attorneys and paralegals from Gulfcoast Legal Services, Inc.: [b6] Executive Director; [b6] Attorney in Charge of the Sarasota Office; [b6] Attorney, Sarasota Office; [b6] Paralegal, St. Petersburg Office; [b6] Paralegal, Bradenton Office; and [b6], Volunteer Attorney, Sarasota Office.

² The delegation was accompanied on the visit by ICE OIC [b6, b7C] SDDO [b6, b7C]; SDDO [b6, b7C] and SDEO Captain [b6, b7C] all of whom met privately with the delegation following the visit.

The delegation was accompanied on the visit by the following MCSO personnel: Lt. [b6, b7C] Sargent [b6, b7C] and Sargent [b6, b7C]

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* not only apply to Service Processing Centers (“SPC”) and Contract Detention Facilities (“CDF”), but also to state and local government facilities used by ICE through Intergovernmental Service Agreements (“IGSA”). The Detention Standards were to have been implemented at each facility by January 2003. The *Standards* are to be viewed as a “floor” not a “ceiling” for treatment of detainees. They are meant to establish the minimal requirements that ICE must adhere to in each of its facilities. Each ICE Field Office or Officer in Charge (“OIC”) of a facility may adopt policies or practices affording ICE detainees more enhanced rights and protections than those mandated by the *Standards*.

BDF’s general operating procedures appear to be modeled on the Florida Model Jail Standards, although the influence of the *Standards* is apparent in some areas, such as the provision made for accommodating free telephone calls to embassies and consulates and the equipping of the law library with some immigration law materials. BDF appears to be overcrowded and does not appear to meet the requirements of the Florida Model Jail Standards from the standpoint of square feet of living space per detainee and the availability of shower and toilet facilities. Because of its location in a high rise building in downtown Bradenton, the only generally used outdoor recreation facility available is on the roof of the building and is a very small and confined space. The facility appears to be operated in a professional manner by competent and experienced personnel, who treat detainees with respect. We did note a number of issues with respect to the *Standards* as follows:

- The BDF equivalent of a detainee handbook has serious deficiencies;
- Insufficient private phone access and inability to make free phone calls to

- counsel; lack of free postage for legal mail;
- Questionable access to legal materials; absence of “Know Your Rights” materials;
 - Attorneys are improperly required to submit G-28s for pre-representational visits;
 - Arbitrary limits on visitation not authorized by the Standards;
 - Marginal outdoor recreation facilities;
 - Questionable access to medical care;
 - Inadequate notice to detainees of the consequences of rule violations; and
 - Insufficient information on how to file grievances and appeal decisions.

II. DOWNTOWN BRADENTON DETENTION FACILITY

BDF is located in downtown Bradenton on the West Coast of Florida between St. Petersburg and Sarasota. It is operated under an IGSA with the Manatee County Sheriffs Office. It appears to be operated in conjunction with another IGSA facility several miles away in Port Manatee known as the Annex. Both are run by MCSO and both are under the jurisdiction of ICE OIC

The same rules and guidelines apply in both facilities and detainees are moved from one to the other depending on space availability. The two facilities combined have a total capacity of 442, with 250 downtown and 190 at the Annex. On the day we visited, there were 233 detainees downtown and 170 detainees in the Annex. Both facilities house only men. ICE pays MCSO \$64.70 per day for each detainee. is also responsible for an IGSA facility in Sarasota that houses approximately 90 female detainees. Until recently, he also had responsibility for a

facility in Citrus County which is no longer being used. [REDACTED] office and the offices of four ICE supervisors and several detention and deportation officers and their assistants are located in BDF. BDF also houses an Immigration Court with one permanent judge and occasional visiting judges.

ICE officials were reluctant to speculate on the percentage of detainees with criminal convictions, while conceding it was likely more than fifty percent. Although BDF occasionally receives detainees caught by the Border Patrol, it usually does not receive people from airports. Aliens detained at airports are usually sent to Miami. BDF frequently gets people transferred from county jails before they plead or go to trial. Because of the overcrowding of county jails, people who are out of status or have outstanding deportation orders are often turned over to ICE immediately after they are arrested. There are occasional asylum seekers at BDF, but there are not many. The average length of stay at BDF varies by nationality. Mexicans typically have the shortest average stay, 22 days, because there are federal flights available to take them to the border and because ICE gets very good cooperation from the Mexican Consulate in Orlando. Some detainees remain at BDF or the Annex for periods up to a year or more. Detainees come from many countries, with most coming from Mexico, Jamaica, Haiti, Cuba and Central and South America. There are a few Canadians and Europeans.

BDF appears to be a very secure facility, having formerly been the Manatee County Jail. Detainees are housed partly in dormitory style rooms and partly in rooms that contain separate sleeping areas in 2 person cells. Meals are served in the housing areas; there is no dining room or mess hall. The dormitory rooms are very crowded. One detainee said there were 32 detainees in his

dormitory with only one toilet, one urinal and one shower.⁴ Each floor has a visitor area and a private room for visits with attorneys or clergy. The general library and the law library are in the same location. The recreation area is on the roof of the building and has a concrete floor, concrete walls and a steel cage. Detainees are allowed to volunteer to work, but are not paid for their work.

