

MEMORANDUM

To: Anthony Tangemann, Detention and Removals Office, Immigration and Customs Enforcement, Department of Homeland Security
From: American Bar Association Delegation to Plymouth County Correctional Facility, Plymouth, Massachusetts
Cc: [REDACTED] b6, ABA Commission on Immigration Policy, Practice and Pro Bono
Re: Report on Observations during a Tour of the Plymouth County Correctional Facility
Date: November 6, 2003

I. ICE Detention Standards

The Immigration and Naturalization Service (“INS”)¹ 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 Service Processing Centers (“S.P.C.”), Contract Detention Facilities (“C.D.F.”), and state and local government facilities used by the ICE through Intergovernmental Service Agreements (“I.G.S.A.”). The Detention Standards went into effect at ICE SPCs on January 1, 2001, and were to have been implemented at each facility by January 2003. 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 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 practices affording ICE detainees more enhanced rights and protections than those provided for by the *Standards*.

II. Introduction

A. The Delegation’s June 23rd Visit

This memorandum summarizes the facts and findings gathered by our ABA delegation² during a tour of the Plymouth County Correctional Facility in Plymouth, Massachusetts (the “PCCF”) on June 23, 2003. The information contained herein was gathered via observation of the facility and interviews with detainees and PCCF staff.³

B. General Information about PCCF

PCCF staff informed us that PCCF’s population numbered approximately 1,580 individuals at the time of our tour, all of whom were male. Immigration detainees numbered

¹ With the establishment of the Department of Homeland Security (“DHS”), the functions, expertise, resources and jurisdictions of several border and security agencies were merged and reconstituted into U.S. Immigration and Customs Enforcement (“ICE”), including all functions of the INS relating to detention and removal.

² The ABA delegation consisted of Attorneys [REDACTED] b6, [REDACTED] b6, [REDACTED] b6, [REDACTED] b6, [REDACTED] b6, and [REDACTED] b6.

³ We met with various staff members during our tour, including but not limited to [REDACTED] b6, b7C Capt. [REDACTED] b6, b7C Lt. [REDACTED] b6, b7C and Attorney [REDACTED] b6 (sp?).

approximately 168, or just over 10% of PCCF's population. The staff stated that they believed the most common country of origin of the immigration detainees to be the Dominican Republic.

Detainees are provided with a copy of the Inmate Orientation Handbook (the "Handbook") upon arrival to PCCF. The staff indicated that the Handbook is available in English and other languages, including Spanish. The ABA delegation was provided with a copy of the Handbook in English, a copy of which is attached hereto as Exhibit A.

III. Observations of Implementation of Legal Access Standards

A. Legal Access/Visitation

1. Visits by Legal Representatives

PCCF staff stated that attorneys could determine if a particular detainee was housed at PCCF by telephoning the visitor desk.

Access to detainees by law students, law graduates, accredited representatives, legal assistants, interpreters, independent medical service providers and experts was all subject to the approval of the Director of Security.

Detainees did not indicate that they had any problems related to attorney access via an in-person visit, regardless of whether they were housed in the regular units or in administrative or disciplinary segregation. However, the issue of privacy in the area where detainees and their attorney may meet was a subject of concern to a number of detainees. One detainee stated that he had no problems getting to meet with his attorney, but he had serious privacy concerns during the meetings. He said that he did not feel comfortable discussing issues when others could hear the conversation.⁴ The area where detainees and attorneys meet is an open room with only 5 foot cubicle dividers separating conversations. It is not only easy to overhear adjacent conversations, it is almost impossible not to hear them.

Another detainee reported that he'd never had a problem arranging a meeting with his attorney. But, he said he was taken to a room with 5 cubicles where there was no privacy at all. He did not feel comfortable discussing his legal issues when there were other people in the room. Another detainee voiced similar concerns and stated that the guards were outside the room during the legal consultation. He was strip-searched after the meeting with his attorney.⁵

A detainee commented that legal mail sometimes arrives open with a note "Sorry opened by mistake."⁶ Another detainee indicates that he believes that the mail is slow in arriving, being delayed at least a week.⁷

⁴ Interview Notes, Attorneys [b6] [b6] and [b6]

⁵ Interview Notes, Attorneys [b6] and [b6]; The Handbook provides that "[i]nmates are subject to being searched 24 hours a day and in any location they may be, while in custody of the Plymouth County Sheriff's Department." Handbook, Section 1: General Information: Searches.

