

MEMORANDUM

To: Anthony S. Tangeman, Deputy Executive Commissioner, Office of Detention and Removal

From: American Bar Association Delegation to Yuba County Jail¹

Re: Report on Observations during a General Tour of the Marysville, California Facility

Cc: [REDACTED] ABA Commission on Immigration Policy, Practice and Pro Bono

Date: December 23, 2003

This memorandum evaluates and summarizes facts and findings gathered at the Yuba County Jail in Marysville, California. The information was gathered via observation of the facility by the delegation, reference to the "Information Booklet" Handbook of the Jail, interviews with facility and ICE staff and interviews with seven detainees on December 2, 2003.

I. ICE Detention Standards

The Immigration and Naturalization Service ("INS") promulgated the "INS Detention Standards" (the "*Standards*") in November 2000. There are 36 standards that cover a broad range of issues from visitation policies to grievance procedures and food service.² The standards apply to INS Service Processing Centers ("SPCs"), Contract Detention Facilities ("CDFs"), and state and local government facilities utilized by the INS through Intergovernmental Service Agreements ("IGSAs"). These standards were to have been implemented at every facility by January 2003. They constitute a "floor" and not a "ceiling" for the treatment of INS detainees.

On March 1, 2003, the Bureau of Immigration and Customs Enforcement ("ICE"), under the Border and Transportation Security Directorate of the Department of Homeland Security, became the federal entity responsible for the enforcement of customs and immigration laws and the protection of federal buildings against terrorism and other threats.

II. Introduction

A. The Delegation's December 2nd Visit

On December 2, 2003, the members of our delegation met with several members of the Yuba County Jail staff and members of the ICE staff. Our delegation met with Sheriff [REDACTED] b6, b7C Captain [REDACTED] b6, b7C Lieutenant [REDACTED] b6, b7C ICE Chief Detention Officer [REDACTED] b6, b7C and three other ICE representatives. The delegation was told by ICE that the facility tour would be limited to one hour, but the staff at the jail graciously accommodated the delegation and provided a

¹ The delegation was comprised of [REDACTED] b6, [REDACTED] b6, [REDACTED] b6, [REDACTED] b6, [REDACTED] b6 and [REDACTED] b6, attorneys at Latham & Watkins LLP (San Franc

² *Id.*

thorough tour of the facility lasting over three hours. In addition, after a tour of the facility, the delegation was allowed to interview seven detainees.

B. The Yuba County Jail

The Yuba County Jail is located in Marysville, California. The facility houses both men and women, including persons detained by ICE, and persons being held pursuant to state and local law (“inmates”). The Yuba County Jail accepts ICE detainees directly upon release from the state or federal criminal justice system and those that have been taken into custody at area airports. The detainees are from many different countries, with significant numbers from Asia, Central America, and Mexico.

On the day we visited, 202 of the 385 men and women housed in the facility were ICE detainees. Captain [REDACTED] b6, b7C stated that the number of ICE detainees housed at Yuba fluctuates between approximately 175 and 220. According to the ICE representatives, the facility principally functions as a short-term holding facility for detainees who are waiting for processing or hearings with ICE or the Immigration Court in San Francisco. Detainees are typically held at the Yuba County Jail for two weeks to three months. An ICE representative said that longer term detainees are moved to other long-term holding facilities.

Captain [REDACTED] (b)(6), (b)(7)c and an ICE representative stated that approximately 90 percent of the ICE detainees at the Yuba County Jail come into ICE custody directly after serving criminal sentences, and are then classified by the severity of the crimes committed. Upon intake to Yuba County Jail, ICE detainees are placed into “pods,” or cells, under one of three security classifications. Inmates and ICE detainees are classified according to the nature of the determined threat they pose to others housed in the facility. For instance, the staff will take note of a detainee’s gang-affiliation, if any, as evidenced by identifying tattoos or verbal admissions, in order to assign rival gang members into different pods. A leading factor in classifying detainees appeared to be the nature of the crime for which they were incarcerated before being delivered into ICE custody. A question of fairness is presented by this practice to the extent that a high risk classification limits a detainee’s rights and privileges at the jail, because a detainee will have already served his time for these crimes in state or federal prison.