⁴ b6 Detainee Interview Notes

The *Standards* suggest that each facility develop a site-specific detainee handbook to serve as an overview of, and guide to, the detention policies, rules and procedures in effect at the facility. MCSO personnel give each detainee on arrival a copy of a pamphlet entitled “Guidelines for the Downtown and Annex Detention Facility” (“BDF Guidelines”).⁵ There are English and Spanish versions, but it is not available in any other languages. The BDF Guidelines were last revised on December 1, 2001. The list of Free Legal Service Providers supplied with the BDF Guidelines was last revised on March 3, 2004.⁶ The BDF Guidelines also contain a list of ICE personnel at the facility with their telephone numbers. Cases are assigned to Deportation Officers by the last two digits of the detainees’ alien file number so that each detainee can determine the name of his deportation officer. Comments on the extent to which these materials incorporate the *Standards* are covered in Section IV.H below.

III. IMPLEMENTATION OF THE LEGAL ACCESS STANDARDS

A. VISITATION

There are separate visitation procedures for attorneys and other visitors at BDF. Contact visits are allowed for attorneys at any time seven days a week. Non-legal visitors are limited to non-contact visits pursuant to a fixed schedule.

1. Visitation By Attorneys

a. Visitation Times

BDF Guidelines specifically provide that attorneys are allowed to visit at any time without exception. ICE and MCSO personnel confirm that this is in fact their practice.

⁵ English and Spanish versions of the BDF Guidelines are attached at Tab A, together with several related inserts.

Attorneys may call the MCSO reception desk at any time to schedule an appointment with a detainee. Private and NGO attorneys we have contacted have not reported any problems in scheduling visits with clients at BDF.

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. Additionally, an attorney or an accredited representative should not have to submit a G-28, Notice of Entry of Appearance, for a pre-representation interview. Moreover, upon presentation of a letter of authorization from a supervising attorney, legal assistants and others assisting the attorney should be allowed entry. Notwithstanding provisions in the *Standards* to the contrary, SDDO b6, b7C said that at BDF attorneys are required to submit a G-28 prior to any interview of a detainee, including pre-representation interviews. If an attorney later decides not to represent a client for whom a G-28 has been submitted, ICE will on request remove the G-28 from the detainees file as long as it has not been previously submitted to the Executive Office for Immigration Review (EOIR), the Immigration Court.

⁶ The list of free legal service providers is one of the inserts included at Tab A.

Attorneys are required to provide bar cards in order to gain access, although this policy is waived as a matter of practice for attorneys who are known to the staff. ICE personnel indicated that other documentation could be substituted for a bar card and that legal assistants with written authorization from an attorney with a G-28 on file would be allowed access.⁷ None of the private or NGO attorneys we contacted had expressed any concern about gaining access to visit clients in detention.

c. Security Issues

The *Standards* provide that in ICE owned and operated SPC facilities detainees should not be strip searched after legal visitation, unless there is a reasonable suspicion that a detainee is concealing contraband. Lt. [REDACTED] and ICE personnel indicated that BDF had the right to strip search detainees after contact visits, but the decision whether to do so was in the discretion of the officer or deputy escorting the detainee. We were further advised that detainees who wished to be assured that there would be no strip search had the option of requesting a non-contact visit. None of the detainees we interviewed had been strip searched after an attorney visit. Private and NGO attorneys we contacted indicated that their clients were not strip searched after visits at BDF. Detainees, however, are often patted down after contact visits with attorneys.

d. Access to Contact Information for Legal Services

The *Standards* provide that detainees should be given information on the availability of free legal services and NGOs offering assistance to detainees and that such information should be posted in detainees' language with instructions on how to contact such service providers. The BDF

⁷ Most of the delegations' questions were answered by SDDO [REDACTED] and OIC [REDACTED]

Guidelines provided to detainees contains a list, in English and Spanish, of free legal service providers. The copy we received on the day of our visit had been updated on March 3, 2004, and is included at Tab A. The same list was posted near the telephones in each of the housing areas. Although there are instructions in English and Spanish for making free telephone calls to the providers on the list, a member of our delegation was not successful in getting through the several steps required to complete a free call. None of the detainees we visited had made a free call to a provider on the list.

Of the nine entities on the list of free legal service providers, three specifically state that they will not represent aliens in detention. Two of the remaining six state that they may charge a nominal fee and another provider on the list has a reputation for usually charging for his services. Some on the list note that they accept asylum cases, suggesting they may not accept other cases. One organization that is known to provide pro bono representation to detainees at BDF, the Florida Immigrant Advocacy Center, Inc., (“FIAC”) is not on the list of free legal service providers. The Immigration Judge on site at BDF, Judge McHugh, has been working with the local chapter of the American Immigration Lawyers Association (“AILA”) and NGO groups in the area in an effort to expand the amount of pro bono representation available to detainees at BDF.

e. Visitation Conditions

The *Standards* provide that facilities should allow detainees to meet privately with their current or prospective legal representatives and their assistants. At BDF, attorneys are allowed to meet alone with their clients in private rooms. The rooms used for attorney visits we observed were equipped with a table and four chairs. Although the rooms had a glass wall facing the corridor allowing observation by guards, it appeared that discussions could take place without being

overheard.

