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(C/O Dan Olmsted)
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JU/2002002207

Melanie Ann Pustay
Deputy Director
Office of Information and Privacy
Suite 570, Flag Building
Department of Justice
Washington, DC 20530

Officials handling FOIA Requests for Attorney General John Ashcroft,

Subject to FOIA, please forward to me any copies of correspondence between the Department of Justice and members of Congress that took place since the Sept. 11 terrorist attacks with regard to the following four subjects.

1) Recent Department of Justice policy that might allow the government to monitor some communication between suspects and their attorneys.
2) Information on individuals detained in the government's investigation of the attacks.
3) The administration's decision to possibly establish military tribunals to try terrorist suspects.
4) The subject of civil liberties.

Please feel free to contact me if any further information might help expedite this process.

Sincerely,

Mark Benjamin
Congressional Bureau Chief
United Press International

Desk: 202 898-8077
[redacted] FOIA Exemption b(6)

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 21, 2001

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your letter, dated November 9, 2001, which requested information about the Department's recently promulgated regulation that would permit law enforcement personnel to monitor certain communications of detainees who are subject to "special administrative measures." We want to assure you that our promulgation of the regulation was undertaken with careful consideration of the concerns you have articulated.

Our interest in promulgating the regulation is to prevent individuals who have been detained based upon their suspected involvement in terrorist activities from using their lawyers as a means of communicating with – and plotting terrorist attacks with – their associates outside of (or inside) prison. We are quite cognizant of the legal issues this regulation raises and have made every effort to tailor it narrowly so as to avoid any undue intrusion into attorney-client communications, consistent with our national security interests. In order to address your concerns, we have obtained information from the Office of Legal Counsel and the Criminal Division, which is set forth in response to the numbered questions in your letter, as follows:

1. On what basis are the interceptions of privileged attorney-client communications authorized by your new policy constitutional, and what are the constitutional limits on such interceptions?

Response:

The preamble to the interim rule frankly acknowledges that the Sixth Amendment limits the government's ability to monitor conversations between a detainee and his or her attorney. *See* 66 Fed. Reg. 55062, 55064 (Oct. 31, 2001). Nonetheless, relying on the Supreme Court's leading decision of *Weatherford* v. *Bursey*, 429 U.S. 545 (1977), it explains that the fact of monitoring by itself does not violate the Sixth Amendment right to effective assistance of counsel. Rather, the propriety of monitoring turns on a number of factors, including the purpose for which the government undertakes the monitoring, the protections afforded to privileged

communications, and the extent to which, if at all, the monitoring results in information being communicated to prosecutors and used at trial against the detainee.

In *Weatherford*, a government informant was present at two meetings between a defendant, Bursey, and his attorney during which Bursey and the attorney discussed preparations for Bursey's criminal trial. To preserve his usefulness as an undercover agent, the informant could not reveal that he was working for the government and thus sat through the meetings and heard discussions pertaining to Bursey's defense. Bursey later brought a suit under 42 U.S.C. § 1983, claiming that his Sixth Amendment right had been violated. The court of appeals found for Bursey, holding that the informant's presence during the attorney-client meetings necessarily violated Bursey's Sixth Amendment right. The Supreme Court reversed, explaining that

> [t]he exact contours of the Court of Appeals' *per se* right-to-counsel rule are difficult to discern; but as the Court of Appeals applied the rule in this case, it would appear that if an undercover agent meets with a criminal defendant who is awaiting trial and with his attorney and if the forthcoming trial is discussed without the agent's revealing his identity, a violation of the defendant's constitutional rights has occurred, whatever was the purpose of the agent in attending the meeting, whether or not he reported on the meeting to his superiors, and whether or not any specific prejudice to the defendant's preparation for or conduct of the trial is demonstrated or otherwise threatened.

Weatherford, 429 U.S. at 550.

The Supreme Court expressly rejected such a *per se* rule and denied that having a government agent hear attorney-client communications results, without more, in an automatic violation of Sixth Amendment rights. Instead, the Court noted that it was significant that the government had acted not with the purpose of learning Bursey's defense strategy, but rather with the legitimate law enforcement purpose of protecting its informant's usefulness. *Id.* at 557. The Court further explained that "unless [the informant] communicated the substance of the Bursey-Wise conversations and thereby created at least a realistic possibility of injury to Bursey or benefit to the State, there can be no Sixth Amendment violation." *Id.* at 557-58. Thus, the Court indicated that the Sixth Amendment analysis requires considering the government's purpose in overhearing attorney-client consultations and whether any information from overheard consultations was communicated to the prosecution in a manner that prejudiced the defendant.

We believe *Weatherford* fully supports the proposition stated in the preamble to the interim rule, that "when the government possesses a legitimate law enforcement interest in monitoring detainee-attorney conversations, no Sixth Amendment violation occurs so long as privileged communications are protected from disclosure and no information recovered through monitoring is used by the government in a way that deprives the defendant of a fair trial." 66 Fed. Reg. at 55064. The interim rule adheres to these standards by permitting monitoring only when the Attorney General certifies that "reasonable suspicion exists to believe that a particular

detainee may use communications with attorneys or their agents to further or facilitate acts of terrorism," *id.* at 55066, and by establishing a strict firewall to ensure that attorney-client communications are not revealed to prosecutors.

The cases cited in your letter in no way support a contrary understanding of the Sixth Amendment right to counsel. The 1951 court of appeals decision in *Coplon* v. *United States*, 191 F.2d 749, 759 (D.C. Cir. 1951), set out precisely the sort of *per se* rule that the Supreme Court rejected sixteen years later in *Weatherford*. In fact, in *Weatherford* the Supreme Court expressly pointed out, contrary to the characterization in your letter, that its decision in *Hoffa* v. *United States*, 385 U.S. 293 (1966), had *not* affirmed *Coplon*'s holding, but rather had assumed, without deciding, that *Coplon*'s Sixth Amendment analysis was correct. *See Weatherford*, 429 U.S. at 553.

The more recent Tenth Circuit decision in *Shillinger* v. *Haworth*, 70 F.3d 1132 (10th Cir. 1995), is also perfectly consistent with the Department's approach. It takes *Weatherford* as its starting point for analysis and characterizes that decision as standing for the principle that "*under some circumstances* a defendant's Sixth Amendment rights may be violated by the state's intrusion into the attorney-client relationship." *Id.* at 1138 (emphasis added). The *Shillinger* court stated, as does the preamble to the interim rule, that when the government possesses a legitimate law enforcement purpose for intruding into the attorney-client relationship, some risk of prejudice must be shown to establish a Sixth Amendment violation. *See id.* at 1139-40. That risk of prejudice may be established when the defendant's privileged consultations with his attorney are revealed to prosecutors (a result the interim rule is careful to protect against). The court also went on to hold that when the government's intrusion is deliberate and lacks any legitimate purpose, prejudice may be presumed. *See id.* at 1140-43. But the court emphasized that "the instant case presents a vastly different situation than that confronting the Court in *Weatherford*," *id.* at 1141, where there were legitimate law enforcement interests (protecting an informant) for the intrusion. *Shillinger* thus is inapposite here. It was a case in which the government lacked a legitimate law enforcement purpose for intruding into the attorney-client relationship. The narrow circumstances addressed by the interim rule, in contrast, are those in which the government possesses a legitimate law enforcement purpose of the most pressing kind.

Although your question concerns constitutional limitations, we would also note that if the government detects communications intended to further acts of terrorism (or other illegal acts), those communications, as the interim rule's preamble points out, do no fall within the scope of the attorney-client privilege. That privilege affords no protection for communications that further ongoing or contemplated illegal acts, including acts of terrorism. *See, e.g., Clark* v. *United States*, 289 U.S. 1, 15 (1933) (such a client "will have no help from the law"). Importantly, the crime-fraud exception applies even if the attorney is unaware that his professional services are being sought in furtherance of an illegal purpose, *see, e.g., United States* v. *Soudan*, 812 F.2d 920, 927 (5th Cir. 1986), and even if the attorney takes no action to assist the client, *see, e.g., In re Grand Jury Proceedings*, 87 F.3d 377, 382 (9th Cir. 1996). A detainee's efforts to use his or her lawyer to plan acts of terrorism simply are not protected by the attorney-client privilege.