In the minimum security pods, there was one pod containing solely ICE detainees and another pod with a mix of ICE detainees and inmates. In the heightened and maximum security pods, the ICE detainees were mixed with inmates. In addition, there was a separate cell block for ICE detainees and inmates who volunteered to work in the kitchen. This block enjoyed special privileges over the other detention classifications. As a general observation, ICE detainees and inmates were given the same rights and subject to the same restrictions. ICE detainees were distinguished from the general inmate population by dress: ICE detainees wear red prison clothing while male inmates wear orange and female inmates wear green.

The Yuba County Jail is housed in a secure building. There is a processing area, a library, a food preparation facility, a medical facility, a small indoor recreation area, a visiting area, a commissary, a number of classrooms and a dispensary. The delegation visited each of

these areas and observed all of the housing areas for male detainees and inmates, and visited one of the housing areas for female detainees and inmates.

The Yuba County Jail staff has prepared a handbook for all inmates called the “Yuba County Sheriff’s Department Information Booklet,” (the “*Information Booklet*”) attached to this memorandum as Exhibit A. The *Information Booklet* covers the basic rules, regulations and operations of the jail. While sufficiently detailed for inmates, the publication does not address the specific issues relevant to detainees, such as a detainee’s legal rights or how to request additional immigration-related legal materials from ICE. The publication is available in English and Spanish.

Overall, the delegation was impressed with the competence and courtesy of the Yuba County Jail staff, the cleanliness of the facility and the treatment of inmates and detainees. As a jail facility, the Yuba County Jail deserves high marks. Discrepancies noted in this report are largely due to our observation and conclusion that the Yuba County Jail does not distinguish detainees from inmates (other than providing for a separate holding area for certain minimum risk detainees). As detailed below, in certain situations where detainees are entitled to greater rights and freedoms than inmates, such rights and freedoms were not adequately provided for.

III. Observations of Implementation of Legal Access Standards

A. Visitation

1. Legal Visitation

According to the *Standards*, legal visitation should be allowed at least eight hours on weekdays and four hours on weekends.³ The visits should be conducted in a private room with no audio monitoring.⁴ Attorneys and other legal representatives must be allowed to provide detainees with paper documents, and the detainees should be permitted reasonable access to these documents.⁵ Following a visit by a legal representative, a detainee should not be strip searched unless there is reasonable suspicion that the detainee is concealing contraband.⁶

The *Information Booklet* does not address visitation by lawyers. The section on visitation concerns only visits by family and friends.⁷ Given the limitations on family and friend visits, this may give the impression that access to a lawyer is similarly restricted. Captain [b6, b7C] and Lieutenant [b6, b7C] told us that there are no restrictions on when an attorney may visit. They assured us an attorney could gain access to his client even on nights and weekends.

³ DOM Standard 1.

⁴ DOM Standard 1.

⁵ *Id.*

⁶ *Id.*

⁷ See *Information Booklet*, pg. 2.

Lawyer visits are conducted in small private rooms with doors on each side and a Plexiglas wall separating the detainee and the lawyer. Communication is through a telephone receiver. The booths are big enough for two people to sit reasonably comfortably on each side (though only one at a time could speak with the detainee through the telephone) and are equipped with a small table top for writing. Fluorescent lights illuminate the booths adequately. There are four such booths. One additional booth is available which contains a slot for passing papers. This booth has a metal grate divider instead of Plexiglas, so the visitor and the detainee can talk directly without the aid of a telephone. The booths were semi-private. The delegation observed that visitor comments could be heard though the doors on the visitors' side. Contact visits are not permitted. Lieutenant [b6, b7C] said strip searches are not performed, therefore, unless the guards have reason to believe the detainee is in possession of contraband.