2. Visitation by Family and Friends

a. Visitation Times and Duration

The *Standards* provide that authorized persons should be allowed to visit detainees. Visits from family and friends are encouraged. The *Standards* provide that visiting hours should be clearly posted and include times during the week and on weekends and holidays. Visits should be allowed for at least 30 minutes. Special arrangements should be available for family members who are unable to visit during regular visiting hours. The BDF Guidelines set forth the visitation policy and the policy is posted at various locations in the facility. Visitation is allowed on Monday through Friday from 8:00 A.M. to 10:00 A.M. or from 1:00 P.M. to 3:00 P.M. The same times are available on Saturday, plus 6:30 P.M. to 8:30 P.M. All visits are for 2 hours, considerably exceeding the amount of time suggested by the *Standards*. Two detainees stated that if normal visiting hours were a hardship for family members, arrangements could be made for special visits.⁸ Detainees are allowed only one visitation per week.

b. Other Limits on Visitors

⁸ [REDACTED] and [REDACTED] Detainee Interview Notes

The *Standards* provide that other than limitations due to visiting room capacity, no limitation should be imposed on the number of visitors per detainee. BDF imposes a limit of three persons on each visit, limits each detainee to one visit per week and limits the total number of persons who can schedule visitation appointments to six. Each detainee is allowed to “register” up to six visitors by providing their names, addresses, phone numbers, dates of birth and relationship to detainee. Only two changes to this form are permitted during the course of a year.⁹ Children under 18 must be accompanied by a parent or guardian. Each child, including infants, is counted in arriving at the 3 person limit per visit. All visits require an appointment. Appointments must be made in advance by calling Monday through Friday only between the hours of 7:30 A.M. and 4:00 P.M.¹⁰ The list of visitors must be submitted in advance to the Alien Intake Specialist of MCSO for approval. Visitors are allowed to leave money for a detainee’s account only in the form of money orders to be placed in a detainee’s commissary account. Money orders must be made out to the MCSO inmate account with the detainee’s booking number. Any checks left for a detainee will not be deposited in his account, but instead will be held for safekeeping with the detainee’s personal property.

c. Security Issues

Detainees are separated from family and friends during visits by a Plexiglas panel. The visitation area consists of a long room with chairs on one side of the Plexiglas partition

⁹ The Registration form is one of the inserts included at Tab A

¹⁰ A sheet entitled “Downtown Detention Facility Visitation Rules” included with the BDF Guidelines has information which conflicts with the visitation times listed in the Guidelines and confirmed by MCSO personnel and the detainees we interviewed. Paragraph 2 on this sheet states that “(v)isitation can be made from 7:00 - 22:00 hours daily.”

for detainees and along the other side for visitors. There are privacy panels on either side of the chairs on the detainee side, but not on the visitor side. On the visitor side in particular, there appeared to be little privacy for conversations and, of course, there is no opportunity for direct physical contact. Since the visits are non-contact, detainees are not searched after visits from family and friends. There is no provision for conjugal visits.

B. TELEPHONE ACCESS

The *Standards* provide that detainees should have reasonable and equitable access to telephones. The *Standards* further provide that detainees should be able to make free phone calls to consular offices, free legal service providers, local courts and government offices and, in the case of emergency, to family members. BDF provides two telephones in each housing unit. Some detainees we interviewed noted there was often a wait to obtain access to phones. With the exception of calls to embassies, however, there is no ability at BDF in practice to make free phone calls. The phones are said to be programmed to permit free phone calls to free legal service providers, but the detainees we interviewed had not been successful in making free calls and neither was a member of our delegation. Detainees can make collect calls and have access to phone cards, which can be purchased from the commissary. One hundred minutes of local calling time can be purchased for \$23.50.

The *Standards* require that detainees should be able to talk with their attorney on the phone in private. The phones at BDF are located in an open environment in the housing areas. Obtaining privacy for phone calls to attorneys would be difficult for detainees in these conditions and would require the cooperation of the guards and other detainees. Detainees noted the lack of

privacy, which allowed other detainees and guards nearby to hear conversations with counsel.¹¹

¹¹ [REDACTED], [REDACTED] and [REDACTED] Detainee Interview Notes

The *Standards* require that detention facilities take and deliver telephone messages to detainees as promptly as possible. The BDF does not as a matter of policy and practice take and deliver telephone message to detainees, except to advise them when an appointment has been made for a visit. ICE personnel confirmed that this practice applies to telephone calls from attorneys as well. However, one detainee¹² said the facility did take and deliver phone messages and another detainee¹³ said emergency messages could be delivered through the Chaplain. An attorney at FIAC stated she had not been successful in having phone messages delivered to detainees.¹⁴

C. LEGAL MATERIALS

The *Standards* require detention facilities to maintain a law library, adequately lighted and reasonably quiet, with sufficient space to support legal research and writing. It must contain an adequate number of tables and chairs to accommodate all of the detainees who wish to use it. It must also contain typewriters, writing materials and specified legal texts. In addition, the library should provide one typewriter or computer for every 5 detainees, as well as sufficient writing materials and texts to enable detainees to conduct legal research and prepare legal documents.