⁶ Interview Notes, Attorneys [b6] and [b6]

⁷ Interview Notes, Attorneys [b6] and [b6]

In an issue related to attorney access, a detainee indicated that when his attorney requested that the detainee obtain a copy of a document and that the detainee get that document notarized, the detainee had trouble receiving copies of documents he requested, even though he is not indigent and he was willing and able to pay for the copies. He also complained about not being able to have a document notarized, even though he knew that there are full time notary publics (in the legal department) on staff.⁸

2. Visits by Family and/or Friends

PCCF officials gave our ABA delegation a “Visitor’s Booklet” upon the start of the tour of PCCF. The booklet is divided into sections entitled Visiting Schedules, Visitor’s Dress Code, Visiting Rules and Regulations, Inmate Funds, Inmate Property, Release Procedures, Bail Procedures, Communications with Inmates, and Driving Directions.

Visitation rules are the same for Department of Homeland Security detainees as they are for criminal inmates, i.e., Thursday and Sunday from 9 a.m. to 11 a.m., 1 p.m. to 4 p.m., and 6 p.m. to 10 p.m. These are non-contact visits and a detainee may have only one half-hour visit per week, either Thursday or Sunday. However, one detainee reported that he had one visitor and he was forced to end his visit after just 20 minutes.⁹ In addition, if a detainee has, for example, 3 people visiting, the aggregate time that the detainee meets with all 3 visitors may not exceed 30 minutes. PCCF officials indicated that these visitation rules apply to detainees in administrative segregation as well as those in the general population.¹⁰ These same visitation rights are not available to detainees in disciplinary segregation.

At least one detainee explained that the 30 minute time limit makes it unreasonable for his family and friends to visit him from out-of-state.¹¹ Another detainee complained he was unable to have a visit with his newborn niece. That is consistent with PCCF rules which provide that minors may visit only their parents, step-parents, guardians or siblings.

B. Telephone Access

The Visitor’s Booklet states: “You may communicate with an inmate through telephone conversations. All telephone calls may be initiated by the inmate, via the telephone provided at the facility. Inmates are not allowed to receive calls. All outgoing calls from inmates are made on collect only telephones and are recorded. In an emergency, and for information, visitors can telephone (508) 830-6200.”

Telephone access is allowed daily at PCCF. Each detainee is allotted one hour of phone time per day. The PCCF stated that it does take and deliver phone messages from attorneys,¹² and legal calls are not electronically recorded. Detainees must provide the administrators with a

⁸ Interview Notes, Attorneys [redacted] and [redacted]

⁹ Interview Notes, Attorneys [redacted] and [redacted]

¹⁰ Tour Notes, Attorney [redacted]

¹¹ Interview Notes Attorneys [redacted] and [redacted]; The Handbook does not mention any specific procedures for accommodating family who must travel long distances to visit detainees/inmates.

¹² Detention Operation Manual “DOM” Standard 2 provides that “the facility should receive and deliver phone messages for a detainee promptly.”

list of telephone numbers of people they want to call, but they may call any attorney freely whether or not the attorney is on the list.¹³ However, one detainee reported that the new telephones make them agree to be recorded.¹⁴ HOC staff listens to inmate/detainee phone calls, but not attorney calls.¹⁵

PCCF does not allow incoming personal calls, except in cases of emergency. For example, if a friend or family member wants to personally convey news of a death in the family, then PCCF will allow the detainee to take such a call. The staff was unsure of the service provider, but they are adding some new phones. Currently, each unit has two phones; PCCF has plans to add two more phones for each unit, so each unit will have a total of four (4) phones.

Telephone use was an issue that was of concern to virtually all detainees interviewed. Making calls during recreation time is difficult because many people want to use the phone. Detainees complained that there are not enough telephones (12 for 156 people) and there is no privacy because the telephones are in very close proximity to each other.¹⁶ The telephones are very expensive and the first minute is the most expensive (\$4.84 for the 1st minute; \$.89 for subsequent minutes for out-of-state calls; \$2.27 and \$.11 respectively for in-state calls). By default, through lack of funds, detainees seem limited only to collect calls. Collect calls are very expensive, with no possibility of using less expensive service, and making international calls, i.e. to their home countries, is mostly impossible.