Interviews with the detainees and local attorneys confirmed that attorney visits are not a problem at the facility.

2. *Visitation by Family and Friends*

The *Standards* state that visiting hours for family and friends should be clearly posted and permitted during set hours on weekends and holidays.⁸ Special arrangements should be made for family and friends who cannot visit during those hours.⁹ A visit should be permitted to last at least 30 minutes.¹⁰ No limitation should be placed on the number of visitors at any given time, except limitations based on the room capacity.¹¹ Contact visits should be allowed, and visits without audio monitoring should be permitted upon request.¹²

Visits by family and friends are conducted under similar conditions as visits by lawyers – behind Plexiglas barriers and through a telephone receiver. The one difference is that the family and friend visits are not conducted in private rooms. A bit of visual privacy is provided by small partitions that separate one visitation window from another. But there are no back walls, so there is no audio or visual privacy from persons standing behind the detainee. A visitor may not leave food, medicine, or other personal items for a detainee, but a visitor may deposit money into a detainee's account at the facility for spending at the commissary.

The delegation noted two concerns in this respect of the *Standards*. First, contact visits are not permitted at Yuba. Second, the *Information Handbook* says, "Special visits will not be allowed."¹³ The term "special visits" is not defined in the handbook. This prohibition violates the requirement that special arrangements should be made for family and friends who cannot visit during the regular hours. An additional problem with this approach to family and friend

⁸ DOM Standard 1.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² DOM Standard 1.

¹³ *Information Handbook*, pg. 2.

visit is that visitation schedules are based on the detainees' housing area, or pod, so a detainee's visitation schedule would change without notice if a detainee is moved.

The detainees who were interviewed were familiar with their visitation hours and reported that these times are posted in the recreation area. The staff told us that detainees are typically allowed two hours of visitation per week but that this may be reduced to one hour if the visitation area is crowded. However, at least one of the interviewed detainees reported that one hour is the norm. The delegation was also told that visitation time may be reduced as a form of punishment.

B. Telephone Access

The *Standards* provide that detainees, including those in segregation, should be able to make free phone calls to consular offices, free legal service providers, local courts and government offices and, in personal emergencies, to family members.¹⁴ In the Yuba County Jail, telephones are located in the common area of each housing unit. Detainees may use the phones while in the common area. Two phones were checked at random and they both appeared to function properly. One detainee complained that the telephones were turned off during "transportation times," which were long periods in the morning and evening. This same detainee had the impression that the phones were turned off for long periods during the day. Some of the detainees complained that they did not have sufficient privacy when making phone calls due to the location of the telephones.

The jail staff explained that a list of codes is posted next to the phones, which when used allow detainees to make free phone calls to consulates and organizations offering free legal services. At least two detainees confirmed that a list was posted next to the phones in their housing units. Another detainee stated that he used the free phone service to contact his consular office. An ICE representative said that long distance calling cards are made available to detainees with family emergencies; however, this was not confirmed during the interviews.

The jail does not take phone messages from attorneys for detainees. A member of the jail staff explained that the jail tried this in the past and found that it was becoming a message service.

Several of the detainees complained about the cost of collect calls from the jail. One individual said that collect call rates are \$3.70 for the first minute and \$0.70 for each subsequent minute. Many detainees make collect calls to their attorneys.

C. Group Presentations on Legal Rights

The *Standards* indicate that attorneys, non-profits and BIA certified organizations have the right to conduct legal rights presentations in detention facilities.¹⁵ In addition, ICE approved

¹⁴ DOM Standard 2.

