

MEMORANDUM

To: Victor Cerda, Acting Director, Office of Detention and Removal

Cc: ABA Commission on Immigration

From: American Bar Association Delegation to the Queens Detention Center

Re: Report on Observations during a General Tour of the Queens Detention Center in Queens, NY

Date: September 15, 2004

I. EXECUTIVE SUMMARY

In 2000, the Immigration and Naturalization Service created a set of thirty-eight standards (“*Standards*”) designed to ensure secure and humane treatment of immigration detainees at detention facilities. The American Bar Association tasked delegations to tour various detention facilities. Our delegation¹ visited the Queens Detention Center, Queens, New York (“QDC”), a detention facility to which the *Standards* apply, to determine implementation of the *Standards* related to access to legal assistance and basic treatment. The delegation toured QDC for approximately three hours on March 10, 2004. This report (“Report”) is based on observations by the delegation during the tour, as well as discussions with QDC staff, interviews with three ex-detainees and with an attorney from a legal services provider with clients at QDC, and follow-up communications with QDC staff.

The delegation determined that QDC had implemented many sections of the *Standards* related to legal access and basic treatment. There were, however, some significant areas of concern. Aside from treatment concerns, and severe limits of the physical facilities, essential legal materials available to detainees were inadequate and dated, harming, rather than facilitating detainees’ ability to prepare asylum claims. Space for detainees and word processing equipment in the law library were unduly limited and ex-detainees reported instances of access to the law library below the minimum required by the *Standards*.

¹ Members of the delegation are listed at the end of the Report.

II. INTRODUCTION

In 2000, the former Immigration and Naturalization Service (INS)² created the “*INS Detention Standards*” (“*Standards*”) to ensure the “safe, secure and humane treatment” of immigration detainees. The thirty-eight standards, collected in a Detention Operations Manual,³ cover a broad spectrum of issues ranging from visitation policies to grievance procedures and food service. These standards apply to Immigration and Customs Enforcement (“ICE”)-operated detention centers and other facilities that house immigration detainees as part of a contract or intergovernmental service agreement.

The *Standards* went into effect at ICE-operated detention facilities on January 1, 2001. ICE intended to phase-in the standards in all of its contract and intergovernmental service agreement (“IGSA”) facilities by December 31, 2002. The *Standards* constitute a “floor,” and not a “ceiling,” for treatment of immigration detainees. In other words, they are meant to establish the minimal requirements that ICE must satisfy in its facilities. Each Officer in Charge (“OIC”) may, at his or her discretion, enact policies and practices affording ICE detainees more enhanced rights and protections than those provided for by the *Standards*. The American Bar Association (“ABA”) requested that the delegation tour the Queens Detention Center, Queens, New York (“QDC” or “Facility”) in order to determine if QDC had implemented the *Standards* related to access to legal assistance and basic treatment.

A. The Delegation’s Report

The visit took place on a single day, March 10, 2004, for approximately three hours. OIC (b)(6), (b)(7)c provided a walking tour, during which the delegation spoke with OIC (b)(6), (b)(7) and several members of QDC’s staff, including Officer (b)(6), (b)(7)c, Kitchen Supervisor (b)(6), Medical Director (b)(6) and Detention Officer Supervisor (b)(6), (b)(7)c.

The Report is based on (a) the delegation’s observations and the discussions the delegation had with these QDC staff members during the walking tour; (b) an interview with an attorney from a legal services provider with clients at QDC; (c) interviews with three ex-QDC detainees to obtain their perspectives on operations and compliance with the *Standards* at QDC;

² Effective March 1, 2003, the INS ceased to exist as an agency of the Department of Justice. The INS’s immigration enforcement functions were transferred to Immigration and Customs Enforcement (“ICE”), a division of the Department of Homeland Security (“DHS”).

³ ICE, Detention Operations Manual, *available at* www.ice.gov/graphics/dro/opsmanual/index.htm.

and (d) follow-up communications with QDC. Two of the three ex-detainees had been released from QDC within days of the delegation’s visit, and both had been detained there for multiple years. The third detainee had been detained at QDC for almost a month in 2003. In some instances, ex-detainee reports were compatible with statements made by Facility personnel and/or observations by delegation members. In such cases, the delegation was able to determine whether QDC had implemented the *Standards* and the *QDC Detainee Handbook* (“*Handbook*”) that governs rules and procedures at QDC.⁴ However, in certain instances, ex-detainee reports conflicted with statements made by Facility personnel. Where we were unable to verify the conflicting reports, the delegation was unable to determine implementation.⁵

B. General Information About QDC

1. Detainee Classification

The *Standards* require that all facilities develop and implement a system according to which detainees are classified generally based on security risk, and that the system “ensure[s] that each detained alien is placed in the appropriate category and physically separated from detainees in other categories.”⁶ Classification is to be determined by a variety of objective factors, including a history of arrests or criminal convictions, a history of violence, and incidents within a detention facility.⁷ Classification is to be done at intake and is to be made visible, e.g., through a “color-coded uniform and wristband based on [the detainee’s] classification level.”⁸ A detainee’s classification may change, including via an appeal process, and if it does the color-coding changes.⁹

QDC has implemented this section of the Standards. The *Handbook* generally tracks the *Standards* and provides notice of an appeals process regarding classification of detainees.¹⁰ OIC Regis told the delegation that ICE has three uniform colors that correspond to a detainee’s

⁴ *Handbook*, p. 4.

⁵ Drafts of the Report were provided to QDC for comment. QDC provided written and oral comment that the delegation incorporated into this final Report.

⁶ *Standards*, Detainee Classification System, Section I.

⁷ *Standards*, Detainee Classification System, Section III.D.

⁸ *Standards*, Detainee Classification System, Section III.B.

⁹ *Standards*, Detainee Classification System, Sections III.G-H.

¹⁰ *Handbook*, pp. 6-7.

security risk: red (high), orange (medium), and blue (low).¹¹ She added that no criminal aliens were housed at QDC.¹² All detainees that the delegation observed wore blue uniforms.¹³

III. OBSERVATIONS OF IMPLEMENTATION OF LEGAL ACCESS STANDARDS

A. LEGAL ACCESS/VISITATION

1. Visitation by Attorneys and Legal Representatives

The *Standards* provide that facilities must allow detainees to meet privately with their current or prospective legal representatives and their legal assistants.¹⁴ Legal visits must be permitted seven days a week, for a minimum of eight hours per day on weekdays and a minimum of four hours per day on weekends and holidays.¹⁵ On regular business days, the visits may proceed through mealtime, and the detainee must be able to receive a meal after the visit is over.¹⁶ The standards for legal visits apply not only to attorneys, but also to legal assistants, interpreters, and messengers with legal documents.¹⁷ While state bar cards are the preferred method of identification for attorneys, attorneys may present other documentation to verify their identity.¹⁸ Facilities are also required to establish procedures allowing for attorneys to call the facility in advance to determine whether a particular individual is being detained there.¹⁹

The Facility has implemented this section of the *Standards*, but the delegation is concerned about detainees' access to legal assistance while detained off-site at medical/psychiatric facilities.

The *Handbook* states that attorneys are not restricted to the normal hours of visitation. Rather, attorneys are allowed to visit detainees at the Facility from 9:00 a.m. – 9:00 p.m., seven days per week.²⁰ There is no official limit on the length of the attorney visits, but due to limited attorney visitation space, attorneys are expected to curtail visits when other attorneys are waiting

11 Notes of delegation member [REDACTED] (b)(6) [REDACTED] om interview with OIC [REDACTED] Mar. 10, 2004.

12 Notes of delegation member [REDACTED] (b)(6) [REDACTED] om interview with OIC [REDACTED] (b)(6), (b)(7) [REDACTED] Mar. 10, 2004.

13 Notes and observations of delegation member [REDACTED] (b)(6) [REDACTED] Mar. 10, 2004.

14 *Standards*, Visitation, Section III.I.1.

15 *Standards*, Visitation, Section III.I.2.

16 *Standards*, Visitation, Section III.I.2.

17 *Standards*, Visitation, Section III.I.3.

18 *Standards*, Visitation, Section III.I.4.

19 *Standards*, Visitation, Section III.I.6.

20 *Handbook*, p. 18.

to visit with clients. Attorneys may visit with detainees through meal times, although the attorneys are discouraged from doing so due to the inconvenience to the Facility.²¹ When a detainee misses a meal due to an attorney visit, an officer notifies the kitchen to hold the meal, and the meal is then re-heated and brought to the detainee.²²

However, ex-detainees Mr. X and Mr. Y both reported that on many occasions, especially when an attorney was not well-known to QDC staff, attorney visits were interrupted by guards so that they could ask the detainees questions or relay information to them although there was no emergency. In some cases, this would occur several times during the course of a single interview.²³

OIC (b)(6), (b)(7) is aware that most New York attorneys do not have bar cards, and thus attorneys are permitted to visit with clients without any formal attorney identification. The attorney on each case must file a G-28 Notice of Entry of Appearance, and other persons working with the attorney on the case such as legal assistants, interpreters, and law students will be permitted to visit the detainee if they present a letter from the attorney of record. Attorneys of record may also call the Facility to find out whether a detainee is still being housed at the Facility or has been transferred or released.²⁴

There are three relatively spacious rooms for attorney visits.²⁵ These rooms have concrete walls with one Plexiglas window, allowing for privacy and confidentiality. All attorney visitation areas allow for contact visits.²⁶ Detainees are not subject to strip searches after attorney visits; they are subject to only “pat down” searches,²⁷ in accordance with the *Standards*.²⁸ Detainees who are in administrative or disciplinary segregation have the same rights to visit with their attorneys as detainees in the general population.²⁹

21 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.
22 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) and Kitchen Supervisor (b)(6), Mar. 10, 2004.
23 Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.
24 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.
25 Notes and observations of delegation member (b)(6) Mar. 10, 2004.
26 Notes and observations of delegation member (b)(6) Mar. 10, 2004.
27 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.
28 *Standards*, Visitation, Section III.I.11. (b)(6), (b)(7)
29 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

Detainees transferred to off-site medical facilities have less access to counsel than detainees housed at QDC. In particular, detainees who are transferred by QDC to Holliswood Hospital (“Holliswood”), a private psychiatric hospital located in Queens, New York, are only allowed to see their attorneys if they are judged to be sufficiently well. It is unclear whether the officers of QDC or the treating doctor at Holliswood make the ultimate decision as to whether a visit will be allowed. An attorney seeking to visit a detainee who has been transferred to Holliswood must first obtain a letter from an officer at QDC to present at Holliswood.³⁰ QDC must, when it transfers detainees, ensure that the other facility does not unduly inhibit those detainees’ access to counsel.

