



Society for Immigrant & Refugee Rights  
Columbia University School of Law

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Columbia University School of Law  
435 West 116<sup>th</sup> Street  
New York, NY 10027

April 9, 2007

Richard T. Wolf  
Executive Director  
New York City Board of Correction  
Room 931, 51 Chambers Street  
New York, NY 10007

Dear Mr. Wolf,

We, the undersigned, are members of the Society for Immigrant & Refugee Rights' 2006-2007 Executive Board at the Columbia University School of Law.<sup>1</sup> We are writing to comment on the proposed amendments to the Minimum Standards for New York City Correctional Facilities ("Minimum Standards"). We are especially concerned about, and opposed to, the proposal to abolish § 1-01(c)(1), the requirement that "[e]ach institution shall have a sufficient number of employees and volunteers fluent in the Spanish language in understanding, and participating, in the various institutional programs and activities, including the use of the law library and parole applications."

We commend the Board of Correction ("Board") for its proposal to amend the Minimum Standards by adding new § 1-01(d)(3), the requirement that "[p]rocedures shall be employed to ensure that non-English speaking prisoners understand all written and oral communications from facility staff members, including, but not limited to orientation procedures, health services procedures, facility rules and disciplinary proceedings." However, this addition does not compensate for the deletion of § 1-01(c)(1) because Spanish is the language of a commanding majority of non-English speakers who come into contact with the criminal justice system in New York City.<sup>2</sup>

We are concerned first and foremost because these changes will eliminate the Minimum Standards' only requirement that "sufficient" numbers of "employees and volunteers" be utilized to ensure translation for non-English speaking prisoners. Proposed § 1-01(d)(3) neither specifies *what* "procedures shall be employed" to ensure translation (whereas

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<sup>1</sup> The Society for Immigrant & Refugee Rights is a student run organization at the Columbia University School of Law composed of law students dedicated not only to academic study related to immigrants and refugees, but also to taking action to further the rights of immigrants and refugees both in the U.S. and around the world. For more information visit our website at <http://www.columbia.edu/cu/law/sirr>.

<sup>2</sup> See Anita Khashu, Vera Institute for Justice, *Translating Justice: A Guide for New York City's Public Safety Agencies to Improve Access for Residents with Limited English Proficiency 3-5* (2006), available at [http://www.vera.org/publication\\_pdf/342\\_619.pdf](http://www.vera.org/publication_pdf/342_619.pdf).



current § 1-01(c)(1) mandates the use of employees and volunteers), nor requires that these procedures be *sufficient*.

We are worried that the procedures developed under proposed §1-01(d)(3) will look less like current § 1-01(c)(1) (use of “a sufficient number” of “employees and volunteers”) and more like current § 1-01(c)(2) (use of “[b]ilingual prisoners”). This concerns us for three reasons:

- First, ***the deletion § 1-01(c)(1)***, and its requirement that “a sufficient number” of “employees and volunteers fluent in the Spanish language,” be available at each facility, and its replacement with a standard that neither specifies what procedure shall be employed nor requires that such procedure be sufficient, ***sends a discouraging message*** that the quality of translation services for Spanish speaking prisoners will be lessened.
- Second, ***the use of bilingual prisoners*** to assist Spanish speaking prisoners in understanding all written and oral communications from facility staff members ***is simply not adequate*** to completely replace the use of “employees and volunteers fluent in the Spanish language,” because the use of “ad hoc interpreting” has been shown to result in “incomplete or inaccurate explanation of the facts.”<sup>3</sup>
- Third, ***the use of bilingual prisoners*** to assist Spanish speaking prisoners in understanding all written and oral communications from facility staff members will discourage Spanish speaking prisoners from seeking assistance from facility staff because it ***jeopardizes confidentiality***.<sup>4</sup> This is especially a concern for prisoners seeking assistance or information on HIV/AIDS.<sup>5</sup>

For the foregoing reasons, we oppose the deletion of § 1-01(c)(1) and urge the Board to reconsider its proposal to do so. We do support the Board’s decision to add new § 1-

<sup>3</sup> Daniel J. Rearick, Note, Reaching Out to the Most Insular Minorities: a Proposal for Improving Latino Access to the American Legal System, 39 Harv. C.R.-C.L. L. Rev. 543, 577 (2004). Ad hoc interpreters “tend to make five common errors: (1) omission: completely or partially deleting a message sent by the speaker; (2) addition: the tendency to include information not expressed by the speaker; (3) condensation: the tendency to simplify and explain; (4) substitution: the tendency to replace; and (5) role exchange: the interpreter assuming the role of the interviewer, taking over the interview and asking her own questions.” *Id.*, at 577 n. 184 (citing Javier Vasquez, The Problem with Interpreters: Communicating with Spanish-speaking Patients, 42 Hosp. & Cmty. Psychiatry 163 (1995)).

<sup>4</sup> Michael F. Haggerty, M.P.H., The Body, Incarcerated Populations & HIV (2000), <http://www.thebody.com/cria/summer00/prison.html> (stating that “[i]n the absence of bilingual staff, inmates who do not speak English often must rely on bilingual inmates as translators. In doing so, they jeopardize their confidentiality”).

<sup>5</sup> “Inmates have been attacked and killed for being perceived as gay and/or HIV positive in prison. HIV is still largely considered a ‘gay disease’ inside. If an inmate becomes too interested in treatment or education, he or she may be labeled as gay, adversely impacting health, housing, and life.” *Id.*



01(d)(3) because, although Spanish speakers are the vast majority of non-English speakers in New York City who come into contact with the criminal justice system, other non-English speaking populations also require translation services. However, the new § 1-01(d)(3), is in no way an adequate replacement for the current § 1-01(c)(1) in regard to the needs of the majority of New York City’s non-English speaking prisoners.

We furthermore urge the Board to revise this new requirement to be more specific as to *what* “procedures shall be employed” to ensure translation for non-English speakers other than Spanish speakers. Specifically, we urge the Board to revise proposed § 1-01(d)(3) to require that “employees and volunteers” be used to accommodate the needs of non-English speakers other than Spanish speakers, and to require that the procedures developed under this new requirement be “sufficient.”

Sincerely,

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