Detainees also report that the telephone system goes down at times, sometimes for an entire 24-hour period. The phones are cut off without warning at 8:00 or 8:30 p.m., though they are supposed to be available until 10:00 p.m., and disconnecting any calls that were being made at the time – even in the middle of a conversation.¹⁷ Furthermore, re-dialing means that the expensive rate for the first minute is paid again. Some detainees could not place calls because the automated system apparently failed to recognize their valid PIN numbers.¹⁸

In addition to the above, two detainees reported that they and others have been unable to speak to their consuls (most consulates, both said, do not accept collect calls and DHS has to authorize a telephone call).¹⁹ One said that he had been trying to reach his consulate for 4 months.²⁰

¹³ The Handbook states that all calls to “[p]ersons approved as attorneys, law firms, or clergy will be exempt from being recorded once the numbers are confirmed.” Handbook, Section 2: Housing Unit Information: Telephones

¹⁴ Interview Notes, Attorneys [b6] and [b6]

¹⁵ DOM Standard 2 provides that “[i]f the facility monitors calls, prominent multilingual notice of monitoring shall be displayed at each monitored phone along with procedures for requesting an unmonitored call to a legal representative.”

¹⁶ DOM Standard 2 provides that “[d]etainees should be able to discuss their legal cases over the phone in a private environment . . .”

¹⁷ DOM Standard 2 provides that “[d]etainees should be able to discuss their legal cases over the phone . . . without interruption or cut-offs.”

¹⁸ Interview Notes, Attorneys [b6], [b6], [b6], [b6], [b6] and [b6]

¹⁹ DOM Standard 2 provides that “detainees . . . should be able to make *free calls* through pre-programmed technology (upon request) to consular [b6]s, . . .”

²⁰ Interview Notes, Attorneys [b6] and [b6]

C. Legal Materials

The *Standards* mandate that PCCF shall establish and maintain a law library.²¹ The library must be adequately lighted, reasonably quiet, and large enough to support legal research and writing.²² It must also contain an adequate number of tables and chairs to accommodate all detainees who wish to use the facility.²³ 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 documents.²⁴

PCCF's library does not meet many of the requirements set forth in the *Standards*. The library to which the detainees have access essentially consists of 19 computers, only two of which permit access to specialized immigration-related materials. It is therefore insufficiently equipped to adequately support legal research and writing in accordance with the *Standards*.

1. Access to Library, Equipment and Holdings/Library Materials

The *Standards* require facility libraries to maintain the legal materials listed in Attachment A-2 of the *Access to Legal Materials* chapter of the *Detention Operations Manual*.²⁵ These materials must be updated regularly and supplemented with timely information regarding significant regulatory and statutory changes affecting the detention and deportation of aliens.²⁶ A current list of available texts and materials should be posted in the library.²⁷ To ensure these requirements are met, PCCF must designate an employee with responsibility for inspecting, updating and maintaining the library materials in good order.²⁸

As stated, detainees at PCCF only have direct access to library materials via the computer laboratory. In any event, the vast majority of relevant resources that are available at PCCF are located on CD-ROM in the computer center.

The library schedule is difficult to understand. According to the schedule we received, the hours of operation are as follows:

Law 1

Monday 9:00 AM

Tuesday 9:00 AM

Weds 9:00 AM

Thurs 9:00 AM

Units H-3, FN-3, FS-3, C-3

Law 2

²¹ Detention Operations Manual, Access to Legal Materials.

²² *Id.* at Section III.A.

²³ *Id.*

²⁴ *Id.* at Section III.B.

²⁵ *Id.* at Section III.C.

²⁶ *Id.* at Section III.E.

²⁷ *Id.* at Section III.C.

²⁸ *Id.* at Section III.H.

Monday 1:00 PM
Weds 1:00 PM
Sunday 9:00 AM
Units first floor house and orientation units.

Law 3
Tues 1:00 PM
Thurs 9:00 AM
Sunday 1:00 PM
Units E-3, DN-3, and FN-1

The schedule did not include the library's closing times. Thus, although each unit appears to have some degree of access to the library on a rotating schedule, the specific time spans during which immigration detainees have access to the library remains unclear. The officers who led the tour of PCCF were unable to clarify the matter.

PCCF does have a library consisting of hardbound volumes, but detainees do not have direct access to these volumes. PCCF employs a full time attorney and a full time paralegal who oversee access to the volumes. The attorney and paralegal are charged with responding to legal inquiries by detainees, immigration-related or otherwise, and supplying them with copies of requested cases, treatises, handbooks, etc. Three detainees are also made available to the attorney and paralegal each morning to assist them in copying requested materials. According to the staff attorney, copies of requested materials are typically supplied to detainees within a couple of days.

