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MEMORANDUM

August 1, 2003

To: Anthony Tangeman
From: American Bar Association Delegation to the Monmouth County Correctional Institute¹
File no: 502130-0003
Copies to: [REDACTED] ABA Commission on Immigration Policy, Practice and Pro Bono
Subject: Report on Observations During a General Tour of the Monmouth County Correctional Institute in New Jersey

I. INTRODUCTION

This memorandum evaluates and summarizes facts and findings gathered at the at the Monmouth County Correctional Institute (“MCCI”), a facility used by the Immigration and Customs Enforcement (ICE) under an Inter-governmental Service Agreement (“IGSA”) in New Jersey. The information was gathered via observation of the facility by the delegation and interviews with detainees and facility staff on July 17, 2003.

The Immigration and Naturalization Service² (“INS”) promulgated the “*INS Detention Standards*” in November 2000 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 ICE Contract Detention Facilities (“CDFs”), ICE Service Processing Centers (“SPCs”), and state and local government facilities used by the INS through Intergovernmental Service Agreements (“I.G.S.A.”). The *Standards* constitute a “floor” not a “ceiling” for treatment of ICE detainees. In other words, they are meant to establish the minimal requirements that the ICE must adhere to in the operation of its facilities. Each ICE Field Office or Officer in Charge (“OIC”) of a facility may, in his or her discretion, promulgate policies and

¹ The delegation was comprised of Latham & Watkins attorneys [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED].

² The INS is now known as the United States Immigration and Customs Enforcement (“ICE”).

practices affording ICE detainees more enhanced rights and protections than those provided for by the *Standards*.

Overall, the delegation felt that the staff at the Monmouth County Correctional Institute are taking steps toward implementation of the *Standards*. However, the following problems were noted by the delegates during the course of our visit:

- Insufficient access to contact information for legal services.
- Understocked, understaffed, and outdated law library with inadequate computer or word-processing support. With almost no immigration-related materials, the library is of little use to the detainees housed at this facility.
- Insufficient private phone access and free phone calls to counsel.
- Incorrect contact information for “Free Legal Services” and government agencies.
- Inadequate clothing provided to detainees.
- No detainee-specific handbook.
- The facility simply does not live up to its promise of adequate visitation rights.
- Evidence of last-minute remedial action and clean-up of problems prior to our visit.

This memorandum focuses on portions of the *Standards* relating particularly to areas of legal access, as well as general concerns arising from observations during the general tour. ICE’ stated goal in promulgating these *Standards* was to insure the “safe, secure, and humane treatment” of ICE detainees. In particular, the memorandum focuses on the Monmouth County Correctional Institute’s implementation of the *Standards* relating to access to counsel and legal rights, including the following: (1) Visitation; (2) Telephone Access; (3) Legal Materials; and (4) Group Rights Presentations. This memorandum also addresses other concerns observed during the course of the visit including: recreation, medical care, and religious issues.

II. THE MONMOUTH COUNTY CORRECTIONAL INSTITUTE

The Monmouth County Correctional Institute is located in Monmouth County, New Jersey. The facility is accredited according to the standards of the American Correctional Association. Monmouth typically houses around 1200 prisoners of which 150 are ICE detainees. On the day of the delegation’s visit, 149 of 1210 inmates were ICE detainees. Though there are 130 female prisoners at Monmouth, none are ICE detainees. The detainees were transferred from federal prisons after serving sentences for felony convictions. Most of the ICE detainees are from Latin American countries.

III. OBSERVATION OF IMPLEMENTATION OF LEGAL ACCESS STANDARDS

A. Visitation

The range of permissible visitors at the MCCI includes: attorneys, legal representatives, friends, family, and media. Detainees are allowed to have both “contact” and “non-contact” visits at the Monmouth County Correctional Institute.

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.

The Inmate Handbook states that only “members of the Clergy, Religious Leaders, and Attorneys shall be allowed to visit their clients as frequently as necessary.”³ According to Officers [b6, b7C] and [b6, b7C] attorneys are able to meet with their clients seven (7) days a week at any time before lockdown, which is at 9:30 pm. Visits are not to be interrupted during meals or head counts. According to the officers, if a meeting continues through meal hours, detainees have a menu tray or a sack meal brought to them at the visitation room; Detainee [b6, b7C] stated that food would be provided only after the meeting, rather than during it. Officer [b6, b7C] also stated that the attorney visits with those in disciplinary or administrative segregation are not limited.

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. And, upon presentation of a letter of authorization from a supervising attorney, legal assistants, law students, or law graduates, and non-attorneys with appropriate identification should be allowed entry.