2. What statutory authority supports such interceptions?

Response:

The Attorney General possesses broad authority to establish regulations governing the treatment of federal prisoners. Subsection 4001(b)(1) of Title 18 provides that "[t]he control and management of Federal penal and correctional institutions, except military or naval institutions, shall be vested in the Attorney General, who shall promulgate rules for the government thereof . . ." As for individuals held by components of the Justice Department other than the Bureau of Prisons, such as the U.S. Marshals Service or the Immigration and Naturalization Service, the Attorney General's authority rests on both more general and more specific grants of authority. Section 301 of Title 5 authorizes the head of each executive department to "prescribe regulations for the government of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property." Section 509 of Title 28 provides, with certain exceptions not relevant here, that "[a]ll functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General." Section 4086 of Title 18 provides that "United States marshals shall provide for the safe-keeping of any person arrested, or held under authority of any enactment of Congress pending commitment to an institution." Section 564 of Title 28 empowers U.S. Marshals with "the same powers which a sheriff of the State [in which the marshal exercises his authority] may exercise in executing the laws thereof." Subsection 566(d) authorizes U.S. Marshals to make warrantless arrests when they have "reasonable grounds to believe that the person to be arrested has committed or is committing" a federal felony. The Immigration and Nationality Act ("INA") states that, with certain exceptions not relevant here, "[t]he Attorney General shall be charged with the administration and enforcement of this [Act] and all other laws relating to the immigration and naturalization of aliens." 8 U.S.C. § 1103(a)(1). That charge specifically includes the authority to prescribe regulations. *See id.* § 1103(a)(3). Moreover, the INA expressly authorizes the Attorney General to detain aliens pending a determination of their removability. *See id.* § 1226(a).

3. What opportunity for prior judicial authorization and judicial review will there be of the legality of such interceptions?

Response:

The interim rule does not expressly provide for judicial authorization of monitoring. It permits monitoring when the Attorney General "specifically so orders, based on information from the head of a federal law enforcement or intelligence agency that reasonable suspicion exists to believe that a particular detainee may use communications with attorneys or their agents to further or facilitate acts of terrorism." 66 Fed. Reg. at 55066. If the Attorney General makes the required determination, the detainee and his attorney must be given written notice of the monitoring. *See id.* The rule also does not expressly provide for judicial review of the decision

to undertake monitoring, but that does not mean that a detainee would not have an opportunity to raise legal challenges. Because the rule provides for notice to the detainee and his or her attorney, it effectively gives the detainee an opportunity to challenge the legality of the monitoring. The rule *does* require judicial authorization before any information acquired during the monitoring may be disclosed to anyone, "[e]xcept in cases where the person in charge of the privilege team determines that acts of violence or terrorism are imminent." *Id.*

4. What criteria will you use in deciding whether to certify that "reasonable suspicion exists to believe that an inmate may use communications with attorneys or their agents to further or facilitate acts of violence or terrorism," and in how many cases have you made such a certification?

Response:

Before the Attorney General authorizes the monitoring of a detainee's privileged conversations with his or her attorney, the detainee must first, or contemporaneously, have been placed under special administrative measures ("SAM") in accordance with 28 C.F.R. § 501.3(a). Subsection 501.3(a) provides that SAM restrictions

> may be implemented upon written notification to the Director, Bureau of Prisons, by the Attorney General or, at the Attorney General's direction, by the head of a federal law enforcement agency, or the head of a member agency of the United States intelligence community, that there is a substantial risk that *a prisoner's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons.*

28 C.F.R. § 501.3(a) (emphasis added).

The attorney-client communications of a detainee under SAM pursuant to 28 C.F.R. § 501.3(a) can be monitored only if the Attorney General finds, "based on information from the head of a federal law enforcement or intelligence agency[,] that *reasonable suspicion exists to believe that a particular inmate may use communications with attorneys or their agents to further or facilitate acts of terrorism.*" 28 C.F.R. § 501.3(d) (emphasis added).

The specific "reasonable suspicion" requirement for the monitoring of attorney-client communications would require that objective, reasonable, articulable suspicion exists to believe that, under the totality of circumstances as known by the government, the SAM-restricted detainee may use attorney-client communications to further or facilitate acts of terrorism. Thus, the standard is an objective one that requires more than mere suspicion, but less than probable cause.

The Attorney General has made no such certifications to date.

5. Your new regulation states that "specific procedural safeguards" will be employed to prevent abuse. Please provide a detailed description of the procedural safeguards that you will make available in all cases.

Response:

The procedural safeguards include:

- As noted above, the detainee must first be subject to SAM restrictions. The Attorney General must determine that the detainee's communications or contacts with persons could result in death or serious bodily injury to persons, or substantial damage to property that would entail the risk of death or serious bodily injury to persons. 28 C.F.R. § 501.3(a).

- The attorney-client monitoring SAM provision applies only to the communications of those who are detained in terrorism-related cases.

- There must be a separate finding of reasonable suspicion to believe that the communications between an detainee and his attorney may be used in furtherance of or to facilitate terrorism. This certification by the Attorney General "shall be in addition to any findings or determinations relating to the need for the imposition of other special administrative measures . . . ." 28 C.F.R. § 501.3(d)(1).

- The Attorney General must receive "information from the head of a federal law enforcement or intelligence agency that reasonable suspicion exists to believe that a particular detainee may use communications with attorneys or their agents to further or facilitate acts of terrorism" before attorney-client communications are monitored. 28 C.F.R. § 501.3(d).

- The detainee and his or her attorney must be placed on notice that the monitoring of attorney-client communications will occur before any monitoring takes place, "[e]xcept in the case of prior court authorization." 28 C.F.R. § 501.3(d)(2).

- Appropriate safeguard procedures requirement: "The Director, Bureau of Prisons, with the approval of the Assistant Attorney General for the Criminal Division, shall employ appropriate procedures to ensure that all attorney-client communications are reviewed for privilege claims and that any properly privileged materials (including, but not limited to, recordings of privileged communications) are not retained during the course of the monitoring.

- To protect the attorney-client privilege and to ensure that the investigation is not compromised by exposure to privileged material relating to the investigation or to defense strategy, a privilege team shall be designated, consisting of individuals not involved in the underlying investigation.

- The monitoring shall be conducted pursuant to procedures designed to minimize the intrusion into privileged material or conversations. Additionally, except in cases where the person in charge of the privilege team determines that acts of violence or terrorism are imminent, the privilege team shall not disclose any information unless and until such disclosure has been approved by a federal judge." 28 C.F.R. § 501.3(d)(3).

- Since the SAM attorney-client communications monitoring provision has not been implemented, specific minimization procedures have not been completed. However, those procedures, which will be similar to those used in conducting court-authorized wiretaps, pursuant to 18 U.S.C. 2510, *et seq.*, will ensure that only communications in furtherance of acts of terrorism will be retained and/or acted upon.

6. Did you consider building upon current procedures and seeking court approval for monitoring in those circumstances where it may be justified by the crime-fraud exception to the attorney-client privilege and, if so, why did you reject the process of court-supervised monitoring?

Response:

The regulation does, in fact, build upon the law relating to the attorney-client privilege. As discussed above, that privilege does not protect communications in furtherance of the client's ongoing or contemplated illegal acts. *Clark* v. *United States*, 289 U.S. 1, 15 (1933). Under current law, law enforcement authorities can monitor conversations that fall within the crime-fraud exception to the attorney-client privilege without providing any notice to the detainee or his attorney. The regulation offer even greater protection than what is legally required and provides for prior notice to the detainee and his attorney of the government's listening activities. Moreover, the regulation provides for firewall procedures, including the use of a special "privilege team" to contemporaneously monitor a detainee's communications with counsel and federal court approval prior to the release or dissemination of information gleaned by the privilege team while monitoring.

The Department considered seeking "court approval" before initiating monitoring, but determined that prior approval is not legally required in the SAM context, and that it could delay monitoring in a situation where time is of the essence to prevent an act of terrorism. The requirement that the detainee and his attorney be given prior notice of the government's intent to monitor attorney-client communications insures that the detainee and his lawyer have the opportunity to challenge the monitoring in federal court.

7. When did you first begin monitoring lawyer-client conversations?

Response:

To date, the Attorney General has authorized no attorney-client monitoring under the new regulation, and no monitoring under the new regulation has occurred.

I hope that this information is helpful and, again, want to reiterate our appreciation for your leadership in supporting our law enforcement efforts relating to terrorism. Please do not hesitate to contact me if you would like to confer further about this or any other matter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Orrin G. Hatch
Ranking Minority Member

November 9, 2001

The Honorable John Ashcroft
Attorney General
United States Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Attorney General Ashcroft:

Since September 11, I have worked closely with you and with the Administration to ensure that the Department of Justice and other law enforcement agencies have all the tools necessary to effectively combat 21st Century terrorism. In working together to craft the USA PATRIOT Act, we had intense and frank discussions about how to meet our shared objective of keeping Americans safe without sacrificing the freedoms which, as the President eloquently said last night, are the defining characteristic of our society. Nowhere in that legislation or in our discussions was there any mention by you or any Administration representative that you intended to move unilaterally and immediately to claim authority to monitor confidential lawyer-client communications.

Since we provided you with new statutory authorities in the USA PATRIOT Act, I have felt a growing concern that the trust and cooperation Congress provided is proving to be a one-way street. You have declined several requests to appear before the Committee to answer questions and have not responded to requests to provide information on such basic points as the number of people -- according to some Department of Justice reports, more than a thousand -- currently detained without trial and without specific criminal charges under your authority. Today, I read in the newspapers that the Administration has decided that it will now provide even less information than before regarding detentions. No one has explained to me how national security compels withholding from Congress and the public – with appropriate protections, if warranted – basic information regarding people who have been detained, arrested and imprisoned.