¹⁵ DOM Standard 3.

videotapes and materials may be shown and distributed at the request of outside organizations.¹⁶

Captain [REDACTED] b6, b7C explained that group rights presentations are logistically very difficult due to language barriers and the rapid turnover time of detainees. He stated that one group presentation had taken place in recent memory, but the group language problem was so great, the group of about 50 had to be broken down into small sections. Captain [REDACTED] b6, b7C was not aware of any current requests to make presentations. None of the interviewed detainees had heard of such presentations being held at the jail.

D. Access to Legal Materials

According to the *Standards*, the law library should be accessible to detainees at least one hour per day, and the library should be open at least eight hours daily.¹⁷ The library should accommodate legal research: sufficient lighting, tables, chairs and space.¹⁸ One typewriter or computer per five detainees should be available, and writing materials should also be made available.¹⁹ The library's holdings should include 30 specified titles.²⁰ Research materials should be updated periodically and damaged or worn items replaced as needed.²¹ Photocopying should be made available for court filings.²²

The law library has 10 chairs and five rectangular tables (approximately 6' x 3' each). Given the table space and configuration, five or six detainees could conduct modest legal research at the same time. Overhead fluorescent lighting is ample, and there is a dry-erase board on the wall, which is likely used mainly by instructors who also teach classes in the library. In fact, a hands-on class on residential electrical wiring was being conducted during our tour. No computers are available, but one typewriter is available upon request.

The staff informed us that requests to use the library are accommodated within 24 hours and that an inmate may stay in the library for a reasonable amount of time. Detainees who may not visit the library for disciplinary reasons may arrange to have books or photocopies brought to their cell. The opinion among the detainees interviewed was that access to the law library is difficult to obtain. One detainee says it often takes up to a week to get into the library, though he has never submitted a request himself. Another detainee says it took him two days to gain access. A third claims he was told he could use it "later," but never heard back regarding his request.

¹⁶ *Id.*

¹⁷ DOM Standard 4.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *See* Attachment A-2, DOM Standard 4.

²¹ DOM Standard 4.

²² *Id.*

The library has a good collection of legal materials. A bailiff periodically inspects the holdings to replace damaged and outdated materials. The *Information Booklet* catalogues materials contained in the library, but does not list the materials required to be provided to detainees under the *Standards*.²³ The library, however, did appear to carry most (if not all) of the materials required by the *Standards*.

IV.

A. Correspondence

The *Standards* provide that a facility's staff may open and inspect incoming general correspondence and other mail for contraband in the presence of the detainee.²⁴ Staff may also inspect special correspondence or legal mail for physical contraband but may not read or copy such mail.²⁵ Outgoing special correspondence and legal mail may not be opened, inspected or read.²⁶

At the Yuba County Jail, detainees receive mail once a day. The jail staff inspects all correspondence for contraband; however, it does not read legal mail. Out-going legal mail is checked to make sure the addressee is an attorney. Detainees may not receive packages at the jail.

Indigent inmates and detainees receive an unlimited number of postage-free letters to attorneys and courts, and two stamped envelopes each week to write to family and friends.

B. Grievance Procedure

The *Standards* indicate that an informal procedure should be in place for a detainee to present orally his concerns to any staff member at any time within five days of the event.²⁷ Detainees should be guaranteed that no reprisals will result from stating or filing a grievance.²⁸ Translation assistance should be provided to facilitate those who need such assistance stating an informal grievance or filing a formal one.²⁹

The *Information Booklet* details a grievance procedure. The *Information Booklet* indicates that the proper way to complain about a problem is to file a grievance. A detainee may

²³ *Information Booklet*, pgs. 20-22.

²⁴ DOM Standard 9.

²⁵ *Id.*

²⁶ *Id.*

²⁷ DOM Standard 18.

²⁸ *Id.*

²⁹ *Id.*

complain about any jail condition, but a separate procedure is in place to complain about disciplinary matters. Upon receiving a formal complaint the shift supervisor will gather information and attempt to settle the complaint within 48 hours. If the detainee is satisfied by the resolution, he may sign a statement representing his satisfaction. Otherwise a hearing will be held. The hearing will be held within 72 hours of filing the grievance. An appeals procedure is also outlined in the handbook.³⁰

Interviewed detainees stated that they were familiar with the grievance procedure. However, one detainee claimed that his formal grievance went unanswered.

