

July 2007

ALIEN DETENTION STANDARDS

Telephone Access
Problems Were
Pervasive at Detention
Facilities; Other
Deficiencies Did Not
Show a Pattern of
Noncompliance





Highlights of [GAO-07-875](#), a report to congressional requesters

Why GAO Did This Study

The total number of aliens detained per year by the Department of Homeland Security's (DHS) U.S. Immigration and Customs Enforcement (ICE) increased from about 95,000 in fiscal year 2001 to 283,000 in 2006. The care and treatment of these detained aliens is a significant challenge to ICE. GAO was asked to review ICE's implementation of its detention standards for aliens in its custody. GAO reviewed (1) detention facilities' compliance with ICE's detention standards, (2) ICE's compliance review process, and (3) how detainee complaints regarding conditions of confinement are handled. To conduct its work, GAO reviewed DHS documents, interviewed program officials, and visited 23 detention facilities of varying size, type, and geographic location.

What GAO Recommends

GAO is making several recommendations, including that ICE take actions to ensure that the pro bono phone system in alien detention facilities is operating effectively, and to explore current and future options to obtain recourse for contractor nonperformance. DHS stated that it agreed with our seven recommendations and identified corrective actions that it has planned or are under way to address the problems identified by GAO.

www.gao.gov/cgi-bin/getrpt?GAO-07-875.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard M. Stana at (202) 512-8777 or StanaR@gao.gov.

ALIEN DETENTION STANDARDS

Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance

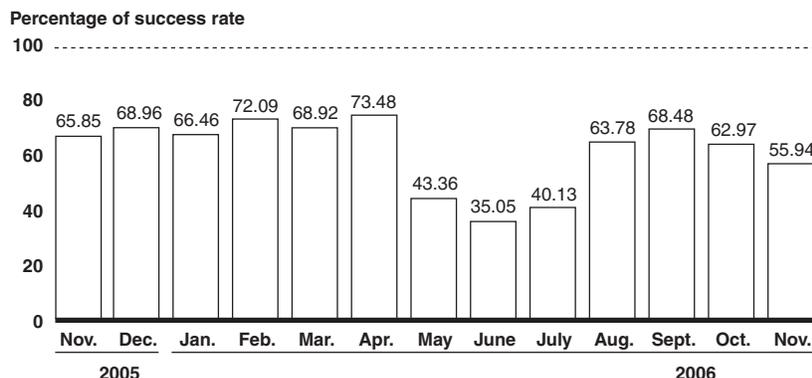
What GAO Found

GAO's observations at 23 alien detention facilities showed systemic telephone system problems at 16 of 17 facilities that use the pro bono telephone system, but no pattern of noncompliance for other standards GAO reviewed. At facilities that use the ICE detainee pro bono telephone system, GAO encountered significant problems in making connections to consulates, pro bono legal providers, or the DHS Office of the Inspector General (OIG) complaint hotline. As shown in the figure below, monthly performance data provided by the phone system contractor indicate the rate of successful connections through the detainee pro bono telephone system was never above 74 percent. ICE officials stated there was little oversight of the telephone contract. In June 2007, ICE requested an OIG audit of the contract, stating that the contractor did not comply with the terms and conditions of the contract. Other instances of deficiencies GAO observed varied across facilities visited but did not appear to show a pattern of noncompliance. These deficiencies involved medical care, use of hold rooms, use of force, food service, recreational opportunities, access to legal materials, facility grievance procedures, and overcrowding.

ICE annual compliance reviews of detention facilities identified deficiencies similar to those found by GAO. However, insufficient internal controls and weaknesses in ICE's compliance review process resulted in ICE's failure to identify telephone system problems at most facilities GAO visited. ICE's inspection worksheet used by its detention facility reviewers did not require that a reviewer confirm that detainees are able to make successful connections through the detainee pro bono telephone system.

Detainee complaints may be filed with several governmental and nongovernmental organizations. Detainee complaints mostly involved legal access, conditions of confinement, property issues, human and civil rights, medical care, and employee misconduct at the facility. The primary way for detainees to file complaints is to contact the OIG. OIG investigates the most serious complaints and refers the remainder to other DHS components.

Percentage of Successful Calls through ICE's Detainee Pro Bono Telephone System, November 2005 through November 2006



Source: GAO analysis of ICE contractor provided data.

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Abbreviations

ABA	American Bar Association
ACA	American Correctional Association
CBP	Customs and Border Protection
CDF	Contract Detention Facilities
COTR	Contracting Officer Technical Representative
CRCL	Civil Rights and Civil Liberties
DFIG	Detention Facilities Inspection Group
DHS	Department of Homeland Security
DRO	Office of Detention and Removal
DOJ	Department of Justice
EOIR	Executive Office for Immigration Review
HHS	Health and Human Services
ICE	Immigration and Customs Enforcement
IGSA	intergovernmental service agreement
JIC	Joint Intake Center
JCAHO	Joint Commission on Accreditation of Health Care Organizations
NCCHC	National Commission on Correctional Health Care
OIG	Office of the Inspector General
OPR	Office of Professional Responsibility
PCS	Public Communications Services
PHS	Public Health Service
SPC	Service Processing Centers
UNHCR	United Nations High Commissioner for Refugees

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United States Government Accountability Office
Washington, DC 20548

July 6, 2007

Congressional Requesters

In 2006, a Pew Hispanic Center report estimated that there were 11.5 million to 12 million unauthorized aliens in the United States.¹ Moreover, according to the Department of Homeland Security's (DHS) *2005 Yearbook of Immigration Statistics*, the population of unauthorized aliens in the United States will continue to grow at an average annual rate of about 400,000 aliens per year.² Through immigration enforcement efforts such as workplace raids and other law enforcement activities, some of these unauthorized aliens may be apprehended and placed in detention pending civil administrative immigration removal proceedings. The total number of aliens in administrative proceedings that spend some time in detention per year increased from 95,214 in 2001 to 283,115 in 2006.³ Available detention bed space rose from 19,702 in fiscal year 2001 to 27,500 in fiscal year 2007. In fiscal year 2007, DHS's U.S. Immigration and Customs Enforcement (ICE) received \$953 million in funding for detention services. The care and treatment of these aliens while in detention is a significant challenge to ICE, and concerns have been raised by members of Congress and advocacy groups about the treatment of aliens while in ICE custody.

According to ICE, its goal is to provide safe, secure, and humane conditions for all detainees in ICE custody. Furthering the goal of ensuring that alien detainees are housed under appropriate conditions of confinement, in 2000, the former Immigration and Naturalization Service implemented National Detention Standards that apply to alien adult detention facilities. These standards are derived from the *American Correctional Association Third Edition, Standards for Adult Local*

¹Pew Hispanic Center, *America's Immigration Quandary: No Consensus on Immigration Problem or Proposed Fixes*, March 30, 2006. The Pew Hispanic Center is a nonpartisan research organization supported by the Pew Charitable Trusts whose mission is to improve understanding of the U.S. Hispanic population and to chronicle Latinos' impact in the United States. The center is a project of the Pew Research Center in Washington, D.C.

²Office of Immigration Statistics, U.S. Department of Homeland Security, *2005 Yearbook of Immigration Statistics*.

³Administrative proceedings can include removal proceedings and asylum hearings.

Detention Facilities, and were developed in consultation with the American Bar Association (ABA), the U.S. Department of Justice (DOJ), and other organizations involved in pro bono representation and advocacy for immigration detainees. The standards encompass areas such as telephone access, legal access, medical services, detainee grievance procedures, food services, and recreation. Following the creation of DHS in March 2003, ICE took over responsibility for the National Detention Standards when the Immigration and Naturalization Service was abolished. ICE's Office of Detention and Removal (DRO) is responsible for conducting reviews to ensure compliance with these standards, and according to ICE policy, all detention facilities are required to be inspected annually for this purpose.

The National Detention Standards apply to the 330 adult and 3 family detention facilities that ICE uses to detain aliens.⁴ These standards are to govern conditions relating to detainee telephone access, medical care, and access to legal materials, among others. Alien detention facilities can use various means to satisfy the requirements of the standards. For example, the telephone access standard and grievance procedure standard require that facilities provide a means for detainees to make calls at no charge to themselves or to the recipients, to their consulates, pro bono legal providers, and the DHS Office of the Inspector General's (OIG) complaint line among others. Many facilities have adopted ICE's contractor-provided automated pro bono telephone system⁵ to satisfy the standard, while others allow detainees to make the required calls using facility phones with the assistance of facility personnel. As a second example, to fulfill the standard for providing medical services, some facilities provide on-site medical care, while others make use of local medical providers. As a third example, some facilities provide legal search programs on computers to meet the access to legal materials standard, while others provide hard-copy legal reference materials in a law library.

This report focuses on the following questions: (1) To what extent do selected facilities comply with established detention standards? (2) To

⁴ICE has separate standards that apply to juveniles at 19 juvenile and 3 family detention facilities.

⁵ICE refers to its automated telephone system as the "pro bono telephone system" because the system enables detainees to place calls at no charge to their respective consulates, pro bono legal service providers, the local immigration court, and the OIG's complaint line, among others.

what extent does ICE's compliance review process identify deficiencies?
(3) What organizations external to the detention facilities receive alien detainee complaints, and what types of complaints have been received?

To address our objectives we,

- conducted visits to a nonprobability sample of detention facilities to observe conditions of confinement, implementation of the standards, and extent of compliance with alien detention standards;
- interviewed DHS and ICE officials responsible for compliance with alien detention standards and analyzed documentation on staffing levels devoted to ensuring compliance with alien detention standards and associated guidance and training provided to personnel to oversee compliance with the standards;
- interviewed DHS and ICE officials and analyzed DHS documentation on efforts, methodologies, and internal controls used to evaluate compliance with the standards;
- analyzed data on pro bono telephone system performance provided by the ICE telephone contractor; and
- analyzed data on detention-related complaints filed by alien detainees or their representatives with the OIG, and reviewed information on the number and type of detainee complaints received by DHS and ICE components, and nongovernmental organizations assisting alien detainees.

On the basis of interviews with the United Nations High Commissioner for Refugees (UNHCR), ABA, and OIG officials, we selected a nonprobability sample of 8 of 38 ICE National Detention Standards to review at the detention facilities we visited. The 8 standards we selected are telephone access, medical care, hold rooms procedures,⁶ use of force, food services, recreation, access to legal materials, and detainee grievance procedures. According to the officials we interviewed, these standards pertained to the basic treatment of detainees and were representative of areas of concern

⁶These establish policies and procedures for hold rooms that are used for the temporary detention of individuals awaiting removal, transfer, Executive Office for Immigration Review (EOIR) hearings, medical treatment, intrafacility movement, or other processing into or out of the facility.

and common complaints received in their organizations. We also observed whether the population in the facilities we visited exceeded rated capacity. We visited all 3 family detention facilities, 2 of 19 juvenile detention facilities, and 18 of 330 adult detention facilities for our visits on the basis of geographic diversity, facility type, and prior inspection ratings. Because we did not randomly select our detention facilities, the results pertain only to the facilities we visited and cannot be projected to the universe of detention facilities. We also analyzed ICE annual facility compliance reports for the detention sites we visited. Additionally, we analyzed the most recently available detainee complaints compiled by the OIG and reviewed information on the number and type of detainee complaints received by ICE, UNHCR, and other sources. We did not independently assess the merits of detainee complaints. Also, we did not determine if any corrective actions suggested for the detention facilities as a result of DRO reviews or detainee complaints were implemented.

We analyzed data on alien detention population statistics from DRO's Monthly Detention Reports, the number of authorized detention facilities and their most current compliance ratings from DRO's Detention Inspection Unit's compliance database, and available data on the number and status of detainee complaint allegations received by the OIG. Further, we reviewed and reported on the number and type of detainee complaints received by ICE's Office of Professional Responsibility (OPR), DHS Office of Civil Rights and Civil Liberties (CRCL), the UNHCR, and the ABA. To determine compliance with the telephone access standard, we also analyzed contractor monthly telephone performance data related to the detainee pro bono telephone system. Overall, we determined the data to be sufficiently reliable for purposes of our review.

Our review focused on ICE, which has responsibility for custody of alien detainees pending civil administrative removal proceedings and accompanied juvenile aliens. We did not include alien detainees serving criminal sentences in DOJ's Bureau of Prisons facilities or unaccompanied juvenile aliens in the custody of the Department of Health and Human Services (HHS). See appendix I for more detailed information on our scope and methodology.

Our work was conducted from May 2006 through May 2007 in accordance with generally accepted government auditing standards.

Results in Brief

During field visits to 23 detention facilities, we observed systemic problems with the pro bono telephone system at 16 of 17 detention facilities that use this system. Further we also observed instances of noncompliance with one or more other selected national detention standards at 9 of the 23 facilities we visited. At 16 detention facilities we visited where ICE contracts with a private vendor for a pro bono phone system, often we could not make successful connections due to technical problems within the system. Further, there were insufficient internal controls at the facilities to ensure posted phone numbers were kept up to date or otherwise accurate. At 1 facility we visited in September 2006, the list of consulate numbers was 6 years old (dated 2000). We called 30 of the consulate numbers on the posted listings and determined that 9 of the numbers were incorrect. We found that the pro bono telephone system provider had reported performance data to ICE every month for the last 5 years for all facilities using the system that when analyzed, indicated the likelihood of significant and consistent telephone system failures. However, ICE officials told us that they did not know the nature and the extent of the problem prior to our review. The ICE contracting officer assigned responsibility for the Public Communications Services (PCS) contract told us that he had taken only a limited oversight role regarding the PCS phone contract. A senior official in ICE's Office of Acquisition, which is responsible for overseeing contractor performance, said that the office faced significant challenges relating to turnover, understaffing, and loss of institutional knowledge regarding contract oversight and management. Officials acknowledged that a lack of internal controls exists in its present system for monitoring detainee telephone system contractor performance and acknowledged that greater contractor oversight is required. ICE has confirmed that PCS has not complied with the terms and conditions of the contract. As a result, the ICE Assistant Secretary requested a DHS Inspector General audit of the ICE pro bono telephone system and contract. With the exception of the pro bono telephone system failures, other instances of deficiencies varied across the facilities that we visited and did not appear to show a pattern of noncompliance. Examples of other deficiencies included food service issues at 3 facilities, medical care policy at 3 facilities, hold room policy at 3 facilities, and use of force policy at 4 facilities. We also observed detainees being housed in numbers that exceeded the rated capacity at 4 of the 23 sites we visited.

ICE conducts annual compliance inspection reviews at detention facilities to determine that these facilities are in compliance with the National Detention Standards, and recent ICE inspection reports for the facilities that we visited reflected similar deficiencies in compliance with the standards to those that we observed. Lack of internal controls and

weaknesses in ICE's compliance review process, however, resulted in ICE's failure to identify telephone system problems at many facilities we visited. Specifically, ICE's Detention Inspection Worksheet used by reviewers did not require that a reviewer check that detainees are able to make successful connections through the pro bono telephone system. Further, there was variation in how ICE reviewers addressed and reported telephone system problems. For example, at the 16 facilities where we identified telephone problems, ICE reported problems with the detainee telephone system for only 5 of these facilities in its most recently available compliance reports. Moreover, in at least one case when phone system problems were identified by ICE reviewers resulting in the facility being rated "at risk" for the Telephone Access Standard, our tests showed that the problems still persisted nearly a year later when we visited the facility in October 2006.

Detainees have filed a variety of complaints regarding conditions of confinement with external organizations. The primary mechanism for detainees to file external complaints is directly with the OIG, either in writing or by phone using the OIG complaint hotline. Our review of about 750 detainee complaints in the OIG database for the period fiscal years 2005 through 2006 showed that most complaints related to medical treatment; case management; mistreatment; detainee protests of detention or deportation; civil rights, human rights or discrimination; property issues; and employee misconduct at the facility. As previously discussed, we found that detainees' ability to register complaints through the OIG may be restricted due to consistent system failures in the pro bono telephone system that is provided for this purpose. Of the approximately 1,700 detainee complaints in the OIG database that were filed in the period from 2003 through 2006, OIG investigated 173 and referred the remainder to other DHS components, such as ICE's Office of Professional Responsibility (OPR) and DRO, for their review. Of the 409 complaints OPR reported it had received during this period, officials told us they had substantiated 7 of them. DRO also receives complaints from the OIG, but we found that its informal database of detainee complaints was not sufficiently reliable for audit purposes. Since DRO is responsible for overseeing the management and operation of detention facilities, it is important that DRO accurately document detainee complaints related to conditions of confinement to, among other things, inform its review teams and DRO management regarding the conditions at the facilities used to detain aliens. Moreover, our standards for internal control in the federal government call for clear documentation of transactions and events that is readily available for examination. Detainees or their representatives may also file complaints with nongovernmental organizations, including

UNHCR and other advocacy organizations that monitor alien detention conditions. Examples of complaints received by UNHCR included lack of timely response to requests for medical services, inadequate access to legal materials, and problems making connections using the ICE pro bono telephone system. These external organizations said they forward detainee complaints to DHS components for review and possible corrective action.