Today I also learned through the press of another troubling development: Your unilateral executive decision to authorize interception of privileged attorney-client communications between detained persons and their lawyers. As I noted to you this morning, after having worked closely with the Department to equip Federal and State law enforcement to combat terrorism and after having received no request from you for statutory authorization to take this controversial step, and with no warning that you were contemplating such a step, I am deeply troubled at what appears to be an executive effort to exercise new powers without judicial scrutiny or statutory authorization.

As fellow prosecutors, you and I both know that the rule of law is essential to our American freedoms, and the right to a lawyer with whom one can communicate candidly and effectively is essential to the adversary process by which the rule of law operates in America. There are few safeguards to liberty that are more fundamental than the Sixth Amendment, which guarantees the right to a lawyer throughout the criminal process, from initial detention to final appeal. When the detainee's legal adversary -- the government that seeks to deprive him of his liberty -- listens in on his communications with his attorney, that fundamental right, and the adversary process that depends upon it, are profoundly compromised. For this reason, it has long been recognized that the essence of the Sixth Amendment right to effective assistance of counsel is privacy of communication with counsel, and law enforcement practice throughout our history has recognized that subject only to the most narrow and judicially-scrutinized exceptions, attorney-client communications are immune from government interception. See *Coplon v. United States*, 191 F.2d 749 (1951) (government interception of private telephone consultations between the accused and her lawyer denies the accused her constitutional right to effective assistance of counsel); *Hoffa v. United States*, 385 U.S. 293, 306 (1966) (affirming holding in *Coplon*); *Shillinger v. Hayworth*, 70 F.3d 1132, 1141 (10th Cir. 1995) (purposeful intrusion on the attorney-client relationship "strikes at the center of the protections afforded by the Sixth Amendment").

I continue to recognize, as I did in leading efforts in the Senate to pass the USA PATRIOT Act, that these are difficult times. Trial by fire can refine us, but it can also coarsen us. The public's response already has given the world uncounted examples of Americans at their finest. The government and its leaders face equally demanding challenges, to appeal to the better angels of our nature, and to respond in ways that are prudent, effective, measured, and respectful of the freedoms that we are fighting to preserve and protect. The history of the detentions of Japanese Americans without trial during the Second World War and the unauthorized phone taps during the Vietnam era teach that there is a need for law enforcement to open itself to the maximum public, congressional and judicial scrutiny that the interests of national security allow when the lives and freedoms of Americans are under threat. As the Supreme Court wrote in *United States v. Robel*, 389 U.S. 258, 264 (1967):

> [T]his concept of "national defense" cannot be deemed an end in itself, justifying any exercise of ... power designed to promote such a goal. Implicit in the term "national defense" is the notion of defending those values and ideas which set this Nation apart. ... It would indeed be ironic if, in the name of national defense, we would sanction the subversion of one of those liberties . . . which makes the defense of the Nation worthwhile.

I appreciate our conversation this morning, but as Chairman of the Judiciary Committee, I need answers to the grave concerns raised by your new policy.

Please provide answers to these questions:

(1) On what basis are the interceptions of privileged attorney-client communications authorized by your new policy constitutional, and what are the constitutional limits on such interceptions?

(2) What statutory authority supports such interceptions?

(3) What opportunity for prior judicial authorization and judicial review will there be of the legality of such interceptions?

(4) What criteria will you use in deciding whether to certify that "reasonable suspicion exists to believe that an inmate may use communications with attorneys or their agents to further or facilitate acts of violence or terrorism," and in how many cases have you made such a certification?

(5) Your new regulation states that "specific procedural safeguards" will be employed to prevent abuse. Please provide a detailed description of the procedural safeguards that you will make available in all cases.

(6) Did you consider building upon current procedures and seeking court approval for monitoring in those circumstances where it may be justified by the crime-fraud exception to the attorney-client privilege and, if so, why did you reject the process of court-supervised monitoring?

(7) When did you first begin monitoring lawyer-client conversations?

Given the grave importance of this matter and its implications for basic civil liberties, I would appreciate a response to these questions by no later than November 13. I would also respectfully suggest that full and responsive answers to my earlier letters of October 25 and 31 and November 7 and 8, 2001, be provided without further delay. I expect the Senate Judiciary Committee will be holding prompt hearings on these matters.

Very truly yours,

Patrick Leahy

PATRICK LEAHY
Chairman

U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

November 27, 2

INS

The Honorable Patrick Leahy
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

This responds to your letter, dated November 7, 2001, which requested information about the death of Mr. Muhammad Rafiq Butt and the Department's actions to preserve the testimony of material witnesses. The Immigration and Naturalization Service (INS) and the Department's Criminal Division have provided the information set forth below in response to your letter.

The INS has advised that Mr. Butt entered the United States on September 24, 2000, with a B-1 visa, which authorized him to remain here through December 23, 2000. He failed to depart at that time or to request an extension of his visa. On September 20, 2001, the INS took Mr. Butt into custody and served him with a Notice to Appear before an Immigration Judge (IJ). On October 15, 2001, Mr. Butt appeared before an IJ, who 1) granted Mr. Butt voluntary departure "with safeguards" (generally meaning that INS would escort him to the airport until he boarded his flight to Pakistan) through November 15, and 2) denied him bond from INS detention until his travel arrangements could be completed. Under the terms of the IJ's order, the INS could not deport Mr. Butt before November 15.

Mr. Butt's death occurred during the time he was in custody attempting to make his own travel arrangements. When an individual is first taken into custody, it is a standard operating procedure for INS to begin filling out form I-217 (Information for Travel Document or Passport) in case it is needed after the IJ hearing to effect the deportation of the person. In Mr. Butt's case, INS staff did begin filling out such a form concerning Mr. Butt on September 20, in advance of his October 15 hearing. Attached are copies of the form I-217 and other documents related to Mr. Butt's case. However, as far as we are aware, Mr. Butt never indicated that he needed INS assistance in obtaining a travel document to effect his voluntary departure.

The Department of Justice, including the INS, takes each incident of detainee illness, injury or death very seriously. In September 2000, INS implemented new detention standards that govern medical care and terminal illness, advance directives and death. A copy of the pertinent provisions is attached for your information. An October 4, 2001 INS inspection of the Hudson County Correctional Facility, where Mr. Butts was detained, found the jail to be operating in a safe and satisfactory manner.

A medical professional gives each detainee a thorough health screening and asks the detainee to provide a complete medical history, using an interpreter or telephonic translation service if the medical professional does not speak the detainee's language. The INS has advised that, in Mr. Butt's case, an Indian doctor who spoke his dialect of Urdu completed the entrance examination and he was subsequently treated for bleeding gums. INS provides detainees with care for medical complaints as they arise and transports detainees with medical emergencies by ambulance to the nearest hospital. Finally, the Medical Director of the Division of Immigration Health Services of the U.S. Public Health Service will perform a mortality review of the circumstances of Mr. Butts' death.

With regard to your questions about detainees generally, I have been advised that there are currently 548 individuals who are in custody on INS charges and 55 individuals in custody on federal criminal charges. These individuals were arrested as part of the investigation into the events of September 11, 2001. The Department has charged 104 individuals on federal criminal charges, although some of the indictments or complaints are filed under seal by order of court.

There are other individuals who have been detained, or are currently being detained, on material witness warrants. Those proceedings are being conducted under seal as related to the grand jury, and therefore the Department cannot provide the number or identity of those individuals. The Department is also unable to provide any information about affidavits, motions or other papers filed in these proceedings. However, these proceedings are being conducted under the supervision of the court. Indeed, on some occasions, the individuals detained on material witness warrants are presented to a judge as directed by the court.

You have asked whether the Department has used 18 U.S.C. section 3144 depositions for individuals detained on material witness warrants. Because there is no pending case against an individual defendant (as opposed to the material witness) represented by an attorney who would have the right to be present during a section 3144 deposition, these depositions are not warranted in this matter at this time. If and when a case is charged against a defendant and material witness warrants are issued for individuals with knowledge of the charged case, it may be appropriate to use section 1344 depositions. However, I want to assure you that Department attorneys attempt to promptly ascertain and develop information from these individuals in the appropriate forum, whether that be in a proffer session, or in front of a grand jury. The individuals are released, and the warrants vacated, as soon as the warrants are satisfied.

I hope that this information is help. Please do not hesitate to contact me if you would like additional assistance with this or any other matter.

