

MEMORANDUM

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

From: American Bar Association Delegation to Elizabeth Detention Center¹

Re: INS Compliance with Detention Standards at the Elizabeth, New Jersey facility

Date: November 5, 2001

This memorandum summarizes and evaluates information gathered at the Corrections Corporation of America (“CCA”), Elizabeth, New Jersey facility (“Elizabeth facility”), through interviews of detainees, observation by delegation staff, and discussions with INS and Elizabeth facility personnel on the July 9, 2001 visit.

INS Detention Standards

The Immigration and Naturalization Service promulgated the “*INS Detention Standards*” in November 2000 to insure the “safe, secure and humane treatment of individuals detained by the INS.” The thirty-six *Standards* contained in the Detention Operations Manual cover a broad spectrum of issues ranging from visitation policies to grievance procedures and food service. These standards apply to INS Service Processing Centers (“S.P.C.”), Contract Detention Facilities (“C.D.F.”), and state and local government used by the INS through Intergovernmental Service Agreements (“I.G.S.A.”). The Detention Standards went into effect at INS S.P.C.s on January 1, 2001. The INS aims to phase-in the standards in its contract facilities, and state and local facilities, over the next two years. The INS Detention Standards constitute a “floor” not a “ceiling” for treatment of INS detainees. In other words, they are meant to establish the minimal requirements that INS must adhere to in its facilities. Each District Office or Officer in Charge (OIC) may, in his or her discretion, promulgate policies and practices affording INS detainees more enhanced rights and protections than those provided for by the *Standards*.

The Elizabeth facility is a contract detention facility housing from 270 to 290 detainees from various nations.² The average length of stay varies from a number of months to one year.³ Moreover, the paucity of adequate pro bono representatives causes the initial screening interview to take longer which further prolongs a detainee’s stay.

¹ The delegation was comprised of [REDACTED] of the ABA Immigration Pro Bono Development and Bar Activation Project, [REDACTED] of the American Bar Association (“ABA”) Immigration Pro Bono Development Project, [REDACTED], Partner at Latham & Watkins (Washington, DC), [REDACTED], Partner at Fried, Frank, Harris, Shriver & Jacobs (New York, NY), [REDACTED] a partner at the law firm of Mark & Santiago, P.C. and Vice President of the Hispanic National Bar Association; and [REDACTED] Associate at Shearman & Sterling (Washington, DC) and coordinator of the delegation report.

Ms. [REDACTED]’s notes

³ Conversation, Elizabeth INS facility Judge

The facility is located in a remote warehouse district of Elizabeth, NJ making outsider access to the facility logistically difficult.⁴

This memorandum discusses INS compliance with the *Detention Standards of INS Detention Operations Manual*. The memo focuses on select portions of the standards where INS compliance is of particular importance for the achievement of their stated goal to insure the “safe, secure, and humane treatment” of INS detainees. In particular, this memo focuses on INS facility compliance with the following *Standards of the Detention Operations Manual*: (1) Legal Access; (2) Telephone Access; (3) Legal Materials; (4) Group Rights Presentations; (5) Recreation Issues; (6) Classes; (7) Medical Issues; and (8) Religious Issues.

I. General Information

The *INS Detention Standards* require that each facility “develop a site-specific detainee handbook to serve as an overview of, and guide to, the detention policies, rules, and procedures in effect at the facility. The handbook also will describe the services, programs, and opportunities available through various sources including the facility.”⁵ The handbook is supposed to constitute a comprehensive guide to life in the facility and include, at a minimum, the information specified in Section III, A through J of the *Detainee Handbook Standard*, of the *Standards*. The purpose of the Handbook requirement is to give detainees notice of all applicable rules, policies, and privileges of the facility.

Based on our research conducted from our facility visit, it did not appear that INS was in full compliance with this Standard. According to our interviews with two detainees, the Elizabeth facility routinely did not routinely issue handbooks to incoming detainees.⁶ Additionally, multilingual handbooks were not provided and/or readily available at the facility. Even if detainees were provided handbooks in English, based on interviews with detainees, the importance of the handbook was not being emphasized or explained to the detainees by INS staff.⁷ Neither detainees that we interviewed was provided with a handbook upon arrival at the Elizabeth facility.⁸

INS’ failure to provide detainees with handbooks has potentially serious consequences for detainees at the Elizabeth facility. Since detainees lack notice of facility procedures and policies, they risk committing unintentional infractions of the disciplinary code. The purpose of requiring the issuance of a handbook to all detainees is not only to inform detainees of applicable procedures but to avoid unnecessary violations of procedures predicated on misunderstandings or lack of notice. Unintentional disciplinary infractions may severely prejudice the legal status of a person facing the post-order custody review process, because the INS considers any such disciplinary

⁴ Ms. [REDACTED] notes

⁵ *Detention Operations Manual*, Detainee Services (5)(I).