The facility fails to meet all the criteria. The Inmate Handbook is silent about this standard. Officer [b6, b7C] stated that an attorney who does not carry a bar card and who is not on the Bar Association list of Attorneys ostensibly provided may not be allowed to meet with her client. He denies any knowledge of the G-28 form, but he then asserts it is not necessary. Also in accordance with the Officer, any other legal representative, interpreter and investigator can visit

³ Inmate Handbook (January 22, 2001) at 9. Only one of the detainees interviewed had received a copy of the Inmate Handbook; the delegation was told that there is a copy of it in the cell block.

the detainee if there is proof of authorization from a supervising attorney firm and if this proof is pre-approved by the Facility's administration.⁴

c. Security Concerns

At the MCCI, according to Officers [b6, b7C] and [b6, b7C] with detainees' corroboration,⁵ there are no strip searches after legal visitation.

d. Access to Contact Information for Legal Services

The delegation observed that there is insufficient access to Information for Free Legal Services at the MCCI. The Inmate Handbook does not include any instructions about it, but the staff referred to a phone number through which you can have access to a list of public defenders. Some of the detainees interviewed mentioned the existence of a list of names of free legal services maintained in the unit. However, it was not clear to the delegation whether the MCCI provided the list or if it was provided by ICE, before the detainees' admittance to the facility. In any case, the detainees reported that the list is largely useless to them because they are given no free calls and the cost of outgoing calls is prohibitive. The only real option when calling attorneys or legal aid providers is to call collect and they routinely do not accept the charges.⁶ Moreover, Mr. [b6, b7C] reports that, through calls with his family, he has learned that none of these organizations listed help individuals convicted of a felony. During the tour, the delegation did not observe any list posted near the telephones.

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. An attorney or legal representative should be provided with a private room to conduct a meeting with possible visual, but no audio observation. Attorneys, legal representatives, law students and legal assistants should be able to provide the detainee with paper documents, and the detainee should have the right to retain or have reasonable access to them.

At the MCCI, detainees meet with their legal representatives in rooms with glass walls, located immediately outside the units where detainees are housed. Therefore, the room interior is observable by the Facility staff, but conversations are private. There is one legal visitation room per unit but Officer [b6, b7C] asserted that, if necessary, special arrangements are made so that meetings can be conducted in other improvised rooms. However, detainees mention that because only a very small number of detainees actually have legal representation, there has not

4 [b6, b7C] interview.

5 Interview with detainee [b6, b7C] July 17, 2003; Interview with detainee [b6, b7C], July 17, 2003.

6 [b6, b7C] interview; [b6, b7C] interview; interview with detainee [b6, b7C] July 17, 2003. [b6, b7C] also explained he had a public defender for his felony conviction but has not had a lawyer for any of his INS problems. Similarly, [b6, b7C] and [b6, b7C] stated that they are not legally represented.

been any situation when these special arrangements were necessary during the length of their stay.⁷

Officer [b6, b7C] stated that detainees are allowed to keep paper documents in their cells; however, when the volume of stacked documents becomes excessively large, the staff strongly advises detainees' attorneys to take most of these documents with them, for safety reasons.⁸

2. Visitation by Family and Friends

a. Visitation Times and Duration

The *Standards* provide that Facilities should permit authorized persons to visit detainees within secure and operational constraints and that ICE should encourage 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 be for at least 30 minutes.

The visitation schedule was posted at the front door but it is not clearly outlined in the Inmate Handbook.⁹ Copies of the schedule are also available at the visitation room for distribution to detainees and visitors. According to the schedule, the general population is allowed non-contact visits four times a week and contact visit once a week. The staff purports to be "flexible" with visiting times for family members, and, according to Officers [b6, b7C] and [b6, b7C], if normal visiting hours are a hardship for family members, arrangements can be made for visits at other times.¹⁰ At least one detainee differed with the officers on this point, saying that, outside of normal visiting hours, no special arrangements are ever made.¹¹ Staff states that visits last for 30 minutes, but detainees differ and consistently assert the visits are only for about 15 minutes.¹²

Visiting hours for non-contact visits are from 12 noon until 8 pm on Wednesdays and Thursdays. On weekends the hours are from 8 am until 4 pm.¹³ Visitors are required to register in certain prescribed times. Thus, visitors for male detainees whose last names start with the

7 [b6, b7C] interview; [b6, b7C] interview.

8 It should be noted that inmates' storage bins can only accommodate a very small amount of materials.

9 There are two provisions in the handbook relating to visitation hours where it is asserted generally that "regular visiting for the general population is held everyday except Monday and Tuesday" and that inmates in administrative segregation, infirmary, and protective custody will be allowed non-contact visits on Fridays, from 2:15 pm to 4:00 pm. Inmate Handbook (January 22, 2003) at 7-8.

10 Inmate Handbook (January 22, 2001) at 9.

11 [b6, b7C] interview.

12 [b6, b7C] interview; [b6, b7C] interview.