Sincerely,

Daniel J. Bryant
Assistant Attorney General

cc: The Honorable Orrin G. Hatch
Ranking Minority Member

DATE PREPARED	INFORMATION FOR TRAVEL DOCUMENT OR PASSPORT	FILE
09/20/01		A78 516 910

1. NAME BUTT, Muhammad					2. SEX Male
3. OTHER NAMES USED OR KNOWN BY AKA: ☒ NO ☐ YES					4. CITIZENSHIP Pakistan
5. DATE OF BIRTH January 1, 1946	6. PLACE OF BIRTH Jehlum				
7. HEIGHT 66"	WEIGHT 155 lbs	EYES Bro	HAIR White	COMPLEXION Medium	MARKS OR SCARS None visible
8. NEAREST LARGE CITY TO PLACE OF BIRTH Lahore				9. DISTANCE AND DIRECTION OF PLACE OF BIRTH FROM THIS LARGE CITY 150 miles north	
10. IF CITIZENSHIP IS DIFFERENT FROM COUNTRY OF BIRTH, EXPLAIN. IF NATURALIZED IN ANY COUNTRY, SHOW DATE AND PLACE OF NATURALIZATION, CERTIFICATE NUMBER, AND STATE HOW CITIZENSHIP WAS ACQUIRED. N/A					
11. NAMES, LOCATIONS AND DATES(YEARS) OF ATTENDANCE OF FOREIGN SCHOOLS. No Education				12. NAMES, EXACT LOCATIONS AND DATES(YEARS) OF ATTENDANCE OF FOREIGN CHURCHES. INCLUDE DATE AND NATURE OF ANY RELIGIOUS CEREMONY WHICH MAY HAVE BEEN RECORDED. Islam	
13. LAST PERMANENT RESIDENCE IN COUNTRY OF CITIZENSHIP *(SHOW DATES OF RESIDENCE)* Jehlum, Pakistan					
14. ADDRESS IN COUNTRY OF LAST FOREIGN RESIDENCE *(SHOW DATES OF RESIDENCE AND IMMIGRATION STATUS THERE)* Jehlum, Pakistan					
15. PLACE OF ENTRY INTO THE UNITED STATES New York, New York				DATE OF ENTRY INTO UNITED STATES September 24, 2000	
16. LIST DATE AND PLACE OF ISSUANCE AND NUMBER OF PASSPORT, BIRTH CERTIFICATE, BAPTISMAL CERTIFICATE OR DOCUMENT OF IDENTITY. SPECIFY DATES OF MILITARY SERVICE, COUNTRY AND UNIT, RANK, SERIAL NUMBER, AND PLACES OF INDUCTION AND DISCHARGE.					
17. IN POSSESSION OF TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY: ☒ YES ☐ NO. DESCRIBE DOCUMENT(S). IF SUBJECT DID NOT HAVE TRAVEL DOCUMENT OR PASSPORT AT TIME OF ENTRY, OR DOES NOT HAVE SUCH A DOCUMENT NOW, INDICATE WHETHER EVER OBTAINED ONE: ☐ YES ☐ NO. STATE HOW, WHEN, AND WHERE IT WAS OBTAINED: WHAT KIND OF DOCUMENT IT WAS, AND WHAT BECAME OF IT.					
18. FATHER'S NAME YOUSAF, Muhammed (Pakistan)			DATE OF BIRTH Deceased	PLACE OF BIRTH Jehlum	
PRESENT ADDRESS Jehlum, Pakistan					
19. MOTHER'S MAIDEN NAME BEGUM, Iqbal (Pakistan)			DATE OF BIRTH Deceased	PLACE OF BIRTH Jehlum	
PRESENT ADDRESS Jehlum, Pakistan					
20. NAME, RELATIONSHIP, AND ADDRESSES OF RELATIVES ABROAD #18, 19					
21. PREVIOUSLY ☐ EXCLUDED ☐ DEPORTED ☐ REQUIRED TO DEPART FROM THE UNITED STATES ON N/A VIA N/A TO N/A (DATE) (PORT) (COUNTRY)					
22. INDICATE WHETHER EVER ARRESTED, IN PRISON OR A PUBLIC INSTITUTION IN THE COUNTRY OF WHICH A NATIONAL, SUBJECT OR CITIZEN: ☐ YES ☐ NO. IF SO GIVE DATES AND PLACES. Claims None					
23. NAME, NATIONALITY AND PRESENT ADDRESS OF SPOUSE, AND DATE AND PLACE OF MARRIAGE. [redacted] (Pakistan) married in Lahore, Pakistan FOIA Exemption b(6)					
24. NAMES, AGES AND ADDRESSES OF ALL CHILDREN [redacted] (Pakistan) [redacted] yoa; [redacted] (Pakistan) [redacted] yoa; [redacted] (Pakistan) [redacted] yoa; [redacted] (Pakistan) [redacted] yoa; ALL RESIDE IN JEHLUM, PAKISTAN					
25. IF NONCANADIAN DEPORTABLE TO CANADA, GIVE DATE AND PORT OF ARRIVAL IN CANADA, AND NAME OF VESSEL. N/A					

Form I-217(Rev.3-30-77)

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U.S. Department of Justice
Immigration and Naturalization Service

Notice of Rights and Request for Disposition

File No: A 78516 910

Name: BUTT, Muhammad Rafiq

NOTICE OF RIGHTS

You have been arrested because immigration officers believe that you are illegally in the United States. You have the right to a hearing before the Immigration Court to determine whether you may remain in the United States. If You request a hearing, you may be detained in custody or you may be eligible to be released on bond, until your hearing date. In the alternative, you may request to return to your country as soon as possible, without a hearing.

You have the right to contact an attorney or other legal representative to represent you at your hearing, or to answer any questions regarding your legal rights in the United States. Upon your request, the officer who gave you this notice will provide you with a list of legal organizations that may represent you for free or for a small fee. You have the right to communicate with the consular or diplomatic officers from your country. You may use a telephone to call a lawyer, other legal representative, or consular officer at any time prior to your departure from the United States.

REQUEST FOR DISPOSITION

_____ Initials ☐ I request a hearing before the Immigration Court to determine whether or not I may remain in the United States.

_____ Initials ☐ I believe I face harm if I return to my country. My case will be referred to the Immigration Court for a hearing.

MR Initials ☒ I admit that I am in the United States illegally, and I believe I do not face harm if I return to my country. I give up my right to a hearing before the Immigration Court. I wish to return to my country as soon as arrangements can be made to effect my departure. I understand that I may be held in detention until my departure.

X محمد رفیق بٹ
Signature of Subject

9/20/01
Date

CERTIFICATION OF SERVICE

☐ Notice read by subject

FOIA Exemptions b(6) and (7)(c)

☒ Notice read to subject by [redacted], in the Urdu language.

FOIA Exemptions b(6) and (7)(c)

FOIA Exemptions b(6) and (7)(c) [redacted]
Name of Service Officer (Print)

[redacted]
Name of Interpreter (Print)

FOIA Exemptions b(6) and (7)(c) [redacted]
Signature of Officer

4:50 AM 9/20/01
Date and Time of Service

Form I-826 (4/1/96)N

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IMMIGRATION COURT
970 BROAD STREET, ROOM 1135
NEWARK, NJ 07102

In the Matter of

BUTT, MUHAMMAD RAFIQ
Respondent

Case No.: A78-516-919

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on Oct 15, 2001. This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[ ] The respondent was ordered removed from the United States to _____ or in the alternative to _____

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____

[X] Respondent's application for voluntary departure was granted until NOV 14, 2001 upon posting a bond in the amount of $ NONE with an alternate order of removal to EXISTING

[ ] Respondent's application for asylum was ( )granted ( )denied ( )withdrawn.

[ ] Respondent's application for withholding of removal was ( )granted ( )denied ( )withdrawn.

[ ] Respondent's application for cancellation of removal under section 240A(a) was ( )granted ( )denied ( )withdrawn.

[ ] Respondent's application for cancellation of removal was ( ) granted under section 240A(b)(1) ( ) granted under section 240A(b)(2) ( ) denied ( ) withdrawn. If granted, it was ordered that the respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's application for a waiver under section _____ of the INA was ( )granted ( )denied ( )withdrawn or ( )other.

[ ] Respondent's application for adjustment of status under section _____ of the INA was ( )granted ( )denied ( )withdrawn. If granted, it was ordered that respondent be issued all appropriate documents necessary to give effect to this order.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted to the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $ _____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____

Date: Oct 15, 2001
Appeal: Waived/Reserved Appeal Due By:

DANIEL A. MEISNER
Immigration Judge

CM

ALIEN NUMBER: 78-516-919 ALIEN NAME: BUTT, MUHAMMAD RAFIQ

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATT/REP [ ] INS

DATE: 10/15/01 BY: COURT STAFF _____

Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

06

[redacted]

MEDICAL CARE

I. POLICY

All detainees shall have access to medical services that promote detainee health and general well-being.

Medical facilities in service processing centers and contract detention facilities will maintain current accreditation by the National Commission on Correctional Health Care. Each medical facility will strive for accreditation with the Joint Commission on the Accreditation of Health Care Organizations.