We are making several recommendations to help ensure that detainees can successfully use the pro bono telephone service to contact legal service providers, report complaints, and obtain assistance from their consulates. These include amendments to the DRO compliance inspection process relating to the detainee telephone access standard to include that reviewers test to ensure that the pro bono telephone system is functioning properly. Further, we are recommending the establishment of formal procedures to ensure that the pro bono telephone numbers posted in detention facilities reflect the most currently available numbers. We are also recommending that ICE's Office of Acquisition and DRO establish better contractor oversight and that the Assistant Secretary explore current and future options to obtain recourse for contractor nonperformance. Additionally, we are also recommending that DRO establish improved internal control procedures to help ensure that detainee complaints are properly documented and their disposition is recorded for later examination.

We provided a draft of this report to DHS for review and comment. In commenting on this report, DHS agreed with our recommendations and outlined actions planned or under way to address them. A copy of DHS's letter commenting on the report is presented in appendix V. DHS also provided technical comments, which we considered and incorporated into this report as appropriate.

Background

DRO is responsible for the detention of aliens in its custody pending civil administrative immigration removal proceedings. According to ICE, as of the week ending December 31, 2006, there were 27,607 aliens detained in ICE custody at 330 adult detention facilities nationwide.

The majority of ICE's alien detainee population is housed with general population inmates in about 300 state and local jails that have intergovernmental service agreements with ICE. In addition to being

housed in these state and local facilities, alien detainees are also housed in 8 ICE-owned service processing centers and 6 contract detention facilities operated by private contractors specifically for ICE alien detainees.⁷ In addition to these adult detention facilities, ICE contracts for the operation of 19 juvenile and 3 family detention facilities.

According to ICE officials, they maintain custody of one of the most highly transient and diverse populations of any correctional or detention system in the world. This diverse population includes individuals from different countries; with varying security risks (criminal and noncriminal); with varying medical conditions; and includes males, females, and families of every age group. As of January 2007, the countries with the largest numbers of alien detainees in ICE custody were Mexico, El Salvador, Guatemala, Honduras, the Dominican Republic, and Haiti. See appendix II for additional information on alien detention population statistics.

ICE's National Detention Standards are derived from the *American Correctional Association Third Edition, Standards for Adult Local Detention Facilities*. ICE officials said that they were currently in the process of revising the National Detention Standards based on *American Correctional Association Fourth Edition, Performance-Based Standards for Adult Local Detention Facilities*. In most cases ICE standards mirror American Correctional Association (ACA) standards. However, in some cases ICE standards exceed or provide more specificity than ACA standards to address the unique needs of alien detainees. As an example, ICE standards specify that a detainee should receive a tuberculosis test upon intake, while ACA standards do not. Further, ICE standards require a detailed list of immigration-related legal reference materials be made available in law libraries, while ACA standards do not specify the type and nature of legal materials to be made available. Also, exceeding ACA standards, ICE standards specify that, when possible, use of force on detainees be videotaped and that certain informational materials provided

⁷A service processing center is a detention facility of which the primary operator and controlling party is ICE. A contract detention facility is a facility that provides detention services under a competitively bid contract awarded by ICE. An intergovernmental service agreement (IGSA) is a cooperative agreement between ICE and any state, territory, or political subdivision for the construction, renovation, or acquisition of equipment, supplies, or materials required to establish acceptable conditions of confinement and detention services. ICE may enter into an IGSA with any such unit of government guaranteeing to provide bed space for ICE detainees, and to provide the clothing, medical care, food and drink, security, and other necessities specified in the ICE Detention Standards; facilities providing such services are referred to as IGSA facilities.

to detainees, such as fire evacuation instructions and detainee handbooks, be available in Spanish.

The ICE National Detention Standards are to apply to ICE-owned detention facilities and those state and local facilities that house alien detainees.⁸ The standards are not codified in law and thus represent guidelines rather than binding regulations. According to ICE officials, ICE has never technically terminated an agreement for noncompliance with its detention standards. However, under ICE's Detention Management Control Program policies and procedures, ICE may terminate its use of a detention facility and remove detainees or withhold payment from a facility for lack of compliance with the standards.

Separate standards addressing the treatment of juvenile aliens are used for juvenile secure detention and shelter facilities. Both adult and juvenile detention facility standards are used at ICE's family shelter facilities because of the unique classification of family shelters. There are 38 ICE National Detention Standards for adult detention facilities; 18 standards are related to detainee services, 4 are related to detainee health services, and 16 are related to security and control. More detailed information on each of these standards is provided in appendix IV.

According to ICE officials, in addition to being required to comply with ICE's National Detention Standards, some ICE detention facilities are accredited by ACA. For example, seven of eight ICE service processing centers and five of six contract detention facilities are accredited by ACA. In addition, according to ICE officials, some of the over 300 intergovernmental service agreement facilities are also accredited by ACA. Moreover, some facilities are also accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO), the predominant standards-setting and accrediting body in health care, and the National Commission on Correctional Health Care (NCCHC), which offers a health services accreditation program to determine whether correctional institutions meet its standards in their provision of health services.

⁸In providing technical comments to this report, ICE officials stated that detention standards generally apply to contract facilities as well, although certain standards might not apply in specific instances, for example, a law library is not required at an under 72-hour facility.

Field Visits at 23 Detention Facilities Showed Systemic Telephone Access Problems and Instances of Noncompliance with Other Standards

Our field observations at 23 alien detention facilities showed systemic telephone system problems at 16 of 17 facilities that use the pro bono telephone system, but no pattern of noncompliance for other standards we reviewed. Problems with the pro bono telephone system restrict detainees' abilities to reach their consulates, nongovernmental organizations, pro bono legal assistance providers, and the OIG complaint hotline. ICE and facility officials told us that they did not know the specific nature and extent of the problem prior to our review. ICE's lack of awareness and insufficient internal controls appear to have perpetuated telephone system problems for several years. Similarly, there were insufficient internal controls at the facilities to ensure posted phone numbers were kept up to date or otherwise accurate. For instance, one facility told us that the only means to know if a posted phone list was out of date or inaccurate was if a detainee complained. In addition to telephone problems, we also observed a lack of compliance with one or more aspects of other individual detention standards at 9 of the 23 sites we visited. These instances of noncompliance varied across facilities that we visited, and unlike the telephone system problems, did not appear to show a persistent pattern of noncompliance. Other examples of deficiencies included food service issues such as kitchen cleanliness and menu rotation, failure to follow medical care policy at intake, hold room policy violations such as lack of logbooks and overcrowding, and potential use of force violations such as the potential for use of dogs and/or Tasers,⁹ since some facilities had the use of Tasers either authorized in policy or facility officials stated they used these methods.¹⁰ Last, we also observed detainees being housed in numbers that exceeded the rated capacity at 4 of the 23 sites we visited.

Systemic Problems in Detainees' Telephone Access Restrict Detainees' Ability to Reach Pro Bono Services

ICE alien detention standards specify that detainees be provided the ability to make telephone calls, at no charge to themselves or to the recipients, to their respective consulates, designated pro bono legal service providers, and the OIG complaint hotline, among others. The pro bono telephone system is to ensure that detainees have access to authorized legal representatives, that aliens who wish to retain counsel are

⁹According to Taser International, Taser is a trademark and an acronym for the Thomas A. Swift Electrical Rifle, which was developed in the 1970s. For the purposes of this report, the term "Taser" will refer to a weapon that shoots two stainless steel barbs to a distance of 25 feet and results in an incapacitating 50,000-volt electric shock.

¹⁰ICE's use of force standard states that detention facilities used by ICE must comply with ICE's use of force policy, which forbids the use of Tasers.

not prevented from doing so, and to allow detainees to contact their home country consulates to seek assistance. The pro bono telephone system is also to ensure that detainees can voice complaints regarding their conditions of confinement to organizations with responsibility for investigating or monitoring detainee treatment. In order to meet the telephone access standard, ICE contracted with Public Communications Services (PCS) to provide a pro bono telephone system to enable detainees to contact the aforementioned parties at no charge. The term of the contract is January 22, 2004, to January 21, 2009, and consists of a 12-month base period and four 12-month options.

Widespread Failures Found at Facilities We Visited in the Pro Bono Telephone System

Of the 23 detention facilities we visited, 17 facilities utilize the PCS detainee telephone system.¹¹ We performed telephone tests at all 17 of these facilities. Our tests consisted of dialing the OIG's complaint line, consulates, nongovernmental organizations, and pro bono legal service providers from the numbers posted next to the telephones to determine if we could get a connection. All of the phones were in good working order, and we observed that detainees could successfully place personally funded phone calls using calling cards purchased from the facility. However, we often could not connect to the telephone numbers for the OIG, consulates, and pro bono legal providers. At 16 of 17 detention facilities where we performed test calls through the pro bono telephone system, we encountered numerous failures that ranged from incomplete and inaccurate phone number postings to a variety of technical system failures that would not permit the caller to make the desired connections. For example, during our facility visits, we observed posters advertising the OIG complaint hotline 1-800 number. However, we found that the OIG number was blocked or otherwise restricted at 12 of the facilities that we tested. Typical problems that we encountered when dialing the OIG's complaint line included getting a voice prompt stating that "this number is restricted," "this is an invalid number," or "a call to this number has been blocked by the telephone service provider." Also, at 14 of the facilities using the PCS detainee telephone system, we could not complete phone connections to some consulates. We received messages such as a message stating that "all circuits are busy, call back at a later time" and "this number is restricted." At the Pamunkey Regional Jail in Virginia we requested that the on-site Systems Administrator call PCS to determine

¹¹IGSA detention facilities are not required to adopt the detainee telephone system, and it is ultimately their choice as to whether to use the platform to meet the standard or provide pro bono telephone access by some other means.

why its pro bono telephone system was not working properly. The PCS service department informed him that there was a problem with the PCS system and it seemed to be at all facilities. Figure 1 shows a telephone with posted pro bono numbers at the Denver Contract Detention Facility, where we identified telephone system problems during our testing.

Figure 1: Detainee Telephone System and Posted Pro Bono Call Lists at Denver Contract Detention Facility, October 2006



Source: GAO.

Further, we found the PCS detainee telephone system to be cumbersome and complicated to use. For example, at Pamunkey Regional Jail, the automated system required eight different actions by the user to place a call. One of these actions added further confusion by instructing a detainee to select “collect call” in order to make a pro bono telephone system call. Similarly, at the Northwest Detention Center, detainees were offered only two voice prompt options when attempting to place a call using the pro bono telephone system: (1) to place a “collect call” and (2) to place a “credit card call.”

In some cases, we found that the pro bono telephone system requires detainees to input their Alien Registration Number (commonly referred to as an “A” number) as part of the process for making a pro bono telephone call.¹² In at least one facility, however, this in itself provided enough confusion among detainees to prevent them from making a successful call. At Pamunkey Regional Jail, we asked a group of about 40 detainees in one dorm if any of them could call any of the pro bono service numbers posted on the wall. We found that most of the detainees were not familiar with “A” numbers that would be required. In one case, when we asked a detainee for his “A” number, he referred to an unrelated number labeled “PIN” on his jail inmate wrist band. This may have been because the detainee handbook at Pamunkey refers to an “A” number as “PIN.” This problem was also recorded during a visit by UNHCR representatives at the same facility in 2005. Nevertheless, we obtained an actual “A” number from personal paperwork provided to us by one of the detainees. Using his legitimate “A” number, and working our way through numerous voice prompts, we could not make a connection using any of the pro bono legal service or consulate numbers posted at the Pamunkey Regional Jail. The facility compliance officer, the phone technician on site, and the ICE phone system contract technical representative who accompanied us at Pamunkey could offer no explanation for the pro bono telephone system failure. The telephone technician told us that he oversees frequent problems with the detainee phones at Pamunkey.

Insufficient Internal Controls Existed to Ensure Pro Bono Telephone Number Postings Are Kept Up to Date or That the Pro Bono Calling System Is Functioning Properly

At 16 of the 17 detention facilities we visited with the ICE pro bono telephone system, we found insufficient internal controls to ensure that telephone number postings are kept up to date and/or that the pro bono telephone system is functioning properly. For example, the phone number listings for pro bono legal providers and consulates were out of date and inaccurate at the Elizabeth Detention Facility. When we visited this facility in September 2006, the list of consulate numbers was 6 years old (dated 2000). We called 30 of the consulate numbers on the posted listing and determined that 9 of the numbers were incorrect. When we asked the ICE officer in charge on site why the consulate numbers were not up to date, he said he had no way of knowing if the phone numbers posted for the detainees were out of date unless someone complained. Additional examples include Pamunkey and Hampton Roads Regional Jails, where we found that consulate numbers were not listed for two countries with

¹²The Alien Registration Number is the number assigned to an alien’s administrative file for tracking purposes.

detainees of those nationalities present. Inaccurate or missing telephone numbers may preclude detainees from reaching consulates, pro bono legal providers, and the OIG complaint hotline, as required in ICE's National Detention Standards.

Officials we interviewed at the Department of Justice's Executive Office for Immigration Review (EOIR) stated that their organization updates all local pro bono legal services phone numbers every 3 months and provides these updated phone numbers to all immigration courts. Some of these immigration courts are located within the detention facilities themselves. The EOIR officials stated that it is the responsibility of ICE staff to ensure that copies of updated pro bono phone lists are regularly picked up at the immigration courts and posted in the detainee dorms. Moreover, we did not have any problem obtaining current phone number lists for local pro bono legal services from the EOIR Web site. Current consulate phone numbers are also available on the Department of State's Web site.¹³ Despite the availability of these numbers, ICE staff did not have procedures to ensure that the updated numbers were posted and provided to the phone system contractor to be programmed into the system on a regular basis.

We found that most facilities that we visited were not aware that the pro bono telephone system was not operating properly because there were no internal control procedures for regularly testing the system. At two of the facilities we visited, the San Diego Correctional Facility and the Denver Contract Detention Facility, ICE's recent compliance inspection reports cited facility officials for failing to properly monitor the pro bono phone system. When we tested the pro bono telephone system at the T. Don Hutto Family Shelter and found that we were unable to make most connections successfully, the facility officials established a new logbook and required the officer on duty in the detainee dorms to test the pro bono telephone system three times daily (8 a.m., 12 noon, and 4:30 p.m.) and record the results of these tests (satisfactory or unsatisfactory). We are not aware of any other immediate corrective action taken by other facilities that we visited. At Broward Transitional Center, facility officials stated that if a detainee had difficulty connecting through the pro bono call system, they provided an alternative means for a detainee to direct-dial these calls on a facility phone outside of the housing unit. Noting the

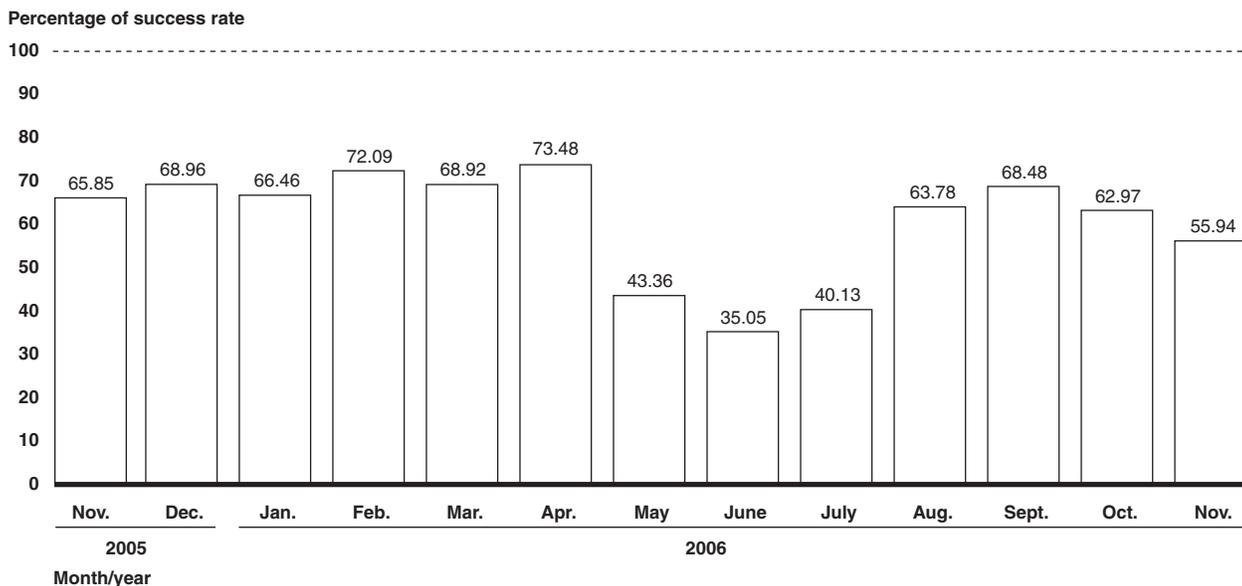
¹³Department of State Web site for current lists of consulates can be found at <http://www.state.gov/s/cpr/rls/fco/fallwinter2/>, and Executive Office for Immigration Review lists of local pro bono legal services can be found at <http://www.usdoj.gov/eoir/probono/states.htm>.

poor performance of the pro bono telephone system it is important for facilities to post instructions for alternative means for detainees to complete calls in the event that the ICE pro bono telephone system is not functioning properly.