⁶ Interview with detainees [REDACTED] and [REDACTED] on July 9, 2001.

⁷ Id.

⁸ Id.

violation an adverse factor in determining whether to release or continue detaining the alien.⁹ Disciplinary infractions are routinely relied on by the INS to deny the release of detainees facing post-order detention.

II. Legal Access / Visitation

The range of permissible visitors includes: Consular officials, attorneys, legal representatives, friends, family, and media. No laptops are allowed during any visitation.

A. Visitation by Attorneys

The *Standards* provide that facilities should allow detainees to meet privately with their current or prospective legal representatives and legal assistants and to meet with their consular officials. The policy concerning legal service visitation is also outlined in the handbook.

Attorneys are allowed to visit seven days a week at the Elizabeth facility. Our delegation observed attorneys in meeting rooms with their clients. The posted attorney visitation hours were from 6:00 a.m. to 10:00 p.m. Legal visitation is available to detainees for at least eight hours per day on weekdays and four hours per day on weekends and holidays. A detainee will not be forced to conclude an attorney-detainee interview for routine scheduled events such as lunch. If an attorney visitation runs into the scheduled lunch hour, the detainee's lunch will be delivered to him. In addition, legal visitations will not be interrupted for routine counts.¹⁰

All meeting rooms can be observed by the Elizabeth facility staff; however, they offer some degree of privacy. Interview rooms are available to attorneys, for "contact" visits or non-contact telephone interview equipment is available.¹¹ All detainees are subject to a pat-down search after an attorney visit.¹² The handbook defines the types of searches conducted at the Elizabeth facility.¹³ Attorneys are not permitted to take photographs. Instead, INS officials will take photographs at the attorney's request.¹⁴

Legal assistants are permitted to visit the detainees unaccompanied by their supervising attorney. Prospective legal representatives may visit without completing a

⁹ See Post Order Custody Review Procedures, 8 C.F.R. § 241.1 "Continued detention of inadmissible, criminal and other aliens beyond the removal period. The regulation provides, "Factors for Consideration. The following factors should be weighed in considering whether to recommend further detention or release of a detainee: (1) The nature and number of disciplinary infractions or incident reports received when incarcerated or while in Service custody." See 8 C.F.R. § 241.1(f)(1).

¹⁰ Ms. [REDACTED] notes

¹¹ Ms. [REDACTED] notes

¹² Conversation with [REDACTED], acting head of facility. Interview with detainee, [REDACTED] also corroborates this fact.

¹³ See *Detainee Handbook* (June 2000) at 12.

¹⁴ Ms. [REDACTED] notes

Form G-28. A current list of pro bono legal organizations is posted in the detainee housing areas, allowing detainees to sign-up for such services.¹⁵

B. Visitation for Consultation of Detainees Subject to Expedited Removal

At the Elizabeth facility, when a detainee is held subject to expedited removal, the detainee is permitted to consult with any person of his choice while the asylum officer's decision is under review. Consultations may be in person or by phone. These visits are permitted seven days per week, from 6:00 a.m. to 10:00 p.m.¹⁶

C. Visitation by Family, Friends and the Media

The *Standards* provide that facilities should permit authorized persons to visit detainees within security and operational constraints. To maintain detainee morale and family relationships, INS encourages visits from family and friends. Additionally, facilities should permit members of the media and non-governmental organizations to have access to non-classified and non-confidential information about the facility's operation.

The handbook indicates that family visitation hours are Saturdays, Sundays and holidays from 9:00 a.m. to 5:00 p.m.¹⁷ However, signs in the Elizabeth facility's main lobby indicate a more restrictive schedule with some dormitories permitting visitation only on Saturday and the other dormitories permitting visitation only on Sunday.¹⁸ In order to accommodate all of the detainees, the length of a visitation with family or friends is limited to one hour.¹⁹ There were no brochures listing the visiting hours in the lobby, although the attendant noted that they are available upon request. If the regular visiting hours are a hardship for family members, arrangements can be made for other suitable visiting hours.²⁰

The visiting room's layout is such that the detainee is separated from the visitor by a thick glass wall. Visitors are separated from other visitors by short partitions. Communication between the detainee and visitor takes place via telephone system. Contact visits with friends and family are not permitted.²¹

Members of the news media have access to the Elizabeth facility and detainees if pre-arranged. Advance notice is required in all cases.²²

¹⁵ Ms. [REDACTED] notes

¹⁶ Ms. [REDACTED] notes

¹⁷ See *Detainee Handbook* (June 2000) at 10.