II. APPLICABILITY

The standards provided in this Detention Standard shall apply to the following facilities housing INS detainees:

1. Service Processing Centers (SPCs);
2. Contract Detention Facilities (CDFs); and
3. State or local government facilities used by INS through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours; referred to as "IGSA facilities."

Within the document additional implementing procedures are identified for SPCs and CDFs. Those procedures appear in italics. IGSA facilities may find such procedures useful as guidelines. IGSAs may adopt, adapt or establish alternatives to, the procedures specified for SPCs/CDFs, provided they meet or exceed the objective represented by each standard.

See the separate "Definitions" Standard for the meaning of certain terms used in this document.

III. STANDARDS AND PROCEDURES

A. General

Every facility will provide its detainee population with initial medical screening, cost-effective primary medical care, and emergency care. The OIC will also arrange for specialized health care, mental heath care, and hospitalization within the local community.

All facilities will employ, at a minimum, a medical staff large enough to perform basic exams and treatments for all detainees. The OIC, with the cooperation of the Clinical Director, will negotiate and keep current arrangements with nearby medical facilities or health care providers to provide required health care not available within the facility. These arrangements

will include securing appropriate custodial officers to transport and remain with the detainee for the duration of any off-site treatment or hospital admission.

A health care specialist shall determine medical treatment, except when there is disagreement on the type or extent of treatment that is medically necessary. In such cases, INS will make the determination, in consultation with the Chief of Medical Staff and in accordance with the medical policies of the U.S. Public Health Service's Division of Immigration Health Services.

In SPCs/CDFs, the health care program and the medical facilities will be under the direction of a Health Services Administrator (HSA) and will be in compliance with the standards of the National Commission on Correctional Health Care (NCCHC). Each medical facility will maintain current NCCHC accreditation and strive to achieve and maintain accreditation from the Joint Commission on the Accreditation of Health Care Organizations (JCAHO).

B. Facilities

Adequate space and equipment will be furnished in all facilities so that all detainees may be provided basic health examinations and treatment in private.

Medical records will be kept separate from detainee records and stored in a securely locked area within the medical unit.

In SPCs/CDFs, medical facilities will be located within the primary secure perimeter in an area restricted from general detainee access. The medical facility will have its own perimeter to ensure restricted access.

A holding/waiting area will be located at the entrance to the medical facility. This area will be under the direct supervision of custodial officers and not medical staff. A detainee toilet and drinking fountain will be accessible from the holding/waiting area.

All pharmaceuticals in SPCs or INS contract detention facilities will be stored in a secure area with the following features:

1. *A secure perimeter;*
2. *Access limited to authorized medical staff (never detainees);*
3. *A locking pass-through window;*
4. *Solid walls from floor to ceiling and a solid ceiling;*
5. *A solid core entrance door with a high security lock (with no other access); and*
6. *A secure medication storage area.*

C. Medical Personnel

The health care staff will have a valid professional licensure and or certification. The USPHS, Division of Immigration Health Services, will be consulted to determine the appropriate credentials requirements for health care providers.

In SPCs/CDFs, medical personnel credentialing and verification will comply with the standards established by the NCCHC and JCAHO.

D. Medical Screening (New Arrivals)

All new arrivals shall receive initial medical and mental health screening immediately upon their arrival by a health care provider or an officer trained to perform this function. This screening shall include observation and interview items related to the detainee's potential suicide risk and possible mental disabilities, including mental illness and mental retardation.

For further information concerning suicide intervention and prevention see the "Detainee Suicide Prevention and Intervention" Standard.

The health care provider of each facility will conduct a health appraisal and physical examination on each detainee within 14 days of arrival at the facility. If there is documented evidence of a health appraisal within the previous 90 days, the facility health care provider may determine that a new appraisal is not required.

All new arrivals shall receive TB screening by PPD (mantoux method) or chest x-ray. The PPD shall be the primary screening method unless this diagnostic test is contraindicated; then a chest x-ray is obtained.

All detainees shall be evaluated through the initial screening for their use of or dependence on mood and mind-altering substances - alcohol, opiates, hypnotics, sedatives, etc.

Detainees reporting the use of such substances shall be evaluated for their degree of reliance on and potential for withdrawal. The Clinical Director (CD) or contract equivalent, shall establish guidelines for evaluation and treatment of new arrivals who require detoxification. Treatment and supportive measures shall permit withdrawal with minimal physiological and physical discomfort.

A detainee will be hospitalized only on the order of a physician and with administrative notification. Detainees experiencing severe, life-threatening alcohol or drug withdrawal will be immediately transferred to an acute care facility.

Detoxification will be carried out only at facilities qualified to do so in accordance with local, state, and federal laws.

All non-INS facilities shall have policy and procedure to ensure the initial health screening and assessment is documented.

Health appraisals will be performed according to NCCHC and JCAHO standards.

If language difficulties prevent the health care provider/officer from sufficiently communicating with the detainee for purposes of completing the medical screening, the officer shall obtain translation assistance. Such assistance may be provided by another officer or by a professional service, such as a telephone translation service. In some cases, other

detainees may be used for translation assistance if they are proficient and reliable and the detainee being medically screened consents. If needed translation assistance cannot be obtained, medical staff will be notified or the screening form will be filled out to refer the detainee to medical personnel for immediate attention.

If a detainee requires emergency medical care, the officer will immediately take steps to contact a health care provider through established procedures. Where the officer is unsure whether emergency care is required, the officer should immediately notify the on-duty supervisor. If the on-duty supervisor has any doubt whether emergency care is required, the on-duty supervisor will immediately take steps to contact a health care provider, who will make the determination whether emergency care is required.

Detainees with symptoms suggestive of TB will be placed in an isolation room and promptly evaluated for TB disease. If the initial screening is negative, the detainee will be allowed to join the general population.

Detainees diagnosed with a communicable disease shall be isolated according to local medical operating procedures.

In SPCs/CDFs:

The health screening will be conducted during in processing and prior to the detainee's placement into a housing unit. The health care provider or officer will complete the In-Processing Health Screening Form (I-794) and all findings of the medical screening process will be recorded.

Upon completion, the In-Processing Health Screening Form will be forwarded to the facility medical staff for appropriate action. The facility health care provider will be responsible for promptly reviewing all I-794s, and deciding whether the detainee should receive prompt medical attention.

For other facilities that do not use the INS In-Processing Health Screening Form (I-794), the INS Health Services Division must approve any substitute form.

E. Dental Treatment

An initial dental screening exam should be performed within 14 days of the detainee's arrival. If no on-site dentist is available, the initial dental screening may be performed by a physician, physician's assistant or nurse practitioner.

Detainees shall be afforded only authorized dental treatment defined as follows:

1. Emergency dental treatment, which includes those procedures directed toward the immediate relief of pain, trauma and acute oral infection that endangers the health of the detainee. It also includes repair of prosthetic appliances to prevent detainee suffering.

2. Routine dental treatment may be provided to detainees for whom dental treatment is inaccessible for prolonged periods because of detention for over six months. Routine dental treatment includes amalgam and composite restorations, prophylaxis, root canals, extractions, x-rays, the repair and adjustment of prosthetic appliances and other procedures required to maintain the detainee's health.

F. Sick Call

Each facility will have a mechanism that allows detainees the opportunity to request health care services provided by a physician or other qualified medical officer in a clinical setting.

All facilities must have a procedure in place to ensure that all request slips are received by the medical facility in a timely manner. If necessary detainees will be provided with assistance in filling out the request slip, especially detainees who are illiterate or non-English speaking.

Each facility will have regularly scheduled times, known as sick call, when medical personnel will be available to see detainees who have requested medical services. Sick call will be regularly scheduled in accordance with the following minimum standards:

1. Facilities with fewer than 50 detainees - a minimum of 1 day per week;
2. Facilities with 50 to 200 detainees - a minimum of 3 days per week;
3. Facilities with over 200 detainees - a minimum of 5 days per week.

The health care provider will review the request slips and determine when the detainee will be seen.

All detainees, including those in Special Management Units, regardless of classification, will have access to sick call. In addition to sick call, all facilities will have emergency procedures for medical treatment as provided below.

In SPC/CDFs:

Request slips will be made freely available by the facility staff for detainees to request health care services on a daily basis. The request slip will be made available in English and the foreign languages most widely spoken among the detainees. The slip will be completed by the detainee and will contain the detainee's name, A-number, sex, age, country of nationality, and reason for requesting a medical visit. The slip will be dated and signed by the detainee. If necessary, detainees will be provided with assistance in filling out the request slip, especially detainees that are illiterate or non-English speaking.

G. 24-Hour Emergency Medical Treatment

Each facility will have a written plan for the delivery of 24-hour emergency health care when no medical personnel are on duty at the facility, or when immediate outside medical attention is required.