C. The Information Booklet

The *Standards* require a facility to distribute site-specific handbooks to individuals who will remain detained for more than 72 hours.³¹ At Yuba County jail, ICE detainees receive the *Information Booklet* at in-take. This booklet provides an overview of the detention policies, rules and procedures in effect. It covers such topics as mail, visitation, commissary, exercise and recreation, housing area rules, types of punishment, health care, grievance procedure, inmate programs and a list of the books available in the law library. The *Information Booklet* is available in English and Spanish only. The jail staff explained that a detainee could have the booklet translated by using Language Line, a private company with which the jail has contracted for translation services. However, interviewed detainees indicated they did not know this service was available to translate the handbook.

It appears that the facility does not consistently distribute these booklets to ICE detainees. At least two detainees reported having not received an *Information Booklet*. Failure to distribute the information booklet is problematic because the booklet provides detainees with notice of facility rules and policies. Two interviewees stated that they had never seen a posted list of the rules of conduct and resulting disciplinary sanctions in the facility. The delegation also noted that the *Information Booklet* does not provide any information specific to detainees or make any distinction between the rights and obligations of detainees and those of inmates.

D. Access to Medical Care

The *Standards* hold that each facility should staff medical professionals in ratio to number of detainees, should maintain current accreditation by the National Commission on Correctional Health Care, should provide each detainee with an initial medical screening, primary medical care, routine dental check-ups, and emergency care and should have an arrangement with a nearby facility to provide health care services not provided at the detention facility.³²

The medical service center is located on site on the first floor of the Yuba County Jail and appeared sanitary and well-equipped. A nurse is on the premises 20 hours per day seven days

³⁰ *Information Booklet*, pgs. 12-14.

³¹ DOM Standard 19.

³² DOM Standard 24.

per week. A medical doctor and a psychiatrist are on call seven days a week. Dental services, anger management services, and alcohol/drug addiction services are all available on-site once a week. The Yuba County Jail meets and surpasses the ABA standard for an institution of its size, which requires that a medical professional be available to examine detainees five days per week.

The Yuba County Jail screens each detainee at intake. The intake medical screen questionnaire is attached at Exhibit B. HIV/AIDS testing is not performed at the intake screen, but detainees are asked as part of the screen whether they are HIV/AIDS-positive. HIV/AIDS-positive detainees normally remain mixed in the general population. Detainees who are ill may be placed in one of five medical cells, two of which are quarantine cells equipped with negative air flow for detainees who are contagious. Detainees' medical information, including HIV status, is protected. In non-emergency situations, medical consent forms are obtained from detainee-patients.

Medication passes are made twice daily by medical professionals or officers who make rounds with a cart stocked with prescription and non-prescription medicines. The non-prescription medicines are sold for 50 cents to those with sufficient funds. Indigent detainees and inmates receive these medicines gratis, but are charged for them later, should they come into possession of sufficient funds.

To receive medical attention, a detainee fills out a sick call slip, which may be collected by either a medical professional or officer running medicine passes or by any Yuba officer. Sheriff [b6, b7C] stated that sick call slips usually result in a doctor visit within 24 hours. Some detainees complained that they were not able to receive prompt treatment for their medical needs or attention to their requests.