13 Inmate Handbook (January 22, 2001) at 9.

letters A to L should register for a visit between 12:15 pm and 3:30 pm on Wednesdays and Fridays, and between 8:15 am and 10:30 am on Saturdays and Sundays. Visitors for male detainees whose names start with the letter M to Z, in turn, should register for a visit between 5:45 pm and 6:30 pm on Wednesdays and Thursdays, and between 12 noon and 1 pm on Saturdays and Sundays. Finally, visitors for female detainees should register between 6:30 pm and 7:00 pm on weekdays and between 2:00 pm and 2:30 pm on weekends. On Fridays, detainees in administrative segregation, infirmary, and protective custody may receive non-contact visits from 2:15 pm until 4 pm.¹⁴ Inmates are restricted to one non-contact visit per day and visits are limited to five visitors.

The facility also allows for pre-scheduled contact visits on Fridays, from 8 am until 2 pm. Detainees have to file an “Inmate Contact Visit Request Form” at least two weeks prior to the expected visit. After approved by the POD Officer, detainees must notify their intended visitors.¹⁵ The Handbook states that contact visits are available for any inmate meeting certain requirements, mainly concerning disciplinary measures.¹⁶ It also states that inmates are allowed only one contact visit in a thirty-day period and up to two (2) visitors can be permitted on each contact visit.¹⁷ Detainees contend that, as a rule, contact visits are allowed only after several months of stay in the facility.¹⁸

b. Other Limits on Visitors

The Inmate Handbook provides that “the number of visitors, schedule, space and personal constraints limits length of visit.”¹⁹ It also provides that children under eighteen (18) years of age have to be accompanied by a parent or a legal guardian.²⁰ Although the *Standards* provide that they should be able to visit each other during regular visiting hours, Officer [REDACTED] reports that detainees cannot meet with other immediate family members detained at the same facility. Family members can leave money orders for a detainee’s account.²¹

The schedule specifies that proper photo identification and attire is required for visitors. The handbook describes the types of identification that are acceptable²² but does not say anything about attire. Officer [REDACTED] explained that it cannot be revealing.

The *Standards* also provide that a facility disciplinary system should not allow for deprivation of access to legal or family visitation. However, Officer [REDACTED] reports that

¹⁴ Id. at 8.

¹⁵ Id.

¹⁶ Id.

¹⁷ Id.

¹⁸ [REDACTED] view; [REDACTED] view.

¹⁹ Inmate Handbook (January 22, 2001) at 9.

²⁰ Id.

²¹ Id.

²² Id. at 8.

visitation rights may be revoked as punishment for infractions and the handbook states that detainees in “disciplinary detention shall have no visits, unless approved by the watch commander and for emergent reasons.” In the same way, detainees in administrative segregation, infirmary, protective custody or on lockdown status will be denied contact visits.²³

c. Security Concerns

The *Standards* and the Inmate Handbook provide that detainees may be subject to a pat-down search before a contact visit and be strip-searched after a contact visit. Staff confirms that a strip search is performed after each contact visit. Staff asserts that there are no strip searches after non-contact visits and the detainees interviewed concur.

B. Telephone Access

The *Standards* provide that facilities shall permit detainees to have reasonable and equitable access to telephones. This includes, among other things, multilingual operators and reasonable rates. The ICE *Standards* dictate that detainees should be able to make free calls through pre-programmed technology to consular offices, free legal service providers, local courts, government offices, and family members (in case of emergency).

There are several problems with the phone systems at the MCCI. First, the Monmouth County jail does not have a system of pre-programmed calls in place. According to the ICE officials,²⁴ a new system for free pre-programmed calls should have been installed in May, but due to problems with the telephone company who will be providing the service, the installation has been delayed.²⁵

Officers [b6, b7C] and [b6, b7C] explained that if a detainee needs to make a free phone call, he should fill out a request form for the shift captain or for the social services department. Also according to the Officers, if the reason for the request is legitimate, it is usually granted within forty-eight (48) hours. However, the detainees we interviewed consistently indicated that no free phone calls are available. Detainee [b6, b7C] provided us with a copy of the third written request he has filed for free calls for his family and for legal services. His latest request was dated July 10th, and he claims not to have received any answer from the facility staff by July 17th, 2003.

Second, collect calls are the only alternative detainees have to contact lawyers, consulates, and family. However, because the rates for collect calls are excessively high, legal services providers and consulates do not take the calls. According to Mr. [b6, b7C] and Mr. [b6, b7C] the first minute for domestic calls is \$5.14 and \$0.89 for each additional minute. Local calls are \$2.45 for the first minute.

²³ Id.

²⁴ The ICE officers who accompanied this delegation are [b6, b7C] and [b6, b7C]

²⁵ [b6, b7C] interview; [b6, b7C] interview.