PCCF also employs an officer who appears to be responsible for the monitoring of the computer laboratory. The officer was minimally familiar with the contents of the legal resources CD-ROM, although the computer laboratory did have two detainees who seemed to be reasonably familiar with the contents of the CD-ROM's and were available for training or guidance. The officer indicated that the CD-ROM's are regularly updated.

The attorney who was responsible for oversight of the library of hardbound volumes and documents indicated that the paralegal is responsible for updating available materials, including looseleaf materials such as *Bender's INA Regulation Service*. The attorney indicated that the paralegal diligently performs this duty.²⁹

The PCCF library does not contain several texts listed on Attachment A-2, and only contained many of the listed texts were only available on CD-ROM. The following items appeared to be available to detainees, in one form or another:

- a. *The Constitution of the United States of America* (hardbound and on CD-ROM) (I did not see *The Constitution of the United States of America: Analysis and Interpretation*);
- b. *United States Code, Title 8, Aliens and Nationality*;
- c. *Code of Federal Regulations, Title 8* (CD-ROM only);

²⁹ Tour Notes, Attorneys [b6] and [b6]

- d. *Bender's INA Regulation Service* (hardbound);
- e. *Administrative Decisions Under Immigration and Nationality Laws* (CD-ROM only);
- f. *Federal Habeas Corpus, Practice & Procedure* (hardbound; unsure which edition was available);
- g. *Black's Law Dictionary* (hardbound; unsure which edition was available);
- h. Telephone books and yellow pages for area.

As far as we could tell, perhaps with minor exception, the other items listed in Attachment A-2 appeared to be missing.³⁰ The staff attorney at PCCF did present a package of basic information about immigration law that had apparently been assembled by either him or his paralegal.

2. Library Conditions

PCCF's computer laboratory is adequately lit, both by sunlight and artificial light, and is located in a quiet room off of a major hallway with little traffic.

As stated, the computer laboratory contains 19 computer terminals, only two of which contain CD-ROM access to materials that specifically relate to Immigration matters. All computers appeared to be in working condition. The number of computers with Immigration-related information was insufficient in relation to the one typewriter or computer for every five detainees standard that is specified in the *Standards*.³¹ The CD-ROM software that was installed on the computers appeared to be Lexis-based. We did not determine whether PCCF provides any software which can be used for the preparation of forms. We also did not determine the policy with regard to repairs of broken computers or restocking of supplies. The paralegal and attorney at PCCF are both notaries public, and are available to notarize documents for the detainees. Nevertheless, as noted in a previous section, one detainee who was interviewed stated that he was unable to have a document notarized because there were no notaries available when he needed one.³²

Detainees appeared capable of working in tandem on legal research. Detainees are allowed to retain papers with them in their residential units. Detainees in segregation were supplied with "flimsy pens" and were also permitted to retain copies of legal materials. No complaints were received with regard to ability to maintain notes relating to legal research.

3. Feedback about the Law Library from Immigration Detainees

The detainees with whom we spoke had negative experiences with the library. One common complaint of the detainees was that it is often difficult to get access to the library.³³ Detainees stated that they had waited for as long as 1-1/2 weeks to 1 month to gain access to the

³⁰ Due to time constraints, we were unable to verify whether the library contains each and every legal reference listed in Attachment A-2 and whether all materials were up to date.

³¹ DOM Standard 4.B.

³² Interview Notes, Attorneys [b6] and [b6]

³³ Interview Notes, Attorneys [b6] [b6] [b6] and [b6]

library. They believed that the library is often closed because the staff is on vacation or the network is down. They felt that the schedule is too limited to allow for sufficient time to research and/or draft of documents, particularly because the transit time between their cell and the law library (approx. 20 mins) is subtracted from their allotted library time (1 hour 3 days per week).

The lack of proper equipment apparently magnifies this problem.³⁴ It is particularly difficult for the detainees to draft documents because there is no access to word processors or typewriters and, as a result, every pleading or document has to be handwritten. Moreover, there is only one computer for the immigration detainees and that this computer is not always working. As a result, there are often several people waiting for the computer during their limited time. The wait is made worse by the fact that the computer for immigration detainees does not have a printer, and, as a result, they have to read it online while others are waiting.