The BDF library does not have any current written legal materials and does not have one typewriter or computer for every five detainees. It does appear to offer some opportunities, within the limitations of the guidelines, for legal research by those detainees who are computer literate. The limit of five hours a week usage would appear to be a bigger obstacle than any other in view of the complexity of immigration law.

¹² b6 Detainee Interview Notes

¹³ b6 Detainee Interview Notes

1. Materials identified in Attachment A of the Access to Legal Material Standard

Attachment A of the “Access to Legal Material” chapter of the Detention Operations Manual contains a list of legal materials each facility is required to maintain in its library. A current list of such materials available should be posted in the library. To help insure this requirement is met, the facility must designate an employee with responsibility for updating and maintaining the library materials in good order.

As of April 5, 2004, the BDF library computers contained a computer disk which appeared to be a Lexis-Nexis customized collection of materials entitled (something to the effect of) the BICE Law Library. Upon review of the main menu of the disk there appeared to be a listing of the materials listed on Attachment A of the Standard. A sheriff’s deputy is responsible for loading the disks on the computers as they arrive at the facility from the publisher. We did not verify the complete contents of the disk during our visit. We did note that although there were computers available which appeared to be in operational order, there was no Internet access available. The written materials in the library are all out of date and it does not appear that any new written materials have been added for some time. The only set of Interpreter Releases available was from 1999, and no written materials had been updated since 2001. None of the non-electronic legal materials in the law library were in any discernible order. The MCSO officers confirmed that there was no written list of the available hardback and paperback legal material collections. The library did not contain any of the Florence Project’s “Know Your Rights” materials or any other “Know Your Rights” materials. See a further discussion of this issue in Section III.D, below. There are

¹⁴ Email from FIAC attorney [b6] to [b6] dated March 10, 2004.

some general reading materials in Spanish in the library.

2. Library Conditions

The legal and general libraries at BDF are located in the same room with legal texts located in a small adjoining room and a copier in a separate adjoining room. The general library materials include a few shelves of paperback fiction but do not include any newspapers or periodicals, such as Time or Newsweek. The library space is adequately lighted and appears to be quiet. There are seven computers located in the main room, each equipped with a printer. They appeared to be in working order. There are no typewriters. The main room is equipped with tables and chairs that would accommodate approximately 10 detainees. There were no detainees in the library on the day we visited.

Detainees are allowed to work together and are supplied with paper and pencils. Detainees are allowed to keep possession of their legal files, and some we interviewed had large legal files with them. The library contains telephone books, including Yellow Pages with attorney listings.

3. Photocopies and Mail

There is a large high-speed copier in a small room adjoining the library. Free paper is supplied and there is no limit on the number of pages that can be copied or, within reason, on the number of copies that can be made.

The *Standards* require that indigent detainees be provided with free envelopes and stamps for mail to potential and actual legal representatives and to courts. Although it is clear that BDF provides free paper, envelopes and pencils to detainees, there is conflicting evidence as to whether free stamps are provided. MCSO personnel stated that free postage was supplied to

detainees, but 2 of the 5 detainees interviewed stated that they are required to pay for stamps for legal mail.¹⁵

4. Access to Library and Equipment

The *Standards* require that detainees be allowed to use the law library a minimum of five hours a week and that usage of the law library cannot cause the detainee to miss a meal or recreation time. Detainees at BDF do not have to choose between library time and recreation time. The library is open Monday through Friday from 8:30 a.m. to 9:30 a.m.; 10:30 a.m. to 11:30 a.m.; and 1:30 p.m. to 2:30 p.m.. In order to visit the library, a detainee is required to make a written request 24 hours in advance of the time of his intended visit. None of the detainees we interviewed had experienced any problems in obtaining access to the library.

5. Assistance for Illiterate and Non-English Speakers

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

¹⁵ [REDACTED] and [REDACTED] Detainee Interview Notes

Detainees are permitted to work together in the library. One illiterate detainee said that he had been assisted by the staff in having copies of legal materials made and in having them read to him.¹⁶ There is no formal process for providing aid to illiterate and Non-English speaking persons, but they are allowed to obtain assistance from other detainees.

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 on the subject of the US Immigration Laws, so long as the presentations are done in a way that is consistent with the security and orderly operation of the facility.

According to ICE representatives, there have been no “Know Your Rights” (“KYR”) presentations made at BDF, since such a presentation was last made by FIAC in 2002. ICE representatives said that they would welcome any group prepared to give KYR presentations, provided that they followed the procedures set forth in the *Standards* and they did not use the occasion as a vehicle to obtain clients. None of the detainees we interviewed had ever been present at a KYR presentation, nor had they seen such a presentation by means of a video or CD-Rom.