ICE Not Monitoring Contractor Telephone System Performance Reports

We reviewed monthly pro bono telephone system performance reports provided to ICE by the pro bono phone system contractor for the last 5 years. The overall data show that over the 5-year period, 41 percent of calls placed through the system were not successful. This was consistent with problems we found during our site visits. These high failure rates indicated a systemic problem with the detainee pro bono telephone system. Figure 2 shows the monthly success rate for telephone calls placed through the pro bono telephone system from November 2005 to November 2006. Over this period, the rate of successful connections was never above 74 percent. Further, during the period between May and July 2006, on average, 60 percent of all attempted calls by detainees were not completed.

Figure 2: Percentage of Successful Calls through ICE’s Detainee Pro Bono Telephone System, November 2005 through November 2006



Source: GAO analysis of ICE contractor provided data.

The contractor-provided performance data also contained information on systemwide facility success rates for completed calls. When we reviewed these data, we found that individual facilities showed a similar trend of

poor performance in completing calls when detainees attempted to use the pro bono call system.

Our discussions with ICE contract administration officials, including contract officials in the Office of Acquisition and the Contracting Officer Technical Representative (COTR) in DRO, indicated that there was little oversight of the telephone contract being performed. The ICE contracting officer assigned responsibility for the PCS contract told us that the PCS phone contract was operating essentially on “autopilot” in that there was limited oversight being performed of the contract. The contracting official also stated that he had not been informed of any performance-related contract issues by the ICE COTR, who he said was responsible for monitoring the technical performance of the contractor. When we interviewed the COTR, he told us that he was assigned contract-related duties on a collateral basis while serving as a full-time compliance reviewer in the Detention Standards Compliance unit of DRO. A senior official in ICE’s Office of Acquisition said that the office faced significant challenges relating to turnover, understaffing, and loss of institutional knowledge regarding contract oversight and management. After several discussions with ICE contract and detention compliance officials concerning our findings of systemic problems with the pro bono calling system, the officials acknowledged that a lack of internal controls exists in its present system for monitoring detainee telephone system contractor performance and that greater contractor oversight is required. According to ICE officials, their intent is to issue a new telephone contract solicitation in the coming months. This contract for delivering pro bono telephone services is projected to be awarded by December 31, 2007.

Some Telephone Contracts Provide for Commissions to Detention Facilities

We found that detainee complaints over the high costs of phone calls were common. Under ICE’s pro bono telephone contract, PCS gains exclusive rights to provide paid telephone access to detainees at Service Processing Centers (SPC) and Contract Detention Facilities (CDF) to make paid telephone calls through the purchase of calling cards in denominations of \$5, \$10, or \$20. The PCS rates range from \$0.65 to \$0.94 per minute for international calls and \$0.06 to \$0.17 a minute for domestic calls. Additionally, PCS contracts independently of ICE to provide paid telephone access at some intergovernmental service agreement (IGSA) facilities who determine their own rates apart from ICE. For instance, at the Pamunkey Regional Jail, an IGSA facility, detainees are charged \$3.95 to connect and 89 cents a minute for long-distance calls. Under ICE’s

agreement with PCS, PCS provides the pro bono platform to any IGSA facility that chooses to adopt it to meet the telephone access standard.¹⁴ ICE officials stated that approximately 200 facilities currently use the PCS pro bono telephone system. They also stated that some detention facilities have revenue-sharing agreements with PCS for a portion of the revenue resulting from the sale of the calling cards. ICE officials provided some information at the end of our review indicating that telephone commissions at some detention facilities range from 2 percent to 10 percent of calling card sales. According to ICE, revenue sharing is not a part of its ICE-PCS contract; however, PCS has negotiated agreements independently with detention facilities to make distribution to the detainees of the phone cards, collect money, etc. We were unable to examine the full extent of these contractual agreements across all ICE detention facilities. However, on June 1, 2007, the ICE Assistant Secretary requested a DHS Inspector General audit of the ICE pro bono telephone system and contract to include activity relevant to the sale and use of calling cards. Our review of correctional facility literature indicated that commissions resulting from telephone card sales can be as high as 20 percent to 60 percent.

Compliance with Other Standards Varied but Did Not Show a Consistent Pattern of Noncompliance

In addition to reviewing compliance with the telephone access standard, we focused on seven other detention standards. The standards we reviewed included medical care, hold rooms, use of force, food service, recreation, access to legal materials, and detainee grievance procedures. While we found deficiencies regarding these other standards, unlike the telephone system problems, these deficiencies did not show a systemic pattern of noncompliance from facility to facility.

Medical Care

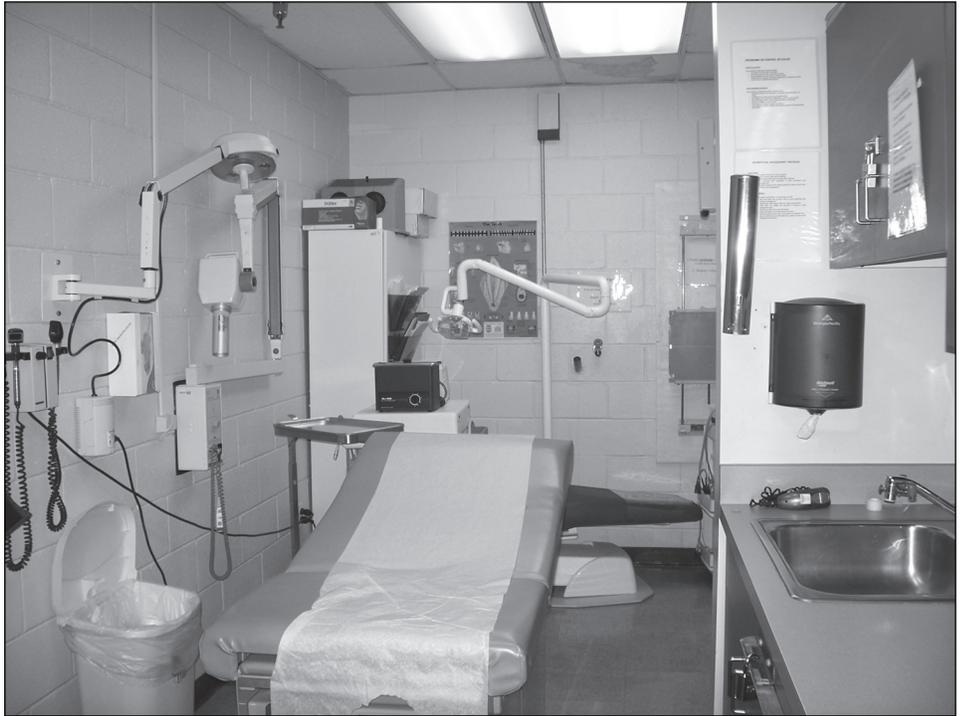
ICE standards state that detainees are to receive an initial medical screening immediately upon admission and a full medical assessment within 14 days. The policy also states that a health care specialist shall determine needed medical treatment. Medical service providers used by facilities include general medical, dental, and mental health care providers and are licensed by state and local authorities. Some medical services are provided by the U.S. Public Health Service (PHS), while other medical

¹⁴According to ICE, there are several IGSA facilities that have both an ICE IGSA contract and where PCS is the provider selected locally for detainee phone service, but that IGSA facilities are not required to select PCS as their phone service provider. An IGSA facility may choose to meet the telephone access standard via the pro bono platform provided by PCS and not adopt PCS as its primary service provider.

service providers work on a contractual basis. Facilities that we visited ranged from small clinics with contract staff to facilities with on-site medical staff and diagnostic equipment such as X-ray machines. According to ICE, when outside medical care appears warranted, then ICE will make the determination through a Managed Care Coordinator provided by PHS. Officials at some facilities told us that the special medical and mental health needs of detainees can be challenging. Some also cited difficulties in obtaining approval for outside medical and mental health care as also presenting problems in caring for detainees.

We observed deficiencies in ICE's Medical Care Standards at three facilities we visited. These facilities consisted of one adult detention facility, one family detention facility, and one juvenile detention facility. Specifically, at the San Diego Correctional Facility, ICE reviewers that we accompanied cited PHS staff for failing to administer the mandatory 14-day physical exam to approximately 260 detainees. PHS staff said the problem was due to inadequate training on the medical records system and technical errors in the records system. At a family detention center, Casa de San Juan Family Shelter, the facility staff did not administer medical screenings immediately upon admission, as required in ICE medical care standards. Finally, at the Cowlitz County Juvenile Detention Center, no medical screening was performed at admission and first aid kits were not available, as required. Figures 3 and 4 show examples of medical facilities at the Denver Contract Detention Facility and Berks County Prison, which provide on-site medical care.

Figure 3: Medical Exam Unit at Denver Contract Detention Facility, October 2006



Source: GAO.

Figure 4: Berks County Prison Dental Treatment Room, September 2006



Source: GAO.

Hold Rooms

Hold rooms are used for temporary detention of individuals awaiting removal, transfer, medical treatment, intrafacility movement, or other processing into or out of the facility. ICE standards specify that detainees not be held longer than 12 hours in a hold room, and that logs be maintained documenting who is being held in hold rooms, how long they have been held, and what food and services have been provided to them. Deficiencies were observed in compliance with hold room standards at three detention facilities we visited. As we accompanied ICE reviewers at the San Diego Correctional Facility, the reviewers cited the facility for placing detainees in holding cells for longer than the 12-hour limit. The San Diego facility was also cited for failing to maintain an accurate hold room log with custodial information about detainees arriving at and departing from the facility.

During our visit to the Denver Contract Detention Facility, we observed that the number of detainees in the hold rooms exceeded rated capacity and that the logbook was not properly maintained for individuals housed in the hold rooms. As a result, officers on duty could not determine how many detainees were being kept in hold rooms and meals were not recorded. In a compliance review closeout meeting with Denver facility officials, ICE reviewers identified the following deficiencies with the

facility's compliance with ICE's hold room standards: hold rooms were over capacity; the detainee hold room logbook was incomplete and unreadable; and unsupervised detainees had placed wads of paper in hold room air vents. We also observed the absence of a hold room log at the North Las Vegas Detention Center.

Use of Force

ICE's use of force standard specifies that facilities have policies on the use of force that require documentation of the criteria for using force, the filing of incident reports, and review and consultation with medical staff before and after the use of force. If possible, service processing centers and contract detention facilities are required to videotape situations where it is anticipated that the use of force may occur. All facilities that we visited, with the exception of Casa de San Juan Family Shelter, had policies on the appropriate criteria for the use of force on inmates. ICE policy on the use of force also prohibits a facility to use Tasers at any time or dogs except when searching for contraband. However, we observed the potential for the use of Tasers and/or dogs at four of the adult detention facilities that we visited. At the Wakulla County Sheriff's Office, we observed officers armed with Tasers. We interviewed one of these officers, who was not aware of ICE's policy forbidding the use of Tasers on detainees. Therefore, if an incident occurs where he felt use of his Taser was warranted, it would be unlikely he would distinguish between an alien detainee and a jail inmate. At the North Las Vegas Detention Facility, officers told us that they use Tasers and the use of Tasers was noted in the facility's Use of Force continuum. At Pine Prairie Correctional Center and York County Prison, the use of Tasers is authorized in policy. According to officials at the North Las Vegas detention facility, dogs may be potentially used in a "show of force" situation, but would not actually be deployed as a "use of force" on detainees.

Food Service

ICE standards require that all facilities offer rotating 5-week menus, special medical and religious meals when approved by medical staff or a chaplain, and that menus be reviewed by a nutritionist to ensure adequate caloric and nutritional intake. Further, ICE food service standards require that facility food service employees be instructed in food safety and that the facility be inspected by local, state, or ICE authorities. We observed deficiencies regarding the ICE Food Service Standard at two adult detention facilities and one juvenile detention facility that we visited. At the Denver Contract Detention Facility, an adult facility, ICE reviewers cited the facility for lack of cleanliness in its food service preparation and a 4-week rotating menu instead of the required 5-week menu. The Denver Contract Detention Facility received a deficient rating in sanitation from ICE reviewers in October 2006 because the kitchen area was not properly

cleaned between meals. Figure 5 shows an unclean kitchen grill at the Denver Contract Detention Facility.

Figure 5: An Unclean Kitchen Grill at Denver Contract Detention Facility, October 2006



Source: GAO.

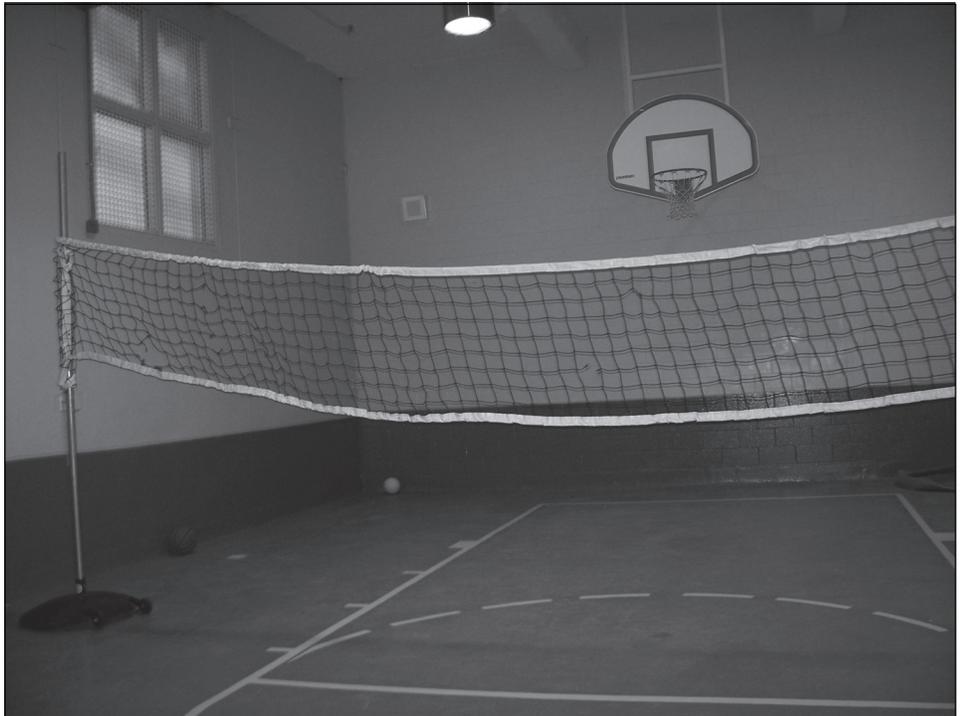
At the San Diego Correctional Facility, an adult facility, PHS inspectors we accompanied reviewed the files of the detainee food service workers and found that two of the detainee workers had not been cleared to work in the kitchen. These workers were immediately removed from food service duty until such time as they receive the proper medical and security clearances. At the Cowlitz County Juvenile Detention Center, juveniles received only one hot meal per day rather than two hot meals per day as required by the ICE Juvenile Food Standard. Some detainees we spoke with expressed displeasure with the food, frequently citing that what they were served was not what they were accustomed to or that meals were served too early in the morning, and/or they did not have sufficient time to eat their meals.