Furthermore, once they gain access to the library and/or computer, they are disappointed because they believe that the availability of legal materials is limited and outdated.³⁵ In fact, one detainee reported that there are no dictionaries in the library. Similarly, detainees complained that they do not always receive copies of cases which they request because they are not provided with cases that are not available in the library. When they do receive copies, it apparently takes approximately one week to receive it.

Others quickly abandoned any attempt to use the library because they found it difficult to learn how to use the resources and to find information.³⁶ One detainee explained that he knows how to use it only because he has worked as a computer consultant, and also noted that there are always two inmates to help with computer-based research.³⁷ Another detainee explained that the people who staff the library, though they may have legal experience, have no immigration law experience, and so are not especially helpful.³⁸

4. Photocopies and Mail

Detainees are provided with photocopies of materials upon request. Captain [b6, b7C] reported that copies of requested legal documents typically are supplied to detainees within two days.³⁹ While the Handbook notes that a facility may require detainees with a large amount of personal legal materials to place some material in a personal property storage area,⁴⁰ there is no indication that staff members limit the number of copies detainees can maintain in their cells.

Under the *Standards*, “[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.”⁴¹ According to Captain [b6, b7C] if detainees have

³⁴ Interview Notes, Attorneys [b6] and [b6]

³⁵ Interview Notes, Attorneys [b6] and [b6]

³⁶ Interview Notes, Attorneys [b6] and [b6]

³⁷ Interview Notes, Attorneys [b6]

³⁸ Interview Notes, Attorneys [b6] and [b6]

³⁹ Tour Notes, Attorneys [b6] and [b6]

⁴⁰ Detention Operations Manual, Access to Legal Materials, Section III.K.

⁴¹ *Id.* at Section III.N.

money in their canteen, they are responsible for the cost of their stamps and envelopes.⁴² Captain Moniz indicated that indigent detainees⁴³ are supplied with 10 stamps and 10 envelopes per month, apparently for personal use and for legal correspondence, but indicated that they can easily obtain more stamps and envelopes for legal correspondence if necessary by speaking with their social worker.⁴⁴

According to the Handbook, PCCF may open and inspect incoming *general correspondence* and other mail for contraband in the presence of the detainee and may read mail, with OIC approval, at random.⁴⁵ Incoming mail should be distributed to detainees within 24 hours of receipt by PCCF.⁴⁶ Legal mail may be inspected for physical contraband and to confirm that any enclosures qualify as special correspondence, but shall not be read or copied.⁴⁷ Outgoing mail may be inspected in the presence of the detainee if there is reason to believe that the item might present a threat to PCCF's security, endanger the recipient or the public or facilitate criminal activity.⁴⁸ Outgoing mail shall be delivered to the postal service within a day after it is received by PCCF staff or placed by the detainee in a mail depository, excluding weekends and holidays. Outgoing legal mail is not to be opened, inspected or read.⁴⁹ Incoming and outgoing mail may be rejected to protect the security of the institution, protect the public or deter criminal activity.⁵⁰ The sender and addressee should receive written notice and a signed explanation when mail is confiscated or withheld.⁵¹

PCCF searches incoming mail sent to detainees for contraband (e.g. illegal items, weapons, drugs, pornography, etc.) by passing the mail through a machine that opens envelopes and inspecting the contents of the envelope. Stamps are removed from envelopes in case they are being used to conceal contraband. The written contents of mail sent to detainees is not read. According to Lieutenant [b6, b7C] mail that relates to a detainee's legal proceedings and correspondence from attorneys are opened in front of the detainee to whom the correspondence is sent.⁵² Lieutenant [b6, b7C] reported that mail reaches detainees within one to two days.⁵³

Detainees are able to place outgoing mail in a locked mailbox that is made available in each unit. An officer in PCCF collects the mail each night. Outgoing mail is not inspected or read unless it has an unusual appearance. There is no limitation on the amount of outgoing mail a detainee may send.

When incoming or outgoing mail is rejected or refused, PCCF provides the respective detainee with a completed form which indicates that their mail has been rejected or refused and

⁴² Tour Notes, Attorneys [b6] [b6] [b6] [b6] [b6] and [b6]

⁴³ The facility defines an "indigent detainee" as someone who has no money in his canteen for 30 days, regardless of resources available to the detainee outside of the facility (e.g. in personal bank accounts).

⁴⁴ Tour Notes, Attorneys [b6] [b6] [b6] [b6] [b6] and [b6]

⁴⁵ Detention Operations Manual, Co [b6] ce and Other Mail, [b6] III.

⁴⁶ *Id.* at Section III.C.