Third, ICE *Standards* require that detainees should be able to discuss their legal cases on the phone in a private environment and that detainees legal calls should not be monitored without court order. There are eight telephones in each unit common area. These phones, however, do not provide any privacy. They are in a visible, open environment, surrounded by other detainees and/or guards. The Inmate Handbook provides that calls may be monitored,²⁶ but Monmouth staff asserts that they are not.²⁷ Detainees comment that, since most of them hardly make any calls at all, due to the financial obstacles mentioned above, privacy has not been an issue for them.

Finally, the *Standards* provide that the detention facility should receive and deliver phone messages for a detainee promptly. Officer [REDACTED] b6, b7C said that the MCCI does not provide an answering service for attorneys and does not deliver any messages from family members. Officer [REDACTED] b6, b7C on the other hand, asserted that, in a family emergency or for legal purposes, accommodations can be made for delivering messages to the detainees. At least one detainee disagreed with this assertion.²⁸

The insufficient access to phone calls was cited as one of the detainees' principal complaints.²⁹

C. Legal Materials

The *Standards* mandate that IGSA's establish and maintain a law library.³⁰ The library must be adequately 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.

Plainly, the MCCI library does not meet the requirements set forth in the *Standards*. While the library is large enough to accommodate up to 25 detainees, it is not sufficiently equipped to support legal research and writing.

1. Materials Identified in Attachment A-2 of the *Standards*

The *Standards* require the library 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

²⁶ Inmate Handbook (January 22, 2001) at 5.

²⁷ [REDACTED] b6, b7C interview.

²⁸ [REDACTED] b6, b7C interview.

²⁹ [REDACTED] b6, b7C interview; [REDACTED] b6, b7C interview; [REDACTED] b6, b7C interview.

³⁰ Detention Operations Manual, Detainee Services Chapter 1: Access to Legal Material.

met, the facility must designate an employee with responsibility for inspecting, updating and maintaining the library materials in good order.³¹

The MCCI does not have the following material that is required pursuant to Attachment A-2:

1. *Administrative Decisions Under Immigration & Nationality Laws;*
2. *Immigration Law and Crimes;*
3. *Guide for Immigration Advocates;*
4. *Country Reports on Human Practices;*
5. *Human Rights Watch – World Report;*
6. *UNHCR Handbook on Procedures and Criteria for Determining Refugee Status;*
7. *Considerations for Asylum Officers Adjudicating Asylum Claim from Women;*
8. *Immigration and Naturalization Service Basic Law Manual;*
9. *Lawyer’s Committee Handbook on Representing Asylum Applicants;*
10. *Legal Research in a Nutshell;*
11. *Legal Research & Writing: Some Starting Points;*
12. *Black’s Law Dictionary;*
13. *Directory of Non-profit Agencies that Assist Persons in Immigration Matters;*
and
14. *Telephone Books (yellow pages).*

In addition, the following research references found in the library have not been consistently updated:

1. *Code of Federal Regulations, Title 8, Aliens and Nationality (1997);*
2. *Bender’s Immigration and Nationality Act Service (1999);*
3. *Bender’s INA Regulation Service;*
4. *Rights of Prisoners;*
5. *Federal Habeas Corpus, Practice & Procedure;*
6. Hard copies of *United States Code, Title 8, Aliens and Nationality (1998);* and
7. Hard Copies of *BIA decisions (most recent decision dated 2000).*

Based on the quantity of materials missing from the library’s collection, it is clear that the facility’s library officer has not promptly replaced missing texts, nor has she regularly updated existing materials.

2. Library Conditions

The MCCI library is composed of two connected rooms: one for books and a reference desk, and another for the typewriters, the computers, and reading tables. In the first room, closer to the hallway, there are bookshelves around three contiguous walls. There are also two large

³¹ Detention Operations Manual, Detainee Services Chapter 1: Access to Legal Materials.

tables (with no chairs) in the middle of the room where detainees can stand and read. In the second room, there are seven typewriters, four computers, and a few tables. It appears to be quiet, well lit, and appropriate for researching.

3. Access to the Library, Equipment, and Holdings

The *Standards* mandate that an adequate number of typewriters and/or computers, carbon paper, writing implements, writing tablets, and non-toxic liquid paper be available for use by the detainees.

The *Standards* mandate that each facility devise a flexible schedule, in order 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 any other planned activity. Detainees are to be provided with free stationery. As stated previously, it is questionable whether the law library at the MCCI provides its detainees with access to the equipment necessary to draft and produce legal documents.