Recreation

ICE detention standards state that detainees are to be allowed at least 5 hours of recreation per week. At facilities that we visited, common

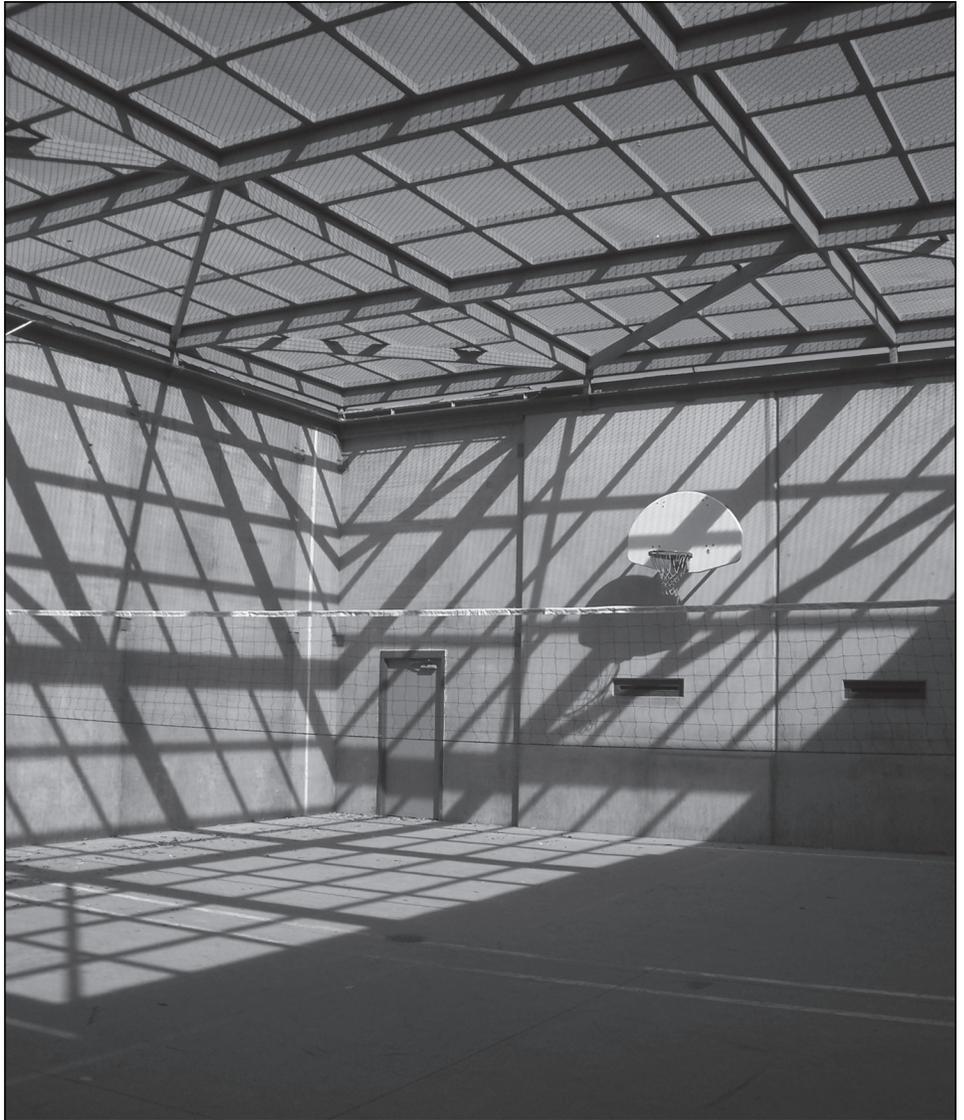
outdoor recreational activities included basketball and volleyball, and common indoor recreation activities included board games and television. The physical facilities for recreational activities varied, particularly the outdoor recreation facilities. ICE detention standards do not specify that outdoor recreation take place physically outside the detention facility. If only indoor recreation is available, detainees shall have access for at least 1 hour each day and shall have access to natural light. Some facilities we visited provided recreation through indoor areas with natural sunlight. For example, figures 6 and 7 show indoor/outdoor recreational areas with natural sunlight and fresh air ventilation for detainees at the Hampton Roads Regional Jail and Denver Contract Detention Facility. Each of the facilities we visited met the 5-hour-per-week recreation standard. ICE's recreation standard states that if outdoor recreation is available at the facility, each detainee shall have access for at least 1 hour daily, at a reasonable time of day, 5 days a week, weather permitting. However, the Wakulla County Sheriff's Office detainee handbook stated that detainees were allowed 3 hours of outdoor recreation per week. In commenting on our report, DHS stated, notwithstanding the handbook, that detainees receive outdoor recreation at Wakulla 5 days a week for a 1-hour period each day.

Figure 6: Hampton Roads Regional Jail Indoor/Outdoor Recreation Area, October 2006



Source: GAO.

Figure 7: Indoor/Outdoor Recreation at Denver Contract Detention Facility, October 2006



Source: GAO.

Access to Legal Materials

According to the ICE legal access standard, which applies only to adult and family detention facilities, detainees shall be permitted access to a law library for at least 5 hours per week, be furnished legal materials, and be provided materials to facilitate detainees' legal research and writing. Although not required, 18 of the 21 adult and family detention facilities

visited provided detainees with at least one computer and legal software as an option to conduct research on immigration law and cases.

Detainees at most facilities that we visited generally had access to legal materials. However, we observed a law library deficiency at the North Las Vegas Detention Center. At North Las Vegas, certain detainees did not have direct access to its law library because of the law library's location. This is because low-risk detainees would have needed to pass through a dorm that housed high-risk detainees, thus violating ICE's policies against comingling of risk levels. As a result, some detainees were required to submit a research plan to a designated detainee law clerk, who researches the information on their behalf. We discussed this policy with facility officials and they said that the current system was adopted to prevent comingling among detainees of different risk levels and reduce overcrowding within the law library. In June 2007, ICE officials stated that all detainees at this facility have access to computers loaded with a legal research database, which according to an ICE law librarian meets ICE's requirements to provide legal research material. However, at the time of our visit to the North Las Vegas Detention Center, facility officials told us that they were only in the process of providing for a mobile law library cart with a computer loaded with legal research software. At the time of our visit to the facility, the cart/computer system was not available to the detainees. Figure 8 shows the law library available at the San Diego Correctional Facility law library.

Figure 8: Law Library at the San Diego Correctional Facility, September 2006



Source: GAO.

Detainee Grievance Procedures

ICE's detainee grievance standard states that facilities shall establish and implement procedures for informal and formal resolution of detainee grievances. The detainee grievance standard advocates resolving detainee grievances informally, before resorting to formal grievance processes. The formal grievance process permits detainees to file written grievances with the designated grievance officer, generally within 5 days of the event or unsuccessful resolution of an informal grievance. The standard also states that detainees must have the opportunity to file a complaint directly with the OIG, which we discuss later in the report. The standard also requires facilities to maintain a grievance log and outline grievance procedures in the detainee handbook. Our review of available grievance data obtained from facilities and discussions with facility management showed that the types of grievances at the facilities we visited typically included the lack of timely response to requests for medical treatment, missing property, high commissary prices, poor food quality and/or insufficient food quantity, high telephone costs, problems with telephones, and questions concerning detention case management issues.

Four of the 23 facilities we visited did not comply with all aspects of ICE's detainee grievance standards. Specifically, Casa de San Juan Family Shelter did not provide a handbook, the Cowlitz County Juvenile Detention Center did not include grievance procedures in its handbook,

Wakulla County Sheriff's Office did not have a grievance log, and the Elizabeth Detention Center did not record all grievances that we observed in their facility files.

Detainee Populations Exceeded Rated Capacity at 4 of 23 Facilities Visited

At 4 of the 23 detention facilities we visited, we observed that detainees were sleeping in portable beds on the floor in between standard beds and/or sleeping three persons to a two-person cell. These 4 detention facilities were the Krome Service Processing Center, the Denver Contract Detention Facility, the San Pedro Service Processing Center, and the San Diego Correctional Facility. At the time of our visit, the Krome Service Processing Center in Florida had a population of 750 detainees with a rated capacity of 572 detainees. Officials told us that the facility's population had been as high as 1,000 detainees just 1 week prior to our visit. An official at that facility expressed concern about the limited amount of unencumbered space at the facility. Figure 9 shows the use of portable beds on the left side of the picture used to accommodate excess population at the Krome Service Processing Center.

Figure 9: Portable Beds on the floor between Standard Beds at the Krome Service Processing Center, Miami, Florida, October 2006



Source: GAO.

At the San Diego Correctional Facility, we observed that detainees were “triple-bunked”—three detainees in a cell built for two. For example, we counted 110 women housed in a dorm designed to house only 68 detainees. ICE and facility officials stated that overcrowding was a potential security and safety issue, and this concern was noted in ICE’s inspection report. The officials later informed us that they had developed a plan with recommendations to address overcrowding at the San Diego facility. According to these officials, they had submitted the plan to ICE headquarters officials for their approval. In January 2007, we contacted ICE officials for an update on the overcapacity issues at the San Diego Correctional Facility, and officials said that ICE had reduced the detainee population and was no longer triple-bunking detainees. We requested documentation in support of the San Diego facility’s new policy on overcrowding, but ICE said that it could not respond to our request due to pending litigation involving the San Diego facility.

During our October 2006 visit to the Denver Contract Detention Facility, we also observed that detainees were sleeping in portable beds placed in the aisles between standard beds. The ICE Denver Field Office Director said that his field office has been requesting additional detention bed space within the region for some time and that his office considers overcrowding to be an issue of concern. He said that the portable beds that we observed are a measure to address overcapacity and that the Denver Contract Detention Facility needs to be expanded. Figure 10 shows the use of portable beds and overcapacity conditions at the Denver Contract Detention Facility.

Figure 10: Portable Beds on the Floor between Standard Beds at the Denver Contract Detention Facility, Denver, Colorado, October 2006



Source: GAO.

In addition to our observations, UNHCR officials, who monitor conditions of confinement at alien detention facilities, told us that they had observed overcrowded conditions at two facilities they visited in 2006. These facilities were the South Texas Detention Complex, Pearsall, Texas, and the Aguadilla Service Processing Center in Puerto Rico.

ICE's Review Mechanism Identified Deficiencies in Most Areas, but Weaknesses Exist Regarding the Telephone System

ICE annual inspections of detention facilities are generally conducted on time and with the exception of the pro bono telephone system have identified deficiencies for corrective action. Weaknesses that we found in ICE's compliance review process have resulted in ICE's failure to identify telephone system problems at many facilities we visited. Specifically, ICE's Detention Inspection Worksheet used by reviewers does not require that a reviewer check that detainees are able to make successful connections through the pro bono telephone system. Further, there was variation in how ICE reviewers addressed and reported telephone system problems. Moreover, in at least one case, the Wakulla County Sheriff's Office, where phone system problems were identified by ICE reviewers,

we observed the same problems nearly a year after the facility's telephone standard compliance had been rated as "at risk."

ICE Annual Compliance Inspection Reviews Have Identified Compliance Deficiencies Similar to Those That We Observed

We reviewed the most recently available ICE annual inspection reports for 20 of the 23 detention facilities that we visited. The 20 inspection reports showed that ICE reviewers had identified a total of 59 deficiencies. Many of the types of deficiencies noted in the ICE inspection reports were similar to those that we observed. For example, deficiencies included issues concerning staff-detainee communication, detainee transfers, access to legal materials, admission and release, recreation, food service, medical care, telephone access, special management unit, tool control, detainee classification system, and performance of security inspections. Additional information on these standards is included in appendix IV. The ICE inspection reports are to be forwarded to the cognizant ICE field office and the facility that was reviewed. For deficiencies that could take longer than 45 days to correct, the facility management is to file a plan of action documenting how the deficiency will be addressed.

According to ICE policy, all 330 adult detention facilities, as well as the 19 juvenile and 3 family detention facilities, are required to be inspected at 12-month intervals to determine that they are in compliance with detention standards and to take corrective actions if necessary. As of November 30, 2006, according to ICE data, ICE had reviewed approximately 90 percent of detention facilities within the prescribed 12-month interval. To perform these compliance reviews, ICE headquarters has a Detention Inspection Unit that has a Unit Chief of Compliance, six staff officers, three support staff, and a private contractor consultant. In addition, 298 ICE field staff serve as detention compliance reviewers on a collateral basis. According to the Detention Management Control Program Policy, reviewers are provided written guidance for conducting compliance inspections. Subsequent to each annual inspection, a compliance rating report is to be prepared and sent to the Director of the Office of Detention and Removal or his representative within 14 days. The Director of the Office of Detention and Removal has 21 days to transmit the report to the field office directors and affected suboffices. Facilities receive one of five final ratings in their compliance report—superior,

good, acceptable, deficient, or at risk.¹⁵ ICE officials reported that as of June 1, 2007, 16 facilities were rated “superior,” 60 facilities were rated “good,” 190 facilities were rated “acceptable,” 4 facilities were rated “deficient,” and no facilities were rated “at risk.” ICE officials stated that this information reflects completed reviews, and some reviews are currently in process and pending completion. Therefore, ICE could not provide information on the most current ratings for some facilities.

Weaknesses in Inspection Checklist Permit Pro Bono Telephone System Problems to Go Undetected at Some Facilities

The telephone access section of the review checklist guide that ICE teams use to conduct their annual detention facility compliance reviews only requires that the reviewer determine that detainees have access to operable phones to make calls. This is an example of an insufficient internal control because the checklist guide does not require the ICE review teams to check that detainees are able to successfully make connections through the pro bono telephone system. During our visits to detention facilities, we found that the phones were fully functional for pay calls but connections could not always be completed using the pro bono call system. Because inspectors did not test the pro bono telephone system during the review process to determine whether a call could actually be completed using that system, facilities could be and, in some instances were, certified as being in compliance with ICE’s telephone access standard when in reality the pro bono call system was not functioning and detainees were not able to make connections.

For example, at one facility where we had determined that the pro bono telephone system would not allow us to make connections with consulates, the OIG complaint hotline, or local pro bono legal services, the senior ICE inspector on site considered the phone access standard had been met because he had observed detainees talking on the phones. In this

¹⁵According to Detention Management Control Program policies and procedures, a superior rating means that the facility is performing all of its functions in an exceptional manner, has excellent internal controls, and exceeds expectations. A good rating means that a facility is performing all of its functions, and there are few deficient procedures, but internal controls are not limited by these deficiencies. An acceptable rating means that detention functions are being adequately performed. Although deficiencies may exist, they do not detract from the acceptable accomplishment of the vital functions. Deficient ratings mean that one or more detention functions are not being performed at an acceptable level. Internal controls are weak, thus allowing for serious deficiencies in one or more program areas. At-risk ratings mean the detention operations are impaired to the point that it is not presently accomplishing its overall mission. That is, internal controls are not sufficient to reasonably ensure acceptable performance can be expected in the future.

instance, the ICE reviewer found that the facility was in compliance with the telephone access standard without actually verifying that a successful connection could be made through the pro bono telephone system. As a result, it is possible that many phone system problems had not been identified by ICE reviewers.

As discussed above, we found telephone access compliance deficiencies to be pervasive at the detention facilities we visited. However, at 16 of 17 detention facilities that utilize the pro bono telephone system; the most recently available ICE inspection reports for these same facilities disclosed phone problems at only 5 of the 16 facilities. Of these 5 facilities, 3 were given a rating of “deficient” or “at risk” for compliance with the telephone access standard that required the facility to submit a plan of action to resolve the deficiency. For the other two facilities, the problems were listed as a “concern” rather than a deficiency and as such, did not require a plan of action. The examples below illustrate the variations in how the ICE reviewer in charge reported telephone compliance problems.