¹⁸ Ms. [REDACTED] notes

¹⁹ Ms. [REDACTED] notes

²⁰ Ms. [REDACTED] notes

²¹ Ms. [REDACTED] notes

²² Ms. [REDACTED] notes

Medical experts do not typically visit the facility—rather, if it is determined that their expertise is needed, the detainee is sent out of the facility to see the expert.²³

Although not outlined in the handbook, a formal detainee disciplinary process takes place prior to revocation of a detainee’s visitation privileges.²⁴

III. Telephone Access

The *Standards* provide that facilities shall permit detainees to have reasonable and equitable access to telephones.

The delegation observed that phone booths were present in some of the recreation areas with nearby bulletin boards listing pro bono telephone numbers, consular telephone numbers, instructions to use the telephones, and telephone rates. The telephones were equipped with debit card systems, with instructions in English, Spanish and Mandarin.²⁵

IV. Legal Materials

The *Standards* mandate the designation of a law library in each INS facility.²⁶ Each library must be large enough to facilitate detainee research and writing in a well-lit and reasonably quiet area. In addition, each library facility must have an adequate number of tables and chairs, in order to provide access to all detainees who request to use the library. Each facility must also provide materials, equipment and library holdings sufficient to enable detainees to research and prepare legal documents.

It is questionable whether the law library in the Elizabeth facility meets the minimum standards set forth by the *INS Detention Standards*. The law library is not large enough to accommodate detainee needs and is not sufficiently equipped to enable detainees to draft and produce legal documents.

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

The *Standards* require all law libraries to hold the legal materials contained in Attachment A-2 of the *Access to Legal Materials* chapter of the *Detention Operations Manual*. These materials must be updated regularly and information must be added on significant regulatory and statutory changes regarding detention and deportation of aliens in a timely manner. In addition, the *Standards* require that each facility post a list of materials in the law library and designate an employee with responsibility for updating the materials, inspecting them weekly and maintaining them in good order.²⁷

²³ Ms. [REDACTED] notes

²⁴ Interview with [REDACTED], District Director for New Jersey, on July 9, 2001.

²⁵ Ms. [REDACTED] notes

²⁶ Detention Operations Manual, Detainee Services Chapter 1: Access to Legal Material.

²⁷ Detention Operations Manual, Detainee Services: Chapter 1 Access to Legal Materials.

The library is missing a number of materials on the list, and the list itself is not posted for detainees to view. Examples of missing materials noticed on inspection include: an updated Bender’s Immigration Law & Practice after 1998; a hard copy of the CFR (which is apparently available on-line, though no notice of this was posted); and an up-dated copy of Bender’s Immigration and Nationality Act publication since 1996. In addition, the written library inventory list provided to the delegation indicated that the BIA decisions have not been updated in hard copy since 1998.²⁸

Given the state of the library’s collection, it appeared that materials were not promptly ordered and replaced when missing, nor were they updated regularly. We were unable to discern on this visit if or how requests for additional legal materials are handled.

B. Library Conditions

The law library at Elizabeth is well-lit and near a hallway without much apparent traffic.²⁹ However it is cramped, disorganized, and in need of improvement. Although Elizabeth houses up to 300 detainees, the library can accommodate no more than five or six detainees at a time. Although, the guard staffed at the library told us that space had never been a problem, the inadequate facilities may curtail demand.

The library had only one typewriter. One is an inadequate number for a facility of this size and falls short of one typewriter and/or computer for every five detainees that is specified in the *Standards*. Additionally, we were unable to determine the policy and frequency of repairs of broken typewriters or restocking of supplies.

There is no indication that detainees are prevented from working together on legal documents. Detainees are allowed to retain papers with them in the residential units; their storage bins can accommodate a fair amount of materials. We heard no complaints of insufficient access to personal storage.

C. Photocopies and Mail

A detainee has indirect access to photocopying equipment via INS officials.³⁰ With respect to legal materials, the notice posted in the law library indicates that detainees are allowed three copies; the staff member working in the library indicated that requests for additional copies are honored. There is no indication that staff members review confidential materials.³¹

According to the *Standards*, indigent women are entitled to free postage for a specified number of legal and personal documents. Specifically, the *Standards* provide that “[t]he facility will provide indigent detainees with free envelopes and stamps for

²⁸ Mr. [b6] notes

²⁹ Ms. [b6] notes; Mr. [b6] notes

³⁰ Ms. [b6] notes

³¹ Mr. [b6] notes

mail related to a legal matter, including correspondence to a legal representative, potential legal representative or any court.”³²

D. Computer Access, Equipment and Holdings

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

The law library has only two computers. The library’s collection includes multilingual dictionaries, although interviews with French-speaking detainees revealed that French-English dictionaries have not been available.³³ Detainees are provided with free stationery.³⁴ It is questionable whether the Elizabeth facility law library provides its detainees with access to the equipment necessary to draft and produce legal documents.