¹⁶ [REDACTED] Detainee Interview Notes

FIAC made KYR presentations at BDF in July in both 2001 and 2002.¹⁷ FIAC received good cooperation from MCSO personnel on both occasions in making their presentations, but experienced difficulty in attempting to interview individual detainees. The MCSO staff at BDF was not aware that FIAC intended to do individual intake interviews and did not make rooms available in which to conduct such interviews in private. FIAC staff was able to interview some detainees in the same room where the presentation was being made, but it was difficult to hear the detainees and take notes, because the presentation was taking place at the same time, and FIAC was not allowed to continue the interviews after the presentation was concluded.¹⁸

ICE and MCSO personnel did not appear to be aware that the *Standards* require that groups making KYR presentations be allowed to meet with small groups of detainees following such presentations to answer questions concerning a detainee's individual circumstances and that ICE and facility staff may not be present during these meetings. This aspect of the Group Rights Presentations Standard is intended to allow sufficient opportunity for meeting with small groups to identify individuals who might benefit from representation and with whom an individual meeting could later be arranged under the Visitation Standard.

¹⁷ FIAC Memorandum to [REDACTED], dated March 17, 2004, and attached.

¹⁸ Letter from FIAC to [REDACTED] dated July 31, 2002.

As indicated in Section III.C above, the BDF library did not contain any KYR material from the Florence Project or elsewhere on the day of our visit. We had been advised prior to our visit by FIAC that it had sent the BDF OIC, [REDACTED] a CD-Rom with KYR material in English and Spanish in the fall of 2003. Following our visit, we received a letter from [REDACTED] dated April 5, 2004, stating that he had a February 10, 2004 memorandum from Mr. Tangeman relating to KYR material and that he had found a CD-Rom entitled "Florence Project" with KYR materials, which he said would be added to the BDF library computers.¹⁹ Mr. [REDACTED] also agreed to track down the materials previously supplied by FIAC.

OIC [REDACTED] stated that any group wishing to make KYR presentations should contact him directly and that he would make the necessary arrangements with MCSO. Written materials would have to be cleared in advance by District Counsel. Information on the presentation would be posted on the detainee bulletin board. If a request was made to give the same presentation again, it would not be necessary to go through the clearance process a second time.

IV. OTHER GENERAL OBSERVATIONS UNRELATED TO THE LEGAL ACCESS STANDARDS

The Detention Operations Manual does not address one of the most critical aspects of detention for the majority of detainees who have no realistic hope of gaining their freedom except through deportation - namely the quality and the amount of space in which they live and the availability of toilet and shower facilities. At BDF detainees live and eat in the same very tight quarters. The amount of space available to detainees housed in dormitory style rooms does not

¹⁹ Letter from [REDACTED] to [REDACTED] dated April 5, 2004, attached at Tab B.

appear to meet the requirements of the Florida Model Jail Standards, and the shower and toilet facilities fall far short of these state standards, raising the question whether sanitary conditions pose a threat to health.²⁰ The living and recreation facilities at BDF would be particularly difficult for the infirm, frail, elderly or handicapped.

A. RECREATION

The *Standards* require that facilities provide detainees with access to recreational programs and activities and that every effort be made to provide outdoor recreation. 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.

²⁰ Section 5.08 of the Florida Model Jail Standards requires dormitory housing units to have 75 square feet of floor space per inmate, including both sleeping and day room areas. There are allowances for less space for inmates allowed out of their units for a minimum of 8 hours a day. Facilities built before October 1, 1996, may use certain factoring procedures set forth in Appendices A and B of the Standards, which allow for limited reductions in the amount of space required. Toilets and sinks must be provided in the ratio of one to eight inmates. Urinals may be substituted for up to one half of the toilets in male housing units. Shower facilities must be provided in the ratio of a minimum of one to sixteen inmates. Without knowing exactly the size of the housing dormitories at BDF, and without having gone through the detailed analysis that would be required to estimate the reductions allowed for facilities built before October 1, 1996, it is nonetheless apparent to us that the dormitory units at BDF housing up to 32 detainees would not meet the Florida Model Jail Standards. They would not meet the minimum square feet of living space requirements and, with one toilet, one shower and one urinal, they would not meet the toilet and shower requirements.

BDF appears to meet the letter of the *Standards* in providing outdoor recreation. There is a small outdoor area on the fourth floor, which is infrequently used. The main outdoor recreation area is on the roof of the building. We estimated that it was 20 feet wide and 40 feet long with concrete walls on all four sides and a metal cage mounted on the walls. This area would be very hot seven months a year, with the heat exacerbated by the location in the middle of a downtown area and the small space enclosed by walls blocking any breeze. The detainees play basketball, soccer and volleyball in this area. On the day we visited most of the detainees were seated on the floor along the walls. It was clear that not all of the detainees present could have been playing basketball, soccer or volleyball at the same time during their one hour of outdoor recreation. One detainee noted that BDF was “worse” than other facilities in which he had been detained, in part, because of the lack of outdoor recreation room.²¹ Recreation in the housing areas includes watching TV in English and Spanish, books, cards, chess, checkers and dominos.