Elizabeth Detention Facility: At this facility, our analysts accompanied the ICE team during its annual compliance inspection. Although we advised the ICE team, ICE facility staff, and contractor management that the phone listings were out of date and the pro bono telephone system was not operating properly, ICE’s final compliance report only addressed problems with outdated phone numbers and not the larger concern of telephone system problems.

San Diego Correctional Facility: At San Diego, we also accompanied ICE reviewers who noted pro bono telephone system problems, including inaccurate and outdated phone lists and detainees being unable to make successful connections through the pro bono telephone system. In this case, the ICE reviewers detected the full range of telephone problems and reflected them in their final report, subsequently requiring the facility to file a plan of action.

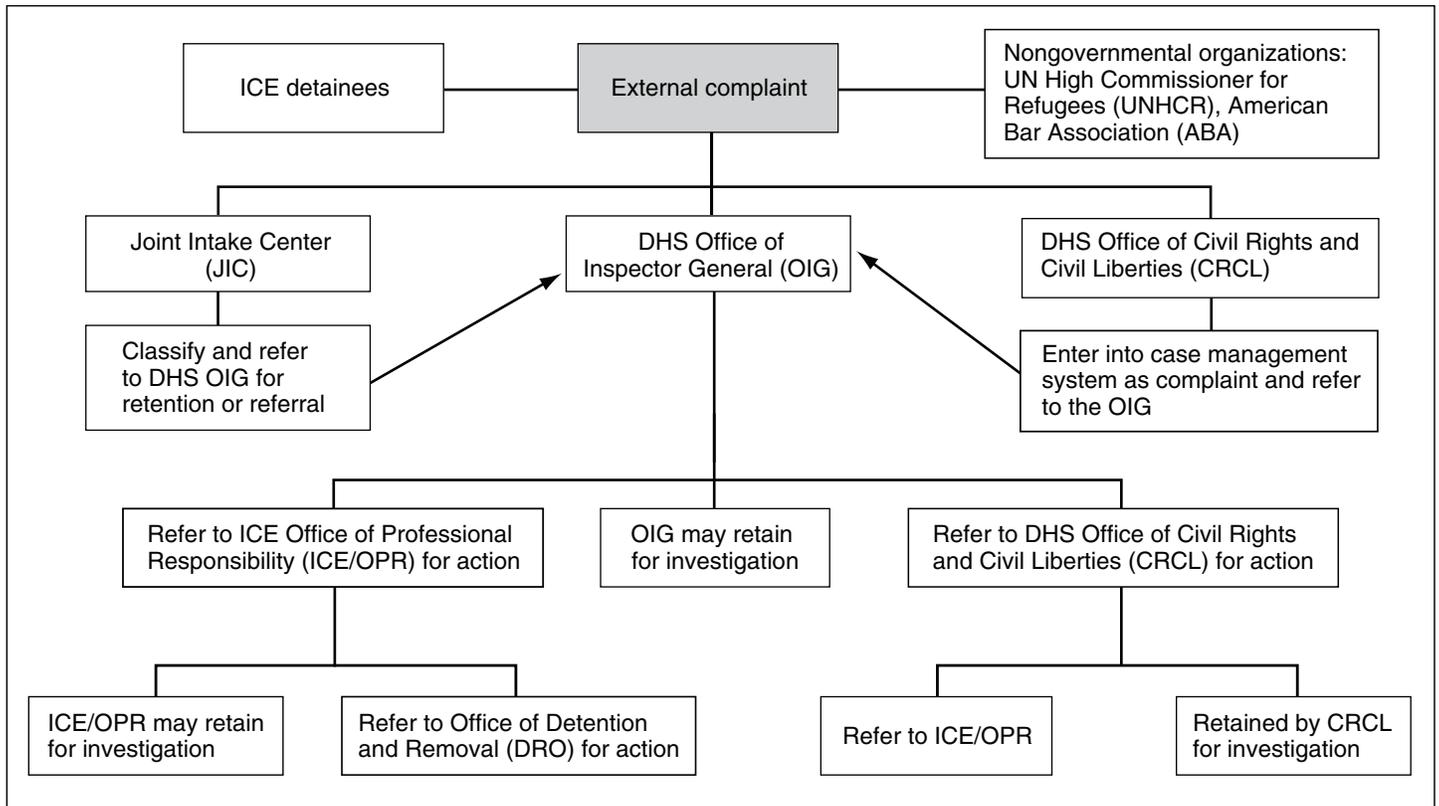
Wakulla County Sheriff’s Office: We visited this facility in October 2006 and observed a full range of pro bono telephone system problems, including an inability to connect to consulates. Some of these problems were also cited during ICE’s 2005 compliance review at this facility. In this review ICE rated the Telephone Access Standard at this facility as “at risk,” requiring that a plan of action be filed within 30 days and that noted deficiencies be addressed within 90 days. Despite these requirements, no corrective action was evident during our visit nearly a year later.

According to ICE officials, the ICE Office of Professional Responsibility is creating a Detention Facilities Inspection Group (DFIG) within its Management Inspections Unit to independently validate detention inspections conducted by DRO. ICE officials stated that DFIG will perform quality assurance over the review process, ensure consistency in application of detention standards, and verify corrective action. According to these officials, experienced staff were assigned from other ICE components to this unit in February 2007.

Alien Detainees Filed Complaints with Several External Organizations Concerning a Wide Range of Allegations

In addition to the detainee grievance procedures at the detention facilities, external complaints may be filed by detainees or their representatives with several governmental and nongovernmental organizations, as shown in figure 11. The primary mechanism for detainees to file external complaints is directly with the OIG, either in writing or by phone using the OIG complaint hotline. Detainees may also file complaints with the DHS Office for Civil Rights and Civil Liberties, which has statutory responsibility for investigating complaints alleging violations of civil rights and civil liberties. In addition, detainees may file complaints through the Joint Intake Center (JIC), which is operated continuously by both ICE and U.S. Customs and Border Protection (CBP) personnel, and is responsible for receiving, classifying, and routing all misconduct allegations involving ICE and CBP employees, including those pertaining to detainee treatment. ICE officials told us that if the JIC were to receive an allegation from a detainee, it would be referred to the OIG. OIG may investigate the complaint or refer it to CRCL or DHS components such as the ICE Office of Professional Responsibility (OPR) for review and possible action. In turn, CRCL or OPR may retain the complaint or refer it to other DHS offices, including DRO, for possible action. Further, detainees may also file complaints with nongovernmental organizations such as ABA and UNHCR. These external organizations said they generally forward detainee complaints to DHS components for review and possible action.

Figure 11: External Process for Filing Detainee Complaints



Source: Department of Homeland Security.

Of the approximately 1,700 detainee complaints in the OIG database that were filed in fiscal years 2003 through 2006, OIG investigated 173 and referred the others to other DHS components as displayed in figure 11. As discussed earlier, the OIG complaint hotline telephone number was blocked or otherwise restricted at 12 of the facilities that we visited. Therefore, while some detainees at these facilities may have filed written complaints with the OIG, the number of reported allegations may not reflect the universe of detainee complaints. OIG has a system to record the type of complaint and its status (e.g., open investigation, closed due to insufficient information, or referred). Our review of approximately 750 detainee complaints from fiscal years 2005 through 2006 showed that the complaints in the OIG database mostly involved issues relating to

medical treatment; case management;¹⁶ mistreatment;¹⁷ protesting detention or deportation; civil rights, human rights, or discrimination;¹⁸ property issues; and employee misconduct at the facility. Other, less common complaints involved physical abuse, use of force, mismanagement, detainee-on-detainee violence, general abuse, food and commissary issues, general environmental concerns, and general harassment. One challenge faced by the OIG in investigating detainee complaints is that generally detainees do not stay in facilities for long periods of time, so the complainant may be relocated to another facility or returned to his or her country of origin before an investigation is initiated or completed.

OPR investigates allegations of corruption and other official misconduct only upon formal declination to investigate and referral by the OIG. OPR classifies allegations under four categories based on severity of the allegation and may retain cases for investigation, or refer complaints to DHS components including DRO.¹⁹ OPR stated that in fiscal years 2003 through 2006, they had received 409 allegations concerning the treatment of detainees. Seven of these allegations were found to be substantiated,²⁰ 26 unfounded,²¹ and 65 unsubstantiated.²² Three of the seven substantiated

¹⁶“Case management” was defined as a complaint regarding the administrative handling of a detainee’s case.

¹⁷An allegation alleging that a detainee suffered mistreatment by ICE or facility contract personnel during detention.

¹⁸Any allegation that claimed discrimination, alleged civil rights infractions, or human rights complaints.

¹⁹Class I allegations consist of criminal activity. OPR retains all Class I cases. Class II allegations consist of noncriminal but serious misconduct that can result in adverse action if substantiated. Class III allegations consist of those that are referred to management officials at CBP or ICE without an OPR investigation, or with a limited OPR investigation that clarified the allegation. The management officials may assign an OPR-trained fact finder to conduct an administrative inquiry. Class IV allegations are treated as information only and as such require no investigation but may be referred to management officials for their information.

²⁰OPR defines “substantiated allegation” as an allegation for which the evidence would cause a reasonable person to conclude that the alleged act of misconduct is likely to have occurred.

²¹An allegation is unfounded when the evidence would cause a reasonable person to conclude that the subject employee did not commit the alleged misconduct, or that, in fact, no misconduct occurred.

²²An allegation is unsubstantiated when the evidence is not sufficient for a reasonable person to determine whether the subject employee committed the alleged misconduct.

cases resulted in employee terminations, one resulted in an employee termination that is currently under appeal, and according to an OPR official, three cases were still being adjudicated. Additionally, 200 of the allegations were classified by OPR as either information only to facility management, requiring no further action, or were referred to facility management for action, requiring a response.

CRCL also receives complaints from the OIG, nongovernmental organizations, and members of the public. It tracks this information in its complaint management system. Officials stated that from the period March 2003 to August 2006 they received 46 complaints related to the treatment of detainees. Of these 46 complaints, 14 were closed, 11 were referred to ICE OPR, 12 were retained for investigation, and 9 were pending decision about disposition. CRCL monitors the review of all referred complaints until conclusion.

We could not determine the number of cases referred to DRO or their disposition. On the basis of a limited review of DRO's complaints database and discussions with ICE officials knowledgeable about the database, we concluded that DRO's complaint database was not sufficiently reliable for audit purposes. According to ICE, DRO's complaints database is used as an internal managerial information system and is not designed to be a formal tracking mechanism. DRO is responsible for overseeing the management and operation of detention facilities. Therefore, it is important that DRO accurately document detainee complaints related to conditions of confinement to, among other things, inform its review teams and DRO management regarding the conditions at the facilities used to detain aliens. Moreover, our standards for internal control in the federal government call for clear documentation of transactions and events that is readily available for examination.²³ Documentation would allow for analysis that may reflect potential systemic problems throughout the detention system.

In addition to our fieldwork and interviews with DHS and ICE officials regarding compliance efforts in place for alien detention facilities, we reviewed 37 detention monitoring reports compiled by UNHCR from the period 1993 to 2006. These reports were based on UNHCR's site visits and its discussions with ICE officials, facility staff, and detainee interviews,

²³GAO, *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999), p. 15.

especially with asylum seekers. Some of the issues noted in UNHCR mission reports included inadequate access to legal materials, the lack of timely response to requests for medical service, questions about case management, the high cost of telephone calls, and problems connecting through the ICE pro bono telephone system.

While ABA officials informed us that they do not keep statistics regarding complaints, on the basis of a review of their correspondence as of August 2006, they compiled a list of common detainee complaints received. Common complaints reported by ABA included the high cost of telephone calls and problems with the ICE detainee telephone system, delayed or nonarriving mail, insufficient or outdated law library materials and lack of access to law libraries, detainees housed with criminals and treated like criminals, lack of information about complaint and grievance procedures, medical and dental treatment complaints, unsanitary conditions, insufficient food, facility staff problems, and abuse by inmates or other detainees. Further, ABA data from January 2003 to February 2007 indicated that of the 1,032 correspondences it received, 710 involved legal issues, 226 involved conditions of confinement, 39 involved medical access, and 57 involved miscellaneous issues or were not categorized.

Conclusions

While ICE annual inspection reviews of detention facilities noted various deficiencies in compliance with ICE's standards, insufficient internal controls and weaknesses in ICE's compliance review process resulted in ICE's failure to identify telephone system problems that we found to be pervasive at most of the detention facilities we visited. The insufficient internal controls and weaknesses in the telephone access section of the review checklist contributed to ICE reviewers' failure to identify these telephone system problems. Amendments to the checklist to include requirements to confirm that pro bono telephone call connections can be made successfully may provide for more consistent reporting of telephone problems. Also, insufficient internal controls at detention facilities for ensuring that posted pro bono telephone numbers were accurate resulted in some facilities having inaccurate or outdated number lists. Systemic problems with the pro bono telephone system may preclude detainees from reaching consulates, nongovernmental organizations, pro bono legal providers, and the OIG complaint hotline, as required in ICE's National Detention Standards. Additionally, ICE's limited monitoring of contractor performance data that indicated poor system performance is evidence of the need for improved internal controls and monitoring of the contract. ICE confirmed that the contractor did not comply with the terms and conditions of the contract and in June 2007 requested that the OIG review

the extent of noncompliance with the terms and conditions of the contract. Given the problems with the current pro bono telephone system we found at 16 facilities we tested, it is also prudent to ensure detainees are aware of and have access to alternative means for completing calls to consulates, pro bono legal providers, and the OIG's complaint line as required by ICE standards. Without sufficient internal control policies and procedures in place, ICE is unable to offer assurance that detainees can access legal services, file external grievances, and obtain assistance from their consulates.

ICE's lack of a formalized tracking process for documenting detainee complaints hinders its ability to (1) identify potential patterns of noncompliance that may be systemwide and (2) ensure that all detainee complaints are reviewed and acted upon if necessary. Because DRO is responsible for overseeing the management and operation of alien detention facilities, it is important that DRO accurately document detainee complaints related to conditions of confinement to, among other things, inform its review teams and DRO management regarding the conditions at the facilities and facilitate any required corrective action. Moreover, our standards for internal control in the federal government call for clear documentation of transactions and events that is readily available for examination.

Recommendations for Executive Action

To ensure that detainees can make telephone calls to access legal services, report complaints, and obtain assistance from their respective consulates, as specified in ICE National Detention Standards and that all detainee complaints are reviewed and acted upon as necessary, we recommend that the Secretary of Homeland Security direct the Assistant Secretary for U.S. Immigration and Customs Enforcement to take the following actions:

- Amend the DRO compliance inspection process relating to the detainee telephone access standard to include:
 - measures to ensure that facility and/or ICE staff frequently test to confirm that the ICE pro bono telephone system is functioning properly;
 - revisions to ICE's compliance review worksheet to require ICE reviewers, while conducting annual reviews of the telephone access standard at detention facilities, to test the detainee pro bono telephone system by attempting to connect calls and record any automated voice messages as to why the call is not being put through.

-
- Require the posting in detention facilities of instructions for alternative means for detainees to complete calls in the event that the ICE pro bono telephone system is not functioning properly.
 - Direct ICE staff to establish procedures for identifying any changes to phone numbers available from EOIR, the Department of State, and the OIG and for promptly updating the pro bono telephone numbers posted in detention facilities.
 - Establish supervisory controls and procedures, including appropriate staffing, to ensure that DRO and Office of Acquisitions staff are properly monitoring contractor performance.
 - In regard to the contract with Public Communications Services, explore what recourse the government has available to it for contractor nonperformance.
 - In competing a new telephone contract, ensure that the new contract contains adequate protections and recourse for the government in the event of contractor nonperformance.
 - Develop a formal tracking system to ensure that all detainee complaints referred to DRO are reviewed and the disposition, including any corrective action, is recorded for later examination.