E. Access to the Library

The *Standards* mandate that each facility devise a flexible schedule in order to permit all detainees’ use of the law library for a minimum of five hours per week. These five hours cannot cause a detainee to miss a meal, recreation time or any other planned activity.

A detainee’s use of the law library is limited to two hours, twice per week. However, those detainees using the law library on a regular basis are given permission to stay up to five hours per visit.³⁵ A detainee is not forced to choose between library time and recreation activities, although there is no written procedure for requesting additional time. The law library is open from 8:30 a.m. to 4:30 p.m.³⁶

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

The *Standards* require that “[t]he facility shall provide assistance to any unrepresented detainee who requests a notary public, certified mail or other such services to pursue a legal matter” if the detainee is unable to meet the need through family members or community organizations.³⁷

V. Group Rights Presentations

³² The Delegation did not have sufficient time to obtain answers to questions relating to mail access. Detention Operations Manual, Section 1(O) “Envelopes and Stamps for Legal Material.”

³³ Interview with detainee [REDACTED] b6, b7C on July 9, 2001.

³⁴ Ms. [REDACTED] b6 notes

³⁵ Conversation with CDC staff member and librarian.

³⁶ Mr. [REDACTED] b6 notes; Ms. [REDACTED] b6 notes

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

The *Standards* provide that facilities shall permit authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law and procedures consistent with the security and orderly operation of the INS facility. All facilities must cooperate fully with authorized persons seeking to make such presentations. The area for a group rights/presentation however, is very small and does not appear to be practical.³⁸ Moreover, detainees interviewed indicated that they were not aware of the concept of group rights presentations and had not yet attended any.³⁹

VI. Recreation Issues

The *Standards* require that “all facilities shall provide INS detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”⁴⁰ Every effort is to be made to provide outdoor recreation facilities, but lacking such, the recreation room should be large, with exercise equipment and having access to sunlight. The Elizabeth facility’s recreation areas consist of three areas: two indoor and one “outdoor.”

A. Indoor Recreation

The first indoor recreation area was a bare open space with concrete benches where detainees could congregate. It contained phone booths, postings for language classes, bible study, law library hours, and a schedule of recreation activities.⁴¹

The second indoor recreation area contained a library of books in various languages. It also contained an exercise area, a table and chairs, some board games and a video game booth.⁴²

B. Outdoor Recreation

The extent of a detainee’s access to the outdoors is limited to a caged-in room with a mesh-wire ceiling exposing the sky and allowing fresh air. The fencing is present for security reasons. There is limited access to this room after rain, because the room must be drained.⁴³ This plan meets the American Correctional Association’s definition of outdoor recreation.⁴⁴

An interview with a detainee, however, revealed that there might not be sufficient outdoor recreation offered. This detainee complained about the lack of fresh air and

³⁸ Ms. [REDACTED] notes

³⁹ Ms. [REDACTED] interview with detainees, [REDACTED] b6, b7C and [REDACTED] b6, b7C

⁴⁰ Detention Operations Manual, Section 27 at 1.

⁴¹ Ms. [REDACTED] notes

⁴² Ms. [REDACTED] b6 notes

⁴³ Ms. [REDACTED] notes

⁴⁴ Conversation with [REDACTED] b6, b7C District Director for New Jersey, on July 9, 2001.

sunlight, noting that his skin color had paled significantly during the duration of his time in detention.⁴⁵

While compliant with the ACA requirements, for outdoor recreation, the Elizabeth facility's outdoor recreation area represents an exception under the *Standards* to allow for a virtually indoor area to constitute outdoor recreation. The INS has no plans to build any actual outdoor recreation area at the Elizabeth facility.⁴⁶

C. Type of Recreation Available

The Elizabeth Detention Facility Orientation Brochure (hereinafter "Brochure") states:

[R]ecreation activities are provided as a means to build up energy and to keep detainees in good physical condition. Such indoor and outdoor activities may include basketball, volleyball, table tennis, weight lifting, keyboard and board games. This facility also provides a library for reading pleasure and a separate legal reference library.