E. Recreation

According to the *Standards*, every effort should be made to place detainees in a facility with access to outside recreation.³³ If the facility does not have an outdoor area, a large recreation room with exercise equipment and access to sunlight should be provided.³⁴ If neither indoor nor outdoor recreation is available, a detainee will be eligible after 45 days for a transfer to a facility providing recreation.³⁵ The *Standards* specify that access to outdoor or indoor recreation in a Contract Detention Facility must be at least for one hour daily, every day of the week.³⁶

The Yuba County Jail refers to its "roof top" as its outdoor recreation. According to Captain [b6, b7C], there are two roof top areas, one in the new section of the facility – known as the pod section – and one in the old section. The roof top we viewed in the tour of the pod is the size of a half basketball court. The recreation area is completely cemented on the ground and on

³³ DOM Standard 27.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

three of its walls (the fourth wall is a transparent Plexiglas wall in order to monitor the recreation area from the pod control area); it has a cage-like appearance. Other than one net-less basketball hoop hanging from the cemented wall the recreation room is empty: no grass, plants or other vegetation, and no recreation equipment, tables or chairs. The area is covered by a metal lattice work roof that allows some natural sunlight to enter. There was one individual in the roof top area when we viewed it. The tour did not take us to the other recreation area.

In addition to the “roof top,” each housing area contains a recreation area that has some metal picnic-table style seating and a ping-pong table. There is no exercise equipment in either the roof top exercise yard nor in the recreation area of the pods.

Detainees stated that they only knew of the roof top that was part of the pod. They had no knowledge of and had never seen the other recreation area.

Some detainees stated that occasionally their recreation time was scheduled for pre-dawn hours, such as 4 a.m., which does not comply with the requirement in the *Standards* for access to sunlight. Detainees indicated that they would decline to go to the recreation area at 4 a.m. One detainee stated that if a detainee chose to use the recreation area, he would be locked on the roof top for the entire two hours and would not be allowed to go back to the pod early. This created some problems since the roof recreation area did not have a bathroom and a detainee may not want to be locked in the roof area for the full two hours. Another detainee stated that he did not use the roof top recreation area because it was dirty and concrete, and he was concerned about catching some sickness from the area. A third detainee said that he never used the outdoor recreation area. Detainee responses indicated the outdoor facility was not adequate.

The *Information Booklet* specifies that individuals are allowed to exercise at least four times a week for at least two hours each time.³⁷ Captain [REDACTED] b6, b7C explained that they rotate all of the inmates and detainees through the exercise yard at least four times a week and will continue through the rotation if there is excess time remaining after all inmates or detainees have been offered the standard recreation time in the exercise yard; thus, some detainees may exercise more than four times each week. However, because the *Standards* require access every day of the week, Yuba County’s policy in the *Information Booklet* and in practice is not in compliance.

F. Religious Practices

The *Standards* provides that detainees have the right to engage in group religious activities, and the detention facility should designate space for religious services without regard to whether the services are mainstream.³⁸ Detainees shall have access to religious pastors and counselors.³⁹ Representatives and volunteers from faith groups in the community may be brought into the facility and should be encouraged, and schedules for services should be clearly

³⁷ *Information Booklet*, pg 3.

³⁸ DOM Standard 27.

³⁹ *Id.*

posted in all dorms and on bulletin boards.⁴⁰ In addition, detainees should be allowed to keep religious items as personal belongings, such as prayer books in soft cover, prayer beads, rosaries, oils, prayer rugs, and religious medallions.⁴¹ Religious headwear should be permitted, and Detention facilities must accommodate religious and dietary requirements of the detainees.⁴²

The *Information Booklet* details that requests for special diets for religious reasons will be forwarded to the jail supervisor for approval.⁴³ On the tour of the kitchen, Captain [REDACTED] b6, b7C and Lieutenant [REDACTED] b6, b7C explained that the kitchen provides numerous special meals for both dietary and religious reasons (about 75-80 special diet meals in the facility). The kitchen staff showed us a cart of food with the papers indicating the special diets. The facility was proud of the fact that it catered to the special needs of the detainees and inmates. One interviewed detainee who was a kitchen trustee confirmed that the kitchen made many special meals. However, an interview with another detainee revealed that he and three other Muslim detainees requested a non-pork diet and they are sometimes delivered dishes with pork. The detainee explained that these actions were especially offensive to the Muslim detainees as pork meals arrived during Ramadan. He explained further that every time he was served pork, he complained and filled out the appropriate forms. While the detainee said that the deputy was very nice and promised to attend to his problems, he was concerned since he sometimes still received meals including pork.