⁴⁷ *Id.* at Section III.E.2.

⁴⁸ *Id.* at Section III.F.1.

⁴⁹ *Id.* at Section III.F.2.

⁵⁰ *Id.* at Section III.G.

⁵¹ *Id.*

⁵² Tour Notes, Attorney [b6]

⁵³ Tour Notes, Attorney [b6]

the cause for the rejection or refusal (e.g. contraband, pornography, etc.).⁵⁴

Detainees reported problems in obtaining documents and receiving mail. According to one detainee who was interviewed, it is difficult to receive requested documents, in spite of the fact that he is not indigent and can pay for the copies. Another detainee reported that court documents arrived late in one instance, and another detainee indicated that it takes at least a week for mail to arrive. A third detainee stated that legal mail sometimes arrives opened with a note that reads, "Sorry opened by mistake."⁵⁵

D. Group Rights Presentations

The staff indicated that PCCF currently hosts “group rights presentations” at PCCF, which are conducted approximately once every other month by organizations believed to include Catholic Legal Immigration Network/Boston College Immigration and Asylum Project, Political Asylum/Immigration Representation Project (PAIR), Massachusetts Law Reform, and/or Refugee Immigration Services of Greater Boston Catholic Charities. However, rather than providing for a group presentation, PCCF designates a particular area of the unit, such as the kitchenette, for meetings between individual detainees and the visiting organization. Staff indicated that this format evolved because the detainees are in need of more detailed discussion of their own particular cases. PCCF has designated a volunteer coordinator who is charged with organizing such presentations. Detainees must submit a written request to attend the “presentations”. Although DOM Standard 3.B. states that: “[d]etainees should not be required to forego . . . recreation time if they decide to attend a rights presentation”, detainees stated that their attendance at such presentations counts against their recreation time.⁵⁶ Staff indicated that detainees in administrative detention are permitted to attend the presentations, but detainees in disciplinary segregation are prohibited, which is contradictory to DOM Standard 3.B.⁵⁷

Staff indicated that they have the “Know Your Rights” video created by the nonprofit organization “The Florence Project” and distributed by ICE. However, staff indicated that the video is shown upon request only because the information contained therein is provided to the detainees in the existing presentations. Massachusetts Law Reform distributes a self-help guide in Spanish, English and possibly Haitian Creole.

E. Recreation

Recreation space is very limited, with only a 15’ by 30’ outdoor area to accommodate 156 men. Detainees reported that a number of recreation times had been cancelled during the previous month. Recreation hours are scheduled from 9 a.m. – 11 a.m., 1 p.m. – 4 p.m., 7 p.m.-9:45 p.m. There is no recreational equipment of any kind available to the inmates. At least one detainee explained that he avoids the outdoor recreation area for fear of being exposed to

⁵⁴ Tour Notes, Attorney [REDACTED]

⁵⁵ Interview Notes, Attorneys [REDACTED] and [REDACTED] The Handbook states that “[a]ny mail from attorneys (legal mail) is opened in the inmates presence, but not read.” Handbook, Section 1: General Information: Mail.

⁵⁶ Interview Notes, Attorneys [REDACTED] and [REDACTED]

⁵⁷ Interview Notes, Attorney [REDACTED]

physical violence by other inmates.⁵⁸ The *Standards* provide that unless detainees are “placed in facilities that provide outdoor recreation . . .” or “a large recreation area with exercise equipment and access to sunlight”, then “a detainee will be eligible for a transfer to a facility providing recreation after 45 days”.⁵⁹ While PCCF appears to technically comply with these provisions, it does not appear to comply with the intent of these *Standards*. Although PCCF provides an outdoor recreation area, its limited size minimizes the detainees’ access due to overcrowding and related concerns. As a result, detainees at PCCF may in practice be denied access to outdoor recreation, sunlight, recreation equipment and the opportunity to transfer to another facility that provides outdoor recreation. In addition, while the Handbook indicates that detainees may have access to the gymnasium, but “[g]ym use is a privilege for inmates housed in general population, and may be taken away for inappropriate behavior, prior to use, en route to the gym and/or while in the gym.”⁶⁰

F. Medical Care

The *Standards* set forth a broad policy that “detainees...have access to medical services that promote detainee health and general well being.”⁶¹ The *Standards* require that detainees be provided with an initial medical screening and have access to primary care and emergency care.⁶² 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 detention for over six months.”⁶³

According to Lieutenant [REDACTED] b6, b7C Medical Officers are available at PCCF throughout the day, one during a day shift and another from 6 p.m. to 11 p.m. The Medical Officers are either RN’s or LPN’s and are employed by the Plymouth County Sheriff’s department. There is also a medical doctor available throughout the day who is employed by the Sheriff’s department. Each unit in PCCF has a sign up list for medical assistance. The lists are compiled and perused by the Medical Officer, at which point the Medical Officer triages the medical needs of the detainees.⁶⁴ Lieutenant Yetman reports that PCCF maintains accreditation with the National Commission on Corrections Health Care.