With regards to initiation of contact with attorneys, the Facility posts lists of *pro bono* legal organizations near the phones in the intake holding rooms as well as by the phones in each dormitory. The Facility has a system allowing for free calls to these organizations, which was functioning properly at the time of our visit.³¹ However, an ex-detainee reported that the system did not function during a significant part of the several-week period during which he was detained, and he and other detainees had to use expensive phone cards in order to contact attorneys.³²

The directions for contacting *pro bono* legal organizations are in English, Spanish, French, and Arabic.³³ Detainees who do not understand any of these languages need to obtain the assistance of others in order to comprehend the lists and contact a lawyer. Since there is a lot of linguistic variety amongst the population at QDC,³⁴ the failure to post the directions in additional languages, although not in violation of the *Standards*, seriously impinges some detainees’ ability to access legal assistance.³⁵

Anwen Hughes, attorney at legal services provider Human Rights First, reported that this problem has been exacerbated by the fact that the Facility no longer provides legal organizations

30 Notes of delegation member [redacted] from interview with OIC [redacted] and QDC Medical Director [redacted] Mar. 10, 2004.

31 Notes of delegation member [redacted] Mar. 10, 2004.

32 Notes of delegation member [redacted] from interview with Mr. Z, Mar. 5, 2004; Notes of delegation member [redacted] from interview with Mr. Z, Mar. 5, 2004.

33 Notes of delegation member [redacted] from interview with Deportation Officer Supervisor [redacted] Sept. 8, 2004.

34 Notes of delegation member [redacted] from interview with OIC [redacted] Mar. 10, 2004.

35 Notes of delegation member [redacted] from interview with Mr. X and Mr. Y, Apr. 30, 2004.

with periodic lists of new detainees. The Facility's former practice of notifying organizations of new detainees allowed the organizations to prepare Group Legal Rights Presentations in the languages of the new arrivals and to easily screen them for possible representation. Currently, organizations are not aware of new detainees unless a detainee either phones them or signs up on lists in the dormitories, which again is difficult due to list instructions being in a limited number of languages.³⁶

2. Visitation by Family and Friends

To maintain detainee morale and family relationships, the *Standards* encourage visitation with family and friends.³⁷ To that end, the *Standards* require that all detention facilities allow visitation and establish written visitation procedures.³⁸ The *Standards* require a minimum of thirty minutes per visitation, under normal conditions, and encourage longer visits when possible.³⁹ The Facility must allow visitation by immediate family members, and other relatives, friends, and associates.⁴⁰

The Facility has implemented this section of the *Standards*. QDC provides for visitation by family and friends, and sets forth its written visitation procedures in both the *Handbook* provided to detainees upon arrival⁴¹ and in fliers posted throughout the Facility.⁴² Visiting hours are split into two groups, with three weekday and Sunday hours for persons with a last name beginning A-L and two weekday and Saturday and Sunday hours for persons with a last name beginning M-Z.⁴³ The OIC stated that the Facility tries to accommodate visitors who cannot visit during a detainee's allotted visitation time, but the OIC also made clear that the Facility prefers not to alter the schedules to make an accommodation.⁴⁴

Mr. X and Mr. Y stated that because their friends lived far away and could only travel to the Facility on the weekends, there were problems with visitation since they were only allowed a

³⁶ Notes of delegation member (b)(6) from interview with (b)(6) Esq., Staff Attorney at Human Rights First, Mar. 9, 2004.

³⁷ *Standards*, Visitation, Section I.

³⁸ *Standards*, Visitation, Section III.H.1.

³⁹ *Standards*, Visitation, Section III.H.1.

⁴⁰ *Standards*, Visitation, Section III.H.2.

⁴¹ *Handbook*, p. 17.

⁴² Notes and observations of delegation member (b)(6) Mar. 10, 2004.

⁴³ *Handbook*, p. 17.

⁴⁴ Notes and observations of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

visit on one of the weekend days. The Facility often would not change the schedule so that their friends could have two weekend day visits even though their friends had traveled a great distance to see them. They also reported that the system of basing visitation rights on last name often resulted in detainees being denied a visit outside their allotted time even when there were no visitors at that moment for detainees who had the time allotted under the schedule.⁴⁵ The OIC stated that couples housed at the Facility are permitted a non-contact thirty-minute visit once per week, which is shorter than the one-hour visit period stated in the *Handbook*.⁴⁶

As with attorney visits, detainees are only subject to “pat down” searches after family or friends visits.⁴⁷

B. PHONE ACCESS

The *Standards* require that facilities provide detainees with reasonable and equitable access to phones.⁴⁸ In order to meet this requirement, facilities must provide at least one phone for every twenty-five detainees and written phone access rules to each detainee.⁴⁹

The QDC Facility has implemented some sections of the *Standards* regarding phone access, but has failed to implement other sections. The housing unit the delegation observed had four phones and a maximum of forty detainees. The phones are intended to be operational twenty-four hours per day, seven days per week.⁵⁰ Detainees may use the phones at any time except during “count” times.⁵¹

Instructions regarding usage of the phone system are posted next to the phones in English and Spanish. Detainees may purchase pre-paid calling cards from the Facility if they have sufficient money in their accounts with the Facility.

1. Direct Calls

45 Notes of delegation member [REDACTED] from interview with Mr. X and Mr. Y, Apr. 30, 2004.
46 Notes of delegation member [REDACTED] (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.
47 Notes of delegation member [REDACTED] from interview with OIC [REDACTED] (b)(6), (b)(7) Mar. 10, 2004; Notes of delegation member [REDACTED] (b)(6) from interview with Mr. Z, Mar. 5, 2004.
48 *Standards*, Telephone Access, Sections I & III.A.
49 *Standards*, Telephone Access, Sections III.B-C.
50 *Handbook*, p. 13.
51 *Handbook*, p. 9.

According to the *Standards*, a facility must permit detainees to make direct calls to a number of organizations, including the local immigration court, the Board of Immigration Appeals, Federal and State courts, consular officials, legal service providers, and relevant government offices.⁵² Detainees must also be able to make direct calls to family members when a “compelling need” arises (to be interpreted liberally).⁵³ A facility shall not require indigent detainees to pay for the types of calls listed above if they are local calls, nor for non-local calls if there is a compelling need.⁵⁴ Moreover, regardless of whether the detainee is indigent, the facility must provide a detainee with the ability to make calls to the ICE-approved list of legal service providers and consulates at no charge to the detainee or the receiving party.⁵⁵ Also, detainees in the Segregation Unit for either disciplinary or non-disciplinary reasons (e.g., protective custody, suicide risk) shall have the same rights to make direct calls as detainees in the general population.⁵⁶

QDC has implemented this section of the *Standards*. The *Handbook* states that emergency calls are forwarded to detainees immediately.⁵⁷ The Unit Housing Officer will assist detainees in returning emergency phone calls when access to the phone is not available.⁵⁸

Detainees are able to make calls to the ICE-approved list of legal service providers and consulates at no charge to the detainee or the receiving party. The delegation confirmed this successfully using the instructions and list of legal service providers and foreign consulates posted at the intake area to call a legal service provider. However, one ex-detainee reported that the system for such free calls did not work for a significant part of the several-week period he was detained at QDC, and detainees had to use phone cards instead.⁵⁹ There was a list of legal service providers in the intake area visited by the delegation.

The *Handbook* also states that detainees in the Segregation Unit for disciplinary reasons are allowed unlimited phone privileges during out-of-cell time; detainees in the Segregation Unit

⁵² *Standards*, Telephone Access, Section III.E.

⁵³ *Standards*, Telephone Access, Section III.E.

⁵⁴ *Standards*, Telephone Access, Section III.E.

⁵⁵ *Standards*, Telephone Access, Section III.E.

⁵⁶ *Standards*, Telephone Access, Section III.G.

⁵⁷ *Handbook*, p. 13.

⁵⁸ *Handbook*, p. 13.

⁵⁹ Notes of delegation member (b)(6) from interview with Mr. Z, July 5, 2004.

for non-disciplinary reasons are allowed the same phone privileges as detainees in the general population.⁶⁰

2. Privacy and Phone Usage Restrictions for Phone Calls Regarding Legal Matters

The *Standards* provide two sets of rules regarding phone usage restrictions.⁶¹ One set of rules governs calls regarding legal matters, while the other set governs calls unrelated to legal matters. With respect to legal phone calls, the *Standards* provide that a facility shall not restrict the number of detainee calls to legal representatives, nor limit the duration of such calls by rule or automatic cut-off, unless necessary for security purposes or to maintain orderly and fair access to phones.⁶² If time limits are necessary for such calls, they shall be no shorter than twenty minutes, and the detainee shall be allowed to continue the call at the first available opportunity.⁶³

Further, the facility must ensure privacy for all detainee phone calls regarding legal matters. The facility must provide a reasonable number of phones on which detainees can make such calls without being overheard by officers, other staff, or other detainees.⁶⁴ The *Standards* also explicitly prohibit the facility and its personnel from monitoring or recording phone calls on legal matters, absent a court order.⁶⁵

The QDC Facility has not fully implemented this section of the *Standards*. The delegation is concerned about the Facility's implementation of the privacy requirements for phone calls regarding legal matters under the *Standards*. QDC conflicts with the *Standards* by preventing detainees from making phone calls for legal assistance without being overheard by QDC personnel and by other detainees. The phones in each housing unit are not private, and are located in open areas. The individual phones are separated by side partitions, extending approximately from the user's waist height to head height, and about one and one-half feet out from the wall. In the housing unit that the delegation observed, the phones were located approximately ten feet from the position in the unit normally occupied by the guard. Thus it appeared that a guard, as well as other detainees, could hear a detainee's legal communication.