Agency Comments and Our Evaluation

We provided a draft of this report to DHS for review and comment. DHS provided written comments on June 25, 2007, which are presented in appendix V. In commenting on the draft report, DHS stated it agreed with our seven recommendations and identified corrective actions it has planned or under way to address the problems. With regard to several of our recommendations, DHS believed that its progress in implementing corrective actions merited our closing them. For example, by memo of the DRO Assistant Director for Management, effective immediately, ICE staff are to verify serviceability of all telephones in detainee housing units by conducting random calls to pre-programmed numbers posted on the pro bono and consulate lists. ICE staff also are to interview a sampling of detainees and review written detainee complaints regarding detainee telephone access. The field office directors are to ensure that all phones in all applicable facilities are tested on a weekly basis. This appears to be a step in the right direction; however, proper implementation and oversight of this initiative will be needed to resolve the issues we identified. While we are encouraged by DHS's plans and actions designed to address the

problems we identified in our report, we have not reviewed these plans and actions to determine whether they could resolve or have resolved the problems and thus will keep the recommendations open until these actions can be evaluated for sufficiency.

DHS's official comments also raised three issues that require some clarification of our findings. First, DHS stated that the deficiencies we identified generally do not illustrate a pattern of noncompliance with ICE National Detention Standards, but rather, are isolated incidents, the exception being telephone access. While it is true that the only pervasive problem we identified related to the telephone system—a problem later confirmed by ICE's testing—we cannot state that the other deficiencies we identified in our visits were isolated. Our findings are based on a non-probability sample of 23 detention facilities that was not generalizable to all alien detention facilities. Moreover, we observed facility conditions at a point in time that could have been different before and after our visits.

Second, DHS commented that GAO personnel stated in discussions that they did not test or validate the availability of some other means for detainees to make telephone connections when the detainee phones are unable to do so. This is not the case. We checked whether the facilities we visited offered alternative means to make telephone connections when the pro bono system was not working. With the exception of the Broward Transitional Center, we were not able to satisfy ourselves through interviews with facility officials and detainees that routine assistance was available to detainees to make pro bono calls when they were unable to make these calls on the telephones provided for this purpose.

Third, DHS stated that it believes that figure 2 in our report, which shows low connection rates for the pro bono network, does not properly represent the number of calls that are not connected due to problems with the network or provider. DHS's comments included contractor data that point out that a detainee may input a wrong number, hang up before completing the call process, or call a pro bono attorney after business hours. We acknowledge there could be a variety of reasons why some calls may not have been completed over the period we reported on. However, these additional data do not explain our own test results in which we could not complete calls using the pro bono calling system at 16 of the 17 facilities we tested. We also note that we invited detainees, facility personnel, and on-site ICE officials to attempt to make the same calls, and they confirmed the calls could not be completed. Further, after we brought the telephone deficiencies to their attention, ICE officials concluded that

the telephone service contractor had not been in compliance with the terms and conditions of the contract.

DHS also provided us with technical comments, which we considered and incorporated in the report where appropriate.

If you or your staff have any questions about this report, please contact me at (202) 512-8777 or StanaR@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Key contributors to this report are acknowledged in appendix VI.



Richard M. Stana
Director, Homeland Security and Justice Issues

List of Requesters

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
House of Representatives

The Honorable Kendrick Meek
House of Representatives

The Honorable Zoe Lofgren
Chairwoman
Subcommittee on Immigration,
Citizenship, Refugees, Border Security,
and International Law
Committee on the Judiciary
House of Representatives

The Honorable Ed Markey
House of Representatives

The Honorable Eleanor Holmes Norton
House of Representatives

The Honorable Sheila Jackson Lee
House of Representatives

Appendix I: Scope and Methodology

We used a combinations of approaches and methodologies to meet our audit objectives to assess (1) the extent to which selected facilities comply with U.S. Immigration and Customs Enforcement (ICE) National Detention Standards, (2) how reviews are conducted to ensure compliance with National Detention Standards, and (3) what pertinent complaints and reports have been filed with the Department of Homeland Security (DHS) and ICE and external organizations monitoring the treatment of alien detainees.

To meet our audit objective on the extent to which selected facilities comply with National Detention Standards, we visited a nonprobability sample of 23 detention facilities from September to November 2006.¹ These facilities were selected on the basis of geographic diversity, facility type, and a cross section of different types of facility ratings. Three of the facilities were undergoing ICE headquarters compliance inspection reviews during our visits, and included the Elizabeth Detention Facility, the San Diego Correctional Facility, and the Denver Contract Detention Facility. Site visits focused on several detention standards affecting basic treatment of detainees, including telephone access, medical care, legal access, food, grievance and complaint procedures, use of force policies, recreation, and hold room policy. On the basis of our interviews with United Nations High Commissioner for Refugees (UNHCR), the American Bar Association (ABA), and the DHS Officer Inspector General (OIG) officials, we selected a nonprobability sample of these standards to reflect areas of concern and common complaints cited by these organizations.

Our site visits ranged from 1 to 3 days. At each location, we collected information and made independent observations using a data collection instrument that we developed from the ICE reviewer checklist in consultation with ICE and nongovernmental organizations monitoring the treatment of alien detainees. Our data collection instrument was not the ICE compliance reviewer checklist in its entirety, but instead included key components drawn from the checklist that we believed to be relevant to the standards we reviewed. We used this checklist to determine if there were deficiencies in compliance with one or more aspects of selected ICE standards. For our site visits, we first requested a tour of the key detention

¹Information obtained from these site visits is not generalizable because the sites selected represent a nonprobability sample. Results from nonprobability samples can not be used to make inferences about a population because in a nonprobability sample, some elements of the population being studied have no chance or an unknown chance of being selected as part of the sample.

facility operations, including housing unit areas, medical units, kitchens, hold rooms, special management or disciplinary units, recreational areas, law libraries, visitation areas, and educational classrooms when applicable. During these tours, we interviewed facility staff and ICE officers assigned to the facility. In addition, when presented with an opportunity, we interviewed individual detainees concerning their treatment at detention facilities. Due to the limited amount of time we had available at each facility and our desire to visit as many facilities as possible for this review, we did not conduct structured file reviews. However, we did review policies and procedures pertaining to detainee conditions of treatment and interviewed facility and ICE staff responsible for compliance with the standards that we reviewed.

For those detention facility locations undergoing ICE compliance inspection reviews at the time our visit, we made use of our data collection instrument, but supplemented it by observing the compliance review process. For juvenile detention facilities, in addition to our data collection instrument, we also referred to ICE's juvenile standards of treatment to guide our reviews of those facilities. For family shelters included in our review, our observations were based on both the juvenile standards and National Detention Standards for adults because no specific standards for family detention facilities exist. Once problems with detainee access to pro bono numbers were identified, we developed a structured telephone test instrument to provide uniformity with our observations across the sites visited.

The detention sites visited are:

- *Philadelphia Field Office*
 - Berks County Prison
 - Berks County Youth Shelter
 - Berks Family Shelter
 - York County Prison

- *Newark Field Office*
 - Elizabeth Detention Facility
 - Washington Field Office
 - Pamunkey Regional Jail
 - Hampton Roads Regional Jail

- *New Orleans Field Office*
 - West Baton Rouge Parish Detention Center
 - Bureau of Prisons Oakdale Federal Detention Center
 - Pine Prairie Correctional Center

- *Miami Field Office*
 - Krome Service Processing Center
 - Broward Transitional Center
 - Wakulla County Sheriff's Office
 - Los Angeles Field Office
 - San Pedro Service Processing Center
 - North Las Vegas Detention Center

- *San Diego Field Office*
 - El Centro Service Processing Center
 - San Diego Correctional Facility
 - Casa De San Juan Family Shelter

- *Denver Field Office*
 - Denver Contract Detention Facility
 - Seattle Field Office
 - Northwest Detention Center
 - Cowlitz County Juvenile Detention Center

- *San Antonio Field Office*
 - T. Don Hutto Family Facility
 - Laredo Contract Detention Facility

To describe how reviews are conducted to ensure compliance with National Detention Standards, we interviewed DHS and ICE officials and analyzed documentation on staffing levels for ensuring compliance with alien detention standards, training provided to staff to ensure compliance with the standards, and processes in place to ensure compliance with the standards. To assess what pertinent complaints and reports have been filed with DHS and ICE and external organizations monitoring the treatment of alien detainees, we analyzed data on detainee complaints from the DHS OIG complaint database from fiscal years 2005 through 2006 using content analysis. For our content analysis, we reviewed about 750 detainee complaints and categorized them by type to be able to characterize common types of detainee complaints received by the OIG. We also obtained and reviewed information on the number and types of detainee complaints received from components within DHS and ICE for the period fiscal years 2003-2006 as well as UNHCR for the period 1993 through 2006 and the ABA for the period January 2003 through February

2007. We did not independently assess the merits of detainee complaints. Also, we did not determine if any corrective actions suggested for the detention facilities as a result of Office of Detention and Removal (DRO) reviews or detainee complaints were implemented.

To assess the reliability of OIG detainee complaint data for the period fiscal years 2005 through 2006, we reviewed existing information about the data and the system that produced them and interviewed agency officials knowledgeable about the data. On the basis of our review of this information and these discussions, we determined the OIG data to be sufficiently reliable for our purposes. Regarding the DRO complaints database, we reviewed existing information about the data and the system that produced them and interviewed agency officials knowledgeable about the data. On the basis of our review of this information and these discussions, we determined that this information was not sufficiently reliable for audit purposes. In regard to other data sources that we reviewed, on the basis of our discussions with agency officials knowledgeable about the data, we also determined that these sources were sufficiently reliable for purposes of our review. In the case of contractor performance data, we could not independently verify the accuracy of the data, but did corroborate these data with other sources and determined they were reliable for our purposes. Our work was conducted from May 2006 through May 2007 in accordance with generally accepted government auditing standards.

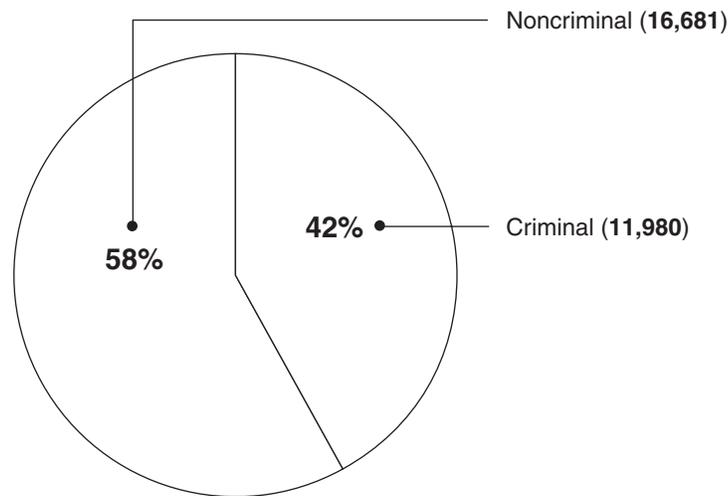
While we focused our review on DHS and ICE, we also contacted officials at the Departments of Justice, Health and Human Services, and State to discuss other issues related to alien detention, such as the custody of ICE alien detainees at the Bureau of Prisons facilities, the care of juvenile aliens in Health and Human Services custody, and the treatment of refugees and asylum seekers in detention.

Appendix II: Alien Detention Population Statistics

According to ICE data, the average length of stay in ICE adult detention custody for fiscal year 2007 as of April 2007 was 37.6 days. As of April 30, 2007, ICE reported that 25 percent of all detained aliens are removed within 4 days, 50 percent within 18 days, 75 percent within 44 days, 90 percent within 85 days, 95 percent within 126 days, and 98 percent within 210 days. According to ICE officials, there are many variables in the time equation for length of stay at a detention facility, including travel document requirements, political conditions, and airline conditions to country of origin.

Figure 12 shows the breakdown between criminal and noncriminal aliens in detention.

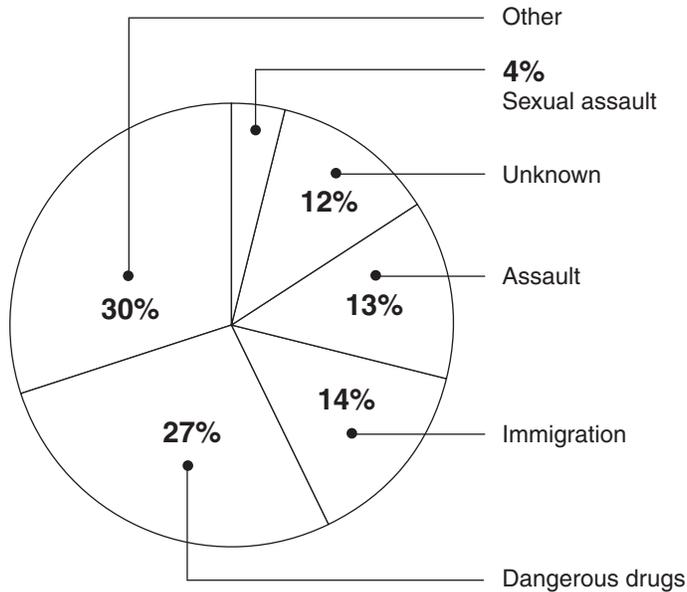
Figure 12: Criminal versus Noncriminal Aliens in Detention as of December 31, 2006



Source: GAO analysis of ICE data.

Figure 13 shows the breakdown of criminal charges by criminal aliens.

Figure 13: Criminal Charges by Criminal Aliens as of December 31, 2006



Source: GAO analysis of ICE data.

In fiscal year 2006, ICE was funded at an authorized bed level of 20,800. For fiscal year 2007, ICE received funding for 27,500 bed spaces. ICE has requested appropriations to fund 28,450 detention bed spaces in fiscal year 2008. As noted in ICE's *ENDGAME: Office of Detention and Removal Strategic Plan, 2003-2012*, the demand for detention has grown much faster than available federal bed space, causing an increased reliance on local jails to house detainees. ICE stated that this factor is critical because DRO has more stringent jail standards than other entities, limiting the number of jails that it can use.

Appendix III: Juvenile and Family Detention Standards

The Office of the National Juvenile Coordination Unit within U.S. Immigration and Customs Enforcement's Office of Detention and Removal provides oversight and policy guidance to ICE/DRO field offices and field office juvenile coordinators nationwide on issues related to juveniles and families in detention. Within DRO, there are separate standards governing juvenile, family, and adult detention facilities. These standards were developed to ensure proper and safe housing of juveniles and families. Specifically, the family shelter standards are tailored to a unique population and encompass both the Juvenile Detention Standards as well as ICE National Detention Standards for adult aliens. Furthermore, the Minimum Standards for ICE Secure and Shelter Juvenile Detention Facilities are based on American Correctional Association standards and were developed with input from ICE DRO and the American Bar Association and include program requirements contained in the *Flores* court case settlement.¹ The Juvenile Detention Standards reflect the needs of the juvenile population and include such areas as access to court and legal counsel, educational and vocational training, and medical services and visitation.

Currently, ICE has 19 juvenile facilities and 3 family shelters. According to ICE policy, all juvenile secure detention and shelter facilities and family shelter facilities are required to be inspected at 12-month intervals. As with adult detention facilities, the Detention Management Control Program policies and procedures govern the review of ICE juvenile and family facilities. Reviews are conducted through the use of structured review worksheets. Facilities receive one of five final ratings upon review—superior, good, acceptable, deficient, and at risk. According to the National Juvenile Coordinator, juvenile facilities rated deficient and at-risk are immediately reviewed by DRO headquarters to determine the suitability of use for placement of ICE juveniles.

Our observations of deficiencies in compliance with ICE standards at juvenile and family shelters are discussed in the body of the report.

¹The court-approved settlement agreement in the case of *Flores v. Reno* is the result of a class action lawsuit filed against the former Immigration and Naturalization Service challenging the agency's arrest, processing, detention, and release of juveniles in its custody. The agreement sets out nationwide policy for the detention, release, and treatment of minors in the custody of ICE. Stipulated Settlement Agreement, *Flores v. Reno*, No. CV85-4544-RJK (C.D. Cal. Jan 17, 1997).

Figures 14, 15, and 16 show examples of juvenile and family shelter facilities.

Figure 14: Outdoor Playground at Berks Family Shelter, Leesport, Pennsylvania, September 2006



Source: GAO.

Figure 15: Housing Unit at Berks Family Shelter, Leesport, Pennsylvania, September 2006



Source: GAO.

Figure 16: Classroom at Berks Family Shelter, Leesport, Pennsylvania, September 2006



Source: GAO.