In SPCs/CDFs, a plan will be prepared in consultation with the facility's routine medical provider. The plan will include an on-call provider; a list, available to all staff, of telephone numbers for local ambulances and hospital services; and procedures for facility staff to utilize this emergency health care consistent with security and safety.

H. First Aid and Medical Emergencies

In each detention facility, the designated health authority and the OIC will determine the availability and placement of first aid kits consistent with the American Correctional Association requirements.

Detention staff will be trained to respond to health-related emergencies within a 4-minute response time. This training will be provided by a responsible medical authority in cooperation with the OIC and will include the following:

1. The recognition of signs of potential health emergencies and the required response;

2. The administration of first aid and cardiopulmonary resuscitation (CPR);

3. The facility plan and its required methods of obtaining emergency medical assistance;

4. The recognition of signs and symptoms of mental illness (including suicide risk) retardation, and chemical dependency; and

5. The facility's established plan and procedures for providing emergency medical care including, when required, the safe and secure transfer of detainees for appropriate hospital or other medical services.

Whenever an officer is unsure whether a detainee requires emergency care by a health care provider, the officer should contact a health care provider or an on-duty supervisor immediately.

I. Delivery of Medication

Distribution of medication will be according to the specific instructions and procedures established by the health care provider. Officers will keep written records of all medication given to detainees.

In SPCs/CDFs, medication will not be delivered or administered by detainees. In facilities that are medically staffed 24 hours a day, the health care provider will distribute medication. In facilities that are not medically staffed 24 hours a day, medication may be distributed by detention officers who have received proper training by the health care provider, only when medication must be delivered at a specific time when medical staff is not on duty. Distribution of medication by detention officers will be according to the specific instructions and procedures established by the health care provider. Officers will keep written records of all medication they deliver to detainees.

J. Special Needs

The medical care provider for each facility will notify the OIC in writing when a detainee has been diagnosed as having a medical or psychiatric condition requiring special attention (e.g. pregnancy, special diet, medical isolation, AIDS, etc.).

In SPCs/CDFs, the medical care provider for each facility will notify the OIC, using a Detainee Special Need Form (I-819), when a detainee has been diagnosed as having a medical or psychiatric condition requiring special attention (e.g. pregnancy, special diet, medical isolation, etc.).

K. HIV/AIDS

To the extent possible, the accurate diagnosis and medical management of HIV infection among detainees will be promoted. The diagnosis of AIDS is established only by a licensed physician based on a medical history, current clinical evaluation of signs and symptoms, and laboratory studies. HIV cannot be transmitted by normal office or household contacts with AIDS patients or persons in the high risk groups. Persons, who must feed, escort, directly supervise, interview or conduct routine office work with AIDS patients are not considered at risk of infection. However, persons regularly exposed to blood are at risk.

1. When it is determined that current symptoms are suggestive of HIV infection, the following will be implemented:

   a. Clinical evaluation will determine the medical need for isolation.

      USPHS will not recommend to INS that the detainee be separated from the general population, either pending a test result or after a test report, unless clinical evaluation reveals a medical need for isolation.

   b. Following clinical evaluation if a detainee manifests symptoms requiring treatment beyond the facility's capability, the provider will recommend the detainee be transferred to a hospital, or other appropriate facility for further medical testing, final diagnosis, and acute treatment as needed, consistent with local operational procedures.

   c. HIV positive detainees should be hospitalized until any acute treatment deemed necessary is completed.

      When the attending physician determines that a detainee is in remission from his/her illness and/or no longer requires off-site care, he/she will be returned to the detention facility. The physician must make a recommendation as to whether the detainee should be housed in the general population or, in another location.

d. An HIV positive diagnosis must be reported to government bodies according to State and Federal requirements. Please note that only reports of AIDS, and not HIV infection, are required by the CDC. State laws differ considerably. The Clinical Director is responsible for insuring that all applicable state requirements are met.

e. Any detainee with tuberculosis (active) should be evaluated for possible HIV infection.

2. Staff Risk/Responsibility

a. Staff will not be excused from carrying out their regular duties and responsibilities with respect to detainees who are suspected or diagnosed as having HIV infection, unless the staff member is at high risk for infection because of compromised immune status (e.g. HIV infection or immuno-suppressive disorder).

b. If a staff member believes that they are at risk, they are responsible for discussing this issue with their supervisor.

c. Staff member's concerns will be evaluated and if appropriate, an attempt to adjust the individual's work responsibilities may be made.

Tthe HSD Director will advise the OIC if the adjusting of an individual's work responsibilities is necessary.

3. Exposure

Staff or detainee's exposure to potentially infectious body fluids, such as through needle sticks or bites shall be reported as soon as possible to the Clinical Director.

4. Precautions

Universal precautions are to be used at all times when caring for detainees. All detainees should be assumed to be infectious for blood-borne pathogens. No additional special precautions are required for the care of HIV positive detainees.

L. Informed Consent

As a rule, medical treatment will not be administered against the detainee's will. The facility health care provider will obtain signed and dated consent forms from all detainees before any medical examination or treatment, except in emergency circumstances. If a detainee refuses treatment, the INS will be consulted in determining whether forced treatment will be administered, unless the situation is an emergency. In emergency situations, the INS shall be notified as soon as possible.

In SPCs/CDFs, if the detainee refuses to consent to treatment, medical staff will make reasonable efforts to convince the detainee to voluntarily accept treatment. The medical risks faced if treatment is declined will be explained to the detainee. Medical staff will document their treatment efforts and the refusal of treatment in the detainee's medical record. The detainee refusing examination or treatment will be segregated from the general population when recommended by the medical staff. Forced treatment is a decision made only by medical staff under strict legal restrictions. (See also the "Hunger Strikes" standard.)

M. Confidentiality and Release of Medical Records

All medical providers shall protect the privacy of detainees' medical information to the extent possible while permitting the exchange of health information required to fulfill program responsibilities and to provide for the well being of detainees.

Where a detainee is covered by the Privacy Act, specific legal restrictions govern the release of medical information or records.

Copies of health records may be released by the facility health care provider directly to a detainee, or any person designated by the detainee, upon receipt by the facility health care provider of a written authorization from the detainee. (Form I-813 may be used for this purpose).

In absence of the I-813, a written request may serve as authorization for the release of health information if it includes the following (and meets any other requirements of the facility health care provider):

1. Address of the facility to release the information;
2. Name of the individual or institution that is to receive the information;
3. Detainee's full name, alien number, date of birth and nationality;
4. Purpose or need for the information to be released;
5. Nature of the information to be released with inclusive dates of treatment; and
6. Detainee's signature and date.

Following the release of health information, the written authorization will be retained in the health record, and a copy placed in the detainee's A-file. IGSA facilities shall notify INS each time a detainee medical records are released.

Detainees who indicate that they wish to obtain copies of their medical records will be provided with the appropriate form. The INS will provide the detainee with basic assistance in making the written request (if needed) and will assist in transmitting the request to the facility health care provider.

If INS receives a request for a detainee's medical records, the request should be forwarded to the facility health care provider or the requester, (if other than a detainee) should be advised to redirect their request and provided with the appropriate name and address.

N. Transfer and Release of Detainees

INS shall be notified when detainees are to be transferred or released.

Medical/Psychiatric Alert. When the medical staff determines that a detainee's medical or psychiatric condition requires either clearance by the medical staff prior to release or transfer, or requires medical escort during deportation or transfer, the OIC will be so notified in writing.

Notification of Transfers, Releases, and Removals. The facility health care provider will be given advance notice prior to the release, transfer, or removal of a detainee, so that medical staff may determine and provide for any medical needs associated with the transfer or release.

Transfer of Health Records. When a detainee is transferred to another detention facility, the detainee's medical records, or copies, will be transferred with the detainee. These records should be placed in a sealed envelope or other container labeled with the detainee's name and A-number and marked "MEDICAL CONFIDENTIAL."

O. Medical Experimentation

Detainees will not be used in medical, pharmaceutical or cosmetic experiments or research.

This will not preclude an individual detainee from receiving a medical procedure not generally available, but determined medically necessary by the primary health care provider. In IGSA facilities, USPHS' Division of Immigration Health Services shall be notified.