⁶⁰ *Handbook*, p. 13.

⁶¹ *Standards*, Telephone Access, Section III.F.

⁶² *Standards*, Telephone Access, Section III.F.

⁶³ *Standards*, Telephone Access, Section III.F.

⁶⁴ *Standards*, Telephone Access, Section III.J.

⁶⁵ *Standards*, Telephone Access, Section III.J.

Ex-detainee Mr. Z also stated that the guard and other detainees could at times overhear detainees' phone conversations.⁶⁶ QDC has implemented the *Standard's* provision regarding call duration limits.

Office (b)(6), (b)(7) stated that the Facility is capable of taping detainee calls, but does not do so.⁶⁷ The Facility, however, records the phone numbers called by detainees.⁶⁸

3. Privacy and Phone Usage Restrictions for Other Calls

As for phone calls not related to legal matters, the facility may restrict the number and duration of such calls for the following reasons only: availability (i.e., the usage demands of other detainees); orderly operation of the facility (e.g., scheduled detainee movements, court schedules, meals, counts); and emergencies (e.g., escapes, escape attempts, disturbances, fires, power outages).⁶⁹

The *Standards* also provide that a facility may monitor all detainee phone calls of a non-legal nature.⁷⁰ If a facility monitors calls, it must notify detainees upon admission and place a notice at each monitored phone.⁷¹ The notice must state that detainee calls are subject to monitoring and must provide the procedure for obtaining an unmonitored call for legal purposes.⁷²

The QDC Facility has implemented this section of the *Standards*. The *Handbook* states that normally there are no limitations on the number or duration of calls a detainee may make.⁷³ However, when phone demand is high detainees must limit call duration to twenty minutes, so that other detainees may use the phones as well.⁷⁴ The phones are operational

⁶⁶ Notes of delegation member (b)(6) from interview with Mr. Z, Sept. 2, 2004. OIC (b)(6), (b)(7) stated that, as suggested by the *Standards*, Telephone Access, QDC uses side partitions ("privacy panels") to prevent detainee calls from being overheard. See fax letter from OIC (b)(6), (b)(7) to delegation member (b)(6) (b)(6) p. 4 (Aug. 13, 2004). However, the close proximity of the guard, and other detainees, in the housing unit to the phones appeared to negate the effects of side partitions for a detainee making a legal call. Ex-detainee Mr. Z's experience confirmed this conclusion.

⁶⁷ Notes of delegation member (b)(6) from interview with Officer (b)(6), (b)(7) Mar. 10, 2004.

⁶⁸ Notes of delegation member (b)(6) from interview with Officer (b)(6), (b)(7) Mar. 10, 2004.

⁶⁹ *Standards*, Telephone Access, Section III.F.

⁷⁰ *Standards*, Telephone Access, Section III.K.

⁷¹ *Standards*, Telephone Access, Section III.K.

⁷² *Standards*, Telephone Access, Section III.K.

⁷³ *Handbook*, p. 13.

⁷⁴ See Fax letter from OIC (b)(6), (b)(7) to delegation member (b)(6) p. 4 (Aug. 13, 2004).

twenty-four hours per day, seven days per week.⁷⁵ Detainees may use the phones at any time except during “count” times.⁷⁶ As with legal calls, the Facility does not tape detainee non-legal calls, but does record the phone numbers called by detainees.⁷⁷

4. Incoming Calls and Messages

The *Standards* require facilities to take and deliver messages regarding emergency and non-emergency incoming phone calls to detainees as promptly as possible.⁷⁸ If the facility receives an emergency phone call for a detainee, the facility is required to obtain the caller’s name and phone number and permit the detainee to “return the emergency call as soon as reasonably possible.”⁷⁹ Moreover, the facility must enable indigent detainees to make free return emergency calls.⁸⁰

QDC has implemented this section of the *Standards*. The *Handbook* states that incoming phone call messages for detainees are forwarded to detainees within a four-hour period, unless the call is of an emergency nature.⁸¹ Emergency calls are forwarded to detainees immediately.⁸² The Unit Housing Officer will assist detainees in returning emergency phone calls when access to the phone is normally not available.⁸³ Incoming calls regarding legal issues are accepted by the Facility until 10:00 p.m., seven days per week.⁸⁴

C. ACCESS TO LEGAL MATERIALS

The *Standards* provide that facilities “shall permit detainees access to a law library, and provide legal materials, facilities, equipment and document copying privileges, and the opportunity to prepare legal documents.”⁸⁵

⁷⁵ *Handbook*, p. 13.

⁷⁶ *Handbook*, p. 9.

⁷⁷ Notes of delegation member (b)(6) from interview with Officer (b)(6), (b)(7) Mar. 10, 2004.

⁷⁸ *Standards*, Telephone Access, Section III.I.

⁷⁹ *Standards*, Telephone Access, Section III.I.

⁸⁰ *Standards*, Telephone Access, Section III.I.

⁸¹ *Handbook*, p. 13.

⁸² *Handbook*, p. 13.

⁸³ *Handbook*, p. 13.

⁸⁴ *Handbook*, p. 13.

⁸⁵ *Standards*, Access to Legal Material, Section I.

QDC has not fully implemented the *Standards* regarding access to legal materials, including specifically failing to maintain an appropriately functional law library with updated legal materials.

1. Access to the Library

The *Standards* provide that all detainees shall have access to the library for a minimum of five hours per week. A detainee shall not be required to sacrifice time in the library for recreation time. Moreover, detainees shall be permitted to request additional time in the library.⁸⁶

The Facility has implemented this section of the *Standards*. It appears that detainees have library access for a minimum of five hours per week as required by the *Standards*. The *Handbook* states that detainees are allowed to visit the library from 7:30 a.m. until 8:30 p.m., Monday through Friday.⁸⁷

The Facility's procedures for requesting access to the law library raise additional concerns. The *Handbook* states that the sign-up sheet for library use is posted in housing units and in the holding room for newly arrived detainees.⁸⁸ The *Handbook* states that detainees request access to the library by asking a Housing Unit Officer to permit the detainee to place his or her name on the request sheet. Detainees write their names on the sheet in the morning (Mr. Z reported that detainees sign up for library access between 6:00 a.m. and 7:00 a.m.)⁸⁹ and an officer retrieves the sign-up sheet that day. OIC (b)(6), (b)(7) stated that detainees might have to wait to use the library for two to three days after signing up.⁹⁰ The officers take requests for library visits only one time per day, and often do not accommodate all requests if there are many. The Facility's failure to honor all requests in a timely manner concerns the delegation.

Equally problematic is that, in order to make only one trip to the library with detainees per day, officers sometimes bring fifteen to twenty detainees to the library at one time.⁹¹

⁸⁶ *Standards*, Access to Legal Material, Section III.G.

⁸⁷ *Handbook*, p. 16.

⁸⁸ The *Handbook* distinguishes "social" from law library use. It is not clear from our visit in what ways the procedures for requesting time to perform legal research differ from those for recreating in the library. *Handbook*, p. 16.

⁸⁹ Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004.

⁹⁰ Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

⁹¹ Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

Grouping too many detainees at once in a small space impedes meaningful use of the library, Although OIC (b)(6), (b)(7) indicated that the request system functions well because she does not receive complaints from detainees,⁹²

Detainees may request extra time in the library by submitting a form.⁹³ OIC (b)(6), (b)(7) said she encourages detainees to use the library for quiet time (to draw, read, and meditate) instead of attempting to use segregation cells to be alone.⁹⁴ Nevertheless, the cramped space of the library and its awkward configuration (an “L” shape, with one leg of the “L” constituting the law library) contribute to preventing detainees from obtaining extra time in the law library.⁹⁵ The officer on staff reported that requests for extra time might be denied if too many detainees express such an interest because of space concerns.⁹⁶ The delegation is concerned that meaningful access to the law library is hindered by lack of space.

2. Condition of the Law Library

The *Standards* provide that the library shall be quiet, with sufficient space and seating to facilitate research and writing.⁹⁷

The Facility has not implemented this section of the *Standards*. The library has seven chairs around a table about eight-feet-long. The space is just large enough for a rectangular table surrounded by a narrow aisle between it and bookshelves. There are three fluorescent lights overhead.⁹⁸ The delegation is concerned that the library does not have sufficient space for up to twenty detainees at a time to use the library, and such attempted volume has the overall effect of hindering access for all detainees.

3. Legal Materials in the Library

The *Standards* provide that the law library shall contain certain legal materials.⁹⁹ Those materials shall be updated, and the outdated materials shall be disposed of when replacement

92 Notes of delegation member (b)(6), (b)(7) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.
93 Notes of delegation member (b)(6) from interview with staff officer in library, Mar. 10, 2004.
94 Notes of delegation member (b)(6), (b)(7) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.
95 Notes and observations of delegation member (b)(6) Mar. 10, 2004.
96 Notes of delegation member (b)(6) from interview with staff officer in library, Mar. 10, 2004.
97 *Standards*, Access to Legal Material, Section III.A.
98 Notes and observations of delegation member (b)(6) Mar. 10, 2004.
99 *Standards*, Access to Legal Material, Attachment A.

materials are available.¹⁰⁰ Moreover, detainees shall be permitted to make requests for additional materials not contained in the standard library collection.¹⁰¹

The Facility has not fully implemented this section of the *Standards*. Although the library has the majority of titles of books listed by the *Standards*, the books at QDC are outdated, being editions that have been superceded or supplemented, but the library does not have the supplements. Detainees are not permitted to request books in addition to those in the library's collection. Moreover, although not required under the *Standards*, the library does not provide electronic legal research tools, such as the Internet, to supplement outdated books. A detainee cannot meaningfully use the QDC law library to prepare an immigration case without current materials.