Appendix IV: Explanation of the Standards

Table 1: Subjects of the ICE National Detention Standards

Detainee services	Security and control
<p>1. Access to legal materials</p> <p>Facilities housing ICE detainees shall permit detainee access to a law library, and provide legal materials, facilities, equipment and document copying privileges and the opportunity to prepare legal documents.</p>	<p>1. Contraband</p> <p>Establishes policies and procedures for handling and properly disposing of contraband items, including those items that may be a security threat to people or property.</p>
<p>2. Admission and release</p> <p>Establishes procedures for admission and release including initial medical screenings, files and past history reviewed for classification, searches, and inventorying and safeguarding detainee property. Upon release, provides standards for identity verification, documentation, and redistribution of property.</p>	<p>2. Detention files</p> <p>Establishes policies and procedures for maintaining a detention file for all detainees in a facility for more than 24 hours, including documents such as classification sheets, medical questionnaires, and property inventory sheets.</p>
<p>3. Correspondence and other mail</p> <p>Establishes procedures for detainees to send and receive both general correspondence and legal and personal mail.</p>	<p>3. Detainee transfers</p> <p>Establishes procedures and notification requirements to be followed when transferring a detainee from one facility to another for a variety of reasons.</p>
<p>4. Detainee classification system</p> <p>Establishes requirements for facilities to classify detainees according to risk level upon intake based on previous criminal history and other factors. Specifies that low-risk detainees are not to be comingled with high-risk detainees.</p>	<p>4. Disciplinary policy</p> <p>Establishes disciplinary sanctions on any detainee whose behavior is not in compliance with facility rules and procedures.</p>
<p>5. Detainee grievance procedures</p> <p>Establishes procedures for detainees to submit grievances about their conditions of confinement internally at the facility. Encourages detainees to resolve their grievances informally, but also specifies a formal system with multiple levels of appeal.</p>	<p>5. Emergency plans</p> <p>Requires facilities to develop plans for emergencies that are reasonably likely to occur. The stated goal of these plans is to control the emergencies without endangering lives or property.</p>
<p>6. Detainee handbook</p> <p>Requires a facility to prepare a handbook for detainees in English and the other most commonly spoken languages within the facility. The handbook is to describe the services, programs, and rules within a facility.</p>	<p>6. Environmental health and safety</p> <p>Establishes a hazardous materials program for the control, handling, storage, and use of flammable, toxic, and caustic materials at facilities.</p>
<p>7. Food service</p> <p>Specifies policy and procedures for preparation and distribution of food to detainees, including levels of sanitation, nutritional content analysis, and medical clearances for workers.</p>	<p>7. Hold rooms in detention facilities</p> <p>Establishes policies and procedures for hold rooms that are used for the temporary detention of individuals awaiting removal, transfer, Executive Office for Immigration Review (EOIR) hearings, medical treatment, intrafacility movement, or other processing into or out of the facility.</p>
<p>8. Funds and personal property</p> <p>Specifies policy for the control and storage of detainee personal property while in detention.</p>	<p>8. Key and lock control (security, accountability, and maintenance)</p> <p>Establishes a system for the use, accountability, and maintenance of keys and locks at a facility.</p>
<p>9. Group presentations on legal rights</p> <p>Specifies policy and procedures for group presentations for the purposes of informing detainees on U.S. immigration law and procedures.</p>	<p>9. Population counts</p> <p>Establishes a system for the counting of detainees at facilities. Formal and informal counts will be conducted as necessary to ensure around-the-clock accountability for all detainees.</p>

Appendix IV: Explanation of the Standards

Detainee services	Security and control
<p>10. Issuance and exchange of clothing, bedding, and towels</p> <p>Specifies the procedures associated with the issuance and exchange of clothing, bedding, and towels, including issuance immediately upon entry to the facility and the regular exchange of clothing afterward.</p>	<p>10. Post orders</p> <p>Specifies that each officer at a facility will have written post orders that specifically apply to his/her current duties. The post orders will specify the duties of the post officer, along with instructions on how to perform those duties.</p>
<p>11. Marriage requests</p> <p>Specifies that all facilities have in place policy and procedures to enable eligible detainees to marry.</p>	<p>11. Security inspections</p> <p>Specifies that in an area with heightened security requirements, a facility's post officer must thoroughly understand all aspects of facility operations. Specially trained officers only will be assigned to these security inspection posts.</p>
<p>12. Nonmedical emergency escorted trips</p> <p>Establishes procedures for detainees with approved staff escort to visit critically ill members of their immediate family or attend their funerals.</p>	<p>12. Special management unit (administrative segregation)</p> <p>Specifies that each facility will establish a Special Management Unit that will isolate certain detainees from the general population for administrative reasons.</p>
<p>13. Recreation</p> <p>Specifies policies and procedures for detainees to have access to recreational activities.</p>	<p>13. Special management unit (disciplinary segregation)</p> <p>Specifies that each facility will establish a Special Management Unit that will isolate certain detainees from the general population for disciplinary reasons.</p>
<p>14. Religious practices</p> <p>Specifies policy and procedures related to detainee access to religious practices, including the provision of religious services and availability of religious meals.</p>	<p>14. Tool control</p> <p>Establishes a tool control policy with which all employees at a facility shall comply. The Maintenance Supervisor shall maintain a computer-generated or typewritten inventory of tools and equipment, and storage locations. These inventories shall be current, filed, and readily available during an audit.</p>
<p>15. Staff-detainee communication</p> <p>Establishes procedures to allow for formal and informal contact between ICE staff and detainees. Includes requirement for periodic visits by ICE staff and provides for means for detainees to make written requests to ICE staff.</p>	<p>15. Transportation (land transportation)</p> <p>Specifies reasonable precautions to protect the lives, safety, and welfare of officers; other personnel; the general public; and the detainees themselves involved in the ground transportation of detainees.</p>
<p>16. Telephone access</p> <p>Specifies policy and procedures to provide for detainee access to telephones. Requires facilities to provide a means for detainees to reach consulates, pro bono legal providers, and immigration courts among others.</p>	<p>16. Use of force</p> <p>Specifies that the use of force is authorized only after all reasonable efforts to resolve a situation have failed. Officers shall use as little force as necessary to gain control of the detainee; to protect and ensure the safety of detainees, staff, and others; to prevent serious property damage; and ensure the security and orderly operation of the facility. Physical restraints shall be used to gain control of an apparently dangerous detainee only under specified conditions.</p>
<p>17. Visitation</p> <p>Establishes policies and procedures for detainees to receive both personal and legal visitors.</p>	
<p>18. Voluntary work program</p> <p>Establishes policies and procedures for detainees to voluntarily work in the facility.</p>	

Health services

1. Hunger strikes

Establishes policy and procedures for facilities to respond to a detainee hunger strike.

2. Medical care

Specifies policies and procedures for responding to detainee medical needs, including a medical evaluation immediately upon intake and a comprehensive physical examination within 14 days of arrival at a facility.

3. Suicide prevention and intervention

Establishes policies and procedures designed to prevent and respond to detainee suicide attempts

4. Terminal illness, advance directives, and death

Establishes policies and procedures for facilities to respond to a detainee terminal illness, provide for advance directives, or death.

Source: GAO analysis of ICE data.

Appendix V: Comments from the Department of Homeland Security

U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

June 25, 2007

Mr. Richard M. Stana
Director, Homeland Security and Justice Issues
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 20548

Dear Mr. Stana:

RE: Draft Report GAO-07-875, Alien Detention Standards: Telephone Access Problems Were Pervasive at Detention Facilities; Other Deficiencies Did Not Show a Pattern of Noncompliance (GAO Job Code 440515)

The Department of Homeland Security (DHS) appreciates the opportunity to review and comment on the draft report referenced above. We agree with the seven recommendations. U.S. Immigration and Customs Enforcement (ICE) officials have either completed steps to correct identified problems or have started to do so.

As noted in the draft report, identified deficiencies generally do not illustrate a pattern of noncompliance with the ICE National Detention Standards (NDS) but rather are isolated incidents, the exception being telephone access. Since the time of the review, ICE has worked vigorously to address all of the U.S. Government Accountability Office's (GAO's) concerns, with special attention to improving telephone access. It should be noted that the telephone access contract is based upon a legacy Immigration and Naturalization Service contract framework. In addition to internal efforts, ICE officials also have requested an audit by the DHS Office of the Inspector General (OIG) of telephone services to detention facilities to ensure that this problem does not continue.

Beyond addressing these specific issues, ICE continues to exercise rigorous national oversight of its detention facilities. In furtherance of this effort, ICE created the Detention Facilities Inspection Group (DFIG) within its Office of Professional Responsibility (OPR). The DFIG performs quality assurance reviews of the Office of Detention and Removal Operations (DRO) detention facility review process, ensures consistent application of the National Detention Standards, and verifies corrective actions. This additional oversight will complement the current DRO Detention Standards Compliance Program and ensure ICE detention facilities remain safe and secure while providing appropriate conditions for detainees.

ICE's NDS were implemented in 2001. The NDS were developed in coordination with subject matter experts from within various components of the Department of Justice and non-governmental entities, such as the American Bar Association. DRO is currently engaged in a

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major initiative to improve the delivery of care to detainees by converting the standards into a performance-based format, consistent with the approach used by the American Correctional Association. The revised standards, practices, and outcome measures will enable ICE to not only monitor activities but also to measure outcomes over time.

ICE also remains committed to ensuring that all Service Processing Centers (SPCs) and Contract Detention Facilities (CDFs) that house ICE detainees fully comply with the NDS, and that Intergovernmental Service Agreement (IGSA) facilities managed by other law enforcement agencies meet the intent of those standards.

GAO recommends that the Secretary of Homeland Security direct the Assistant Secretary for U.S. Immigration and Customs Enforcement to take the following actions to ensure that detainees can make telephone calls to access legal services, report complaints, and obtain assistance from their respective consulates, as specified in ICE's National Detention Standards and that all detainee complaints are reviewed and acted upon as necessary.

Recommendation 1A: Amend the DRO compliance inspection process relating to the detainee telephone access standard to include measures to ensure that facility and/or ICE staff frequently test to confirm that the ICE pro bono telephone system is functioning properly.

ICE Response: ICE concurs with this recommendation. The detention standard for telephone access requires detention facilities to provide reasonable and equitable access to telephones and allow detainees to make free access calls to consulate offices, community-based free ("pro bono") legal service organizations, and to the DHS OIG.

To facilitate these free access calls, ICE contracted with Public Communication Services Inc. (PCS) on January 22, 2004 to maintain what is known as the free "Pro-Bono Platform." This "platform" allows ICE detainees to make free calls by using a toll-free telephone number and/or preprogrammed speed dial numbers.

ICE's National Detention Standards require that facilities provide "some other means" to meet this requirement when detainee phones are unable to do so. The ICE standards require that in instances when detainees advise staff that they cannot make the free access calls required by the standard, facilities may provide cell phones for detainee use or, as in most cases, escort detainees to facility administrative phones to make such calls. GAO did not include in the draft report whether facilities were providing detainees with another means of making these free access calls. The GAO personnel also stated in discussions that they did not test or validate the availability of this crucial element of the standards.

As a result of the issues identified by the GAO, ICE has taken steps to further enhance the delivery of free access calls for detainees and is being proactive in its efforts to address the issues. Specifically, on April 4, 2007, DRO issued a memorandum directive to all Field Office Directors regarding detainee telephone services. The directive, which took effect April 6, 2007, requires that all telephones in facilities for ICE detainees be checked weekly for serviceability. These serviceability checks are to verify that phones are working, that the telephones can connect to the "pro-bono" platform, and have connectivity to a selection of consulates and pro-bono services, the OIG, and the Executive Office of Immigration Review (EOIR). The ICE review worksheet already has specific line items for reviewers to ensure that

facilities provide detainees with the ability to make non-collect (special access) calls, and that call blocking or other telephonic restrictions are not used on detainees attempting to contact attorneys and legal service providers who are on the approved "Free Legal Services List." The memorandum requires field offices to maintain a record of serviceability checks and subsequent corrective actions to verify compliance and document efforts to correct service problems.

In addition, ICE is conducting random compliance audits to ensure that field office personnel are fully implementing the directive. DRO is working with the Office of Acquisition Management (OAQ) to develop a Web-based work request system to report telephone service problems. ICE officials anticipate that the system will reduce the periods of inoperability after telephone service problems are first identified by providing real-time reporting capabilities to telephone service providers and to ICE oversight staff. The Web-based system will also provide trend analysis of phone problems to identify trouble areas or technical equipment problems. A draft version has been developed and is currently under review. ICE officials expect to implement the system before September 30, 2007.

ICE requests that this recommendation be considered resolved and open pending the implementation of the remaining portions of this response.

Recommendation 1B: Amend the DRO compliance inspection process relating to the detainee telephone access standard to include revisions to ICE's compliance review worksheet to require ICE reviewers, while conducting annual reviews of the telephone access standard at detention facilities, to test the detainee pro-bono telephone system by attempting to connect calls and record any automated voice messages as to why the call is not being put through.

ICE Response: ICE concurs with this recommendation. ICE has designated Agency Technical Representatives (ATRs) to provide "eyes and ears" on the ground for the Contracting Officer. ATRs will be responsible for monitoring telephone service within their areas of responsibility and for reporting issues to the Contracting Officer, Contracting Officers Technical Representative (COTR), and the service provider through the Web-based system.

ICE will require PCS to conduct training of field personnel regarding use of the PCS/ICE Web site. The training shall be in either a Web-based or manual format that will enable proper use of this tool. The Web site will allow the addition/deletion of telephone numbers locally and the removal of call blocking among other options. Additionally, the Web site will soon offer online trouble ticket reporting. ICE OAQ is developing a task order for the contractor to ensure the training is completed. ICE currently has scheduled the training for July 24-26, 2007 and August 7-9, 2007.

ICE OAQ has also developed a Quality Assurance Surveillance Plan to enhance consistent oversight of PCS performance. In this way, ICE has increased overall oversight of the PCS contract to include monitoring response times and repair times, while ensuring full compliance with contract terms and conditions.

As previously noted ICE has also established an inspections group within OPR that is responsible for providing independent oversight of DRO detention facility inspections, and for

other related areas of concern such as detainee telephone access. OPR will also provide independent review of all detention compliance reviews conducted by DRO. As necessary, OPR will alert DRO to any deficient or at-risk facilities identified so that immediate management action may be undertaken.

ICE requests that this recommendation be resolved and closed.

Recommendation 2: Require the posting of instructions in detention facilities for alternative means for detainees to complete calls in the event that the ICE pro bono telephone system is not functioning properly.

ICE Response: ICE concurs in principle with this recommendation. In fact, ICE believes that a better long-term solution would be to include the information in the ICE Detainee Handbook rather than post the information. Posted information is frequently damaged and destroyed in detention facilities. By publishing the information in the Detainee Handbook, detainees will have a greater degree of access to a more durable source.

ICE developed the Detainee Handbook for use by detainees regardless of where they are detained. Notification that detention facilities must provide detainees with an alternative means to complete calls in the event that the ICE pro-bono telephone system is not functioning properly will be included in the handbook. The handbook will direct detainees to seek facility or ICE staff for assistance when they are unable to make free access calls on detainee telephones. The handbook is currently under review by ICE officials. ICE expects to issue the new handbook in the next few months. In the interim, ICE will require facilities to post instructions for alternative means for detainees to complete calls, in the event that the ICE pro bono telephone system is not functioning properly. ICE will ensure that instructions are posted in all detainee-housing areas by June 30, 2007.

ICE requests that this recommendation be considered resolved and open until ICE provides a copy of the new Detainee Handbook to GAO.

Recommendation 3: Direct ICE staff to establish procedures for identifying any changes to phone numbers available from EOIR, the Department of State, and the OIG and for promptly updating the pro bono telephone numbers posted in detention facilities.

ICE Response: As noted in our response to recommendation 1, the testing of the serviceability of the system includes ensuring the telephone numbers are current and that the contractor has the current pro bono and consulate numbers as well. The April 4 memo referenced in ICE's response above tells the field personnel to ensure that ALL aspects of the telephone system work from their locations.

ICE requests that this recommendation be resolved and closed.

Recommendation 4: Establish supervisory controls and procedures, including appropriate staffing, to ensure that DRO and Office of Acquisitions staff are properly monitoring contractor performance.