P. Quarterly Administrative Meetings:

Formal, documented meetings will be held at least quarterly between the OIC of each facility and the HSA of the medical facility. Other members of the facility staff and medical staff will be included as appropriate. Minutes of the meeting will be recorded and kept on file. The meeting agenda will include, but not be limited to, the following:

1. *An account of the effectiveness of the facility health care program;*
2. *Discussions of health environment factors that may need improvement;*
3. *Changes effected since the previous meetings; and*
4. *Recommended corrective actions, as necessary.*

IV. AMERICAN CORRECTIONAL ASSOCIATION STANDARDS REFERENCED:

American Correctional Association, 3rd Edition, Standards for Adult Detention Facilities:

3-ALDF-4E-01, 3-ALDF-4E-02, 3-ALDF-4E-03, 3-ALDF-4E-04,
3-ALDF-4E-06, 3-ALDF-4E-07, 3-ALDF-4E-08, 3-ALDF-4E-09,
3-ALDF-4E-10, 3-ALDF-4E-11, 3-ALDF-4E-13, 3-ALDF-4E-17,
3-ALDF-4E-19, 3-ALDF-4E-20, 3-ALDF-4E-24, 3-ALDF-4E-25,
3-ALDF-4E-26, 3-ALDF-4E-30, 3-ALDF-4E-43

United States Public Health Service (USPHS) Division of Immigration Health Services (DIHS) Policies and Procedures Manual (1996)

National Commission on Correctional Health Care, Standards for Health Services in Jails (1996)

Approval of Standard

Michael D. Cronin
Acting Executive Associate Commissioner
Office of Programs

Date

Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

Date

INS DETENTION STANDARD

TERMINAL ILLNESS, ADVANCE DIRECTIVES, AND DEATH

I. POLICY

All facilities shall have policies and procedures addressing the issues of terminal illness, fatal injury, advance directives, and detainee death. Each will address notification of all concerned, from family to INS.

II. APPLICABILITY

The standards provided in this Detention Standard shall apply to the following facilities housing INS detainees:

1. Service Processing Centers (SPCs);
2. Contract Detention Facilities (CDFs); and
3. State or local government facilities used by INS through Intergovernmental Service Agreements (IGSAs) to hold detainees for more than 72 hours; referred to as "IGSA facilities."

Within the document there are additional implementing procedures that are identified for SPCs and CDFs. IGSA facilities may find such procedures useful as guidelines. IGSAs may adopt, adapt or establish alternatives to, the procedures specified for SPCs/CDFs, provided they meet or exceed the objective represented by each standard.

See the separate "Definitions" Standard for the meaning of certain terms used in this document.

III. STANDARDS AND SPC/CDF PROCEDURES

A. Terminal Illness

The facility's Clinical Director (CD), assisted by the Health Services Administrator (HSA), will arrange the transfer of chronically, critically, or terminally ill detainees to appropriate off-site medical facilities.

When a detainee's medical condition becomes life-threatening, the following standards and procedures apply:

1. A seriously ill or dying detainee's care shall be consistent with the "Detainee Access to Medical Care" standard.

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2. A detainee in a community hospital remains under INS authority. INS retains the authority to make administrative decisions affecting the detainee (visitors, movement, authorizing/limiting services, etc.). The hospital assumes medical decisionmaking authority consistent with the contract (drug regimen, lab tests, x-rays, treatments, etc.).

3. The hospital's policy for involving next of kin shall be consistent with State law. Internal rules and procedures concerning the seriously ill, injured, and dying will apply to detainees.

   Authority over the detainee's treatment, once approved by INS, is exercised by the hospital's medical staff, who will keep INS informed of major developments.

4. A detention facility shall immediately notify INS when a detainee is seriously injured or ill. INS, in turn, shall immediately contact (or make reasonable efforts to contact) the next of kin, who will be notified of the medical condition/medical status, the detainee's location, and the visiting hours and rules at that location. INS will provide family members as much opportunity for visitation as possible.

   In SPCs/CDFs, the HSA shall notify the OIC of the detainee's condition by phone or in person, and the OIC shall arrange to notify the family. The HSA shall document the detainee's condition in a memorandum., briefly describing the illness and prognosis, if possible. With respect to a serious illness, major surgery, or death of a detainee with immigration proceedings pending, the OIC shall notify the EOIR or the court of record.

B. Living Wills and Advance Directives

Each medical facility shall use the State Advance Directive Form for implementing living wills and advance directives. The guidelines for completing the form include instructions for detainees who wish to have a living will (different from the generic document available from the INS Division of Immigration Health Services [DIHS]) and/or authorize or refuse permission to perform extraordinary measures to prolong his/her life. The guidelines should note that private attorneys can prepare such documents.

When the medical professional responsible for the detainee's care determine that the terms and conditions of the detainee's medical directive should be implemented, he/she shall contact the CD/HSA and the INS General Counsel, providing the name, condition, and circumstances of the detainee.

In the interest of all parties, INS may seek judicial or administrative review of a detainee's advance directive.

C. Do Not Resuscitate Orders (DNR)

Each facility holding INS detainees shall establish and implement through written procedure policy governing DNR orders. The director and other members of the DIHS governing body shall review and approve all policies before implementation.

In addition, each facility's DNR policy will comply with the following:

(1) A DNR written by a staff physician requires the CD/HSA's approval.

(2) The policy shall protect basic patient rights and otherwise comply with DIHS standards.

(3) The decision to withhold resuscitative services shall be considered only under specified conditions:

(a) The detainee has requested or strongly endorsed the decision. If the detainee is unconscious or otherwise unable or incompetent to participate in the decision, staff will attempt to obtain the written concurrence of an immediate family member. The attending physician shall document these efforts in the medical record.

(b) The detainee is diagnosed with a terminal illness or terminal injury.

(c) A DNR is consistent with sound medical practice, not in any way associated with assisting suicide, euthanasia, or other such measures to hasten death.

(4) The detainee's medical file shall include documentation validating the DNR order:

(a) A standard stipulation at the front of the in-patient record, and explicit directions: "Do Not Resuscitate" or "DNR."

(b) Forms and memoranda recording:

1. Diagnosis and prognosis.

2. Express wishes of the detainee (living will, advance directive, or other signed document).

3. Immediate family's wishes.

4. Consensual decisions and recommendations of medical professionals, identified by name and title.

5. Mental competency (psychiatric evaluation), if detainee concurred in, but did not initiate, the DNR decision.
6. Informed consent evidenced, among other things, by the legibility of the DNR order, signed by the ordering physician and CD.

(6) A detainee with a DNR order may receive all therapeutic efforts short of resuscitation.

(7) The facility shall follow written procedures for notifying attending medical staff of the DNR order.

(8) The medical facility shall notify the DIHS medical director and governing body, and the INS General Counsel, of the name and basic circumstances of any detainee for whom a "Do Not Resuscitate" order has been filed in the medical record.

D. Organ Donation by Detainees

The following procedures govern organ donations by detainees:

(1) The organ recipient must be a member of the donor's immediate family.

(2) All costs associated with the organ donation (hopitalization, fees, etc.) shall be at the expense of the detainee, involving no Government funds.

(3) The detainee shall sign a statement documenting his/her decision to donate the organ to the specified family member. The detainee must confirm that he/she understands and accepts the risks associated with the operation of his/her own free will; and that the Government will not be held responsible for any medical complications or financial responsibilities.

(4) Resources permitting, INS shall assist in the preliminary medical evaluation.

(5) The facility housing the detainee shall coordinate arrangements for transportation, custody, classification, etc.

(6) The detainee is not authorized to donate blood or blood products.

E. Death Occurring in INS Custody

The facility shall follow written procedures when notifying INS officials, immediate family members, and consulate offices of a detainee's death.

(1) Detention Facilities

It is the responsibility of the ADD/DD to contact the OIC of every facility in his/her jurisdiction, specifying the procedures for reporting a detainee death.

(2) Death Occurring in Transit in a Land Vehicle Driven by INS Personnel

If a detainee dies while in transit, the transporting officers must notify the originating or receiving office as soon as possible, by any means excluding transmission by government radio (susceptible to public monitoring). The notification shall state the detainee's name, A-number, and the date, time, place, and apparent cause of death. The closest INS office will arrange for the local coroner and the Federal Bureau of Investigation (FBI) to meet the bus. If death was caused by violence or was associated with other unusual or suspicious circumstances, the INS office will also contact the local law enforcement authority, which will coordinate bus-meeting with the FBI.

The interagency rendezvous point, where the coroner will remove the body from the bus, must be in the State where the death occurred.

The transporting officers shall obtain a coroner's receipt in exchange for the body.

(3) Death Occurring in Transit via Commercial Flight

The escorting officers shall notify the Assistant District Director for Detention and Deportation (ADD/DD) of the detainee's in-flight death. If the aircraft carrier makes a landing on foreign soil, the officers shall contact the nearest U.S. consulate or embassy for immediate assistance before contacting the ADD/DD.

(4) Death Occurring in Transit via JPATS

The local INS office will contact the ADD/DD. Established JPATS protocol will be followed.

(5) Vital Information

The ADD/DD shall assemble the following information concerning the deceased detainee:

(1) Name;
(2) Alien registration number;
(3) Date of birth;
(4) Date, time, and location of death;
(5) Apparent cause of death;
(6) Investigative steps being taken, if necessary;
(7) Name and address of next of kin in the United States;
(8) Notifications made;
(9) Brief medical history related to death;

(10) Status of autopsy request, if necessary.