The library, as of March 10, 2004, contained the following law books that are on the *Standards* list (date of material included where ascertained):¹⁰²

- *U.S. Code, Title 8, Aliens and Nationality* (1999, no pocket part)
- *Code of Federal Regulations* (through volume 1-103)
- *U.S. Department of Justice Interim Decisions* (1999)
- *Administrative Decisions Under Immigration and Nationality Laws* (Bureau of Immigration Appeals)

The worth of these approximately five-year-old materials, to a government adjudicator or an attorney, would be severely limited given the vast array of recent changes to the legal scheme regarding asylum. The library also contained the following law books that are on the *Standards* list:

- *Federal Reporter* (through 979 F.2d)
- *Federal Digest* (1995-1996, with pocket part for immigration cases)
- *Federal Rules of Civil Procedure* (2003)
- *Federal Criminal Code and Rules* (2001)
- *U.S. Constitution*
- *Immigration Case Reporter* (Benders)
- *Immigration Law and Defense* (National Lawyers Guild)
- *Immigration Law Procedure Reporter* (LEXIS)
- *Criminal Procedure* (LaFave)
- *Rights of Prisoners*
- *Black's Law Dictionary* (7th Edition)

¹⁰⁰ *Standards*, Access to Legal Material, Sections III.C & E.

¹⁰¹ *Standards*, Access to Legal Material, Section III.I.

¹⁰² Notes and observations of delegation member (b)(6) Mar. 10, 2004.

- *Human Rights Watch annual reports* (1996 and 1997)
- *Legal Research in a Nutshell*
- *Legal Research & Writing: Some Starting Points*
- *AILA Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure* (1st Edition) by Regina Germain¹⁰³

The final book in the list, the *AILA Asylum Primer*, is the most useful “how-to” guide currently available, but it is now in a third edition. Providing laypersons extremely outdated materials risks prejudice to their ability to address the required issues, harming rather than facilitating the asylum case. Also, U.S. Department of State Country Reports on Human Rights Practices (“Country Reports”) are preeminent sources for an Immigration Judge’s consideration in review of an asylum claim. QDC’s library had none of the Country Reports. Under the *Standards*, Country Reports are required to be in detention center law libraries.¹⁰⁴

After the delegation’s visit, to fill perceived gaps in the library collection, the delegation donated books and materials to the Facility, including: two copies of *AILA Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure* by Regina Germain (3rd Edition); one copy of *AILA Asylum Primer: A Practical Guide to U.S. Asylum Law and Procedure* by Regina Germain (2nd Edition); two copies of The Florence Project “Know Your Rights” *pro se* asylum pamphlets (in English and Spanish); and U.S. Department of State Country Reports on Human Rights Practices (2000–2003) for twenty-five selected countries. The Facility should have a process in place to identify and acquire new editions and updated Country Reports as issued.

The delegation is concerned that detainees are not made aware of the immigration texts and resources that are in the library’s collection, or how to use them.¹⁰⁵ Mr. Z reported that, during his time in detention, neither the guard nor the detainee working in the library had any knowledge of the library contents or a general idea of how a detainee could use the library to proceed *pro se* with his or her asylum case.¹⁰⁶

¹⁰³ The law library likely contained some other books in addition to those listed above.

¹⁰⁴ *Standards*, Access to Legal Material, Attachment A, no. 10.

¹⁰⁵ Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004; Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

¹⁰⁶ Notes of delegation member (b)(6) from interview with Mr. Z, May 3, 2004.

OIC (b)(6), (b)(7) stated that there was no way for detainees to obtain books that are not in the library's collection.¹⁰⁷ Accordingly, the Facility has not implemented this section of the *Standards* providing that a detainee shall be permitted to request additional legal material from the appropriate facility employee, who shall then notify the ICE contact person of the request. The *Standards* further provide that detainees facing imminent court deadlines will receive priority in obtaining additional legal materials.¹⁰⁸ The delegation is concerned that without access to additional legal materials, a detainee will be unable adequately to present his or her asylum case, and will be misled by out-of-date materials in any presentation to be made.

Of additional concern to the delegation is that the library does not contain any immigration case forms such as the I-589 Application for Asylum and for Withholding of Removal. The delegation was told that ICE would provide immigration case forms in response to a request.¹⁰⁹ Nevertheless, the lack of immediate access to immigration case forms could impede the ability of *pro se* asylum seekers to prepare their immigration cases.

The *Standards* provide that "the facility *shall* permit detainees to assist other detainees in researching and preparing legal documents upon request, except when such assistance poses a security risk" (emphasis added).¹¹⁰ The *Handbook*, however, prohibits detainees from using the law library in order to assist other detainees.¹¹¹ Despite this, it appears that QDC has implemented this *Standard* in practice, as Mr. Z stated that detainees do in fact assist one another in the law library and that this adds greatly to the quality of asylum applications.¹¹² Moreover, OIC (b)(6), (b)(7) reported that a detainee works in the library. The QDC library officer stated that he and the designated detainee help about four to five detainees in the library per week, and that detainees use the library frequently.¹¹³

107 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

108 *Standards*, Access to Legal Material, Section III.I.

109 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

110 *Standards*, Access to Legal Material, Section III.K.

111 *Handbook*, p. 16.

112 Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004.

113 Notes of delegation member (b)(6) from interview with staff officer in library, Mar. 10, 2004.

4. Equipment: Computer, Printer, Photocopy Machine, and Typewriter

The *Standards* provide that the “law library shall have an adequate number of typewriters and/or computers.”¹¹⁴ Moreover, they state that detainees shall be able to photocopy legal materials and retain copies of those materials.¹¹⁵

The Facility has not fully implemented this section of the *Standards*. The library contains one computer, one printer, one photocopying machine, and one typewriter. There is no Internet downloading of legal materials permitted on the computer. OIC (b)(6), (b)(7) explained that this is because QDC is concerned about increasing opportunities for detainees to communicate with people outside the Facility via the Internet without being able to adequately monitor that contact.¹¹⁶ However, appropriate blocking of communication to permit access to legal materials is technologically possible.

The officer in the library stated he is available to help detainees with the computer.¹¹⁷ The computer appeared to be operational, given that the delegation observed a detainee using the computer.¹¹⁸ Nevertheless, Mr. X and Mr. Y reported that detainees rarely have access to the computer, partly because they are often told it is not working.¹¹⁹

The copy machine is free for detainees. In accordance with the *Standards*,¹²⁰ OIC (b)(6), (b)(7) reported that detainees are permitted to retain photocopies made in the library and legal materials generally.¹²¹ Mr. Z confirmed this, although he expressed concern that guards (either the guard who assists detainees with making photocopies in the library or the guard in the dormitory) are able to view a detainee’s photocopies.¹²²

D. Group Legal Rights Presentations

In order to “instruct detainees about the immigration system and their rights and options within it,” the *Standards* require that facilities “permit authorized persons to make presentations to groups of detainees for the purpose of informing them of U.S. immigration law and

114 *Standards*, Access to Legal Material, Section III.B.

115 *Standards*, Access to Legal (b)(6) II.J.

116 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

117 Notes of delegation member Rachel Braunstein from interview with staff officer in library, Mar. 10, 2004.

118 Notes and observations of delegation member (b)(6) Mar. 10, 2004.

119 Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

120 *Standards*, Access to Legal Material, Section III.K.

121 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

122 Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004.

procedures, consistent with the security and orderly operation of each facility.”¹²³ Legal entities wishing to make such presentations must be approved by ICE and give proper notice of such presentations.”¹²⁴ Approved presentations must be given in “an environment conducive to the presentation,” may include the distribution of ICE-approved written materials, and may also be followed by individual counseling of detainees.¹²⁵

The Facility appears to have implemented this section of the *Standards*. The Facility *Handbook* notes that, “at times, notifications will be posted to announce Group Legal Rights presentations,” which gives detainees the opportunity to sign-up to participate.¹²⁶ Those in segregation are allowed to participate “if security is not compromised.”¹²⁷ Group Legal Rights presentations are conducted at the Facility by the Catholic Legal Immigration Network, Inc. (CLINIC), Human Rights First, and other organizations.¹²⁸ These are normally available on Tuesdays and Fridays, and are generally available in English, French, or Spanish.¹²⁹ The Facility also shows a “Know Your Rights” video, created by an immigrants’ rights organization, during the intake process in the holding area.¹³⁰

1. Immigration Court

The Facility has an immigration court on site in the building. Detainees are transported to the court on foot in the company of a guard without shackles or any other restraints. Detainees may have their attorney or others accompany them to hearings at the court.¹³¹

123 *Standards*, Group Presentation on Legal Rights, Section I.

124 *Standards*, Group Presentation on Legal Rights, Sections III.A & Attachment A.

125 *Standards*, Group Presentation on Legal Rights, Sections III.E-G.

126 *Handbook*, p. 18.

127 *Handbook*, p. 18.

128 Notes of delegation member (b)(6) from interview with OIC (b)(6) Mar. 10, 2004.

129 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

130 Notes and observations of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

131 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004; Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004.