Special activities are also provided at the facility. These activities may include English classes, which are offered twice a week in the evenings, and also religious services. Schedules for the special activities are posted in each dormitory.⁴⁷

Furthermore, the Detainee Handbook states:

[A]ctivities for inside and outside recreation have been provided as a means to release built up energies and to keep in good physical condition. There will be a minimum of one hour of recreation daily. If possible, both indoor and outdoor recreation will occur. Such activities may include basketball, handball, table tennis and a universal gym.

Recreation will start in the morning with dorms scheduled for indoor recreation and a different group for outdoor recreation. Outdoor recreation will be held, weather permitting. Each morning a new dorm area will start the rotation.⁴⁸

The delegation noted that basketball and volleyball courts were available in the "outdoor" recreation area. Universal weights were also available. The indoor areas featured room for soccer, a treadmill, and videogames. Art materials were also available and the delegation observed artwork and murals created by detainees.

⁴⁵ Interview with [REDACTED] (Egypt), INS [REDACTED], on July 9, 2001.

⁴⁶ Conversation with [REDACTED], District Director for New Jersey, on July 9, 2001.

⁴⁷ INS Elizabeth Detention Facility Orientation Brochure (June 2000) at 8.

⁴⁸ Detainee Handbook (June 2000) at 5.

D. Extent of Recreation

Detainees at the Elizabeth facility are allowed at least one hour per day to recreate, with this time often extended longer. An interview with a detainee revealed that these times are usually extended to two hours of outdoor recreation plus one hour of indoor recreation per day for each day of the week.⁴⁹

E. Recreation for Detainees in Segregation

Detainees in segregation are entitled to the same recreation privileges as other detainees, which is one hour per day for each day of the week, but they must recreate alone for security reasons.⁵⁰

VII. Classes

The Detainee Handbook states:

Special activities are also provided at the facility and are considered a privilege and not mandatory to attend. Such activities may include religious services (such as Juma prayer, Catholic services, and meetings with the Rabbi) and recreational activities. Special activities will be posted in the dormitory with sufficient notice to inform you of the time, place, and date of the event.⁵¹

Furthermore, the Brochure provides:

Special activities are also provided at the facility. These activities may include English classes, which are offered twice a week in the evenings, and also religious services. Schedules for the special activities are posted in each dormitory.⁵²

The delegation observed a posting for bible study in the dormitory. The posting noted that Bible study in English is offered Mondays at 6:30 to 7:15 p.m. and Wednesdays at 7:30 to 8:15 p.m.⁵³

Although live English classes were cancelled in early 2000, INS makes available ESL in the dormitories via video daily at 3:00 p.m.⁵⁴

⁴⁹ Interview with detainee [REDACTED] (Nepal), INS [REDACTED] on July 9, 2001.

⁵⁰ Detainee Handbook (June 2000) at 5 and Conversation with [REDACTED], District Director for New Jersey, on July 9, 2001.

⁵¹ Detainee Handbook (June 2000) at 6.

⁵² INS Elizabeth Detention Facility Orientation Brochure (June 2000) at 8.

⁵³ Mr. [REDACTED] notes

⁵⁴ Mr. [REDACTED] notes

Given the discrete nature of the noncriminal asylum-seeking constituency, rehabilitation classes are not offered and would be unnecessary unless in the area of mental health for victims of torture.⁵⁵

In conclusion, although these activities are consistent with the *Standards*, it appears that INS could do more in the area of classes since, other than religious services, there does not appear to be any structured live educational activities available to the detainees.

VIII. Medical Issues

The *Standards* provide:

All detainees shall have access to medical services that promote detainee health and general well-being. Medical facilities in . . . contract detention facilities will maintain current accreditation by the National Commission on Correctional Health Care.⁵⁶ Each facility is also to have regularly scheduled times, known as sick call, when medical personnel will be available to see detainees who have requested medical services. For a facility of over 200 detainees, a minimum of five days per week is required.⁵⁷ The INS policy with respect to emergency care states, “if a detainee requires emergency medical care, the officer will immediately take steps to contact a health care provider through established procedures.”⁵⁸

The Detainee Handbook further provides:

Medical services are provided by the U.S. Public Health Service (“USPHS”). The function of the medical staff is to ensure that your health is adequately maintained and problems, which occur during your stay at this facility, are resolved. After completion of processing, you will be seen by the clinical staff in the medical department. During your stay, should you experience a medical problem, ask a staff member for permission to see the nurse immediately.⁵⁹

The *Handbook* outlines procedures for entry-level appraisal by a registered nurse including screening for syphilis, tuberculosis and other communicable or chronic diseases.⁶⁰ This is followed by a general physical examination by a physician assistant or physician for the purposes of identifying medical problems for possible immediate treatment or follow-up care.⁶¹

⁵⁵ Mr. [REDACTED] notes

⁵⁶ Detention Operation Manual, Section 24 at 1.