ICE Response: ICE concurs with this recommendation. Since identification of this issue, both DRO and ICE OAQ have taken appropriate measures to establish supervisory controls and new or revised procedures to properly monitor contractor performance. DRO staff members are inspecting telephone service weekly, to include making calls, checking posted numbers, and verifying connectivity. ICE has the contractor providing weekly trouble ticket status; weekly pro bono checklists to track Intergovernmental Service Agreement connections to the network; monthly pro bono usage reports to track successful calls through the pro bono network; and a monthly comprehensive trouble ticket report. ICE will officially assign 42 part-time Agency Technical Representatives to help the Contracting Officers Technical Representative monitor the contract in the field. These ATRs will be responsible for reporting telephone problems to the contractor by phone and to the COTR using an ICE-produced and hosted database. In the interim, other DRO staff have been assigned to monitor and review phone service as an additional duty.

On page 16 of the draft report, the GAO provided a chart that displayed an unacceptably low connection rate for the pro bono network. ICE is currently reviewing this connection data metric, and believes that the data improperly represents the number of calls that are not connected due to problems with the network or provider. Connection data reflects that the system's 'failure to connect' a call is often due to problems resulting from something other than the general provision of telephone services. More specifically, the status of a given phone's 'failure to connect' is also frequently caused by other means, not related to the network or provider, including that:

- A busy signal is received.
- Detainees sometimes hang up before the call is complete. A hang up will show as a non-completed call because the pro bono network was accessed.
- Some consulates still require positive acceptance. Without such affirmation, the call data shows it as a non-completed call.
- Many detainees make after-hour or weekend calls to pro-bono attorney offices outside of the attorneys' normal business hours. These calls register as non-completed calls, even though the receiving office's business hours are outside the pro bono network provider's control.
- Detainees are required to input a 9-digit PIN after accessing the pro bono network. If they enter too few or too many numbers, the attempt to make the call shows as a non-completed call.

In order to understand the reasons for non-completed calls, ICE officials asked the contractor to provide additional detail on the type of non-completions. ICE personnel chose a 13-month period that included the performance review from November 2005 through November 2006, which approximates the period of the GAO review. Provided below is a summary of the data:

- Call was not accepted (positive acceptance required) – 15,649 calls
- Line was busy – 33,910 calls
- Called party did not answer – 11,203 calls
- User dialing error – 65,540 calls; and

▪ Refused – 64 calls

ICE officials are requiring that valid non-connect calls be tracked and will improve the statistics that are within their control over time. Although it may not be possible to resolve all wrong numbers, busy signals or non-answers, ICE is committed to improving in areas within contractor/government control. Where detainee action such as inputting a code or a PIN is required, ICE will improve clarity for detainees by developing easy-to-follow instructions that local ICE staff will post next to each phone bank. ICE has requested that the pro bono network contractor update the system so that all sites use the same speed dial listings instead of actual phone numbers. The update to the system will facilitate accuracy, as well as aid detainees by permitting them to dial shorter numbers. Speed dial listings will remain the same at all sites for important numbers, including but not limited to the OIG Hotline.

ICE requests that this recommendation be resolved and closed.

Recommendation 5: In regard to the contract with Public Communications Services, explore what recourse the government has available to it for contractor non-performance.

ICE Response: ICE concurs with this recommendation. ICE has examined this matter closely and is taking appropriate actions for instances of contractor non-performance as established by law and the contract itself. ICE has increased its communication with the contractor and has already had two meetings with senior PCS management to review corrective action plans. The COTR and contracting officer together performed in-person reviews at selected sites. ICE will continue to evaluate performance to determine if there was failure to fully comply with all contract terms and conditions, and has issued formal notices to the contractor to require resolution of all deficiencies at all sites when they are discovered and documented. Further, as previously mentioned, ICE has requested that the DHS Office of the Inspector General arrange for an audit of the contract to document problems in detail so that a determination can be made about appropriate actions. Because of the complexity and large number of sites involved, it is important that all corrective actions be supported and legally enforceable within the framework of the contract itself. OAQ will consider all solutions within the terms of the contract based on the nature and severity of the findings. The first identified action is a decision not to exercise the final option period on this contract. Instead, ICE is developing and will solicit for a new contract with a target award date of December 31, 2007.

ICE requests that this recommendation be resolved and closed.

Recommendation 6: In competing a new telephone contract, ensure that the new contract contains adequate protections and recourse for the government in the event of contractor non-performance.

ICE Response: ICE concurs with this recommendation. The follow-on detainee telephone contract will remain a zero cost contract with revenue to the contractor generated from the sale of debit phone cards to detainees at core sites. Through consistent monitoring, more-effective oversight, and better contract administration, ICE officials will strongly convey their willingness to re-compete the contract rather than have options exercised if the performance is sub par. Provisions under consideration for the follow-on contract include the use of liquidated damages to provide an incentive to quickly resolve all significant issues that surface. In

addition, ICE personnel will explore the possibility of creating an award-term arrangement so as to provide positive incentive for exemplary performance on the contract. Further still, OAQ will provide appropriate past performance ratings if the contractor fails to fully comply with all terms and conditions. A negative past performance rating will adversely affect the contractor should subsequent government contracts be sought. ICE officials will develop a new contract with a target award date of December 31, 2007.

ICE requests that this recommendation be considered resolved and open until the GAO can be advised of the status of any new telephone contract that might be let out for bid.

Recommendation 7: Develop a formal tracking system to ensure that all detainee complaints referred to DRO are reviewed and the disposition, including any corrective action, is recorded for later examination.

ICE Response: ICE concurs with the recommendation. DRO has already coordinated with the ICE Office of Chief Information Officer (OCIO) to develop an OCIO-certified referral case tracking system.

It should be noted that DRO has a functioning business process in place to ensure that all complaints referred to DRO, including detainee complaints from OPR and OIG, are reviewed and recorded in an information system. Likewise, DRO would also store information pertaining to the disposition of these complaints--including any corrective action--for purposes of record keeping. DRO's current records-keeping system lists the type of complaints and its status (e.g., open case, closed case, fact finder case, or management referral case). However, given the concerns noted in the GAO draft report, the database user interviewed by the GAO might not have been able to fully articulate how the database is used. The user also required additional training on how to extrapolate data from the database. Nevertheless, in May of 2007, DRO made some modification and enhancements to the existing DRO database to store "detainee complaint" referrals, as distinguished from all other OPR and OIG referrals to DRO. DRO has since provided remedial training to the employee performing this function. This has provided DRO with an immediate ability to address the GAO's primary concern.

Furthermore, DRO established an Administrative Inquiry Unit in February 2007 for the purpose of receiving, documenting, and tracking all referrals to DRO, including detainee complaints. This Unit ensures that each referral is reviewed and that the disposition, including corrective action, is recorded and stored for later examination.

As the GAO noted during earlier discussions, the ICE OPR Joint Integrity Case Management System (JICMS) is also an exceptional tool for the purpose of recording, tracking and monitoring detainee complaints. JICMS is also the primary tool used by the ICE Joint Intake Center, through which detainees sometimes report complaints, and also provides a means to coordinate actionable complaints with the DHS OIG. The ICE Employee & Labor Relations office also uses JICMS to track employee administrative inquiries and disciplinary action through the adjudication stage, making this a viable system to consider for the purposes stated by the GAO or at least to model a new system after. This is especially helpful for management purposes since a JICMS-patterned system would possess data reporting features capable of generating the level of data detail sufficient for auditing purposes. DRO will consider in its

long-term planning the options available for closer coordination with OPR and ICE OCIO and the possibility of developing a compartmentalized module within a system like JICMS that will further enhance DRO's capability to more closely manage detainee complaints.

ICE requests that this recommendation be considered resolved and open pending a demonstration to the GAO that a plan of action has been initiated or a system is in place to better track and manage detainee complaints.

The ICE NDS are designed to meet the needs of all alien detainees and were carefully crafted with the assistance of nongovernmental organizations to ensure that detention facilities provide humane conditions for all detainees. For example, the Access to Legal Material Standard ensures all detainees have access to a Law Library with legal materials and document copying privileges for the preparation of legal documents. The Telephone Access Standard ensures all detainees have reasonable and equitable access to telephones. The Religious Practices Standard ensures that all detainees are provided reasonable and equitable opportunities to participate in the practices of their respective faiths. The Classification Standard ensures all detainees are classified into appropriate categories and physically separated from other categories.

ICE has a rigorous NDS compliance program and conducts detention standards compliance reviews at more than 300 facilities nationwide each year. The Detention Standard Compliance Unit has a cadre of more than 400 specially trained officers authorized to review detention facilities for compliance with ICE's National Detention Standards.

The inspection consists of a comprehensive 643-point checklist and takes two trained officers, two to three full days to complete. All facility inspection reports are thoroughly reviewed by the Detention Standards Compliance Unit and plans of action are required for noted deficiencies. This is further augmented with the OPR Detention Facilities Inspection Group that was noted previously.

ICE will continually seek to improve operations and procedures to assure the safety, security and welfare of the detainees in its custody.

ICE officials' comments largely regarding action taken on several issues or conditions noted in the draft report follow. These GAO observations did not result in recommendations.

Medical Care

As reported by the GAO, ICE compliance reviewers determined that during the annual compliance review of the San Diego CDF, 14-day physicals were not being provided in a timely manner. The U.S. Public Health Service operates the San Diego CDF's medical department. It is currently accredited by American Correctional Association (ACA), National Commission for Correctional Health Care (NCCHC) and Joint Commission on Accreditation of Healthcare Organizations (JCAHO). In an effort to remedy this issue, ICE required that the Department of Immigration Health Services (DIHS) detail staff to the facility and conduct a complete file review of all medical records. DIHS quickly brought all physicals up to date and continues to ensure compliance with the 14-day requirement.

Hold Rooms

As reported by the GAO, ICE compliance reviewers identified instances where detention facilities utilized by ICE were not 100 percent compliant with the ICE hold room standard. ICE policy prohibits detainees from being held in hold rooms for more than 12 hours and requires that logs be maintained to record services provided and the lengths of time detainees are confined in hold rooms. These facilities were required to submit plans of action to correct the deficiencies and the local field offices were required to conduct a follow-up review to ensure corrective actions were implemented. ICE is in the process of following up on plans of action submitted by the facilities to ensure these facilities will be in compliance with the hold room standard.

Use of Force

The GAO reported the potential for Taser and canine use at four IGSA detention facilities utilized by ICE. ICE policy restricts the use of canines to contraband detection only and forbids the use of any Electro-Muscular Disruption devices (EMDs), such as Tasers. ICE is aware of the growing trend in the corrections/detention industry to utilize EMDs as an alternative to other use of force devices. ICE has issued a memorandum to field staff reiterating current use of force and canine policies. Additionally, ICE is surveying all field offices to identify IGSA facilities where the potential might exist for Tasers and canines to be used contrary to ICE policy. ICE will examine the final survey results and its current policies to ensure they are consistent with industry standards.

Food Service

As reported by the GAO, ICE compliance reviewers inspected the Denver CDF in October 2006. The facility was found to be deficient in food service due to the kitchen not being fully cleaned between meals and for having a 28-day menu cycle rather than a 35-day menu cycle. However, ICE found that the facility was overall in compliance with National Detention Standards. The Denver Contract Detention Facility is currently accredited by both ACA and NCCHC. Both of these organizations are recognized as leaders in the Detention/Corrections industry, and their accreditation programs have food service components. Even so, the facility was required to submit a plan of action to remedy noted deficiencies and ICE has verified the facility has corrected those deficiencies. To further ensure compliance, ICE will direct the Denver Field Office to ensure that monthly reviews of food service are conducted and that the facility remains in compliance with the standard.

As reported by the GAO, ICE compliance reviewers inspected the San Diego Contract Detention Facility in September of 2006. ICE found the facility compliant with the food service standard as well as the Voluntary Work Program Standard. The GAO suggested in its draft report that some kitchen workers may not have appropriate medical clearances. ICE has verified that all kitchen workers receive appropriate medical clearances.

Recreation

As reported by the GAO, ICE compliance reviewers inspected the Wakulla County Detention Facility in August of 2006. ICE found the facility compliant with the recreation standard. The

GAO suggested in the draft report that some detainees were not receiving appropriate recreation. The ICE reviewer in charge specifically noted on the compliance review worksheet that detainees have access to recreation activities outside their housing unit five days a week for a one-hour period on each day. ICE conducted an unscheduled review in April 2007 and again found the facility compliant with the recreation standard.

Access to Legal Materials

ICE utilizes the Casa San Juan Family Center via a U.S. Marshal Service IGSA. ICE currently uses the Casa San Juan Family Center for temporary placement for unaccompanied alien children while awaiting placement to a Department of Health and Human Services' Office of Refugee Resettlement-approved shelter. The GAO reported law library deficiencies at the Casa San Juan Family Center and the North Las Vegas Detention Facility. The former facility is used to shelter unaccompanied alien children for periods under 72-hours, and therefore, does not require a law library.

ICE compliance reviewers inspected North Las Vegas in October 2006. ICE reviewers reported erroneously that the facility was deficient in the access to legal material standard. The ICE DRO Field Office has clarified all ICE detainees have access to computers loaded with the Lexis Nexis CD-ROM Law Library. In January 2007, a letter was issued by the law librarian for the Office of the Principal Legal Advisor, which stated that Lexis Nexis CD-ROM Law Library meets ICE's requirements to provide legal research material. Additionally, computers at the detention facilities include word processing software that affords detainees the means to perform legal work.

Detainee Grievance Procedures

The GAO identified minor deficiencies with the grievance procedures at four facilities. The ICE grievance procedure inspection worksheet measures compliance in six different areas of the standard. Non-compliance with one of the six areas does not constitute a finding of non-compliance and an overall rating of deficient. ICE strives for 100 percent compliance, and when deficiencies are identified, corrective plans of action are required to address deficiencies and obtain compliance. ICE has shared the GAO's findings with its Field Office Directors for future use toward inspections and the National Detention Standards program.

Rated Capacity

The GAO reported that four ICE facilities were observed exceeding their established rated capacity. It is important to note, however, that maintaining facility population below rated capacity is not a requirement of ICE Detention Standards; nor does maintaining a detainee population above rated capacity prevent accreditation under the ACA Standards. While we cannot discuss in great specificity any issues related to rated capacity as it applies to particular facilities, due to on-going litigation, ICE closely monitors detainee populations at each of its facilities and has always maintained facility safety, security, and appropriate conditions of confinement. To this end, DRO provides ICE management a weekly report of any facilities operating above the established rated capacity in order to ensure that the facilities do not reach unsafe levels of capacity.

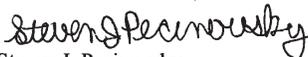
Detained population at San Diego CDF dropped from just over 900 on January 25, 2007, to under 650 on January 29, 2007. The ICE detained population at San Diego CDF has remained below 800 since January 29, 2007 and is not expected to exceed that population. No immigration detainees have been tripled celled at the San Diego CDF since January 29, 2007. Similarly, the detained population at the Krome Service Processing Center dropped from just over 750 on January 14, 2007, to under 550 on January 23, 2007. The Krome SPC population has remained below 650 since January 23, 2007.

The Denver CDF and San Pedro SPC continue to use temporary beds on a limited basis due to fluctuations in the criminal alien population and the dynamic nature of the immigration enforcement system. In a 60-day period from April 2007 through May 2007, the Denver CDF utilized an average of nine temporary beds per day for its 400-bed population, while San Pedro averaged 85 temporary beds per day for its 550-bed population. However, all beds are in open bay dorms and facilities remain below emergency capacities.

As GAO found, the identified deficiencies generally do not illustrate a pattern of noncompliance with the ICE National Detention Standards, but rather, are isolated incidents, the exception being telephone access. Since the time of the review, ICE has worked diligently to address all of GAO's concerns, and will continue to do so.

Technical comments will be provided under separate cover.

Sincerely,


Steven J. Pecinovsky
Director
Departmental GAO/OIG Liaison Office

Appendix VI: GAO Contact and Staff Acknowledgments

GAO Contact

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Acknowledgments

In addition to the contact listed above, William W. Crocker III, Assistant Director; Minty M. Abraham; Frances A. Cook; Katherine M. Davis; Dorian R. Dunbar; Cindy K. Gilbert; Lemuel N. Jackson; Robert D. Lowthian; Victoria E. Miller; and William T. Woods made key contributions to this report.

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