The *Information Booklet* does not specifically have a section covering detainees' religious rights. Captain [REDACTED] b6, b7C and Lieutenant [REDACTED] b6, b7C talked about religious practices in the facility. Lieutenant [REDACTED] b6, b7C stated that religious members visit the facility and are encouraged to do so. There have been Bible study classes in the past. In addition, detainees are allowed to possess soft cover devotional books and religious materials among their personal items. During the tour, we did see devotional books in the living quarters. One detainee stated that the jail provided him with a Bible, and another confirmed that he was allowed to keep a copy of the Koran. Detainees remarked that they could request Bibles in many languages.

While the facility partially accommodates the *Standards* by allowing religious reading material, Yuba County Jail does not completely comport with the *Standards* since it prohibits some other religious personal property, such as religious charms and rosaries. One detainee stated that he was unable to keep a religious bracelet given to him by his mother. He recalled that during in-take, a guard cut off the bracelet and threw it in the trash.

It did not appear that the facility provided any regularly scheduled religious services of any type. We did not view any postings regarding religious events or activities.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² DOM Standard 28.

⁴³ *Information Booklet*, p. 3.

The *Information Booklet* does not discuss religious headwear or special garb, and we did not observe anyone wearing special headwear or clothing during the visit. We were unable to confirm whether special religious headwear would be permitted.

G. Disciplinary Policy

The *Standards* specify that rules of conduct and disciplinary actions must be posted in English, Spanish, and other languages spoken by a significant number of detainees.⁴⁴ Disciplinary action must not allow for corporal punishment, deviation from normal food, or deprivation of any of the following: clothing, bedding, personal hygiene products, physical exercise, access to legal and family visitation, telephone access, correspondence or access to the law library. Discipline must not be retaliatory or capricious.⁴⁵ The facility should have a graduated scale of offenses and resulting disciplinary action.⁴⁶ These punishments may range from withholding of privileges to segregation, which should not exceed 60 days.⁴⁷ In addition, the facility shall not hold a detainee accountable for his or her action if the medical authority in the facility concludes that the detainee is mentally incompetent.⁴⁸

The *Standards* also specify that officers who witness or suspect certain prohibited acts must prepare and submit a detailed incident report which states the facts clearly, completely, and accurately.⁴⁹ The *Standards* do provide that in a Contract Detention Facility minor transgressions may be settled informally, if there is mutual assent.⁵⁰ Incident reports should be investigated within 24 hours of the occurrence, and facilities must create a Unit Disciplinary Committee to adjudicate the incident.⁵¹

In addition, the *Standards* emphasize that through the course of disciplinary proceedings, the detainee has the right to remain silent, to attend the entirety of the hearing before the Unit Disciplinary Committee, to waive the right to appear at the hearing, to present statements on behalf of the detainee, to appeal the committee's decision through the detainee appeal process, and to have a staff representative assist in helping prepare a defense.⁵²

At the Yuba County Jail, detainees are subject to the same disciplinary policy and punishments as inmates. The Yuba County Jail details its disciplinary policy in its *Information*

⁴⁴ DOM Standard 12.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

Booklet;⁵³ the rules of conduct and disciplinary actions are not posted in the facility, and the policy is only available in English or Spanish. Punishment for minor violations include oral or written reprimand, relocation to another cell, and the possibility of taking away access for one week to the exercise area, commissary, friends and family visitation, educational programs, as well as confinement to quarters for the day. Major violations may be punished by any of the methods used for minor violations or by the revocation of access to the exercise area, commissary, library, or visitation for thirty days, disciplinary lock-down for up to ten days, loss of trusty status, loss of good time credits, and imposition of a disciplinary diet. The deputy must make a written report of the incident within 48 hours if any punishment other than reprimand is imposed.⁵⁴ The policies in the *Information Booklet* raise concern since the deprivation of visitation, recreation time, and regular meals conflicts with the *Standards*.