⁵⁷ Detention Operation Manual, Section 24 at 5.

⁵⁸ Detention Operation Manual, Section 24 at 6.

⁵⁹ Detainee Handbook, (June 2000) at 6.

⁶⁰ Detainee Handbook, (June 2000) at 6.

⁶¹ Detainee Handbook, (June 2000) at 8.

Detainees who fall ill must obtain a sick call slip from a correctional officer, complete the sick call slip, and drop the request into the box marked by a red cross. Sick call is conducted twice daily during the week. On the weekend and after-hours, sick call is limited to emergency and acute illness.⁶²

Medication is distributed by the facility pharmacist and certain medications are dispensed individually by the staff nurse with a visit to the clinic.⁶³

A. General Access to Healthcare

At the Elizabeth facility, the delegation interviewed Captain [REDACTED], the Clinical Director, who has been an internist with the facility for five years. Commander [REDACTED] is the USPHS pharmacist. There is one Physician Attendant, one Nurse Practitioner and a USPHS periodontist. These practitioners are all accredited by NCCHS and JACCQ. They are available twenty-four hours a day, seven days a week for medical emergencies and often receive calls after-hours.⁶⁴ Procedures for requesting medical care were posted conspicuously in the facility, as were signs referring to health service studies conducted by the National Commission for Correctional Health Care and the Lawyers Committee for Human Rights.⁶⁵

The medical staff uses the ATT Language Line for medical interpretation. Dental care is outsourced to a local dentist. Emergency treatment, including psychiatric is outsourced to two local hospitals. The medical staff makes OB/GYN referrals and also has a contract psychiatrist who can make referrals. The medical staff is capable of providing detainees with glasses when necessary. The pill line is run three times each day.⁶⁶

The USPHS staff is responsible for handling the medical complaints⁶⁷, but there is no complaint procedure specified in the Detainee Handbook, nor are forms available to the detainees in their dormitories.⁶⁸

Generally, the medical staff considers its role to maintain the detainee's basic health and intervene in emergency situations. Thus, no non-essential treatment, such as preventative or cosmetic treatment is provided. The medical staff believes their ethical duty as physicians comes first. The budget and costs are still considered, albeit later. All medical staff is aware of and monitors their expenses against their budget.⁶⁹ Generally, the medical and mental health policies and procedures appeared generally consistent with the *Standards*.

⁶² Detainee Handbook, (June 2000) at 9.

⁶³ Detainee Handbook, (June 2000) at 8.

⁶⁴ Interview with Captain [REDACTED] Clinical Director, on July 9, 2001.

⁶⁵ Mr. [REDACTED] notes

⁶⁶ Interview with Captain [REDACTED] Clinical Director, on July 9, 2001.

⁶⁷ Interview with [REDACTED] District Director for New Jersey, on July 9, 2001.

⁶⁸ Mr. [REDACTED] notes

⁶⁹ Interview with Captain [REDACTED] Clinical Director, on July 9, 2001.

B. Privacy and Consent

Detainees are required to sign consent forms for examinations and invasive procedures.⁷⁰

Generally, medical information is confidential to USPHS and only accessible to the detainee's lawyer through F.O.I.A. The F.O.I.A. requirement for medical file access seems inconsistent with the *Standards*, which provide greater access to medical records when authorized by the detainee. By comparison, other facilities use a USPHS medical request form that the detainee signs to consent to attorney file access.

Although USPHS is under contract with INS, individual cases are not reported to INS. However, weekly meetings are held on Wednesday mornings between USPHS, INS, and the CCA staff to discuss facility issues.⁷¹ Thus, it is unclear whether USPHS staff shares individual medical information with INS. Further inquiry and examination of the USPHS-INS contract is necessary.

Detainees who cannot fill out the medical request form in English will have other detainees fill it out or stop the nurse during her rounds to dormitories for sick call or the pill line.⁷² This compromises the detainee's reasonable expectation of privacy in his medical status.

C. H.I.V.

Detainees are not screened for H.I.V. unless there are visible indicators or they request a screening. Detainees with H.I.V. are not segregated from the rest of the population unless it is medically necessary for the detainees' health or protection.⁷³

IX. Religious Issues

The *Standards* provide that detainees of different religious beliefs will be provided reasonable and equitable opportunities to participate in the practices of their respective faiths. These opportunities must exist equally regardless of the number of practitioners of the religion or whether the religion is "mainstream" or not.

At the Elizabeth facility, detainees have access to religious services and articles such as crosses and rugs, as required under the *Standards*. The Elizabeth facility provides Christian, Catholic, and Muslim services at least once a week with outside volunteers.⁷⁴

⁷⁰ Interview with Captain [REDACTED] Clinical Director, on July 9, 2001.