IV. OTHER GENERAL OBSERVATIONS UNRELATED TO THE LEGAL ACCESS STANDARDS

A. DETAINEE HANDBOOK

According to the *Standards*, a detainee handbook will be put together for each facility by the OIC of that facility for the use of detainees and staff. The detainee handbook is to “serve as an overview of, and guide to, the detention policies, rules, and procedures” of the facility.¹³² The handbook “will also describe the services, programs, and opportunities available through various sources, including the facility, ICE, private organizations, etc.”¹³³ The *Standards* require that the handbook be translated into Spanish and “if appropriate, into the next-most prevalent language(s) among the facility’s detainees.”¹³⁴

QDC has not fully implemented this section of the *Standards*. While QDC has published a detainee handbook, QDC has not fully implemented the *Standards* regarding translation of such manuals. The *Handbook* is only available in English, Spanish, and French,¹³⁵ although many QDC detainees read none of these languages. Subsequent to the delegation’s visit, OIC (b)(6), (b)(7) stated that the Facility is in the process of having the *Handbook* translated into Chinese.¹³⁶ Former detainees stated that familiarity with the *Handbook* was crucial to their ability to know their rights and responsibilities and to hold QDC staff accountable to the rules.¹³⁷ While QDC explains the *Handbook* to a new detainee via a telephonic language interpreter if necessary during the intake process,¹³⁸ there is no substitute for day-to-day access to the *Handbook* in the detainee’s language so that the rules may be consulted. The *Handbook* should be translated into additional languages common among the detainees as stated in the *Standards*.¹³⁹

132 *Standards*, Detainee Handbook, Section I.

133 *Standards*, Detainee Handbook, Section I.

134 *Standards*, Detainee Handbook, Section III.E.

135 Notes of delegation member (b)(6) from interview with Deportation Officer Supervisor (b)(6), (b)(7)c Sept. 8, 2004.

136 Fax letter from OIC (b)(6), (b)(7) to delegation member (b)(6), 3 (Aug. 13, 2004).

137 Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

138 Fax letter from OIC (b)(6), (b)(7) to delegation member (b)(6) (Aug. 13, 2004).

139 Notes of delegation member Rodger Hurley from interview with Mr. X and Mr. Y, Apr. 30, 2004.

B. DETAINEE GRIEVANCE PROCEDURES

The *Standards* require that every facility develop and implement procedures for addressing detainee grievances.¹⁴⁰ The facility should initially seek to resolve grievances informally before moving to the formal grievance procedure where all communications between the detainee and the facility must be in writing.¹⁴¹ The facility must provide detainees translation assistance for both formal and informal grievances upon request.¹⁴² The *Standards* also require that each facility establish a reasonable time limit for: (1) “processing, investigating, and responding to grievances;” (2) “convening a grievance committee to review formal complaints;” and (3) “providing written responses to detainees who filed formal grievances, including the basis for the decision.”¹⁴³ All grievances must receive supervisory review; the procedure includes guarantees against reprisal, and allows for appeals.¹⁴⁴

QDC has implemented some sections of the *Standards* regarding grievance procedures, but has failed to implement the section providing detainees the opportunity to file complaints about officer misconduct directly with the U.S. Department of Justice.¹⁴⁵ Furthermore, QDC at times failed to respond to a detainee’s written grievance within five days as required by the *Standards*.¹⁴⁶

The *Standards* require detainee handbooks to provide an explanation of the grievance procedures, including the opportunity to file a complaint about officer misconduct directly with the U.S. Department of Justice (including the phone number and address of the U.S. Department of Justice).¹⁴⁷ According to ex-detainees there is a box for correspondence to the Justice Department located in Facility’s library.¹⁴⁸ However, there is no provision for detainee contact with the Justice Department mentioned in the *Handbook*.

¹⁴⁰ *Standards*, Detainee Grievance Procedures, Section I.

¹⁴¹ *Standards*, Detainee Grievance Procedures, Section III.A.

¹⁴² *Standards*, Detainee Grievance Procedures, Sections III.A.1-2.

¹⁴³ *Standards*, Detainee Grievance Procedures, Section I.

¹⁴⁴ *Standards*, Detainee Grievance Procedures, Sections I & III.C.

¹⁴⁵ *Standards*, Detainee Grievance Procedures, Section III.G.6.

¹⁴⁶ *Standards*, Detainee Grievance Procedures, Section III.A.2.

¹⁴⁷ *Standards*, Detainee Grievance Procedures, Section III.G.6.

¹⁴⁸ Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

According to the *Standards*, it is QDC's responsibility to "institute procedures for informal resolution of oral grievances."¹⁴⁹ The *Handbook* provides clear directions for informal grievances, in which detainees are directed to orally explain their grievances to the shift supervisor. It is the shift supervisor's duty to decide whether a "grievance falls within the scope of the [his/her] responsibility."¹⁵⁰ If the shift supervisor cannot resolve a grievance, it is to be forwarded to the Assistant Facility Administrator.¹⁵¹

As for formal/written grievances, the *Standards* state that detainees must be given the option to forego the informal grievance process or to appeal the judgment rendered through the informal grievance process through the filing of a formal/written grievance.¹⁵² The *Standards* require the facility staff provide detainees with formal grievance forms upon request and that detainees receive the assistance necessary to properly complete the grievance form.¹⁵³ The *Handbook* states that detainees who decide to "bypass or terminate the informal grievance process" in favor of the formal/written grievance process "may submit a detainee request slip to the Assistant Facility Administrator for resolution of problems not handled satisfactorily by the Shift Supervisor."¹⁵⁴ However, ex-detainees reported that obtaining the grievance forms from the Facility staff was quite difficult, as staff members were reluctant to provide the forms and did not seem to comply with Facility regulations regarding the distribution of grievance forms.¹⁵⁵

According to the *Standards*, once a written grievance form is obtained and completed it is to be given to a member of the staff designated by the facility.¹⁵⁶ At QDC, detainees are instructed by the *Handbook* to place written grievances in "the [ICE] Request box located in each housing unit."¹⁵⁷

1. Failure to Respond to Detainee Grievances

Mr. X and Mr. Y reported that a QDC guard named (b)(6), (b)(7)c displayed extremely unprofessional behavior towards detainees over a period of several years, including taking some

149 *Standards*, Detainee Grievance Procedures, Section III.A.1.

150 *Handbook*, p. 23.

151 *Handbook*, p. 23.

152 *Standards*, Detainee Grievance Procedures, III.A.1.

153 *Standards*, Detainee Grievance Procedures, III.A.2.

154 *Handbook*, p. 23.

155 Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

156 *Standards*, Detainee Grievance Procedures, III.A.2.

157 *Handbook*, p. 23.

of his clothes off and simulating sexual acts with detainees; stating jocularly that he wanted to have sex with detainees; and cursing routinely in his speech. When detainees complained, the QDC tour commander and security chief dismissed the concerns, stating that Officer (b)(6), (b)(7)c was crazy and that they could not help.¹⁵⁸ The *Handbook* states, “[i]t is the policy of the Bureau of Immigration and Customs Enforcement to treat detainees with dignity and respect”¹⁵⁹ Despite complaints, Officer (b)(6), (b)(7)c continued to be employed at QDC as of March, 2004.¹⁶⁰ QDC currently is in conflict with *Handbook* policy by not conducting discipline proceedings for QDC staff member (b)(6), (b)(7)c and ensuring that any such unprofessional behavior ceases.

In another example regarding grievance issues, Mr. Y was being transported back to QDC after attending a dental appointment outside of the Facility when he was made to crawl from the bus to the Facility (approximately sixty-five feet) because the officers aiding in the transport would not loosen the shackles on his legs so that he could walk. Despite Mr. Y’s insistent verbal request for the shackles to be loosened, the officers refused. His knees were badly bruised and scraped after the ordeal. Upon reaching the Facility, Mr. Y complained to other QDC staff and was told that he would have to address his complaint to the security officers who handle detainee transportation.¹⁶¹ QDC staff actions during these events were in conflict with the *Handbook* provision requiring that detainees be treated with dignity and respect.¹⁶²

In a third example, Mr. X and Mr. Y were sent a package of legal mail from their lawyer relating to their pending asylum applications. After reviewing the contents of the parcel, a QDC staff member, Officer (b)(6), (b)(7)c took the documents and did not return them for approximately one hour. Neither Mr. X nor Mr. Y knows who read the documents or whether copies were made of the confidential materials. According to the ex-detainees, the documents were clearly labeled “Privileged and Confidential.”¹⁶³ QDC’s action was in clear violation of the *Standards* regarding detainees’ right to the confidentiality of legal mail.¹⁶⁴ Following this event, Mr. X and Mr. Y

158 Notes of delegation member (b)(6), (b)(7)c from interview with Mr. X and Mr. Y, Apr. 30, 2004.

159 *Handbook*, p. 4.

160 Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

161 Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

162 *Handbook*, p. 4.

163 Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

164 *Standards*, Correspondence and Other Mail, Section III.E.2.

filed a formal written grievance against QDC and forwarded a copy of the grievance to the Justice Department in Washington, D.C., but received no response.¹⁶⁵

2. Grievances That Received a Response

Mr. Y filed a written grievance against QDC Officer (b)(6), (b)(7)c who supervised the kitchen workers, including Mr. Y. According to Mr. Y, Officer (b)(6), (b)(7)c approached him and said that two detainees from Mr. Y's country had been deported, and threatened that Mr. Y would be next. Knowing that it was against the rules of the *Handbook* for an officer to threaten a detainee, Mr. Y decided to complain in the form of a written grievance. Not only did Mr. Y charge Officer (b)(6), (b)(7)c with threatening him, but he also argued that Officer (b)(6), (b)(7)c had committed a further offense in divulging confidential information regarding the identity of the deported detainees. Mr. Y received a response, which he characterized as timely and complete. Following his receipt of a written response, Mr. Y saw Officer (b)(6), (b)(7)c in the kitchen and noticed that the officer had cut his hair, ironed his clothes, and generally looked like an exemplary guard, compared to his former disheveled appearance. In this case, not only did Mr. Y receive a written response, but also it appeared to Mr. Y that Officer (b)(6), (b)(7)c was being watched closely by his superiors and in turn was forced to comply with Facility standards.¹⁶⁶

In another example, QDC again was responsive to a detainee's written grievance. Upon arriving at the Facility, Mr. Z's wedding band was confiscated by the guards.¹⁶⁷ This is a violation of the *Handbook* as well as the *Standards*, which provide that detainees are allowed to keep wedding rings, along with certain other sentimental items in their possession, so long as the item "does not pose a threat to the security or good order of the facility."¹⁶⁸ Because Mr. Z did not know why his ring had been taken, he decided to file a written request to have the ring returned to him. He wrote a complaint and gave it to the guard responsible for his dorm. Within two weeks, Mr. Z's wedding ring was returned to him.¹⁶⁹ These events demonstrate that the Facility's written grievance system can be responsive to detainees' written complaints. However, according to the *Handbook*, Mr. Z should have "receive[d] a written copy of the

¹⁶⁵ Notes of delegation member (b)(6), (b)(7)c from interview with Mr. X and Mr. Y, Apr. 30, 2004.