At the Monmouth County Jail, detainees may have direct access to the typewriters but cannot use the computers without a library assistant's help.³² Moreover, according to the detainees we interviewed, the library hours are severely limited. Mr. [b6, b7C] asserts that detainees have access to the library for one to one and half hour, on Fridays. Mr. [b6, b7C] confirms detainees have access to the library once a week, but he claims that they may have access to it for only fifteen minutes.³³

4. Photocopies and Mail

Detainees are provided with photocopies of cases upon request. They are entitled to a total of twenty five (25) pages or three (3) cases per week, which, according to the request form, will be delivered to them in "no earlier than 48 hours." The request form also lists the available research areas: post conviction remedies, habeas corpus, civil rights, and conditions of confinement only. According to Mr. [b6, b7C] a library assistant collects the requests for copies on Mondays and Wednesdays, but he also complained that this service is frequently interrupted.³⁴ The Library Officer confirmed that nobody substituted for her when she took a two-week vacation.³⁵

Under the *Standards*, indigent detainees should be provided with two envelopes and three regular stamps for legal mail. Specifically, the *Standards* provide that "[t]he facility will provide indigent detainees with free envelopes and stamps for mail related to a legal matter, including correspondence to a legal representative, potential legal representative, or any court." However,

³² Library Officer Interview.

³³ [b6, b7C] interview; [b6, b7C] interview.

³⁴ [b6, b7C] interview.

³⁵ Library Officer Interview.

according to the detainees we interviewed, those supplies are not free and they have to pay for pens, pencils, envelopes, stamps, and paper, even if they are indigent.³⁶

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

The *Standards* require that “[t]he 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.³⁷ The Librarian has said that certified mail is available upon request if the detainee pays for it.

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 ICE facility. All facilities must cooperate fully with authorized persons seeking to make such presentations.

According to MCCI staff, no organization has ever requested authorization to make presentations there.

IV. OTHER GENERAL OBSERVATIONS UNRELATED TO THE LEGAL ACCESS STANDARDS

A. Recreation

The *Standards* require generally that “all facilities shall provide ICE detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”³⁸ 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 outdoor area, a large recreation room with exercise equipment and access to sunlight will be provided.”³⁹ 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.⁴⁰ Although the Inmate Handbook states only that detainees “have the right to... a regular exercise period...”,⁴¹ according to Officers [REDACTED] and [REDACTED] detainees are able to have outside and inside

³⁶ [REDACTED] the delegation a price list that includes the items listed.

³⁷ Detention Operations Manual, Section 1(P) “Notaries, Certified Mail, and Miscellaneous Needs Associated with Legal Matters.” The Delegation did not have sufficient time to obtain answers to these questions or verify compliance with the *Standards*.

³⁸ Detention Operations Manual at Section 27, I.

³⁹ Id. at III.A.1.

⁴⁰ Id. at III.B.1.

⁴¹ Inmate Handbook (January 22, 2001) at 17.

recreation for at least one hour, seven days a week, any time before lockdown, which is at 9:30 pm.

- Detainees recreate with other detainees of the same classification.⁴²
- Detainees may choose between an indoor recreation room with exercise equipment, an outdoor basketball court and inside recreational activities such as chess, dominoes, and baccarat.
- Recreation is available to detainees held in segregation on the same terms, although such detainees may not recreate with general population, and only once a week with other detainees held segregation.⁴³
- There are certain type of punishments that are not permitted at the MCCI. “Punishment shall not include restrictions in the following: ...
g. Exercise”.⁴⁴

The *Standards* provide that mental and medical health professionals, and interpreters, with appropriate identification, should also be allowed entry. Mental and medical health professionals, on the other hand, are not allowed to visit detainees.⁴⁵

B. Access to Medical Care

1. Generally

The *Standards* set forth a broad policy that “detainees ... have access to medical services that promote detainee health and general well-being.”⁴⁶ The *Standards* require that detainees be provided with an initial medical screening and have access to primary care, and emergency care.⁴⁷ Although emergency dental care is required, “[r]outine dental treatment may be provided to detainees from whom dental treatment is inaccessible for prolonged periods because of

⁴² Detention Operation Manual at III.B.1.

⁴³ Interview with Captain [REDACTED] b6, b7C July 17, 2003. Interview with Lieutenant [REDACTED] b6, b7C, July 17, 2003.

⁴⁴ Inmate Handbook (January 22, 2001) at 29-30.

⁴⁵ [REDACTED] b6, b7C stated that when detainees are admitted to the facility, they go through a thorough medical screening, when their personal mental and medical health professionals may be consulted in order to provide information on their health. But once admitted, they have to rely on the Facility’s medical staff. [REDACTED] b6, b7C Interview.

⁴⁶ Id. at Section 24, I.

⁴⁷ Id. at III.A.

detention for over six months.”⁴⁸ The information we received regarding health services indicated that the MCCI has met these *Standards*.

The delegation met with [REDACTED] b6, the Health Services Administrator, to discuss the medical policies at the MCCI. The medical facility has been NCCHC accredited for 11 years and is currently in the process of its 4th reaccreditation. While it does not have JCAHO accreditation (apparently for hospitals), it does work with Central State Medical Center in Freehold, New Jersey, a JCAHO accredited hospital, for outpatient services.