⁷¹ Interview with [REDACTED] District Director for New Jersey, on July 9, 2001.

⁷² Interview with [REDACTED] District Director for New Jersey, on July 9, 2001.

⁷³ Interview with Captain [REDACTED] Clinical Director, on July 9, 2001.

⁷⁴ Mr. [REDACTED] notes

As noted in Part VII, *supra*, Bible study times were posted. Bible study classes are offered twice per week.⁷⁵ Although no other religious events were posted, an INS official stated that there was access to a Muslim Imam at the facility.⁷⁶ Both the Koran and the Bible were available in the recreation room library where the religious services are held. Special religious diets are provided to detainees upon referral by the medical staff at USPHS.⁷⁷

There seems to be a lack of access to individual religious counseling, as there is no time for religious counseling after services.⁷⁸ Although religious volunteers are permitted to visit from 6:00 a.m. to 10:00 p.m., it is unclear whether they can provide individual counseling.⁷⁹ This may be due to security reasons.

X. Other Issues

A. Detainee Classification

As the Elizabeth facility is a non-criminal facility, detainees are not classified by security or safety issues except for those placed in the Special Housing Unit (“S.H.U.”). The S.H.U. is a hall of individual cells for administrative and disciplinary segregation. Detainees are segregated in their housing units based on sex. INS also places people slated for removal under expedited removal procedures in the S.H.U., because their detention is temporary. Segregation of detainees slated for expedited removal is troubling, as these detainees should not be treated in the same manner as a detainee being disciplined.⁸⁰

B. Accommodations

The Detainee Handbook provides, “[C]lean linens are provided for each person entering the facility to include two sheets, one towel, one hand towel, one pillow case, and two blankets.”⁸¹ The Handbook also provides a schedule for laundering linens, personal items, and jumpsuits.

Detainees sleep in cells with several beds in their housing unit. Toilets and showers are available.⁸² Some of the detainees interviewed stated that they sleep in a room for six.⁸³ It is unclear whether these cells are locked during sleeping hours. Individual Special Housing Units each come equipped with a toilet. Detainees are provided with a linen change consisting of fresh sheets, blankets, and pillows once per month. Fresh clothing is provided once per week. Free toiletry kits consisting of a comb,

⁷⁵ Mr. [REDACTED] notes

⁷⁶ Ms. [REDACTED] notes

⁷⁷ Mr. [REDACTED] notes

⁷⁸ Interview with detainee [REDACTED] (Nepal), INS [REDACTED], on July 9, 2001.

⁷⁹ Mr. [REDACTED] notes

⁸⁰ Mr. [REDACTED] notes

⁸¹ Detainee Handbook, (June 2000) at 9.

⁸² Mr. [REDACTED] notes

⁸³ Interview with detainees [REDACTED] and [REDACTED] on July 9, 2001.

toothbrush, soap, and shampoo are provided to each detainee. Additionally, detainees have access to razors on a daily basis.⁸⁴

C. Personal Item Retention

The Orientation Brochure allows for property to be dropped off for detainees limited to forty pounds per detainee.⁸⁵ Permitted items include clothing and shoes. Toiletry items are not permitted. All property is subject to search.⁸⁶ Visitors may also leave money with a designated staff member for deposit into the detainee's account.

As prescribed by the handbook⁸⁷, detainees are permitted to retain the following: small religious items, soft-covered religious and secular reading materials, legal documents and papers, prescription glasses, dentures, address books, personal correspondence, a wedding ring, and up to ten 5'' x 7'' photographs.⁸⁸ These are kept in bins located under the detainee's bed.⁸⁹ Other property is itemized and stored.⁹⁰

D. Dietary Requirements

A detainee has the freedom to request special dietary needs. Special dietary lists are posted near the kitchen. Most diets endeavor to include 2500-3000 calories per day.⁹¹

E. Detainee Work Program

The Detainee Handbook provides:

[D]etainees can volunteer to perform tasks associated with the operation of the facility. Such tasks may include general sanitation, working in food service, laundry and other tasks. All work outside the dormitory is on a voluntary basis. Eligibility will be determined by INS who will prepare a volunteer worker list of detainees who have medical clearance. INS will refer these detainees to the CCA for work. All volunteer detainee workers will be paid \$1.00 per day for their services. Detainees may sign up at any time by submitting a request to INS.⁹²

The delegation noted that these opportunities were available for the detainees at the Elizabeth facility—all non-segregation detainees are permitted to work voluntarily at the rate of \$1.00 per day.⁹³

⁸⁴ Mr. [REDACTED] notes

⁸⁵ INS Elizabeth Detention Facility Orientation Brochure (June 2000) at 9.