¹⁶⁶ Notes of delegation member (b)(6), (b)(7)c from interview with Mr. X and Mr. Y, Apr. 30, 2004.

¹⁶⁷ Notes of delegation member (b)(6), (b)(7)c from interview with Mr. Z, Mar. 5, 2004.

¹⁶⁸ *Standards, Funds and Personal Property*, Section III.B; *Handbook*, p. 5.

¹⁶⁹ Notes of delegation member (b)(6), (b)(7)c from interview with Mr. Z, Mar. 5, 2004.

Grievance Officer's findings within five (5) days, excluding weekends and holidays."¹⁷⁰ Mr. Z never received a written response.¹⁷¹ Written responses are important. They document reasons for actions taken and can provide context in the event of further challenged actions.

In a final example, a QDC guard's conduct was modified because of the availability of the grievance system. Mr. Z had a conflict with a guard regarding the guard's refusal to adhere to the posted television schedule.¹⁷² Mr. Z requested to watch a certain foreign news program, as indicated by the schedule, but the guard wanted to continue watching horseracing. Mr. Z threatened to file a written grievance against the guard because the guard habitually deviated from the television schedule in order to watch horseracing. In response to this threat, the guard began to follow the schedule, allowing Mr. Z to watch foreign news.¹⁷³

C. HUNGER STRIKE

According to the *Standards*, hunger strikes are classified as a medical concern. The *Standards* require that the facility respond to hunger strikes with proper medical attention to protect the health and welfare of striking detainees.¹⁷⁴

The Facility appears to have implemented this section of the *Standards*.

Procedures in place at the Facility indicate that it categorizes hunger strikes as a medical concern in accordance with the *Standards*. For example, medical personnel monitor the detainee's medical condition every six hours during the strike and a Facility psychiatrist may visit a hunger-striking detainee.¹⁷⁵ Although medical attention is undoubtedly necessary, this response alone inadequately addresses the concerns that tend to motivate detainees to carry out hunger strikes. Often, detainees use hunger strikes to express complaints about fundamental concerns.

¹⁷⁰ *Handbook*, p. 23.

¹⁷¹ Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004.

¹⁷² "[T]he [television] schedule shall be strictly adhered to and no deviation is permitted unless authorized by the Recreation Officer(s)." *Handbook*, p. 25.

¹⁷³ Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004.

¹⁷⁴ *Standards*, Hunger Strikes, Section I.

¹⁷⁵ Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

D. HEALTH AND DIGNITY OF DETAINEES

The *Handbook* states “[i]t is the policy of the Bureau of Immigration and Customs Enforcement to treat detainees with dignity and respect”¹⁷⁶ There are a number of changes in procedure and schedule that QDC should make that would contribute significantly to the dignity and health of people detained at QDC, without any security or significant cost concerns. One of these changes discussed below would also bring QDC into compliance with the *Handbook* rule concerning quiet hours.

1. Sleep

According to former detainees, lack of restful, uninterrupted sleep, while not life-threatening, was a major contributor to detainees’ generally poor mental and physical health. It also reduced detainees’ ability to appropriately prepare for and testify regarding their asylum claims. Detainees lack restful, uninterrupted sleep because the QDC housing units are not quiet at night. Two former detainees reported that overnight guards in their housing unit routinely kept the television on until 1:00 a.m. or 2:00 a.m., and turned it on again around 5:00 a.m. even on weekdays.¹⁷⁷ Operation of television at all of these hours is in violation of the *Handbook*.¹⁷⁸ Overnight guards also regularly talked with detainees throughout the night, disturbing the rest of the other detainees in the housing unit.¹⁷⁹ One detainee finally obtained a sleeping mask from an outside source and found it helpful to block out some of the light from the television and the lamps that remain on all night in the corners of the room.¹⁸⁰

Detainees also lack restful, uninterrupted sleep because at QDC breakfast occurs at 6:00 a.m. Two former detainees found the 8:00 a.m. breakfast schedule at a U.S. prison where they had been detained allowed them more sleep than their experience at QDC.¹⁸¹

2. Clothes Storage

Former detainees reported that the storage of detainees’ clothing at QDC added to detainees’ security and dignity concerns. QDC stores detainees’ clothing, including shoes,

¹⁷⁶ *Handbook*, p. 4.

¹⁷⁷ Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

¹⁷⁸ “TV SCHEDULE Sunday-Thursday 7:00 AM-11:00 PM Friday-Saturday (Inc. Holidays) 5:00 A.M.-12:00 midnight.” *Handbook*, p. 25.

¹⁷⁹ Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, Apr. 30, 2004.

¹⁸⁰ Notes of delegation member (b)(6) from interview with Mr. X, Apr. 30, 2004.

¹⁸¹ Notes of delegation member (b)(6) from interview with Mr. X and Mr. Y, May 3, 2004.

socks, underwear, suit, and coat, compressed together in a small bag for the months or years that each person is detained. In contrast, U.S. prisons store clothing in larger bags with coat hangers. Former detainees heard that other detainees deported back to the country from which they fled originally had attracted attention from security forces because of their odor and “homeless” appearance due to QDC’s practice. Former detainees also reported that because of QDC’s practice detainees had the appearance of vagrants and felt humiliated upon release in the United States.¹⁸²

3. Access to Sunlight and Fresh Air

The Handbook states that detainees have “the right to . . . proper ventilation for warmth and fresh air”¹⁸³ According to former detainees, the lack of fresh air and sunlight at QDC was another major contributor to detainees’ generally poor mental and physical health.¹⁸⁴ For example, one detainee experienced intense, recurring nosebleeds while detained at QDC. The medical staff told the detainee that it was caused by QDC’s environment of constant air conditioning without any exposure to fresh air. Former detainees reported that U.S. prisons with which they were familiar were preferable to QDC in this respect because those prisons permitted detainees regular access to outdoor areas with grass and fresh air.¹⁸⁵

Another detainee was so affected by the lack of sunlight that he filed a written request to see the sun while at QDC.¹⁸⁶ He was detained during the winter, and QDC did not permit him and the other detainees any access to outdoors because QDC does not permit outdoor recreation from November until spring – a time period of half the year or more.¹⁸⁷ The only sunlight available to detainees during those months came from an overhead skylight. QDC did not grant the detainee’s request.

While the detainee’s request may have been difficult to grant, as the winter weather conditions may have impeded outdoor recreation, it is important to recognize the validity of his complaint. The Facility is a converted warehouse that allows for a dismal, at best, quality of life.

¹⁸² Notes of delegation member [REDACTED] from interview with Mr. X and Mr. Y, May 3, 2004.

¹⁸³ *Handbook*, p. 29.

¹⁸⁴ Notes of delegation member [REDACTED] from interview with Mr. Z, Mar. 5, 2004; Notes of delegation member [REDACTED] from interview with Mr. X and Mr. Y, Apr. 30, 2004.

¹⁸⁵ Notes of delegation member [REDACTED] from interview with Mr. X and Mr. Y, Apr. 30, 2004.

¹⁸⁶ Notes of delegation member [REDACTED] from interview with Mr. Z, Mar. 5, 2004.

¹⁸⁷ Notes of delegation member [REDACTED] from interview with OIG [REDACTED] Mar. 10, 2004.

Detainees' access to sunlight and fresh air from spring to October takes place in a small dusty exterior area with high cinderblock walls covered with wire mesh. The inability of detainees to breathe fresh air and to see the sun undoubtedly contributes to many of the cases of depression and anxiety. Although QDC is located in an urban environment, with harsh winters, this should not result in detainees going months without getting fresh air or direct sunlight so that their mental and physical health is severely affected.

E. MEDICAL TREATMENT

The *Standards* require that each facility provide its detainees with "initial medical screening, cost-effective primary medical care, and emergency health care. The OIC [must] arrange for specialized health care, mental health care, and hospitalization within the local community."¹⁸⁸ Also, facilities must provide an initial dental screening, emergency dental care, and routine care for those detained in excess of six months.¹⁸⁹

While the Facility mostly appears to have implemented these sections of the *Standards*, the delegation is concerned that current procedure inadequately guards against unnecessary confinement of detainees at a mental health facility.

1. Accreditation

The *Standards* require that each facility maintain current accreditation by the National Commission on Correctional Health Care, and that each facility "strive for accreditation" with the Joint Commission on the Accreditation of Health Care Organizations.¹⁹⁰

QDC has implemented this section of the *Standards*. QDC currently is accredited by the National Commission on Correctional Health Care, and by the Joint Commission on the Accreditation of Health Care Organizations.¹⁹¹

2. Initial Medical Screening

The *Standards* require that each facility provide its detainees with initial medical screening.¹⁹²

¹⁸⁸ *Standards*, Medical Care, Sections III.A.

¹⁸⁹ *Standards*, Medical Care, Sections III.E.

¹⁹⁰ *Standards*, Medical Care, Section I.

¹⁹¹ Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) and QDC Medical Director (b)(6), Mar. 10, 2004.