An overriding theme of our visit was that while they receive a different designation and are generally segregated from the inmate population, the detainees are provided with the same services as the inmates. By and large, this means that the prison is more concerned with complying with ACA, rather than ICE, standards. Ms. [REDACTED] b6 was more or less ignorant of the ICE medical access standards and did not know if the nurse who most often spoke with the ICE contacts regarding detainees was familiar with ICE forms and procedures.

The staff of the medical center at the prison consists of two doctors, two “and a half” nurse practitioners (per Ms. [REDACTED] b6), thirty nurses, two dentists, one oral surgeon, one dental assistant, two psychiatrists, four psychologists, one nurse midwife, one orthopedic surgeon, one optometrist, and one physical therapist. The physical therapist, surgeons, and midwife are available on call. The optometrist visits the facility once monthly. Other medical situations requiring different specialists are handled through the hospital.

Detainees receive the same initial examination as inmates. This facility houses detainees that usually come directly from another prison, so the intake health procedures are the same for everyone. This initial examination is conducted by a nurse within 24-48 hours of arrival at the facility. Examination with a physician will occur during that period if there is a history of infectious disease or other serious malady. If the detainee has no paperwork confirming a tuberculosis test within the last six months, he or she is given a PPD and evaluated for signs and symptoms by an infectious disease trained nurse. If the detainee displays symptoms, she or he is placed in one of the facility’s two reverse flow isolation rooms. If there is no serious medical history, the detainee is seen by a physician within 14 days of arrival. Detainees also receive a mental health evaluation upon intake.

Medications are stored in a secure area. Detainees are permitted (according to Officer [REDACTED] b6, b7C) to administer “self carrying” medications to themselves.⁴⁹ They must go to the medical facility to receive narcotic or potentially dangerous medications.

The health services are outlined on pages 12-14 of the inmate handbook.

⁴⁸ Id. at III.E.2.

⁴⁹ Inmate Handbook (January 22, 2001) at 14.

2. Detainee Concerns

Detainees expressed concern in interviews about the fact that they are charged 5 dollars per visit to the medical facility and that they are also charged for medicine and other services. Detainees also expressed concern about the fact that one may not cancel a scheduled visit to the medical facility even if, for example, the underlying condition for which the appointment was made has passed without paying the \$5 fee. Physicians are required to “see a person whose name has been placed on the [sick] list within a reasonable time.”⁵⁰

C. Detainee Handbook

The *Standards* require that “[h]andbooks should be distributed to each detainee upon their admission to any facility in which they will be detained for more than 72 hours. Handbooks should be available in languages other than English.”

As previously noted, there is no detainee-specific handbook at the MCCI. There is, however, an Inmate Handbook, revised as needed, supposedly provided to every inmate and detainee upon intake. Almost none of the detainees had been given a copy of the book. Deputy Warden [b6, b7C] told us that the handbook is currently undergoing revision. Detainees expressed concern that they had not received the book. One detainee claims to have obtained a copy of the book only after a written request.⁵¹ The inmate handbook is available in English and Spanish. There are no plans to create a separate detainee handbook. It was unclear from discussions with Deputy Warden [b6, b7C] if the revised handbook would contain a section on immigrant detainees.

The handbook adequately lays down all of the prison policies regarding classification, *inmate* rights and responsibilities, work, recreation, health, religion, housing, clothing, grievance, and disciplinary policies. There is no section in the handbook relating to specific rights and responsibilities of immigrant detainees. Specifically, there is no mention of ICE proceedings nor is there mention of social services particular to immigrant detainees.

D. Detainee Grievance Procedures

The *Standards* require that “[e]ach facility must develop standard operating procedures that address detainee grievances including emergency grievances and must guarantee against any reprisals.” The *Standards* require both formal and informal grievance procedures.

When detainees have a grievance at the MCCI, they may proceed informally to their “pod officer” (OIC) to see if it can be worked out within the pod. This process is encouraged for small matters. According to Officer [b6, b7C] detainees who wish to have their grievance dealt with formally fill out a grievance form which is sent to Captain [b6, b7C] who decides what should be done. If Captain [b6, b7C] is unable to solve the problem and it pertains to the detainee’s immigration status, the grievance is faxed to ICE for review. It is unclear what the policies are regarding special help for detainees who may have difficulty filing a grievance in English. Mr.

⁵⁰ Id. at 13.

⁵¹ Interview with detainee [b6, b7C] July 17, 2003.

b6, b7C of ICE told us that officers from ICE visit the facility once or more per week to discuss grievances and other issues with detainees. Mr. b6, b7C said that each officer may be responsible for up to 90 detainees.

The grievance rights, rules, and procedures are found on pages 32-34 of the Inmate handbook. Inmates and detainees may file grievances regarding medical care; conditions of confinement; general classification procedures; general discipline procedures; inmate program participation; telephone, mail, and visiting procedures; food, clothing, and bedding issues; and religious preference.⁵² Inmates may appeal decisions made by their watch commander. Appeals are handled by the deputy warden.⁵³

Several detainees told us, in addition to the substance of their grievances, that their complaints go unanswered. Detainees did not seem well informed of the formal grievance procedures.