⁸⁶ Mr. [REDACTED] notes

⁸⁷ See Detainee Handbook, (June 2000) at 13.

⁸⁸ Ms. [REDACTED] notes

⁸⁹ Interview with [REDACTED], District Director for New Jersey, on July 9, 2001.

⁹⁰ Mr. [REDACTED] notes

⁹¹ Ms. [REDACTED] notes

⁹² Detainee Handbook, (June 2000) at 8.

⁹³ Mr. [REDACTED] notes

F. Grievance and Disciplinary Procedures

The handbook provides for the posting of disciplinary and grievance procedures in the housing units. The handbook also provides for an informal grievance process wherein Detainee Request Forms are made available in the dormitory in case of complaints, suggestions, or concerns regarding areas governed by the CCA. These forms are to be completed and dropped off in the INS box, and will be picked up on a daily basis and responded to as soon as possible.⁹⁴

The Handbook also states that the policy for the formal grievance process must be posted on the dormitory bulletin board.⁹⁵ The Handbook continues:

It is the policy of the Corrections Corporation of America to encourage resolution of complaints at the lowest possible level since grievances should be, whenever possible, resolved through direct contact with staff responsible for the particular problem area. However, all detainees shall have access to the formal grievance procedures any time the informal process has not provided successful resolution of the complaint. Neither employees nor detainees shall be subject to retaliation, reprisal, harassment or discipline for use of participation in the grievance procedures. Any allegations of this nature will be thoroughly investigated by the Facility Warden and reviewed by the corporate office.

Once a detainee decides to file a formal complaint, a grievance form must be obtained from the Correctional Officer working at the post duty station where the detainee resides. This form must be completed and filed within seven days of the alleged incident. The completed form must be placed in the box in the dormitory marked “grievances.” The Facility Grievance Officer shall, within five days of receipt of the grievance, conduct an investigation of the grievance and render a written response to the detainee. If the detainee wishes to appeal the response to the Facility Warden (the highest administrative authority), he or she has five days to complete the section of the grievance form described as “State Reason(s) for Appeal” and place the form back into the grievance mailbox. The Facility Warden will render a written decision on the grievance appeal within fifteen days of receipt from the detainee. This decision is considered final to any grievance matter. Upon notice to the grievant, the time limitations may be extended for an additional thirty days to allow for a more complete investigation of the claims contained in the grievance.⁹⁶

The delegation did not observe postings for disciplinary and grievance procedures, nor did they observe the informal grievance process Detainee Request Forms or the grievance mailbox, but this maybe due to the fact that they visited an uninhabited

⁹⁴ See Detainee Handbook, (June 2000) at 11.

⁹⁵ See Detainee Handbook, (June 2000) at 11.

⁹⁶ See Detainee Handbook, (June 2000) at 21.

housing unit.⁹⁷ Furthermore, one of the detainees interviewed described his frustration after having written the INS Deportation Officer regarding his lost luggage three or four times since his arrival. The detainee believes that some of his luggage was sent back to Japan by the airline. His luggage contained original documents that would substantiate his asylum claim. The INS has not responded to his grievances.⁹⁸

The Detainee Handbook also outlines the disciplinary procedures, listing all offenses and corresponding penalties governing the detainees in the facility and providing for oral communication of these matters upon detainee processing. The disciplinary procedures are to be posted conspicuously throughout the facility.⁹⁹

The Handbook's disciplinary procedure is lacking in that it does not describe the detainee's rights in the process. The Disciplinary Board is a joint CCA-INS entity where detainees have the right to be represented by CCA staff and the INS Officer In Charge is responsible for the result. Outside representation, such as by attorneys or fellow detainees, is not permitted in these proceedings.¹⁰⁰

At the Elizabeth facility, the delegation did not notice posted disciplinary procedures.

Conclusion

Overall, the staff at the Elizabeth detention facility were informed of the *Standards* and indicated that continued efforts are being made to ensure implementation and compliance. However, as noted by this delegation, there is significant room for improvement, particularly with respect to the provision of multilingual Detainee Handbooks to detainees and updating and improving the legal resources available to the detainees in the law library.

⁹⁷ Mr. [b6] notes

⁹⁸ Interview with detainee [b6, b7C] (Nepal), INS [b6, b7C] on July 9, 2001.

⁹⁹ See *Detainee Handbook*, (June 2000) at 14-19.

¹⁰⁰ Interview with [b6, b7C] District Director for New Jersey, on July 9, 2001.