QDC has implemented this section of the *Standards*. New arrivals to the Facility are subject to initial medical screening. These screenings consist of a PPD test for tuberculosis, a basic mental health evaluation, and a pregnancy test for all female detainees. The mental health evaluation is usually conducted by a social worker because the staff psychiatrist is only at QDC part-time.¹⁹³

3. Sick Call

Each facility is required to have regularly scheduled times, known as sick call, when medical personnel are available to see detainees who have requested medical services. The *Standards* require a minimum of five days sick call per week for a facility of over 200 detainees.¹⁹⁴

QDC appears to have implemented this section of the *Standards*. According to the *Handbook*, in order to see a member of the “health care team” detainees must complete a sick call slip and place it in the “‘sick call’ box located in each housing area dayroom. Sick call is conducted Monday through Friday from 8:30 a.m. to noon and from 1:00 p.m. to 3:30 p.m.”¹⁹⁵ The maximum capacity for QDC is 200 detainees; thus with five days sick call per week, QDC is in compliance with this section of the *Standards*.

In the case of ex-detainee Mr. Z’s housing unit, from 6:00 a.m. to 7:00 a.m. Monday through Friday a sign-up sheet was circulated for detainees to request medical attention. Only detainees who knew they would be in need of medical attention at that time would be able to see medical staff on that day in a non-emergency situation.¹⁹⁶ Detainees who request medical attention through a “sick call” are seen by a physician’s assistant.¹⁹⁷ According to Mr. Z, it was routine to receive medical treatment if a detainee signed up for sick call. After 7:00 a.m., a detainee would be required to inform the guard on duty that he needed medical attention.¹⁹⁸ OIC

192 *Standards*, Medical Care, Section III.A.

193 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) and QDC Medical Director (b)(6) Mar. 10, 2004.

194 *Standards*, Medical Care, Section III.F.

195 *Handbook*, p. 24.

196 Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004.

197 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) and QDC Medical Director (b)(6) Mar. 10, 2004.

198 Notes of delegation member (b)(6) from interview with Mr. Z, Mar. 5, 2004.

Regis stated that detainees are usually seen by a medical professional the day after they request medical treatment.¹⁹⁹

4. Medical Staff Size

The facility must employ a medical staff large enough to perform basic exams and treatments for all detainees.²⁰⁰ The medical staff must have valid professional licensure and/or certification.²⁰¹

QDC appears to have implemented this section of the *Standards*. Twelve U.S. Public Health Service medical staff work at QDC. A doctor is present at QDC two days per week. The doctor assigned to this Facility is a cardiologist. When not at the Facility, the doctor is available via cell phone. A psychiatrist is available one day per week and a social worker three days per week. The doctor, psychiatrist, and social worker are shared with the Elizabeth, New Jersey detention facility. QDC has one physician's assistant and either one or two Registered Nurses present during the weekdays. At night and on the weekend there is one Licensed Practical Nurse or one Registered Nurse on staff.²⁰²

5. Medical Diet

The *Standards* require that the medical care provider notify the OIC when a detainee requires a special diet for medical reasons.²⁰³

QDC appears to have implemented this section of the *Standards*. The *Handbook* provides that “[m]edical diets may be prescribed by a facility physician or dentist as part of a detainee’s treatment. Medical diet menus will be prepared not to exceed thirty (30) days. Physician or dentist approval is required to continue medical diets after thirty (30) days.”²⁰⁴

199 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) and QDC Medical Director (b)(6) Mar. 10, 2004.

200 *Standards*, Medical Care, Section III.A.

201 *Standards*, Medical Care, Section III.C.

202 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) and QDC Medical Director (b)(6) Mar. 10, 2004.

203 *Standards*, Health Services, Section III.J.

204 *Handbook*, p. 10.

6. Mental Health Care

The OIC is required to arrange for specialized health care, mental health care, and hospitalization for detainees within the local community.²⁰⁵ With regard to mental health care, the Facility has a relationship with Holliswood Hospital (“Holliswood”), a private psychiatric hospital located in Queens, New York.²⁰⁶ Detainees who exhibit abnormal or uncontrollable behavior are evaluated at QDC and can be sent to Holliswood for mental health treatment. The decision to send a detainee to Holliswood is made by whichever medical professional is on call at QDC at the time the issue arises. The medical professional making the decision could range from a doctor to a social worker to a Licensed Practical Nurse.²⁰⁷ It appears that most detainees who are sent to Holliswood suffer from depression, anxiety, and other stress-related disorders.²⁰⁸ It is unclear how severe a detainee’s symptoms must be for the detainee to be sent to Holliswood. The detainee need not consent to being transferred to Holliswood. A detainee is only required to consent before treatment begins.²⁰⁹

QDC appears to have implemented this section of the *Standards*. However, the delegation is concerned that current procedure inadequately guards against unnecessary confinement of detainees at Holliswood. The current procedure is inadequate because (1) the decision to send a detainee to Holliswood can be made by lower-level medical staff without approval from the part-time staff psychiatrist, and (2) there are no written criteria governing the decision of whether to commit a detainee to Holliswood. If a detainee is unnecessarily confined at Holliswood, reduced access to counsel and reduced ability to participate in the asylum process are among the negative effects, thereby needlessly prolonging the detention of that person.

7. Dental Care

The *Standards* require an initial dental screening exam within fourteen days of the detainee’s arrival and that the facility provide a number of services, including emergency dental

²⁰⁵ *Standards*, Medical Care, Section III.A.

²⁰⁶ *Handbook*, p. 7.

²⁰⁷ Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) and QDC Medical Director (b)(6) Mar. 10, 2004.

²⁰⁸ Notes of delegation member (b)(6) from interview with (b)(6) Esq., Staff Attorney at Human Rights First, Mar. 9, 2004.

²⁰⁹ Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) and QDC Medical Director (b)(6) Mar. 10, 2004.

treatment and repair of prosthetic appliances.²¹⁰ For detainees who are held in detention for over six months, routine dental treatment may be provided, including “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.”²¹¹

QDC does not appear to have fully implemented this section of the *Standards*.

According to ex-detainee Mr. Y, a detainee must spend one year in detention before he/she is eligible to receive routine dental treatment. After being detained for the requisite length of time to receive routine dental care (six months as required by the *Standards*), Mr. Y was forced to wait nine months for proper dental treatment. During this time, he suffered from a toothache and visited a dentist four times. Each time Mr. Y saw the dentist, the dentist told him that he could do nothing but provide Mr. Y with painkillers, as the dentist’s recommended course of treatment had not yet been approved.²¹²

F. DIET

The *Standards* note that it is ICE policy “to provide detainees with nutritious, attractively presented meals, prepared in a sanitary manner while identifying, developing and managing resources to meet the operational needs of the food service program.”²¹³ To that end, they also require the appointment of food service professionals to administer the service and to assure proper custody and security, particularly regarding items such as knives that could be potentially be used as weapons.²¹⁴

QDC appears to have implemented the *Standards* for food service. The *Handbook* nearly quotes verbatim the general food service policy noted in the *Standards*, provides a schedule of meal times, and provides information regarding modifications to the general diet that may be made for religious or medical reasons.²¹⁵ These policies were consistent with what the delegation observed in its visit to the Facility’s kitchen and its conversations with Kitchen Supervisor (b)(6) noted that the Facility employs a weekly cycle of menus and

²¹⁰ *Standards*, Medical Care, Section III.E.1.

²¹¹ *Standards*, Medical Care, Section III.E.2. Some items that are “routine” under the *Standards*, such as severe cavities, neglect of which leads to tooth loss, should not have to wait six months before treatment.

²¹² Notes of delegation member (b)(6) from interview with Mr. Y, Apr. 30, 2004.

²¹³ *Standards*, Food Service, Section I.

²¹⁴ *Standards*, Food Service, Sections III.A.1-3. & B.1-6.

²¹⁵ *Handbook*, p. 10.

that much of the food is prepared fresh rather than processed.²¹⁶ He added that the QDC tries to accommodate detainee needs to fast for religious reasons, e.g., by obtaining the advice of an Imam regarding the regulations for the Muslim holy season of Ramadan.²¹⁷ Further, meals are also held and served later to those detainees who miss them for legitimate reasons, e.g., visits or intake processing.²¹⁸

(b)(6) stated that the general daily diet at QDC is 3500 to 3800 calories per day, but can be adjusted for health reasons.²¹⁹

G. RELIGIOUS PRACTICES

The *Standards* state that “[d]etainees of different religious beliefs will be provided reasonable and equitable opportunities to participate in the practices of their respective faiths,” regardless of whether or not they are considered “mainstream” religions, and that opportunities to practice those faiths will be limited only by “concerns about safety, security, the orderly operation of the facility, or extraordinary costs.”²²⁰ For example, the OIC is permitted under the *Standards* to “limit participation in a particular religious activity or practice to the members of that religious group,” particularly “when the nature of the activity or practice (fasts, ceremonial meals, headwear requirements, work proscriptions, etc.) indicates a need for such a limitation, only those detainees whose files reflect the pertinent religious preference will be included.”²²¹

Detainees’ religious preferences, if any, may be designated during processing, and detainees are permitted to change the designation of their religious preferences. Such requests must be made in writing to the Chaplain or other designated official.²²² The *Standards* also assume the presence and/or employment of a Chaplain, who is “responsible for managing religious activities in the facility” and “available to provide pastoral care and counseling . . . both

216 Notes of delegation member (b)(6) from interview with Kitchen Supervisor (b)(6), Mar. 10, 2004.

217 Notes of delegation member (b)(6) from interview with Kitchen Supervisor (b)(6), Mar. 10, 2004.

218 Notes of delegation member (b)(6) from interview with Kitchen Supervisor (b)(6) and OIC (b)(6), (b)(7) Mar. 10, 2004.