The *Information Booklet* emphasizes that detainees will not be subject to cruel, corporal, or unusual punishment that injures or impairs health.⁵⁵ Detainees cannot be punished by deprivation of clothing, bedding, or normal hygienic items.⁵⁶ The booklet does not state whether personal religious items can be deprived as a means of punishment. Lieutenant [REDACTED] b6, b7C stated that religious items have never been taken away as a form of punishment. Captain [REDACTED] b6, b7C stated that it is very rare to impose a disciplinary diet and one has never been imposed on an ICE detainee.

Captain [REDACTED] b6, b7C stated that detainees who violate the disciplinary rules and who were deemed to be mentally incompetent would be given psychological treatment rather than being subject to the disciplinary policy.

According to the *Information Handbook*, minor and major violations must be investigated by the shift supervisor within 72 hours of the report of the incident. In the case of a minor violation, the detainee may explain his or her version of the incident. In the case of a major violation, the detainee is entitled to a hearing before the Jail Commander as long as the detainee requests the hearing on the disciplinary action form. The hearing must occur within 72 hours of the report of request for a hearing. The detainee shall be given a written notice of the charges and a copy of the *Information Booklet* at least 24 hours before the hearing. A detainee may appeal only certain punishments imposed for major violations.⁵⁷

While the procedures detailed in the *Information Booklet* regarding the reporting, investigating, appealing, and punishing a disciplinary incident roughly correlate to the *Standards*, they appear to be less protective of the detainee (e.g., longer time allowed for investigating the incident, not all punishments may be appealed). The Yuba County Jail does not have a Unit

⁵³ See *Information Booklet*, pgs. 4-10.

⁵⁴ *Information Booklet*, pg. 7.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 7-8.

Disciplinary Committee. In addition, the *Information Booklet* does not detail the rights of the detainee in regards to the disciplinary policy.

H. Voluntary Work Program

The *Standards* provide that every facility with a work program will provide capable detainees with the opportunity to work and earn money.⁵⁸

Detainees and inmates with “good records and behavior” can volunteer to work in the kitchen. This is a nonpaid position but inmates who work in the kitchen are housed in a separate cell and given additional perks (no lock-up, 24 hour television, double food portions).

I. Staff Detainee Communication

The *Standards* provide that the ICE staff should conduct scheduled weekly announced visits and regular unannounced visits to detention facilities to encourage informal communication between the ICE staff and the detainees. In addition, the *Standards* provide that the ICE staff should have procedures in place to respond to detainee requests within 72 hours.

As this is a relatively newly promulgated Standard, ICE has not yet implemented these staff-detainee communication standards. The ICE staff does not currently conduct scheduled weekly announced visits or regular unannounced visits with detainees at the Yuba County Jail. At the beginning of our visit, the ICE representatives stated that they were planning on starting regular facility visits every two weeks to meet with detainees. ICE staff do come to the facility daily to drop off and pick up detainees, and the Jail forwards all detainee mail to ICE to the ICE staff. The ICE representative indicated that their policy was to respond to detainee mail within 72 hours. The delegation was unable to confirm if detainee communications were responded to within 72 hours.

V. Conclusion

In general, the Yuba County Jail provides adequate accommodations for detainees. The facility is clean and safe; the staff is courteous and competent; and the detainees have decent access to medical and legal resources. Nevertheless, a number of shortcomings require attention, as this report has noted in the sections above. Perhaps the majority of these shortcomings result from the fact that detainees are not systematically differentiated from the regular jail population. Others could be readily addressed within the present system at the Yuba County Jail.

⁵⁸ DOM Standard 37.