Detainees are allowed one hour a day of outdoor recreation five days a week. The outdoor area is not available on Thursday and Friday because on these days the staff is busy with a large amount of intakes and releases of detainees. There are three rotations a day of detainees allowed to go to the outdoor recreation area, done by floor, which accounts for the large numbers of detainees in the recreation area at the same time.

B. DISCIPLINARY AND GRIEVANCE PROCEDURES

1. Discipline

²¹ b6 Detainee Interview Notes

The *Standards* require each facility to have a disciplinary system that clearly defines detainees' rights and responsibilities and provides progressive levels of review. Disciplinary action may not include corporal punishment, deviations from normal food service or deprivation of clothing, bedding, personal hygiene items, correspondence or physical exercise, unless there is a security concern. Detainees must be advised of prohibited acts, the disciplinary severity scale and the sanctions applicable. All facilities must have graduated scales of offences and disciplinary consequences. Violations must be documented in an incident report and investigated. Detainees must be given a copy of the incident report and advised of their right to a hearing. There must be a written record of the hearing documenting the evidence considered, findings, the decision reached and the sanctions imposed.

The BDF Guidelines given to each detainee contain the facility rules and list prohibited acts. They also state that disciplinary action may include reprimand, privilege restrictions, segregation or criminal prosecution. However, the BDF Guidelines do not inform the detainees of the severity scale of any offense or the range of sanctions that may be imposed for a particular offense. None of the prohibited acts listed in the Guidelines are graded in terms of severity. Accordingly, detainees have no clear idea of what range of punishments may be imposed for a particular offense. Lt. b6, b7C stated that there is in fact an unpublished set of punishment standards. Prohibited acts A through Z in the BDF Guidelines are considered Level 1 offenses subject to a maximum of 30 days in disciplinary segregation. Prohibited acts AA through YY in the BDF Guidelines are considered Level 2 offenses subject to a maximum of 20 days in disciplinary segregation. The BDF Guidelines are also inadequate in their failure to inform detainees of their rights during the disciplinary process and the right to appeal any adverse decision, assuming they do

in fact have that right in practice.²²

²² The single paragraph in the BDF Guidelines relating to grievances states that grievances “will be acknowledged, investigated, and responded to by the Facility Director or designee.” The BDF Guidelines do not provide any information on a detainee’s right to appeal from any decision made by the Facility Director or designee.

Lt. [REDACTED] b6, b7C stated that there was only one level of disciplinary review at BDF and that the Disciplinary Committee consisted of one officer who was not involved in the incident. However, the MCSO “Inmate Rights at Hearing - Acknowledgment Form” advises the detainee that a decision of the “Disciplinary Deputy” may be appealed to the “Central Operations Jail Commander”.²³ We did not determine whether there is in practice an appeal available or to whom the appeal is made. The referenced form also advises the detainee that he has the right to request that a staff member represent him, but only if the detainee is unable to understand the charges against him, is illiterate or does not speak English.²⁴

One detainee indicated that officers were reasonable in imposing discipline, giving adequate warnings before instituting formal disciplinary proceedings.²⁵

C. ACCESS TO MEDICAL CARE

The *Standards* set forth a broad policy that detainees have access to medical services that promote health and well-being. They require that detainees be provided with an initial medical screening and have access to primary and emergency care. Although emergency dental care is required, the *Standards* provide that routine dental treatment may be provided to detainees for whom dental treatment is not accessible for prolonged periods because of detention.

Medical, dental and mental health services at BDF are provided by Prison Health Services, Inc., of Brentwood, Tennessee and the on-site clinic is open 24 hours a day. The clinic is staffed by one registered nurse and two licensed practical nurses. A physician’s assistant visits twice a week on Monday and Wednesday from 8:30 A.M. to noon. Dr. [REDACTED] b6 is on call 24 hours a day.

²³ This form and other forms relating to the disciplinary process at BDF are included at Tab C

The nurses visit each of the housing pods on a daily basis to administer medication and to respond to requests for medical attention. The BDF Guidelines note that medical services are available 24 hours a day for emergency, infirmary and clinical services. The BDF Guidelines further note that verbal requests for medical services that do not involve an emergency may not be processed, because of the large number of detainees in the facility. In order to obtain routine medical services, a Detainee Medical Request Form must be completed and submitted to the Medical Section.²⁶

Upon arrival at the facility, detainees are screened by a nurse for physical and mental health issues. Within 14 days of admission, a nurse performs a physical examination and takes a medical history. A doctor or physician's assistant reviews the history and the results of the physical. There is a mental health counselor available at BDF, [REDACTED] b6 [REDACTED]. If a detainee requires a psychiatrist, he will be referred to Dr. [REDACTED] b6 [REDACTED] who is off-site. There is no infirmary at BDF. If a detainee needs to be put in an infirmary, he is transferred to the Manatee County Central Jail. If dental treatment is required in the opinion of a nurse, the detainee will be transferred to the Central Jail for treatment. Detainees are asked upon admission if they are HIV positive and may request an HIV test. Status as HIV positive does not influence decisions on where detainees are housed. Those who are sick and require hospitalization are transferred to the Central Jail.