(6) Notification of Immigration Officials

a Immediate Notifications

1. Death During or after Regular Workday

The ADD/DD shall, on receiving the information, telephone the District Director (DD) and the Assistant Regional Director for Detention and Deportation (ARD/DD). The ADD/DD shall confirm the notification electronically (via cc:Mail), sending an information copy to the Director of Field Operations, Headquarters.

The ARD/DD shall, on receiving the information, immediately, telephone the Director of Field Operations, Headquarters (who must be notified of all deaths). During non-business hours, the ARD/DD shall telephone the report to the Director of Field Operations, Headquarters, via the INS Command Center, (202) 616-5000.

2. Medical Reports

Within 48 hours, the ADD/DD shall send all available medical reports to the local representative of the U.S. Public Health Service (USPHS).

b. Notification of Family

1. Immediate Telephonic Notification

The DD shall telephone the person named as the next of kin in the United States to communicate the circumstances surrounding the death. If the next of kin cannot be located, the DD shall notify the consulate of the deceased.

2. Letter of Condolences

As soon as practical, the ADD/DD shall prepare a condolence letter (for DD signature) to the next of kin, which will include the circumstances of the death, as follows:

a. If the death was by natural causes, a brief account of the medical details.

b. If the death was accidental, with no suspicion of foul play, a brief description of the accident and cause of death.

c. If the death occurred under suspicious circumstances or by foul play, a clinical statement of the cause of death, with the proviso that the matter is under investigation and, for that reason, details of the cause may not be provided at this time.

3. Notification of Consulate Officials

The DD shall notify, by telephone, the consulate of the deceased. An official follow-up letter shall be prepared, explaining the circumstances of the death, and sent to the consulate.

F. Disposition of Property

If after a reasonable period of investigation, next of kin cannot be identified and/or located in the United States or abroad (through the consulate; see section III.C., below), INS shall dispose of the property of the deceased in accordance with the "Personal Property Operations Handbook," chapters 10 and 17.

If the detainee dies while in an IGSA facility, the OIC shall turn his/her property to INS for processing and disposition.

G. Disposition of Remains

Within seven calendar days of the date of notification (in writing or in person), the family shall have the opportunity to claim the remains. If the family chooses to claim the body, the family shall assume responsibility for making the necessary arrangements and paying all associated costs (transportation of body, burial, etc.).

If the family wants to claim the remains, but cannot afford the transportation costs, INS may assist the family by transporting the remains to a location in the United States. As a rule, the family alone is responsible for researching and complying with airline rules and Federal regulations on transporting the body. However, INS will coordinate the logistical details involved in returning the family member's remains to the family.

If family members cannot be located or decline, orally or in writing, to claim the remains, INS will notify the consulate, in writing. The consulate shall have seven calendar days in which to claim the remains. If the consulate exercises its right to claim the body, it shall be responsible for making the necessary arrangements and paying all costs incurred (moving the body, burial, etc.)

In the event that neither family nor consulate claims the remains, the DD shall schedule an indigent's burial, consistent with local procedures. However, if the detainee's record indicates U.S. military service, the DD will contact the Department of Veterans Affairs to determine the deceased's eligibility for burial benefits before proceeding with the indigent-burial arrangements.

Under no circumstances shall INS authorize cremation or donation of the remains for medical research.

H. Case Closure

Procedures for closing the case of a deceased detainee include the following:

1. Sending the detainee's fingerprint card to the FBI, stamped "Deceased." and identifying the place of death;

2. Placing the detainee's death certificate or medical examiner's report (original or certified copy) in the subject's A-file;

3. Placing a copy of the gravesite title in the A- file (indigent burial only); and

4. Closing the detainee's DACS file.

I. Death Certificate

The OIC shall specify in post orders the designated officer's responsibility for proper distribution of the death certificate.

When the death certificate arrives, the designated officer shall send the original to the person who claimed the body. He/she shall place a certified copy of the death certificate in the A-file of the deceased or, if the deceased received an indigent's burial, the actual death certificate (not a copy) shall be placed in the A-file.

J. Authority To Order Autopsies

The OIC shall develop and implement written procedures for arranging an autopsy, including: contacting the local coroner; scheduling the autopsy; identifying the individual who will perform the autopsy; obtaining State-approved death certificates, and transporting the body to the coroner's office.

The FBI, local coroner, or the USPHS may order an autopsy and related scientific or medical tests to be performed in cases involving homicide, suicide, fatal illness or accident, or unexplained death.

DIHS may order an autopsy or post-mortem operation for other cases, with the written consent of a person authorized under State law to give such consent (e.g., the coroner, next-of-kin, or, to authorize a tissue transfer, the deceased him/herself.

State laws regarding these issues vary greatly; where legal questions arise, the District Office of General Counsel should be contacted. State law provisions and guidelines on when to contact the coroner shall be incorporated into the Facility Policy and a copy forwarded to General Counsel.

Medical staff (DIHS) shall arrange for the approved autopsy to be performed. Time is a critical factor in arranging for an autopsy, as this ordinarily must be performed within 48 hours of the death. While a decision on an autopsy is pending, no action should be taken that will affect the validity of the autopsy results. Local law may also require an autopsy when death occurs and the deceased was otherwise unattended by a physician.

Before the initiation of an autopsy or embalming, determination of the detainee's religious affiliation shall be made. Religions such as Judaism and Islam forbid embalming. Additionally, there are other religious specific requirements involving autopsies and embalming. Therefore, it is critical the ADD/DD or designate verify the detainee's religious preference prior to final authorizations for autopsies or embalming.

IV. AMERICAN CORRECTIONAL ASSOCIATION STANDARDS REFERENCED

American Correctional Association Standards for Adult Local Detention Facilities 3rd Edition: 3-ADLF-4E-28, 4E-45.

Approval of Standard

Michael D. Cronin
Acting Executive Associate Commissioner

Date

Office of Programs

Michael A. Pearson
Executive Associate Commissioner
Office of Field Operations

Date

The Washington Post
1150 15TH STREET N.W.
WASHINGTON, D.C. 20071-7403
(202) 334-6000

Oct. 24, 2001

Mindy Tucker
Director of Public Affairs
Office of Public Affairs
U. S. Department of Justice
Room 1128
950 Pennsylvania ave. nw.
Washington, D. C. 20530-0001

Dear Ms. Tucker:

Attached is a Freedom of Information Act request for which I request expedited treatment pursuant to 28 CFR 16.5(d)(iv). The detentions of hundreds of people in the wake of the Sept. 11 attacks are a matter of widespread and exceptional media interest in which there exist possible questions about the government's integrity which affect public confidence. Especially at issue is the government's regard for traditional civil liberties and constitutional protections.

Sincerely yours,

George Lardner Jr.
Staff Writer

Phone 202-334-7434
Fax 202-496-3883
Email: lardnerg@washpost.com

3/13

THE WASHINGTON POST
1150 15TH STREET N. W.
WASHINGTON, D.C. 20071-7403
(202) 334-6000

Oct. 23, 2001

Thomas J. McIntyre, Chief
FOIA/PA Unit
Criminal Division
Suite 1127, 1301 New York Ave. nw.
Department of Justice
Washington, D. C. 20530-0001

Dear Mr. McIntyre::

Pursuant to the Freedom of Information Act (5 U.S.C. section 552 as amended), I hereby request disclosure of the following records for inspection and possible copying:

1. The names and ages of all those who have been detained, including those released--more than 830 at last count--as a result of the Sept. 11 terrorist attacks in Washington and New York. Please specify which ones have been released and which ones are still in custody as of the date of this letter.

2. Their nationalities, wherever available.

3. The number and identities of those held as material witnesses.

4. The number and identities of those arrested and/or charged by information or indictment on criminal charges and the charges lodged against each.

5. The number and identities of those the FBI determined it has no interest in.

6. The number and identities of those facing INS deportation proceedings and the nature of the allegations against each. E. G., overstay of visa.

7. The number and identities of those who were allowed to leave the country voluntarily.

If you regard any of these records as exempt from required disclosure under the Act, I hereby request that you exercise your discretion to disclose them nevertheless.

I further request that you disclose the listed documents as they become available to you, without waiting until all the documents have been assembled. If the information is available in machine readable format, I would prefer it on disc; alternatively, on a CD-ROM or magnetic tape.

I am making this request on behalf of The Washington Post, a newspaper of general circulation throughout the United States. The records disclosed pursuant to this request will be used in the preparation of news articles for dissemination to the public. Accordingly, I request that, pursuant to 5 U.S.C. section 552 (a) (4) (A), you waive all fees in the public interest because the furnishing of the information sought by this request will primarily benefit the public. If, however, you decline to waive all fees, I am prepared to pay your normal search fees (and copying fees if I decide to copy any records), but I request that you notify me if you expect the search fees to exceed $100.

As specified under the Act, I expect a response to this request within ten working days. Thank you.

Sincerely,

George Lardner Jr.

George Lardner Jr.
Staff Writer

Phone: 202-334-7434
Fax: 202-496-3883