Lieutenant [REDACTED] b6, b7C indicated that detainees are provided with an initial medical screening subsequent to entering PCCF. He believed the screening was conducted within three days. Lieutenant [REDACTED] b6, b7C was not certain whether detainees undergo an initial dental screening, and indicated that detainees can obtain dental treatment upon request.⁶⁵

Lieutenant [REDACTED] b6, b7C stated that detainees are able to request mental health treatment

⁵⁸ Interview Notes, Attorneys [REDACTED] b6 and [REDACTED] b6

⁵⁹ DOM Standard 27.A.

⁶⁰ Handbook, Section 3: Activities Outside the Housing Unit: Gymnasium

⁶¹ Detention Operations Manual, Medical Care, Section I.

⁶² *Id.* at Section III.A.

⁶³ *Id.* at Section III.E.

⁶⁴ The Handbook states that “[t]riage is conducted by interviewing/examining inmates who have signed up on the Sick Call Sign-Up Sheet”, but it is not clear that such interviews or examinations are being conducted. Handbook: Section 2: Housing Unit Information: Medication/Sick Call/Unit Triage.

⁶⁵ Tour Notes, Attorney [REDACTED] b6

through a case worker, who can issue a mental health referral to the medical department. He noted that if a detainee's mental state necessitated forced physical or chemical restraint, he would be transferred to another facility. He added that if a detainee is determined to be suicidal, he would be removed from the unit, dressed in a "paper johnny," and placed in a special segregated cell where he would be continuously monitored by an officer.⁶⁶

Lieutenant [b6, b7C] and Captain [b6, b7C] both stated that HIV-positive patients are not separated from other detainees, and that their status is kept confidential. They indicated, however, that because HIV-positive patients are prescribed a high-calorie diet, it is often obvious who is afflicted with the disease.

Lieutenant [b6, b7C] stated that PCCF does its best to accommodate special medical needs of detainees (e.g. dietary needs, exercise, restraint on movement).⁶⁷ He indicated that they will accommodate any dietary needs on physician orders and can accommodate bed rest, but that it is more difficult to accommodate special exercise regimens that are not easily accomplished by a detainee on his own during recreation time.⁶⁸

Each unit within PCCF is accessible to disabled detainees.

Detainees report difficulty in gaining access to medical care. A number of the detainees complained that they had to wait months to see a physician or a dentist, and in some cases were still waiting.⁶⁹ One detainee reported that he had to wait three months to see a dentist.⁷⁰ Another detainee was still waiting after requesting to see a doctor approximately four months earlier.⁷¹ Another detainee stated that he had heard of cases where it took several weeks to get medical attention for broken bones, and immediate attention is only provided in extremely serious cases.⁷²

Another complaint concerned the procedures required to receive medical attention because they have to request medical attention in writing and suffer delays in the processing of a request. For instance, one detainee noted that if he has a headache at 5 p.m. and requests aspirin, he will not receive the aspirin until the next day.⁷³

G. Detainee Classification

All detainees are classified upon arrival as either Level One, Level Two or Level Three detainees. The classifications are based on prior criminal history, with Level Three reserved for those detainees with the most violent criminal histories. While the assignment of these levels appeared to be somewhat subjective, one staff member believed that the "3's" are aggravated felons; the "2's" are other criminal aliens and the "1's" are non-criminal aliens. 1's and 2's or 2's

⁶⁶ Tour Notes, Attorney [b6]

⁶⁷ Tour Notes, Attorney [b6]

⁶⁸ Tour Notes, Attorney [b6]

⁶⁹ Interview Notes, Attorneys [b6] and [b6]

⁷⁰ Interview Notes, Attorneys [b6] and [b6]

⁷¹ Interview Notes, Attorneys [b6] and [b6]

⁷² Interview Notes, Attorneys [b6] and [b6]