²⁴ See the "Inmate Right's at Hearing-Acknowledgement Form" included at Tab C.

²⁵ Martin Detainee Interview Notes

²⁶ See the paragraph on page 2 of the BDF Guidelines with the heading, "Medical Services."

The BDF Guidelines do not indicate whether there is any specific procedure for filing grievances as to health care services. One detainee reported that he had two teeth extracted and his gums became infected, but he was not given antibiotics to treat the infection.²⁷ A detainee said that he had to wait one month to see a dentist.²⁸ Another detainee said that although he has not had any problems, he knew another detainee who waited five days for medical assistance.²⁹ One of the private attorneys we contacted who represents detainees at BDF reported the following experience at BDF: She had a client at BDF in the fall of 2003, who had diabetes and who developed a serious cough; The medical staff administered two different antibiotics, neither of which were effective; The attorney spent five weeks trying to arrange an examination by a private physician; The private physician recommended immediate hospitalization; Some time later the detainee was released, was diagnosed with lung cancer and died on Christmas, 2003.³⁰

BDF's apparent policy of transferring detainees who require hospitalization to the Manatee County Central Jail raises the question of whether this practice is suitable for dealing with emergency cases. With no physician on site, there may well be cases in which a detainee in critical condition should be transferred immediately to a hospital emergency room. There should be specific procedures in place to facilitate such a transfer in emergency cases.

D. RELIGIOUS ISSUES

The *Standards* require that detainees be afforded the opportunity to engage in practices of

²⁷ [REDACTED] Detainee Interview Notes

²⁸ [REDACTED] Detainee Interview Notes

²⁹ [REDACTED] Detainee Interview Notes

³⁰ Email from attorney [REDACTED] to [REDACTED] Dated January 13, 2004.

their religious faith that are “deemed essential by the faith’s judicatory” consistent with the safety, security and orderly operation of the facility. Religious activities are to be managed by the Chaplain or a designated individual. All facilities are required to designate a space for religious activities. All facilities are required to have resources for community groups that provide religious services not provided by the Chaplain. Policies to enable the observance of important “holy days” should be in place. Detainees should be allowed access to personal religious property consistent with security requirements. Religious dietary requirements should be accommodated within reason. Detainees in the Special Management Unit should not be excluded from religious services unless they present a risk.

The BDF Guidelines state that religious services are held weekly by the Chaplains and other religious volunteers.³¹ It also states that Chaplains are available for religious counseling and that Bible classes are held. In order to attend religious services, detainees are required to sign up on a sheet posted in each dormitory.³² We did not specifically determine whether Bible classes are in fact held at BDF, but all of the detainees we interviewed said there were no classes of any kind available.

Religious services are held regularly at BDF by [REDACTED] b6 from the American Baptist Church. He makes all the arrangements for services by other denominations, including Muslim clerics, to hold services. Christian services are held regularly and Muslim services are held when there is a need. All services are held in the pods where detainees are housed. There are special diets available to meet different religious requirements, such as Ramadan. The Koran and the Bible are available. Muslims are given a second towel for prayers. Prayer beads are not allowed in the

³¹ See the paragraph in the BDF Guidelines with the heading, “Religious Services.”

³² Ibid.

facility because they could be used as a weapon.

Volunteers occasionally visit and conduct religious services. One detainee who had been in detention since January 5, 2004, had received no other visitors except representatives of a Christian church came to visit him on two occasions as part of their volunteer mission.

E. DETAINEE CLASSIFICATION

The BDF Guidelines provide that all detainees will be classified on arrival, before being admitted into the general population.³³ Detainees are housed, “recreated”, and fed with other detainees in the same classification. The assignment to a specific housing area is said to depend on “criminal history, behavior, medical problems and other factors”. We did not obtain detailed information on how the Classification Standards were implemented at BDF.

Detainees at BDF do not wear different colored uniforms, because their assignment to the housing pods is determined by their classification and, to some extent, by their language. BDF keeps detainees in their housing units most of the time by providing most services, such as meals, medical needs, religious services and telephone access within the housing units. These practices limit the amount of interaction between detainees housed in different housing units and particularly those housed on separate floors.

F. ICE PRESENCE AND COMMUNICATION WITH DETAINEES

³³ See the paragraph on page 2 of the BDF Guidelines with the heading, “Overview of the Detention Facility.”

The ICE OIC and other ICE detention and deportation officers maintain offices at BDF in a non-secure area of the building and service the detainee population at both BDF and the Annex.³⁴ Detainees are given a list of ICE personnel, including supervisory personnel, together with their telephone numbers and extension. Detainees are advised of the name and telephone number of the Deportation Officer and Deportation Assistant assigned to them.