219 Notes of delegation member (b)(6) from interview with Kitchen Supervisor (b)(6), Mar. 10, 2004.

220 *Standards*, Religious Practices, Section I.

221 *Standards*, Religious Practices, Section III.B.

222 *Standards*, Religious Practices, Section III.C.

through group programs and individual services.”²²³ In addition, the Facility is to assure that designated spaces are available for religious services and that properly recognized and credentialed religious representatives from outside the Facility shall be made available to detainees.²²⁴

The Facility’s *Handbook* assures that detainees “shall have access to religious resources, services, instruction and counseling on a voluntary basis” and they “shall be extended the greatest amount of freedom and opportunity for pursuing any legitimate religious belief or practice within the constraints of security and safety considerations.”²²⁵ It does not, however, attempt to provide a definition of what is a “legitimate” religious practice. It further designates the “Recreation Officer(s)” as the proper parties to receive “all requests related to religious service opportunities.”²²⁶ Finally, the *Handbook* does designate particular parts of the Facility as the proper places for religious activities.²²⁷

QDC has not fully implemented the *Standards* regarding religious practices. The delegation noted that there are regular religious services at QDC: a priest from the Brooklyn Diocese presides at Mass once a week and a Muslim Imam provides regular Friday services.²²⁸ Further, the Imam may be called in to address specific detainee concerns.²²⁹ The *Handbook* indicates that “Christian” and “Non-Denominational” services are also supposed to be available,²³⁰ and while the delegation found a bulletin board indicating the schedule for the “Christian” service, it is apparently no longer available.²³¹

It appears that the Facility tries to meet detainees’ requests for special meals to accommodate their religious beliefs.²³² The *Standards* permits the wearing of religious items, as

223 *Standards*, Religious Practices, Sections III.D.

224 *Standards*, Religious Practices, Sections III.E-F.

225 *Handbook*, p. 14.

226 *Handbook*, p. 14.

227 *Handbook*, p. 14 (noting “the indoor recreation area, empty dorm, library or miscellaneous room” as appropriate).

228 Notes of delegation member (b)(6) from interview with OIC (b)(6) Mar. 10, 2004.

229 Notes of delegation member (b)(6) from interview with OIC (b)(6) Mar. 10, 2004.

230 *Handbook*, p. 14.

231 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

232 Notes of delegation member (b)(6) from interviews with OIC (b)(6) and (b)(6) food Service, Mar. 10, 2004.

long as it is “consistent with facility security.”²³³ The Handbook also notes that among the items a detainee is allowed to retain at QDC is “one religious medal with chain.”²³⁴ OIC (b)(6), (b)(7) stated that detainees were allowed to have religious items (e.g., Bible, Koran, head scarf, etc.) in their personal belongings.²³⁵

H. RECREATION

The *Standards* state that, “All facilities shall provide [ICE] detainees with access to recreational programs and activities, under conditions of security and supervision that protect their safety and welfare.”²³⁶ Further, “[e]very effort shall be made to place a detainee in a facility that provides outdoor recreation. If a facility does not have an outdoor area, a large recreation room with exercise equipment and access to sunlight will be provided. (This does not meet the requirement for outdoor recreation.)”²³⁷ The *Standards* deem opportunities for adequate recreation to be so important that cases where only indoor or no recreation facilities are available, they provide detainees the opportunity to request transfer to other facilities.²³⁸

QDC has nominally implemented the *Standards* for Recreation. The *Handbook* distinguishes between “in-dorm” and “outside” recreation, the latter of which presumably encompasses both the indoor and outdoor recreation areas; and it devotes the bulk of the discussion of “in-dorm” recreation to the rules governing television.²³⁹

The delegation found the outdoor recreation opportunities for detainees at QDC to be extremely limited, both by the physical structure of the building and by weather conditions. The outdoor recreation facilities consisted of a caged-in area, approximately thirty by sixty feet; however, substantial portions of even this small area were obstructed by a ramp and what looked like a large heating, ventilating, and air conditioning unit.²⁴⁰

233 *Standards*, Religious Practices, Section III.K.

234 *Handbook*, p. 5.

235 *Standards*, Religious Practices, Sections III.K.; Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

236 *Standards*, Recreation, Section I.

237 *Standards*, Recreation, Section III.A.1.

238 *Standards*, Recreation, Sections III.C-D.

239 *Handbook*, pp. 24-25.

240 Notes and observations of delegation member (b)(6) Mar. 10, 2004.

By contrast, the indoor area measured approximately twenty-five by forty feet and featured a half-court basketball surface, a weight machine, two step machines, and two rowing machines.²⁴¹

The *Handbook* states that “[a]ll detainees, weather and physical layout permitting, will be provided, at a minimum, one hour of outdoor recreation per day, five (5) days per week.”²⁴² Detainees in segregation are afforded the same access to recreation as other detainees, unless they are denied such access for disciplinary reasons.²⁴³

I. ICE PRESENCE AT QDC

The *Standards* require procedures to be in place “to allow for formal and informal contact between key facility staff and ICE staff and ICE detainees and to permit detainees to make written requests to ICE staff and receive an answer in an acceptable time frame.”²⁴⁴ The *Standards* require that weekly visits be conducted by ICE personnel and that “regular unannounced (not scheduled) visits” be conducted by the ICE OIC, the Assistant OIC, and designated department heads.²⁴⁵ The purpose of such visits is to monitor housing conditions, interview detainees, review records, and answer questions for detainees who do not comprehend the immigration removal process.²⁴⁶

The *Standards* also require that detainees “have the opportunity to submit written questions, requests, or concerns to ICE staff.”²⁴⁷ All facilities that house ICE detainees must have “written procedures to route detainee requests to the appropriate ICE official” and must assist detainees “who are disabled, illiterate, or know little or no English.”²⁴⁸ Moreover, the *Standards* require that informal detainee requests (as contrasted with formal/written grievances) be responded to “as soon as possible and practicable, not later than within seventy-two hours from receiving the request.”²⁴⁹ ICE must maintain a log of detainee requests.²⁵⁰

²⁴¹ Notes and observations of delegation member (b)(6) Mar. 10, 2004.

²⁴² *Handbook*, p. 25.

²⁴³ Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.

²⁴⁴ *Standards*, Staff-Detainee Communication, Section I.

²⁴⁵ *Standards*, Staff-Detainee Communication, Section III.A.

²⁴⁶ *Standards*, Staff-Detainee Communication, Section III.A.

²⁴⁷ *Standards*, Staff-Detainee Communication, Section III.B.

²⁴⁸ *Standards*, Staff-Detainee Communication, Section III.B.

²⁴⁹ *Standards*, Staff-Detainee Communication, Section III.B.1.a.

²⁵⁰ *Standards*, Staff-Detainee Communication, Section III.B.2.

ICE appears to have implemented this section of the *Standards* at QDC.

OIC (b)(6), (b)(7) and Detention Officer Supervisor (b)(6), (b)(7)c emphasized that ICE staff are always on-site at QDC. Supervisor (b)(6), (b)(7)c summarized his officers' tasks as "quality assurance."²⁵¹ Detention officers go into all areas of QDC to observe, talk to detainees, and review Geo Group, Inc. ("GEO," the company contracted with running QDC) staff actions.²⁵² Detention officers conduct three tours of the Facility per shift. The tours include unannounced visits into each housing unit, and areas of use by detainees such as the kitchen and the infirmary.²⁵³

Detainees can discuss issues of concern with ICE staff, including detention officers, or give a staff member a written form without first going through GEO guards and staff.²⁵⁴ ICE responds to these informal written requests from detainees as soon as possible, and within seventy-two hours at the latest.²⁵⁵ ICE maintains a log of detainee requests and responses to those requests.²⁵⁶

The *Handbook* states that detainees also may discuss grievances with ICE staff rather than GEO staff by placing a formal grievance form in the ICE request box located in each housing unit. Facility staff will assist with completing the form if necessary. Medical grievances will be referred to the medical staff director. Emergency grievances will be responded to immediately. ICE will respond to formal grievances within five days excluding weekends and holidays.²⁵⁷

Each detainee is also assigned to an ICE deportation officer. The deportation officer performs a case manager function for the detainee. A detainee may see the assigned deportation officer as often as once per week if desired. The deportation officer reviews the assigned

251 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7)c and Detention Officer Supervisor (b)(6), (b)(7)c Mar. 10, 2004.

252 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7)c and Detention Officer Supervisor (b)(6), (b)(7)c Mar. 10, 2004.

253 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7)c and Detention Officer Supervisor (b)(6), (b)(7)c Mar. 10, 2004.

254 Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7)c and Detention Officer Supervisor (b)(6), (b)(7)c Mar. 10, 2004.

255 Notes of delegation member (b)(6) from interview with Detention Officer Supervisor (b)(6), (b)(7)c Mar. 10, 2004.

256 Notes of delegation member (b)(6) from interview with Detention Officer Supervisor (b)(6), (b)(7)c Mar. 10, 2004.

257 *Handbook*, p. 23.

detainee's file upon intake. After the detainee's credible fear interview, the deportation officer drafts the Notice to Appear. The deportation officer also provides immigration forms to the detainee as requested, and assists with forms such as those regarding stay of removal, request for parole, and appeals.²⁵⁸

V. CONCLUSION

The delegation wishes to thank OIC (b)(6), (b)(7) and the QDC staff for their cooperation and assistance in scheduling and facilitating its visit on March 10, 2004. The delegation determined that QDC had successfully implemented many sections of the *Standards* related to legal access. There were, however, some significant areas where the delegation observed that the *Standards* had not been implemented. The delegation sincerely hopes that QDC will implement the *Standards* with the letter and the spirit of the *Standards* and thus to respect the human rights and dignity of the men and women detained at QDC in a manner consistent with the values and the security needs of the United States.

²⁵⁸ Notes of delegation member (b)(6) from interview with OIC (b)(6), (b)(7) Mar. 10, 2004.