⁷³ Interview Notes, Attorney [b6] and [b6]

and 3's may be held together, but 1's and 3's may not. Immigration detainees recreate with inmates who are awaiting criminal trials or have been convicted and are waiting to be transferred to a federal prison, a point of significant concern among the immigration detainees.⁷⁴

H. Accommodations

The ABA delegation was provided a tour of a number of units. The tour included the area just outside of the disciplinary unit. Among observations by the ABA delegation and interviews with ICE detainees were the following: Detainees are in lockdown 16 hours per day. They are out of their cell only from 9:00 a.m. to 10:50 a.m., 1:00 p.m. to 3:50 p.m., and 7:00 p.m. to 9:50 p.m. A number of detainees expressed concern that they are co-mingled with criminal inmates. Another stated that cells are too cold, and he made himself a hat from the sleeve of his tee-shirt to keep his head warm the authorities confiscated it as contraband.⁷⁵

I. Personal Items

Staff indicated that the retention of personal items is limited to wedding bands and sneakers. Detainees are also permitted to keep legal papers in their cells.

A detainee commented that they are permitted to keep the underwear and undershirt that they were wearing when they were detained by DHS. Other changes of clothing have to be purchased at expensive commissary rates, e.g., \$4.50 for a tee-shirt. Another detainee stated that he was provided with clothes – but he refused them because they were (very) dirty.⁷⁶

J. Work Programs

The *Standards* indicate that every facility with a work program will provide detainees who are physically and mentally able to work the opportunity to work and earn money, noting that work assignments must be voluntary and will depend on a detainee's classification, and that detainees shall not work more than 8 hours per day or 40 hours per week.⁷⁷

PCCF only allows immigration detainees to work within their own unit and are not paid for their work. Detainees will not work more than 8 hours per day or 40 hours per week. Examples of work that detainees may perform within their unit include serving food, cleaning tables and hair cutting.

K. Grievance Procedures

Grievance procedures are the same for all prisoners, whether pre-trial, serving a sentence or immigration detainees. Detainees are given an orientation booklet, which describes the grievance procedures, when they first arrive at PCCF. The book is available in English and Spanish but no other languages. The ABA delegation was told that grievances may be filed in

⁷⁴ Tour Notes, Attorney [REDACTED] b6

⁷⁵ Interview Notes, Attorneys [REDACTED] b6 and [REDACTED] b6

⁷⁶ Interview Notes, Attorneys [REDACTED] b6 and [REDACTED] b6

⁷⁷ Detention Operations Manual, Voluntary Work Program, Sections I, III.E, III.G and III.H.

Spanish, although the officer who gave us the orientation had never seen that happen, and did not know how it would be handled. One detainee interviewed stated that the prison was very slow (2-3 weeks) in responding to grievances.⁷⁸ There are no procedures to guarantee against retaliation. The officers who gave us the tour simply said that it wouldn't happen.

L. Special Management Units

The prison has a separate unit known as the "administrative segregation" unit. Detainees who do not follow rules like other prisoners, are sent there. An example the officer gave us was if people do not go into their cells when told to, they will be written up for discipline and a "move" team, guards in SWAT team uniforms with pepper spray and shields, will surround the inmate and forcibly restrain him. The instruction is in English and there generally are no officers present who speak other languages, although other inmates often assist by interpreting.

Detainees held in the disciplinary segregation unit are held in 23 hour lock down, with no visitations, no canteen privileges and very limited telephone access.

IV. Conclusion

Based on the facts and findings detailed herein, our delegation has concluded that, while the staff is attempting to implement the *Standards*, there are a number of areas that fail to meet the Standards, including but not limited to:

- Visits by Legal Representatives: The space made available for attorney-detainee meetings is inadequate to allow for private discussion;
- Telephone Access: Detainees' access to the telephone is inadequate due to poorly functioning equipment, too few telephones, lack of privacy (of particular concern with respect to attorney telephone calls) and high costs to the detainees;
- Legal Materials: There are numerous problems with the law library, including delayed and limited access to the library, inadequate immigration law resources, and no access to typewriters or word processing;
- Medical Care: Detainees suffer unreasonable delays in accessing health care and are sometimes denied access to a physician and/or dentist altogether;
- Correspondence and Other Mail: Incoming mail, including correspondence from attorneys, is sometimes opened before delivery to the detainees; and
- Special Management Units: Detainees in disciplinary segregation have only limited telephone access and are denied family visits and access to rights presentations.

⁷⁸ Interview Notes, Attorneys [b6] and [b6]