E. Disciplinary Policy & Segregation

The rules of conduct, sanctions and procedures upon violation are defined in the Inmate Handbook. As noted, according to prison officials, it is given to all detainees on entry to the facility, but detainees almost uniformly asserted they did not get it.⁵⁴ Any rules that are unclear are to be explained by an officer.⁵⁵ The Handbook also includes sections on inmate rights and privileges, prohibited acts, and minor and major violations and sanctions. If a problem situation arose that required a detainee to be placed in either administrative or disciplinary segregation, the officials at MCCI would contact ICE. There are currently no ICE detainees in either type of segregation, nor does Captain b6, b7C recall any ICE detainee ever requiring such measures.⁵⁶ The segregation measures discussed herein therefore reflect Monmouth's general inmate policies, which would apply to ICE detainees as well and are stated in the Inmate Handbook.

Disciplinary segregation results when there is a charge against an inmate due to an infraction. The maximum length an individual may be placed in this segregation is 30 days (2 infractions resulting in 15 days each). A charge sheet is created when an inmate goes into the special management unit ("SMU"). The inmate receives a copy of the order within 24 hours, and it is reviewed by a captain the next day.⁵⁷ Administrative segregation results from a threat (for example, to staff) based on an individual's propensity or past history.⁵⁸

⁵² Id. at 33.

⁵³ Id. at 34.

⁵⁴ b6, b7C interview; b6, b7C interview. There is no separate Detainee Handbook.

⁵⁵ Inmate Handbook (January 22, 2001) at 19.

⁵⁶ b6, b7C interview.

⁵⁷ Id.

⁵⁸ Id.

When a minor offense occurs, a verbal or written warning may be given, possibly accompanied by the loss of 1 or 2 days of recreation privileges. When these more informal resolutions are not suitable, a captain informs the ICE via fax of the charges and incident report.⁵⁹

The disciplinary board which adjudicates major offenses is composed of a three-member panel: one custody supervisor and two non-custody civilian staff members. These board members are not to have filed the complaint, witnessed the accident, participated in the investigation, have responsibility for subsequent review of the decision or have personal interest in the outcome.⁶⁰ During a hearing, the board considers statements taken during the preliminary investigation onsite, written reports and any other evidence, and pleadings by the inmate and staff representative. Although a paralegal is available to an inmate facing a disciplinary hearing if requested, this information is not stated in the inmate handbook.⁶¹ The use of confidential informant information is governed by written procedures, and inmates have the right to cross-examine witnesses against them at the hearing.⁶² Findings are not based on the reasonable doubt standard but require overwhelming evidence.

The inmate handbook specifies that major infractions will be investigated within forty-eight hours of the time the disciplinary report is served upon the inmate.⁶³ Postponements are to be allowed for inmates for causes such as preparation of a defense, illness or unavailability of an inmate, further investigation required of a factual matter relevant to the hearing or pending criminal court prosecution.⁶⁴ These extensions are limited to 1-3 days. Postponements are not to be granted to staff except for a holiday or emergency.⁶⁵

Disallowed sanctions are to include restrictions on the following: food, health and sanitary facilities, clothing, access to medical needs, reading and correspondence (mail), hygienic implements, and exercise.⁶⁶ An inmate in administrative segregation may have his physical exercise restricted to a more secure area and singly, instead of with other inmates.

The disciplinary system at Monmouth has progressive levels of review and appeals, which are documented. According to Captain [REDACTED] b6, b7C it is possible for a reviewer to recommend early release from the SMU, depending on the merits of the case. An inmate files an appeal with any captain, who examines and makes a judgment on the case. Appeals to the Deputy Warden and Warden are also possible through the grievance procedure. Inmates are to

⁵⁹ Id.

⁶⁰ Inmate Handbook (January 22, 2001) at 30-31.

⁶¹ [REDACTED] b6, b7C interview; Inmate Handbook (January 22, 2001).

⁶² [REDACTED] b6, b7C interview.

⁶³ Inmate Handbook (January 22, 2001) at 19.

⁶⁴ Id. at 31.

⁶⁵ [REDACTED] b6, b7C interview.

⁶⁶ Inmate Handbook (January 22, 2001) at 29-30.

be given the appeal form at their hearing and have forty-eight hours to submit it.⁶⁷ Paralegals are available to help them with this process.⁶⁸ The answer to these appeals are provided in writing.