ICE personnel stated that they respond promptly to written or telephone inquiries received from detainees, and that within the last year they had begun to maintain a log of such inquiries. Messages given to MCSO personnel for delivery to ICE are delivered to ICE without having been read by MCSO personnel. ICE personnel are present regularly at the facility, yet one detainee said he had been at BDF for four months and had never talked to an ICE officer.³⁵

One private attorney we contacted reported that the Deportation Officers were not prompt in returning telephone calls and that communication with them by letter or fax was very difficult.³⁶ The Standards state "...INS staff will respond to the caller as soon as possible, but in no case more than 24 hours after the call was made".³⁷

G. DETAINEE GRIEVANCE PROCEDURES

The *Standards* require every facility to develop Standard Operating Procedures ("SOP") to address detainee grievances. The SOP must establish a reasonable time limit for, (1) responding to grievances, (2) convening a committee to review formal complaints and (3) providing written

³⁴ [b6] s notes of meeting of ABA Delegation meeting with ICE OIC [b6, b7C] SDDO [b6, b7C] SDDO [b6, b7C] and SDEO [b6, b7C].

³⁵ [b6] Detainee Interview Notes

³⁶ Email from Attorney [b6] to [b6], dated January 13, 2004.

responses to formal complaints, including the basis for the decision. All grievances must receive supervisory review and guarantees against reprisal. Each facility must have a SOP for handling emergency grievances. Each facility must maintain a Detainee Grievance Log.

The *Standards* require the detainee handbook or equivalent to provide specific information on the following:

- (1) opportunity to file grievance, both formal and informal
- (2) procedures for filing a grievance and an appeal, including the availability of assistance
- (3) procedures for appeal, including appeal to the ICE OIC
- (4) procedures for appealing the decision of the ICE OIC
- (5) the policy prohibiting staff from retaliating against a detainee for filing a grievance
- (6) opportunity for complaining about an officer's conduct directly to the Justice

Department

The BDF Guidelines are minimally consistent with the first two requirements, but fail completely to address the remaining four requirements. The BDF Guidelines should be expanded to spell out the procedures for appealing the decisions made by MCSO personnel to ICE and ultimately to the Justice Department.

³⁷ DOM Visitation III.I.6 p.7

We did not determine whether BDF uses the grievance forms included in the *Standards* or whether BDF maintains a log of grievances as required by the *Standards*, other than the ICE log began recently which is referenced in Section IV F above. According to MCSO personnel, most grievances are informal and are handled by a floor supervisor.³⁸ We were told that ICE personnel are rarely involved in resolving a detainee grievance. However, ICE personnel did claim that they review grievances relating to discipline. For example, if a detainee complained that he was locked down without just cause, ICE would review the basis for the disciplinary action taken by MCSO. We did not determine whether BDF has a special procedure for resolving emergency grievances.

H. DETAINEE HANDBOOK

The *Standards* require that each facility develop a site-specific detainee handbook to serve as an overview and guide to the policies, rules and procedures in effect at the facility. It should constitute a comprehensive guide to life in the facility and provide notice to the detainees of all the applicable rules they are responsible for following, and all of the services and opportunities available to them.

³⁸ See [REDACTED] notes.

To incorporate this Standard, BDF provides a four page brochure entitled “Guidelines for the Downtown and Annex Detention Facility” together with detainee specific inserts relating to visitation, free legal services and a list of ICE personnel.³⁹ The guidelines are available in English and Spanish, but not other languages, and are given to each detainee upon arrival.

The BDF Guidelines appear to cover in a minimal and somewhat confusing fashion most of the requirements of the *Standards*, but they are lacking in several important respects. An important failure is the complete absence of any listing of detainees’ rights in contrast with the extensive listings of detainees’ responsibilities. The *Standards* require that detainees be advised of their rights in the following areas, among others:

- Voluntary religious worship
- Health care
- Visits from family and friends
- Legal counsel at no cost to government
- Reading materials
- Participation in a work program
- Right to be released on bond if not an exclusion case
- Right to an administrative hearing
- Right to apply for asylum
- Right to request voluntary departure

³⁹ See the material at Tab A.

The BDF Guidelines discuss certain subjects in the recommended list of rights, such as religious services, food service and visitation, but do not identify them as rights. Other rights, such as the right to participate in a work program, the right to be released on bond if not an exclusion case, and other rights are not covered at all.

There are a few other subjects recommended for inclusion in the handbook that are not covered in the Guidelines, including group legal rights presentations, education, barber services, Alien Registration files, detention files and the operation of Special Management Units.

Specific additional deficiencies in meeting the requirements of the Detainee Handbook Standard are discussed in Sections IV. B and IV. G, above.

CONCLUSION

Confinement at BDF with its crowded conditions and limited opportunity for outdoor recreation is a harsh experience for detainees. We believe that the MCSO staff at BDF carry out their responsibilities in a professional manner. ICE personnel on site are experienced and professional. However, there is a serious question as to whether it is appropriate to use BDF to house a population as large as the one it is currently authorized to handle. Moreover, implementation of the *Standards* is lacking in many areas, as we have noted. The difficulty of providing reasonable housing and in fully implementing the *Standards* in an IGSA facility, such as BDF, underscores the need for ICE to continue to work hard to identify alternatives to detention that will meet its requirements in providing security and adherence to removal orders.