Standard procedure also includes review of an inmate's disciplinary detention at set intervals, which are conducted by the classification committee. Administrative segregation is reviewed every 30 days; officers did not know of cases where an inmate was in segregation for longer than a few months.⁶⁹ This committee looks at all documented information and makes a formal written review, which the inmate receives, explaining its decision and rationale. The inmate is interviewed as needed, if information is not clear or certain.⁷⁰

F. Administrative Segregation & Special Management Unit ("SMU")

Inmates can be in protective custody without segregation. A request to place a detainee in the administrative SMU must be made in writing, unless the cause is so immediate and obvious as to obviate the need for a request. There are two main types of protective custody: when an inmate faces a death threat and must be segregated (for example, for testifying against another inmate), or when an inmate must be kept away from another inmate and is therefore housed in a different unit. There are not any ICE detainees in protective custody, administrative detention or segregation.

Protective custody it is an overt attempt to guarantee inmate safety; inmates in administrative segregation have the same general privileges though they may have different restrictions of time and availability.⁷¹ Segregated inmates do not have less opportunity to exchange or launder clothing than the general population. Detainees' access to the law library is the same as the general population's, though at it's own times and separately from other inmates. They receive three meals per day, from the same menu as the general population, and are able to maintain a normal level of personal hygiene. Visits from clergy are allowed. Visitation is allowed on Friday mornings only, not normal visiting hours. There is no television in the room.

The delegation did not tour the SMU and did not observe its conditions first-hand. According to an officer, the SMU is well-ventilated, adequately lighted and heated, and maintained in sanitary condition. A health care professional visits at least three times weekly, and shift supervisors visit daily, including weekends and holidays. Every cell is equipped with a bed that is secured to the wall. The number of inmates per cell does not ever exceed the occupancy limit.⁷² The criteria for objectively assessing living standards are included in the facility's written procedures; as an accredited facility, it is up for review every three years. Reviews are conducted for inmates in administrative segregation every thirty days, with a copy

⁶⁷ Id. at 32.

⁶⁸ [REDACTED] interview.

⁶⁹ Id.

⁷⁰ Id.

⁷¹ Id. Inmates are provided barbering services, recreation, reading material, religious materials and the same correspondence privileges given to the general population. Telephone access is limited to one hour.

⁷² [REDACTED] interview.

of all decisions going to the inmate. Appeals of decisions can be made to the classifications committee.⁷³

The SMU maintains a permanent log, where it registers detainees' activities. This log includes information on meals, hygiene, exercise and medical care. There are also daily records maintained for each day a detainee is in administrative segregation, which are retained until the detainee returns to the general population.⁷⁴

G. Voluntary Work Program

MCCI has a voluntary work program, run by Captain [REDACTED] b6, b7C⁷⁵ About 20-30% of the general population works through the program and about 10-15% of the detainees. The figure is lower for detainees because they are often not at Monmouth long-term.⁷⁶ Both sentenced and unsentenced inmates can participate;⁷⁷ low level-three detainees can also participate if they have been sentenced. "Special needs" inmates (including detainees), those who are physically or mentally challenged, can participate in the program as well. Individuals are paid according to state standards and are discouraged from opting out of the work program. Detainees are paid a stipend "as required," which they can put into their commissary account.⁷⁸

To qualify for a job, an inmate/detainee must go through classification, which includes a security check and an examination of the inmate's file.⁷⁹ According to Captain [REDACTED] b6, b7C the facility rarely runs out of work or workers. Typically, an individual in the work program will have a progression of jobs based on security levels, for example, from kitchen, to floor, to outside detail. Work at an outside site requires clearance; at MCCI, only sentenced inmates may do outside details, such as road crew.

Inmates often work only 3-4 hours a day, depending on their job. They would not usually work over the standard 40-hour work week, according to Captain [REDACTED] b6, b7C Whether the work schedule is fixed depends on the job; some responsibilities are more flexible than others.

The Inmate Handbook specifies that work privileges can be rescinded for "failure to report for work or reporting for work in an unsanitary condition or failure to perform satisfactorily."⁸⁰ Before being removed from a work detail, an inmate would be charged and

⁷³ Id.

⁷⁴ Id.

⁷⁵ Id.

⁷⁶ Id.

⁷⁷ Inmate Handbook (January 22, 2001) at 10.

⁷⁸ [REDACTED] b6, b7C interview.

⁷⁹ Id. Inmates who are prone to fighting, for example, might only be tried out in particular jobs.

⁸⁰ Inmate Handbook (January 22, 2001) at 11.

have a hearing with due process. Any decisions are recorded, and unless the infraction is serious, removal is usually not permanent and lasts only 15-30 days.⁸¹

Workers are trained before beginning a job. Food service workers are also given a medical check before training. and the program follows OSHA, NFPA, ACA and EOSH standards.⁸² Updated versions of these standards are maintained onsite at the facility. If an INS detainee was injured on the job, he would be given medical care and an incident report and insurance work injury form would be filled out.⁸³

81 [REDACTED] interview.

82 Id.

83 Id.